

July 3, 2013

**FILED VIA ECF**

Honorable Dennis M. Cavanaugh  
United States District Judge  
U.S. Post Office & Courthouse Building, Room 451  
P.O. Box 999  
Newark, New Jersey 07101-0999

**Re: United States v. Paul W. Bergrin,**  
**Docket No. 09-369**

Dear Judge Cavanaugh:

At the risk of belaboring the record, we write as standby counsel for defendant Paul W. Bergrin, in very brief response to the government's July 1, 2013 letter. In that letter, faced with the discrepancies raised in Mr. Bergrin's reply brief, the government suddenly retracts its reliance on the 7:13 p.m. telephone call on December 4, 2003, between defendant Paul Bergrin and Hakeem Curry, to support its theory that the Avon Street meeting to which Anthony Young testified occurred on December 4, 2003. As set forth in Mr. Bergrin's reply brief, the substance of that conversation confirms that Mr. Bergrin had no plans to see or even speak to Curry that evening. Nevertheless, the government again asserts that "it is certainly rational to infer that the meeting occurred after Baskerville's December 4th bail hearing, because it was at that hearing that Bergrin and Baskerville learned that Baskerville faced life imprisonment and was not being released on bail." Gov. Ltr. (7/1/13). The government also contends that "The fact that there were three calls between Bergrin and Curry that day underscored their concern about the outcome of the hearing and reinforced the inference that the meeting Young described occurred on or after December 4th." *Id.* (citing 34T 8505-07) (government summation).

The government continues to play fast and loose with the evidence in this case. The truth still is that there is absolutely no evidence that the calls between Mr. Bergrin and Curry on December 4, 2003 demonstrated *any* concern that Mr. Baskerville would face life imprisonment or that a meeting was necessary in light of the hearing. Specifically, those calls show, as clear as can be, that at 7:13 p.m., Mr. Bergrin informed Curry that he believed he could obtain a 13-year plea deal for William Baskerville, and that Curry encouraged him to "fight, Paul." CW-000009 (provided in discovery on July 1, 2009). In the first of the two calls leading up to that conversation, at 15:45:40, *i.e.* 3:45 p.m., after the bail hearing, Curry called Mr. Bergrin. Mr. Bergrin informed him that he was "real disappointed" because he "argued my heart" and he "really thought we had a shot at it," but that Baskerville's bail was denied. Mr. Bergrin stated that it was a "rough case," specifically citing the extensive surveillance the government had -- notably, without reference to the testimony of an informant. *Id.* In response to Curry's question "How bad is that?" Mr. Bergrin reassured Curry that, "it all carries the same penalty" but that "as far as proving it, I don't know until I get the surveillance reports ... it's too early." *Id.* Curry, in turn, appears to understand that "until you get the discovery you don't know what's going on with the case really" but that Mr. Bergrin will get the papers when he returns to Court on December 11, 2003. *Id.* In the second call, at 16:47:29, *i.e.* 4:47 p.m., Mr. Bergrin merely asks

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Curry if he can call him later, as he is with a client. *Id.* Mr. Bergrin, of course, calls Curry back at 7:13 p.m. Thus, the three calls reveal that Mr. Bergrin had expected to obtain bail for Mr. Baskerville, but that he would know more about the strength of the government's proofs when he received the surveillance reports on a date a full week after December 4th.

The calls, moreover, do not convey the impression that Mr. Bergrin feared, even after the hearing, that Baskerville was facing life imprisonment and Mr. Bergrin does not convey that he was. Indeed, on the call to which the government pointed the Court, Mr. Bergrin told Curry Baskerville was facing eighteen years and stated his belief that he could negotiate a thirteen-year plea deal. Likewise, consistent with Mr. Bergrin's defense that he would not have said "no Kemo, no case" in light of the strong surveillance and other evidence against Baskerville, and inconsistent with Young's testimony that Mr. Bergrin hinged Baskerville's freedom on preventing Kemo from testifying, Mr. Bergrin notes in two different conversations the extensive surveillance evidence against Baskerville.

In sum, these calls simply cannot support the inference that the meeting Young described occurred on December 4, 2003 or, for that matter at any time after the bail hearing; indeed, the calls fundamentally contradict the core of Young's testimony that Mr. Bergrin met with the Curry organization and told them that Baskerville faced life imprisonment. The government's letter is disturbing, both for its unapologetic post-briefing change of argument and for its preoccupation with upholding Mr. Bergrin's convictions related to the Kemo murder (notwithstanding his convictions on so many other counts which are not the subject of post-trial motions). Most respectfully, Mr. Bergrin faces life without parole on the counts at issue, and the government should be more concerned about the fact that the substance of the calls themselves negates Young's account (which is, of course, the sole evidence of Mr. Bergrin's involvement in the Kemo McCray murder) and less concerned with victory at all costs.

For the reasons set forth in Mr. Bergrin's prior submission, given both the pertinent substantive law and the standards that Mr. Bergrin fully recognizes are applicable at this stage of proceedings, Mr. Bergrin's motion for a judgment of acquittal on Counts 3, 12 and 13 should be granted.

Respectfully submitted,

s/ Lawrence S. Lustberg

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Standby Counsel for Defendant Paul W. Bergrin

cc: Steven G. Sanders, Assistant U.S. Attorney (via email)  
Paul W. Bergrin