UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA v. PAUL BERGRIN Defendant.	Criminal No. 09-369 Chief Judge Jose L. Linares

REPLY BRIEF IN SUPPORT OF DEFENDANT PAUL BERGRIN'S MOTION FOR A NEW TRIAL GROUNDED ON NEWLY DISCOVERED EVIDENCE

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INTRODUCTION

In support of his motion for a new trial under Federal Rule of Criminal Procedure 33, Defendant Paul Bergrin has submitted extensive newly discovered evidence establishing that the most material evidence against him was at the least unreliable, and more likely outright false. This evidence satisfies the factors identified in *United States v. Iannelli* for the grant of a new trial because it has only been discovered since trial not because of any lack of diligence by Bergrin, and because it is not merely cumulative or impeaching, but rather so material that it would likely produce an acquittal. 528 F.2d 1290, 1292 (3d Cir. 1976). To more fully establish the credibility and materiality of this proof, Bergrin has requested an evidentiary hearing, at which the government may cross-examine the relevant witnesses and the Court may observe their demeanor and assess their credibility, which the government seeks to disparage as a matter of law. Such a hearing will establish that Bergrin never joined a conspiracy to kill government witness Kemo McCray by uttering the words "No Kemo, no case," never conspired to kill a second witness against Bergin client Vincent Esteves, and never engaged in narcotics trafficking of any kind.

In response, the government urges the Court to disregard this evidence and deny Bergrin a hearing, arguing that Bergrin has not met his burden under various *Iannelli* factors. The government's arguments, however, mischaracterize both the law and the record. First, the government invents new *per se* rules to claim that Bergrin must have been aware of, or was not diligent in discovering, particular pieces of evidence; specifically, the government contends that evidence in a defendant's physical possession, or coming from a co-defendant, co-conspirator, or trial witness, can *never* be newly discovered. The caselaw does not support these rules, however, and instead requires a case-specific analysis that takes account of the totality of the circumstances and all relevant factors. Here, those factors amply demonstrate that Bergrin was diligent and unaware of the proof he now presents.

Second, the Government attempts to show that some of Bergrin's newly discovered evidence is merely cumulative or impeaching, is not credible, and can be proven false from the record evidence without need of a hearing. But the impeachment evidence Bergrin presents undermines the most significant government testimony in the case, and is not contradicted by any proven facts. Further, the credibility of witnesses is a determination properly left to the Court, and an evidentiary hearing would best serve this purpose.

Third, and finally, the government argues that its case at trial was so overwhelming as to render all of Bergrin's newly discovered evidence immaterial. The government's analysis both overstates the strength of its case in chief and pays short shrift to the ways that new evidence undermines it. As was demonstrated in Bergrin's principal brief and as is further detailed below, the newly discovered evidence reveals that the government's case was built on fabricated testimony, almost exclusively from cooperating witnesses who exploited the government's eagerness to convict Bergrin. Accordingly, Bergrin respectfully requests an evidentiary hearing so that he may show he is entitled to a new trial.

ARGUMENT

I. Bergrin's Evidence Is Newly Discovered under Established Law.

As Bergrin notes in his principal brief, Def.'s Br. at 2-4, the first two *Iannelli* factors entail a two-part inquiry to determine whether evidence is "newly discovered" for purposes of Rule 33: first, evidence must be newly discovered as an objective matter, meaning that it "could [not] have been known by the diligence of the defendant or his counsel"; and second, the evidence must be subjectively new, *i.e.* the defense team must have actually been unaware of it pre-trial. *United States v. Cimera*, 459 F.3d 452, 461 (3d Cir. 2006) (citing *Iannelli*, 528 F.2d at 1292). Under the first (objective) test, "[t]o determine whether the movant exercised 'reasonable diligence,' [a court] must carefully consider the factual circumstances of the case." *Id.* (citing 44 A.L.R. Fed. 13

("[Ordinary diligence . . . is a relative term and depends on the circumstances of the case[.]")). As the Third Circuit recently held, "even the most zealous of counsel cannot be expected to inquire into every remote possibility and may reasonably prioritize the investigation of matters material to the defense above those that seem peripheral." *United States v. Noel*, 905 F.3d 258, 272 (3d Cir. 2018). Accordingly, a defendant should have discovered particular evidence in the exercise of reasonable diligence only "once the circumstances alert her to the existence of additional information that has a reasonable possibility of proving material to the defense." *Id.* The Court must therefore determine Bergrin's diligence by considering whether, based on the specific circumstances of this case, Bergrin was alerted to the possible existence and materiality of the evidence he has now presented. Further, the Court must also determine whether, as a matter of fact, Bergrin was unaware of this evidence pre-trial.

The Government's responding brief ignores this standard and instead advocates for a series of *per se* rules in an effort to disqualify particular evidence raised by Bergrin's motion. These alleged rules, discussed in turn, are unsupported by precedent. Instead, using the established case-by-case analysis described above, the Court should find that Bergrin was sufficiently diligent and subjectively unaware with regard to the evidence in question so that his motion should be decided on its merits.

1. No *per se* rule holds that evidence cannot be newly discovered if the defendant physically possessed it pre-trial.

The government proposes a new *per se* rule that materials in a defendant's possession pre-trial can never be newly discovered under Rule 33. Gov't Br. at 18, 21. According to the government, this disposes of two pieces of evidence: audio recordings made pursuant to a wiretap of alleged co-conspirator Hakeem Curry ("the Curry Tapes"), and toll records of Bergrin's phone calls revealing over 50 phone calls made by Bergrin to DEA Agent Greg Hilton. The materiality

of this evidence is discussed *infra*, but for present purposes, the government is wrong on the law—Bergrin was diligent with regard to this evidence, and he did not know of its existence. The government further argues that, in any event, Bergrin's trial strategy shows that he in fact listened to the Curry Tapes. But this is incorrect as well. Bergrin's conduct at trial is in complete accord with his sworn ignorance of the Curry Tapes, and the government's arguments to the contrary rely on improper inferences and the misconstruction of the record.

To begin, the government's claim that evidence in a defendant's physical possession is *per se* not newly discovered relies on a single sentence in a footnote in *United States v. Cimera*, where the Third Circuit stated: "where the defendant had possession of the evidence at the time of his trial, his failure to realize its relevance will not render that evidence 'newly discovered.'" 459 F.3d at 460 n.10; Gov't Br. at 18, 21 (quoting *Cimera*). But as the plain text makes clear, *Cimera* thus held only that newfound "*relevance*" will not make evidence "newly discovered." It does not hold, as the government would have it, that a defendant's physical possession means he must have been *aware* of such evidence, whether through reasonable diligence (objectively) or in fact (subjectively).

The distinction is even clearer in context. Thus, in *Cimera*, the defendant moved for a new trial under Rule 33, following his conviction for knowingly cashing 14 stolen checks; he argued that the checks bore different account numbers and therefore could not all have been cashed at the location where he worked. 459 F.3d at 457-58. Specifically, the defendant alleged two forms of newly discovered evidence: the account numbers themselves, and the discrepancy between them. *Id.* at 460. Of the first category—the account numbers—the court held that "carefully consider[ing] the factual circumstances of the case," the defendant should have discovered them through "reasonable diligence" because the account numbers were "of such a size as to be clearly

visible [on the checks] without the aid of a magnifying glass"; the checks were "admitted at trial"; "[the] case [was] about stolen checks"; and one theory of defense was that "[defendant] was not the person who cashed the checks." *Id.* at 460-62. Of the second category—the discrepancy between the account numbers—the court said, "an observation or a conclusion—or, in the words of the District Court, an 'appreciation of the significance'—about those physical markings [*i.e.* the account numbers] is not evidence." *Id.* And it was in support of this proposition that the court added the footnote cited by the government here, stating, "[s]everal other circuits have held that where the defendant had possession of the evidence at the time of trial, his failure to realize its relevance will not render that evidence 'newly discovered.' We agree that this is the correct rule." *Id.* at 460 n.10 (citations omitted). In other words, the sentence quoted by the government is about what constitutes "evidence" in the "newly discovered evidence" analysis—a defendant's post-trial revelation about how to use evidence of which he should have long been aware does not qualify as new "evidence." But contrary to the government's interpretation, *Cimera* held that whether a defendant was diligent in discovering evidence is not dictated by any one fact *per se*, but turns on "careful[] consider[ation] [of] the factual circumstances of the case." *Id.* at 461. Such a "careful consideration of the factual circumstances" test, however, is the very antithesis of the *per se* rule proposed by the government that physical possession equates to knowledge and, accordingly, flies in the face of, rather than being supported by *Cimera*.

(a) *The Curry Tapes*

Viewed through this analytic framework, the Curry Tapes are certainly newly discovered evidence. First, Bergrin showed the proper diligence with respect to the tapes, given all of the relevant circumstances. As noted in his principal brief, Bergrin faced numerous, serious charges over the course of two trials, including conspiracies to commit murder, murder-for-hire, and drug trafficking, as well as aiding prostitution and evading financial reporting requirements. Def's Br.

at 1. The resulting case was factually sprawling—the 2013 trial contained 68 witnesses, and their testimony filled more than 30 days. *See generally* A1911-9415. Accordingly, pre-trial discovery was mountainous: Bergrin received thousands of pages of documents, hundreds of CDs, and tens of thousands of unindexed, individual audio recordings, which were often apparently out of chronological order. Def's Ex. 17 at 1. Proceeding *pro se*, Bergrin alone was responsible for reviewing these materials, not standby counsel, Def.'s Supp. Exh. 1 ¶ 2,[1] and as an incarcerated *pro se* defendant, he was severely constrained in this regard, as the trial court noted. *See* A1715 (granting Bergrin additional time to review video footage, stating, "he's at a disadvantage here. It's not like he could go run back to his office and work till two in the morning to work on this. He's at a disadvantage."); *see Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239 (3d Cir. 2013) ("We are especially likely to be flexible when dealing with imprisoned litigants."); *cf. Houston v. Lack*, 487 U.S. 266, 270 (1988) (relaxing filing deadline for incarcerated *pro se* litigant, citing litigant's limited control over his surroundings and need to rely on corrections officers to pursue litigation). More specifically, Bergrin was required to share a single computer for review of electronic discovery with over 100 other pre-trial detainees, such that he was often allotted less than one hour per day. Def. Supp. Exh. 1 ¶ 3. It was therefore absolutely necessary that Bergrin be selective with regard to his preparations.

Against this backdrop, the government conveyed the Curry Tapes to Bergrin with the understanding that they were not properly sealed and so would not be introduced, and that this was to Bergrin's great benefit because, as the government conveyed to him in no uncertain terms, the

[1] Due to complications associated with Bergrin's present incarceration at ADX Florence, counsel were unable to attain Bergrin's signed declaration in time for filing this brief. Accordingly, counsel submit Bergrin's unsigned declaration as a placeholder and will file Bergrin's signed declaration as soon as it is available.

tapes were damning. Def. Supp. Exh. 1 ¶ 7; Def.'s Exh. ¶¶ 3-4. In so representing, the government omitted that, to the contrary, the tapes would definitively refute the testimony of Anthony Young in numerous, material ways, thus discrediting the only witness to tie Bergrin to by far the most serious charge in the case, the conspiracy to murder Kemo McCray. Of course, though the government argues otherwise, Gov't Br. at 21, Bergrin was entitled to rely on the government's representation. As the Supreme Court has held in a different context:

> A rule [] declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process. Ordinarily, we presume that public officials have properly discharged their official duties. We have several times underscored the special role played by the American prosecutor in the search for truth in criminal trials. Courts, litigants, and juries properly anticipate that obligations [to refrain from improper methods to secure a conviction] . . . plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.

Banks v. Dretke, 540 U.S. 668, 696 (2004) (citation and quotation marks omitted) (modifications in original); *see also United States v. Pelullo*, 399 F.3d 197, 213 (3d Cir. 2005) (holding in the *Brady* context that is it "clear [] that defense counsel's knowledge of, and access to, evidence may be effectively nullified when a prosecutor misleads the defense into believing the evidence will not be favorable to the defendant"); *United States v. Shaffer*, 789 F.2d 682, 691 (9th Cir. 1986) (regarding *Brady* claim, holding that " while the government did apprise [defendant's] counsel of tapes [bearing allegedly exculpatory evidence], such disclosure was inadequate because the government also told [] counsel that these tapes would be of no value to [the] defense. This later statement by the government negates any disclosure made in the earlier statement."); *Hughes v. Hopper*, 629 F.2d 1036, 1039 (5th Cir. 1980) (in *Brady* context, identifying as a "situation[] in which defense counsel's knowledge of the substance [of allegedly exculpatory evidence] has been effectively nullified by the prosecution's actions" as "when the prosecution misleads the defense into believing the evidence will not be favorable to the defendant").

Under these unique circumstances, Bergrin exercised reasonable diligence with regard to the Curry Tapes: a *pro se* incarcerated defendant facing enormous discovery and a lengthy trial, Bergrin acted reasonably in declining to examine evidence that would not be presented against him, and which the government represented could only harm him, so that he could focus his limited resources elsewhere. *See Noel*, 905 F.3d at 272 ("even the most zealous of counsel cannot be expected to inquire into every remote possibility and may reasonably prioritize the investigation of matters material to the defense above those that seem peripheral.").

Second, Bergrin was also subjectively unaware of the contents of the Curry Tapes – neither he nor any standby counsel actually knew what was on them. *Cimera*, 459 F.3d at 461. The government responds by arguing, as an initial matter, that Bergrin has not carried his burden on this prong because he relied on the certification of standby counsel without submitting his own declaration. Gov't Br. at 19. Though Bergrin does not agree, to remove all doubt, he nonetheless swears unequivocally in conjunction with this Reply Brief that he was only ever aware of the content of two Curry recordings: those between Curry and Bergrin on November 25, 2003, in which Bergrin first relayed that William Baskerville had been arrested, and second, detailed the charges, evidence, and exposure William faced, including the identity of a confidential informant named "Kamo." Def.'s Supp. Exh. 1 ¶ 6. The evidence of these calls was provided to Bergrin in a distinct production, and Bergrin either listened to the recordings or reviewed a transcript and determined them unremarkable. *Id.*

But as to a second, separate production—the hundreds of CDs containing all of the Curry calls, which numbered nearly 40,000—Bergrin never listened to a single recording pre-trial, nor did any standby counsel do so. *Id.* ¶¶ 7, 10. Prior to his arrest, Bergrin did learn from Curry himself, who had been provided the tapes in conjunction with his own criminal case, that as a

general matter, the tapes did not prove the existence of a "No Kemo, no case" meeting, and Bergrin communicated this to his then-counsel David Ruhnke. *Id.* ¶¶ 10-11. But Bergrin never listened to the tapes himself, because as previously noted, the government conveyed them with the message that they were highly inculpatory and would be suppressed. *Id.* ¶ 7. Instead, it was only during the course of briefing on Bergrin's Rule 29 motion post-verdict, when the government claimed a December 4, 2003 call proved that the alleged "No Kemo, no case" meeting occurred that evening, ECF No. 556 at 12 n.2, that Bergrin checked the tapes to verify that assertion. Def.'s Supp. Exh. 1 ¶ 8. Finding, as the government has since conceded, *see* Gov't Br. at 21, that the recording contradicted the government's narrative, Bergrin then considered for the first time that the government might have misrepresented the substance of other recordings and so examined them. Def.'s Supp. Exh. 1 ¶ 8. Until then, he was subjectively unaware of the contents of the Curry Tapes.

The government argues that Bergrin must nonetheless have listened to the Curry Tapes because the trial record demonstrates his familiarity with their contents. Gov't Br. at 19-20. Thus, the government alleges that Bergrin "extensively cross-examined witnesses about some of those calls," citing Bergrin's examination of FBI Agent Shawn Brokos, Anthony Young, and Monmouth County Detective George Snowden. Gov't Br. at 20, 20 n.5. But the government's citations do not check out. Rather, Bergrin questioned Agent Brokos using telephone records and a law enforcement-created chronology compiling them—paper documents showing the timing of calls, not their contents. SA650-57, SA661-63; A2915-18, 2936-38. And on two occasions when Bergrin asked generally whether, beyond the phone records, any conversations supported the government's theory of a "No Kemo, no case" meeting, the government promptly warned Bergrin

that he was potentially opening the door to the Curry Tapes, and having been falsely warned that the tapes were incriminating, Bergrin immediately withdrew the question. SA665; A2917-18.

Bergrin's cross-examination of Anthony Young was similar. That is, while Bergrin questioned Young with regard to calls that were recorded in the Curry wiretap, Bergrin did not use the Curry Tapes to do so. Instead, he asked Young about his own recollections, as Young purported to have been present as Curry spoke, and Bergrin further employed the same law-enforcement generated chronology used in his Brokos examination to reveal that Young's timeline was nonsensical. SA901-04, SA908-13, SA985-88, SA996-97; A3738-39, 3747. None of this any way suggests that Bergrin knew what was on the Curry recordings.

Likewise, Bergrin did not cross-examine Detective Snowden concerning the Curry Tapes. Rather, Bergrin asked Snowden about wiretaps of Curry's second-in-command, Ishmael Pray, and Bergrin asked whether law enforcement had recorded Curry's calls in February 2004. A1724-36. Bergrin never approached the substance of the Curry Tapes, nor did he reference those here at issue, concerning calls made between November and December of 2003.

The government also points to Bergrin's opening and closing arguments, but this fares no better. Again, certain of the government's record citations refer to Bergrin's discussion of phone records or of Young's eyewitness account. *See, e.g.*, SA389-90 (at opening argument, Bergrin stated "[t]hey have my EZPass records, they have my phone records. Tell me where there's a cell call, a call anywhere that I was in Newark that weekend," and said of Anthony Young, "[h]e gives so many versions, . . . so many inconsistencies, so many lies, it's almost mind-boggling"). And the remainder show only what Bergrin learned from Curry, as previously noted, that the calls did not substantiate the existence of any "No Kemo, no case" meeting. *See* A389 ("there's not one intercepted call setting up that meeting, not one intercepted call by anybody, Hakeem Curry telling

anybody to be at this meeting"); A11191-92 ("There was 33,000 intercepted conversations in the Hakeem Curry case – 33,000. They talked freely and openly. There is not one conversation setting up any meeting or talking about any meeting on the date William Baskerville was arrested or any date therafter with Paul Bergrin or Hakeem Curry or any of these individuals. There was no chatter about a meeting with Paul Bergrin and these individuals."); A9267-68 ("Why do you think, ladies and gentlemen of the jury, why do you think that there's no chatter setting up this meeting, any meeting at all with Paul Bergrin?"); SA1400 ("They have Hakeem Curry under intense DEA investigation at that time, intercepted phone calls. Not one call ever setting up this meeting."); SA1401 ("The bottom line is: Hakeem Curry is under intense investigation. There's not one phone call setting it up, talking about it, afterward talking about it, no chatter whatsoever because it would have come forth."). These statements prove only what Bergrin has sworn, that he learned one summary fact about the recordings, not that he in fact knew their contents, which accordingly are properly considered newly discovered evidence.

Finally, the government also points to a pre-trial filing authored by then-counsel David Ruhnke, which stated, "'the electronic surveillance never picked up any hint of the ["No Kemo, no case"] meeting described by Mr. Young.'" Gov't Br. at 23. But this is the same generalized summary that Bergrin learned from Curry and passed on to Ruhnke—Ruhnke himself never reviewed the Curry Tapes. Def.'s Supp. Exh. 1 ¶ 11. Accordingly, this argument too fails to support the government's argument, leading inexorably to the conclusion that the Curry Tapes are in fact newly discovered evidence within the meaning of Rule 33.

(b) *The Toll Records*

In his attached declaration, Bergrin affirmatively demonstrates that the toll records constitute newly discovered evidence, as well. Def.'s Supp. Exh. 1 ¶¶ 12-13. To be sure, Bergin possessed and reviewed the records themselves before trial. But that is not dispositive. *Cimera*

held that "evidence discovered before or during trial may have latent attributes that are not discovered until after trial. In such a case, evidence to establish the existence of those latent attributes may be considered 'newly discovered.'" 459 F.3d at 460 n.11. Here, the toll records possessed the latent attribute of proving that Bergrin had extensive contact with DEA Agent Greg Hilton, but Bergrin only discovered this post-trial when he obtained Hilton's phone number through the aid of a new investigator who happened to have DEA contacts. Def.'s Supp. Exh. 1 ¶ 13. Bergrin had sought this information earlier. He asked the government for the names associated with the toll records pre-trial, but these were never provided. *Id.* ¶ 12. And he directed standby counsel to speak to Hilton about the calls, but when that occurred, Hilton flatly denied their existence. *Id.* ¶ 13. Under these circumstances, Agent Hilton's number should be considered newly discovered evidence that reveals a latent attribute of the toll records.

The government contends that Bergrin simply failed to understand the significance of evidence in his possession, and so that under *Cimera*, the toll records are not newly discovered. Gov't Br. at 24. But the government overlooks that Bergrin required Hilton's number to appreciate what the toll records showed. This is the very definition of a "latent attribute." *See Cimera*, 459 F.3d at 460 n.11 (giving examples of "latent attributes" such as what DNA analysis might prove with respect to a blood sample already in evidence, or a handwriting expert's conclusion that initials on a document in evidence had been forged). The government counters that to call Bergrin diligent in seeking Hilton's phone number "makes a mockery of the term." *Id.* But this overlooks that it was the government that possessed this information and refused to supply it to Bergrin in response to his pointed request. Def.'s Supp. Exh. 1 ¶ 12. Further, Hilton himself represented to standby counsel that no such calls ever occurred, and certainly did not provide counsel with his phone number. Thus, Bergrin did not and could not get the number pre-trial, and the government

does not say how he should have gone about doing so. Indeed, it was only because Bergrin's post-trial investigator had DEA connections that Bergrin obtained it at all. In sum, the government's protestations notwithstanding, the evidence of Bergrin's 50-plus calls to Agent Hilton must be considered newly discovered.

2. No *per se* rule holds that the testimony of co-defendants and/or co-conspirators cannot be newly discovered evidence.

In an attempt to dispose of the statement of Yolanda Jauregui and the certifications of Hakeem Curry and Rakim Baskerville, the Government proposes a different *per se* rule: that the testimony of a co-defendant or co-conspirator can never be newly discovered. Gov't Br. at 25-29. The Government reaches this conclusion in two stages. First, it invokes the established proposition that "'previously known, but newly available, evidence is not newly discovered within the meaning of Rule 33.'" *Id.* at 25 (*quoting United States v. Jasin*, 280 F.3d 355, 368 (3d Cir. 2002)). And second, it goes on to assert that the testimony of co-defendants and/or co-conspirators is always "previously known" where it is consistent with the defense presented at trial. Gov't Br. at 27-28. But this second proposition is unsupported by authority and is, in fact, contrary to law. Whether a defendant was aware of the testimony of a co-defendant or co-conspirator is not subject to any irrebuttable presumption, but instead must be determined using the analytic methodology set forth in *Cimera*, 459 F.3d at 461, requiring an examination of the defendant's objective and subjective knowledge. And under this analysis, the evidence from Jauregui, Curry, and Rakeem Baskerville must be considered newly discovered.

Beginning with the first prong of the Government's argument, it is undoubtedly true that under *Jasin*, "a codefendant's testimony *known to the defendant* at the time of trial cannot be considered 'newly discovered evidence' under Rule 33, regardless of the codefendant's unavailability during trial because of invocation of his Fifth Amendment privilege." *Jasin*, 280

F.3d at 368 (emphasis added); *see* Gov't Br. at 25 (quoting *Jasin*) And it is also the case that in *United States v. Forbes*, the Second Circuit extended the logic of *Jasin* to co-conspirators, holding that, "[w]here . . . *a defendant is aware* that a coconspirator could provide exculpatory testimony, but the coconspirator refuses to do so on the basis of his Fifth Amendment privilege, that testimony . . . is not newly discovered[.]" 790 F.3d 403, 409 (2d Cir. 2015) (emphasis added); *see* Gov't Br. at 25 (quoting *Forbes*). But as *Jasin* and *Forbes* took pains to underscore, a co-defendant/co-conspirator's invocation of his Fifth Amendment privilege bars his testimony from later being "newly discovered" only if the defendant was actually aware of that testimony at the time of trial. *See Jasin*, 280 F.3d at 362 n.7 ("[O]ur holding is premised entirely on the conclusion that [defendant] was aware of the substance of [his co-defendant's] testimony at trial, for if [co-defendant] presented evidence of which [defendant] had no knowledge at trial, [co-defendant's] testimony clearly would be 'newly discovered evidence' under the first prong of *Iannelli* and would be a basis for granting a new trial if it satisfied the remaining prongs."); *id.* at 367 ("[W]hether the defendant was aware of the substance of the testimony at the time of trial—not whether the testimony came from a codefendant who asserted his Fifth Amendment privilege at trial—is the determining factor under the first prong of the *Iannelli* test."); 368 n.10 ("The standard we adopt today bans newly available codefendant testimony *only* if the defendant was aware of the substance of the testimony at trial.") (emphasis in original); *see United States v. Forbes*, 790 F.3d 403, 409 (2d Cir. 2015) ("[W]e hold that evidence is excluded from the meaning of 'newly discovered' under Rule 33 where (1) the defendant was aware of the evidence before or during trial, *and* (2) there was a *legal* basis for the unavailability of the evidence at trial, such as the

assertion of a valid privilege.") (emphasis in original).[2] Thus, a defendant may succeed in showing that a co-defendant/co-conspirator's testimony is newly discovered provided that he demonstrates he was subjectively and objectively unaware of it.

The government attempts to circumvent this law, and to preclude the Court's consideration of Bergrin's motion, with the second prong of its argument—a new, irrefutable presumption that a defendant is *always* aware of the testimony of a co-defendant/co-conspirator where such testimony is consistent with the defense at trial. Thus, the government states that Bergrin must have known the substance of the Curry and Rakeem Baskerville certifications because,"[g]iven Bergrin's false denial that he ever urged Curry and Rakim Baskerville in Young's presence to kill Kemo, he must have believed that Curry and Rakim Baskerville would make the same false denial[.]" Gov't Br. at 27. Similarly, the government alleges that Bergrin must have known of the Jauregui's prospective testimony because "the cornerstone of Bergrin's defense of his drug-trafficking charges . . . was that Jauregui was dealing with Barraza-Castro and others behind Bergrin's back, and that Bergrin despised Barraza-Castro, whom he believed was sleeping with Jauregui." Gov't Br. at 28.[3] Yet the Government cites no authority for this proposition, and

[2]*See also United States v. Owen* 500 F.3d 83, 91 (2d Cir. 2007) ("In holding [] that 'newly discovered' does not mean 'newly available,' it should be noted that we do not preclude the possibility that a codefendant's post-trial exculpatory statements may ever qualify as newly discovered evidence within the meaning of Rule 33. . . . But where, as in this case, a defendant knew or should have known, that his codefendant could offer material testimony as to the defendant's role in the charged crime, the defendant cannot claim that he 'discovered' that evidence only after trial.").

[3]The government also alleges that Bergrin must have known what Jauregui would say because he drafted a proposed affidavit for her before she was interviewed by his investigators. Gov't Br. at 28. But this proves only what Bergrin believed and hoped that Jauregui could corroborate, *see* Def. Supp. Exh. 1 ¶ 18, and in fact, Jauregui rejected certain items in the proposed affidavit as factually inaccurate. *See* Def.'s Br. at 23-24 (Jauregui disputed Bergrin's proposed facts concerning "the nature and extent of her sexual relationship with Alejandro Castro") (quoting McVann Decl., Ex. 8 ¶ 8). As Bergrin has sworn, he did not, in fact, know what Jauregui knew or how she might testify. Def.'s Supp. Exh. 1 ¶ 18.

understandably so—counsel is aware of no published decision holding that where a co-defendant/co-conspirator's prospective testimony would have supported the defense theory at trial, the defendant must have been aware of it.

The Government's error is that it wrongfully equates facts with evidence, *i.e.* it presumes that because Bergrin knows what did and did not occur, he also knows that anyone with firsthand knowledge would so testify. But, of course, a fact only becomes evidence when it is made a "'species of proof . . . legally presented at the trial of an issue . . . by the act of witnesses, records, documents, concrete objects, etc. . . .'" *Cimera*, 459 F.3d at 459 n.9 (quoting Black's Law Dictionary 656 (4th ed. 1951). And Rule 33 permits this Court to grant a new trial on the basis of "newly discovered *evidence*"—it does not require newly discovered facts. Fed. R. Crim. P. 33; *see United States v. Smith*, 62 F.3d 641, 649 (4th Cir. 1995) (in discussing time limitation for filing of motion under Rule 33, noting "the very language of the rule suggests that . . . that which is 'newly discovered' must be *evidence* . . . . Otherwise, the rule would more naturally refer to 'newly discovered *facts*' or 'newly discovered *information*.'") (emphasis in original). Put simply, just because Bergrin knew the truth does not mean he also knew that certain co-defendants and co-conspirators would testify truthfully in his defense.

Moreover, Bergrin's knowledge of events related to the charges against him did not, as a matter of fact, inform him of all that his co-defendants/co-conspirators could say to support him. Thus, for example, while it is true, as the Government notes, that Bergrin's defense to the Kemo McCray murder charge was that he never attended a meeting where he uttered the words "No Kemo, no case," Gov't Br. at 27, that does not mean that he must have known that neither Rakeem Baskerville nor Hakeem Curry ever participated in or were aware of any conspiracy to kill McCray, as both have now certified. *See* Def.'s Exh. 5 at 13 (Rakeem Baskerville Decl.) ¶ 4 (". . . I had no

involvement in, nor knowledge of, any plot, scheme, or conspiracy to kill McCray . . . ."); *id.* at 10 (Curry Decl.) ¶ 4 (". . . I had no role in any sort of conspiracy to kill Deshawn McCray because of his status as an informant/witness against Mr. Baskerville.").[4] Similarly, while Bergrin's theory of defense in relation to the drug charges was, in fact, that Jauregui and others were selling narcotics together behind Bergrin's back and without his knowledge, it does not follow that Bergrin would have known, for example, that Jauregui falsely implicated Bergrin because of government pressure, nor specifically how that pressure was applied, as Jauregui has now confirmed. *See* Def.'s Exh. 8 at 2 (McVann Decl.) ¶ 8; *id.* at 4-7 (Juaregui Statement). In sum, the Government's proposed *per se* rule concerning the testimony of co-defendants and co-conspirators is contrary to law.

Instead, whether Bergrin was aware of the prospective testimony of each of Rakeem Baskerville, Curry, and Juaregui is determined under the same tests for subjective and objective awareness used for all proposed newly discovered evidence: "'the evidence must be in fact, newly discovered. . .' and 'facts must be alleged from which the court may infer diligence on the part of the movant.'" *Cimera*, 459 F.3d at 461 (quoting *Ianelli*, 528 F.2d at 1292). Bergrin has satisfied his burden in this regard. As to the subjective prong, Bergrin has sworn, in a declaration filed herewith, that as a matter of fact he was not aware until after his second trial that Rakeem Baskerville and Hakeem Curry both alleged, respectively, that they were not aware of and did not participate in any conspiracy to kill McCray, Def.'s Supp. Exh. 1 ¶ 15; and that Juaregui initiated

[4]The Government points to Bergrin's assertion that he attempted to call Rakeem Baskerville and Curry to testify at his trial, noting "[t]here would have been no reason to make that attempt if Bergrin thought either man would inculpate him[.]" Govt't Br. at 27. True enough, but that does not mean Bergrin knew all that these witnesses could say, or that they would say it.

a drug-dealing business with Barraza-Castro and others without Bergrin's knowledge, in which she falsely implicated Bergrin because of pressure from the Government, *id.* ¶ 18.

Bergrin also showed reasonable diligence in attempting to discover this testimony earlier. Bergrin attempted to interview both Rakeem Baskerville and Curry, but neither would communicate with Bergrin's defense team. *Id.* ¶ 15. Similarly, Juaregui refused to speak with Bergrin's investigators pretrial. *Id.* ¶ 17. It is Bergrin's belief, now substantiated in large part by Juaregui, that as to each and all of these witnesses, the government used the threat of prosecution, more severe punishment for existing charges, or both, in order to keep these witnesses from assisting Bergrin by telling the truth at the time of his trial. *See* Def.'s Exh. 8 (Juaregui Statement) ¶¶ 3-4.[5] This troubling prospect could best be verified at an evidentiary hearing, and if it is true, the Court should not permit the government to benefit from intentionally rendering witnesses unavailable by declining to consider their testimony now. In sum, rejecting the Government's proposed *per se* rule, as the Court must, the certifications of Rakeem Baskerville and Hakeem Curry, and the statement of Yolanda Juaregui, should be considered "newly discovered evidence" for purposes of Rule 33.

3. No *per se* rule holds that witnesses known to Bergrin at the time of trial may not provide newly discovered evidence.

The government next challenges the prospective testimony of numerous witnesses on the grounds that "the defendant personally knew [them] before trial." Gov't Br. at 29. According to the government, this necessarily means that Bergrin did not exercise reasonable diligence in

[5]This was evidenced during the first trial when AUSA Gay discussed the need for Jamal Baskerville to invoke his Fifth Amendment privilege and not to testify on Bergrin's behalf. When the Court pointedly noted that the evidence of Jamal's role in the murder of Kemo McCray was the same as that against Bergrin—the testimony of Anthony Young—and pointedly asked why the government had not charged him in five years since the offense, the government had no answer. *See* Def.'s Supp. Exh. 6 at 3-7.

securing their testimony, since "'[s]itting on one's hands and waiting for a known eyewitness to come forward . . . cannot be considered . . . reasonable diligence.'" *Id.* (quoting *United States v. Kelly*, 539 F.3d 172, 186 (3d Cir. 2008)). In particular, the government challenges on this basis the newly discovered evidence from Juaregui, Sonia Tibbs (formerly Sonia Erickson), Marilisa Jimenez, Loriann Ortiz, Jose Jimenez, Amin Shariff, Agent Hilton, Deirdra Baskerville, Hassan Miller, and Theresa and Robert Vannoy. *Id.* at 29-32.[6] But as previously noted, Bergrin's "diligence . . . is [] relative [] and depends on the circumstances of the case[.]" *Cimera*, 459 F.3d at 461 (quoting 44 A.L.R. Fed. 13). Here, those circumstances show that Bergin made reasonable efforts to secure the testimony of these witnesses, but was frustrated by factors beyond his control, namely the government's efforts to distance witnesses from Bergrin through fear and coercion, and Bergrin's necessary reliance on the Marshals Service to subpoena witnesses. *See* A4595-99 (Bergrin submitted a motion to the district court with a list of witnesses to be subpoenaed by the Marshal's Service, which the court promptly signed).

On information and belief, the government used threats of criminal sanctions to alienate prospective witnesses from the defense, such as Yolanda Juaregui and Hassan Miller. Def.'s Supp. Exh. 1 ¶¶ 17-18, 23. Bergrin has already detailed, *supra*, his efforts with regard to Yolanda Juaregui. As for Miller, Bergrin sought to interview him pre-trial, but Miller refused, citing his open charges and fear of government retaliation. *Id.* ¶ 23. The government responds with regard to Juaregui that Bergrin's account is "nonsense," since her cooperation agreement compelled her to testify truthfully at any trial if called as a witness. Gov't Br. 30. But Juaregui's statement makes

[6]Bergrin's efforts to secure the testimony of Agent Hilton are detailed above, and as noted in Amin Sharif's declaration, this witness came forward of his own accord post-trial, *see* Def.'s Exh. 16 ¶ 8. As the government presents no new arguments pertaining to these witnesses in this section, Bergrin does not further discuss these witnesses here.

clear that implicit in her cooperation agreement was the understanding that her testimony had to incriminate Bergrin. Def.'s Exh. 8 (Juaregui Statement) ¶¶ 3-4 ("If I did not say that Paul Bergrin was involved, was the leader and in charge and participated in the crime, then it was obvious that I would not be accepted as a cooperating witness and, I, would receive extraordinary time in prison[.]"). Consistent with this understanding, Juaregui refused to speak with Bergrin's investigator's pretrial. Def.'s Supp. Exh. 1 ¶ 17. Regarding Miller, the government argues that his 2013 interview proves only that he did not want to be perceived as cooperating at that time, not that Miller was too frightened to speak with the defense at the time of trial. Gov't Br. at 31-32. Bergrin disputes that interpretation, but regardless, Bergrin has now attested based on his own recollection that Miller refused to speak with investigators pre-trial for fear of criminal sanctions. Def.'s Supp. Exh. 1 ¶ 23. There is thus strong reason to conclude that the government willfully and improperly utilized its prosecutorial power to prejudice Bergrin by silencing witnesses.[7]

Relatedly, on information and belief, the government told other prospective witnesses that Bergrin was dangerous and might harm them, encouraging and in some cases assisting them to go

[7]This is corroborated by the attached attorney ethics complaint filed by Ramon Jimenez against John Azzarello, the attorney first appointed to represent him in conjunction with his potential cooperation. *See* Def.'s Supp. Exh. 5 (entered as exhibit D-14 at Bergrin's first trial). Specifically, Ramon described how he was pressured by FBI Agent Shawn Brokos, among others, to provide incriminating information about Bergrin in exchange for assistance in his and his sister Yolanda Juaregui's cases, with the FBI warning him, "if you are not in our side as a witness . . . there will be nothing we can do for you." *Id.* at 5. Further, Ramon claimed that his court-appointed counsel "interrogated me about Paul Bergrin," regularly stepping out to confer with AUSA John Gay, and "asking me the same question about Paul Bergrin only in a different form." *Id.*; *see also* Def.'s Supp. Exh. 7 at 3 (2011 trial transcript) (Ramon Jimenez agreed that the FBI, U.S. Attorney's Office, and his own appointed cousel "were intensely cross-examining [him], asking [him] the same questions over and over again, and to [him] it was intimidating."). This is consistent with Juaregui's statement that the government repeatedly returned to the same questions, demonstrating that only one answer would be acceptable, and in this manner used the its immense influence to marshal evidence against, and suppress proof in favor of, Bergrin. *See* Def.'s Exh. 8 (Juaregui Statement) ¶¶ 3-4.

into hiding. Thus Bergrin's investigators attempted to locate both Marisa Jimenez and Loriann Ortiz but were unable to do so, and though a subpoena was issued for Marisa, it could not be served. Bergrin's understanding is that the government cautioned Juaregui's family—of which Marisa and Ortiz were a part—to disappear for their own safety. Def.'s Supp. Ex. 1 ¶ 20. Likewise, it is Bergrin's understanding that the government assisted Maria and Jose Jimenez in relocating to Alaska, where Bergrin's investigators could not find them. *Id.* at ¶ 21. And Deirdre Baskerville suddenly sold her home and moved to an unknown location pre-trial; Bergrin's investigators attempted to obtain an interview by surveilling her last known address, but they could not find her, and later she refused service of a subpoena. *Id.* ¶ 16; A9299 (Bergrin represents to the court that the marshals had attempted to subpoena Deirdre three times, unsuccessfully). Bergrin maintains that this sudden disappearance was in response to government coercion, either through threats of prosecution or warnings about Bergrin's alleged dangerousness. *Id.* That Deirdre "was not incarcerated" nor "in any form of protective custody," as the government says, Gov't Br. at 30, does not address these concerns.

In addition, Bergrin's diligent efforts with regard to Sonja Tibbs were likewise obstructed through no fault of his own. Bergrin's investigators located and interviewed Tibbs in Louisiana, and she was willing to testify, but a subpoena issued to her arrived after she was due to appear. *Id.* ¶ 19; Def.'s Exh. 10 ¶ 8. That Bergrin was unable to obtain Tibbs' testimony at trial thus speaks to error and delay by the Marshals Service, not any lack of diligence by Bergrin.

Finally, with respect to Theresa and Robert Vannoy, first, the attached declaration of Sonja Tibbs makes clear that Theresa and Robert suddenly disappeared pretrial when Sonja—at the urging of the FBI—secreted them away from Yolanda Juaregui. Def.'s Supp. Exh. 3 ¶¶ 8-9. When Robert Vannoy later returned to New Jersey, Bergrin was able to subpoena him and he appeared

at trial, but Bergrin was afforded only five minutes to interview this witness, at the courthouse, before examining him. Def.'s Supp. Exh. 1 ¶ 22. Bergrin then covered those limited topics in his direct examination that he was able to confirm with Vannoy during their limited interview. Bergrin did not know what Vannoy would later attest, that he had told the government explicitly that Bergrin was not involved in dealing drugs, and thus Bergrin could not adduce this proof at trial. *Id.*

In sum, despite Bergrin's diligent efforts, he was unable to effectively interview and examine numerous witnesses, largely because of the sprawling influence of the government in diverting these witnesses from assisting the defense, but also because of his dependence on the Marshals Service and the constraints of being an incarcerated *pro se* defendant. Accordingly, the Court should properly find, after an evidentiary hearing if necessary, that Bergrin exercised reasonable diligence as to the evidence in question.

II. Bergrin's Newly Discovered Evidence Would Impeach the Government's Most Critical Witnesses on the Most Inculpatory Elements of Their Testimony, and Should Be Assessed by the Court at an Evidentiary Hearing.

In a further effort to prevent the Court from assessing Bergrin's newly discovered evidence through live testimony, the government asserts that the prospective testimonies of Charles Madison, Hassan Miller, Amin Sharif, Savina Sauseda, and Yolanda Jauegui "merely impeach witnesses whom Bergrin had already impeached," and so cannot form the basis for a new trial. Additionally, the government attacks the credibility of these witnesses and alleges that their prospective testimony can be proven false on the basis of the existing record. Both the government's approach and its conclusions are wrong. Impeachment evidence of exactly the sort that Bergrin here presents allows—and under the present circumstances, requires—a new trial. And the credibility of witnesses is a matter for the Court to assess at an evidentiary hearing, not based upon the paper attacks of a prosecution desperate to maintain a verdict no matter how flawed.

Finally, the record does not disprove the testimony of the witnesses in question, but at most raises discrepancies that should be considered by the Court with the benefit of a full and fair hearing.

1. Newly discovered evidence that impeaches critical witnesses as to the most material testimony in the case supports the grant of a new trial.

The Third Circuit expressly permits the grant of a new trial on the basis of newly discovered impeachment evidence, in appropriate cases. *United States v. Quiles*, 618 F.3d 383, 391-92 (3d Cir. 2010) ("District courts do not and should not ignore a claim that there has been a miscarriage of justice just because the newly discovered evidence supporting the claim could be categorized as impeachment in character.") (citing cases). In particular, when there is either "a strong exculpatory connection between the newly discovered evidence and the evidence presented at trial or [] the newly discovered evidence, though not in itself exculpatory, throw[s] severe doubt on the truthfulness of the critical inculpatory evidence," "then a defendant may be entitled to a new trial even though he relies on evidence that could be classified as 'impeachment evidence.'" *Quiles*, 618 F.3d at 393; *see id.* at 394 n.19 (clarifying that impeachment evidence may form the basis for a new trial under either of two scenarios: where it is exculpatory, or where it "destroy[s] critical trial evidence").[8] By contrast, impeachment evidence that lacks either of these features is "*merely* impeaching [and] unlikely to reveal that there has been a miscarriage of justice," and so cannot provide the basis for a new trial under Rule 33. *Id.* at 392 (emphasis in original).

The government properly recognizes this distinction between "merely impeaching" evidence and impeachment evidence that may authorize the grant of a new trial. Gov't Br at 32-33. Yet in a sweeping, conclusory statement, the government attempts to dismiss the newly

[8]The *Quiles* Court so held in recognition of the fact "that Rule 33(a) as written permits courts to grant a new trial when the interest of justice requires it and does not distinguish between newly discovered circumstantial and direct evidence as a basis for granting such a motion." *Id.* at 391.

discovered evidence from Charles Madison, Hassan Miller, Amin Sharif, and Savina Sauseda as "merely impeach[ing]."[9] The government does not support this characterization with any application of the standard set forth in *Quiles*; indeed, the requisite analysis shows that Bergrin's newly discovered evidence is not "merely impeaching," but rather properly supports his Rule 33 motion.

To begin, both Charles Madison and Hassan Miller provide new evidence that Anthony Young admitted to falsely implicating Bergrin in the murder of Kemo McCray. Specifically, Madison certified that Young told him Bergrin "didn't do shit and he [Young] had to make up some bullshit about a meeting" in order for Young to get "a lighter sentence in return." Def.'s Ex. 1 at 2. Relatedly, Hassan Miller certified that Young repeatedly said that he was going to falsely implicate Bergrin (whom he called "his meal ticket out") in the McCray killing, and that he (Miller) had stated to the Government, "he lying on the guy, Paul Bergen [*sic*], and he saying all this that he's going to do." Def. Ex. 2 at 12.

The significance of these statements cannot be overestimated: Anthony Young's testimony that Bergrin called a meeting where he uttered the words "No Kemo, no case" was the very lynchpin of the Government's case—it was the only evidence that Bergrin intended McCray's killing and acted in furtherance of a conspiracy to achieve it, the most serious charge Bergrin faced and one that, beyond providing severe penalties in and of itself, certainly affected the jury's thinking on every charge. *See United States v. Bergrin*, 599 Fed.Appx. 439, 440-41 (3d Cir. Dec. 18, 2014) (in response to sufficiency of the evidence claim regarding conspiracy to kill McCray,

[9]The government also argues that the testimony of these witnesses would be cumulative. Gov't Br. at 34 (noting newly discovered evidence would "impeach witnesses whom Bergrin had already impeached, using exactly the same theories, at his second trial[.]"). Bergrin addresses this claim in the next section in which he shows that the newly discovered evidence would likely have resulted in an acquittal.

discussing Young's testimony as primary evidence sustaining the conviction); *see also* Gov't Br. at 53 (Government acknowledges, "Young was the primary witness for the Government regarding Kemo's murder."). Accordingly, insofar as the certifications from Madison and Miller show that Young admitted to two different people that he fabricated the core of the State's case on the most serious charge, this newly discovered evidence "throw[s] severe doubt on the truthfulness of the critical inculpatory evidence." *Quiles*, 618 F.3d at 393. Madison and Miller's newly discovered testimony is thus undeniably the sort of impeachment evidence which can, and in the present context, must, warrant a new trial. *See*, *e.g.*, *id.* at 391 ("'If the government's case rested entirely on the uncorroborated testimony of a single witness who was discovered after trial to be utterly unworthy of being believed because he had lied consistently in a string of previous cases, the district judge would have the power to grant a new trial in order to prevent an innocent person from being convicted.'" (quoting *United States v. Taglia*, 922 F.2d 413, 415 (7th Cir. 1991)).

Similarly, the prospective testimonies of Amin Sharif and Yolanda Jauregui likewise "destroy critical trial evidence." *Id.* at 394 n.19. Sharif certified that he was pressured by the Government to incriminate Bergrin in drug-dealing, and that his first cousin Eugene Braswell encouraged him to lie against Bergrin and make up whatever the Government wanted to hear, noting that Braswell himself stated that he and "everyone else" intended to do the same. Def.'s Ex. 16 ¶ 5(a)-(b). Braswell, of course, was an alleged co-conspirator who testified that Bergrin was involved in drug trafficking, and who specifically stated that Bergrin connected Braswell with drug suppliers and personally supplied Braswell with kilos of drugs out of his law office. The newly discovered evidence from Sharif completely undermines this highly inculpatory evidence, and would also provide a basis to challenge other inculpatory evidence through cross-examination

of Braswell using his statement to Sharif that, consistent with Bergrin's defense at trial, "everyone else" was "[j]ump[ing] on" Bergrin's case. *Id.*

Juaregui's prospective testimony would be even more far-reaching. In sum and substance, the government's theory with regard to the narcotics trafficking charges was that Bergrin dealt kilograms of cocaine together with Alejandro Barraza-Castro, and brokered drug deals between Barraza-Castro and others, including his law clients. *See* Gov't Br. at 73 (summarizing evidence). The certification that Juaregui agreed was completely correct, excepting immaterial details, completely undermines this evidence in numerous ways, effectively proving Bergrin's innocence of the drug charges. That is, Juaregui agreed that Bergrin was not involved in dealing drugs with Barraza-Castro, Def. Br., Exh. 8, Cert. ¶ 14 ("I know for an absolute fact that neither Alejandro, me nor Ramon [Jimenez] EVER would let Paul learn, find out or be involved with drug dealing."), that it was Juaregui, unbeknownst to Bergrin, who brokered drug deals using Bergrin's client contacts, *id.* ¶ 13 ("I used Paul's contacts without him ever having knowledge . . ."), and that Bergrin was completely uninvolved in all such dealings, *id.* ¶ 15 ("Paul was NEVER involved. Paul had absolutely no knowledge and Paul was NEVER paid nor made any money off us. NEVER."). Further, Juaregui agreed that she only ever stated to the contrary because the government pressured her to do so, making clear that she would face stiff criminal penalties unless she specifically implicated Bergrin. *Id.* ¶¶ 2-4. This would have been devastating impeachment evidence, suggesting not only that Bergin was innocent of drug offenses, but also that all inculpatory testimony from all drug witnesses was fabricated, self-serving, and the result of Government influence.

Finally, the newly discovered evidence from Savina Sauseda suggests that Oscar Cordova doctored audio recordings in his role as a confidential informant. Def.'s Exh. 7 ¶¶ 7-8 (Sauseda

told Bergrin's investigator that she discovered a tape recorder of Cordova's containing "bits and pieces" of conversations that sounded as though he had transferred portions of conversations from one recording to another). As the government acknowledges, "[t]he recordings Cordova made were the 'critical inculpatory evidence'" with regard to the charge of conspiring to kill a witness against Vincent Esteves. Gov't Br. at 47. Accordingly, Sauseda's testimony would call into question the veracity of the seminal evidence on this charge—this too, is the sort of impeachment evidence that warrants a new trial.

2. Witness credibility is best determined by the court at an evidentiary hearing.

The Court has the discretion to order an evidentiary hearing where "a fully developed record" would assist with resolution of a defendant's Rule 33 motion. *United States v. Herman*, 614 F.2d 369, 372 (3d Cir. 1980). Nonetheless, the Government urges this Court to deny Bergrin an evidentiary hearing because the prospective testimony of Madison, Miller, Sharif, Juaregui, and Sauseda is allegedly not credible. Gov't Br. at 33-34; *see also id.* at 77 (specifically arguing in conclusion that the Court should not hold a hearing). Yet an evidentiary hearing, where Bergrin's newly discovered evidence could be presented for the first time through live testimony, subjected to cross-examination, and where the Court would be able to assess the demeanor of witnesses, is the best means of determining witness credibility. *See Crawford v. Washington*, 541 U.S. 36, 61 (2004) (noting in the Confrontation Clause context that "reliability can best be determined" through "testing in the crucible of cross-examination"); *see also United States v. Inadi*, 475 U.S. 387 (1986) (holding that live testimony is preferable to admission of transcript of prior testimony because of the benefits of "full cross-examination and the opportunity to view the demeanor of the declarant"); *see also Morrison v. Nissan Motor Co.*, 601 F.2d 139, 141 (4th Cir. 1979) (holding, in a different context, "the credibility of the witnesses . . . can best be determined by the trier of facts after observation of the demeanor of the witnesses during direct and cross-examination").

Accordingly, insofar as the Government attempts to impugn the credibility of newly discovered witness testimony, it unwittingly makes the case for a hearing where these witnesses may be cross-examined.

The government, however, suggests that no hearing is required because, on the basis of the existing record, the newly discovered evidence of the above-noted witnesses is "demonstrably false." Gov't Br. at 34. To be sure, this testimony, like any other, may be demonstrated to be false – that is, as the government states, its truth or falsity, is "demonstrable," *i.e.*, capable of demonstration. But it is incorrect and unfair to say that it has been demonstrated to be false at this stage, without the benefit of an adversary process. To the contrary, as is detailed below, the record does not disprove the allegations of these witnesses testimony, but at most suggests the existence of factual discrepancies that would best be resolved through live testimony.

(a) *Charles Madison*

The government is wrong in claiming that "Madison's claims do not square with other proven facts, or with logic." Gov't Br. at 36. Specifically, the government alleges that Madison's claim is not credible for three reasons, but each fails upon a balanced examination. First, the government asserts that Madison must be lying because the government reads Madison's certification as saying that Young "concocted his plan []while in jail," when in fact Young first cold-called the FBI eight months prior to his incarceration. *Id.* at 34. But the government misinterprets Madison's certification—Madison does not aver that Young came up with the plan to lie against Bergrin while incarcerated, but rather to *avoid* extended incarceration. That is, Madison certified that Young said "he had to tell these people some information about who they were interested in (Hak, Rakeem Baskerville, Paul Bergrin) and the murder of some guy named Kimo" because "he was not going to jail anymore," "that he was tired of doing time," and that "he wasted a lot of his life in jail and has nothing to show for it." *Id.* at 2. Further, while Young was

not incarcerated at the time of his call to the FBI in January 2005, he was facing gun charges from an earlier arrest in 2004, and made explicit on the phone with the FBI that he was providing information for the express purpose of "deal[ing] those [gun] charges for information regarding the murder of alleged Federal Witness KEMO." SA2210; *see also* A4014-14 (FBI Agent who received Young's initial call testified that Young stated he wanted to trade information for assistance with gun charges); *see also* A2645 (FBI Agent Brokos testifies, "I believe it was December of '04, he had been arrested by Newark police department for possessing a weapon. We then adopted that charge federally in what's referred to as a Trigger Lock."). Thus, Madison's certification is fully consistent with the record evidence insofar as Young was cooperating against Bergrin—falsely, per Young—to avoid prison.

Second, the government alleges that "it is not possible that Young's initial call to the FBI . . . could have been the result of law enforcement 'pressuring him about Paul [Bergrin],'" since Young cold-called the FBI and told an agent with no familiarity with the case that Bergrin had provided Curry and his associates with the means to determine Kemo's identity, and then told them, "No Kemo, no case." Gov't Br. at 37. But while Young reached out to the FBI in January 2005, the FBI had been investigating the McCray killing since long before—the Government sought a superseding indictment against William Baskerville charging him with the murder on November 30, 2004, suggesting that the investigation had been ongoing well beforehand. A2633, 2639. It is therefore entirely plausible that Young had learned before he cold-called the FBI, either from associates or law enforcement, that the FBI was investigating the McCray killing, and more specifically, that it was looking to corroborate a theory that Bergrin and certain associates of William Baskerville were involved. Furthermore, even if it is not true that Young initially fabricated his account specifically in response to the FBI "pressuring him," that is not necessarily

evidence that Madison is not credible. In such a scenario, it is at least equally plausible that Young—who admitted to lying throughout his involvement in this case, and who was caught in numerous inconsistencies on the stand—lied to Madison, falsely claiming the Government was pressuring him in order to justify his cooperation. Regardless, these are precisely the sort of credibility questions that would best be resolved through examination of Madison at an evidentiary hearing.

Third, and finally, the government argues that it would have been illogical for Young to falsely implicate himself in a murder he did not commit in order to reduce his sentence on an unrelated gun charge. Gov't Br. at 38. Preliminarily, again, this speaks at least as much to Young's credibility (and rationality) as Madison's. But additionally, as also previously noted, whatever the illogic of Young's plan as reported to Madison, per the government's own witnesses, Young told the FBI precisely the same thing—that he wanted to provide information about a murder, in which he eventually admitted to being the shooter, in exchange for help with gun charges. SA2210; A4014-14. Thus, the government's proposed account, that Young cold called the FBI and ultimately implicated himself in a murder *for no apparent reason*, is even less plausible than Bergrin's. That is, all parties must account for the fact that Young was foolish enough to cold-call the FBI and provide information that lead to his conviction for the underlying murder; the government, however, seeks to turn that implausibility against Bergrin alone. In sum, Madison's certification is neither illogical nor contradicted by the record evidence, and the Court should hold an evidentiary hearing to properly assess this important evidence.

(b) *Hassan Miller*

The government is likewise incorrect that the record disproves the newly discovered evidence from Hassan Miller. In an audio recording of an interview with Miller by Bergrin's investigators in 2013, Miller stated that while incarcerated with Anthony Young, Young repeatedly

told Miller that he planned to lie and frame Bergrin and others for murder in order to help himself. *See*, *e.g.*, Def. Br., Ex. 2 at 9 (According to Miller, Young said, "I'm going to put myself in there. I'm going to say Hak . . . did it, and I'm going to say Paul . . . had something to do with it, and he orchestrated the whole thing."); *id.* at 10 ("He [Young] said that he did it, knowing that he didn't even do it, but he said this is his – his meal ticket to get out, so he's going to use Paul[.]"). Miller further stated in 2013 that he told this to the government, which thereafter had him wear a wire to capture Young admitting it. *See* Def. Ex. 2 at 12 (Miller stated that he told the government, "he lying on the guy, Paul Bergen [*sic*], and he saying all this that he's going to do. So they wanted to hear it theyself."). As Bergrin argued in his initial brief, Def. Br. at 9, this information was never provided to the defense in violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

The government argues that Miller's account is false because a 2005 report of a proffer session with Miller written by FBI Agent Brokos makes no mention of Young lying against Bergrin. Gov't Br. at 38 (citing SA2194). The government also cites the testimony of Agent Brokos to the effect that the government "sent [Miller] in to the Hudson County Jail to have a recorded conversation with Anthony Young. . . . [t]o elicit information that Anthony Young was the shooter[,]" not to catch Young admitting that he was falsely accusing Bergrin, as Miller stated in 2013. Gov't Br. at 39 (citing A2644-45). But the fact that the FBI has a different version of the purpose of Miller taping Young does not undercut the fact of what Young actually said to Miller and its explosive effect on the government's case; indeed, the FBI's version of events is completely consistent with Bergin's theory that the government suppressed Miller's statements in violation of *Brady*. That is, in the face on an allegation of wrongful conduct, the government cannot prove what Miller told the FBI by relying on the FBI alone; rather, Miller must be permitted to testify to

his version of events, and the government may attempt to impeach him. Ultimately, what Miller told the FBI should be left to the Court's determination after an evidentiary hearing.

The government also alleges that "Miller's conclusion in 2013 about what he told the government in 2005 is based upon his faulty recollection of what Young said in the recorded conversation." Gov't Br. at 39. In support, the government cites Miller's 2013 statement to Bergrin's investigators that the government must have known that Young admitted lying against Bergrin to Miller, because "if you have the recording, you know the truth." *Id.* at 39-40 (citing Def's Ex. 2 at 35-36). But the government ignores, as noted above, that Miller also told Bergrin's investigator that he told the government directly that Young was lying against Bergrin. Def's Ex. 2 at 12. It is this statement that raises serious concerns about the accuracy and integrity of Bergrin's conviction; it is this statement that should be the subject of a hearing at which the Court, and not the government, may assess the merits of Mr. Bergrin's powerful motion.

And while the recorded conversation is equivocal, it provides some support for the notion that Young was falsely implicating Bergrin and others out of a belief that it would help him, even though it entailed admitting to his own participation as the shooter. Thus, on the recording, Miller pretended to have been the shooter in a homicide and discussed with Young the prospect of cooperating. In response to Miller's repeated questions as to how the government could protect him if he admitted to being the trigger person, Young stated numerous times that the government would overlook this if they were targeting the head of a criminal organization for prosecution. *See, e.g.*, Def.'s Supp. Ex. 10 (admitted in 2013 trial as D-7) (Transcript of Miller Recording) at 9 ("They can do it. They got – them prosecutors are devious, man. You know how much shit we did that old boy didn't do? Huh? But they know he the boss. They know he calling shots. They want his ass."); *id.* at 14-15 ("How you think I'm getting money? How you think I'm getting

witness protection? You know what it's called, keep him, let him go."); *id.* at 28 ("It doesn't matter, man. It doesn't matter, man. It doesn't matter, man. He's the head of the organization, that's what they want. That's who the fuck they want."). The recording also shows that Young coached Miller about how to tell the government a plausible lie that would coalesce with the Government's theory of the case. *See id.* at 21-23, 29-30 (urging Miller to say that while he shot at the decedent, a Crips gang member, the murder was premeditated by a codefendant leader of the Bloods gang). And further still, the recording demonstrates that Young believed that his cooperation protected him against any possible charges, and that as a result, he would be released from custody. *Id.* at 15-16 (Young told Miller, "[t]hey can't charge you" with an offense, so long as you admit to prior to signing a cooperation agreement); *id.* at 49 ("I'm going home to my family. They going to jail."). Indeed, the recording even provides support for the notion that Miller understood Young to be lying about his involvement in the McCray murder, as at one point, Miller asked Young of his cooperation, "[t]hey don't get mad if they know that you were innocent?" *Id.* at 45. In sum, the recorded conversation between Young and Miller does not contradict, but rather supports, the newly discovered testimony of Hassan Miller, and while it may not establish Mr. Miller's credibility on paper, nor can the government's attack on his credibility demonstrate, as a matter of law and without a hearing, that he is lying, as the government contends.

(c) *Amin Shariff*

The government also fails to demonstrate, as it alleges, that the certification of Amin Sharif is "demonstrably false." Gov't Br. at 40. Sharif certified that before he pled guilty in November 2009, the government began pressuring him for information concerning Bergrin, that Sharif spoke with his cousin Eugene Braswell about this by phone, and that Braswell encouraged Sharif to lie against Bergrin, saying that he (Braswell) and others were doing so. Def. Br., Ex. 16 ¶ 5(a)-(b) (Sharif quoted Braswell as saying, "[j]ump on Paul's case. Everyone is doing it including me.

Fuck Paul. He's our ticket to freedom. . . . That's what you have to do like everyone else, including myself, is doing."). According to the government, Braswell could not have said this as Sharif claims because "Braswell was not arrested on the case that prompted his cooperation until *February 5, 2010*, nearly three months later." Gov't Br. at 41. But prior to his arrest on federal charges, Braswell was arrested on State charges for narcotics trafficking in July 2008, after Bergrin had been arrested; Braswell later pleaded guilty to those State charges, pursuant to an agreement whereby his State sentence would run concurrent to the federal one, by way of benefit for his cooperation. A8145, A8213m A8300. Thus, it is at least plausible – and really quite likely – that even before his federal arrest, Braswell knew that the government was pursuing charges against Bergrin and that Braswell decided to cooperate against Bergrin to lessen his own own exposure, whether on his existing State charges, or on federal charges that he could reasonably have expected might be pending.

The government's remaining arguments concerning Sharif's certification merely challenge Sharif's credibility. Thus, the government attempts to impeach the certification with Sharif's prior statement in a December 2009 proffer. *See* Gov't Br. 41. And the government argues that "Sharif's connection to Bergrin is far closer than Sharif admits," and that if Sharif were truly remorseful that he allowed Braswell to falsely implicate Bergrin, he would have come forward sooner. *Id.* at 42. These arguments go to the weight to be give Sharif's testimony, however, and is properly the subject of cross-examination, but cannot be decided as a matter of law, as the government seeks here in arguing that no such hearing should even take place. *See generally Seirocinski v. E. I. Du Pont De Nemours & Co.*, 118 F.2d 531, 536-37 (3d Cir. 1941) ("It is [] the office of cross-examination to appraise the weight, if any, to be ascribed to the inferences to be drawn from a witness' testimony.").

(d) *Savina Sauseda*

The government asserts that Savina Sauseda cannot be telling the truth that she found a Hawk recording device in a sofa cushion containing snippets of recordings made by Oscar Cordova, because the Hawk has no playback function through which Sauseda could conceivably have listened to any recordings. Gov't Br. at 42-46. In response to the government's brief, Bergrin's investigator contacted Sauseda to ask her how she knew the device was a Hawk, and how she had been able to play it. Sauseda clarified, as detailed in her supplemental declaration, that she is not sure the device she found was a Hawk; it was not affixed with any brand label. Def.'s Supp. Exh. 4 ¶ 3. However, as she recalls, she concluded it was a Hawk because sometime after finding it, she searched on the internet for recording devices and found an image of a Hawk that resembled what she had found. *Id.* Sauseda further reports that, whatever the make and model, the device she found had playback functionality, as well as a jack with earphones plugged in, and that she listened to the recordings using these earphones. *Id.* ¶ 4. Given Sauseda's insistence about her discovery and her ability to listen to the recordings, it now seems likely that she was simply mistaken in identifying the device as a Hawk.

The government argues, however, that it would have been exceedingly difficult for Cordova to doctor audio recordings to inculpate Bergrin, detailing the arcane processes (and unattainable equipment) involved in transferring audio between Hawk devices. Gov't Br. at 45-46. But none of these difficulties attach if Cordova was using an ordinary recording device to transfer snippets of recordings to a Hawk. That is, Cordova might have recorded Bergrin using his own, ordinary device, then edited the recording, played it onto the Hawk, and returned the Hawk to the government. The record does not disprove this possibility, and the sworn statements of Sauseda—who does not know Bergrin, came forward independently, and has nothing to gain—supports it. Accordingly, the Court should hear live testimony from Sauseda, and all other

witnesses offering newly discovered evidence, so that it may observe their demeanor subject to cross-examination, and make an appropriate assessment of credibility.

(e) *Yolanda Juaregui*

Finally, the government asserts that Juaregui's statement is not only false but reflects an effort to suborn perjury, citing letters from a person named Anna James to Juaregui discussing the prospect of money and involvement in a potential movie deal if Juaregui and her brother, Ramon Jimenez, were to attest to Bergrin's innocence. Gov't Br. at 49-51 (citing SA2267, 2269-70, 2278). However, Brian McVan, the attorney who originally submitted an affidavit swearing that Juaregui reviewed the statement that Bergrin prepared for her, never discussed exchanging anything of value for Juaregui's testimony, nor did she mention it to him. Def.'s Supp. Exh. 8 ¶ 3. Indeed, McVan maintains that Juaregui told him the statement was true in all material respects, excepting only details about her alleged sexual relationship with Alejandro Barraza-Castro, and apparently did so without pressure or as part of any *quid pro quo*, but truthfully, in response to legitimate inquiries. *Id.* ¶ 2. Under these circumstances, where Juaregui has stated different things at different times, the content and veracity of her prospective testimony obviously cannot be determined from a cold record. Instead, the appropriate course is for the parties to examine and cross-examine her before the Court at an evidentiary hearing.

III. The Newly Discovered Evidence in This Case Is Material, Non-cumulative, and Would Likely Have Resulted in an Acquittal.

1. Conspiracy to kill Kemo McCray

The government's case on the charge of conspiracy to kill Kemo McCray hinged on the testimony of Anthony Young, and more specifically, on Young's testimony that Bergrin attended a meeting with Hakeem Curry and his associates where Bergrin uttered the words, "No Kemo, no case." This was the only proof that Bergrin had any intent to kill Kemo or entered into a conspiracy

for that purpose, and so was uniquely essential to the government's case. *See United States v. Bergrin*, 2013 WL 3864393, at *4 (D.N.J. July 23, 2013) (noting in denying motion for judgment of acquittal, "Young's testimony alone [concerning the alleged "No Kemo, no case" meeting] allowed a rational jury to conclude that . . . Bergrin joined with members of the Curry organization to further the objectives of [a conspiracy to kill McCray]," and referencing "[a]dditional evidence" as only "reinforce[ing] a finding that the jury's inference in that regard was rational."). Yet newly discovered evidence demonstrates that Young lied as to the existence of this meeting and that it never occurred—so Bergrin never spoke that fateful line.

Thus, two witnesses have now independently attested that Young confessed to them separately that he was fabricating his testimony, falsely implicating Bergrin, and concocting the alleged meeting in an attempt to lessen his own criminal exposure. Charles Madison states that Young said Bergrin "didn't do shit and he [Young] had to make up some bullshit about a meeting that supposedly took place because they kept pressuring him about Paul." Ex. 1 at 2. Madison further avers that Young "said he lied and told them that Paul held a meeting and told them to kill this kid Kimo," and that in truth, "Paul didn't do anything but if I don't say that [Bergrin directed others to kill Kemo] my deal is off the table." *Id.* And Hassan Miller states that Young told him, "I'm going to say Hak [Curry] . . . did it, and I'm going to say Paul . . . had something to do with it, and he orchestrated the whole thing." Ex. 2 at 9. When Miller then confronted Young about lying, Miller says that Young replied, "I know, but I got to get myself out of jam." *Id.* Miller thus understood Young to consider Bergrin "his meal ticket to get out." *Id.* Both Madison and Miller were trusted confidantes of Young. *See* Def.'s Ex. 1 at 1 (Madison states he "grew up with Anthony Young from adolescents [*sic*]," the two "are like brothers and . . . served time together"); *see* A3464 (defense asked Young during cross-examination whether Miller was "a friend and

confidant of yours," to which Young responded, "Yes, somebody I associated with, yes"). Both, also, have nothing to gain from assisting Bergrin. Accordingly, their signed statements are highly credible, and devastating to Young's account.

In addition, two of the alleged attendants of the "No Kemo, no case" meeting have now denied that the meeting ever occurred. As Rakeem Baskerville swore, he had "no involvement in, nor knowledge of, any plot, scheme, or conspiracy to kill McCray as alleged," Ex. 5 at 13, and more pointedly, he "did not attend any meeting 4-10 days after William Baskerville's arrest where it is alleged that a meeting occurred between myself, Paul Bergrin, Hakim Currie [*sic*], Anthony Young, Jahmal McNeil [*sic*] and Jamal Baskerville where it is further alleged that Paul Bergrin stated, 'no K-Mo, no case,'" *id.* And Hakeem Curry certified that he had "no role in any sort of conspiracy to kill Deshawn McCray because of his status as an informant/witness against Mr. Baskerville." Ex. 5 at 10. Given that the government has never charged either Rakeem Baskerville or Curry with Kemo's murder, it stands to reason that it considers these statements credible.

Further, the Curry Tapes undermine Young's account of particular details from that alleged meeting. Specifically, the Curry Tapes show that Bergrin characterized the charges against William Baskerville as presenting "an impossible case" in light of extensive audio and video surveillance of six different drug deals. Call No. 10493. Bergrin would thus never have concluded that McCray's testimony meant the difference between acquittal and conviction, making Young's attribution of the phrase "No Kemo, no case" nonsensical. Moreover, Young's explanation for why Bergrin directed the associates to kill Kemo—that Bergrin allegedly told them William Baskerville "was facing life in prison for that little bit of cocaine," A3281—also falls flat. In a phone call on November 26, Curry told associate Jarvis Webb that, according to Bergrin, William Baskerville was facing a possible 20 year sentence, but was "really facing" only 12 years. Call

No. 09771. And on December 4, after leaving William Baskerville's detention hearing, Bergrin told Curry that Baskerville was facing 18 years, but that Bergrin believed he could negotiate a 13-year deal. Call No. 10519. It simply does not follow that Bergrin would not have said William Baskerville was facing a life sentence, let alone offered this as a reason to eliminate a government witness. The force of this evidence is obvious.

There is also considerable new evidence that Young lied as to other particulars of his testimony, lending weight to the notion that Young's account was fabricated generally. Thus, Young testified that he attended a meeting at the home of Jamal Baskerville on the morning of November 25, 2003 to discuss William Baskerville's arrest, with attendees that included Deirdre, Hamid, and Rakeem Baskerville, and then after Deirdre left, Hakeem Curry. A3262-3267. But Deirdre now swears that she "did not attend any meeting on November 25, 2003 at the residence of Jamal Baskerville," and "never met Anthony Young in my life." Ex. 5 at 12. Rakeem Baskerville also denies attending any such meeting. Ex. 5 at 13. And the Curry Tapes prove that Hamid Baskerville did not attend any such meeting with Curry, Ex. 6 at 4, Call No. 09369 (Curry told Hamid, "I ain't talk to you, I ain't see you"), and further, that Curry himself did not learn of the arrest until 12:30 p.m. in a phone call with Maurice Lowe, Ex. 6 at 2-3, Call Nos. 09218-28, 09241.

Additionally, the Curry Tapes undermine several other significant elements of Young's testimony. For instance, while Young testified that he was present for two phone calls between Bergrin and Curry on November 25, the Curry Tapes show that Young got the timing of these calls wrong, as the government concedes. *See* Gov't Br. at 62. Thus, Young testified that the second call occurred while Curry was sitting in his vehicle between 1:00-2:00 p.m., A3269, but as the tapes reveal, the first call occurred at 2:40 p.m., Call No. 986037, and the second at 4:01, *see*

Gov't Br. at 63. Indeed, between 1:00-2:00 p.m., Curry was standing outside of his store waiting for a ride from Ishmael Pray, not seated in his vehicle with Young and others, and was on the telephone with Bergrin. Ex. 6 at 2-3, Call Nos. 09266, 09272-82; 09369. For that matter, in a phone call with Hamid Baskerville at 4:24 p.m. on November 25, Curry recounted the events of his day chronologically, never mentioning having seen or spent any time with Anthony Young. *See* Def. Exh. 6 at 4, Call No. 09369.

In sum, the newly discovered evidence shows that Young lied as to the existence of any "No Kemo, no case," meeting, and that he fabricated this incident—along with much of his testimony, in general—in an attempt to limit his own criminal exposure. This evidence would have impeached the government's most critical witness as to the most significant evidence in the case, and would have resulted in an acquittal. Furthermore, it is not cumulative. While Bergrin certainly attacked Young's credibility at trial, citing numerous inconsistencies across his many accounts over successive trials, he did not have the definitive proof he presents now. That is, no witness testified for Bergrin that Young admitted that Bergrin was innocent and that he [Young] was falsely implicating Bergrin for his own benefit. Nor was Bergrin able to decisively refute the existence of any "No Kemo, no case" meeting with the testimony of other individuals that Young had identified as in attendance. And Bergrin was likewise without the irrefutable evidence of the Curry Tapes that reveals the illogic of Bergrin's ever having encouraged Curry and his associates to kill McCray, either because it would make any difference to William Baskerville's case, or regardless, because he was facing a lengthy sentence. All such proof is newly discovered, and warrants a new trial.

The government tries to boost Young's credibility by listing the ways in which his testimony agreed with established facts. *See* Gov't Br. at 57-63. Specifically, the government

argues that Young's claim that he was the shooter in the McCray killing is amply corroborated by crime scene and autopsy evidence, *id.* at 57-58, and further, that the Curry Tapes substantiate Young's testimony regarding the existence and substance of two phone calls between Curry and Bergrin on November 25, 2003, *id.* at 58-63. But that Young was a member of the Curry organization who may have played a central role in McCray's murder says absolutely nothing about the existence of a "No Kemo, no case" meeting. In other words, the government can support Young's credibility only in areas that are irrelevant to the charges against Bergrin.

The government next attempts to salvage Young's credibility by reference to the testimony of other witnesses. Thus, the government cites Vincent Esteves's claim that Bergrin told him he would "take care of" having a witness killed in Esteves' case, adding that, "it wasn't his first time," and "if there's no witness, there's no case." Gov't Br. at 53 (quoting A6853-56) (quotation marks omitted). The government says that "when Bergrin told Esteves, 'it wasn't his first time' killing a witness, he was referring to his involvement in killing Kemo. *Id.* But this is pure speculation. Indeed, in support of this inference, the government cites only its *own argument* at trial. *Id.* Even supposing that Esteves testified truthfully, and that Bergrin was not merely bluffing, Esteves refused to say—despite the government's repeated, leading questions, *see* A6855-56 ("[H]is first time doing what, as you understand it?"; "That he did what before?"; "What was the 'it' that he had done before as far as you understood it?")—that Bergrin was referring to the Kemo murder. In fact, Esteves testified that he understood Bergrin to speaking of killing someone in general, and not specifically a witness. He testified that he understood Bergrin to mean he had "[k]ill[ed] somebody before. Have somebody killed," and when the government followed up by asking "Witnesses?," Esteves responded, "That's what we're talking about. But in general, kill

somebody." A6856. Thus, the government's claim that Bergrin's statement to Esteves is proof of his guilt in the McCray murder is unfounded.[10]

As for Bergrin's alleged statement to Esteves, "if there's no witness, there's no case," Bergrin impeached Esteves at trial by showing that for 13 months following his arrest, he never attributed any such statement to Bergrin. A7198-99. Rather, it was only after Esteves began cooperating, by which point he had read the discovery in his case including the indictments against all co-defendants, that he suddenly attributed "if there's no witness, there's no case" to Bergrin. A7199. In this manner, Bergrin attempted to show that Esteves had fabricated his account after reading Young's statement. At trial, because Bergrin was unable to effectively disprove the existence of any meeting where he said "No Kemo, no case," the jury may well have considered such statements to be Bergrin's "signature" and so believed Esteves, despite Bergrin's impeachment. But with Young's testimony on this score now disproved, Esteves' testimony loses credibility in parallel. And in any event, absent Young's testimony, Bergrin's inducement to kill a witness in an unrelated case would have no bearing on the McCray murder charge.

Similarly, the government cites the testimony of Richard Pozo that Bergrin offered to have a witness killed as part of Pozo's defense. Gov't Br. at 56. But here again, even if this testimony were true—and Bergrin fairly impeached Pozo on this point by questioning that he (or anyone) would have offered to commit a murder for a new client within six months of meeting him, *see* A4096, A4124-25—it could not buoy Young's account of a "No Kemo, no case" meeting in light

[10] This evidence might well have been excluded had Bergrin been able to show, with the testimony now available, that he never stated "No Kemo, no case." That is because the testimony from Esteves was only admissible pursuant to Fed. R. Evid. 404(b)(2) as proof of intent with respect to that alleged utterance. If Bergrin had been able to demonstrate that he never made the statement alleged by Young, Esteves' testimony would rightfully have been excluded under Fed. R. Evid. 404(b)(1) as impermissible propensity evidence in light of its obvious prejudicial effect..

of the newly discovered evidence. Instead, the opposite is true: once Young's statement is revealed to be false, as the new evidence shows, the similarity between the statements would sink the credibility of Pozo's suggesting exactly the sort of orchestrated, fabricated testimony that Bergrin alleged in his defense.[11]

The government next points to numerous witnesses who testified, in effect, that Bergrin spoke with them about the prospect of being indicted for the McCray murder. As a preliminary matter, any anxiety on Bergrin's part about the possibility of an indictment would have been understandable and consistent with his innocence: as the government notes, it was a matter of public information that Bergrin supplied the name of a government informant to associates of his client, and that the witness was later killed. *See* Gov't Br. at 54 (citing A3215) (noting that Bergrin supplied this information to reporters). Indeed, Bergrin only supplied this information to a reporter after the government moved to disqualify him from representing William Baskerville for an alleged conflict of interest. A3215. Thus, Bergrin had ample reason to believe the government might be investigating him regarding the McCray killing, meaning that Bergrin's statement to others about his possible indictment were based upon a well-founded fear and do not serve to undercut this compelling, highly probative new evidence, as a matter of law and prior to the Court having had an opportunity to hear and consider it.

Indeed, upon careful inspection, the statements attributed to Bergrin by various witnesses, highlighted by the government in its brief in an effort to predetermine the outcome of this motion

[11] The government also alleges that it presented evidence of Bergrin's alleged personal motive to kill McCray in order to foreclose any possibility of William Baskerville cooperating against him on drug charges. Gov't Br. at 52-53. But as the government also notes, *id.* at 55, Abdul Williams testified for the government that Bergrin did *not* believe that Baskerville would cooperate against him, A5252. Moreover, as discussed *infra*, the newly discovered evidence shows that Bergrin was not, in fact, involved in drug-dealing, so he could have had no motive to kill McCray to protect his alleged role in such a criminal enterprise.

practice, are not even probative, let alone dispositive. as to Bergrin's guilt or innocence. First, the government quotes Thomas Moran as saying that Bergrin admitted that "he told them [Curry and his associates] the name of the informant, and that three months later, they had killed him." Gov't Br. at 53 (quoting A7393) (quotation marks omitted). Yet by Moran's account, Bergrin's conduct was completely lawful, and went no further than what Bergrin had stated publicly. The government continues that "Bergrin also told Moran that the government 'tried to indict him, but they could not because the shooter, Anthony Young, gave three statements, was not credible, that the information was attorney-client privileged information, and there was an illegal phone tap.'" *Id.* at 54 (quoting A7394-94). This, the government says, amounts to "boasting" that should be interpreted as "Bergrin was admitting to Moran his involvement in the Kemo murder." *Id.* But Moran's testimony attributes to Bergrin only factual assertions, and the government's attempt to paint it as a tacit admission is fanciful and really unfair, especially in the face of the contrary proof that the government works so hard to keep from the Court.

Next, the government quotes the testimony of Abdul Williams that Bergrin said, "[William Baskerville might] flip on him [Bergrin] and say he had something to do with that guy Kemo getting killed," before agreeing that it "would be stupid" for Baskerville to do so because "[h]e'd be incriminating himself." Gov't Br. at 55 (A5251-52) (quotation marks omitted). The government does not explain how this testimony supports a theory of Bergrin's guilt, and it does not. Given that William Baskerville was the first person indicted for the McCray murder, and that Bergrin was concerned that he might be indicted after the government moved to remove him from Baskerville's case, it would have been reasonable for Bergrin to consider whether Baskerville might cooperate against him to help himself, whether truthfully or otherwise.

The government also offers in this vein the testimony of Eric Dock that he learned from William Baskerville that Bergin said, "the Feds are just mad because I represented all of you" and "I don't care if they charge me, if they do, I'll just come in here with you and fight my shit, and I got lawyers just in case they decide to charge me with anything." Gov't Br. at 55 (quoting A3157) (internal citation and quotation marks omitted). But this testimony attributes to Bergrin a claim of innocence and a theory of his indictment that is completely consistent with Bergrin's defense at trial, namely, that he was the victim of government overreach, and that he was prepared to fight the charges as unwarranted.

Finally, in a last ditch effort to distract from the materiality of the newly discovered evidence, the government takes aim at Bergrin's theory of defense at trial, calling it "ridiculous." In particular, the government argues that:

> To accept Bergrin's defense, [] the jury would have had to believe: that Young decided to falsely implicate himself even though neither he nor anyone else had been charged with the Kemo murder . . . ; that Young, upon advice of his counsel, subsequently pleaded guilty to a crime he did not commit for which he agreed to be sentenced to a mandatory term of life imprisonment; and that Young did this so he could reduce his sentence on an unrelated weapons possession charge carrying far less severe penalties.

Gov't Br. at 57. But to the contrary, to acquit Begrin, the jury would only have needed to conclude that Young was lying about the existence of a meeting where Bergrin said, "No Kemo, no case." And the newly discovered evidence from numerous witnesses would have compelled this conclusion. Furthermore, as previously discussed, the illogic of Young's behavior is not a problem for Bergrin alone. That is, even under the government's version of events, Young cold-called the FBI and offered to exchange information about a murder—for which he later pled guilty—in what he explicitly stated was an attempt to get assistance with gun charges. The Hassan Miller recording suggests that Young did so under the erroneous belief that so long as he confessed to all his crimes before signing a cooperation agreement, he could not be charged. Def.'s Supp. Exh. 10 (Transcript

of Hassan Miller Recording) at 15-16 (Miller asked Young if it "might backfire" if he confessed to a murder to the FBI, to which Young responded, "No it can't. If you signed your paper," adding that so long as he "signed it [a cooperation agreement] before ahead of time" and noted all of his crimes, then "[t]hey can't charge you."). Thus, Bergrin's theory is no more or less plausible than the government's. But it matters not: whatever Young's flawed reasoning, the case – really the entire case – rose or fell based upon Young's testimony. It is for that reason that the materiality of the newly discovered evidence with regards to the McCray murder is manifest. The government fails to show why that is not so, and Bergrin should accordingly be granted a new trial on these charges, and all of the others which were tainted by his conviction on these counts.

2. Conspiracy to kill a witness against Vincent Esteves

The government concedes that regarding the Esteves charges, the audio recordings made by Oscar Cordova were essential, stating "Cordova's recordings were critical[.]" Gov't Br. at 71. The government even goes so far as to tacitly acknowledge that Cordova had no personal credibility and that the jury may well have discounted any testimony not backed by the recordings. *Id.* (noting that Cordova lied on the stand in denying that he had called in a phony death threat against himself shortly before trial but brushing this aside, stating, "because Cordova's testimony was strictly limited to the facts contained on the recordings, the jury could and obviously did credit those facts even if they would not otherwise believe a word he said.").

As a result, the newly discovered testimony of Savina Sauseda is highly material and would have resulted in an acquittal.[12] That is, Sauseda's testimony undermines the key to the government's case on the Esteves charges because it suggests that Cordova doctored the tapes to

[12]Sauseda's credibility would best be determined by the Court after an evidentiary hearing, but for present purposes, Bergrin notes only that Sauseda came forward of her own volition because "it's the right thing to do," and in spite of her concerns that she may face personal repercussions for doing so. Def.'s Ex. 7 ¶ 18.

falsely incriminate Bergrin and exclude exculpatory recordings. The government responds first by disputing the premise, maintaining that it is impossible that Sauseda could have found and listened to a Hawk recording device. But as Sauseda has now clarified, the device she found may not have been a Hawk. And if it was not a Hawk, Sauseda could have listened to it and heard, as she claims, snippets of over 20 recorded conversations, including the seminal quote from Bergrin, "make it look like a robbery." Def.'s Ex. 7 ¶ 7. There could be no innocent explanation for Cordova possessing a recording device with this audio stored on it. Per the government, Cordova could not have played that audio from the Hawk onto a second device without specialized equipment that is provided exclusively to law enforcement personnel. Gov't Br. at 46. That means that Cordova would have needed to first record conversations onto his own device, then play whatever portions he chose onto the Hawk. And Sauseda's statement that Cordova admitted "he was paid to . . . [l]ie on the witness stand against Paul Bergrin," leads to the further inference that Cordova was doing this to manipulate the audio recorded onto the Hawk and provided to the government to falsely inculpate Bergrin.

The government next responds that Sauseda's testimony would not have resulted in an acquittal because the jury would never have been able to "reconcile the inconsistency between [Bergrin's trial theory that he believed Cordova was an informant and so no actual danger to witnesses] and his corollary claim that he purposefully withheld information from Cordova so that Cordova could not actually locate and kill anyone." Gov't Br. at 72. The government manufactures the alleged inconsistency, however—the jury would have been perfectly capable of understanding that Bergrin understood Cordova to be an informant[13] and nonetheless, given the

[13] In this regard, Maria Correira now confirms that Bergrin "did not seem to be fooled by Oscar," repeatedly voicing a belief that Cordova was an informant. Def.'s Supp. Exh. 9 ¶ 12. Correira states that she believes the government has continuously made efforts to keep her from testifying

gravity of the consequences, took the added precaution of withholding information that could be misused.

Finally, nor is Sauseda's prospective testimony merely cumulative. While Bergrin had contended at trial that Cordova doctored the recordings, *see, e.g.*, A9611, he was unable to present proof of this beyond Cordova's poor credibility. In sum, the newly discovered testimony of Savina Sauseda is so material to require a new trial on the Esteves charges.

3. The Narcotics Trafficking Charges

Bergrin's newly discovered evidence would also likely have led to his acquittal on drug trafficking charges. That is because several witnesses have for the first time confirmed what Bergrin argued at trial, that he had no knowledge or involvement in drug-dealing, and that he was falsely accused by cooperating witnesses. Yolanda Juaregui's prospective testimony is most sweeping in this regard, completely absolving Bergrin of any involvement and admitting that she and others sold drugs in concert and specifically hid this from Bergrin:

> Paul was not involved with any drug dealers, never. I used Paul's contact[s] without him ever having knowledge, as well as Ramon working for Paul to meet new drug customers. While Paul was showering, I took his cellular telephone contact list and copied down numbers, such as Rondre "Dre Kelly[,] Abdul "Mutallic" Williams. Paul had no clue. I did this behind Paul's back and without his knowledge.

Def.'s Exg. 9 at 9 ¶ 13. And this proof is corroborated by newly discovered evidence from other members of Yolanda's family and inner circle. Thus, her father Jose Jimenez, who was living above Isabella's restaurant, states that Bergrin is "innocent of the drugs," had "nothing to do with [that]," and "didn't know anything about" drugs in Isabella's basement. Def.'s Exh. 12 at 18-19,

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to the unethical manner in which the FBI conducted its investigation of Bergrin, and to Bergrin's impressions that Cordova was an informant and otherwise untrustworthy. *Id.* ¶¶ 11-12. As of the time of filing, Correira was in between homeless shelters in Portugal and so was unable to timely submit a signed declaration—but rather than delay this filing, Bergrin here files her declaration unsigned based upon the statement that she provided, and will file the signed declaration as soon as it is available.

24, 42. Robert and Theresa Vannoy, who were then children living with Jauregui, have stated likewise. Robert testified that Bergrin had nothing to do with drugs at Bergrin's trial, A9306-9311, but has recently stated further that he provided this information to the FBI. And Theresa Vannoy, contacted since the time of Bergrin's principal brief, now confirms what her mother Sonja Erickson certified, Def.'s Exh. 10 at 2, that Bergrin had no involvement in drug-dealing. Def.'s Supp. Exh. 2 ¶¶ 16-20. More specifically, Theresa states that not only did she never see Bergrin involved with drugs, but that she specifically recalls seeing Juaregui and Alejandro Barraza-Castro exchanging duffel bags with a person called "Moo" (likely Abdul "Mutallic" Williams), and that the bags brought him by Juaregui and Barraza-Castro contained piles of money which they counter and bundled. *Id.* Theresa further states that she told to keep all such incidents—and the relationship between Juaregui and Barraza-Castro generally—a secret from Bergrin. *Id.* This testimony clearly substantiates Bergrin's theory of defense, now supported by Juaregui, that it was Juaragui and Barraza-Castro who sold drugs together with individuals like Williams, and that this information was specifically kept from Bergrin.

The newly discovered evidence of Bergrin's toll records, showing that Bergrin contacted DEA Agent Hilton over 50 times during the period when the government alleged that Bergrin was dealing drugs with Barraza-Castro, further proves Bergrin's theory of defense. That is, Bergrin could have examined Agent Hilton with these records to establish that Bergrin spoke to him repeatedly in an effort to report Barraza-Castro for narcotics trafficking. Obviously, it is inconceivable that a person would report their own partner in a drug enterprise to the DEA, and so the jury would have been forced to conclude from this evidence that Bergrin never sold drugs together with Barraza-Castro as the government alleged.

Finally, Amin Sharif's testimony would have demonstrated that Eugene Braswell's incrimination of Bergrin was self-serving and completely fabricated, quoting Braswell as instructing Sharif to "[j]ump on Paul's case," adding "Fuck Paul. He's our ticket to freedom. . . . Look the Feds in the eye and just bullshit them." Def.'s Exh. 16 at 3. Sharif would further have proven that the government was susceptible to, and even invited, this kind of falsified testimony from cooperators, as Sharif also states of the FBI, "I knew and believed they wanted me to lie." *Id.* And in fact, according to Sharif, the practice among cooperators was accordingly widespread, as Braswell also told Sharif, "[e]veryone is doing it [jumping on Bergrin's case] including me." *Id.*[14] Thus, Sharif's testimony would have undercut the veracity of not only Braswell but all cooperators, and would have harmed the credibility of the government's investigation more generally. It is therefore not enough to argue, as the government does, that it had a "veritable Everest of evidence" at trial, since the newly discovered evidence would have alternatively impeached much of that evidence and prejudiced the jury's view of the prosecution as to the remainder.

This evidence is not cumulative. Bergrin certainly cross-examined government witnesses and argued vociferously at trial that the drug-trafficking charges were unfounded, and that the testimony of cooperators was falsified. But Bergrin did not have the proof at that time. Now, newly discovered evidence shows that Bergrin was correct, that the government used coercion and

[14] This is further supported by the letter of Kamau Muntasir to Bergrin's investigator. Def.'s Supp. Exh. 2 Att. Muntasir, who was incarcerated alongside Braswell and Abdul Williams in the Hudson County Jail beginning in 2010, states that Braswell and Williams would "get together and discuss what the government wanted from them concerning Mr. Bergrin and get their stories coordinated for evidence they would give." *Id.* at 1. Braswell offered to supply Muntasir with "a story [Muntasir] could use about him to help himself," and when Muntasir declined, Braswell and Williams distanced themselves from him. Muntasir called Anthony Pope, Mr. Bergrin's former law partner, in 2012 in an effort to provide this information to Bergrin, but Pope stated that he was "not trying to help" Bergrin, and Muntasir made no further efforts at that time. *Id.* at 2.

cooperation agreements to present perjured testimony, and that Bergrin was innocent of the drug charges.

The government responds first that much of Bergrin's newly discovered evidence is presented in the form of hearsay, since it is attested to by Bergrin's investigator, and not specific witnesses themselves. Gov't Br. at 73-74. This would not be so, however, at an evidentiary hearing or a new trial. That is, that Bergrin must rely on his investigator at this stage speaks to witness transience and continuing fear of the government, issues which would dissipate if Bergrin's right to compulsory process were properly enforced.

The government next attempts to devalue the testimony of particular prospective witnesses by arguing that their basis of knowledge was too limited to help Bergrin. In this regard, the government says that "[n]o Government witness claimed that either one [of Theresa or Robert Vannoy] was present for Bergrin's interactions with Barraza-Castro, Abdul Williams, [and others]." *Id.* at 74. The government similarly attacks the prospective testimony of Jose Jimenez on the ground that Jimenez attests that he himself was not involved in drug-dealing. *Id.* at 75. But Theresa Vannoy's testimony shows that in fact she *was* present for what were obviously drug deals involving Juaregui and Barraza-Castro, and likely Williams as well—and that not only was Bergrin not present, but Juaregui expressly told Theresa to keep such dealings secret from Bergrin. And Jimenez's basis of knowledge, as Juaregui's father and a tenant of the building where Isabell's was located and drugs were discovered, is far broader than the government admits.

The government argues against the materiality of Bergrin's toll records because DEA Agent Hilton denied the existence of calls between himself and Bergrin to counsel at the time of trial. *Id.* at 75-76. But that is exactly why the toll records are material—they would impeach any such denial by Agent Hilton and prove incontrovertibly that Bergrin was in regular contact with

the DEA during the time period that the government claimed he was in engaged in large scale drug trafficking.

Finally, the government responds to Sharif's prospective testimony by suggesting Braswell was a disposable witness for the government. *Id.* at 76 ("Braswell's testimony was not essential to any of Bergrin's many counts of conviction . . . ."). First, the government understates the significance of Braswell to its case in chief: Braswell testified for over 200 transcript pages regarding his alleged purchase of multi-kilograms quantities of cocaine from Bergrin, and from others with whom Bergrin put him in contact. *See* A8103-8326. But beyond the obvious significance of this testimony, the government also fails to appreciate that Sharif's testimony impeaches more than Braswell alone. That is, Sharif quotes Braswell as saying that other cooperating witnesses were similarly lying against Bergrin. And Sharif himself states that the government pressured him to give false testimony. As previously noted, Sharif's prospective testimony would therefore undermine the government's entire drug case. In sum, the newly discovered evidence supports the grant of a new trial on the drug charges.

CONCLUSION

For the foregoing reasons, and those stated in Bergrin's principal brief, the Court should conduct an evidentiary hearing to assess the newly discovered evidence, and grant Bergrin a new trial on call counts.

Respectfully submitted

/s/ Lawrence S. Lustberg
Lawrence S. Lustberg

Dated: November 21, 2018

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES plaintiff v. PAUL W. BERGRIN defendant.	Honorable Jose R. Linares Criminal No. 09-369 DECLARATION OF PAUL W. BERGRIN

I, PAUL W. BERGRIN, of full age, do certify that:

1. I am the defendant in the above-captioned criminal matter. I submit this declaration in support of my motion for a new trial on the basis of newly discovered evidence under Federal Rule of Criminal Procedure 33. Everything contained in this declaration is completely true and accurate to the best of my knowledge and recollection, and I understand that if anything in this declaration is willfully false, I may be subject to punishment.
2. I was tried twice. In both cases, I represented myself *pro se* with the assistance of the Gibbons law firm as standby counsel. The division of labor between me and standby counsel was as follows: I was responsible for reviewing discovery, directing the investigation, preparing and conducting cross-examination of witnesses, and preparing and conducting opening and closing arguments; Gibbons attorneys assisted me by researching, drafting, and arguing motions, voicing and arguing objections, and assisting with investigative tasks as directed by me.

3. Throughout preparations for both trials, I was incarcerated, either in county jail (briefly), or at the Metropolitan Detention Center (MDC) in Brooklyn, NY. It was extremely difficult to review discovery and prepare for trial in these environments. In the county jail, there was no computer available for inmate use, and so it was impossible to review any recordings. In the MDC, there was one (1) computer to be shared among approximately 110-120 pretrial detainees, which often meant that I was able to review discovery using the computer for one hour per day or less. In both facilities, it was very loud and difficult to concentrate or read documents in an expedient manner.
4. Nonetheless, I worked day and night to prepare for my trials. I put enormous time and effort into my defense, as my life was at stake, and I worked diligently to leave no stone unturned.
5. Among tens of thousands of other pieces of discovery, I was provided evidence of recordings made by the Government of Hakeem Curry's telephone calls pursuant to a wiretap. I was actually provided this evidence in two forms on different occasions. On one occasion, I was provided audio recordings and transcripts of two calls between Curry and me on November 25, 2003—the day William Baskerville was arrested. On another occasion, I was provided with hundreds of compact discs containing tens of thousands of audio recordings, consisting primarily of surveillance recordings of Curry from November 25, 2003 onward, all of which was unindexed.

6. When I received the isolated audio and transcript of the two November 25 calls, I believe I either reviewed the transcript, the recordings, or both together with Lavinia Mears, Esq. while at the MDC. In the first of these calls, I told Curry that William Baskerville had been arrested, and in the second, after having met with Will and appeared in his case, I told Curry the charges that William was facing, his exposure, and what I knew of the Government's case, including the existence of an informant witnesses named "Kamo." These calls were unremarkable to me at the time and I did not focus on them. The existence and details of these calls had been widely publicized in State-wide periodicals by then, and I did not consider these calls to be inculpatory; I believed—as I still maintain—that these calls showed nothing more than an attorney properly discussing a pending charge with a trusted associate of a client.

7. With regard to the recordings of Curry provided amidst hundreds of CDs, I never reviewed these before the conclusion of my trial. I never so much as listened to a single one of these recordings. From the beginning, I was told by the Government that the Curry calls were highly inculpatory and offered no exculpatory evidence. The Government also stated that the recordings had not been properly sealed, and that the Government would not seek to present them as evidence against me. The Government stated that I was very fortunate, because but for the sealing error, the recordings would have been used against me to great effect. The Government also warned me, both before my trials and during my trials, that if I tried to use any of the recordings in my defense, that this would open the door and allow the

Government to bury me with other, damning recordings. Believing that I did not need to listen to the recordings to understand evidence that would be used against me, and that listening to the recordings for the purpose of discovering exculpatory material would be fruitless, I did not listen at all. Instead, particularly in light of the other, massive discovery materials and the sprawling nature of the indictment, I focused my time and efforts on different aspects of trial preparation.

8. It was only after I had been convicted, when the Government submitted a response to my motion under Federal Rule of Criminal Procedure 29, that I began to explore the Curry recordings. This came about when the Government alleged that the infamous (and fictitious) "No Kemo, no case" meeting occurred on December 4, 2003, as evidenced by a Curry phone call after 7:00 p.m. that evening. I knew that no such meeting had occurred, and discovered that in fact the phone call referenced by the Government did not substantiate the Government's claim. But upon listening to that audio recording, it occurred to me for the first time that the Government had not been truthful in its representations of what the recordings contained. At that point, I began listening to the recordings and analyzing them in detail, and discovered their exculpatory value, as discussed in my Rule 33 motion and habeas corpus petition.

9. To my knowledge, no member of my defense team listened to the Curry audio recordings prior to my conviction, either. Certainly, if anyone did so, this was never discussed with me.

10. I did, however, learn some summary information about the Curry recordings from Curry himself. I recall a specific conversation I had with Curry at the Passaic County Jail on one occasion; as I remember it, I was representing William Baskerville at the time and the Government had recently filed a motion to disqualify me as counsel. Curry told me on that occasion that the Government was concocting an unfounded theory of McCray's killing, including a hypothesis that a meeting occurred in which Curry, me, and others conspired to kill McCray. Curry told me that either he or his legal team had listened to audio surveillance of Curry, which he had received in discovery in his own case, and that there was no evidence of such a meeting in any recording during the relevant time period.

11. I conveyed this information to my first attorney, David Ruhnke. I know for certain, however, that Ruhnke never listened to the audio recordings, personally. In fact, Ruhnke conducted no investigation on my case whatsoever, and was relieved as counsel before he would have done so.

12. Among the other copious discovery materials provided to me were records of my own telephone calls. These records contained only telephone numbers, without corresponding names. I repeatedly asked the Government for some reference material identifying the individuals whose phone numbers were listed on my call records, but none was ever provided.

13. In the time period during which the Government alleged that I was involved in narcotics trafficking, I spoke with DEA Agent Gregory Hilton by telephone on a number of occasions about Alejandro Barraza-Castro. My purpose in doing so was

to alert the DEA that Barraza-Castro was a major drug dealer. I wanted Agent Hilton to testify to these calls at trial, to rebut the claim that I was involved in narcotics trafficking with Barraza-Castro. Obviously, if Barraza-Castro had been my partner in crime, it would have been reckless and nonsensical for me to report him. To determine Agent Hilton's recollection of these calls, I asked standby counsel Lawrence Lustberg, Esq., to speak to him. Agent Hilton told Mr. Lustberg, at the courthouse, that he had no idea what Mr. Lustberg was asking about, and denied that any such calls occurred. I interpreted this response to mean that Agent Hilton would not assist me as a witness.

14. After I was convicted, while I was incarcerated in Arizona, an investigator working on my case, Kirk Schwindel, provided me with Agent Hilton's telephone number. Mr. Schwindel was able to obtain this information through contacts at the DEA. I provided Agent Hilton's telephone number to Ginger Galvani, Esq., an attorney and friend who was then assisting me with my case. Ms. Galvani then analyzed the records of my phone calls provided to me by the Government and determined that I had called Agent Hilton over 50 times during the relevant time period.

15. I wanted Hakeem Curry and Rakeem Baskerville to testify in my defense. I had no idea how they might testify, but I knew that there had never been a meeting at which I was present and uttered the words "No Kemo, no case," and I thought it would be in each of their self-interests to testify truthfully to this fact. However, I was never able to obtain an interview of either witness. It is my understanding and belief that the Government warned each of these individuals that they could be charged with

McCray's murder and to avoid involvement in my case. Each ultimately invoked his Fifth Amendment privilege and refused to testify. Neither has been charged with McCray's killing.

16. I wanted Deirdre Baskerville to testify on my behalf, and I attempted to have my investigators interview her before trial. However, Deirdre sold her home and moved to an unknown location. My investigators spent many hours surveilling her last known address but did not see her. I attempted to have her subpoenaed but to no avail—she refused service and I was unable to compel her presence. I did not know how Deirdre Baskerville would testify, but I knew that she had called me on the morning of November 25, 2003, and that she was at her home at the time of that call. I hoped that she would testify truthfully to this fact at trial. It is my understanding and belief that the Government frightened Deirdre Baskerville and urged her to go into hiding, either by threatening her with potential prosecution or by telling her that she could be harmed by me or others if her location were discovered.

17. I wanted Yolanda Juaregui to testify in my defense. I did not know what she would say, as she had said many different, conflicting things with regards to the charges against me. But I knew the truth, which is that I was never involved in drug-dealing. My investigators tried to interview Yolanda, but she refused to speak with them. It is my understanding and belief that the Government threatened Yolanda with a Draconian sentence on her own charges in order to keep her from assisting in my defense.

18. I drafted a prospective declaration for Yolanda Juaregui. The information I put in that declaration reflected my understanding of the truth, information culled from discovery materials I received from the Government, including FBI reports of interviews with Yolanda (Form 302s), and as to those things of which I lacked personal knowledge, my hypotheses. I did not know if all of the information in the draft declaration was completely accurate, but it reflected my sincere belief as to the truth, and I hoped that Yolanda would agree that it was accurate in material respects, correct any inaccuracies, and sign it.

19. My investigators interviewed Sonja Erickson on one occasion while she was living in Louisiana. From this interview, I learned that Sonja could testify that FBI agents had pressured her daughter, Theresa Vannoy, to implicate me in drug dealing, but that Theresa refused to do so because it was untrue. I subpoenaed Sonja to testify at my trial, but the subpoena arrived late, and the judge refused to enforce it and stay the trial pending her arrival.

20. Marisa Jimenez and Loriann Ortiz were both prospective witnesses who my investigators were unable to find. In Marisa's case, a subpoena was issued but never served. It is my understanding and belief that Marisa and Loriann went into hiding preceding and during my trial in response to warnings from the Government. In particular, it is my understanding that the Government cautioned these women that I might be a danger to them while facing trial, and encouraged them to disappear.

21. Maria and Jose Jimenez were both prospective witnesses that I wanted to testify as part of my defense, but it is my understanding that the Government relocated these witnesses to Alaska before my trial and my investigators were unable to locate them.

22. I called Robert Vannoy to testify in my second trial. On the day he was to testify, I was allotted only five minutes to interview him before he took the stand. During this time period, I asked the questions I could and then examined him accordingly. I did not have enough time to ask him about what I have since learned and which has been presented to the Court in support of my Rule 33 motion, that Robert told the Government I was never involved in drug-dealing with Barraza-Castro. The Government never provided this information to me.

23. I directed my investigators to interview Hassan Miller before my second trial. Miller refused to be interviewed because he had serious open charges, and he feared Government retaliation if he were to assist my defense.

24. I give the information in this declaration freely and of my own will to demonstrate that I was at all times diligent in investigating my case, and that in particular, I was diligent in learning and procuring the testimony of the witnesses whose evidence I have provided in support of my Rule 33 motion for a new trial. My efforts were frustrated by my incarcerated status, the Government's use of fear and threats to render important witnesses unavailable, the Government's failure to abide by its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), the inefficacy of the marshal service in serving subpoenas, and the District Court's refusal to assist in protecting my rights to compulsory process and a fair trial. The evidence I have

presented in support of my Rule 33 motion is indeed newly discovered, and warrants a new trial.

25. I have set forth a comprehensive account of my trial in a petition for writ of *habeas corpus*. As the present declaration is for a more limited purpose, I do not repeat that complete account here, but as to any details of my case not contained within this declaration, I refer the Court to Case Number 2:16-cv-03040, ECF No. 1, which I hereby incorporate by reference as if fully set forth herein.

_____
Paul W. Bergrin

Dated: November____, 2018

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES plaintiff v. PAUL W. BERGRIN defendant.	Honorable Jose R. Linares Criminal No. 09-369 DECLARATION OF MICHAEL MCMAHON

I, MICHAEL MCMAHON, of full age, do certify that:

1. I am a Private Investigator in the states of New York and New Jersey.
2. I am a retired NYPD police officer, and I have participated in hundreds of arrests and investigations throughout my career.
3. On January 27, 2018, I spoke by telephone with federal inmate Kamau Muntasir. I have an audio recording of this interview that I can provide to the Court upon request. Muntasir informed me that he had previously been incarcerated together with Eugene Braswell and Abdul Williams, and that during this time, he learned that "Braswell would say anything and put together anything to get out of jail." In particular, Muntasir told me that Braswell had admitted to lying against Paul Bergrin to help himself. Muntasir said that in 2012, he reached out to Anthony Pope, Esq. with this information, but Pope said that he did not want to help Bergrin, and Muntasir made no further efforts to assist Bergrin at that time. As the call concluded, Muntasir told me that he had Giglio material from his own case with Braswell that would be helpful to Bergrin, and that he would send that to me.

4. On June 17, 2018, Muntasir sent me a two-page letter together with documents apparently sent to Muntasir in October 2012 pursuant to the Government's Giglio obligations in a case in which Muntasir and Braswell had been charged as co-defendants. Attached to this declaration is a true and correct copy of the two-page letter I received from Muntasir.

5. On November 13, 2018, I spoke by telephone with Savina Sauseda, together with counsel for Paul Bergrin, Avram D. Frey, Esq. I asked Ms. Sauseda about statements she had previously made to me concerning a tape recorder she found in a sofa cushion in her apartment.

6. In particular, I noted that Ms. Sauseda had previously told me that the recording device was a "Hawk" brand device, and how she concluded this. She replied that she was not certain of this fact, as the device did not have any brand label on it that she could recall. She had concluded it was a Hawk sometime after finding it, when she searched the internet for photographs of recording devices and found one that looked like the device she had discovered. As she remembered it, this device she saw online had been labeled a Hawk.

7. I also asked Ms. Sauseda how she had been able to listen to recordings on the device she found. She said that the device had a jack for earphones and that there were earphones plugged in when she found it. She listened to the recordings by pressing play on the device while listening with the earphones that were already attached.

8. On November 11, 2018, I conducted an interview by telephone with Theresa Vannoy Womack. I have an audio recording of this conversation which I am able

to provide to the Court upon request. Theresa is the daughter of Sonja Tibbs, but was raised for many years by Yolanda Juaregui.

9. Theresa told me that while she lived with Yolanda, she came to know and have a relationship with Paul Bergrin. Paul was dating Yolanda and eventually moved in with them. The two spoke about getting married, and Paul gave Yolanda a ring.

10. Theresa remembered Paul as a very hard working attorney who sometimes stayed up all night working on cases.

11. Theresa recalled that at some point, Yolanda's brother, Ramon, introduced Yolanda to a man named Alejandro Barraza-Castro. Sometime after that, Yolanda and Alejandro began having an affair. Yolanda tried to keep her relationship with Alejandro a secret from Paul. Sometimes she would go see Alejandro, or he would come to the house while Paul was not around, and Theresa would see them together. On those occasions, Yolanda would instruct Theresa to tell Paul she and Yolanda had seen a woman named "Nancy" instead of Alejandro. Theresa never knew a "Nancy," and was not sure if it was a real person. As far as Theresa understood, "Nancy" was just a lie to cover for Yolanda seeing Alejandro.

12. Theresa said that Paul and Yolanda had a restaurant together, Isabella's. Theresa spent a lot of time in Isabella's; she was there every day after school, and all day in the summers. She reported to me that she very rarely saw Paul there. He would come into the restaurant maybe once per month, and only to eat dinner. After eating, he would leave. He did not stick around or see people.

13. Theresa said that at some point, Alejandro began living in an apartment above the restaurant. Paul did not know about this. Yolanda was insistent that Theresa not tell Paul about this.

14. Theresa told me that at some point later, some people robbed money from the cash register at Isabella's. They also went upstairs. Living in the apartments up there were two men in addition to Alejandro. One of these men was formerly homeless. He had mental problems, and used to talk into a walkie-talkie, saying he was talking to the police. When the robbers came upstairs, the man who used to be homeless said that he was going to tell the police what they were doing. The robbers shot and killed this man. The robbers then tied up Alejandro and burned him with irons.

15. After that incident, Alejandro moved out of the building where Isabella's was. He moved into a basement apartment in Newark that was a short distance away from Isabella's. Theresa did not remember the address of this apartment.

16. Theresa recalled that during this time period there were occasions when she went with Yolanda to meet up with Alejandro, and the two of them would then go to meet with a man whom Theresa said they referred to as "Moo." When Yolanda and Alejandro met with this man, Theresa was told to wait in the car as they talked outside or went into Moo's house. On several of these occasions, Theresa saw Yolanda and Alejandro exchange duffel bags with Moo.

17. On a few occasions, Theresa remembered going with Yolanda and Alejandro immediately back to Alejandro's basement apartment after they had met with Moo and picked up a duffel bag from him. On these occasions, the bag was full of money

in stacks of twenty dollar bills. Alejandro would bring the bags into the house and count the money. Sometimes, he would ask Theresa for help counting the money, and she would do it. She did not know what the money was from, or what it was for.

18. After counting the money, Yolanda and Alejandro would wrap it in black paper, then bundle it up in plastic wrap.

19. As far as Theresa knew, Paul did not know about Yolanda and Alejandro's trips to see Moo, or about the money. Theresa was always told not to tell Paul about Yolanda's interactions with Alejandro, and she was specifically told by Yolanda not to tell Paul about going to Alejandro's basement apartment, or counting money there.

20. Theresa remembered that there were sometimes other people in Alejandro's basement apartment helping him and Yolanda to count and wrap money. These people included Alejandro's brothers Alfredo and Alonso, and Alfredo's wife, Blanca, and at one point, Alonso's girlfriend (Theresa did not recall her name). There may have been other people, too, who were family members of Alejandro's from Bakersfield, California. That location stands out in Theresa's memory because Alejandro used to have her buy airplane tickets for his family members who were coming from Bakersfield.

21. Theresa told me that at one point, Yolanda and Alejandro were talking about needing to find a place to park an 18-wheeler truck. As she recalled, they eventually

settled on parking this truck in a man named Carmen's tow yard. She never knew what this was about, and she stated that Paul never knew anything about this, either.

22. Theresa once told Paul that she had seen Alejandro in the house with Yolanda, and that she believed they were having an affair. This provoked a confrontation between Paul and Yolanda, and Yolanda became extremely angry and upset. She hit both Theresa and Paul, and she kicked Theresa out of the house. Yolanda told Paul that Theresa was lying, which was not true.

23. After that, Paul left the house for a few days. And it was not very long after that he was arrested. Theresa told me that she was there the first time Paul was arrested. He was going to drive her to school, but the FBI came and put him in handcuffs. They put Theresa in handcuffs, too, even though she was just in middle school, and was obviously a child.

24. According to Theresa, when Yolanda was arrested sometime after Paul's arrest, the FBI found money in the ceiling. Paul did not know about this money, as far as Theresa knew.

25. After Yolanda was arrested, Theresa told me, she was picked up for questioning by a woman named Shawn Brokos. Shawn told Theresa that she wanted to know what Theresa knew about the drug-dealing by Yolanda and Paul. Shawn told Theresa that Yolanda and Paul both owned Isabella's, and that the FBI found drugs there. She said Paul was in on Yolanda's drug-dealing business. But Theresa told Shawn that she did not think Paul had anything to do with drugs, that she had never seen

him involved with drugs or any kind of crime. The things that Theresa saw Yolanda doing with Alejandro were a secret from Paul, Theresa told Ms. Brokos.

26. Theresa told me that the FBI tried to put her and her brother and members of Yolanda's family into something like the witness protection program, but Theresa's legal guardian at the time did not want to stay there, so they moved.

27. Theresa told me that she would have been willing to testify at Paul's trial. She never received a subpoena to testify.

28. The foregoing statements are true to the best of my knowledge and recollection. I am aware that if any statement in this declaration is willfully false that I may be subject to punishment.

Michael McMahon

Dated: November 20th, 2018

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Mike Mcmahon
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June 17, 2018

Greetings

As per our last talk, enclosed is some discovery material on the Brasswell and others mentioning Mr Bergrin. Personally I know that Eugene Brasswell knew that the federal government wanted Mr Bergrin and said he was willing to say whatever they wanted him to say to relieve himself of his federal situation. His position was that Mr. Bergrin didn't count from a street perspective as far as telling. He told me that he never dealt with Mr. Bergrin in drug transactions, but he would say what was needed to be said to get his benefit.

In early 2010 Brasswell was arrested and was housed in Hudson County jail with me on the same teir. We became close, eating, exercising, and spending time together. Abdul Williams was housed on the teir next to our, which we could communicate through a large plexiglass window and we went to the law library together a few days out of the week. On these days they would get together and discuss what the government wanted from them concerning Mr. Bergrin and get their stories coordinated for the evidence they would give. Brasswell asked me did I know anything about Mr. Bergrin or if I wanted to get a story I could use about him to help myself. Inwhich, I declined.

After time passed and he saw that I didn't support any of his plan, he began to backpedal like he was not going to go through with it. Williams began to do the same and they started excluding me from their conversations in the law library. Braswell soon bailed out and stayed intouch as is evident form the conspiracy case we caught. By the time it came out that he was definately a witness against Mr. Bergrin, he ahd signed a cooperation

agreement in our case.

While I was in Huson County for the case with Braswell I contacted Anthony Pope, Mr. Bergrin's former partner. This was 2012. I spoke with Pope and told him I had information I wanted to get to Mr. Bergrin concerning some witnesses in his case. Pope told me, " I'm not trying to hurt Paul, but I'm not trying to help him either". He did not want to discuss Mr. Bergrin any further and quoted amounts to take my case. After that I gave up my attempts to contact Mr. Bergrin as his trial commenced soon after.

If I can come up with or recall anything else, I will contact you. In the event you need me to make a declaration or anything, please let me know.

Respectfully,

Kamau Muntasir

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES plaintiff v. PAUL W. BERGRIN defendant.	Honorable Jose R. Linares Criminal No. 09-369 DECLARATION OF SONJA TIBBS

I, SONJA TIBBS, of full age, do certify that:

1. My name is Sonja Tibbs, previously Sonja Erickson. I am the biological mother of Theresa and Robbert Vannoy. Vannoy is my maiden name.
2. My daughter Theresa and son Robert were raised by Yolanda Jauregui for a number of years. After a while, I had no way of reaching Yolanda, but I wanted to bring my children home to live with me. At this time, I began searching on the internet for any information about Yolanda.
3. One night, I found news online about Yolanda and Paul Bergrin pertaining to a federal investigation. Right away, I called the FBI. The next morning, I received a phone call from FBI Agent Shawn Brokos. I told her over the phone that Yolanda had my children and that I wanted them back.
4. Agent Brokos listened to me and acted sympathetic. She called me frequently, sometimes multiples times in the same day, to get as much information as she could about my children and Yolanda. Agent Brokos told me that she was going to help me regain my kids.

5. The FBI at one point asked me to sign my name many times on a piece of paper. They explained to me that they were going to use this to conduct a handwriting analysis. The FBI later informed me that Yolanda had apparently forged my signature on adoption papers for Theresa ~~and Robert~~ Just Theresa. The FBI could tell the adoption papers were forged because my signature on the papers did not match my actual signature. But the FBI also knew the adoption papers were forged because my name had been signed "Sonja Vannoy," when at the time of the signature, I was married and using the name "Sonja Erickson."

6. The FBI never actually helped me to regain custody of my kids. Many times, Agent Brokos told me that the FBI was taking action on my behalf by sending children's services in to take custody of the kids. But then later, Agent Brokos always had an excuse for why the FBI had not been able to follow through, saying that I needed to provide information to children's services, or the FBI could not provide the necessary information because there was an open investigation of Yolanda.

7. Instead of helping me, Agent Brokos used the information I had provided her to threaten Yolanda that ~~Theresa and Robert could be taken away~~ She would be charged w/ forgery/Kidnapping from her if she did not cooperate with the FBI in its investigation of Paul Bergrin. The FBI told Yolanda that she could avoid charges of kidnapping and fraud if she testified against Paul.

8. Eventually, the FBI told me that if I wanted my kids back, I could help myself. Agent Brokos told me that since Yolanda had no legal right to custody of my children, that I was the only one with legal custody, and so I could just take my kids back and not face any legal consequences.

9. That is what I did. I befriended one of Yolanda's neighbors, who snuck Theresa and Robert over to her house. She then brought them to the Newark and put them on a Greyhound bus

for Virginia, where my oldest son picked them up. He then drove them to Louisiana, where I was living at the time. I believe this occurred in late January or early February 2012, because I posted a photograph of my son Robert to Facebook on February 2, 2012, and I recalled my oldest son taking, AND I posted ~~taking~~ and posting that photo very soon after he arrived in Louisiana. SKT

10. I am making this statement of my own free will. No one has pressured me or promised me anything.

11. Everything in this declaration is true to the best of my knowledge. I understand that if anything in this declaration is knowingly false, I could be subject to prosecution for perjury.

Sonja Tibbs

SONJA ~~GIBBS~~ SONJA TIBBS SKT

November 16, 2018
Apache Junction, Arizona

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES plaintiff v. PAUL W. BERGRIN defendant.	Honorable Jose R. Linares Criminal No. 09-369 DECLARATION OF SAVINA SAUSEDA

I, SAVINA SAUSEDA, of full age, do certify that:

1. My name is Savina Sauseda. I used to be in a relationship with Oscar Cordova, who I now understand was an informant for the federal government in its investigation of Paul Bergrin.

2. Previously, I spoke with an investigator working for Paul Bergrin named Mike McMahon. I told Mr. McMahon a number of things about Oscar, including the fact that, after we stopped seeing each other, I found a recording device in the cushions of a couch in my home. I told Mr. McMahon that I was able to play this device, and that I listened to it and found that it had ~~over twenty~~ a lot of recordings dating back to 2006. What I told Mr. McMahon about this recording device, and what I heard on it, is absolutely true.

I do not member exact # of tries, but I do member the face the recorder owed dates nd length of cording.

3. I told Mr. McMahon that I thought this device was a "Hawk" brand recording device. I am not completely certain whether the device was a Hawk or not. It did not say "Hawk" on it. But sometime after discovering this device, I looked on the internet for pictures of recording devices and I found one called the Hawk that looked like the device I had found.

4. The recording device had a jack for earphones and I was able to play back the recordings on it. I listened to the recordings using earphones that were plugged into the jack.

5. I no longer have possession of this recording device. At some point, I put all of Oscar's things together and threw them away.

6. I am making this declaration of my own free will. No one has pressured me to make this declaration, nor has anyone promised me anything in return for it. In fact, being at all involved in this case is painful for me, as it requires me to think back to an unhappy time in my life, as my relationship with Oscar was abusive. However, I decided to contact attorney Lawrence Lustberg on my own because I asked myself whether what I knew might be really important, and it seemed to me that it might be. It seemed to me that Oscar might have been involved in manufacturing evidence against ~~an~~ potentially innocent person, Paul Bergrin. That is why I reached out to Mr. Lustberg.

7. I swear that all of the statements in this declaration are true and accurate to the best of my knowledge. I am aware that if any statement in this declaration is willfully false, that I may be subject to punishment.

Savina Sauseda

Dated: November 20, 2018

SEND IN TRIPLICATE
(Including Attachments)

ATTORNEY ETHICS GRIEVANCE FORM

Please Type Or Print Legibly All Information

A. GRIEVANT: Mr./Mrs./Miss./Ms. (Circle One)

JIMENEZ — RAMON — L
LAST NAME — FIRST — MIDDLE

MID-STATE C.F — P.O. BOX 866 RANGE Rd.
ADDRESS — STREET/P.O. BOX

WRIGHTSTOWN, N.J. — 08565 — COUNTY
CITY — STATE — ZIP

TELEPHONE: DAY (____) _____ EVENING (____) _____

B. THE SPECIFIC LAWYER YOU ARE COMPLAINING ABOUT IS:

AZZARELLO — JOHN — A
LAST NAME (INCLUDE SR., JR., III, ETC.) — FIRST — MIDDLE

560 MAIN STREET
OFFICE ADDRESS — STREET/P.O. BOX

CHATHAM — N. J. — 07928 — COUNTY
CITY — STATE — ZIP

(1) IS THE SPECIFIC LAWYER COMPLAINED ABOUT YOUR LAWYER? ✓ YES ___ NO
(2) IF SO, DOES THIS LAWYER STILL REPRESENT YOU? ✓ YES ___ NO
(3) IF NOT, DO YOU HAVE A NEW LAWYER? ___ YES ✓ NO
(4) IF SO, WHO IS YOUR NEW LAWYER? _____

C. THE TYPE OF CASE HANDLED BY THE LAWYER WAS: (CHECK ONE)

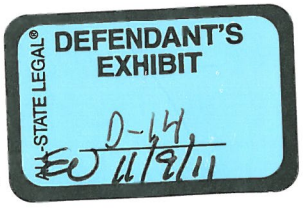
___	Admiral/Maritime	(V)	___	International Law	(I)
___	Adoption/Name Change	(A)	___	Juvenile Delinquency	(J)
___	Bankruptcy/Insolvency/Foreclosure	(B)	___	Labor	(L)
___	Collection	(H)	___	Landlord/Tenant	(Q)
___	Contract	(K)	___	Negligence (Personal Injury)	(N)
___	Corporation/Partnership Law	(X)	___	Property Damage	(P)
___	Criminal, Quasi-Criminal and Municipal Court	(C)	___	Patent/Trademark/Copyright	(R)
___	Domestic Relations (Divorce, Support, Custody)	(D)	___	Real Estate	(S)
___	Estate/Probate	(E)	___	Small Claims Court	(T)
✓	Federal Remedies/Civil Rights	(F)	___	Tax	(W)
___	Government Agency Problems (Local thru Federal)	(G)	___	Workers' Compensation	(Y)
___	Immigration/Naturalization	(M)	___	Other Litigation (specify) _____	(Z)
				Other Non-Litigation (specify) _____	

IS THE CASE HANDLED BY THE LAWYER STILL PENDING? ✓ YES ___ NO

(This Section for Secretary's Use Only)

DOCKET NUMBER _____ DATE DOCKETED _____

** COMPLETE BOTH SIDES **



D. OTHER RELATED COMPLAINTS OR LITIGATION:

(1) Have you filed a complaint regarding this matter with law enforcement authorities or any other state or federal agency? _____YES ✓ NO If yes, please state:

Name of Agency: _____

Contact Person: _____ Date Filed: _____

Result: _____

(2) Is the matter you are complaining about the subject of a pending civil law suit? _____YES ✓ NO If yes, give name of Court _____

Docket Number: _____ County: _____

E. NATURE OF GRIEVANCE:

State what the lawyer did or failed to do which may be unethical. State all relevant FACTS including dates, times, places and names and addresses of important witnesses. Attach copies of important letters and documents.

THIS GRIEVANCE COMES BEFORE YOU BECAUSE OF A CONFLICTING LOYALTIE THAT WAS CREATED BY MY ATTORNEY JOHN A. AZZARELLO AND ATTORNEY GENERAL JOHN GAY AND HIS ASSISTANCE JOE.

SOME TIME LAST YEAR 2010 I WROTE A BRIEF LETTER TO ATTORNEY GENERAL JOHN GAY AND JOE, IN REFERNCE OF MY

(Use Additional Sheets if Necessary)

F. INVESTIGATIVE CONFIDENTIALITY

The Supreme Court of New Jersey has held that persons who file grievances "may speak publicly regarding the fact that a grievance was filed, the content of that grievance, and the result of the process." Since disciplinary officials are required by *Rule* 1:20-9(h) to maintain the confidentiality of the investigation process and may neither speak about the case nor release any documents, until and unless a formal complaint is issued and served, you must also keep confidential any documents you may receive during the course of the investigation of your grievance.

To protect the integrity of the investigation process, we recommend that you, as well as all witnesses, not speak about the case other than to disciplinary officials while the matter is under investigation. So long as you maintain the confidentiality of the investigation process, you have immunity from suit for anything you say or write to disciplinary officials. However, the Supreme Court has stated that you "are not immune for statements made outside the context of a disciplinary matter, such as to the media or in another public forum." *R.M. v. Supreme Court of New Jersey, 185 N.J. 208* (2005).

Date: 9/28/2011 SEND IN TRIPLICATE (Including Attachments) Ramon L. Jimenez
Signature

PLEASE REVIEW THE PAMPHLET "INFORMATION ABOUT GRIEVANCE PROCEDURES AND DISCIPLINE OF LAWYERS" PROVIDED BY THE ETHICS SECRETARY.

PLEASE NOTIFY DISTRICT SECRETARY OF DISABILITY ACCOMMODATION NEEDS.

Wednesday, 28 of 2011

Re: Cynthia S. Earl. Esq.
Secretary, District III Ethics Committee
Moorestown, NJ

Sister case **Yolanda Jauregui** what I stated in that brief letter was as follow:

My name is Ramon Jimenez; I am presently incarcerated at Mid-State C.F. I would very much like the opportunity to speak with you, and I'm appreciative of your time in difference to your busy schedule I shall be brief.

I am writing to you reference of my sister's case **Yolanda Jauregui**, case number: **09-369(WJM)**. I believe that I can be of help to you as well as to my sister. If you're interested in hearing of what I have to say; I will be calling you early next Thursday 1:00 pm to know if you are interested. I don't wish speak to anyone else but you or Joe.

On 10/28/2010, I was interview by two **FBI** Agents by the names of Mike and Shawn at Mid-State Prison from 10:00 am until 1:30 pm. When I first entered the room, they introduced themselves as **FBI** and we begin a dialog:

F.B.I Agents: Do you know why we're here?

Me: No.

FBI Agents: We are not here to arrest or charge you. We are here because of **Paul Bergrin**, we need a witness and we are looking at that person right now. We know that you're facing sometime in PA; which is 6 years for a Paroled Violation and we can work something out with the time in PA. We also know that your sister Yolanda is part of the case, however things could still be worked for here as well but it's up to you.

Me: What is it that you need to know about Paul?

F.B.I Agents: Everything that you know can help us in the case will be helpful.

Me: I will need immunity privilege against self-incrimination if you want me to be a witness, and protection for my **Wife and Kids**.

F.B.I Agents: We can give your family and you all the protection; but we cannot give you immunity privilege right at this moment because are not the way it works.

Me: Than tell me how it works so we can make it happen, because without immunity privilege you can forget about me cooperating.

F.B.I Agents: Listen Ramon, we understand you're concerned in incriminating yourself, and feeling uneasy to talk to us. But you have to keep in mind; we are not here to charge you or trying to investigate you. We are only here to see if you could be a witness in our case against **Paul Bergrin**.

Me: If you want me to become a witness against **Paul Bergrin**, than do what you have to in getting me immunity privilege against self incrimination

F.B.I Agents: Ramon, everything you tell us in this room is confidential, we are not trying to make your time any longer or harder on you; you have to trust us.

Me: If you want me to become a witness, then why are you guys avoiding the immunity against self-incrimination?

F.B.I Agents: We are not trying to avoid anything here Ramon, we just can't give you or anyone immunity because not how it works, there is a process that is done before anyone is given immunity, and this is part of that process and the way it works is, anything you tell us that's corroborating evidence to our case we take back that information to the **Attorney General John Gay** and inform him that the information you have knowledge f is evidence to our case and that you are asking for immunity, and we both will support you on that if you give us corroborating evidence to our case.

Me: How do I know or what guarantee do I have that **John Gay** is not going to charge me if he doesn't want to give me immunity.

F.B.I Agents: You have us, and **John Gay** is a very Good Friend of Mine and we always make sure when working a case together our witnesses are well protected, and if you going to be witness, we stand by **One Hundred percent....** However if

you are not in our side as a witness, and your name comes up through another person stating that you played a part in the case, than there will be nothing we can do for you.

This whole interview back went and forth as is stated above until, I finally believed that they will not charge me. I stated some information that is incriminating me in this case; which I got charged on 06/08/2011. Both **F.B.I Agents** Mike and Shawn interview me 3-times and in neither one was my rights ever read to me, I never signed any paper waiving my rights.

On 11/15/2010, during the interview I asked for a lawyer because I did not like the way the questioning was going.
On 11/30/2010, I was taken to U.S district court in Newark front of a female judge who appointed MR. **John A. Azzarello** as my counselor. I was then taken in to a room next to John Gay's Office.

In this room I stated everything to MR. **John A. Azzarello** as I stated in this grievance. I made it clear to him that never waived my rights. He stated that I did by writing the letter to **John Gay**; He then stepped out the room for about 15-minutes, came back in the room and started interrogating me about **Paul Bergrin**. We went on like this back and forth for about 30-minutes, and then He would step-out again for about 10-minutes come back and started asking me the same question about **Paul Bergrin** only in a different form. We started arguing because I felt that my rights were being deprived, so I told him that I no longer want or need him as my lawyer.

I also informed both **F.B.I Agents** and Joe that I do not want **John Azzarello** as my lawyer anymore.
On 04/06/2011, I was taken back to **U.S. District Court in Newark** front of the same female Judge to be reappointed **John A. Azzarello** as my counsel. The later meetings on 04/25/2011 & 05/12/2011; the questions involved was more confrontational and intimidating as well on 04/06/201.
On 05/12/2011, John A. Azzarello gave me a form that stated if I was to give untruthful statements on this day that I will be subject to possible prosecution, I signed it and gave a truthful statement. I was never advised by my lawyer that this same statement we will be prosecution against me.
On 06/08/2011, I was taken back to **U.S.D.C** for initial appearance for charges on the statement. I gave on 05/12/2011.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No. 09-cr-369-WJM
v.	:	
PAUL W. BERGRIN,	:	TRANSCRIPT OF TRIAL PROCEEDINGS
Defendant.	:	

----------x

Newark, New Jersey
November 9, 2011

BEFORE:

THE HON. WILLIAM J. MARTINI, U.S.D.J.

Reported by
CHARLES P. McGUIRE, C.C.R.
Official Court Reporter

Pursuant to Section 753, Title 28, United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above entitled proceedings.

s/CHARLES P. McGUIRE, C.C.R.

CHARLES P. McGUIRE, C.C.R.

APPEARANCES:

JOHN GAY, Assistant United States Attorney,
STEVEN J. SANDERS, Assistant United States Attorney
JOSEPH N. MINISH, Assistant United States Attorney
970 Broad Street
Newark, New Jersey 07102
On behalf of the Government

PAUL W. BERGRIN, ESQUIRE
Pro se

GIBBONS, PC
One Gateway Center
Newark, New Jersey 07102
BY: LAWRENCE S. LUSTBERG, ESQ., and
AMANDA B. PROTESS, ESQ., and
JENNIFER MARA, ESQ.
Standby counsel for Defendant

surveillance was actually made, and therefore, no buy ever took place.

THE COURT: They knew about the surveillance?

MR. GAY: They determined -- that's part of what happened. The surveillance was -- the guys on the block made the surveillance, and he then thereafter said he wasn't going to sell to Mr. McCray.

THE COURT: Does the Government have a number of 302 reports involving Mr. Baskerville, Jamal Baskerville?

MR. GAY: We do have 302 reports.

In addition, Judge, I would say that --

THE COURT: And in those 302 reports, did he deny any involvement in the murder?

MR. GAY: Oh, no, no, no, Judge. I misunderstood the Court's question. No, we have no 302 reports in which Mr. Baskerville was interviewed.

THE COURT: Was he ever attempted to be interviewed?

MR. GAY: My understanding is no, because --

THE COURT: Was he ever subpoenaed to the grand jury?

MR. GAY: No, he was not subpoenaed to the grand jury, Judge.

THE COURT: All right.

MR. GAY: Yes. And part of the reason -- well, I

guess I won't -- but I mean -- we did not believe he was going to tell us the truth about his own involvement. We had no --

THE COURT: What about Mr. Young's implication of him?

MR. GAY: No, Judge, what I'm saying is that --

THE COURT: I've heard testimony in this case. Mr. Young is pretty emphatic about Jamal Baskerville being there.

MR. GAY: Absolutely, Judge, but to be clear --

THE COURT: Well, I'm asking you an obvious question.

MR. GAY: No, no, no.

THE COURT: You have the evidence of Mr. Young's testimony saying Jamal Baskerville was an integral part of this.

MR. GAY: Yes, absolutely, Judge.

THE COURT: But he was never subpoenaed, never charged or anything.

MR. GAY: He was never charged, Judge, because -- and part of the thing is, Judge, as the Court's well aware, I mean, Mr. Young's testimony, although the Government obviously believes it is credible and believable, we do not bring a case based solely on a single witness' testimony.

THE COURT: What about this case?

MR. GAY: Judge, as you pointed out, there have been additional witnesses --

THE COURT: Okay. Mr. Castro, who's directly --

MR. GAY: There's also Mr. Williams. There's also --

THE COURT: No, you're talking about --

MR. GAY: Judge, you're talking about --

THE COURT: Wait. Mr. Gay.

MR. GAY: I apologize, Your Honor.

THE COURT: You're talking about, the other witnesses talk about Mr. Bergrin's drug activities with these people. The other witnesses talk about that - Jimenez. They talk about would I allow in on your argument that it shows motive some involvement by Mr. Bergrin with Curry with respect to drugs consistent with your argument that that's the motivation for him to do this. But when it comes to the actual case of what he said he did, it's Anthony Young. And then it's Castro, who adds something about he believes that he came to him to do the shooting. But it's Anthony Young. Mr. Young's testimony regarding Baskerville, Jamal, is far more extensive as to Jamal Baskerville's involvement in the murder, and the Government has known about that all the time --

MR. GAY: Yes.

THE COURT: -- and hasn't charged him.

MR. GAY: Well, Judge, I will say this. I think I -- and I'm going to apologize for getting us off on this tangent here, which I think is not really relevant to the inquiry.

THE COURT: It's a legitimate question by me. It's not a tangent.

MR. GAY: No, no, no, I'm not saying it wasn't a proper question, Judge. What I'm saying is, I think a statement by me got us a little sidetracked on it.

But what is clear, Judge, is that Mr. Baskerville, there is evidence of his involvement in this murder. That -- that --

THE COURT: Anthony Young --

MR. GAY: -- if he were to take the stand, the Government would be able to cross-examine him about that topic.

THE COURT: Based on Anthony Young's statements.

MR. GAY: Well, based on that, and based on whatever the evidence. But clearly he would be able to -- we would be permitted to cross him on that, Judge.

THE COURT: Okay. I know what your point is. Your point is, he should be advised of his rights before he takes the stand.

MR. GAY: Correct, especially since he's been subpoenaed and now compelled to testify.

THE COURT: He's not coming here voluntarily, apparently.

MR. GAY: Yes.

THE COURT: I understand the issue, Mr. Gay.

MR. GAY: Okay.

THE COURT: I had some obvious questions, but I'm trying to find out -- you know, if you're telling me this investigation as to him is still pending, and there's more evidence out there, I think the only evidence you have is Mr. Young.

MR. GAY: Well, Judge, I'm not --

THE COURT: You've had that for five years.

MR. GAY: If that's -- I misunderstood the Court's concern on that, so I'll address that, Judge.

We have not charged Mr. Baskerville yet. That's absolutely correct and true. But that's the exact reason why, if he were to take the stand and say something that could be interpreted as inculpatory, he could be charged.

THE COURT: I know.

MR. GAY: And that's the point, Judge, really. So -- and the only reason I was saying -- I'm not trying to create the impression that we have scores of agents out there working on the Jamal Baskerville investigation, but the reality is that if he were to implicate himself, the statute of limitations has not run on this charge, and he --

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Criminal No. 2:09-cr-00369-WJM

UNITED STATES OF AMERICA, :
: TRANSCRIPT OF PROCEEDINGS
v. : - Trial -
:
PAUL W. BERGRIN, :
:
Defendant. :
- - - - - - - - - - - - - - -x

Newark, New Jersey
October 21, 2011

B E F O R E:

THE HONORABLE WILLIAM J. MARTINI,
UNITED STATES DISTRICT JUDGE,
And a Jury

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above entitled proceedings.

A P P E A R A N C E S:

UNITED STATES ATTORNEY'S OFFICE
BY: JOHN GAY
JOSEPH N. MINISH
STEVEN G. SANDERS
Assistant U. S. Attorneys
For the Government

PAUL W. BERGRIN, Defendant, Pro se
- and -
GBBONS, PC
BY: LAWRENCE S. LUSTBERG, ESQ., Standby Counsel
AMANDA B. PROTESS, ESQ.
for the Defendant

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above entitled proceedings.

S/WALTER J. PERELLI
WALTER J. PERELLI, CCR, CRR
Official Court Reporter

I N D E X

E X H I B I T S

Sidebar Discussions

Colloquy Between Court and Counsel
Jury Not Present

Azzarello was appointed as your attorney?
A That's correct.
Q And that is the truth, isn't it, that he was asking you the same question about me over and over and over again for 30 minutes. Correct?
A That is correct.
Q And did you also tell the Ethics Committee that in the meetings that you had with the U.S. Attorney, with the Government, with your attorney, with the FBI and with these prosecutors on April 6th of 2011, April 25th of 2011 and May the 12th of 2011, that they were confrontational and intimidating to you?
A Correct.
Q And that's true also, isn't it, Mr. Jimenez?
A Yes, it is.
Q They were intensely cross-examining you, asking you the same questions over and over and over again, and to you it was intimidating. Correct?
A Yes.
Q Now, there came a time when you entered into a plea agreement. Correct?
A Correct.
Q And in the cooperating plea agreement and your plea agreement you pled guilty to narcotic trafficking. Correct?
A Correct.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES plaintiff v. PAUL W. BERGRIN defendant.	Honorable Jose R. Linares Criminal No. 09-369 DECLARATION OF BRIAN P. MCVAN

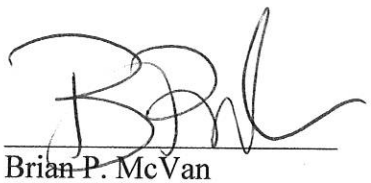
I, BRIAN P. MCVAN, of full age, do certify that:

1. I am an attorney and a member in good standing of the Bars of the Commonwealth of Pennsylvania and the State of New Jersey. I am also a member in good standing of the Bars of the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey.
2. On May 24, 2016, I signed an affidavit in the above-captioned matter concerning a telephonic interview that I conducted with Yolanda Jauergui. Everything I stated in that affidavit is completely true, and I stand behind it 100%. In particular, I maintain that I discussed with Ms. Juaregui a declaration that had been prepared for her, that she had reviewed it before we spoke, and that she confirmed to me that the declaration was entirely true with the exception of details concerning an alleged sexual relationship between her and Alejandro Castro.
3. At no time during my conversation with Ms. Juaregui did I ever discuss the prospect of paying her money, whether or not in conjunction with any movie deal, or otherwise offering or suggesting anything else in exchange for her prospective

testimony. Nor did Ms. Juaregui raise any such issue with me. My understanding at that the time was that she told me that the declaration was true in nearly all respects because that was her honest opinion and belief.

4. To put a finer point on it, I am a diligent practicing attorney and an honest person. I would never even consider jeopardizing my career or betraying my moral integrity by attempting to perpetrate a fraud upon the court, in this or any case.

5. I give this declaration willingly and of my own free will. The foregoing statements are true to the best of my knowledge and recollection. I am aware that if any statement in this declaration is willfully false that I may be subject to punishment.



Brian P. McVan

Dated: November 21, 2018

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES plaintiff v. PAUL W. BERGRIN defendant.	Honorable Jose R. Linares Criminal No. 09-369 DECLARATION OF MARIA CORREIA

I, MARIA CORREIA, of full age, do certify that:

1. My name is Maria Correia. I worked as a confidential informant for the FBI in its investigation of Paul Bergrin.
2. I was first approached about the Bergrin investigation in 2006 or 2007 while incarcerated for a probation violation in Hudson County, New Jersey. I was taken from Hudson County to the Federal Building where I met with the Federal Public Defender, Patrick McMahon, and FBI Special Agent Shawn Brokos. At this meeting, Agent Brokos stated that she wanted my help in investigating Paul Bergrin.
3. I knew of Paul Bergrin because he had previously represented my boyfriend, Carlos Tavares, in a criminal case. Agent Brokos told me that Paul had badly misrepresented Carlos, and that I could get back at him by helping the FBI to investigate him.
4. After this initial meeting, however, I had no immediate involvement in the Bergrin investigation. Instead, I was returned to my cell and completed my sentence in Hudson County, and was then extradited to Virginia where I served additional time on different charges.

5. I was then released on probation and I returned to live in New Jersey. At that time, Agent Brokos contacted me and asked me again if I was willing to assist with the Bergrin investigation. I was initially reluctant but eventually agreed. The plan was for me to go into Paul's office and say that I was interested in setting up a corporation to launder money on behalf of the Latin Kings street gang. Agent Brokos liked me for this role because I was previously affiliated with the Latin Kings.
6. My role in the investigation shifted when Oscar Cordova became involved. Oscar was presented as a Latin King who would be working with Paul, and the FBI wanted me to make sure I could get Paul and Oscar to interact as much as possible. When I learned that Oscar was supposedly a Latin King, I refused, thinking this could be dangerous for me, as I was a former member who was at the time pretending to still be affiliated. But Agent Brokos told me not to worry, that Oscar was a confidential informant like me working for the DEA. Agent Brokos made me swear to secrecy about this, saying she could lose her job if it was discovered that she had told me.
7. To this day, I do not know if Oscar was truly a member of the Latin Kings. But he was not a member of any ranking status, that much I know. I say this because he was a mess. He was alcoholic, unintelligent, and very much in over his head. I cannot imagine that the Latin Kings would have assigned any real responsibility to such a person.
8. Paul did not seem to be fooled by Oscar, telling me on several occasions that he suspected Oscar was an informant and that there was something wrong with him. Paul often said to me regarding Oscar, "he is not who he said he is." When Paul would say these things, I would try to reassure him that "my people" had checked him out and said he was legitimate.

But Paul did not seem to be persuaded. In fact, he began to accuse me of being an informant. He once asked me to lift my shift to prove that I was not wearing a wire.

9. At some point in the investigation, I began an affair with Oscar. But while I knew he was an informant, I did not reveal to him that I was an informant.

10. After Paul was arrested, the Government told me that I needed to enter the witness protection program, and they began to prepare me to testify against Paul. But they eventually decided that I would not be helpful to them. After that, I left the witness protection program. I had nothing—no money, no property, and no job. So I committed a credit card fraud. For this, I was arrested and locked up.

11. At the time of Paul's second trial, I was aware that Paul was interested in having me testify on his behalf. At that point, I was put "in transit." This lasted for weeks. I was moved around from prison to prison. As I recall, I was moved in and out of over five different facilities. At one point, I was held in an Oklahoma prison for a month and a half. Then one night, a corrections officer told me that he had heard on the news that the judge in Paul's case was not going to continue the trial to allow for certain witnesses to testify. The next day, I was returned to the prison where I had been held initially, in Louisiana, and the transit was over.

12. I believe that the Government continues to monitor my communications with Paul's defense team and tries to keep me from assisting Paul. I believe this because it seems to me that every time I have any communication with Paul's defense team, immediately afterwards, something bad happens to me. For instance, while in federal custody, immediately after speaking with a member of Paul's team, I have been transferred to a different prison facility, or had new restrictions imposed on me. After I was interviewed

by an investigator for Paul in November 2016, I had a long conversation with Agent Brokos and Assistant United States Attorney John Gay in which they told me that the Government was going to deport me because this was the only way Paul would leave me alone. And, in fact, I was deported and am currently living in Portugal.

13. I am making this declaration of my own free will. No one has pressured me to make this declaration, nor has anyone promised me anything in return for it.

14. I swear that all of the statements in this declaration are true and accurate to the best of my knowledge. I am aware that if any statement in this declaration is willfully false, that I may be subject to punishment.

_____
Maria Correia

Dated: November____, 2018

U.S.	:	TRANSCRIPT
VS.	:	OF
BERGRIN	:	RECORDING

D A T E:

August 3, 2005

T I M E:

7:00 p.m.

P L A C E:

Hudson County Jail

TRANSCRIPT ORDERED BY:

Kimberly Brock, Paralegal
Gibbons, P.C.
One Gateway Center
Newark, New Jersey 07102-5310

AudioEdge Transcription, LLC
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Roseland, New Jersey 07068
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SPECIAL AGENT MANSON: This is Special Agent Shawn Manson. The time is approximately 7:00 p.m., August the 3rd, 2005 at the Hudson County Jail.

(Pause)

UNIDENTIFIED SPEAKER: Sit down. Put it on yourself.

(Pause)

UNIDENTIFIED SPEAKER: I saw you coming with your (indiscernible) on. I was looking right at you.

UNIDENTIFIED SPEAKER: What happened down there now?

UNIDENTIFIED SPEAKER: Huh?

UNIDENTIFIED SPEAKER: He told me (indiscernible). He didn't tell me anything.

UNIDENTIFIED SPEAKER: (indiscernible).

HASSAN MILLER: This mother fucker gonna turn around and go to witness protection and tell these mother fuckers, I got a murder.

ANTHONY YOUNG: Said he did a murder?

HASSAN MILLER: Yeah. Some boys are onto me.

ANTHONY YOUNG: He said something about a robbery.

HASSAN MILLER: Along with the other shit.

ANTHONY YOUNG: They know about that already, right?

HASSAN MILLER: Yeah, but how --

UNIDENTIFIED SPEAKER: You wasn't there for the mother fucker murder.

HASSAN MILLER: I'm telling you this nut ass lawyer I'm like yo. He like just calm down, they want to hear your side. You know what I mean? They feel like that you didn't -- well I said well hold up. If I helped y'all, you know what I'm saying? He's flipping out on me. Ya'll know I -- you know what I mean? Where's it going to leave me?

ANTHONY YOUNG: Right. Word. That's what they trying to do.

HASSAN MILLER: So I'm like -- he's like yo, there's ways of getting out of this you know what I'm saying? You know? I say -- I said well what? He said well if you happen to testify on them, you know what I'm saying, then they can put me in like some witness protection program. How the hell are they going to put me in the witness protection program and he's saying I did a murder?

ANTHONY YOUNG: No, they telling you that -- if, with, the lawyer, that's what I hear him saying, right?

He's saying alright, a murder occurred. Did you ever -- did you know about that murder? Did you ever tell the prosecutor you knew about it?

That's(indiscernible). But, right?

HASSAN MILLER: You're telling me if I go -- if I go, you know,

ANTHONY YOUNG: And testify against him --You get what I'm getting.

HASSAN MILLER: Well how -- I don't know -- how the hell I'm going to get witness protection program if he's saying I committed the murder?

ANTHONY YOUNG: He's saying you did the shooting?

HASSAN MILLER: He's saying I was with him.

ANTHONY YOUNG: But you still can testify against him.

HASSAN MILLER: But how are they going to put me in the witness protection program if these mother fuckers are saying I did some nut shit?

ANTHONY YOUNG: Easy. The same way you see Turtle and them, and them all in the car together, they commit a murder. They want the triggerman. The triggerman got to go. You testify against the triggerman now you get witness protection program. You know what I mean? The only reason I'm getting out

because of Hak -- any way -- if it wasn't his status, everybody would be testifying against me. You feel me? Me and Rak. They'd be testifying against us and getting the witness protection. But they want Hak. But, only way we -- it's fucked up that is that you didn't tell on the mother fuckers Hass. You sit down and them mother fuckers tell you dog, they be -- this is the exact words they said to me, I don't know how to explain it to you, but --

HASSAN MILLER: How can you get witness protection program --

ANTHONY YOUNG: Testifying against somebody. You can, the triggerman.

HASSAN MILLER: Yeah.

ANTHONY YOUNG: Testifying against the triggerman.

HASSAN MILLER: Yeah. Then he's saying I was there (indiscernible).

ANTHONY YOUNG: I know. I was there. But the only thing on my case they don't want the triggerman. They want Hak. They want the mother fucker -- see, this is how it start, it start from conspirator, being you with me, right? Then they go to the triggerman. And the triggerman, you know the highest point, the person that paid for it. Now if they ain't nobody that

paid for it, then the triggerman is the person they want. Feel me? That's how my ladder is. Robber, trigger, pay, Hak. The mother fucker that paid for a murder is the one they want. If there ain't nobody that paid for a murder just happens the triggerman. Like Turk and them. Turk is in. You all testifying against this -- these niggers that killed that boy, they'll give you all witness protection. Ya'll was there. You know what I mean, ya'll was there. But the problem with yours is the prosecutor said, why you didn't tell me?

HASSAN MILLER: But I told him. I told him part. But, you know what I'm saying like yo you got to give me a couple of things, you know what I'm saying? And he was like ah (indiscernible) something like that. But there's (indiscernible) telling me he like --

ANTHONY YOUNG: (indiscernible) saying.

HASSAN MILLER: He did. He's saying that even if you knew who did it, they want this mother fucker.

ANTHONY YOUNG: That's what they want. When you go over there you better spill things on his ass and tell that mother fucker I will get on the stand tomorrow. I get on there tomorrow and testify against that nigger. They going to drill you. The prosecutor won't be mad at you.

HASSAN MILLER: Yeah but he said -- he said the (indiscernible) is not mad at me. He said if you did it they know -- got so much evidence against this dude that they want him.

UNIDENTIFIED SPEAKER: That (indiscernible).

HASSAN MILLER: So I'm sitting there telling them, I'm like how is they going to give me witness protection program --

ANTHONY YOUNG: Yeah.

HASSAN MILLER: -- if they saying I actually did the (indiscernible). He said listen, they want this guy this bad, man.

ANTHONY YOUNG: You know, they ain't going to believe him because he already went against them. They ain't going to believe him saying you did the shooting so you gottta sit down now and say yo, I was out there when it happened, ba, ba, ba. He did it. He shot the mother fucker.

HASSAN MILLER: You know what I'm saying, he saying even if you did it, he said listen man, I said now if you said if I did it -- I said listen, if I did it --

ANTHONY YOUNG: You know what that means.

HASSAN MILLER: Yeah.

ANTHONY YOUNG: If he -- that lawyer talking about -- if they said you shot him that's bullshit. Don't go over there and tell crackers that shit. You better to stick to no he shot him, I was out there. He shot the nigger. It ain't like I ran with him. I went another way. You know what I mean? He shot him. This nigger shot him. And they are charging --

HASSAN MILLER: If they want -- if they want him that bad, man --

Anhony Young: Uh-huh.

HASSAN MILLER: Oh man.

ANTHONY YOUNG: They give you witness protection quick. Hell yeah. They gonna to give it to you. If you say he shot him, they give it to you. They got to.

HASSAN MILLER: With him saying -- he's saying --

ANTHONY YOUNG: That you did it.

HASSAN MILLER: He saying, listen, when he's the one, you know what I'm saying, got all that --

ANTHONY YOUNG: Dope.

HASSAN MILLER: You know what I'm saying? He like listen they want him. He's affiliated with this man, they don't want you. If you had -- even if you did it, you know what I'm saying, you shot him. Okay.

You did it, killed him. They want this dude, man that bad.

ANTHONY YOUNG: If they want him that bad --

HASSAN MILLER: They want him that bad.

ANTHONY YOUNG: Same with Hak.

HASSAN MILLER: Would you testify?

ANTHONY YOUNG: Hell yeah.

HASSAN MILLER: I'm sitting like yeah. But I'm like well -- I'm like just -- hold up how you all gonna give me, you know what I'm saying, the witness protection program if they saying that I did it?

ANTHONY YOUNG: They can do it. They got -- them prosecutors are devious, man. You know how much shit we did that old boy didn't do? Huh? But they know he the boss. They know he calling shots. They want his ass. They want his ass -- so much shit I don't tell you all man. When I go over there my lawyer told me so much shit the other day. It's like --

HASSAN MILLER: But I'm talking about they saying--

ANTHONY YOUNG: That you did it.

HASSAN MILLER: If I was there on robbery, this mother fucker is saying that I'm the one.

ANTHONY YOUNG: That shot him.

HASSAN MILLER: But he like listen, he said Mr. Miller man, we don't care about that. They already -- I talked with them, they don't care about that. They want him.

ANTHONY YOUNG: Well if he telling you that --

HASSAN MILLER: He's involved with the gang shit, you know what I'm saying?

ANTHONY YOUNG: If he --

HASSAN MILLER: They can give you witness protection program.

ANTHONY YOUNG: What? He a Blood?

HASSAN MILLER: Yeah.

ANTHONY YOUNG: Oh man, you got to testify against him. They don't get a fuck.

HASSAN MILLER: Yeah, but --

ANTHONY YOUNG: He a leader in the Bloods?

HASSAN MILLER: Yeah.

ANTHONY YOUNG: All right, man. That's why.

HASSAN MILLER: Well how is they --

ANTHONY YOUNG: It doesn't matter. I wouldn't give a fuck if you shot at nigger. He's the influence. That's what he's telling you.

HASSAN MILLER: But I --

ANTHONY YOUNG: No matter what you did.

HASSAN MILLER: But yeah, that's what I'm talking about. Well how can they give me -- help me out, you know what I'm saying, if they're saying they want him how can they help me the fuck out?

ANTHONY YOUNG: They going to put you wherever you want to go. Yeah.

HASSAN MILLER: (indiscernible) go with them.

ANTHONY YOUNG: Hey man you better listen to that lawyer, dog. You better listen to -- he can't misdirect you anyway. It's against the law for him to misdirect you. Yeah.

HASSAN MILLER: I don't --

ANTHONY YOUNG: You really don't have no choice, man. You really don't have no choice but to go against that nigger like that. I would stick to my guns and say yeah I was there but he shot him and I keep saying he shot him. I keep saying it. He did it, he did it, he did it. He did it. Yeah they give you witness protection. I ain't know this nigga was a leader in those Bloods. I don't even know the man. I don't fucking --

HASSAN MILLER: Yeah, but you --

ANTHONY YOUNG: -- go like that. Yo Hass, let me tell you something. I don't talk -- yo, let me tell you something. I don't talk to nobody on this mother-

fucker, not you, not Sheed, not Turtle, not nobody about my shit no more. When I went over there when that mother fucker prosecutor somebody came over here and talked to us and said bah, bah, bah, this and that. He said Ant, shut your mouth and I shut up.

HASSAN MILLER: He don't --

ANTHONY YOUNG: I don't even care who.

HASSAN MILLER: You know (indiscernible) --

ANTHONY YOUNG: I don't even care who --

HASSAN MILLER: Yeah but you (indiscernible) --

ANTHONY YOUNG: It doesn't matter though, know what I mean? But I just -- he said shut up, that means shut up. You know what I mean?

HASSAN MILLER: I don't (indiscernible) like that.

ANTHONY YOUNG: So I said cool. Well I'm saying, it don't matter who. I don't care because one thing -- see when I sit down --

HASSAN MILLER: I don't (indiscernible) mother fucker (indiscernible), man.

ANTHONY YOUNG: But see when you said (indiscernible) Hass, this is where you fucked up man. When you --

HASSAN MILLER: I sat down and told him everything. You know what I'm saying?

ANTHONY YOUNG: You told him about that shooting?

HASSAN MILLER: Yeah. I said --

ANTHONY YOUNG: That's all matters. You told him you was there?

HASSAN MILLER: Yeah I said, yo, this dude is trying say that I was the one.

ANTHONY YOUNG: It doesn't matter. It -- as long as you told him about it -- as long -- you know how many niggers are going to say Ant did this and Ant did that. My lawyer thinks that don't matter.

HASSAN MILLER: Whatever you --

ANTHONY YOUNG: You know what I mean, John Gay say, "Ant, that don't matter."

HASSAN MILLER: If you hit a mother fucker you're (indiscernible) about to say --

ANTHONY YOUNG: It don't matter. It don't matter. That's what I'm telling you.

HASSAN MILLER: So they saying I --

ANTHONY YOUNG: It doesn't matter.

HASSAN MILLER: -- shooting (indiscernible) involved with it.

ANTHONY YOUNG: Did you tell them that?

HASSAN MILLER: Yeah. I said well the dude got hurt. You know what I'm saying? I said but he -- the dude, he deleted the shit.

ANTHONY YOUNG: And that exact shooter, Hass. Now, one thing you got to tell them was that exact shooter. During that shooting did you sit down and tell him there was a shoot out, I shot, he shot but I don't know who hit him and he died?

HASSAN MILLER: I said it was a robbery, you know what I'm saying? We was out doing some stick ups or whatever and then when we by the Savoy's (phonetic). You all know where Savoy's at?

ANTHONY YOUNG: Yeah.

HASSAN MILLER: I said that shit happened right there, you know what I mean? But I knew that once they got -- had got him that he was going to say --

ANTHONY YOUNG: You good, man. You good. I'm thinking you didn't tell him. As long -- look, when they grabbed me --

HASSAN MILLER: How --

ANTHONY YOUNG: Hey. Look, check -- I'm about to tell you --

HASSAN MILLER: How can they give you money if they saying that I popped -- I popped this mother fucker?

ANTHONY YOUNG: How you think I'm getting money? How you think I'm getting witness protection? You know what it's called, keep him, let him go.

HASSAN MILLER: Yeah but if you -- if I actually get did the shit how can they -- they might backfire on me.

ANTHONY YOUNG: No it can't. If you signed your paper.

HASSAN MILLER: Yeah.

ANTHONY YOUNG: All right then.

HASSAN MILLER: But I signed that shit before, man.

ANTHONY YOUNG: It doesn't matter. You still signed it. You signed it before ahead of time saying you cannot be charged now nor later. My shit -- this is what they told me and my lawyer is sticking to our guns, I'm sticking to mine. They said yo, whatever -- I started off with the one murder, right? The one. John Gay said, Ant, you better sit here and tell me everything that ya'll did, tell me everything that you did even if you wasn't with Hak and them, you know?

HASSAN MILLER: Well they saying that -- you saying --

ANTHONY YOUNG: Listen. Listen. Listen to my situation. They said tell me shit you did when you was

by yourself, tell me shit you did when you was with them, tell me shit you did when you was with somebody else, he said because -- he said because if you -- if these guys get locked up, right, and start pointing fingers at you, this was his exact words, if these guys get locked up and start pointing fingers at you about shit that you didn't tell me, then I'm charging you. But if they point fingers at you after they -- after we go over there and get them and they point fingers at you about shit you did tell me, you good. They said we don't care what you did. We want Hak. That's it. And we want Rak because he's Will's brother. They said now if you don't -- if you leave anything out, anything --

HASSAN MILLER: So you're saying if I go over -- when I go over there next week and they said like I murdered this mother fucker but I signed the thing, you know what I'm saying but they want him --

ANTHONY YOUNG: They can't charge you.

HASSAN MILLER: But how can they --

ANTHONY YOUNG: They can't charge you.

HASSAN MILLER: -- (indiscernible) with a murder. That's what I'm trying to say --

ANTHONY YOUNG: How --

HASSAN MILLER: -- how are they going to help me, man?

ANTHONY YOUNG: How am I sitting here with a charge, Hass? How long I been here? Six months. You know why? Because I sat down and I said boom, boom, boom, boom, boom, boom. Here you go. Here you go. Ya'll take all that. I didn't leave not one mother fucking thing, out Hass. And he told me if you do and we catch somebody else and they say he did this, we charging you. But if you tell us now and they say he said he did this --

HASSAN MILLER: So they ain't --

ANTHONY YOUNG: -- he ain't charging you.

HASSAN MILLER: Did anyone telling you (indiscernible) --

ANTHONY YOUNG: Uh-uh. Uh-uh. You going to be a witness against a dude that they want bad as hell. And you --

HASSAN MILLER: I don't know. I'm kind of nervous with that one because they say that's a body, man.

ANTHONY YOUNG: It doesn't matter, man. Man, we got seven of them. We got two CI's, we got Fat Kev --

HASSAN MILLER: Yeah but --

UNIDENTIFIED SPEAKER: -- (indiscernible).

HASSAN MILLER: If they know that I did it, would that shit still (indiscernible)?

ANTHONY YOUNG: They know I did it. I'm sitting here. You got to go over there and snitch your things, man. Snitch your things. You -- as long as you didn't tell -- you see the whole thing is lying, man. That's what they crackers don't like, lying. When you lie they're going to fuck you. I'm telling you now. If you lie -- I'm going to tell you if you lie to them --

HASSAN MILLER: I didn't, man. I didn't.

ANTHONY YOUNG: As long as you didn't lie to them they ain't going to fuck you. If you lie to them they're going to fuck you. Whatever the shooting happened at the Savoy's or whatever and the guns went off --

HASSAN MILLER: I ain't tell (indiscernible).

ANTHONY YOUNG: -- all you have to do is say I don't know which bullet hit him because all of us were shooting.

HASSAN MILLER: They're making -- no one is making it look like a stick up because I got the (indiscernible).

ANTHONY YOUNG: Yeah. But it ain't going to hurt you because they want this nigger.

HASSAN MILLER: That's what I'm trying to do, right?

ANTHONY YOUNG: Yeah. But not just that, he is a mother fucker and he got status in the Bloods, man.

HASSAN MILLER: Yeah.

ANTHONY YOUNG: He got status. When you got status they want to blow smoke up your ass. So the whole thing is you know what you do, boom, boom, boom, I don't know what happened but however it happened, as long as you told them before --

HASSAN MILLER: I did.

ANTHONY YOUNG: -- about that Savoy shit, you good. If you didn't, they going to blow smoke up your ass. I'm going to keep it real with you.

HASSAN MILLER: (indiscernible).

ANTHONY YOUNG: Here go my words again. If you told them about the murder and you told them you was there --

HASSAN MILLER: I said --

ANTHONY YOUNG: -- you good.

HASSAN MILLER: (indiscernible) got hit.

UNIDENTIFIED SPEAKER: Yeah.

UNIDENTIFIED SPEAKER: I don't know.

ANTHONY YOUNG: That's all you need to say. That's all you needed to say. I don't know what happened.

HASSAN MILLER: That (indiscernible).

ANTHONY YOUNG: I told you, you ain't know what's going on. But the whole thing is, you know, I'm keeping it real. If you told them about the Savoy shooting --

HASSAN MILLER: I did.

ANTHONY YOUNG: -- and say who got shot --

HASSAN MILLER: But I don't know how (indiscernible). I ain't --

ANTHONY YOUNG: It doesn't matter, man.

HASSAN MILLER: I ain't trying to (indiscernible) they do, man --

ANTHONY YOUNG: It doesn't matter.

HASSAN MILLER: -- because last time I -- you know what I'm saying in the beginning but --

ANTHONY YOUNG: You know you good -- you see a Crip?

HASSAN MILLER: Yeah.

ANTHONY YOUNG: You good.

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: All right. Now you know why you good? One, you ain't Blood.

HASSAN MILLER: No.

ANTHONY YOUNG: Number one. Number two, I will put that shit off -- the reason we shot him was because he was Crip and he Blood and he don't like him so start

banging at him because we was trying to get him. Yeah. He Crip and he Blood.

HASSAN MILLER: But I got a murder witness that's what I --

ANTHONY YOUNG: That doesn't matter, man. I got -- out of eight of them I got three with these niggers. I got three out of eight. I just know what happen on the other side. I know every gun that was used, this, that.

HASSAN MILLER: I'm (indiscernible), triggerman.

ANTHONY YOUNG: Me too.

HASSAN MILLER: Man I have history (indiscernible). Yo, man --

ANTHONY YOUNG: That's how the game goes man. They ain't want a nigger -- he Crip, man. I be like we shot him because he Blood. He wanted him dead. He was robbing him, he was trying to get him. But he's getting him because he's Blood, he Crip. He ain't like him.

HASSAN MILLER: I knew something was wrong. I was waiving to him. You know what I'm saying?

ANTHONY YOUNG: That's what I'd tell him. That's what I would tell him. I would be like, yo -- me I'd be like yo, he is a sergeant or lieutenant in the Bloods, the dude was Crip, while we was around he

said let's get him. That Crip made him boy a slob or whatever and we got out and started banging at him. Guess what, it was his idea. Guess what it's called, premeditated. He premeditated the murder. That's who they want.

ANTHONY YOUNG: Hey man, you got to sit back and read, Hass. Start reading this little bit o shit, man. You know what I mean? Start reading how these crackers work, man. Dang. They want the mother fucker that premeditate the murder.

HASSAN MILLER: Are you telling me that he -- you know when I --

ANTHONY YOUNG: Yeah, they going to give you witness protection if you --

HASSAN MILLER: But I just was trying to look at him like, yo --

ANTHONY YOUNG: Trying to get me in --

HASSAN MILLER: Yeah, like --

ANTHONY YOUNG: I thought the same thing.

HASSAN MILLER: -- how can I get this? How can you -- how are you going to tell me that I'm going to get witness protection and help from the government --

ANTHONY YOUNG: Because he's saying --

HASSAN MILLER: -- and you telling me that I actually killed this man and -- but you're telling me that they want them.

ANTHONY YOUNG: It doesn't matter.

HASSAN MILLER: How can that happen for me? That's what I want to figure out. That doesn't sound good.

ANTHONY YOUNG: Yeah it do. Now he going in, he premeditated the murder. The dude was a Crip. You even better on that. He a Blood. They know you ain't Blood, right?

HASSAN MILLER: No. Hell no.

ANTHONY YOUNG: They know that. Okay. They know he Blood, right?

HASSAN MILLER: They try -- they try that before asking me I was like hell no.

ANTHONY YOUNG: All right. So they know you ain't Blood, they know dude a Crip that died, right? Hell he premeditated the murder. I would go sit in there and say yeah well you know before we robbed him ahead of time you know he kept saying the dude was a slob or whatever and bah, bah, bah. You know, he was Crip, bah, bah, bah this and that, let's get him. He just premeditated a murder.

HASSAN MILLER: Did you tell him (indiscernible) my lawyer this and that, get in touch with him.

ANTHONY YOUNG: Yeah, Hass, you know, it's my first -- I just saw my lawyer the other day in six months, well five and a half. But I know she doing her job.

HASSAN MILLER: She's expensive as hell.

ANTHONY YOUNG: And I'm on -- I'm on top of my mother fucking prosecutor's ass. Anytime I go to him bah, bah, bah. You know, you got nothing to worry about, man.

HASSAN MILLER: If I mentioned (indiscernible).

ANTHONY YOUNG: If you told him anything, that's it.

HASSAN MILLER: So if I go and tell him that, yo, you know what I mean, (indiscernible) you know what I mean, I didn't know that the dude died.

ANTHONY YOUNG: Yeah.

HASSAN MILLER: But they want him. He telling me that they want him.

ANTHONY YOUNG: That's all they want then. That's all they want. Go ahead.

HASSAN MILLER: For a murder, man?

ANTHONY YOUNG: Yeah.

HASSAN MILLER: That's why I can't -- if my shit ain't right I (indiscernible), man.

ANTHONY YOUNG: Sure it is. It is -- he in organized crime. He a Blood. That's organized crime. Same shit. He might not have as much money.

HASSAN MILLER: No, none.

ANTHONY YOUNG: It doesn't matter, it's still organized crime, man. Organized crime. That's an organization, the Bloods. I'd go in there and say that mother fucker said, man, we got to get he a Crip. And me being with them, I followed the lead. We start robbing and start shooting. I never knew dude died.

HASSAN MILLER: I just ain't taking it lightly, man, like (indiscernible).

ANTHONY YOUNG: You can't take nothing lightly. I don't take none of this shit lightly. Nothing, man.

HASSAN MILLER: You telling me you --

ANTHONY YOUNG: I don't take none of it lightly.

HASSAN MILLER: And I've been sitting here, you know, I had did what my partner in the beginning, you know what I'm saying --

ANTHONY YOUNG: Yeah.

HASSAN MILLER: -- work out but now it's like --

ANTHONY YOUNG: They waiting to get out.

HASSAN MILLER: You, you, you -- he got him. He's our man.

ANTHONY YOUNG: But I'm just saying he's waiting to see what was the outcome --

HASSAN MILLER: Yeah, but the two other ones.

ANTHONY YOUNG: And now they got you in a situation where either you're going to testify or are we taking this shit?

HASSAN MILLER: Yeah.

ANTHONY YOUNG: That's how it's going to go.

HASSAN MILLER: That's why I'm sitting here telling like well he --

ANTHONY YOUNG: You got to.

HASSAN MILLER: -- the witness protection program. I'm saying how they going to give me this program, man, if you're telling me this dude saying I was -- did the body. He said they don't want -- they don't want you, they want him. So I'm like how can they want him and I did the body.

ANTHONY YOUNG: Because he Blood.

HASSAN MILLER: But I did the body. This don't --

ANTHONY YOUNG: It don't matter, he Blood. It doesn't matter.

HASSAN MILLER: Well this (indiscernible).

ANTHONY YOUNG: Look, man, I'm just -- you know, I'm guaranteeing --

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: How the prosecutor gave it to me. I'm about to go this week.

HASSAN MILLER: I'm good.

ANTHONY YOUNG: My lawyer came the other day and said we'd probably go this week. So either Friday or Monday, Tuesday, Wednesday, Thursday or Friday. I says --

HASSAN MILLER: Yeah he told me I'm good. You (indiscernible) that money -- ya'll --

ANTHONY YOUNG: Money don't mean shit, man.

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: That money is out the window, man. It's called organization. That's what it's called. Money don't mean shit. It's called organization. Ya'll was running an organization and he the head of the organization. Yeah. That's how it go. Same with dude he got status in the Bloods. He had an organization. He got status.

HASSAN MILLER: They give me that?

ANTHONY YOUNG: Hell yeah they're going to give it to you.

HASSAN MILLER: If I hurt the dude, you know what I'm saying?

ANTHONY YOUNG: Huh?

HASSAN MILLER: They going --

ANTHONY YOUNG: It doesn't matter, man. It doesn't matter, man. It doesn't matter, man. He's the head of the organization, that's what they want. That's who the fuck they want. Like they want Hak, they want Rak. They want Rak because its Will's brother. You know what I mean? They want Hock because he's the head of everything, him and Sheik. That's all they want. They can knock them down and kick you in your ass.

HASSAN MILLER: Yeah but if you do -- if you go, they know -- you know what I'm saying? You don't get -- you know what I'm saying, you don't -- you done told them what the hell you did. And that's what I'm trying to figure out is if you --

ANTHONY YOUNG: You told them what you did?

HASSAN MILLER: Yeah.

ANTHONY YOUNG: All right then. As long as you're telling the truth.

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: It's no different, man. It's no different. It's called organized crime. If dude a

Blood -- that's organized crime and that's all that it say.

HASSAN MILLER: I tell --

ANTHONY YOUNG: Organized crime. As long as you sat down and told them, man, everything, man, you don't leave nothing out, man. I ain't leave shit out. I gave you straightforward, take all this.

HASSAN MILLER: They was looking at you funny when you said you did it?

ANTHONY YOUNG: Yeah, John Gay was like--

HASSAN MILLER: You said it, man.

ANTHONY YOUNG: Hakeem got something to worry about. Hakeem got a lot to worry about.

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: Better sit there and tell them who did it.

HASSAN MILLER: So you probably got --

ANTHONY YOUNG: Tell them mother fuckers --

HASSAN MILLER: -- because Hak did some other mother fuckers.

ANTHONY YOUNG: It doesn't matter, he's the head of organized crime. You better tell them mother fuckers the only reason we did it was dude was Crip, he was Blood, he wanted his ass. I be like he wanted him. He wanted him. Why? Because he was a Crip. He Blood.

I was thinking more about robbery, I ain't give a fuck about their gang shit. I was more in robbery, then guns start blazing. Guess what, he just premeditated a murder because he said let's get him. If I -- if me and you together right now and we pull up, I'm in the --

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: I'm like Hass, they -- just they been trying to send my father out. My father just like nah, he ain't ready to leave. He -- that's the first thing they're going to do. They just like 20, 30 grand to send him down and wherever they want to go. They been askin my father --

HASSAN MILLER: Murder.

ANTHONY YOUNG: Yeah. They been askin my father.

HASSAN MILLER: Ya'll somebody, this -- ain't no mother fucking body.

ANTHONY YOUNG: (indiscernible) no body. The Bloods -- a lot of body. They killing everything out that mother fucker. Dang. Look at Killer Keek. He ain't nobody, he ain't got no money, look at how they look at him. They look at that nigger like he a menace to society.

HASSAN MILLER: I told them I ain't part of it, I'm too fucking old.

ANTHONY YOUNG: Look at Dave. Dave ain't got no money, but Dave know he run those mother fucking Bloods. Look at OG Mac (phonetic). OG Mac ain't rich, Jermaine ain't rich. Wait until they get 'Maine over here from that hospital.

HASSAN MILLER: 'Maine still alive?

ANTHONY YOUNG: I told you that.

HASSAN MILLER: Yeah, you did.

ANTHONY YOUNG: I told you that.

HASSAN MILLER: I said --

ANTHONY YOUNG: Because his wife said that bullshit to their mother, everybody thought he was dead. No, when he come back up here, Jermaine ain't never going home in his life. They going to do the same shit they did to Dave --

HASSAN MILLER: Right.

ANTHONY YOUNG: That's how it be, man. I felt like that too when I came here but then I started looking, understanding and you know what I mean, knowing what these white folks want, you know what I mean? And my whole philosophy was give them what they want. My lawyer sit down, I don't even talk to her.

HASSAN MILLER: (indiscernible). I think Aziz (indiscernible) the way (indiscernible) I was like (indiscernible) Aziz (indiscernible).

ANTHONY YOUNG: Kicking other people back in, but you did the same shit.

HASSAN MILLER: Okay.

ANTHONY YOUNG: I ain't fucking with him. Look at him -- when I look at him he look like he's dying, dog.

HASSAN MILLER: Yeah, he got (indiscernible).

ANTHONY YOUNG: Something wrong with Aziz. Aziz is (indiscernible) I was standing next to Aziz. He's 250 pounds. A fucking year and a half ago, man.

HASSAN MILLER: Aziz knows a lot of shit that you were telling me. You know (indiscernible) you know he was lying.

ANTHONY YOUNG: Yes, he knew. Telling me Hak sold his jewelry to get somebody. Nobody -- Hak jewelry ain't got -- they took all his shit.

HASSAN MILLER: And I'm sitting up here telling him -- I'm sitting up here like Ant know all the --

ANTHONY YOUNG: He was the first one locked up. How the fuck?

HASSAN MILLER: Yo --

ANTHONY YOUNG: --he gonna sell some jewelry to (indiscernible). Come on man.

HASSAN MILLER: I don't want --

ANTHONY YOUNG: They went and got Hak before they went and got anybody.

HASSAN MILLER: Yeah.

ANTHONY YOUNG: He was number one. They sent Hass at him. Hass threw the Dobermans They clapped him then they want everybody in the house. Everybody. They ain't go get Norman until the next day after, Hak got locked up.

HASSAN MILLER: That's what Tweety (phonetic) was telling me too.

ANTHONY YOUNG: Tweety ain't get locked up until five days later.

HASSAN MILLER: Yeah, but he said -- he said Ant did the murder -- he said, yo, somebody brought Ant the fuck in. He said -- so I wanted -- man I don't give a fuck Ant gotta do what he got to do. So you know what I mean?

ANTHONY YOUNG: The nigger is crazy. The nigger crazy.

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: I wouldn't --

HASSAN MILLER: I ain't telling none of them.

ANTHONY YOUNG: I ain't tell that nigga shit.

HASSAN MILLER: No, I --

ANTHONY YOUNG: I laugh at him.

HASSAN MILLER: Yeah. I always like that anyway, you know what I'm saying?

ANTHONY YOUNG: You know what I mean?

HASSAN MILLER: Even if I was sitting (indiscernible) where you at? I'm right there. I'm right there. He don't (indiscernible) be with you and those mother fuckers (indiscernible).

ANTHONY YOUNG: That nigga is nothing. The first thing he did was kick me in the back. And --

HASSAN MILLER: Yeah I don't know what he doing behind with my cousin because every time I ask him for my cousin information so I could write him, it's some bullshit. I'm just like what the fuck man. You know what I'm sayin'. So now I'm going to tell him that Tweety -- when I -- when I try to say something oh yeah Tweety leant me some, that book of appeals. There's a lot of dudes in here, man. I'm going (indiscernible). But I said I ain't doing it. I'm fucked up, man. When (indiscernible) nothing but a (indiscernible) stogie. Straight fucked up, man.

ANTHONY YOUNG: You go over there and do what you got to do. I told you the truth and nothing but the truth so help me God.

HASSAN MILLER: What you did (indiscernible) I did -- but I told you that before but I didn't know -- he tell me the dude died. I'm like (indiscernible) no paper.

ANTHONY YOUNG: It doesn't matter. You didn't know.

HASSAN MILLER: I said (indiscernible).

ANTHONY YOUNG: Yeah.

HASSAN MILLER: Is it (indiscernible) died. Kevin something.

ANTHONY YOUNG: You didn't know he died. You just knew there was a shooting. You told the truth. As long as you told the truth. You ain't know the dude died. And you got to tell him the truth. That's it. That's it. 100 percent.

HASSAN MILLER: But this is -- this just came today. I said yeah we did the robbery. I said well, you know what I mean, I'll tell you about the guns you know what I'm saying. And I said but these crazy mother fuckers with the guns and shit so I'm like oh no.

ANTHONY YOUNG: Tell them 'bout Savoy's, that's all they want to know.

HASSAN MILLER: Yeah.

ANTHONY YOUNG: You said they did the shooting.

HASSAN MILLER: Yeah. But today it came to me as --

ANTHONY YOUNG: A murder.

HASSAN MILLER: -- the murder.

ANTHONY YOUNG: Yeah. But you told 'em you all did a shooting.

HASSAN MILLER: Yeah.

ANTHONY YOUNG: That's it. You never knew that he died. That's the 100 percent truth.

HASSAN MILLER: Yeah.

ANTHONY YOUNG: That's what you got to tell them, the truth. Man, I sat there and told them everything. I didn't leave a (noise) out. Nothing. Not even a poof (phonetic). Nothing.

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: The shooting and the shit that I told them about. I don't know what the fuck happened afterwards. You know what I mean? I don't know what happened afterwards. Yeah man we fucking all this mother fucker and they was fucking over here and I don't know what happened. You know what I mean?

HASSAN MILLER: You got that -- you talking about the CI (indiscernible). I ain't got no (indiscernible), man. Listen man, I'm fucking nervous, man.

ANTHONY YOUNG: Fuck that. I'm their CI. Their number one CI. Fuck that. Nothing but the truth so help me God. Hak going to jail, Rak going to jail, Mals going to jail, Sheik going to jail. Get the mother fuckers to stand on their ass and point this happened, blah, blah, blah, this is what I know.

HASSAN MILLER: What if they try to verify and say he did the one that did the murder.

ANTHONY YOUNG: They're trying to do that on you. They don't want you, they want him. I'm telling you that. You told ya'll did a shooting. You didn't know what happened. You told them ya'll did a shooting. You didn't know what happened, now you know he died.

HASSAN MILLER: I can't (indiscernible) stress the fuck out.

ANTHONY YOUNG: All right.

HASSAN MILLER: I can't believe that fool. You (indiscernible) that fool?

ANTHONY YOUNG: He (indiscernible). That shit make me sick. Mother fucker sit down, he Crip, he

Blood, he premeditated a shooting man. I ain't know what happened afterward but I know he was shooting at the man. I know I was shooting at him. Done a robbery because he told me to. Why? Because he was Crip and he Blood. So I started banging my ammo.

HASSAN MILLER: Yeah.

ANTHONY YOUNG: Now why would you start shooting? I don't trust this mother fucker, he's a nut, he'd kill me. I'm scared now. Testify. Don't worry about that, witness protection, man. You know what I mean? It ain't going to be witness protection program it's going to be we'll move you here, we'll move you there, that's what it is. Go where you want. Write your family name.

HASSAN MILLER: I'm scared because you know what I'm saying they --

ANTHONY YOUNG: You got to be, Bloods is deep, man. Deep as hell.

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: You got to be cautious, man.

HASSAN MILLER: Am I going (indiscernible) Monday if I'm going with this tell him that --

ANTHONY YOUNG: (indiscernible)

HASSAN MILLER: -- he died. I just don't feel comfortable like damn this dude died so I, I'm a part

of this, so I may not get the same shit because ya'll got money, you know what I'm saying?

ANTHONY YOUNG: It don't matter. Turtle and them broke as hell. They ain't got nothing. Dang. They ain't got nothing.

HASSAN MILLER: I'm hurting, man. I don't --

ANTHONY YOUNG: (indiscernible) ain't got nothing. They getting off though. They getting off.

HASSAN MILLER: Yeah but they was just there. This mother fucker is saying (indiscernible) boom, boom.

ANTHONY YOUNG: Who gave him the gun? All right. They want dude. That's how the game go, man. All they want is the truth, man. And who they want is who they want.

HASSAN MILLER: Even if I hit this mother fucker? You say they kill (indiscernible) don't worry (indiscernible) fuck out. Straighten the fuck up.

ANTHONY YOUNG: I want that mother fucker to say my ammo start blazing. Why? Because he told me start shooting this dude, Crip. And he Blood. He's a sarge, he's a lieutenant, whatever the fuck he is. Whatever, I'm not safe.

HASSAN MILLER: I ain't feeling good out there, man.

ANTHONY YOUNG: You're not safe. You ain't. Again, before we start this, you go get my sister and who else out of here. Yeah. They called my father immediately.

HASSAN MILLER: Yes, but nobody is trying to fuck with you. They know you as wild mother fucker.

ANTHONY YOUNG: It doesn't matter. Why won't you think -- it ain't that -- it ain't that they won't try, Hass, it's that -- it's just that they not cocky--

HASSAN MILLER: Those mother fuckers (indiscernible) but Aziz said that shit gave (indiscernible).

ANTHONY YOUNG: (indiscernible)

HASSAN MILLER: Yo, I swear on my life, he said Ant would push his shit back.

ANTHONY YOUNG: Got to, man.

HASSAN MILLER: I was like --

ANTHONY YOUNG: Dang.

HASSAN MILLER: I said --

ANTHONY YOUNG: What, somebody going to push you?

HASSAN MILLER: And then fucking Twee (phonetic) said he a nutty nigga. He said, yeah? He said (indiscernible).

ANTHONY YOUNG: Man, I don't trust nobody. I don't trust the mother fucker. I used to do too many robberies, Hass. I'm a car thief, dog. I'm a car thief. All I used to do was rob. Rob, rob, rob. Hotman Hak, that's my man. Right? Carlstein (phonetic) took his car. Run that mother fucking CRX, nigga. I got to get high.

UNIDENTIFIED SPEAKER: Ya'll became tight?

UNIDENTIFIED SPEAKER: Then we became tight, yeah. Caught Malik ass in (indiscernible) comin' out (indiscernible) mother fucking car. Me and him peace out. I'm up out of there. He still don't like them. Them my niggers though, you know what I mean? They love me. Well not now but he still don't like (indiscernible), he just shot Jihad. That's the one who tried to kidnap Jihad.

HASSAN MILLER: (indiscernible) Yeah. Oh ho.

ANTHONY YOUNG: Jihad just got shot a couple of months ago.

HASSAN MILLER: Not when he was in -- when he was backed up --

ANTHONY YOUNG: Nah, when --

HASSAN MILLER: I heard about that one.

ANTHONY YOUNG: -- when he was in seven, backing out. Mookie (phonetic) snatched and then shot him. This just happened like five --

HASSAN MILLER: You know what, yeah, as a matter of fact --

UNIDENTIFIED SPEAKER: (indiscernible)

HASSAN MILLER: -- a matter of fact --

ANTHONY YOUNG: A month before they ran back--

HASSAN MILLER: When Balough (phonetic) when Balough had came in, we thought that the dude -- because there was a nigger here in the can that got pushed with a 745. Some dumb nigger--

ANTHONY YOUNG: Oh yeah, yeah, yeah, yeah, yeah.

HASSAN MILLER: And that's who we thought it was.

ANTHONY YOUNG: No. It wasn't Jihad --

HASSAN MILLER: Wow.

ANTHONY YOUNG: Yeah Mookie tried to kidnap Jihad. Like a month before any of this shit happened. Before anybody got locked up. Jihad comin' out the gym.

HASSAN MILLER: Other niggas too?

ANTHONY YOUNG: Yeah that's my dog. Popped Jihad. Boom. Jihad got away though and started fighting Mook. Ran back in the gym. Yeah.

HASSAN MILLER: I feel so (indiscernible).

ANTHONY YOUNG: That mother fucker telling people the truth, man. They don't like no lies.

HASSAN MILLER: I didn't lie, but if anybody ask me, you know what I'm saying --

ANTHONY YOUNG: Tell them the same story, but I didn't know nobody died.

HASSAN MILLER: Yeah, that's --

ANTHONY YOUNG: Why did you shoot him? Because the dude was Crip and he a Blood. And he told me let's get at him. I was thinking about money, I was broke.

HASSAN MILLER: I understand that. I tried man, once.

ANTHONY YOUNG: That's what I would do.

ANTHONY YOUNG: I tell John Gay (indiscernible) It be like this, that I forgot about. You know what I'd do? I'd go straight to the phone (claps). Charm him. I was sitting back thinking, you know, this shit happened a couple of years ago, ba ba ba. Let me write that down. Send it to John Gay, like hey, it's nothing, man. I don't want nobody getting knocked off and start pointing to say Ant did and Ant did and Ant did and if they do they lying. It ain't going to stick because they lying.

HASSAN MILLER: I hope that don't happen to me, man.

ANTHONY YOUNG: They lying.

HASSAN MILLER: I hope that don't happen to me, man.

ANTHONY YOUNG: That's what they told me though. They said tell us everything, because if people start pointing fingers at you after they get knocked off, we charge you. So I made sure I got every --

HASSAN MILLER: Even if Twee did something (indiscernible)?

ANTHONY YOUNG: Yeah.

HASSAN MILLER: (indiscernible) Twee had paperwork.

ANTHONY YOUNG: It doesn't matter. If I break a case right now there ain't going to be no paperwork because I don't know what happened. All I know is who was there.

HASSAN MILLER: That's fucked up, man.

ANTHONY YOUNG: If you, Sheed, and somebody else did something, right --

HASSAN MILLER: That's fucked up, man.

ANTHONY YOUNG: -- and you come around me later and I know you all did it (indiscernible). The key,

Hassan Miller, to get a break baby, ba ba ba -- I know who was around when it was happening.

HASSAN MILLER: You ain't tell -- you going to ask Twee (indiscernible) that shit (indiscernible).

ANTHONY YOUNG: What am I -- what am I worried about that for Hassan? I'm telling them I murdered one nigger. So if I was to do that and then they get you and say ha, boom, boom, boom, boom, boom and you say --

HASSAN MILLER: I'm about to (indiscernible).

ANTHONY YOUNG: Yo man, do what you got to do.

HASSAN MILLER: (indiscernible).

ANTHONY YOUNG: You got to do what you got to do, dog.

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: (indiscernible)

HASSAN MILLER: All I know is I'm not negotiating.

ANTHONY YOUNG: I'm out -- on Friday. Between now and Friday. My lawyer came Monday. She's like this week or next week, you'll be outta here.

HASSAN MILLER: I called (indiscernible).

ANTHONY YOUNG: Maybe, maybe not, she said might be a little minute, but maybe, maybe not, but I called Shawn today, the FBI lady, gave her small shit.

HASSAN MILLER: They don't get mad if they know that you were innocent?

ANTHONY YOUNG: You down with a clique man. You got to tell them everything that you know.

HASSAN MILLER: Everything, I already (indiscernible).

ANTHONY YOUNG: They want that Blood shit out of here, man. The Bloods are serious though. And if it's a Crip that died --perfect excuse.

HASSAN MILLER: I didn't know Twee's old ass was a blood when I was hittin' him (indiscernible)

ANTHONY YOUNG: (indiscernible). Who told you that?

HASSAN MILLER: (indiscernible) --

ANTHONY YOUNG: His son blood, he blood.

HASSAN MILLER: Shit man, fucking RICO, my (indiscernible) pleaded with me, tears in (indiscernible) eyes --

ANTHONY YOUNG: I saw when you walked in.

HASSAN MILLER: That was like nothing, man.

ANTHONY YOUNG: But, you better go over there and tell them mother fucking crackers everything. The truth, nothing but the truth so help you God.

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: Go over there and do what you gotta do.

HASSAN MILLER: (indiscernible). You know what I mean? You ain't tell me that shit.

ANTHONY YOUNG: (indiscernible).

ANTHONY YOUNG: But, as long as you told them doesn't matter who you told.

ANTHONY YOUNG: A lot of shit I didn't tell y'all, but I know John Gay know. John Gay know everything I did, everything I was around, everything. I don't care if I was a block away looking at it, he know about it. I don't care if me and Hak was in the car together and another nigger did the shooting. I told him about that too.

HASSAN MILLER: Yeah?

ANTHONY YOUNG: One time, me and Hak was sitting there, look at the murder like this. Boom, boom, boom, boom boom. First car leave, the rear pull up. I get out and look it. Make sure the nigger dead. Went back in with him.

HASSAN MILLER: You had the radio on.

ANTHONY YOUNG: (indiscernible) cracker.

ANTHONY YOUNG: And I get back in the van. Car in the van with Hak, we haul ass. A lot of times I didn't get out. Get back in the car, look over the

body, damn, the dude fucked up. Get back and Hak like, he dead? I'm like hell yeah he's dead. Three bullets to the head, man. He finished.

HASSAN MILLER: You know how you get the feeling like, nothing never works out for me. I'm always getting R&Rs, I'm always getting--

ANTHONY YOUNG: Everything.

HASSAN MILLER: And just, this shit don't feel like it's gonna work for me, man.

ANTHONY YOUNG: Now you know how I feel. Did nine years in the joint. I'm always the one to go down, come home, some dumb shit happened, this and that. I'm out for a year and a half, at a year I didn't get locked up, thinking I'm chilling and here they come (whoop noise). Nope. No you ain't. You ain't going nowhere. Won't be moving that furniture.

HASSAN MILLER: Does that shit get to you?

ANTHONY YOUNG: What?

HASSAN MILLER: Told on you about the money?

ANTHONY YOUNG: Not at all.

HASSAN MILLER: That's why I'm like, I should -- shit, I should do another robbery. This mother fucking, this shit backfire.

ANTHONY YOUNG: Right. I don't leave nothing out man, don't never leave nothing out. Because guess

what, it'll backfire on you down the line. Two years -- even if I got to sit here another year at least I know I told them mothers the truth so I won't worry. I sit here and sit here 'til it's time for Hak, Rak and them to go to trial. Will. I mean, I may be going to trial with him.

HASSAN MILLER: (indiscernible)

ANTHONY YOUNG: Sit there, you said this. And your dude's gone.

HASSAN MILLER: Will?

ANTHONY YOUNG: Yeah, he going to jail too.

HASSAN MILLER: I'm saying I'm trying to hold on--

ANTHONY YOUNG: I got a family to go home to, Hass. That's all I'm worried about. I don't care about nobody else. I'm going home to my family. They going to jail.

HASSAN MILLER: You know, Aziz [(indiscernible) /got] Paul Bergrin.

ANTHONY YOUNG: Paul going to jail too if it come down to it. Yeah. Paul told us the names, Paul told us that if he die--

HASSAN MILLER: He probably -- he probably -- he probably -- he could probably represent his mother-fucking self.

ANTHONY YOUNG: He is. Or, Pope can represent him, Anthony Pope. His partner. It ain't his partner no more. But, I'm going against his ass too. I'm going to tell them, Paul came on Avon, well I already told them. Said this, said that. Did like this, said this, said that. Yeah. He did it. Everything you know is 12 times [(indiscernible)/Will sold] to him. Paul yeah, told 'em everything. They said yeah? Paul told you how to do -- Paul told you to do this? Yeah Paul told us to do that. Did he say this? Yeah, Paul said that. Yeah because we got this type of conversation with him and Hak on the phone, yeah, it's in reference to us. Yeah. Paul going to jail too, unless he turn state on Hak. And that's what he going to do, because he ain't gonna fuck his career. Yeah. Where Hak money at? Paul got it, yeah -- They said, we heard he's got a whole lot of -- yeah, Paul got his money. Yeah. Bought Paul a brand new Corvette.

HASSAN MILLER: Aziz knew that, a couple people (indiscernible)

ANTHONY YOUNG: Yeah, brand new. Bought his daughter a car. Fucking his daughter. Helped her through college. He was fucking her for a long time. I told 'em everything. Check her house, there might be some of his money in there. I ain't miss nothing,

Hass. Uh-uh. I ain't lying to them white folks, man. Your life is in their hands. 100 percent in their hands, man. [Earn that life/I'm not lying].

HASSAN MILLER: Everybody is (indiscernible) --

ANTHONY YOUNG: I'm not lying to the white folks, boy. I give 'em all they want. If they want, Hass, I will sit over there and take a lie detector test (noise). And guess what, it's gonna come out positive. Positive that he's not lying all the way across. Yeah I told John Gay. I'd take a lie detector test if you want me to.

HASSAN MILLER: Man, that shit's gonna backfire, they gonna use that shit against you. I don't know, these mother fuckers man.

ANTHONY YOUNG: I'd take a lie detector test on everything I told you. It's 100 percent true.

HASSAN MILLER: Yo, I swear to God, I need something with (indiscernible).

ANTHONY YOUNG: That's why I be telling y'all, one day --

HASSAN MILLER: Ya'll show up here (indiscernible).

ANTHONY YOUNG: I'll take these niggas out, right? To the left, dog.

HASSAN MILLER: Yo man.

ANTHONY YOUNG: (indiscernible) I said this on Monday, but, I switched the whole thing around. I say yeah -- ba ba ba, this and that.

HASSAN MILLER: So at least the (indiscernible) say, the CO say that Z (phonetic) need to get on the phone boy, use the phone.

ANTHONY YOUNG: Yeah I know. (indiscernible) tell the prosecutor, I know that already (indiscernible). But, never tell nobody your story correct. Even when I tell ya'll my stories, they don't be correct. I say it one day and told Sheed, Turtleman, you, yeah, left-handed this, left-handed. You ain't never in your life saw me use my left hand, ever. I'm not left-handed. (indiscernible) One day I'm playing with Sheed, I'm like (indiscernible).

HASSAN MILLER: That mother fucker (indiscernible).

ANTHONY YOUNG: He like, he like, you ain't left-handed. I said nah. That's because from boxing. Playing basketball. But, I never used my -- I can't, I don't even probly know how to shoot a fucking gun with my left hand. Never tried. (indiscernible) You ever see me bullshit I be like (indiscernible). Right handed, 100 percent. You don't tell these niggers your

story right. Nuh-uh. Uh-uh. Put it off. Keep everybody in amazement.

HASSAN MILLER: Sheed came in here and said (indiscernible)

ANTHONY YOUNG: Do it right. I put that nigga's ass under the jail, dog, I done told them them everything. You got to, man. You got to. Got to, man. You got to tell 'em. If you look now, they like, ask me shit, I be like, man I be giving 'em extra shit that they don't even need to know about. But I know if they find out later it's going to be a problem. So I tell 'em about it. There, take that. Even shit when I wasn't there. Yeah. This murder happened through our clique. I know exactly how it happened, I know what gun was used, they be looking like -- they investigate that shit, car, our car, everything turn out good.

HASSAN MILLER: I'm going to call my lawyer right now and tell him (indiscernible).

ANTHONY YOUNG: You go over there and do what you got to do. Fuck that nigga. (indiscernible) Yeah, man. One day I be sittin' by (indiscernible). We talking 'bout bowling. I'm like, I (indiscernible). He like, left-hand, right? I started laughing because that's all he remember. That's all they remember that I said I was left-handed. Know what I mean?

(Private conversation ends when the two participants walk into an open room with music and talking)

(Conclusion)

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