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VIA HAND DELIVERY

July 15, 2013

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

Re: *United States v. Bergrin*
Docket Number 09-369
Defendant Paul Bergrin's *Pro Se* Supplemental Brief

Dear Honorable Judge Cavanaugh:

I most respectfully submit the following supplement to Stand-By-Counsels letter dated July 3, 2013, (hereinafter letter), to vociferously reinforce defense motions and in response to the additional submission of the government, dated 10 July 2013.

It is apparent that the government has willfully and knowingly abdicated their obligations to seek justice while acting within the parameters of the law and The Model Rules of Professional Responsibility.

Their blatant and rampant failure to ignore the incredulous sworn testimony of their prime and exclusive witness, Anthony Young(hereinafter "Young"), in the prosecution of the Deshawn McCray(Kemo) murder case, has resulted in a grave miscarriage of justice; which must be remedied as a matter of law, by this Honorable Court. Moreover, their apathetic and intentional disregard of the truth seeking process is evinced by their presentation of evidence they knew or a reasonable investigation would have shown was false, fabricated and perjured.

Moreover, it was proven that their refusal to objectively investigate and scrutinize facts has eviscerated the Due Process and Constitutional rights of Paul Bergrin and has resulted in an

injustice; that will be shown to be unconscionable.[1]

An impartial consideration of the evidence convincingly proves that no meeting ever occurred, as Young and the Government alleged, either on December 4, 2003 nor any date thereafter and that Bergrin never informed anyone that Baskerville was facing life in prison, if they did not get rid of Kemo. The evidence contained in the recordings depicts that Bergrin reviewed the substantial and independent evidence against Baskerville and that Kemo would have no effect upon the outcome of the case.

For approximately seven years it was the government's position, (relying upon Young), that the alleged meeting with Bergrin and the Curry Organization occurred four to five days after the November 25, 2003 arrest of Baskerville. In *United States v. Baskerville*, Young repeatedly and consistently testified to this fact and never equivocated nor proposed that any meeting ever occurred after Thanksgiving. T4349, L16-19, T4363, L15, T4364, L1-12, T4365, L15-18. The government knew or should have known that Young was misleading the Court as a multitude of intercepted conversations proved Curry had driven to North Carolina on November 27, 2003, and did not return to Newark, New Jersey until December 1, 2003. (November 25, 2003 recordings, 1234129, 537076, 260564, 1256505, as well as others).

Furthermore, in *United States v. Baskerville*, the government knew and had evidence that Young was being deceptive when he alleged and swore that on the date of November 25, 2003, Rakeem Baskerville was in Curry's automobile at 10:30a.m., that Rakeem Baskerville was present and seated in Curry's Range Rover during purported conversations with Bergrin about the William Baskerville case, that Rakeem Baskerville and Young determined in the Curry motor vehicle that "Kemo" and not "Kamo" was the name of the informant, that Curry, Young, Hamid Baskerville and Rakeem Baskerville met during the morning hours of 25 November 2003 and discussed William Baskerville's arrest and that based upon the charges in the Complaint, they were devoid of knowledge that Baskerville was facing life in prison. The Curry intercepts clearly and unequivocally proved every one of these representations were false.

Moreover, the government knew that Young falsely swore that he was never instructed to tell the truth to law enforcement and during proffer sessions. Additionally, the government knew Young had perjured himself and was lying about Bergrin attending any meetings subsequent to Thanksgiving, informing anyone that Baskerville will receive a life sentence and that no decisions were made to kill Kemo until after the meeting with Bergrin. Young ardently testified in Baskerville that he made the decision to kill Kemo on November 25, 2003. T4354, L7-16, and that it was Curry on November 25, whom informed him that Baskerville was facing life in prison

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[1] As a preliminary matter the government was remiss in their statutory obligations to properly seal wiretap recordings, in *United States v. Curry, et al.*, thereby resulting in a multitude of inadmissible recorded conversations. Despite the inadmissibility of the recordings, the government was fully cognizant of their substance; yet they knowingly and intentionally admitted evidence diametrically opposed and inconsistent with their contents. Furthermore, they permitted false testimony to be presented to the jury and argued that wrongful and improper inferences be adduced and drawn from this inadmissible evidence; which resulted in violation's of Bergrin's Due Process rights.

and not Bergrin, T4358, L20-25.

What is of utmost significance for this Court to consider is that the underlying premise and theory expressed by the government for Bergrin's motivation to hold a meeting with the Curry Organization , was the alleged life sentence Baskerville was going to receive. The government deceived, mislead and allowed false evidence to be admitted to the jury and even attempted to usurp justice and mislead this Court; in its decision making and findings for the purpose of this Rule 29 and 33 motions, Fed. R. Crim. P.; all in deprivation of their obligations pursuant to the Model Rules of Professional Responsibility and existing case law. They breached their moral and professional mandates to seek justice and to investigate facts they knew or should have known were false and fictitious.[2]

To further offend the integrity of this judicial process and this Honorable Court, the government submitted a letter dated 1 July 2013, wherein the government deceptively and wrongfully asserts that they never suggested in their summation that the 7:13p.m. phone call on December 4, 2003, was offered to show that the meeting occurred on this date and pointed the Court to AUSA Minish's summation at 34T8505-07.

The government misrepresented to the Court their position, but more importantly, they wrongfully and ardently argued and suggested to the jury, that December 4, 2003, was the date of the Bergrin meeting. They also mislead the Court and jury to believe and accept that inadmissible recordings substantiated and corroborated Young and the government's theory; when they were aware that the recordings actually proved that Young committed perjured and offered false testimony.

In summation Minish strongly argued the following: that Bergrin wants you to believe this is a one-witness case. But corroboration of Anthony Young of the information provided is independent and irrefutable. (T5802:3-5802:16). ***We know the phone calls exist and we know that the substance that Mr. Young heard is correct by independent irrefutable evidence***. T5820:3-8520:6. {Emphasis added}.

Further, during his summation starting at T8504:24, Minish informed the jury that the event of significance that happens after Thanksgiving, is the detention hearing on December 4, 2003. He argued that this was the first time that Mr. Bergrin and William Baskerville are told he's facing life....And on that day there were phone calls between Mr. Bergrin and Hakeem Curry; three calls.

Minish even used demonstrative evidence to have the jury wrongfully infer the substance of the calls which actually disproved Young's sworn testimony. The substance of these inadmissible three calls chronologically depict:

(1)That Bergrin informed Curry that the evidence against Baskerville was overwhelming, independent of Kemo and that Bergrin believed he Baskerville would receive bail;

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[2] See Napue v. Illinois, 360 U.S. 264(1959. Mooney v. Holohan 294 U.S. 103(1935) and Northern Mariana Islands v. Bowie, 243 F.3d1109 (9th Cir.2001).

(2)That Bergrin will have to call Curry back at a later time because he was too busy to converse; and
(3)***That Bergrin could get Baskerville a 13 year plea and will call Curry tomorrow.*** Again this proved that Bergrin never believed Baskerville was facing life imprisonment and that the nature of the evidence against Baskerville was so compelling that Kemo was not an essential witness. Most importantly, it conclusively proved no meeting ever occurred; especially on December 4, 2003.

The government accentuated and relied on December 4, 2003, as the date of the alleged Bergrin meeting and audaciously now deny this fact. Because it is proven to an absolute certainty that they lacked candor and their prime witness committed perjury; with their subornation, Minish told the jury:

> You can see on December 4, three calls, three conversations from or between, I should say, two phones, Hakeem Curry's and Paul Bergrin's phone the day of the detention hearing when Mr. Baskerville was told, 'You are not getting out of jail, no bail for you and you are facing life.' You can look at these dates. You can match the date on there with the front page of the transcript. Same date.

AUSA Minish absolutely and pointedly asking the jury to conclude that the date of this meeting was 4 December. What conclusively established their reliance on December 4 and in direct contravention of the Sanders 1 July 2013 letter, is AUSA Minish's statement during summation: "…the detention hearing at which Mr. Bergrin has told the Curry gang that you got to kill Kemo." T8536:23-8538:7, with the government having actual notice of the substance of all the December 4 recordings, in conjunction with the November 26, 2003 intercepted call between Curry and Organization confidant Jarvis Webb. Through these two calls the government knew to an absolute certainty there was no meeting on December 4, 2003 as they feverishly argued and that neither Bergrin nor Curry ever believed Baskerville was facing life in prison. The government clearly was aware that Bergrin made it clear to Curry he understood that the evidence against Baskerville was overwhelming and totally independent of Kemo.[3]

What is ironic is that Minish told the jury in summation;"No one is going to kill Kemo McCray if will Baskerville was doing ten years. It wasn't going to happen." T8504. The seminal point is that the November 26 and December 4, 2003 recordings prove that Bergrin made it blatantly clear to Curry that this was all the time Baskerville was realistically and practically facing for the ministerial sales of crack cocaine for which he was charged.

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[3] On November 26, 2003, Curry and Webb are intercepted confirming that Curry just left Bergrin's law office and that Bergrin informed Curry that Baskerville was only facing 12 years and would only have to serve 10 years. Call 995,926, 5:38p.m., dated 26 November 2003. Furthermore, On December 4, 2003 at approximately 5:30p.m., recording number 135,475, proves the government knew Curry was heading into New York City for dinner and was unavailable for any meetings.

The recordings unequivocally prove that the government should have known that Young was not being frank and candid and permitted his false testimony despite this fact. Yet, in an apparent attempt to conceal their misconduct and knowledge, the government abrasively files the Saunder's letters of July 3 and 10, 2013; insulting the Court's wisdom and intelligence, fully knowing it contradicts the substance of the recorded conversations and evidence in their possession.

The government knew that there were in excess of 33,000 intercepted conversations in the Curry case and that due to their statutory violations many were excluded and inadmissible. They were further aware that there was in excess of 20,000 pages of materials, hundreds of recordings that needed to be scrutinized and an overwhelming abundance of trial preparation. Moreover, they provided discovery to Stand By Counsel but never to Bergrin directly. A multitude of the CD's containing recordings were dysfunctional, could not be opened nor played and that, pursuant to limited time for trial preparation, decisions had to be made as far as delegating responsibilities. Defense relied on an investigative report prepared by Curry's Investigators that opined that the recordings were devoid of incriminatory evidence against Bergrin and to spend time in other areas of preparation.

Furthermore, Bergrin did not receive operable recordings until trial commenced. By this time it was too late to even attempt to listen to them. Additionally, the government reportedly threatened that any mention of the recordings would "open the door" to all recordings. Defense never feared any of the recordings being played but was intimidated by the government attempting to deceive the jury, as they did anyway. The Court must accept the fact that the content of these recordings are exculpatory and delineate the extent of false, misleading and perjured testimony presented to the Jury.

In sum, the recordings prove:

1) The government knew that the 25 November, 2003 recordings proved that Young lied that it was Paul Bergrin, at this Avon Avenue meeting, whom informed the Curry Organization Baskerville was facing life.

In their letter of July 10, the government states that the recordings corroborate Young pertaining to the use of the name "Kamo" and other minor facts. What the government clearly loses sight of and is the essence of the Kemo case, is the fact that on November 25 and during the reading of the allegations contained in the Complaint to Curry, the fact was relayed that: Baskerville is being charged with the intent to distribute more that 50 grams of crack cocaine. CURRY WAS INFORMED THAT THE STATUTORY MAXIMUM IS LIFE IN PRISON. {Emphasis added} Thereby undermining the entire theory of their case that neither Young nor any member's of the Curry Organization were informed until they met with Bergrin, that Baskerville was facing life in prison. It could not be clearer that Young perjured himself. Although the Statutory maximum may have been life imprisonment, Bergrin made it absolutely clear in two separate recordings that realistically Baskerville is only facing 12 to 13 years.

Rhetorically, when does the government desist from their deceit and concede that they knew Young testified falsely?

As a matter of fact, on November 25, 2003, Curry calls Hamid Baskerville at 4:24:46 p.m. and tells Hamid, his brother Will Baskerville has been arrested and is facing life; to which Hamid responds, "I know." The government further also knew Young lied about any meeting on Avon Avenue Newark, New Jersey on 25 November, 2003, and whom he met with during the morning hours, as this call occurred in the afternoon and was the first time Curry spoke to Hamid and discussed Will. Additional intercepts prove Young perjured himself about this meeting because of the time Curry learned about Baskerville's arrest and the substance of conversations he had with Rakeem and Hamid Baskerville (conversation 242985 at 2:00 p.m.). It was evident that there was never any meeting as testified to.

2) The government knew that, during the course of 33,000 intercepted conversations Bergrin mentioned the name Kemo only one time during the context of the Criminal Complaint. Furthermore, there is not a single conversation setting up any meetings between Bergrin and the parties, nor one word of chatter about any meetings having occurred; and the parties spoke freely and openly on the telephone.

3) The government knew Young lied about his testimony that he and Rakeem, while in Curry's Range Rover, on November 25, figured out "Kamo" was Kemo; because Curry called Rakeem Baskerville in an intercepted conversation at 4:00 p.m., (call 346671, on 25 November 2003, and inquired as to whether he knows anyone named Kemo; and Rakeem was not sure who Kemo was nor what area of Newark he is was from.

4). On multiple occasions dating November 26 and December 4, 2003, Curry confirms that he spoke to Bergrin and that Baskerville is only facing 12 to 13 years; thereby dispelling any notion and theory that any party ever conceived or fathomed that Baskerville was facing extensive imprisonment or a life sentence. Curry confirms this FACT in a recorded conversation with his close associate and confidant, Jarvis Webb as they are intercepted discussing that Baskerville will only have to serve a 10 year sentence.

The government firmly, abrasively and disingenuously submits, in their 10 July letter the meritless theory that the two telephone calls between Bergrin and Curry prove that there was fear of Baskerville cooperating, when the evidence offered by their own witnesses asserts otherwise. Young unequivocally swore, in contravention to his 2007 Baskerville testimony, that there was no fear nor belief that Baskerville would cooperate. The two conversations are absolutely dichotomous to any such belief; as the first conversation has Bergrin asserting that he believed Baskerville would receive bail and that the evidence against him was substantial; independent of Kemo. The second conversation was Bergrin telling Curry he is busy and has to call him later and the third one concerned the 13 year plea that Bergrin was confident he could obtain. They knew there was never a meeting on Avon Avenue and their fictional motive never existed.

Lastly, Young did not come forward until 9 months subsequent to Kemo's death. The facts he knew could have been obtained from a multitude of his contacts, conversations and being a spectator on 2 March, 2004 as he informed Tarver. Moreover, the recordings are inherently inconsistent with Young and prove actual lies and fabrications concerning the most vital and material points of Young's proffers and testimony. Of the 33,000 plus recordings there is not one

iota of evidence to depict any meeting or to corroborate what Young alleges.

It is a sad day for our criminal justice system when the government pathetically and desperately submits a recantation letter such as the one of 3 July, and a letter with the contents contained in the one of 10 July; knowing they contain misleading, atrocious and blatant inaccuracies. Their misguided reliance on the December 4, date as the date of the meeting, proves they wrongfully pursued Bergrin and should not have relied on Young; a witness proven to be unbelievable. It further establishes that their underlying theory of the case and the fact pertaining to an alleged meeting on December 4, was absurd and misguided.

Consequentially, not only did the government wrongfully and detrimentally argue and rely on the suppressed Title III conversations and mislead the jury as to their substance, they relied on Young's assertion that on 4 December 2003, Curry informed Young that, "My man (Bergrin according to Young) is on his way." (See government's reply brief). The government also had their co-lead case agent, Steve Kline emphasize this December 4 date as the date of the meeting; knowing its falsity.

Henceforth, this Court must be concerned by the government's presentation of false and misleading evidence and reliance on a witness they knew or should have known was false and misleading. When considering a motion for a new trial under Rule 33, a district court has discretion to "weigh the evidence and in so doing, evaluate for itself the credibility of the witness". United States v. Sanchez, 969 F. 2d 1409, 1413 (2nd Circuit 1992).

This Court must consider the following facts to which the government was obligated to disclose to the Court, but intentionally concealed. It further supports the government's willingness to win at all costs.

1) The government was cognizant that Attorney Richard Robert's represented multiple and conflicted cooperating witnesses and co-conspirators. He represented Rondre Kelly and Albert Castro (an underling of Kelly and drug trafficker that was supplied by Kelly). Additionally, Robert's was retained by and represented Abdul Williams, also a co-conspirator and co-defendant, in the Indictment. A conflict hearing was never sought nor requested by the government because they were aware that Robert's was retained by another cooperating witness and co-conspirator, Maria Corriea, to represent Castro, with stolen and embezzled FBI funds. Evidence presented to the government by Corriea proved that Roberts illegally and wrongfully coached and convinced Castro to perjure himself against Bergrin in his first trial.
Also of significance is the fact that the government was aware that Roberts improperly consulted cooperating witness Yolanda Jauregui, in an attempt to convince her to retain him; while she was represented by attorney Chris Adams. Roberts sought Jauregui to sign a contract with him for a book and movie deal, in reference to her association and knowledge of Bergrin.

What is most disturbing is that Robert's, upon Bergrin's arrest, relocated his office and moved into Bergrin's old office at the Robert Treat Center, 50 Park Place, Newark N.J. Prior and subsequent to moving into Bergrin's old office, Roberts also solicited Bergrin's former clients and offered them a discount if they retained him.

The motivation for all those represented by Robert's to fabricate evidence against Bergrin was extraordinary and this taint, known by the government, was never brought to the Court's attention.

It is beyond dispute that Jauregui denies Abdul Williams ever served as a taxi driver, courier, or deliverer of cocaine for Bergrin and that Jauregui firmly contends that the seven kilogram drug transaction, denied by Williams was consummated. (The transaction while Williams was incarcerated with Alejandro Castro at Hudson Jail). Additionally, Jauregui's position on Kelly is completely in opposite to the trial testimony.

Moreover, Ramon Jimenez, completely disputes Braswell and Kelly's testimony concerning Bergrin; yet the government never sought the truth

2) Attorney Chris Adams had a known and actual conflict of interest. He represented Jauregui while partner, James Plaistead, was the trial attorney on behalf of Hakim Curry. This conflict tainted his objective representation and gave the government a tactical and strategic advantage in the case.

3) Subsequent to three years of representation and on the eve of trial, Attorney Vincent Nuzzi was judicially removed from representing Hakeem Curry. The recusal was aggressively sought by the Government whom asserted an actual conflict of interest by Nuzzi.

Consequently, the government was well aware of their obligations to inform the Court of even a potential conflict of interest and for the Court to determine this material issue. What is amazing is that, in the case at hand, it is the same government counsel who prosecuted Bergrin that accused Nuzzi of being in actual conflict. In a memorandum to the District Court, Prosecutor Gay sought removal of Nuzzi because he represented Curry underlings, hired attorneys for members of the Curry organization and represented close associates and Curry confidants; specifically citing Jarvis Webb. Yet, in the Bergrin case, the government failed to bring to the Court's attention Nuzzi's representation of co defendant and co conspirator, Eugene Braswell. Nuzzi's representation of the Curry Organization and its underlings conflicted him from this case.

It is for the aforementioned supplemented facts and law that Bergrin seeks dismissal of the Kemo counts with prejudice, and because of its taint, a new trial be ordered.

Respectfully Submitted,

Paul Bergrin

cc: S. Sanders, Esq., AUSA