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FILED VIA ELECTRONIC MAIL AND HAND DELIVERY

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

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

Dear Judge Cavanaugh:

Please accept this letter, in lieu of a more formal application, on behalf of defendant Paul W. Bergrin, allowing Mr. Bergrin to elicit the sworn testimony of Ignatius Benjamin Hohn via live two-way video conference from Jamaica. As discussed further below, Mr. Hohn's testimony is critical to Mr. Bergrin's defense as he is expected to directly contradict the testimony of Anthony Young, the key witness in the Kemo Murder allegations against Mr. Bergrin, and, indeed, the only government witness who has directly implicated Mr. Bergrin in that conspiracy in this trial. For the convenience of the Court, we have attached the statement that Mr. Bergrin's investigator took from Mr. Hohn on February 5, 2013 (Exhibit A).

As this Court is aware, Anthony Young has testified that on March 2, 2004, the evening of Kemo McCray's murder, Young had his then-girlfriend Rashida Tarver drive Young and Rakeem Baskerville to Ben Hohn's auto body shop where Young, Baskerville, and employees of the auto body shop melted the murder weapon. . Tr. (2/4/13) 2360-62. At the last trial, Ms. Tarver disputed that she ever drove Young and Baskerville to Hohn's shop as Young testified. Tr. (11/9/11) at 54. Ben Hohn will corroborate Ms. Tarver's expected testimony and contradict the testimony of Anthony Young. Indeed, Hohn has stated that "I did not melt a gun in March 2004. I have never melted a gun in all my life," and that around "August or September 2004 a guy by the name of 'Ant', who I have done business with repairing his car on more than one occasion came to me and said to me he needed to get rid of a gun which he showed me in his waist." Exhibit A. Since, like Ms. Tarver, Mr. Hohn disputes Young's account,¹ his testimony is absolutely necessary to demonstrate that Young is lying about melting the murder weapon on the evening of the murder, which is consistent with Mr. Bergrin's defense that Mr. Young is lying about shooting Mr. McCray and is fabricating his testimony about Mr. Bergrin's involvement in that conspiracy.

¹ Indeed, Mr. Hohn's account that Young came to him in the Fall of 2004, and not March, is consistent with the testimony of Devon Jones, who asserted that it was cold on the occasion that Young and another individual came to Mr. Hohn's shop to melt a gun. Tr. (2/6/13) at 2957-58.

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Unfortunately, although Mr. Hohn is willing to swear to this information under oath, Mr. Hohn has informed Mr. Bergrin's investigators that he will not travel to the United States and, in any event, doubts his ability to obtain a visa to do so. Moreover, this Court lacks subpoena power over this foreign witness. Mr. Hohn is, however, willing to testify via video conference from the Four Seasons Hotel in Kingston, Jamaica, several hours from his residence. This hotel has the requisite facilities for video conferencing. Accordingly, Mr. Bergrin requests that the Court permit him to elicit Mr. Hohn's testimony in this manner and issue an Order providing for the technology to do so.

The case law makes clear that this Court has the authority, pursuant to its inherent powers to manage proceedings before it, to authorize such testimony by videoconference. *See, e.g., United States v. Diehl-Armstrong*, No. 11-1601, 2012 U.S. App. LEXIS 23435 at *6 (3d Cir. Nov. 15, 2012) (noting district court gave defendant option of calling foreign witness to testify via videoconference); *United States v. De La Cruz Suarez*, 410 F. App'x 250, 252 (11th Cir. 2011) (affirming district court that permitted videotaped testimony and told prospective jurors that videotaped testimony was now "routine," and that "whether testimony was live or videotaped did not matter and should be treated the same for purposes of evaluating credibility and applying the standard of proof"). *Cf.* Fed. R. Crim. P. 15(c)(3) (permitting, in the interest of justice, testimony taken by deposition of foreign witnesses whose attendance at trial cannot be obtained); *see United States v. Kelly*, 892 F.2d 255, 261 (3d Cir. 1989) (videotaped depositions of foreign witness taken without defendant's presence admissible because witness was unavailable to testify at trial); *United States v. Gigante*, 166 F.3d 75, 81 (2d Cir. 1999) (approving the use of two-way, closed circuit television to present the testimony of a witness from an undisclosed location outside the courtroom and comparing District Court's discretion in this regard to Rule 15 discretion). Notably, since the defendant, and not the prosecution makes this request, there is no risk of infringing on Mr. Bergrin's Sixth Amendment right of confrontation, an issue that Courts must address when such requests arise from the Government. *See, e.g., Gigante*, 166 F.3d at 80. Indeed, to the contrary, this application implicates *Mr. Bergrin's* constitutional right to present a defense, *see Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) ("Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'") (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986), and may not therefore be denied without violating the Fifth and Sixth Amendments. *See O'Dell v. Netherland*, 521 U.S. 151, 171 (1997) ("When a defendant is denied the ability to respond to the state's case against him, he is deprived of 'his fundamental constitutional right to a fair opportunity to present a defense.'") (quoting *Crane*, 476 U.S. at 690); *Montana v. Egelhoff*, 518 U.S. 37, 61 (1996) ("This Court's cases establish that limitations placed on the accused's ability to present a fair and complete defense can, in some circumstances, be severe enough to violate due process.").

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In sum, Mr. Hohn's testimony is necessary to Mr. Bergrin's defense and to the vindication of his Sixth Amendment right to present that defense,, and it is certainly well within this Court's authority to approve its transmission via video conference. If Your Honor has any questions or concerns or require any additional information, please do not hesitate to contact me. Thank you for your kind attention to this matter.

Respectfully submitted,

s/ Lawrence S. Lustberg

Lawrence S. Lustberg
Standby Counsel for Defendant Paul W. Bergrin

cc: John Gay, Assistant U.S. Attorney
Joseph N. Minish, Assistant U.S. Attorney
Steven G. Sanders, Assistant U.S. Attorney
Paul W. Bergrin

Privileged & Confidential/Attorney Work Product

The following statement was faxed to Investigator Louis F. Stephens by Investigator Gerald L. Forrester's investigator in Jamaica who interview IGNATIUS BEN HOHN in Jamaica on February 5, 2013. The statement is handwritten and is typed verbatim:

Date of Interview:	February 5, 2013
Person Interviewed:	EGNATUS (sic) BENJAMIN HOHN a/k/a Jesus Christ Born August 16, 1955 Residing 5 Greendale Close, Valentine Gardens, Kingston 19 Jamaica

“I am neither a United States citizen or permanent resident. I am a Jamaican citizen with Jamaican passport No. AZ708155.”

“ I did not melt a gun in March 2004. I have never melted a gun in all my life”

“Whilst residing in the United States I operated an auto body garage at 702 South 12th Street, Newark, New Jersey. Around August or September 2004 a guy by the name of “Ant”, who I have done business with repairing his car on more than one occasion came to me and said to me he needed to get rid of a gun which he showed me in his waist. When I said to him I had to leave the shop so he could speak to DEVON JONES who was in the shop at the time and see if they would do it for him. I immediately left the shop after that conversation for about half an hour and after I returned “Ant” was still there. He was holding the barrel section of the gun which was round. I can remember that a part of the gun was silver but I cannot say what type of gun it was as I have no knowledge about guns”.

“ I have no knowledge if anyone by the name of Young and no one told me to lie to the FBI. When I gave them my first statement in this matter the FBI was not truthful to me as they said I was the one who destroyed the gun. Because the FBI lied to me I fabricated a story that the person who melted the gun was “ROCKY”. I had rented a space in my shop to ROCKY and DEVON JONES to work with on their car. I do not know anyone by the name of CHRISTOPHER SPRUIL or TOM GIORDANO.”

“ If I am required to give evidence in this matter I would rather to do this via satellite because the FBI cannot be trusted”

EXHIBIT A

“This statement consisting of approximately 2 ½ pages was freely (sic) given by me. I read it over and signed to its correctness. I have been told that I can add, later or correct anything. This statement is true. I made it on my own free will, no promises, threats or duress was meted out to me. It was done voluntarily”.

Hohn signed and dated all 3 pages of the aforementioned statement.

Lou is informed that we were able to determine a phone number for HOHN.

END.

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

v.

PAUL BERGRIN,

Defendant.

Criminal No. 09-369 (DMC)

ORDER

THIS MATTER having come before the Court upon the application of Gibbons P.C. (Lawrence S. Lustberg, Esq., appearing), standby counsel for defendant Paul Bergrin, pursuant to the Criminal Justice Act (“CJA”), 18 U.S.C. § 3006A; and the Court having further determined that it is necessary to permit the testimony of Ignatius Benjamin Hohn via video conference to vindicate the defendant’s constitutional right to present a defense, and for good cause shown,

IT IS on this _____ day of March, 2013,

ORDERED that in presenting the defense case, Mr. Bergrin may elicit the sworn testimony of Ignatius Benjamin Hohn via live two-way video conference from Jamaica.

Honorable Dennis M. Cavanaugh, U.S.D.J.