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March 6, 2013

FILED & SERVED ELECTRONICALLY

Honorable Dennis Cavanaugh
United States District Judge
U.S. Post Office & Federal Courthouse
Newark, NJ 07102

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

Dear Judge Cavanaugh:

Please accept this brief letter on behalf of defendant Paul W. Bergrin, in response to Your Honor's request of March 5, 2013 for a written application as to the Government's failure to tie testimony about Mr. Bergrin's request for an adjournment in the Norberto Velez case to the charges in this matter.

As this Court is aware, on January 23, 2013, the Government elicited the testimony of New Jersey prosecutor Toni Gutierrez that Mr. Bergrin sought to delay the proceedings in the state case against Mr. Bergrin's client, Norberto Velez, because of "some issue with his health." Tr. (1/23/13) at 530. The Government also elicited evidence that, when granted an adjournment, and notwithstanding Judge McCormick's admonition that "he better not hear that Mr. Bergrin was on trial someplace else or in court somewhere else," Mr. Bergrin was apparently seen in public shortly thereafter, thus raising the inference that he falsely claimed he was ill to delay the proceedings. Tr. (1/23/13) at 531. The government additionally introduced Government Exhibit 644, the letter Mr. Bergrin wrote to the Court making that request, into evidence; for Your Honor's convenience, it is attached hereto.

This evidence was admitted, over Mr. Bergrin's objection, based upon the Government's specific representation at sidebar that it would demonstrate the relevance of this evidence by tying it to the time period during which Carolyn Velez alleges that Mr. Bergrin coerced her to give false testimony. Tr. (1/23/13) at 528. According to the Government's proffer, Mr. Bergrin's request for an adjournment was relevant to because he took advantage of the delay in the trial to continue his alleged tampering of Ms. Velez. Tr. (1/23/13) at 528 ("And I'm explaining -- so we want to bring that out, Judge, because in this case, he had just --his scheme to try to manipulate Carolyn Velez had just blown up. He needed more time to continue to do that. And Carolyn Velez is going to testify that after -- basically after the prosecutor -- after she gives the statement to the prosecutor that they basically unleash their fury upon her, she comes back in line, and then they need more time to rehearse the lie to get her back in shape.").

In fact, however, the Government failed to elicit any such testimony through Ms. Velez or from anyone else to link the alleged tampering in any way to the delay occasioned by the

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request for a continuance. *See* Tr. (1/28/13) at 973 (discussing, without identifying, the time when Norberto Velez became aware that Carolyn gave statements contrary to the ones she had provided for the defense in that case). Nor did the Government elicit any testimony demonstrating why Mr. Bergrin would have needed an adjournment of the trial to gain access to Carolyn Velez. Notably, when standby counsel raised this issue orally, the Government contended that it made good on the proffer by showing that “the tampering occurred all the way up until she testified at trial,” Tr. (3/5/13) at 7675. Yet, that assertion is in conflict with the Government's original proffer, in which Mr. Gay argued that evidence of the adjournment was relevant precisely because the tampering was *not* ongoing. As the Government originally argued, Mr. Bergrin's “scheme to try to manipulate Carolyn Velez had just blown up” because officials intervened and Mr. Bergrin “needed more time” around the adjournment date to rekindle those efforts. Tr. (1/23/13) at 528. If the tampering allegedly was ongoing, then the adjournment does not render any of the allegations more or less probable. *See* Fed. R. Evid. 401. On the other hand, if, as was proffered, the adjournment request was tied to a specific time period during which the alleged tampering was renewed, then no proof was ever elicited as to the pertinent time period. In either event, the proffer was not fulfilled and the evidence should be stricken.

Accordingly, in light of the Government's inability to make good on its proffer, evidence of Mr. Bergrin's request for an adjournment is irrelevant to the charges. As a result, Mr. Gutierrez's testimony about this event should be stricken from the transcript and Exhibit 644 should be removed from evidence. Indeed, even were this evidence to have some marginal relevance, given the fact that the jury in this case learned that Mr. Bergrin's bout of influenza in January required a nearly two-week delay of the proceedings, any arguable relevance of evidence that he previously sought a delay for an allegedly false claim of illness is substantially outweighed by the danger for unfair prejudice. *See* Fed. R. Evid. 403.

In sum, pursuant to either Rule 401 or 403, this evidence should be stricken. Thank you for your kind consideration of this matter.

Respectfully submitted,

s/ Lawrence S. Lustberg
Lawrence S. Lustberg

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

Pope, Bergrin and Verdesco, P.A.

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OF COUNSEL:
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May 30, 2003

Via Hand Delivery

The Honorable Thomas M. McCormack, J.S.C.
Essex County Superior Court
New Courts Building
50 W. Market Street
Newark, New Jersey 07102

Re: **State of New Jersey v. Norberto Velez**
Indictment No.: 02-3-989

**GOVERNMENT
EXHIBIT
644**

Dear Judge McCormack:

Over the past four days I have been inundated with continuing discovery from Assistant Prosecutor Tony Guitierrez in regard to the above-listed matter. Included with these submissions are documents and discovery that require extensive review.

Before addressing each of the State's late submissions I would like to remind Your Honor that I have just concluded a six-week trial in State v. Dente Brothers, et al. To label this trial as physically and mentally exhausting would be an understatement. This six week long adventure consisted of three defendants, three co-counsel, twenty-one witnesses, two interlocutory appeals and three days of jury deliberation. Such an undertaking has left me little or no time to prepare the complicated trial, which is before Your Honor in this matter. Moreover, this dilemma is further complicated by the State's barrage of new discovery that has taken place over the last four days.

I take issue with the Prosecutor's latest submissions on several levels. Chief among them on the eve of trial. Secondly, some of the Prosecutor's proposed discovery may be subject to motions in limine. Specifically, the information regarding police responses to two locations in Belleville may be subject to a N.J.R.E. 404(b) motion to exclude evidence.

Furthermore, I preliminarily disagree with an amended report from Dr. Eshekanagi at such a late date without my experts being able to review said amendment.

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Additionally, I require more time to address Mr. Gutierrez's latest correspondence that being thirty-eight pages of notes and the MMP1-2 from Dr. Harris. Undoubtedly, it will take some time to retrieve similar documentation from my other proposed experts. Also, I would like to remind the Court that all of the defendant's expenses have to be approved through the Public Defender's Office, which always causes delays. Moreover, I believe that the State's request for such documents is impermissible under the work-product doctrine and I wish to be heard in that regard.

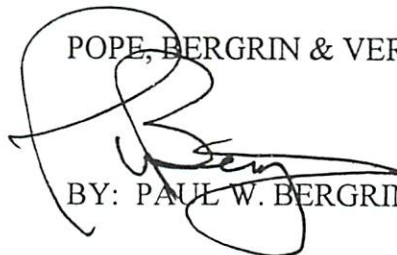
Furthermore, I discussed the need for this matter to be adjourned with Presiding Judge Fullilove who indicated to me that he would have no objection with this matter being temporarily postponed; subject to Your Honor's approval.

Clearly, the State would not be prejudiced by a delay in the commencement of this trial. However, considering all of the above outlined factors, the defendant would most definitely be prejudiced by an immediate start to his trial. Having just completed a six-week long trial today and in light of the recent submission by the State, I respectfully request an adjournment of this matter. It would be ineffective assistance of counsel to commence this trial on June 2, 2003.

Thank you for your attention to this matter.

Very truly yours,

POPE, BERGRIN & VERDESCO, P.A.



BY: PAUL W. BERGRIN, ESQ.

PWB:JLL:ym

cc: Tony Gutierrez, Assistant Prosecutor (Via Hand Delivery)