



U.S. Department of Justice

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BY ECF AND E-MAIL

Hon. Dennis M. Cavanaugh, U.S.D.J.
U.S. District Court, District of New Jersey
Post Office Building & Federal Courthouse, Room 451
Newark, New Jersey 07101-0999

Re: United States v. Bergrin, Crim. No. 09-369 (DMC)

Dear Judge Cavanaugh:

In explaining what a rational jury could have inferred based on Anthony Young's testimony, the Government's recently filed opposition brief asserted that the "no Kemo, no case" meeting Young described likely occurred on the night of December 4, 2003 (the date of William Baskerville's bail hearing), footnoting that "Phone records showed a call from Bergrin to Curry at 7:13 p.m. on December 4, 2003, 27T7544, and (according to Young) Curry said that evening, "My man on his way. Mr. Bergrin is on his way." 9T2252." ECF No. 556 at 25-26 & n.2. In his Reply Brief, Defendant Paul Bergrin claims that the content of the 7:13 p.m. call (which was not properly sealed under Title III) does not show that the meeting occurred later that same evening. Reply Br. at 5.

The Government did not suggest in its summation that the 7:13 p.m. phone call helped show that the meeting occurred later that same night. See 34T8505-07. But Bergrin is correct that footnote 2 of the Government's Rule 29 Brief did so. The Government therefore withdraws that suggestion and apologizes for advancing it.

That correction, however, has no bearing on the outcome of Bergrin's Rule 29 motion. The law requires this Court to presume that the jury credited Young's testimony that the meeting occurred sometime after Thanksgiving 2003. See United States v. Pendleton, 636 F.3d 78, 84 (3d Cir. 2011); accord United States v. Scanzello, 832 F.2d 18, 21 (3d Cir. 1987). And it is certainly rational to infer that the meeting occurred after Baskerville's December 4th bail hearing, because it was at that hearing that Bergrin and Baskerville learned that Baskerville faced life imprisonment and was not being released

on bail. The fact that there were three calls between Bergrin and Curry that day underscored their concern about the outcome of the hearing and reinforced the inference that the meeting Young described occurred on or after December 4th. See 34T 8505-07 (advancing that argument).

Thank you for your consideration.

Respectfully submitted,

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