



**U.S. Department of Justice**

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July 10, 2013

**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 his July 3, 2013 letter, Defendant Paul Bergrin continues to dispute the premise that a rational jury could infer that the meeting about which Anthony Young testified occurred sometime after the December 4th bail hearing. Bergrin now claims that the two December 4, 2003 calls cited in his Reply Brief prove that no such meeting occurred. And he goes so far as to suggest that the Government “should be more concerned about the fact that the substance of the [December 4th] calls themselves negates Young’s account (which is, of course, the sole evidence of Mr. Bergrin’s involvement in the Kemo McCray murder) and less concerned with victory at all costs.” Bergrin July 3, 2013 Letter at 2. The Government has sought only justice in this case, not “victory act all costs.”

Initially, Bergrin refuses to accept that “uncorroborated accomplice testimony may constitutionally provide the exclusive basis for a criminal conviction.” United States v. DeLarosa, 450 F.2d 1057 (3d Cir. 1971). Young testified that Bergrin came to a meeting at Avon Avenue and 17th Street after Thanksgiving in 2003 and effectively instructed the Curry Organization to murder McCray. 9T2249-54. That testimony, if credited by a rational jury, *alone* suffices to uphold Bergrin’s convictions for the McCray murder. See United States v. Pendleton, 636 F.3d 78, 84 (3d Cir. 2011). Whether other evidence supported or contradicted Young was for the jury to decide.

At any rate, there is no merit to Bergrin's claim that "the substance of the [December 4th] calls themselves negates Young's account." Bergrin Letter at 2. If the calls were as powerful as Bergrin claims, he would have sought to use them at trial. That he did not shows that the December 4th calls do not bear the weight Bergrin places on them.<sup>1</sup> Indeed, the fact that Bergrin (as house counsel) and his coconspirator Curry (*i.e.*, Baskerville's boss) discussed Baskerville's case twice on December 4th supports the Government's theory that both Bergrin and Curry were concerned that Baskerville would cooperate. And it further undermines Bergrin's claim that he was merely updating a family member on the status of his client's case. To be sure, Bergrin and Curry did not arrange a specific meeting date, but that hardly shows that the December 4th calls "negate" Young's testimony that a meeting occurred after Thanksgiving 2003.

Furthermore, given Bergrin's conduct at the first and second trials, it is beyond hypocritical for him to cherry-pick just two suppressible Title III intercepts to accuse the Government of attempting to mislead the tribunal. If this Court has any doubt about whether the verdicts on Counts 12 and 13 serve the interests of justice, the Government—assuming Bergrin has no objection—would be happy to supply all of the suppressible calls, including the critical 4:00 p.m. call between Bergrin and Curry on November 25, 2003, the date of Baskerville's arrest. That recording corroborates several key aspects of Young's trial testimony, including that Bergrin mispronounced Kemo McCray's name as "K-Mo" when speaking to Curry. Compare 9T2242-43 (Young's trial testimony), with Exhibit A at 2 (transcript of Nov. 25, 2003 call).

In fact, admitting the suppressible calls at trial would have *furthered* the search for the truth by laying bare Bergrin's false assertions to the jury, e.g., 12T3011-13 (admitting the substance of the 2:26 p.m. call to clear up the false impression Bergrin created when questioning Special Agent Cline), and by

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<sup>1</sup>Bergrin suggests that he did not use the December 4th calls at trial because he was afraid to open the door to other (suppressible) calls. See ECF No. 558 at 12 n.2. But that is hard to square with Bergrin's opening statement, where he baldly asserted that none of the 33,000 intercepted calls showed him arranging a meeting with the Curry Organization after Baskerville's arrest. 1T162. That assertion clearly opened the door by implying that the Government had a wiretap on every phone used by Bergrin and Curry (which Bergrin knew was untrue) and by claiming that Young could be considered credible *only* if a recording corroborated his testimony (when Bergrin well knew that other, suppressible calls corroborated other aspects of Young's testimony). Bergrin's decision not to use the December 4th calls at trial betrays his well-founded belief that the Title III intercepts, on balance, helped the Government and hurt him.

preventing Bergrin from misleading the jury as to Young's credibility. Bergrin cannot now seek the benefit of the suppressible calls that he claims help him while avoiding the burdens of the many more such calls that would have helped the Government.<sup>2</sup>

We thank the Court for its continuing indulgence.

Respectfully submitted,

PAUL J. FISHMAN  
United States Attorney

By: s/ STEVEN G. SANDERS  
Assistant U.S. Attorney

cc: Lawrence S. Lustberg, Esq.  
Bruce A. Levy, Esq.  
Amanda B. Protes, Esq.  
(all by ECF & e-mail)

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<sup>2</sup> The Government does not understand Bergrin to claim that the Government violated the principle articulated in Napue v. Illinois, 360 U.S. 264 (1959), by sponsoring and defending Young's testimony about the Avon Avenue meeting, which claim would be forfeited and patently meritless, Lambert v. Blackwell, 387 F.3d 210, 249 (3d Cir. 2004) (no due process violation when prosecution elicits testimony that is contradicted by other evidence of which it is aware); United States v. Julien, 318 F.3d 316, 322 (1st Cir. 2003) (no due process violation where defendant who claimed that witness's testimony was inherently implausible had the opportunity to make that argument to the jury).

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COREYGRUBBS/mtm

CASE: C3-03-0017  
PHONE: 862-205-9273 SPRINT  
CALL: 9349  
INCOMING: 9739850994  
DATE: NOVEMBER 25, 2003  
TIME: 16:00:23 - 16:01:44

PARTICIPANTS:

CURRY, IBN (HAK)

BERGRIN, PAUL (PB)

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PHONE RINGS

HAK: Paul

PB: Hey Hak, I just came from Magistrate's Court, I'm going over to the actual cell block

(PB to background: Hey (inaudible) where is he on the 5<sup>th</sup> FL across the street?

U/F: 4<sup>th</sup> floor

PB: where they take the prisoners across the street?

U/F: Yeah go here and you want to press the basement

PB: alright

U/F: But buzz the, dial 295 there is nobody else in there. To get in make the left, there is going to be a phone and another set of doors, 295

PB: Alright, thanks a million)

PB: Hak

HAK: Yeah

PB: They bind him pretty heavy. They got four, four hand to hand sales. They say they have him recorded and under surveillance with surveillance video. He's facing life you know

HAK: Yeah

PB: Yeah, um the informant, he said, I got a chance to speak to William and he said the informant is a guy by the name of K-Mo.

HAK: K-Mo?

PB: Yeah

HAK: From where?

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PB: I don't know. He's gonna, I'm going to go over now and speak with him and see him.

HAK: Alright get detail and detail and call me back.

PB: Alright

CONVERSATION ENDS