



U.S. Department of Justice

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March 10, 2013

BY ECF & 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:

We write to alert the Court to some evidentiary issues that are likely to be raised by the proffered testimony of defense witness Lemont Love, an inmate at Northern State Prison serving time for drug, robbery, and assault convictions.

According to reverse "Jencks" produced by defendant Paul Bergrin (attached herewith), Love will testify that FBI agents came to interview him and allegedly asked him to lie about Mr. Bergrin. Love claims that he told the FBI that they were looking for the wrong guy, that Mr. Bergrin was not involved in illegal activities, and that he would not falsely inculcate Mr. Bergrin.

Love's testimony—that FBI agents allegedly asked him to lie about Mr. Bergrin—arguably is not hearsay because it concerns an alleged verbal act. However, such testimony has little to no relevance (since Love did not testify for the Government), and raises Rule 403 concerns because the Government in its rebuttal case will have to call the FBI two agents who interviewed Love to deny his (false) allegations. The remainder of his proffered testimony about his encounter with the FBI is clearly offered for its truth and, thus, is inadmissible.

Love also claims that defense attorney Richard Roberts told him that everyone is jumping on the "gravy train" by cooperating against Mr. Bergrin. According to Love,

Roberts urged Love to fabricate testimony against Mr. Bergrin. Mr. Roberts also apparently told Love what other cooperators had said to him or to law enforcement.

Very little of what Love proposes to testify regarding Richard Roberts is admissible. The statement “everyone’s jumping on the gravy train” clearly would be offered for its truth and, thus, violates Rule 802. So, too, would be Love’s testimony about what other witnesses allegedly said to the Government. Further, assuming that Roberts’ alleged advice to Love to lie against Bergrin would be considered a verbal act, it would be irrelevant to the issues in this case absent evidence showing that Roberts was acting on behalf of the Government at the time. As Bergrin lacks such evidence, the proffered testimony by Love regarding Richard Roberts is not probative of any material issue. And even if it has some minimal probity, Rule 403 considerations counsel against admission. Simply put, if Mr. Bergrin wants to elicit what Richard Roberts allegedly said to Lemont Love, he should call the alleged declarant, Mr. Roberts, so that Mr. Roberts may respond to these nonsensical allegations. The fact that Love appears on the defense witness list but that Roberts does not speaks volumes.

We look forward to discussing these issues Monday morning.

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. Proress, Esq.
(all by ECF & e-mail)

L.L. My name is Lemont Love. I am currently an inmate at the Northern State Prison in Newark, New Jersey. I am 31 years old. I was born on October 2, 1980. I am a high school graduate and I read, write and understand the English language. I am not under the influence of alcohol or drugs. I freely and voluntarily provide this signed statement. I have not been coached or forced to provide this statement.

On July 3, 2012 I was visited by an attorney named Lavinia Mears and a private investigator named Louis F. Stephens and I provided them information which is summarized below:

On or about December 2006 I was arrested and charged with aggravated assault on a police officer and subsequently charged with eluding police officers and various drug offenses. I hired attorney Paul Bergrin to assist with my defense. On July 10, 2008 Mr. Bergrin came to visit me at the Middlesex County, New Jersey jail where I was confined. During this time I was also met with L.L. visited by attorney Thomas Moran who worked with Paul Bergrin. Moran was supposed to assist Bergrin with my case. Moran, during my contact with him, was high on speed, smelled of alcohol, constantly sniffing with his nose all red as if he were high on narcotics.

Sometime in March or April of 2009 I visited Bergrin's office in the Robert Treat building in Newark, New Jersey. Paul asked me to speak to Moran in his office about a witness in my case. Moran told me to close the door. He pulled out a silver case which I thought contained cigarettes. When he opened it he pulled out a knotted bag that contained cocaine. Moran bit the knot off the bag and sprinkled some of the cocaine on the flat part of the silver case and snorted it with a silver straw that he also retrieved from within the case. Moran offered me some and I declined. Moran told me not to tell Paul. He said that Paul doesn't fuck around. He said "hell no, Paul doesn't partake in any of the festivities and he'd fire my ass if he knew I did."

I was subsequently released on bail but was arrested again on April 28, 2009 in New Brunswick, New Jersey. Paul Bergrin was arrested in May 2009. That same month, because Mr. Bergrin was confined to jail I retained attorney Richard Roberts to assist in my defense. He agreed to give me a 25% discount on his fee to defend me because I was Paul Bergrin's client. Richards represented several other inmates at the Middlesex County jail where I was confined and I saw him sell marijuana to prisoners and deliver cell phones to them. I last saw Roberts in December of 2010.

Roberts provided me with details regarding the government's case against Paul Bergrin. Roberts told me that he had spoken to with the FBI about Paul and me and that he met a male FBI Agent in "CRIF" in Trenton, New Jersey who was interested in talking with me about Paul Bergrin. CRIF is an intake facility for new inmates into the New Jersey prison system. I was L.L.

L.L. subsequently visited for about ten minutes by two FBI Agents; one a slender blond female; the other a male agent. The female agent did most of the talking. She told me to give she and her partner a story on Paul and that if I did they will make my pending cases go away. They said they would get me immunity from prosecution and that they didn't care if what I told them about Bergrin was ~~true~~ ^{true} or not. L.L. The agents were focused on information about conspiracy to murder charges and drug charges. The female agent in particular told me that it was okay to lie. She said that Bergrin was involved in both activities.

I told this female agent (name unrecalled), that Paul Bergrin is not the one she wanted; that they were going after the wrong guy and that Bergrin was not involved in illegal drugs and other illegal activities. I refused to lie and/or otherwise cooperate with the FBI Agents. ~~I L.L. specifically recall that after the FBI visited me I telephoned Paul Bergrin's daughter Beth and told her about the meeting. L.L.~~

Thereafter, between May 2009 until December 2010 I met with attorney Roberts ~~three~~ ^{several L.L.} times that I recall. On each occasion Roberts tried to convince me to "tell on Paul." ^{L.L.} He told me that he had spoken to the FBI and to the U.S. Attorney's office and that they in turned talked to the Middlesex County Prosecutor on my cases – a female prosecutor named Marcie, and that I would get immunity from prosecution if I cooperated and that it didn't matter if what I told the FBI was the truth; just lie and tell them what they want to hear since everybody else involved in Bergrin's case was throwing him under the bus and lying about him in order to get deals from the government. Roberts told me that the FBI would love talk to me.

I told Roberts that Bergrin was not involved in selling illegal drugs or anything else illegal that I knew about. He replied that everybody and his mother is rolling on Paul and that I should get on the gravy train with them and make something up. Roberts told me that Tom Moran, Yolanda – Paul's girlfriend and Alejandro Castro were rolling on Paul. Roberts told me that the FBI sat Tom Moran down in a room and told him that he was facing the death penalty and that he had ten minutes to give Paul up; then they left the room and when they came back Moran told the FBI what they wanted to hear.

I know that Yolanda was a big time drug dealer because I observed her sell kilos of cocaine at her restaurant on Summer Avenue in Newark, New Jersey. I observed her sell kilos of cocaine to somebody named Ra-Ra. I saw her hand him a doggie bag full of cocaine. Never once did I observe Paul Bergrin involved in that activity. Yolanda hid her drug dealing from Paul and he was not aware she was involved. L.L.

L.L. I had these conversations with Roberts in his office in West Caldwell, New Jersey; at the Middlesex County Courthouse when a trial date for my case was set and on that occasion Roberts told me to the FBI something and my case would go away -- give them anything. The prosecutor is willing to give me immunity if I do so. I also had practically identical conversations with Roberts in his office in the Robert Treat hotel after he moved there from West Caldwell.

I finally told Roberts that I didn't want to talk about Paul. I wasn't going to lie and that I wanted to talk about beating my cases.

I have read this typewritten statement consisting of this page and two additional pages. I have initialed the top and bottom of each page and also initialed all corrections in this statement. This statement is true and correct and I ^{place L.L.} my signature below as well as this entire statement is provided without coercion, freely and voluntarily. L. L.

L.L. This statement that I have provided is not all inclusive concerning the knowledge that I have about this case. L.L.

Date: July 16, 2012

Lemont Love

Lemont Love

Jain P. G. [Signature]
Witness