

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

UNITED STATES OF AMERICA :
 :
V. : **CR. No. 09-41S**
 :
ANTHONY M. ST. LAURENT SR. : **AUGUST 12, 2009**

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

In April of 2006, agents of the FBI were investigating a scheme in which the defendant Anthony M. St. Laurent Sr, was planning to extort money from two unknown individuals. A cooperating witness provided some of the information which was corroborated by audio recordings.

On April 6, 2006 the cooperator and another individual met at St. Laurent's home. During the course of their discussion about the extortion plot, St. Laurent interrupted the conversation to direct it to his effort to procure Robert De Luca's murder. St. Laurent's not so oblique references to De Luca's murder were recorded by the FBI and then interpreted by Special Agent Joseph R. Degnan in a 302 and in a sworn affidavit on January 23, 2009.

On April 12, 2006 the cooperating witness met again with St. Laurent and had another conversation in which St. Laurent solicited his participation in the effort to kill De Luca. Moreover, the defendant actually took the cooperator to the site of De Luca's employment at Sidebar and Grille on Dorrance Street in Providence.

St Laurent was arrested on April 13, 2006 in order to insure that the killing did not take place.

The governments proffer at the detention hearing included a recital of St. Laurent's efforts to kill De Luca, and caused the magistrate judge to make special findings about the murder solicitation in a separate attachment. On April 14, 2006 a Providence Journal report also provided information about De Luca and his association with St. Laurent, which revealed more details about the solicitation.

At that point in the history of St. Laurent's case, the defendant knew that the evidence in the extortion case involved cooperating witnesses and tape recorded conversations. He also knew that the details of his effort to solicit others to murder De Luca was tape recorded and supported by cooperating witnesses.

The defendant immediately directed his counsel to secure a plea agreement for the charged offense and more importantly an agreement of non prosecution for his conduct in the solicitation to murder case. That agreement was consummated in what is exhibit F.

That agreement contains these two relevant provisions:

2. Governments obligations in exchange for defendants plea of guilty:
 - e) The government agrees not to charge the defendant with any offenses known to the government related to the conspiracy charge to which the defendant is pleading, so long as defendant does not attempt to withdraw his plea of guilty to this indictment.
13. This agreement is limited to the District of Rhode Island and does not bind any other federal, state, or local prosecutive authorities. Defendant is aware the (sic) he may be charged by the State of Rhode Island for an alleged solicitation for murder. This agreement does not affect this possible charge in any way .

Plea bargaining is an essential component of the administration of justice and should be encouraged by the courts. Santobello v. New York, 404 US 257 (197); United States v. Penta, 940 F.2d 13 (1st Cir. 1990); United States v. Papaleo, 853 F.2d 16 (1st Cir. 1988). A plea bargain standing alone is without constitutional significance, Mabry v. Johnson, 467 US 504 (1988); United States v. Papaleo, supra; but when a court approves a plea of guilty pursuant to a plea agreement, the constitution is implicated. This is so because the defendant has agreed to surrender his liberty without a trial. Mabry, 467 US at 507-08; United States v. Papaleo, supra.

While plea agreements are a matter of criminal jurisprudence, most courts, including the First Circuit, have held that they are subject to contract principles. United States v. Kingsley, 851 F.2d 16 (1st Cir. 1988); United States v. Baldacchino, 762 F.2d 170 (1st Cir. 1985) United States v. Reed, 778 F.2d 1437 (9th Cir. 1985); United States v. Fields, 766 F.2d 1161 (7th Cir. 1985); United States v. Hembrel, 754 F.2d 314 (10th Cir. 1985). This means that the government may not breach any term of a plea agreement which induced the defendant to plead guilty; Santobello, supra at 262; United States v. Panzardi-Alvarez, 879 F.2d 975 (1st Cir. 1989), and that the principles of contract law provide useful references when construing a plea agreement. United States v. Santiago Gonzalez, 66 F.3d 3 (1st Cir. 1995); United States v. Anderson, 921 F.2d 335 (1st Cir. 1990). This approach to plea agreements ensures not only that constitutional rights are respected, but also that the integrity of the criminal process is upheld. United States v. Gonzalez-Sanchez, 825 F.2d 572 (1st Cir. 1987),

Because plea bargaining requires a defendant to waive fundamental constitutional rights, prosecutors engaging in plea bargaining are held to the most meticulous standards

of both promise and performance. United States v. Velez-Carrero, 77 F.3d 11 (1st Cir. 1996); United States v. Clark, 55 F.3d 9 (1st Cir. 1995). As the court held in United States v. Conway, 81 F.3d 26 (1st Cir. 1996); a plea agreement is a contract under which both parties give and receive consideration. The government obtains a conviction that it might otherwise might not have, and the defendant receives less or a chance at less than he otherwise might have. And both sides must keep their plea agreements and they may not do end runs around them. United States v. Voccola, 600 F supp 1534 (DRI 1985).

In this case the agreement clearly establishes that the government agreed not to charge the defendant with the solicitation for murder, but left it to the state, to decide whether it would. Whatever argument that might be made that the contract did not encompass the De Luca solicitation is negated by the fact that counsel for the defendant and the defendant sought to bar non prosecution for the April 2006 solicitation, the agreement covered the same time, place and participants as the conspiracy that was charged; but most importantly the contract contained a provision notifying the defendant that his agreement with the government did not include a promise of non prosecution by the state for solicitation to murder. This fact alone evidences the intent of the parties, the defendants reliance on it and the vitality of his motion to dismiss.

Respectfully submitted,
Anthony St. Laurent
By his attorney,

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CERTIFICATION

I hereby certify that on August 12, 2009 a true copy of the above document was served upon all attorneys of record by ECF filing.

/s/ Victor J. Beretta