

TRANSCRIPT APPENDIX 10

Brent = Mr. Cole
Joe = Mr. Malatesta

Brent - This is Brent.

Joe - Hi Brent hey my name is Joe Malatesta Sr.

Brent - Yeah.

Joe - I'm Chuck Robinson's - Attorney Chuck Robinson's investigator.

Brent - Right.

Joe - And Chuck is picking up the Haeg case, which you are familiar with?

Brent - Yeah.

Joe - He asked me to give you a call. Maybe you could help us out with a few things.

Brent - Ok.

Joe - Um - The first thing is I'm looking through the file and there's some mention about some photos and a video but I don't see them do you ---

Brent - David has the photos and the videos doesn't he?

Joe - I don't know. I'll have to ask him.

Brent - You need to ask him. We gave him all the videos and the photos.

Joe - I gotcha. Um the other thing is that I'm looking through there and I saw some of your handwritten notes. It looks like you had some kind of plea agreement with -uh- with the State?

Brent - I had about 3 of them - 4 of them.

Joe - You're kidding. Was the - did you have any with open sentence - you know what you guys agreed to?

Brent - Excuse me?

Joe - Did you have any agreements with the State where you know sentencing was open. That you folks agreed to and then the State backed out?

Brent - Well I - I that's a difficult question. The State gave us a number of options on a number of different occasions and I've gone through all that with David on a number of occasions. You mean a straight open sentencing?

Joe - Yeah an open sentencing you know where you agreed and then they - the State backed out. He was telling me something about he had to bring witnesses in and all and then the State backed -

Brent - Going to go to be arraigned at an open sentencing, yes.

Joe - And why did they back out?

Brent - They didn't back out they changed the deal.

Joe - Well that's basically backing out, right?

Brent - Well ---

Joe - I'm just wondering if they ---

Brent - they probably had the right to do that.

Joe - Ok but you did have an open sentencing agreement?

Brent - That's a difficult question that's a hard legal question -um- quite frankly what he wanted wasn't goanna get him what he wanted anyway. I mean I - I - to me I - I never underst - he has a very difficult idea with his concept of open sentencing but even under his concept he lost his license for a min - at a minimum 1 year.

Joe - Right that's what he said. He said you explained it to him but he said that you had made an agreement with the State that (this is what he's telling me) you had made an agreement with the State with open sentencing and - and basically had agreed on the conditions he would lose his plane etcetera, had to

do restitution or community service, jail time was suspended, and he said you had a good agreement and he scheduled people in to testify for him and so forth and the State backed out.

Brent - No - no - no - no that's not what happened.

Joe - Ok that's what I'm calling you about. Can you help me out with that - what actually happened then?

Brent - From the beginning we talked about the um and I don't have my notes in front of me right now so I'm kind of doing this by memory now.

Joe - No problem.

Brent - Um about the pluses and minuses of going to trial or not and we made the decision that because of the strength of the States evidence but most particularly because David was most concerned about the possibility that he could lose his license for 5 years.

Joe - Correct he said that.

Brent - That we decided to cooperate with them and they said as a consequence we would get a better deal.

Joe - Right he said all that to.

Brent - We cooperated and received the letter from Scot Leaders, which you should have in that file.

Joe - Ok and the letter was an offer?

Brent - Yes.

Joe - And did you guys agree to it then?

Brent - No. We negotiated significantly from there.

Joe - Ok but I mean did you end up with an agreement that you negotiated, that you were happy with?

Brent - That - that I thought was a very fair deal.

Joe - Right that's what he said. He said you did a good job that you got him down to an open sentence.

Brent - It wasn't open sentencing though and that's what I...

Joe - Oh ok.

Brent - It was a deal that was - the only thing that was open was how long he was going to lose his license and we were goanna be able to argue 1 year and the State wanted to argue 2 years but the - the agreement was that it was goanna be between 1 and 3 years that he was goanna lose his license.

Joe - But no more than 3?

Brent - No more than 3.

Joe - Ok so basically then you were goanna be allowed to argue out about sentencing?

Brent - Yes.

Joe - So then you did have some kind of an agreement with the State, why did they back out?

Brent - They didn't back out of that one.

Joe - Oh.

Brent - What happened was then - ok no I've got to get this straight - I worked, I worked, I got a deal and then we were getting ready to go out there and David asked about a simple open sentencing, deal.

Joe - Right.

Brent - And I said, "Most defendants don't want open sentencing, David but I will ask about that." My experience has been most defendants want to know exactly what they're goanna get.

Joe - What their exposure is, ok.

Brent - What is their exposure and - and I saw some - some significant downsides and I had just been out you know and I do this all over the State and one of my clients had just lost his

license for 5 years. And I said I you know I - I asked Scott Leaders about that. I said, "Can he do this deal just open sentencing?" And this is where David has a problem. And I - and I can understand it a little bit. And Scott Leaders initially said yes.

Joe - Ok well that's important. So he - he accepted it?

Brent - No - no

Joe - Oh.

Brent - Just - just wait.

Joe - Ok.

Brent - So no document had been filed at all.

Joe - So it wasn't in writing?

Brent - It wasn't in writing.

Joe - But you still had an agreement telephonically with the DA?

Brent - And we said, "Can he plead to the same counts and just do an open sentencing?" And Leaders was like "I don't know why he'd want to do that but yeah ok."

Joe - Ok that's important to me.

Brent - Ok.

Joe - That's what I needed to know.

Brent - But listen.

Joe - I'm listening.

Brent - So then I went out to Dillingham on Thursday and on Friday - no the following Monday David was coming in to do the sentencing. Was it Thursday - yeah it was Thurs - was it Friday - Friday morning I went out to Dillingham. Thursday they filed the complaint against him, Friday morning - maybe it was Thursday he called me and said - we were talking and he said, "If David is - is not - he goes I'm not willing to do totally open sentencing with those deals".

Joe - So he changed his mind?

Brent - Right.

Joe - Ok that's a problem for him is what I'm driving at.

Brent - Well.

Joe - If you guys verbally had a - had a ---

Brent - Maybe it isn't. You got to - you got to think this through, ok?

Joe - Ok - I'm trying but I - if you had an agreement tele...

Brent - Just - just listen for a second.

Joe - I am - I have been listening. Go ahead.

Brent - So I said - he said, "If he will forfeit the plane he can have open sentencing".

Joe - Ok - I'm still with you.

Brent - "If he is unwilling to forfeit the plane and we have to have to have a hearing about that then I'm goanna file an amended information charging him with AS 08 54 720 A 15". Which makes him lose his license for a minimum 3 years.

Joe - I gotcha - I'm still with you.

Brent - And I said, "Hey you know that doesn't make sense to me". And he said, "Well that's the way its goanna be". And I said, "Ok".

Joe - That's great.

Brent - So then we said -um- what happened then. Then on Monday I met with David and we were scheduled to go to McGrath on Tuesday morning. So we worked and I presented all the different scenarios that David had in front of him. He was unhappy about what the DA had changed. And I was too.

Joe - Well it's - it's important.

Brent - Listen to me it doesn't make that much difference. Now it may make some difference for you guys. But even if he gets to go open sentencing, as I told him, he's at risk to lose everything and much further.

Joe - And that could be and I don't have an argument. My argument is that - and I'm just looking at this you know prima facially for Chuck -

Brent - Right.

Joe - He'll have to review it. I'm just his investigator.

Brent - Right.

Joe - But I'm looking at this that you've been honest with me this morning and I knew you would be cause I work with so many lawyers and everybody told me you would be. It sounds to me like you had a rule 11 agreement verbally.

Brent - We had a couple different - opt - options.

Joe - And Scot Leaders reneged. He just backed out on those - on that agreement.

Brent - He did.

Joe - Ok well then he's got a problem.

Brent - Then - then on Monday afternoon we reached another deal. (*Long pause*) And that deal was what I thought David was goanna be willing to plea to and that's why we didn't go to McGrath the next day is because we had to get it approved - we had to get the ok from the Division of Occupational Licensing.

Joe - Ok - but the whole crust of this thing is you did a good job for him, you got him an agreement, and the DA backed out.

Brent - If you guys want to look at it that way yeah you can.

Joe - Ok I'm not sure that that's goanna get us anywhere but the point is I ---

Brent - To me it just gets you back to the original charges and then they say you know I guess maybe you can get in there and get a sentencing at that but ---

Joe - Well I guess the point that if I understand you correctly the exposure is 1 to 3 years on all of your agreements. That was you and Leaders had come up with. His max was 3 his minimum was 1 and you got him a good deal if I'm reading this paper right. You got him no jail time, suspended

Brent - No jail time no - basically no fine.

Joe - Right and - and community service ---

Brent - Community service. I thought it was a great deal.

Joe - Well - well Scot Leaders backed out of that he's got a problem because that is a good deal.

Brent - Well the only thing he backed out on was what he would - whether it would be a minimum 3 years. If it was open - if David agreed to forfeit his plane he - he didn't back out of that deal.

Joe - Well according the notes that I'm reading here he did.

Brent - No if he'd have agreed to forfeit the plane he got the same exact deal.

Joe - All right I'm sure that Chuck may want to talk to you later but I'll try to pass this on. Took notes and I think I understand and you explained about the discovery.

Brent - One thing that the DA did back out on though is originally he said same counts that he was facing that are in that note that he sent to me "open sentencing".

Joe - And that's the point that I'm interested in.

Brent - Right.

Joe - And he backed out.

Brent - Then he changed that. But everything else was the same.

Joe - Sounds (*indecipherable*)

Brent - We wanted a full deal you know to argue everything but just the sentencing I mean just how long he lost his license that was there.

Joe - Yeah and that's important.

Brent - And if he wanted to give up his plane he could completely open sentencing.

Joe - Ok.

Brent - But the only thing the DA said is "if he is not goanna give up his plane then I'm going to change this from 720A08 to 720A15" which he did the very next morning anyway.

Joe - Yeah so he back out of the agreement. I mean guess what I'm hearing from you I just want to recap

Brent - Yep.

Joe - Make sure I don't mix it up. You had an agreement regardless of what all the parameters were you had an agreement with opening -

Brent - the options.

Joe - Right all the options you had an agreement with an open sentence and basically the DA backed out.

Brent - Right.

Joe - That's all I need to know.

Brent - Ok.

Joe - All right and if Chuck needs to talk to you he'll talk to you. Hey good to talk to you again.

Brent - Thanks.

Joe - All right bye - bye.

Brent - Bye.