

TRANSCRIPT (2)

MR. HAEG: How can I say, 'file a motion' when you never mentioned that I could do so?

MR. COLE: I did to David. I mentioned it. I talked to you about it.

MR. HAEG: Are you - I don't know - this might be whatever argumentative or whatever. Are you telling me that you can read all this, honestly sit there and tell me that if you'd have said you could of filed a motion that I would have not said 'hammer down - let's go - let's get it'?

MR. COLE: I told you that - I had it in my notes. I told you that when we met with Mr. McCommas I had it in my notes and I'm sure I told you this before. I know I told you this before.

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MR. COLE: I told them I was unhappy with what Leaders had done. I just didn't see number one the benefit of fighting a battle to get open sentencing on the original information and I told David that. I said 'to do that you would have to file a motion to require the State to honor a deal that was never in writing.' And I said, 'even if we win where does that get us, David, where does that get us? It gets us open sentencing with a 1 year minimum - that's not good and we've got a prosecutor whose then goanna be arguing - it's - it's not goanna be helping us in fact he's goanna be adverse to you. Why would you do that - just to get this plane?' I said, 'It is not worth it'.<sup>2</sup>

MR. COLE: ...we talked about filing a motion to require the State to bring the original charges. I talked about that with him and I said to him why - yes I could do that David but

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<sup>1</sup> Tr. Fee Arbitration p. 368.

<sup>2</sup> Tr. Fee Arbitration p. 308.

then I'm goanna have to say that I had a discussion with Scot Leaders and he said 'x' and he said 'x' so now if I'm right what's - where are we - where's this goanna get us? He's goanna oppose that and he's goanna say 'I didn't say that'. So now you're goanna have two attorneys fighting each other but even more important even if he says 'ok you can have open sentencing now there - all deals off' and I'm arguing for 5 years. <sup>3</sup>

MR. COLE: I thought his 4<sup>th</sup> option was file a lawsuit compelling the State to agree David to plead to the 1<sup>st</sup> information without having to forfeit the airplane. <sup>4</sup>

MR. HAEG: Is there any way to - if - if you - if you don't get things in writing and get a verbal agreement is there any recourse?

MR. COLE: Yeah.

MR. HAEG: And what is the recourse?

MR. COLE: You could file - if you thought that you had an agreement in place, and we discussed this, you could file a motion to enforce the agreement that was in place and submit an affidavit and I told you that you could do that in your case - that I would do in this case, if you wanted. It was goanna cost you a lot more money and where was it goanna get us? And we explained and we went through it time and time again.<sup>5</sup>

MR. COLE: Well like we talked about David if you file the motion and request to have open sentencing under the original information at the end the best that gets you is open sentencing at the - under the original information. And that means now you have to go in front of the judge in open sentencing and I told you time and time again in my opinion - in my legal advice you do not want to be in front of a judge in open sentencing because

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<sup>3</sup> Tr. Fee Arbitration p. 316.

<sup>4</sup> Tr. Fee Arbitration p. 318.

<sup>5</sup> Tr. Fee Arbitration p. 343.

I was very afraid that you would get more than a thousand dollar fine, more than 5 days in jail, and then you would lose your guide license for 5 years - which I felt you could not handle. I told you that time and time again. And you agreed with me. <sup>6</sup>

MR. COLE: I told you I didn't want to file the motion because I knew what would happen if you did file the motion. <sup>7</sup>

MR. COLE: I never heard you say that 'yes it is - I want to take that risk'. <sup>8</sup>

MR. COLE: Now for David to stand in here and say that he - that I didn't tell him this before he got here is just wrong - I did tell him over the phone that that was the deal. <sup>9</sup>

MR. COLE: ... no this is August 27<sup>th</sup> - an opportunity for open sentencing. <sup>10</sup>

MR. COLE: I handed him - I think I told him this is you know here's the deal. I just disagree with David when I said - when he says I never told him before. I did tell him before that Leaders had informed me that if he wanted to go open sentencing they were goanna to change the charges and it was goanna require a 3 year loss of license. I said it's not fair - I don't like it - but I don't have any discretion over what the prosecutor files as charges. And I said - and I have my notes here - we went through and talked about it - the options that he had with the group of people in there. <sup>11</sup>

MR. COLE: So we sat down in the room with the 4 people and I charted this for them. I - I don't know how many people there were - there was a number of people and we talked what his

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<sup>6</sup> Tr. Fee Arbitration p. 299.

<sup>7</sup> Tr. Fee Arbitration p. 300.

<sup>8</sup> Tr. Fee Arbitration p. 301

<sup>9</sup> Tr. Fee Arbitration p. 262.

<sup>10</sup> Tr. Fee Arbitration p. 262.

<sup>11</sup> Tr. Fee Arbitration p. 265.

options were and he was unhappy about the position he was being put in and I kept saying 'you know we went over this'.

MS. SHAW: What's...

MR. COLE: why can't I have my deal open sentencing on the original amended info - or original complaint? <sup>12</sup>

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<sup>12</sup> Tr. Fee Arbitration p. 266.