

STATE OF MARYLAND VS. BENYAMIN FLEISCHMAN

Transcript of Official Proceedings

Held on 01-08-04 Before Judge Glynn

STATE OF MARYLAND,

In The Circuit Court OF MARYLAND FOR BALTIMORE CITY

CASE NOS. 103211052 & 103211053

Plaintiff vs BENYAMIN FLEISCHMAN,Defendant

TRANSCRIPT OF OFFICIAL PROCEEDINGS

(Plea Agreement)

BEFORE: THE HONORABLE JOHN M. GLYNN, Judge

HEARING DATE: January 8, 2004

APPEARANCES:

For the Plaintiff: Tammy Griffin Lawman, . Assistant State's Attorney

For the Defendant: Howard L. Cardin, Esquire

Transcriptionist: Transcription Service: Nancy E. Guido

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DEFENDANT'S WITNESSES: None given EXAMINATION BY PG

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PLAINTIFF'S EXHIBITS FOR ID IN EV.

None given.

DEFENDANT'S EXHIBITS FOR ID IN EV.

None given.

PROCEEDINGS

(On the record -- 10:18:22)

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MS. LAWMAN: State of Maryland versus Benjamin Fleischmani; Case Number 103211052 through 053. Griffin Lawman (ph.) for the State.

MR. CARDIN: On behalf of the Defendant, Howard Cardin. Good morning, Your Honor.

THE COURT: Now my understanding is there's going to be a plea to second degree assault that carries a maximum lawful sentence of 10 years and the agreement is going to be the sentence is 10 years suspended, five years probation with a collection of requirements with respect to counseling, and no unsupervised contact with children under the age of 18 is that correct?

MS. LAWMAN: A stay away order, from the victim, Your Honor.

THE COURT: And visitation to be in accordance with what?

MS. LAWMAN: CPS, Your Honor. THE COURT: Okay.

MR. CARDIN: Child Protective Services.

THE COURT: Okay is that your understanding?

MR. CARDIN: That is, Your Honor. In addition, of course, there will be a motion or modification filed and we will be asking the Court to change this to probation before judgment at the appropriate time.

THE COURT: Now my understanding is the victim and the family are not present is that correct?

MS. LAWMAN: That is correct, Your Honor.

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THE COURT: But that they fully concur that this is the correct outcome?

MS. LAWMAN: Correct, Your Honor.

THE COURT: Okay. Would you raise your right hand so the Clerk can take down your information?

(The Defendant was duly sworn according to law) .

CLERK: Please state your first and last name for the record.

MR. FLEISCHMAN: Benjamin Fleischman. CLERK: Address?

MR. FLEISCHMAN: 1014 Flag Tree Lane, Pikesville.

CLERK: Okay; zip code?

MR. FLEISCHMAN: 21208.

CLERK: Date of birth?

MR. FLEISCHMAN: 10/31/1963.

CLERK: And how old are you today, sir? MR. FLEISCHMAN: Forty.

CLERK: Thank you.

MS. LAWMAN: Your Honor, to be clear, the State is calling the second count in 052.

THE COURT: Second degree assault.

MS. LAWMAN: Correcto

THE COURT: Okay; if you would please advise your client?

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MR. CARDIN: Certainly. Now Mr. Fleischman, we have indicated to the Court that we wish to tender this plea of guilty to second degree assault. Before the Court can accept that plea it must be satisfied that you understand that you enjoy certain rights and that those rights are being given up by tendering this plea do you understand that?

MR. FLEISCHMAN: (Inaudible)..

MR. CARDIN: So I am about to ask you-a number of questions to make sure that you understand what is going on here today, and that the Court can make a finding that you have voluntarily and intelligently given up these rights do you understand that?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: And again, we'll ask you to keep your voice up. If you have any questions, stop me I'll be glad to answer. answer them okay? If not, the Court will be glad to. How much education have you had?

MR. FLEISCHMAN: A Master's.

MR. CARDIN: Okay and so you certainly can read and write?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: And you understand what is going on here today?

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MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: And would it be fair to say that you and 1, along with many of the other persons here have met on many, many occasions to discuss this case?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: Now, you understand that you do have the right to continue your pleas of not guilty, and if you did you would be able to have a trial. That trial could either be a court trial or a jury trial. A jury is 12 persons selected from the community who would have to agree unanimously that the State had proven its case beyond a reasonable doubt before the jury could find you guilty. If you had selected a court trial then the Court would have to be convinced beyond a reasonable doubt. Do you understand that?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: Do you understand that by entering this plea of guilty you're giving up your right to a trial, be it a court trial or a jury trial?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: Do you further understand that had you pled not guilty and had there been a trial that the State would have called witnesses. Those witnesses would have testified from the witness chair under oath. You have a right to see those witnesses, a right to cross

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examine them through me as your counsel. That's your right of confrontation and cross examination of witnesses. By entering this plea of guilty you're giving up your right of confrontation and cross examination. Do you understand that?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: Do you further understand that had this case gone to trial you would have been able to call witnesses in your own defense. You would have been able to use the subpoena power of the Court to get those witnesses to come in, and you, yourself would have been able to testify. There will be no trial; thus you're giving up your right of compulsory process to have witnesses come in to testify. Do you understand that?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: Do you further understand that had you gone to trial you would have had the absolute right not to testify. That is your right against self-incrimination. By entering this plea of guilty you're giving up your right against self-incrimination. Do you understand that?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: All right. Now let me point out and let us make it clear at this point; you and I have

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discussed the fact that you are tendering this plea under *Alfred v. North Carolina*. That is, you are saying to this

Court that you believe you are innocent of this offense, but that because of the plea offer that

has been made to you in our discussions you have agreed or decided it would be in your best interests to enter this plea of guilty is that correct?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: And that is what you' re saying to this Court?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: Okay. Now, you understand that there were motions that were filed on your behalf. The Court would have ruled on those motions prior to trial. By entering this plea of guilty those motions become moot and, in fact, are withdrawn. Do you understand that?

MR.' FLEISCHMAN: Yes, sir.

MR. CARDIN: Do you further understand that had this case gone to trial, had you Been found guilty you would have had an automatic right of appeal to the Court of Special Appeals. By entering this plea of guilty you're giving up your automatic right of appeali do you understand that?

MR. FLEISCHMAN: Yes, sir.

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MR. CARDIN: Let me advise you at this pointi you would be able to file an application for leave to appeal but that is limited to four very narrow issues. Those issues are the jurisdiction of this Courti and I advise you that the events occurring in Baltimore City, and you being over the age of 18 gives this Court jurisdiction. Do you understand that?

MR. FLEISCHMAN: (Nods head yes) .

MR. CARDIN: The second issue you could raise is whether or not you received the proper assistance of counsel. Are you satisfied with the services that I have rendered?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: The third issue you could raise is whether or not the plea you are entering, the guilty plea you are entering is a free and voluntary act on your parto In that regard the Court needs to know whet?er or not anyone has threatened you, coerced you, or forced you in any way to get you to plead guilty.

MR. FLEISCHMAN: No, sir:.

MR. CARDIN: Other than the plea negotiations has anyone promised you anything to get you to plead guilty?

MR. FLEISCHMAN: No, sir.

MR. CARDIN: Is this, then, a free and voluntary act on your part?

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MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: The fourth issue that you could raise would be whether or not the sentence imposed by the Court is one that is allowed by law. I have advised you that second degree assault, the maximum penalty is 10 years, and the maximum period of probation that a Court can impose is five years, so that the sentence contemplated by the plea negotiations is certainly a sentence that is allowed by law. Do you understand that?

MR. FLEISCHMAN: (Nods head yes) .

MR. CARDIN: So what I've said to you is this. Although you would be able to file an application for leave to appeal, the likelihood of success is extremely remote. Do you understand that?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: Now, are you under the influence of any alcohol or drugs at this time?

MR. FLEISCHMAN: No, sir.

MR. CARDIN: Do you suffer from any mental or physical impairment that would prevent you from understanding what is going on here today?

MR. FLEISCHMAN: No, sir.

MR. CARDIN: Are you under the care of a psychiatrist or a psychologist?

MR. FLEISCHMAN: Yes

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MR. CARDIN: Okay; and that is as part of your counseling is that correct?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: Is there anything about that that would prevent you from understanding what is going on here today?

MR. FLEISCHMAN: No, sir.

MR. CARDIN: Have you recently been in a mental institution?

MR. FLEISCHMAN: No, sir.

MR. CARDIN: Are you on probation or parole?

MR. FLEISCHMAN: No, sir.

MR. CARDIN: Do you understand that if you were on probation or parole this guilty plea would be a violation of that probation or parole?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: Are you a citizen of the United States?

MR. FLEISCHMAN: Yes, sir,.

MR. CARDIN: Do you understand that if you were not a citizen of the United States, if you were mistaken about that, that this guilty plea would result in or could result in your deportation from the United States?

MR. FLEISCHMAN: Okay. MR. CARDIN: Okay.

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Now, having then understood all the rights that explained to you, and recognizing that you are these rights, is it still your desire to enter this plea of guilty at this time?

MR. FLEISCHMAN: Yes, sir.

MR. CARDIN: Okay.

THE COURT: Any questions for me or for your attorney?

MR. FLEISCHMAN: No, sir.

THE COURT: I find the plea is entered into I knowingly, voluntarily, and intelligently.

MS. LAWMAN: If called to testify, Your Honor, the State's witnesses would testify as follows. **That (Minor Victims Name Removed), date of birth Minor (Victims Date of Birth Removed), who was the (Relationship of Victim Removed) of Mr. Benyamin Fleischman, date of birth 10/31/19'63, who would be identified here in Court today as person standing at Defense counsel table, disclosed to her therapist that from the age of five to the age of ten Fleischman forced her to engage in sexual intercourse and various other sexual acts. (Minor Victims Name Removed) was living with Mr. Fleischman at the time at (Victims Address Removed), which is located in Baltimore City, State of Maryland. (Minor Victims Name Removed) was under the age of 18 and Mr. Fleischman was the custodian of (Minor Victims Name Removed) at the time.** That would be the statement of facts, Your

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THE COURT: Additions or corrections?

MR. CARDIN: And Your Honor, we agree that that's witnesses would testify to; this being an -

THE COURT: I understand you contest the facts the family of the victim and the victim wish to in this fashion.

MS. LAWMAN: Correct, Your Honor. MR. CARDIN: Yes, sir.

THE COURT: All right; very well.

Based upon that and the facts as recited in the I'll enter a find of guilty to the second degree count beyond a reasonable doubt. Anything else you wish to say on sentence?

MR. CARDIN: Yes, Your Honor; If I might. I have -- the Court will note all the witnesses who are the courtroom on Mr. Fleischman's behalf. I have them that we did discuss this matter in chambers and indicated to them that their presence here was certainly very important but they need not testify at this time. I believe as a result I would just like to proffer Court that there are witnesses here, not only locally, but from New York, from Minneapolis, I believe; from Florida; certainly coming from all areas to testify behalf of Mr. Fleischman. And I suggest to you and I

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~represent to you that he has just an excellent reputation in the community. That is the reason why I did ask the tcourt to consider and the Court did advise how we would handle a situation for probation before judgment.

I would like al so to put on the record -- I know these things are not adrmissible as far as trial is concerned, but indeed, there was a polygraph exarnination conducted at rny request, not to the knowledge of the State; and I have it here which does indicate that Mr.Fleischman was telling the truth when he denied these allegations.

The last thing I want to say to the Court before disposition is, Mr. Fleischnan is a photographer and is frequently commissioned to do jobs out or the State of Maryland; and so we are requesting that the probation orders specifically allow him to leave the State of Maryland for purposes of taking this employment.

He has also been engaged to do jobs out of this country, and he -- during -- while we were waiting for trail, in fact he had to turn down --

MR. FLEISCHMAN: Two jobs.

MR. CARDIN: -- at least two jobs because of In fact, I was getting ready to file a petition to to go on one and we decided ultimately that we not do that.

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As part of his pre-trial release order he was to turn in his passport. He attempted to do so

accept it. So I have been holding that I make that representation to the Court, since he was released. I also would ask the Court with regard to that whether or not the passport can, of be returned to him.

THE COURT: Is there any concern about that at

MS. LAWMAN: No, Your Honor. THE COURT: That's fine.

MR. CARDIN: So that will be returned to him; and that with regard to jobs out of the country we to will have to file some type of request for him to be able We understand that and we're prepared to do

THE COURT: I would ask the Clerk to note on the order that he's permitted to travel outside the of Maryland for the purposes of work. That's fine.

MS. LAWMAN: Your Honor, I would just like to be clear. Just one second.

THE COURT: Sure.
(Plaintiff and Defense counsel confer briefly) .

MS. LAWMAN: Your Honor, I would just ask that th e counseling requirement be through Parole and

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THE COURT: That's fine.

MS. LAWMAN: And be reflected on the probation order

MR. CARDIN: Your Honor, and one other thing; and I do apologize to the Court. With regard to traveling out of the state, and I should have realized this, he does have, family out of also. We would ask that he be permitted to -

THE COURT: That's fine.

MR. CARDIN: I don't think that's an issue now with the State.

MS. LAWMAN: Your Honor, as long as he follows

THE COURT: That's fine. No objection.

MR. CARDIN: Okay; thank you.

THE COURT: And I do appreciate so many people cming here today, and, I mean, a consideration of the plea is the fact that Mr. Fleischman has otherwise had a led an exemplary life without any other involvements with the criminal justice system and has a lot of community support. And obviously the fact that the family to be resolved in this fashion, 1 think, it's best interests of everybody given the unfortunate of the case.

Is there anything else? MR. CARDIN: No, Your Honor. We are prepared for

THE COURT: Does Mr. Fleischman have anything he to say?
(Mr. Fleischman. struggles to stand up) THE COURT: Are you okay?

MR. FLEISCHMAN: I've had back surgery. Sorry,

THE COURT: Anything else you wish to say?

MR. FLEISCHMAN: No, thank you.

THE COURT: All right.

Pursuant to our agreement, sir, the sentence is which will be suspended, five years probation, requirements recited before of no contact with under 18, cooperate with Child protective with respect to visitation, and appropriate sex counseling under the Department of parole and

MS. LAWMAN: And a stay away order from the Your Honor.

THE COURT: And stay away from the victim.

MR. CARDIN: Your Honor, it's not -- no unsupervised contact with children under 18.

MS. LAWMAN: No unsupervised contact

THE COURT: No unsupervised contact

MR. CARDIN: Yeah when you said no contact unsupervised contact it's no unsupervised contact.

THE COURT: That's fine. Right.

MR. CARDIN: And my client asked the same that brought us to the Court right before New Year's and that is what happens if he sees her -- you know, I -- we're going to work it out; and I explained to him that, you know the world has to go on, and his life will go on, too.

THE COURT: Right. You understand the sentence,

MR. FLEISCHMAN: Yes, sir.

THE COURT: You have 10 days to ask for a new trial, 30 days to request a leave to appeal, 90 days to request modification. Counsel can obviously do that for you by filing appropriate pleading in the courthouse. Any other Questions?

MR. FLEICHMAN: No, sir.
THE COURT: Good luck to you.

MS. LAWMAN: Your Honor, all counts not called in the State would ask be closed by operation of law, and State would enter a nolle prosequi in 103211053.

THE COURT: Very well.
MR. CARDIN: Thank you, Your Honor.

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THE COURT: Thank you.
MS. LAWMAN: May 1 be excused, Your Honor? THE COURT: Yes, thank you.
MS. LAWMAN: Thank you.
(Proceedings concluded -- 10:23:01)

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This is to certify that the foregoing the matter of State of Maryland versus Fleischman, Case Nos. 103211052 and 103211053, the Circuit Court of Maryland for Baltimore City on January 8, 2004 was recorded by means of videotape.
I hereby certify that the proceedings, transcribed by me to the best of my ability in complete.

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and accurate manner, constitute the official transcript thereof

In witness whereof, I have unto subscribed my name this 29th day of January, 2004
Nancy E. Guido