

Lisa Mango  
Senior Court Reporter

Proceedings

1 THE COURT CLERK: Number 1 on for sentencing,  
2 People versus Marc Fishman under SCR-70088-2018, formerly  
3 6293M-2018.  
4 Appearances.  
5 (Whereupon, Defendant is virtually present and  
6 before the Court)  
7 MR. DEMIRAYAK: Caner Demirayak, retained counsel  
8 on behalf of my client Marc Fishman.  
9 Good morning, your Honor.  
10 THE COURT: Good morning.  
11 MR. GREEN: Frederic Green and George Hlapatsos  
12 for the People.  
13 Good morning, your Honor. Nice to meet you.  
14 MR. H LAPATSOS: Good morning, your Honor.  
15 THE COURT: Good morning.  
16 This matter is on for sentencing today following  
17 the jury verdict on January 28, 2020 wherein the defendant  
18 failed to appear for sentence and a bench warrant was  
19 issued.  
20 For the record, the defendant is appearing  
21 virtually today with the assistance of a realtime  
22 transcription.  
23 An application was made by defendant to appear  
24 virtually. The Court in its discretion, given the  
25 circumstances, given the documentation which was received

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1 by the Court -- and I believe counsel was copied on this  
2 documentation that we received as well --

3 MR. GREEN: No, I have not seen the documentation,  
4 your Honor, and I requested it because I do have an  
5 objection on behalf of the People to the proceeding  
6 happening virtually.

7 The defendant is a fugitive from justice. He has  
8 an outstanding warrant in place since 2022 issued by a  
9 judge of the Supreme Court --

10 THE COURT: You can have a seat counselor.

11 MR. GREEN: I feel comfortable standing. Thank  
12 you, your Honor.

13 THE COURT: Okay.

14 MR. GREEN: You know, he is a fugitive and he has  
15 been a fugitive for three full years and for five years has  
16 not availed himself of the authority of the Court.

17 And so just as I guess we would say a preliminary  
18 matter, I do object to -- I respect the Court's discretion,  
19 of course, but I do object to the process of him being  
20 permitted to appear virtually for reasons that only the  
21 Court knows and for the fact that he is a fugitive and has  
22 an outstanding warrant that I think demands that he be  
23 present in Court as we generally do with defendants who are  
24 fugitives.

25 THE COURT: Okay.

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1 MR. H LAPATSOS: Your Honor, if I could just add.

2 THE COURT: Sure.

3 MR. H LAPATSOS: In addition, it is our position  
4 that because the bench warrant that was issued, as you  
5 recognize, in 2022 remains outstanding at this time that  
6 the defendant is not in a position to be able to move the  
7 Court for sentencing because of the outstanding bench  
8 warrant which must be satisfied pursuant to the CPL while  
9 the defendant is present within the state.

10 In the absence of the defendant's presence here,  
11 the bench warrant cannot be executed pursuant to the CPL  
12 and, for that reason as well, we're of the belief that this  
13 matter is not properly before the Court for the purpose of  
14 sentencing today.

15 THE COURT: Okay.

16 MR. DEMIRAYAK: If I could respond, your Honor,  
17 briefly.

18 THE COURT: Yes, go ahead.

19 MR. DEMIRAYAK: Thank you, your Honor.

20 So I would move to vacate the bench warrant today  
21 virtually.

22 I would also note Mr. Fishman is only a fugitive  
23 in light of the fact that he previously requested multiple  
24 times to appear at sentencing via video and was denied  
25 previously by other judges, other courts.

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1                   Additionally, the CPL and case law does permit the  
2                   Court to sentence a defendant in their absence. So whether  
3                   he is here in person, on video or what it may be, the Court  
4                   has absolute discretion to decide to sentence someone in  
5                   their absence, in person or on video and there is really  
6                   nothing against that.

7                   The People will not be able to cite any cases that  
8                   would state the Court's exercise of its discretion today  
9                   would be an abuse of its discretion.

10                  I do think that three years, three-and-a-half  
11                  years after a case, I think it is time to have some  
12                  finality here both for my client, both for the complaining  
13                  witness and obviously the People will have their mechanisms  
14                  to challenge anything, we'll have our mechanisms and I  
15                  think it will be good for all the parties to have finality  
16                  here.

17                  I believe the Court can vacate a warrant via video  
18                  or could sentence Mr. Fishman even in his absence if he  
19                  wasn't here, so that would be my position.

20                  And I believe the Court does have jurisdiction  
21                  and I believe the Court is in a position to sentence  
22                  Mr. Fishman today.

23                  THE COURT: All right --

24                  MR. GREEN: May I --

25                  THE COURT: I am going to give you an opportunity

1 to respond.

2 I want to make sure the record is 100 percent

3 clear. The Court in its discretion did permit Mr. Fishman

4 to appear virtually. The Court has given ADA

5 accommodations to Mr. Fishman based on his health, based on

6 the information that was provided to the Court concerning

7 his current state.

8 Accordingly, the Court in its solemn discretion

9 has decided to allow for ADA accommodations in this case

10 and, accordingly, the Court is prepared to move forward to

11 sentencing.

12 MR. GREEN: Just in response to your Honor's

13 comment and also counsel's comment, I think that the issue

14 of sentencing has not been accurately described by counsel

15 that wanting finality is the overarching goal of today's

16 proceeding.

17 If that was a concern of the defendant or his

18 counsel, he could have appeared on any of the 20 plus prior

19 appearances when this case was calendared by a judge for

20 him to be sentenced and time after time, year after year

21 this defendant has not submitted to the authority of the

22 Court and has never come to Court for five years.

23 It is quite extraordinary that in my decades of

24 practice I have never seen a defendant so determined to

25 avoid coming to Court. Not just someone who is a fugitive

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1 but someone who knows that Court is happening and  
2 essentially says to the Court I'm not coming.

3 I remind counsel that there is a victim in this  
4 case and this was a domestic violence case focused on an  
5 incident where a violation of an order of protection took  
6 place and where there was a victim.

7 And what the defendant is doing in saying we  
8 should all want finality and we should all just sort of  
9 wash our hands of this matter and see it ended really  
10 ignores the fact that for years he's thwarted the victim  
11 from getting justice and he has been doing this exact  
12 technique of avoiding Court for years.

13 Even before our criminal case arose, a Family  
14 Court judge jailed him because he delayed, didn't come to  
15 Court, didn't follow court orders.

16 And I just find it really not right that the  
17 record should have comments that say our desire to see  
18 finality in this process should be the overarching goal.

19 With respect to sentencing going forward today,  
20 although the Court has discretion to sentence a defendant  
21 on a misdemeanor when he is not there, he has to sign a  
22 waiver and present it to the Court and I presume present it  
23 to the People that specifically sets forth the provisions  
24 of the statute.

25 I don't know if such a document has been provided

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1 by counsel, but that is in the statute.

2 I know counsel says I can't cite to any case law.  
3 The statute says defendants have to be present for  
4 sentencing unless on a misdemeanor they've presented to the  
5 Court a waiver that specifically includes certain  
6 documentation that the CPL requires.

7 I ask the Court whether the Court has such a  
8 waiver because I think that that waiver needs to exist. If  
9 it exists and I just don't know about it, forgive me, but I  
10 haven't seen one. And if it doesn't exist, it would be a  
11 procedural bar to the sentencing going forward.

12 That is included in Criminal Procedure Law  
13 384.40(1) and (2) that I am citing to.

14 So that is my first procedural objection to the  
15 sentencing going forward.

16 My second procedural objection to the sentencing  
17 going forward is his fugitive status.

18 And my third procedural objection to the  
19 sentencing going forward is that we don't have an updated  
20 pre-sentence report in the case. Because he thwarted Court  
21 for all these years, the pre-sentence report that was  
22 written by the Department of Probation was written more  
23 than four years ago.

24 Although I've had what I would call a stale  
25 pre-sentence report in the DA's office file all these



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1 years, I communicated with the Probation Department  
2 yesterday about whether or not they had any update to the  
3 report and the deputy commissioner of probation that I  
4 spoke to, Mary Fusillo (phonetic), indicated to me that  
5 they were not comfortable with their stale pre-sentence  
6 report being used as the basis for the Court sentencing the  
7 defendant now and that they would want an opportunity to  
8 update it.

9 No one knows what this defendant has been up to  
10 for the past I would say four years, since 2021, when the  
11 pre-sentence report was originally written.

12 And to rely on something on a fugitive -- I'm  
13 sorry I keep saying that, but it is a fact he is a fugitive  
14 from justice. The Court of Appeals declined to grant him  
15 leave to hear something because they ruled that he was a  
16 fugitive in 2023. I think that we can't ignore that fact.

17 The Probation Department has expressed to me as of  
18 yesterday that they want an opportunity to do an updated  
19 pre-sentence report where they could advise the Court of  
20 anything they could learn about what his habits and  
21 behaviors have been for the past four years since they  
22 originally prepared the report.

23 I know it is a lot, your Honor, but those are many  
24 reasons why the People are opposed to sentencing going  
25 forward at this time in this manner.

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1 MR. DEMIRAYAK: Your Honor, the People are  
2 incorrect. There is no need for a waiver.

3 Mr. Fishman was likely given Parker warnings by  
4 the trial judge and he is well aware of his rights that if  
5 he is not present, the trial can go on without him, he can  
6 be convicted without him being present and he could be  
7 sentenced without him being present. So there is no need  
8 for some sort of waiver.

9 As far as a pre-sentence investigation report, as  
10 we all know, those are not required for misdemeanors. It  
11 was requested in this case, but it was not required. This  
12 is not a felony case. Sentencing can proceed without a  
13 pre-sentence investigation report.

14 Additionally, the Court of Appeals declined to  
15 review a non-assist final decision in a case that has not  
16 been fully subjected to a conviction and judgment following  
17 a jury's verdict.

18 A judgment does not attach until sentencing is  
19 final which is one of the reasons why the appellate courts  
20 have refused to assist us here.

21 We're not saying that we want finality for  
22 finality's sake. We're saying that the need for finality  
23 supports the Court's exercises in its discretion today.

24 And I just question the People's, you know, use of  
25 extreme resources on a misdemeanor where essentially what

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1 we've learned since then is the defendant was likely  
2 actually innocent, and obviously the jury did find him  
3 guilty and it is the law of this case currently, and I am  
4 not saying that it wasn't proven by a jury. We do intend  
5 to challenge it, but that's besides the point.

6 You know, this is not a situation where there was  
7 violence, physical harm. Mr. Fishman never went on the  
8 property. I don't want to re-litigate the case.

9 But this is not the victim that was victimized --

10 THE COURT: I have heard enough. I've heard  
11 enough. I think I've heard enough. I have given both  
12 sides an opportunity. Now it is my time.

13 First, I will address the waiver. Again, I don't  
14 necessarily believe that the waiver is necessary given the  
15 fact that the defendant is appearing here virtually today.

16 The PSR -- under 390.20, no PSR is required. This  
17 is a misdemeanor. We don't need a PSR.

18 As it relates to the warrant, the Court is going  
19 to vacate the warrant at this time. This was a warrant  
20 issued by me. I'm vacating the warrant. I am prepared to  
21 proceed today.

22 As it relates to finality, the Court is not going  
23 to be governed or bound by finality or anybody's desire for  
24 finality in this case. That is not why I am here.

25 I issued -- in fact, this will cover both points

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1           that I need to address right now.

2                     One, the issue of his failure to appear in prior  
3 court appearances, that is not before me.

4                     I had him before me, I had this case before me on  
5 one occasion. The defendant requested ADA accommodations  
6 that was denied and I moved forward on that case.

7                     I issued a decision as it relates to as to whether  
8 or not he is supposed to be here. I directed him to be  
9 present. He is here virtually.

10                    Albeit he did request ADA accommodations, and I  
11 believe I addressed it already. I indicated the Court is  
12 allowed to provide for ADA accommodations for a defendant  
13 to be present and be here before us.

14                    The Family Court issue is not before me. I did a  
15 lot of Family Court practice in my day. I am not doing  
16 Family Court practice today. I am here on the case before  
17 me, the sentence following a verdict which was rendered on  
18 January 28, 2020.

19                    Whether or not he was innocent or not, again, that  
20 is not before me. That is why I am cutting you off. I am  
21 not going to get into re-litigating issues. That is not  
22 why we are here. We are here for sentence. I understand  
23 the People's position. I understand the defendant's  
24 position.

25                    I am prepared to move forward today. Full stop.

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1 Full stop.

2 There were two prior PSRs prepared. Not required.  
3 Not needed for a misdemeanor. I am going to go forward  
4 today.

5 Do the People wish to be heard further at this  
6 time?

7 MR. GREEN: I want to be heard with respect to  
8 sentencing, but are you asking do I have anything else that  
9 I want to say about the ruling that you are making now or  
10 about sentencing?

11 THE COURT: Sure. As it relates to sentencing.

12 Again, I have heard enough. All right. I'm  
13 saying I'm going forward. Based on what I said just now, I  
14 have made a decision. I'm going to go forward today.

15 MR. GREEN: Your Honor, of course I respect what  
16 the Court is saying. I just am concerned that we are  
17 proceeding in a fashion that is in direct disregard of the  
18 Criminal Procedure Law and the Criminal Procedure Law  
19 does --

20 THE COURT: In what regards, counsel?

21 MR. GREEN: It requires him to sign a waiver.

22 I am uncomfortable as an officer of the Court  
23 participating in a proceeding where we are violating what  
24 dictates -- what is put in the CPL.

25 Why would we do that for a fugitive? Why would we

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1 deviate from the process laid out in the statute?

2 THE COURT: The Court in its discretion -- I  
3 believe the defendant is before us right now. We don't  
4 need a waiver to the fact the extent the defendant is  
5 appearing virtually. He is here.

6 It is not a situation where he is going to be  
7 sentenced in absentia, he is not here. He is here  
8 virtually.

9 I am prepared to go forward.

10 Counsel, to the extent you disagree with my  
11 position, you know exactly what to do.

12 MR. GREEN: Actually, I don't have a lot of  
13 remedies.

14 One of the reasons that -- the statute of his  
15 signing a waiver, 348.40(2), demands that he acknowledge  
16 what the sentence could be and is a relevant factor because  
17 we don't even know where he is.

18 We don't even know if he is in New York State.

19 I don't know -- if the Court issues a sentence  
20 that I ask the Court to impose, how would that even be  
21 executed, especially in light of us not taking a waiver  
22 from him where he expressly indicates that he knows what  
23 the sentence could be, which is what the statute demands?

24 THE COURT: And I can respond to that.

25 Irrespective of what your recommendation is, I'm

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1 not bound by your recommendation.

2 MR. GREEN: Of course. I understand that.

3 THE COURT: Whereas you may have a proposed  
4 sentence that you want me to execute or to order, I don't  
5 necessarily have to go with that.

6 MR. GREEN: Of course. But the statute says he  
7 has to acknowledge that he understands that you could  
8 impose whatever the maximum available is.

9 THE COURT: I will do it this way then.

10 On a misdemeanor, the defendant, Mr. Fishman, you  
11 understand the Court could sentence you to up to 364 days  
12 in the county jail? You understand that, correct?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: You understand that. All right.

15 MR. HLAPOTSOS: If I could just be heard with  
16 regard to the representations made by counsel for the  
17 defendant regarding his speculative claim that Parker  
18 warnings had been given at the time of the initial  
19 conviction that was returned by a jury verdict.

20 There is no indication in the record that I have,  
21 nor do I believe that counsel has produced the minutes from  
22 that proceeding, to demonstrate to the Court that in fact  
23 Parker warnings were given.

24 To make that presumption as a basis for his  
25 application today to have the defendant move forward with

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1 sentencing is premature and, at best, I would suggest that  
2 counsel's lack of significance in making his appearance  
3 today might not be a factor the Court can take into account  
4 if we were to request an adjournment of today's sentencing  
5 since this is a virtual appearance by the defendant and a  
6 virtual appearance by his attorney. The inconvenience upon  
7 them seems to be minimal.

8 And I would ask for an adjournment of the  
9 sentencing, again, for the purpose of enabling the People  
10 to have the victim present. She did want to give a victim  
11 impact statement before the Court. She is prepared to do  
12 so.

13 In addition, of course we do have the issue with  
14 regard to the outstanding warrants which I know you  
15 indicated are now deemed executed --

16 THE COURT: Not executed. I said I am going to  
17 vacate the warrant.

18 We are kind of getting ahead of ourselves right  
19 now.

20 MR. Hlapatsos: I am --

21 THE COURT: I am willing to vacate my warrant as  
22 I issued as a condition of sentence.

23 Once we get to sentence, I am going to vacate my  
24 warrant. I am going to tell you that right now.

25 MR. GREEN: What about --



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1 THE COURT: One second. You are not going to  
2 ambush me. I am going to talk too.

3 As it relates to what counsel mentioned just now,  
4 Parker warnings were issued on January 22, 2020. The  
5 matter was adjourned for trial and Parker warnings were  
6 given.

7 MR. Hlapatsos: So the defendant --

8 THE COURT: No. One second.

9 MR. Hlapatsos: Sure.

10 THE COURT: To the extent you are saying the  
11 victim wants to be here, sure, the victim can be here. To  
12 the extent you want an adjournment on that basis, the Court  
13 is prepared to adjourn so the victim can be here.

14 MR. Hlapatsos: Thank you, Judge.

15 THE COURT: But what I can't understand, what I  
16 can't understand is -- and, again, this is in the Court's  
17 own discretion. Because it is not a secret I was going to  
18 go forward and sentence him today. It is not.

19 So I don't understand why the People are coming in  
20 here today saying, you know, we want the victim to be here.  
21 Why isn't the victim here?

22 MR. Hlapatsos: In all candor, Judge, we  
23 anticipated there would be argument today on whether or not  
24 the defendant was legally entitled to be sentenced and we  
25 were confident that based upon the statutory --

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1 THE COURT: I hear you, counsel, you know, that  
2 you are confident your argument -- I would be persuaded by  
3 your argument. You have to understand I might not  
4 necessarily be convinced by your argument.

5 MR. GREEN: We did anticipate that and prepared  
6 orders of protection in anticipation --

7 THE COURT: I'm sorry. I am making a mess for the  
8 court reporter. I apologize.

9 Go ahead, counsel.

10 MR. HLAPATSOS: I just wanted to indicate that  
11 based upon the many functions that the sentencing  
12 proceeding serves, that the ability of the Court to move  
13 forward with sentencing today, that being already resolved,  
14 that the Court does find that it is capable under the  
15 circumstances of moving forward with sentence, the People  
16 would simply be heard with regard to a request to adjourn  
17 the sentencing procedure from today's date, again, based  
18 upon the lack of significant inconvenience that this  
19 provides to the defendant who is appearing virtually.

20 THE COURT: When can you have your victim here?

21 MR. GREEN: Can we have a moment to just talk,  
22 your Honor?

23 THE COURT: Sure.

24 (Pause)

25 MR. HLAPATSOS: Your Honor --

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1 THE COURT: One second. Because my understanding  
2 is that we do have victim statements here in the file.

3 So to the extent that we have victim statements in  
4 the file, is it that you are saying your victim wants to  
5 give an additional statement?

6 MR. H LAPATSOS: Your Honor, I wanted to give the  
7 victim the opportunity, again, since four years or  
8 approximately have passed since the last victim impact  
9 statement, the activities of the defendant are unknown to  
10 the People, his whereabouts are unknown to the People --

11 THE COURT: Have there been any violations of the  
12 orders of protection since -- you know, I will leave that  
13 question alone.

14 MR. H LAPATSOS: None that are prosecuted by this  
15 office at this time.

16 THE COURT: Then we have an answer.

17 MR. H LAPATSOS: But we do have, in addition to the  
18 warrant which you vacated --

19 THE COURT: One second. I am prepared to vacate  
20 it. I don't know that we vacated it yet. I want to do  
21 everything all together.

22 To the extent I am going to go forward with  
23 sentencing, I am prepared to vacate the warrant at that  
24 juncture when I am going to go forward with sentencing.

25 I want to make sure the record is 100 percent

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1 clear. To the extent the People are asking for an  
2 adjournment, I am looking right now and I have my staff  
3 looking for the victim impact statements.

4 And I get it, you are saying you want to be able  
5 to give a fresh victim impact statement notwithstanding the  
6 fact you are saying there have not been any violations  
7 which have been prosecuted by your office for the past four  
8 years, is that correct?

9 MR. H LAPATSOS: That said, no violations of the  
10 order of protection.

11 There was an arrest for a bail jumping charge on  
12 December 16th of 2022. That constitutes a new criminal  
13 violation subsequent to the conviction had before the jury  
14 in this Court and that might be a factor that also impacts  
15 upon the ultimate sentence decision.

16 THE COURT: However -- again, come on, counsel.  
17 We are not going to move the goal post. We are talking  
18 about your victim.

19 MR. H LAPATSOS: Yes.

20 THE COURT: So to the extent there is a bail  
21 jumping charge, I don't see the causal connection between a  
22 bail jumping and your victim.

23 MR. H LAPATSOS: I am relating the only misconduct  
24 by the defendant since his criminal conviction as  
25 determined by a jury is the bail jumping we are aware of.

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1                   With regard to any violations, because Mr. Fishman  
2                   has not availed himself of the Court over the ensuing four  
3                   years since his jury verdict, we don't have additional  
4                   information. If we had a more recent PSR, they would be in  
5                   a position to do the routine investigation that is --

6                   THE COURT: You are going around in a circle.  
7                   Come on. We don't need a PSR.

8                   MR. HLA PATSOS: Absolutely. It could be a  
9                   benefit.

10                  I am submitting you ask if Mr. Fishman has been  
11                  involved in any criminal activity since --

12                  THE COURT: My direct question was were there any  
13                  violations, right, as -- I guess I wasn't clear. My  
14                  apologies.

15                  When I said were there any violations, I am  
16                  talking about in relation to that victim, right.  
17                  Violations of the orders of protection.

18                  The orders of protection are still in place,  
19                  correct?

20                  MR. HLA PATSOS: Yes, Judge.

21                  THE COURT: I am asking you since then have there  
22                  been any violations of the orders of protection which have  
23                  been prosecuted by your office.

24                  MR. HLA PATSOS: None.

25                  But I --

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1 THE COURT: No new contempt charges have been  
2 filed?

3 MR. HLA PATSOS: No new charges have been filed.

4 I don't know if there has been improper contact  
5 with the victim. That has not yet been reported.

6 If I was able to have that one-week adjournment to  
7 reach out to the victim and provide her with the respect to  
8 enable her to bring anything to my attention so I could  
9 bring it to your attention any new events that might bear  
10 on the issue of sentence.

11 THE COURT: Okay. Counsel.

12 MR. DEMIRAYAK: Yes, your Honor. Just briefly.

13 CPL 380.50(2)(a) makes sure the victim's ability  
14 to testify in Court as a victim impact statement is  
15 generally for felonies, not for misdemeanors.

16 The People are using the defendant's own rights as  
17 a sword to delay sentencing here in the hopes of something.

18 I think we should proceed today.

19 I think if the People submitted written victim  
20 impact statements from the victim, that is enough to inform  
21 the Court's decision today. I don't think there would be a  
22 need for additional statements.

23 And, you know, if there were any more contacts  
24 with the Criminal Justice System anywhere in the world, the  
25 People could easily determine that by running their own rap

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1 sheet, going through CJA, which they should have done  
2 before today, and they would have been alerted if there was  
3 anything.

4 There has been, to my understanding and  
5 information and belief, no contact with the Criminal  
6 Justice System. No violations, no infractions since he has  
7 been convicted by a jury.

8 THE COURT: There is an old adage there is no  
9 victim in this crime.

10 In this case we don't have to speculate there was  
11 a victim.

12 I would be remiss as a judge here in Westchester  
13 County if I prevent a witness from coming in to make a  
14 statement on how the crimes committed by this defendant  
15 affected her.

16 Your arguments are not going to work with me today  
17 as it relates to whether or not the victim should be here  
18 and the fact it is a misdemeanor, not a felony and the  
19 victim doesn't need to be here.

20 That is in my discretion. I am going to allow the  
21 victim to come in here and to speak. Okay.

22 Give me a date, please.

23 MR. DEMIRAYAK: Are you asking me or the People,  
24 your Honor?

25 THE COURT: I am asking my staff, counsel.

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1 MR. DEMIRAYAK: Okay. Sorry, Judge.

2 THE COURT: So in accordance with CPL 370.15,  
3 within four to five days after arraignment on the charges  
4 and accusatory instrument for the above-stated docket, the  
5 defendant is required to be served with a proper notice  
6 alleging that a victim of the crime charged herein -- I  
7 left my glasses.

8 A violation of an order of protection is issued by  
9 Family Court to members of the family are held as that term  
10 is defined in CPL 530.11.

11 Is the defendant contesting the fact the victim  
12 in this case was his ex-wife?

13 MR. DEMIRAYAK: No, we don't dispute that and we  
14 can concede the parties are known.

15 THE COURT: All right. So there is no CPL 370.15  
16 issues to be resolved, is that correct?

17 MR. DEMIRAYAK: That's correct.

18 THE COURT: All right.

19 Next week, Tuesday, Wednesday, Thursday?

20 MR. GREEN: Whatever the Court sets is okay with  
21 us.

22 MR. HLAATSOS: At the pleasure of the Court.

23 THE COURT: All right. I am going to give you as  
24 much time as I can.

25 Can we do Thursday next week?



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1 (Pause)

2 THE COURT: Next Wednesday.

3 I am telling you right now -- as a matter of fact,  
4 I am going to issue Parker warnings right now as well.

5 I am going to proceed with or without the  
6 defendant on Wednesday.

7 Again, Mr. Fishman, you have a right to be present  
8 in any proceeding, hearing or trial. In fact, we are on  
9 for sentencing today.

10 Parker warnings were issued on the 22nd of  
11 January 2020.

12 Again, I am advising you, again, of your right to  
13 be present in Court for sentencing. Sentencing is going to  
14 proceed on Wednesday --

15 Wednesday is what date?

16 THE COURT CLERK: The 27th.

17 THE COURT: -- the 27th of August, next Wednesday.

18 To the extent that you are not here or your  
19 attorney is not here, we are going to proceed in your  
20 absence.

21 Do you understand, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: People.

24 MR. H LAPATSOS: Thank you, your Honor. We intend  
25 to appear on the 27th as directed.

## Proceedings

1 MR. DEMIRAYAK: I would just request that the  
2 defendant be permitted to appear virtually on the next date  
3 as well.

4 THE COURT: Did you place your name and address on  
5 the record, Mr. Fishman? I don't believe you did.

6 THE DEFENDANT: Your Honor, are you asking me a  
7 question?

8 THE COURT: I am asking you a question.

9 Did he place his name and address on the record?

10 I believe we got appearances from counsel.

11 Mr. Fishman, I am directing you to put your name  
12 and address on the record right now, sir.

13 MR. DEMIRAYAK: Go ahead, Mr. Fishman. Go ahead.  
14 Give them your full name and current address where you are  
15 presently.

16 THE DEFENDANT: Marc Fishman, 3200 Netherland  
17 Avenue, Bronx, New York 10463 is my official address.

18 THE COURT: I didn't ask for your official  
19 address.

20 Your attorney asked for you to put your address  
21 where you currently are.

22 MR. DEMIRAYAK: Your current location --

23 THE COURT: Counsel, I don't need your help.

24 MR. DEMIRAYAK: Sorry, Judge.

25 THE COURT: Let me remind you you are under oath,

## Proceedings

1           sir.

2                     State your name and address for the record now,

3           sir.

4                     THE DEFENDANT: My name is Marc Fishman.

5                     THE COURT: Your address, current address where  
6           you are right now.

7                     THE DEFENDANT: Where I am right now, Eisenhower  
8           Hospital in Rancho Mirage, California, 39000 Bob Hope  
9           Drive.

10                    THE COURT: Spell it for me please.

11                    THE DEFENDANT: Eisenhower, like the president.

12                    THE COURT: Okay. The present hospital.

13                    THE DEFENDANT: Rancho Mirage, California. I  
14           believe it is 39000 Bob Hope Drive, Rancho Mirage,  
15           California 92270.

16                    THE COURT: Anything else that we need to address?

17                    MR. HLAATSOS: No, your Honor.

18                    THE COURT: Be back here on the 27th for  
19           sentencing.

20                    9:30 on the 27th and we will send a link out.

21                    Again, the Court is allowing you to appear  
22           virtually. The Court is not allowing additional  
23           individuals to appear on this link. I want to make sure  
24           you are aware of that.

25                    It is an open courtroom. If they want to come

## Proceedings

1 into the courtroom, that's fine. But the Court is not  
2 going to open the link.

3 Counsel, I notice, for the record, you are in a  
4 car. I should have inquired of you -- when I was  
5 practicing, judges always inquired as to whether or not  
6 anyone else was in the car with me.

7 Please make proper accommodations or arrangements  
8 so that you can appear virtually to the extent the Court is  
9 allowing you to appear virtually.

10 I believe you have appeared here personally. I  
11 am not sure why you are appearing virtual.

12 MR. DEMIRAYAK: I am virtual because I have  
13 matters in Bronx Supreme Court.

14 THE COURT: Your matter is before me on Wednesday.  
15 I am directing you to be here on Wednesday at 9:30.

16 MR. DEMIRAYAK: Okay.

17 THE COURT: Okay. Thank you.

18 (Continued on the following page)  
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21  
22  
23  
24  
25

## Proceedings

1 MR. DEMIRAYAK: Okay. Thank you.

2 THE COURT: That concludes our business today.

3 MR. GREEN: Thank you, your Honor.

4 MR. HLAATSOS: Thank you, your Honor.

5 THE COURT: Take care.

6 \* \* \* \* \*

7 Certified to be a true and accurate transcript of  
8 the stenographic minutes taken within.

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12

A handwritten signature in cursive script, reading "Lisa Mango", is written over a horizontal line.

13

Lisa Mango  
Senior Court Reporter

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