

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
3

4 UNITED STATES OF AMERICA,)
5) CR20-174-MLP-JCC
6 Plaintiff,) SEATTLE, WASHINGTON
7)
8 v.) September 16, 2020
9)
10 ERIC SHIBLEY,) 2:30 p.m.
11)
12 Defendant.) Initial Appearance

13
14 VERBATIM REPORT OF PROCEEDINGS
15 BEFORE THE HONORABLE MICHELLE L. PETERSON
16 UNITED STATES MAGISTRATE JUDGE
17

18 APPEARANCES:
19
20

21 For the Plaintiff: Brian Werner
22 Assistant United States Attorney
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For the Defendant: Michael Nance
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1 THE CLERK: The next matter before the court is
2 scheduled for an initial appearance. This is 20-385, United
3 States of America versus Eric Shibley. We'll please take
4 appearances, starting with the government, followed by
5 defense counsel, then the Pretrial Services office. Thank
6 you.

7 MR. WERNER: Good afternoon, Your Honor. Brian
8 Werner on behalf of the United States.

9 MR. NANCE: Michael Nance, appearing for Eric
10 Shibley.

11 THE COURT: Mr. Nance, you cut out. So you want to
12 try that again?

13 MR. NANCE: Michael Nance appearing for Eric Shibley.
14 Is that better?

15 THE PROBATION OFFICER: Good afternoon, Your Honor.
16 This is Angela McGlynn, appearing on behalf of Probation and
17 Pretrial Services.

18 THE COURT: All right. Maybe it's my line that's
19 cutting out, because you cut out a little bit officer...

20 THE PROBATION OFFICER: Angela McGlynn.

21 THE COURT: All right. Can everybody hear me okay?

22 MR. WERNER: Yes, Your Honor.

23 THE PROBATION OFFICER: Yes, Your Honor.

24 THE COURT: I don't know if I can talk much more.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. Thank you. We'll both try to keep
2 our voices up.

3 Okay. Before we begin today, did you have an opportunity
4 to speak to Mr. Nance about appearing by video today?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And after consulting with Mr. Nance, do
7 you consent to proceed by video?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. Mr. Nance, it might be when I'm
10 unmuted and you're unmuted at the same time. That might be
11 causing the feedback. If you could mute -- or if we could
12 mute Mr. Nance. There, that's much better.

13 I promise if you want to speak, Mr. Nance, we'll make sure
14 you have that opportunity. Mr. Shibley, along the same
15 lines, if at any time you want to speak to Mr. Nance
16 privately, like you were just doing before we came on, just
17 let me know. I will stop this proceeding and you guys can
18 have a private conversation. Okay?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Now, you're here today because two
21 petitions have been filed against you with allegations of
22 domestic violence. The purpose of today's hearing is to go
23 over the allegations in the two petitions.

24 Do you have a copies of those petitions or were you given
25 copies of the petitions?

1 THE DEFENDANT: I was not given anything.

2 THE COURT: There you go. Those are the, presumably
3 the petitions. That's what those are. It should say
4 "petition" at the top.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Now, the purpose is to go over those
7 today and figure out how you'd like to proceed. But before
8 we do that, you should know you don't have to make any
9 statements about the allegations contained in the petitions.
10 You have the right to silence. You don't have to speak about
11 those allegations to me, or to law enforcement. But if you
12 do say something, it could be used against you. Okay? Do
13 you understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And you also have the right to counsel.
16 And Mr. Nance is here to represent you.

17 So at this time, Mr. Werner, if you could please advise
18 Mr. Shibley of the two allegations in the petitions, and the
19 penalties that are associated with those allegations.

20 MR. WERNER: Yes, Your Honor. Before I do that, I
21 want to raise something with the court -- I raised it with
22 Mr. Nance while the court was off, a minute ago -- that might
23 affect whether or not we go forward today.

24 My understanding is that Mr. Shibley had an appearance
25 this morning, or early this afternoon at the RJC. That

1 explains his garb. My understanding is that the FBI went to
2 pick him up from the RJC, and they might have -- and I think
3 they took him from the RJC before his release or his bail
4 process was completed at the RJC. That's probably my fault.
5 I told them to get him here as soon as they could get him
6 here, as soon as they can. But it's my understanding that
7 Mr. Shibley had not posted his bail in connection with the
8 state-court matter here; therefore, at the conclusion of this
9 proceeding, he would need to go back to the RJC, post his
10 bail and get released there.

11 A way to avoid that would be to not call the case,
12 basically request Mr. Shibley -- have the FBI return
13 Mr. Shibley to the RJC, have them finish the proceeding
14 there, get formally released from the RJC, and then be taken
15 into custody on our case, and appear most likely tomorrow on
16 our case. But there are a number of other ways that it could
17 be addressed as well.

18 But my understanding is that the proceeding -- he has not
19 formally been released from the RJC at this time. Again, I
20 raised this with Mr. Nance, he might have more information
21 than I do, but that's my understanding of what's going on
22 right now.

23 THE COURT: All right. Well, that sounds like a lot
24 of back and forth that's not necessary. So, Mr. Nance, what
25 is your position?

1 MR. NANCE: Your Honor, first of all I believe -- I
2 could be wrong -- but I believe he was at the King County
3 Jail earlier awaiting an appearance in front of Seattle
4 Municipal Court. Maybe I'm off on that. But he was on the
5 Seattle Municipal Court portal, and was scheduled to appear
6 this morning. I don't think that ever actually happened.

7 The court docket there suggests that there's a \$1,000 bail
8 that's out there. So it's possible that that would get him
9 out on that charge.

10 I don't like the idea of him going back there, then coming
11 back to your court. If anything, if he needs to come back, I
12 would ask the court to consider some kind of temporary
13 release on this matter, on the federal matter, so that he's
14 not jerked back.

15 He would ultimately deny the alleged violations here,
16 whether it's entered today or entered when he eventually has
17 to do a plea entry. I would argue that even if the court
18 were to find that there was probable cause to believe he's --
19 (unintelligible)

20 THE COURT: He's -- Mr. Nance, you're breaking up. I
21 don't know if it's just me.

22 MR. NANCE: What I'm trying to say is that the court
23 has some leeway here. You could do a temporary release now
24 and ultimately have him back, if the government insists on
25 having a hearing, where there would be -- we could argue

1 about conditions that would assure his future appearance and
2 community safety.

3 Because of the nature of the violations, probably the
4 greatest concern is for the well-being of this alleged
5 victim. I think those can be addressed. Mr. Shibley will
6 agree immediately to a permanent no-contact order regarding
7 this woman. He would take other proactive steps to prevent
8 or preclude her from coming to his house, his home. She's
9 had access to his home and office. We can change the locks,
10 if necessary. He would be sure to put the dead bolt on. He
11 would do whatever else is necessary to avoid further contact
12 with her.

13 So I guess for today, I'm asking the court to release him
14 on the federal hold, until he can resolve the Seattle
15 Municipal Court matter.

16 THE COURT: All right. I think I understand the
17 position. Basically the U.S. Government made Mr. Shibley a
18 fugitive in state court.

19 MR. WERNER: Well, you didn't like my idea, Your
20 Honor, of not making him a fugitive in state court and
21 sending him back immediately, so I'm prepared to go forward
22 with the bond hearing today. And obviously, again, I want to
23 keep this hearing on track and argue detention later. But of
24 course, Your Honor, we could reach out, my office, the
25 probation office, could reach out to the state court and

1 advise the state what's going on. If the court does decide
2 to keep Mr. Shibley in custody, we would make sure that no
3 issues would be raised there.

4 THE COURT: Okay. Well, let's do the initial
5 appearance. Let's get through that first. Go ahead,
6 Mr. Werner.

7 MR. WERNER: Yes, Your Honor. Mr. Shibley has been
8 charged with two violations of the terms of his bond. The
9 first violation charges him with committing the crime of
10 assault, domestic violence, on or about September 12, 2020;
11 the second violation charges him with committing the crime of
12 assault, domestic violence, on or about September 15, 2020,
13 both in violation of the standard conditions of his release
14 that he not commit a federal, state or local crime.

15 The maximum penalty that could be imposed here would be
16 the revocation of his release and he would be in custody
17 awaiting trial in this matter.

18 THE COURT: All right. So we will enter -- oh,
19 Mr. Nance, you've already informed me that he's going to deny
20 the allegations. But do you want to put that on the record?

21 MR. NANCE: Yes, Your Honor. We would deny both
22 allegations.

23 THE COURT: All right. And for the court reporter, I
24 think Mr. Nance said that he denies both allegations. You're
25 really breaking up, Mr. Nance, it's very hard to --

1 MR. NANCE: I'm sorry. Yes, you interpreted or heard
2 me correctly. He is denying the allegations.

3 THE COURT: All right. We will enter denials to the
4 two allegations and set this for an evidentiary hearing
5 before me, on what date, Mr. Quach?

6 THE CLERK: Your Honor, we can set this evidentiary
7 hearing on Friday, November 18th -- excuse me, Friday,
8 September 18th at 1:00 p.m. before Your Honor.

9 THE COURT: All right. That's Friday. So that's
10 good. Because, Mr. Shibley, I am not going to release you
11 pending that evidentiary hearing. And let me tell you why.
12 I originally got the first petition that there was some sort
13 of domestic violence incident, and that the police attempted
14 to arrest you, but you -- the allegations are, this is just
15 the allegations, that you locked the door. And they didn't
16 arrest you.

17 And so I thought, well, I'll give him a chance to -- I'm
18 not going to issue an arrest warrant at this time, I'm going
19 to give him the benefit of the doubt, and I'm going to issue
20 a summons so he appears. And that's just a completely
21 different circumstance than being arrested by the U.S.
22 Marshals.

23 Just a day later, or two days later, I get the second
24 petition that it's happened again. And that is completely --
25 it's the allegation that it happened again, let's be clear,

1 but those two allegations taken together leads me to believe
2 that even after the first one, it wasn't sufficient to have
3 the Seattle Police at your door. And so for the safety of
4 the alleged victim, until I know more, you will remain in
5 federal custody. And I will leave it to Mr. Werner or
6 Mr. Nance to figure out how you're going to deal with the
7 charges in state court. But that's my ruling, and I will see
8 you on Friday at 1 o'clock.

9 Anything further, Mr. Nance?

10 THE DEFENDANT: Can I speak with Mr. Nance?

11 THE PROBATION OFFICER: Your Honor, this is the
12 probation officer, and I just wanted to let you know that I
13 will call Seattle Municipal Court, as well as the Regional
14 Justice Center, and find out what we need to do to resolve
15 this matter regarding his being borrowed by the FBI.

16 THE COURT: Okay. Thank you, Officer McGlynn.

17 Mr. Nance, Mr. Shibley is trying to call you. Did you
18 know that?

19 JAIL GUARD: The phone for Mr. Nance is going to
20 voicemail.

21 MR. NANCE: I can call you directly, if I had a
22 number for you.

23 (The defendant met telephonically with counsel.)

24 MR. NANCE: I'm back on the record, I suppose. We
25 have nothing really to add. We'll plan to attend on Friday.

1 THE COURT: All right. Thank you. Mr. Werner,
2 anything further?

3 MR. WERNER: Nothing further from the government.
4 Thank you, Your Honor.

5 THE COURT: Okay. I do think, Mr. Werner, since you
6 created this situation, you should assist Mr. Nance and
7 Pretrial Services in making sure that it gets taken care of
8 on the Seattle Municipal Court side.

9 MR. WERNER: Understood, Your Honor.

10 THE COURT: All right. We'll be in recess.

11 (Adjourned.)

12

13 C E R T I F I C A T E

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16 I certify that the foregoing is a correct transcript from
17 the record of proceedings in the above-entitled matter.

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20

21 */s/ Debbie Zurn*

22 DEBBIE ZURN
23 COURT REPORTER

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