

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,	)	
	)	CASE NO. MLP-20-385-MLP
Plaintiff,	)	CR20-0174-JCC
	)	
v.	)	Seattle, Washington
	)	
ERIC SHIBLEY,	)	June 30, 2020
	)	10:30 a.m.
Defendant.	)	
	)	INITIAL APPEARANCE
	)	held via Zoom
	)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE MICHELLE L. PETERSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: AMANDA VAUGHN
 LAURA CONNELLY
 United States Department of Justice
 Criminal Division
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For the Defendant: MICHAEL NANCE
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Reported by: NANCY L. BAUER, CCR, RPR
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PROCEEDINGS

THE CLERK: The United States District Court for the Western District of Washington is now in session, the Honorable Michelle L. Peterson, presiding.

The matter before the court is an initial appearance in Cause No. MJ-20-385, United States of America versus Eric Shibley.

Counsel, please make your appearances for the record.

MS. VAUGHN: Good afternoon, Your Honor. Amanda Vaughn for the United States, here with my colleagues.

MR. WERNER: And good afternoon, Your Honor. Brian Werner on behalf of the United States.

MS. CONNELLY: And good morning, Your Honor. Laura Connelly on behalf of the United States.

MR. NANCE: Good afternoon, Your Honor. Michael Nance for Eric Shibley.

THE COURT: And from probation?

THE PROBATION OFFICER: Good afternoon. Lorraine Bolle from Pretrial Services.

THE COURT: Good afternoon, Officer Bolle.

Good afternoon, Mr. Shibley. Are you able to hear me okay?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Do you have a phone next to you that would allow you to have a confidential communication with

1 Mr. Nance?

2 THE DEFENDANT: I have a landline next to me.

3 THE COURT: Do you need to speak with Mr. Nance
4 privately? Were you able to speak to him?

5 THE DEFENDANT: I was able to speak.

6 THE COURT: Okay.

7 If at any time you would like to speak to Mr. Nance, just
8 let the court know, and the U.S. marshals can dial out to
9 Mr. Nance so that you can have a private conversation if you
10 have any questions during this hearing. Okay?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Now, prior to the hearing, did Mr. Nance
13 talk to you about your right to appear in person at this
14 hearing?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Are you having a hard time hearing me, or
17 are you just leaning forward to talk into the mike?

18 THE DEFENDANT: No, I can hear.

19 THE COURT: After consulting with Mr. Nance about the
20 pandemic and appearing by video conferencing, do you consent to
21 appear by video conference today?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Okay. We have made this hearing open to
24 the public via a call-in number on the court's website, so
25 family, friends, media, interested parties can listen in to the

1 hearing, and I will note that there are a number of call-in
2 people shown, which means people are taking advantage of the
3 call-in number.

4 Okay. We also have a court reporter appearing today, and
5 she's going to be taking everything down. So if at any time
6 you're not able to hear, Ms. Bauer, just let us know.

7 All right. Mr. Shibley, do you have in front of you a copy
8 of the complaint that was filed against you?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. Did you have an opportunity to
11 speak to Mr. Nance about that complaint?

12 THE DEFENDANT: Not particularly about the complaint,
13 because I just skimmed through it five minutes ago.

14 THE COURT: Okay. What we're going to do today is,
15 I'm going to ask the lawyers representing the government to go
16 over the allegations contained in the complaint, as well as the
17 maximum penalties.

18 But before we do that, Mr. Shibley, you have a couple of
19 rights I'd like to go over with you.

20 You have the right to remain silent. You don't need to
21 make any statement in court today. If you start to make a
22 statement and you decide you want to invoke your right to
23 silence, you can do that at any time. You also don't have to
24 make any statements to law enforcement about this case. Do you
25 understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: You also have the right to have counsel
3 present with you to assist you at this hearing and all future
4 hearings and to assist you in the defense of this case. If you
5 can't afford counsel, you can ask the court to appoint counsel
6 on your behalf.

7 I understand that you have retained Mr. Nance, and you are
8 not requesting court-appointed counsel at this time.

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. Mr. Werner, are you going to be
11 speaking on behalf of the government?

12 MR. WERNER: No, Your Honor; Ms. Vaughn.

13 MS. VAUGHN: I am, Your Honor.

14 THE COURT: Ms. Vaughn, please go over the counts in
15 the complaint as well as the maximum possible penalties
16 associated with those counts. And, Mr. Shibley, Ms. Vaughn is
17 going to go over the maximum penalties, so it's the most that
18 you can be punished.

19 Go ahead, Ms. Vaughn.

20 MS. VAUGHN: Yes, Your Honor.

21 The criminal complaint charges Mr. Shibley with two counts.
22 Count 1 charges Mr. Shibley with wire fraud and alleges that in
23 or around April 2020 through in or around June 2020, at Seattle
24 in the Western District of Washington and elsewhere, the
25 defendant knowingly devised and intended to devise a scheme and

1 artifice to defraud the United States to obtain money and
2 property by means of false and fraudulent pretenses,
3 representations and promises, and attempted to do so.

4 It alleges that, as part of the scheme to defraud, the
5 defendant submitted false and misleading loan applications to
6 various financial institutions in order to obtain funds under
7 the Paycheck Protection Program and the Economic Injury Disaster
8 Loan Program.

9 It is further part of the scheme to defraud that the
10 defendant submitted a loan application to Financial
11 Institution 1, seeking more than \$560,000 in funds under the
12 Paycheck Protection Program on behalf of an entity called
13 Detroit Construction LLC, and that the defendant included in the
14 loan application multiple material false statements that
15 included, one, that as of February 15th, 2020, Detroit
16 Construction LLC was in operation and had employees for which it
17 paid unemployment taxes, or had independent contractors; two,
18 that Detroit Construction LLC had monthly payroll expenses of
19 \$225,400; and, three, that the defendant was not currently on
20 probation.

21 To execute this scheme, the complaint alleges that on or
22 about April 30th, 2020, at Seattle in the Western District of
23 Washington and elsewhere, the defendant transmitted and caused
24 to be transmitted, by means of interstate wire communication, a
25 Paycheck Protection Program loan application on behalf of

1 Detroit Construction LLC, from the Western District of
2 Washington --

3 THE COURT: Ms. Vaughn, you're going to have to slow
4 down. Ms. Vaughn, stop. You're going to have to slow down. We
5 have court reporter, and, as you're reading, you are speeding
6 up.

7 MS. Vaughn: I will slow down, Your Honor. I'll back
8 up.

9 To execute the scheme, the complaint alleges that, on or
10 about April 30th, 2020, the defendant transmitted or caused to
11 be transmitted an interstate wire communication that was a
12 transmission of a Paycheck Protection Program loan application
13 on behalf of Detroit Construction LLC from the Western District
14 of Washington to Financial Institution 1 in Utah.

15 Count 2 of the complaint charges the defendant with bank
16 fraud. It alleges that from in or around April 2020 through in
17 or around June 2020, at Seattle in the Western District of
18 Washington and elsewhere, the defendant knowingly executed and
19 attempted to execute a scheme to obtain monies owned and under
20 the care, custody, and control of Financial Institution No. 1 by
21 means of false and fraudulent representations and promises.

22 It further alleges that Financial Institution 1 is a
23 federally insured financial institution as is defined in
24 Section 20 of Title 18 of the United States Code.

25 The complaint alleges that as part of the scheme to

1 defraud, Mr. Shibley, the defendant, submitted a loan
2 application under the Paycheck Protection Program to Financial
3 Institution 1 on behalf of Detroit Construction LLC for more
4 than \$560,000, and that loan application included the same
5 material false statements that were described with respect to
6 Count 1, the wire fraud count.

7 The complaint alleges that, to execute the scheme on or
8 about April 30th, 2020, at Seattle in the Western District of
9 Washington and elsewhere, the defendant submitted that loan
10 application in the name of Detroit Construction LLC to Financial
11 Institution 1, which included the materially false statements.

12 The maximum penalties for wire fraud, as charged in
13 Count 1, is 20 years of imprisonment, a fine not to exceed
14 \$250,000 or twice any pecuniary gain or loss, up to three years
15 supervised release, a mandatory special assessment of \$100,
16 restitution, and forfeiture of property as may be required.

17 The maximum penalties for bank fraud, which is charged in
18 Count 2, is up to 30 years imprisonment, a maximum fine of
19 \$1 million or twice any pecuniary gain or loss, up to five years
20 of supervised release, a mandatory special assessment of \$100,
21 restitution, and forfeiture of property as may be required.

22 THE COURT: Thank you, Ms. Vaughn.

23 Mr. Nance, do you concur with the overview of the counts
24 and the maximum penalties?

25 Mr. Nance, I can't hear you. I think you're on mute.

1 MR. NANCE: Let me try again. Can you hear me now?

2 THE COURT: Much better.

3 MR. NANCE: Yeah, we don't (inaudible) --

4 (Court reporter interrupts.)

5 MR. NANCE: Is that better?

6 Yeah, we aren't contesting probable cause. We agree that
7 the maximum penalties, as stated, are accurate.

8 THE COURT: Thank you, Mr. Nance.

9 Are you going to be waiving the preliminary hearing, or do
10 you still want a preliminary hearing scheduled?

11 MR. NANCE: I would like to keep it on the books for
12 the moment, and we can maybe talk later about waiving it. I'll
13 go ahead and reserve it.

14 THE COURT: Yes. Okay.

15 Mr. Shibley, do you understand the allegations against you?
16 I know you haven't had a chance to review the entire complaint,
17 but do you understand the allegations?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. So I do not have -- first, let's
20 schedule a preliminary hearing date. I believe he's going to be
21 out of custody, since I don't have a motion for detention, so we
22 can go out 21 days, if necessary.

23 Ms. Vaughn, did you want to say something?

24 MS. VAUGHN: No, Your Honor. I was just going to
25 confirm that we weren't filing a motion for detention.

1 THE COURT: Thank you.

2 THE CLERK: Your Honor, a preliminary hearing is
3 scheduled for Tuesday, July 21st, at 1:00 p.m., before Judge
4 Tsuchida.

5 THE COURT: All right. So the only issue before the
6 court, then, since there has not been a request for detention by
7 the government, is what conditions are necessary to ensure that,
8 Mr. Shibley, you will appear at your next court hearing and that
9 the community will be safe from any potential actions by you.

10 Mr. Nance, did you have a chance to go through the Pretrial
11 Services report with Mr. Shibley and talk about the conditions?

12 MR. NANCE: I did, and I believe they are agreeable.

13 THE COURT: Okay.

14 And, Ms. Vaughn, I assume -- did you want any input on the
15 conditions, or were the proposed conditions acceptable to you?

16 MS. VAUGHN: Yes, Your Honor, the proposed conditions
17 are acceptable to the government. We would also request that
18 the defendant be barred from contacting witnesses, and we can
19 provide a list of the witnesses in which the government is
20 currently aware, to the court, if need be.

21 THE COURT: I think that's one of our standard
22 conditions.

23 MS. VAUGHN: Our understanding was that the standard
24 condition was not to tamper with witnesses, but --

25 THE COURT: No --

1 MS. VAUGHN: -- if it is standard not to contact them,
2 then the no-contact is what we're seeking.

3 THE COURT: No, you're correct, it is tamper.

4 Mr. Nance, any issues with adding that? Or does he still
5 bank with these banks?

6 MR. NANCE: He does have a banking relationship, and
7 he also has -- he actually has -- I know the government is
8 skeptical of this -- he actually does have his employees that
9 the government would probably consider witnesses. So it seems
10 that -- (inaudible) --

11 (Court reporter interrupts.)

12 MR. NANCE: Mr. Shibley actually has employees,
13 current employees, that the government may regard as witnesses.
14 I don't know that we want to agree that he should not be
15 permitted to speak to current employees, if they're actually
16 doing legitimate work for him.

17 THE COURT: Okay. Well, what we will add, then, is he
18 will do the special condition of no contact with witnesses or
19 victims, and no discussion or conversations with witness or
20 victims about the investigation in this case.

21 MR. NANCE: That's fine.

22 THE COURT: Does that work for you, Ms. Vaughn?

23 MS. VAUGHN: That's fine with the government, Your
24 Honor.

25 THE COURT: Okay. Ms. Prather, did that make sense to

1 you?

2 THE CLERK: Yes, Your Honor. I've added that
3 condition, the "except for it should not be regarding the case."

4 THE COURT: Okay. "The investigation in this case."

5 So, Mr. Shibley, I know that you've gone over this with
6 Mr. Nance.

7 What I'm going to do at this time is, the court clerk is
8 going to draft up an appearance bond, and this is going to be an
9 agreement that you're going to make, to abide by certain
10 conditions while you're on pretrial release.

11 Obviously, I can't give those conditions or the appearance
12 bond to you in person, so what will happen is, your attorney is
13 going to review it and go over it with you on a separate phone
14 line. We might have to have the U.S. marshals open up that
15 line. And the court clerk is going to email it to government
16 counsel, as well as your attorney and me. We'll all go through
17 it together. You'll go through it privately with Mr. Nance, and
18 then when we come back into court, I'm going to ask you if you
19 have any questions or confusions about the conditions. I'll
20 then go over the conditions, and I'll have you affirm on the
21 record that you will agree to those conditions.

22 And then before you leave the courthouse today, the U.S.
23 marshals will print you that appearance bond so that you have
24 those conditions with you before you leave. Okay?

25 Ms. Prather, if you could send that around, and if the

1 United States marshals can open up the attorney line so that
2 Mr. Nance -- and, Mr. Nance, if you could go over each and every
3 one of those conditions with Mr. Shibley, because I will ask you
4 on the record to confirm that you've done that.

5 Let's mute, Mr. Nance.

6 THE CLERK: Your Honor, this is the clerk. The
7 appearance bond has been sent to all parties.

8 (Off the record.)

9 THE COURT: Mr. Nance, can you hear?

10 MR. NANCE: Yeah, I can, I can, but I'm not seeing
11 you.

12 THE COURT: It's not important to see me.

13 MR. NANCE: Yep.

14 THE COURT: Okay.

15 MR. NANCE: I made a mistake. In readily agreeing to
16 a couple of conditions, because I, frankly, just hadn't read
17 them closely enough, among the special conditions are that, as
18 currently set forth, the defendant shall not use, possess, or
19 have access to a computer or a computer component.

20 I thought we were agreeing to his being fully monitored
21 with anything that he would do online.

22 He's a physician. He's got lots of reasons that he needs
23 to get online -- email, communicating with patients, and living
24 life -- and that seems particularly restrictive to me, in view
25 of his willingness to, basically, pay for the installation of

1 monitoring software so that anything he does or visits online,
2 on either his laptops or his cell phone, the government and the
3 court is going to know about it. So that's one exception --
4 major exception we have.

5 The other is this notion of being required to submit to
6 polygraph tests, which was not a part of what -- this kind of
7 started earlier today. The government went over its notion of
8 what the proper conditions would be, and there was no reference
9 to a polygraph or anything of that.

10 We were agreeable to that, and I think we were agreeable to
11 everything else, but not this notion of no access to computers
12 in general and being required to submit to a polygraph.

13 THE COURT: Well, okay. So let me take the first one.

14 So he's not to have access without the prior approval of
15 Pretrial Services, but I agree it needs to be explicit that he
16 may have access to his computers in order to conduct business,
17 with the proper monitoring of his computers.

18 Does that need to be explicit, or are you concerned that
19 Pretrial Services is going to revoke his right to use computers?

20 MR. NANCE: Well, the way this is currently written,
21 it is "the defendant shall not use, possess, or have access to a
22 computer or a computer component."

23 THE COURT: Without the approval of Pretrial Services.
24 Do you need me to explicitly include that condition?

25 MR. NANCE: I do see that.

1 Well, I guess as long as we're clear that the default would
2 be that he can use the computer, except for these forbidden
3 purposes, looking for COVID-related financial relief or other
4 such things.

5 THE COURT: No, Mr. Nance. The default will be he
6 cannot use his computer unless he needs to use it to run his
7 businesses and support his livelihood. So that's my impression
8 of why that condition is written the way it is.

9 If Pretrial Services is too restrictive and is not
10 permitting Mr. Shibley to access his computers with the proper
11 monitoring software, then that's something that you can bring to
12 the court's attention. But I do think this is a necessary
13 condition, given the allegations in the complaint.

14 MR. NANCE: All right.

15 THE COURT: It is a privilege to be able to use his
16 computers to continue operating his business, and that privilege
17 is going to come with the proper monitoring by Pretrial
18 Services.

19 Now, I agree the polygraph test is over the top, so we can
20 remove that.

21 MR. NANCE: And I think it's been addressed, but in
22 talking to Mr. Shibley, just for his peace of mind, the final
23 condition under the special conditions regarding direct or
24 indirect contact with witnesses or potential witnesses would not
25 restrict him from openly communicating with current employees

1 concerning legitimate job duties and requirements, provided that
2 he doesn't discuss this investigation with them or attempt to
3 influence their cooperation for statements to the authorities.

4 THE COURT: Yes, he can have contact with witnesses or
5 potential witnesses, as long as it doesn't involve the
6 investigation of this case.

7 MR. NANCE: All right. Thank you.

8 THE COURT: Ms. Prather, do you see where it says,
9 "Submit to polygraph testing"? I missed that, too. I didn't
10 see that in there.

11 THE CLERK: Yes, Your Honor, I found it and removed
12 it.

13 THE COURT: Yes. I think that's a standard condition
14 for a different type of case. So let's remove that sentence and
15 then recirculate it.

16 Ms. Vaughn, did you want to be heard at all on those
17 changes?

18 MS. VAUGHN: No, Your Honor. The government doesn't
19 have any objection to those changes.

20 THE COURT: Okay. Thank you, Ms. Vaughn.

21 Ms. Prather has circulated a revised appearance bond.

22 Mr. Shibley, did you have an opportunity to go through that
23 appearance bond line by line?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Mr. Nance, did you cover every condition

1 in the appearance bond with Mr. Shibley?

2 MR. NANCE: Yes, I did.

3 THE COURT: Okay. Thank you.

4 Mr. Shibley, I'm not going to go over everything in the
5 appearance bond, but I, just for the record, want to make sure
6 you understand that there are some pretty restrictive conditions
7 in this appearance bond, most of them relating to your ability
8 to access the Internet and computer usage. But you're also
9 going to be permitting the Pretrial Services officer to put a
10 monitoring software on your computer so they can see everything
11 that you do. Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And you're also going to have to submit
14 information regarding your financial status, as well as allowing
15 the Pretrial Services office to run a credit report on you.
16 You'll be restricted from opening any new credit card or
17 anything like that. Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And do you understand, to the extent you
20 have to have contact with potential witnesses because of your
21 business, that you are not to talk to them about this
22 investigation or this case in any way, shape, or form? Don't
23 even get near the outer edges of the investigation.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Now, I'm going to read to you a statement,

1 and at the end of the statement, I will ask you if you will
2 affirm or agree to that on the record.

3 Do you understand and agree to comply with every condition
4 marked above, and do you understand that if you fail to comply
5 with any condition of your release, the court will immediately
6 issue a warrant for your arrest and you will be subject to a
7 revocation of release and order of detention and prosecution for
8 contempt of court? Do you understand this appearance bond
9 remains in effect during any proceeding on appeal or review?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: I am signing the appearance bond. You'll
12 get a copy of the appearance bond before you leave court today.
13 If you have any questions, you can contact the Pretrial Services
14 officer, or you can contact Mr. Nance.

15 My recommendation is it's always good to get clarification,
16 if you're unsure about something. There is a lot of
17 complicated, moving pieces here, and so if in doubt, call
18 Mr. Nance. Okay?

19 THE DEFENDANT: Okay.

20 THE COURT: All right. Or your Pretrial Services
21 officer.

22 All right. I have signed the bond, and I'm sending that
23 now.

24 Is there anything further, Ms. Vaughn?

25 MS. VAUGHN: Nothing further from the government, Your

1 Honor.

2 THE COURT: Okay. Mr. Shibley, your next court date
3 is July 21st, and that's the preliminary hearing. I forgot to
4 mention that.

5 THE DEFENDANT: Thank you.

6 THE COURT: Anything further, Mr. Nance?

7 MR. NANCE: Nothing further. Thank you.

8 THE COURT: Okay. We'll be in recess.

9 (Proceedings concluded at 2:54 p.m.)

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C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 7th day of May 2022.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter