

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,	)	
	)	CASE NO. MLP-20-385
Plaintiff,	)	CR20-0174-JCC
	)	
v.	)	Seattle, Washington
	)	
ERIC SHIBLEY,	)	September 28, 2020
	)	10:00 a.m.
Defendant.	)	
	)	REVOCATION HEARING
	)	
	)	

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

APPEARANCES:

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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.

Your Honor, the matter before the court this morning is an evidentiary hearing on bond revocation in Case MJ-20-385, United States of America versus Eric Shibley.

Counsel, please make your appearances for the record.

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

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

THE PROBATION OFFICER: Good morning, Your Honor. Angela McGlynn on behalf of Pretrial Services and Probation.

THE COURT: All right. Good morning.

I got some feedback when Mr. Nance was speaking. Hopefully, that doesn't persist.

If at any time, Ms. Bauer, you're not able to hear, please just let us know, and we'll try to fix the problem.

All right. And I have another person on video. I think Officer Montgomery is going to be testifying, but it says that you're Katie Moran. So I'm guessing that you used her log-in information.

You're muted.

1 THE WITNESS: Yes, Your Honor. Officer Montgomery,
2 Seattle Police Department.

3 THE COURT: Okay. Great.

4 All right. To begin, there's no recording or broadcasting
5 of these hearings. It is strictly prohibited by the court's
6 local rules.

7 Mr. Shibley, can you hear me okay?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Mr. Shibley, prior to this hearing, did
10 you have an opportunity to speak to Mr. Nance about the fact
11 that you'd be appearing by video today?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And after consulting with Mr. Nance, do
14 you consent to appear by video?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right.

17 Mr. Shibley, we are here today for an evidentiary hearing
18 on two petitions that were filed against you alleging that you
19 violated the terms that I set for release in the appearance
20 bond.

21 Now, before we begin, I have reviewed a number of
22 documents. Let me state for the record, there are two motions
23 to seal; one was filed by the government at Docket No. 26, and
24 another filed by the defendant at Docket No. 21. I do find that
25 there is good cause to seal those exhibits, and I will grant the

1 motions at Docket No. 26 and Docket No. 21.

2 Now, prior to this hearing, I did go back and review the
3 original pretrial report, which is at Docket No. 3, dated
4 June 30th, 2020. I reviewed both the pretrial petition, Docket
5 No. 15, and the supplemental pretrial petition at Docket No. 16.
6 I did review, Mr. Nance, your status memo at Docket No. 22. I
7 reviewed the government's memorandum at Docket No. 24, and the
8 exhibits that were attached thereto at Docket No. 27.

9 Is there anything else that I should have reviewed that I
10 have not gone over?

11 Mr. Nance, I'll start with you.

12 MR. NANCE: No, Your Honor. That's -- I think
13 that's -- I think that's complete.

14 THE COURT: All right. Mr. Werner, is there any
15 additional information that I should have reviewed?

16 MR. WERNER: No, Your Honor.

17 THE COURT: All right. So we will proceed with the
18 evidentiary hearing.

19 Mr. Shibley, so you're aware -- I'm sure you've spoken to
20 Mr. Nance about this -- the purpose of this hearing is to
21 determine whether or not there is probable cause to believe that
22 you violated federal or state law, and so that's what the focus
23 of this hearing is going to be.

24 I'll start with you, Mr. Werner. If you are calling a
25 witness or if you want to call a witness and then make argument,

1 or what's your plan?

2 MR. WERNER: Your Honor, I would like to call Officer
3 Montgomery, present his testimony, allow for cross-examination,
4 and then that would complete the government's presentation. We
5 would prefer to argue at that point.

6 THE COURT: All right. Please proceed, Mr. Werner.

7 MR. WERNER: Thank you, Your Honor. The government
8 calls Officer Jeremy Montgomery, the Seattle Police Department.

9 THE COURT: Mr. Montgomery, if you could state your
10 full name for the record, please.

11 THE WITNESS: Yes. My name is Jeremy Thomas
12 Montgomery of the Seattle Police Department.

13 THE COURT: And if you could please raise your right
14 hand.

15 JEREMY MONTGOMERY,
16 having been previously sworn, testified as follows:

17 THE COURT: Please proceed, Mr. Werner.

18 DIRECT EXAMINATION

19 BY MR. WERNER:

20 Q. Good morning, Officer Montgomery.

21 A. Good morning.

22 Q. Officer Montgomery, do you have a binder with four exhibits
23 in front of you?

24 A. I do.

25 Q. Okay. Officer Montgomery, that binder includes reports

1 from the incidents we're going to be talking about, so if at any
2 time you need to refresh your memory by looking at the reports,
3 they're marked as Exhibits 1 and 2. Okay?

4 A. Okay.

5 THE COURT: Mr. Werner, if I could just interject? I
6 forgot one thing.

7 Mr. Shibley, do you have a separate line to speak
8 confidentially to Mr. Nance?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. If at any time during this hearing
11 you want to have that confidential communication with Mr. Nance,
12 please let me know, and we'll make that happen.

13 Also, Mr. Shibley, did you have the opportunity to review
14 the exhibits that Mr. Werner is referring to?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: All right. Mr. Werner, as you're going
17 over the exhibits, if you could please share your screen so
18 Mr. Shibley can see those.

19 MR. WERNER: Yes, Your Honor. Will do.

20 Q. (By Mr. Werner) Officer Montgomery, what are your duties
21 with the Seattle Police Department?

22 A. I'm a patrol officer stationed at the Southwest Precinct.
23 I respond to 911 calls and proactive patrol in my district.

24 Q. And does the Southwest Precinct cover West Seattle?

25 A. It does.

1 Q. Directing your attention to the early hours of September
2 14th, 2020, were you on duty that early morning of September
3 14th, 2020?

4 A. I was.

5 Q. Did you receive a call directing you to 4700-36th Avenue
6 Southwest?

7 A. I did.

8 Q. And did you respond to that address?

9 A. Yes.

10 Q. Had you been to this address before?

11 A. Yes.

12 Q. And can you describe this location, 4700-36th Avenue
13 Southwest?

14 A. It's a clinical office that is owned by Mr. Shibley.

15 Q. Is that where Mr. Shibley resides?

16 A. Yes.

17 Q. Again, who else resides at this location?

18 A. Michelle Batistelli. She lives there with him. She is an
19 employee of his, and they, at some time in the past, had a
20 romantic relationship.

21 Q. Approximately how many times have you visited this
22 location?

23 A. Over a half dozen times in the past.

24 Q. And those are in your capacity as a Seattle police officer?

25 A. Yes.

1 Q. And can you describe those other visits?

2 A. Some have been domestic disturbances between the two of
3 them; others have been issues relating to -- (inaudible).

4 (Court reporter interruption.)

5 A. Yes. As I stated before, I responded there over a half
6 dozen times in the past. Some have been domestic disturbances
7 between Mr. Shibley and Ms. Batistelli, and others have been for
8 (inaudible) issues regarding Ms. Batistelli.

9 THE COURT: Can you repeat that? What issues?

10 THE WITNESS: Crisis issues.

11 Q. (By Mr. Werner) Officer Montgomery, the domestic
12 disturbances, what prompted the call for your visits to the
13 residence when the call-out was based on a domestic disturbance?

14 A. For the incident on the 14th?

15 Q. I'm, actually, asking in the past.

16 Who called you there -- who called the police there for the
17 domestic disturbances?

18 A. Oftentimes, it was Michelle. If my memory serves, I
19 believe, once or twice Mr. Shibley called. Generally, they were
20 arguments between the two of them.

21 Q. Now, going to the early morning hours of September 14th,
22 when you arrived at the residence that first time, what did you
23 observe?

24 A. Well, referring to my report, Michelle was heavily
25 intoxicated. She was crying. I observed two healing bruises on

1 either side of her cheek, and she stated that Mr. Shibley had
2 assaulted her two days prior, causing those injuries.

3 Q. I'm going to show you a copy of Exhibit 3. Do you
4 recognize this first page of Exhibit 3?

5 A. Yes.

6 Q. What is this?

7 THE COURT: All right. Just a minute, Mr. Werner.
8 Let me confirm.

9 Mr. Shibley, are you able to see the shared screen?

10 Is he unmuted?

11 THE CLERK: He is unmuted, Your Honor, yes.

12 THE COURT: Mr. Shibley, can you see the screen?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. Go ahead, Mr. Werner.

15 Q. (By Mr. Werner) And, again, Officer Montgomery, for the
16 record, what is this first page of Exhibit 3?

17 A. That is a photograph of Ms. Batistelli that I took of her
18 with my department-issued cell phone.

19 Q. And this from the first incident, the early morning hours
20 of September 14th, 2020?

21 A. Yes.

22 Q. I'm now showing you the second page of Exhibit 3. Do you
23 recognize that?

24 A. Yes.

25 Q. And what is it?

1 A. Another photo of Ms. Batistelli that I took with my
2 department-issued cell phone.

3 Q. Officer Montgomery, the early morning hours of September
4 14th, 2020, did you speak with Mr. Shibley when you were at the
5 residence?

6 A. I did not.

7 Q. Did you try to speak with him?

8 A. My partner, Officer Oliverson, called him several times at
9 his cell phone number and was eventually able to reach him and
10 speak with him.

11 Q. Did he come and meet the officers in person that night?

12 A. He did not.

13 Q. Did he respond to the allegation that he had hit the victim
14 in this case?

15 A. He denied assaulting her two days prior, and alleged that
16 she assaulted him two days prior.

17 Q. After you were unable to talk to Mr. Shibley in person,
18 what did you do at the scene?

19 A. We offered Ms. Batistelli resources, tried to see if she
20 would want to go to the hospital, a hotel, some other location
21 where she could be safe, and she refused any further assistance.

22 Q. Did you take Mr. Shibley into custody that evening?

23 A. No. We were unable to locate him. He was behind a locked
24 door in the bedroom.

25 Q. Directing your attention to the next day, the early morning

1 hours of September 15th, 2020, did you receive a call directing
2 you to the same address on 36th Avenue Southwest?

3 A. Yes.

4 Q. And what did you observe when you appeared at the residence
5 on the early morning hours of September 15th?

6 A. As we approached, Ms. Batistelli was at the door. She was
7 again very upset and crying. I noticed she had a laceration on
8 the bridge of her nose and bruising beneath both of her eyes,
9 and these were new injuries from my contact the previous day.

10 Q. What did she say to you?

11 A. She stated that approximately two hours prior, she'd been
12 sleeping in bed when Eric entered and woke her up. They got
13 into a verbal argument. He hit her several times, and he left.

14 Q. Showing you now what has been marked as Exhibit 4, do you
15 recognize this image from Exhibit 4?

16 A. I do.

17 Q. What is this?

18 A. The image of Ms. Batistelli that I took with my
19 department-issued cell phone.

20 Q. And, again, you observed a laceration on Ms. Batistelli on
21 September 15th that you did not see on September 14th, correct?

22 A. Correct.

23 Q. After she told you -- she told you that Mr. Shibley had hit
24 her, and then Mr. Shibley had left, correct?

25 A. Correct.

1 Q. And then what did she do after Mr. Shibley left?

2 A. She stated that she hid in the bedroom for about two hours
3 until she was sure he was gone, and then she went across the
4 street to a neighbor and asked for assistance. The neighbor
5 called 911.

6 Q. Did she receive medical treatment those early morning hours
7 of September 15th?

8 A. Yes. She was evaluated by the Seattle Fire Department, and
9 then she was taken to Virginia Mason Medical Center.

10 Q. And, again, showing you the fourth page of Exhibit 4, is
11 this another picture from that evening?

12 A. Yes.

13 Q. That night?

14 A. Yes.

15 Q. Besides the face, did you take any other pictures -- sorry.
16 I should be clear.

17 Did you take these pictures, Officer Montgomery?

18 A. I did.

19 Q. Besides the two pictures of the face, did you take any
20 other pictures?

21 A. Yes. In the binder in front of me, Exhibit 4, there are
22 also two pictures of Ms. Batistelli's left hand.

23 Q. I'm sharing the second picture.

24 Why did you take pictures of the hand?

25 A. Her left middle finger was slightly swollen, and she was

1 complaining that it was possibly broken or sprained.

2 Q. On September 15th, again, after the woman received medical
3 treatment, were you able to locate Mr. Shibley?

4 A. Yes.

5 Q. Where was he?

6 A. Ms. Batistelli advised that Eric was driving a silver
7 sedan. Officer Oliverson and myself decided to canvass the
8 surrounding area. Officer Oliverson was driving southbound
9 along 36th Avenue, the 4700 block, and he observed a silver
10 sedan pull up and park on the street. He approached the
11 vehicle, and he observed Mr. Shibley inside the vehicle.

12 Q. Did the officer speak with Mr. Shibley?

13 A. Yes. We both spoke with Mr. Shibley at the vehicle, and
14 then we took him into custody.

15 Q. What, if anything, did Mr. Shibley say to you?

16 A. He denied assaulting the victim and stated that he left the
17 residence earlier in the morning that day, on the 14th, and he
18 was just now returning.

19 Q. Did he explain why he had pulled up away from the
20 residence? Did he explain why he didn't park at the residence
21 where he lived?

22 A. No, he did not.

23 Q. Again, for the record, Exhibit 1 and Exhibit 2 are copies
24 of your reports. Have you had a chance to review them?

25 A. Yes, they are my reports, and yes, I've had a chance to

1 review them.

2 MR. WERNER: Your Honor, I'd offer those for the
3 court's consideration. It sounds like the court has had a
4 chance to review them, so perhaps that's not necessary.

5 I have no other questions for Officer Montgomery.

6 THE COURT: All right. Thank you, Mr. Werner.

7 Mr. Nance, it is your witness.

8 MR. NANCE: Thank you.

9 CROSS-EXAMINATION

10 BY MR. NANCE:

11 Q. Officer Montgomery, can you hear me?

12 A. Yes.

13 Q. Officer Montgomery, did you have a partner with you in the
14 early morning hours of September 14th?

15 A. Yes, I did.

16 Q. Okay. You responded to the residence at 4700-36th Avenue
17 Southwest about 12:37 in the morning or so?

18 A. Yes.

19 Q. And you determined, pretty quickly, that -- was it
20 Ms. Batistelli that had called 911?

21 A. Yes.

22 Q. You described her as heavily intoxicated?

23 A. Yes.

24 Q. How did you make that determination?

25 A. She was slurring her speech, and her eyes were watery and

1 bloodshot, and, based on my experience with her, she is a
2 chronic abuser of alcohol.

3 Q. You mentioned there were previous -- I think you used the
4 expression "crisis issues" with her that you personally
5 experienced with her?

6 A. Yes. I've taken several reports from her in the past.

7 Q. Have those all involved her being heavily intoxicated?

8 A. Most of them, yes.

9 Q. Emotionally distraught?

10 A. Yes.

11 Q. Crying?

12 A. Yes.

13 Q. Now, on this particular occasion, she did not allege that
14 she had been assaulted that night; is that correct?

15 A. That is correct.

16 Q. Instead, she told you that she and Mr. Shibley had argued?

17 A. Yes.

18 Q. And the only comment about assault was something she said
19 occurred two nights previously?

20 A. Correct.

21 Q. She could not, or, at least, did not describe how that
22 alleged assault occurred, did she?

23 A. She only said he hit her. She did not provide any further
24 details.

25 Q. Nor did she describe the reason for the argument that very

1 evening, did she?

2 A. She did not.

3 Q. On that meeting, she refused to be examined by the Seattle
4 Fire Department; is that right?

5 A. She did.

6 Q. Refused to go to the hospital?

7 A. Yes.

8 Q. Refused to meet with the mobile team at the precinct?

9 A. Yes.

10 Q. Despite being asked to do so, she refused to leave the
11 residence?

12 A. Correct.

13 Q. Refused to accept any other medical services that were
14 offered to her?

15 A. Correct.

16 Q. Refused to provide a taped statement about what happened?

17 A. Correct.

18 Q. And declined to accept the DV pamphlet that was offered to
19 her?

20 A. Correct.

21 Q. And so you, the police, left her at the house that evening?

22 A. Correct.

23 Q. And then the next contact was the following day, around the
24 same time, early morning of the 15th?

25 A. Correct.

1 Q. Was it the same situation? You and your partner came out
2 together, responded?

3 A. Correct.

4 Q. And, again, you met up with Ms. Batistelli. Was she on the
5 front porch of the residence at this time?

6 A. Yes; she was just inside the front door.

7 Q. Was she intoxicated again?

8 A. Yes.

9 Q. And she claimed at that time that Mr. Shibley had assaulted
10 her?

11 A. Correct.

12 Q. But Mr. Shibley was not there at that time?

13 A. He was not present.

14 Q. Ms. Batistelli was treated at the scene and transported to
15 the hospital; is that right?

16 A. Correct.

17 Q. She signed a release for her medical records; is that --

18 A. Correct.

19 Q. Were you able to obtain those records?

20 A. I have not.

21 Q. And it was some time after she was transported from the
22 scene that Mr. Shibley drove up and parked in the area?

23 A. Correct.

24 Q. And was arrested?

25 A. Correct.

1 MR. NANCE: That's all I have. Thank you.

2 THE COURT: All right. Thank you, Mr. Nance.
3 Anything further, Mr. Werner?

4 MR. WERNER: No, Your Honor.

5 THE COURT: All right. Officer Montgomery, you're
6 free to stay on -- well, you should stay on the hearing, but
7 you're free to leave your camera on, or you can turn it off.
8 You're done testifying at this time.

9 Mr. Nance, do you have any witnesses or exhibits?

10 MR. NANCE: We do not have any testimony beyond --
11 we'd like the court to consider our proffer we made in writing.
12 There are denials in place, the officer has testified to that,
13 but we have no -- no live witnesses to present at this time.

14 Thank you.

15 THE COURT: Okay. Thank you, Mr. Nance.

16 Mr. Werner, I'll hear argument from you first.

17 MR. WERNER: Your Honor, as the court indicated at the
18 outset of the hearing, the standard here is whether or not there
19 is probable cause to believe a crime has been committed.

20 After the testimony today and the evidence that's been
21 presented to the court, both in written and in oral form, I
22 think the focus of my argument will be on the second night, the
23 second violation on September 15th.

24 While I think there is evidence to support probable cause
25 for the first night, I think the evidence is stronger for the

1 second night.

2 Again, the evidence is that there is a history of domestic
3 disturbance between Mr. Shibley and the woman who lives with
4 him.

5 On the night in question, September 15th, 2020, we have
6 testimony that the victim, Ms. Batistelli, reported an assault.
7 At that time, she made a statement contemporaneous to the
8 officer. She indicated that she'd been hit by Mr. Shibley,
9 repeatedly. She indicated -- the officer observed a mark on her
10 forehead, a laceration on her forehead that was not there the
11 day before. We have evidence that Ms. Batistelli had a mark
12 across the bridge of her nose that was not there when the
13 officer was there just 24 hours prior.

14 When Mr. Shibley was -- Mr. Shibley was gone from the
15 scene. He had left the scene, again, likely hoping that he
16 would not be -- he would be able to just miss the officers
17 again, like he had the night before, and just avoid the whole
18 situation altogether and avoid getting arrested.

19 And, again, I think the fact that he had left the
20 residence, that he refused -- instead of going back to his
21 residence, he parked a few blocks away, again with the idea of
22 avoiding the situation -- again, the evidence is -- that he
23 caused.

24 The last bit of evidence, I think, the court can consider
25 is to take judicial notice that the municipal court in this case

1 has found probable cause. There was a hearing, and they found
2 probable cause to proceed on the assault by Mr. Shibley in the
3 early morning hours of September 15th, 2020.

4 I think the evidence, altogether, shows that there is
5 probable cause to believe that Mr. Shibley assaulted
6 Ms. Batistelli on or about September 15th, 2020, and I believe
7 the court should so find.

8 THE COURT: I don't know if this is a question for
9 you, Mr. Werner, or a question for Officer McGlynn, but do we
10 know if these prior no-contact orders and assaults on his
11 criminal history involve Ms. Batistelli?

12 THE PROBATION OFFICER: Your Honor, Angela McGlynn
13 here on behalf of pretrial.

14 I am not sure. I know that Mr. Shibley has a history with
15 his ex-wife, the mother of his son. But I would have to review
16 the pretrial report more specifically to know if the previous
17 victim was Ms. Batistelli.

18 THE COURT: Did you have an opportunity to speak with
19 Tyrone Rose?

20 THE PROBATION OFFICER: No, Your Honor. I do not
21 know who --

22 THE COURT: Trevor Rose.

23 THE PROBATION OFFICER: I do not know who Trevor Rose
24 is.

25 THE COURT: I believe that's his state probation

1 officer. It's in the pretrial service report. It says, "The
2 defendant completed a domestic violence evaluation and was in
3 treatment. He failed to appear for his probation appointments
4 on April 2019, August 2019. A message was left with the
5 defendant's probation officer, Trevor Rose; however, a return
6 phone call has not been received."

7 Do we know if Officer Parkhurst has followed up on that, or
8 anyone?

9 THE PROBATION OFFICER: The previous pretrial officer
10 was Michael Munsterman, and I don't have any information
11 regarding that.

12 THE COURT: One more question for you, Ms. McGlynn.

13 On September 14th, I believe, I signed a summons for
14 Mr. Shibley to appear on the first allegation of domestic
15 violence.

16 Do we know, was Mr. Shibley made aware of that summons
17 prior to the September 15th incident?

18 THE PROBATION OFFICER: I don't believe so, Your
19 Honor. The summons would have been issued Monday and then sent
20 to Mr. Shibley. I would have to look back at the record, but I
21 did not originally provide the address to the court of
22 Mr. Shibley, because I had requested a warrant, and then when a
23 summons was issued, I provided the address of Mr. Shibley to the
24 court, and a summons would normally be mailed to the defendant.
25 So I'm not sure if Mr. Shibley would have been advised of that.

1 I did not advise him.

2 MR. NANCE: Your Honor, maybe I could enlighten the
3 court a little bit on that.

4 I learned of the summons within hours of it being issued.
5 I received email notification of that. And I immediately tried
6 to contact Mr. Shibley. I was unable to reach him until after
7 he had been arrested the following evening. So I don't believe
8 he knew about it. I certainly didn't (inaudible).

9 THE COURT: Can you mute the Katie Moran line? We're
10 getting some feedback.

11 One other question I had, and I don't know if this is
12 dispositive of anything, but there are allegations both that
13 she's a girlfriend, she's an acquaintance, she was five months
14 pregnant, she's not pregnant.

15 Mr. Nance, do you have any information as to -- I did read
16 your proffer, and I do understand that there was a time when
17 they were boyfriend and girlfriend, but Mr. Shibley has been
18 trying to break that off.

19 Do you know anything about -- was she pregnant, not
20 pregnant?

21 MR. NANCE: Your Honor, I, actually, reached
22 Ms. Batistelli by phone, and I asked her, just pointblank, "Are
23 you pregnant?" She told me that she was not, and I didn't get
24 into details. I left it at that. She said she wasn't. I
25 accepted that.

1 We haven't seen it, but there is a medical report taken
2 immediately after she was transported in. It would probably
3 confirm that one way or the other. But she's told me that she
4 was not -- that she is not pregnant.

5 THE COURT: Okay. Thank you.

6 THE PROBATION OFFICER: Your Honor, could I address
7 that for a minute?

8 THE COURT: Yes, please.

9 THE PROBATION OFFICER: I would just like the court to
10 be aware that the pretrial report is a self-report from
11 Mr. Shibley.

12 In addition, when, on Friday, I believe, the -- let's see.
13 That would have been the 12th -- no, Friday the 11th of
14 September, I had a text-message conversation with Mr. Shibley.
15 I asked Mr. Shibley who Ms. Batistelli was and was she his
16 girlfriend, and his response was, "No, she is an acquaintance
17 and a former employee." There's some -- so when he answered me,
18 the correct answer should have been, "No, she's my
19 ex-girlfriend," and I think that Mr. Shibley was, you know,
20 dismissing that or -- he wasn't being truthful with regard to
21 who she was and what his relationship was with her.

22 So it has -- he hasn't been truthful or fully disclosed the
23 relationship, and so it's unclear exactly what his motives have
24 been to say that she was pregnant or not pregnant, that she's
25 his girlfriend.

1 But what I do know is that when Mr. Shibley filled out a
2 pretrial intake form, in his own handwriting, he wrote -- there
3 is a question that says, "Who resides in your home?"
4 Mr. Shibley wrote Ms. Batistelli's name, her age, and that she
5 resided in his home and that she was his girlfriend.

6 So I'm not exactly sure when they broke up or what their
7 relationship currently is, but it does appear that Mr. Shibley
8 has not been completely truthful with probation with regard to
9 this relationship.

10 THE COURT: Okay.

11 Anything in response, Mr. Nance?

12 MR. NANCE: Yes.

13 I would characterize the relationship being one in
14 transition. Maybe that's the best gloss to put on it. They
15 were in a romantic relationship at one time. The relationship
16 has been deteriorating for a long while.

17 The report that Mr. Shibley made in June, at that point,
18 she was still his girlfriend, and something -- well, in the
19 interim, he no longer considers her his friend. He doesn't want
20 to be in the relationship, and certainly the relationship,
21 apparently, has no future at this time.

22 So I suppose he could have phrased it differently, that
23 she's an ex-girlfriend. But she's currently not his girlfriend,
24 in his view.

25 THE COURT: All right. Thank you.

1 And just to clarify, Officer McGlynn, it appears
2 Mr. Shibley was on probation for a no-contact protection-order
3 violation when the underlying incident occurred in this case, as
4 well as the two bond violation allegations; is that right?

5 THE PROBATION OFFICER: That is correct. I think the
6 no-contact order is with his ex-wife, the mother of his child.

7 THE COURT: She must reside in Anacortes.

8 THE PROBATION OFFICER: To my knowledge, she lives in
9 Anacortes with her son, yes.

10 THE COURT: All right.

11 Mr. Werner, I'm prepared to rule, unless you have anything
12 further.

13 MR. WERNER: Again, Your Honor, the issue of, I guess,
14 release or detention, I don't know if the court is going to
15 entertain argument separately about that. I'm done with my
16 presentation on the bond violation. I do have some comments on
17 release or detention, but if you want to handle that separately,
18 Your Honor, I can address that later.

19 THE COURT: Well, I was going to handle it all at the
20 same time, so go ahead, Mr. Werner.

21 MR. WERNER: Thank you.

22 I know the proposal from defense here is to allow the
23 victim to stay in the residence and put Mr. Shibley in a new
24 residence. I don't think that is a good plan. To my knowledge,
25 it's not been vetted through the probation office here. I don't

1 quite understand how that would work with Mr. Shibley's medical
2 clinic being -- with Mr. Shibley not being allowed to go to his
3 own medical clinic.

4 So I think that's an issue. Again, if the court were to
5 consider releasing Mr. Shibley, I don't think it's properly
6 addressed here, Your Honor. So I think that's another reason
7 that detention is the response here, Your Honor. Thank you.

8 THE COURT: Mr. Nance?

9 MR. NANCE: Yes, thank you.

10 Your Honor, first of all, there's some change or some
11 (inaudible) with the situation.

12 THE COURT: Mr. Nance, you were breaking up. Maybe
13 try one more time.

14 MR. NANCE: Okay.

15 There's some change in circumstances. Ms. Batistelli, we
16 believe, is no longer in the home. And I base that on a report
17 from Mr. David Madrid, who is on the line and can confirm this.

18 That is that -- Mr. Madrid, just by way of introduction,
19 is, basically, a real estate -- a realtor and property manager.
20 He has been working with Mr. Shibley in his businesses and is
21 very familiar with the home/medical clinic in West Seattle.
22 He's also familiar with Ms. Batistelli.

23 In any event, he received a voicemail message Saturday
24 evening from Ms. Batistelli, telling him that she had moved out
25 of the residence and had gone to live with her mother. He knows

1 her mother lives in Stockton, California. And so maybe that's a
2 good solution, to move out of the area.

3 The current plan would be for Mr. Shibley to return to his
4 own home in West Seattle, where he has the medical clinic and
5 his residence, and to reside there.

6 He's well aware that there's a no-contact order regarding
7 Ms. Batistelli. The biggest red flag from her might be her
8 trying to contact him. Now, it kind of doesn't matter. If she
9 tries to contact him, he knows he has to resist all overtures
10 from her.

11 He's prepared to change the locks on his house. He's
12 prepared to change the access code. He certainly would decline
13 to take any calls from her, or the like, and even to report her
14 attempts to contact him, if that ever happens.

15 He's also prepared to wear a location monitoring device, if
16 it's necessary. I don't know that it would be if she's out of
17 the area. And I would invite the court to confirm anything,
18 regarding her placement, with Mr. Madrid. He's on the line.

19 THE COURT: You might need to restate that last
20 sentence.

21 MR. NANCE: I was going to say, Mr. Madrid, who is on
22 the line, could confirm any property issues, management issues.

23 We approached this thinking that we needed to deal with the
24 prospect of her placement. If it wasn't going to work with her
25 staying in Mr. Shibley's home, then she needed to be somewhere

1 else where she could be safe. It appears she has largely
2 addressed that on her own. I mean, good for her. She's
3 contacted her family. According to her own message, she's gone
4 to live with her mother.

5 So, hopefully, that concern is addressed.

6 The court, of course, has discretion to make a finding that
7 there's been a violation and still amend the conditions of the
8 bond to permit Mr. Shibley out.

9 If you consider the primary concerns about making future
10 court appearances or fleeing the area, he's got property in the
11 area. He's got lots of ties in the area. He's surrendered his
12 passport. He's been in compliance with all the bond conditions.

13 So Ms. Batistelli has been the problem here, of recent
14 vintage, and if she's out of the home and he's not having
15 contact with her, then it should be a workable situation.

16 And, of course, he's already under this other no-contact
17 order, a very strict one, from the Seattle Municipal Court. So
18 he'll have two different jurisdiction scrutinizing his movements
19 and comings and goings on this.

20 So I would urge the court to reinstate a bond, and impose
21 any appropriate additional conditions, if you feel that any are
22 necessary.

23 THE PROBATION OFFICER: Your Honor, I would like to
24 address that for one moment.

25 THE COURT: Sure, Officer McGlynn.

1 THE PROBATION OFFICER: Thank you.

2 This has not been vetted by probation at all. Last I heard
3 on Friday, Ms. Batistelli had no family, nowhere to go, no one
4 to help her. In fact, they were concerned that she would have,
5 you know, a place to live, enough money to eat. She had no
6 resources whatsoever.

7 And I had a long discussion with Mr. Nance regarding how to
8 approach this, and if she would live in Mr. Shibley's home or
9 one of Mr. Shibley's rentals. So I have not been able to verify
10 that she has, in fact, left the area, because I was under the
11 impression that she had absolutely no resources.

12 THE COURT: All right. Thank you, Officer McGlynn. I
13 appreciate that information.

14 Mr. Shibley, the purpose of the evidentiary portion of the
15 hearing is to determine whether or not there is probable cause
16 to believe that a crime was committed while you were on release,
17 and that you committed the crime.

18 Now, it's a low standard. It doesn't really require a
19 whole lot of evidence to show that there's probable cause to
20 believe that the crime was committed, and I do find that there
21 is probable cause. I think the government has more than met its
22 burden of showing that there were injuries suffered by
23 Ms. Batistelli, and that there's a history of these types of
24 calls to your residence. Also, I've reviewed the police
25 reports. Those seem to be very strong. And I do agree with the

1 government; another court has already determined that there was
2 probable cause that a domestic crime has been committed. So I
3 find that there is proximate cause.

4 Now, the next matter the court needs to review is whether
5 or not there are conditions or a combination of conditions that
6 would ensure, essentially, the safety of the community. I'm not
7 concerned about whether you'll appear at your next court
8 hearing, but I'm very concerned about the safety of the
9 community, whether it's the ex-wife or the ex-girlfriend,
10 Ms. Batistelli.

11 In doing so, the court looks at the 3142(g) factors, and
12 that includes your history and characteristics, the nature of
13 the offense charged, and the safety of the community.

14 Now, in addition, though, if the court finds that the
15 person is unlikely to abide by any condition or combination of
16 conditions, I can revoke the release on that ground, under 18
17 U.S.C., 3148(b)(2)(B), and that's the tough part. There's a
18 rebuttable presumption that there are no conditions that will
19 ensure the safety of the community.

20 And normally I would try to find conditions that would
21 ensure the safety of the community, especially given these
22 particular times and the fact that you haven't even been charged
23 by indictment in this case. You're still here on a complaint.
24 You don't have a trial date.

25 But my concern relates to the second element, and that is

1 whether or not you're likely to abide by the conditions. And
2 here's the trouble: I look at your past history and the
3 no-contact orders that you have had with your ex-wife, and I am
4 concerned that there is, at least, an allegation that you
5 violated the no-contact order with your ex-wife four different
6 times; that you were sentenced to a term of imprisonment for
7 violating the no-contact protection order.

8 You were ordered to go to a domestic violence evaluation
9 and treatment, and it appears, although we haven't confirmed it
10 with your probation officer, that you never attended, at
11 least -- did not attend at least two of those appointments.
12 You've been ordered to go to anger management. It's not clear
13 whether or not you completed that condition of your sentence.
14 But even after serving time in jail, there's an allegation that
15 you violated the no-contact protection order again in June of
16 2018. And so while you're on probation for the no-contact
17 protection order against your ex-wife, or with your ex-wife,
18 there's allegations that you've committed domestic violence
19 against your current girlfriend, or ex-girlfriend, and that's
20 very, very concerning, because it just reveals to me that you
21 are not a person that is going to abide by the condition that I
22 set that you not have any contact with Ms. Batistelli or -- in
23 this case, you already have a no-contact order with the ex-wife.

24 And so I do find there is probable cause to believe that
25 you committed a crime while on release, and I will find you are

1 unlikely to follow any condition or combination of conditions
2 that I set, so I will detain you pending trial in this matter.

3 Mr. Nance, did you have anything further?

4 MR. NANCE: Only that we would ask the court, because
5 this has created a lack of ability to fully vet the full
6 circumstances, we would ask the court to leave open the prospect
7 of revisiting this issue once that can be fully vetted.

8 If, in fact, Ms. Batistelli is truly out of the picture and
9 in a safe place and likely to have any future contact with
10 Mr. Shibley, we would ask leave to bring that back before the
11 court.

12 THE COURT: Yes.

13 Mr. Shibley, so you understand: If there's a change in
14 circumstance, so if we learn additional information about either
15 your prior criminal history or Ms. Batistelli's whereabouts,
16 Mr. Nance can reopen the detention hearing. You can also appeal
17 the detention hearing to a district court judge. You don't have
18 one assigned currently, but Mr. Nance could file the proper
19 paperwork to get a district court judge assigned.

20 So, yeah, I mean, it's not a final decision until your
21 trial date. It's just, based on the information that I have
22 been given, I have serious doubts about your ability to abide by
23 conditions that you not contact these people.

24 Now, Mr. Shibley was raising his hand. I don't know if you
25 can see that, Mr. Nance. Mr. Nance, did you want to talk to him

1 or do you want him to speak in open court?

2 MR. NANCE: It probably would be better if we speak
3 privately.

4 THE COURT: All right. Go ahead.

5 (Off the record.)

6 MR. NANCE: Mr. Shibley and I have had a chance to
7 consult. We would -- I would just reiterate.

8 I would like the opportunity to see this matter with
9 Ms. Batistelli vetted. And there may be some clarification we
10 bring to the out-of-district no-contact matter. I can maybe
11 supplement that in a filing to better inform the court on that.

12 THE COURT: Yeah. Mr. Shibley, as I said, there's
13 just not enough information right now to give me assurances that
14 you would abide by the conditions, and you would be a risk of
15 safety to the community. With a change in circumstances,
16 as Mr. Nance is able to do more investigation, this hearing can
17 be reopened. Okay?

18 He's raising -- do you want to speak with him, Mr. Nance?

19 MR. NANCE: I think -- well...

20 (Off the record.)

21 MR. NANCE: All right, Your Honor. I think we are
22 good for now. We do intend to file something supplemental, so
23 the court can expect that.

24 THE COURT: All right. Thank you. We'll be in recess.

(Proceedings concluded at 10:08 a.m.)

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