

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * * 20-CR-074-MSM
*
UNITED STATES OF AMERICA *
*
VS. * OCTOBER 7, 2021
*
DAVID STAVELEY *
*
* * * * * PROVIDENCE, RI

BEFORE THE HONORABLE MARY S. McELROY
DISTRICT JUDGE
(Sentencing Hearing)

APPEARANCES:

FOR THE GOVERNMENT: LEE H. VILKER, AUSA
U.S. Attorney's Office
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Providence, RI 02903

FOR THE DEFENDANT: JASON P. KNIGHT, ESQ.
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Court Reporter: Denise P. Veitch, RPR
One Exchange Terrace
Providence, RI 02903

1 7 OCTOBER 2021 -- 11:00 A.M.

2 THE COURT: Good morning. I apologize for being
3 late; we had another matter and I had a meeting in
4 between, Mr. Vilker. So I'm going to ask that we go on
5 the record in the case of the United States of
6 America v. David Staveley, and that is criminal action
7 20-74, and I'm going to ask counsel to identify
8 themselves for the record, beginning with the
9 Government, please.

10 MR. VILKER: Good morning, your Honor.
11 Lee Vilker for the United States.

12 THE COURT: Good morning again, Mr. Vilker.

13 MR. KNIGHT: Good morning, your Honor.
14 Jason Knight on behalf of David Staveley.

15 THE COURT: Good morning Mr. Knight.

16 Mr. Staveley, how are you?

17 THE DEFENDANT: Excuse me, your Honor?

18 THE COURT: I can't hear you, Mr. Staveley.

19 THE DEFENDANT: Excuse me?

20 THE COURT: How are you this morning,
21 Mr. Staveley?

22 THE DEFENDANT: Okay.

23 THE COURT: You're going to need to speak up or
24 I won't be able to hear you.

25 THE DEFENDANT: I'm okay. Thank you.

1 THE COURT: Okay. All right. You can be
2 seated. Can you tell me in your own words,
3 Mr. Staveley, why we are here today.

4 THE DEFENDANT: Yes, your Honor. We're here
5 because, to be sentenced regarding crime that occurred
6 in Rhode Island.

7 THE COURT: You need to speak just a little
8 louder, Mr. Staveley.

9 THE DEFENDANT: I'm sorry.

10 THE COURT: That's okay. So you're here, you
11 know, for sentencing; correct?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right. So now tell me, did you
14 go over the sentencing report with your attorney, the
15 Presentence Investigation Report.

16 THE DEFENDANT: I did, your Honor.

17 THE COURT: Okay. And did Mr. Knight answer all
18 your questions about it?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Okay. So the process for today just
21 so you're aware is that we're going to go through the
22 presentence report after I hear the objections from
23 your attorney and from the Government, and then the
24 Court will determine the appropriate advisory
25 sentencing guideline; and then I'll hear from the

1 Government and your attorney regarding sentencing. If
2 there's anything you would like to say to the Court,
3 that's your time to address the Court; you're not
4 required to, but you can, and that's your opportunity
5 to do so, okay?

6 THE DEFENDANT: Yes, your Honor. Thank you.

7 THE COURT: Okay. So I'm going to start with
8 the Government's objections to the presentence report.

9 MR. VILKER: Your Honor, the final report I
10 don't -- the only objection that we had was really
11 joining in the defense that we believe that there
12 should be credit for acceptance of responsibility and
13 that the Defendant entered this plea after he committed
14 the offense that we believe constitutes obstruction of
15 justice. We believe he's accepted responsibility for
16 both of those offenses and should be credited with the
17 three-level reduction. Other than that I don't believe
18 there's any other objection that the Government has.

19 THE COURT: Okay.

20 Mr. Knight.

21 MR. KNIGHT: Yes, your Honor. We --

22 THE COURT: Can you go to the podium, please,
23 for the stenographer. I'm sorry; I should have said
24 that before. Not used to doing things in the
25 courtroom.

1 MR. KNIGHT: It's all (indecipherable). Your
2 Honor, on the presentence report, we filed an objection
3 with three points. One of them has been taken care of
4 by agreement with the Government and Probation, so I
5 don't have to address that.

6 THE COURT: Which one was that?

7 MR. KNIGHT: Probation had assigned points for
8 fraud in violation of the Stafford Act, but that's
9 legally not tenable.

10 THE COURT: Okay.

11 MR. KNIGHT: We put an objection in because
12 Probation did not credit him the three points for
13 acceptance, as the Government just recommended, so both
14 the Defendant and the Government believe that he should
15 get credit for acceptance, the three points, because he
16 has in fact pled, he has stood in front of the judge,
17 in front of you and accepted responsibility for his
18 actions and is here today for sentencing.

19 And then finally, Probation assigned two points
20 for obstruction of justice. Now, I'm here to say that
21 when you read the manual they can do that. I think the
22 manual opens the door for assigning obstruction of
23 justice points in the case where somebody has fled and
24 avoided a pretrial appearance. However, as with many
25 things in the manual I think that it is and I argue

1 that it's just unfair. He's going to get sentenced for
2 the charge of failure to appear and that should be
3 enough, and it just strikes me as fundamentally unfair
4 and it's sort of doubling up to add points for
5 something, for an act by which he's been criminally
6 charged by way of Indictment and is going to get
7 sentenced. The book may allow it, but I don't think
8 it's right and I don't think it's fair, and I think you
9 should not add the points.

10 THE COURT: So I might agree with you,
11 Mr. Knight, if the obstruction charge and the plea to
12 that charge carried with it an impact on his advisory
13 guideline range, but with or without that enhancement
14 he -- so without that, just on the original charge, the
15 Count I, his guideline range or his adjusted offense
16 level would be a 23 without the acceptance of
17 responsibility, without the arguments for the other
18 adjustments.

19 MR. KNIGHT: Right.

20 THE COURT: The offense level on Count VII,
21 which is fleeing the jurisdiction, he's a 15, and when
22 they're combined he gets a 23, so he doesn't get
23 ratcheted up at all because of cutting off his bracelet
24 and leaving the jurisdiction; in fact, he gets the same
25 guideline range as he would have without that. Do you

1 know what I'm saying? So he's not getting
2 double-counted. He's getting one two-level adjustment.

3 MR. KNIGHT: That's my point, Judge. He, when
4 you go through the -- I don't have the calculation in
5 front of me. He gets points for Count I, he gets
6 points for Count II. You combine them. Count I is
7 higher so that's the one that's going to control.

8 THE COURT: Right.

9 MR. KNIGHT: And then you add points or don't
10 deduct, depending on where you are on the acceptance
11 thing, so he's got 23. If you take away the three
12 points for acceptance that would put him in a 20. And
13 I'm saying he got ratcheted two points for obstruction.
14 If he didn't have the two points for obstruction he
15 would be 18. That's how I read it.

16 THE COURT: Right. But you don't think his
17 conduct was obstructive? I'm going to not ask that
18 question; that's unfair.

19 MR. KNIGHT: I think that Count II or Count VII
20 accommodates that behavior.

21 THE COURT: Okay. I understand.

22 Mr. Vilker, do you have anything you want to
23 say?

24 MR. VILKER: Your Honor, just two brief points
25 on this. First this is classic obstruction of justice.

1 The application to the guideline for 3C1.1 says that
2 (Reading) The following is a non-exhaustive list of
3 examples of the types of conduct to which this applies.
4 And then note (E) to that says, (Reading) Escaping or
5 attempting to escape from custody before trial or
6 willfully failing to appear as ordered for judicial
7 proceeding.

8 This is, I mean, right down the middle of the
9 lane on what counts as obstruction of justice. And as
10 your Honor indicated, if that two levels is not applied
11 it's as if he gets a pass. The guidelines would not
12 even count. Count VII doesn't add anything to the
13 guideline calculation. So we think it should apply.

14 THE COURT: Thank you, Mr. Vilker.

15 Mr. Staveley, I'm going to go through the
16 offense calculations and explain to you what I think
17 about the objections as to each one.

18 So as we just indicated, you pled guilty to
19 conspiracy to commit bank fraud and the base offense
20 level for that is a base offense level of 7. The
21 guidelines under 2B1.1(b)(1)(G) calls for a 12-level
22 enhancement because of the intended loss which was
23 between \$250,000 and \$550,000.

24 So with respect to paragraph 34 in the
25 presentence report, the Probation Department has

1 assigned a two-level increase for the fact that the
2 offense involved creating these false documents to
3 defraud the bank with respect to the Payroll Protection
4 Program. I think your attorney and the Government have
5 agreed that that does not apply, and so I'm not going
6 to impose that additional two-level enhancement -- oh,
7 I apologize. Am I wrong?

8 MR. VILKER: Yes, your Honor. Paragraph 34 is a
9 different enhancement. That's for using one means of
10 identification. That enhancement you mentioned has
11 already been removed from the presentence report.

12 THE COURT: Never mind; that's my bad,
13 Mr. Staveley. I'm reading from the wrong paragraph.

14 Okay. So paragraph 34 is a two-level increase
15 because the offense that you pled to involved the
16 possession of any device-making equipment or
17 authentication feature. In this case they're saying
18 that your Co-Defendant knowingly created the false and
19 fraudulent IRS 941 forms for you and for himself and
20 submitted these forms, and that you submitted these
21 forms to BankNewport. So that two-level enhancement
22 does apply. And I apologize; the other one has already
23 been removed.

24 The Government has, I mean the Probation Office
25 also assigned you a two-level increase for obstruction

1 of justice, and this is absolutely applicable in your
2 case. It is not somebody who obstructed justice by not
3 showing in court, happened a day or two late. You
4 disappeared for two months. You cut off your home
5 confinement bracelet. For whatever reason you led the
6 Government to believe that you had committed suicide,
7 and the Government spent resources and time to track
8 you down. I think there's no clearer case for
9 two-level enhancement under 3C1.1. And so I am
10 overruling your objection to that, Mr. Knight, and I am
11 going to impose that three -- that two-level
12 enhancement.

13 I would also say that because of the way the
14 guidelines are calculated, even though you pled guilty
15 to Count VII it doesn't change your guidelines at all
16 because it is a much lower offense level than the bank
17 fraud with the amount of money. So if I didn't apply
18 that your offense level would be exactly the same as it
19 would be if you had done everything you were supposed
20 to do and not done any of that behavior, so I think I
21 can't see a way to take away that two-level
22 enhancement. That gives you an adjusted offense level
23 of 23.

24 With respect to as I said before Count VII, the
25 base offense level is a 6. Because of the statutory

1 maximum of the charge that you fled during the
2 prosecution, that adds nine levels for an adjusted
3 offense level on just that charge of 15; and the way
4 that the guidelines tell us to combine offenses, your
5 offense level stays at a 23.

6 So the other question is the acceptance of
7 responsibility, and I think that this is one of those
8 things that is difficult to give you the obstruction
9 and also the acceptance of responsibility, but it is
10 left to the discretion of the judge; and I listened to
11 what the Government says with respect to this, these
12 factors, acceptance of responsibility points,
13 particularly the third point are in the discretion of
14 the Government. They're the ones that have to
15 prosecute you. If they feel you've accepted
16 responsibility sufficiently to earn the three points,
17 then it would be my inclination to grant you that
18 three-point reduction.

19 So I am going to rule in your favor on that
20 objection, Mr. Knight.

21 And that reduces your total offense level from a
22 23 to a 20, Mr. Staveley. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Okay. So as I'm sure you've
25 reviewed the presentence report with your attorney,

1 he -- as you know the criminal history points that you
2 have are for past criminal convictions and you are
3 awarded seven criminal history points for your past
4 convictions, which puts you in a Criminal History
5 Category IV. So with an offense level of 20 and a
6 Criminal History Category of IV, your advisory
7 guideline range is 51 to 63 months of incarceration,
8 and I think that's the appropriate guideline in this
9 case.

10 Does anybody want to say anything else about the
11 application of the guidelines?

12 MR. VILKER: No, your Honor.

13 MR. KNIGHT: That calculation appears to be
14 correct.

15 THE COURT: All right. Great. Thank you. Now,
16 part of the -- I don't think anybody is asking for any
17 departures or asking for any witnesses to testify so I
18 think that -- Mr. Knight, go ahead.

19 MR. KNIGHT: Sorry, Judge. I was going to as
20 part of my presentation advise the Court that the
21 Defendant is going to allocute and he also has his
22 mother here who would like to speak to the Court, for
23 witnesses.

24 THE COURT: That's unusual, but as long as it's
25 brief I think we can allow his mother to speak.

1 MR. KNIGHT: Thank you.

2 THE COURT: Okay. So Mr. Staveley, have you
3 gone over the presentence report with your attorney in
4 its entirety?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Okay. And are you -- do you
7 understand everything in it? Have you had everything
8 in this report explained to you adequately by
9 Mr. Knight?

10 THE DEFENDANT: Yes, I believe so, your Honor,
11 yes.

12 THE COURT: Is there anything that you think you
13 don't understand in that?

14 THE DEFENDANT: I don't think so, no.

15 THE COURT: Okay. And do you understand as I've
16 just outlined for the record your advisory guideline
17 range?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: So at this point I'm going to hear
20 argument from the Government and then from your
21 attorney, and then there will be an opportunity for you
22 to speak to the Court. I will have some questions for
23 you, if it's okay with your attorney, but I won't ask
24 them if your attorney does not consent.

25 Mr. Vilker.

1 MR. VILKER: Thank you, your Honor. Your Honor,
2 this Defendant has a long history of committing fraud.
3 Indeed, this case is his third federal fraud conviction
4 and in this case the Defendant took his fraud
5 essentially to the next level by attempting to defraud
6 the Paycheck Protection Program in a time of national
7 emergency by submitting four fraudulent loan
8 applications with his co-conspirator, David Butziger.
9 The 18 USC 3553 factors in this case call for a very
10 significant sentence, and the Government is
11 recommending a sentence in the middle of the advisory
12 guideline range of 56 months imprisonment.

13 The first factor that I would suggest is the
14 most important in this case is the seriousness of the
15 offenses. At the very beginning of this pandemic, with
16 the country reeling and many people out of work and
17 many businesses shutting down, the Defendant saw only
18 an opportunity to make himself rich by stealing monies
19 that were meant to help other people in need. He
20 submitted PPP loans in the name of his brother without
21 his brother's knowledge or consent and he did so for
22 three different restaurants. One of these restaurants,
23 the Top Of The Bay restaurant in Warwick the Defendant
24 didn't even own, didn't have legal title to; just made
25 up entirely that he owned that restaurant. The other

1 two restaurants were closed before the pandemic began.
2 One of them, the Remington Inn in Warwick had been
3 closed for years. In these loan applications
4 Mr. Staveley represented that he had between 18 to 26
5 employees and that he needed this money to continue
6 paying their salaries. He submitted fake tax documents
7 to make it look like these businesses had actually
8 employees when they didn't.

9 Fortunately, the scheme was uncovered before any
10 of these monies were paid out. The attempted fraud in
11 this case on the Paycheck Protection Program was an
12 especially reprehensible kind of fraud. These PPP
13 funds, even though they may have seemed like it at the
14 time, they were not endless. There are many legitimate
15 businesses who could not access these funds or have
16 experienced long delays in getting these funds.

17 When people like this Defendant attempted to
18 take for themselves what was meant to help others, they
19 were in effect taking actions that could prevent an
20 actual person or an actual business in need from
21 attaining these funds. This thought, I don't even know
22 if it crossed this Defendant's mind, there's no
23 evidence that it did; he simply saw a way of stealing
24 hundreds of thousands of dollars for himself.

25 Now, the fact that the money in this case came

1 from funds that were set aside for a national emergency
2 doesn't even come into play in this Defendant's
3 guideline range. He would be facing the exact same
4 guideline range if he committed some other kind of
5 fraud like he has in the past on some business or
6 committing mortgage fraud or what have you. The
7 guideline range would be exactly the same. A strong
8 argument could be made in this case that the guidelines
9 don't really take into account the true nature of this
10 type of action that this Defendant committed in the
11 middle of a national emergency.

12 On top of that, the Defendant then committed a
13 whole separate crime when he removed his electronic
14 monitoring device from his body and fled. In an effort
15 to deceive law enforcement into believing that he had
16 died, Mr. Staveley staged his own suicide by leaving
17 suicide notes with family members and associates,
18 writing letters saying he was going to commit suicide
19 to a number of people, blaming them for driving him to
20 this point that he was killing himself and leaving them
21 with the belief that they were somehow responsible for
22 his suicide. He left his vehicle unlocked and parked
23 by the Atlantic Ocean. Law enforcement actually sent a
24 search and rescue party out in the nearby ocean in an
25 attempt to locate his body. During the next two

1 months, in an effort to avoid apprehension, he traveled
2 throughout the country, mostly in the South, using
3 false identities and stolen license plates. The
4 Marshals worked tirelessly in tracking him down, even
5 during the period which was very unclear if he had
6 indeed committed suicide. During this period
7 Mr. Staveley changed his phone number on at least five
8 occasions, and ultimately he was apprehended by
9 Marshals in Alpharetta, Georgia. He was found to be in
10 position of multiple false identification documents
11 that he used throughout the period of the flight.

12 Now, the Government submits to your Honor that
13 this sentence in this case must be harsher than it
14 otherwise would be if the Defendant had not committed a
15 separate crime of failing to appear in court.
16 Otherwise we would be in the perverse situation in
17 which a defendant ultimately receives the same sentence
18 he would have received even if he had not cut his
19 bracelet, assumed fake identities and led the Marshals
20 a two-month wild goose chase. If that were to occur
21 there would be no disincentive for other criminals to
22 take off. Why not try to flee if the worst-case
23 scenario is that you end up getting caught and get the
24 same sentence anyway. The guidelines as we just went
25 over in this case only add two levels for this conduct,

1 in fact adding 10 months to the low end of the
2 guideline range from 41 to 51 months to 61 to
3 63 months.

4 The Government submits that whatever sentence
5 your Honor deems to be just on the fraud count, an
6 additional 10 to 12 months should be added on the
7 (indecipherable) to his conduct for absconding in this
8 case.

9 The next 3553 factor I want to talk about is the
10 protection of the public. The public needs to be
11 protected from this Defendant. This is his third time
12 in federal court on fraud charges. In 2009 he was
13 convicted in the District of New Hampshire for wire
14 fraud. That case concerned the Defendant's defrauding
15 a minor league baseball team by submitting false
16 invoices for fictitious companies. He received a
17 sentence for 30 months imprisonment for that offense.
18 He then was convicted in 2015 for wire fraud again in
19 the District of New Hampshire. This offense involved a
20 complicated mortgage fraud scheme that the Defendant
21 orchestrated in 2003 to 2005, and the Defendant was
22 sentenced to 27 months of imprisonment for this
23 offense. Those significant sentences of 30 months and
24 27 months didn't stop this Defendant from committing
25 more fraud once the coronavirus crisis hit and

1 businesses across the country had to shut down.

2 I also think this is a strong argument for
3 deterrence in this case, both general and specific
4 deterrence. For general deterrence a message needs to
5 go out to the public that if you commit fraud,
6 particularly this type of fraud in a time of crisis
7 that money is meant to help people in need, you're
8 going to go to jail for a long period of time.

9 This particular case has received a lot of
10 publicity because the Defendant was actually the first
11 one charged in the country with committing PPP fraud,
12 and I by no means suggest that because he was the first
13 person charged that should affect the sentence in any
14 way; but nonetheless this is a case in which there is
15 an opportunity for general deterrence for people to
16 hear that a defendant who does this is going to receive
17 a significant sentence.

18 THE COURT: I'm sorry to interrupt, but your
19 argument that that was the first case, and I know
20 you're not saying it deserves additional sentence; but
21 the thing that struck me is that this first application
22 was filed only a week after the PPP, the CARES Act was
23 passed, --

24 MR. VILKER: Right.

25 THE COURT: -- and that PPP was enabled by

1 Congress, so to me that is a fairly deliberate act.

2 MR. VILKER: Yes. I mean there is no evidence,
3 and we went through a lot of e-mails back and forth
4 between the two co-conspirators, and no evidence of any
5 kind of hesitation. Immediately, I think it was the
6 very end of March -- the applications were submitted
7 April 6th, and immediately one co-conspirator,
8 Mr. Butziger, is e-mailing Mr. Staveley, you know,
9 attached are the -- excuse my language -- the BS 941
10 forms. This was an immediate decision as soon as these
11 funds became available to take advantage of the
12 program.

13 And beyond that, your Honor, I really think this
14 is a case that specific deterrence is necessary. This
15 Defendant has already been sentenced twice for fraud
16 and got 27 and 30 months. Those sentences obviously
17 didn't do the trick. A sentence significantly higher
18 than that we hope would send this Defendant the message
19 that he can't keep committing fraud.

20 We're recommending a sentence in the mid point
21 of the guideline range. I think the guideline range in
22 this case of 51 to 63 gets it about right for the
23 amount of fraud and his taking off, and I think the
24 midpoint is an appropriate sentence in this case.

25 I do want to spend a little while talking about

1 this Defendant as an individual because I know that's
2 what Mr. Knight is probably going to be spending a
3 significant amount of time on. I don't really think
4 it's appropriate for me in this venue to talk about the
5 allegations that the Defendant made in the past. All I
6 would say on that point, your Honor, is reading through
7 the presentence report, there's a lot of mixed
8 information on that and it's very unclear. I'm not
9 saying it didn't happen, I just don't know; and I don't
10 think the Court can just accept this Defendant's word
11 that that happened. It may have; if it did, you know,
12 I'm deeply sorry and I can't imagine how horrible it
13 is, but there's no factual basis one way or the other.

14 The thing that's always kind of jumped out to me
15 about this particular Defendant and, you know, and
16 different than a lot of other defendants in certain
17 ways, he seems to constantly be playing the victim and
18 blaming other people for his conduct. I was really
19 struck in the presentence report where he told the
20 Probation Department that he committed this crime of
21 submitting, immediately when the funds became available
22 submitting these false loan applications because he was
23 going through a bad, he was in a bad relationship and
24 that led to trauma and that led him to make this
25 decision. And I mean obviously there's no connection

1 between the two. This crime was just pure greed.

2 And then even when he was talking about his
3 flight he seems to, you know, blame Mr. Butziger,
4 saying he did it at his direction and that he was just
5 blacking out and never got to his destination until he
6 was found by the Marshals in Georgia. You know, he
7 doesn't talk about how he sent suicide notes to his
8 friends and family and used different identifications,
9 different phones. I mean this was a deliberate and
10 intentional act. At least coming to court and take
11 responsibility and say I committed these crimes, I
12 accept my role in it. And I think if that -- that's
13 really the first step toward us, the Government and the
14 Court, having any confidence that this is a defendant
15 who is not going to keep repeating similar type actions
16 in the future and keep blaming others for his
17 decisions.

18 So for all these reasons, the Government
19 recommends a sentence in the middle of the guideline
20 range of 56 months. We believe that the
21 (indecipherable) of acceptance of responsibility are
22 appropriate. He has admitted and accepted
23 responsibility. Even though he, you know, tends to
24 blame other people, I think we're past the threshold in
25 the Government's view of him accepting responsibility,

1 he has come into court and admitted it, and I think a
2 midpoint of the guideline range is appropriate.

3 Thank you.

4 THE COURT: And so I'm clear, you're
5 recommending that as a total sentence, so something on
6 Count I -- Count II has to be -- Count VII has to be
7 consecutive, so whatever the Court decides is
8 appropriate, your recommendation is a total of 56.

9 MR. VILKER: That's correct, your Honor.

10 THE COURT: Thank you. Mr. Vilker, there's no
11 restitution; is that correct?

12 MR. VILKER: There is not because there's no
13 actual loss.

14 THE COURT: Thank you.

15 Mr. Knight.

16 MR. KNIGHT: Chilly.

17 THE COURT: The room is cold.

18 MR. KNIGHT: The room is cold.

19 Your Honor, good morning, and I'm pleased to
20 present this --

21 THE COURT: Would you speak up or speak closer
22 to the microphone. It's hard to hear with the fans
23 behind us.

24 MR. KNIGHT: I'm pleased to present this
25 recommendation in this case, but I wanted to start by

1 talking about a different case. I don't know if the
2 Court's familiar with *Her Majesty v. Tom Dudley and*
3 *Edwin Stephens* from 1884. I was first exposed to this
4 case in law school, and the sentencing in this matter
5 brought it to my attention again and I thought I should
6 bring it up. It's a murder case. Dudley and Stephens
7 were sailors assigned to the yacht MIGNONETTE down in
8 South Africa. There was a big storm, the yacht was
9 overcome, and Dudley and Stephens were put into a life
10 boat with a couple of other people, notably the young
11 17-year-old cabin boy named Parker, who this was his
12 first time at sea and he didn't have a lot to
13 contribute to the enterprise. Things got bad.
14 Everyone was going to die, at least they thought they
15 were, and Dudley and Stephens murdered Parker and they
16 ate him and drank his blood and they survived until
17 they reached land. When they reached land they were
18 charged with murder, and the legal issue in the case
19 was is necessity ever a defense to murder, and aside
20 from self-defense it's not.

21 But the interesting thing about the case from
22 our perspective is that they ultimately were found
23 guilty of murder, and in those days the penalty was
24 death and if it was commuted it would be life, and back
25 then life meant life. But in this particular case

1 The Queen, through her administration, gave them six
2 months to serve, and the story of that case beyond the
3 legal issues is the story of the role of compassion in
4 our system of law and the role of mercy in our system
5 of law.

6 And it's with that kind of compassion I'm asking
7 the Court today to strongly consider compassion in this
8 case as you figure out what to do about David Staveley
9 and his sentence. And I'm asking you to consider the
10 man. I've given the Court a detailed memo --

11 THE COURT: And just for the record, I've
12 reviewed that. I'm not going to go over what's
13 contained in that. I've reviewed the Government's memo
14 as well.

15 MR. KNIGHT: Okay. I think it's, I think I can
16 say today --

17 THE COURT: You're free to go over anything you
18 and your client want, but I know there are personal
19 details in there.

20 MR. KNIGHT: Right. But I will say this. He's
21 got bad PTSD, and the Government says that the source
22 of that PTSD, that is an allegation. But I gave the
23 Court medical records showing that the providers, the
24 medical providers believe it is the case, it is the
25 diagnosis. And a correctional setting, because of the

1 nature of the event, is what causes that PTSD; it's
2 what triggers him. And they are back, those symptoms,
3 so bad that he ran to avoid jail, which is documented
4 in Count VII.

5 But the rest of the story is that he was
6 arrested and he was taken to Wyatt, where he's been for
7 approximately 14 months, if my math is right, and
8 that's been 14 months of effectively self-isolation to
9 try to stay away from the rest of the population, to
10 try to stay away from the things that are troubling to
11 him, to try to stay away from the things that give him
12 the symptoms. And those 14 months are long months.
13 They're longer than for most other defendants.
14 Additionally they're COVID months, and you know as well
15 as I do and everyone in our system knows that those are
16 incredibly difficult months at Wyatt with a lot of
17 lockdown. Effectively, Judge, he has suffered every
18 single day of his incarceration in a way that was not
19 true in his previous incarcerations, and I'm asking the
20 Court to consider that.

21 I'm also asking the Court to consider that were
22 he -- were you to sentence him in line with the
23 Government's recommendation, that he would serve that
24 time at the Bureau of Prisons, and because of some
25 factual matters I've detailed in my memo it's likely

1 that that time would be hard time as well. So that's
2 the prison piece. He's done a significant chunk, and I
3 hope you consider that as you figure out the sentence
4 in this case.

5 But in talking about him, you know, he's older
6 now than he was in those previous offenses, and we all
7 know that there's this tendency for criminality to age
8 out of people as they get older. He's not violent.
9 This is not a violent offense. There is, there
10 certainly was an intended loss, but actually I don't
11 even want to talk about loss yet. He's not violent.
12 His overall criminal history shows some domestic
13 behavior but nothing violent. He has family support.
14 His mother is here in the room today and she's going to
15 tell you about what she can contribute to his life, to
16 his rehabilitation were he to get out. He has skills.
17 He can work. And he's vaccinated, and he's taken COVID
18 seriously from the time that I met him and got
19 vaccinated at the first opportunity.

20 There is no doubt in his 54 years, in his path
21 to this courtroom today there have been ups and downs,
22 a lot of downs. He has a unique history, and I'll get
23 to the factors, the 3553 factors in a minute the way
24 the Government did. But when we're talking about one
25 of those factors, which is the nature, the

1 characteristics of the Defendant, his are unique.
2 There are big, big issues there that are not present in
3 every other case. It's almost unique -- well, it is
4 unique. He's a unique human being; but he falls far
5 outside that standard deviation for other defendants
6 that come before you for other crimes, and I hope you
7 consider his unique issues in forming that sentence.

8 When we talk about the offense, there's the
9 offense which is the conspiracy to steal money, and
10 there's the escape charge. I think that the Government
11 lays it on a little thick by saying that this PPP
12 program, that somehow what the Defendant and his
13 Co-Defendant did made it harder for other businesses
14 and legitimate recipients of that money to apply or get
15 the money or somehow caused delay. The PPP, I mean
16 (indecipherable) because the PPP program went into
17 place. The Small Businesses -- the U.S. Treasury and
18 then the Small Business Association had to like kill
19 themselves essentially to come up with a regulation as
20 fast as they could. Businesses were chomping at the
21 bit, and the ones that wanted to get an application in,
22 were motivated to get their applications in, got their
23 applications in and got their money. To the extent
24 that we heard about businesses having trouble with the
25 PPP loans in the media during that time, that blitz, I

1 would argue that oftentimes there was problems with the
2 businesses, lack of documentation, lack of 941s.

3 THE COURT: But wasn't -- I don't want to,
4 because this really isn't as relevant as other
5 issues, --

6 MR. KNIGHT: Sure.

7 THE COURT: -- but my recollection is that one
8 of the factors that businesses had difficulty getting
9 initially approved for PPP had to do with not having a
10 prior relationship with one of the banks administering
11 it and so the smaller businesses, the businesses with
12 less of a track record had some difficulty because
13 banks were prioritizing their already existing clients.
14 Am I incorrect in that?

15 MR. KNIGHT: There was news media around that.
16 I think also it was an issue that -- I did PPP, and I
17 had that personal experience of applying through a bank
18 with an existing relationship and I happened to have
19 941s. And I know it's unusual to draw on personal
20 experience, but my recollection is that if you had an
21 established relationship with the bank and you were
22 bona fide concerned with payroll, it was pretty easy.
23 If you were a small business that maybe was doing
24 something, you were just cutting the check and doing
25 the payroll yourself, you had to do a little math, a

1 little math on the spreadsheet because the banks
2 evolved with the regulatory agencies to try to make the
3 process easier. I've done two PPP loans. I've been
4 forgiven for both. The process or the application on
5 one, on the first one, to the forgiveness on the first
6 one, and the application of the second one and the
7 forgiveness on the second one, are (indecipherable)
8 easier as time went on because they streamlined the
9 regulations. So to the extent that people had problems
10 getting to it, it wasn't because of David Butziger and
11 Mr. Staveley.

12 There was no actual loss in this case and
13 indeed, as I pointed out in my memo, the government
14 never, you know, when the government gave out this
15 money they had no intention of bringing it back. It
16 doesn't make --

17 THE COURT: Mr. Vilker says and he points out
18 that it was limited. If there's a pie and somebody
19 steals a piece of the pie there's less pie for
20 everybody else; right?

21 MR. KNIGHT: That is a fact.

22 THE COURT: And while he didn't get paid out, he
23 intended to take money out of a finite pool of money;
24 correct?

25 MR. KNIGHT: Yes.

1 THE COURT: Okay.

2 MR. KNIGHT: And it's an open question as to
3 what that money was going to be used for. Was it going
4 to go right into the pockets and run to Mexico, I don't
5 know. But the Government doesn't know either; right?
6 It could have been plowed into trying to make some of
7 these things work. Top Of The Bay he didn't own. He
8 didn't have an ownership piece of Top Of The Bay. And
9 I can't tell, I can't represent to the Court, you know,
10 in detail what was going through his mind at the time.
11 But the other two businesses were, even though they
12 were having trouble, they might have been shut down,
13 had ongoing concerns before this happened.

14 THE COURT: But not his.

15 MR. KNIGHT: Not Top Of The Bay. But the other
16 two he had a piece of.

17 THE COURT: Remington House and the other
18 business he had a piece of?

19 MR. KNIGHT: On The Tracks, yes.

20 THE COURT: On The Tracks.

21 MR. KNIGHT: Right.

22 THE COURT: And I know Remington House closed in
23 2018. When did On The Tracks close, if you know.

24 MR. KNIGHT: That's the Berlin matter; right?

25 MR. VILKER: Sorry about that. I believe that

1 was just a couple of weeks before COVID hit, very
2 beginning of March.

3 MR. KNIGHT: Because they ran into problems with
4 their liquor license.

5 THE COURT: All right.

6 MR. KNIGHT: I don't mean to diminish, but I'm
7 trying to draw constraints around what it is and what
8 it isn't in terms of the crime. And also the idea that
9 Butziger and Staveley jumped right in and were ready to
10 go with PPP applications as soon as the process opened
11 up, I think a lot of people were looking for some sort
12 of relief; and it was in the media, it was publicized
13 and it's coming, and Congress had passed the CARES Act,
14 and it was \$1.3 trillion coming to you, get ready.
15 Everyone was ready to apply if they could.

16 So in this particular case the question is
17 what's sufficient, and I am arguing that a time-served
18 sentence with supervised release and a long supervised
19 release is sufficient for the reasons that I've stated.
20 It's an unusual recommendation given his criminal
21 history points and the nature of the offense compared
22 to his previous history, but because of his particular
23 concerns and what incarceration would in particular do
24 to him, and the fact that he's done the 14 months, I
25 think you could exercise some of that compassion

1 appropriately that I described before in that story and
2 sentence him in a way that punishes, sentence him in a
3 way that does provide deterrence and both specific and
4 individual, because it is a sentence, and supervised
5 release is not, it's not a free pass to do whatever you
6 want.

7 If you do sentence him to a term of
8 incarceration beyond what he's already done, I would
9 request that you recommend a halfway house to BOP. I
10 would request that you request placement in New England
11 so he can be near family.

12 And I just want to bring it back to this, Judge.
13 I've put myself in your shoes as I've tried to come up
14 with what I think would be a, what it would be like for
15 you to thread the needle in this case. The Government
16 suggests that it's time to drop the hammer, right, it's
17 a 56 month sentence, which is far longer than what he
18 got before. Never mind the weird charging of his
19 previous charges. There was the 2008 case and then the
20 2013 which actually referenced 2003 events. The
21 Government says you know what, he needs to be really
22 deterred and jail is the answer; right? But, arguably,
23 because of that previous incarceration jail is not the
24 answer. It might be for nine out of 10 defendants, but
25 it's not the answer in this particular case.

1 THE COURT: What is?

2 MR. KNIGHT: I think time-served with a long
3 period of supervised release, real supervised release
4 with Probation in his back pocket such that they can
5 keep an eye on him so that he walks the straight and
6 narrow, gets a job, a real job, a job that there's
7 nothing fancy about it, it doesn't get too big for his
8 britches. I mean clearly in this case people didn't
9 know COVID was coming. This is not like a bank robbery
10 that they planned two years and then pulled off the
11 heist; right? He was in over his head with these
12 businesses and then COVID hit, which prompted the
13 availability of the relief program. But for the
14 pandemic he might not be here today.

15 THE COURT: What businesses did he own and what
16 percentage and what was operating at the time COVID
17 hit?

18 MR. KNIGHT: So this is the complicated piece,
19 your Honor. To the best of my recollection, because I
20 always have to go back to the file and look at this,
21 there was a partner setup for On The Tracks in Berlin
22 where I believe that he participated as like a sort of
23 overall manager. What I actually don't know is if he
24 had a true bona fide ownership interest. I know that
25 he had, because the Government alleges that he had

1 signed for his brother as an owner through a power of
2 attorney that had been drafted by an attorney so that
3 the brother could kind of be a silent partner, but his
4 name was not on the documents because he had the
5 record. So that was for On The Tracks. They
6 negotiated for Top Of The Bay, and then the Remington
7 House I believe was a similar setup, but I could be
8 wrong and the Government will correct me, but I'm
9 trying to pull the facts out of my head as best I
10 could.

11 THE COURT: Thank you.

12 MR. KNIGHT: And then in the conspiracy there's
13 this Dock Wireless thing which was Butziger's scheme.
14 So in the Indictment, Count I of the Indictment is four
15 entities; the other one is Butziger's.

16 Anything else?

17 THE COURT: I think you indicated that you
18 wanted Mr. Staveley's mother to speak briefly.

19 MR. KNIGHT: Yes. I don't know what order you
20 would --

21 THE COURT: She's next. She's part of your
22 allocution. Typically we don't, we ask they present
23 things by letter or affidavit, but we'll hear from her
24 briefly.

25 MR. KNIGHT: May she approach the podium? She's

1 actually been vaccinated, tested negative before she
2 came in today.

3 THE COURT: Yes, then she can approach the
4 podium.

5 MS. SANBORN: Good morning, your Honor.

6 THE COURT: Good morning -- good afternoon, I
7 apologize. Go right ahead.

8 MS. SANBORN: Can you hear me?

9 THE COURT: I can now, yes.

10 MS. SANBORN: I have two things that I don't
11 have on this, my letter. When PPP was discussed, the
12 only thing I ever heard my son say to me was he wanted
13 10 hours a week for his people at On The Tracks. I
14 never heard about those other places at all. And the
15 second thing was that after David Butziger was, I guess
16 he was arrested, maybe had to be home, he came to my
17 house three or four times later at night and he had
18 someone else's car so they could not follow him on a
19 GPS. I don't know what he wanted when he was coming
20 here, except that I know that he did tell David to run,
21 just run, and --

22 THE COURT: Were you there for that? Did you
23 hear that, or are you telling me that's what David told
24 you?

25 MS. SANBORN: Those are the two things.

1 My name is Judith Sanborn. Amidst the fear and
2 trauma of being in solitary confinement for 14,
3 15 months, we have been able to talk about his
4 responsibilities and errors, and he accepts them and
5 understands what he has to do to change his life in
6 order to survive. He has paid dearly for his mistakes,
7 both mentally and physically, but he is a very hard
8 worker, always has been, and I'm positive that he now
9 knows that he needs and wants help from other informed
10 sources. And in that light I have to tell you I am a
11 retired nurse, and PTSD was not something we ever had.
12 That didn't come out. So when he was out on probation
13 before, there was no help for him with PTSD. Medicine
14 like Zoloft is not an option for that particular
15 diagnosis. The main thing wrong with it is it
16 increases the risk of suicide. That's the first thing
17 on their contents.

18 Trauma of all kinds is the course of PTSD,
19 whether it's war or abuse of women and children, and
20 there is no easy, quick cure. And I have to tell you
21 that the probation department does nothing to help
22 people when they come out of -- are on probation. They
23 do nothing to help them with employment or housing or
24 anything.

25 The Cole Resource Center at McLean Hospital has

1 been so helpful to me in order to understand this
2 tragedy and how I can support and help my son in his
3 long road of healing. They will have a plan ready for
4 him as soon as he is released, and they have given me a
5 list of trauma centers in the Boston area to which I
6 can bring him. They have group and singular therapy
7 sessions. They will help him with employment, which
8 will be extremely difficult because of misinformation
9 on the Internet and many of his records were not
10 sealed. It's tough because anybody can go on the
11 Internet and read his whole story, and I think some of
12 it is against his civil rights.

13 THE COURT: Go ahead.

14 MS. SANBORN: They will listen and help him work
15 through these problems. I can give him the safe and
16 peaceful environment, a place where he can learn to
17 sleep again to be able to think things through before
18 making a rash decision. Good nutrition and exercise
19 are also really important.

20 He has taken the first step in accepting his
21 responsibilities. The second step is accepting the
22 help of professionals, and he has already had the COVID
23 shot so he is ready to leave a place that is so full of
24 virus when nobody wears masks; and I think the last
25 figures were 27 percent had the injection, the rest

1 have not got it, they will not get it.

2 He has always been ready to help people with
3 disabilities and now it's time for him to get help with
4 his.

5 I thank you for listening to me.

6 THE COURT: Thank you, Mrs. Sanborn.

7 Mr. Staveley, this is your opportunity if you'd
8 like to address the Court -- I'm sorry.

9 Mr. Knight, are you through?

10 MR. KNIGHT: I just want to say thank you. It's
11 been a long time since we've done a sentencing in
12 person, and I appreciate the Court's indulgence.

13 Do you want Mr. Staveley to speak from the
14 table? He's got ankle cuffs on.

15 THE COURT: Has he been tested today? No?

16 He can speak at the podium but with his mask if
17 he hasn't been tested this morning. If he has, that's
18 fine.

19 THE DEFENDANT: I was tested this morning, your
20 Honor.

21 THE COURT: Okay.

22 THE DEFENDANT: It's been a long 15 years. I
23 know I've made serious mistakes, poor judgments, and I
24 take responsibility for all that. I had never been in
25 jail before and I went -- (pause) -- and the

1 (indecipherable) within six months.

2 THE COURT: Why don't you take a deep breath.
3 And Mr. Knight, you can maybe get a tissue for him
4 because we can't get a record if --

5 (Overlapping speech)

6 THE DEFENDANT: I understand.

7 THE COURT: Okay.

8 THE DEFENDANT: And after that unthinkable
9 happened, I think the hardest part is just coping, you
10 know, between people that don't want to believe you,
11 people that do believe you, people that found you
12 pathetic. But the hardest part, your Honor, is you
13 just hate yourself, you're a coward, and you run.
14 You're scared, you know, you live your life constantly
15 being scared. I'm not making excuses, but I just
16 always felt like I was behind the eight ball all the
17 time. And I made terrible decisions and not only in
18 relationships and things like that but, you know, every
19 time I thought there was a chance to get ahead I
20 listened and I did it and I, you know, and I, I'm just,
21 I'm sick of it.

22 These last 14 months, you know, the time that I
23 was in jail, because of what happened to me I spent
24 almost 30 months of it by myself in special housing
25 unit. So, you know, I've been running, I've been

1 scared, and I've made terrible decisions and
2 (indecipherable) my life. I take responsibility for
3 that. It's my fault. It's my fault because I didn't
4 address my issues. I've been avoiding them forever.
5 And I know these last 14 months with COVID have just,
6 you know, the hardest part is I sit there and -- you
7 know, my mother is 81, she's the only family I have
8 left, and I have two kids I haven't seen for 10 years
9 because of what's happened to me. You know, I have no
10 friends, I have nothing; I just have my mom, and I
11 watched her struggle the last year while I was in
12 there. You know, if she falls, there's nobody to help
13 her because she's estranged from the whole family
14 because of me and I just, you know, it's time for me to
15 face this head-on. I can't, I can't do this any longer
16 physically, and I need to overcome it, you know?

17 And I'm sorry, I'm sorry about running. I was
18 just so damn scared. And, you know, all of a sudden it
19 sounds like a good idea. I don't know how else to
20 describe it. So, you know, it was not, it was not my
21 intention; it wasn't that I woke up one day and said I
22 want to do this. But, your Honor, I had five suicide
23 attempts in the last 12 years. You know, I just, it's
24 hard, it's hard to cope with the whole thing.

25 But I knew we were cutting corners. I knew --

1 you know, you asked the question about the bank
2 relationship. Well, that's how we even found out about
3 PPP, it was the bank locally, they were an
4 administrator for it and that's how it ended up to us.

5 And we had a 941 for Berlin. That's a real
6 operating business and that location is just depressed,
7 it's in Massachusetts, and all these people were out of
8 work and we wanted them to get back to work. And that
9 was the first one that our attorney said this is, you
10 know, an opportunity for you, and we did it. And, you
11 know, and then I knew that corners were being cut and,
12 you know, I just was trying so hard to fight back and
13 didn't want to let my brother down or anybody else and
14 it just happened, you know, it just happened.

15 But, you know, I don't want to tell you -- I
16 wasn't even on the payroll with the company. Not one
17 bit of the money would've come to me. It was all going
18 to help people keep their jobs, you know. That was
19 what I always had. That was what it was going to be
20 for.

21 But I think I'm smarter in these last 14 months.
22 And Mr. Knight addressed it. Maybe it's my age, which
23 I just can't do this anymore. I can't physically do
24 this anymore. And I need to get better, I need to, you
25 know, (indecipherable) based on, take them on and fix

1 myself. But I know I've made so many mistakes, but I
2 don't think I'm a mistake.

3 Thank you.

4 THE COURT: I have some questions for you if
5 your attorney is okay with you answering them.

6 MR. KNIGHT: Yes.

7 THE COURT: Okay. So obviously, Mr. Staveley,
8 you know what the Court's job is in sentencing; right?

9 THE DEFENDANT: Yes, your Honor, yes.

10 THE COURT: So I have some questions to sort of
11 get at some of the information that I'm not a hundred
12 percent clear on, okay, because when you said I
13 listened and I did it about this and about your prior
14 offenses as well. Is that what you're saying?

15 THE DEFENDANT: No. Prior offenses, I mean
16 they're all, the first offense -- both those offenses
17 go back to 2003. Mr. Vilker referenced it was a
18 baseball stadium, and I have to tell you I was a
19 basically PR guy and the next thing you know I ended up
20 involved in a business deal and I was sitting at a city
21 council meeting, and I was just so far over my head and
22 I, I made mistakes, and that's what I mean and I did
23 that.

24 And the second thing with the mortgage fraud was
25 my ex-wife and I, and you know, I could have, I could

1 have sit there and not taken responsibility. I could
2 have done something, but I wasn't sending the mother of
3 my children to jail. I wasn't going to do that.

4 So while I was in jail, the next offense came up
5 and I took responsibility for it and just stayed more
6 time in solitary confinement.

7 The third one, what we're facing right now, this
8 all started, my nephew, to help him get back on his
9 feet and get started in something, and I needed help,
10 too. And my brother, out of the kindness of his heart
11 helped and --

12 THE COURT: In what way? In what way? Who is
13 your nephew and in what way?

14 THE DEFENDANT: So my nephew has issues and he's
15 my adopted nephew, and my brother has a heart of gold,
16 and my nephew liked cooking and he thought this would
17 give him a chance to get into it. And he also said for
18 me it would give me a job, because I bartend; that's
19 really my biggest thing. And I have history in the
20 broadcasting field, and I was working again. I had
21 just finally got a part-time job.

22 THE COURT: Where?

23 THE DEFENDANT: At a radio station, Cumulus
24 Radio in Worcester called The Pike.

25 THE COURT: When did that start?

1 THE DEFENDANT: I was there for about 18 months.
2 It started part-time I guess July of '19 and just
3 part-time, I did like Saturday mornings and stuff like
4 that, but as I was there longer I started getting more
5 opportunities. And frankly when this whole thing
6 happened I had just been offered an opportunity to go
7 and work for them at another station down South and
8 have a full-time job, and that was my intention to go
9 there.

10 My brother was working another job and we hired
11 a general manager, somebody with restaurant experience
12 that was supposed to be running it. There was all
13 kinds of personality conflicts and stuff, and I would
14 be there to bartend. I didn't get paid; I just worked
15 on tips so we could keep overhead down. And, you know,
16 the person that was being the general manager was, also
17 I was in a personal relationship with her, and when we
18 had a falling out is when everything just went south;
19 and she was on the liquor license, so my brother had to
20 try to change the name on the liquor license and that's
21 where they all kind of hit at the same time.

22 THE COURT: So that was the Berlin restaurant.

23 THE DEFENDANT: That's correct, your Honor, yes,
24 an operating restaurant.

25 THE COURT: When did that close?

1 THE DEFENDANT: So the liquor license probably
2 mid March of 2020 was in jeopardy, but the restaurant
3 was still a restaurant; it just didn't have a liquor
4 license. And the idea was when COVID came and the plan
5 was to try to keep some employees on and do takeout,
6 just do takeout, at least keep some people working.
7 And then this whole thing happened and it just shut
8 down.

9 THE COURT: So are you saying that -- when you
10 say this whole thing happened, you mean --

11 THE DEFENDANT: This case.

12 THE COURT: Yes. So the restaurant was still
13 operating, is what you're saying?

14 THE DEFENDANT: So the restaurant was, because
15 of COVID there was no business, right, nobody could
16 come in so it was closed for that. But the intention
17 was to reopen with takeout. They actually had a good
18 takeout business and just do takeout food and get some
19 employees back.

20 THE COURT: So when you submitted these
21 documents, did you submit the actual payroll for that
22 restaurant, or did you submit fraudulent payrolls for
23 that restaurant?

24 THE DEFENDANT: So that's kind of the
25 interesting part of this is we had payroll, a payroll

1 company post payroll up there. So the 941 piece, yes,
2 I knew that Dave Butziger was doing them and it was
3 submitted. But I have to tell you honestly that's how
4 disorganized we were; we didn't even need it for
5 Berlin, but it somehow got submitted.

6 THE COURT: When you use the passive voice like
7 that, "it somehow got submitted", it just --

8 (Overlapping speech)

9 THE DEFENDANT: I don't --

10 THE COURT: -- disassociates yourself with
11 responsibility.

12 THE DEFENDANT: Oh, no, no, no. I have full
13 responsibility for it, your Honor, but what I'm saying
14 is that's how disorganized I am. The whole thing went
15 in when it didn't have to go in like that; it could
16 have -- you know, Berlin had its own little thing, so.

17 THE COURT: Okay. But you never had an interest
18 in any of the other places; is that correct?

19 THE DEFENDANT: I had no interest in any of
20 them.

21 THE COURT: One of my other questions is about I
22 think, if I understand what your attorney is arguing,
23 is that your PTSD has caused you to engage in this
24 fraudulent behavior in this case or at least
25 exacerbated behavior; is that --

1 THE DEFENDANT: I wouldn't say that either, your
2 Honor. I think that, I think I'm -- I think I'm always
3 feeling like I have to get ahead, I have to work that
4 much harder than the other person because of my
5 criminal history and then of course what happened to me
6 personally. And I think that, you know, when the
7 opportunities arises I take it on as a cutting corner
8 and I hope -- you know, I always think my intentions
9 are good, but I end up making these huge mistakes and
10 errors in judgment. And it's my fault, it's my fault.
11 And the PTSD, I don't think that's necessarily why it
12 happens; I just think it's one of the many things in my
13 life that has put me in a situation that I feel needy,
14 you know, and --.

15 THE COURT: Okay. I don't think I have any
16 other questions.

17 Mr. Knight, based on my questions do you have
18 anything else you would like to add?

19 MR. KNIGHT: Judge, just this. This case, the
20 factual piece of this case has a ton of moving parts,
21 and I did not mean to suggest -- and if the Court took
22 it this way it was my fault -- that somehow his
23 diagnosis of PTSD contributed to him committing the
24 crime. That's not what I'm saying.

25 In my investigation of the matter, I described

1 in the memo as I think getting in above your head is
2 the easiest way to say they were in a complete mess of
3 business. There is no doubt, because he pled to it,
4 that there was a conspiracy to provide falsified
5 information to the government in order to obtain PPP
6 money. I mean that is the crime, that is what he pled
7 guilty to, and I'm not saying that didn't happen.

8 But there is a swirling mass of interests and
9 agendas and personalities that surround that criminal
10 conduct, and I don't know what prompted what and who,
11 what and where and how it all came out. I get the
12 feeling, honestly I get the feeling in the case of a
13 bunch of amateurs trying to do too much with the
14 restaurant business, and I'll just leave it at that.

15 THE COURT: I did have two more questions for
16 your client, and you can decide whether or not you want
17 him to answer them.

18 MR. KNIGHT: Okay.

19 THE COURT: The first is when did he meet
20 Mr. Butziger and in what capacity, and the second is
21 whose idea was this.

22 (Pause)

23 THE DEFENDANT: I met Mr. Butziger through the
24 general manager for Berlin. He's a Rhode Island-based
25 guy and he was also the real estate broker on the

1 transaction for Remington House. That's how I met
2 Mr. Butziger.

3 THE COURT: Okay. And whose idea was this?

4 THE DEFENDANT: The PPPs?

5 THE COURT: Yes.

6 THE DEFENDANT: I will tell you it's collective.
7 It came to us. My co-conspirator heard about it
8 through his bank, a local bank down here, and we had an
9 attorney in this deal that I mean he was recommended to
10 us, somebody that really knew the restaurant and liquor
11 license, and he was supportive of it, you know, that we
12 would apply for this, and -- but we all made the
13 decision. Like I was involved in the decision saying
14 yes, you know, I think we should apply for these, you
15 know. And I'm not going to tell you that I'm a stupid
16 man, but I didn't understand what it, what a PPP really
17 was at the end of the day. I mean I have a lot more
18 information now because of this case. But it's my
19 fault. I didn't research it, I didn't do my homework,
20 and I put myself in a situation to commit a crime.

21 THE COURT: When you were submitting these
22 things, did you ever own a piece of Remington House?
23 You personally, not your brother.

24 THE DEFENDANT: So if I can give you a little
25 history on that.

1 THE COURT: Sure.

2 THE DEFENDANT: When Remington House started it
3 was going to be -- that was this gentleman that was our
4 general manager, he was from Rhode Island, from
5 Warwick, and he was the broker for the deal and the
6 deal was basically he would help us in Berlin if we
7 helped down in Warwick.

8 THE COURT: In what capacity? Helped how?

9 THE DEFENDANT: Well, he helped us because we
10 didn't really know the restaurant business. He was
11 from the restaurant business, his whole life worked in
12 it. And I met him, your Honor, when I was at a halfway
13 house and working for him at a pizzeria, you know, is
14 where I met the guy. And he was the only person I
15 knew, and that's how he got in and that's how I ended
16 up knowing about Remington House, because he's from
17 Warwick and we don't have any real connection to that
18 otherwise.

19 And then the adjacent property to the restaurant
20 was owned by the Butziger family, and that's how David
21 Butziger came in. He ended up doing all our IT work up
22 in Berlin as well, that's how he ended up in the deal,
23 and he's from Warwick. So, and what ended up happening
24 was to make the Warwick deal happen, the Butziger
25 property -- and this was based on the attorney telling

1 us the Butziger property had to be part of the deal.
2 So that's how David Butziger came into the deal in
3 Warwick and ended up being a part of it.

4 THE COURT: Okay. Thank you.

5 THE DEFENDANT: Okay.

6 THE COURT: Mr. Vilker, I think you want to say
7 something.

8 MR. VILKER: Your Honor, I just want to provide
9 some clarity about our understanding of these different
10 restaurants and what was happening with each of them.
11 The On The Tracks restaurant in Berlin, Mr. Staveley
12 had had a piece of that. It wasn't a functional
13 restaurant. It closed down; the liquor license was
14 revoked March 10 of 2020. An e-mail went out to all
15 employees saying this restaurant is closed. I'm pretty
16 confident that none of them got their final paychecks,
17 my recollection; they all left, they were all fired,
18 and they went on to other jobs. A month later is when
19 on April 6th the PPP application was filed for On The
20 Tracks indicating at that particular time that it still
21 had 22 employees and it still had a payroll of 36,000.
22 So the suggestion that this money was going to try to
23 save these people, there were no jobs, there was nobody
24 working there at that time. The money would not have
25 gone to pay them. There was no business operating.

1 The Remington, there was a company that
2 Mr. Staveley formed using his brother's name without
3 his brother's knowing it for Apponaug Restaurant Group
4 where the owner was Gregg Sanborn, Mr. Staveley's
5 brother, and that entity purchased the location of
6 Remington House. So they actually owned, through his
7 brother owned the actual property, and they were in the
8 process of doing some renovations, is my understanding,
9 and with the hope of it reopening at some point in the
10 future as an actual restaurant when COVID hit. But
11 they had no, never had any employees; and the
12 application they submitted, they, Mr. Staveley and
13 Mr. Butziger submitted said they had 18 employees and
14 an average monthly payroll of 46,000. There were no
15 employees. But at least those two there was some
16 actual connection with those restaurants.

17 The third restaurant, Top Of The Bay,
18 Mr. Staveley, again pretending to be his brother,
19 Gregg, was in negotiations for a while with the owner,
20 actual owner of the Top Of The Bay restaurant to
21 purchase that restaurant as well. Those negotiations
22 fell through for whatever reason. The deal never
23 happened. And then a month or two after that is when
24 he, Mr. Staveley, submitted his application saying that
25 that restaurant was up and running and had all these

1 employees and monthly payroll.

2 So I know there's a lot of moving parts here,
3 but the bottom line is there are no actual employees
4 who would have gotten any of this money.

5 THE COURT: Thank you. Thank you, Mr. Vilker.
6 Mr. Vilker, with respect to Counts II
7 through VI, do you have a motion?

8 MR. VILKER: Yes, your Honor. The Government
9 does move to dismiss Counts II through VI.

10 THE COURT: Obviously I'm assuming no objection,
11 Mr. Knight.

12 MR. KNIGHT: No, your Honor.
13 Can I just add one factual piece that I think is
14 important.

15 THE COURT: Sure.

16 MR. KNIGHT: I just want to put it out there so
17 we're all thinking about PPP in the same terms. PPP
18 was designed, it's called the Paycheck Protection
19 Program, but it allowed expenses were for other things
20 as well, rent, utilities, keeping the lights on, that
21 sort of thing, and all sorts of rules about how to be
22 used and forgiveness, and there were percentages for
23 payroll. So even though it's got the fancy name, the
24 idea behind the legislation was to fund businesses,
25 business operations including payroll.

1 Thank you, Judge.

2 THE COURT: Thank you, Mr. Knight.

3 Mr. Staveley, after calculating the guidelines
4 and hearing argument from your counsel, the Government,
5 I heard from your mother and from you, it's my job to
6 consider the relevant factors that are set out in
7 18 USC 3553(a) and ensure that I impose a sentence
8 sufficient but not greater than necessary to comply
9 with the purposes of sentencing. And those purposes
10 include some of the things you've heard your attorney
11 and the attorney for the Government discuss today,
12 including the need for the sentence to reflect the
13 seriousness of the offense, to promote respect for the
14 law, to provide just punishment for the offense, and
15 the sentence should also deter criminal conduct,
16 protect the public from future crimes by the defendant,
17 and promote rehabilitation. And so I have to consider
18 the nature and circumstances of the offense, your
19 history and characteristics, as well as things like the
20 need to avoid unwarranted sentencing disparities among
21 similarly situated defendants and the types of
22 sentences that are available to me.

23 This sentencing I think presents a very
24 difficult situation for me. I'm going to tell you some
25 of the things that I see from this. While I understand

1 what your attorney is arguing, that the PPP provided
2 for things from the government in addition to the
3 support of paychecks, all of those things were in order
4 to ensure that people -- whose jobs had been yanked out
5 from under them in the middle of an unprecedented
6 pandemic -- were able to feed their families, keep
7 their lights on at home, pay their rent, and survive
8 themselves, feed their children. So while, yes, other
9 things were permitted, it was clearly money and it was
10 a finite source of money that was intended for a
11 purpose, none of which was the purpose that you sought
12 out to get the money for, and I think it's pretty clear
13 that you knew that and that you and your Co-Defendant
14 conspired to take that money anyway.

15 If you had provided just one application for
16 On The Tracks on April 6th, I might give more
17 credibility to your argument that you thought -- you
18 started off doing the right thing or thinking you were
19 doing the right thing with that restaurant. The
20 Government tells me, and I have nothing different on
21 the record, that you'd already closed that business a
22 month before, well, March 10th, that you sent or
23 someone on that business's behalf had sent an e-mail to
24 everybody saying no more job, you're terminated. So I
25 find it hard to believe that the money from that

1 application was going to be used to reemploy those
2 people or even to just pay them while they were out of
3 work; especially because with enough time that had
4 passed, I assume they had already either gotten other
5 jobs or applied for, if they qualified, unemployment.

6 But if you had only applied on April 6 for
7 On The Tracks, that would have been one thing. But on
8 April 6, the same day, it appears to me that you filed
9 fraudulent applications for two other businesses that
10 you had no connection to, no payroll connection to.
11 One of them, Remington House, as I understand what the
12 Government and your attorney have argued, is that in
13 your brother's name, without his permission, you had
14 purchased the building and that there was never a
15 payroll that you were responsible for in that building.
16 It closed sometime in 2018, and you submitted the first
17 application for Remington House or I believe you -- it
18 was for the Apponaug Restaurant Group doing business as
19 Remington House, also on April 6, 2020. And you also
20 submitted a fraudulent loan application on that same
21 day for the Top Of The Bay restaurant on April 6th with
22 fraudulent payroll records for a business that you
23 never had any ownership interest, and not even through
24 your brother, because you were just negotiating as your
25 brother to buy the restaurant.

1 So I don't buy the argument that you kind of
2 got swept up in this and you intended to do the right
3 thing with this money. I don't think there's anything
4 in the record that shows that, frankly, and so what I
5 think you did was you saw an opportunity with a big pot
6 of money that, yes, the media told us about multiple
7 times, and you saw an opportunity to go in and get
8 money that you weren't entitled to. If your true
9 intention was to pay people, you didn't have to do
10 anything but On The Tracks, and if that was the only
11 fraud that was here we would be in a very different
12 situation. And I realize you didn't get any of the
13 money; but had you gotten all of that money, there were
14 no employees of yours to pay from Top Of The Bay or
15 Remington House, so that argument rings hollow and
16 honestly I don't buy it, Mr. Staveley.

17 So while I think you have accepted
18 responsibility enough to earn those points, in reading
19 through the presentence report provided by Probation,
20 there's an awful lot of it was someone else's fault;
21 including today when you said our bank, that's how we
22 got involved, our bank reached out to us. That
23 argument might fly if you were a young man or
24 uneducated or you hadn't been through this all before.
25 But you have, more than once, and you did it knowing

1 what the consequences were: It's federal prison. You
2 knew it. You signed things under penalty of perjury,
3 and you've done it before.

4 Your counsel tells us the case of *Her Majesty*
5 *v. Dudley and Stephens* and argues that that case is
6 about compassion, and I think in some ways it is about
7 compassion. I think it's also about necessity. But I
8 don't see you as the same as Dudley and Stephens. To
9 me in that scenario, Mr. Staveley, you're the person
10 who in that scenario if you had come in, killed the
11 cabin boy, ate all of him for yourself and left the
12 others to die, that's the equivalent of what you did
13 here. You didn't kill the cabin boy to protect your
14 life and the life of the other people in the life boat,
15 to use your attorney's analogy. So while I understand
16 what he's saying, and I agree on some level that
17 compassion doesn't have as big a role in sentencing as
18 it should, I'm not sure that comparing you to Dudley
19 and Stephens in this case is an appropriate comparison.

20 I know that you've indicated that you made
21 serious mistakes and that you've exercised poor
22 judgment, and I appreciate that here today. The
23 difficulty here and the argument the Government makes
24 is that there needs to be deterrence. And the reason I
25 asked about the first, you know, that this was the

1 first Payroll Protection Program prosecution is because
2 it happened a week after these loans became available.
3 It wasn't that you got desperate, you had no money, you
4 didn't know what to do, you were trying to help the
5 people at On The Tracks and you hesitated but then you
6 went ahead with what you knew to be fraud to help other
7 people. This was a get rich quick, make an easy buck
8 scheme, and that's exactly what it reads like, frankly,
9 and that's exactly what it was.

10 I think that because of, you know, unfortunately
11 nobody knew in March and April of 2020 how long the
12 pandemic would be going on or how much businesses would
13 suffer; but the reality is that they have, a lot of
14 people suffer, people have become homeless, and the
15 government has provided these monies to try to tide
16 people over through a time of economic hardship in a
17 national emergency. I can't give you a higher sentence
18 because the pandemic has gone on longer, and I don't
19 think that that's anything that anybody would have
20 anticipated at that time.

21 And then when it came time to -- when you got
22 arrested and you were given pretrial release and the
23 time was then to start to think about the way that you
24 had done things, you cut off your bracelet and you
25 fled. You did it while you were living with your

1 mother, so you weren't desperate. And then, even then
2 you said that it wasn't your fault, that Mr. Butziger
3 talked you into doing it and that you blacked out and
4 you woke up in Georgia. But there were two months in
5 between there during which time you were fraudulently
6 living or using other identifications and you knew that
7 you were not legitimately where you were supposed to
8 be. So I find it difficult to understand what
9 motivates you to do these things, but more than that
10 what motivates you to then sort of step back on the
11 responsibility and say, well, Mr. Butziger told me to
12 cut off my bracelet and I blacked out and the bank sent
13 me the application things. It just, it defies logic
14 that someone would do this and then say that they were
15 accepting responsibility.

16 But I am also mindful of the other factors under
17 3553(a) besides deterrence of you and deterrence of the
18 public; and that the idea that you're an individual
19 human being who deserves individual sentencing is
20 absolutely true, that you deserve my compassion and the
21 compassion of this court is absolutely true as well,
22 and you have that.

23 The fact that serving time in prison for you is
24 more difficult because of the PTSD and the things that
25 you've been through, it is something that is awful and

1 that this Court cannot pretend to understand, but it's
2 also a risk that you knew you were taking at the time
3 that you were engaging in this behavior. So if you
4 were, as I said, uneducated, somebody in their 20s,
5 this was your first offense, I think a lot of these
6 arguments would cut in your favor. But I think because
7 of your age, your educational background, you're
8 telling us you were legitimately working, even though
9 it was part-time in a broadcasting job for 18 months
10 before COVID, my understanding is you were living with
11 your mother, you weren't homeless, you weren't
12 desperate, and so I think those factors cut against
13 you, frankly, Mr. Staveley.

14 I think that the Government's recommendation is
15 appropriate and I think it is the proper sentence in
16 this case. It isn't an easy sentence, but you've had
17 sentences of 30 months and I think 24 months before,
18 and it hasn't deterred you and it hasn't caused you to
19 look inward at your own behavior, you know, it hasn't
20 caused you to do or look at what you're doing to your
21 mother or your brother.

22 So while I think that the Government could have
23 argued against the three-level reduction for acceptance
24 of responsibility, they've agreed to it, and I've given
25 that to you, and they've recommended what I think is a

1 very fair sentence at the mid range of the resulting
2 guideline range.

3 So on Count I of the Indictment I am going to
4 sentence you to 44 months of incarceration and on
5 Count II -- on Count VII I'm going to sentence you to
6 12 months of incarceration to be served consecutively
7 with that 44 months for a total of 56 months of
8 imprisonment.

9 I am going to sentence you -- I'm going to order
10 that you serve three years of supervised release upon
11 your release from prison and that will be concurrently
12 on each count. I'm not going to impose a fine in this
13 case because I don't think that it's appropriate and I
14 don't think that that is something that would be
15 (indecipherable) at this point that when you're
16 released from prison would be in any way helpful to
17 you. I am required to assess \$200 in special
18 assessments for the two counts in this case, and I will
19 do that.

20 As your attorney requested, I am going to
21 recommend that you serve your sentence as close to the
22 state of Rhode Island, as your mother, as possible. I
23 believe she's in Massachusetts. And I think if
24 possible, I'm going to ask the Bureau of Prisons to
25 consider sending you to serve your sentence at Devens

1 in Massachusetts if that's available. And I'm sure
2 Mr. Knight has told you I can make recommendations but
3 I can't tell them where to send you, but that is my
4 strong recommendation.

5 When you're released on supervised release, your
6 conditions will include that you shall refrain from
7 alcohol use; that you'll participate in substance abuse
8 testing, in substance abuse testing to include alcohol
9 testing, up to 72 drug tests per year; that you'll
10 participate in a program of mental health counseling as
11 directed and approved by Probation; and that you'll
12 participate in a manualized behavioral program as
13 directed by the United States Probation Officer; and
14 you'll contribute based on your ability to pay for any
15 of those treatments. You're also to provide access to
16 all financial information requested by your supervising
17 probation officer, including, but not limited to,
18 copies of all federal and state income tax returns and
19 all tax returns must be filed in a timely manner.

20 You will -- while you are on supervised release
21 you are not to open any new lines of credit, and that
22 includes not leasing any vehicles or any other
23 property, and you're also not to use any existing
24 credit resources without the prior approval of your
25 supervising probation officer. You're also to maintain

1 one checking account and all of your income or monetary
2 gains or other pecuniary proceeds are to be deposited
3 into that account, and you'll disclose those things to
4 Probation as appropriate.

5 There's no restitution in this case, but until
6 you pay the \$200 special assessment you're not
7 permitted to sell or give away or convey any asset
8 worth more than a thousand dollars without prior
9 approval of Probation until that \$200 assessment is
10 paid. And you're also not to hold employment that has
11 any fiduciary responsibility during your supervision
12 without first notifying the employer of this conviction
13 and without approval of your supervising probation
14 officer, and that includes self-employment; and you're
15 to cooperate with Probation in the investigation and
16 approval of any position of self-employment, so you
17 have to get approval for that before you're able to be
18 self-employed while out on supervised release.

19 I recognize, Mr. Staveley, that this is not a
20 light sentence and that it's more than I'm sure that
21 you had hoped for, but under all of the circumstances
22 contained in the presentence report and your sentencing
23 memos and the allocution, your allocation and the
24 statements of the Government, I think it is the fairest
25 and most appropriate sentence that I can impose in this

1 case.

2 You have also pursuant to the plea agreement
3 waived or given up your right to appeal the sentence if
4 it was within or below the advisory guideline range,
5 and since it is within the range your right to appeal
6 has been waived. And you can speak to Mr. Knight about
7 that and he can explain it to you further.

8 Is there anything else?

9 MR. VILKER: No, your Honor. Thank you.

10 MR. KNIGHT: No, your Honor.

11 THE COURT: We'll be in recess.

12 (Adjourned)
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C E R T I F I C A T I O N

I, Denise P. Veitch, RPR, do hereby certify
that the foregoing pages are a true and accurate
transcription of my stenographic notes in the
above-entitled case.

/s/ Denise P. Veitch
Denise P. Veitch, RPR
Federal Official Court Reporter

February 21, 2022
Date