

The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIC SHIBLEY,

Defendant.

NO. CR20-174JCC

**GOVERNMENT'S RESPONSE TO
MOTION TO REOPEN DETENTION
HEARING AND FOR RELEASE ON BOND
(Dkt. #46)**

The government files this response in opposition to Defendant Eric Shibley's Motion to Reopen Detention Hearing and for Release on Bond. Dkt. # 46. Defendant has not met the threshold to reopen detention. Even if the Court were to consider detention again, it should again find that Shibley should be detained.

I. BACKGROUND

On June 30, 2020, Defendant Eric Shibley was arrested on a two-count Complaint that charged him with Wire Fraud and Bank Fraud related to a scheme to submit false and fraudulent applications for Paycheck Protection Program (PPP) loans. Dkt. # 1. At a hearing that same day, Defendant was released on conditions, including that he not commit another crime and Defendant not obtain a loan without probation officer approval. Dkt. # 6.

A. Bond violations and bond revocation

In September, while release on bond in this case, Defendant was arrested after the Seattle Police Department was twice called to his West Seattle residence on reports of domestic violence by Defendant against his girlfriend. Defendant was subsequently charged in Seattle Municipal Court with assault. In this Court, Defendant was charged with two violations of the conditions of his release: 1) committing the crime of assault on or about September 12, 2020; and 2) committing the crime of assault on or about September 15, 2020.

On September 28, 2020, this Court held a hearing on these charges. Dkt. #28. The Court found probable cause that Defendant committed a crime. Dkt. #29. The Court further noted that Defendant was on probation for violating a no-contact order and that Defendant had violated protection orders in the past. The Court also noted that Defendant provided misleading information to his Probation Officer. The Court found that there were no conditions that will reasonably assure that Defendant was not a danger to his girlfriend or the community. Accordingly, the Court revoked Defendant's appearance bond and ordered him detained pending trial. Dkt. #29 at 2-3.

B. Indictment, Current Motion, and Trial Date

On October 15, 2020, the grand jury returned a 15-count indictment charging Defendant with wire fraud, bank fraud, and money laundering. Dkt. #31. Trial was initially scheduled before Judge Coughenour for December 14, 2020. Dkt. #37.

On Friday, November 13, 2020, Defendant filed a sealed motion to re-open detention. Dkt. #46.¹ In this motion, Defendant apparently offers three possible changed circumstances: 1) Defendant will not have contact with the victim; 2) Defendant is having difficulty making mortgage payments; and 3) concerns about Defendant's physical and mental health. Dkt. #46 at 3-8.

¹ The motion for detention was filed under seal. The government believes that the name of the victim in this case should be protected.

On Monday, November 16, the Court held a status conference with the parties and discussed the upcoming trial date. At this status hearing, attorney for Defendant raised concerns about the upcoming December trial date, including concerns related to Defendant's current mental health. After this motion is resolved, the parties may request that the Court order a competency hearing under 18 U.S.C. § 4241.

II. ARGUMENT

A. Legal standard for re-opening a detention hearing

A detention hearing may be reopened "at any time before trial if the judicial officer finds that [1] information exists that was not known to the movant at the time of the hearing *and* [2] that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community." 18 U.S.C. § 3142(f) (emphasis added). Courts have interpreted Section 3142(f)'s reopening provision "strictly." *United States v. Ward*, 63 F. Supp. 2d 1203, 1206 (C.D. Cal. 1999). Even if a defendant meets this threshold requirement to reopen a detention hearing, the Court must then determine whether release is appropriate under the Bail Reform Act.

B. Defendant has not met the standard to re-open the hearing

Defendant cannot overcome this threshold. Again, Defendant's motion offers three possible reasons to re-open detention: 1) his view that the victim will be "discourage[d]" from entering his West Seattle home; 2) his concern over mortgage payments; and 3) his concerns about his health. None of these reasons bear on the issue of whether there are conditions of release that will assure his appearance and protect the community.

As an initial matter, Defendant has provided no new information about the victim that would have a "material bearing" on whether there are conditions of release that can keep the community, and the victim, safe. According to Defendant's motion, the victim continues to reside at Defendant's proposed residence. Nothing has been done to remedy

1 | this core issue that lead to detention. To protect the community and the victim, Shibley
2 | should remain detained.

3 | Second, Defendant's concerns about making mortgage payments have no bearing
4 | on whether he can be released. Again, these do not go to the core issue of whether
5 | Defendant will abide by conditions of release or the protection of the community. In fact,
6 | given the allegations in the Indictment, Defendant's concerns about making mortgage
7 | payments raise concerns about whether the community can be adequately protected from
8 | further fraud should Defendant be released. Defendant seems to suggest that he needs to
9 | be released in order to evict his tenants, who he characterizes as "homeless." Dkt. # 46 at
10 | 5. He also notes that "[c]urrent evictions are substantially more difficult in the wake of
11 | Covid-based eviction relief measures enacted to alleviate homelessness." *Id.* This is not
12 | a situation that has "material bearing" on whether there are conditions of release that can
13 | keep the community safe. In fact, it is likely that even if he were released, Defendant
14 | would not be able to evict his tenants, given the new relief measures enacted. In sum,
15 | Defendant's issues in making mortgage payments have no relevance to the analysis
16 | regarding his release.

17 | Third, the Defendant seems to argue that concerns over his health in relation to the
18 | COVID-19 pandemic warrants his release. Courts who have addressed this issue have
19 | concluded that COVID-19 does not have "material bearing" on the appropriate conditions
20 | of release. *See, e.g., United States v. Yu Zhou*, No. 2:19-CR-163(1), 2020 U.S. Dist.
21 | LEXIS 57981, at *8-9 (S.D. Ohio Apr. 2, 2020) ("The Court concurs that COVID-19
22 | presents a novel and unprecedented change in circumstances. But that change presently
23 | plays no material role as to whether there are conditions of release that will reasonably
24 | assure the future appearance of [the defendant] in court."); *United States v. Knight*, No.
25 | 3:19-CR-0038-MMD-CLB, 2020 U.S. Dist. LEXIS 60421, at *15-16 (D. Nev. Apr. 6,
26 | 2020) ("A defendant's concerns that he or she would face heightened Covid-19 risks if
27 | incarcerated would not typically factor into a § 3142(f) analysis"). In sum, nothing about
28 | the pandemic makes it more likely that Defendant will abide by conditions of bond if

1 released. Accordingly, modification of Defendant's detention order is not permitted
2 under Section 3142(f)(2).²

3 Furthermore, in light of concerns raised by counsel for Defendant about
4 Defendant's mental health, it may in fact be better for Defendant and the community that
5 he remains in custody. At Monday's hearing, Defendant's counsel noted concerns about
6 Defendant's mental health, including that Defendant was confused, panicked, and was
7 hearing voices. These concerns are most appropriately raised through competency
8 proceedings pursuant to 18 U.S.C. § 4241, which the parties have been directed to
9 address after the detention issue is resolved. Dkt. # 49. As the Court is aware, the FDC
10 has psychologists on staff that can address the competency issue.

11 **C. Even if the Court were to re-consider detention, Shibley should remain**
12 **detained.**

13 After briefing and an evidentiary hearing on September 28, 2020, this Court made
14 a finding that there was probable cause that Defendant committed the crimes of domestic
15 violence assault on September 12 and 15, 2020, while he was on bond in this case. Dkt.
16 #29. Defendant has provided no new evidence to call this finding into question. As
17 noted by this Court in its bond revocation order, Defendant was on probation in
18 Washington State for violating a no contact/protection order at the time he allegedly
19 committed the crimes in the Indictment and the crimes against his ex-girlfriend. *Id.*
20 Based on this, the Court found that "Defendant [was] unlikely to abide by any condition
21 or combination of conditions of release pursuant to 18 U.S.C. § 3148(b)(2)(B)." Dkt.
22 #29. Again, nothing in Defendant's filing provides new evidence suggesting Defendant
23 is now likely to abide by conditions of release.

24 Furthermore, the government has learned that Defendant may have violated other
25 conditions of his release before his detention in September. Violations of conditions of
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27 ² The government also notes that Defendant is currently detained at FDC-Seatac, where there are
28 currently no active COVID-19 cases. See <https://www.bop.gov/coronavirus/>

1 release are governed by the provisions in 18 U.S.C. § 3148. That section describes the
2 standards of proof for the types of typical bond violations. For the violation alleged here,
3 a violation of conditions of release, the statute states that the Court may revoke release
4 and order detention if the Court finds “clear and convincing evidence that the person has
5 violated any other condition of release.” 18 U.S.C. § 3148(b)(1)(B).

6 One of Defendant’s conditions of release stated: “The defendant shall be
7 prohibited from incurring new credit charges, opening additional lines of credit, or
8 obtaining a loan without approval of the defendant's U.S. Probation Officer.” Dkt. # 6.
9 Defendant appears to have attempted to circumvent this condition while trying to
10 purchase at least one new real property.

11 The government has been informed by David Madrid, an individual who has been
12 characterized by Defendant as his “commercial real estate broker and occasional property
13 manager,” that in July 2020, while he was out on bond, Defendant purchased a property
14 located in Seattle, Washington. See Defendant’s Sealed Filing, Dkt. # 22. Madrid
15 provided the government with a purchase and sale agreement, signed July 21, 2020,
16 showing Defendant’s purchase of this new Seattle property – excerpts are attached as
17 Exhibit 1. Madrid told agents that the property, as well as the loan and the note for the
18 property is in Defendant’s former girlfriend’s name (the victim described above) because
19 Defendant had been arrested. Madrid reported that Defendant negotiated everything
20 related to the sale, and Madrid helped to arrange the hard-money loan. Madrid reported
21 that the earnest money for the sale of \$10,000, a cashier’s check from BECU, was
22 provided by Defendant on July 23, 2020. Defendant’s former girlfriend is listed as the
23 Purchaser on the check. See Exhibit 2.

24 Furthermore, the government has obtained the emails Defendant has sent to
25 Madrid while incarcerated. In one email, dated October 12, 2020 and provided to the
26 Court as Exhibit 3, Defendant writes to Madrid:
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1 I think if [Defendant's former girlfriend] understand that 9103³ will get
2 foreclosed if we dont [sic] sell it and we need Mike happy for business
3 down the road, she will co operate [sic]. I hope she understands! The
4 sooner the better. Once I am out of here and if the no contact is dropped I
5 can come back , [sic] otherwise I can not have any direct or indirect contact
6 or role in any sort of negotiation on that issue.

7 The email appears to confirm Defendant's role with the property, given that it suggests he
8 has a say in whether the property will be sold. Furthermore, Defendant appears to ask
9 Madrid to convince Defendant's former girlfriend to agree to the sale of the property.

10 While the government is still investigating the circumstances of this property
11 purchase, taken with Defendant's history on non-compliance with no contact orders and
12 the fact that Defendant is alleged to have committed the underlying crime and two more
13 domestic violence assaults while on probation in his Washington State case, Defendant
14 has demonstrated that he is unable and unwilling to abide by any conditions of release set
15 by this Court. Defendant's motion has provided no evidence that this has changed since
16 this Court ordered his detention in September. Furthermore, the involvement of the
17 victim in the purchase of the property described above suggests that Defendant is still in
18 close contact and coordination with her. As such, he should remain detained pending
19 trial.

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28 ³ 9103 is the house number for the address of the Seattle property bought in July.

III. CONCLUSION

The government respectfully requests that the Court deny the motion to re-open the detention hearing. In the event that the Court considers Defendant's arguments to re-consider the detention order, the Court should continue detention.

DATED this 17th day of November, 2020.

Respectfully submitted,

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