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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

* * * * *	)	
UNITED STATES OF AMERICA,	)	Criminal Action
	)	No. 21-00083
Plaintiff,	)	
	)	
vs.	)	
	)	
BRANDON FELLOWS,	)	Washington, D.C.
	)	November 2, 2022
Defendant.	)	3:33 p.m.
	)	
* * * * *	)	

**REDACTED** TRANSCRIPT OF STATUS CONFERENCE  
CONDUCTED VIA ZOOM  
BEFORE THE HONORABLE TREVOR N. McFADDEN,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:	ZACHARY PHILLIPS, ESQ. UNITED STATES ATTORNEY'S OFFICE 1801 California Street Suite 1600 Denver, Colorado 80202
FOR THE DEFENDANT:	WILLIAM L. SHIPLEY, ESQ. LAW OFFICES OF WILLIAM L. SHIPLEY Post Office Box 745 Kailua, Hawaii 96734
REPORTED BY:	LISA EDWARDS, RDR, CRR Official Court Reporter United States District Court for the District of Columbia 333 Constitution Avenue, Northwest Room 6706 Washington, D.C. 20001 (202) 354-3269

1 THE COURTROOM DEPUTY: Your Honor, this is  
2 Criminal Case 21-83, the United States of America versus  
3 Brandon Fellows.

4 Counsel, please introduce yourselves for the  
5 record, starting with the Government.

6 MR. PHILLIPS: Good afternoon, your Honor.  
7 Zachary Phillips on behalf of the United States.

8 THE COURT: Good afternoon, Mr. Phillips.

9 MR. SHIPLEY: Good afternoon, your Honor, or good  
10 morning, your Honor. William Shipley on behalf of Defendant  
11 Brandon Fellows, who's present via a video connection from  
12 the Northern Neck Regional Jail in Virginia.

13 THE COURT: Good afternoon, Mr. Shipley.

14 And good afternoon, Mr. Fellows.

15 THE DEFENDANT: Good afternoon. Sorry. It's a  
16 little cold in here.

17 THE COURT: I was trying to figure out what was  
18 going on there, Mr. Fellows. These government facilities  
19 have a hard time with heating and cooling on the shoulder  
20 seasons.

21 We're here for a status conference. I first want  
22 to address the Defendant's motion for reconsideration of his  
23 detention status. I have reviewed his filings and also the  
24 filings of the Government.

25 He explains that the mental health evaluation he

1 participated in has shed light on why he was previously  
2 violating the conditions of his supervised release.

3 For the following reasons, I will decline to  
4 reconsider the detention order: The applicable statute, 18  
5 USC 3142(f), states that a detention hearing may be reopened  
6 at any time before trial if the judicial officer finds that  
7 information exists that was not known to the movant at the  
8 time of the hearing and that has a material bearing on the  
9 issue whether there are conditions of release that would  
10 reasonably assure the appearance of such person as required  
11 and the safety of any other person in the community.

12 Here, the new information offered is primarily  
13 Mr. Fellows's mental health evaluation. I think it was  
14 useful, and I'm glad he got the mental health evaluation.  
15 But I don't think that new information merits  
16 reconsideration of the detention status.

17 I had previously ordered the Defendant detained  
18 based on the fact the Defendant missed just over half of his  
19 call-ins for drug testing while on release, violated his  
20 curfew and failed to submit to a court-ordered mental health  
21 evaluation. He has now done the last, but I don't think  
22 this new information has a material bearing on the issue of  
23 his release.

24 I also note that Mr. Fellows does not present any  
25 plan or treatment to deal with the mental health issues

1 uncovered in the evaluation. He explains in his motion for  
2 reconsideration that the mental health evaluation shows that  
3 his behavior is beyond his ability to control by his own  
4 volition. I'm looking to Page 7 of his motion for that.

5 Frankly, I agree with the Government that that's  
6 actually kind of concerning and raised a question about  
7 whether he'd be able to comply with drug testing and curfew  
8 and follow the behavior that I would expect of a pretrial  
9 detainee on the outside.

10 He does present a release plan in his most recent  
11 submission; but based on the past violations, I'm not  
12 confident that even living with a custodian will be enough  
13 to maintain compliance with his conditions of release.

14 I also want to make clear that I do think the  
15 Defendant poses a danger to the community. And I'm not  
16 concerned that he poses a violent danger, but I am concerned  
17 about the Defendant's ability and willingness to comply with  
18 the law and with any reasonable release conditions.

19 For all these reasons, I find that reconsideration  
20 of the detention order is not warranted at this time.

21 Mr. Shipley, can you -- now just speaking briefly,  
22 maybe you can state for the record where things stand. I  
23 think we talked in the past about the potential for a plea,  
24 a potential bench trial. Otherwise, I think we want to set  
25 out a briefing schedule for the jury trial.

1           MR. SHIPLEY: Correct, your Honor. I mean, the  
2           issue right now is that the only offer from the Government  
3           is to plead guilty to the sole felony offense. But when we  
4           pencil out the potential likely guideline range, Mr. Fellows  
5           approaches time served. So why would he accept a felony  
6           conviction when he could go to trial and potentially be  
7           exonerated and not face any additional time in custody?

8           So I think there's no likelihood of a disposition  
9           short of a trial based on the current posture of the  
10          Government.

11          Given the fact that he is likely going to shortly  
12          reach what is a potential time-served, you know, status, you  
13          know, we're going to ask, you know, to remain with the  
14          existing trial date and, you know, depending on  
15          conversations I'm going to have with Mr. Fellows now, we  
16          might ask to advance that into a bench trial on a shorter  
17          timeframe, eliminating many of the pretrial issues.

18          And I'm even going to talk to Mr. Fellows about  
19          how we might streamline the presentation of the evidence,  
20          because I don't think there's a lot of dispute about the  
21          evidence. The question is: What does the evidence show?

22          THE COURT: Great. That all makes a lot of sense  
23          to me, Mr. Shipley.

24          I'll tell you, my availability is running a little  
25          short. I do have some time right before Christmas. I've

1 got a couple weeks there. So I think we could potentially  
2 do a bench trial there, depending on the attorneys'  
3 availability.

4 And obviously, that would -- I think we'd need to  
5 either really expedite briefing or else forego some  
6 briefing. But based on what you're saying, I think we  
7 should proceed with a briefing schedule assuming a February  
8 date. And if Mr. Fellows wants to waive jury trial and you  
9 want to shoot for a December date, Mr. Shipley, I'm  
10 certainly happy to try to accommodate that.

11 THE DEFENDANT: Your Honor, I'm looking to  
12 represent myself also. I need to just throw that in there.

13 THE COURT: So --

14 MR. SHIPLEY: He has not communicated that to me  
15 previously until this moment, your Honor. And I have said  
16 to Mr. Fellows in the past, and I'll represent to the Court  
17 right now, I'm not going to represent him as standby  
18 counsel, not being out here in the Pacific. I'm not going  
19 to be captive to the schedule that he wants to impose or the  
20 decisions he wants to make.

21 THE COURT: So let's hold on a second.

22 Ms. Chaclan, maybe you can put Ms. Edwards,  
23 Mr. Shipley and Mr. Fellows and me in a breakout room for a  
24 moment.

25 THE COURTROOM DEPUTY: Yes, Judge.

















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[REDACTED]

[REDACTED]

(Whereupon, the following proceedings were had with only Government counsel present:)

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THE COURT: Mr. Phillips, Mr. Shipley and Mr. Fellows are going to talk for a few minutes before they rejoin us.

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MR. PHILLIPS: Great. Thank you, your Honor.

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(Whereupon, the following proceedings were had with all counsel present:)

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THE COURTROOM DEPUTY: Your Honor, we lost Mr. Fellows. He's not in the room.

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THE COURT: Why don't we resolve -- he probably pushed the wrong button.

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THE COURTROOM DEPUTY: I can text someone to see if we can get in contact with the jail to see if we can connect with him.

17

18

MR. SHIPLEY: If you want to, your Honor, I can just tell you off the record real quick where we ended up and we can bring him back in to save time.

19

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21

THE COURT: Well, yes. I might ask you to essentially waive his presence. But yes. Where do things stand, Mr. Shipley?

22

23

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Ms. Chaclan, if you can try to make contact in the meantime.

25

1 THE COURTROOM DEPUTY: I will.

2 MR. SHIPLEY: Yeah. Yeah. He didn't realize, but  
3 when -- I told I'm actually going to be in the District next  
4 week the entire week. And I told him, you know, we had --  
5 you may recall the last time I was there we tried to go down  
6 to see him and got barred by a lockdown situation. They  
7 wouldn't let us in to see him, so we missed that visit.

8 So I told him, Look, we're going to be there next  
9 week. Mr. Marshall and I will drive down and spend all day  
10 with him. We will go through everything he wants to do as  
11 part of his defense. And then, assuming that that's a  
12 productive exercise and I'm confident that we're all going  
13 in the same direction, that we would come back to the Court  
14 in two weeks to give you exactly where we stand and I think  
15 potentially, you know, move this towards a bench trial along  
16 the timeframe we talked about.

17 I have a couple things I need to talk to  
18 Mr. Phillips about in that regard about streamlining the  
19 presentation of the evidence and, you know, the worst-case  
20 scenario -- well, I guess there's two. But the  
21 second-worst-case scenario would be just to stick with the  
22 February trial date. The worst-case scenario would be you  
23 have to find out whether or not he in fact gets to terminate  
24 me.

25 But I think -- I think he's -- I don't think he's

1           there anymore. So I think we're okay.

2           THE COURT: So we'll see if Ms. Chaclan can make  
3           contact. But my proposal is that we set a briefing  
4           schedule, assuming we're on for February, but then also come  
5           back as you say in a couple weeks. And that would be to  
6           confirm that Mr. Fellows is comfortable with proceeding with  
7           Mr. Shipley as counsel. And then if there's going to be  
8           discussion about shifting to a bench trial, we'd see if we  
9           can accommodate that.

10           Does that make sense to you, Mr. Shipley?

11           MR. SHIPLEY: Yes, your Honor.

12           THE COURT: And are you willing to waive your  
13           client's presence for purposes of this scheduling?

14           MR. SHIPLEY: Yes, your Honor. I'll talk to him  
15           about the technical problem when I next speak to him on the  
16           phone.

17           THE COURT: Thank you.

18           Mr. Phillips, does that make sense to you?

19           MR. PHILLIPS: It does. Thank you, your Honor.

20           THE COURT: Okay. So let's just work back from  
21           February. We have a Monday the 13th trial date. We have a  
22           pretrial conference on February 3rd.

23           I will ask for -- I'm just going to work  
24           backwards. So any replies in support of motions to  
25           suppress, motions *in limine*, 404(b) evidence or motions in



1 support of expert testimony are going to be due by  
2 January -- say January 27th.

3 I'll also ask the parties to provide joint  
4 proposed voir dire questions and joint proposed final jury  
5 instructions by that date. To the extent the parties can't  
6 agree on jury instructions or voir dire questions, I'll ask  
7 you all to make that clear what you disagree on. But I'm  
8 looking -- ideally, I think, it tends to work better if the  
9 parties can collaboratively come up with what they think  
10 makes sense for jury instructions and voir dire questions.

11 I'll also make sure to send you all my standard  
12 voir dire questions or at least the voir dire questions I  
13 used in -- I think it was *Hale-Cusanelli*, which I think  
14 would be a good starting point for you all. I'm certainly  
15 not looking for a complete overhaul of my voir dire  
16 questions.

17 So that takes us back to January 13th.

18 I'd ask for any opposition to motions to suppress,  
19 any opposition to motions *in limine*, any opposition to  
20 expert testimony -- all of those should be filed by January  
21 13th. And given the holidays, why don't we say December  
22 16th is the deadline for any motions *in limine*, motions to  
23 suppress, 404(b) notices and expert testimony designations.  
24 All of those should be filed by --

25 MR. SHIPLEY: Your Honor, could I -- can I

1 suggest -- can I suggest for my sanity we roll these dates  
2 over to a Monday? And I say that only because I'm going to  
3 be in the Oath Keeper trial the whole month of December and  
4 I'll have to be doing this work on the weekend.

5 THE COURT: That's fine. So it would be December  
6 19th. I think it was January 17th. Is that -- the 16th is  
7 Martin Luther King Day.

8 MR. SHIPLEY: Yeah. The 17th would be fine.

9 And the 27th is fine, because I hope the trial is  
10 over by then. If the trial's not over by then, I've got  
11 other problems.

12 THE COURT: So any concerns with that timeline,  
13 Mr. Shipley?

14 MR. SHIPLEY: No, your Honor.

15 THE COURT: And Mr. Phillips?

16 MR. PHILLIPS: No. That's fine, your Honor.

17 THE COURT: And then let's look for a status  
18 conference date. I'm starting a trial myself, so I don't  
19 have a lot of options here.

20 MR. SHIPLEY: I won't do 3:00 a.m.

21 THE COURT: How about 1:30 p.m. on Friday,  
22 November 18th, for a video teleconference?

23 Mr. Phillips, does that work for you?

24 MR. PHILLIPS: That does. Yes.

25 THE COURT: Mr. Shipley, does that work for you?

1 MR. SHIPLEY: I can do that, your Honor. Yes.

2 THE COURT: And, Ms. Chaclan -- oh, yes. Tell me  
3 what you're seeing. We need to work around that.

4 THE COURTROOM DEPUTY: Northern Neck only starts  
5 amount 2:00 p.m.

6 Also, your Honor, in regards to this hearing,  
7 Northern Neck has a hard stop at 4:00. So I think that's  
8 why he was disconnected. And the jail was called, and they  
9 don't even pick up at this time.

10 THE COURT: So, Ms. Chaclan, why don't we set this  
11 at -- can we do 2:00 p.m. on the 18th? And then I know  
12 we've got a pretrial conference. We'll just need to move  
13 that back half an hour.

14 THE COURTROOM DEPUTY: One moment. Let me check.  
15 Your Honor, the calendar is showing that that's  
16 available.

17 THE COURT: So let's set this for a status  
18 conference on Friday, November 18th, at 2:00 p.m.

19 Mr. Shipley, let me ask that you get a jury trial  
20 waiver form from Ms. Chaclan and that you take that down  
21 with you. If you do want to waive trial, I want to handle  
22 that colloquy on the 18th. And I'll need a signed jury  
23 trial form -- jury trial waiver form for that hearing that  
24 you should just provide to chambers ahead of time.  
25 Obviously, again, I'm not at all pushing him to waive trial,

1 but I do want to say, I mean, we're running out of  
2 availability and weeks to make that happen in December. So  
3 I need you to make sure that that all works out so that we  
4 can do the colloquy on November 18th if we want to try to  
5 fit in a bench trial in December.

6 MR. SHIPLEY: And as I said, I'll be personally  
7 there and we'll go through that issue thoroughly.

8 THE COURT: Thank you.

9 Mr. Phillips, anything further for the Government?

10 MR. PHILLIPS: No, your Honor, other than speedy  
11 trial.

12 THE COURT: On what basis are you seeking tolling?

13 MR. PHILLIPS: That the defense has asked to go  
14 and meet with their client and asked for additional time and  
15 the Court's availability for the trial in February.

16 THE COURT: And Mr. Shipley?

17 MR. SHIPLEY: For defense preparation, your Honor.  
18 I'm not sure the Court's calendar is a basis under the  
19 Speedy Trial Act. But for my calendar needs and more time  
20 to prepare.

21 THE COURT: I agree. I think it is appropriate  
22 for us to toll the speedy trial clock in light of needs for  
23 defense preparation, and I will waive it. To be clear, I'm  
24 waiving it just for the couple weeks here until this next  
25 status conference.

1 MR. SHIPLEY: That's fine.

2 THE COURT: And we'll talk then about what, if  
3 any, tolling would be appropriate there.

4 All right. Mr. Shipley, anything further for  
5 defense?

6 MR. SHIPLEY: Nothing, your Honor.

7 THE COURT: Thanks, gentlemen. See you all in a  
8 couple weeks.

9 MR. SHIPLEY: Thank you, your Honor.

10 MR. PHILLIPS: Thank you.

11 (Proceedings concluded.)

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