

FILED
KING COUNTY, WASHINGTON

SEP 21 2020

SUPERIOR COURT CLERK
BY Tara Berger
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

RYAN SANTHUFF,

Plaintiff,

vs.

STATE OF WASHINGTON, and DAVID
JAMES NOBACH, an individual

Defendant.

Case No.: 19-2-04610-4 KNT

ORDER ON CONTEMPT
OF COURT

I. FINDINGS OF FACT

Trial in this matter started on August 31, 2020. Plaintiff's Omnibus *Motion in Limine* number two, requesting that witnesses be excused pursuant to ER 615, was granted.

In light of the current health guidelines as a result of the COVID-19 pandemic, and in an effort to comply with Article I, Section 10 of the Washington State Constitution (Justice in all cases shall be administered openly), the Court created a Zoom link so that observers could watch the proceedings remotely.

The Court, on at least two occasions, told the parties that in order to ensure witnesses would not be in violation of the Court's order excluding witnesses pursuant to ER 615, the attorneys on cross-examination could inquire of the witnesses if they had violated the Court's order by watching the proceedings via Zoom.

1 The relevant Court's Order on *Motions In Limine* reads as follows:

2 The Court will ask if a witness can be excused after they're
3 done testifying. At [that] point, the parties will be asked if the
4 witness can be excused and the party should advise that they
5 cannot be excused if it's possible that the witness may be called
6 on rebuttal.

7 Counsel are ordered to admonish the parties and witnesses to not
8 discuss the case with other witnesses or describe what occurred
9 in the courtroom. [Witness] are not to be provided with the Zoom
10 link to watch or listen to the proceedings prior to their testimony
11 or until they have been excused. Counsel is to inform witnesses
12 that opposing counsel may inquire as to whether or not the
13 witness violated the Court order under oath. A witness who
14 violates the Court's order will be held in contempt of court.

15 Lieutenant Nobach, the defendant in this case, has been present throughout the
16 proceedings.

17 On Thursday, September 17, 2020, Defense counsel advised the Court that three of
18 defense witnesses, Brenda Biscay, Jeff Hatterberg, and Francisco Shannon, had watched
19 portions of the proceedings via Zoom; that they had watched Plaintiff's testimony; and they
20 had commented on his testimony. It was revealed, and it is undisputed, that Lt. Nobach
21 provided the Zoom link to Brenda Biscay.

22 The Court gave Lt. Nobach the opportunity to explain his actions and provide
23 mitigating information. Lt. Nobach indicated he was sorry, it was a mistake, and he believed
24 Zoom was a public forum.

25 II. CONCLUSIONS OF LAW

Contempt of court means an intentional disobedience of any lawful order, or process
of the court. RCW 7.21.010(b). A judge presiding in a proceeding may impose a punitive

1 sanction upon a person who commits a contempt of court. The judge shall impose the
2 sanctions immediately after the contempt of court or at the end of the proceeding and only for
3 the purpose of preserving order in the court and protecting the authority and dignity of the
4 court. RCW 7.21.050(1). The Court may impose for each separate contempt of court a
5 punitive sanction of a fine of not more than five hundred dollars or imprisonment for not
6 more than thirty days, or both. RCW 7.21.050(2).

7
8 **Lt. James Nobach is found to be in Contempt of Court for intentionally having**
9 **violated the Court's order of providing the Zoom link to Brenda Biscay.** Lt. Nobach had the
10 opportunity to speak in mitigation.


11
12 III. ORDER

13 IT IS HEREBY ORDERED THAT Lt. James Nobach is to pay \$500 for each
14 violation. As of the signing of this Order, it is the Court's understanding that the only
15 witness that Lt. Nobach provided the link to is Brenda Biscay.

16
17 **As such, the Court will impose a sanction of \$500 to be paid to the King County**
18 **Superior Court Clerk's Office by .** *9/30/20*

19 If throughout the remainder of the trial the Court learns that Lt. Nobach provided the
20 Zoom link to additional witnesses, the Court will impose an additional \$500 per witness and
21 will prepare an amended order.

22
23
24 DONE IN OPEN COURT this *21st* day of *Septmbr*, 2020.

25

The Honorable Mafé Rajul
King County Superior Court Judge