

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

22-CR-35-JLS

LUKE MARSHALL WENKE,

Defendant.

**GOVERNMENT'S POST-HEARING
SUBMISSION ON VIOLATION OF SUPERVISED RELEASE**

At the conclusion of the evidentiary hearing on the defendant's alleged violation of supervised release, the Court directed the parties to submit legal authority regarding when communication with a third-party is "indirect contact" with a protected person.

The government submits that, as with all legal interpretation, the Court should apply the plain and ordinary meaning of "indirect contact." Webster's Third New International Dictionary defines "indirect" as, among other things, "not proceeding to an intended end by the most direct course or method," or "not directly aimed at or achieved." *Indirect*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (3d ed., 1961). Ballentine's Law Dictionary defines "indirect" as "not leading to the fulfillment of a purpose by the plain and obvious course, but obliquely or by remote means," or "not resulting directly from an act or cause, but more or less remotely connected with or growing out of it." *Indirect*, BALLENTINE'S LAW DICTIONARY (3d ed., 1969).

Based on this plain meaning of “indirect,” the government submits that “indirect contact” here should be interpreted as either: (a) intended contact with R.G. brought about through indirect means, *i.e.* through contact with A.B.; or (b) intended contact with A.B. that was reasonably foreseeable to result in contact with R.G.

The government’s interpretation is consistent with case law deciding when defendants violate orders of protection by indirect contact with protected persons. *See Palmer v. Johnson*, Civil Action No. 3:08cv006–HEH, 2008 WL 3992327 (E.D. Va. 2008) (upholding state court conviction for violating order of protection when the defendant sent a threatening email to a coworker of the protected person, and the email was forwarded to others); *United States v. Streete*, ACM 36757, 2009 WL 2996990 (U.S. Air Force Court of Criminal Appeals 2009) (affirming conviction for violating order to have no contact with victim where defendant asked a third party to contact victim and see if she would meet the defendant); *United States v. Thompkins*, 58 M.J. 43 (U.S. Court of Appeals for the Armed Forces 2003) (affirming conviction for violating no contact order where the defendant contacted the protected person’s girlfriend and asked for the return of property, and the girlfriend took it upon herself to relay the request to the protected person).

Here, the defendant sent a vitriolic email to A.B. containing repeated references to R.G.—all while knowing that A.B. and R.G. had represented Teeter together and were close associates. Under those circumstances, the Court should find that the defendant either (a) intended for the email to reach R.G., or (b) should have reasonably foreseen that the email would reach R.G. due to its content and his knowledge of R.G.’s relationship with A.B.

Under either circumstance, the conduct would meet the plain language definition of “indirect contact” with R.G. and would violate the terms of his supervised release. The reasonableness of this conclusion is underscored by the fact that A.B. immediately forwarded the email to R.G., who instantly interpreted it as an attempt to indirectly contact him.

Under these circumstances, the Court should find that the defendant violated the terms of his supervised release.

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