

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	*	Docket Number:
	*	1:22-CR-00035-JLS-HKS-1
	*	
	*	Buffalo, New York
v.	*	June 21, 2023
	*	1:04 p.m.
	*	
LUKE MARSHALL WENKE,	*	VIOLATION HEARING
	*	
Defendant.	*	
	*	
* * * * *	*	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	TRINI E. ROSS, UNITED STATES ATTORNEY, By DAVID J. RUDROFF, ESQ., CHARLES KRULY, ESQ., Assistant United States Attorney, Federal Centre, 138 Delaware Avenue, Buffalo, New York 14202, Appearing for the United States.
For the Defendant:	FEDERAL PUBLIC DEFENDER'S OFFICE By ALEXANDER J. ANZALONE, ESQ., FONDA KUBIAK, ESQ., Assistant Federal Public Defenders, 300 Pearl Street, Suite 200, Buffalo, New York 14202.
The Courtroom Deputy:	KIRSTIE L. HENRY

1 The Court Reporter: BONNIE S. WEBER, RPR,
2 Notary Public,
3 Robert H. Jackson Courthouse,
4 2 Niagara Square,
5 Buffalo, New York 14202,
6 Bonnie_Weber@nywd.uscourts.gov.

7
8 Proceedings recorded by mechanical stenography,
9 transcript produced by computer.

10 (Proceedings commenced at 1:04 p.m.)

11 **THE CLERK:** All rise.

12 The United States District Court for the Western
13 District of New York is now in session. The Honorable John
14 Sinatra presiding.

15 **THE COURT:** Please be seated.

16 **THE CLERK:** Court calls United States versus
17 Luke Marshal Wenke, Case Number 22-CR-35. This is a date set
18 for a violation hearing.

19 Counsel, please state your appearances for the record.

20 **MR. RUDROFF:** Good afternoon, Your Honor.
21 David Rudroff and Charles Kruly on behalf of the Government.

22 **MR. ANZALONE:** Good afternoon, Your Honor.
23 Alexander Anzalone and Fonda Kubiak from the Federal Defenders
24 Office. We're here on behalf of Mr. Wenke, who is seated to our
25 left in custody.

THE COURT: Okay. Good afternoon, Counsel. And good

1 afternoon, Mr. Wenke.

2 **THE DEFENDANT:** Good afternoon, Your Honor.

3 **MR. ANZALONE:** Good afternoon.

4 **THE COURT:** Okay. Anything we need to do regarding
5 this revocation hearing before we get started with witnesses
6 from the Government?

7 **MR. RUDROFF:** Nothing from the Government, Your Honor.

8 **THE COURT:** Mr. Anzalone?

9 **MR. ANZALONE:** Your Honor, I would just ask the
10 nontestifying witnesses to be excluded.

11 I know the Government usually asks for an exception
12 for their case agent. This is a VOSR hearing. I don't think
13 that's necessary here.

14 **THE COURT:** Hang on a second. It's only the
15 testifying -- people who would follow on that you would be
16 concerned about for a sequestration, isn't it?

17 So it would be the second and third or fourth
18 witnesses, not somebody who is just sitting here observing.

19 **MR. ANZALONE:** I'd agree.

20 **THE COURT:** If that's what you meant by that?

21 **MR. ANZALONE:** If I wasn't clear, then that's what I
22 meant.

23 **THE COURT:** Mr. Rudroff --

24 **MR. RUDROFF:** Your Honor, I don't have an objection.
25 I intend to call Probation Officer Zenger first and then --

1 yeah, so then Special Agent Krystie Brown from the FBI second.

2 **THE COURT:** Just those two witnesses?

3 **MR. RUDROFF:** The only two witnesses, Your Honor.

4 **THE COURT:** Okay. So your second witness should be
5 remaining in the hallway until we need her.

6 **MR. RUDROFF:** Yes, Your Honor.

7 **THE COURT:** Okay. Thank you.

8 All right. So, Mr. Rudroff --

9 **MR. RUDROFF:** Yes, Your Honor. Does the Court prefer
10 a brief opening remark or just get right into it?

11 **THE COURT:** I don't think I need it. I think I'm
12 familiar with what's going on and what the allegations are.

13 **MR. RUDROFF:** Understood, Your Honor. The Government
14 calls Probation Officer Matt Zenger.

15 **THE COURT:** Mr. Anzalone, do you need to say
16 something?

17 **MR. ANZALONE:** I do not.

18 **THE COURT:** Okay.

19 Mr. Zenger, come on up. Please stay standing. Raise
20 your right hand for the oath.

21

22 **MATTHEW ZENGER,**

23 witness on behalf of the **GOVERNMENT**, having first been duly
24 sworn, testified as follows:

25

1 **THE WITNESS:** I do.

2 **THE CLERK:** Thank you.

3 **THE COURT:** Mr. Anzalone, does your client need to be
4 reminded of what his rights are under Rule 32? I assume he know
5 them through you and Ms. Kubiak.

6 **MR. ANZALONE:** He does. We've gone through them and,
7 as you can see, many of those rights are being exercised today.

8 **THE COURT:** Okay. I just want to make sure that I
9 don't need to read the litany to him.

10 Okay, Mr. Rudroff, your witness.

11 **MR. RUDROFF:** Thank you, Your Honor.

12

13 **DIRECT EXAMINATION BY MR. RUDROFF:**

14

15 **BY MR. RUDROFF:**

16 Q. Good afternoon, Officer Zenger. Can you please state and
17 spell your name for the record?

18 A. Matthew Zenger, M-A-T-T-H-E-W, Z-E-N-G-E-R.

19 Q. And where are you currently employed?

20 A. U.S. Probation.

21 Q. How long have you been a U.S. probation officer?

22 A. Since January of 2018.

23 Q. Can you just briefly describe your duties as a U.S.
24 probation officer as it results -- relates to people on
25 supervised release?

1 A. Currently my duties include supervising offenders in the
2 community to ensure that they follow the conditions that were
3 imposed by the Court.

4 Q. And are you familiar with a person named Luke Wenke?

5 A. I am.

6 Q. How are you familiar with Mr. Wenke?

7 A. Mr. Wenke is one of the individuals that I supervise.

8 Q. Do you see him in the courtroom today?

9 A. I do.

10 Q. Can you please identify him for the record?

11 A. He is the individual sitting with the two defense
12 attorneys.

13 Q. How long have you supervised Mr. Wenke?

14 A. Since approximately the end of March of this year.

15 Q. Of 2023?

16 A. Yes.

17 Q. Are you familiar with whether this is Mr. Wenke's first
18 time of supervised release Federally?

19 A. It is.

20 Q. Okay.

21 **MR. RUDROFF:** Your Honor, would the Court prefer that
22 I approach the witness with an exhibit or simply put it on the
23 ELMO?

24 **THE COURT:** Do you have any problems, Mr. Anzalone,
25 just using the ELMO?

1 **MR. ANZALONE:** No.

2 **THE COURT:** Okay. Go ahead, Mr. Rudroff.

3 **MR. ANZALONE:** Well, provided I can see what's on the
4 ELMO.

5 **THE COURT:** We will all have that need, right.

6 **MR. ANZALONE:** Thank you.

7 **BY MR. RUDROFF:**

8 Q. Officer Zenger --

9 **MR. ANZALONE:** One moment, I'm still not getting it
10 here.

11 **THE COURT:** Stand by, Mr. Anzalone.

12 **MR. ANZALONE:** Thank you.

13 **BY MR. RUDROFF:**

14 Q. Officer Zenger, I've put on the ELMO what I've marked for
15 identification as Government Exhibit 1. And for record
16 purposes, this was provided to the defense before today's
17 hearing.

18 Do you recognize Government Exhibit 1, Officer Zenger?

19 A. I do.

20 Q. What is Government Exhibit 1?

21 A. This is the judgment in a criminal case, which essentially
22 outlines the conditions that were imposed by the Court, or the
23 entire sentence imposed by the Court at the time of sentencing.

24 Q. And have you reviewed that entire exhibit?

25 A. I did.

1 Q. And is that a true and accurate copy of the judgment of
2 conviction in 22-CR-35?

3 A. Yes, it appears so.

4 **MR. RUDROFF:** Your Honor, I offer Government Exhibit 1
5 into evidence.

6 **THE COURT:** Any objection?

7 **MR. ANZALONE:** No objection.

8 **THE COURT:** Government Exhibit 1 is admitted.

9

10 **The following was received in Evidence:**

11 **GOVT. EXH. 1**

12

13

14 **BY MR. RUDROFF:**

15 Q. Officer Zenger, did you review this document with the
16 defendant?

17 A. I did.

18 Q. Approximately when was that?

19 A. I believe we covered it -- we reviewed the document
20 together over the phone a few days prior to his release.

21 And then he reported to the office in person the first
22 business day following his release, at which time we reviewed it
23 together in person again.

24 Q. Can you tell the Court what your standard practice is
25 reviewing judgments of convictions of supervisees?

1 **MR. ANZALONE:** Objection. Relevance.

2 **THE COURT:** I'll allow it. And I'm assuming he's
3 going to get to what his recollection is here as to this
4 defendant, right?

5 **MR. RUDROFF:** Yes, Your Honor.

6 **THE COURT:** Okay.

7 **THE WITNESS:** Yes. So we review every condition from
8 the mandatory conditions to the standard conditions to the
9 special conditions, each line item with the defendant.

10 **BY MR. RUDROFF:**

11 Q. And is that what you, in fact, did with Mr. Wenke with
12 respect to Government Exhibit 1?

13 A. Yes.

14 Q. Turning to page four of Government Exhibit 1. What are we
15 looking at on page four, Officer Zenger?

16 A. So page four lists the standard conditions of supervision.
17 So those are the conditions that every person on supervised
18 release has to follow.

19 Q. Okay. And you reviewed these conditions with Mr. Wenke
20 when you began supervising him?

21 A. I did.

22 Q. Looking at the bottom of page four, can you read that block
23 underneath U.S. Probation office use only?

24 A. Upon a finding of a violation of probation or supervised
25 release, I understand that this Court may: One, revoke

1 supervision.

2 Two, extend the terms of supervision; or three, modify the
3 conditions of probation or supervised release.

4 A U.S. probation officer has instructed me on the
5 conditions specified by the Court and has provided me with a
6 written copy of this judgment containing these conditions.

7 For further information regarding these conditions, see
8 overview of probation and supervised release conditions
9 available at www.UScourts.gov.

10 Q. And do you recognize those signatures underneath that
11 portion you just read?

12 A. I do.

13 Q. Whose signatures are those?

14 A. It is the defendant's signature, next to the defendant's
15 signature. And then my own signature next to U.S. probation
16 officer.

17 Q. And did you watch the defendant sign this form?

18 A. I did.

19 Q. Turning to page five of Government Exhibit 1, what are we
20 looking at on page five?

21 A. These are the special conditions of supervision. So these
22 are the conditions that the Court is intending to meet the
23 offender's specific needs.

24 So they may or may not even be conditions that fall into
25 this area, but these are the conditions that the Court felt was

1 relevant for the defendant.

2 Q. And can you just read into the record the very last special
3 conditions on page five?

4 A. "The defendant shall not have any contact directly or
5 indirectly, including through social media, telephone, text,
6 mail or e-mail with the victim, RG, his family members or his
7 current or prior places of employment."

8 Q. And did you review all of the special conditions of
9 supervision with the defendant in this case?

10 A. I did.

11 Q. Did you review the special conditions of supervision with
12 the defendant before he signed on page four --

13 A. Yes.

14 Q. -- that we just looked at?

15 Did you give the defendant an opportunity to ask questions
16 about the conditions of his supervision?

17 A. Yes.

18 Q. Do you recall if he asked any questions?

19 A. I do not recall if he had any questions.

20 Q. If he had asked any questions, would you have answered them
21 for him?

22 A. Absolutely.

23 Q. Did you make sure that the defendant understood all of the
24 conditions before he signed?

25 A. It seemed as though he did.

1 **MR. ANZALONE:** Objection. Speculative.

2 **THE COURT:** Overruled. And the observation's
3 occurring to me now, since we're reading the special condition
4 at the bottom of page five, that that my assumption is we're
5 going to use initials, Mr. Rudroff, as opposed to full names?

6 Or, actually, the more I say that out loud, the more I
7 realize it's probably going to become a moot point once we look
8 at some of these exhibits, right?

9 **MR. RUDROFF:** That's correct, Your Honor. I think the
10 intention was to do that, but some of these exhibits have full
11 names and I don't really think there is a way around it.

12 **THE COURT:** Okay.

13 Mr. Anzalone, do you see it the same way?

14 **MR. ANZALONE:** I do, yes.

15 **THE COURT:** Okay. All right.

16 **BY MR. RUDROFF:**

17 Q. So I suppose to ask that a different way -- excuse me. Did
18 the defendant say or do anything to suggest that he did not
19 understand the conditions --

20 A. No.

21 Q. -- of his release?

22 Officer Zenger, putting on the ELMO what I've marked as
23 Government Exhibit 2.

24 Do you recognize that?

25 A. I do.

1 Q. What is Government Exhibit 2?

2 A. It is a petition for offender under supervision.

3 Q. Is that the petition for offender under supervision that
4 you submitted to the Court in this case?

5 A. It is.

6 Q. Is it a true and complete copy of the petition that you
7 submitted in this case?

8 A. Yes.

9 Q. Can you very briefly explain why you submitted the petition
10 for offender under supervision in this case?

11 A. Shortly prior to filing the petition I received -- I was
12 notified by the Government and the FBI that the defendant had
13 sent an e-mail to an individual --

14 **MR. ANZALONE:** Objection. Hearsay.

15 **THE COURT:** It's not for a hearsay purpose at this
16 point, so I will overrule it.

17 **THE WITNESS:** -- to an individual that shares office
18 space with the victim of the original case.

19 **BY MR. RUDROFF:**

20 Q. And is that e-mail set forth on pages two, three and four
21 of the petition?

22 A. Yes.

23 Q. And is it set forth verbatim?

24 A. Yes.

25 Q. Thank you.

1 **MR. RUDROFF:** Your Honor, I have nothing further for
2 Mr. Zenger.

3 **THE COURT:** Are you going to move in Exhibit 2 or are
4 you not doing that, Mr. Rudroff?

5 **MR. RUDROFF:** No, Your Honor, I do offer that into
6 evidence. I suppose that's an important part I overlooked.

7 **THE COURT:** Mr. Anzalone?

8 **MR. ANZALONE:** No objection.

9 **THE COURT:** All right. Government 2 is admitted.
10

11 **The following was received in Evidence:**

12 **GOVT. EXH. 2**
13

14 **THE COURT:** And are you done with your direct?

15 **MR. RUDROFF:** Yes, Your Honor.

16 **THE COURT:** Mr. Anzalone?

17 **MR. ANZALONE:** Yes, Your Honor, if I could have one
18 moment, please?

19 **THE COURT:** Sure.

20 **MR. ANZALONE:** Thank you.
21

22 **CROSS-EXAMINATION BY MR. ANZALONE:**
23

24 **BY MR. ANZALONE:**

25 Q. Officer Zenger, good afternoon.

1 A. Good afternoon.

2 Q. Couple quick questions. When you reviewed the conditions
3 with Mr. Wenke, that was after he was released from his
4 sentence, correct?

5 A. We actually reviewed the conditions twice, I believe. Once
6 over the phone.

7 Q. You reviewed them once with him over the phone?

8 A. Yes.

9 Q. And that was just a few days before he was released; is
10 that right?

11 A. Yes. Correct.

12 Q. And then you reviewed them a second time with him in person
13 after he was released?

14 A. Correct.

15 Q. At that point, the judgment is final at that point,
16 correct?

17 A. Correct.

18 Q. You asked him if he understood the conditions, correct?

19 A. Yes.

20 Q. But he doesn't have an opportunity to go back and ask the
21 judge to change the conditions; is that right?

22 A. Correct.

23 Q. Okay.

24 **MR. ANZALONE:** I have nothing further.

25 **THE COURT:** Any redirect, Mr. Rudroff?

1 **MR. RUDROFF:** No redirect, Your Honor.

2 **THE COURT:** Okay. Mr. Zenger, you may step down.

3 (The Witness was Excused.)

4 **MR. RUDROFF:** Your Honor, the Government calls Special
5 Agent Krystie Brown from the FBI.

6 **THE COURT:** Come on up, Ms. Brown, and remaining
7 standing when you get up to the witness stand, please.

8

9 **KRYSTIE BROWN,**
10 witness on behalf of the **GOVERNMENT**, having first been duly
11 sworn, testified as follows:

12

13 **THE WITNESS:** I do.

14 **THE CLERK:** Thank you.

15 **THE COURT:** Please be seated.

16 **THE CLERK:** Can you please say your name and spell it
17 for the record?

18 **THE WITNESS:** Krystie Brown, K-R-Y-S-T-I-E, B-R-O-W-N.

19 **THE COURT:** Mr. Rudroff.

20 **MR. RUDROFF:** Thank you, Your Honor.

21

22 **DIRECT EXAMINATION BY MR. RUDROFF:**

23

24 **BY MR. RUDROFF:**

25 Q. Special Agent Brown, where are you employed?

1 A. I'm employed with the FBI.

2 Q. What's your position with the FBI?

3 A. I'm a special agent.

4 Q. How long have you held that position?

5 A. Since 2017.

6 Q. Are you assigned to any particular squad or group with the
7 FBI?

8 A. Yes. I work on the joint terrorism task force, working
9 counterterrorism.

10 Q. And what very generally are your duties with the -- if I
11 say JTTF, you understand that to mean Joint Terrorism Task
12 Force?

13 A. Yes, sir.

14 Q. Can you please tell the Court what your duties are very
15 generally for JTTF?

16 A. Yes. I investigate Federal statutes and violations of
17 Federal law.

18 Q. Special Agent Brown, are you familiar with a person named
19 Luke Wenke?

20 A. Yes, I am.

21 Q. How are you familiar with Luke Wenke?

22 A. Luke Wenke was the subject of an investigation involving a
23 criminal defense attorney located in Minneapolis.

24 Q. Do you know when that investigation occurred?

25 A. It began at the end of 2020.

1 Q. Do you know if that investigation ultimately developed into
2 a prosecution and conviction of Luke Wenke?

3 A. Yes, it did.

4 Q. Do you know if Luke Wenke was incarcerated as a result of
5 that prosecution?

6 **MR. ANZALONE:** Objection. Relevance.

7 **THE COURT:** I'll allow it. Overruled.

8 You can answer.

9 **THE WITNESS:** Yes, he was.

10 **BY MR. RUDROFF:**

11 Q. Did you receive information that Mr. Wenke was approaching
12 his release date in March of 2023?

13 A. Yes.

14 Q. Do you know when, or if and when he was ultimately released
15 from prison?

16 A. Yes. He was released at the end of March 2023.

17 Q. Did -- or are you aware, did the FBI continue to monitor
18 Mr. Wenke after his release from prison?

19 A. Yes.

20 Q. Can you tell the Court what that monitoring involved?

21 A. Yes. It just monitored publicly available information.

22 Q. Did that include the defendant's social media?

23 **MR. ANZALONE:** Objection. Leading.

24 **THE COURT:** Why don't you rephrase that, Mr. Rudroff.

25 Sustained.

1 **BY MR. RUDROFF:**

2 Q. Did the FBI review or monitor Mr. Wenke's social media
3 accounts?

4 **MR. ANZALONE:** Same objection.

5 **THE COURT:** It's overruled.

6 Go ahead, you can answer.

7 **THE WITNESS:** Yes.

8 **BY MR. RUDROFF:**

9 Q. Did the FBI gather any non publicly available information
10 as a part of that continued monitoring?

11 A. No.

12 Q. What was the purpose of continuing to monitor Mr. Wenke
13 after his release?

14 A. We wanted to make sure that he wasn't -- he didn't continue
15 to be a threat to public safety.

16 **MR. ANZALONE:** Object to that characterization.

17 **THE WITNESS:** And also --

18 **THE COURT:** Overruled.

19 You can continue, Ms. Brown.

20 **THE WITNESS:** We also wanted to monitor and confirm
21 that the victim in the case was being protected. And that's it.

22 **BY MR. RUDROFF:**

23 Q. So were you monitoring Mr. Wenke to see whether he was
24 contacting the victim in the case, RG?

25 A. Yes.

1 Q. Why was that?

2 A. Because the history of the case was that the victim was
3 harassed through social media, along with other electronic
4 means.

5 Q. Did RG eventually reach out to law enforcement regarding
6 Luke Wenke after his release from prison?

7 A. Yes.

8 **MR. RUDROFF:** If we can display the ELMO one more
9 time.

10 **THE COURT:** Is this 3 for identification, Mr. Rudroff?

11 **MR. RUDROFF:** That's correct, Your Honor.

12 **THE COURT:** Okay.

13 **BY MR. RUDROFF:**

14 Q. Special Agent Brown, I've put on the ELMO what I've marked
15 as Government Exhibit 3 for identification.

16 Do you recognize that?

17 A. Yes, I do.

18 Q. What is Government Exhibit 3?

19 A. This is an e-mail sent by [Victim-1] to law enforcement.

20 Q. And can you just read into the record what that e-mail
21 states from Mr. Garry?

22 A. "Drew, David and Jason, good morning, guys. Well, here we
23 go again. Below is an e-mail and a picture attached from
24 Luke Wenke to attorney Andy Birrell.

25 Luke e-mailed it to Andy over the weekend. Luke obviously

1 knows he cannot communicate with me, but this seems to be
2 third-party contact in that he knows Andy and I share the same
3 office space and are close.

4 Not sure what, if anything, you want to do about it.
5 Thanks for your consideration. ."

6 Q. And if we go below --

7 **MR. RUDROFF:** Judge, I apologize, but I have a second
8 Government Exhibit 3. It's the exact same document and the
9 version that I put on the ELMO is the version that I marked up
10 for my own notes. Is that okay if we swap in a clean copy?

11 **THE COURT:** Any objection, Mr. Anzalone?

12 **MR. ANZALONE:** No.

13 **THE COURT:** Okay.

14 **MR. RUDROFF:** I can show it.

15 **MR. ANZALONE:** Thank you.

16 **THE COURT:** No issues.

17 **MR. RUDROFF:** Thank you, Your Honor.

18 **BY MR. RUDROFF:**

19 Q. So the e-mail from Mr. Garry stated below, when we go down,
20 what are we looking at here at the bottom of that first page?

21 A. This is an e-mail from [Victim-1's
business partner] to [Victim-1] .

22 Q. And what's the subject line?

23 A. Forwarded: George Floyd is dead and that's a good thing.

24 Q. So we'll flip to page two of Government Exhibit 3. What
25 are we looking at here?

1 A. This is an e-mail sent from Luke Marshal Wenke at Proton.ME
2 to Andy Birrell.

3 Q. Are you familiar with Proton.ME?

4 A. Yes.

5 Q. What is that?

6 A. It's an e-mail service, an e-mail server that uses
7 end-to-end encryption.

8 Q. Do you know if Proton servers are located within the United
9 States?

10 A. They are not.

11 Q. Have you seen Proton used as an e-mail server in your
12 custody issues in the past?

13 A. Yes.

14 Q. What is your understanding of why a person would use Proton
15 as opposed to a more conventional e-mail server?

16 **MR. ANZALONE:** Objection. Relevance.

17 **THE COURT:** Overruled.

18 You can answer.

19 **THE WITNESS:** It's good to use Proton e-mail because
20 the servers are not located in the U.S., they can't be
21 subpoenaed and it's better for confidentiality.

22 **BY MR. RUDROFF:**

23 Q. So you stated that this e-mail was to Andy Birrell; is that
24 correct?

25 A. Yes.

1 Q. When was that e-mail sent, according to the header?

2 A. Saturday May 13, 2023, at 10:23 a.m.

3 Q. And I won't ask you to read the entire e-mail into the
4 record, because it is lengthy, but have you read the entire
5 e-mail that we're discussing?

6 A. Yes.

7 Q. Can you just very generally summarize the content of the
8 e-mail?

9 A. The content of the e-mail focuses on Benjamin Ryan
10 and [Victim-1] .

11 Q. Who is Benjamin Ryan ?

12 A. Benjamin Ryan was a subject of an FBI investigation
13 who was arrested towards the end of 2020.

14 Q. Do you know his relationship, if any, to the defendant?

15 A. My understanding is they had a romantic relationship.

16 Q. Do you know if there is any association between Mr. Teeter
17 and Mr. Garry?

18 A. Yes. [Victim-1] was the criminal defense attorney
19 representing Benjamin Ryan .

20 Q. Do you know if he was Mr. Teeter's only defense attorney?

21 A. He was not.

22 Q. Who else represented Mr. Teeter in that matter?

23 A. Andy Birrell.

24 Q. So again, without reading the entire e-mail into the
25 record, there is just a few high points that I would like you to

1 illustrate for the Court, if you could.

2 A. Read it out loud?

3 Q. No. No. I'm sorry. Don't start reading. I'll tell you
4 where. Can you start or just read the sentence where I'm
5 indicating with my finger?

6 It's the first full paragraph, the sentence starts with: I
7 never.

8 **MR. ANZALONE:** Objection. This is not evidence.

9 **THE COURT:** That was my next comment.

10 **MR. RUDROFF:** That's correct, Your Honor.

11 **THE COURT:** So are you moving it into evidence?

12 **MR. RUDROFF:** Your Honor, based on Special Agent
13 Brown's comments earlier regarding authentication, I do move it
14 into evidence at this point.

15 **THE COURT:** Any objections?

16 **MR. ANZALONE:** I object. I don't think it's been
17 properly authenticated.

18 **THE COURT:** What's your authentication argument,
19 Mr. Rudroff?

20 **MR. RUDROFF:** Your Honor, Ms. Brown testified that
21 this is a true and correct copy of the e-mail that she received
22 from -- or that law enforcement received from Mr. Birrell in
23 March of 2023.

24 **THE COURT:** Well, I think, Mr. Rudroff, you probably
25 need a couple of links in the foundation. I see your name is up

1 there. You are not testifying now, though.

2 But you might need to lay the foundation on how it
3 came from you or Jason Bedrol or Elizabeth Duo or Andrew Winter
4 over to the witness.

5 **MR. RUDROFF:** No, I think that I can prove that up,
6 Your Honor.

7 **BY MR. RUDROFF:**

8 Q. Special Agent Brown, how did you come to be aware of this
9 e-mail chain that was sent to myself, Mr. Winter and Mr. Bedrol?

10 A. Sure. I'm a co-case agent on Luke Wenke's case through the
11 Federal Bureau of Investigation. And this was reported to us
12 through the U.S. Attorneys Office.

13 Q. Did you ultimately interview Mr. Birrell about this?

14 A. Yes, I did.

15 Q. What, if anything, did he state about this e-mail?

16 A. He said the e-mail made him anxious and concerned.

17 Q. Let's back up a little bit. Did he state whether or not he
18 actually received it?

19 A. Yes. He did confirm that he received this e-mail.

20 Q. And what did he say he had did with the e-mail after he
21 received it?

22 A. He forwarded it to [Victim-1] .

23 **MR. RUDROFF:** Your Honor, based on that, I would move
24 this Government Exhibit 3 into evidence.

25 **THE COURT:** Mr. Anzalone?

1 **MR. ANZALONE:** I'm sorry, can I have one moment
2 please, Your Honor?

3 **THE COURT:** Yes.

4 **MR. ANZALONE:** Thank you. Your Honor, I still would
5 object on authentication grounds. Our position is that the bulk
6 of this exhibit has still not been authenticated.

7 **THE COURT:** I would overrule that. I think the
8 foundation is there and the rest is for cross-examination.

9 So please proceed. Exhibit 3 is admitted.

10 **The following was received in Evidence:**

11 **GOVT. EXH. 3**

12

13 **BY MR. RUDROFF:**

14 Q. Thank you, Your Honor. So back to what we were discussing
15 before, Special Agent Brown, we'll zoom in a little bit.

16 Can you please read that sentence that starts with: I
17 never -- I'm indicating with my finger? It's the first large
18 paragraph?

19 A. "I never got arrested my entire life until age 29, when I
20 made the mistake of having a heart for your client, Benjamin
21 Ryan . He acted like he was stranded out there."

22 Q. You can stop there. I'm sorry. Just that one sentence.
23 Going to the next paragraph, the first sentence starts with:
24 Over a year went on --

25 Can you read just that sentence?

1 A. "Over a year went on and your comrade [Victim-1] continued
2 to make fake recon profiles, speaking to me very impersonally
3 when he could have just spoken to me directly."

4 Q. Two paragraphs down, the last sentence -- we don't need to
5 read the full sentence, but starting with the word, "this" --
6 where I'm indicating with my finger?

7 Can you read just that portion of that sentence?

8 A. "This is what your wonderful colleague did to me."

9 Q. Turning to the next page of that exhibit, the paragraph
10 that begins with: Thank you.

11 Can you read that second sentence that starts with: Thank
12 you for -- ?

13 A. "Thank you for the felony, but I would like it gone now."

14 Q. And then lastly the third paragraph from the bottom, where
15 I'm indicating the sentence begins with: Also, your client --
16 can you please read that sentence?

17 A. "Also, your client lied about my grandfather's hunting
18 rifle."

19 Q. As an investigator did you attach any significance to these
20 references we just read?

21 A. Yes.

22 Q. What significance do they have?

23 A. They demonstrate Mr. Wenke's knowledge that [Victim-1's
24 represented Ryan and worked as a co-counsel with
25 [Victim-1] .

1 Q. And who signed that e-mail at the bottom?

2 A. Luke Wenke.

3 **MR. ANZALONE:** I'm going to object to that.

4 **THE COURT:** What's the basis for the objection,
5 Mr. Anzalone?

6 **MR. ANZALONE:** It's speculation as to who signed it.
7 There are words on the paper, I guess, but that's my objection.

8 **THE COURT:** Okay. I'll let the answer stand. The
9 document says what it says. His name is at the bottom and you
10 can argue to me why I should disregard that.

11 **BY MR. RUDROFF:**

12 Q. Special Agent Brown, is there any other indication that
13 this letter actually came from Mr. Wenke? This e-mail, excuse
14 me, actually came from Mr. Wenke?

15 A. Yes.

16 Q. What is that?

17 A. It has the same writing style and mentions a lot of the
18 same material in the past. There is also a picture attached to
19 it.

20 Q. The last page of Government's Exhibit 3, is that the
21 attachment that you were referring to?

22 A. Yes.

23 Q. Do you recognize the people in that paragraph?

24 A. Yes.

25 Q. Who are they?

1 A. Luke Wenke, his mother and who I understand to be a local
2 politician.

3 Q. Now, you mentioned earlier that you had investigated
4 Mr. Wenke, his underlying case; is that correct?

5 A. Yes.

6 Q. Based on your investigation in the underlying case, did you
7 have any reason to believe that Mr. Wenke was familiar with
8 Mr. [business partner] ?

9 A. Yes.

10 Q. What basis is that?

11 A. Mr. Wenke e-mailed [Victim-1] an e-mail previously. I
12 believe it was December 2020, where he mentioned [business partner] in the
13 e-mail several times.

14 Q. I've put on the ELMO what I have marked for identification
15 as Government's Exhibit 4.

16 Do you recognize that?

17 A. Yes.

18 Q. What is that e-mail -- or excuse me -- what is Government's
19 Exhibit 4?

20 A. This is a true and accurate representation of an e-mail
21 Luke Wenke sent to [Victim-1] .

22 Q. So you jumped the gun. Is that a true, accurate and
23 complete copy of the e-mail that you referenced?

24 A. Yes.

25 Q. And how did the FBI obtain these e-mails?

1 **THE COURT:** This e-mail, Exhibit 4?

2 **MR. RUDROFF:** This e-mail.

3 **BY MR. RUDROFF:**

4 Q. Excuse me. This e-mail, Government Exhibit 4?

5 A. This was given to the FBI by [Victim-1] .

6 **MR. RUDROFF:** Your Honor, based on that, I move to
7 admit Government's Exhibit 4 into evidence.

8 **MR. ANZALONE:** Your Honor, can I have a moment,
9 please?

10 **THE COURT:** Yes.

11 **MR. ANZALONE:** Thank you. No objection.

12 **THE COURT:** Okay. Government Exhibit 4 is admitted.

13 **The following was received in Evidence:**

14 **GOVT. EXH. 4**

15

16 **BY MR. RUDROFF:**

17 Q. In looking at the header of that e-mail, who does
18 Government Exhibit 4 report to be from?

19 A. Luke Wenke -- from the e-mail address, LukeWenke@Yahoo.com.

20 Q. And if you could just read that last line of the first
21 paragraph of Government Exhibit 4?

22 A. "I am aware you and the Birrells are close with the judge."

23 Q. And the last paragraph -- or last sentence, excuse me, of
24 the second to last paragraph of the e-mail?

25 A. "You and the Birrells are shockingly good at what you do,

1 and I have learned a lot these past few months, being someone
2 who only has traffic ticket cases behind my belt."

3 Q. And based on the header of Government Exhibit 4, when was
4 that e-mail sent?

5 A. Wednesday December 16, 2020, at 7:48 p.m.

6 Q. And you mentioned earlier that you interviewed Mr. Birrell
7 as part of your investigation in this case; is that correct?

8 A. Yes.

9 Q. Based on that interview, are you familiar with where
10 Mr. Birrell practices law?

11 A. Yes.

12 Q. Where is that?

13 A. His law firm is located in the same office as [Victim-1] in
14 Minneapolis.

15 Q. I'm showing you on the ELMO what I have marked as
16 Government Exhibit 5.

17 Are you familiar with Government Exhibit 5?

18 A. Yes.

19 Q. What is Government Exhibit 5?

20 A. This is information from Birrell Criminal Defense website.

21 Q. When you say Birrell Criminal Defense, what is that?

22 A. This is the law firm that's owned by Birrell.

23 Q. And is Government Exhibit 5 a true and accurate copy of
24 that portion of the website that you mentioned?

25 A. Yes, it is.

1 Q. When did you last visit that website as part of this
2 investigation?

3 A. Today.

4 **MR. RUDROFF:** Your Honor, I move Government Exhibit 5
5 into evidence.

6 **THE COURT:** Ms. Brown, you said this law firm was
7 owned by Birrell. Andy Birrell, is that who you are talking
8 about?

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** Okay. Any objection, Mr. Anzalone?

11 **MR. ANZALONE:** Yes, Your Honor. I'm objecting on
12 relevance grounds.

13 There has been no showing that Mr. Wenke has used this
14 website, was aware of this website, his access and this
15 information, it's completely irrelevant to this proceeding.

16 **THE COURT:** What's the relevance proffer, Mr. Rudroff?

17 **MR. RUDROFF:** Your Honor, it is publicly facing
18 information that shows that the address for Mr. Birrell's
19 criminal defense practice is at the same address, including the
20 same suite number as [Victim-1] 's practice.

21 Again, it is publicly available information. When you
22 Google Mr. Birrell, it's the first thing that comes up. So
23 whether or not it is -- I would say whether or not Mr. Wenke
24 actually visited this website, whether there is proof of that
25 goes to the weight that the Court should give it, not its

1 admissibility.

2 However, when it is one of the first results on
3 Google, I believe the Court should admit it as relevant to
4 Mr. Wenke's knowledge here or what he should have known.

5 **THE COURT:** Okay. I'll admit it. The Government
6 Exhibit 5 is admitted.

7 **The following was received in Evidence:**

8 **GOVT. EXH. 5**

9

10 **BY MR. RUDROFF:**

11 Q. So looking at Government Exhibit 5, Special Agent Brown,
12 can you read the address for Mr. Birrell's criminal defense
13 practice?

14 A. 333 South Seventh Street, Number 3020.

15 Q. Now, I've put Government Exhibit 6 for identification on
16 the ELMO as well.

17 Do you recognize that, Special Agent Brown?

18 A. Yes.

19 Q. And what is that?

20 A. This is information from [Victim-1] 's law firm website.

21 Q. And is this a true and accurate representation of the
22 information on that website?

23 A. Yes.

24 Q. When is the last time you viewed that website?

25 A. Today.

1 **MR. RUDROFF:** Your Honor, I move Government Exhibit 6
2 into evidence.

3 **MR. ANZALONE:** Same objection. I'm objecting based on
4 relevance for the reasons previously stated.

5 **THE COURT:** Okay. Overruled. Exhibit 6 is admitted.

6 **The following was received in Evidence:**

7 **GOVT. EXH. 6**

8
9 **BY MR. RUDROFF:**

10 Q. Special Agent Brown, can you please read the address for
11 **[Victim-1]**'s law firm?

12 A. [address]

13 Q. Now, going back to your interview with Mr. **[business partner]**, did you
14 ask Mr. **[business partner]** about his law firm, the physical layout?

15 A. Yes.

16 Q. And what did he tell you?

17 A. Him and **[Victim-1]** have separate law firms, but they share
18 the same office space.

19 Q. Did he give you a description of how that space is laid
20 out?

21 A. Yes.

22 Q. What did he say?

23 **MR. ANZALONE:** Objection. Relevance. Really the same
24 grounds as before, we just have no tie to Mr. Wenke having any
25 knowledge whatsoever of this information. It's irrelevant.

1 **THE COURT:** Does he, Mr. Anzalone, need to under the
2 condition that we're talking about here?

3 **MR. ANZALONE:** Yes. Does he -- I want to make sure I
4 understand the Court's question.

5 **THE COURT:** Does your client need to have knowledge of
6 the shared office space situation --

7 **MR. ANZALONE:** Our position --

8 **THE COURT:** -- or does he just need to have knowledge
9 that the condition is being violated?

10 **MR. ANZALONE:** In -- I would -- in order to know that
11 condition is being violated, Your Honor, he needs to know that
12 they share an office space.

13 He needs to know that. Otherwise, he wouldn't be
14 committing a knowing violation of supervised release.

15 **THE COURT:** Okay. Save that for your argument to me,
16 then, Mr. Anzalone. I'll admit Exhibit 6. And the question is
17 allowed.

18 **MR. ANZALONE:** Understood.

19 **THE COURT:** Yep.

20 So go ahead. You want to ask that again?

21 **MR. RUDROFF:** Yes, Your Honor.

22 **BY MR. RUDROFF:**

23 Q. I believe the question was what did Mr. Birrell tell you
24 about the physical layout of his office space?

25 A. Because they share the same office space, they share the

1 same reception, conference room, copier, refrigerator.

2 Q. Did he state the layout of their physical offices?

3 A. Yes, he did.

4 Q. And what did he tell you?

5 A. He said that the three -- inside the office are three
6 smaller offices. If you look at the wall, there is three doors.
7 His is located in the middle. [Victim-1] 's is located directly
8 next to his.

9 MR. RUDROFF: No further questions, Your Honor.

10 THE COURT: Mr. Anzalone, give me just a second before
11 I invite you up.

12 MR. ANZALONE: Yes, Your Honor.

13 THE COURT: Okay. Mr. Anzalone, cross-examination.

14 MR. ANZALONE: Thank you, Your Honor.

15

16 CROSS-EXAMINATION BY MR. ANZALONE:

17

18 BY MR. ANZALONE:

19 Q. Special Agent, good afternoon.

20 A. Good afternoon.

21 Q. [Victim-1] has his own law firm, correct?

22 A. Yes, sir.

23 Q. It's the [Victim-1], Attorneys and Counselors at Law; is
24 that right?

25 A. Yes.

1 Q. Okay. [Victim-1] has multiple employees at that law firm?

2 A. I'm not aware of his employee -- how many employees he has.

3 Q. Well, you know Andy Birrell is not one of his employees,
4 right?

5 A. That's correct.

6 Q. Andy Birrell does not work at [Victim-1] 's law firm, to be
7 clear?

8 A. That's my understanding.

9 Q. And, in fact, Andy Birrell has his own law firm, right?

10 A. Yes.

11 Q. And Andy Birrell's law firm is called the Birrell Law Firm;
12 is that right?

13 A. Yes.

14 Q. Do you know if the Birrell Law Firm has multiple lawyers?

15 A. I believe so.

16 Q. Okay. [Victim-1] is not one of those lawyers at the
17 Birrell Law Firm, correct?

18 A. I don't believe so.

19 Q. Just to be clear, [Victim-1] and [business
20 partner] do not work
21 at the same law firm; is that right?

22 A. No, they don't.

23 Q. Special Agent, you talked us through Government's Exhibit 5
24 and 6. Those were screenshots from those respective websites.

25 Do you remember doing that?

A. Yes.

1 Q. There is no evidence that Mr. Wenke accessed those
2 websites, correct?

3 A. That's correct.

4 Q. And you also gave us some information about the shared
5 space between Mr. Garry and Mr. Birrell, right?

6 A. That's correct.

7 Q. That information did not come from Mr. Wenke, correct?

8 A. No.

9 Q. That information actually came from Mr. Birrell?

10 A. That's correct.

11 Q. There is no evidence that Mr. Wenke knew about their shared
12 office space; is that right?

13 A. I can't speak to what Mr. Wenke knows or does not know.

14 Q. Did you come in -- you have investigated this now, this
15 violation, correct?

16 A. Yes, sir.

17 Q. Okay. Throughout the course of your investigation, did you
18 come across any evidence that Mr. Wenke had knowledge of the
19 shared office space?

20 A. I don't believe so.

21 Q. Special Agent, you indicated that you spoke with Andy
22 Birrell yesterday?

23 A. Yes, sir.

24 Q. And he told you during that conversation that he had never
25 spoken with Mr. Wenke before he received the e-mail in question;

1 is that right?

2 A. That's correct.

3 Q. Okay. And, actually, he said he's never even been in
4 contact with Mr. Wenke before he received that e-mail; is that
5 right?

6 A. That's right.

7 Q. And in the e-mail, the sender actually describes
8 Mr. Birrell as a, quote, stranger I've never met; is that right?

9 A. Yes.

10 Q. Special Agent, Andy Birrell represented Mr. Teeter on his
11 Federal case, correct?

12 A. Yes.

13 Q. And he was, I think you told us, one of two attorneys
14 handling that case?

15 A. Yes.

16 Q. Handling that case for Mr. Teeter?

17 A. That's right.

18 Q. And that was the material support for terrorism charge?

19 A. I don't recall what the exact charge was.

20 Q. Pretty serious case, right?

21 A. Yes.

22 Q. Not unusual for two separate lawyers to come together on a
23 big serious case?

24 A. No, that's not unusual.

25 Q. And it was publicly available information who was

1 representing Mr. Teeter, correct?

2 A. Yes.

3 Q. Probably -- withdrawn. It's publicly available on the
4 Court docket, right?

5 A. Yes.

6 Q. And it's also publicly available in news reports, right?

7 A. Yes.

8 Q. You also know from your investigation that Mr. Wenke was
9 aware that Mr. Birrell was representing Mr. Teeter; is that
10 right?

11 A. That's correct.

12 Q. And you know that because of what we've already gone
13 through today in the e-mail that Mr. Birrell received, the
14 sender described Mr. Teeter as "your client"; is that right?

15 A. Yes.

16 Q. And that was one of the things that led you to conclude
17 that Mr. Wenke was aware that Mr. Birrell was representing
18 Mr. Teeter in the past?

19 A. Yes.

20 Q. And the prosecutor also showed you, I believe it was
21 Government Exhibit 4, which was an old e-mail sent by Mr. Wenke.
22 Do you remember that?

23 A. Yes.

24 Q. And in that e-mail, Mr. Wenke also indicated that he knew
25 that Mr. Birrell was involved in representing Mr. Teeter; is

1 that right?

2 A. Yes.

3 Q. So bottom line is Mr. Wenke knew Mr. Birrell was working on
4 the Teeter case?

5 A. Yes.

6 Q. He knew he was one of his lawyers?

7 A. Yes.

8 **MR. ANZALONE:** Can I have a moment, Your Honor,
9 please?

10 **THE COURT:** You may.

11 **MR. ANZALONE:** Thank you. Thank you, Your Honor.
12 Just a couple more questions, please.

13 **BY MR. ANZALONE:**

14 Q. You indicated that in the e-mail, the sender refers to
15 **[Victim-1]** as Mr. **[business partner]** 's comrade, your comrade; is that
16 right?

17 A. Yes.

18 Q. He doesn't at any point refer to Mr. Garry as your
19 coworker; is that right?

20 A. I would have to read it to refresh my memory.

21 Q. Okay.

22 **MR. ANZALONE:** Your Honor, can I approach with a copy
23 of Government's Exhibit 3?

24 **THE COURT:** You may.

25 **MR. ANZALONE:** Thank you.

1 **THE WITNESS:** Thank you.

2 **BY MR. ANZALONE:**

3 Q. Special Agent Brown, just look up when your memory is
4 refreshed, please. Okay.

5 Memory refreshed?

6 A. Yes, sir.

7 Q. Okay. He never refers to them as coworkers in that e-mail,
8 does he?

9 A. That's correct.

10 Q. Doesn't refer to them as partners in the e-mail?

11 A. That's correct.

12 Q. Does not refer to them as associates in that e-mail?

13 A. No.

14 Q. Okay. In that e-mail that you just reviewed, there is no
15 physical address listed on that; is that right?

16 A. No, there isn't.

17 Q. Certainly no reference to a suite number?

18 A. No.

19 **MR. ANZALONE:** I have nothing further.

20 **THE COURT:** Mr. Rudroff, any redirect?

21 **MR. RUDROFF:** No redirect, Your Honor.

22 **THE COURT:** No?

23 **MR. RUDROFF:** No, Your Honor.

24 **THE COURT:** Okay. Ms. Brown, you may step down.

25 Thank you.

1 **THE WITNESS:** Thank you, Your Honor.

2 (The Witness was Excused)

3 **THE COURT:** Mr. Rudroff.

4 **MR. RUDROFF:** No further witnesses, Your Honor. The
5 Government rests.

6

7

GOVERNMENT RESTS

8

9 **THE COURT:** Mr. Anzalone?

10 **MR. ANZALONE:** Yes, Your Honor, I do have a motion to
11 close of the Government's proof. I'll make that now and I would
12 like to have a discussion with my client if that motion was
13 denied.

14 **THE COURT:** Okay. Go ahead.

15 **MR. ANZALONE:** Sorry, that wasn't very clear. I have
16 a motion.

17 **THE COURT:** Yep. Go ahead, make it.

18 **MR. ANZALONE:** Okay. I'm moving to dismiss the
19 petition, Your Honor.

20 It's our position that the Government has not put
21 forth sufficient proof to establish that this was a knowing
22 violation of the conditions of Mr. Wenke's release.

23 The Government has certainly proven that Mr. Garry and
24 Mr. Birrell work in the same building, perhaps even the same
25 suite.

1 They have not shown that Mr. Wenke had any awareness
2 whatsoever that they work in the same building or the same
3 suite.

4 The allegations that Mr. Wenke sent an e-mail to an
5 e-mail address to someone he knew represented an individual
6 along with Mr. Garry, that is not the condition that he's
7 alleged to have violated.

8 He was never prohibited from sending any communication
9 with someone who has worked as co-counsel with Mr. Garry on a
10 criminal case.

11 He's prohibited from having e-mail communication with
12 [Victim-1] , his family members, or his place of employment.

13 Our position is that the Government has not come close
14 to showing that he knowingly communicated with Mr. Garry's place
15 of employment.

16 And, in fact, communicated with an individual who, to
17 the proof before Your Honor, simply worked at another law firm,
18 who was involved in one case that Mr. Garry was involved in, so
19 I'm moving to dismiss it based on that.

20 **THE COURT:** Okay, Mr. Anzalone, thank you.

21 Mr. Rudroff?

22 **MR. RUDROFF:** Yes, Your Honor. Importantly, on a
23 violation of supervised release, it is a preponderance of the
24 evidence standard.

25 Now, the Court heard testimony that Mr. Garry and

1 Mr. Birrell worked closely together, that they share office
2 space, they share office amenities, their conference room, their
3 reception, their kitchenette, et cetera.

4 You've also heard evidence that the defendant was well
5 aware of the close relationship of Mr. Garry and Mr. Birrell
6 through that e-mail that he sent to Mr. Birrell, as well as his
7 past e-mails to Mr. Garry in 2020.

8 The condition is whether or not Mr. Wenke knowingly
9 communicated with Mr. Garry's place of employment.

10 We submit that is satisfied by a knowing communication
11 to a person in what is effectively the same law firm.

12 I recognize that they are two legally distinct
13 entities, that there is a [Victim-1] law firm and a [business
14 partner] law firm.

15 But functionally they are in the same suite, which is
16 available on publicly facing information, a simple Google
17 search.

18 They are sharing office space. They are sharing
19 office amenities. They are working together on cases. And
20 there is, I believe, sufficient proof in front of Your Honor to
21 establish that the defendant knew that.

22 So, Your Honor, as far as a motion to dismiss for
23 legal insufficiency, we believe that that should be denied.

24 There is sufficient evidence for the Court to conclude
25 by a preponderance of the evidence that Mr. Wenke communicated

1 with Mr. Garry's place of employment when he reached out to the
2 attorney in the office next door to him, with whom he shared a
3 suite and numerous office amenities.

4 **THE COURT:** Mr. Rudroff, does there need to be enough
5 for me to make an inference that Mr. Wenke communicated with
6 Mr. Garry's place of employment when he sent the e-mail to
7 somebody who shares office space with them?

8 In other words, does the defendant need to know -- is
9 there enough evidence for me to infer that the defendant knew
10 that they actually shared the same office?

11 **MR. RUDROFF:** I would say, Your Honor, based on the --
12 what I believe is the intimate knowledge of Mr. Garry and
13 Mr. Birrell, evidenced from the e-mail to them, he refers to
14 them as your client, your colleague -- excuse me.

15 I believe he does refer to him as your colleague. We
16 didn't have the agent read this, but it's in the fourth large
17 paragraph of the e-mail: "This is what your wonderful colleague
18 did to me."

19 So your client, your colleague, your comrade, combined
20 with what's publicly available information showing that they
21 share the same suite, I do believe there is enough for Your
22 Honor to infer that he knew he was reaching out to his place of
23 employment.

24 **MR. ANZALONE:** Can I be heard? Thank you.

25 Your Honor, there is a far cry between your comrade

1 and your colleague and, quote, effectively the same law firm.

2 They are not effectively the same law firm.

3 There is proof before Your Honor that they are two
4 entirely separate law firms and there is absolutely not one iota
5 of proof that Mr. Wenke has knowledge of the information that
6 the Government is relying on.

7 Shared refrigerator? There is no proof Mr. Wenke
8 knows that they are, quote, effectively the same law firm. I
9 would argue that they hold themselves out very separately.

10 **THE COURT:** All right. I'm going to take a few
11 minutes, maybe until ten minutes after 2 and then I'll come back
12 out here.

13 **MR. RUDROFF:** Thank you.

14 **MR. ANZALONE:** Thank you.

15

16 (Recess at 2:03 p.m., until 2:15 p.m.)

17

18 **THE CLERK:** All rise.

19 **THE COURT:** Please be seated.

20 The way I read the -- I think there is two different
21 parts of the condition that we're talking about here.

22 And, I mean, we can take the relevant words and create
23 two different requirements. One is that Mr. Wenke shall not
24 have any direct contact with the victim, RG, or his place of
25 employment. That's one requirement.

1 Another requirement is that the defendant shall not
2 have any indirect contact with the victim, RG. And so that's
3 where we are.

4 Is this an indirect contact with RG, Mr. Anzalone?

5 **MR. ANZALONE:** Absolutely not, Your Honor. There are
6 ways to have indirect contact with someone and it's very simple.

7 I'm sorry, it's not very simple, but it's very
8 straightforward. If I call someone and say I need you to give
9 this person a message, that is in direct contact.

10 I have read this e-mail over and over and over again.
11 There is at no point does Mr. Wenke give a directive, give an
12 implied directive, indicate that he wants to get a message to
13 **[Victim-1]** .

14 This is an e-mail addressed to, intended for and
15 directed at **[business partner]** ..

16 Simply by mentioning someone's name -- first of all, I
17 mean, you can't have a valid condition that restricts someone in
18 the common parlance to keep someone's name out of your mouth.
19 You can't have that.

20 And simply invoking someone's name in a written
21 communication is not indirect contact.

22 **THE COURT:** Can I infer, based on the content of the
23 e-mail, that Mr. Wenke intended one lawyer to convey the message
24 over to the other lawyer?

25 **MR. ANZALONE:** I would -- I would argue that based on

1 this e-mail, you cannot do that.

2 **THE COURT:** Okay.

3 Mr. Rudroff, anything in response to what I just
4 heard?

5 **MR. RUDROFF:** Yes, Your Honor. I believe given the
6 facts of this case, as they have come out at the hearing and
7 looking at the actual e-mail that was sent and knowing
8 Mr. Wenke's knowledge of the closeness between Mr. Birrell and
9 Mr. Garry, as evidenced by the language in his e-mail, it was
10 certainly foreseeable, if not intended, that when I send an
11 e-mail with harsh or threatening or vitriolic language about
12 somebody I know to be close to the recipient, that I intend for
13 that information to make it back to the recipient.

14 It kind of reminds me in, for example, the wire fraud
15 context of the -- you know, sends or caused to be submitted.

16 You don't have to, as the Court noted, directly
17 contact Mr. Garry. Mr. Wenke didn't have to directly contact
18 Mr. Garry.

19 I would argue that it is enough for Mr. Wenke to have
20 reached out to a person he knows to be close to Mr. Garry with
21 the content of the e-mail, knowing that it would make it to
22 Mr. Garry.

23 And that's evidenced by Mr. Birrell's reaction, which
24 was to turnaround and forward the e-mail to Mr. Garry almost
25 immediately.

1 And it's evidenced by Mr. Garry's e-mail forwarding
2 that to the myself and to the FBI in Minneapolis, where he says,
3 this is a third-party contact, he obviously knows we're very
4 close.

5 So, Your Honor, I do believe that that's a logical
6 inference, that this was, in fact, an indirect contact with RG.

7 **THE COURT:** Go ahead.

8 **MR. ANZALONE:** Your Honor, the Government keeps
9 referring to this plainly close relationship. They use the word
10 close multiple, multiple times. This self-evident close
11 relationship between **[Victim-1]** and **[business partner]** .

12 I don't know where that's coming from. From the word
13 comrade? From the word colleague?

14 They are imputing the knowledge that they have after
15 their investigation, onto Mr. Wenke, when he does not have
16 access to anywhere near the same amount of information and the
17 same type of information that they have.

18 **THE COURT:** I have enough of a concern on the indirect
19 contact prong, and I may need some case law on this to fully
20 resolve it, but enough of a concern to deny your motion at the
21 time, Mr. Anzalone, so please proceed with your case, if you
22 have one.

23 **MR. ANZALONE:** Thank you. If I can have one moment,
24 please?

25 **THE COURT:** Sure.

1 (Discussion off the record.)

2 **MR. ANZALONE:** Your Honor, I do have one witness and
3 he should be pretty brief, so I'm going to call investigator Ron
4 Ransford at this time.

5 **THE COURT:** Okay. And that's a witness that is not
6 somebody that was in the courtroom before, so we didn't have a
7 sequestration problem, did we?

8 **MR. ANZALONE:** All correct, yes.

9 **THE COURT:** Okay. Go ahead.

10 Please remain standing, sir.

11

12 **RONALD C. RANSFORD,**

13 witness on behalf of the **DEFENDANT**, having first been duly
14 sworn, testified as follows:

15

16 **THE WITNESS:** I do.

17 **THE CLERK:** Thank you.

18 **THE COURT:** Please be seated.

19 **THE CLERK:** Can you please state your name and spell
20 it for the record.

21 **THE WITNESS:** Ronald, C for Charles, Ransford,
22 R-A-N-S-F-O-R-D.

23 **THE COURT:** Mr. Anzalone.

24

25 **DIRECT EXAMINATION BY MR. ANZALONE:**

1

2 **BY MR. ANZALONE:**

3 Q. Investigator Ransford, good afternoon.

4 A. Good afternoon.

5 Q. You just told us your name. Can you tell us what you do
6 for a living?7 A. Yes. I'm an investigator for the Federal Public Defenders
8 Office here in Buffalo.9 Q. And what's your general role in your job as an
10 investigator?

11 A. I assist the attorneys in investigations.

12 Q. Did you assist in this investigation?

13 A. Yes, I did.

14 **MR. ANZALONE:** Your Honor, may I approach, please?15 **THE COURT:** You may.16 **MR. ANZALONE:** I'm approaching with a copy of what's
17 been marked for identification purposes as Defendant's Exhibit

18 A.

19 **THE COURT:** Okay.20 **BY MR. ANZALONE:**21 Q. Investigator Ransford, do you recognize Defendant's Exhibit
22 A?

23 A. Yes, I do.

24 Q. What do you recognize it to be?

25 A. This is a copy from the website from the [Victim-1]

1 Attorneys and Counsels at Law, which I accessed in my
2 investigation.

3 Q. Okay. And is it your understanding that's publicly
4 accessible information?

5 A. Yes, it is.

6 Q. And when you accessed that public information, is what you
7 see in front of you a fair and accurate representation of what
8 was produced from that website?

9 A. Yes, it is.

10 **MR. ANZALONE:** Your Honor, I'd offer Defendant's
11 Exhibit A into evidence.

12 **THE COURT:** Any objection, Mr. Rudroff?

13 **MR. RUDROFF:** No objection, Your Honor.

14 **THE COURT:** Okay. Defendant's Exhibit A is admitted.

15 **The following was received in Evidence:**

16 **DEFT. EXH. A**

17

18 **MR. ANZALONE:** Your Honor, may I approach again,
19 please?

20 **THE COURT:** You may.

21 **BY MR. ANZALONE:**

22 Q. Investigator Ransford, I just handed you what's marked for
23 identification purposes as Defendant's Exhibit B.

24 Do you recognize that?

25 A. Yes, I do.

1 Q. And what do you recognize it to be?

2 A. It appears to be a copy from the website from the Birrell
3 Law Firm in Minnesota.

4 Q. When you accessed that -- when you accessed that website,
5 did it appear to be publicly accessible?

6 A. Yes, it is.

7 Q. And do you recognize what's in front of you as a fair and
8 accurate representation of what was produced when you accessed
9 that publicly accessible websites?

10 A. Yes.

11 Q. Excuse me, website?

12 A. Yes.

13 **MR. ANZALONE:** I'm going to offer Defendant's Exhibit
14 B into evidence.

15 **THE COURT:** Any objection, Mr. Rudroff?

16 **MR. RUDROFF:** No, Your Honor.

17 **THE COURT:** Defendant's B is admitted, B as in boy.

18 **The following was received in Evidence:**

19 **DEFT. EXH. B**

20

21 **MR. ANZALONE:** Thank you, Your Honor. I have no
22 further questions.

23 **THE COURT:** Mr. Rudroff, any cross-examination?

24 **MR. RUDROFF:** Your Honor, we don't have any
25 cross-examination.

1 **THE COURT:** Okay. Mr. Ransford, thank you. You may
2 step down.

3 **THE WITNESS:** Thank you.

4 (The Witness was Excused)

5 **MR. ANZALONE:** Your Honor, if I could have one second,
6 please?

7 **THE COURT:** Sure.

8 **MR. ANZALONE:** I have no further witnesses. Thank
9 you.

10

11 DEFENDANT RESTS

12

13 **THE COURT:** Any rebuttal case, Mr. Rudroff?

14 **MR. RUDROFF:** No, Your Honor.

15 **THE COURT:** I can -- and I can and may ask you to
16 comment right now and talk to me about what you think the
17 evidence shows or doesn't show, but I guess I feel like going
18 back to the condition itself and talk about where -- where I am
19 and where I might be hung you up.

20 Again, I'm going to go through the condition again.
21 There's two ways to read it, two different kinds of conditions.

22 It may be more. There is multiple ways, but at least
23 the two that are relevant here is the defendant shall not have
24 direct contact with RG or his current or former place of
25 employment, current or prior place of employment. That's the

1 direct contact piece.

2 And I'm somewhat skeptical that there is enough there,
3 but I'm willing to be convinced. We'll see.

4 The indirect piece is the defendant shall not have any
5 indirect contact with the victim RG. Hard stop. It doesn't
6 matter. That's one of the multiple ways.

7 And there, I guess I've got the flipside concern and
8 I'm a little bit skeptical of Mr. Anzalone's argument there.

9 And we may be in a situation where I need to send you
10 out and do some research and return to me on why the indirect
11 piece isn't met, because there is no evidence of intent or
12 knowledge, mens rea, and the flip side would be the opposite.

13 But then we've got to get some research on -- each of
14 you would brief each issue, I think.

15 But the other part is is this an indirect contact
16 situation and what's the case law look liking there?

17 I don't know the answer to that as I sit here. I
18 didn't do that research before I came out here, so I think it
19 would be unfair to have me shoot from the hip on that issue.

20 So with that preface, Mr. Rudroff, do you feel like
21 you need to make a closing statement?

22 **MR. RUDROFF:** Your --

23 **THE COURT:** I'm certainly willing to entertain it and
24 we can do it in writing as well.

25 **MR. RUDROFF:** No, Your Honor, I believe at this point,

1 given the Court's concerns, I acknowledge I do not now off the
2 top of my head the case law and indirect contact, what would
3 qualify.

4 So if the Court is open to it, I would suggest or
5 request closing statements by writing, where we could brief that
6 issue for the Court.

7 **THE COURT:** That sounds like a good plan for me.

8 Mr. Anzalone --

9 **MR. ANZALONE:** I'm outnumbered, but, yes, I agree. I
10 think that's a good plan.

11 I would ask to be heard on Mr. Wenke's custody status
12 while we brief that, but I have no objection to doing that in
13 writing.

14 **THE COURT:** Well, I think that I've got the same
15 concerns that I had yesterday.

16 What I would rather do more than anything is to get
17 you to hurry up and get the case law to me. Maybe you can do
18 that by the end of the day tomorrow, and then we can have you
19 all back here on Friday.

20 That way, you know, in the event that this is not
21 proven, then the defendant's detention doesn't prolong longer
22 than necessary.

23 So can we have you get us the best case law you can
24 find by tomorrow?

25 **MR. RUDROFF:** Yes, Your Honor.

1 **THE COURT:** And have you back here on Friday?

2 **MR. ANZALONE:** Yes, Your Honor.

3 **THE COURT:** Read the case law and, you know, if you've
4 got three or four, five cases, just cite them and save yourself
5 the pages on trying to tell me what they say.

6 I can read them and, you know, keep your arguments
7 short, because I'll read the cases.

8 And if you need to give me a high level view, I can
9 understand what each side's views are, but same thing with your
10 closing argument, if you will keep it crisp.

11 **MR. RUDROFF:** Yes, Your Honor.

12 **THE COURT:** Anything, Mr. Rudroff?

13 **MR. RUDROFF:** Nothing from the Government, Your Honor.

14 **THE COURT:** Mr. Anzalone, I didn't let you make a
15 robust record on your client's detention, but nothing has
16 changed from yesterday, so I still have those overriding
17 concerns about public safety.

18 So if you need to say something that you haven't
19 already said, now is the time.

20 **MR. ANZALONE:** Very briefly. Just our position is
21 that with the strength of the evidence or lack thereof, it
22 requires further briefing.

23 Mr. Wenke has every additional incentive to come back
24 to Court and answer for this alleged violation. That's why I'm
25 asking for his release.

1 **THE COURT:** Okay.

2 **MR. ANZALONE:** That's our position that that's the
3 changed circumstances.

4 **THE COURT:** Okay. And that request is denied. I'm
5 going to keep him detained and we'll revisit where we are on
6 Friday. We just need to pick a time.

7 **MR. ANZALONE:** Is the Court available at any point in
8 the afternoon on Friday?

9 **THE COURT:** How is Friday at 1:30, everybody?

10 **MR. ANZALONE:** Thank you. Yes.

11 **MR. RUDROFF:** Works for the Government.

12 **THE COURT:** Friday at 1:30. Get your briefs to me by
13 the end of the day, filing day tomorrow. The sooner the better.

14 **MR. ANZALONE:** Is the end -- I'm sorry. Is that 5:00
15 o'clock or midnight?

16 **THE COURT:** I mean, if you -- the sooner the better.
17 If you get them to me, the more time I will spend with them.

18 But if they are at the end of the CM/ECF filing
19 deadline at midnight, I will read them first thing Friday
20 morning.

21 **MR. ANZALONE:** Thank you.

22 **THE COURT:** But if you have got your case law and you
23 know you got it, send it in early.

24 **MR. RUDROFF:** Understood. Thank you.

25 **MR. ANZALONE:** Thank you, Your Honor.

1 **THE COURT:** All right. Very good. See you Friday.

2 **MS. KUBIAK:** Thank you, Judge.

3 (Proceedings concluded at 2:31 p.m.)

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1
2 In accordance with 28, U.S.C., 753(b), I certify that these
3 original notes are a true and correct record of proceedings in
4 the United States District Court for the Western District of
5 New York before the Honorable John L. Sinatra, Jr.
6
7
8
9

10 s/ Bonnie S. Weber
11 Signature

July 31, 2023
Date

12 **BONNIE S. WEBER, RPR**

13 Official Court Reporter
14 United States District Court
15 Western District of New York
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