

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.	*	December 5, 2023
	*	9:04 a.m.
	*	
LUKE MARSHALL WENKE,	*	STATUS CONFERENCE
	*	
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 MICHAEL DiGIACAMO, 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 FRANK R. PASSAFIUME, ESQ., Assistant Federal Public Defender, 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.

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

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11 (Proceedings commenced at 9:04 a.m.)

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13 **THE CLERK:** All rise.

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

17
18 **THE COURT:** Please be seated.

19 **THE CLERK:** In United States versus Luke Marshall
20 Wenke, Case Number 22-CR-35. This is the date set for a status
21 conference.

22 Counsel, please state your appearances.

23 **MR. DiGIACOMO:** Good morning, Your Honor. Michael
24 DiGiacomo for the United States.

25 **MR. PASSAFIUME:** Frank Passafiume for Mr. Wenke,
Judge.

THE COURT: Good morning, Counsel. Good morning,
Mr. Wenke and Mr. Zenger.

We're scheduled for a sentencing or a status today,

1 but let's get ourselves kind of all on the same page and up to
2 speed.

3 There was an e-mail from Mr. Passafiume regarding some
4 people that the lawyers have been in touch with. That e-mail
5 was from Tuesday, the 28th. Ultimately, assuming that you've
6 settled on meeting with Dr. Antonius in a couple of days.

7 Is that the current status of things?

8 **MR. DiGIACOMO:** No.

9 **MR. PASSAFIUME:** It was until late yesterday
10 afternoon -- I don't want to speak, but Dr. Antonius reached out
11 to both Mr. DiGiacomo and I and said he was no longer available
12 until January or February.

13 He did give us a list of alternatives, four other, I
14 believe, professors or faculty members at UB that may be
15 appropriate here.

16 There is one name in particular, a Dr. Coggins,
17 C-O-G-G-I-N-S, whose CV seemed appropriate for this.

18 And I spoke with -- I reached out to Mr. DiGiacomo
19 late yesterday afternoon, when we got the Dr. Antonius message.

20 I just spoke to him now before Court and I believe she
21 is the first person that we're going to try to make contact with
22 to set this up, so it happens sooner rather than later.

23 But all these experts, not just on this case, Judge,
24 in general, the backlog is a lot. In January and February, the
25 dates that we are getting a lot from people, those are the other

1 names on the list from the status update, none of them were
2 available sooner, rather than later. So it -- that's it.

3 Another kind of a last minute thing, every time we
4 come in, there is always a curve ball at the very end and we
5 couldn't avoid this one, Dr. Antonius let us know late yesterday
6 that he would be unavailable until January.

7 **THE COURT:** Okay. On that front, on the second front,
8 late last week Mr. Zenger alerted me to something that Endeavor
9 was willing to do -- there was something that was within their
10 wheelhouse that we were unaware of.

11 Can you explain what that process is, was or the
12 potential process might be?

13 **PROBATION OFFICER:** Yes, Your Honor. So Endeavor
14 partners with the Buffalo Police Department to -- for a
15 cooperative group, essentially, that addresses community risk.

16 And they reached out to me after we made first contact
17 with them regarding this case, explaining that their program
18 manager, along with a detective from the Buffalo Police
19 Department could go to the facility to meet with Mr. Wenke.

20 Their program manager would meet with Mr. Wenke to
21 assess his mental health, in general, which is much like the
22 initial mental health evaluation that Horizon did, but this
23 would be with Endeavor.

24 So that would not be to the level of expertise
25 forensically that the parties are discussing with Dr. Antonius,

1 but then in addition to that, the detective with the Buffalo
2 Police Department would do a criminogenic assessment as well.

3 So that would assist in predicting any kind of future
4 criminal behavior and determine any criminal risk to the
5 community.

6 **THE COURT:** So the Endeavor person would be looking at
7 Mr. Wenke, for planning purposes, for mental health going
8 forward?

9 **PROBATION OFFICER:** Mental health going forward and
10 also any type of intervention that he may need to enhance the
11 safety of the community.

12 **THE COURT:** The police detective, this is a program
13 that they have in place already?

14 **PROBATION OFFICER:** It is.

15 **THE COURT:** And he or she would be looking at
16 Mr. Wenke for to -- at least the way I see things, to give me
17 some kind of rule on risk to the community if he were to be
18 released?

19 **PROBATION OFFICER:** That is also what I understand,
20 Your Honor.

21 Mr. Passafiume did pose some questions to me
22 yesterday, but which I have since relayed to the parties at
23 Endeavor.

24 I just have not heard back yet explicitly from them
25 with a further explanation for him.

1 **THE COURT:** Okay. Just to close the loop on that,
2 that is essentially roughly what Mr. Zenger told me late last
3 week.

4 And I said, it sounds like a great idea. See if we
5 can do it right away, which I think could have been as early as
6 yesterday.

7 Mr. Passafiume, I think, was within his rights to
8 press pause on that until he could maybe attend.

9 I think that's maybe what your thought process is,
10 Mr. Passafiume?

11 **MR. PASSAFIUME:** Sure. I've never heard of this
12 assessment before and I did pose a lot of questions to
13 probation.

14 But to expedite it, all my questions would be resolved
15 if I just were there and put a stop to something that I don't
16 think is appropriate.

17 It's law enforcement speaking to my client, Judge.
18 You know, I would be the worst defense attorney in the history,
19 if I allowed that to happen.

20 So as long as I'm there, I don't need those questions
21 answered. The goal is to get Mr. Wenke out of custody and into
22 treatment and with his dad.

23 So I could be there tomorrow, if they want to come do
24 it again tomorrow and sit through the assessment.

25 **THE COURT:** Well, if they are available today, we can

1 do it today, even, right?

2 The idea is -- here is what I said to my law clerk
3 late last week, which is, the sooner we can do that, the sooner
4 I can get some comfort level, the sooner I can consider
5 releasing Mr. Wenke pending sentencing.

6 So if everything works well, and these people that
7 visit Mr. Wenke say everything looks good, give me no cause for
8 concern, then I can release him pending sentencing.

9 And then I can hold off on sentencing until you,
10 Mr. Passafiume and Mr. DiGiacomo, can get Mr. Wenke evaluated by
11 this alternative person that's out in the works there. I can't
12 remember her name.

13 That seems to be my -- if everything works well, that
14 would be where I would like to go on this.

15 So Mr. Zenger, Mr. Passafiume, are we still working to
16 see if we can get this -- will they allow Mr. Passafiume to sit
17 in with him. I don't see why that's a problem.

18 **PROBATION OFFICER:** Yes, Your Honor. I can
19 essentially connect Mr. Passafiume with these parties and be
20 included myself and make sure that they are all able to schedule
21 together as soon as possible.

22 **THE COURT:** I don't see why we can't do that right
23 away and then report back to me. And if everything is good,
24 then we can come back here soon, by the end of the week.

25 **MR. PASSAFIUME:** That works.

1 **THE COURT:** Is that a good game plan for now? So we
2 will just pause on the sentencing, see if we can -- see if this
3 works.

4 If it doesn't work, then we will regroup and we can
5 come back with plan B.

6 Anything, Mr. DiGiacomo?

7 **MR. DiGIACOMO:** Judge, just two things. I am not
8 saying I want to go, but would the Court have any objection or
9 I'll ask, Frank, obviously, if I could be there just to see what
10 questions they are asking or we could discuss it.

11 I mean, I am not going to ask any questions.

12 **THE COURT:** Mr. DiGiacomo is no more scary than a
13 police detective, is he?

14 **MR. PASSAFIUME:** No. I think that's fair. I think
15 we're both kind of in the dark with what the assessment is
16 about.

17 **THE COURT:** I don't see a problem with that.
18 Mr. Passafiume, do you, as a passive observer?

19 I guess the idea being, I guess is even better because
20 then everyone can come back to me and report to me that there is
21 no crisis if Mr. Wenke were to be walking the streets in a
22 couple of days or something like that.

23 **MR. PASSAFIUME:** Absolutely.

24 **THE COURT:** Isn't that really what we are after at
25 this point, I think?

1 Because then, if there is no urgency -- excuse me, no
2 concern about public safety, then he can be released pending
3 sentencing and we can deal with the rest of the case as it
4 comes.

5 **MR. PASSAFIUME:** Absolutely.

6 **MR. DiGIACOMO:** Sounds good.

7 **THE COURT:** Let's see if we can do that and -- he's in
8 Niagara County; is that right?

9 **PROBATION OFFICER:** I believe he is in Chautauqua.

10 **THE COURT:** Chautauqua. Harder to entice people to
11 drive down there on short notice, but see what we can do.

12 Is there any way it can happen today, when he's here
13 in the building or is that asking too much?

14 **PROBATION OFFICER:** I'm happy to reach out
15 immediately. I just don't know if those professional are
16 available that readily.

17 **THE COURT:** When is the transport going back?
18 Whenever --

19 **US MARSHAL:** Probably in the next couple hours.

20 **THE COURT:** So we don't really have a lot of time.
21 See what we can do. If it works, we're lucky it works. If it
22 doesn't work, then the next available day, right?

23 **PROBATION OFFICER:** Yes, Your Honor.

24 **THE COURT:** Okay. Anything else, anybody?

25 **MR. DiGIACOMO:** Judge, for scheduling purposes, would

1 you like Mr. Passafiume and I reach out to the Court once this
2 meeting occurs?

3 **THE COURT:** Any one of you, the lawyers or Mr. Zenger
4 can reach out and let me know we're ready to have another status
5 conference and we have time slots throughout the week that we
6 can get you back in.

7 **MR. DIGIACOMO:** Thank you.

8 **MR. PASSAFIUME:** Thank you.

9 **THE COURT:** Keep working. Thanks, guys. All right.

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11 (Proceedings concluded at 9:13 a.m.)

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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.
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8
9

10 s/ Bonnie S. Weber
11 Signature

January 17, 2024
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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