

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

22-CR-35 (JLS-HKS)

vs.

LUKE MARSHALL WENKE,
Defendant.

Buffalo, New York
December 8, 2023
1:00 p.m.

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STATUS CONFERENCE

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

TRINI E. ROSS, ESQ.
United States Attorney
BY: MICHAEL DIGIACOMO, AUSA
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

FOR DEFENDANT: MARIANNE MARIANO, ESQ.
Federal Public Defender
BY: FRANK RICHARD PASSAFIUME, AFPD
300 Pearl Street
Suite 200
Buffalo, New York 14202

COURT REPORTER: Diane S. Martens
dmartensreporter@gmail.com

U.S. vs. Wenke - 22-CR-35

P R O C E E D I N G S

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(Open court, defendant present.)

THE CLERK: United States v. Luke Wenke, case number
22-Criminal-35.

This is the date set for a status conference.

MR. DIGIACOMO: Michael DiGiacomo for the United States.

MR. PASSAFIUME: And Frank Passafiume for Mr. Wenke.

THE COURT: Good afternoon, Counsel.

Good afternoon, Mr. Wenke.

MR. PASSAFIUME: Afternoon.

THE DEFENDANT: Afternoon.

THE COURT: I note, for the record, Mr. Wenke's father
is not here currently.

Does anyone know about his plans to be in attendance?

MR. PASSAFIUME: No. I just actually asked probation
about that. We thought he would be here. He was here
yesterday. He's been at every proceeding.

THE COURT: Did anyone come in recently?

Did you come into the building recently?

MR. DIGIACOMO: I was the last one in, your Honor.

MR. PASSAFIUME: No, I've been here the whole time.

THE COURT: Was there a long line downstairs?

MR. DIGIACOMO: There was no line.

U.S. vs. Wenke - 22-CR-35

1:04PM 1 **THE COURT:** Okay. All right.
2 So, who has new information to report to me?
3 I know that Mr. Senger does.
4 Does anyone else?

1:04PM 5 **MR. DIGIACOMO:** No, Judge.
6 From the government's perspective, I reviewed Mr. Zenger
7 email, the exchange he had with Mr. Passafiume.
8 I have not had a full opportunity to read the pamphlet
9 but we know just as much as the Court.

1:05PM 10 **MR. PASSAFIUME:** So, obviously we're okay with this.
11 This intensive outpatient has been around for quite some
12 time. And it is limited to very severe mental health
13 illness. My experience has been with people suffering from
14 severe schizophrenia. The eligibility here, I don't know if
1:05PM 15 Mr. Wenke qualifies, but I guess it doesn't matter if we
16 would be okay with it.
17 Your Honor, I think there needs to be a court order for
18 that. Usually that's a state court judge that makes that
19 order. I don't know why your Honor can't do it. I think
1:05PM 20 your Honor can.
21 And if Endeavor is willing to do it pursuant to your
22 order, we would be, obviously, amenable to everything that
23 Officer Zenger laid out as far as the telemedicine
24 appointments, residing with his father. Mr. Wenke would
1:06PM 25 abide by all conditions that all the parties discussed

U.S. vs. Wenke - 22-CR-35

1:06PM 1 yesterday. So I guess that's my two cents, Judge.

2 I, I don't know why it's been so hard for these agencies

3 to kind of step up here when they're paid to do so.

4 And Mr. Wenke was compliant with treatment at Horizon

1:06PM 5 until his arrest on this violation and there were no issues

6 with his compliance.

7 **THE COURT:** All right. I think I probably need, just

8 for the sake of the record, a little bit more detail.

9 Mr. Zenger, do you want to tell us some background?

1:06PM 10 What's new since we were all together?

11 **PROBATION OFFICER ZENGER:** Yes, your Honor.

12 So I had contact with the -- I believe it's the director

13 of clinical services at Endeavor and she presented,

14 essentially, the combination of treatment efforts for Mr.

1:06PM 15 Wenke.

16 So that would be outpatient services through Endeavor.

17 It would not be the forensic program that we had initially

18 discussed, just being that he has a more unique mindset than

19 most of the clients in that department. But that his

1:07PM 20 appointments would need to take place via tele-health so that

21 he would not need to enter the facility, given there's a

22 large number of vulnerable populations that attend those

23 places.

24 And they would also make arrangements with the local

1:07PM 25 hospital to have any medications that would be injectables

U.S. vs. Wenke - 22-CR-35

1 administered to Mr. Wenke there.

2 And, also, recommended that a police escort be put into
3 place when he would be entering the hospital, as well.

4 In addition to that, the clinician recommended that --
1:07PM 5 actually stated that, essentially, their willingness to work
6 with Mr. Wenke is dependent on there also being a AOP order
7 in place which is a county-offered mental health program that
8 is Court ordered and would offer a lot more oversight and a
9 whole treatment team approach to Mr. Wenke.

1:08PM 10 **THE COURT:** They also recommended a police escort. That
11 seems to be a little bit overkill, doesn't it?

12 (No response.)

13 **THE COURT:** To anybody? To me, it does.

14 **MR. PASSAFIUME:** I think so.

1:08PM 15 **THE COURT:** Who's going to supply the police escort?

16 **MR. PASSAFIUME:** And, honestly, in my experience with
17 this, they used to actually deliver like injectable medicine,
18 if it was required, to patient's houses so that patients
19 didn't have to leave.

1:08PM 20 **MR. DIGIACOMO:** Judge, my position on the police escort,
21 I think that would be something, if the Court wants to see, I
22 have no -- I have no familiarity with this program.

23 **THE COURT:** Right.

24 **MR. DIGIACOMO:** And I have no reason to question Mr.
1:08PM 25 Passafiume that the medication may, in fact, be delivered if

U.S. vs. Wenke - 22-CR-35

1:08PM 1 it's necessary to Mr. Wenke.
2 But if it's a situation that it's not, then I think it's
3 something that we should see how Mr. Wenke's progressing
4 before we automatically cut that provision off.

1:09PM 5 **THE COURT:** Here's the other thing that dawned on me
6 later than it should have -- it only dawned on me today, a
7 couple of hours ago. So I'm still not entirely satisfied
8 with this. I'm not so sure that Mr. DiGiacomo is, either.
9 If I pressed him, I'm sure he would object to any release at
1:09PM 10 this point; is that correct?
11 **MR. DIGIACOMO:** That's correct, Judge. I mean --
12 **THE COURT:** Your position is the way it was yesterday?
13 **MR. DIGIACOMO:** Absolutely, Judge.
14 I mean, we're, we're opposed to his release until a full
1:09PM 15 treatment program is implemented here. I guess what my
16 concern is, Judge, if he were to be released today to the
17 custody of his father, I mean, all, all we're doing is
18 putting him into an environment of which he might have
19 computer access, which really is I don't think is beneficial
1:09PM 20 to Mr. Wenke going forward at this point until he gets
21 himself back into the counseling session that he needs.
22 **THE COURT:** So the late-breaking thought that I had --
23 and I should have had it earlier -- but the thought is this:
24 That if I'm going to release him to his father's
1:10PM 25 custody, the way we've been talking, the condition that I

U.S. vs. Wenke - 22-CR-35

1:10PM 1 think would resolve my remaining concern would be that
2 they -- that "they" -- drive over and report to ECMC today
3 and Mr. Wenke, Luke Wenke, present himself to ECMC and say "I
4 would like a psychiatric evaluation". And it goes from
1:10PM 5 there.

6 If they don't think that they don't need to act on it,
7 they don't need to act on it. If he goes there and tells
8 them what's on his mind, then they can act on it. And then
9 at least we can get some engagement with the mental health
1:10PM 10 community which has been so far impossible.

11 He presents himself to the hospital and if they feel
12 like they need to work with him, then they'll work with him.

13 What's wrong with that?

14 **MR. PASSAFIUME:** Nothing.

1:10PM 15 **THE COURT:** Maybe they'll feel like he's somebody else
16 crying wolf and they'll send him to the door but I hope not.

17 **MR. DIGIACOMO:** Judge, I want to make sure.

18 Is the Court saying they're going to release Mr. Wenke
19 on the condition that he --

1:11PM 20 **THE COURT:** I've got a long list of potential
21 conditions. I'll go through them.

22 **MR. DIGIACOMO:** I guess --

23 **THE COURT:** The one I'm talking about now is that he go
24 to ECMC from here. If somebody needs to stop off for a
1:11PM 25 cheeseburger, I suppose that's okay, but, you know, the point

U.S. vs. Wenke - 22-CR-35

1 being, you know, because the wait could be long. But if he
2 goes straight to ECMC, presents for a psychiatric evaluation,
3 and then abide by whatever they tell him.

4 The second half of that condition would be that if
1:11PM 5 there's any discharge or whatever paperwork they give him
6 when he leaves, he report that paperwork over to Mr. Zenger.

7 And then I think we need to come back here next Friday
8 to make sure everything's working, which, by the way, he's
9 going to be on GPS monitoring so Mr. Zenger can make sure
1:11PM 10 that he actually went and stayed for -- you know, if anyone's
11 been to a hospital any time recently, it's going to be a
12 while before he leaves there. Hours.

13 Mr. Zenger, you want to comment on that thought?

14 **PROBATION OFFICER ZENGER:** Yes, your Honor.

1:12PM 15 It is entirely up to the Court if they would like to
16 impose that condition. I, I followed up with our specialist
17 in this area today and from what it sounds like, the
18 discretion would be up to ECMC at that point and whether or
19 not they would want to evaluate him if he were to show up.

1:12PM 20 **THE COURT:** Right. But I guess that's the point after
21 all, I mean, isn't it, someone who's qualified other than all
22 of us in this room?

23 **PROBATION OFFICER ZENGER:** That's right.

24 **THE COURT:** That's the problem, right? None of us in
1:12PM 25 this room is equipped to evaluate potential mental health

U.S. vs. Wenke - 22-CR-35

1:12PM 1 issues or treatment. So I don't know how else to do it. And
2 the community that you got contract with is just unable --
3 unable, unwilling, whatever the answer is -- to engage, at
4 least any time soon, or when they're willing to engage, it's
1:12PM 5 kind of in a halfhearted way. And I'm disappointed by that.
6 They're going to engage anyway because he's going to still
7 have to go through the Endeavor process.

8 **PROBATION OFFICER ZENGER:** Right.

9 **THE COURT:** So I'm going to go down this road and we're
1:13PM 10 going to do it and we're going to talk about all these
11 conditions next.

12 So, subject to all these conditions, my finding would be
13 that, subject to these conditions that I find by clear and
14 convincing evidence that pretrial release/presentence release
1:13PM 15 does not create an undue risk to public safety or risk of
16 flight, okay.

17 So, Mr. Passafiume is going to take the burden of
18 drafting this Order because I don't have any idea what this
19 Order for this intensive outpatient program, AOP Order,
1:13PM 20 whatever you're talking about, that Endeavor wants.

21 Mr. Passafiume will take the first draft, circulate it
22 to Mr. DiGiacomo and to Mr. Zenger because I don't have any
23 idea what this Order needs to look like.

24 So, Mr. Passafiume, I don't know what the rest of your
1:13PM 25 day looks like but maybe by Monday, at least, get me that

U.S. vs. Wenke - 22-CR-35

1:13PM 1 Order?

2 **MR. PASSAFIUME:** I'll get you --

3 **THE COURT:** It should be today but if your whole day is

4 scheduled, I wouldn't put that burden on you.

1:14PM 5 **MR. PASSAFIUME:** It will be by end of business today.

6 **THE COURT:** Get that Order circulated to everybody.

7 **MR. PASSAFIUME:** Absolutely.

8 **THE COURT:** And to my chambers, as well. And then I'll

9 enter it as soon as it looks like it's satisfactory.

1:14PM 10 Because, look, I'm looking at this brochure, too, that

11 Mr. Zenger found or they sent to him, looking at their

12 requirements and recommendations.

13 **The police escort provision, leave it in there** and we'll

14 address it later. If it's necessary, it's necessary. If

1:14PM 15 it's not, it's not and we can take it out. So leave it at

16 the way they want it because it will have to be looked at.

17 Otherwise it might create another hiccup for us. So that's

18 the main construct.

19 Let's drill down into some of these conditions now.

1:14PM 20 Mr. Wenke, Luke's father -- I don't know your first name

21 right now but I did know it at one point.

22 **KEVIN WENKE:** Kevin.

23 **THE COURT:** Are you prepared to take Luke to ECMC this

24 afternoon?

1:15PM 25 **KEVIN WENKE:** Yeah, sure.

U.S. vs. Wenke - 22-CR-35

1:15PM 1 **THE COURT:** All right.

2 And you're going to have to help him abide by all of the
3 rest of these conditions; do you understand that?

4 **KEVIN WENKE:** Yes.

1:15PM 5 **THE COURT:** So I don't forget, let's set another status
6 conference for next week, Friday. I want to check in on
7 everybody, make sure progress is being made, make sure that
8 there's hiccups, make sure that's there no other issues with
9 Luke Wenke.

1:15PM 10 **MR. DIGIACOMO:** Judge, might the Court have availability
11 on Thursday? Next Friday I --

12 **THE COURT:** I should have some availability on Thursday.
13 I would say in the afternoon.

14 So next Thursday, the 14th, in the afternoon. How's
1:15PM 15 2 o'clock?

16 **MR. DIGIACOMO:** Works for the government.

17 **MR. PASSAFIUME:** Sounds good, thank you.

18 **THE COURT:** 2 p.m. on the 14th for a further status
19 conference. And then we can make sure everything's gone
1:15PM 20 well.

21 Meanwhile, Mr. Luke Wenke, that way we can make sure and
22 Mr. Zenger's going to make sure that you, in fact, complied
23 with my condition to report to ECMC and ask for help there,
24 talk to them. Tell them what's on your mind. Tell them
1:16PM 25 what's bothering you.

U.S. vs. Wenke - 22-CR-35

1:16PM 1 Do you feel like you need some assistance, don't you?

2 THE DEFENDANT: I'll talk to them about everything.

3 THE COURT: Do you feel like you need some mental health
4 assistance?

1:16PM 5 THE DEFENDANT: As this part of my life goes on, I'll
6 tell them every detail, what got me here.

7 THE COURT: Tell them what's on your mind and they're
8 the mental health professionals and they might be able to
9 engage with you sooner in terms of what you need --

1:16PM 10 THE DEFENDANT: Mm-mm.

11 THE COURT: -- than this other process we've been trying
12 to put in place that's kind of like -- I don't know what you
13 would characterize it as -- broken Christmas tree with
14 ornaments all over the place, that's kind of what we put
1:16PM 15 together here because we've got pieces every where. And so
16 far it's not working.

17 So I think at least get there and see what they have to
18 say and if they see a need to treat you right away, then they
19 can, all right?

1:16PM 20 THE DEFENDANT: Mm-mm.

21 THE COURT: The conditions obviously would be the
22 existing conditions that you were on the last time, okay?
23 Let's start with that. That's the baseline.

24 That would obviously include the existing mental health
1:17PM 25 treatment program condition that's in existence already.

U.S. vs. Wenke - 22-CR-35

1:17PM 1 So, Mr. Zenger, please take notes on these because we're
2 going to have to do a modification order now.

3 **PROBATION OFFICER ZENGER:** Yes, your Honor.

4 **THE COURT:** Are you prepared to do that? All right.

1:17PM 5 That mental health condition would include the intensive
6 outpatient program through Endeavor, and subject to further
7 Order that we just discussed about the Order to comply with
8 that, to trigger that process, that Mr. Passafiume is going
9 to help us draft. All right.

1:17PM 10 That mental health treatment program condition is going
11 also to include that he report, upon leaving the building
12 here, to -- he's got to stop at probation and get an ankle
13 bracelet, too. After he gets the ankle bracelet, he reports
14 with his father to ECMC and asks for a psychiatric
1:17PM 15 evaluation. And then abide by their recommendations at ECMC.

16 And any discharge or related paperwork that they give
17 him, he needs to turn over a copy to you, Mr. Zenger, all
18 right?

19 **PROBATION OFFICER ZENGER:** Yes.

1:18PM 20 **THE COURT:** That's the ECMC condition.

21 The other remaining conditions, just highlight them.

22 Anger management condition is still in effect.

23 Counseling session with his lawyer. We talked about
24 that the last time. I do think it's worthwhile, Mr.

1:18PM 25 Passafiume, to spend some time in the next couple of weeks

U.S. vs. Wenke - 22-CR-35

1:18PM 1 with your client to give him advice on what he can and can't
2 do in terms of letter writing and online social media
3 activity. I think that's a good use of your time and it will
4 be compensated when it's time for you to submit your voucher.

1:18PM 5 So, it's compensable time. Spend it with your client
6 counseling him.

7 **MR. PASSAFIUME:** Oh, I don't submit vouchers. I get
8 paid.

9 **THE COURT:** Right. I'm sorry, yes, I know that. If you
1:18PM 10 were, right, if you were a CJA counsel, I would. The point
11 is that it's within your charge, I would say --

12 **MR. PASSAFIUME:** Yes.

13 **THE COURT:** -- to provide that advice and counsel to
14 your client. So I would want that done as well. All right.

1:19PM 15 The new condition that I'm imposing is that Mr. Wenke
16 shall not send to anyone any item by mail or other delivery
17 service with the exception of ink on paper unless he gets the
18 prior approval of probation.

19 So, if he needs to send a return back to Amazon with a
1:19PM 20 product, he's got to get approval from Mr. Zenger. Anything
21 along those lines, unless it's pen and paper. I'm trying to
22 protect core First Amendment concerns. Obviously if it's
23 just pen on paper, we can deal with that.

24 He's got his other constraints by statute and other
1:19PM 25 conditions about what he can and can't write and who he can

U.S. vs. Wenke - 22-CR-35

1:19PM 1 and can't send things to. So I just want to protect against
2 him sending anything that he shouldn't send to people, and to
3 anyone.

4 The other condition that's in existence already is
1:20PM 5 substance abuse; the search condition; complying with orders
6 of protection; the restriction on sending anything to those
7 same protected people that we've identified in the past.
8 Same -- I don't remember all the initials of those people --
9 but that's all still in effect Mr. Zenger, right?

1:20PM 10 **PROBATION OFFICER ZENGER:** Yes.

11 **THE COURT:** The home detention condition, right? I
12 think it should. Let's start with home detention and if some
13 time passes and it should be moved to curfew, then Mr.
14 Passafiume can make an application but we're starting with
1:20PM 15 home detention. He can leave for all health and mental
16 health related reasons and to come to Court.

17 What would the other reasons for leaving the house be in
18 the standard home condition?

19 **PROBATION OFFICER ZENGER:** For work, your Honor.

1:21PM 20 **THE COURT:** So if he gets a job, then he can go to work.

21 **PROBATION OFFICER ZENGER:** And with that, can I just
22 request that probation approve the offender's work, Mr.
23 Wenke's work, just because it would be complicated to try to
24 track him on home detention. With his previous work
1:21PM 25 experience of delivering food, it's just not conducive for

U.S. vs. Wenke - 22-CR-35

1:21PM 1 the process to be used, if that makes any sense. If he were
2 to go to a traditional job, if he goes to a worksite and
3 work, I can verify that but if he's driving around all day
4 delivering food --

1:21PM 5 **THE COURT:** Yes, yes, you can put that down, and you
6 should put that down. But I still think there are ways to
7 verify that. We would just have to sharpen our pencils and
8 figure out a way.

9 **PROBATION OFFICER ZENGER:** Okay.

1:21PM 10 **THE COURT:** I'm not saying that he can't do delivery
11 service. It's just a little bit more challenging to verify
12 it. It can probably be verified some other way, though --

13 **PROBATION OFFICER ZENGER:** Okay.

14 **THE COURT:** -- other than where his whereabouts are.

1:22PM 15 **MR. DIGIACOMO:** Judge, I apologize for the interruption.

16 We talked about that yesterday with Mr. Wenke's father
17 and the three of us. I mean, if -- again, I know that the
18 work, if he's going to find -- Mr. Wenke should obtain and
19 find suitable employment but if it is going -- we were

1:22PM 20 thinking -- even his father agreed -- that it may not be best
21 to be in food service.

22 But if it's going to be in the food delivery service, if
23 that's the only type of employment he can find, then it needs
24 to be limited, perhaps, to the northern counties. He can

1:22PM 25 only deliver from, say, Cheektowaga north. It's my

U.S. vs. Wenke - 22-CR-35

1:22PM 1 understanding Mr. Wenke's father -- and he can verify this --
2 tends, I don't know the exact location where Mr. Wenke is
3 going to be hanging his hat but I get the impression it's in
4 the north town?

1:22PM 5 **KEVIN WENKE:** It's right next to the --

6 **THE COURT:** It's in the city.

7 **MR. DIGIACOMO:** In the city.

8 The reason, Judge, we have someone who's, one of the
9 individuals who's in this petition has expressed concern and
1:22PM 10 I just don't want Mr. Wenke showing up delivering food into
11 her jurisdiction or his jurisdiction and that's a concern.
12 That was something that was raised yesterday. I know Mr.
13 Wenke father indicated that, perhaps, he can find a job at
14 either a brick and mortar place or something to that nature.

1:23PM 15 **THE COURT:** All right.

16 **MR. DIGIACOMO:** I'm not saying I'm opposed to his work.
17 I think, like you were saying, we'll have to drill down on
18 that once probation approves.

19 **THE COURT:** All right.

1:23PM 20 So, Mr. Zenger, my instruction to you is make sure that
21 when you're approving, my view is you shouldn't be approving
22 having anything that would have him focused on the area of
23 this particular person we're talking about without naming his
24 or her name. So we're looking -- the idea is the city and
1:23PM 25 north towns, to keep him in that general vicinity.

U.S. vs. Wenke - 22-CR-35

1:23PM 1 **PROBATION OFFICER ZENGER:** Okay, yes, Judge.

2 **THE COURT:** All right. But that concern is also going

3 to be ameliorated by exclusion zones with the GPS monitoring.

4 So I believe you've got addresses, Mr. Zenger, that

1:23PM 5 Mr. Wenke's not allowed to interact with?

6 **PROBATION OFFICER ZENGER:** I do, your Honor.

7 **THE COURT:** You have all those addresses.

8 The addresses of the people -- Mr. Wenke, you know who

9 they are -- all those addresses will be inputted into the GPS

1:24PM 10 system so that there's an exclusion zone around all of those

11 people's homes and other addresses that they want in there.

12 So, if they want to give you an employment address, as well.

13 **PROBATION OFFICER ZENGER:** Okay.

14 **THE COURT:** All right. So work on that, Mr. Zenger.

1:24PM 15 So you're not allowed to go around any of those people's

16 houses, Mr. Wenke, or where they work or where they go to

17 school or those sorts of things.

18 So it's home detention, ankle bracelet, GPS monitoring

19 with these exclusion zones.

1:24PM 20 Should there be any other exclusion zones that I'm not

21 thinking about right now?

22 (No response.)

23 **THE COURT:** Not hearing any.

24 **MR. DIGIACOMO:** Judge, on the leave, we have medical

1:24PM 25 treatment, perhaps we said it court, work, I'm assuming the

U.S. vs. Wenke - 22-CR-35

1:24PM 1 Court would include meetings with Mr. Passafiume, if need be,
2 that would be part of that --

3 **THE COURT:** I think that's in the standard --

4 **PROBATION OFFICER ZENGER:** It is.

1:25PM 5 **THE COURT:** -- home detention provision that he can meet
6 with his lawyer, come to court, see you, and probation those
7 sorts of things.

8 **PROBATION OFFICER ZENGER:** Yes.

9 **THE COURT:** All right.

1:25PM 10 And the final new condition is no contact directly or
11 indirectly with Nathan Weaver without prior approval of
12 probation.

13 **PROBATION OFFICER ZENGER:** I have it, your Honor.

14 **THE COURT:** All right. Got it all.

1:25PM 15 Anything else that we need to talk about before I review
16 Mr. Zenger's notes and sign them?

17 **MR. DIGIACOMO:** One last thing, Judge.

18 With respect to -- I just want clarity. Again, I know
19 I've objected on the record to Mr. Wenke's release until this
1:25PM 20 program gets in place but I fully respect the Court's
21 opinion.

22 With respect to the no contact by mail or other delivery
23 service, does Mr. Wenke have access -- is he going to have
24 access, so there's no confusion, to a computer or electronic
1:26PM 25 devices that would allow him to post on social media?

U.S. vs. Wenke - 22-CR-35

1:26PM 1 Because, as the Court's well aware of the history of this
2 case, some of the contact Mr. Wenke has initiated has come in
3 the form of that type of Facebook posts or things of that,
4 social media. And I think for Mr. Wenke's benefit and
1:26PM 5 everybody else's, if there's clarity on that issue. I know
6 we talked about writing letters. I didn't know how the Court
7 wants to handle that.

8 **THE COURT:** Right. Do you want to be heard, Mr.
9 Passafiume, and, Mr. Zenger, on that topic.

1:26PM 10 **MR. PASSAFIUME:** It's going to be tough because Endeavor
11 said they would only treat him via telemedicine. So he's
12 going to need access to that to get treated, according to
13 Endeavor.

14 **THE COURT:** Mr. Zenger, thoughts?

1:26PM 15 **PROBATION OFFICER ZENGER:** That is correct. I mean, he
16 could probably do his -- so I apologize. I was reviewing my
17 notes for the conditions.

18 The question was any kind of restriction for computer
19 access?

1:27PM 20 **THE COURT:** Right.

21 **MR. DIGIACOMO:** Yes, just because he does stuff on
22 social media. I didn't know if that part fell into the
23 noncontact aspect of?

24 **PROBATION OFFICER ZENGER:** If the Court would entertain
1:27PM 25 a condition that he not make a reference to any of the

U.S. vs. Wenke - 22-CR-35

1:27PM 1 victims? I know that was a point of contention in the past,
2 whether or not that constituted contact. Otherwise, I do
3 believe he would need access to computers, or at least a cell
4 phone, to participate with his treatment.

1:27PM 5 **THE COURT:** So, he's not allowed to put the names of any
6 of these four individuals, is it?

7 **PROBATION OFFICER ZENGER:** Three individuals. But
8 that's difficult, too, your Honor, because --

9 **THE COURT:** I count four.

1:27PM 10 **PROBATION OFFICER ZENGER:** Because a lot of times...
11 Yes, there --

12 **THE COURT:** Don't we have a father and a son, we have
13 somebody else.

14 **PROBATION OFFICER ZENGER:** With the father and son, that
1:28PM 15 would be four, yes.

16 **THE COURT:** So he doesn't mention their names on social
17 media, is that the proposed condition?

18 **PROBATION OFFICER ZENGER:** I don't know how useful that
19 would really be --

1:28PM 20 **THE COURT:** Yeah.

21 **PROBATION OFFICER ZENGER:** -- to be honest but...

22 **THE COURT:** I think the existing conditions the way they
23 are, the way we're describing them, is sufficient.

24 And, look, the last thing I want to do -- and I hope the
1:28PM 25 last thing you want, Mr. Luke Wenke, is to be back here

U.S. vs. Wenke - 22-CR-35

1:28PM 1 talking about violations because you kind of like this is the
2 extent of the amount of my patience so far. We spent it all
3 through this process. So that means the next time you're
4 here on violation, I'm not going to have flexibility. I'm
1:28PM 5 not going to be eager to work with you. None of those things
6 any more, okay?

7 **THE DEFENDANT:** As long as there's no lies to the
8 Hamburg police like last time about license plates that were
9 turned in illegally last year, then we --

1:28PM 10 **THE COURT:** Well, you've got -- my conditions don't have
11 anything to do with that. So you've got a long list of
12 conditions here. You're a smart guy. Read them and abide by
13 them and you'll stay out of trouble. Really it's a simple
14 solution. And going forward, you got Mr. Passafiume and Mr.
1:29PM 15 Zenger to help you interpret and comply with those
16 conditions.

17 **THE DEFENDANT:** Mm-mm.

18 **THE COURT:** So I'll encourage that, as well.
19 Anything else, Mr. Zenger, before I sign these
1:29PM 20 conditions?

21 **PROBATION OFFICER ZENGER:** No, your Honor.

22 **THE COURT:** All right.
23 Anybody?
24 (No response.)

1:29PM 25 **THE COURT:** No.

U.S. vs. Wenke - 22-CR-35

1:29PM 1 **MR. DIGIACOMO:** Thanks for the input.
2 Thanks to everybody for their hard work on this.
3 And, Mr. Luke Wenke, you got a lot of people that worked
4 hard for you here. Don't let everybody down.

1:29PM 5 **THE DEFENDANT:** Mm-mm.
6 **THE COURT:** Let's see that Order, Mr. Zenger. I'll sign
7 it.
8 **PROBATION OFFICER ZENGER:** Your Honor, I'm happy to
9 explain to you. I was writing very quickly.

1:29PM 10 **THE COURT:** Yeah, as long as it's legible. All right.
11 (WHEREUPON, a discussion was held off the record between
12 Judge Sinatra and Probation Officer Zenger.)
13 **THE COURT:** Okay. So, the order setting the conditions
14 will be forthcoming shortly. All right.

1:30PM 15 So what's next, Mr. Zenger? He's going to go down and
16 get his ankle bracelet, then he's heading off to ECMC?
17 **PROBATION OFFICER ZENGER:** Yes, your Honor.
18 So you need to report to the first floor operation
19 office. I can meet you there.

1:30PM 20 **THE COURT:** Mr. Passafiume, anything else from you?
21 **MR. PASSAFIUME:** No, Judge, thank you.
22 **THE COURT:** Mr. DiGiacomo?
23 **MR. DIGIACOMO:** I noted my position on the record.
24 Thank you.

1:30PM 25 **THE COURT:** Very well.

U.S. vs. Wenke - 22-CR-35

Thank you, everybody.

(WHEREUPON, proceedings adjourned.)

* * *

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court
of the Western District of New York before the
Honorable John L. Sinatra on December 8, 2023.

S/ Diane S. Martens

Diane S. Martens, FCRR, RPR
Official Court Reporter