

25-1165-cr

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

LUKE MARSHALL WENKE,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume I of II

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Submitted in a separate, sealed envelope along with Joint Appendix,
not for public disclosure, are:

- Revised Presentence Investigation Report, filed August 17, 2022;
- Forensic Psychological Examination, dated April 1, 2024, authored by Corey M. Liedenfrost, Ph.D.;
- Cover letter, dated November 13, 2024, with Forensic Evaluation, dated November 12, 2024, authored by Kaitlyn Nelson, Psy.D. and Robin Watkins, Ph.D., ABPP; and
- Forensic Psychological Examination, dated January 13, 2025, authored by Corey M. Liedenfrost, Ph.D.

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CLOSED, APPEAL, CASREF, VictimNotify

U.S. DISTRICT COURT
U.S. District Court, Western District of New York (Buffalo)
CRIMINAL DOCKET FOR CASE #: 1:22-cr-00035-JLS-HKS-1

Case title: USA v. Wenke

Date Filed: 03/15/2022

Magistrate judge case number: 1:22-mj-00036-HKS

Date Terminated: 08/18/2022

Assigned to: Hon. John L. Sinatra, Jr.
Referred to: Hon. H. Kenneth Schroeder Jr.

Defendant (1)

Luke Marshall Wenke
TERMINATED: 08/18/2022

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Pending Counts

18:2261.F and 18:2261A(2)(b)
INTERSTATE DOMESTIC VIOLENCE
(1)

Highest Offense Level (Opening)

Felony

Terminated Counts

18:875C.F INTERSTATE
COMMUNICATIONS - THREATS
(2)

Highest Offense Level (Terminated)

Felony

Disposition

Defendant is sentenced to the custody of Bureau of Prisons for a term of 18 months. Following his release from the Bureau of Prisons, defendant shall be placed on supervised release for a term of 3 years. Terms and conditions of Supervised Release shall be set forth in the Judgment of Conviction. \$100 Special Penalty Assessment imposed.

Disposition

Dismissed

Complaints

18:875C.F - INTERSTATE
COMMUNICATIONS - THREATS

Disposition**Plaintiff**

USA

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Date Filed	#	Docket Text
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01/27/2022	1	COMPLAINT as to Luke Marshal Wenke (1). (LMG) [1:22-mj-00036-HKS] (Entered: 01/28/2022)
01/29/2022		<p>Minute Entry for proceedings held before Hon. H. Kenneth Schroeder Jr.: Initial Appearance as to Luke Marshal Wenke held remotely by videoconference on 1/29/2022.</p> <p>Defendant consented to proceeding being held remotely by videoconference via Zoom for Government.</p> <p>Court advised defendant of charges set forth in Criminal Complaint and entered plea of not guilty on his behalf. Court advised defendant of his rights, including the right to counsel.</p> <p>Defendant requested assigned counsel at this time but may attempt to retain counsel in the future. Court assigned AFPD Alexander Anzalone to represent defendant.</p> <p>Government moved for detention. Detention Hearing set for 1/31/2022 at 03:00 PM before the Hon. H. Kenneth Schroeder Jr. The proceeding will be held remotely by videoconference. Instructions on how to connect to the proceeding will be e-mailed to counsel. Public access may be obtained by contacting Judge Schroeder's chambers at 716-551-1870.</p> <p>Time from 1/29/2022 to 1/31/2022 excluded for purposes of the Speedy Trial Act, Bail Reform Act, Rule 5.1 of the Fed. R. Crim. P. pursuant to Title 18 U.S.C. Sections 3161(h)(7)(A), (h)(7)(B)(iv) and (h)(1)(D). Defendant remanded to the custody of the U.S. Marshals Service.</p> <p>Appearances: AUSA David Rudroff for the government; AFPD Alexander Anzalone with defendant; USPO Brian Mamizuka. (LMG) [1:22-mj-00036-HKS] (Entered: 01/29/2022)</p>
01/29/2022	2	ORDER regarding use of videoconferencing as to Luke Marshal Wenke. Signed by Hon. H. Kenneth Schroeder Jr. on 1/29/22.(LMG) [1:22-mj-00036-HKS] (Entered: 01/29/2022)
01/31/2022	3	ORDER TO CONTINUE - Ends of Justice as to Luke Marshal Wenke. Time excluded from 1/29/22 until 1/31/22. Signed by Hon. H. Kenneth Schroeder Jr. on 1/31/22.(LMG) [1:22-mj-00036-HKS] (Entered: 01/31/2022)
01/31/2022		<p>Minute Entry for proceedings held before Hon. H. Kenneth Schroeder Jr.: Detention Hearing as to Luke Marshal Wenke held remotely by videoconference on 1/31/2022.</p> <p>Defendant consented to proceeding being held remotely by videoconference via Zoom for Government.</p> <p>After hearing government's proffer and response by defense counsel, Court granted government's motion, ordered defendant detained and remanded him to the custody of the U.S. Marshals Service. Defendant waived preliminary hearing.</p> <p>Appearances: AUSA David Rudroff for the government; AFPD Alexander Anzalone with defendant; USPO Brian Mamizuka. (LMG) [1:22-mj-00036-HKS] (Entered: 01/31/2022)</p>
01/31/2022	4	ORDER regarding use of videoconferencing as to Luke Marshal Wenke. Signed by Hon. H. Kenneth Schroeder Jr. on 1/31/22.(LMG) [1:22-mj-00036-HKS] (Entered: 01/31/2022)
01/31/2022	5	ORDER OF DETENTION as to Luke Marshal Wenke. Signed by Hon. H. Kenneth Schroeder Jr. on 1/31/22. Copies forwarded to U.S. Marshals Service and U.S. Pretrial

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		Services.(LMG) [1:22-mj-00036-HKS] (Entered: 02/01/2022)
02/23/2022	6	MOTION to Set a Rule 48(b) Dismissal Date of <i>March 15, 2022</i> by Luke Marshal Wenke. (Anzalone, Alexander) [1:22-mj-00036-HKS] (Entered: 02/23/2022)
02/23/2022	7	TEXT ORDER granting 6 Motion to Set Rule 48(b) Dismissal Date as to Luke Marshal Wenke (1). The Criminal Complaint herein shall be dismissed without prejudice pursuant to Rule 48(b) of the Fed. R. Crim. P. effective 3/15/2022. The time from 2/23/2022 to 3/15/2022 is excluded for purposes of the Speedy Trial Act and Rule 5.1 of the Fed. R. Crim. P. pursuant to Title 18 U.S.C. Sections 3161(h)(7)(A) and (h)(7)(B)(iv). SO ORDERED. Issued by the Hon. H. Kenneth Schroeder Jr. on 2/23/2022.(LMG)[1:22-mj-00036-HKS] (Entered: 02/23/2022)
03/15/2022	8	INDICTMENT as to Luke Marshall Wenke (1) count(s) 1, 2. (SG) (Entered: 03/16/2022)
03/15/2022	9	Sealed Unredacted Document as to Luke Marshall Wenke filed pursuant to FRCrP 49.1. (SG) (Entered: 03/16/2022)
03/15/2022	10	TEXT ORDER OF REFERRAL Hon. H. Kenneth Schroeder Jr., United States Magistrate Judge, is hereby designated to act in this case as follows:All pre-trial matters in this case are referred to the above-named United States Magistrate Judge, including all pre-trial matters that a Magistrate Judge may hear and determine pursuant to 28 U.S.C. Section 636(b)(1)(A), and those which a Magistrate Judge may hear and thereafter file a report and recommendation for disposition pursuant to Section 636(b)(1)(B).All procedural aspects of matters properly before the Magistrate Judge under this Order, including scheduling and the filing of briefs or other supporting material, shall be determined by the Magistrate Judge.All motions or applications shall be filed with the Clerk and made returnable before the Magistrate Judge. IT IS SO ORDERED.. Signed by Hon. John L. Sinatra, Jr. on 3/15/22.(SG) (Entered: 03/17/2022)
03/17/2022		<p>Minute Entry for proceedings held before Hon. H. Kenneth Schroeder Jr.: Arraignment as to Luke Marshall Wenke (1) Count 1,2 held on 3/17/2022.</p> <p>Defendant waived reading of Indictment and entered plea of not guilty to charges set forth therein.</p> <p>Defense counsel advised the Court that there has been a change in circumstances that would warrant the Court's reconsideration of its prior Order of Detention. Defendant's Exhibits A and B handed up. Defense counsel moved for defendant's release to home incarceration so defendant can receive out-patient mental health treatment. Counsel for government opposed motion. Court denied defendant's motion and remanded him to the custody of the U.S. Marshals Service.</p> <p>Defense counsel advised that defendant wishes to proceed to trial before the Hon. John L. Sinatra, Jr. immediately. Despite this, Court established dates for the issuance of a Scheduling Order to be followed in the event this case does not immediately proceed to trial. Court conditionally excluded the time from 3/17/2022 to 4/15/2022 for purposes of the Speedy Trial Act pursuant to Title 18 U.S.C. Sections 3161(h)(7)(A) and (h)(7)(B)(iv). Defense counsel noted his objection to the exclusion of time for the record.</p> <p>Appearances: AUSA Charles Kruly for the government; AFPD Alexander Anzalone with defendant. (Court Reporter FTR Gold.)(LMG) (Entered: 03/17/2022)</p>
03/17/2022	11	SCHEDULING ORDER as to Luke Marshall Wenke: Discovery completed by 4/1/2022; Motions due by 4/15/2022; Responses due by 4/29/2022; Oral Argument set for 5/10/2022 at 10:30 AM before the Hon. H. Kenneth Schroeder Jr. Signed by Hon. H. Kenneth Schroeder Jr. on 3/17/2022.(LMG) (Entered: 03/17/2022)

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03/17/2022	12	NOTICE OF HEARING as to Luke Marshall Wenke: Status Conference set for 3/21/2022 at 9:00 AM in US Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr. (KLH) (Entered: 03/17/2022)
03/21/2022	13	NOTICE OF ATTORNEY APPEARANCE: Marianne Mariano appearing for Luke Marshall Wenke (Mariano, Marianne) (Entered: 03/21/2022)
03/21/2022	14	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference as to Luke Marshall Wenke held on 3/21/2022. Parties request a trial date as soon as possible. Court sets trial to commence with jury selection on 5/2/2022 at 9:30 AM. Final Pretrial Conference set for 4/25/2022 at 2:00 PM. Final Status Conference set for 4/29/2022 at 2:00 PM. Pretrial Order to follow. Government moves to exclude time from 3/21/2022 through 5/2/2022 for purposes of the Speedy Trial Act pursuant to Title 18 U.S.C. Sections 3161(h)(7)(A) and (h)(7)(B)(iv). Defendant is available for an earlier trial date and objects to the exclusion. Court grants the motion. Government to submit a proposed speedy trial order. Appearances. For government: David Rudroff and Charles Kruly. For defendant: Alexander Anzalone. Defendant Present. (Court Reporter Bonnie Weber) (KLH) (Entered: 03/21/2022)
03/21/2022	15	PRETRIAL ORDER as to Luke Marshall Wenke (Please Note: This docket text may <u>not</u> contain the entire contents of the attached Order. It is your responsibility to read the attached Order and download it for future reference. Direct any questions to the Chambers of the Judge who entered this Order.) Final Pretrial Conference set for 4/25/2022 02:00 PM in US Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr.. Final Status Conference set for 4/29/2022 02:00 PM in US Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr.. Jury Selection set for 5/2/2022 09:30 AM in US Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr.. Jury Trial set for 5/3/2022 09:00 AM in US Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr... Signed by Hon. John L. Sinatra, Jr. on 3/21/22.(SG) (Entered: 03/22/2022)
03/23/2022	16	ORDER TO CONTINUE - Ends of Justice as to Luke Marshall Wenke Time excluded from 3/21/22 until 5/2/22. Signed by Hon. John L. Sinatra, Jr. on 3/23/22.(SG) (Entered: 03/23/2022)
03/30/2022	17	MOTION to Adjourn Deadline for Initial Pretrial Submissions <i>Ten Days (Unopposed)</i> by Luke Marshall Wenke. (Anzalone, Alexander) (Entered: 03/30/2022)
03/31/2022	18	ORDER granting 17 Motion to Adjourn Deadline for Initial Pretrial Submissions. An Amended Pretrial Order to be issued. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 3/31/2022.(CJG) (Entered: 03/31/2022)
03/31/2022	19	AMENDED PRETRIAL ORDER as to Luke Marshall Wenke (Please Note: This docket text may <u>not</u> contain the entire contents of the attached Order. It is your responsibility to read the attached Order and download it for future reference. Direct any questions to the Chambers of the Judge who entered this Order.) Pretrial Conference set for 4/25/2022 02:00 PM in US Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr.. Status Conference set for 4/29/2022 02:00 PM in US Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr.. Jury Selection set for 5/2/2022 09:30 AM in US Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr.. Jury Trial set for 5/3/2022 09:00 AM in US Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr... Signed by Hon. John L. Sinatra, Jr. on 3/31/22.(SG) (Entered: 03/31/2022)

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04/01/2022	20	MOTION to Adjourn DEADLINE FOR VOLUNTARY DISCOVERY by USA as to Luke Marshall Wenke. (Rudroff, David) (Entered: 04/01/2022)
04/01/2022	21	TEXT ORDER granting 20 Motion to Adjourn Voluntary Discovery Deadline to 4/15/2022 as to Luke Marshall Wenke (1). SO ORDERED. Issued by the Hon. H. Kenneth Schroeder Jr. on 4/1/2022.(LMG) (Entered: 04/01/2022)
04/11/2022	22	TEXT ORDER as to Luke Marshall Wenke. A Plea Hearing is set for 4/18/2022 at 2:00 PM in US Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr. Pursuant to the Defendant's request, the Court holds the deadlines in the 19 Amended Pretrial Order in abeyance. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 4/11/2022. (KLH) (Entered: 04/11/2022)
04/18/2022	23	PLEA AGREEMENT as to Luke Marshall Wenke. (KLH) (Entered: 04/18/2022)
04/18/2022	24	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Plea Hearing as to Luke Marshall Wenke held on 4/18/2022. Defendant sworn and advised of rights. Court issues Brady Disclosure Order. Plea entered by Luke Marshall Wenke: Guilty Count 1 of the Indictment. Court accepts defendant's guilty plea and the defendant is adjudged guilty of Count 1. The Court defers acceptance of the plea agreement. Sentencing set for 8/18/2022 at 10:00 AM in U.S. Courthouse, 2 Niagara Square, Buffalo, NY 14202-3350 before Hon. John L. Sinatra, Jr. Defendant remanded. Appearances. For government: David Rudroff. For defendant: Alexander Anzalone. Defendant present. (Court Reporter Bonnie Weber) (KLH) -PROBATION NOTIFIED OF PLEA- (Entered: 04/18/2022)
04/18/2022	25	BRADY DISCLOSURE ORDER as to Luke Marshall Wenke. Signed by Hon. John L. Sinatra, Jr. on 4/18/2022. (KLH) (Entered: 04/18/2022)
04/18/2022	26	SENTENCING SUBMISSION DEADLINES as to Luke Marshall Wenke. Please note: This docket entry does not contain every detail of the attached schedule. It is your responsibility to review and download the pdf to this document for reference. Failure to comply with this schedule may result in adjournment of sentencing. Presentence Report to Parties due by 7/5/2022. Presentence Report to the Court due by 8/4/2022. (KLH) (Entered: 04/18/2022)
04/19/2022		Terminate hearings as to Luke Marshall Wenke (final pretrial conference and final status conference). (KLH) (Entered: 04/19/2022)
06/28/2022	27	PRESENTENCE INVESTIGATION REPORT (Sealed) as to Luke Marshall Wenke. (Schrack, Joette) (Entered: 06/28/2022)
07/19/2022	28	STATEMENT WITH RESPECT TO SENTENCING FACTORS by USA as to Luke Marshall Wenke (Rudroff, David) (Entered: 07/19/2022)
07/21/2022	29	OBJECTION TO PRESENTENCE INVESTIGATION REPORT by Luke Marshall Wenke (Anzalone, Alexander) (Entered: 07/21/2022)
07/21/2022	30	SENTENCING MEMORANDUM by Luke Marshall Wenke (Attachments: # 1 Exhibit A)(Anzalone, Alexander) (Entered: 07/21/2022)
07/27/2022	31	CONTINUATION OF EXHIBITS by Luke Marshall Wenke <i>Additional Character Letter</i> (Anzalone, Alexander) (Entered: 07/27/2022)
07/28/2022	32	SENTENCING MEMORANDUM by USA as to Luke Marshall Wenke (Rudroff, David) (Entered: 07/28/2022)

07/28/2022	33	CONTINUATION OF EXHIBITS by Luke Marshall Wenke <i>Defendant's Letter to Judge Regarding Sentencing</i> (Anzalone, Alexander) Modified on 8/10/2022 to seal (KLH). (Entered: 07/28/2022)
08/03/2022	34	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Luke Marshall Wenke. (Myers, Mary) (Entered: 08/03/2022)
08/03/2022	35	RECOMMENDATION (Sealed) as to Luke Marshall Wenke. (Myers, Mary) (Entered: 08/03/2022)
08/10/2022		E-Filing Notification re 33 CONTINUATION OF EXHIBITS by Luke Marshall Wenke <i>Defendant's Letter to Judge Regarding Sentencing</i> : Entry was modified on 8/10/2022 to seal. (KLH) (Entered: 08/10/2022)
08/17/2022	36	MOTION for Protective Order <i>and Order to Seal</i> by USA as to Luke Marshall Wenke. (Rudroff, David) (Entered: 08/17/2022)
08/17/2022	37	TEXT ORDER granting 36 Motion for Protective Order and to Seal as to Luke Marshall Wenke. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 8/17/2022.(CJG) (Entered: 08/17/2022)
08/17/2022	38	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Luke Marshall Wenke. (Schrack, Joette) (Entered: 08/17/2022)
08/17/2022	39	PROTECTIVE ORDER as to Luke Marshall Wenke. Signed by Hon. John L. Sinatra, Jr. on 8/17/22.(SG) (Entered: 08/17/2022)
08/17/2022	40	Sealed Document-Victim Impact Statement as to Luke Wenke. (SG) (Entered: 08/17/2022)
08/18/2022	41	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Sentencing held on 8/18/2022 for Luke Marshall Wenke on his previous plea of guilty to Count 1 of the Indictment. Defendant is sentenced to 18 months in the custody of the Bureau of Prisons, followed by 3 years of Supervised Release with conditions. See Judgment for standard, mandatory and special conditions of Supervised Release. No fines or costs of incarceration or supervised release imposed. \$100 special assessment due immediately. Government moves for dismissal of Count 2 of the Indictment. Court grants the motion. Court imposes the sentence as stated and directs preparation of the Judgment of Conviction. Defendant remanded. Appearances. For government: David Rudroff. For defendant: Alexander Anzalone. For probation: Ashley McNeal. Defendant present. (Court Reporter Bonnie Weber) (JLV) (Entered: 08/18/2022)
08/18/2022	42	JUDGMENT as to Luke Marshall Wenke (1), Additional certified copies forwarded to USPO, USM, US Attorney, Debt Collection, Financial Department. Signed by Hon. John L. Sinatra, Jr. on 8/18/2022. (CGJ) (Entered: 08/19/2022)
08/18/2022	43	Sealed Document (Statement of Reasons) as to Luke Marshall Wenke. (CGJ) (Entered: 08/19/2022)
05/18/2023		Set/Reset Hearings as to Luke Marshall Wenke: Initial Appearance on Violation Proceedings set for 5/18/2023 at 02:00 PM in Cattaraugus Courtroom, 7th West, 2 Niagara Square, Buffalo, NY before Hon. H. Kenneth Schroeder Jr. (LMG) (Entered: 05/18/2023)
05/18/2023		Minute Entry for proceedings held before Hon. H. Kenneth Schroeder Jr.: Initial Appearance re Violation of Supervised Release as to Luke Marshall Wenke held on 5/18/2023.

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		<p>Defendant acknowledged receipt of violation petition. Defendant waived probable cause hearing and asked to be released pending an appearance before the Hon. John L. Sinatra, Jr. Government moved for detention.</p> <p>Court denied government's motion for detention, released defendant and imposed terms and conditions of release in addition to the terms and conditions of release previously imposed.</p> <p>Parties directed to appear before the Hon. John L. Sinatra, Jr. on 6/6/2023 at 10:00 AM in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY.</p> <p>Appearances: AUSA David Rudroff for the government; AFPD Fonda Kubiak (standing in for AFPD Alexander Anzalone) with defendant; USPO Matthew Zenger. (Court Reporter FTR Gold)(LMG) (Entered: 05/18/2023)</p>
05/18/2023	45	ORDER Setting Additional Conditions of Release as to Luke Marshall Wenke. Signed by Hon. H. Kenneth Schroeder Jr. on 5/18/23.(LMG) (Entered: 05/18/2023)
06/06/2023	46	<p>Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Wenke held on 6/6/2023. Defendant requests a status conference in two weeks to allow time for discussions with the government and probation. Government not opposed. Court sets a status conference for 6/20/2023 at 2:30 PM. All conditions of the 45 order setting additional conditions of release, issued by Judge Schroeder remain in effect.</p> <p>Appearances. For government: David Rudroff. For defendant: Alexander Anzalone. For probation: Janelle Dzina. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 06/06/2023)</p>
06/15/2023	47	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on August 18, 2022, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 7/6/2023. Redacted Transcript Deadline set for 7/17/2023. Release of Transcript Restriction set for 9/13/2023. (BSW) (Entered: 06/15/2023)</p>
06/20/2023	48	<p>Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Wenke held on 6/20/2023. Defense counsel advises the Court that the Government has presented additional documents in court today. If Court is inclined to hear argument on detention, Defendant requests adjournment, to review these new documents and prepare for argument. Government moves for detention in light of recent material provided by the FBI. Probation recommends detention. Court orders Defendant detained for reasons stated on the record, pending a violation hearing on 6/21/2023 at 1:00 PM.</p> <p>Appearances. For government: David Rudroff. For defendant: Alexander Anzalone. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 06/20/2023)</p>
06/20/2023	49	WITNESS LIST by USA as to Luke Marshall Wenke (Rudroff, David) (Entered: 06/20/2023)
06/20/2023	50	EXHIBIT LIST by USA as to Luke Marshall Wenke (Rudroff, David) (Entered: 06/20/2023)

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06/21/2023	51	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Violation Hearing as to Luke Marshall Wenke held on 6/21/2023. Government calls U.S. Probation Officer Matthew Zenger and FBI Special Agent Krystie Brown. Government Exhibits 1, 2, 3, 4, 5, and 6 admitted into evidence. Defendant moves to dismiss the petition. Government opposes the motion. Court denies Defendant's motion. Defendant calls Ronald Ransford, Investigator from the Federal Public Defender's Office. Defense Exhibits A and B admitted into evidence. Court directs counsel to provide closing arguments in writing, to include relevant case law. Submissions due 6/22/2023. Violation proceeding to conclude on 6/23/2023 at 1:30 PM. Appearances. For government: David Rudroff and Charles Kruly. For defendant: Alexander Anzalone and Fonda Kubiak. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 06/21/2023)
06/22/2023	52	MEMORANDUM/BRIEF <i>in support of VOSR</i> by USA as to Luke Marshall Wenke (Rudroff, David) (Entered: 06/22/2023)
06/22/2023	53	MEMORANDUM/BRIEF <i>Post-Revocation Hearing Brief</i> by Luke Marshall Wenke (Anzalone, Alexander) (Entered: 06/22/2023)
06/23/2023	54	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Continuation of Violation Hearing as to Luke Marshall Wenke held on 6/23/2023. Court finds that the government has proven by a preponderance of the evidence that the defendant violated the conditions of supervised release, as charged in the petition. Court finds the defendant guilty of Charge #1. Sentencing set for 7/14/2023 at 11:00 AM. Probation's report due 7/7/2023. Submissions from the parties due 7/12/2023. Defendant remanded. Appearances. For government: David Rudroff. For defendant: Alexander Anzalone and Fonda Kubiak. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 06/23/2023)
06/26/2023	55	ARREST Warrant Returned Executed on 3/15/22 in case as to Luke Marshall Wenke. (SG) (Entered: 06/27/2023)
06/26/2023	56	ARREST Warrant Returned Executed on 5/17/23 in case as to Luke Marshall Wenke. (SG) (Entered: 06/27/2023)
07/10/2023	57	MOTION to Adjourn Sentencing Date and Sentencing Scheduling Order <i>Three Weeks (Unopposed)</i> by Luke Marshall Wenke. (Anzalone, Alexander) (Entered: 07/10/2023)
07/10/2023	58	TEXT ORDER granting 57 Motion to Adjourn sentencing as to Luke Marshall Wenke. Sentencing on Violation of Supervised Release is now set for 8/3/2023 at 9:30 AM in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY. Issued by Hon. John L. Sinatra, Jr. on 7/10/2023. (KLH) (Entered: 07/10/2023)
07/28/2023	59	SENTENCING MEMORANDUM by USA as to Luke Marshall Wenke (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Rudroff, David) (Entered: 07/28/2023)
07/28/2023	60	MOTION to Seal <i>VOSR Sentencing Memorandum and Exhibits</i> by Luke Marshall Wenke. (Anzalone, Alexander) (Entered: 07/28/2023)
07/28/2023	63	TEXT ORDER granting 60 Motion to Seal as to Luke Marshall Wenke (1). Issued by Hon. John L. Sinatra, Jr. on 7/28/2023. (KLH) (Entered: 08/01/2023)
07/28/2023	64	Sealed Document as to Luke Marshall Wenke - Defendant's sentencing memorandum. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(KLH) (Entered: 08/01/2023)

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07/31/2023	61	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on June 21, 2023, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 8/21/2023. Redacted Transcript Deadline set for 8/31/2023. Release of Transcript Restriction set for 10/30/2023. (BSW) (Entered: 07/31/2023)
07/31/2023	62	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on June 23, 2023, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 8/21/2023. Redacted Transcript Deadline set for 8/31/2023. Release of Transcript Restriction set for 10/30/2023. (BSW) (Entered: 07/31/2023)
08/01/2023	65	Sealed Document as to Luke Marshall Wenke - Government's unredacted version of Exhibit B re 59 sentencing memorandum. (Attachments: # 1 Unredacted version of Exhibit E) (KLH) (Entered: 08/01/2023)
08/03/2023	66	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Sentencing on Violation of Supervised Release on Charge #1 of the petition for violation of supervised release as to Luke Marshall Wenke held but not completed on 8/3/2023. Final report from probation office to be filed under seal. Government argues for a sentence of incarceration. Defendant requests a sentence of time served, with a new term of supervision to include mental health treatment, as specified on the record. Probation advises the Court that arrangements can be made for defendant to be evaluated and to begin mental health treatment on 8/10/2023. Court adjourns sentencing until 8/10/2023 at 9:00 AM. Defendant remains remanded. Appearances. For government: David Rudroff. For defendant: Alexander Anzalone and Fonda Kubiak. For probation: John Taberski. Defendant present. (Court Reporter Bonnie Weber)(KLH) (Entered: 08/03/2023)
08/10/2023	67	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Sentencing on Violation of Supervised Release as to Luke Marshall Wenke completed on 8/10/2023. Defendant's term of supervised release is revoked and he is sentenced to the custody of the Bureau of Prisons for a period of time served, followed by 34 months of supervised release. Court acknowledges the sentence is intended to accommodate defendant's mental health treatment plan. See judgment for standard, mandatory and special conditions of supervised release. Court imposes the sentence as stated and directs preparation of judgment for revocation of supervised release. Appearances. For government: David Rudroff. For defendant: Alexander Anzalone. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber)(KLH) (Entered: 08/10/2023)
08/14/2023	68	JUDGMENT for Revocation of Probation or Supervised Release as to Luke Marshall Wenke (1), Additional certified copies forwarded to USPO, USM, US Attorney, Debt Collection, Financial Department. Signed by Hon. John L. Sinatra, Jr. on 8/14/23.(SG) (Entered: 08/14/2023)
08/14/2023	69	Letter from Luke Wenke, dated 8/11/23, to Judge Sinatra (SG) (Entered: 08/14/2023)

08/14/2023	76	Sealed Document as to Luke Marshall Wenke - final report from probation. (KLH) (Entered: 09/28/2023)
08/22/2023	70	NOTICE OF APPEAL. (Ovsiovitch, Jay) (Entered: 08/22/2023)
08/23/2023		Within 14 days of filing the Notice of Appeal, the appellant is required to electronically file with the District Court an index of filed documents it wishes the Court of Appeals to consider, called Designation of Record on Appeal. After receipt, the Clerks Office will certify and transmit the index to the Circuit. (SG) (Entered: 08/23/2023)
08/24/2023	71	Letter from Luke Wenke to Judge Sinatra (SG) (Entered: 08/25/2023)
08/29/2023	72	DESIGNATION OF RECORD ON APPEAL by Luke Marshall Wenke re 70 Notice of Appeal CLERK TO FOLLOW UP (Ovsiovitch, Jay) (Entered: 08/29/2023)
08/29/2023	73	TRANSCRIPT REQUEST by Luke Marshall Wenke (Ovsiovitch, Jay) (Entered: 08/29/2023)
08/30/2023	74	CLERKS CERTIFICATE as to Luke Marshall Wenke filed and electronically sent to Court of Appeals re 72 Designation of Record on Appeal/Index. (SG) (Entered: 08/30/2023)
08/30/2023	75	ORDER as to Luke Marshall Wenke modifying conditions of supervision. Signed by Hon. John L. Sinatra, Jr. on 8/30/23.(SG) (Entered: 08/31/2023)
10/04/2023		SCHEDULING NOTICE as to Luke Marshall Wenke. Initial Appearance on Violation Proceedings set for 10/4/2023 02:00 PM in Alleghany Courtroom, 6th Floor East, 2 Niagara Square, Buffalo, NY before Hon. Michael J. Roemer. (RAZ) (Entered: 10/04/2023)
10/04/2023	78	<p>Minute Entry for proceedings held before Hon. Michael J. Roemer. Appearances: AUSA John D. Fabian on behalf of government; AFD Frank R. Passafiume w/defendant Luke Marshall Wenke; USPO Matthew G. Zenger.</p> <p>Initial Appearance re Violation Under Supervision as to Luke Marshall Wenke held on 10/4/2023. Government summarized the violations contained in the Petition. Defense counsel acknowledged receipt of the Petition. Court advised defendant of his rights including the right to counsel. Defendant requested assigned counsel and AFD Passafiume advised the Court that his office has been representing defendant through this case and if his financial status changes the Court will be notified.</p> <p>Government moved for detention. P.O. Zenger recommended detention. Defense counsel reserved the right to proceed with all hearings before Hon. John L. Sinatra, Jr. Status Conference set for 10/6/2023 02:00 PM in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. Defendant was remanded to the custody of the U.S. Marshal Service. (Court Reporter FTR Gold.)(RAZ) (Entered: 10/04/2023)</p>
10/05/2023	79	NOTICE OF ATTORNEY APPEARANCE John D. Fabian appearing for USA. (Fabian, John) (Entered: 10/05/2023)
10/06/2023	80	<p>Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status conference on Violation of Supervised Release as to Luke Marshall Wenke held on 10/6/2023. Defendant waives preliminary hearing. Government seeks revocation and moves for detention pending a revocation hearing, based on the grounds set forth in the petition. Probation advises the Court of additional correspondence from the victim and recommends detention. Defendant consents to continued detention, but reserves the right to move for release. Revocation hearing set for 10/26/2023 at 10:00 AM.</p>

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		Appearances. For government: Paul Bonanno. For defendant: Jeff Bagley. For probation: Matthew Zenger. Defendant present. (Court Reporter FTR Gold) (Entered: 10/11/2023)
10/16/2023	81	DEMAND for <i>Discovery and Disclosure</i> as to Luke Marshall Wenke (Passafiume, Frank) (Entered: 10/16/2023)
10/19/2023	82	MOTION to Adjourn Revocation Hearing <i>for One-Week</i> by Luke Marshall Wenke. (Passafiume, Frank) (Entered: 10/19/2023)
10/19/2023	83	TEXT ORDER granting 82 Motion to Adjourn Revocation Hearing as to Luke Marshall Wenke. The Revocation Hearing is now set for 11/7/2023 at 2:00 PM in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY. Issued by Hon. John L. Sinatra, Jr. on 10/19/2023. (KLH) (Entered: 10/19/2023)
10/23/2023	84	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on August 3, 2023, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 11/13/2023. Redacted Transcript Deadline set for 11/24/2023. Release of Transcript Restriction set for 1/22/2024. (BSW) (Entered: 10/23/2023)
10/23/2023	85	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on August 10, 2023, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 11/13/2023. Redacted Transcript Deadline set for 11/24/2023. Release of Transcript Restriction set for 1/22/2024. (BSW) (Entered: 10/23/2023)
10/25/2023	86	Letter from Luke Wenke to the Court, received 10/23/2023. (KLH) (Entered: 10/26/2023)
10/30/2023	87	Letter from Luke Wenke to the Court, received 10/30/2023. (KLH) (Entered: 10/30/2023)
10/31/2023	88	AMENDED PETITION/ORDER as to Luke Marshall Wenke directing that this Amended Petition shall serve as the charging document in place of the previously filed petition. Signed by Hon. John L. Sinatra, Jr. on 10/31/23.(SG) (Entered: 10/31/2023)
11/01/2023	89	MEMORANDUM/BRIEF (<i>Government Response to Defendant's Discovery Request</i>) by USA as to Luke Marshall Wenke (DiGiacomo, Michael) (Entered: 11/01/2023)
11/02/2023	90	MANDATE of USCA (certified copy) as to Luke Marshall Wenke re 70 Notice of Appeal. IT IS HEREBY ORDERED that the motion to withdraw appeal is GRANTED. The appeal is deemed withdrawn. (CGJ) (Entered: 11/02/2023)
11/02/2023	91	TEXT ORDER. To the extent that Dkt. 81 and Dkt. 89 relate to witness/hearsay issues, the Court will hear from the parties on their "good cause" and "interest of justice" arguments (Fed. R. Crim. Pro. 32.1(b)(2)(C)) at the outset of the revocation hearing on 11/7/2023 at 2:00 PM. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 11/2/2023. (NAK) (Entered: 11/02/2023)
11/03/2023	92	Letter from Luke Wenke to the Court, received 11/3/2023. (KLH) (Entered: 11/03/2023)
11/03/2023	93	SECOND AMENDED PETITION/ORDER as to Luke Marshall Wenke directing that this Amended Petition shall serve as the charging document in place of the previously filed petition. Signed by Hon. John L. Sinatra, Jr. on 11/3/2023. (KLH) (Entered: 11/03/2023)

11/07/2023	95	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Revocation hearing as to Luke Marshall Wenke scheduled but not held on 11/7/2023, for reasons discussed on the record. Plea on Violation of Supervised Release held instead. Defendant sworn. Defendant admits to the allegation in Charge # 5 of the Second Amended Violation Petition. Court accepts defendant's admission and defendant is adjudged to have violated Charge # 5. Sentencing set for 11/21/2023 at 10:00 AM before the Hon. John L. Sinatra, Jr. Report due from probation on or before 11/14/2023. Probation to follow up on arrangements for defendant's psychiatric evaluation. Defendant remains remanded pending sentencing. Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 11/08/2023)
11/08/2023	94	NOTICE OF ATTORNEY APPEARANCE Michael DiGiacomo appearing for USA. (DiGiacomo, Michael) (Entered: 11/08/2023)
11/08/2023	96	ARREST Warrant Returned Executed on 10/4/23 in case as to Luke Marshall Wenke. (SG) (Entered: 11/08/2023)
11/09/2023		Attorney update in case as to Luke Marshall Wenke. Attorney John D. Fabian terminated. (CGJ) (Entered: 11/09/2023)
11/15/2023	97	Letter from Luke Wenke to the Court, received 11/15/2023. (KLH) (Entered: 11/15/2023)
11/21/2023	98	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Sentencing on Violation of Supervised Release as to Luke Marshall Wenke scheduled but not held on 11/21/2023. Status conference held instead. Probation advises the parties and the Court that it has been unable to identify a provider to provide the recommended evaluation, based on feedback from Horizon. Court adjourns sentencing to 12/5/2023 at 9:00 AM. Parties to confer with probation and try to identify a provider who is available and qualified to provide the evaluation, as discussed on the record. Parties to file a joint status report by 11/28/2023. If necessary, the sentencing hearing may be converted to a status conference. Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 11/21/2023)
12/05/2023	99	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 12/5/2023. Parties agree to work with probation to arrange for Mr. Wenke to undergo a preliminary mental health and criminal risk assessment as discussed on the record. Court will schedule a status conference after the assessment is complete. Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 12/05/2023)
12/06/2023	100	NOTICE OF HEARING: Status Conference set for 12/7/2023 at 2:00 PM in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. (KLH) (Entered: 12/06/2023)
12/07/2023	101	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 12/7/2023. Probation is in contact with Endeavor Health Services to establish a treatment plan for the defendant. Court advises the parties that in the absence of a treatment plan, the defendant

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		<p>will remain remanded pending sentencing. Probation expects to hear back from Endeavor very soon. Court sets a status conference for 12/8/2023 at 1:00 PM.</p> <p>Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber/FTR) (KLH) (Entered: 12/07/2023)</p>
12/08/2023	102	<p>Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 12/8/2023. Probation provides an update based on the Endeavor clinician's recommendations. Court orders defendant released pending sentencing, subject to the conditions stated on the record. Order setting conditions of release to follow. Defense counsel to prepare and submit to the Court, a proposed order that will meet the requirements recommended by Endeavor to establish a treatment plan as stated on the record. Parties to appear for a status conference on 12/14/2023 at 2:00 PM.</p> <p>Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger. Defendant present. (Court Reporter Diane Martens) (KLH) (Entered: 12/08/2023)</p>
12/11/2023	103	ORDER Setting Additional Conditions of Release. Signed by Hon. John L. Sinatra, Jr. on 12/11/2023. (KLH) (Entered: 12/11/2023)
12/11/2023	104	ORDER authorizing Assistant Outpatient Treatment as to Luke Marshall Wenke. Signed by Hon. John L. Sinatra, Jr. on 12/11/2023. (KLH) (Entered: 12/11/2023)
12/14/2023	105	<p>Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 12/14/2023. Probation advises the Court of concerns regarding defendant's conduct since his release last week. Court acknowledges a letter received from Katie Valentine. Court will docket redacted versions of the letter and probation's email to the Court. After hearing argument from the parties and probation, Court finds that there are no longer any conditions or combination of conditions that will reasonably assure the safety of the community and orders the defendant detained pending sentencing. Probation to follow up with the Bureau of Prisons to find out what treatment options would be available to the defendant after sentencing. Counsel to continue to find a psychiatrist who is willing and able to evaluate defendant. Court sets a status conference for 1/2/2024 at 9:00 AM.</p> <p>Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger and John Taberski. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 12/15/2023)</p>
12/14/2023	106	REDACTED DOCUMENTS as to Luke Marshall Wenke - Redacted letter to the Court from K. Valentine. (Attachments: # 1 Redacted email from probation, # 2 Redacted email from probation) (KLH) (Entered: 12/18/2023)
12/14/2023	107	Sealed Document as to Luke Marshall Wenke - Unredacted version of 106 Redacted Documents. (Attachments: # 1 Sealed Document, # 2 Sealed Document) (KLH) (Entered: 12/18/2023)
01/02/2024	108	<p>Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 1/2/2024. Government provides an update regarding options for defendant's psychiatric evaluation. Parties continue to explore the best option and to determine if cost-sharing can be worked out. Court sets a status conference for 1/16/2024 at 9:30 AM. Parties may contact the Court to advance the status conference to an earlier date, if needed.</p>

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		Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger and John Taberski. Defendant present. (Court Reporter Bonnie Weber)(KLH) (Entered: 01/03/2024)
01/16/2024	109	<p>Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 1/16/2024. Mr. Passafiume advises the Court that a medical provider has been identified, but the office of the federal public defender may not be in a position to pay for the evaluation for reasons stated on the record, and presents the Court with possible avenues for the evaluation to be paid for by either the U.S. Marshal or the Judiciary. Court will explore the options. A further status conference is set for 1/30/2024 at 9:30 AM.</p> <p>Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger. Defendant present. (Court Reporter FTR) (KLH) (Entered: 01/16/2024)</p>
01/26/2024	110	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on December 5, 2023, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 2/16/2024. Redacted Transcript Deadline set for 2/26/2024. Release of Transcript Restriction set for 4/25/2024. (BSW) (Entered: 01/26/2024)
01/26/2024	111	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on December 7, 2023, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 2/16/2024. Redacted Transcript Deadline set for 2/26/2024. Release of Transcript Restriction set for 4/25/2024. (BSW) (Entered: 01/26/2024)
01/29/2024	112	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Status Conference as to Luke Marshall Wenke held on December 8, 2023, before Judge John L. Sinatra. Court Reporter Diane S. Martens, dmartensreporter@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/20/2024. Redacted Transcript Deadline set for 2/29/2024. Release of Transcript Restriction set for 4/29/2024. (DSM) (Entered: 01/29/2024)
01/30/2024	113	<p>Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 1/30/2024. The parties have identified a psychiatrist to evaluate the defendant. Probation will be the facilitator for purposes of having the evaluation completed. A report on the evaluation will be submitted by probation to the Court and will be filed under seal. Upon receipt of the report, the parties will contact the Court to request a sentencing date. Order to follow.</p> <p>Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 01/30/2024)</p>
01/30/2024	114	ORDER as to Luke Marshall Wenke. Signed by Hon. John L. Sinatra, Jr. on 1/30/2024. (KLH) (Entered: 01/30/2024)

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02/14/2024	115	AMENDED ORDER as to Luke Marshall Wenke. Signed by Hon. John L. Sinatra, Jr. on 2/14/24.(SG) (Entered: 02/15/2024)
03/04/2024	116	Letter from Luke Wenke to the Court. (CGJ) (Entered: 03/04/2024)
03/11/2024	117	Letter from Luke Wenke to the Court, received 3/11/2024. (KLH) (Entered: 03/11/2024)
03/11/2024	118	Letter from Luke Wenke to the Court, received 3/11/2024. (KLH) (Entered: 03/11/2024)
03/20/2024	119	Letter from Luke Wenke to Judge Sinatra (SG) (Entered: 03/21/2024)
03/25/2024	120	Letter from Luke Wenke to Judge Sinatra (SG) (Entered: 03/25/2024)
04/01/2024	121	Letter from Luke Wenke to Judge Sinatra. (LB) (Entered: 04/01/2024)
04/02/2024	122	Sealed Document as to Luke Marshall Wenke - Confidential Evaluation Report by Corey M. Leidenfrost, Ph.D. (KLH) (Entered: 04/02/2024)
04/02/2024	123	TEXT ORDER. In light of Dkt. 122, the parties shall appear for a Status Conference on 4/16/2024 at 10:00 AM in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. The parties shall be prepared to discuss next steps, including whether the Court should, on its own motion, order a hearing pursuant to 18 U.S.C. sections 4244(a) and 4247(d). SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 4/2/2024. (NAK) (Entered: 04/02/2024)
04/09/2024	124	Letter from Luke Wenke to the Court, received April 9, 2024. (KLH) (Entered: 04/09/2024)
04/16/2024	125	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference as to Luke Marshall Wenke held on 4/16/2024. Parties discuss their positions regarding the Confidential Evaluation Report by Dr. Leidenfrost. The Court orders a hearing under 18 U.S.C. § 4244 and, after Mr. Passafiume has an opportunity to make arrangements for an alternative expert to conduct a separate evaluation of Mr. Wenke, will schedule the hearing. Mr. Passafiume will provide a status report next week with a suggested timeframe to allow for completion of the evaluation and to conduct the hearing. Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger and John Taberski. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 04/16/2024)
04/16/2024	126	Letter from Luke Wenke to Judge Sinatra (SG) (Main Document 126 replaced with redacted version on 4/17/2024) (KLH) (Entered: 04/17/2024)
04/22/2024	127	Letter from Luke Wenke to Judge Sinatra (SG) (Entered: 04/22/2024)
04/22/2024	128	NOTICE OF HEARING as to Luke Marshall Wenke: A hearing under 18 U.S.C. § 4244 is set for October 17, 2024 at 9:30 AM in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. If the hearing is not concluded on October 17, 2024, it will continue on October 18, 2024 at 9:30 AM. (KLH) (Entered: 04/22/2024)
04/24/2024	129	Letter from Luke Wenke to Judge Sinatra (CGJ) (Entered: 04/25/2024)
04/26/2024	130	Sealed Document as to Luke Marshall Wenke - Email correspondence between the Court and counsel regarding scheduling. (KLH) (Entered: 04/26/2024)
05/03/2024	131	TEXT ORDER. In light of the forthcoming expert evaluation, Defense counsel shall file a status report by 7/26/2024. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 5/3/2024. (NAK) (Entered: 05/03/2024)

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05/06/2024	132	Letter from Luke Wenke to Judge Sinatra. (SG) (Entered: 05/06/2024)
06/24/2024	133	Letter from Luke Wenke, to Judge Sinatra. (CGJ) (Entered: 06/24/2024)
06/24/2024	134	Letter from Luke Wenke, to Judge Sinatra. (CGJ) (Entered: 06/24/2024)
06/24/2024	135	Letter from Luke Wenke, to Judge Sinatra. (CGJ) (Entered: 06/24/2024)
07/01/2024	136	Letter from Luke Wenke, to Judge Sinatra. (CGJ) (Entered: 07/01/2024)
07/10/2024	137	Letter from Luke Wenke, received by the Court on July 8, 2024. (KLH) (Entered: 07/10/2024)
07/15/2024	138	Letter from Luke Wenke to the Court, received 7/15/2024. (KLH) (Entered: 07/15/2024)
07/23/2024	139	Correspondence from Luke Wenke to the Court, received 7/22/2024. (KLH) (Entered: 07/23/2024)
07/25/2024	140	MOTION for Psychiatric Exam by Luke Marshall Wenke. (Passafiume, Frank) (Entered: 07/25/2024)
07/26/2024	141	NOTICE OF HEARING: Status Conference set for 7/30/2024 at 3:00 PM in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. (KLH) (Entered: 07/26/2024)
07/29/2024	142	Letter from Luke Wenke, to Judge Sinatra. (CGJ) (Entered: 07/29/2024)
07/30/2024	143	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 7/30/2024 re 140 motion for psychiatric exam. Court grants the motion and directs the parties to confer and prepare a proposed order as discussed on the record. Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume and Fonda Kubiak. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 07/30/2024)
08/06/2024	144	ORDER for Psychiatric Exam as to Luke Marshall Wenke (1). Signed by Hon. John L. Sinatra, Jr. on 8/6/24.(SG) (Entered: 08/07/2024)
08/09/2024	145	Letter from Luke Wenke to Judge Vilardo, received 8/6/2024. (KLH) (Entered: 08/09/2024)
08/21/2024	146	Letter from Luke Wenke to the Court, received 8/19/2024. (KLH) (Entered: 08/26/2024)
08/21/2024	147	Letter from Luke Wenke to the Court, received 8/19/2024. (KLH) (Entered: 08/26/2024)
08/27/2024	148	Letter from Luke Wenke to Court, received 8/23/2024. (KLH) (Entered: 08/27/2024)
08/30/2024	149	Letter from Luke Wenke to Pro Se Litigation Unit, received 8/29/2024. (KLH) (Entered: 08/30/2024)
09/10/2024	150	Letter from Luke Wenke to the Court, received on 9/10/2024. (Attachments: # 1 Additional Letter to the Court, received on 9/10/2024) (KLH) (Entered: 09/10/2024)
09/16/2024	151	NOTICE OF HEARING as to Luke Marshall Wenke: Status Conference set for 9/18/2024 at 9:30 AM in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. (KLH) (Entered: 09/16/2024)
09/18/2024	152	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 9/18/2024. Parties provide an update regarding communications with the forensic psychologist and request the Court issue an amended order to address the concerns expressed on the record. Court

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		will amend its order addressing, in part, the parties' concerns. Court cancels the 10/17/2024 hearing under 18 U.S.C. § 4244, and sets a status conference for 10/17/2024 at 9:00 AM. Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. (Court Reporter Megan Pelka) (KLH) (Entered: 09/18/2024)
09/18/2024	153	AMENDED ORDER for Psychiatric Exam as to Luke Marshall Wenke. Signed by Hon. John L. Sinatra, Jr. on 9/18/24.(SG) (Entered: 09/20/2024)
09/30/2024	154	LETTER from the Office of the Warden, Dept of Justice, to the Court, dated 9/17/2024. (KLH) (Entered: 09/30/2024)
09/30/2024	155	Letter from Luke Wenke to Court, received on 9/30/2024. (KLH) (Entered: 09/30/2024)
10/01/2024	156	TEXT ORDER granting the 154 Federal Bureau of Prison's request for a 15-day extension to complete Defendant's evaluation. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 10/1/2024. (JMS) (Entered: 10/01/2024)
10/07/2024	157	Letter from Luke Wenke, to the Court, received 10/7/2024. (KLH) (Entered: 10/07/2024)
10/16/2024	158	RESCHEDULING NOTICE: The 10/17/2024 Status Conference on Violation of Supervised Release is RESCHEDULED for <u>10/24/2024 at 9:30 AM</u> in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. (KLH) (Entered: 10/16/2024)
10/22/2024	159	RESCHEDULING NOTICE: The 10/24/2024 Status Conference on Violation of Supervised Release is RESCHEDULED for <u>10/29/2024 at 10:00 AM</u> in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. (KLH) (Entered: 10/22/2024)
10/25/2024	160	Letter from Luke Wenke to the Court, received on 10/24/2024. (KLH) (Entered: 10/25/2024)
10/29/2024	161	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 10/29/2024. Parties advise the Court that Mr. Wenke has not yet returned to the district after his evaluation. Court sets a status conference for 11/14/2024 at 9:30 AM. Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: Matthew Zenger and John Taberski. (Court Reporter Bonnie Weber)(KLH) (Entered: 10/29/2024)
11/05/2024	162	Letter from Luke Wenke to the Court, received 11/4/2024. (Attachments: # 1 Additional Letter)(KLH) (Entered: 11/05/2024)
11/13/2024	163	RESCHEDULING NOTICE: The 11/14/2024 status conference is RESCHEDULED for <u>11/19/2024 at 2:30 PM</u> in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. (KLH) (Entered: 11/13/2024)
11/14/2024	164	Sealed Document as to Luke Marshall Wenke - Competency Report by Kaitlyn Nelson, Psy.D. under supervision of Robin Watkins, Ph.D., ABPP. (KLH) (Entered: 11/14/2024)
11/18/2024	165	Letter from Luke Wenke to Judge Sinatra, received 11/18/2024. (Attachments: # 1 Letter from Luke Wenke addressed to Judge Vilardo, # 2 Letter from Luke Wenke addressed to Judge Arcara) (KLH) (Entered: 11/18/2024)
11/19/2024	166	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 11/19/2024. Court has received and reviewed the competency report (Dkt. 164) and finds defendant is

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		competent to proceed, but, for reasons stated on the record, has reasonable cause to believe defendant may be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. Court directs the parties to contact Dr. Leidenfrost to determine whether he can opine as to the statutory standard set forth in 18 U.S.C. § 4244(b) and § 4247(c). Joint status report due 11/29/2024. Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: John Taberski. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 11/19/2024)
11/22/2024	167	Letter from Luke Wenke, addressed to Judge Sinatra. (Attachments: # 1 Letter from Luke Wenke, addressed to Judge Vilardo.) (KLH) (Entered: 11/25/2024)
11/25/2024	168	Letter from Luke Wenke, addressed to Judge Sinatra. (KLH) (Entered: 11/25/2024)
11/27/2024	169	Letter filed by USA as to Luke Marshall Wenke (DiGiacomo, Michael) (Entered: 11/27/2024)
11/27/2024	170	Letter from Luke Wenke, addressed to Judge Sinatra. (CGJ) (Entered: 11/27/2024)
12/10/2024	171	TEXT ORDER. The parties confirmed that Dr. Leidenfrost will evaluate Defendant and render a report opining to the statutory standard under 18 U.S.C. § 4244. In light of the forthcoming expert evaluation, the parties shall disclose the 164 Competency Report to Dr. Leidenfrost. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 12/10/2024. (JMS) (Entered: 12/10/2024)
12/11/2024	172	TEXT ORDER. The parties shall appear for a status conference on January 16, 2025, at 10:30 a.m., at the Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 12/11/2024. (JMS) (Entered: 12/11/2024)
01/06/2025	173	RESCHEDULING NOTICE (TIME CHANGE ONLY): Status Conference RESCHEDULED for 1/16/2025 at 9:00 AM in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. (KLH) (Entered: 01/06/2025)
01/10/2025	174	Letter from Luke Wenke to the Court, received on 1/8/2025. (KLH) (Entered: 01/10/2025)
01/14/2025	175	Sealed Document as to Luke Marshall Wenke - Confidential report by Dr. Leidenfrost. (KLH) (Entered: 01/14/2025)
01/15/2025	176	NOTICE OF ATTORNEY APPEARANCE David J. Rudroff appearing for USA. <i>NOTICE OF REMOVAL</i> (Rudroff, David) (Entered: 01/15/2025)
01/16/2025		Attorney update in case as to Luke Marshall Wenke. Attorney David J. Rudroff terminated. (SG) (Entered: 01/16/2025)
01/16/2025	177	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 1/16/2025 re the report of Dr. Leidenfrost. Court advises the parties that it will set a hearing under 18 U.S.C. § 4244. Counsel to contact their respective witnesses to determine dates they would be available. Status report, to include proposed hearing dates, due by 1/31/2025. Appearances. For government: Michael DiGiacomo. For defendant: Frank Passafiume. For probation: John Taberski and Matthew Zenger. Defendant present. (Court Reporter Sue Ryckman, Forbes Court Reporting) (KLH) (Entered: 01/17/2025)

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01/31/2025	178	Letter filed by USA as to Luke Marshall Wenke (DiGiacomo, Michael) (Entered: 01/31/2025)
01/31/2025	179	NOTICE OF HEARING as to Luke Marshall Wenke: An evidentiary hearing under 18 U.S.C. § 4244 is set for February 12, 2025, at 1:30 p.m., in the Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. At that time, Dr. Michael E. Rutter may testify, and any other witnesses called by the parties. The hearing will continue on February 18, 2025, at 1:30 p.m., for Dr. Corey Leidenfrost to testify and any other witnesses called by the parties. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 1/31/2025. (JMS) (Entered: 01/31/2025)
02/07/2025	180	SCHEDULING NOTICE: At the request of the parties, the February 12, 2025 Evidentiary Hearing is canceled. The hearing will be held on February 18, 2025 at 1:30 p.m. in Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. (KLH) Modified on 2/10/2025 (KLH). (Entered: 02/07/2025)
02/18/2025	181	NOTICE OF ATTORNEY APPEARANCE Franz M Wright appearing for USA. (Wright, Franz) (Entered: 02/18/2025)
02/18/2025	182	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Evidentiary hearing under 18 U.S.C. § 4244 as to Luke Marshall Wenke held on 2/18/2025. Government calls witness Corey M. Leidenfrost, Ph.D. Government exhibits 1, 2, and 3 entered into evidence, under seal. Parties discuss alternatives to defendant returning to BOP for treatment, should the Court find that defendant may be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. Parties to confer and return for a status conference on 2/20/2025 at 9:30 AM. Court holds the hearing under 18 U.S.C. § 4244 open in the meantime. Appearances. For government: Franz Wright. For defendant: Frank Passafiume and Fonda Kubiak. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 02/18/2025)
02/18/2025	183	Sealed Document as to Luke Marshall Wenke - Government exhibits 1, 2, and 3. (Attachments: # 1 Exhibit 2, # 2 Exhibit 3)(KLH) (Entered: 02/18/2025)
02/20/2025	184	NOTICE OF ATTORNEY APPEARANCE: Fonda Dawn Kubiak appearing for Luke Marshall Wenke (Kubiak, Fonda) (Entered: 02/20/2025)
02/20/2025	185	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Status Conference on Violation of Supervised Release as to Luke Marshall Wenke held on 2/20/2025. After hearing recommendations from the parties, the Court determines that the hearing under 18 U.S.C. § 4244 will continue for reasons stated on the record. Defense counsel to contact the Court with potential dates for witness testimony by videoconference. Court recommends the U.S. Marshal transfer Mr. Wenke to Niagara County Jail, so that he can receive mental health treatment during the pendency of the hearing and the Court's subsequent decision. Appearances. For government: Franz Wright and Michael DiGiacomo. For defendant: Fonda Kubiak. For probation: Matthew Zenger. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 02/20/2025)
03/10/2025	186	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on February 18, 2025, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 3/31/2025. Redacted

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		Transcript Deadline set for 4/10/2025. Release of Transcript Restriction set for 6/9/2025. (BSW) (Entered: 03/10/2025)
03/11/2025	187	NOTICE OF HEARING. The evidentiary hearing, under 18 U.S.C. § 4244, will continue on April 10, 2025, at 9 a.m., in the Chautauqua Courtroom, 8th Floor East, 2 Niagara Square, Buffalo, NY before Hon. John L. Sinatra, Jr. The witnesses will testify via videoconference. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 3/11/2025. (JMS) (Entered: 03/11/2025)
03/12/2025	188	NOTICE OF ATTORNEY APPEARANCE Michael DiGiacomo appearing for USA. <i>NOTICE OF REMOVAL OF APPEARANCE</i> (DiGiacomo, Michael) (Entered: 03/12/2025)
03/12/2025		Attorney update in case as to Luke Marshall Wenke. Attorney Michael DiGiacomo terminated. (CGJ) (Entered: 03/12/2025)
03/25/2025	189	Letter from Luke Wenke, to U.S. District Court; no date on letter. (DDS) (Entered: 03/25/2025)
04/10/2025	190	Minute Entry for proceedings held before Hon. John L. Sinatra, Jr.: Continuation and conclusion of evidentiary hearing under 18 U.S.C. § 4244 as to Luke Marshall Wenke held on 4/10/2025. Defendant calls witnesses Robin Watkins, Ph.D., ABPP and Kaitlyn Nelson, Psy.D., both of whom testify remotely by videoconference. Post hearing submissions due 4/18/2025. Appearances. For government: Franz Wright. For defendant: Frank Passafiume and Fonda Kubiak. For probation: John Taberski. Defendant present. (Court Reporter Bonnie Weber) (KLH) (Entered: 04/10/2025)
04/16/2025	191	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on April 10, 2025. before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 5/7/2025. Redacted Transcript Deadline set for 5/19/2025. Release of Transcript Restriction set for 7/15/2025. (BSW) (Entered: 04/16/2025)
04/18/2025	192	MEMORANDUM/BRIEF by Luke Marshall Wenke (Attachments: # 1 Exhibit A-1, # 2 Exhibit A-2, # 3 Exhibit A-3, # 4 Exhibit A-4, # 5 Exhibit A-5, # 6 Exhibit A-6, # 7 Exhibit A-7, # 8 Exhibit A-8)(Passafiume, Frank) (Entered: 04/18/2025)
04/18/2025	193	MEMORANDUM/BRIEF <i>Government's Post Hearing Memorandum</i> by USA as to Luke Marshall Wenke (Wright, Franz) (Entered: 04/18/2025)
04/23/2025	194	DECISION AND ORDER OF COMMITMENT as to Luke Marshall Wenke. Signed by Hon. John L. Sinatra, Jr. on 4/23/2025. (KLH) (Entered: 04/23/2025)
05/01/2025	195	NOTICE OF ATTORNEY APPEARANCE: Timothy Patrick Murphy appearing for Luke Marshall Wenke (Murphy, Timothy) (Entered: 05/01/2025)
05/01/2025	196	NOTICE OF APPEAL by Luke Marshall Wenke re 194 Order. Fee Status: No fee due, Federal Public Defender (Murphy, Timothy) Modified on 5/2/2025 (CGJ). (Entered: 05/01/2025)
05/02/2025		E-Filing Notification: re 196 Docket text modified to correctly reflect filing event and add fee status. (CGJ) (Entered: 05/02/2025)

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05/02/2025		Within 14 days of filing the Notice of Appeal, the appellant is required to electronically file with the District Court an index of filed documents it wishes the Court of Appeals to consider, called Designation of Record on Appeal. After receipt, the Clerks Office will certify and transmit the index to the Circuit. (CGJ) (Entered: 05/02/2025)
05/02/2025	197	Letter from Luke Wenke, to Judge Arcara. (CGJ) (Entered: 05/02/2025)
05/02/2025	198	Letter from Luke Wenke, to Pro Se Litigation Unit. (CGJ) (Entered: 05/02/2025)
05/06/2025	199	DESIGNATION OF RECORD ON APPEAL by Luke Marshall Wenke re 196 Notice of Appeal - Interlocutory CLERK TO FOLLOW UP (Murphy, Timothy) (Entered: 05/06/2025)
05/06/2025	200	TRANSCRIPT REQUEST by Luke Marshall Wenke for proceedings held on April 18, 2022; November 21, 2023; December 14, 2023; January 2, 2024; April 16, 2024; July 30, 2024 and November 19, 2024 before Judge Hon. John L. Sinatra, Jr., (Murphy, Timothy) (Entered: 05/06/2025)
05/07/2025	201	CLERKS CERTIFICATE as to Luke Marshall Wenke filed and electronically sent to Court of Appeals re 199 DESIGNATION OF RECORD ON APPEAL (CGJ) (Entered: 05/07/2025)
05/09/2025	202	MOTION For a Stay re 194 Order of Commitment by Luke Marshall Wenke. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Murphy, Timothy) (Entered: 05/09/2025)
05/12/2025	203	TEXT ORDER regarding the 202 Motion for a Stay. The Government shall file a response by May 14, 2025. SO ORDERED. Issued by Hon. John L. Sinatra, Jr. on 5/12/2025. (JMS) (Entered: 05/12/2025)
05/15/2025	204	RESPONSE to Motion by USA as to Luke Marshall Wenke re 202 MOTION For a Stay re 194 Order of Commitment (Wright, Franz) (Entered: 05/15/2025)
05/16/2025	205	DECISION AND ORDER denying 202 Motion For a Stay as to Luke Marshall Wenke (1). Signed by Hon. John L. Sinatra, Jr. on 5/16/2025. (CGJ) (Entered: 05/16/2025)
06/11/2025	206	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on April 18, 2022, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 7/2/2025. Redacted Transcript Deadline set for 7/14/2025. Release of Transcript Restriction set for 9/9/2025. (BSW) (Entered: 06/11/2025)
06/11/2025	207	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on November 21, 2023, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 7/2/2025. Redacted Transcript Deadline set for 7/14/2025. Release of Transcript Restriction set for 9/9/2025. (BSW) (Entered: 06/11/2025)
06/11/2025	208	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on December 14, 2023, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that

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		date, it may be obtained through PACER. Redaction Request due 7/2/2025. Redacted Transcript Deadline set for 7/14/2025. Release of Transcript Restriction set for 9/9/2025. (BSW) (Entered: 06/11/2025)
06/11/2025	209	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on January 2, 2024, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 7/2/2025. Redacted Transcript Deadline set for 7/14/2025. Release of Transcript Restriction set for 9/9/2025. (BSW) (Entered: 06/11/2025)
06/11/2025	210	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on April 16, 2024, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 7/2/2025. Redacted Transcript Deadline set for 7/14/2025. Release of Transcript Restriction set for 9/9/2025. (BSW) (Entered: 06/11/2025)
06/11/2025	211	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on July 30, 2024, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 7/2/2025. Redacted Transcript Deadline set for 7/14/2025. Release of Transcript Restriction set for 9/9/2025. (BSW) (Entered: 06/11/2025)
06/11/2025	212	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings as to Luke Marshall Wenke held on November 19, 2024, before District Judge, the Honorable John L. Sinatra, Jr. Court Reporter/Transcriber Bonnie S. Weber, Bonnie_Weber@nywd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 7/2/2025. Redacted Transcript Deadline set for 7/14/2025. Release of Transcript Restriction set for 9/9/2025. (BSW) (Entered: 06/11/2025)
06/17/2025	213	Letter from Luke Wenke, to Judge Arcara. (CGJ) (Entered: 06/17/2025)
06/26/2025	214	Letter from Luke Wenke, to Judge Sinatra. (CGJ) (Entered: 06/26/2025)

PACER Service Center			
Transaction Receipt			
07/02/2025 13:10:00			
PACER Login:	tmurphy1	Client Code:	
Description:	Docket Report	Search Criteria:	1:22-cr-00035-JLS-HKS
Billable Pages:	21	Cost:	2.10
Exempt flag:	Exempt	Exempt reason:	Always

IN THE DISTRICT COURT OF THE UNITED STATES

for the Western District of New York

**November 2021 GRAND JURY
(Impaneled November 5, 2021)**

THE UNITED STATES OF AMERICA

INDICTMENT

-vs-

Violations:

**LUKE MARSHALL WENKE
(Counts 1-2)**

Title 18, United States Code,
Section(s) 875(c) and 2261A
(2 Counts)

COUNT 1

(Cyberstalking)

The Grand Jury Charges That:

Between on or about September 22, 2020 and on or about January 24, 2022, in the Western District of New York, and elsewhere, the defendant, LUKE MARSHALL WENKE, with the intent to harass and cause substantial emotional distress to Victim 1, a person known to the Grand Jury, did use an interactive computer service and facility of interstate and foreign commerce to engage in a course of conduct that placed Victim 1 in reasonable fear of the death of, or serious bodily injury to, Victim 1, or that caused, attempted to cause, and would reasonably be expected to cause substantial emotional distress to Victim 1.

All in violation of Title 18, United States Code, Sections 2261A(2)(a) and 2261A(2)(b).

COUNT 2

(Making Interstate Threats)

The Grand Jury Charges That:

Between on or about January 23, 2022, and January 24, 2022, in the Western District of New York, and elsewhere, the defendant, LUKE MARSHALL WENKE, did knowingly, willfully, and unlawfully, and for the purpose of issuing a threat and with knowledge that the communication would be viewed as a threat, transmit communications in interstate commerce, that is, an email that contained threats to injure the person of another, specifically, Victim 1, a person known to the Grand Jury.

All in violation of Title 18, United States Code, Section 875(c).

DATED: March 15, 2022.

TRINI E. ROSS
United States Attorney

BY: *s/DAVID J. RUDROFF*
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
716/843-5806
David.Rudroff@usdoj.gov

A TRUE BILL:

s/FOREPERSON

A-27

Case 1:22-cr-00035-JLS-HKS Document 23 Filed 04/18/22 Page 1 of 12

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

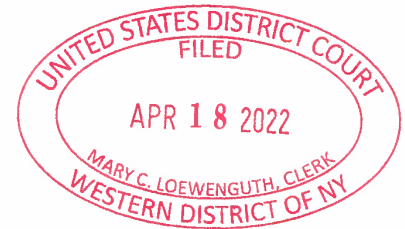
UNITED STATES OF AMERICA,

v.

22-CR-35

LUKE MARSHALL WENKE,

Defendant.



PLEA AGREEMENT

The defendant, LUKE MARSHALL WENKE, and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to waive indictment and plead guilty to Count One of the Indictment, which charges a violation of Title 18, United States Code, Sections 2261A(2)(a) and 2261A(2)(b) (cyberstalking), for which the maximum possible sentence is a term of imprisonment of 5 years, a fine of \$250,000, a mandatory \$100 special assessment and a term of supervised release of 3 years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that, if it is determined that the defendant has violated any of the terms or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 2 years, without credit for

time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in ¶ 1 of this agreement.

II. ELEMENTS AND FACTUAL BASIS

3. The defendant understands the nature of the offense set forth in ¶ 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

- a. That the defendant used a facility of interstate or foreign commerce;
- b. That the defendant engaged in a course of conduct with the intent to harass or intimidate the victim, R.G.; and
- c. That as a result of that course of conduct, R.G. was placed in reasonable fear of the death of, or serious injury to, himself, or that the course of conduct caused, attempted to cause, or would reasonably be expected to cause R.G. to experience substantial emotional distress.

FACTUAL BASIS

4. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

- a. Between on or about January 23, 2022 and on or about January 24, 2022, in the Western District of New York, and elsewhere, the defendant, LUKE MARSHALL WENKE, knowingly used a facility of interstate commerce to transmit communications containing threats to injure R.G. in Minnesota.
- b. R.G. is a criminal defense attorney who represents an acquaintance of the defendant in a criminal matter in the District of Minnesota. Beginning in September 2020, the defendant grew dissatisfied with the representation that R.G. provided to the acquaintance, and began to

issue harassing and threatening communications to R.G., including emails, telephone calls, internet reviews, and physical letters, all of which travelled in interstate commerce.

- c. Between September 22, 2020, and January 24, 2022, the defendant sent R.G. more than 76 emails, 1 voicemail, made two phone calls to R.G.'s law firm, and attempted to visit R.G.'s law firm in-person on one occasion, in addition to numerous fake internet reviews of R.G.'s law firm.
- d. Several of the communications referenced the defendant's possession of firearms, and/or his familiarity with explosives.
- e. On or about January 23, 2022, the defendant sent R.G. an email in which he stated, among other things, "They say men respect each other after a fight. I will gladly take a steel chair to your face until I get what I want here. You don't respect me. . . but you will. I am the dom and you are the bitch right now. Two very simple demands need to be met to finally change course from this perpetual bullshit largely incited by your miscalculations." (ellipsis in original).
- f. On January 24, 2022, the defendant sent another email to R.G. in which he stated, among other things, "This fight will happen, do not fear and do not worry. Do not cross certain lines. Oh boy do I have work to do tomorrow."
- g. On January 24, 2022, the defendant sent another email to R.G. in which he stated, among other things, "BAM BAM POW POW [R.G.] THE COMIC BOOK LAWYER WANTS TO FIGHT LUKE WENKE!!" This email attached a photo depicting an arial view of R.G.'s residence.
- h. The emails discussed above were sent by the defendant in the Western District of New York to R.G. in the State of Minnesota.
- i. At the time the defendant sent the emails to R.G., he did so with the intent to harass and intimidate R.G.
- j. As a result of the defendant's conduct, R.G. was placed in reasonable fear of death or bodily injury, and was caused substantial emotional distress.

III. SENTENCING GUIDELINES

- 5. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

BASE OFFENSE LEVEL

6. The government and the defendant agree that Guidelines § 2A6.2(a) applies to the offense of conviction and provides for a base offense level of 18.

ACCEPTANCE OF RESPONSIBILITY

7. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level decrease of Guidelines § 3E1.1(a) (acceptance of responsibility), and further agrees to move the court to apply the additional one (1) level decrease of Guidelines § 3E1.1(b), which would result in a total offense level of 15.

CRIMINAL HISTORY CATEGORY

8. It is the understanding of the government and the defendant that the defendant's criminal history category is I. The defendant understands that if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS, AND IMPACT

9. It is the understanding of the government and the defendant that, with a total offense level of 15 and criminal history category of I, the defendant's sentencing range would be a term of imprisonment of 18 to 24 months, a fine of \$7,500 to \$75,000, and a period of

supervised release of 1 to 3 years. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the maximum penalties set forth in ¶ 1 of this agreement.

10. Notwithstanding the above calculations, it is the agreement of the parties pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure that the Court at the time of sentence impose an 18-month term of imprisonment and three years of supervised release, as part of the appropriate sentence in this case. If, after reviewing the presentence report, the Court rejects this agreement, the parties will be relieved of their other obligations under this agreement and the defendant shall then be afforded the opportunity to withdraw the plea of guilty. This agreement does not affect the amount of a fine or the amount of restitution that may be imposed by the Court at sentencing.

11. The defendant understands that, except as set forth in ¶ 10, above, the Court is not bound to accept any Sentencing Guidelines calculations set forth in this agreement and the defendant will not be entitled to withdraw the plea of guilty based on the sentence imposed by the Court.

12. In the event the Court contemplates any Guidelines adjustments, departures, or calculations different from those agreed to by the parties above, the parties reserve the right to answer any inquiries by the Court concerning the same.

IV. STATUTE OF LIMITATIONS

13. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any federal criminal offense which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

V. REMOVAL

14. The defendant represents that he is a citizen of the United States. However, if the defendant is not a citizen of the United States, the defendant understands that, if convicted, the defendant may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

VI. GOVERNMENT RIGHTS AND OBLIGATIONS

15. The defendant understands that the government has reserved the right to:
- a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;
 - b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;

- c. advocate for a specific sentence consistent with the terms of this agreement including the amount of restitution and/or a fine and the method of payment; and
- d. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information, including conduct and statements by the defendant subsequent to this agreement, regarding the recommendation or factor.

16. At sentencing, the government will move to dismiss Count 2 of the Indictment.

17. The defendant agrees that any financial records and information provided by the defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

VII. RESTITUTION

18. The defendant understands, and the parties agree, that the Court must require restitution in an amount to be determined by the Court and to be paid to the victim as part of the sentence, pursuant to Sentencing Guidelines § 5E1.1 and Title 18, United States Code, Section 2264. The defendant understands that defendant will not be entitled to withdraw the plea of guilty based upon any restitution amount ordered by the Court.

19. The defendant agrees that the defendant will not oppose bifurcation of the sentencing hearing under 18 U.S.C. § 3664(d)(5) if the victims' losses are not ascertainable prior to sentencing.

20. The defendant agrees to disclose fully and completely all assets in which the defendant either has any property interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. The defendant agrees to make complete financial disclosure to the United States by truthfully executing a sworn financial statement by the deadline set by the United States, or if no deadline is set, no later than two weeks prior to the date of sentencing. The defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms for the United States to obtain tax information, bank account records, credit history, and social security information. The defendant agrees to discuss or answer any questions by the United States relating to the defendant's complete financial disclosure. The defendant will submit to an examination under oath and/or a polygraph examination conducted by an examiner selected by the U.S. Attorney's Office on the issue of the defendant's financial disclosures and assets, if deemed necessary by the U.S. Attorney's Office. The defendant certifies that the defendant has made no transfer of assets in contemplation of this prosecution for the purpose of evading or defeating financial obligations that are created by the agreement and/or that may be imposed upon the defendant by the Court. In addition, the defendant promises that the defendant will make no such transfers in the future.

21. The defendant understands and agrees that the Court, at the time of sentencing, will order that all monetary penalties imposed at that time (including any fine, restitution, or special assessment imposed in accordance with the terms and conditions of this plea agreement) are to be due and payable in full immediately and will be (i) subject to immediate

enforcement as provide for in 18 U.S.C § 3613, and (ii) submitted to the Treasury Offset Program (TOP) so that any federal payment or transfer of returned property the defendant receives may be offset and applied to federal debts but will not affect any periodic payment schedule set by the Court.

22. The defendant understands and acknowledges that any schedule of payments imposed by the Court at the time of sentencing is merely a minimum schedule of payments and does not, in any way, limit those methods available to the United States to enforce the judgment.

23. The defendant agrees that any funds and assets in which the defendant has an interest, which have been seized or restrained by the government or law enforcement as part of the investigation underlying this plea agreement, and not subject to forfeiture, will be used to offset any judgment of restitution and fine imposed pursuant to this plea agreement, or to satisfy any debts owed by the defendant to the United States and/or agencies thereof.

24. To the extent that the defendant has an interest, the defendant authorizes the District Court Clerk to release any funds posted as security for the defendant's appearance bond in this case, which funds shall be applied to satisfy the financial obligation(s) of the defendant pursuant to the judgment of the Court.

25. The defendant is aware that voluntary payment of restitution prior to adjudication of guilt is a factor in considering whether the defendant has accepted responsibility under the United States Sentencing Guidelines §3E1.1.

VIII. APPEAL RIGHTS

26. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal and collaterally attack any component of a sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶ 10, above, notwithstanding the manner in which the Court determines the sentence. In the event of an appeal of the defendant's sentence by the government, the defendant reserves the right to argue the correctness of the defendant's sentence.


27. The defendant understands that by agreeing not to collaterally attack the sentence, the defendant is waiving the right to challenge the sentence in the event that in the future the defendant becomes aware of previously unknown facts or a change in the law which the defendant believes would justify a decrease in the defendant's sentence.

28. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, ¶ 10, notwithstanding the manner in which the Court determines the sentence. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence.

IX. TOTAL AGREEMENT AND AFFIRMATIONS

29. This plea agreement represents the total agreement between the defendant, LUKE MARSHALL WENKE, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

TRINI E. ROSS
United States Attorney
Western District of New York

BY: 

DAVID J. RUDROFF
Assistant United States Attorney

Dated: April 18, 2022

I have read this agreement, which consists of pages 1 through 12. I have had a full opportunity to discuss this agreement with my attorney, Alexander Anzalone, AFPD. I agree that it represents the total agreement reached between me and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.



LUKE MARSHALL WENKE
Defendant

Dated: April 18, 2022



ALEXANDER ANZALONE, AFPD
Attorney for the Defendant

Dated: April 18, 2022

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.	*	April 18, 2022
	*	2:01 p.m.
	*	
LUKE MARSHALL WENKE,	*	PLEA HEARING
	*	
Defendant.	*	
	*	
* * * * *		

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

APPEARANCES:

For the Government:	MICHAEL DiGIACOMO, UNITED STATES ATTORNEY, By DAVID J. RUDROFF, 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., 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.

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

11 (Proceedings commenced at 2:01 p.m.)

12 **THE CLERK:** All rise.

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

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

17 **THE CLERK:** In the United States versus Luke Wenke,
18 Case Number 21-CR-35. This is the date set for a plea hearing.
19 Counsel, please state your appearances for the record.

20 **MR. RUDROFF:** Good afternoon, Your Honor. David
21 Rudroff for the Government.

22 **MR. ANZALONE:** Good afternoon, Your Honor. Alexander
23 Anzalone from the Federal Defender's Office on behalf of
24 Mr. Wenke. Mr. Wenke is to my left in custody.

25 **THE COURT:** Good afternoon, Counsel.

Good afternoon, Mr. Wenke.

1 Mr. Anzalone, I understand that Mr. Wenke is here
2 today to enter a guilty plea pursuant to the plea agreement
3 presented and signed today; is that correct?

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

5 **THE COURT:** Mr. Rudroff, have there been any changes
6 to the draft agreement provided to my chambers April 14th?

7 **MR. RUDROFF:** Your Honor, there have been no
8 substantive changes. There was one typographical error that was
9 corrected in the headings.

10 **THE COURT:** All right. The signed plea agreement will
11 be incorporated into and made a part of this proceeding.

12 Mr. Rudroff, have victims been notified of today's
13 proceeding?

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

15 **THE COURT:** Mr. Wenke, before I accept your guilty
16 plea, I want to be sure that you are fully informed of your
17 rights and that you understand those rights; the nature of this
18 proceeding here today, and the consequences to you of pleading
19 guilty.

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** If you don't understand something I say or
22 a question that I ask, please tell me and I'll try to make it
23 clearer.

24 And please stop me at any time you need to talk to
25 your lawyer and I'll accommodate that, okay?

1 **THE DEFENDANT:** Yes, Your Honor.

2 **THE COURT:** Would you please stand and raise your
3 right hand to take the oath.

4

5 **LUKE MARSHALL WENKE, DEFENDANT, SWORN**

6

7 **THE DEFENDANT:** I do. Thank you.

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

9 Mr. Wenke, do you speak, read and understand English?

10 **THE DEFENDANT:** Yes, I do.

11 **THE COURT:** You just took on oath that you would
12 answer my questions here today truthfully.

13 If you say something that's not true, that statement
14 may be used against you later in a separate criminal
15 prosecution, such as for perjury or for making a false statement
16 or it may result in other consequences from this Court.

17 Do you understand that?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** Do you understand you have the right to
20 remain silent and not to answer any of my questions?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** Do you want to answer my questions and
23 give up that right?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** Okay. Mr. Anzalone, do you join in that?

1 **MR. ANZALONE:** I do.

2 **THE COURT:** Mr. Wenke, what's your full name?

3 **THE DEFENDANT:** Luke Marshall Wenke.

4 **THE COURT:** And where were you born?

5 **THE DEFENDANT:** In Dunkirk, New York.

6 **THE COURT:** When were you born?

7 **THE DEFENDANT:** April 15, 1992.

8 **THE COURT:** Okay. How old does that make you?

9 **THE DEFENDANT:** I just turned 30 three days ago.

10 **THE COURT:** Are you married?

11 **THE DEFENDANT:** No.

12 **THE COURT:** Do you have children?

13 **THE DEFENDANT:** No.

14 **THE COURT:** How far along in school did you go?

15 **THE DEFENDANT:** I graduated from Salamanca High School

16 and then I did three semesters at Jamestown Community College.

17 **THE COURT:** So you're able to read?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** Were you able to read the entire plea

20 agreement that you signed in full, by yourself, before you

21 signed it?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** Are you a U.S. citizen?

24 **THE DEFENDANT:** Yes, I am.

25 **THE COURT:** What was your most recent employment?

1 **THE DEFENDANT:** Employment, Lyft. It's a different
2 Uber.

3 **THE COURT:** Okay. Are you currently seeing a doctor
4 to for any physical or mental condition that could affect your
5 ability to read, communicate, make decisions or to understand
6 these proceedings here today?

7 **THE DEFENDANT:** No, I'm not.

8 **THE COURT:** Do you have any mental condition or
9 disability that would prevent you from fully understanding the
10 charges against you or the consequences of your guilty plea?

11 **THE DEFENDANT:** No, I do not.

12 **THE COURT:** Have you recently been treated for mental
13 illness or addiction to narcotics?

14 **THE DEFENDANT:** No.

15 **THE COURT:** Are you currently under the influence of
16 any drug, medication or alcohol?

17 **THE DEFENDANT:** No.

18 **THE COURT:** Is there any medication that your doctor
19 wants you to take that you're not taking?

20 **THE DEFENDANT:** No.

21 **THE COURT:** Is there any reason we should not proceed
22 with this change of plea hearing today?

23 **THE DEFENDANT:** No.

24 **THE COURT:** Mr. Anzalone, did you speak with Mr. Wenke
25 about this proceeding today?

1 **MR. ANZALONE:** I did, Your Honor.

2 **THE COURT:** Do you have any reason to believe that he
3 should not proceed with this plea today?

4 **MR. ANZALONE:** No, I don't.

5 **THE COURT:** And do you believe that he's competent to
6 proceed?

7 **MR. ANZALONE:** Yes, I do.

8 **THE COURT:** Did you share with your client all formal
9 plea offers by the Government?

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

11 **THE COURT:** Mr. Wenke, did you speak with your lawyer
12 about the charges against you, your rights, the proposed plea
13 agreement and your options?

14 **THE DEFENDANT:** Yes, I did.

15 **THE COURT:** Are you satisfied with the advice and
16 counsel that you've received from Mr. Anzalone?

17 **THE DEFENDANT:** Yes, I am.

18 **THE COURT:** Based on the observations of Mr. Wenke and
19 his lawyer and my observations -- excuse me.

20 Based on the statements of Mr. Wenke and his lawyer
21 and my observations, I find that Mr. Wenke is in full possession
22 of his faculties and is competent to proceed.

23 Next, regarding the Due Process Protections Act and
24 Rule 5(f)(1), both of those require me to direct the prosecution
25 to comply with its obligation under Brady versus Maryland and

1 its progeny, to disclose to the defense all information, whether
2 admissible or not, favorable to the defendant; material to
3 either guilt or punishment; and known to the prosecution.

4 Possible consequences for noncompliance may include
5 dismissal of individual charges or the entire case; exclusion of
6 evidence and professional discipline or Court sanctions on the
7 attorneys responsible.

8 I'm going to be entering that order. I'm going to
9 sign it now. That fully describes the obligation and the
10 possible consequences. And I'm directing the prosecution to
11 review and comply with the order.

12 In the meantime, Mr. Rudroff, do you confirm that the
13 Government has, to your understanding, fulfilled its
14 obligations?

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

16 **THE COURT:** Mr. Wenke, have you received a copy of the
17 indictment, which is the written statement of the charges
18 against you?

19 **THE DEFENDANT:** Yes, I have.

20 **THE COURT:** In Count One of that indictment, the Grand
21 Jury charges that, between on or about September 22, 2020, and
22 January 24, 2022, in the Western District of New York and
23 elsewhere, the defendant -- that is, you, Luke Marshall Wenke --
24 with the intent to harass and cause substantial emotional
25 distress to Victim One, a person known to the Grand Jury, did

1 use an interactive computer service and a facility of interstate
2 and foreign commerce to engage in a course of conduct that
3 placed Victim One in reasonable fear of the death of or serious
4 bodily injury to Victim One or that caused, attempted to cause,
5 and would reasonably be expected to cause substantial emotion
6 distress to Victim One, all in violation 18 U.S.C., Sections
7 2261A(2) (a) and 2261A(2) (b) .

8 You have several Constitutional rights that you'll be
9 giving up if you plead guilty to that count and I'll discuss
10 those with you now.

11 You have the right to plead not guilty to any offense
12 charged against you and to persist of that plea throughout the
13 process.

14 In fact, earlier in the case, you entered the plea of
15 not guilty to all charges and you have the right to continue and
16 persist in that plea.

17 You have the right to a speedy and public trial. You
18 have the right to a jury trial. And at that trial, you would
19 have the right to participate in selecting the jury from members
20 of the community.

21 At trial, you would be presumed innocent. The
22 Government would have to prove your guilt by proving each
23 element of each count beyond a reasonable doubt.

24 The jury would have to be unanimous. In particular,
25 the jurors would have to reach a unanimous verdict on this Count

1 One to convict you of cyberstalking.

2 If both you and the Government gave up the right to a
3 jury trial, you would have the right to be tried by the Court,
4 and that means by me.

5 You have right to be represented by counsel and to
6 have your lawyer assist with your defense.

7 You have that right at trial and at every other stage
8 of the proceedings against you, including any appeal.

9 If you can't afford a lawyer, the Court will appoint
10 one for you free of charge, to assist you at trial and at every
11 other stage of the proceeding.

12 At trial, you have the right to confront and
13 cross-examine the witnesses against you, which means you have
14 the right to see the witnesses, hear them testify and have them
15 questioned by your lawyer.

16 You have the right to present a defense at trial,
17 including the right to testify on your own behalf, present
18 evidence, call witnesses to testify and have witnesses
19 subpoenaed and required to come to Court to testify on your
20 behalf.

21 You also have the right to be protected from compelled
22 self-incrimination, which means you have the right to remain
23 silent and not to testify at trial. No one can force you to
24 testify or to incriminate yourself.

25 If you plead guilty, you give up the right to be

1 protected from compelled self-incrimination and you will be
2 incriminating yourself.

3 If you went to trial and were convicted, you would
4 have the right to appeal to your conviction and your sentence.

5 If you plead guilty and if I accept your guilty plea,
6 you will waive each of these rights.

7 In particular, if you plead guilty, you agree that
8 this is your day in Court and there will be no trial.

9 Pleading guilty will have the same effect to you as if
10 you went to trial and the jurors reached a unanimous guilty
11 verdict as to this charge.

12 By pleading guilty, you waive all of these rights,
13 including your right to appeal, except for a very limited right
14 to appeal your sentence and we'll talk about that later.

15 Do you understand all of that?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** Did your lawyer advise you of all the
18 rights I just described?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Do you understand those rights?

21 **THE DEFENDANT:** Yes, I do.

22 **THE COURT:** Do you have any questions about them?

23 **THE DEFENDANT:** No, I do not.

24 **THE COURT:** Do you need more time to speak to your
25 lawyer about those rights?

1 **THE DEFENDANT:** No.

2 **THE COURT:** Do you want to give up those rights?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** All right.

5 Mr. Anzalone, are you satisfied that Mr. Wenke is
6 waiving these rights knowingly, voluntarily and intelligently?

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

8 **THE COURT:** Do you join and agree with each waiver?

9 **MR. ANZALONE:** I do.

10 **THE COURT:** Okay. We're going to look over the plea
11 agreement now.

12 Mr. Wenke, did you sign this plea agreement on
13 page 12?

14 **THE DEFENDANT:** Yes, I did.

15 **THE COURT:** And did you read it before you signed it?

16 **THE DEFENDANT:** Yes, I did.

17 **THE COURT:** Did you discuss the plea agreement with
18 your lawyer before you signed it?

19 **THE DEFENDANT:** Yes, I did.

20 **THE COURT:** Do you understand everything in this
21 agreement?

22 **THE DEFENDANT:** Yes, I do.

23 **THE COURT:** Do you agree with everything in it?

24 **THE DEFENDANT:** I do agree.

25 **THE COURT:** Do you have any questions about this

1 agreement?

2 THE DEFENDANT: I do not.

3 THE COURT: Do you need more time to discuss it with
4 your lawyer?

5 THE DEFENDANT: No, I do not.

6 THE COURT: Do you understand that I am not a party to
7 this agreement, which means I'm not bound by its terms?

8 THE DEFENDANT: Yes.

9 THE COURT: Other than what's contained on the pages
10 of the written plea agreement that you signed, did anyone make
11 any promises, representations or guarantees to you to try to get
12 you to plead guilty?

13 THE DEFENDANT: No.

14 THE COURT: Other than what's contained in the written
15 plea agreement that you signed and other than a general
16 discussion of the sentencing guidelines and other sentencing
17 considerations with your lawyer, did anyone promise you leniency
18 or a particular sentence or any other incentive to get you to
19 plead guilty?

20 THE DEFENDANT: No.

21 THE COURT: Is anyone forcing you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Did anyone try to threaten you, someone in
24 your family or someone close to you to get you to plead guilty?

25 THE DEFENDANT: No.

1 **THE COURT:** Whether to plead guilty is your decision.
2 Not your lawyer's.

3 You should do what you want to do, not what you think
4 your lawyer wants you to do and not what you think anyone else
5 wants you to do.

6 Do you understand that?

7 **THE DEFENDANT:** Yes, I do.

8 **THE COURT:** Is your decision to plead guilty here
9 today voluntary and of your own free will?

10 **THE DEFENDANT:** Yes, it is.

11 **THE COURT:** You're agreeing to plead guilty to one of
12 the charges against you.

13 That is Count One of the indictment which alleges that
14 you violated 18, United States Code, 2261(a)(2)(A) and
15 2261(a)(2)(B), cyberstalking, which is a felony.

16 I'd now like to explain the elements of this charge.
17 And the Government would have to prove these elements beyond a
18 reasonable doubt if the case went to trial:

19 First, that you used a facility of interstate or
20 foreign commerce.

21 Second, that you engaged in the course of conduct with
22 the intent to harass or intimidate the victim, R.G.

23 Third, that as a result of that course of conduct,
24 R.G. was placed in reasonable fear of the death of or serious
25 injury to himself or that the course of conduct caused,

1 attempted to cause or would reasonably be expected to cause R.G.
2 to experience substantial emotional distress.

3 Do you understand the nature of the charge against
4 you?

5 **THE DEFENDANT:** Yes, I do.

6 **THE COURT:** And do you understand the elements of the
7 charge that I just explained?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Did you discuss the charge and its
10 elements with your lawyer?

11 **THE DEFENDANT:** Yes, we did.

12 **THE COURT:** Do you have any questions about the charge
13 or its elements?

14 **THE DEFENDANT:** No, I do not.

15 **THE COURT:** Were you advised of the maximum penalties
16 for this charge?

17 **THE DEFENDANT:** Yes, I was.

18 **THE COURT:** In paragraph one of the agreement, you'll
19 see that the maximum possible sentence is a term of imprisonment
20 of five years, a fine of \$250,000 and a term of supervised
21 release of three years. And then, there's also a mandatory
22 \$100 special assessment.

23 Do you understand these maximum penalties?

24 **THE DEFENDANT:** Yes, I do.

25 **THE COURT:** Supervised release is a form of

1 post-imprisonment supervision. It does not replace a portion of
2 the sentence of imprisonment.

3 Instead, it's an order of supervision in addition to
4 any term of imprisonment that I may impose.

5 During any term of supervised release you must comply
6 with certain terms and conditions that I set and that the
7 probation office sets with my approval.

8 Do you understand that?

9 **THE DEFENDANT:** Yes, I do.

10 **THE COURT:** Do you understand that if you're placed on
11 supervised release and if I find by a preponderance of the
12 evidence that you violated a condition of that release, you may
13 be returned to prison for all or part of the term of supervised
14 release, up to two years without time -- without credit for time
15 previously served on supervised release?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** Do you understand that if that happens --
18 if you violate a condition of supervised release -- you could
19 end up serving more time in prison than set forth in the
20 statutory maximum?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** I don't know if you're currently on
23 parole, probation or supervised release in some other criminal
24 case.

25 If you are, today's guilty plea may provide a basis

1 for revoking that parole, probation or supervised release. As a
2 result, you may be returned to prison on that other case, if
3 there is one.

4 Do you understand that?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** Parole no longer exists in the Federal
7 system; so if you're sent to prison, you will not be released on
8 parole.

9 Do you understand that?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** You are pleading guilty here today to
12 felony offense.

13 If I accept your plea, I will find you guilty and you
14 may lose value civil rights. For example, the rights to vote,
15 to hold public office, to serve on a jury and to possess a
16 firearm.

17 Do you understand that?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** Next let's talk about restitution, which I
20 think is covered in 18 through 25.

21 Mr. Rudroff, would you summarize the restitution
22 paragraphs for us?

23 **MR. RUDROFF:** Yes, Your Honor. Paragraph 18, the
24 defendant understands that the Court must impose restitution in
25 this case.

1 And that he will not be entitled to withdraw his
2 guilty plea based on whatever amount of restitution is imposed
3 by the Court.

4 Paragraph 19, the defendant agrees that he won't
5 oppose bifurcation of sentencing in the event that the victim's
6 losses are not ascertainable at the time of sentencing.

7 Paragraph 20, the defendant agrees to disclose all of
8 his assets and make complete financial disclosure to the United
9 States to be used in the enforcement of any financial penalties
10 in this case.

11 He also agrees to provide releases for all of his
12 financial information.

13 Paragraph 21, the defendant understands that all
14 monetary penalties that are imposed in this Court will be due
15 and payable immediately upon sentencing.

16 That they'll be subject to immediate enforcement. And
17 that they will be submitted to the Treasury Offset Program for
18 potential enforcement.

19 Paragraph 22, the defendant agrees that any payment
20 schedule set by the Court is merely a minimum and that it does
21 not limit the enforcement methods available to the U.S.

22 Paragraph 23, the defendant agrees that any assets
23 that are seized or restrained by the United States may be used
24 to offset financial obligations that are imposed as a part of
25 his sentence.

1 Paragraph 24, the defendant agrees that the District
2 Court Clerk will release any funds that have been posted as
3 security for his appearance in this case.

4 And that they will be applied to satisfy any financial
5 obligations imposed by the Court.

6 Paragraph 25, the defendant understands that voluntary
7 payment of restitution in this case may be a factor considered
8 whether or not the defendant has accepted responsibility in this
9 case.

10 **THE COURT:** Thank you, Mr. Rudroff.

11 Have there been any requests for restitution so far?

12 **MR. RUDROFF:** Your Honor, there have been none so far.

13 **THE COURT:** Mr. Wenke, do you understand what the
14 prosecutor just said regarding those paragraphs?

15 **THE DEFENDANT:** Yes, I do.

16 **THE COURT:** Do you understand, Mr. Wenke, that you
17 will not be entitled to withdraw your guilty plea based on any
18 restitution amount that I order?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** I may order you to provide notice of your
21 conviction to victims of the offense and to bear the cost of
22 that notice.

23 Do you understand that?

24 **THE DEFENDANT:** Yes, I do.

25 **THE COURT:** Did you discuss the facts of your case,

1 possible defenses and the possible punishment with your lawyer?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Did you tell your lawyer everything that
4 you know about your case?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** In paragraph four of the agreement, you
7 and the Government agree to certain facts regarding the charge
8 that you plan to plead guilty to.

9 Mr. Rudroff, please summarize or read the facts the
10 Government would be prepared to prove if it case were to go to
11 trial.

12 **MR. RUDROFF:** If this case were to go to trial, the
13 Government would be prepared to prove that between on or about
14 January 23, 2022 and on or about January 24, 2022 -- excuse me.

15 Between on or about September of 2020 and January 24th
16 of 2022, the defendant knowingly used a facility of interstate
17 commerce to facilitate communications containing threats to
18 injure R.G. in Minnesota.

19 R.G. is a criminal defense attorney who represents an
20 acquaintance of the defendant in a criminal matter in the
21 District of Minnesota.

22 And beginning in September of 2020, the defendant grew
23 dissatisfied with the representation that R.G. provided to his
24 acquaintance and began to issue harassing and threatening
25 communications to R.G., which included e-mails, telephone calls,

1 Internet reviews and physical letters, all of which traveled in
2 interstate commerce.

3 Between September 22nd, 2020 and January 24th, 2022,
4 the defendant sent R.G. more than 76 e-mails; at least one
5 voicemail; made two phone calls to R.G.'s law firm and attempted
6 to visit the law firm in person on one occasion, in addition to
7 the numerous fake internet reviews of R.G.'s law firm that he
8 posted.

9 Several of the communications referenced the
10 defendant's possession of firearms and/or his familiarity with
11 explosives.

12 On or about January 23rd, 2022, the defendant sent
13 R.G. an e-mail in which he stated, among other things, quote:
14 "They say men respect each other after a fight.

15 I will gladly take a steel chair to your face until I
16 get what I want here. You don't remember me, but you will. I
17 am the dom and you are the bitch right now.

18 Two very simple demands need to be met to finally
19 change course from this perpetual bullshit largely incited by
20 your miscalculations."

21 On January 24th, 2022, the defendant sent another
22 e-mail to R.G. in which he stated, among other things, this
23 fight -- excuse me.

24 Quote: "This fight will happen. Do not fear and do
25 not worry. Do not cross certain lines. Oh, boy, do I have work

1 to do tomorrow."

2 On January 24th, 2022, the defendant sent another
3 e-mail to R.G. in which he stated, among other things, quote:
4 Bam bam, pow pow. R.G. the comic book lawyer wants to fight
5 Luke Wenke.

6 The e-mail attached a photo depicting an aerial view
7 of R.G.'s residence. These e-mails were sent by the defendant
8 in the Western District of New York to R.G. in the state of
9 Minnesota.

10 At the time that the defendant sent the e-mails to
11 R.G., he did so with the intent to harass and intimidate R.G.

12 And as a result of the defendant's conduct, R.G. was
13 placed in reasonable fear of death or bodily injury and was
14 caused substantial emotional distress.

15 **THE COURT:** Mr. Wenke, do you understand what the
16 prosecutor just said?

17 **THE DEFENDANT:** Yes, I do.

18 **THE COURT:** Is everything that he said about you, your
19 conduct and your intent true?

20 **THE DEFENDANT:** Yes, it is.

21 **THE COURT:** Mr. Rudroff, how would the Government
22 prove those facts at trial, if there were a trial?

23 **MR. RUDROFF:** Your Honor, if there were a trial, the
24 Government would call agents of the Federal Bureau of
25 Investigations who would testify regarding their investigation

1 of this case.

2 Among other things, those agents would introduce
3 evidence from the Federal search warrants that were obtained
4 regarding the contents of the defendant's electronic devices,
5 specifically his cell phone and the several e-mail accounts that
6 he controlled.

7 The Government would introduce into evidence the
8 contents of those e-mail accounts and electronic devices, which
9 would establish the communications that were just referenced,
10 including the three or four e-mails on January 22rd, 2022, and
11 January 24th, 2022.

12 Additionally, that evidence would establish that the
13 defendant had sent at least 76 e-mails, but likely many more, to
14 the victim, R.G., between September 22, 2020, and January 24,
15 2022.

16 Several of the e-mails would reference the defendant's
17 possession of firearms and his familiarity with explosives.

18 The Government would introduce evidence through the
19 manager of the firearm store, an FFL here, in the Western
20 District of New York, who had established that the defendant
21 had, in fact, actually taken steps to obtain an operable firearm
22 in September and November of 2021, during the time at issue,
23 when he was sending these communications to R.G.

24 The Government would also call R.G., several members
25 of his family and several employees of the law firm, who would

1 all testify as to R.G.'s response to this course of conduct; his
2 behavior in the aftermath of receiving these e-mails.

3 They would establish that R.G. was distressed; that he
4 was concerned, intimidated. That he feared bodily harm and that
5 he experienced substantial emotional distress.

6 They would testify that R.G. not only changed his work
7 habits. That he at one time sent his family to live in another
8 location, away from their home.

9 That he had taken additional security measures at
10 work, including posting the defendant's picture among security
11 desks, including a security system, including a doorbell and a
12 buzzer system that he had never had to use before.

13 And several members of his staff had, in fact,
14 considered quitting their jobs or taking other measures in
15 response to the defendant's conduct.

16 **THE COURT:** Mr. Wenke, do you understand what the
17 prosecutor just said?

18 **THE DEFENDANT:** Yes, I do.

19 **THE COURT:** Are you pleading guilty here today because
20 you did the things that the plea agreement says that you did and
21 that are charged in Count One of the indictment?

22 **THE DEFENDANT:** Yes, I am.

23 **THE COURT:** In your own words now, Mr. Wenke, tell me
24 what it is you did that makes you believe you're guilty of Count
25 One.

1 **MR. ANZALONE:** Your Honor, if I could just have one
2 moment, please?

3 **THE COURT:** You may.

4 **THE DEFENDANT:** I very inappropriately treated R.G.
5 and dehumanized him and carried on for way too long. And
6 definitely harassed him over e-mails for longer than ever should
7 have happened.

8 **THE COURT:** Did you do that with the intent to harass
9 or intimidate that person?

10 **THE DEFENDANT:** Yes, I did.

11 **THE COURT:** Is the Government satisfied with that
12 factual basis?

13 **MR. RUDROFF:** Yes, Your Honor. That factual basis,
14 together with what's included in the plea agreement.

15 **THE COURT:** Okay. Paragraphs five through 12 of the
16 agreement deal with the sentencing guidelines.

17 I understand, Mr. Wenke, that you and the Government
18 have agreed to a specific sentence in this case, which I would
19 impose if I accepted the plea agreement at a later date, and
20 we'll get to that.

21 First, we'll have to discuss the sentencing
22 guidelines.

23 The U.S. Sentencing Commission issues guidelines that
24 I must consult and take into account when determining sentences.

25 Mr. Wenke, if you plead guilty or are convicted after

1 trial, I will calculate and consider the applicable sentencing
2 guidelines range and also consider sections of the guidelines
3 concerning upward or downward departures.

4 I must consider these guidelines, but they're advisory
5 only, which means I'm not with bound to follow them when
6 determining your sentence.

7 Do you understand that?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** When determining your sentence, I also
10 will consider all of the sentencing factors in the statute,
11 which is 18 United States Code, Section 3553(a).

12 Those factors include the nature and circumstances of
13 the offense; your own history and characteristics; the need for
14 the sentence to reflect the seriousness of the offense.

15 Promote respect for the law, and provide a fair
16 punishment; the need to deter others from committing crimes and
17 to protect the public from your crimes.

18 The need provide you with educational or vocational
19 training, medical care or other correctional treatment; the
20 kinds of sentences available.

21 Any policy statements issued by the Sentencing
22 Commission; sentences given to others who committed crimes
23 similar to the one that you're planning to plead guilty to; and
24 the need to provide restitution to victims.

25 Do you have any questions about those factors?

1 **THE DEFENDANT:** No, I do not.

2 **THE COURT:** Did you and your lawyer talk about how
3 those factors and the guidelines might be applied in your case?

4 **THE DEFENDANT:** Yes, we did.

5 **THE COURT:** Do you understand that the conduct used to
6 compute your guidelines range will include both the conduct to
7 which you pleading guilty and relevant conduct that may involve
8 counts that are dismissed or were never charged?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** There might be other relevant conduct,
11 conduct that we're not even thinking about right now, that might
12 affect your sentencing guidelines range.

13 Do you understand that?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** If I accept your guilty plea, a
16 presentence report will be prepared before you are sentenced.

17 You and the Government will have a chance to review
18 the report, to challenge the reported facts and the guidelines
19 range calculation, and to suggest that I consider -- consider
20 other factors consistent with the plea agreement.

21 Do you understand that?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** Neither I nor your lawyer will be able to
24 determine the guidelines range for your case until the
25 presentence report has been prepared.

1 Do you understand that?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** In paragraph six through nine of the
4 agreement, you and the Government agree to guidelines
5 calculations.

6 And in paragraph nine, you and the Government agree to
7 a specific -- agree that a specific guidelines range would
8 apply.

9 And that is that the guidelines could would call for a
10 sentence of 18 to 24 months of imprisonment, plus a fine of
11 between \$7,500 and \$75,000, plus a period of supervised release
12 of one to three years.

13 Do you understand that I can accept this calculation,
14 but I can also reject the calculation and find another
15 guidelines calculation on my own?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** All right. Next, we'll talk about the
18 Rule 11(c)(1)(C) plea agreement that you and the Government
19 have. That's covered in paragraph ten.

20 And there, you'll see that you and the Government
21 agree that the Court should impose a specific sentence of
22 imprisonment of 18 months.

23 If you enter a guilty plea today, I plan not to decide
24 whether to accept or reject the plea agreement until after I
25 review the presentence report.

1 If at that time I reject the plea agreement and reject
2 your agreement with the Government to impose this
3 18-month sentence, I must give you a chance to withdraw your
4 guilty plea.

5 Do you understand that?

6 **THE DEFENDANT:** Yes.

7 **THE COURT:** If I reject the plea agreement, I must
8 also give the Government a chance to withdraw from it as well.

9 Do you understand that?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** And if a situation were to arise where I
12 rejected the plea agreement and neither you or the Government
13 chose to withdraw from it, do you understand that, regardless of
14 the sentencing guidelines calculation and regardless, even, of
15 my own calculation, I would then have the discretion to impose a
16 sentence that is more or less severe than the guidelines range,
17 as long as the sentence is not more than the statutory maximum?

18 In other words, I would be able to sentence you, in
19 that scenario, up to the maximum penalties that we discussed
20 earlier.

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** You also understand that you and the
23 Government agreed not to advocate for the application of any
24 other guideline and not to move for any departure or recommend a
25 sentence outside the guidelines, other than is set forth in the

1 agreement?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Do you have any questions about the
4 sentence that you may receive if I accept your guilty plea?

5 **THE DEFENDANT:** No, I do not.

6 **THE COURT:** Mr. Rudroff, please tell us about the
7 statute of limitations covered in paragraph 13.

8 **MR. RUDROFF:** Yes, Your Honor. Before I do, I just
9 want to point out the Rule 11(c)(1)(C) agreement also would call
10 for a three-year term of the supervised release. So as long as
11 the defendant also understands that.

12 **THE COURT:** Do you understand that, Mr. Wenke?

13 **THE DEFENDANT:** Yes, I do.

14 **THE COURT:** Give me one moment.

15 Okay. Go ahead, Mr. Rudroff.

16 **MR. RUDROFF:** Thank you, Your Honor. Under
17 paragraph 13, the defendant understands that if his guilty plea
18 is withdrawn or his conviction is vacated, whether that is by
19 appeal, motion, post-conviction, proceeding or otherwise, the
20 Government would have six months from that date to reinstate any
21 charges that are dismissed as a result of this plea agreement.

22 And the defendant agrees not to assert the statute of
23 limitations as a defense in any of those -- or in that
24 instance -- excuse me.

25 **THE COURT:** Mr. Wenke, do you understand what the

1 prosecutor just said?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** The next paragraph is paragraph 14. It's
4 entitled removal.

5 Earlier, you told me that you are a U.S. citizen.
6 This paragraph 14 says that, if you were not a U.S. citizen,
7 there could be some other consequences to you as a result of
8 your guilty plea, such as removal from the United States, denial
9 of citizenship, and denial of admission to the United States.

10 Based on what you told me earlier today, that you are
11 a U.S. citizen, these consequences would not apply to you.

12 Do you understand that?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Mr. Rudroff, please tell us next about the
15 rights the Government reserves in paragraph 15, the Government's
16 obligation in paragraph 16, and the defendant's agreement in
17 paragraph 17.

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

19 Paragraph 15, the Government has reserved the right to
20 provide the probation office and the Court with all the
21 information and evidence in its possession that the Government
22 deems relevant concerning the defendant's background, character,
23 and involvement in the offenses charged and well as the
24 circumstances surrounding the charge and the defendant's
25 criminal history.

1 The Government may also respond at sentencing to any
2 statements that are made by the defendant or on his behalf, if
3 they are inconsistent with the information and evidence
4 available to the Government.

5 The Government may advocate for a specific sentence
6 consistent with the terms of the plea agreement. That includes
7 the amount of restitution or a fine in the method of payment.

8 And the Government may modify its position with
9 respect to any sentencing recommendation or a sentencing factor
10 under the guidelines, including criminal history category, if
11 subsequent to the plea agreement, the Government receives
12 previously unknown information, which includes conduct and
13 statements by the defendant subsequent to the agreement,
14 regarding the recommendation or factor.

15 In paragraph 16, the Government agrees to move to
16 dismiss Count Two of the indictment at sentencing.

17 And at paragraph 17, the defendant agrees that any
18 financial records and information that he has provided to the
19 probation office before or after sentencing will be disclosed to
20 the U.S. Attorney's Office to be used in the collection of any
21 unpaid financial obligation.

22 **THE COURT:** Mr. Wenke, do you understand what the
23 prosecutor was saying?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** By entering into this plea agreement and

1 pleading guilty, you're giving up your right to appeal to
2 conviction.

3 You're also giving up your right to collaterally
4 attack your conviction by filing a motion in this Court.

5 Do you understand that?

6 **THE DEFENDANT:** Yes.

7 **THE COURT:** You're also giving up your right to appeal
8 or collaterally attack your sentence by filing a motion in this
9 Court, as long as the sentence is within or less than your
10 agreed sentence of imprisonment that we discussed earlier.

11 Even based on facts you may learn in the future that
12 you think would justify a lesser sentence, and even if the law
13 changes in a way that you believe justifies a lesser sentence.
14 This is covered in paragraphs 26 through 27.

15 Do you understand?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** Did you discuss your right to appeal and
18 how pleading guilty affects that right with your lawyer?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Based on that discussion and after
21 considering the issue, do you agree to give up your right to
22 appeal on the terms and conditions that I just stated?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** Is the plea agreement that you signed and
25 that we've been discussing here today the complete agreement

1 between you and the Government?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Did you review the entire agreement with
4 your lawyer?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** Do you understand and agree with
7 everything in it?

8 **THE DEFENDANT:** Yes, I do.

9 **THE COURT:** Did anyone make any promises,
10 representations or guarantees to you, other than the ones in the
11 plea agreement that you signed?

12 **THE DEFENDANT:** No, they have not.

13 **THE COURT:** And do you understand and agree that this
14 agreement is the final one and takes the place of any prior
15 verbal or written agreement that you may have had with the
16 Government?

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** Mr. Anzalone, did you and Mr. Wenke both
19 sign the plea agreement we've been discussing here today?

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

21 **THE COURT:** Did you discuss the contents of every
22 section, subsection, paragraph and subparagraph of this
23 agreement with Mr. Wenke before you signed it?

24 **MR. ANZALONE:** Yes, I did.

25 **THE COURT:** Does the signed agreement represent the

1 entire agreement between Mr. Wenke and the Government?

2 **MR. ANZALONE:** Yes, it does.

3 **THE COURT:** Did you review with your client the facts
4 of the case and all of discovery provided by the Government?

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

6 **THE COURT:** Did you discuss with Mr. Wenke the
7 potential defenses that he might have?

8 **MR. ANZALONE:** I did.

9 **THE COURT:** Did you and your client agree that it was
10 in his best interest to enter this plea?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** Do you believe he's fully entering into --
13 excuse me.

14 Do you believe that he's entering into this plea
15 freely and voluntarily with full knowledge of the charge and
16 consequences of the plea?

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

18 **THE COURT:** Were any promises, representations or
19 guarantees, other than what's in the signed written plea
20 agreement, made to you or Mr. Wenke?

21 **MR. ANZALONE:** No.

22 **THE COURT:** If I accept the plea agreement, I will
23 impose a sentence that includes a term of imprisonment of
24 18 months. And it includes that supervised release provision as
25 well.

1 Other than that, did you promise your client a
2 particular sentence if I accepted his guilty plea?

3 **MR. ANZALONE:** No, Your Honor.

4 **THE COURT:** Is there any reason I should not accept
5 Mr. Wenke's plea?

6 **MR. ANZALONE:** Not that I'm aware of.

7 **THE COURT:** Do you join in the waiver of jury trial
8 and concur in the plea?

9 **MR. ANZALONE:** Yes, I do.

10 **THE COURT:** Mr. Rudroff, other than what's contained
11 in the signed agreement, did the Government make any promises,
12 representations or guarantees to either Mr. Wenke or
13 Mr. Anzalone?

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

15 **THE COURT:** Does the Government also waive its right
16 to a jury trial?

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

18 **THE COURT:** Mr. Wenke, are you satisfied with
19 Mr. Anzalone and the representation that he's provided to you?

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** Did you tell him everything that you know
22 about your case?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** Do you believe that he fully considered
25 any defense you may have to this case?

1 **THE DEFENDANT:** Yes.

2 **THE COURT:** Do you believe that he fully advised you
3 concerning this case and the consequences of this plea?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** Did you have enough time to discuss your
6 case with Mr. Anzalone?

7 **THE DEFENDANT:** Yes, I did.

8 **THE COURT:** Did you answer all of my questions here
9 today truthfully?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** Have you understood everything I've said
12 and every question that you've answered?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Do you believe that you're competent to
15 decide to plead guilty?

16 **THE DEFENDANT:** Yes, I am.

17 **THE COURT:** And is there any reason I should not
18 accept your guilty plea?

19 **THE DEFENDANT:** I do not believe so.

20 **THE COURT:** Do you understand that if I accept your
21 guilty plea, the only thing remaining in your case will be
22 sentencing, which will include imprisonment?

23 Do you understand that?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** Having in mind everything we've discussed

1 so far today, including the rights you'll give up and all other
2 consequences to you, do you want to plead guilty?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** Mr. Rudroff, Mr. Anzalone, do you both
5 agree that I've complied with Rule 11?

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

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

8 **THE COURT:** Mr. Wenke, in Case Number 22-CR-35, how do
9 you plead to Count One of the indictment, cyberstalking?

10 **THE DEFENDANT:** Guilty.

11 **THE COURT:** In United States versus Luke Marshall
12 Wenke, I questioned Mr. Wenke and his counsel on the offer of
13 his plea of guilty to Count One of the indictment of felony.

14 He and his counsel have advised me that they conferred
15 about the offered plea of guilty, all aspects of the charge
16 against Mr. Wenke and any defenses he may have.

17 I observed the intelligence, demeanor and attitude of
18 Mr. Wenke while answering questions and I observed that
19 Mr. Wenke does not appear to be under the influence of any
20 medicine, drug or other substance that might affect his judgment
21 or actions in any manner.

22 Based upon all of that, I find that Mr. Wenke is fully
23 competent and capable of entering an informed plea and that he's
24 aware of his Constitutional rights, the nature of the charge
25 against and the consequences of the plea.

1 I also find that the guilty plea is knowingly,
2 voluntarily and intelligently made, in light of Mr. Wenke's
3 complete understanding and appreciation of the nature of the
4 charge and the consequences of the plea and his Constitutional
5 rights.

6 I further find that the plea is supported by an
7 independent factual basis containing each essential element of
8 the crime.

9 I therefore accept Mr. Wenke's guilty plea and I defer
10 acceptance of the plea agreement pursuant to Rule 11(c)(3)(A).
11 Mr. Wenke is adjudged guilty of Count One.

12 A written presentence report will be prepared by the
13 probation office to assist the Court.

14 Mr. Wenke, you will be asked to meet with the
15 probation officer and to provide in information for that report.
16 Your lawyer should attend.

17 Both of you will be able to read the report and file
18 any objections before the sentencing hearing.

19 You will be able to submit any additional information
20 and motions that are consistent with the terms of the plea
21 agreement and the plea that you just entered.

22 You and your lawyer will be able to speak on your own
23 behalf at the sentencing hearing, and victims will be entitled
24 to speak as well.

25 Mr. Wenke is referred to the probation officer for a

1 report. And the date for sentencing will be what, Ms. Henry?

2 **THE CLERK:** August 18th at 10:00 a.m.

3 **MR. ANZALONE:** Thank you.

4 **MR. RUDROFF:** Thank you.

5 **THE COURT:** Okay. August 18, 10 a.m. You're all
6 ordered to appear on that date and time without any further
7 notice or order of the Court.

8 Mr. Rudroff, are there any victims who wish to be
9 heard as to Mr. Wenke's status pending sentencing?

10 **MR. RUDROFF:** Your Honor, there are no victims who
11 wish to be heard at this time.

12 It's the Government's position that the defendant
13 should stay detained in this case. He now stands convicted of
14 cyberstalking, which is a crime of violence.

15 To my knowledge, there are no exceptional reasons
16 under 3145(c) why the defendant should be released.

17 And, lastly, I would point out that if the Court is
18 inclined to accept the plea agreement as it currently stands,
19 the defendant is looking at 18 months incarceration.

20 **MR. ANZALONE:** Based on the terms of the plea
21 agreement, I have no request for the Court at this time.

22 **THE COURT:** Okay. So he'll remain remanded pending
23 sentencing. I don't think I have anything else.

24 Counsel, do either of you?

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

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1 **MR. ANZALONE:** No, Your Honor. Thank you.

2 **THE COURT:** Okay. Have a good day. Thank you.

3 **MR. RUDROFF:** You, too.

4 **MR. ANZALONE:** Thank you.

5

6 (Proceedings concluded at 2:40 p.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.
6
7
8
9

10 s/ Bonnie S. Weber
11 Signature

May 22, 2025
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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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.	*	August 18, 2022
	*	10:00 a.m.
	*	
LUKE MARSHALL WENKE,	*	SENTENCING
	*	
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., 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., 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.

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

9 (Proceedings commenced at 10:00 a.m.)

10 **THE CLERK:** All rise.

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

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

15 **THE CLERK:** United States versus Luke Wenke,
16 Case Number 22-CR-35. This is the date set for sentencing.

17 Counsel, please state your appearance for the record.

18 **MR. RUDROFF:** Good morning, Your Honor. David Rudroff
19 on behalf of the Government.

20 **MR. ANZALONE:** Good morning, Your Honor.
21 Alexander Anzalone from the Federal Public Defenders Office on
22 behalf of Mr. Wenke.

23 Mr. Wenke is to my left in custody.

24 **THE COURT:** Okay. Good morning, counsel.

25 Good morning, Mr. Wenke.

THE DEFENDANT: Good morning.

1 **THE COURT:** Mr. Wenke is here today for sentencing on
2 his previous plea of guilty to Count One of the indictment
3 charging him with cyber stalking in violation of 18 United
4 States Code Sections 2261(a) -- 2261(a)2(A) and 2261(a)(2)(B).

5 Mr. Wenke, we're going to begin today with some
6 questions that I have for the lawyers and then for you regarding
7 the presentence report.

8 Then I'll make sure that I've received and read
9 everyone's sentencing related submissions. I'll hear from the
10 lawyers about objections and then I'll make findings of fact and
11 calculate the applicable guidelines range.

12 Before deciding the sentence, I will give the lawyers
13 and then you a chance to address the Court.

14 Do you have any questions before we start?

15 **THE DEFENDANT:** I don't, no.

16 **THE COURT:** All right. First regarding the
17 presentence report, which was prepared by the U.S. Probation and
18 Pretrial Services Office, Mr. Anzalone, have you had enough time
19 to read the presentence report first prepared June 27, 2022, and
20 most recently revised yesterday and to review it with your
21 client?

22 **MR. ANZALONE:** Yes, I have.

23 **THE COURT:** Ms. McNeal, have there been any revisions
24 or updates to the report dated yesterday?

25 **PROBATION OFFICER:** No, Your Honor.

1 **THE COURT:** Thank you.

2 Mr. Anzalone, did you explain the contents of the
3 report and the addendum to your client?

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

5 **THE COURT:** Mr. Wenke, have you received a copy of the
6 August 17, 2022, presentence report?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** Did you discuss it with your lawyer?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** Mr. Anzalone, I've received and reviewed
11 your client's objections.

12 First, regarding the two-level enhancement in
13 Paragraph 45 pursuant to guideline section 2A6.2B1E. That is
14 for the offense involving a pattern of activity involving
15 stalking, threatening, harassing or assaulting the same victim.

16 He also objects to the inclusion of certain
17 information in the PSR that is irrelevant: "Including
18 information in paragraphs 36, 37 and 38." And that's regarding
19 your client's possible connection to the Boogaloo Boys and his
20 internet search terms.

21 And lastly, he objects to the inclusion and
22 characterization of information in paragraphs 59, 60 and 61
23 labeled as other criminal conduct.

24 Other than those three general topics, does your
25 client otherwise adopt the facts and sentencing guidelines

1 calculations in the report?

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

3 **THE COURT:** Does he have any other objections besides
4 those?

5 **MR. ANZALONE:** No.

6 **THE COURT:** All right. I've received and reviewed his
7 sentencing memorandum, his letter to the Court and letters
8 written on his behalf by Janet McCall, I believe it's Cynthia
9 Wenke, his grandmother, and Kevin Wenke.

10 Does he wish to submit anything else in writing?

11 **MR. ANZALONE:** No. Thank you, Your Honor.

12 **THE COURT:** Mr. Rudroff, I have received and reviewed
13 the Government's statement with respect to sentencing factors
14 stating that the Government adopts the findings in the
15 presentence report, except as to the calculations resulting from
16 the application of the two-level enhancement under 2A6.2B1E,
17 because the plea agreement did not apply, the enhancement and
18 the Government is bound to advocate the calculation in the plea
19 agreement.

20 Does the Government otherwise adopt the facts and
21 guidelines calculations in the report?

22 **MR. RUDROFF:** Yes, we do, Your Honor.

23 **THE COURT:** Does the Government have any objections?

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

25 **THE COURT:** I've received and reviewed the

1 Government's sentencing memorandum and the victim impact
2 statement, which is docket 40, under seal.

3 Does the Government have anything else to submit in
4 writing?

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

6 **THE COURT:** All right.

7 Mr. Anzalone, would you wish to be heard on the
8 objections?

9 **MR. ANZALONE:** No, Your Honor. I'll rest on my
10 papers. Thank you.

11 **THE COURT:** Okay. Mr. Rudroff?

12 **MR. RUDROFF:** No, Your Honor. We have nothing to add,
13 other than the fact that we believe everything objected to --
14 again, with the exception of the sentencing guideline
15 calculation, which under Lawlor, we can't deviate from the plea
16 agreement, but everything in the PSR, it's our position is
17 relevant when evaluating the sentencing factors under 3553A.

18 So we don't believe that the relevance objections have
19 merit.

20 **THE COURT:** Okay. Ms. McNeal, anything other than the
21 addendum that you wish to say on that issue?

22 **PROBATION OFFICER:** No, Your Honor.

23 **THE COURT:** Okay. I must rule on any dispute or
24 controversy regarding the presentence report or alternatively
25 determine that a ruling is unnecessary because the issue will

1 not affect sentencing or I would not consider it.

2 The objections are going to be resolved as follows:

3 Number one, first one, with respect to the enhancement under

4 2A6.2B1E, the Court overrules the objection.

5 The enhancement is appropriately applied in this case

6 for the reasons set forth in the addendum.

7 As indicated in the application notes, a pattern of

8 activity means any combination of two or more separate instances

9 of stalking, threatening, harassing or assaulting the same

10 victim.

11 Courts have applied this enhancement when there have

12 been only two instances of a defendant threatening the victim.

13 For example, see United States versus Lloyd, 809 F. App'x 750.

14 And that's from the Eleventh Circuit, 2020.

15 The conduct here involving 76 or so e-mails, as well

16 as threats and harassing messages sent via social media and

17 letters over a period of about 16 months qualifies for the

18 enhancement.

19 Regarding the second and third objections to certain

20 information be included in the report and/or characterized as

21 other criminal conduct, those objections are also overruled.

22 I agree with the reasons set forth in the addendum and

23 adopted as my reasoning.

24 In particular, I agree that the Court is entitled to

25 all relevant information as to the history and characteristics

1 and conduct of the defendant in reaching a proper sentence.

2 Based on the submissions and representations of the
3 parties today and rulings today, the parties do not dispute any
4 other facts contained in the presentence report.

5 I've reviewed the report and based on that review and
6 the parties' positions, I adopt the facts in the report as my
7 findings of fact and incorporate them into the record.

8 The August 17, 2022, presentence report now will be
9 placed in the record under seal.

10 If an appeal is filed, Appellate counsel will be
11 permitted access to the sealed report, except that Appellate
12 counsel will not be allowed access to the recommendation, which
13 is provided only to me.

14 Next regarding the sentencing guidelines, I must first
15 calculate and then consider them as an important part of
16 determining the sentence and as an important part of determining
17 whether the Rule 11(c)(1)(C) agreement ought to be approved.

18 There are no outstanding disputes about the reports
19 recommendations regarding the applicable sections of the
20 guidelines under the 2021 version of the guidelines manual.

21 The report calculates that section 2A6.2a provides for
22 a base offense level of 18. The report finds the specific
23 offense characteristic under 2A6.2B1E applies.

24 And it does apply, based on my finding that the
25 offense involved a pattern of activity involving stalking,

1 threatening, harassing or assaulting the same victim.

2 The report then recommends that the offense level be
3 decreased by two levels under 3E1.1A because Mr. Wenke accepted
4 responsibility.

5 And in its statement with respect to sentencing
6 factors, the Government has moved for the one level decrease
7 under 3E1.1B, and I grant that motion.

8 Based on all that, the report calculates the total
9 offense level as 17 and further calculates Mr. Wenke's criminal
10 history category as one, based on a criminal history score of
11 zero.

12 Based on my factual findings, I agree with the
13 report's offense level and criminal history category
14 calculations.

15 With that offense level of 17 and criminal history
16 category of one, the presentence report calculates the
17 guidelines range as a sentence of imprisonment of 24 to
18 30 months, a fine of \$10,000 to \$95,000, and a period of
19 supervised release of one to three years.

20 And then there is always a mandatory \$100 special
21 assessment that I must impose. I agree with those calculations
22 as well.

23 Mr. Wenke, under the Supreme Court's decision in
24 United States versus Booker and the Second Circuit's Crosby
25 decision, I must consider the applicable guidelines, but I'm not

1 bound by them.

2 I also must consider the statutory sentencing factors
3 in 18 United States Code 3553A.

4 Those factors include the nature and circumstances of
5 the offense, your own personal history and characteristics; the
6 need for the sentence to reflect the seriousness of the offense,
7 promote respect for the law and provide a fair punishment.

8 The need to deter others from committing crimes and to
9 protect the public from your crimes; the need to provide you
10 with educational or vocational training medical care or other
11 correctional treatment; the kinds of sentences available, any
12 policy statements issued by the Sentencing Commission, sentences
13 given to others who committed crimes similar to the one that you
14 are convict of, and the need to provide restitution to victims.

15 I will take those factors as applicable into account
16 today, but before imposing a sentence, I'm going to give the
17 lawyers and then you, Mr. Wenke, and any victim, if there is a
18 victim here today, a chance to speak.

19 And a question -- just a general question to both
20 counsel, as you address the Court on this issue, why is this an
21 appropriate sentence?

22 Why is it adequate and why is the public adequately
23 protected, is the question that I've got.

24 So Mr. Rudroff?

25 **MR. RUDROFF:** Yes, Your Honor. Again, I recognize

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1 that in a (c)(1)(C) agreement outside of the guidelines is
2 unusual and it may be something that the Court is not ultimately
3 all that comfortable with at the moment.

4 I've been involved in this case since the day that
5 Mr. Wenke was arrested, and I've been the primary prosecutor
6 since then.

7 I have reviewed all of the evidence in the case, I've
8 been closely involved with the investigating agents and with the
9 victims.

10 I'm familiar with -- or I guess I can represent to the
11 Court that my office gave great consideration both to the
12 strength of the case, but also some litigation risks. You know,
13 no case is bulletproof.

14 In addition, I have spoken with the victim. I can say
15 every step of the way, I spoke with him, I believe shortly after
16 Mr. Wenke was arrested.

17 And I kept in contact with him multiple times
18 throughout plea negotiations, throughout trial preparation, and
19 then as we approached sentencing.

20 Your Honor, I understand that the public, society, is
21 always a victim in every crime in some sense, and the public is
22 entitled to, I guess, benefits from sentencing a criminal
23 defendant.

24 But at the end of the day, nobody really experienced
25 the effects of Mr. Wenke's conduct more acutely than the victim,

1 RG, and his family.

2 And he did submit a victim impact statement in this
3 case that was very eloquent and it almost -- you know, almost
4 should have been appended to the defense sentencing memo, it was
5 so deferential.

6 One of the things that stands out to me, though, is
7 every time I talked to the victim he stated, you know, I think
8 Mr. Wenke needs help.

9 I want to see him held accountable. I want him to
10 stop, but I want to see him get the help that he needs.

11 And it's the Government's position that the (c) (1) (C)
12 agreement, which is 18 months in prison, but also a stipulated
13 supervised release range, that's at the top of what's possible.

14 The three years, would both hold Mr. Wenke
15 accountable. It would also adequately punish him.

16 18 months in Federal prison, or I suppose six months
17 in local custody and the rest in Federal prison is -- it's no
18 joke.

19 I know both my office, this Court, the Public
20 Defenders Office, we see cases that are heinous and involve
21 extremely long sentencing.

22 But for a first-time offender, I do think 18 months in
23 prison is a stiff sentence. It's an eye opener.

24 And so it would be, we believe, sufficient in that
25 regard to deter Mr. Wenke from future conduct, but also deter

1 the public from future acts of this type.

2 But additionally, Your Honor, I don't want the Court
3 to lose sight of the three years of supervised release that were
4 stipulated in the (c)(1)(C) agreement as part of this plea,
5 because that term of supervised release both would require that
6 Mr. Wenke stays under close court and probation supervision and
7 that his conduct will be constrained in some way as a result of
8 that.

9 But it also gives the Court the ability, if it feels
10 that Mr. Wenke is not abiding by the terms of supervised
11 release, to revoke that supervised release and sentence him to
12 an additional prison term, which may ultimately bring his total
13 time in incarceration within or above the guidelines, as the
14 Court has calculated them today, 24 to 30 months.

15 So, Your Honor, for those reasons, we do believe 18
16 months incarceration, plus the three years of supervised release
17 is sufficient to punish Mr. Wenke's conduct.

18 It is a sentence that was endorsed by the most direct
19 victim of this crime. It is sufficient, but not greater than
20 necessary to achieve the goals of sentencing that will deter
21 both Mr. Wenke and the public.

22 It will also give him an ability -- or an opportunity,
23 I should say, to reform his conduct, but also remain under some
24 level of supervision with an opportunity to still do more time
25 if it turns out that he has not, in fact, reformed his ways.

1 And so, I guess all of that, Your Honor, is to say
2 that this (c)(1)(C) agreement is not something that our office
3 agreed to lightly.

4 It's not something that we agreed to simply to move
5 the case to a resolution. We truly do believe when viewing the
6 case holistically and consulting with RG and his family that it
7 is the appropriate sentence.

8 It's sufficient, but not greater than necessary in
9 that it is warranted by the 3553A factors.

10 **THE COURT:** I assume the victim is not here to speak
11 at this time?

12 **MR. RUDROFF:** He is not here, Your Honor. He did
13 submit a victim impact statement, which I provided to the Court
14 by e-mail on Monday and filed under seal yesterday.

15 **THE COURT:** I read it.

16 Okay. Ms. McNeal, anything you wish to add?

17 **PROBATION OFFICER:** No, Your Honor.

18 **THE COURT:** Mr. Anzalone, same question. And, you
19 know, here's where I'm coming from.

20 Maybe know this or assume it, but, you know, the facts
21 in this case read like the prelude to a violent crime. And
22 thank goodness -- right -- and only Mr. Wenke knows if this
23 could have been a violent outcome, but it wasn't.

24 Thankfully it wasn't, right? How do I know that
25 society is adequately protected going forward? That's really

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1 the issue.

2 **MR. ANZALONE:** Sure. I appreciate that. And I think,
3 you know, I echo what the Government says about viewing this not
4 simply as an 18-month sentence, but as the full package, which
5 is, first and foremost, intervention.

6 Intervention that can be a wake-up call through
7 custody, but also an opportunity for resources, help,
8 counselling, just a chance to right his path. And I think
9 Mr. Wenke sees it as that sort of opportunity.

10 That's where, in my opinion, the three years of
11 supervised release sort of pushed us over the edge in plea
12 negotiations.

13 And I think that that's a lengthy period of time where
14 Mr. Wenke is going to have a really close and watchful eye on
15 him.

16 And the remorse and transformation that he's
17 experiencing, and has experienced from the outside of this case
18 is really going to give -- be given an opportunity to blossom
19 into an actual and permanent change for this young man.

20 And I can say, you know, having had a number of
21 interactions with him over the course of this case, I believe
22 it's genuine.

23 I believe it's long lasting, and I believe that he's
24 going to take advantage of the opportunities he's been given and
25 will be given on supervision.

1 I hear the Court's concern. I think this is a very
2 troubling case on paper, but at the end of the day I don't think
3 that outweighs the family support that Mr. Wenke has, the -- his
4 interest and his family's interest in getting him the mental
5 health counseling that I think is pretty clearly appropriate.

6 You know, I don't want to overstate it, but I do think
7 the COVID isolation had some triggering role here. And once you
8 identify that trigger, it can be addressed and that sort of
9 dealt with.

10 You know, 18 months, as the Government said, is a long
11 time to sit in local custody, BOP custody and think about the
12 consequences of his actions.

13 And I know from having almost weekly phone
14 conversations and a number of in-person meetings with Mr. Wenke,
15 he has had a lot of time to think about that.

16 And he doesn't want his life, his legacy, to be this
17 case or actions or conduct consistent with this case. He has
18 bigger plans to be a productive member of society, to add to the
19 positive and not to the chaos, I think is how he put it.

20 For someone with no -- for someone with no record, who
21 will now have a felony conviction, who will have a serious and
22 lengthy period of supervision, in light of what the Government
23 and the victim have agreed to, and in light of the family
24 support he has, I would submit that this is sufficient here.

25 I think, you know, if Mr. Wenke shows signs that he

1 hasn't taken this opportunity seriously, as the Government has
2 stated, Your Honor is going to have an opportunity to address
3 that.

4 If there is a violation of supervised release, you
5 know, we often see heftier sentences imposed for violations
6 because someone was cut a break on the front end.

7 He knows he's being cut a break. I mean, it's a harsh
8 sentence, but it could be a lot harsher if the Court agrees to
9 follow the parties' agreement.

10 And I'm hoping that the Court agrees and I'm confident
11 that Mr. Wenke sees it as an opportunity.

12 I know he wants to address the Court briefly, but I
13 think his letter is really powerful and accurate and really,
14 hopefully gives the Court a sense of the transformation from the
15 young man who was writing those e-mails to the victim in this
16 case versus the insight that he's gained from this experience
17 and hopefully the change he's ready to make when he's released.

18 **THE COURT:** Mr. Wenke?

19 **THE DEFENDANT:** COVID was definitely not the time to
20 use the internet to fight with people. I never saw jail before
21 age 30.

22 I've seen a lot of stories with other inmates and it's
23 definitely not something I want to repeat. So I know that this
24 can definitely be an only one-time thing in my life.

25 **THE COURT:** You recognize this was wrong, Mr. Wenke?

1 **THE DEFENDANT:** Yes.

2 **THE COURT:** And you are done with all of this kind of
3 thing?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** I previously accepted Mr. Wenke's plea of
6 guilty to Count One of the indictment, cyberstalking.

7 At that time, I deferred acceptance of the plea
8 agreement. I now accept the terms and conditions of the plea
9 agreement that was signed April 18, 2022, and the judgment and
10 sentence will be consistent with that agreement.

11 I note that in the plea agreement, the Government
12 agreed to move to dismiss Count Two of the indictment against
13 Mr. Wenke, and we'll get to that.

14 The charge that he plead guilty to, Count One,
15 adequately reflects the seriousness of the actual offense
16 behavior.

17 Therefore, accepting the agreement does not undermine
18 the statutory purposes of sentencing or the guidelines.

19 Pursuant to the Sentencing Reform Act of 1984 and the
20 2021 version of the sentencing guidelines, it is the judgment of
21 this Court that the defendant, Luke Wenke, is committed to the
22 Bureau of Prisons for a period of 18 months of imprisonment, and
23 that's pursuant to the Rule 11(c)(1)(C) agreement.

24 The cost of incarceration fee is waived. Upon
25 release, he shall be placed on supervised release for a term of

1 three years. That's also pursuant to the agreement.

2 Supervised release, Mr. Wenke, is a form of
3 post-imprisonment supervision. It does not replace a portion of
4 the sentence of imprisonment.

5 Instead, it's an order of supervision in addition to a
6 term of imprisonment. During your term of supervised release,
7 you must comply with certain terms and conditions that I set,
8 and that the probation office sets with my approval.

9 If I find by a preponderance of the evidence that you
10 violated a condition of supervised release, you may be returned
11 to prison for all or part of the term of supervised release, up
12 to two years without credit for time previously served on
13 supervised release.

14 While on supervised release, the following conditions
15 apply: Within 72 hours of release from custody of the Bureau of
16 Prisons, you shall report in person to the probation office in
17 the district where you are authorized to reside, unless your
18 probation officer instructs you differently.

19 You shall comply with the standard conditions of
20 supervised release adopted by this Court, and your lawyer can
21 get you a copy of those conditions.

22 You shall not commit any crimes under Federal, State
23 or Local law. You shall not possess a firearm, ammunition or
24 any other dangerous device.

25 You shall not unlawfully possess a controlled

1 substance. You shall cooperate in the collection of a DNA
2 sample, as required by the Justice for All Act of 2004.

3 Because the incident offense occurred after September
4 13, 1994, drug testing is required by the 1994 Crime Control
5 Act.

6 The defendant shall participate in a program for
7 substance abuse, including substance abuse testing such as
8 urinalysis and other testing, and shall undergo a drug and
9 alcohol evaluation and treatment, if substance abuse is
10 indicated by the testing.

11 The probation officer will supervise the details of
12 any testing and treatment, including the selection of a
13 treatment provider and schedule.

14 If inpatient treatment is recommended, however, it
15 must be approved by the Court unless the defendant consents. He
16 is not to leave any treatment until completion or as ordered by
17 the Court.

18 While in treatment and after discharge, the defendant
19 is to abstain from the use of alcohol, and he is required to
20 contribute to the cost of services rendered.

21 This condition serves the statutory sentencing
22 purposes of public protection, deterrence and rehabilitation.

23 Mr. Wenke is to participate in a mental health
24 evaluation -- mental health treatment program, including mental
25 health evaluation and any treatment recommended.

1 The probation officer will supervise the details of
2 any testing and treatment, including the selection of a provider
3 and a schedule.

4 If inpatient treatment is recommended, it must be
5 approved by the Court unless the defendant consents.

6 He is not to leave any such treatment until completion
7 or as ordered by the Court.

8 While in treatment or taking psychotropic medication,
9 he shall abstain from the use of alcohol. And the defendant is
10 required to contribute to the cost of services rendered.

11 This condition serves the statutory sentencing
12 purposes of public protection and rehabilitation.

13 The defendant shall complete an anger management
14 program. The probation officer will supervise the details of
15 defendant's participation in the program, including the
16 selection of a provider and a schedule.

17 This condition serves the statutory sentencing
18 purposes of public protection and rehabilitation.

19 The defendant shall not have any contact directly or
20 indirectly including through social media, telephone, text, mail
21 or e-mail with the victim, RG, his family members or his current
22 or prior places of employment.

23 This condition serves the statutory sentencing
24 purposes of public protection.

25 The defendant shall submit to a search of his person,

1 property, vehicle, place of residence or any other property
2 under his control based upon reasonable suspicion and permit
3 confiscation of any evidence or contraband discovered.

4 This condition serves the statutory sentencing
5 purposes of deterrence, public protection and rehabilitation.

6 I'm not ordering restitution and I note that no
7 request has been made. And I'm not imposing a fine and I'm not
8 imposing the cost of imprisonment or the cost of supervised
9 release, because I do not believe that Mr. Wenke has the
10 financial ability to make such payments.

11 He shall, however, pay to the United States a
12 mandatory special assessment of \$100, due immediately. Payment
13 shall be made to the Clerk, U.S. District Court, Attention:
14 Finance, U.S. Courthouse, two Niagara Square, Buffalo, 14202.

15 If this special assessment is not paid when he's
16 incarcerated, payment shall begin under the Bureau of Prisons
17 Inmate Financial Responsibility Program.

18 When determining this sentence, I have carefully
19 reviewed the circumstances of the case, the plea, the
20 presentence report and all sentencing submissions.

21 I began my analysis considering the advisory
22 guidelines and have considered all the arguments raised and
23 things that I have heard here from all of you, and I've
24 considered the statutory sentencing factors as well.

25 I'm imposing this sentence and I've accepted the

1 agreement for a few reasons.

2 And by the way, Mr. Wenke, it's not just during COVID.
3 Always, it's not an appropriate time to have that kind of a
4 conversation with somebody else. I think you understand that.

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** First, the nature and circumstances of the
7 offense, your conduct in this case was concerning. While it
8 originated from a place of concern for Mr. Teeter, your behavior
9 escalated to threats and harassment, and ultimately to a place
10 where the victim and his family were very fearful and
11 experienced substantial emotional distress.

12 The fact that you were in possession of weapons at the
13 time of your arrest and were sending threats to the victim is
14 especially troubling.

15 Your lawyer has argued that you never actually harmed
16 anyone physically, didn't intend to carry out your threats and
17 ultimately this was just a crime of words.

18 Whether or not you personally intended to carry out
19 the threats doesn't minimize the harassment, distress and fear
20 that the victim experienced.

21 Also, regarding your personal history and
22 characteristics, I've taken into consideration your lack of
23 criminal history, your employment history and your age.

24 And I note that you have the support of your family
25 who speak highly of you in the letters that were submitted.

1 You, as well as both letters in this case, have
2 mentioned how mental health treatment would benefit you going
3 forward.

4 I hope you use the resources that are available to
5 you, including the stress management and control your emotions
6 and behavior appropriately.

7 I highlight all of that because there are fundamental
8 reasons why I'm accepting the agreement in this case with the
9 lower term of imprisonment than the guidelines envision.

10 I have to assess all the facts as my questioning, kind
11 of, made it clear, I've got to evaluate how you are likely to
12 behave in the future and whether that's something that, you
13 know, we, as a society, can tolerate.

14 So I, you know, say this to you, I expect that you
15 have a clean and productive and good life going forward and I
16 hope that for you.

17 You've read the victim's statement as well. I'm sure
18 you have taken a look at it. You probably should take it to
19 heart.

20 He says: "Among other things, I want the Court to
21 know that I wish Mr. Wenke no ill will and hope that he gets the
22 help he needs. I'm not angry with him.

23 I hope he goes on to live a productive and happy life.
24 And he should know that if he is the type of man that is looking
25 for forgiveness, he has it from me.

1 I do not want him to carry the burden of this case any
2 more than he needs to. So all that being said, I wish Mr. Wenke
3 the very best in the future.

4 I appreciate that he accepted responsibility in this
5 case and did not make my wife to come to court to testify. That
6 would have been difficult for her."

7 I'm imposing the term of supervised release with
8 special conditions. This is to help you return to society after
9 your incarceration and it will allow the probation office to
10 monitor your activities to ensure that you don't engage in
11 further illegal activity.

12 In sum, based on the advisory guidelines, the
13 positions of the parties, my review of the sentencing factors
14 and consideration of all other facts and circumstances presented
15 to me, I find that the sentence imposed here today is
16 sufficient, but not greater than necessary to comply with the
17 purposes of sentencing set forth in the sentencing statute.

18 After considering the guidelines range, I imposed a
19 sentence below that range under the agreement, because I find a
20 guideline sentence in this case would be greater than necessary
21 to comply with the purposes of sentencing set forth in the
22 sentencing statute, and for the reasons we've gone through
23 already here today.

24 Under Rule 32(j)(1)(B), you have a right to appeal. I
25 must advise you of that under certain circumstances, especially

1 if you think the sentence is contrary to law.

2 A defendant may waive those rights as part of a plea
3 agreement. As I think you recognize, Mr. Wenke, you entered
4 into a plea agreement where you waived some of your rights to
5 appeal.

6 Specifically, you waived all rights to appeal a
7 sentence that falls within or is less than the calculated
8 guidelines range of imprisonment, fine and supervised release
9 set forth in the agreement.

10 These waivers are generally enforceable, but if you
11 believe the waiver is unenforceable, you can present that theory
12 to the Appellate Court.

13 If you want to try to appeal some issue that you
14 believe survives your waiver, you must file a notice of appeal
15 within either 14 days of entry of the judgment that you wish to
16 appeal from, or 14 days of any appeal filed by the Government,
17 whichever is later.

18 If you request, the clerk must prepare and file a
19 notice of appeal on your behalf.

20 If you can't pay the costs of an appeal, you may apply
21 to file the notice of appeal and appeal without paying costs.

22 You have the right to be represented by counsel on any
23 appeal, and if you can't afford counsel you have the right to
24 have counsel appointed to represent you.

25 Next, Mr. Rudroff, would you like to make a motion

1 regarding the indictment?

2 **MR. RUDROFF:** Yes, Your Honor. The Government moves
3 to dismiss Count Two of the indictment.

4 **THE COURT:** Okay. That motion is granted.

5 The statement of reasons shall be included with the
6 judgment and shall be provided to the probation office, the U.S.
7 Sentencing Commission and the Bureau of Prisons.

8 A complete copy of the presentence report shall be
9 provided to the probation office, the U.S. Sentencing Commission
10 and the Bureau of Prisons. A judgment of the conviction will be
11 prepared promptly on the form prescribed for judgments.

12 And, Counsel, anything further?

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

14 **MR. ANZALONE:** No. Thank you, Your Honor.

15 **THE COURT:** Okay. Mr. Wenke will remain remanded to
16 the custody of the U.S. Marshals.

17 Mr. Wenke, I wish you well.

18 **THE DEFENDANT:** Thank you.

19 **THE COURT:** We are concluded.

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

21

22 (Proceedings concluded at 10:33 a.m.)

23 * * *

24

25

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

June 12, 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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Case 1:22-cr-00035-JLS-HKS Document 42 Filed 08/18/22 Page 1 of 7

AO 245B

(Rev. 10/19) Judgment in a Criminal Case
Sheet 1

ASM/jis (7790401)

UNITED STATES DISTRICT COURT

Western District Of New York

UNITED STATES OF AMERICA

v.

Luke Marshall Wenke

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:22CR00035-001

USM Number: 83837-509

Alexander J. Anzalone & Marianne Mariano

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2261A(2)(A), 18 U.S.C. § 2261A(2)(B)	Cyberstalking	01/24/2022	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____☒ Count(s) 2 of the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 18, 2022

Date of Imposition of Judgment

Signature of Judge

John L. Sinatra Jr., U.S. District Judge

Name and Title of Judge

Date

August 18, 2022

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Case 1:22-cr-00035-JLS-HKS Document 42 Filed 08/18/22 Page 2 of 7

AO 245B (Rev. 10/19) Judgment in Criminal Case
Sheet 2 — Imprisonment

ASM/js (7790401)

Judgment — Page 2 of 7DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001**IMPRISONMENT**The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
18 months

The cost of incarceration fee is waived.

☐ The court makes the following recommendations to the Bureau of Prisons:☒ The defendant is remanded to the custody of the United States Marshal.☐ The defendant shall surrender to the United States Marshal for this district:☐ at _____ ☐ a.m. ☐ p.m. on _____.☐ as notified by the United States Marshal.☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:☐ before 2 p.m. on _____.☐ as notified by the United States Marshal.☐ as notified by the Probation or Pretrial Services Office.**RETURN**

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

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Case 1:22-cr-00035-JLS-HKS Document 42 Filed 08/18/22 Page 3 of 7

AO 245B (Rev. 10/19) Judgment in a Criminal Case
Sheet 3 — Supervised Release

ASM/js (7790401)

Judgment—Page 3 of 7DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of: Three (3) years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the court determines in consultation with your probation officer that, based on your criminal record, personal history and characteristics, and the nature and circumstances of your offense, you pose a risk of committing further crimes against another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

Upon a finding of a violation of probation or supervised release, I understand that this court may (1) revoke supervision, (2) extend the terms of supervision, and/or (3) modify the conditions of probation or supervised release. A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

U.S. Probation Officer's Signature _____

Date _____

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant is to participate in a mental health treatment program, including a mental health evaluation and any treatment recommended. The probation officer will supervise the details of any testing and treatment, including the selection of a provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave such treatment until completion or as ordered by the Court. While in treatment or taking psychotropic medication, the defendant shall abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall complete an anger management program. The probation officer will supervise the details of the defendant's participation in the program, including the selection of a provider and schedule.

The defendant shall participate in a program for substance abuse, including substance abuse testing such as urinalysis and other testing, and shall undergo a drug/alcohol evaluation and treatment if substance abuse is indicated by the testing. The probation officer will supervise the details of any testing and treatment, including the selection of a treatment provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave treatment until completion or as ordered by the court. While in treatment and after discharge from treatment, the defendant is to abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit confiscation of any evidence or contraband discovered.

The defendant shall not have any contact, directly or indirectly, including through social media, telephone, text, mail, or email, with the victim, R.G., his family members, or his current or prior places of employment.

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AO 245B (Rev. 10/19) Judgment in a Criminal Case
Sheet 4 — Criminal Monetary Penalties

ASM/js (7790401)

Judgment—Page 6 of 7DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100	\$ 0	\$ 0	\$ 0	\$ 0

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	---------------------	----------------------------	-------------------------------

TOTALS	\$ _____	\$ _____
---------------	----------	----------

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B (Rev. 10/19) Judgment in a Criminal Case
Sheet 5 — Schedule of Payments

ASM/js (7790401)

Judgment — Page 7 of 7

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
The defendant shall pay a special assessment of \$100, which shall be due immediately. If incarcerated, payment shall begin under the Bureau of Prisons Inmate Financial Responsibility Program. Payments shall be made to the Clerk, U.S. District Court (WD/NY), 2 Niagara Square, Buffalo, New York 14202.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate.
---------------------------------------------------------------------------------	--------------	-----------------------------	-----------------------------------------

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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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.	*	August 10, 2023
	*	9:04 a.m.
	*	
LUKE MARSHALL WENKE,	*	CONTINUED SENTENCING ON
	*	VIOLATION OF SUPERVISED
	*	RELEASE
	*	
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., Assistant United States Attorney, Federal Centre, 138 Delaware Avenue, Buffalo, New York 14202, Appearing for the United States.
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For the Defendant:	FEDERAL PUBLIC DEFENDER'S OFFICE By ALEXANDER J. ANZALONE, ESQ., Assistant Federal Public Defender, 300 Pearl Street, Suite 200, Buffalo, New York 14202.
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The Courtroom Deputy:	KIRSTIE L. HENRY
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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
11 (Proceedings commenced at 9:04 a.m.)

12
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:** The United States versus Luke Marshal
20 Wenke, Case Number 22-CR-35. We're here for a continuation of
21 sentencing on a violation of supervised release.

22 Counsel, please state your appearances for the record.

23 **MR. RUDROFF:** Good morning, Your Honor, David Rudroff
24 on behalf of the Government.

25 **MR. ANZALONE:** Good morning, Your Honor, Alexander
Anzalone from the Federal Defenders Office on behalf of
Mr. Wenke. Mr. Wenke is to my left in custody.

THE COURT: Okay. Good morning, counsel.

Good morning, Mr. Wenke.

1 **THE DEFENDANT:** Good morning.

2 **THE COURT:** Okay. Does anyone have anything to talk
3 about before I resume where I left off last week?

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

5 **MR. ANZALONE:** I think just a quick status update that
6 the Court may already be aware of, but Mr. Wenke is scheduled
7 for an appointment at Horizon this morning at 10:30.

8 I provided the address to his father, who is present
9 in the Courtroom and able to provide transportation this
10 morning.

11 The probation has confirmed that the treatment
12 provider has been provided the report from Dr. Rudder, which we
13 certainly hope would -- would and will guide any treatment for
14 Mr. Wenke.

15 **THE COURT:** Okay. Thanks for that update,
16 Mr. Anzalone.

17 The next thing is to pronounce the sentence. If
18 anyone has a different recollection of where we were the last
19 time, say so now, but that's where I left off in my notes.

20 Okay. It is the judgment of this Court that
21 Mr. Wenke's term of supervised release is revoked and he is
22 sentenced to the custody of the Bureau of Prisons for a term of
23 time served.

24 I, in my mind, have shortened the time that Mr. Wenke
25 otherwise would have received to accommodate and to facilitate

1 the treatment.

2 So that's -- at least in terms of thinking about how
3 this was built, it was in reverse from a sentence that would
4 have been longer, to something that's shorter, to accommodate
5 the treatment.

6 Upon -- well, the supervised release term is
7 34 months. And the conditions of supervised release are the
8 following: Within 72 hours, Mr. Wenke shall report in person to
9 the probation office in the district where he is authorized to
10 reside, unless the probation officer instructs you differently.

11 You shall comply with the standard conditions of
12 supervised release adopted by this Court.

13 You shall not commit any crimes under Federal, State
14 or Local law.

15 You shall not possess a firearm, ammunition, or any
16 other dangerous device.

17 You shall not unlawfully possess a control substance.
18 In addition, Mr. Wenke shall participate in a mental health
19 program, including a mental health evaluation and any treatment
20 recommended.

21 The probation officer will supervise the details of
22 any testing and treatment, including the selection of a provider
23 and a schedule.

24 If inpatient treatment is recommended, it must be
25 approved by the Court, unless the defendant consents.

1 He is not to leave such treatment until completion or
2 as ordered by the Court. While in treatment or taking any
3 psychotropic medication, he shall abstain from the use of
4 alcohol and he is required to contribute to the cost of services
5 rendered.

6 This condition serves the statutory sentencing
7 purposes of public protection and rehabilitation.

8 And I also had a note here, and Mr. Anzalone covered
9 that, which is to indicate that his appointment at Horizon is
10 today at 10:30, so that's good.

11 He shall complete an anger management program as well.
12 The probation officer will supervise the details of his
13 participation in the program, including the selection of the
14 provider and a schedule.

15 This condition serves the statutory sentencing
16 purposes of public protection and rehabilitation.

17 Mr. Wenke also shall participate in a program for
18 substance abuse, including substance abuse testing, such as
19 urinalysis and other testing and shall undergo a drug and
20 alcohol evaluation and treatment.

21 If substance abuse is indicated by the testing, the
22 probation officer will supervise the details of any testing and
23 treatment, including the selection of a treatment provider and a
24 schedule.

25 If inpatient treatment is recommended, it must -- I

1 must approve it, unless Mr. Wenke consents and he is not to
2 leave any such treatment until completion or as ordered by the
3 Court.

4 While in treatment and after discharge, he is to
5 abstain from the use of alcohol and he must contribute to the
6 cost of services rendered.

7 This condition serves the statutory sentencing
8 purposes of public protection, deterrence and rehabilitation.

9 Mr. Wenke shall submit to a search of his person,
10 property, vehicle, place of residence or any other property
11 under his control, based upon reasonable suspicion and shall
12 permit confiscation of any evidence or contraband discovered.

13 He shall not have any contact directly or indirectly,
14 including through social media, telephone, text, mail or e-mail
15 with the victim, RG, family members, friends, associates or his
16 current or prior places of employment.

17 This condition serves the statutory sentencing
18 purposes of deterrence, public protection and rehabilitation.

19 The search condition I left it out, but it serves the
20 statutory purposes of public protection, deterrence and as well.

21 To arrive at this sentence, in addition to what I just
22 mentioned earlier about how conceptually I kind of worked in
23 reverse to reduce the number of days or months, if you will,
24 what I did, obviously, was calculate the applicable sentencing
25 guidelines that I mentioned last week when we were here.

1 I considered the nonbinding guidelines, provisions, as
2 well as the sentencing factors and the sentencing statute as
3 limited by 18 U.S.C. 3583(e).

4 I find that the sentence imposed is sufficient, but
5 not greater than necessary, based on the factors, again, in the
6 sentencing statute limited by 3583(e).

7 I'm imposing this sentence for several reasons that
8 include the violation of the Court's trust, also, the need to
9 encourage Mr. Wenke to turn a page and observe all conditions
10 going forward and the need to emphasize that this process,
11 generally, and probation's supervision is a serious matter.

12 In light of these circumstances, obviously, I'm
13 imposing the sentence the way it is to facilitate the treatment,
14 one of the major goals of this sentence.

15 In light of these circumstances, this sentence, as
16 I've said before is sufficient, but not greater than necessary
17 to deter future criminal conduct and protect the public.

18 I've considered the guidelines and I am imposing a
19 sentence below the guidelines, because a guideline sentence
20 would be greater than necessary.

21 Mr. Wenke, I must advise you that you have a right to
22 appeal, including the right to appeal your sentence,
23 particularly if you think the sentence is contrary to law.

24 If you want to appeal, you must file a notice of
25 appeal within, either, 14 days of the judgment or 14 days of any

1 notice of appeal from the Government, whichever is later.

2 If you request, the clerk must prepare and file a
3 notice of appeal on your behalf.

4 If you can't pay the costs of an appeal, you may ask
5 for permission to appeal without paying costs.

6 You have the right to be represented by a lawyer on
7 any appeal. And if you can't afford one, you have the right to
8 have a lawyer appointed to represent you.

9 Is there anything further from the Government?

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

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

12 **MR. ANZALONE:** No. Thank you, Your Honor.

13 **THE COURT:** A judgment for revocation of supervised
14 release will be prepared promptly, on the form prescribed for
15 judgments.

16 Mr. Wenke, I wish you well, and if there's nothing
17 else, we are concluded.

18 **MR. ANZALONE:** Thank you.

19 **THE COURT:** Thank you.

20 **MR. RUDROFF:** Thank you.

21

22 (Proceedings concluded at 9:12 a.m.)

23 * * *

24

25

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

September 29, 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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Case 1:22-cr-00035-JLS-HKS Document 68 Filed 08/14/23 Page 1 of 5

AO 245D (Rev. 11/16) Judgment in a Criminal Case for Revocations
Sheet 1

MGZ/jad (7790401)

UNITED STATES DISTRICT COURT

Western District Of New York

UNITED STATES OF AMERICA

v.

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

Luke Marshall Wenke

Case Number: 1:22CR00035-001

USM Number: 83837-509

Alexander J. Anzalone

Defendant's Attorney

THE DEFENDANT:

☐ admitted guilt to violation of charge(s) _____ of the term of supervision.☒ was found in violation of charge(s) _____ #1 _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
#1	Initiating Contact with the Victim	May 13, 2023

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated charge(s) _____ and is discharged as to such violation(s) charge(s).

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.



August 10, 2023

Date of Imposition of Judgment

Signature of Judge

John L. Sinatra Jr., U.S. District Judge

Name and Title of Judge

Date

AO 245D (Rev. 11/16) Judgment in a Criminal Case for Revocations
Sheet 2— Imprisonment

MGZ/jad (7790401)

Judgment — Page 2 of 5DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001**IMPRISONMENT**The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :
Time Served

The cost of incarceration fee is waived.

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____ .
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on _____ .
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **34 months**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the court determines in consultation with your probation officer that, based on your criminal record, personal history and characteristics, and the nature and circumstances of your offense, you pose a risk of committing further crimes against another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

Upon a finding of a violation of probation or supervised release, I understand that this court may (1) revoke supervision, (2) extend the terms of supervision, and/or (3) modify the conditions of probation or supervised release. A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

U.S. Probation Officer's Signature _____

Date _____

DEFENDANT: Luke Marshall Wenke
CASE NUMBER: 1:22CR00035-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant is to participate in a mental health treatment program, including a mental health evaluation and any treatment recommended. The probation officer will supervise the details of any testing and treatment, including the selection of a provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave such treatment until completion or as ordered by the Court. While in treatment or taking psychotropic medication, the defendant shall abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall complete an anger management program. The probation officer will supervise the details of the defendant's participation in the program, including the selection of a provider and schedule.

The defendant shall participate in a program for substance abuse, including substance abuse testing such as urinalysis and other testing, and shall undergo a drug/alcohol evaluation and treatment if substance abuse is indicated by the testing. The probation officer will supervise the details of any testing and treatment, including the selection of a treatment provider and schedule. If in-patient treatment is recommended, however, it must be approved by the Court unless the defendant consents. The defendant is not to leave treatment until completion or as ordered by the court. While in treatment and after discharge from treatment, the defendant is to abstain from the use of alcohol. The defendant is required to contribute to the cost of services rendered.

The defendant shall submit to a search of his person, property, vehicle, place of residence or any other property under his control, based upon reasonable suspicion, and permit confiscation of any evidence or contraband discovered.

The defendant shall not have any contact, directly or indirectly, including through social media, telephone, text, mail, or email, with the victim, R.G., his family members, friends, associates, or his current or prior places of employment.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

22-CR-35-JLS

LUKE WENKE,

AMENDED ORDER

Defendant.

The defendant, Luke Wenke, pled guilty to Cyberstalking, in violation of 18 U.S.C. §§ 2261A(2)(A) and A(2)(B), whereupon he was sentenced to a term of imprisonment of eighteen (18) months followed by three (3) years of supervised release. The defendant subsequently violated supervised release and was sentenced to a term of imprisonment of time served (85 days in custody) followed by an additional thirty-four (34) months of supervised release. The defendant again violated supervised release, and his sentencing is pending. For the reasons discussed on the record (Dkts. 95, 98, 99, 101, 102, 105, 108, and 109), this Court concludes, under 18 U.S.C. § 3552, that there is a compelling reason for an additional study of the defendant to develop the basis for the defendant's sentence.

Accordingly, it is **ORDERED** that:

(1) Under the provisions of § 3552(c), and in accordance with 5 U.S.C. § 3109 as authorized by § 520.10 of the *Guide to Judiciary Policy*, Vol. 14, Ch. 5, the United States Marshal for this district, in coordination with Probation and Pretrial Services, shall make arrangements for an appropriate and professionally licensed

psychiatrist from the local community, namely Dr. Corey M. Leidenfrost, PhD., to conduct a presentence examination of the defendant.

(2) The United States Probation Office may release and/or disclose the following documents to Dr. Leidenfrost as part of the psychiatric examination:

- a. The Pre-Sentence Report prepared by U.S. Probation for the defendant.
- b. The psychological examination conducted by Dr. Michael Rutter on July 26, 2023.
- c. The Behavioral Threat Assessment produced by the Buffalo Police Department on December 5, 2023.
- d. Various written and social media materials produced by the defendant that encompass the nature of the violations pending before this Court.
- e. Written correspondence received from the victim(s) of the defendant's conduct.

(3) Within thirty days of the date of this Amended Order, Dr. Leidenfrost shall prepare and file a report with this Court with copies provided to the counsel for the defendant and to the attorney for the Government, which shall include:

- a. The defendant's history and present symptoms, including whether the defendant suffers from any mental impairments, diseases, or disorders;
- b. A description of the psychiatric, psychological, and medical tests that were employed and their results;
- c. The examiner's opinions as to diagnosis and prognosis;

d. Findings and recommendations regarding the extent to which the defendant is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another;

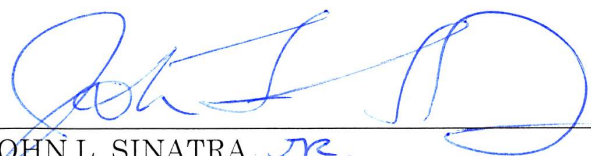
e. Whether the defendant suffers from a mental condition that places him at a risk for adverse outcomes if he is incarcerated; whether incarceration would risk the defendant's psychological deterioration; and, if so, the extent of that risk;

f. Whether an alternative to incarceration tailored to the defendant's mental condition and needs is appropriate, and, if so, an identification of any such available alternative to incarceration; and

g. Any other recommendation the examiner may have as to how the mental condition of the defendant should affect his sentence.

SO ORDERED.

DATED: February 14, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

LUKE WENKE,

Defendant.

22-CR-35-JLS

NOTICE OF MOTION

MOTION BY:

Frank R. Passafiume, Assistant Federal Public
Defender, Attorney for Luke Wenke.

DATE, TIME & PLACE:

Before the Honorable John L. Sinatra
United States District Judge, Robert H. Jackson
United States Courthouse, 2 Niagara Square,
Buffalo, New York 14202, **on date and time to be
set by the Court.**

SUPPORTING PAPERS:

Affirmation of Assistant Federal Public Defender
Frank R. Passafiume, dated July 25, 2024.

RELIEF REQUESTED:

Order for psychiatric examination to determine
competency pursuant to 18 U.S.C. § 4241.

DATED:

July 25, 2024, Buffalo, New York.

Respectfully submitted,

/s/Frank R. Passafiume

Frank R. Passafiume
Assistant Federal Public Defender
Federal Public Defender's Office
300 Pearl Street, Suite 200
Buffalo, New York 14202
(716) 551-3341; 551-3346 (fax)
frank_passafiume@fd.org
Attorney for Luke Wenke

TO: Michael DiGiacomo
Assistant United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

LUKE WENKE,

Defendant.

22-CR-35-JLS

AFFIRMATION

FRANK R. PASSAFIUME, ESQ., affirms under penalty of perjury that:

1. I am an attorney with the Federal Public Defender's Office located at 300 Pearl Street, Suite 200, Buffalo, New York 14202, and I represent the defendant, Luke Wenke, in the instant matter.

2. As the Court is aware, the defense retained an expert psychiatric examiner in anticipation of the October 17, 2024, hearing. The Court thereafter directed the defense file a status report by July 26, 2024.

3. Based on consultations with the expert psychiatric examiner, my investigation of the case, and my observations of Mr. Wenke, I request that a psychiatric examination of Mr. Wenke be conducted pursuant to 18 U.S.C. §§ 4241(a) and 4247(b) as there is reasonable cause to believe that Mr. Wenke is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to assist properly in his defense.

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4. A proposed Order will be submitted separately to the Court.

DATED: July 25, 2024
Buffalo, New York

Respectfully submitted,

/s/Frank R. Passafiume

Frank R. Passafiume
Assistant Federal Public Defender
Federal Public Defender's Office
300 Pearl Street, Suite 200
Buffalo, New York 14202
(716) 551-3341; 551-3346 (fax)
frank_passafiume@fd.org
Attorney for Luke Wenke

TO: Michael DiGiacomo
Assistant United States Attorney

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

22-CR-35 (JLS)

v.

LUKE WENKE,

Defendant.

ORDER

On July 25, 2024, the defense filed a motion requesting that a psychiatric examination of Defendant be conducted pursuant to 18 U.S.C. §§ 4241(a) and 4247(b). *See* Dkt. 140. On July 30, 2024, a status conference was held to address the defense's motion. *See* Dkt. 143.

Based on the proffers from the defense and government at the status conference, and for the reasons set forth in the defense's motion, the Court finds there is reasonable cause to believe that Defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense pursuant to 18 U.S.C. § 4241(a). Accordingly, it is hereby

ORDERED that, pursuant to 18 U.S.C. § 4241(b) and 18 U.S.C. § 4247(b), Defendant undergo a psychiatric examination to determine whether he is presently suffering from a mental disease or defect rendering him mentally incompetent to

the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense; and it is further

ORDERED that, pursuant to 18 U.S.C. § 4247(b), Defendant is committed to the custody of the Attorney General, for placement at a suitable facility closest to the Court, for the purposes of the psychiatric examination; and it is further

ORDERED that, pursuant to 18 U.S.C. § 4247(b), Defendant is committed to the custody of the Attorney General for a reasonable period, not to exceed 30 days, with one reasonable extension of 15 days upon a showing of good cause that the additional time is necessary to observe and evaluate Defendant in order to accomplish the psychiatric examination; and it is further

ORDERED that, pursuant to 18 U.S.C. § 4247(c), a psychiatric report be prepared by the examiner and filed with the Court, with copies provided to counsel for Defendant and the government and that this report shall include:

1. Defendant's history and present symptoms;
2. a description of the psychiatric, psychological, and medical tests that were employed and their results;
3. the name of the examiner(s) and his/her/their qualifications and their findings as to competency to proceed;
4. the examiner's opinions as to diagnosis, prognosis, and whether Defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and the consequences of the proceedings against him or to assist properly in his defense; and,
5. any recommendation the examiner may have as to how the mental condition of Defendant should affect the sentence; and it is further

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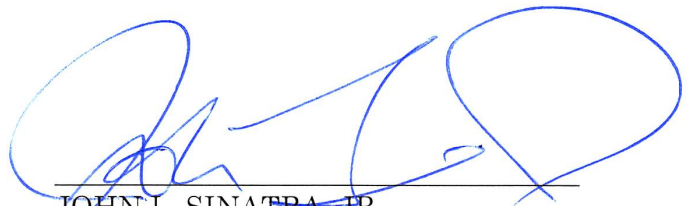
ORDERED that United States Probation is authorized to disclose all materials related to this case, including but not limited to, any and all prior psychiatric reports; and it is further

ORDERED that the United States Marshals deliver Defendant to the suitable facility, to be determined by the Attorney General, as promptly and expeditiously as possible so as to minimize the period during which Defendant must travel; and it is further

ORDERED that sentencing in this case is stayed pending the resolution of Defendant's competency.

SO ORDERED.

Dated: August 6, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *

Docket Number:

1:22-CR-00035-JLS-HKS-1

*

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v.

*

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LUKE MARSHALL WENKE,

EVIDENTIARY HEARING

Defendant.

* * * * *

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

APPEARANCES:

For the Government:

MICHAEL DiGIACOMO,
UNITED STATES ATTORNEY,
By FRANZ M. WRIGHT, 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 D. KUBIAK, 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.

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

9
10 (Proceedings commenced at 1:33 p.m.)

11
12 **THE CLERK:** All rise.

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

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

17 **THE CLERK:** We are on the record in United States
18 versus Luke Marshal Wenke, Case Number 22-CR-35. This is the
19 date set for an evidentiary hearing.

20 Appearing for probation is Matthew Zenger.

21 **MR. WRIGHT:** Good afternoon, Your Honor. Franz Wright
22 for the United States.

23 **MR. PASSAFIUME:** Frank Passafiume and Fonda Kubiak for
24 Mr. Wenke.

25 **THE COURT:** Good afternoon, Counsel and good

1 afternoon, Mr. Wenke.

2 I understand, Mr. Passafiume, that you wanted to be
3 heard at the outset today. So, please --

4 **MR. PASSAFIUME:** Thank you. And I hope it's okay with
5 the Court if Fonda jumps in. Of course, she's got more
6 experience than I do.

7 But the bottom line is, if the goal of the Court is to
8 medicate and possibly force medicate Mr. Wenke, we don't believe
9 a sending him back to the BOP under this statute accomplishes
10 that.

11 And there is a way -- fortunately, if that's the
12 Court's goal, there is a way to do that, and there is a way to
13 follow Dr. Leidenfrost's recommendations locally.

14 And we -- I guess, would like to explore that route,
15 which is a route that none of us knew existed. But after
16 talking with Dr. Leidenfrost, there is a possibility that that
17 could happen.

18 And it would, I think, make everybody happy. It would
19 get the evaluation that Your Honor wants. It would get the
20 medication that Your Honor wants.

21 It would keep Mr. Wenke local with the family support,
22 which I think would be crucial to any type of treatment.

23 And, frankly, sending him back to the BOP, they would
24 have to completely reject their findings and their competency
25 evaluation, and I don't think that's going to happen.

1 I don't think that has ever happened, where you are
2 going to have two different BOP reports saying completely
3 different things.

4 **THE COURT:** They are asking different questions.

5 **MR. PASSAFIUME:** But the questions -- I don't know if
6 they are necessarily different questions, because there is a
7 different goal.

8 But the diagnoses and the observations -- and it is
9 going to be the same. They are going to overlap.

10 **THE COURT:** And I don't, Mr. Passafiume, have any kind
11 of, like, thought process on where things ought to be.

12 I don't have a thought process on whether he ought to
13 be medicated or not. You know what I mean?

14 That's the whole point of the hearing.

15 **MR. PASSAFIUME:** I'm sorry, Judge. Sure.

16 **THE COURT:** And the idea of what has to happen is, I
17 guess, if -- if the case has been made that he's in need of
18 hospitalization, then, I guess, it's their decision to decide
19 what's next. Not mine.

20 **MR. PASSAFIUME:** Sure. And speaking to that point --
21 because he was already found competent -- even if Your Honor,
22 again, adopts Dr. Leidenfrost's report in whole, that -- that
23 says -- you know, there is a chance that Mr. Wenke might need to
24 be force medicated, that's not going to happen at the BOP.

25 They can't -- he's already been found competent.

1 There no *Sell* hearing. There's none of that stuff.

2 So, again, if Dr. Leidenfrost's opinion is Mr. Wenke
3 needs medication, and maybe to be forcibly medicated, that's
4 just not going to happen at the BOP.

5 **THE COURT:** Well, what is this path forward that you
6 think might exist?

7 **MR. PASSAFIUME:** So -- and I would -- if Your Honor
8 wants to hear directly from Dr. Leidenfrost -- I'm sorry to put
9 him on the spot, but, you know, he explained a way where
10 Mr. Wenke could go from jail to the ECMC CPEP unit, where then
11 he could be involuntarily admitted.

12 They would -- they could then, you know, ask -- an
13 attending psychiatrist would be there. Would make a further
14 finding, if there needs medication.

15 Again, what Your Honor is talking about, the attending
16 psychiatrist there would take the next steps.

17 And if, by chance, whatever attending psychiatrist
18 says, you know, Mr. Wenke does not need to be here, he does not
19 need to be medicated, we would know that finding ahead of time,
20 and Mr. Wenke would return to custody.

21 It would be a condition of release that -- that he go
22 directly to the ECMC CPEP and follow all the recommendations.

23 **THE COURT:** So when I sent him to ECMC the last time,
24 was that -- did I use the wrong address or I didn't pick the
25 right doctor's office or what happened?

1 Why didn't that accomplish that goal then?

2 **MR. PASSAFIUME:** That's right, Judge. And I don't
3 know, because Dr. Leindenfrost -- I didn't know that
4 Dr. Leidenfrost had this affiliation with ECMC.

5 You know, that's me. I guess I should have known that
6 and this should have come up earlier.

7 But that's where Dr. Leidenfrost comes in, where he
8 could help facility that.

9 Mr. Wenke just appeared voluntarily there. He wasn't
10 brought there by any law enforcement or ambulance or by anything
11 like that.

12 And he didn't get the evaluation that he would have
13 gotten in that CPEP unit -- that comprehensive psychiatrist
14 program that ECMC has.

15 And there is a way to ensure that he does get that and
16 that he would only be released for that.

17 We would coordinate -- the day of the evaluation would
18 be the day of his release, where they would wait for him to take
19 him in.

20 They would do that evaluation. They make a
21 determination if he needs to be in voluntarily committed.

22 We don't know what's going to happen then, but
23 according to Dr. Leidenfrost, there is a good chance that he
24 would be. And if he's not, he would just come right back.

25 And, again, this happened before, to the custody of

1 his dad and there was no issue. He just didn't get that
2 evaluation that we all wanted.

3 But now that we have Dr. Leidenfrost and we're at this
4 stage of having the proceeding, there is a way to get all that.

5 **THE COURT:** Whose custody is he in while this all
6 happens?

7 **MR. PASSAFIUME:** He would be released to -- with the
8 condition saying that he needs to abide by all the
9 recommendations of ECMC.

10 **THE COURT:** All right. So maybe. But is there any
11 reason why we shouldn't proceed with the hearing anyway, so I
12 can at least get the facts from Dr. Leidenfrost on his opinion,
13 cross-examine it, as you see fit.

14 And then I can perhaps examine the options at that
15 point?

16 **MR. PASSAFIUME:** I don't necessarily think so, Judge.
17 The statute says, shall commit to the custody of the Attorney
18 General.

19 **THE COURT:** If I make the finding, right? I don't
20 have to make the finding just yet.

21 **MR. PASSAFIUME:** No, you don't.

22 **THE COURT:** Right.

23 I don't have to do it on the spot sitting up here. I
24 can do it in writing and think about it for a period of time.

25 **MR. PASSAFIUME:** I guess that's right.

1 **THE COURT:** Otherwise, we are wasting his time having
2 come here ready to testify.

3 **MR. PASSAFIUME:** No. I don't think we would be
4 wasting his time. He could give testimony and I think the
5 questions would be the same as the Government's about the
6 treatment and suitable facility.

7 You know, that's what we have always wanted. That's
8 been the issue the entire time.

9 **THE COURT:** Right.

10 **MR. PASSAFIUME:** It doesn't necessarily need to be a
11 hearing. You know, he can just come in. He can talk to you
12 right now and tell you what that is.

13 You know, as far as -- I'll leave it at that, Judge.
14 If guess you want to call it a hearing, do a hearing that a way,
15 but it would just be everything that I said to you with more
16 specifics coming directly from the doctor.

17 **MR. WRIGHT:** A couple of things, Your Honor. So,
18 first, obviously, the Government has some concerns relating to
19 this proposed release, if the Court would consider that.

20 I think, first, you have a defendant who was examined
21 by Dr. Leidenfrost under this violence risk assessment where a
22 determination was made of the violence that he does present as a
23 result of a mental disease and defect.

24 Relating as well, Your Honor -- so catching up to
25 speed relating to a couple of things. But, for instance, what I

1 expect Dr. Leidenfrost to talk about is, number one, he didn't
2 examine the defendant for competency.

3 There was this determination by BOP where they found
4 him competent. But I expect Dr. Leidenfrost to talk about some
5 differences in opinions relating to that issue specifically as
6 well, Your Honor.

7 So, obviously, the Government has some concerns about
8 the proposed solution, Your Honor. And we'll leave it to the
9 discretion of the Court of how it wants to proceed.

10 **MS. KUBIAK:** Judge, if I could interject --

11 **THE COURT:** Sure, Ms. Kubiak. Give me one second to
12 catch up to both of you. Hold on.

13 Okay, Ms. Kubiak.

14 **MS. KUBIAK:** I just want to clarify a couple of things
15 based upon what the Government just said.

16 As I am aware, the Court has already made a finding
17 reflective to competency. So for the Government to put on
18 Dr. Leidenfrost to refute or dispute that finding is not what I
19 understood the hearing to be. That the hearing was under 4244
20 and a provisional sentence.

21 If we are now relitigating competency, that's a
22 different situation.

23 And as I think Mr. Passafiume is trying to indicate,
24 that 4244 is basically a mechanism in the statute for
25 individuals to not be incarcerated at a Bureau of Prisons

1 medical facility, but to be hospitalized somewhere else.

2 And because he's competent, there wouldn't be that
3 mental -- or there would not be that treatment, because the
4 Bureau of Prisons has found, one, that he is competent.

5 And, two, that he is not suffering from mental disease
6 or defect.

7 So Mr. Passafiume's recommendation is, if the goal is
8 to get treatment, there is a different mechanism.

9 **MR. WRIGHT:** And, Your Honor, just to clarify, this
10 isn't going to be a 4241 hearing or proceeding.

11 The reason I raised that was when the defense argued
12 that because the defendant was previously found competent by
13 BOP, the 4244 proceeding or process wouldn't work, because they
14 wouldn't treat him for a mental disease or defects because they
15 already found him competent.

16 The reason why I raised is that, based on information
17 that possibly Dr. Leidenfrost would talk about, would seek that
18 he be reexamined for competency.

19 **THE COURT:** Okay. Well, look, we're in 4244. We're
20 beyond competency.

21 And I don't think there is anything that happened on
22 the competency evaluation that binds me going forward. I really
23 don't.

24 I read everything that came from BOP the first time
25 around and it is speaking to a different question.

1 So 4244, however, requires the hearing. And it says,
2 if, after that hearing, I find by a preponderance of the
3 evidence. Okay?

4 So I don't have to make any findings if your off ramp
5 is suitable and appropriate. But there is no reason, I don't
6 think, to get this testimony on the record, so that the record
7 exists. And then we can decide whether it's one path or the
8 other at that point.

9 **MR. PASSAFIUME:** Yeah. You have three reports in
10 front of you, Judge. You have both Dr. Leidenfrost and the BOP
11 report.

12 We could --

13 **THE COURT:** I know, but we're here and ready and this
14 is the hearing and he's here.

15 And why would -- why would we stop short of that on an
16 if come that this plan might work?

17 **MR. PASSAFIUME:** That's right. Sure.

18 **THE COURT:** Why not put him on the stand and adjust
19 the statutory requirement of him being here to testify?

20 And then if you want to, while he's here, tell me
21 about this other plan. I'm happy to hear it.

22 **MR. PASSAFIUME:** Sure.

23 **THE COURT:** I've got my thinking cap working. I
24 didn't have it working this morning when you were with me, but
25 it's working now.

1 **MR. PASSAFIUME:** Sure. Your Honor. That's right.

2 The Government just said, though, they are -- you
3 know, Dr. Leidenfrost is going to opine that 4244 wouldn't work.

4 That he would need -- Mr. Wenke being "he" -- a
5 reevaluation of competency and all that stuff, so --

6 **THE COURT:** Yeah.

7 **MR. PASSAFIUME:** -- we're all -- I think we're all on
8 the same page.

9 **THE COURT:** I don't know what any of that means. I
10 really don't.

11 **MR. PASSAFIUME:** Okay. I guess we'll see.

12 **THE COURT:** I really don't. All I know is we're teed
13 up under 4244 here, so I don't know what Mr. Wright is talking
14 about.

15 **MR. PASSAFIUME:** I don't know if I misunderstood what
16 the Government said, though.

17 **THE COURT:** You want to try again?

18 **MR. WRIGHT:** No. This is a 4244 hearing, Your Honor.

19 **THE COURT:** Okay.

20 **MR. WRIGHT:** I was just trying to address the concern
21 relating to, if we proceed with a 4244 proceeding, and the Court
22 renders its decision, that he is in need of a -- of a -- to be
23 hospitalized for treatment --

24 **THE COURT:** Right.

25 **MR. WRIGHT:** -- this whole issue of -- well, BOP has

1 already found him competent, et cetera.

2 That's what I was trying to provide some more insight
3 on, but this is a 4244 hearing, Your Honor.

4 **THE COURT:** Okay. I don't think we're, right now, at
5 cross purposes, so I think we ought to proceed.

6 **MR. PASSAFIUME:** Okay.

7 **THE COURT:** And when we are done listening to the
8 evidence, if you have got any additional evidence, we'll put it
9 on, and we can talk about what our next steps are.

10 I can certainly proceed and write up findings or you
11 can convince me maybe that isn't what I should do. I should sit
12 on the evidence for a moment and I should consider an
13 alternatively off ramp, if you will. I'm certainly happy to do
14 that.

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

16 The Government calls Dr. Corey Leidenfrost.

17 **THE COURT:** Please remain standing for a moment.

18 **THE CLERK:** Can you raise your right hand?

19
20 **COREY LEIDENFROST,**

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

23
24 **THE WITNESS:** I do.

25 **THE CLERK:** Thank you. Have a seat.

1 Can you please state your full name and spell it for
2 the record?

3 **THE WITNESS:** Sure. Corey Leidenfrost. C-O-R-E-Y
4 L-E-I-D-E-N-F-R-O-S-T.

5 **THE COURT:** Mr. Wright.

6 **MR. WRIGHT:** May I proceed, Your Honor?

7 **THE COURT:** Yes.

8
9 **DIRECT EXAMINATION BY MR. WRIGHT:**

10
11 **BY MR. WRIGHT:**

12 Q. Good afternoon, Dr. Leidenfrost.

13 A. Good afternoon.

14 Q. Where do you work?

15 A. I work for a university psychiatric practice, which is part
16 of the UB department of psychiatry.

17 Q. Where did you go to undergrad -- undergraduate school?

18 A. City of Brockport.

19 Q. What did you receive your degree in?

20 A. I have a Bachelor's Degree in Psychology and a Master's
21 Degree in Psychology.

22 Q. Did you receive any further education after that?

23 A. Yes. After my undergrad, I went to SUNY Brockport and got
24 a Master's Degree in Psychology. And then I went to Walden
25 University and got a PhD in Psychology.

1 Q. Do you have any licenses in the psychology as well?

2 A. Yes. I'm a licensed psychologist in New York State.

3 Q. Are you a member of any boards and organizations as well?

4 A. Yes.

5 Q. Can you explain some of them?

6 A. American Psychological Association, the American
7 Psychological Law Society, and the Society for Personality
8 Assessment.

9 Q. Okay. Do you have experience handling forensic
10 examinations?

11 A. Yes.

12 Q. Okay. These are psychological forensic examinations?

13 A. Yes.

14 Q. Can you provide some examples of the types of forensic
15 examinations you have provided in the past?

16 A. Yes. Mostly many, many competency evaluations in New York
17 State. I've conducted sex offender and violence risk
18 assessments.

19 I've done cases regarding mental health mitigation for
20 sentencing. I've done Domestic Violence Survivor Act cases.

21 Q. You mentioned competency examinations. Is that referred to
22 as a 4241 examination as well?

23 A. Yes. 730 in New York State, but, yes.

24 Q. Okay. But Federally it's a 4241 examination?

25 A. Yes.

1 Q. Okay. What about -- have you ever heard the expression a
2 4244 examination?

3 A. Yes. I've heard of it.

4 Q. I'm sorry, 4244 examination.

5 A. Yes.

6 Q. And what is that?

7 A. I believe that is potentially need for treatment, due to
8 mental illness.

9 Q. Okay. And you mentioned conducting violence risk
10 assessments?

11 A. Yes.

12 Q. And what are those?

13 A. So that is making a determination, usually using some sort
14 of structured tool to provide an opinion about somebody's risk
15 for future violence and imminent violence.

16 Q. Okay. And based on the type of forensic examination that
17 you are doing, are there types of different psychological
18 assessments that you use, depending on which one you examine?

19 A. Yes.

20 Q. Okay. So based on your experience, is it fair to say that
21 you have experience diagnosing various types of mental illness?

22 A. Yes.

23 Q. I'd like to just define some terms for the Court, so we can
24 have some context.

25 Can you provide a definition of delusions?

1 A. Yes. A delusion is a strongly held belief that an
2 individual has that is not true and it is not congruent with an
3 individual's culture, religion, political affiliation.

4 Oftentimes, delusions can occur by themselves, as part of a
5 delusional disorder or they often occur as part of a different
6 psychiatric illness.

7 Q. And the definitions that you are using, are these
8 psychiatric definitions?

9 A. Yes.

10 Q. These are definitions that are generally accepted in your
11 field?

12 A. Yes.

13 Q. Okay. Related to delusions, are there different types of
14 delusions?

15 A. Yes.

16 Q. Can you explain some examples?

17 A. Yes. Some of the most common are paranoid, persecutory,
18 grandiose, erotomaniac.

19 Q. What are some symptoms that you look for when you are
20 considering diagnosing someone for delusions, for instance?

21 A. For a delusion, I'm curious about what the belief is and
22 how the person came to believe what they believe.

23 As I mentioned, the need to evaluate whether this belief
24 system is congruent with something in the culture or religion or
25 political affiliation.

1 A key differentiation between delusion and overvalued ideas
2 or extreme beliefs is oftentimes the idiosyncratic nature of the
3 belief.

4 Meaning that, this person's belief deviates from what is
5 common in the culture. I can give an example, if that's
6 helpful.

7 Q. Sure.

8 A. Say I believe that there are vampires after me. They're in
9 my house. They're in my walls and I'm scared and I maybe start
10 chopping the walls apart to find the vampires. That would be
11 delusion.

12 That is something only I hold. It is idiosyncratic to me.
13 It's causing functional problems.

14 Versus an overvalued idea. An example would be people who
15 believe that the earth is flat. That is not a delusion, because
16 it's a strongly held culture belief.

17 It's strongly held, even though there is facts to suggest
18 that is not true. People continue to believe it.

19 But because there is large groups of believe that believe
20 it, it is not delusion. It's an overvalued idea.

21 Q. Mania, how would you define mania?

22 A. So mania is a mood episode. And what is really significant
23 about this is, when people have a manic episode, they have a
24 marked change of their personality and behavior. So they are
25 acting in ways that are not typical to them.

1 People that have manic episodes, it's not usual for them to
2 suffer from depression or hypermania beforehand, which is a less
3 severe type of mania.

4 Mania is characterized by abnormal and persistent
5 alterations of a person's mood. They are elevated, expansive or
6 irritable.

7 But there's also a significant change to the person's
8 activity and energy levels.

9 Q. Okay.

10 A. There is seven symptoms. You need three symptoms to
11 diagnose.

12 Symptoms include, like, reduced need for sleep,
13 distractibility, pressured speaking, engaging in behavior that
14 has a high potential to be dangerous or ruinous to the person,
15 they keep engaging in it even with negative consequences.

16 Q. Okay. A couple more. Psychosis?

17 A. So psychosis is a broad term for different symptoms, which
18 would include hallucinations, delusions, disorganization of
19 one's thoughts, disorganized behavior or catatonic behavior or a
20 series of negative symptoms.

21 Q. Okay. Bipolar I disorder?

22 A. So bipolar I means, an individual has experienced at least
23 one episode of mania in their life time. That's all you need,
24 is evidence the person experienced a manic episode.

25 They may have experienced a depressive episode as well, but

1 the key component is experience of the manic episode symptoms
2 lasting for at least a week.

3 Q. What are some examples of those symptoms?

4 A. Yeah. Like I mentioned, the decreased need to sleep,
5 destructibility, more talkative than usual or pressured speech.

6 Increased in goal-oriented activity or psychomotor
7 agitation, engaging in behavior that's dangerous or reckless.

8 Q. Are you familiar with a term, a
9 psychoactive schizoaffective?

10 A. Yes.

11 Q. What is that?

12 A. So, we'll get in the weeds a little bit, I apologize, but
13 I'll break it down.

14 With psychiatric illnesses, neurobiologically what's
15 happening in the brain is very similar. So illnesses can look
16 very similar to each other.

17 Schizoaffective disorder is very similar to bipolar
18 disorder. And what happens is, somebody experiences symptoms of
19 a major mood disorder, like bipolar and at the same time they
20 are experiencing psychotic symptoms.

21 It would often seem like schizophrenia, so they co-occur.
22 And on top of that, there is periods of time where the person
23 does not have major mood symptoms, but they continue to be
24 psychotic for at least two weeks.

25 Q. Okay. Are you familiar with the defendant, Luke Wenke?

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Corey Leidenfrost, PhD. - Wright/Direct

21

1 A. Yes.

2 Q. Okay. And when did you first meet him?

3 A. January of 2024.

4 Q. And why was that?

5 A. I was approached and asked to conduct an evaluation to
6 determine whether he was dangerous, due to a mental disease or
7 defect.

8 Q. Did you end up meeting him in person at some point?

9 A. Yes.

10 Q. And when was that?

11 A. Late January, 2024.

12 Q. Okay.

13 A. Or was that -- I'm sorry. It was in March. It was March.
14 I'm sorry.

15 Q. If I say it was around, like, March, 2024 --

16 A. Yes.

17 Q. And we'll take a step back. Where did this examination
18 occur?

19 A. I believe it was Orleans County Jail.

20 Q. Okay. And what was the reason for you meeting with him at
21 that time?

22 A. It was part of the process to conduct a violence risk
23 assessment, but also to determine whether he had a mental
24 disease or defect.

25 Q. And what is a violence risk assessment?

1 A. So that has a number of steps, which involve use of some
2 sort of standard decision-making tool to guide.

3 Doing a violence risk assessment, it often includes
4 conducting an interview and then reviewing whatever evidence I
5 can get my hands on; treatment records, medical records,
6 letters, social media, whatever -- as much information as one
7 can gather.

8 Q. Okay. And here you conducted that initial evaluation in
9 person, with the defendant?

10 A. Yes.

11 Q. Okay. And at some point did you issue a report relating to
12 your findings?

13 A. Yes.

14 **MR. WRIGHT:** Okay. May I approach, Your Honor?

15 **THE COURT:** Yeah.

16 **BY MR. WRIGHT:**

17 Q. I'm showing you what's been marked as Government Exhibit 1.

18 A. Thank you.

19 Q. I'll have you take a look at that. Are you familiar with
20 that document?

21 A. I am.

22 Q. And what is that?

23 A. That is my report that I generated on April 1st, 2024,
24 based upon my meeting with him on March 5th, 2024 -- Mr. Wenke.

25 Q. Is that document a fair and accurate representation of the

1 report that you filed -- or submitted?

2 A. Yes.

3 **MR. WRIGHT:** Your Honor, I would like to move it into
4 evidence. I know the Court has reviewed this, but just for the
5 record's sake.

6 **THE COURT:** Any objection?

7 **MR. PASSAFIUME:** No, Judge. We can stipulate to all
8 the reports. That's fine.

9 **THE COURT:** All right. Exhibit 1 is admitted.

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

11 **GOVT. EXH. 1 UNDER SEAL**

12

13 **MR. WRIGHT:** And the report will remain under seal,
14 Your Honor? I know there's some --

15 **THE COURT:** All right. So just work through that
16 issue with Ms. Henry.

17 So Exhibit 1 under seal.

18 **MR. WRIGHT:** Will do, Your Honor. Thank you.

19 **THE COURT:** All right.

20 **BY MR. WRIGHT:**

21 Q. Dr. Leidenfrost, can you provide some examples of the
22 sources of information that you used as part of your evaluation
23 of the defendant from this April -- March, 2024 time period?

24 A. Yes. I was provided with over a dozen letters to the Court
25 from Mr. Wenke. I was provided segments of information from

1 social media, including X, Twitter, Facebook.

2 I located articles completed by local news sources. I was
3 provided with the piece -- presentence investigation.

4 I reviewed a report from Dr. Rutter. I believe it was
5 completed around July 2023. And then used a risk assessment
6 tool.

7 Q. Okay. You mentioned a report from Dr. Rutter. Was that a
8 psychological report assessment?

9 A. Yes.

10 Q. And was that focused on the violence risk assessment or was
11 it something different?

12 A. If I remember correctly, it was evaluating a presence of
13 mental health concerns.

14 Q. Okay. And do you recall what the diagnosis was from that
15 report?

16 A. Unspecified bipolar disorder, hypomania and borderline
17 personality traits, I believe.

18 Q. Okay. You mentioned reviewing letters as well?

19 A. Yes.

20 Q. What are some examples of the letter that you reviewed?

21 A. These are letters that Mr. Wenke wrote addressed to the
22 Court, specifically. I think most of them were to Your Honor.

23 Q. Okay. Were there letters from other individuals as well?

24 A. Yes. There was a letter from KB.

25 Q. Okay. Are you familiar with the psychological evaluation

1 assessment tool, History, Clinical and Risk Management 20,
2 Version 3?

3 A. Yes.

4 Q. What is it?

5 A. So that is a well regarded and probably, if not the most
6 popular violence risk assessment tool in the world.

7 It is a standard decision-making tool to help one guide in
8 making an opinion about somebody's risk for violence.

9 Q. Okay. And when is this tool usually used?

10 A. This tool is used, A, somebody is in a correctional
11 facility or a psychiatric hospital, considering the person for
12 release and making plans about this person's risk for violence.

13 It is also used prior to sentencing to make determinations
14 about somebody's risk for violence that may guide what happens
15 in court.

16 Some are also used as a treatment tool to help come up with
17 treatment tool to manage somebody's violence risk.

18 **MR. PASSAFIUME:** Judge, a quick objection to the
19 testimony regarding the violence part of this.

20 I don't believe that -- we're here for the
21 determination of whether Mr. Wenke has a mental disease or
22 defect, not whether he's violent.

23 That is a separate proceeding. We would object to the
24 testimony regarding the violence assessment.

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

1 **MR. WRIGHT:** Your Honor, the violence assessment ties
2 into the mental disease and defect conclusion that
3 Dr. Leidenfrost is going to discuss of how he reached that
4 conclusion, which is tied to later on his second evaluation that
5 he did in January, 2025. So it's all tied together, Your Honor.

6 **THE COURT:** I don't disagree, Mr. Passafiume, with you
7 in terms of what the statute requires.

8 But there is -- in my view, it's part of his thought
9 process, so I'm going to allow it.

10 Overruled.

11 **BY MR. WRIGHT:**

12 Q. So I'm just going to briefly have you discuss, what are you
13 examining when you do this history, clinical and risk management
14 evaluation?

15 A. So it includes static and dynamic risk factors. So there
16 is ten potential risk factors in the history item. Those are
17 the static items, so risk factors that do not change.

18 There is five items in the clinical section and those are
19 dynamic. So these are risk factors that should change.

20 And the remaining five are the risk management factors.
21 These are things to consider if this person's being released in
22 the community, what are the things that you should be concerned
23 about in managing their violence risk and that may contribute to
24 the violence risk.

25 Q. We don't have to go through all ten, but for the first

1 portion, the static portion, is that like the historical items
2 portion?

3 A. Yes.

4 Q. And can you just provide a brief description of what items
5 you are looking for? That aspect of it?

6 A. So these include history of evidence of mental health
7 problems, history of personality issues, adherence to mental
8 health treatment or adherence to other efforts of supervision in
9 the past.

10 Q. Okay. And for that static portion, is that the clinical
11 scale? Is that another term for that portion?

12 I mean -- I'm sorry, dynamic portion, I should say. The
13 dynamic aspect of it --

14 A. Is the clinical.

15 Q. -- for the clinical portion?

16 A. Yes. The five items in the clinical are the dynamic. And
17 there are -- many of them are similar to the history items, but
18 the time frame is different. It is right now and recently
19 versus history.

20 Q. Okay. And this HCR Version 3 -- 20 Version 3, this is a
21 common accepted -- I'm sorry -- commonly accepted assessment
22 tool in forensic examinations?

23 A. Yes.

24 Q. Okay. So I would like to turn your attention to that
25 examination that you did with Mr. -- with the defendant.

1 Can you talk about, kind of, the process that you went
2 through and what you recall of that examination?

3 A. So the risk assessment involves extensive data collection,
4 including an interview.

5 And there -- for each risk factor, there is a manual that
6 lays out how you are supposed to score each item.

7 You make a determination whether the risk factor is present
8 for the individual and then a determination of whether that risk
9 factor is relevant for the person you are evaluating.

10 So the interview, collateral information, the letters --
11 again, all the data that I have, using the definition for each
12 item, I'm seeing whether there is enough data to support that
13 item as present, or probably present, or not present.

14 And then whether that data supports whether that risk
15 factor is a relevant one to this person's violence risk, from
16 low, moderate or high.

17 Q. Okay. Relating to your examination of the defendant, what
18 were some items that you discussed and what do you recall
19 relating to the defendant's interaction with you during that
20 evaluation?

21 A. So particularly was the evaluation for a mental disease or
22 defect, and that was an item in the history, and also an item in
23 the clinical.

24 So does the person show evidence of having mental illness
25 in the past and do they currently show evidence of mental

1 illness.

2 So that was guided by my interview with the defendant,
3 observations during that interview, along with review of all the
4 other information, the letters to the Court, social media, to
5 establish that history. And then the interview is establishing
6 the present mental health issues.

7 Q. Okay. Were there certain discussions that you had or that
8 the defendant had with you about certain specific individuals?

9 A. Yes.

10 Q. And can you provide some context to the Court of those
11 discussions and why those discussions were important in your
12 overall examination?

13 A. So to go to my concerns, how I reached that there is
14 paranoid, persecutory and grandiose delusions, namely the
15 paranoid and persecutory, was the defendant's fixation on
16 particular individuals.

17 I'm know we're going to avoid full names. I'm just going
18 to use initials.

19 Particularly this belief regarding RT, and how he spoke
20 about RT, and the behaviors that were associated with that,
21 including traveling 14 hours straight to a different state to
22 rescue the individual, after not really knowing the individual,
23 spending about two weeks with the person.

24 Based upon the available data, I came to believe there is
25 erotomantic delusion for RT.

1 That is based upon -- the definition of erotomaniac delusion
2 is believing that another individual is infatuated and in love
3 with you, and there are outside forces at play trying to prevent
4 you from realizing that relationship.

5 So that infatuation is there. The defendant told me his
6 belief that RT is infatuated with him. And I believe that is
7 imported in collateral information as well.

8 He also believes that there are forces, including the
9 courts, BT, KV, RG, they are all working to prevent that
10 relationship from being realized.

11 The paranoid persecutory is -- what I found peculiar in
12 that preoccupation, particularly with KV. He used to be a
13 friend of the defendant.

14 And in her letters to the Court, she talked about that the
15 defendant had a personality behavior change at some point, I
16 think around 2019, 2020.

17 And he's fixated on her, which is clear -- clear based upon
18 social media, the letters and his statements.

19 It was difficult to get him to talk about much of anything
20 else other than these individuals. Believing that KV is
21 breaking into his home, is posting his personal information on
22 the Internet.

23 Something to do with a car that I never quite figured out
24 what was occurring. And to the degree that she sought an Order
25 of Protection and expressed to the Court she was so afraid she

1 was considering changing her name and changing her appearance.

2 What I found peculiar then was -- there is a term called
3 loose associations, where you take information and you connect
4 them together, but they don't really connect.

5 So the defendant's belief that somehow RG is involved with
6 KV; that KV was working for RG, even those these are individuals
7 that, to my knowledge, have no prior knowledge of each other.

8 And his reasoning for why that was true was, well, she was
9 looking for work.

10 Then this association with BT, which is, I believe, the
11 father of RT, to the degree he sought an Order of Protection
12 because he was harassing him.

13 And then his, I think, admitted harassment of RG leading to
14 an Order of Protection, through over sentimental e-mails,
15 voicemails, showing up at the office, just clear fixation.

16 But also believing that RG was setting up false profiles on
17 apps to communicate with the defendant, which he insisted he
18 knew was true because he felt like the writing was consistent.

19 So these are just some of the examples that I thought
20 contributed to delusional thinking.

21 Q. Okay. You mentioned this initial -- or person, RT, related
22 to this discussion of delusion and the fixation aspect of it
23 that you discussed earlier.

24 Were there any -- can you discuss the interaction with
25 psychic mediums and how that played in?

1 A. So, when I evaluate whether somebody has a delusion, I want
2 to look at how they know this is true, like what's supporting
3 it.

4 And one thing that the defendant indicated was, a second
5 medium told them they are destined to be together.

6 And that in itself is not problematic. You know, there are
7 people that believe in psychics. People that believe in
8 spiritualism, so that can be a culturally congruent brief.

9 But that belief in context, with all the other things that
10 I mentioned that he believes ties him to RT makes it a delusion.

11 So even though part of is culturally congruent, taking that
12 belief that a psychic told you you're going to be together with
13 somebody -- like, even people that go to psychics have some
14 discernment.

15 Just don't take it blindly. Particularly, this is a person
16 that he didn't know for more than two weeks.

17 Q. Relating to this issue of your review, you also reviewed
18 items from Facebook pictures.

19 What did you find there, like from Facebook, relating to
20 weapons or anything like that?

21 A. So in particular, I looked at a Facebook page called Olean
22 War Zone, which I believe Mr. Wenke started in July of 2020.
23 That group is still active. A couple thousand members.

24 I found a picture that showed Mr. Wenke apparently with
25 members of the Boogaloo Boys and he was holding what appeared to

1 be an assault rifle.

2 Q. Okay.

3 A. And I think, to add context to that, there is corroboration
4 in other documentation that the Boogaloo Boys supplied him with
5 a weapon in Minnesota, in 2020.

6 Q. What -- one thing I would like to discuss with you as well
7 is, in your report you mention this issue of problems with
8 insight?

9 A. Yes.

10 Q. So let me ask you this: As part of your HCR-20 Version 3
11 psychological evaluation, what did you mean by this reference of
12 problems with insight?

13 A. So with that item, there is a history item and a clinical
14 item that has to do with insight that's relevant here. There
15 are three areas you are looking at insight about.

16 Does the person have insight about their mental health
17 problems?

18 Does the person have insight about the violence they have
19 committed?

20 And do they have insight about their need for treatment?

21 So I evaluated those three areas and I had concerns about
22 all three areas.

23 Q. Okay. And from your interaction with the defendant, can
24 you provide some specific examples of what problems of insight
25 you found, based on your interaction with him?

1 A. So with the problems of mental health, I brought up
2 Dr. Rutter's report and that diagnosis of bipolar disorder.

3 And during the interview, I give him feedback about some
4 symptoms that I thought I saw. And he denied that bipolar was
5 an accurate diagnosis for him and insisted he didn't have a
6 history of mental health concerns.

7 With the violent insight, I brought up that it was clear he
8 was scaring the hell out of people. And I thought there was
9 a -- not an acknowledgement of the degree of fear he was causing
10 for particular individuals that we've been talking about.

11 And then as far as need for treatment, we talked about --
12 you know, he had been ordered to receive mental health treatment
13 as a condition of release.

14 And I think at one period, he didn't receive it -- didn't
15 seek it. And then in 2023, I think he did seek anger management
16 with Horizons, but he was clearly resentful about it and didn't
17 think that he needed treatment.

18 So I had concern about his belief that he could benefit
19 from treatment as well. Believing -- insisting that there is
20 nothing wrong with him.

21 Q. Okay. And based on all of this information and your
22 evaluation, you created what's called a violence risk
23 formulation?

24 A. Yes.

25 Q. Can you explain that to the Court?

1 A. That's one of the last steps, when you complete the HCR-20
2 Version 3, is this formulation.

3 That's when you are telling the story of this person's
4 violence risk. You are explaining how you made your
5 determination, what are your sources of data and why you are
6 going to make the conclusions that you are making.

7 Q. And for that conclusion that you made, you rendered a
8 diagnosis, correct?

9 A. Yes.

10 Q. And what was that diagnosis?

11 A. Bipolar I disorder with psychotic features.

12 Q. And explain.

13 A. Versus schizoaffective disorder bipolar type.

14 Q. Okay. Explain to the Court the interaction between your
15 diagnosis and this violence risk assessment as well.

16 A. Yes. I believe that all of this seemed to start -- as far
17 as the legal troubles, is this belief about RT and the
18 erotomaniac delusion.

19 Because it seems a lot of this behavior we're talking about
20 expanded from there. Going after RG, because he felt he didn't
21 do a good enough job defending RT. And then somehow it expanded
22 to KV and then it expanded to BT.

23 And so those delusions and the symptoms of mania, which I
24 think was clouding his judgment, making him disinhibited,
25 impulsive, engaging in behavior that had a high risk of being

1 harmful, which he did over and over again, I thought those
2 symptoms were one of the main factor that's driving his violence
3 risk.

4 Because he's clearly delusion. Clearly has some mood
5 symptoms. He's experienced those symptoms at least since 2020,
6 2019. And they have been untreated.

7 The main treatment for bipolar schizoaffective is some sort
8 of psychiatric medication. That hasn't happened.

9 So that is my concern, is the symptoms are present. They
10 haven't been treated. They really seem to be fueling his
11 violence risk.

12 Q. Okay. And in summary, related to your opinion on his
13 violence risk, what did you find?

14 A. So there is three determinations for the HCR. For
15 determination of whether a person poses a risk for future
16 violence, I thought he was a high risk.

17 There is a determination for risk for causing future
18 serious physical injury. I thought he was a high risk.

19 And then a determination for imminent risk of violence. I
20 thought he was a high risk.

21 Q. And these risks of violence in the future, the risk of
22 serious physical harm, the risk of imminent violence, this is
23 all based on the mental disease or defect determination that you
24 made?

25 A. That is one of the main drivers. There are other risk

1 factors. That is the risk factors I'm most concerned about.

2 Q. Okay. So I would like to turn your attention to the
3 January, 2025 forensic examination. And this one I will just
4 show you.

5 **MR. WRIGHT:** Your Honor, I'm just to approach with
6 Government's Exhibit 2.

7 **THE COURT:** Okay.

8 **BY MR. WRIGHT:**

9 Q. Dr. Leidenfrost, did you have a chance to review Government
10 Exhibit 2?

11 A. Yes.

12 Q. And what is that?

13 A. It is the report I generated on January 13, 2025.

14 Q. And this is a report of your examination with the
15 defendant?

16 A. Correct.

17 Q. And is that report a fair and accurate representation of
18 the report that you submitted?

19 A. Yes.

20 Q. Okay.

21 **MR. WRIGHT:** Similar, Your Honor. I would just like
22 to move that into evidence under seal.

23 **THE COURT:** No objection?

24 **MR. PASSAFIUME:** No objection.

25 **THE COURT:** All right. Under seal, it's admitted,

1 Government's Exhibit 2.

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

3 **GOVT. EXH. 2 UNDER SEAL**

4
5 **BY MR. WRIGHT:**

6 Q. So relating to the January, 2025 examination, provide some
7 context to the Court about what you are asked to do in that
8 examination.

9 A. So I was approached about whether I could provide an
10 opinion whether the defendant required treatment in an
11 appropriate facility and whether I can make that determination
12 or if I needed to see him again.

13 And since it had been almost a year since my last
14 evaluation, I needed to see him again.

15 So given that question, whether I could offer that opinion,
16 I agreed to do that with the agreement that I needed to see him
17 again, to see if -- how he was doing now, to update essentially
18 that report from last year and his current mental condition.

19 Q. And tell us more about that interaction relating to you
20 meeting with the defendant.

21 A. Yep. So I met with him remotely in January for about an
22 hour. But, also, I was provided letters to the Court, including
23 this Court and other judges, along with the BOP report.

24 Q. Okay. And did you review similar items to what you did in
25 the April, 2024 examination?

1 A. Yes. Along with a -- so the sources of the data from that
2 first report were relevant, but then updated, based upon the
3 current interview, and then the dozens of letters that I was
4 provided to update my report.

5 So, really, it gave me a nice timeline of how he was doing
6 in January when I met him, but also an idea of his mental state,
7 as demonstrated through those letters, going all the way back to
8 the last time I saw him in early 2024.

9 Q. Okay. And as part of your report, did you review a Bureau
10 of Prisons examination?

11 A. I did.

12 Q. Okay. And we'll come back to that as well, but let's focus
13 on your report and examination first.

14 What was your updated diagnosis after your second
15 evaluation with the defendant?

16 A. Schizoaffective disorder, bipolar type.

17 Q. Can you say again?

18 A. Yes. Schizoaffective disorder, bipolar type.

19 Q. Okay. I'll have you define that later on, but take us back
20 to that interaction you had with him.

21 How was it different from the previous interaction? How
22 was it similar? Can you explain a little bit more?

23 A. It was very similar. In fact, before I could explain
24 consent, like why I was meeting with him, what my goal was, what
25 I was going to do with the information, he immediately started

1 talking about some of these individuals we spoke about before,
2 right off the bat.

3 I had to stop him to be able to finish consent, informing
4 him what the purpose was.

5 And similar to the first interview, very often he seemed
6 fixated on KV. And particularly KV and RG, talking about KV
7 over and over again.

8 I would repeatedly have to redirect him back on topic. I
9 would ask a question, he would diverge to talk about something
10 else. I would have to bring him back and then he would diverge.

11 But, really, there was evidence of the delusional beliefs,
12 which is oftentimes marked that the person has a difficult time
13 talking about anything else, because they are so consumed by
14 this belief, it's hard for them to shift to other topics.

15 And that was apparent, again, in this meeting in January.

16 Q. And you mentioned you found a diagnosis. What was your
17 diagnosis from this January, 2025 interview or evaluation?

18 A. Schizoaffective disorder, bipolar type.

19 Q. And what does that mean?

20 A. So it is very similar to bipolar disorder, where somebody
21 experiences symptoms of a major mood disorder, such as bipolar
22 disorder, and at the same time they have psychotic symptoms such
23 as delusions.

24 But, for a period of at least two weeks, the person just
25 experiences psychotic symptoms and does not have significant

1 mood symptoms at the same time.

2 And so that was based upon this idea of his presentation
3 and the review of the letters, where I wasn't convinced that
4 symptoms of mania are always present.

5 They seem to ebb and flow based upon the tone of those
6 letters. But the psychotic symptoms seem to be present all the
7 time.

8 The psychotic symptoms, the delusions seem to be present
9 all the time. I'm not convinced the mood symptoms are always
10 present. That's why I landed on schizoaffective disorder.

11 Q. In your January, 2025 evaluation, did you have the same
12 concerns relating to delusions and mania and paranoia at that
13 same time as well?

14 A. Yes.

15 Q. Similar to the August -- I'm sorry. Similar to the April,
16 2024 evaluation as well?

17 A. Yes.

18 Q. Okay. And you've rendered an opinion as a result of your
19 examination in January of 2025?

20 A. Yes.

21 Q. And what was your opinion?

22 A. That given the current symptoms of a serious mental illness
23 or mental disease or defect, and that the symptoms of a mental
24 disease or defect still significantly contribute to a violence
25 risk, the defendant would benefit from receiving treatment in an

1 appropriate facility.

2 Q. Okay. What about this issue of insight? Can you provide
3 some further information relating to the defendant's insight?
4 Were there any changes to his insight?

5 A. None that I observed.

6 Q. Okay. You mentioned in your report that the defendant is
7 in need of treatment that includes the use of a psychiatric
8 medication -- or use of psychiatric medication such as one with
9 antipsychotic action.

10 What do you mean by that?

11 A. So I need to qualify, I'm a psychologist. I cannot
12 prescribe medication. I think that's important to point out.

13 I have done inpatient psychiatric work for over ten years
14 and I am familiar with the American Psychiatric Association's
15 guidelines for treatment of bipolar and schizoaffective.

16 And they make it clear, first line treatment for those
17 disorders is antipsychotic medications.

18 Q. Okay. And just a couple more things.

19 I'm going to show you Government's Exhibit 3.

20 **MR. WRIGHT:** Your Honor, if I may?

21 **THE COURT:** Yes.

22 **BY MR. WRIGHT:**

23 Q. Dr. Leidenfrost -- I'll give you a second to review.

24 Dr. Leidenfrost, what's in front of you?

25 A. This is the competency evaluation report from the BOP dated

1 in November of 2024.

2 Q. Okay. And this was something that you reviewed as part of
3 your January, 2025 evaluation?

4 A. Yes.

5 Q. Okay. And you said that's a competency evaluation.
6 That's -- to be clear, that's different from what you were asked
7 to examine or look at in January of 2025?

8 A. Correct.

9 Q. And similarly in April of 2024 as well?

10 A. Correct.

11 Q. Okay. You mention in your report having some disagreements
12 on a couple of points in the competency evaluation.

13 Can you just explain those differences and their importance
14 in your overall diagnosis relating to the defendant's need to
15 be -- need for -- need to be in custody or for treatment in a
16 suitable facility?

17 A. Yeah. My disagreement is how they derived a diagnosis.
18 They laid out -- the individuals that wrote this laid out their
19 thought process pretty well and how they reached their
20 diagnosis. I disagree with the arguments that they put forth.

21 One, they argued that the defendant could not have a manic
22 episode, because they argued there wasn't evidence of a clear
23 change in personality or behavior. I disagree.

24 I think there is evidence to suggest a marked change of
25 personality behavior sometime around 2019, 2020, based upon one

1 of the things I have discussed before.

2 They also seem to argue that it couldn't be a manic episode
3 because of the time frame of how long these symptoms lasted.

4 There is no time frame. The minimum is one week. There is
5 no outer limit. I've worked with individuals who have
6 experienced these symptoms for years without treatment, so there
7 is no outer limit how long they can last.

8 The second prong is their argument that his beliefs are not
9 delusional. And, curiously, they only focused on the erotomaniac
10 delusion for RT, arguing it can't be a delusion because the
11 defendant has beliefs consistent with spiritualism, including
12 going to Lily Dale, which is a spiritualist community south of
13 here.

14 Therefore, since that is a culturally congruent belief, it
15 can't be a delusion.

16 I agree, spiritualism is a culture congruent belief.
17 People going to go psychics, people follow that advice.

18 However, it ignores the other evidence that support the
19 presence of an erotomaniac delusion that I talked about a little
20 while ago in my testimony.

21 Namely, insisting that RT is infatuated with him, insisting
22 that if you do a Google search, the results prove they are
23 destined to be together.

24 Insistent that individuals under Orders of Protection
25 oftentimes end up together and believing that outside forces,

1 including the Court, is preventing him from being together with
2 RT. The BOP report didn't address those other facts.

3 Q. And you mentioned the psychic portion of it as well. And
4 that ties back to the discussion relating to the psychic from
5 April of 2024 examination that you did.

6 Is that a fair assessment?

7 A. Yeah. He indicated that he had talked to a psychic medium
8 who told him they were meant to be together.

9 And that was part of this evidence that he was meant to be
10 with RT, despite family members having an Order of Protection,
11 despite him sitting in prison. It is incongruent.

12 So to me, it raised beyond a culturally congruent belief to
13 something that was idiosyncratic for the defendant.

14 Q. And that's an example of a delusion?

15 **MR. WRIGHT:** Give me a second, Your Honor.

16 **THE COURT:** Is Exhibit 3 getting moved into evidence?

17 **MR. WRIGHT:** Yes, Your Honor. I would like to move
18 Exhibit 3 into evidence.

19 **MR. PASSAFIUME:** No objection.

20 **THE COURT:** All right. Under seal, Exhibit 3 is
21 admitted.

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

23 **GOVT. EXH. 3 UNDER SEAL**

24

25 **MR. WRIGHT:** Just one more question, Your Honor.

1 **BY MR. WRIGHT:**

2 Q. As part of your opinion, you rendered an opinion that the
3 defendant would likely refuse to voluntarily take psychiatric
4 medication.

5 Is that part of your analysis in why he should be -- is in
6 need of custody, care, treatment at the suitable facility?

7 A. Yeah. That is part of my concern.

8 **MR. WRIGHT:** Okay. Nothing further, Your Honor.

9 **THE COURT:** Okay.

10 Mr. Passafiume --

11 **MR. PASSAFIUME:** Thank you, Judge.

12
13 **CROSS EXAMINATION BY MR. PASSAFIUME:**

14
15 **BY MR. PASSAFIUME:**

16 Q. Hi, Dr. Leidenfrost.

17 A. Hello.

18 Q. We kind of ended on the BOP diagnosis, so I'm going to
19 start there.

20 A. Sure.

21 Q. Their diagnosis was other specified personality disorder,
22 right?

23 A. Yes.

24 Q. And that disorder is diagnosed when there are multiple,
25 like, traits of multiple disorders?

1 A. Yes.

2 Q. And the BOP identifies three of these personality disorders
3 in their report?

4 A. I'll take your word for it. It sounds reasonable.

5 Q. Narcissistic personality disorder, that would be one of
6 them, right?

7 A. I remember that, yeah.

8 Q. And some of the traits for that would be patterns of
9 grandiosity or grandiose -- however you pronounce it?

10 A. Yes.

11 Q. It would be the need for admiration?

12 A. Yes.

13 Q. Being self-centered?

14 A. Yes.

15 Q. Having an exaggerated self image?

16 A. Yes.

17 Q. Lack of empathy?

18 A. Yes.

19 Q. The other personality disorder, the next one, is borderline
20 personality disorder, right?

21 A. Yes.

22 Q. And traits for that disorder is -- could be instability
23 with relationships?

24 A. Yes.

25 Q. Instability with emotions?

1 A. Yes.

2 Q. And impulsivity?

3 A. Yes.

4 Q. The third disorder they mention is autism spectrum
5 disorder.

6 Are you familiar with that?

7 A. Yes.

8 Q. Some of the traits for that disorder would be difficulty
9 in -- with social communications and interactions?

10 A. Yes.

11 Q. And it would be difficulty understanding social norms?

12 A. Yes.

13 Q. It would be, you have an abnormal approach to the social
14 norms?

15 A. Potentially, yes.

16 Q. Okay. Unable to have back and forth conversations like
17 this?

18 A. That's not true.

19 Q. No?

20 What about the ability to understand the perspective of
21 others?

22 A. Potentially, yes.

23 Q. Okay. And fixation on interests?

24 A. Yes.

25 Q. And that's a -- there is -- it's a repetitive pattern of

1 behavior with that personality disorder?

2 A. Autism is not a personality disorder.

3 Q. Autism spectrum disorder.

4 A. Yes. It's not a personality disorder. It's a separate
5 diagnosis.

6 Q. Sorry.

7 A. Yeah.

8 Q. Sounds good.

9 The treatment for these is generally psychotherapy,
10 correct?

11 A. Yes.

12 Q. And there is different types of that therapy?

13 A. Yes.

14 Q. Psychoanalytical? Is that one?

15 Dialectical. I don't know if I'm pronouncing that -- is
16 that one?

17 A. Yeah. Dialectical behavior therapy.

18 Q. And cognitive behavioral therapy.

19 A. Yes.

20 Q. I've heard of that. Medications are not generally used to
21 treat these disorders and autism?

22 A. They are often used, yes.

23 Q. They are?

24 A. Uh-huh.

25 Q. It's not to treat specifically the disorder. It's to treat

1 the symptoms of other -- like anxiety or depression; isn't that
2 right?

3 A. Yeah. That's fair.

4 Q. And the BOP says -- and I wonder if you agree, that these
5 are -- I'm not saying that Mr. Wenke -- I'm not saying you agree
6 with the BOP diagnosis -- but these traits are unlikely to
7 change in the future if somebody has these disorders?

8 A. Unless the person gets treatment.

9 Q. Okay. Gets treatment.

10 A. Autism is not going to go away.

11 Q. Okay.

12 A. But with personality pathology, there is really good
13 treatment, you can expect the person to improve.

14 Q. With, like, therapy, for example?

15 A. Yes.

16 Q. Okay. You have an affiliation with ECMC, right?

17 A. Through contract.

18 Q. Can you explain that a little bit?

19 A. So I work for University Psychiatric Practice. Because it
20 is part of UB Department of Psychiatry. We have a contract with
21 ECMC to provide psychiatric and psychological services in the
22 hospital.

23 Q. Does the term "chief of transitions" mean anything?

24 A. Yes. It's one of my titles.

25 Q. One of your titles?

1 Could you explain what a chief of transition is?

2 A. So transitions is the inpatient psychiatric unit I work on.
3 We're a psychiatric intensive care unit.

4 We work with patients who are at high risk for violence or
5 aggression due to symptoms of serious mental illness. I've been
6 the unit chief on that unit for ten years.

7 Q. And ECMC, it's a hospital-based emergency psychiatric
8 service, correct?

9 A. Part of what they have -- right. The comprehensive
10 psychiatric emergency program or CPEP.

11 Q. CPEP. And it's actually one of the biggest ones in New
12 York State, isn't it?

13 A. Yes.

14 Q. They provide emergency mental health services?

15 A. They provide emergency evaluation.

16 Q. And those emergency evaluations could lead to extended
17 observations?

18 A. Yes.

19 Q. Future assessments?

20 A. It can lead to -- right, being extended observation or
21 admission psychiatrically to an acute inpatient unit.

22 Q. And they make their own evaluation and treatment
23 recommendations?

24 A. Correct.

25 Q. And those recommendations obviously are dependent on the

1 symptoms, right?

2 A. Yes.

3 Q. And examples of those would be residential treatment --
4 residential inpatient treatment?

5 A. Are we talking about CPEP and the determinations?

6 Q. After the fact.

7 A. After the fact?

8 Q. Yeah. After they had been evaluated.

9 A. Yes. Part of the discharge plan could be a residential
10 facility.

11 Q. Would be outpatient treatment?

12 A. Yes.

13 Q. And, again, those all depend on the severity of the
14 symptoms?

15 A. Yes.

16 Q. Okay. Let's go into your diagnosis a little bit here.

17 A. Sure.

18 Q. Yours was very different than the BOP diagnosis?

19 A. Yes.

20 Q. And you diagnosed Mr. Wenke with the schizoaffective
21 disorder?

22 A. Yes.

23 Q. And you need certain traits or characteristics to make that
24 diagnosis, right?

25 A. Yes.

1 Q. And one would be the delusions?

2 A. It can be, yes.

3 Q. Right. You need to have at least two of the following, but
4 one of the first three, is that what you're meaning?

5 A. Yeah. There is different ways of getting to the diagnosis.

6 Q. But here, applying it here would be the delusions?

7 A. Yes, you're right. That's what's relevant here.

8 Q. And organized speech, I think, is one of them?

9 A. It can be, yes.

10 Q. And treatment for this is usually medication, right?

11 A. Yes.

12 Q. And people come into ECMC and are treated with this
13 disorder?

14 A. Yes.

15 Q. Is that frequently?

16 A. Yes.

17 Q. And you guys have -- I don't want to say, you guys.

18 In your work with ECMC, they have the -- an adequate
19 support structure to receive these individuals, evaluate and
20 treat them?

21 A. Yes.

22 Q. Do they make recommendations of future treatments?

23 A. Yes.

24 Q. Did they arrange the transition from being at ECMC into
25 future treatment?

1 A. Yes.

2 Q. There is never really a period where somebody would miss
3 out on treatment in between the transition?

4 **MR. WRIGHT:** Objection. Your Honor, relevance.

5 **THE COURT:** Overruled.

6 You can answer.

7 **THE WITNESS:** Are you meaning while they are in the
8 hospital?

9 **BY MR. PASSAFIUME:**

10 Q. Sure. So if somebody leaves the hospital --

11 A. Yeah.

12 Q. -- and they are supposed to be to outpatient, they are
13 going to leave the hospital with enough medication until the
14 outpatient starts?

15 A. Right. Yes. I got you, yes.

16 Q. And before we get to more specifics of the delusions and
17 disorganized speech, I want to talk about how you got to that
18 diagnosis.

19 You talked about your sources of your assessment on direct
20 examination, right?

21 A. Yes.

22 Q. And, right? All the various reports? Letters? All of
23 that stuff, right?

24 A. Yes.

25 Q. It is different than what the BOP used, right?

1 A. Can I look at the report?

2 Q. Yes. Well, actually, I'll withdraw that and make it
3 easier.

4 A. Yeah.

5 Q. You didn't speak to any individuals regarding Mr. Wenke,
6 aside from the e-mails that we all exchanged?

7 A. No.

8 Q. You didn't speak to his mom?

9 A. No.

10 Q. His dad?

11 A. No.

12 Q. Any prior counselors?

13 A. No.

14 Q. Any of the victims in this case?

15 A. No.

16 Q. Would you classify those as collateral information?

17 A. Yes.

18 Q. And you talked a little bit about collateral information
19 before. And that information is helpful when making a
20 diagnosis, right?

21 A. Yeah.

22 Q. It could shed more light on the timeline of the symptoms?

23 A. Yeah.

24 Q. It could have insight into additional symptoms?

25 A. Yeah.

1 Q. And when you gave -- you gave Mr. Wenke that HCR
2 assessment, right?

3 A. Yes.

4 Q. And there is -- there is a manual to that that kind of
5 tells you how to do it, right?

6 A. Yes.

7 Q. And the first step is to gather information?

8 A. Yes.

9 Q. And that -- again, that information, not only is it used to
10 give you a better understanding, it makes sure that the
11 information you do have is accurate?

12 A. Yes.

13 Q. An inaccurate information would lead to skewed results as
14 far as a diagnosis?

15 A. Yes.

16 Q. And another difference -- well, you did not review this
17 research paper titled: Differentiating Delusional Disorder from
18 the Radicalization of Extreme Beliefs?

19 A. I'm quite familiar with it, yes.

20 Q. You didn't use that in this report specifically?

21 A. I didn't cite it, but I'm well aware of it. I've received
22 training in it and I train others about it.

23 Q. Okay. And you saw Mr. Wenke on two occasions, right?

24 A. Correct.

25 Q. And in an ideal world you would want to observe a patient

1 more than those two times, right?

2 A. I mean, that's not usually reasonable for these types of
3 evaluations.

4 Q. But the BOP evaluated him from September of 2024 to
5 November of '24.

6 If you had the same, would you -- if you could switch
7 places and evaluate him from September to November, would you?

8 **MR. WRIGHT:** Objection. Speculation.

9 **THE COURT:** I'll let him answer it. Overruled.

10 **THE WITNESS:** Sure.

11 **MR. PASSAFIUME:** All right.

12 **BY MR. PASSAFIUME:**

13 Q. And during that time, those months, the BOP routinely
14 visited Mr. Wenke?

15 A. I don't know if they did.

16 Q. From the report?

17 Okay. All right. Let's get into some of the delusions
18 here. The first one is this grandiose, paranoid and persecutory
19 delusion.

20 And you specifically reference that Mr. Wenke thought he
21 was a public figure and a former chairman of the Libertarian
22 Party of Cattaraugus County?

23 A. Yeah.

24 Q. Are you aware that Mr. Wenke was a former chairman of the
25 Libertarian Party of Cattaraugus County?

1 A. Yeah.

2 Q. And you also referenced two articles about Mr. Wenke in
3 your report. And, specifically, it's the Tap Into article?

4 A. Yes.

5 Q. And one from the wellness -- or Wellsville Sun?

6 A. Yeah. It sounds familiar.

7 Q. And both of those articles discuss Mr. Wenke's history in
8 public office.

9 A. Yes.

10 Q. And are you aware that he actually ran for county coroner
11 in 2019?

12 A. I don't remember if I knew that or not. Maybe.

13 Q. And you believe that the BOP is wrong when they don't
14 consider this a delusion?

15 A. Well, they frame it differently. They're putting it
16 under -- I don't think they disagree that it's an inflated sense
17 of self.

18 I'm putting that under a symptom of mania versus their
19 conceptualization that it's narcissist personality, because
20 there is other information that went into that sense of
21 grandiose.

22 I mean, those things are true. I know he also told BOP
23 that his case was the foundation for grandparents' rights in New
24 York State. I don't know if it's true or not. If it's not
25 true, it's clearly grandiose.

1 But also this fixation that his case is going to go all the
2 way to the Supreme Court.

3 Q. You are aware that Mr. Wenke actually appealed his original
4 conviction?

5 A. I wouldn't be surprised.

6 Q. Let's get into these psychic medium and psychic beliefs.

7 Did you ask him to elaborate on what he meant when he was
8 referring to psychic mediums and to spiritual things like that?

9 A. What do you mean?

10 Q. Did you ask him, why do you believe that stuff?

11 A. No.

12 Q. So you weren't aware that these spiritual psychics have
13 been common in his life? This belief?

14 A. I'm not sure when I became aware of that.

15 Q. You are not aware that his family went to Lily Dale, which
16 is a community for psychics and mediums often, right?

17 A. Yeah. I don't think I knew that when I first saw him.

18 Q. So you weren't aware that this belief system was normal --
19 normative in his life?

20 A. I mean, he believed that psychics were a thing. So, yes, I
21 understood this was a norm for him.

22 Q. Let's talk about KV.

23 A. Okay.

24 Q. We've -- we've singled her out as a big part of the
25 diagnosis, right?

1 A. One of the delusions, yes.

2 Q. Right. You talk about her extensively when you are
3 discussing Mr. Wenke's delusions?

4 A. Yes.

5 Q. And the updated report, the second one that you have, I
6 think you referenced her almost the entirety of the report,
7 right?

8 A. Yes.

9 Q. And it is this fixation -- delusional fixation that
10 Mr. Wenke has on KV, right?

11 A. Yes.

12 Q. And she indicated that she suffered a psychological harm in
13 one of the letters.

14 Do you remember?

15 A. Yes.

16 Q. And I think you testified that in one of the letters she
17 also said that she considered changing her name and appearance
18 to escape Mr. Wenke?

19 A. Yes.

20 Q. And you give some of these -- some examples of these
21 delusions. And the first one is that Mr. Wenke insisted that KV
22 made a website and posted all of his paperwork?

23 A. Yes.

24 Q. Are you aware that there is a website?

25 A. I don't know.

1 Q. Luke Wenke Online is not familiar to you?

2 A. No.

3 Q. So you are not aware that KV has created a blog that
4 documents every single one of Mr. Wenke's court appearances?

5 A. Okay.

6 Q. You are not aware of that?

7 A. No.

8 Q. You are not aware that she has posted every single court
9 document that's been listed on the public docket?

10 A. Okay.

11 Q. All right. You are not aware that she summarizes each --
12 each court proceeding and kind of gives her opinion of what's
13 going on?

14 A. Okay.

15 Q. You are not aware that this website has -- you know,
16 altered pictures that poke fun or ridicule Mr. Wenke?

17 A. Yeah. I don't know.

18 Q. You don't know that she also posts Mr. Wenke's letters and
19 actually transcribes them in those pages?

20 A. Okay.

21 Q. All right. You are not aware that she identifies herself
22 and actually gives reasons why she is doing it --

23 A. No.

24 Q. -- or created this?

25 And on one of the pages -- so you are not aware -- she says

1 she knows and does not care that this would make Mr. Wenke,
2 quote, mad?

3 A. Okay.

4 Q. All right. Did how come you didn't know this -- the
5 website existed?

6 A. I didn't know it existed.

7 Q. Did you look for it?

8 A. I did look for things he told me about, yes. And I
9 couldn't find it.

10 Q. Did you Google Luke Wenke?

11 A. Most recently, I don't remember if I specifically Googled
12 that.

13 I think I did, because I was looking for other things that
14 he had referenced when I talked to him.

15 Q. Did you Google Luke Wenke and KV?

16 A. I don't think so.

17 Q. Is there a reason why you didn't do that?

18 A. I don't know.

19 Q. You verified -- or tried to verify, other information in
20 your report, right?

21 A. Yes.

22 Q. You did -- you did other Google searches, right?

23 A. Yes.

24 Q. You saw other materials?

25 A. Yes.

1 Q. Yes?

2 A. I'm sorry, yes.

3 Q. But you didn't do this Google search?

4 A. No.

5 Q. Are you aware that she updates it regularly, with the last
6 one being February 17th?

7 A. I don't know.

8 Q. Okay. It's a very extensive website.

9 Let's go to the second example of a delusion involving KV.

10 And it's about how Mr. Wenke believes she stole his car and
11 wants her charged with stealing her car, right?

12 A. Yeah.

13 Q. Did you do any investigation about that?

14 A. No.

15 Q. Did you call me at all when you -- in preparing this
16 evaluation?

17 A. No.

18 Q. You didn't want -- you didn't want my opinion or my history
19 with Mr. Wenke?

20 A. You were welcome to reach out. You approached me.

21 Q. That's right. That's true. That's true.

22 And to be fair, you didn't call the Government either,
23 right?

24 A. I spoke to them.

25 Q. Before you did the evaluation?

1 A. Again, you all reached out to me. I asked for all the
2 information that you had available.

3 Q. Okay. So you weren't aware that an investigator from our
4 office actually delivered Mr. Wenke's keys to Miss Valentine
5 back in 2022?

6 A. You didn't tell me.

7 Q. I did not tell you.

8 Would that impact whether you believe that she stole his
9 car is a delusion?

10 A. Maybe.

11 Q. All right. The next example is this -- that KV left a
12 negative Yelp review at Mr. Wenke's mother's restaurant?

13 A. Yes.

14 Q. Again, you didn't call me, but I didn't reach out to you.
15 So you are not aware that Mr. Wenke's mother believes that it
16 was KV?

17 A. Okay.

18 Q. And that she sent messages to Mr. Wenke's father regarding
19 this Yelp review alleging that it was KV, right?

20 A. No.

21 Q. You are had not aware of that?

22 And if -- if his mom -- if Mr. Wenke's mom told Mr. Wenke
23 this, that she believes KV left a negative Yelp review, and then
24 he tells you that, is that still a delusion?

25 A. Not necessarily.

1 Q. And that's because it's -- it comes from his mother, a
2 trusted source, that he believes?

3 A. If there is some accuracy.

4 Q. Okay. How much accuracy do you need or does it vary?

5 A. I mean, it varies because with delusion, a lot of it can be
6 grounded in reality and other parts are not.

7 People become paranoid for a reason. Oftentimes real
8 things happen that contribute to the paranoia. Or they get into
9 legal trouble and then things comes out about them that further
10 fuels the paranoia. It becomes this reciprocal thing that
11 happens sometimes.

12 Q. That makes sense. The next delusion is that, I had a
13 screaming match with KV.

14 A. That may or may not have happened. That's obviously not a
15 delusion. He's brought that up a lot.

16 Q. Well, you brought it that up in your delusion analysis.

17 A. That's more about his fixation with KV.

18 Q. All right. Did -- again, you didn't e-mail me saying, did
19 this actually happen?

20 A. Again, I asked for all the information available from
21 everybody involved when you approached me.

22 Q. That was before you prepared the evaluation though,
23 obviously, right?

24 A. What do you mean?

25 Q. The information that we provided to you was before you

1 prepared the initial evaluation?

2 A. Right. Right.

3 Q. So you are not aware that something like that actually did
4 happen?

5 A. I don't deny that it did.

6 Q. You are not aware that we, meaning an investigator from my
7 office and myself, attempted to contact KV?

8 A. I don't know.

9 Q. You are not aware that she became irate on the phone?

10 A. No.

11 Q. You are not aware that then she hung up the phone on us
12 before we could respond?

13 A. I don't know. You didn't tell me.

14 Q. I didn't tell you. That's right.

15 Let's talk a little bit about treatment. And this is going
16 to be a loaded question, but what would your treatment plan be
17 for Mr. Wenke if you were his doctor?

18 A. I'm a psychologist. I would have to approach it like a
19 psychologist. I cannot prescribe medication.

20 Q. Perfect. So as a psychologist, in your vast experience,
21 right, you have worked with psychiatrists a lot, what would your
22 plan be?

23 A. I mean, if I had someone who was presenting with
24 schizoaffective disorder and the symptoms are acute, meaning
25 that they are active and going on right now, they're actively

1 manic, they're actively psychotic, I cannot do psychotherapy
2 with them until they are stabilized.

3 And then at that point, when the symptoms have decreased,
4 then I can come in and do treatment.

5 Q. And in order to do that, Mr. Wenke would have to be
6 observed by you and the psychiatrist?

7 A. I mean, to make a determination whether medication is
8 prescribed would be up to medical doctors.

9 Q. Medical doctors.

10 And, again, you would need to assess him to see what kind
11 of psychotherapy would be appropriate as well?

12 A. Which I would do after the symptoms have stabilized more.

13 Q. And this is something that the ECMC, the CPEP unit, could
14 do -- the initial assessment?

15 A. Well, they are going to make a determination whether
16 somebody is eligible for admission to a psychiatric service.

17 Q. And with somebody that has disorder -- this disorder, being
18 given a social worker would be a benefit to that person, right?

19 A. It may be.

20 Q. Do you work with social workers at ECMC?

21 A. Yeah.

22 Q. And what about family -- family support?

23 A. It's crucial, family support.

24 Q. It's crucial?

25 A. Uh-huh.

1 Q. And what about the environment of the initial evaluation?
2 What is -- how is it like in CPEP?

3 A. I'm sorry to laugh. It can get very full and very busy and
4 chaotic, but there is, like, a large open room with chairs and
5 beds where people are kept until they can be evaluated by a
6 psychiatrist to make the determination whether they are --
7 should be admitted psychiatrically or not.

8 Q. That's not ideal, right?

9 A. No.

10 **MR. WRIGHT:** Your Honor, I'm just going to object
11 here, relevance. I know we're focused on the 4244 proceeding,
12 now we're going into future treatment.

13 **THE COURT:** Right. Let me -- we're going to take a
14 quick bathroom break in any event.

15 Mr. Passafiume, are you done with cross-examination
16 specifically as to 4244 topics?

17 Are we now going to move into evaluating the ECMC
18 option, if you will?

19 I think it's okay to do that. I just want to know if
20 we're demarking --

21 **MR. PASSAFIUME:** I have some more stuff I want to
22 address, like the danger as well.

23 **THE COURT:** Okay. Can we hold on the ECMC stuff until
24 the very end of your examination?

25 **MR. PASSAFIUME:** Sure.

1 **THE COURT:** Unless it substantially alters your
2 presentation.

3 **MR. PASSAFIUME:** I have no flow, Judge.

4 **THE COURT:** Let's hold and do that at the end.
5 Right now let's take five minutes, something like
6 that, to refresh, okay?

7 **MR. PASSAFIUME:** Thank you.

8 **THE COURT:** Okay.

9 (Discussion off the record.)

10 **(Recess commenced at 3:07 p.m., until 3:15 p.m.)**

11 **THE COURT:** Okay. In case you are not getting back to
12 the delusions concept, I have a question on my own, let's put it
13 in here.

14 Reliance, Dr. Leidenfrost, or belief in psychic medium
15 is not a delusional thing you said at the beginning, correct?

16 **THE WITNESS:** It depends, yeah.

17 **THE COURT:** Okay. So that's my question. Maybe you
18 anticipated where I'm going.

19 You mentioned in this case it was evidence of a
20 delusion when the psychic says that he and RT are destined to be
21 together. In your view, in this instance, it is delusional.

22 Why is it delusional sometimes and not in others?

23 **THE WITNESS:** It's in context with other information.
24 So if it was just that all by itself, the person sees psychics,
25 concurrent to the belief that spiritualization is a thing and

1 you can talk to dead people, and they were told, I'm destined to
2 be with this person, okay. That's all right.

3 But in context with his other behavior and other
4 beliefs, it goes into looking for evidence to support this
5 belief that they are destined to be together. That's one part
6 of it.

7 But along with this idea of a Google search proves
8 that they are going to be together; this idea that even though
9 there is an Order of Protection, that's not going to prevent it;
10 insisting that RT is infatuated with him, after they knew each
11 from what I can gather only two weeks; believing that people are
12 conspiring to be against him.

13 But then going after RG that led to all these legal
14 troubles, clearly believing that he failed to justify this
15 campaign of stalking, harassment, in context with of all of
16 that, does the psychic stuff by itself, not a problem.

17 In context with those other behaviors and beliefs, it
18 goes to that context of a delusion. That it's idiosyncratic to
19 him.

20 He took it way beyond what an ordinary person would if
21 they talked to a psychic medium.

22 **THE COURT:** Mr. Passafiume --

23 **MR. PASSAFIUME:** Thank you.

24 I'll start there.

25 **BY MR. PASSAFIUME:**

1 Q. Mr. Wenke knew RT, right?

2 A. Yeah.

3 Q. They met online?

4 A. Yes.

5 Q. They met in person as well?

6 A. Yes.

7 Q. Did you ever hear of the expression love at first sight?

8 A. Yes.

9 Q. All right. The relationship with RT itself is not a
10 delusion, it's the extent of it -- or what the extent that
11 Mr. Wenke believes?

12 A. Yes.

13 Q. Okay. What if -- and we're talking about context. And you
14 just mentioned RG. And one of the examples with RG is this
15 e-mail that -- that Mr. Wenke sent to him.

16 Do you remember that?

17 A. I think there was 76 e-mails.

18 Q. Sure. You cite -- you cite parts of one e-mail or two
19 e-mails, right?

20 A. I believe so.

21 Q. Like, for example, the one he sent in January of 2002 where
22 Mr. Wenke says, men respect each other after a fight, right?

23 A. Yeah.

24 Q. That he would take a steel chair to Mr. -- to RG's face?

25 A. Yes.

1 Q. And that the fight will happen?

2 A. Yes.

3 Q. The -- there is context to that e-mail. You are aware that
4 RG was emailing Mr. Wenke?

5 A. I don't know.

6 Q. Are you aware that during that same conversation RG
7 e-mailed Mr. Wenke and called and said, quote, you are a weak
8 human being?

9 A. I wasn't provided that information.

10 Q. And -- and then challenged Mr. Wenke to a fight. And if he
11 wanted to fight, he should come to Minneapolis?

12 A. I wasn't aware. I wasn't provided that information.

13 Q. This information came from the original PSR. You were
14 provided that, right?

15 A. Yes.

16 Q. More kind of in this context -- so if the website is real,
17 the website is geared to harass Mr. Wenke.

18 There was some incidents regarding the car. There was a
19 negative Yelp review. And psychics were part of Mr. Wenke's
20 life. That is all true.

21 Does that alter -- or could that alter your diagnosis?

22 A. It could.

23 **THE COURT:** Could it alter your conclusion about
24 whether he needs to be in care for treatment and hospitalized
25 for treatment? Separate question.

1 **THE WITNESS:** No. There are many other symptoms that
2 support.

3 Again, I have worked with many people with mental
4 illness that have lots of things grounded in reality. It doesn't
5 mean that they are not having symptoms of a mental illness.

6 **BY MR. PASSAFIUME:**

7 Q. The delusions, though, is crucial for your diagnosis for
8 the schizoaffective disorder?

9 A. Yes.

10 Q. And you put these examples of delusions in your report for
11 a reason, right?

12 A. Yes.

13 Q. They were the examples that you relied on?

14 A. Yes.

15 Q. Let's -- before the ECMC stuff, let's go through that HCR.

16 This is a structured professional judgment assessment,
17 right?

18 A. Yes.

19 Q. I did my homework. And it's an evidence-based approach
20 that combines empirically validated tools with professional
21 judgment?

22 A. Yes.

23 Q. And the version for me is, the results can vary depending
24 on who the evaluator is?

25 A. They shouldn't.

1 Q. They shouldn't, but judgments -- reasonable people can
2 disagree on something?

3 A. I mean, the way that the test is constructed is to make it
4 as objective as possible. If you follow the rating criteria,
5 you should have interrelated reliability.

6 Q. The criteria is evaluated by the doctor conducting that
7 assessment?

8 A. It's based upon the definitions provided in the manual.

9 Q. But it's -- I'm belaboring here -- but it's the evaluator
10 that makes a determination of whether a symptom is present.

11 How relevant it is, right?

12 A. Right. Ultimately, the professional is making that
13 determination.

14 Q. Okay. For this assessment, again, the first step is to
15 gather information, right?

16 A. Yes.

17 Q. And, you know, that collateral information could be from a
18 number of sources, right?

19 A. Yes.

20 Q. Especially for this kind of assessment.

21 You didn't speak to any of Mr. Wenke's family, right?

22 A. No.

23 Q. You didn't speak to his dad?

24 A. No.

25 Q. Didn't speak to his mom?

1 A. No.

2 Q. You didn't call me. I didn't call you either.

3 A. No.

4 Q. All right. You didn't reach out to any of his prior
5 counselors?

6 A. No. I had treatment records.

7 Q. Did you reach out to any authors of any assessments or
8 reports that you relied on?

9 A. No.

10 Q. For example, the threat assessment, are you familiar with
11 that?

12 A. Yeah.

13 Q. You indicate that it was completed by Endeavor Health
14 Services staff, right?

15 A. Yeah.

16 Q. Why do you think it was completed by Endeavor Health
17 Services staff?

18 A. Whatever was indicated on the paperwork.

19 Q. That paperwork doesn't have an author. But are you -- so
20 you are not aware that was actually completed by a police
21 officer?

22 A. Okay.

23 Q. You weren't aware of that?

24 A. No.

25 Q. It was not done by a mental health professional.

1 A. Okay.

2 Q. And that -- there is no formal name for that threat
3 assessment, like HCR or anything like that?

4 A. I don't know.

5 Q. It's not a standard, widely-accepted assessment, the one
6 that you saw?

7 A. I don't know.

8 Q. You have never seen it before?

9 A. No. It doesn't mean it's -- doesn't -- it's not based upon
10 something.

11 Q. But in your experience, you have never seen that threat
12 assessment that you reviewed for this case?

13 A. In that format? No.

14 Q. Okay. Let's go through -- and, again, just like the
15 Government, I'm not going to go through all of the -- all the
16 factors.

17 I'm going to just talk about the ones that you deemed
18 relevant -- high relevance. Is that okay?

19 A. Okay.

20 Q. For the violence -- and we already discussed it, you -- you
21 cite and you back it up with those e-mails with RG, right?

22 A. Yes.

23 Q. That went into your determination that this factor is
24 present?

25 A. Yes.

1 Q. You also rely on KV's self reporting?

2 A. Yes.

3 Q. That she was having so much psychological harm that she
4 considered changing her name and moving?

5 A. Yes.

6 Q. Same person that has this website?

7 A. Apparently.

8 Q. The next factor, the other antisocial behavior.

9 A. Okay.

10 Q. For this you cite this 2018 incident, where Mr. Wenke is
11 carrying a street sign down the road?

12 A. Yes.

13 Q. That he was charged with marijuana possession in 2020?

14 A. Yes.

15 Q. And that he sent unwanted text messages?

16 A. Yes.

17 Q. None of these contacts with law enforcement resulted in any
18 arrest or charges, to your knowledge?

19 A. I thought the possession of marijuana did.

20 Q. Okay. Correct. I'm sorry.

21 The text messages and the street sign?

22 A. I don't know.

23 Q. Okay. The next is Mr. Wenke's alleged involvement with the
24 Boogaloo Boys.

25 A. Okay.

1 Q. You admit in your report that the extent of that
2 involvement is not clear?

3 A. Right.

4 Q. And you make a claim that they supplied him with a -- with
5 a gun in 2020?

6 A. Yes.

7 Q. That was five years ago, two years before the original
8 offense in 2022.

9 A. Okay.

10 Q. And there is no known allegation that that weapon was ever
11 recovered or found?

12 A. I don't know.

13 Q. No probation officer has told you he has seen it or she has
14 seen it?

15 A. Correct.

16 Q. There is no other report regarding that weapon?

17 A. No. Not that I know of.

18 Q. Okay. The next factor is this mental -- major mental
19 disorder factor.

20 You make it relevant -- or you say it's relevant that you
21 know the onset of the symptoms?

22 A. I'm not sure. That's speculation.

23 Q. Well, you testified that it was important that you knew
24 that these symptoms started around 2019 or 2018.

25 A. That's what I think based on the available information.

1 Q. Well, why -- why wouldn't you call his family to find that
2 information out?

3 A. I could have.

4 Q. You took everything that KV said at face value as if it was
5 true.

6 A. In the letter? I considered it as part of the data.

7 Q. If someone creates a blog that's updated every day, that's
8 worked on every day, that is geared towards harassing another
9 person, would you say the creator of that blog is fixated on the
10 other person?

11 A. I don't know.

12 Q. Would that be a symptom of fixation?

13 A. It could be a fixation, I'll give you that. Sure.

14 Q. Okay. The violent attitudes factor. You use examples from
15 the two articles we mentioned before?

16 A. Yes.

17 Q. The Wellsville Sun and the Tap Into Greater Olean?

18 A. Yes.

19 Q. Did you speak to the authors of any of those articles?

20 A. No.

21 Q. Do you know where any of that information came from that
22 was contained in those articles?

23 A. I believe one of them was an interview with the defendant.

24 Q. Right.

25 The -- a picture where Mr. Wenke was labeled armed and

1 dangerous was first referenced in that Tap Into article, right?

2 A. Maybe. I don't remember.

3 Q. And you don't know if that was a -- like an official
4 designation by law enforcement or that it was even created by
5 law enforcement, right?

6 Have you ever seen that picture?

7 A. I have seen a picture, yeah.

8 Q. Was that -- is there anything in that picture that
9 indicates that it was made by New York State?

10 A. No. It was posted on, I think, the Olean War Zone website.

11 Q. Right. Do you know where that picture came from?

12 A. No.

13 Q. So you're not aware that that picture was included in a
14 reply tweet to Mr. Wenke by an anonymous unknown user?

15 A. Okay.

16 Q. The -- part of this violent attitudes and these factors
17 obviously overlap. Again, you use the Boogaloo Boys
18 involvement?

19 A. It's part of it.

20 Q. It's part of it. And, again, the degree of Mr. Wenke's
21 involvement with that group is unknown?

22 A. Correct.

23 Q. The -- you talk about how he -- he wanted to subvert gun
24 laws of New York State in making guns with 3D printing?

25 A. Yes.

1 Q. And those quotes that you use were taken from the article?

2 A. Yes.

3 Q. And you didn't put the whole context of those quotes, you
4 selected these lines specifically, right?

5 A. Yeah.

6 Q. So I think -- and I -- I don't want to put words in your
7 mouth. But the last, kind of, sentence in one of those quotes:
8 "I honestly encourage everybody to do that", what do you think
9 that that was referring to?

10 A. I mean, in the context of, like, 3D printing guns being
11 prepared?

12 Q. In that -- in that quote, because you use that specific
13 quote in your report?

14 A. Uh-huh.

15 Q. Why did you use that specific quote?

16 A. Because I thought it contributed to evidence of violent
17 ideation.

18 Q. The sentence before that quote states that: "I want people
19 to know that I have no illegal guns myself, but I want people to
20 be aware that instead of throwing money at the NRA and expecting
21 that to be the only answer, just remember 3D printing is going
22 to make that obsolete. I honestly encourage everybody to do
23 that."

24 A. Okay.

25 Q. He could be referring to the throwing money, not -- stop

1 throwing money at the NRA, right?

2 A. Fair enough.

3 Q. Okay. The -- you mentioned some Internet searches with
4 some, I guess, some trigger words that you considered part of
5 these factors?

6 A. There was a Google search history, I think, that was
7 provided to me. That's what you are referring to?

8 Q. I'm sorry?

9 A. Is that what you are referring to as the Google search
10 history?

11 Q. Yeah.

12 A. Okay.

13 Q. You cite certain words that Mr. Wenke Googled that you were
14 concerned about.

15 A. Yes.

16 Q. None of those -- none of those words -- or none of those
17 Google searches pertain to a specific person or thing, right?

18 A. I mean, I think there was references to the Government.

19 Q. There was nothing like how to poison somebody and get away
20 with it?

21 A. I think there was about how to murder somebody and get away
22 with it.

23 Q. You don't say that in the report. You just mention the
24 word murder.

25 A. Okay.

1 Q. Okay. Is that different if somebody says: "This is how
2 you murder somebody", versus just Googling "murder"?

3 A. Sure.

4 Q. One of the factors is problems with supervision. You are
5 aware that Mr. Wenke successfully completed substance abuse
6 treatment in 2021?

7 A. I believe so, yeah. I think he told me that.

8 Q. In your report you said it didn't appear -- from March of
9 2023 to May of 2023 -- that Mr. Wenke attempted to complete
10 mental illness or substance abuse treatment.

11 A. Yes.

12 Q. Where did that information come from?

13 A. Maybe the PSI -- the presentence investigation. I believe
14 I had -- I asked the defendant about that, too.

15 Q. Could it impact your opinion if that was not true and
16 Mr. Wenke actually did attempt to complete mental health
17 treatment?

18 A. Sure.

19 Q. So you are not aware that he -- he was released with a
20 condition to attend mental health treatment and actually
21 attended that treatment?

22 A. When -- when was that?

23 Q. He -- actually, every single time he was released.

24 So are you aware that the first time he was released -- I
25 think it was before the first violation --

1 A. Okay.

2 Q. -- he was traveling from Olean to Buffalo three times a
3 week for treatment?

4 A. Is that the first or the second time? Because I know he
5 went to, like, an anger management program in 2023. He told me
6 he was traveling back and forth from Buffalo to Olean. I know
7 that.

8 Q. And that was for mental health treatment?

9 A. Mental health or anger management, yeah. I think he told
10 me it was an anger management program.

11 Q. And the Horizon reports that I believe you had --

12 A. Yeah.

13 Q. -- said that when Mr. Wenke reported that when he was
14 stressed, overwhelmed, irritable or anxious, he could see the
15 benefit of mental health counseling.

16 Did you read that?

17 A. Yeah. I read those records.

18 Q. The next one was that he wants to learn ways to mediate his
19 emotions when times are tough.

20 A. Yeah.

21 Q. The next one is, Mr. Wenke was motivated to engage in
22 therapy, to learn about himself and effectively manage his
23 moods.

24 A. Okay.

25 Q. The -- the final opinion from that counselor said that --

1 well, I'll withdraw that.

2 He was he was compliant with that and he was attending.

3 And those reasons, the quotes I just read, was a reason why the
4 counselor deemed him compliant -- that's a terrible question.

5 The counselor acknowledged all of those things; that
6 Mr. Wenke was motivated to attend treatment, but cited the
7 distance between his house and the treatment provider as one of
8 the biggest obstacles?

9 A. Yeah. Definitely an obstacle.

10 Q. The final violent risk formulation -- I want to make clear
11 what you relied on for that.

12 It was first the -- Mr. Wenke's change in personality and
13 behavior in 2019 or 2020? Yeah?

14 A. Yes.

15 Q. And that was reported by KV?

16 A. Part of it, yes. That was part of it. There was other
17 evidence that went into that.

18 Q. Like what?

19 A. Well, the change of behavior. Namely the articles of
20 getting into trouble I found documented and then the legal
21 trouble that ended up with him here.

22 Q. You cite this involvement with the Boogaloo Boys --

23 A. Yes.

24 Q. -- as one of them?

25 A. Yes.

1 Q. As one of the factors?

2 A. Yeah.

3 Q. And, again, the involvement was unclear to you, right?

4 A. The extent.

5 Q. The extent of it.

6 A. Uh-huh.

7 Q. You then bring up a local example of Payton Gendron.

8 A. Yes.

9 Q. Are there any similarities between that case and this case?

10 A. I only brought that up to illustrate an example of, like,
11 an overvalued idea. In talking about -- somebody can have --
12 you know, people exhibit violence for different reasons.

13 People can exhibit violence based upon overvalued ideas.
14 It is not mental illness.

15 Somebody that has mental health issues, just because they
16 are delusional, doesn't mean they also have overvalued ideas.

17 Q. It's Buffalo. You mention that case. You know that that's
18 going to be, for lack of a better word, fixated on by the
19 reader?

20 **MR. WRIGHT:** Objection. Your Honor, relevance.

21 **THE COURT:** Overruled.

22 You can answer.

23 **THE WITNESS:** I don't know that.

24 **BY MR. PASSAFIUME:**

25 Q. It's going to read more to somebody in Buffalo as opposed

1 to in Texas?

2 A. Yes.

3 **MR. PASSAFIUME:** I'm sorry, Your Honor, can I have a
4 minute?

5 Judge, we're back on the treatment portion of ECMC. I
6 don't know if you wanted me to just cross-examine him on that or
7 if you want to pose your own questions. I remember you told me
8 to save it to the end.

9 **THE COURT:** Mr. Wright, do you want a redirect at this
10 point on the 4244 factors before we talk about this kind of
11 topic?

12 **MR. WRIGHT:** Yes, Your Honor. I think that that may
13 be better, actually.

14 **THE COURT:** What do you think about that? And then
15 kind of just keep it discrete.

16 **MR. PASSAFIUME:** I would still want to ask questions
17 about the witness about that.

18 **THE COURT:** Yeah. I can bring you back up after
19 Mr. Wright does a redirect and then we can have a -- kind of, a
20 different topic conversation.

21 **MR. PASSAFIUME:** Thank you, Judge.

22 **THE COURT:** Why don't we do it that way.

23 Mr. Wright, why don't you do a redirect on 4244
24 topics?

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

REDIRECT EXAMINATION BY MR. WRIGHT:

BY MR. WRIGHT:

Q. Thank you, Dr. Leidenfrost.

So the defense just went through a whole bunch of matters relating to KV and different -- different things.

Given your evaluation, the totality of everything you reviewed, would that have changed your opinion relating to the defendant's need for -- of custody for care or treatment in a suitable facility because of his mental disease or defect?

A. No.

Q. Okay. And you are relying on information being provided to both the defense and the Government, correct?

A. Yes.

Q. And then here, you issued a report in April of 2024 and another one in January of 2025, correct?

A. Yes.

Q. And there was no additional documents or, for instance, this website, for instance, by KV, that was never provided to you?

A. Correct.

Q. And just one more thing relating to this issue of delusions.

You mentioned this word idiosyncratic to the defendant,

1 correct?

2 A. Yes.

3 Q. And so the issue of the psychics is not just, hey, going to
4 a psychic. It's what he's interpreting for himself, correct?

5 A. Yes.

6 Q. And the extent of he's tying that to other things that he's
7 believing that he expressed to you during your evaluation?

8 A. Yes.

9 Q. Is it a fair statement that part of what you relied on was
10 the totality of what the defendant stated relating to
11 interactions between various people?

12 A. Yes.

13 Q. And this was a significant -- or one of the elements that
14 you reviewed or used in your overall determination of why this
15 defendant has a mental disease or defect?

16 A. Yes.

17 **MR. WRIGHT:** Nothing further, Your Honor.

18 **THE COURT:** All right. Do you need a recross as well
19 on that redirect or are we moving on to the next topic?

20 **MR. PASSAFIUME:** Me?

21 **THE COURT:** Do you need a recross?

22 **MR. PASSAFIUME:** No. Not on that stuff.

23 **THE COURT:** Okay. Okay. So we're --

24 **MR. PASSAFIUME:** Can I, Judge?

25 **THE COURT:** Give me just a moment.

1 **MR. PASSAFIUME:** Sure.

2 **THE COURT:** Dr. Leidenfrost, I've got -- we're going
3 to do, kind of, sounds like a little bit of a conversation with
4 you about things that are a little bit atypical.

5 Under this hearing, we're probably finished with you,
6 I think, for purposes of what I need for the statute, at least
7 from this witness.

8 But we're going to talk about this other proposal that
9 Mr. Passafiume has been discussing with me.

10 And so in your conversation with Mr. Passafiume now --
11 and if there are questions from Mr. Wright as well, the things
12 I'm interested in is -- look, I've got three -- I think three
13 options in front of me now.

14 One, within the statute, is I can agree with you and
15 that requires him to be sent to Bureau of Prisons for them to
16 treat him in their suitable facility.

17 I can disagree with you and then we're done with this
18 conversation.

19 And then the third option is, sounds like this ECMC
20 CPEP option.

21 So if I'm going to consider that third option, I'm
22 going to need to know things like, what is this? What is it?
23 How does it play out?

24 How might it play out? What are the different
25 permutations that could happen?

1 Ultimately, I've got to decide which is the right
2 path. And perhaps it's relevant, I think, too -- maybe you can
3 give me your opinion on the ultimate issue, too, I suppose,
4 which is which of these paths do you think is the right path?
5 And why wouldn't I listen to that as well?

6 Mr. Passafiume --

7 **MR. PASSAFIUME:** Thank you.

8
9 **RECROSS EXAMINATION BY MR. PASSAFIUME:**

10
11 **BY MR. PASSAFIUME:**

12 Q. So Mr. Wenke was seen by two agencies, Horizon and
13 Endeavor, right?

14 A. Okay.

15 Q. Neither of them believed that he -- that there was an
16 imminent danger, right?

17 A. I don't know. The threat assessment, I think, suggested
18 there was a risk.

19 Q. Well, under New York State Mental Health Law, if a
20 counselor or somebody believes that someone else is a threat for
21 imminent danger, you can be admitted to a psychiatric facility?

22 A. Sure.

23 Q. You can be arrested on that?

24 A. Yeah. 941, I think it is.

25 Q. And there is no evidence that that happened here, right?

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1 A. Not that I know of.

2 Q. And you know that Mr. Wenke did time at the BOP?

3 A. Yes.

4 Q. You know that he -- mental health treatment was not deemed
5 necessary there, right?

6 A. Yeah. I believe I read that in the report.

7 Q. And that he was a care level one?

8 A. Yes.

9 Q. And that he was not diagnosed with anything.

10 Do you remember that?

11 A. It was the personality -- he had a diagnosis, the
12 personality.

13 Or are you talking just in the facility overall?

14 Q. Well, let me backtrack. When he served his sentence before
15 the competency evaluation --

16 A. Oh, okay. I got you. I don't know.

17 Q. Okay. So do you -- are you aware of any Federal
18 psychiatric hospitals?

19 A. I'm not familiar with that system.

20 Q. Do you -- are you familiar with the BOP at all?

21 A. Not well.

22 Q. You don't know if there are different prisons for different
23 things?

24 A. Right. I assume there are specializations of different
25 facilities that do different things, sure.

1 Q. But you don't know what the facilities are like?

2 A. I've never been to them.

3 Q. And you don't know what their treatment plan would be?

4 A. I don't know.

5 Q. No? And so you wouldn't know if their treatment plan would
6 be the same as yours?

7 A. Right.

8 Q. Right. And you couldn't tell us at all what happened at
9 the BOP, right?

10 A. No. I think I requested any mental health treatment
11 records from any time in prison. I wasn't provided anything.

12 **MR. WRIGHT:** Your Honor, just -- are we going back to
13 the 4244? Or I thought this was going to be more of a
14 conversation about what the --

15 **THE COURT:** I'm viewing it as a segue, so I hope
16 that's where we're going, Mr. Passafiume. Yes?

17 **MR. PASSAFIUME:** I'm just comparing the BOP versus
18 ECMC.

19 **THE COURT:** Okay.

20 **BY MR. PASSAFIUME:**

21 Q. So if somebody were to have to be transported in custody to
22 a facility that's over 500 miles away, would that be detrimental
23 to his mental health condition?

24 A. Sure.

25 Q. It could worsen his condition?

1 A. Maybe.

2 Q. Before you said, you know, having family around and
3 support, that's crucial, right?

4 A. Yes.

5 Q. So, ideally, you would want family to be close to the
6 psychiatric facility where the person is staying?

7 A. Yeah, ideally. Having a family involvement is important to
8 people's care and recovery.

9 Q. And you -- you know, your diagnosis is very different than
10 the BOP's diagnosis.

11 If you diagnose somebody with condition A. That person
12 goes to another doctor. That person diagnoses him with
13 condition B.

14 Would you follow -- and that individual comes back to you,
15 would you follow your original diagnosis and treatment plan or
16 this other doctor's original diagnosis and treatment plan?

17 A. I mean, hopefully, I would take them both into
18 consideration. Maybe that doctor saw something I didn't.

19 Q. Okay.

20 A. Because also -- if I can just broadly expand it. People
21 look different at different times, too. I can see somebody at
22 point A, two months later, they can be very different, so --

23 Q. Okay. When you evaluated Mr. Wenke after the BOP
24 examination, nothing much changed, right?

25 A. Compared to when I saw him last year, no. He presented in

1 a similar way.

2 Q. Okay. So you don't know if they'd turn Mr. Wenke away, if
3 he went back to the BOP for treatment?

4 A. I don't know.

5 Q. How would you treat somebody -- well, we already talked
6 about that.

7 Main treatment for those personality disorders would be
8 psychotherapy, right?

9 A. Yes.

10 Q. Which is different than the treatment you said about
11 schizoaffective disorder?

12 A. Correct.

13 Q. And you need to be medicated with schizoaffective disorder?

14 A. Yeah, usually.

15 Q. And if the person does not want to take that medication, he
16 would have to be forcibly medicated?

17 A. If there is a dangerousness there, yes.

18 Q. And in your opinion, in your report, you allude to -- I'm
19 going to basically say -- that Mr. Wenke will need to be
20 forcibly medicated?

21 A. Maybe.

22 Q. Maybe?

23 A. I don't know that for certain. I've seen people where we
24 thought there would have to be a medication over objection, and
25 the person, knowing that's going to happen, they give in and

1 took medication.

2 Q. And New York State has a mechanism to forcibly medicate
3 somebody?

4 A. Yes.

5 Q. You've seen that in action before?

6 A. Yes.

7 Q. All right. So let's -- what is CPEP and how does
8 everything play out here?

9 So tell us a little bit about the conversation you and I
10 had before Court, where we talked a little about the steps. You
11 can start with what CPEP is.

12 A. It's Comprehensive Psychiatric Emergency Program. It is
13 like a psychiatric ER, right.

14 Instead of people in a mental health crisis going to the
15 ER, they are going to CPEP, where they are getting an evaluation
16 by a psychiatric provider to determine whether they meet legal
17 criteria for admission to the hospital, whether it is voluntary
18 or involuntary.

19 And there has to be certain criteria met, and certain
20 thresholds, such as, you know, imminent risk because of mental
21 health or this person can't take care of themselves because of
22 mental health.

23 Q. And those folks there would obviously get your report as --
24 to review in making that determination?

25 A. Yeah. They could be supplied with it.

1 Q. Okay. And say somebody goes there and they deem somebody
2 worthy of involuntary admission, how long is the period of --
3 how long does that person stay at that CPEP unit?

4 A. CPEP stays should be short as possible. Ideally turning
5 around in 24 hours.

6 Sometimes people are down there for two or three days --
7 I'm sorry -- sometimes they are in CPEP for two or three days.

8 Q. So if somebody is in need of medication, that medication
9 wouldn't kick in for the two or three days, what happens in the
10 interim?

11 A. Sometimes in CPEP, medication -- if we know somebody is
12 going to admit them, they will initiate medication in CPEP.

13 Other times the medication is not started until the person
14 is on a inpatient psychiatric floor.

15 Q. And that's at ECMC?

16 A. Correct.

17 Q. There is also the Buffalo Psychiatric Center, right?

18 A. Yeah. That's a state facility.

19 Q. And they are both equipped, to your knowledge, to handle
20 schizoaffective disorder?

21 A. Yes.

22 Q. And so the transition is seamless, I guess. If somebody is
23 diagnosed with a condition that requires involuntary or
24 voluntary for that matter, care, they just go to another part of
25 ECMC and receive that care?

1 A. Correct.

2 Q. And how long does somebody stay in that part?

3 A. Average length of stay is about ten to 14 days.

4 Q. What happens after that?

5 A. The person is discharged, if they are improved. If the
6 person improves and they are deemed to no longer meet legal
7 criteria to remain in the hospital, they are going to be
8 discharged. And there are -- some sort safe discharge will be
9 done.

10 If the person does not improve, usually after a period of
11 two to four weeks, very often a referral will to be made to the
12 state hospital, Buffalo Psychiatric Center.

13 They will review the case and may or may not take the
14 person. That process takes months.

15 Q. So before somebody is released, there is going to be an
16 evaluation to determine if he's made enough progress to be
17 released?

18 A. Correct.

19 Q. And that determination would essentially have to say he is
20 no longer a danger to somebody else, right?

21 A. Due to symptoms of serious mental illness.

22 Q. Right.

23 A. That's the key part there. And so the -- specifically, for
24 stay in the hospital, the dangerousness has to be tied to
25 psychiatric symptoms.

1 Meaning this person can still be dangerous, but the
2 psychiatric symptoms are stabilized, they are going to let them
3 go.

4 Q. Is it -- have you seen people transition from ECMC to the
5 Buffalo Psychiatric Center?

6 A. Yes.

7 Q. And do you know anything about the Buffalo Psych Center?
8 How long does somebody stay there?

9 A. They consider themselves an intermediate level of care, so
10 months. Not years, usually months.

11 Q. And does -- is there a review process? I know New York
12 State has that 60-day review process.

13 Is there, like, an internal review process to see
14 somebody's prognosis?

15 A. At BPC, do you mean?

16 Q. Yeah.

17 A. I mean, I'm not familiar with their procedures.

18 Q. So pretend we're in State court and we're doing that 60-day
19 assessment. You come into court, what information do you use
20 for that 60-day assessment?

21 Like, what do you come to Court with to give your
22 recommendation?

23 A. I haven't -- I haven't done those.

24 Q. You haven't done them?

25 A. I can't speak to them. Sorry.

1 Q. If -- if Buffalo Psych Center did not have a mechanism to
2 forcibly medicate somebody, would you recommend that Mr. Wenke
3 go there?

4 **THE COURT:** I don't think I understand the question.

5 **MR. PASSAFIUME:** That's a terrible question.

6 **BY MR. PASSAFIUME:**

7 Q. You -- your preference, based on your evaluation, is that
8 Mr. Wenke go to a facility that has the ability to forcibly
9 medicate him?

10 A. Yes.

11 Q. And in your opinion, he won't be medicated voluntarily?

12 A. Maybe. I don't know. Like I said, I've seen people,
13 knowing they are going to be taken to Court, take medication.
14 That's probably the best case outcome, I think.

15 Q. To your knowledge, you don't know if Mr. Wenke was ever
16 offered medication?

17 A. I don't know. I believe I've had those conversations with
18 him. I don't think anybody has offered a medication, but I
19 can't be certain.

20 Q. Nothing was ever prescribed to him, to your knowledge?

21 A. Nothing that I know of, no.

22 Q. I don't know if I asked you. So -- did I ask you already
23 what your treatment plan would be for Mr. Wenke?

24 A. Yes.

25 Q. I did?

1 A. Well, you phrased it for personality pathology versus
2 schizoaffective. Depending on what the diagnosis is, it will be
3 different treatment.

4 Q. Let's go for your diagnosis.

5 A. Schizoaffective -- like I said, I'm not a medical doctor or
6 psychiatrist.

7 I am aware of the American Psychiatric Association's
8 guidelines for treatment of bipolar and schizoaffective. When
9 somebody is acutely symptomatic, the first line of treatment is
10 an antipsychotic medication.

11 Q. At ECMC, can family come and visit?

12 A. Yes.

13 Q. Again, that's a big part of somebody's recovery?

14 A. Yes.

15 Q. Can that person leave voluntarily, if he's involuntarily
16 committed? Can he just --

17 A. No.

18 Q. No?

19 A. No.

20 Q. There is no way he could tie sheets together and jump out a
21 window?

22 A. No. No.

23 Q. That's securely monitored?

24 A. Yes. It is monitored. Locked doors.

25 Q. Okay. And that person won't leave until there is some

1 psychiatrist that deems Mr. Wenke not a danger to the community?

2 A. Due to symptoms of serious mental illness, yes.

3 Q. And you can't give us an exact treatment plan because you
4 don't know medication you would prescribe -- you can't prescribe
5 medication?

6 A. Correct.

7 Q. You don't know what medication would be appropriate for
8 Mr. Wenke?

9 A. I am not competent to offer that opinion.

10 Q. The psychiatrist at ECMC would make that determination?

11 A. Correct.

12 **MR. PASSAFIUME:** Judge, I don't know if you have -- if
13 I answered the questions that you wanted answered.

14 **THE COURT:** Let me see. Stay there.

15 Dr. Leidenfrost, in your second report under
16 conclusory opinions, the first one is that he is at high risk
17 for future violence.

18 And that -- I'm paraphrasing just a little. And that
19 is primarily due at this time to an underlying mental disease or
20 defect, being bipolar or schizoaffective disorder. That's
21 number one.

22 On page seven, number two says that he's at high risk
23 for serious physical harm.

24 Number three says that he's at high risk for imminent
25 violence, primarily due to the underlying mental disease or

1 defect.

2 And if released to the community at this time, he
3 would create a substantial risk of bodily injury to another
4 person due to that mental disease or defect.

5 And then at the very end, your opinion is that he has
6 a mental disease or defect, number one.

7 Number two, has no insight regarding his symptoms.

8 Number three -- again paraphrasing -- likely to refuse
9 to initially voluntarily take the medication.

10 And his symptoms, number four, significantly influence
11 his risk for future and immediate violence.

12 Based on all of that, then ultimately your opinion is
13 that he's in need of custody for care or treatment in a suitable
14 facility for his mental disease or defect at this time?

15 **THE WITNESS:** Yeah.

16 **THE COURT:** Is that a fair assessment of the ultimate
17 conclusion?

18 **THE WITNESS:** Yeah, spot on.

19 **THE COURT:** Is it your view that this ECMC CPEP
20 program satisfies that opinion on your part?

21 **THE WITNESS:** Yes.

22 **THE COURT:** There is two ways to do it, right? Bureau
23 of Prisons can take him and do what they do?

24 **THE WITNESS:** Uh-huh -- yes.

25 **THE COURT:** Or ECMC CPEP plan, in your view, satisfies

1 your professional concerns?

2 **THE WITNESS:** Yeah. I just want him to get some sort
3 of treatment. So, yes.

4 **THE COURT:** All right. Anything to follow up,
5 Mr. Passafiume?

6 **MR. PASSAFIUME:** No, Judge. Thank you.

7 **THE COURT:** Mr. Wright, your turn.

8

9 **FURTHER REDIRECT EXAMINATION BY MR. WRIGHT:**

10

11 **BY MR. WRIGHT:**

12 Q. So, Dr. Leidenfrost, you can't -- you cannot offer an
13 opinion on the type of treatment BOP would use if he got sent
14 back to BOP?

15 A. Right. I don't know what they are going to do.

16 Q. And, again, not to rehash this, but BOP, in their report,
17 was looking at something completely different than what you were
18 looking at in your report in January, 2025?

19 A. Yes.

20 Q. For this CPEP program, at ECMC would -- as a hypothetical,
21 would the U.S. Marshals bring him there? And how would he be
22 taken into custody at ECMC?

23 A. I don't know.

24 Q. Okay.

25 A. Like I was talking before -- before this hearing, I can

1 give an example of what happens locally.

2 Say if the Erie County Sheriffs Department brings somebody
3 in who is in custody, who is under arrest, they bring them to
4 CPEP, that person cannot be admitted to a civil floor.

5 They are going to be evaluated and either go to the
6 forensic unit that's at ECMC, which is a different -- different
7 unit on the ninth floor or they are going to go to the holding
8 center and we will do psychiatric treatment there.

9 In this circumstance -- like, if the U.S. Marshals brought
10 him to CPEP, I'm not frankly sure how they would handle that.

11 Q. If someone is being held locally, can someone from CPEP go
12 to a local jail, like in Niagara County or somewhere, to meet
13 with that person --

14 A. No.

15 Q. -- to conduct the treatment there?

16 A. No. The evaluation occurs in CPEP.

17 Q. Okay.

18 **MR. WRIGHT:** Nothing further, Your Honor.

19 **THE COURT:** If -- Dr. Leidenfrost, if BOP reaches the
20 same conclusions that you do about the mental disease or defect
21 part of it and -- on the one hand -- and the ECMC CPEP program
22 reaches the same conclusions, then presumably the treatment path
23 would be the same in BOP as it would be at ECMC?

24 **THE WITNESS:** Correct.

25 **THE COURT:** Assuming everyone agrees with you, right?

1 **THE WITNESS:** Yes.

2 **THE COURT:** And then in that case, the difference
3 would be, he would be somewhere else at BOP for the duration of
4 time that BOP decides is appropriate, up to the eight months or
5 something approximately that he has got left under his
6 supervised release maximum, correct?

7 **MR. WRIGHT:** Correct.

8 **THE WITNESS:** Yes.

9 **THE COURT:** Who pays for this ECMC CPEP program? Is
10 there going to be a problem if we go down that road, that
11 somebody is going to say, who is paying and we're not doing it?

12 **THE WITNESS:** Yeah. That's a good concern. It would
13 depend whether his insurance is in network -- whether he has
14 insurance, the insurance is in network.

15 And if there isn't insurance, it could be potentially
16 a private pay circumstance. Somebody would be on the hook
17 paying for it and I don't know what kind of insurance he has,
18 whether he has insurance, what that would be.

19 **THE COURT:** What do they do if someone comes in off
20 the street and clearly needs to be admitted right away, in that
21 scenario, with no insurance or anything like that, it's a
22 Medicaid pay kind of situation?

23 **THE WITNESS:** Yeah. They would be admitted no matter
24 what, despite their ability to pay. And the social workers
25 would probably try to get that person on Medicaid or Medicare.

1 **THE COURT:** Okay. Any further questions, Mr. Wright?

2 **MR. WRIGHT:** No, Your Honor.

3 **THE COURT:** Mr. Passafiume?

4 We can still talk, but the question is whether we need
5 the witness on the stand any longer.

6

7 **FURTHER RECROSS EXAMINATION BY MR. PASSAFIUME:**

8

9 **BY MR. PASSAFIUME:**

10 Q. Would it work if somebody -- if Mr. Wenke were to get
11 released to, like, his father's custody and his father brings
12 him directly to ECMC, we can have it set up where they would be
13 waiting for him or they knew that he would be coming that day,
14 right?

15 A. Sure.

16 Q. And if for some reason -- I guess -- so there does not need
17 to be a period where Mr. Wenke is not in the custody of someone,
18 whether it's his dad or law enforcement?

19 A. Yes. Because I think if he came to CPEP in custody, like
20 he's still in custody of some criminal justice entity, they
21 can't admit him to a civil floor. They wouldn't do that.

22 Q. But a way of doing it would be if he was out of custody and
23 his dad is bringing him in directly there.

24 And, again, we could set it up and coordinate where
25 everything is done the same day, same time?

1 A. Yeah. And he would be like any other individual coming
2 into CPEP.

3 And I need to say, there is no guarantee he would get
4 admitted either. I can coordinate with them, but I don't work
5 in CPEP.

6 I'm not a medical doctor. I'm not able to admit people in
7 New York State. I can convey information. They are my
8 colleagues, but I can't make any guarantees about what they
9 would do -- you know, working under their own license.

10 **MR. PASSAFIUME:** Okay. Thank you.

11 **THE COURT:** Okay. Thank you, Dr. Leidenfrost. You
12 may step down.

13 (Witness Excused)

14 **THE COURT:** All right. While we're all together,
15 let's keep talking a little bit.

16 Do you have any other witnesses for the purposes of
17 this hearing?

18 **MR. PASSAFIUME:** No, Judge.

19 **THE COURT:** I think, nevertheless, that what I ought
20 to do procedurally is hold the hearing open and think about what
21 we're going to do next, while the hearing is still technically
22 held open.

23 That way there is no, you know, statutory pressure on
24 me, I guess, to conclude one way or the other on whether the
25 standard has been met.

1 So I need to hear from the Government, ultimately --
2 and probation, if they've got a view as well, on this proposal
3 from -- the ECMC proposal.

4 **MR. WRIGHT:** Your Honor, number one, obviously the
5 Government has some concerns relating to release and all that
6 stuff, to the parents.

7 But I think part of it, too, was -- and the question
8 to Dr. Leidenfrost relating to if BOP was asked to do a similar
9 examination under 4244, that type of examination related to
10 mental disease and defect, if they came to the same conclusion,
11 would they be in -- kind of like in the same position of kind of
12 following up with the defendant and doing the treatment there.
13 The answer was yes.

14 If -- and this is an uncertainty is how quickly
15 potentially that could be done versus going through the CPEP
16 route and all of that.

17 So it's something I know we would like to look into a
18 little bit more, Your Honor.

19 **THE COURT:** Right. I think we need to reconvene at
20 some point soon.

21 Probably a lot of questions for everybody at this
22 point in time, to see whether this is something that's workable,
23 and then take everyone's temperature on whether they're for it
24 or against it.

25 **MR. PASSAFIUME:** The one thing I want to point -- I

1 want to make sure that we're clear, because I did have a
2 conversation with Mr. DiGiacomo.

3 Dr. Leidenfrost's evaluation is the evaluation under
4 4247 that brought us to the hearing. So he's not going to get
5 evaluated again at the BOP. He would go there for treatment.

6 **THE COURT:** Right.

7 **MR. PASSAFIUME:** So I guess what the Government is
8 saying now is that's not right.

9 I want to make sure that's clear. That we have
10 already done that evaluation. This is for whether he is going
11 to go for treatment.

12 **THE COURT:** Well, in that scenario, he would go down
13 to BOP with this report in hand, I suppose, right?

14 And BOP would pick it up and treat him accordingly,
15 but I don't know, right?

16 Nobody knows exactly what's inside the black box.

17 **MR. PASSAFIUME:** Well, the BOP had the first report
18 when they saw him on the competency.

19 **THE COURT:** Yeah. But we don't know if he's going
20 back to the same people either, right?

21 Will he go back to the same people at BOP or different
22 people? I don't know that. Nobody knows.

23 So that's why you are proposing something where there
24 is more certainty and more things that can be managed, et
25 cetera, and family proximity. I get it. I understand why you

1 are proposing it.

2 So let's reconvene after Mr. Wright can work on
3 things.

4 If probation has views, they can give them to me now
5 or think about it and give it to me.

6 But, Mr. Passafiume, if there is a payment problem, do
7 we need to worry about that now?

8 So things that you need to work on, I guess, are that
9 one, payment and logistics. How do we effectuate it?

10 Number three, then, is how do we make sure that
11 Dr. Leidenfrost's report goes along as well?

12 You'd think that we want the psychiatric provider that
13 does the intake to have that report in hand, perhaps even before
14 they meet with Mr. Wenke.

15 **MR. PASSAFIUME:** I asked him that in the hall and he
16 said they would -- they would have that evaluation.

17 **THE COURT:** They would have it. So that's got to be
18 in hand, I would say. No point in sending Mr. Wenke first.

19 I think the report needs to go first, because it would
20 take a little time to read it, wouldn't it?

21 **MR. PASSAFIUME:** Sure.

22 **THE COURT:** So those logistics, keep working on how
23 those would work out and ultimately what the plan would be and I
24 can decide whether we want to try it.

25 Clearly, given the amount of time we spent on it, I'm

1 open to it, otherwise I wouldn't have wasted everybody's time.

2 But if I hear impediments that are structurally
3 unavoidable, then I need to hear that, too.

4 So, Mr. Wright, a little bit of homework on your side
5 to see what your office's position is.

6 Same thing -- Mr. Zenger, same thing from you, if you
7 have got views.

8 And I think, Mr. Passafiume, you have got to work on
9 the logistics part of it, right?

10 Because the last thing I want to do is hear that he
11 gets there and they won't talk to him because he doesn't have
12 insurance, right?

13 **MR. PASSAFIUME:** Right.

14 **THE COURT:** I can't have that be an impediment,
15 otherwise we are back here and resume the hearing and I make my
16 findings and we wasted everybody's time.

17 And then ultimately, in that scenario, taking time
18 away from Mr. Wenke's treatment, which would be an unintended
19 consequence, I guess.

20 **MR. PASSAFIUME:** Understood, Judge.

21 **THE COURT:** Because all this time passing that we've
22 used up is time that's not available to us for his treatment.

23 Okay. Well, let's -- when should we come back? A
24 couple of days?

25 **MR. WRIGHT:** What is today, Tuesday?

1 **THE COURT:** Tuesday.

2 **MR. WRIGHT:** That's fine, Your Honor. I'll be out for
3 a portion of next week, so this week would probably be better.

4 **MR. PASSAFIUME:** Judge, as you know, I'm out until
5 February 25th.

6 **THE COURT:** Starting today or tomorrow?

7 **MR. PASSAFIUME:** Starting tomorrow. In my mind, I'm
8 already gone. Thursday.

9 **THE COURT:** All right. So can Ms. Kubiak finish for
10 you on Thursday then?

11 **MS. KUBIAK:** Yes, Judge. I can handle the report
12 back.

13 **THE COURT:** But the legwork in the meantime can be
14 done before you go, Mr. Passafiume, right?

15 **MR. PASSAFIUME:** Yes.

16 **THE COURT:** Thursday? Yes? Okay.

17 **MR. WRIGHT:** Yes, Your Honor.

18 **THE COURT:** How does Thursday look, Ms. Henry?

19 **THE CLERK:** Thursday, 9:30.

20 **MR. WRIGHT:** That works for the Government, Your
21 Honor.

22 **MS. KUBIAK:** That's fine.

23 **THE COURT:** And if -- Mr. Wright, if there is a
24 problem with the logistics in terms of getting him there
25 physically via his father -- it did work the last time, I think

1 it was his father who drove him there the last time.

2 If that's a problem and there needs to be some other
3 way, like through the U.S. Marshals Service, then check to see
4 if that's even available.

5 Sometimes the Marshal's Service tells me things like,
6 we can't do that. Maybe they can, maybe they can't. I don't
7 know the answer to that.

8 I think that would be on you, Mr. Wright, to see if
9 that's a possibility in terms of driving him there.

10 **MR. WRIGHT:** Okay. Thank you, Your Honor.

11 **THE COURT:** So the hearing is held open and we'll talk
12 about things again Thursday morning at 9:30.

13 Anything else?

14 **MR. WRIGHT:** No, Your Honor. Thank you.

15 **MR. PASSAFIUME:** Thank you.

16 **THE COURT:** Take care, everybody. Thank you.

17

18 (Proceedings concluded at 4:13 p.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.
6
7
8
9

10 s/ Bonnie S. Weber
11 Signature

March 6, 2025
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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