

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.

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



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

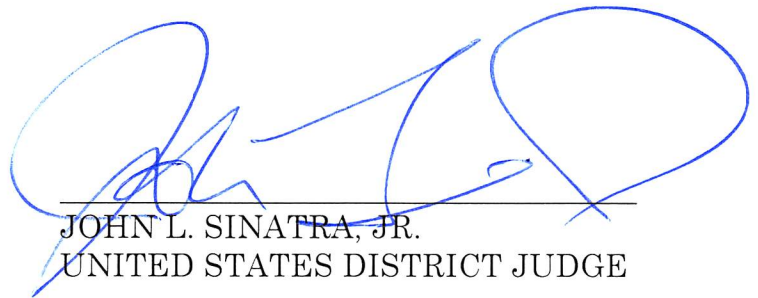
ORDERED that United States Probation is authorized to disclose all materials related to this case, including but not limited to, any and all prior psychiatric reports; and it is further

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,

22-CR-35 (JLS)

v.

LUKE WENKE,

Defendant.

AMENDED 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; and
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 it is further

ORDERED that the 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: September 18, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE