UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

LUKE WENKE,

Defendant.

22-CR-35-JLS

POST-HEARING BRIEF

INTRODUCTION

Prior to sentencing, a court may order a hearing to determine "the present mental condition of the defendant" if there is "reasonable cause to believe that [he] may presently 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." 18 U.S.C. § 4244(a).[1] "If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect and that he should, in lieu of being sentenced to imprisonment, be committed to a suitable facility for care or treatment, the court shall commit the defendant to the custody of the Attorney General." 18 U.S.C. § 4244(d). Therefore, the issue before the Court is (1) whether Luke Wenke suffers from a mental disease or defect and (2) whether he should be hospitalized to treat that mental disease or defect in lieu of being sentenced to imprisonment. *See United States v. Gigante*, 928 F. Supp. 140, 174-75 (E.D.N.Y. 1997); *see also United States v. Buker*, 902 F.2d 769, 770 (9th Cir. 1990).

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[1] This Court previously found reasonable cause to believe Luke Wenke 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 to satisfy subsection (a). *See* Dkt. 166.

DISCUSSION

I. Mental Disease or Defect

There is not a consensus diagnosis of Mr. Wenke. Dr. Corey Leidenfrost opines that Mr. Wenke suffers from "Schizoaffective Disorder, Bipolar Type." Drs. Kaitlin Nelson and Robin Watkins opine that Mr. Wenke suffers from "Other Specified Personality Disorder, With mixed personality traits." The Court received psychological evaluation reports and heard testimony from all three doctors:

(1) Dr. Leidenfrost report, dated April 1, 2024 **(Ex. 1**)

(2) Dr. Leidenfrost updated report, dated January 13, 2025 **(Ex. 2**)

(3) Drs. Nelson and Watkins report, dated November 13, 2024 (**Ex. 3**)

(4) Dr. Leindenfrost testimony, February 18, 2025 (**Tr. 1 at**)

(5) Drs. Nelson and Watkins testimony, April 10, 2025 (**Tr. 2 at**)

Candidly, each opinion is not flawless in the context of § 4244. For instance, although there is overlap in the respective evaluations, Tr. 2 at 14, Drs. Watkins and Nelson evaluated Mr. Wenke to determine whether he is competent pursuant to § 4241, and not to make any determination under § 4244. The flaw in Dr. Leidenfrost's opinion, however, is far more serious and egregious because his opinion and diagnosis is founded on misinformation. The Court should credit (or discredit) it accordingly when determining whether Mr. Wenke suffers from a mental disease or defect under § 4244.

Dr. Leindenfrost opines that Mr. Wenke suffers from "Schizoaffective Disorder." Ex. 2 at 4. For Mr. Wenke, this diagnosis requires the presence of "delusions" or "delusional beliefs." Tr. 1 at 52-53, 73. Ex. 2 at 4. For a belief to be classified as a delusion, the belief must not be based in reality. Tr. 2 at 70, 74. A belief is based in reality if it actually happened, or the context

of the belief gives the person reason to believe it happened. Tr. 1 at 69; Tr. 2 at 70, 74. Symptoms of delusions are detected from individual interactions with a person across time and a determination of whether a belief is reality-based can only be made by a proper examination of collateral information. Tr. 1 at 55-56; Tr. 2 at 15, 50, 78-79; Ex. 1 at 2-3; Ex. 2 at 2-3; Ex. 3 at 2-3.

A. Individual Interactions Across Time

Drs. Watkins and Nelson are the only evaluators that had interactions with Mr. Wenke across time. Specifically, they conducted a competency evaluation of Mr. Wenke that lasted 47 days. Tr. 2 at 35, 45; Ex. 2 at 7. For the evaluation, Mr. Wenke was housed in general population at MCC Chicago. *Id*. During this period, Mr. Wenke was under round-the-clock supervision by psychology and correctional staff, along with other inmates, and was given multiple psychological assessments. Tr. 2 at 46-48. Additionally, Dr. Nelson met with Mr. Wenke 1-on-1 on three occasions, and he was seen by both Drs. Nelson and Watkins six total times. Tr. 2 at 60. The overlap between §§ 4241 and 4244 is relevant here. Both statutes require a diagnosis of a mental disease or defect if one exists. Tr. 2 at 11. So, Drs. Watkins and Nelson had 47 days of individual interactions to diagnose a mental disease or defect.

On the opposite end of the spectrum, Dr. Leidenfrost met with Mr. Wenke in person just once at the Orleans County Jail for about 2 hours and then by videoconference for about 1 hour. Tr. 1 at 52-53, 73; Tr. 2 at 35, 45; Ex. 2 at 7.

B. Collateral Information

Drs. Watkins and Nelson are the only evaluators that properly utilized collateral information. Collateral information includes psychological assessments, legal documents, prior

mental health evaluations, medical records, discovery in a criminal case, and interviews with family members. Tr. 1 at 55-56; Tr. 2 at 12, 1, 50, 78-79; Ex. 1 at 2-3; Ex. 2 at 2-3; Ex. 3 at 2-3. Tr. 2 at 12, 14-17, 55. This information is crucial in making any diagnosis. *Id*. It forms the basis of an evaluator's clinical formulation by outlining a person's developmental history, educational history, employment history, social history, relationship history, medical history, substance use history, and mental health history. Tr. 2 at 56, 57, 61; Ex. 2 at 3-6. It also provides insight into a person's baseline functioning, the timeframe and extent of the departure from the baseline functioning and may detect the presence of other symptoms. Tr. 1 at 55-56; Tr. 2 at 15, 50. Equally important, collateral information verifies the accuracy of information already available to the evaluator. *Id*.

Drs. Watkins and Nelson reviewed the same material as Dr. Leidenfrost and more. Tr. 2 at 49-56. They spoke with all attorneys involved in the case and sought opinions of their observations of Mr. Wenke. Tr. 2 at 52-53. Dr. Nelson interviewed Mr. Wenke's mother. Tr. 2 at 54. Family members are an important resource to determine patterns of behavior and whether there is a significant change in that person and what may have been going on in their life at the time. Tr. 2 at 53. Speaking with attorneys and family can also corroborate (or disprove) any self-reporting. *Id*. Moreover, Dr. Nelson administered the PAI and RCAI assessments, which both factor into the ultimate diagnosis of a mental disease or defect. Tr. 2 at 48-49. Last, Dr. Nelson applied the 17-Factor Model research tool which is utilized to aid an evaluator in these exact circumstances -- to differentiate between a delusion and an extreme belief. Ex. 1 at 2-3; Ex. 3 at 2-3.

Conversely, like Pfc. William Santiago, Dr. Leidenfrost "hadn't called a soul" before making his diagnosis. Dr. Leidenfrost did not contact a single member of Mr. Wenke's family,

any of the attorneys involved in the case, any of the victims, any prior counselors, or any authors of prior psychological evaluation reports. Ex. 1 at 2-3; Ex. 3 at 2-3. Further, the only assessment Dr. Leidenfrost conducted was a violence risk assessment. *Id*. Nor did he did utilize the 17-Factor Model research tool. *Id*. The record is devoid of any attempts by Dr. Leidenfrost to verify any of the information provided to him by Mr. Wenke and others. There was ample opportunity to conduct even the most minimal investigation and Dr. Leidenfrost opted not to do so. To his credit, despite not doing a single thing to make sure he is working with accurate and complete information, Dr. Leidenfrost concedes that inaccurate information would lead to "skewed results" in diagnosis of a mental disease or defect. Tr. 1 at 55-56.

C. Purported Delusions

As noted above, for Mr. Wenke, a diagnosis of Schizoaffective Disorder requires the presence of delusions. Dr. Leidenfrost insists that his 3 total hours with Mr. Wenke with scant collateral information was sufficient to detect the presence of "persecutory, paranoid and erotomanic delusions" from Mr. Wenke leading to his diagnosis of Schizoaffective Disorder. Tr. 1 at 52-53, 73; Tr. 2 at 35, 45; Ex. 2 at 7. But delusions are detected from individual interactions with a person across time and by a thorough review of collateral information. Drs. Watkins and Nelson are the only doctors that had individual interactions with Mr. Wenke across time and that thoroughly investigated and reviewed collateral information. They, not Dr. Leidenfrost, are in the best position to detect the presence of delusions that would support Dr. Leidenfrost's diagnosis of Schizoaffective Disorder. Drs. Watkins and Nelson do not agree with Dr. Leidenfrost and unequivocally opine that they did not observe any overtly delusional beliefs from Mr. Wenke throughout the entire duration of their competency evaluation. Tr. 2 at 35, 45; Ex. 2 at 7. Relevantly, at no point did Dr. Nelson feel it necessary or appropriate to refer Mr.

Wenke to a psychiatrist for consultation on whether he suffered a psychotic disorder requiring medication. Tr. 2 at 63.

Dr. Leidenfrost's extremely limited contact with Mr. Wenke and the lack of a proper review of collateral information skewed his diagnosis. As set forth below, the purported delusions relied upon by Dr. Leidenfrost are not delusions because they are based in reality.

> **Delusion 1:** Mr. Wenke believes he is/was a public figure and a former Chairman of the Libertarian Party. Tr. 1 at 57.
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> **Reality:** Mr. Wenke is, in fact, a former Chairman of the Libertarian Party. Tr. 1 at 57-58. Moreover, the articles from TAPinto Greater Olean and the Wellsville Sun referenced by Dr. Leidenfrost both discuss Mr. Wenke's history in public office. Tr. 1 at 58. Mr. Wenke also ran for county coroner in 2019, but Dr. Leidenfrost does not recall if he knew that information when he prepared his report. *Id*. Drs. Watkins and Nelson did not find discussion of such topics to be overtly delusional at any point during the evaluation. Ex. 2 at 20.
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> **Delusion 2:** Mr. Wenke's believes his case will go to the Supreme Court. Tr. 2 at 36; Ex. 1 at 8.
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> **Reality:** Mr. Wenke does have a criminal conviction, he did appeal his conviction, and theoretically his case could go to the Supreme Court. Dr. Watkins notes that Dr. Nelson was "spot on" as identifying this as a "grandiose idea," but not a delusion. Tr. 2 at 37. "In order to classify something as a delusion, it would need to be clearly not based on reality." *Id*.
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> **Delusion 3:** Mr. Wenke believes George Washington had a vision of an angel at Valley Forge. Ex. 3 at 6.
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> **Reality:** In 1861, author Charles Wesley Alexander published numerous allegorical stories featuring famous American figures. One story recounted by 99-year-old Anthony Sherman in 1859 is that he overheard George Washington tell an officer that an angel had revealed a prophetic vision of America to him.
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> **Delusion 4:** Mr. Wenke believes in psychic mediums. Tr. 1 at 59.

Reality: Belief in psychics is normal in Mr. Wenke's family, which was corroborated by Mr. Wenke's mother. Tr. 1 at 59; Tr. 2 at 68. His family often visited Lily Dale, which is a community for psychic mediums. *Id*. Dr. Nelson explicitly found this belief to not be delusional. Tr. 2 at 68.

Dr. Watkins persuasively comments that "[e]ven if it may not be typical for the general population, it does seem like the beliefs in psychics -- specifically, that belief set, was very common within his family system." Tr. 2 at 40. "There are plenty of people that have strongly held religious beliefs that would be considered culturally normative, that would not be amendable to contradiction or challenging by others." *Id*. It is not delusional "just because the person didn't waiver in their belief in the face of a challenge." *Id*.

Victim KV is discussed extensively by Dr. Leidenfrost in his opinion. Tr. 1 at 60. The bulk of the purported delusions revolve around Mr. Wenke's fixation with KV. Tr. 1 at 60; Ex. 1 at 9. However, like the others, they are not delusions because they are based in reality.

Delusion 5: Mr. Wenke believes that KV created a website dedicated to him. Tr. 1 at 60.

Reality: There is a website created by KV dedicated to Mr. Wenke. *See* https://www.lukewenke.online/. It is a running blog about Mr. Wenke and his criminal case. Attached hereto as Exhibits A1-A8 is a printout of the website. It does not include the actual of documents that are linked throughout the site.

It should be noted that the purpose of including this example -- and all the examples involving KV -- is not to cast doubt on the content of the website and/or any of the allegations against Mr. Wenke by KV. She is undoubtedly a victim in this case. Rather, the purpose is to confirm Dr. Nelson's opinion that if this website existed, it could be a reality-based belief and not a persecutory delusion. Tr. 2 at 71. Not only does this website exist, but it is arguably so overwhelming that it could justify anyone's belief that the creator of the site is out to get or harm him/her (i.e., persecuting him/her). This places the remaining purported delusions revolving around KV in a different context. Which is extremely important here because context matters.

When pressed by this Court on why a belief can be a delusion sometimes, but not others, Dr. Leidenfrost opines that the context of the belief matters. Tr. 1 at 69. The remaining purported delusions should be viewed through a lens coated with this website.

> **Delusion 6:** Mr. Wenke believes KV stole his car. Tr. 1 at 63.
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> **Reality:** An investigator from the Federal Public Defender's Office delivered Mr. Wenke's car keys to KV shortly before she and Mr. Wenke stopped being friends. Tr. 1 at 64.
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> **Delusion 7:** Mr. Wenke believes KV left a negative Yelp review for his mother's restaurant. Tr. 1 at 64.
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> **Reality:** Mr. Wenke's mother believes KV left a negative Yelp review and told Mr. Wenke about it. *Id*.
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> **Delusion 8:** Mr. Wenke believes I had a screaming match with KV. Tr. 1 at 65.
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> **Reality:** Along with an investigator from my office, I did speak briefly with KV via telephone. Not even a minute into the conversation, KV became upset and abruptly hung up the phone. Tr. 1 at 66.

In addition to the persecutory delusions revolving KV, Dr. Leidenfrost references Mr. Wenke's "erotomanic delusion" about RT. Tr. 1 at 70-71; Ex. 1 at 8. Dr. Watkins explicitly found this to not be overtly delusional. Tr. 2 at 36. In support of this finding, Dr. Watkins again persuasively remarks that "it is not uncommon to see various cognitive distortions in offenders involved in [charges related to domestic violence and violations of orders of protection], where -- you know, people may have intentions to continue relationships or make amends, despite the desire of the other party not to be involved in that." Tr. 2 at 39.

D. Diagnosis

After excising these purported delusions from Dr. Leidenfrost's opinion, there is *de minimis* evidence of the presence of delusional beliefs to support his diagnosis of Schizoaffective Disorder. Instead, the diagnosis from Drs. Watkins and Nelson of Other Specified Personality Disorder, With mixed personality traits has plenty of support. Mr. Wenke's patterns of grandiosity, need for admiration, lack of empathy, excessive letter writing (suggestive of a belief his opinions need to be shared), and lack of the ability to take another person's perspective are characteristics of personality disorder, such as Narcissistic Personality Disorder. Tr. 1 at 47-49; Ex. 2 at 17. His pattern of instability of personal relationships, self-image, and impulsivity are also characteristics of personality disorder, such Borderline Personality Disorder. *Id*. And his fixation on interests, deficits in social communication, repetitive patterns of behavior, and abnormal approach to social interactions including communicating with people who do not reciprocate the desire for communication are characteristics of Autism Spectrum Disorder, which was also considered by Drs. Watkins and Nelson. *Id*.

Whether this diagnosis qualifies as a mental disease or defect under § 4244 is a question for the Court to decide. Tr. 2 at 24.

II. Hospitalization

Neither Dr. Leidenfrost nor Drs. Watkins and Nelson could opine on a specific treatment plan for Mr. Wenke and what that would entail (i.e., would it include medication). While Mr. Wenke was never evaluated by a psychiatrist, Dr. Nelson had 47 days to refer Mr. Wenke to a psychiatrist but she never felt it was necessary or appropriate. Tr. 2 at 63. Generally, the treatment for a personality disorder varies depending on the type of disorder and personality

traits. Tr. 2 at 62. Treatment typically includes individual or group therapy, such as dialectal behavior therapy which is the "gold standard" for Borderline Personality Disorder. *Id*. This treatment is available in the community and does not necessarily require hospitalization. Tr. 2 at 65. Any treatment for Mr. Wenke may be futile, however. Drs. Watkins and Nelson opine that his personality disorder contains "features [that] are pervasive and characterological such that they are unlikely to significantly change in the near future." Ex. 2 at 24.

Even if this Court finds that the diagnosis from Drs. Watkins and Nelson qualifies as a mental disease or defect, there is insufficient evidence to conclude that treatment for Mr. Wenke's personality disorder requires hospitalization.

CONCLUSION

Drs. Watkins and Nelson conducted a thorough competency evaluation of Mr. Wenke. The doctors intimately observed Mr. Wenke over a prolonged period and conducted a comprehensive investigation to vet the available collateral information. Their diagnosis is reliable and supported by the evidence. On the other hand, Dr. Leidenfrost barely spoke with Mr. Wenke, did not vet any collateral information, and based his opinion on an erroneous belief of the facts. His diagnosis is unreliable and unsupported by the evidence.

When determining whether Mr. Wenke suffers from a mental disease or defect that he needs hospitalization for pursuant to § 4244, the Court should credit (or discredit) each opinion accordingly.

DATED: April 18, 2025, Buffalo, New York.

Respectfully submitted,

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