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

UNITED STATES OF AMERICA

v. 22-CR-35-JLS

LUKE MARSHALL WENKE,

Defendant.

GOVERNMENT'S POST HEARING MEMORANDUM REGARDING WHETHER THE DEFENDANT SUFFERS FROM A MENTAL DISEASE OR DEFECT REQUIRING HOSPITALIZATION

The established evidence from the evidentiary hearing shows that the defendant, Luke Marshall Wenke, is presently suffering from a mental disease or defect for which treatment at a suitable facility is appropriate. The cumulative effect of the defendant's conduct before the Court raised concerns about the defendant's mental condition. This led the Court to form an opinion that there was reasonable cause to belief that the defendant may presently be suffering from a mental disease or defect, the treatment of which involves the defendant's need of custody for care or treatment in a suitable facility. The evidence presented at the evidentiary hearing shows by a preponderance of the evidence that the defendant is suffering from a mental disease or defect. This supports the Court's original concerns which prompted the Court to initiate this evidentiary process under Title 18, United States Code, Section 4244. Based on this evidence, the Court should commit the defendant to the custody of the Attorney General for treatment.

PROCEDURAL HISTORY

The defendant was convicted of Cyberstalking and was sentenced to 18 months imprisonment and 3 years supervised release, requiring him to comply with certain terms and conditions while released. The defendant violated the terms of supervised release in October 2023, and later pled guilty before the Court. (Dkt. No. 95). After the defendant's plea, there were several attempts by the parties to identify a psychologist to evaluate the defendant. The defendant was detained pending sentencing during this period. (Dkt. No. 105). While detained, the defendant mailed numerous letters to the Court spanning several months, discussing a variety of topics and fixated on certain individuals in these letters.

Around April 2024, Dr. Corey Leidenfrost issued a Forensic Psychological Evaluation report after he examined the defendant in March 2024. Dr. Leidenfrost was asked to examine whether the defendant was suffering from a mental disease or defect and whether his release would create a substantial risk of bodily injury to another person or serious damage to the property of another. While the defendant remained in custody, the Court issued an Order on August 6, 2024, requiring the defendant be examined under 18 U.S.C. § 4241(b), and whether the defendant was mentally incompetent and unable to understand the nature and consequences of the proceedings against him, or to assist properly in his defense. (Dkt. No. 144). The defendant continued to submit letters to the Court while detained, even sending letters to judges who were not assigned his case. (Dkt. No. 165). Per the Court's order, the defendant was later evaluated while he was housed at the Metropolitan Correctional Center (MCC) in Chicago, Illinois. The evaluators issued their report in November 2024, opining that the defendant was competent under 18 U.S.C. § 4241. (Dkt. No. 164).

Reviewing the defendant's conduct during the pendency of the case, on November 19, 2024, the Court found that the defendant was competent to proceed, but the Court had reasonable cause to believe that the defendant may be suffering from a mental disease or defect and needs to be placed in custody for care or treatment in a suitable facility. (Dkt. No. 166). The Court directed the parties to contact Dr. Leidenfrost so he could opine of the defendant's mental condition under 18 U.S.C. § 4244. (*Id.*)

On January 14, 2025, Dr. Leidenfrost issued his report after conducting a forensic examination under the Section 4244 analysis; where he opined that the defendant is presently suffering from a mental disease or defect requiring the defendant's custody for care or treatment in a suitable facility. Evidentiary hearings relating to this Section 4244 analysis then occurred pursuant to the statute.

STATEMENT OF FACTS

A. **Dr. Leidenfrost's Violence Risk Assessment**.

On March 5, 2024, Dr. Leidenfrost evaluated the defendant at the Orleans County Jail to assess whether the defendant is suffering from a mental disease or defect and whether he presented a risk to others if released. Dr. Leidenfrost reviewed several sources of collateral information such as the defendant's presentence report, social media postings, and letters the defendant sent to the Court. Based on Dr. Leidenfrost's review of the collateral information, his interview with the defendant, use of psychological assessments, and observations regarding the defendant's behavior; Dr. Leidenfrost diagnosed the defendant with "Bipolar I Disorder, current episode manic with psychotic features versus Schizoaffective Disorder,

Bipolar Type."[1] Dr. Leidenfrost also opined that the defendant has a High Risk of Future Violence, due to an underlying mental disease or defect. Dr. Leidenfrost similarly concluded that the defendant presented a High Risk for Serious Physical Harm and High Risk for Imminent Violence, due to an underlying mental disease or defect.

B. **Bureau of Prison's Competency Report**.

Tasked with a different analysis, Dr. Kaitlyn Nelson and Dr. Robin Watkins from the Bureau of Prisons, issued their report on November 13, 2024 after evaluating the defendant's competency to proceed to criminal adjudication.[2] Their evaluation was conducted under the 18 U.S.C. § 4241 statutory provision, and assessed whether the defendant was 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. Like Dr. Leidenfrost, Drs. Nelson and Watkins reviewed information from collateral sources, interviewed the defendant, and utilized couple psychological tools to assess the defendant's competency. Based on their evaluation, Drs. Nelson and Watkins opined that the defendant presents symptoms "consistent with a personality disorder or an autism specific disorder", and that the defendant was competent to proceed with his case. (Ex. 3 at p.24).

[1] *See* Government's Exhibit 1 – Dr. Leidenfrost's April 1, 2024 Forensic Psychological Evaluation (under seal) from Evidentiary Hearing dated February 18, 2025.
[2] *See* Government's Exhibit 3 – Federal Bureau of Prisons report dated November 13, 2024 (under seal).

C. **Dr. Leidenfrost's Section 4244 Forensic Evaluation**.

After the Court's opinion that there was reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect requiring treatment, Dr. Leidenfrost evaluated the defendant again on January 7, 2025. Dr. Leidenfrost's evaluation focused on the specific matter of whether the defendant has a mental disease or defect and is in need of custody for care or treatment in a suitable facility. Dr. Leidenfrost again relied on information from collateral sources, his previous evaluation of the defendant, and again interviewed the defendant. Based on this evaluation, Dr. Leidenfrost updated his diagnostic impression from the April 2024 report where he evaluated the defendant's risk for violence. This time, Dr. Leidenfrost diagnosed the defendant with Schizoaffective Disorder, Bipolar Type, "as there is evidence to suggest that [the defendant's] symptoms of psychosis, namely persecutory, paranoid, erotomanic delusions have persisted for a significant period outside the context of a mood episode."[3] Expanding on his previous diagnosis, Dr. Leidenfrost opined that the defendant is in need of custody for care or treatment in a suitable facility, for his mental disease or defect.

Dr. Leidenfrost, however, disagreed with Drs. Nelson and Watkins' diagnostic impressions from their competency evaluation, where they opined that the defendant has "Other Specified Personality Disorder, with Mixed personality traits". (Ex. 3 at p. 4). Dr. Leidenfrost noted that he disagreed with the diagnosis as it did not account for all the defendant's symptoms such as his delusional beliefs, and that there is "ample evidence to

[3] *See* Government's Exhibit 2 - Dr. Leidenfrost's January 13, 2025 Forensic Psychological Evaluation (under seal).

suggest that there has been no change in [the defendant's] psychiatric symptoms" since his last evaluation. (*Id.*)

D. **The Section 4244 Evidentiary Hearing Proceeding**

Pursuant to 18 U.S.C. 4244(c), an evidentiary hearing occurred on February 18, 2025, and April 10, 2025[4]. Dr. Leidenfrost testified about his forensic evaluation relating to the defendant's violence risk assessment and whether the defendant is presently suffering from a mental disease or defect in need of treatment under Section 4244. Dr. Leidenfrost also discussed the evaluation assessment processes he undertook when he examined the defendant and defined certain terms that were important considerations in deciding whether the defendant is presently suffering from a mental disease or defect for which he needs treatment in a suitable facility.

Dr. Leidenfrost, for instance, defined a delusion as a strongly held belief that an individual has that is not true and it is not congruent with an individual's culture, religion, political affiliation. (Tr. 1 at 17: 1-3). Delusions can manifest in various ways, and common examples include "paranoid, persecutory, grandiose, erotomanic" delusions. (*Id.* at 17: 13-18). In assessing a delusion, it is important for the forensic examiner to delve into what the belief is, and how the person being examined, came to believe what they believe. (*Id.* at 17: 21-25). Classifying a belief as a delusion versus an extreme belief involves deciphering the idiosyncratic nature of the belief; meaning the forensic evaluator must decipher whether a person's belief deviates from what is common in culture. (*Id.* at 18: 1-5). Delusions stem from

[4] The Transcript of Proceedings from the Evidentiary Hearing dated February 18, 2025 will be delineated ("Tr. 1"), while the Transcript of Proceedings from April 10, 2025 will be delineated ("Tr. 1")

idiosyncratic beliefs, causing "functional problems", not beliefs that are unusual but are still held by large groups of people. (*Id*. at 18: 12-20).

Dr. Leidenfrost also defined other psychiatric illnesses such as mania, psychosis, Bipolar I disorder, and schizoaffective disorders and the various symptoms he tries to identify before diagnosing someone. (*Id*. at pgs.19 -20). One concerning symptom that Dr. Leidenfrost observed during the defendant's forensic examinations was the defendant's fixation on particular individuals, which contributed to Dr. Leidenfrost's diagnosis that the defendant suffers from paranoid, persecutory and grandiose delusions. (*Id*. at 29: 13-16). One example of this was the defendant's fixation on R.T., which Dr. Leidenfrost classified as an erotomanic delusion. (*Id*. at 29: 20-25). This type of delusion is one where someone believes that another individual is infatuated and in love with them, and that there are outside forces at play trying to prevent the relationship. (*Id*. at 30: 1-10). Relying on his personal examination of the defendant, and his review of collateral information, Dr. Leidenfrost opined that there was sufficient evidence that the defendant exhibited erotomanic delusions. (*Id*.)

Similarly, Dr. Leidenfrost testified about his evaluation of the defendant's belief in psychics and mediums, and why the defendant's belief was more akin to a delusion. (*Id*. at 32: 1-16). The problematic belief is not the defendant's belief in psychics or mediums, which can be a culturally congruent belief, rather it is that the defendant's belief, in context of all the other collateral information, crosses the threshold into a delusion. (*Id*.) Based on his evaluation of the defendant's conduct and the collateral information, Dr. Leidenfrost diagnosed the defendant with a mental disease or defect that made him high risk for future

violence, and imminent violence. (*Id.* at 35: 10-25; 36:4-24). The defendant's symptoms have remained untreated since at least 2019/ 2020. (*Id.* at 36: 4-8).

When Dr. Leidenfrost examined the defendant in January 2025 under the Section 4244 analysis, he updated the defendant's diagnosis to Schizoaffective disorder, Bipolar Type. (*Id.* at 39: 14-18). Dr. Leidenfrost defined this disorder as one where someone experiences symptoms of a major mood disorder, such as bipolar disorder, but at the same time, that person has psychotic symptoms such as delusions. (*Id.* at 39: 15-25). Based on his forensic evaluation, Dr. Leidenfrost opined that "given the current symptoms of a serious mental illness or mental disease or defect, and that the symptoms of a mental disease or defect still significantly contribute to a violence risk," the defendant should receive treatment in an appropriate facility. (*Id.* at 41: 21-25).

Dr. Leidenfrost also testified about his disagreement with certain aspects of Drs. Nelson and Watkins' report. For instance, Dr. Leidenfrost noted that he disagreed with the BOP report – which focused on the narrow issue of competency – that the defendant did not have a manic episode. (*Id.* at 43: 13-25). He also disagreed with their analysis about whether the defendant was delusional, noting that although spiritualism is a culturally congruent belief, their analysis ignores other evidence that support the presence of an erotomanic delusion. (*Id.* at 44: 8-23). The defendant's beliefs are beyond a culturally congruent belief, they are idiosyncratic to the defendant, and within the context of the other facts in the case, is delusional. (*Id.* at 45: 7-14). When someone presents with schizoaffective disorder and their symptoms are acute, meaning that they are active and ongoing, they are actively psychotic, and treatment is needed to stabilize that person. (*Id.* at 66: 23-25; 67: 1-2).

The defendant's counsel questioned Dr. Leidenfrost on the sources of collateral information he utilized – or failed to utilize – in his evaluation process. (*Id*. at 55). One point of emphasis was Dr. Leidenfrost's assessment that the defendant was delusional. (*Id*. at pgs. 69 -73). Dr. Leidenfrost clarified that the assessment of whether the defendant is delusional is based on assessing the context of all the information in addition to the defendant's other behaviors and beliefs. (*Id*. at 69: 23-25). And based on Dr. Leidenfrost's evaluation of the information in the case, and his observations of the defendant, he would not alter his conclusion that the defendant needs to be in care for treatment and hospitalized for treatment, because the defendant exhibited many symptoms to support this conclusion. (*Id*. at 72: 23-25; 73: 1-5).

Drs. Nelson and Watkins also testified about their forensic evaluation under 18 U.S.C. § 4241 where they examined the defendant and opined that the defendant was competent. In exploring diagnoses in the Section 4241 context, the exploration is more limited as the focus of the evaluation is on competency related abilities. (Tr. 2 at 11: 9-14). Under a Section 4244 analysis, however, the inquiry is more "broad based", because the focus is whether a defendant is suffering from a mental disease or defect and if they need treatment, rather than their competency to continue the court proceedings. (*Id*. at 11: 15-22). Although there may be some overlap in the types of information examined under both statutory provisions, the purposes are different. (*Id*. at 14: 19-22). Under a Section 4244 analysis, there are different considerations that may be involved such as different assessments, different measurements, to answer the broader question at issue. (*Id*. at 29: 6-17). Someone can be deemed competent,

but still have or suffer from a mental disease or defect for which they would need treatment. (*Id*. at 29: 21-25; 41: 22-25). BOP's examination was focused on the narrow issue of whether the defendant is competent under Section 4241. But based on their evaluation of the defendant, Drs. Nelson and Watkins believed that the defendant did not discuss overtly delusional beliefs. (*Id*. at 35: 11-13; 36: 7-12). Based on the information they reviewed, and their evaluation of the defendant, Drs. Nelson and Watkins diagnosed the defendant with "other specified personality disorder, with mixed personality features. Primarily borderline traits and narcissistic personality traits." (*Id*. at 61: 16-20). A personality disorder is a pattern of personal characteristics of that person, while a mental illness would be a deviation from what their typical presentation would be. (*Id*. at 62: 1-13). Someone, however, can have a mental disease or defect and still suffer from a personality disorder. (*Id*. at 77: 6-8).

LEGAL STANDARD

A hearing under 18 U.S.C. § 4244(a) is appropriate where there is substantial information available for the Court to establish that there is "reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect." 18 U.S.C. § 4244(a); *United States v. Gigante*, 982 F.Supp. 140, 174-175 (E.D.N.Y. Oct. 29, 1997); *Simmons v. United States*, No. 5:04 CV 539 (JFS), 2005 WL 2033473 at *4 (N.D.N.Y. Aug. 22, 2005). Once a defendant is evaluated and a report is issued, the Court shall hold a hearing, where "if the court finds by a preponderance of the evidence that the defendant is suffering from a mental disease or defect and should be committed to a facility for treatment in lieu of incarceration, then the court may commit the defendant . . ." *See* 18 U.S.C. § 4244(b) –(d).

The preponderance of the evidence analysis standard considers "which circumstance was more likely than not". *United States v. Yannai*, 791 F.3d 226, 242 (2d Cir. 2015).

ARGUMENT

The evidence shows that it is more likely than not that the defendant is suffering from a mental disease or defect for which he should be committed to a suitable facility for treatment. Dr. Leidenfrost was tasked with evaluating the defendant under Section 4244 to provide an opinion on the discrete question of whether the defendant is presently suffering from a mental disease or defect for which treatment is needed. He answered that question in the affirmative.

In assessing the weight that should be given to testimonies in the hearing, the Court should weigh Dr. Leidenfrost's testimony more favorably in understanding whether the defendant is currently suffering from a mental disease or defect. To extrapolate Drs. Nelson and Watkins' conclusion from the Section 4241 evaluation to this broader analysis of whether the defendant is presently suffering from a mental disease would turn the intent of each statute on its head. Even Dr. Watkins acknowledged that in evaluating the defendant under the Section 4244 provisions would require additional and separate information from the assessment done in the Section 4241 evaluation. More time and review of more collateral information can sometimes be beneficial to a case. Here, Dr. Leidenfrost formulated his opinion on the various sources collateral information that were provided to him, and his personal evaluation of the defendant. Importantly, even when confronted by the defense about other sources of collateral information, he did not waiver from his opinion, because his determination was based on multiple sources of information and symptoms that meet the

diagnostic definitions of a mental disease or defect. For the reasons below, the Court should find that the defendant suffers from a mental disease or defect, which requires treatment in a suitable facility.

First, the Court should not find the fact that the defendant was evaluated at MCC for a longer period, versus the two times Dr. Leidenfrost evaluated the defendant determinative. The focus, instead, should be on for what purpose the defendant was being evaluated. Indeed, Dr. Leidenfrost acknowledged the preference is to have more time to interview a defendant but that is not usually reasonable for these evaluations. (Tr. 2 at 57: 1-3). Further, because Dr. Leidenfrost evaluated the defendant over a more extended span of time – almost one year – he was likely in a better position to observe and quantify the symptoms the defendant presented, than the more limited observation period Drs. Nelson and Watkins completed.

Second, the Court should credit Dr. Leidenfrost's diagnosis that the defendant suffers from a mental disease or defect like schizoaffective disorder, which requires psychiatric medication, rather than the general personality disorder traits that Drs. Nelson and Watkins conclude. (Tr. 1 at 36: 4-8). The opinion relating to the defendant's delusion stems from an analysis of various sources of collateral information in the case, and examining the idiosyncratic mental beliefs the defendant has formulated in his mind. (*Id*. at 45: 7-13). A delusion is a belief not based in reality, and the context surrounding the belief is important. Here, Dr. Leidenfrost was careful to clarify that it is not the defendant's mere belief in psychics or mediums or that his family visited Lily Dale with the defendant why he diagnosed the defendant as delusional. (*Id*. at 17: 1-25; 29: 13-25; 44: 8-25; 69: 17-25). His conclusion was based on the totality of the information he evaluated, such as, the defendant holding on to

certain beliefs even when there is contradictory information that conflicts with this belief, because they are idiosyncratic to him. (*Id*. at 45: 7-13). This is one of the key distinctions that Drs. Nelson and Watkins could not provide clear guidance on during their testimony. (Tr. 2 at 35 and 36). The issue here is not the general belief in psychics or mediums, it is the idiosyncratic nature of the defendant's beliefs. The defendant's beliefs are less akin to someone with a strong religious belief, and more like someone whose belief is not based in reality, because of the contradictory information. Moreover, there were other examples of delusional beliefs that Dr. Leidenfrost included in his analysis such as the defendant's fixation on various individuals, and how they are working together against the defendant, including the Court. (*See* Ex. 1 at p. 17). For instance, K.V. may have a website where she posts information about the defendant, but this information, did not change Dr. Leidenfrost's overall diagnosis when he learned about it during the evidentiary hearing because there are other symptoms to support his diagnosis. As such, he would not alter his conclusion that the defendant had a mental disease or defect and needs treatment. (Tr. 1 at 73: 1-4). Indeed, someone may maintain overvalued ideas about some things, and still maintain delusions on other topics. (Ex. 2 at p. 4).

Third, although the defense focused on the collateral information Dr. Leidenfrost failed to consider, the sources of information he was provided and considered supports his conclusion that the defendant presently suffers from a mental disease or defect for which he needs treatment. For instance, Dr. Leidenfrost testified that the defendant has mood symptoms the defendant has been experiencing since the 2019/2020 period for which the defendant has not received treatment. (Tr. 1 at 36: 4-6). All these psychiatric symptoms affect the other overarching issue in this case: how the defendant's mental disease or defect impacts

the defendant's risk of violence. (*Id*. at 36: 9-20). The evidence from the hearing shows that the defendant is not suffering from a mere personality disorder for which he would not need psychiatric medication; it is something more, it is a mental disease or defect that manifests itself a Schizoaffective Disorder, Bipolar Type psychiatric condition. (Ex. 2 at p. 7). This evidence coupled with the defendant's lack of insight into his mental condition, supports the government's arguments that the defendant presently has a mental disease or defect, and is in need of custody for care or treatment in a suitable facility.

As Drs. Nelson and Watkins acknowledged there are different assessments and sources of information that they would need to examine before they could render an opinion in this case on whether the defendant is presently suffering from a mental disease or defect for which he needs treatment in a suitable facility. (Tr. 2 at 29; 77). The salient issue that the Court must address for the Section 4244 hearing is whether the evidence shows by a preponderance of the evidence that the defendant has a mental disease or defect and needs treatment. Dr. Leidenfrost's evaluation and testimony provides that answer, and it is yes.

CONCLUSION

Based on the evidence presented to the Court regarding the 18 U.S.C. § 4244 analysis, the Court should find 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.

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

MICHAEL DIGIACOMO

United States Attorney

BY: ***s/ Franz M. Wright***

Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716) 843-5825
Franz.Wright@usdoj.gov