

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. * June 23, 2023
* 1:32 p.m.
*
* LUKE MARSHALL WENKE, * CONTINUATION OF
* VIOLATION HEARING
*
* 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.,
FONDA 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 (Proceedings commenced at 1:32 p.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:** The United States versus Luke Marshal
16 Wenke, Case Number 22-CR-35. We're here for a continuation of a
17 violation hearing.

18 Counsel, please state your appearances for the record.

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

20 **MR. ANZALONE:** Good afternoon, Your Honor. Alexander
21 Anzalone from the Federal Defenders Office, along with Fonda
22 Kubiak.

23 We're here on behalf of our client, Luke Wenke, who is
24 to our left in custody.

25 **THE COURT:** Okay. Good afternoon.

1 THE DEFENDANT: Good afternoon, Your Honor.

2 **THE COURT:** We're here today for the conclusion of the
3 violation proceeding that began on Wednesday of this week,
4 June 21.

5 I've studied the parties' submissions from yesterday
6 and conducted my own additional research, along with that of my
7 team.

8 Anything that we need to cover before I keep going,
9 Mr. Rudroff?

10 MR. RUDROFF: No, Your Honor.

11 THE COURT: Mr. Anzalone?

12 **MR. ANZALONE:** Your Honor, I'll rest on my
13 submissions. Unless, of course, the Court has questions. I can
14 answer questions.

15 **THE COURT:** Okay. Rule 32.1(b) of the Rules of
16 Criminal Procedure governs the revocation of supervised release.

17 And unlike a criminal trial, where the burden of proof
18 is beyond a reasonable doubt, here the Government bears a
19 lighter burden to prove a violation of supervised release by
20 preponderance of the evidence.

Having considered the hearing testimony, the documentary evidence, and the parties' submissions, I find that the Government has sustained its burden of proving that Mr. Wenke has violated the supervised release condition as the petition charged.

1 In particular, I find that the witnesses presented by
2 the Government were credible, as was defendant's witness.

3 Notably, Probation Officer Zenger testified as to
4 reviewing the conditions with Mr. Wenke on more than one
5 occasion, and that Mr. Wenke understood those conditions.

6 Special Agent Brown testified to the beginning of the
7 investigation into Mr. Wenke and being contacted about the
8 May 21, 2023, e-mail that is the subject of this proceeding.

9 Special Agent Brown also testified to the similarities
10 between the previous communications from Mr. Wenke to [REDACTED]
11 and the e-mail sent to A [REDACTED] B [REDACTED] as for the e-mail that
12 Mr. Wenke sent on May 13, 2023, to A [REDACTED] B [REDACTED].

13 That e-mail references [REDACTED], as well as A [REDACTED]
14 B [REDACTED] and [REDACTED] collectively over 18 times in a rant
15 about how they both supposedly wronged him and how things must
16 be resolved to Wenke's liking.

17 For instance, there is reference to: "Your client,
18 Benjamin Teeter, your comrade, [REDACTED], your colleague",
19 referring to [REDACTED].

20 Three occasions where they were called out, [REDACTED]
21 and A [REDACTED] B [REDACTED] as Nazi lawyers. "You all" referring to both
22 lawyers.

23 "Your criminal defense industry", referring to both,
24 in my judgment. "Your state's Nazi chief lawyer, [REDACTED]";
25 "that stranger", referring to [REDACTED], in my judgment;

1 "Minnesota defense lawyers", referring to the defendant's felony
2 three times.

3 "You guys or guys", referring to both lawyers, three
4 times. And "you people", referring to both lawyers twice.

5 And by "both lawyers" I'm referring, obviously, to
6 [REDACTED] and B [REDACTED].

7 The contents and circumstances of this e-mail easily
8 lead me to infer that Mr. Wenke was intentionally indirectly
9 contacting [REDACTED], and additionally intended to contact A [REDACTED]
10 B [REDACTED] in a way that was reasonably foreseeable to result in
11 contact with [REDACTED].

12 The inference of indirect contact with [REDACTED] is
13 bolstered by defendant's knowledge that he cannot have contact
14 directly with Mr. [REDACTED].

15 And that [REDACTED] and A [REDACTED] B [REDACTED] had worked
16 together previously on a criminal case involving Mr. [REDACTED].

17 And that is relevant there as Government's Exhibit 4,
18 the December 16, 2020, e-mail from Mr. Wenke to [REDACTED],
19 mentioning you and the B [REDACTED] on two occasions.

20 The fact that [REDACTED] and A [REDACTED] B [REDACTED] share office
21 space and the defendant's likely knowledge of that fact, given
22 the history of the case.

23 And noteworthy there are Exhibits 3, 5 and 6 does add
24 something to the weight of this inference, albeit that part is
25 not necessary to my finding.

1 The indirect contact that I find here with [REDACTED]
2 is shown by a preponderance of the evidence.

3 Indirect is something done through someone else or
4 through something else, and Mr. Wenke's e-mail here was an
5 indirect contact with [REDACTED].

6 The case law is noteworthy as well. I've studied
7 Johnson, I've studied a few of these other cases. Johnson is
8 446 F.3d 227 from the Second Circuit, 2006.

9 Also noteworthy is Burroughs, United States versus
10 Burroughs, 613 F.3d 233 from the D.C. Circuit.

11 Among other things, the Court noted that the
12 restriction on indirect contact was clearly meant to reach
13 contact by means of a computer, phone, other device or a
14 third-party intermediary.

15 Also, relevant is United States versus Latigo, 2023
16 Westlaw 2446903, that's from the Fifth Circuit, where the
17 defendant's creation of public websites constituted an indirect
18 communication with the victim, in violation of a condition
19 prohibiting any form of unauthorized direct or indirect contact.

20 Moreover, the condition at issue in this case was not
21 drafted in isolation, nor should it be interpreted in isolation.

22 The power of the Court to impose special conditions is
23 circumscribed by the requirement that the restrictions
24 reasonably relate to the nature and circumstances of the
25 offense, history and characteristics of the defendant and the

1 need for the sentence imposed.

2 The condition must be considered in light of the crime
3 for which Mr. Wenke was charged and convicted here, a pattern of
4 disturbing communications constituting cyberstalking.

5 Based on the evidence, I find that the Government has
6 proven by a preponderance of the evidence that Mr. Wenke sent
7 the e-mail to Andy Birrell, and thereby violated the condition
8 that he not have any contact directly or indirectly through
9 social media, telephone, text, mail or e-mail with the victim,
10 RG, his family or his current or prior places of employment.

11 I therefore find Charge One sustained and that
12 Mr. Wenke has violated this supervised release condition.

13 Next, we need to schedule sentencing, a report from
14 Mr. Zenger and briefing from the parties.

15 Should we start with Mr. Zenger on a schedule?

16 Mr. Anzalone, do you want to be heard before we get
17 that process discussed?

18 **MR. ANZALONE:** I'm just going to ask for an expedited
19 sentencing date, to the extent it can be accommodated.

20 **THE COURT:** Okay. Mr. Zenger, how much time do you
21 need for a report?

22 **MR. ZENGER:** Your Honor, we can have a report prepared
23 within two weeks, so anytime. We can get it in a week before
24 sentencing.

25 **THE COURT:** July 7 for the report from probation.

1 Mr. Anzalone, how much time do you need from the time
2 that you see that?

3 **MR. ANZALONE:** I could file by Wednesday the 12th, if
4 that's reasonable.

5 THE COURT: Okay.

6 Mr. Rudroff, can you match that schedule, Wednesday
7 the 12th of July?

8 MR. RUDROFF: Yes, Your Honor.

9 **THE COURT:** All right. Wednesday the 12th of July.
10 Is the idea that we would get to sentencing by the 14th? Is
11 that what you are, Mr. Anzalone, looking for?

12 | MR. ANZALONE: Please.

13 **THE COURT:** If we can fit it into our schedule. Let's
14 take a look, Ms. Henry.

15 Any submissions, Mr. Anzalone, not just briefs, right?
16 Whatever you are going to submit July 12th.

17 | MR. ANZALONE: Understood.

18 **THE COURT:** Okay. And sentencing, if we can do it on
19 Friday the 14th.

20 | **THE CLERK:** How about 11:00 o'clock?

21 **MR. ANZALONE:** Yes. Thank you.

22 **MR. RUDROFF:** That works for the Government, Your
23 Honor.

24 **THE COURT:** Friday July 14, 11:00 a.m. for sentencing.
25 Okay. Is there anything else, Mr. Rudroff?

1 MR. RUDROFF: Nothing from the Government, Your Honor.

2 THE COURT: Mr. Anzalone?

3 MR. ANZALONE: No. Thank you, Your Honor.

4 **THE COURT:** All right. Mr. Wenke will remain remanded
5 pending sentencing. Thank you very much.

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7 (Proceedings concluded at 1:42 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.
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10 *s/ Bonnie S. Weber*
11 Signature

10 July 28, 2023
11 Date

12 **BONNIE S. WEBER**
13 Official Court Reporter
14 United States District Court
15 Western District of New York
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