

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

|                           |   |                  |
|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, | ) |                  |
|                           | ) |                  |
| Plaintiff,                | ) | Criminal Action  |
|                           | ) | No. 21-10270-MLW |
| v.                        | ) |                  |
|                           | ) |                  |
| ATICHA JITTAPHOL,         | ) |                  |
|                           | ) |                  |
| Defendant.                | ) |                  |
|                           | ) |                  |

BEFORE THE HONORABLE MARK L. WOLF  
UNITED STATES DISTRICT JUDGE

HEARING

April 1, 2022  
2:38 p.m.

John J. Moakley United States Courthouse  
Courtroom No. 2  
One Courthouse Way  
Boston, Massachusetts 02210

Kelly Mortellite, RMR, CRR  
Official Court Reporter  
One Courthouse Way, Room 3200  
Boston, Massachusetts 02210  
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## P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Mark L. Wolf, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Courtroom 2, Boston, Massachusetts, on April 1, 2022.)

(Case called to order.)

THE COURT: You may be seated. Would the clerk please administer the oath to the interpreter, who is going to interpret simultaneously, I understand, remotely.

(Interpreter duly sworn.)

THE COURT: Thank you. Would counsel please identify themselves for the Court and for the court reporter. Excuse me. The interpreter needs to mute himself, except when he's speaking to me.

MS. LAWRENCE: Good afternoon, Your Honor. Kelly Lawrence for the United States.

U.S. PROBATION: Good afternoon, Your Honor. Taylor Wertz for U.S. Probation.

MR. HALPERN: Good afternoon, Your Honor. Keith Halpern for Ms. Jittaphol.

THE COURT: The defendant is present. Do we have Probation Officer Pace on the Zoom as well, I hope?

MR. PACE: Yes, you do, Your Honor. James Pace for

1 U.S. Probation present. And I apologize, I'm in training and I  
2 do not have a sport jacket to wear during this matter.

3 THE COURT: That's fine, that's fine.

4 MR. PACE: Thank you, Your Honor.

5 THE COURT: We're here today pursuant to my March 30,  
6 2022 order, docket number 61. I wrote that, "On March 8, 2022,  
7 the Court modified the conditions of defendant Aticha  
8 Jittaphol's conditions of pretrial release and continued the  
9 hearing to address the alleged violations of the previously  
10 imposed conditions in the November 19, 2021, January 11, 2022  
11 and February 7, 2022 petitions for actions on conditions of  
12 pretrial release," docket numbers 16, 20 and 38.

13 On March 28, Probation filed a petition for summons,  
14 docket number 58, attached to the March 30 order, alleging  
15 additional violations of Jittaphol's conditions of pretrial  
16 release. So I wrote, "A hearing to address the alleged  
17 violations in each of these petitions," the four of them, "will  
18 be held on April 1, 2022 at 2:30 p.m. at the Moakley  
19 Courthouse. Jittaphol shall attend and be prepared to be taken  
20 into custody immediately if the Court revokes her release."

21 Have the parties received the March 31, 2022 release  
22 status report that the Probation Office provided yesterday?

23 MS. LAWRENCE: Yes, Your Honor.

24 MR. HALPERN: Yes.

25 THE COURT: You want to stand up, Mr. Halpern.

1           And the legal issue, the framework has been discussed  
2           previously, including at the January 20, 2022 hearing. So this  
3           is a hearing to determine whether the defendant's release  
4           should be revoked. It's being conducted primarily under 18,  
5           United States Code, Section 3148(b). Under section 3148(b), I  
6           have to determine whether there's probable cause to believe the  
7           defendant committed a state or federal crime since being  
8           released on conditions.

9           And I also need to determine under section 3148(b)  
10          whether there's clear and convincing evidence that she violated  
11          some other condition of her release other than the prohibition  
12          on committing crimes.

13          If violations are proven, basically section 3148(b) in  
14          pertinent part states that, "The judicial officer shall enter  
15          an order of revocation and detention if, after a hearing, the  
16          judicial officer, one, finds there's probable cause to believe  
17          that the person has committed a federal, state or local crime  
18          while on release, or, B, clear and convincing evidence that the  
19          person has violated any other condition of release and finds  
20          that based on the factors set forth in section 3142(g), there  
21          is no condition or combination of conditions," and then in  
22          pertinent part, "that the person is unlikely to abide by any  
23          condition or combination of conditions of release."

24          The standard for proving whether there are no  
25          conditions or combination of conditions that will reasonably

1 assure that the defendant will obey conditions of release is  
2 proof by a preponderance of the evidence, as the Fifth Circuit  
3 wrote in *Aron*, 904 F.2d, 221, 224, and as the Second Circuit  
4 wrote in *Gotti*, 794 F.2d 773, 777. The Federal Rules of  
5 Evidence do not apply in a revocation proceeding as provided in  
6 Rule 1101(d). So if we get to it, I can consider hearsay that  
7 I find to be reliable.

8 All right. That's the legal framework. Does somebody  
9 have a different view of what the legal framework is? No.

10 All right. So I have four petitions, and I'd like to  
11 go over them with the defendant and see which of the alleged  
12 violations, if any, she admits and which she disputes, and then  
13 to the extent, if any, that some are disputed, I'll proceed to  
14 resolving the disputes, including hearing evidence if  
15 necessary.

16 So the defendant should approach the witness stand and  
17 be sworn. Mr. Halpern, you can go with her with copies of the  
18 petitions, all four petitions, please.

19 MR. HALPERN: I don't have all four petitions.

20 THE COURT: What's that?

21 MR. HALPERN: I don't have all four petitions.

22 THE COURT: Okay. Jarrett, would you give him the  
23 petitions, please.

24 Would the clerk please administer the oath to the  
25 defendant.

1 THE WITNESS: Do I need to stand up?

2 THE CLERK: She's not going to be able to hear the  
3 interpreter from there with the headset.

4 THE COURT: All right. You can return to the table  
5 because I'm told that she won't be able to hear the  
6 interpreter.

7 (Defendant duly sworn.)

8 THE COURT: You may be seated. Would you please state  
9 your full name.

10 THE DEFENDANT: Aticha Jittaphol.

11 THE COURT: And do you understand you've just taken an  
12 oath to answer the questions I'm going to ask you honestly and  
13 any failure to do that could be a separate prosecutable  
14 criminal offense?

15 THE DEFENDANT: Yes.

16 THE COURT: And do you understand that if you're  
17 confused by any of my questions or unsure about what an honest  
18 and accurate answer would be, I'll give you a chance to speak  
19 to Mr. Halpern so we can clear up any confusion and you can  
20 give me a reliable response?

21 THE DEFENDANT: Yes.

22 THE COURT: In the last 24 hours have you taken any  
23 drugs, medication or alcohol?

24 THE DEFENDANT: No, sir.

25 THE COURT: And have you talked with Mr. Halpern about

1 the alleged violations of your pretrial release that are  
2 contained in the four petitions that I described earlier?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you fully satisfied with his work as  
5 your lawyer?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. The first petition, so I'm  
8 going to ask you some questions about whether you -- actually,  
9 before I do that, let me say the following:

10 Has the government or Probation made any  
11 representations or promises to the defendant or to her counsel  
12 as to what it will recommend if she admits any of the  
13 violations?

14 MS. LAWRENCE: I have not, Your Honor.

15 THE COURT: You both want to keep your voices up.  
16 Mr. Halpern, is that right?

17 MR. HALPERN: That's right.

18 THE COURT: All right. So I'm going to ask you if you  
19 admit that you committed particular violations or if you deny  
20 it. Do you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. So the first petition that was  
23 filed is docket number 16. I signed it on November 24, 2021.  
24 Do you have that one, Mr. Halpern?

25 MR. HALPERN: Yes, Your Honor.

1 THE COURT: It actually doesn't have all of the  
2 conditions of pretrial release on the first page because the  
3 first condition in all of them is that the defendant must not  
4 violate federal, state or local law while on release. That was  
5 one of the conditions.

6 And then on page 2, it says that Ms. Jittaphol  
7 reported daily use of methamphetamine. Ms. Jittaphol's  
8 urinalysis from 10/29/21 was positive for amphetamines. Did  
9 you tell Probation that you had been using methamphetamine  
10 daily and used it on or shortly before October 29, 2021?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. So the defendant has admitted the  
13 use of possession and use of methamphetamine in violation of  
14 the first condition of her release.

15 MR. HALPERN: Can I be heard?

16 THE COURT: No. I mean, this is standard --

17 MR. HALPERN: I would like to provide context here.

18 THE COURT: What's that?

19 MR. HALPERN: I think the context here --

20 THE COURT: You'll get a chance to argue the  
21 implications if I find that they're done. This is the third  
22 time I could have done this. I want to find out what's  
23 admitted and what is denied and then what's proven if it's  
24 disputed. And once I find the facts, you'll get a chance to  
25 argue the implications of them.

1           Okay. So in that first petition Probation was not  
2 asking me to revoke the defendant and told me that  
3 Ms. Jittaphol is agreeable to entering detox at SSTAR in Fall  
4 River and has signed releases. She was expected to start this  
5 program on 11/22/21. It said, "Probation will update the Court  
6 if any changes are necessary," and I approved, you'll see on  
7 the petition, "No action," and wrote, "However, Probation shall  
8 report promptly if defendant does not properly participate in  
9 detox or otherwise violates the conditions of her release."

10           So I'll make that petition Exhibit 1 of today's date.  
11 Then the second petition is docket number 21. It was filed on  
12 January 12, 2022 and signed by me, the same day. It lists the  
13 conditions of pretrial release that include, 10, "The defendant  
14 must not use or unlawfully possess a narcotic drug or other  
15 controlled substance unless prescribed by a licensed medical  
16 practitioner."

17           That was also a condition noted in the first petition,  
18 Exhibit 1, that was number 5. And condition 14 as described in  
19 Exhibit 2, the second petition, states, "The defendant must  
20 participate in a program for inpatient or outpatient substance  
21 abuse therapy and counseling if directed by the Pretrial  
22 Services Office or supervising officer."

23           And then on page 2, in pertinent part, the petition  
24 says, "As outlined in the November 19 petition, the defendant  
25 admitted to U.S. Probation Office daily use of methamphetamine

1 and was subsequently amenable to participate in inpatient  
2 substance use treatment. Following the Court's approval of  
3 this plan, the defendant was referred for inpatient substance  
4 abuse treatment, SSTAR, located in Fall River, Massachusetts  
5 but was denied placement in the program due to failing to  
6 report to the program during intake hours on November 22, 2021  
7 and November 30, 2021."

8 Did the probation officer tell you to go to the SSTAR  
9 program located in Fall River on November 22 and November 30?

10 THE DEFENDANT: Yes. But I --

11 THE COURT: Did she tell you to go there?

12 THE DEFENDANT: Yeah, she told me to go. I go  
13 there --

14 THE COURT: Here, just listen to what I ask you and  
15 say what's necessary to answer, but I'm going to give you a  
16 chance to tell me. Did you go there during business hours on  
17 November 22, 2021?

18 THE DEFENDANT: Yes, but I drive there, I just got  
19 late, and they did not accept me inpatient.

20 THE COURT: Did you go there during business -- I'll  
21 give you a chance to explain after you answer these questions.  
22 Here, did you go there on November 22, 2021, and were you  
23 denied placement in the program, were you told they weren't  
24 going to place you in the program that day because you hadn't  
25 come during business hours?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay.

3 THE DEFENDANT: Yes.

4 THE COURT: And did the same -- were you told by  
5 Probation to go again on November 30, 2021?

6 THE DEFENDANT: Yes.

7 THE COURT: And did you go again on November 30, 2021?

8 THE DEFENDANT: Yeah, it's like 30 November that I be  
9 there but I late. They not accept me.

10 THE COURT: They didn't accept you the second time  
11 either?

12 THE DEFENDANT: No. The first time I missed that. I  
13 called the Probation that I missed it, I could not make it  
14 because I don't have anyone to take care of the dog for me.

15 THE COURT: The dog?

16 THE DEFENDANT: Yeah. And she make -- indicate that  
17 November 30 for me, and she understand that.

18 THE COURT: Okay. So the probation officer told you  
19 to go on November 30?

20 THE DEFENDANT: Yes.

21 THE COURT: And did she or the program tell you what  
22 time to come?

23 THE DEFENDANT: Yes.

24 THE COURT: And what time were you told to be there?

25 THE DEFENDANT: I believe that 1:30 or 2:00, like

1       that.

2               THE COURT:   Okay.

3               THE DEFENDANT:  I late, 15 minute.  I call and they  
4       say they not accept that because we have to accept -- I have to  
5       be there on time.

6               THE COURT:  All right.  So they told you to be there  
7       at about 1:30, and you got there late and they wouldn't admit  
8       you; is that correct?

9               THE DEFENDANT:  Yeah.  Yes, yes.

10              THE COURT:  All right.

11              THE DEFENDANT:  Yes, I get in during the business  
12       hour.

13              THE COURT:  What's that?

14              THE DEFENDANT:  I get there in the business hour.

15              THE COURT:  It was in the business hours, but you were  
16       late and they wouldn't accept you?

17              THE DEFENDANT:  Exactly.

18              THE COURT:  All right.  And then did the probation  
19       officer refer you to inpatient treatment through the Behavioral  
20       Health Network?

21              THE DEFENDANT:  Yes, in Springfield.

22              THE COURT:  Okay.  So the alleged violation of not  
23       going to SSTAR as directed by Probation I find is admitted with  
24       explanation that I may hear more about later from Mr. Halpern  
25       at least, possibly from the defendant.

1           Okay. Then the next paragraph says, "On December 6,  
2           the defendant was admitted to inpatient substance abuse  
3           treatment with Behavioral Health Network, BHN. On December 27,  
4           2021, the defendant discharged from inpatient treatment without  
5           notifying her U.S. probation officer."

6           Did you leave the Behavioral Health Network on or  
7           about December 27, 2021, without notifying your probation  
8           officer?

9           THE DEFENDANT: Actually, I thought the ST -- that  
10          place, they connect with the Probation because when I asking  
11          them, like, Hope Center, asking them when the cost will be done  
12          or how long I have to stay here, they told me it depend. The  
13          counselor told me it depend on the Probation, and they already  
14          connect together with like, how long I have to stay for. They  
15          all have -- Probation tell them on the -- when I leave from  
16          there, because of The Hope Center, they give me the date that I  
17          can leave. And I thought they connect to the Probation and  
18          Probation told them it's fine that I can go. I cannot leave  
19          there alone at all because everybody have a counselor and thing  
20          like that. Yeah. I got the certificate from the -- I finish  
21          the program and I got that.

22          THE COURT: Okay. So I'm going to treat that  
23          allegation as denied. It's my understanding that the defendant  
24          is saying that the people at BHN, which might also be called  
25          The Hope Center, said she could leave and she thought they had

1 talked to Probation about that. Is that what you want me to  
2 understand?

3 THE DEFENDANT: Yes, yes, that is what I want you to  
4 understand.

5 THE COURT: All right. So I'm treating that as  
6 denied.

7 Did the people at the Behavioral Health Network tell  
8 you that they recommended that you stay for additional  
9 inpatient treatment?

10 THE DEFENDANT: No.

11 THE COURT: You deny that, because it's next -- the  
12 Probation Office -- I'm just trying to identify what's in  
13 dispute. The Probation Office says in the petition that,  
14 "Further inquiry into the circumstances surrounding her  
15 discharge reveals the defendant completed short-term inpatient  
16 treatment and declined to participate in her next phase of  
17 treatment, long-term treatment, which was clinically  
18 recommended by the Probation staff."

19 MR. HALPERN: That's denied.

20 THE COURT: So she disputes that?

21 MR. HALPERN: Yes.

22 THE COURT: She denies that. Okay.

23 All right. And then the next paragraph talks about  
24 what Mr. Halpern allegedly said to Probation, and I don't think  
25 I'm going to ask about that unless somebody thinks I should.

1           The third petition is docket number 39-1, which I  
2       signed on February 10, 2022. It implicates the first condition  
3       of pretrial release that, "The defendant must not violate  
4       federal, state or local law while on release." And the tenth,  
5       "The defendant must not use or unlawfully possess a narcotic  
6       drug or other controlled substance unless prescribed by a  
7       licensed medical practitioner."

8           On page 2, the petition states, "On 2/7/22, the U.S.  
9       Probation Office received notification that the sweat patch  
10      worn by the defendant between January 20, 2022 and January 27,  
11      2022, returned positive with the presence of methamphetamine.  
12      As such and as indicated below, we are asking the Court for a  
13      summons to address this drug use and the need for the defendant  
14      to recommence residential drug treatment. Evidence in support  
15      of this violation are laboratory results from PharmChem, Inc.,  
16      dated 2/7/22, confirming this result."

17           Did you use or possess methamphetamine between January  
18      20, 2022 and January 27, 2022?

19           THE DEFENDANT: I got out of Hope Center, I never use  
20      any drugs or anything like that, I'm swear.

21           THE COURT: So it's your testimony that after you were  
22      released or left The Hope Center in December of 2021, you've  
23      not used methamphetamine or any other controlled substance, any  
24      other drug again?

25           THE DEFENDANT: No.

1 THE COURT: Is that your testimony?

2 THE DEFENDANT: No, I don't use anything after I got  
3 out from The Hope Center. No drug, no nothing.

4 THE COURT: All right. So I'm treating that as  
5 denied.

6 Then there's the fourth and most recent petition. Do  
7 you remember that I had a hearing here in this courtroom in  
8 this case on March 8, several weeks ago?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. And do you recall that I said I was  
11 continuing the hearing on all of the petitions; I wasn't  
12 deciding whether the alleged violations were admitted or  
13 proven, but I was adding some new conditions to your supervised  
14 release? Do you remember that?

15 THE DEFENDANT: I think so.

16 THE COURT: You think you remember?

17 THE DEFENDANT: Not really.

18 THE COURT: Okay. Did Mr. Halpern ever give you the  
19 order I issued the next day with those additional conditions?

20 THE DEFENDANT: Yes.

21 THE COURT: And the first of those conditions was  
22 that, "The defendant must fully and properly participate in  
23 outpatient substance abuse treatment with CPS Boston as  
24 directed by the Probation Office."

25 The second was, "The defendant must fully and properly

1 participate in crystal meth anonymous, CMA, as directed by the  
2 Probation Office."

3 The third was that, "The defendant must fully inform  
4 the Probation Office concerning her employment so it can decide  
5 if that employment is permissible and appropriate. In  
6 addition, the defendant must seek and receive the permission of  
7 the Probation Office before changing employment or engaging in  
8 additional employment."

9 And fourth, "The defendant must submit to urine  
10 testing for prohibited substances observed by a male probation  
11 officer on a weekly basis. The defendant must also submit to  
12 sweat patch testing for prohibited substances on a weekly  
13 basis."

14 Do you recall now that those were the four additional  
15 conditions that I added at and then after the March 8 hearing?

16 THE DEFENDANT: I don't really remember those four  
17 conditions as said.

18 THE COURT: Did the probation officer discuss those  
19 conditions with you, those new conditions?

20 THE DEFENDANT: Probably, probably, but I don't  
21 remember. Sorry about that.

22 THE COURT: The first alleged violation in the  
23 petition I signed on March 28, docket 58, I believe, says that,  
24 "On 3/28/2022, the U.S. Probation Office received notification  
25 that the sweat patch worn by the defendant between 3/8/22 and

1 3/18/22 returned positive with the presence of  
2 methamphetamine."

3 Did you use methamphetamine in the period beginning on  
4 or shortly before March 8, 2022 and ending on March 18, 2022?

5 THE DEFENDANT: No, I didn't.

6 THE COURT: So that's denied. What's that? You said  
7 no. What did you say after that?

8 THE DEFENDANT: No. I didn't use any during that  
9 time.

10 THE COURT: Okay. And then it says on -- I'll skip  
11 ahead a little. It says, "Additionally, the defendant failed  
12 to attend treatment with Crystal Meth Anonymous on March 26,  
13 2022." Did you go to a session of Crystal Meth Anonymous on  
14 March 26, 2022?

15 THE DEFENDANT: Actually, I missing the Saturday, but  
16 I send the short notice to Probation.

17 THE COURT: I'm sorry, I didn't understand -- did you  
18 go, on March 23 -- did you go on March 26, 2022 to a session of  
19 Crystal Meth Anonymous?

20 THE DEFENDANT: No, I didn't go on that day. I didn't  
21 go, did not.

22 THE COURT: All right. So I'm taking it as admitted  
23 that she didn't go to the CMA that day. Did you go to  
24 treatment with CPC on March 10, 2022?

25 THE DEFENDANT: I didn't go on that day.

1 THE COURT: Okay. So I'm taking that as admitted  
2 also.

3 And then it says that, "On March 23, 2022, U.S.  
4 Probation Officer met with the defendant in the community at  
5 her employment." Did you meet on March 23, with the probation  
6 officer at the place you were working that day?

7 THE DEFENDANT: Yes, yes, yes, we met on that day.

8 THE COURT: And on that day did you meet at the place  
9 you were working as a massage therapist which was then called  
10 Emerald Massage located at 8 Academy Road in Brighton,  
11 Massachusetts? You have to answer yes or no.

12 THE DEFENDANT: Yes.

13 THE COURT: And did you tell the probation officer  
14 that that day, March 23, was your first day of work?

15 THE DEFENDANT: Yes, I did.

16 THE COURT: And when the probation officer came, did  
17 you tell her that you had a client in the massage room?

18 THE DEFENDANT: Yes.

19 THE COURT: And before you went to work that first day  
20 at Emerald Massage, did you tell the probation officer that you  
21 wanted to start working there?

22 THE DEFENDANT: I haven't told the probation officer  
23 about that, I didn't.

24 THE COURT: So I take that as admitted as well.

25 All right. So let me see, the defendant has admitted

1 telling Probation in October 2021 that she was using  
2 methamphetamine daily and that she possessed and used meth on  
3 or about October 29, 2021. So that's one admission.

4 With regard to the second petition, Exhibit 2, she  
5 admits that she didn't report to the SSTAR program two times on  
6 the times she was supposed to, had been directed to, so that's  
7 admitted. She denies leaving the Behavioral Health Network  
8 without notifying Probation or staying there based on the  
9 recommendation of program staff. That's Exhibit 2.

10 I'll make the third petition, docket number 39-1,  
11 Exhibit 3. She denies using methamphetamine between about  
12 January 20 and January 27, 2022, although the sweat patch  
13 tested positive for it.

14 And I'll make Exhibit 4 the petition I signed on March  
15 28, and the defendant denies using meth between about March 8  
16 and March 18, 2022, although the sweat patch tested positive,  
17 and she admits that she didn't tell the probation officer that  
18 she was going to start employment at the Emerald Massage before  
19 she did and get approval, and she admits that she didn't attend  
20 one session of Crystal Meth Anonymous on March 26, and she  
21 didn't go for treatment with CPC as directed on March 10, 2022.

22 So by my calculation, there are three open matters  
23 that are in dispute to be resolved. One is whether she left  
24 long-term treatment at the end of December without the  
25 permission of the probation officer. The second is whether she

1 possessed or used methamphetamine between about January 20 and  
2 28, 2022. And the third is whether she used or possessed  
3 methamphetamine between about March 8 and March 18, 2022.

4 So I'm accepting the admissions, and I'll hear  
5 evidence on the three disputed matters and then argument. The  
6 burden of proving an alleged violation is on the government.  
7 And to find anything other than -- well, if there's probable  
8 cause to believe a crime has been committed, that's one  
9 standard, with regard to any other violation. And using meth  
10 would be a crime, so that can be decided based on probable  
11 cause, but it's also related to an alleged violation. And then  
12 with regard to not following the directions of the probation  
13 officer and leaving Hope House, that would have to be proven by  
14 clear and convincing evidence.

15 On March 8 I had directed Probation to provide the  
16 documents it had with regard to the discussions concerning Hope  
17 House and whether she left to the parties and to the Court. I  
18 saw this morning that I didn't have them, so I asked Probation  
19 to send them to me. Did counsel get them, too?

20 MR. HALPERN: No.

21 THE COURT: No?

22 MR. HALPERN: No.

23 MS. LAWRENCE: I received it by email, Your Honor,  
24 about a half hour before the hearing started. It could have  
25 been in route.

1 THE COURT: They were emailed at about 11:00, maybe a  
2 little later, this morning. Do we have -- we'll give you a  
3 copy, Mr. Halpern. We'll make this the next exhibit, Exhibit  
4 5. We'll have to print another copy.

5 There's also, I have a sheet with the drug test. In  
6 fact, it's 3:30. And you haven't -- let's talk about how we're  
7 going to proceed. And then to the extent it implicates those  
8 documents, I'll take a break so you can look at them, so I can  
9 look at them, too. Well, you're making a face.

10 MR. HALPERN: I don't think I need -- I mean, I'll  
11 look at them. I don't think I need much of a break because I  
12 don't think what -- I communicated with both Probation and Hope  
13 House concerning this. Nothing I was told has ever been  
14 disputed, so I think I know what happened.

15 THE COURT: All right. Here, well, it gets a little  
16 complicated if you're the lawyer and the witness, but we'll  
17 find some reasonable way to do this. But I do want to -- I had  
18 very little time to look at them, and it's my hope to conclude  
19 this matter today.

20 What I think, what I suggest is that we hear from the  
21 probation officer. You can each examine her. I probably have  
22 some questions. And then if the defendant would like to  
23 testify, she can testify. That would be the proper way for her  
24 to explain some of this, so it can be subject to  
25 cross-examination.

1           And at the moment, I don't foresee any other  
2 witnesses, except Mr. Halpern, who can make a proffer or  
3 something, which I can consider.

4           Here, Mr. Halpern, if you don't need time to look at  
5 it, listen to me. Don't multitask. So does anybody propose a  
6 different way of proceeding, have the probation officer testify  
7 and then, if she wants, the defendant?

8           MR. HALPERN: I think that's fine.

9           MS. LAWRENCE: That's fine, Your Honor. I apologize.  
10 I have a flight at 5:30 p.m. today.

11          THE COURT: Well, I apologize, you might --

12          MS. LAWRENCE: I'm really sorry, Your Honor.

13          THE COURT: We had to start this later than I wanted  
14 because it's remote. You're the third Assistant U.S. Attorney  
15 on this case.

16          MS. LAWRENCE: I will get someone to cover. I didn't  
17 anticipate the length of beyond two hours. And that's all,  
18 Your Honor.

19          THE COURT: Well, we may or may not. Why don't -- I'm  
20 surprised you're here by yourself. There were two others, and  
21 they brought somebody new in because they were both going to be  
22 unavailable for the sentencing in June. Today is March.  
23 They've got the history of it.

24                 I've got to prepare for sentencing a seventh MS-13  
25 murderer next week. I have to prepare to start a trial the

1 following week. I'll take -- I think it's really -- as I say,  
2 I was surprised you were here by yourself, but I assumed you  
3 were prepared to do this yourself.

4 MS. LAWRENCE: I am prepared, Your Honor, and I deeply  
5 apologize. I moved the flight back when the hearing moved.

6 THE COURT: What's that?

7 MS. LAWRENCE: I moved my flight later when the  
8 hearing moved to 2:30. I couldn't move it any later, and I'm  
9 deeply sorry.

10 THE COURT: Well, when are you going to be back?

11 MS. LAWRENCE: Monday morning.

12 THE COURT: Well, let's see where we are. Maybe I'll  
13 stop because I actually have something else to do today. But  
14 when you come back, don't come back alone.

15 MS. LAWRENCE: Yes. Ms. Wan had anticipated her  
16 pregnancy, naturally, and I have been attending the last three  
17 hearings in your courtroom.

18 THE COURT: Well, I'm glad about that, but there was  
19 somebody else here last time, too.

20 MS. LAWRENCE: She was unavailable this afternoon.

21 THE COURT: It didn't used to be this way. You get a  
22 court order, and then you're available. I'll try to get you  
23 out of here by 4:30.

24 MS. LAWRENCE: Thank you, Your Honor.

25 THE COURT: Or soon after. All right. So the

1 probation officer is Taylor Wertz. She's here. Could I have  
2 her approach the witness stand and be sworn.

3 TAYLOR WERTZ, Sworn

4 THE COURT: Jarrett, don't go so fast. It's got to be  
5 translated. Go ahead.

6 DIRECT EXAMINATION BY MS. LAWRENCE:

7 Q. Would you please state and spell your name for the record,  
8 please.

9 A. Taylor Wertz, T-a-y-l-o-r, W-e-r-t-z.

10 Q. How you employed, Ms. Wertz?

11 A. I am a U.S. probation officer.

12 Q. How long have you held that position?

13 A. The last two and a half years.

14 Q. Are you familiar with the defendant in the courtroom  
15 today?

16 A. Yes.

17 Q. How are you familiar with her?

18 A. I currently supervise the defendant on her pretrial  
19 supervision.

20 Q. Okay. Have you been the supervising probation officer for  
21 the defendant the entire time she's been under pretrial  
22 supervision?

23 A. I have not. I received her case in January of this year.

24 Q. Who was the probation officer assigned prior?

25 A. USPO Maureen Curran.

1 Q. Did you receive information from Probation Officer Curran  
2 regarding the defendant?

3 A. Yes.

4 Q. And are you familiar with her entire record of pretrial  
5 supervision?

6 A. Yes.

7 Q. One of the disputed allegations is the defendant's -- your  
8 allegation, excuse me, that the defendant left The Hope Center  
9 on December 27, 2021 without contacting the probation officer  
10 first. Is that correct?

11 A. Yes.

12 Q. And at that time Ms. Curran was the supervising officer?

13 A. That is correct.

14 Q. Can you tell the Court what you understand from Ms. Curran  
15 occurred on December 27 with respect to the defendant leaving  
16 the treatment center.

17 A. From what I understand, the defendant discharged from the  
18 treatment center on December 27.

19 THE COURT: Excuse me. Go more slowly and speak into  
20 the microphone, please.

21 THE WITNESS: Yes, Your Honor.

22 A. From what I understand, on December 27, 2021, the  
23 defendant discharged from the BHN, Behavioral Health Network  
24 Treatment Center, after completing Hope Center's short-term  
25 inpatient treatment.

1 Q. Prior to the defendant leaving The Hope Center's  
2 short-term treatment plan, had you -- or sorry -- had  
3 Ms. Curran told the defendant that she was required to stay at  
4 the center through the completion of the next phase?

5 MR. HALPERN: Objection.

6 THE COURT: What's the basis of the objection?

7 MR. HALPERN: Did Ms. Curran tell the defendant?

8 MS. LAWRENCE: To Ms. Wertz' understanding, based on  
9 what she knows from Ms. Curran.

10 MR. HALPERN: Objection.

11 THE COURT: Well, as far as I know, there are at least  
12 two potential sources of knowledge. And just to reiterate what  
13 I think I said before, hearsay is admissible. It has to be  
14 reliable hearsay. And I think maybe you should lay a  
15 foundation, for example, whatever -- does she have an  
16 understanding of what the communications were between Ms.  
17 Curran and the defendant on this issue; what's the  
18 understanding based on, and then I'll be in a better position  
19 to rule on the objection.

20 BY MS. LAWRENCE:

21 Q. Okay. Have you discussed with Ms. Curran what she  
22 communicated to the defendant prior to your taking over as  
23 supervisor for the defendant?

24 A. Yes. In reference to her treatment at the Behavioral  
25 Health Network, it was communicated that the defendant would

1 have to participate in treatment per the recommendations of the  
2 clinical staff at the program.

3 Q. Do you have a record of Ms. Curran's communications to the  
4 defendant on this point?

5 A. Yes, via email.

6 Q. What is the basis for that understanding that you have?  
7 What records do you have?

8 A. I have chronological records from the U.S. Probation  
9 Office and email correspondence from the treatment provider.

10 Q. Okay. Are the email correspondence that you referred to  
11 in the chronological record?

12 A. Yes.

13 Q. And is the chronological record you're referring to the  
14 same document that the Court made an exhibit to this hearing --

15 THE COURT: I think it's 5.

16 Q. -- Exhibit 5 to this hearing?

17 A. Yes.

18 Q. Okay. So in Exhibit 5, can you point to the information  
19 that you referred to just a minute ago regarding communications  
20 to the defendant about the expectations.

21 THE COURT: Actually, let me just do a little more to  
22 expedite this but lay a foundation. So Exhibit 5 says,  
23 "District of Massachusetts Pretrial Services Chronological  
24 Record Report 10/26/2021 to 1/20/22 concerning Aticha  
25 Jittaphol." Right?

1 THE WITNESS: Correct, Your Honor.

2 THE COURT: And what is this chronological record?

3 THE WITNESS: This chronological record is  
4 documentation that the U.S. Probation Office has in order to  
5 track collateral contact that we have as well as personal  
6 contact that we have regarding the defendant.

7 THE COURT: And is this a record that Probation  
8 regularly makes in the course of its work?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: And is this something that probation  
11 officers rely on in performing their duties?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: Okay. Go ahead.

14 BY MS. LAWRENCE:

15 Q. In the record marked as Exhibit 5, is there information  
16 that you relied on to understand what was communicated to the  
17 defendant by Ms. Curran?

18 A. Yes. Throughout the defendant's duration of treatment  
19 with BHN, they had interactions regarding next steps in  
20 treatment, especially in regards to aftercare planning as she  
21 moved through the program.

22 Q. Can you point us to that part of the record in Exhibit 5  
23 that reflects that information.

24 A. On page 24.

25 Q. And can you read the relevant part of that communication

1 -- sorry. Who is this communication from?

2 A. Colleen from Behavioral Health Network.

3 Q. Okay. And who is it to?

4 A. To Maureen Curran, a U.S. probation officer.

5 Q. And what's the date of the communication?

6 A. January 4, 2022.

7 Q. Okay. And you don't have to read it verbatim, but in  
8 substance, what is being communicated?

9 A. The piece that's being communicated was that the defendant  
10 did not follow through with her aftercare plan and aspects of  
11 programming that she did not comply with.

12 Q. Do you have any understanding of what Ms. Curran  
13 communicated directly to the defendant about the expectations  
14 for the program?

15 A. From my understanding of the chronological records is that  
16 the recommendation for continued treatment was per the Court's  
17 order to participate in treatment as well as what was discussed  
18 with the clinical team at BHN and the U.S. Probation Office.

19 Q. And again, I believe I asked you this at the beginning,  
20 but is there any record that the defendant told Ms. Curran that  
21 she was going to leave the program on December 27, 2021?

22 A. No.

23 Q. Do you know if the defendant ever directly communicated  
24 that to Ms. Curran?

25 A. I do not know.

1 Q. There are two other disputed allegations in the violation  
2 petitions. The first is that between the date of January 20,  
3 2021 and January 27, 2021, the defendant tested positive for  
4 methamphetamines on a sweat patch test. Do you have evidence  
5 of -- sorry. Maybe I should do this the other way.

6 MS. LAWRENCE: I would like to mark as Exhibit 6, Your  
7 Honor --

8 THE COURT: Why don't you just stop for just a minute.  
9 Let me ask my law clerk to come in with the copies. Why don't  
10 you give one of those to Mr. Halpern. This will be Exhibit 6.  
11 Do you have one?

12 MS. LAWRENCE: I have one. Thank you.

13 THE COURT: Jarrett, take it. I've got one.

14 BY MS. LAWRENCE:

15 Q. This is a three-page document reflecting a drug test. Do  
16 you have a copy at your witness stand?

17 A. I do.

18 Q. Okay. And the first page has the word "Taunton" in the  
19 upper left-hand corner.

20 A. Yes.

21 Q. This says the defendant's name, Aticha Jittaphol, at the  
22 top, and the collection date is 10/29/2021, in the middle, at  
23 8:00 a.m.

24 A. Yes.

25 MS. LAWRENCE: I'm just establishing for the record,

1 Your Honor, that we have the same document, Exhibit 6.

2 THE COURT: Yes.

3 Q. On page 2, if we could turn to that, can you describe what  
4 this page is showing.

5 A. Yes. This page is a document received from PharmChem,  
6 Inc. referencing the results of a sweat patch that was worn by  
7 the defendant from January 20, 2022 to January 27, 2022.

8 Q. What does this reflect in terms of a positive or negative  
9 result for methamphetamine?

10 A. A positive result for methamphetamine.

11 Q. And on page 3 -- before I get there, there's another  
12 alleged violation that's been disputed. And that is that from  
13 March 8, 2022 to March 18, 2022, the defendant had a positive  
14 result on a methamphetamine test for, again, a sweat patch.  
15 And turning to page 3 of Exhibit 6, can you explain what this  
16 information shows.

17 A. Yes. This is a PharmChem, Inc. drug test result from a  
18 sweat patch that was worn on 3/8 to 3/18/2022.

19 Q. And what is the result, positive or negative, for  
20 methamphetamine?

21 A. Positive for methamphetamine.

22 Q. And again, on both page 2 and 3, the name of the person is  
23 the defendant, correct?

24 A. Yes.

25 Q. Do you have any other evidence that supports these test

1 results?

2 A. No.

3 MS. LAWRENCE: That's all I have, Your Honor.

4 THE COURT: Mr. Halpern.

5 MR. HALPERN: Thank you.

6 CROSS-EXAMINATION BY MR. HALPERN:

7 Q. Ms. Wertz, although you weren't working on the case, you  
8 have familiarity with --

9 THE COURT: Mr. Halpern, get closer to the microphone,  
10 please. We have to make sure the interpreter can hear you,  
11 too.

12 BY MR. HALPERN:

13 Q. You have some familiarity with how Probation initially got  
14 involved working with Ms. Jittaphol, correct?

15 A. Yes.

16 Q. All right. So you know that the initial contact with  
17 Probation was by me asking Probation for help. Is that right?

18 A. Yes.

19 Q. And in fact, that was before criminal charges were  
20 brought, because I was appointed when she was a target.

21 A. Yes.

22 Q. And she came to me on her own when she found out that  
23 there was a legal process going on and asked me to contact  
24 Probation so that she could get into a detox.

25 A. Yes.

1 Q. And I contacted Probation and was told that, until she  
2 actually was charged, the Probation Department couldn't help  
3 me.

4 A. Yes.

5 Q. All right. And I told Probation that at that point she  
6 was using methamphetamine every day, multiple times a day, and  
7 did not believe she could stop without going into detox.

8 A. Yes.

9 Q. So the recognition of the need for treatment was hers to  
10 start with, right?

11 A. Yeah.

12 Q. She wanted to stop, right?

13 A. Yes.

14 Q. And she asked me to help reach out to Probation so she  
15 could stop using meth.

16 A. (Nods.)

17 Q. And then she had to wait for the criminal case to start  
18 and for Probation to find a place for her to go, correct?

19 A. Correct.

20 Q. And she didn't hide the fact that she was using  
21 methamphetamine the entire time because from the start she had  
22 told Probation, she had asked me to tell Probation that she  
23 could not stop without going into a detox. Is that right?

24 A. Yes.

25 Q. All right. So then finally, she gets in -- so the initial

1 test when she tests positive in the first report, I believe, on  
2 October 29, that wasn't a surprise to anybody because she had  
3 acknowledged that she was using, and this was before she got  
4 into a detox?

5 A. Yes.

6 Q. Okay. So then she goes into a detox and she transitions  
7 from the detox to a stepdown program, correct?

8 A. Behavioral Health Network, you're referring to?

9 Q. Right.

10 A. Yes.

11 Q. And she did both completely successfully?

12 A. Yes.

13 Q. And their communications with Probation was that she was a  
14 model patient, they had no problems with her, and they thought  
15 she was, you know, completely compliant, right?

16 A. From the chronological records I have with BHN regarding  
17 email correspondence, I can't speak to her complete compliance  
18 with programming.

19 Q. She was committed to stopping use, correct? The records  
20 make it clear that, throughout the time she was there, she  
21 wanted to stop using. She wasn't in denial, was she?

22 A. Not about her use at that time.

23 Q. Okay. So you're aware that at the point when she's ready  
24 for discharge, I had communications with Ms. Curran. You know  
25 about that, right?

1 A. From what Ms. Curran had told me, yes.

2 Q. All right. And part of those communications was that I  
3 was told that -- I questioned whether she needed long-term  
4 residential care, right?

5 A. Yes.

6 Q. And at that point I had familiarized myself with some of  
7 the criteria to determine whether long-term residential care  
8 was appropriate, and I talked about those criteria with Ms.  
9 Curran?

10 A. Yes.

11 Q. All right. And Ms. Curran told me, "We're not the  
12 experts. We rely on what the provider recommends, and so I'm  
13 not going to second-guess the provider. Hope Center  
14 recommended that she have long-term care. We're not going to  
15 contest that. They made the decision." That's what I was  
16 told; you know that.

17 A. Yes, to the extent you're describing it.

18 Q. Okay. And you know that after that I contacted Hope  
19 Center, because I talked with Ms. Curran about what happened a  
20 number of times, what happened when I contacted Hope Center,  
21 correct?

22 A. Correct.

23 Q. And what I told Ms. Curran and her supervisor was that  
24 when I contacted Hope Center and asked what was the basis for  
25 the recommendation of long-term inpatient residential care, I

1 was told, "We never evaluated that. The reason we never  
2 evaluated that" --

3 THE COURT: Why don't you go step by step.

4 Q. All right. I was told that Hope Center had not conducted  
5 an evaluation of whether long-term residential care was needed  
6 because it was a contract provision between Probation and The  
7 Hope Center, right? I told Probation that --

8 THE COURT: Here, you should testify essentially based  
9 on what you know or understand, based on what Ms. Curran told  
10 you and based on what's in the chronological file. Because I  
11 think you said those are the two sources of your information;  
12 is that right?

13 THE WITNESS: That is correct.

14 THE COURT: So if you know, you should confirm that  
15 you know it. If you don't know, you should say you don't know.

16 THE WITNESS: I think I'm quite lost with just the  
17 question, I guess is what I'm trying to speak to.

18 Q. Okay. You're familiar with a form called a PS-45?

19 A. It's a Program Plan 45.

20 Q. And this is a form that Probation provides to the care  
21 provider listing the types of care that they want the  
22 provider --

23 INTERPRETER: I lost telephone contact with the  
24 defendant. I don't think she hear me now.

25 THE COURT: Ms. Jittaphol, are you able to hear the

1 translator?

2 THE DEFENDANT: Yes.

3 THE COURT: She said yes.

4 THE DEFENDANT: No, not now right now, no.

5 THE COURT: Are you able to hear the translator?

6 THE DEFENDANT: Right now, no.

7 THE COURT: He should say something to you, and we'll  
8 see if you can hear it.

9 THE DEFENDANT: Sorry about that.

10 THE COURT: Can you hear him now? Ms. Lawrence,  
11 you're going to make your plane.

12 THE DEFENDANT: Not yet.

13 INTERPRETER: I don't think -- I don't think she hear  
14 me.

15 THE COURT: Can you hear him now?

16 INTERPRETER: Your Honor, Your Honor, I think she hear  
17 me now.

18 THE COURT: Okay. Thank you. All right. Let me just  
19 pause you for a minute because I've got quite a busy schedule  
20 next week. I think we're not going to finish this today, but  
21 I'm going to want to resume at 10:30 on Monday morning. Does  
22 anybody have a concern about that?

23 MR. HALPERN: I've got a Zoom with an inmate that I  
24 can change.

25 THE COURT: My availability is very limited.

1 MR. HALPERN: I'll reschedule it.

2 THE COURT: Thank you very much. Ms. Lawrence?

3 MS. LAWRENCE: I am absolutely okay with that, Your  
4 Honor.

5 THE COURT: What's that?

6 MS. LAWRENCE: I am absolutely okay with that.

7 THE COURT: Yes. Okay. Keep going. We'll go until  
8 about 4:20 or something like that.

9 BY MR. LAWRENCE:

10 Q. So the PS-45 is a form that Probation fills out and gives  
11 to the care provider that lists the type of care that Probation  
12 wants to be given to the recipient.

13 A. The Program Plan 45 is a billing document that we use and  
14 provide to the provider that authorizes certain modalities of  
15 treatment.

16 Q. Okay. So in this case, the PS-45 that was given to The  
17 Hope Center included in the list of services that were going to  
18 be paid for long-term inpatient residential care, correct?

19 A. Yes.

20 Q. All right. And so you know that I had communications with  
21 Probation in which I spoke about the communications I had with  
22 Hope Center, correct?

23 A. Yes.

24 Q. And you know that what I told Probation was that when I  
25 contacted Hope Center and said, "Well, Probation says this was

1 your call and they're relying on you, did you make an  
2 assessment that she needed long-term inpatient residential  
3 care," their response was, "We didn't do the assessment, and  
4 the reason we didn't do the assessment is because Probation  
5 contracted in this PS-45 for long-term inpatient residential  
6 care."

7 THE COURT: Do you know that one way or the other?

8 A. Yes. I can't speak to the exact conversation you had with  
9 them, but that's from my understanding what you told me, yes.

10 Q. Okay. And so there was a recognition at that point by  
11 Probation that, if what I was saying was right, that The Hope  
12 Center had misunderstood what a PS-45 was because it wasn't a  
13 contract that they were required to provide certain services.  
14 It was simply an agreement that, if they did provide the  
15 services, they'd be paid for.

16 A. Yes.

17 Q. All right. So there was, what The Hope Center was  
18 interpreting as a contract agreement was in fact an agreement  
19 that if The Hope Center decided that something was clinically  
20 appropriate, the cost would be covered?

21 A. Yes.

22 Q. All right. But they were supposed to do a clinical  
23 assessment, correct?

24 A. Not that Probation would have authorized. I'm not sure if  
25 they do one internally for their next step.

1 Q. Okay. So ultimately Probation was saying we're relying on  
2 The Hope Center to make an assessment that she needs long-term  
3 inpatient care, and The Hope Center was saying, "We're relying  
4 on a contract with Probation, and they're the ones that decided  
5 she needed long-term inpatient care." So both sides were  
6 pointing at the other. Is that fair to say?

7 A. Yes.

8 Q. And at that same time, nobody had actually done an  
9 assessment for the need for long-term inpatient care.

10 A. No. I believe The Hope Center did aftercare planning with  
11 the defendant.

12 Q. Are you familiar with some of the criteria --

13 THE COURT: Here, I need to understand this. The  
14 defendant -- the witness just said that she understood that The  
15 Hope Center did aftercare planning. Would you look at page 24  
16 of the chronological file that's Exhibit 5.

17 THE WITNESS: Yes.

18 THE COURT: And look at the second full paragraph.  
19 Then I'm going to ask you also about the bottom of the page.  
20 But does the second full paragraph say -- so this is to  
21 Maureen, the probation officer, from Colleen, somebody at Hope,  
22 right?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Does the second full paragraph say, "I  
25 feel like the only aspect of programming that Aticha did not

1     comply with was an aftercare plan. She refused both long-term  
2     treatment, as well as IOP, despite counseling recommendations  
3     as well as the recommendations of our aftercare counselors."  
4     Did I read that right?

5             THE WITNESS: Yes, Your Honor.

6             THE COURT: And what do you understand IOP means?

7             THE WITNESS: Excuse me. Intensive outpatient  
8     treatment, which typically happens in the community multiple  
9     days a week.

10            THE COURT: And what do you understand that paragraph  
11     that I just read communicates or was intended to communicate?

12            THE WITNESS: I believe it communicates that she was  
13     offered aftercare planning either in the form of long-term  
14     treatment or intensive outpatient treatment, and she did not  
15     adhere to that recommendation.

16            THE COURT: So she was -- this is what I'm trying to  
17     understand. So you think, you understand that means that she  
18     was offered -- she was recommended for intensive aftercare,  
19     either inpatient or intensive outpatient. Is that right?

20            THE WITNESS: My understanding is the clinical staff  
21     met with her to develop an aftercare plan, of which could  
22     either consist of long-term residential treatment or intensive  
23     outpatient treatment.

24            THE COURT: And at the bottom it says, "PO also spoke  
25     with Colleen re sub" -- the sub is the defendant, is that

1 right?

2 THE WITNESS: Yes.

3 THE COURT: -- "an email above," that I just read part  
4 of, "Colleen reports full participation while at the program  
5 and believes if sub participates in OIP, that is sufficient."

6 THE WITNESS: Yes.

7 THE COURT: What does that communicate to you? What  
8 do you understand from that?

9 THE WITNESS: From what I understand, given she had  
10 already discharged at that point, Colleen was recommending  
11 intensive outpatient treatment to address her aftercare plan.

12 THE COURT: Okay. Mr. Halpern, you can resume.

13 BY MR. HALPERN:

14 Q. So it's clear that The Hope Center talked to her about  
15 making a recommendation, right? "We recommend long-term  
16 inpatient residential care," correct?

17 A. That BHN offered her a recommendation for long-term  
18 inpatient care, yes.

19 Q. So the dispute that I was involved with with Ms. Curran  
20 wasn't about whether or not Hope Center had recommended  
21 long-term inpatient care. They did.

22 The dispute was why they did. And the issue was whether  
23 the reason that they had recommended it was because they  
24 thought they were contractually obligated to do it or whether  
25 somebody had actually done a clinical assessment that made

1 long-term inpatient care an appropriate medical decision. That  
2 was the dispute, not whether or not they recommended it. We  
3 knew they recommended it.

4 A. Yeah.

5 Q. So she tells them she does not think she needs inpatient  
6 care to stay clean?

7 A. Yes.

8 Q. And that's the position she took with you from the time  
9 you got involved, that she was confident that she did not need  
10 inpatient care because she did not feel an urge to use,  
11 correct?

12 A. Yes.

13 Q. And she has consistently said that, from the time she got  
14 out of treatment, that she doesn't want to use, she doesn't  
15 feel a desire to use, and she knows she is not going to use.  
16 Regardless of any type of care, she doesn't want to use  
17 anymore. She's told you that all along, right?

18 A. That's what she has reported.

19 Q. Okay. So she tells Hope Center that she does not want to  
20 do long-term inpatient residential care and she goes home,  
21 correct?

22 A. Yes.

23 Q. All right. So at that point Probation goes on a program  
24 to test her compliance, correct?

25 A. For drug testing, yes.

1 Q. Right. And initially there is a concern about doing --  
2 how you're going to do urine tests.

3 THE COURT: While you're transitioning, it occurs to  
4 me I have to ask somebody else about 10:30 Monday. Could the  
5 interpreter please state his name for the Court and for the  
6 record.

7 INTERPRETER: Chamroen Tansomboon, Your Honor.

8 THE COURT: Okay. And are you available from about  
9 10:30 to 1:00 if necessary -- well, 10:30 going to about 1:00,  
10 I hope, on Monday?

11 INTERPRETER: So Your Honor, the session will be 10:30  
12 to 1:00?

13 THE COURT: Well, it starts at 10:30, and I hope to  
14 end by 1:00.

15 INTERPRETER: After this session, can I check my work  
16 schedule?

17 THE COURT: Can you check it now because I have to  
18 tell everybody when to come back.

19 INTERPRETER: Okay, okay. So give me one minute. Let  
20 me check my work calendar.

21 THE COURT: I will let you do that. While he's doing  
22 that, I'm going to mention a case to you that I've read since I  
23 saw you last. It relates -- and there may be others that you  
24 want me to read. It relates to the reliability of sweat  
25 patches.

1           Mr. Halpern told me about Judge Young's decision in  
2     *Alfonso* in about 2003. In 2007, the Eighth Circuit wrote  
3     *Meyer*, 483 F.3d 865, 868-69. And it finds and references other  
4     cases that find that courts have held sweat patches are  
5     generally reliable but not infallible. Are you familiar with  
6     that one, Mr. Halpern?

7           MR. HALPERN: I believe I've read it, yeah.

8           THE COURT: What's that?

9           MR. HALPERN: I believe I've read it, yes.

10          THE COURT: Why didn't you tell me about it?

11          MR. HALPERN: I don't know when I read it. I don't  
12     know when I read it in comparison to when I filed the memo, but  
13     I think I've read it.

14          MR. PACE: Your Honor, James Pace from U.S. Probation.  
15     Can you please restate the cite for that case for probation  
16     purposes?

17          THE COURT: Excuse me. The interpreter is back. Let  
18     him answer the question. Can you help us at 10:30 on Monday  
19     morning?

20          INTERPRETER: I can be available at that time, Your  
21     Honor, but I may not be able to stay later than that because I  
22     have some prior commitment after that, but 10:30 to 1:00 p.m.,  
23     I think I can do it.

24          THE COURT: All right. I'm told that we will not need  
25     you. Mr. Lovett, the deputy clerk, got somebody who can be

1 available all day.

2 INTERPRETER: Thank you.

3 THE COURT: I appreciate you helping. Mr. Pace, is  
4 there something you wanted to say?

5 MR. PACE: No, Your Honor, I can follow back --

6 THE COURT: That's fine, follow up after the hearing.  
7 Mr. Halpern, you can resume for about ten minutes, then we'll  
8 have to stop.

9 BY MR. HALPERN:

10 Q. So there was a concern with respect to urine testing that  
11 Ms. Jittaphol could not be observed by a female and that she  
12 might be uncomfortable being observed by a male, right?

13 A. Yes, she reported early on that she would be  
14 uncomfortable.

15 Q. So that was the initial reason for doing sweat patch tests  
16 rather than urine tests, correct?

17 A. Yes.

18 Q. And then there came a point where you learned, where I  
19 told you that she was agreeable to doing observed urine tests,  
20 correct?

21 A. Yes.

22 Q. And urine tests were scheduled for her. And not only did  
23 I tell you repeatedly that she was okay with being observed by  
24 a man, she told you repeatedly when she went in for these tests  
25 that she was okay being observed by a man, correct?

1 A. Yes.

2 Q. But for a considerable period of time despite that,  
3 Probation continued to do unobserved urine tests, right?

4 A. Yes.

5 Q. Now, eventually there's a positive sweat patch test,  
6 right?

7 A. Yes.

8 Q. And that positive sweat patch test was for the period of  
9 January 20 to January 27?

10 A. Yes.

11 Q. All right. Now, the sweat patch test is designed to be  
12 able to identify drug use during the entire week that the patch  
13 is worn, right?

14 A. Yes.

15 Q. Urine tests, and particularly with respect to  
16 methamphetamine, are thought to be reliable going back three or  
17 four days from drug use.

18 A. Yes, I believe 72 hours.

19 Q. All right. So it's almost as long but not quite.

20 A. Yes, and I can just clarify, 72 hours, depending on use.

21 Q. Okay. So she had --

22 THE COURT: I'm sorry, what do you mean by "depending  
23 on use"?

24 THE WITNESS: Depending on the amount that is consumed  
25 at a given time.

1 THE COURT: So if somebody used a small amount, are  
2 you saying that it might not be detectible for the full 72  
3 hours?

4 THE WITNESS: That's correct.

5 BY MR. HALPERN:

6 Q. Let's talk for a minute about your knowledge -- you've  
7 worked with other people who use methamphetamine, correct?

8 A. Yes.

9 Q. All right. Methamphetamine is not the type of drug that  
10 most users decide to use on a weekend or after work, correct?

11 A. I can't speak to that.

12 Q. Methamphetamine, I mean, you know methamphetamine is  
13 extraordinarily addictive?

14 A. Yes.

15 Q. You know that most people who use methamphetamine use it  
16 every day, correct?

17 A. In some cases, that is correct.

18 Q. Right. It's not a recreational drug that people take when  
19 they go out partying on the weekend. It's a drug that people  
20 take day in and day out, and addicts generally take it multiple  
21 times a day.

22 A. I can't speak directly to that. I'm not as well versed in  
23 methamphetamine use, between recreational or daily use.

24 Q. Based on your knowledge, among the various drugs that you  
25 guys test for, is methamphetamine pretty much at the top of the

1 list in terms of addiction?

2 A. I think there's multiple drugs that are at that, I can't  
3 speak to that.

4 Q. All right. In your experience have you found  
5 methamphetamine users who use it once a week and stop for six  
6 days and then go back?

7 A. Not in defendants that I have tested, not --

8 Q. Okay. The people that you are familiar with use it  
9 regularly?

10 A. In some instances, yes. In other instances --

11 Q. All right.

12 A. -- no.

13 THE COURT: Well, you've got to let her answer.

14 MR. HALPERN: All right.

15 THE COURT: Excuse me, now I didn't hear the answer  
16 because you interrupted it.

17 A. In some instances, yes, that happens. In other instances,  
18 that does not happen.

19 THE COURT: In some instances --

20 THE WITNESS: As far as the frequency of use.

21 THE COURT: So in some instances, people you supervise  
22 use it regularly, and in some instances, they do not?

23 THE WITNESS: Yes.

24 BY MR. HALPERN:

25 Q. If you look at the test results, the positive sweat patch

1 test was for January 20 to January 27, correct?

2 A. Yes.

3 Q. And in that week, right, the same week that she tested  
4 positive for the sweat patch, on January 26, there's a negative  
5 urine test, correct?

6 A. Yes.

7 Q. All right. And if you assume that the urine test covers  
8 three days, maybe four days, all three or four of those days  
9 are within the same week that the sweat patch tested positive?

10 THE COURT: I think her assumption was it could be up  
11 to 72 hours, three days.

12 MR. HALPERN: All right.

13 Q. Let's say three days. All right. Those three days would  
14 have been within the same week that the first sweat patch came  
15 back positive, correct?

16 A. With the urine testing? I think I just need you to  
17 clarify.

18 Q. The urine test was the 26th?

19 A. Mm-hmm.

20 Q. Right. The sweat patch was the 20th to the 27th, right?

21 A. Yes.

22 Q. So the three days that the urine test covered, assuming it  
23 covered three days, were within the same week of the positive  
24 sweat patch test?

25 A. Yes.

1 Q. Right. So she would have, assuming the urine test was  
2 accurate, she would have had to use in the couple of days  
3 before that three-day window or in the day or two after the  
4 three-day window?

5 A. Yes.

6 Q. And then stopped using?

7 A. Yes.

8 Q. Are you familiar with literature concerning the relative  
9 reliability between urine tests and sweat patch tests?

10 A. No.

11 Q. She then had another negative urine test on February 3,  
12 right?

13 A. I don't have the drug test results in front of me at the  
14 moment.

15 Q. Okay.

16 THE COURT: Here, you didn't take those. We'll give  
17 you a copy of the drug test results. We'll make that Exhibit  
18 6. All right. Is the list of the drug tests in your memo?

19 THE WITNESS: It is in the release status memo that  
20 was provided yesterday.

21 THE COURT: All right.

22 THE WITNESS: I do have a copy at my seat.

23 THE COURT: Okay. Why don't you go get your copy and  
24 I'll look for mine.

25 I'll make her memo Exhibit 6. This is the status

1 report 3/31.

2 THE WITNESS: I apologize for not bringing that.

3 THE COURT: I'm retracting the other Exhibit 6 because  
4 she's not testifying about that, but the release status report  
5 that the witness dated 3/31/2022 will be Exhibit 6. Go ahead.

6 Actually, when you reach a breaking point, I want to  
7 let Ms. Lawrence get her plane.

8 MR. HALPERN: I mean, if you want me to stop now, I'll  
9 stop now.

10 THE COURT: I think we'll stop now.

11 MS. LAWRENCE: Thank you. I'll tell you the  
12 following. I just told you about a case concerning the  
13 reliability of sweat patches that Mr. Halpern had read but  
14 didn't cite to me. And I don't know whether the government has  
15 read it or not. There may be others out there.

16 I'm ordering that if there are additional cases that  
17 are relevant to this issue of reliability of sweat patches that  
18 you file them by 9:00 on Monday morning. Today is the 1st.  
19 That's the 4th.

20 And Mr. Halpern, this isn't a final answer. Do you  
21 expect the defendant will testify?

22 MR. HALPERN: Well, yes.

23 THE COURT: You expect she will?

24 MR. HALPERN: Probably briefly, but yes.

25 THE COURT: Okay. All right. I think if we start at

1 10:30, we should be able to finish by 1:00. And if we don't,  
2 we'll resume after that. I just have other things to do and  
3 get ready for. All right. Can the probation officer be back?

4 U.S. PROBATION: Yes, Your Honor.

5 THE COURT: Court will be in recess until 10:30 on  
6 Monday, April 4. Court is in recess.

7 (Adjourned, 4:20 p.m.)  
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1 CERTIFICATE OF OFFICIAL REPORTER

2

3 I, Kelly Mortellite, Registered Merit Reporter

4 and Certified Realtime Reporter, in and for the United States

5 District Court for the District of Massachusetts, do hereby

6 certify that the foregoing transcript is a true and correct

7 transcript of the stenographically reported proceedings held in

8 the above-entitled matter to the best of my skill and ability.

9 Dated this 10th day of April, 2022.

10

11 /s/ Kelly Mortellite

12 \_\_\_\_\_

13 Kelly Mortellite, RMR, CRR

14 Official Court Reporter

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