

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

United States of America

v.

Aticha Jittaphol

No. 21-CR-10270-MLW

DEFENDANT'S MEMO RE SWEAT PATCH CASES

My normal practice is to download cases that I find when doing research if I think they are significant. Aside from the *Alfonso* case, my electronic file for Ms. Jittaphol's case does not contain any other cases concerning sweat patches. I've looked at the *Meyer* case. I don't remember whether I read it prior to filing my February 23rd memo, or whether I've ever read it before.

I don't know whether I would have referenced *Meyer* even if I had read it. Whether or not a sweat patch is reliable strikes me as a fact issue, not a conclusion of law. This is buttressed by the Court's direction that district courts should assess the issue on a case-by-case basis. I also may not have considered an Eighth Circuit decision binding on this Court.

More importantly, having now read the case, there are many reasons I find it of very limited significance and may not have referenced it. It offers no review of medical literature concerning reliability. It does not mention studies finding false positive rates of over 20% in cocaine detection and 8% in opiate detection, or studies finding higher false positive rates when the subjects sweated a lot, whether from exercise or hot weather. It involved a defendant that tested positive eight times. It doesn't say whether Meyer's negative urine tests were monitored. It

doesn't involve a defendant that was repeatedly asking Probation to monitor their urine tests. It is completely different that Ms. Jittaphol's situation, where, if you assume that all the test results are accurate, her drug use would be completely inconsistent with her addiction history, when she used multiple times every day and could not stop, and with the way addicts routinely use methamphetamine. On this issue, I think the medical literature describing daily usage and multiple day binges is far more compelling than Ms. Wertz's testimony.

In conclusion, I do not have any other cases and I don't know if I'd read *Meyer* before today.

ATICHA JITTAPHOL

By her Attorney,

/s/ Keith Halpern

Keith Halpern, BBO # 545282
572 Washington Street, Suite 19
Wellesley, MA 02482
(617) 722-9952

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on April 3, 2022.

/s/ Keith Halpern