

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

ATICHA JITTAPHOL,

Defendant

CRIMINAL No. 21-cr-10270-MLW

GOVERNMENT'S MEMORANDUM REGARDING SWEAT PATCHES

The government submits this memorandum in response to the Court's request to provide citation to legal authorities discussing the reliability and acceptance of sweat patch results in court proceedings. As the Court stated at the defendant's April 1, 2022 revocation hearing, federal courts generally find sweat patch testing to be a reliable indicator of drug use, citing *United States v. Meyer*, 483 F.3d 865 (8th Cir. 2007) (collecting cases). *See also, e.g., United States v. Jones*, 861 F.3d 687-691 (7th Cir. 2017) (stating that courts "generally consider sweat patch results to be a reliable method of detecting the presence of drugs") (citing *Meyer*, 483 F.3d at 869). However, because "there may well be certain instances where offenders offer compelling reasons to believe that positive test results from sweat patches are erroneous," courts should evaluate the reliability of such results on a case-by-case basis. *Meyer*, 483 F.3d at 869.

While the First Circuit does not appear to have rendered an opinion on the reliability of sweat patch results, other courts in this District have had occasion to address the issue. In *United States v. Alfonso*, 284 F. Supp. 2d 193 (D. Mass. 2003), and *United States v. Foley*, No. 07-cr-10390-RGS, 2008 WL 4787546 (D. Mass. 2008), the courts acknowledged the use and

acceptance of sweat patch testing by numerous courts and discussed possible external factors that might undermine the reliability of the results. In both cases, the courts ultimately found the sweat patch results sufficiently reliable—and evidence of external contamination or manipulation unfounded or incredible—to serve as a factor in deciding whether to revoke the defendant’s supervised release. Notably, in *Foley*, the defendant, like here, presented with a combination of negative urine tests and positive sweat patch results. After an evidentiary hearing, the court found, among other things, that the defendant had “become aware of just how much cocaine he can take and not excrete a urine that will test positive for cocaine,” something he could not do when the sweat patch test was used. *Foley*, 2008 WL 4787546, at *3. The court also rejected the notion of residual environmental contamination and noted that the defendant’s admitted prior regular use of cocaine, combined with the multiple positive sweat patch results, suggested that he had knowingly used cocaine while on supervised release. *Id.* The *Alfonso* court reached similar conclusions, rejecting the defendant’s claim of environmental contamination and improper application of all but one of the patches and finding that the aggregate of positive results provided probable cause to believe the defendant used cocaine while on supervised release. *Alfonso*, 284 F. Supp. 2d at 204.

In sum, courts have consistently found sweat patch results sufficiently reliable indicators of drug use. To the extent there are claims of environmental contamination or improper application, courts evaluate such evidence on a case-by-case basis.

Respectfully submitted,

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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).

/s/ Kelly Begg Lawrence
Kelly Begg Lawrence
Assistant United States Attorney

Date: April 4, 2022