

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 vs.) No. 21-CR-10270-MLW
6 ATICHA JITTAPHOL, a/k/a)
"LILLY,")
7 Defendant.)

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9
10 BEFORE THE HONORABLE MARK L. WOLF
11 UNITED STATES DISTRICT COURT JUDGE
12 SHOW CAUSE HEARING

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14
15 John Joseph Moakley United States Courthouse
16 Courtroom No. 2
17 One Courthouse Way
Boston, Massachusetts 02210

18 April 4, 2022
19 10:33 a.m.

20
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25 Mechanical Steno - Computer-Aided Transcript

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1 P R O C E E D I N G S

2 THE CLERK: All rise for the Honorable Court.

3 Court is back on record in the matter of United States
4 v. Aticha Jittaphol, Criminal Action 21-10270.

5 THE COURT: Good morning. Would counsel please
6 identify themselves for the court and for the record before we
7 swear the interpreters.

8 MS. LAWRENCE: Good, morning, Your Honor. Kelly
9 Lawrence for the United States.

10 MS. TOCHKA: Good morning, Your Honor. Alyssa Tochka
11 for the United States.

12 MR. HALPERN: Good morning, Your Honor. Keith Halpern
13 for Ms. Jittaphol.

14 THE CLERK: Interpreters, please unmute yourself.

15 THE COURT: Actually, would the second prosecutor
16 identify herself again for the court reporter a little more
17 loudly.

18 MS. TOCHKA: Sure. Alyssa Tochka.

19 THE COURT: Could you spell it.

20 MS. TOCHKA: T-o-c-h-k-a. Thank you.

21 THE COURT: Would the clerk please administer the oath
22 to the two interpreters. Well, actually, would the Probation
23 officers identify themselves too.

24 MS. WERTZ: Good morning, Your Honor, Taylor Wertz for
25 the U.S. Probation Office.

1 MR. PACE: And James Pace from the U.S. Probation
2 Office, Your Honor.

3 THE COURT: All right. The defendant is present and
4 the clerk should swear the interpreters.

5 THE CLERK: Would the interpreters please raise their
6 right hand.

7 **Interpreters, sworn**

8 THE INTERPRETER: Juraporn Ann Huynh. That's
9 H-u-y-n-h.

10 THE INTERPRETER: Chamroen Tansomboon.

11 THE COURT: Thank you. And when we take a break, if
12 you would spell your names -- actually, why don't you each
13 spell your last names for the court reporter.

14 THE INTERPRETER: Certainly.

15 THE COURT: Please spell your last name for the court
16 reporter.

17 THE INTERPRETER: H-u-y-n-h.

18 THE COURT: Thank you.

19 THE INTERPRETER: Thank you.

20 THE COURT: And the other interpreter, please.

21 THE INTERPRETER: Last name T-a-n-s-o-m-b-o-o-n,
22 Tansomboon.

23 THE COURT: Thank you. All right.

24 Since I saw you on April 1, I've received the
25 defendant's memo regarding sweat patch testing, docket 64, the

1 government's memo, docket 65.

2 I issued an order this morning with some documents
3 relating to the sweat patch and particularly two messages from
4 the Administrative Office of U.S. Courts to Probation officers
5 and a press release about Food and Drug Administration approval
6 in 1995 of the sweat patch.

7 I was also handed when I came in -- let me ask you
8 this: Have the parties received my order?

9 MS. LAWRENCE: Yes, we have, Your Honor.

10 MR. HALPERN: I just received it. I haven't read the
11 materials.

12 THE COURT: If we continue this case, I'm ordering
13 that you come here 15 minutes early. We had copies here
14 because I anticipated --

15 MR. HALPERN: I was here over 15 minutes early.

16 THE COURT: Well, thank you for telling me that
17 because I thought there were copies here to give you in
18 anticipation of that. We'll take a recess so you can read it.
19 It will probably take you about five minutes.

20 I was just given a document dated 30 March 2022,
21 clinical reference, laboratory -- it's a report from PharmChem,
22 Inc. Actually, why don't I ask the probation officer.

23 Ms. Wertz, what is this document?

24 PROBATION: This document is the defendant's most
25 recent sweat patch result that we received back. It is a

1 negative sweat patch result. We wanted the court to be
2 informed accordingly.

3 THE COURT: The sweat patch testing was from what date
4 to what date?

5 PROBATION: March 18 to March 24.

6 THE COURT: And was the result negative?

7 PROBATION: The result was negative.

8 THE COURT: What's the next exhibit, Exhibit 7?

9 THE CLERK: Correct.

10 THE COURT: We'll make this Exhibit 7.

11 And then I've also been handed a copy of the
12 defendant's criminal history, I believe, that was run today.
13 Is there any objection -- and I believe I've seen this, an
14 earlier version of this before. Is there any objection to
15 making this Exhibit 8?

16 MR. HALPERN: No, Your Honor.

17 MS. LAWRENCE: No, Your Honor. I don't believe I have
18 a copy of that particular exhibit, but no objection to
19 admitting it.

20 THE COURT: All right. We'll get you a copy.

21 MS. LAWRENCE: No problem. Thank you.

22 THE COURT: Because, as I said, I'll take a brief
23 recess.

24 But before I do that, let me -- is there anything else
25 I should have received and read since Friday? No. All right.

1 Mr. Halpern, does the defendant still intend to
2 testify after Ms. Wertz concludes her testimony?

3 MR. HALPERN: Yes.

4 THE COURT: So on Friday, the defendant admitted some
5 of the violations and denied others. And I anticipate that
6 she'll testify somewhat with regard to the admitted violations,
7 because I told her she'd have an opportunity to explain. So it
8 may be that the government will want to question Ms. Wertz on
9 the admitted violations, to some extent, as well as others.

10 I think the admitted violations are the two times in
11 December that she failed to report to the SSTAR program on time
12 and wasn't admitted, the failure to attend treatment with CPC
13 on March 10, 2022, the failure to attend Crystal Meth
14 Anonymous's meeting on 3/26/2022, and the failure to inform the
15 probation officer in advance of her new employment at Emerald
16 Massage that started on March 23, 2022. Okay? You should
17 also, or I will, ask Ms. Wertz if she discussed the new
18 conditions I imposed in court on March 8 and memorialized in an
19 order dated I believe March 9 with the defendant.

20 Is there a marshal in the courtroom? There was
21 supposed to be. Jarrett, while we're out, will you call Matt
22 Dumas? There should be a marshal here. Although, actually --
23 here, come back and talk to me. I don't know how far we're
24 going to get today.

25 Is there anything else before we take a brief recess

1 so Mr. Halpern can read those documents and I will get the
2 government a copy of the criminal record? No. Okay.

3 We'll take about a five-minute break and, Ms. Wertz,
4 you can get on the witness stand again while we're out. Okay?

5 Court is in recess.

6 THE CLERK: All rise for the Honorable Court.

7 (A recess was taken.)

8 THE CLERK: All rise for the Honorable Court.

9 Court is back in session. You may be seated.

10 THE COURT: All right. You may be seated. We've had
11 about a ten-minute break. Mr. Halpern, did you have an
12 opportunity to read the attachment to today's order?

13 MR. HALPERN: Yes, Your Honor.

14 THE COURT: All right. Ms. Wertz, do you understand
15 that you're still under oath?

16 THE WITNESS: I do, Your Honor.

17 THE COURT: Mr. Halpern, do you want to resume?

18 MR. HALPERN: Thank you.

19 TAYLOR WERTZ, Previously sworn

20 CROSS-EXAMINATION

21 BY MR. HALPERN:

22 Q. Ms. Wertz, just to clarify a document that we got today --

23 THE COURT: Let me do this. I'm concerned -- well,
24 actually, you need the microphone, but can you do this from the
25 podium? Then I think if you keep your voice up enough for her

1 to hear you, the court reporter and I will hear you too.

2 MR. HALPERN: Yeah, I mean -- I'm organized here, but
3 yup.

4 THE COURT: And I'll have the government do the same
5 thing.

6 MS. LAWRENCE: Your Honor, may I ask a question while
7 we're moving locations?

8 On the list of exhibits, I had marked on Friday that
9 the chronological reporting of communications produced by the
10 Probation Office was Exhibit 5, but it appears from the Court's
11 list that that's not the case. And similarly with the drug
12 test from the sweat patch results, I had marked it as Exhibit
13 6. I just wanted to clarify those, since I had thought that we
14 had admitted them into evidence as an exhibit, but my list is
15 different.

16 THE COURT: Hold on just a second.

17 According to what I have, Exhibit 1 is docket 16,
18 November petition for action on pretrial release. Exhibit 2 is
19 docket number 21, the January 12, 2022 petition. Exhibit 3 is
20 docket 30-1, the February 10, 2022 petition. Exhibit 4 is the
21 most recent petition. Exhibit -- is this Exhibit 5? Do you
22 have Exhibit 5 as the chronological reports of Probation?

23 MS. LAWRENCE: I did, yes.

24 THE COURT: That's what I have too in my file.

25 Exhibit 6 is the drug test as of --

1 MS. LAWRENCE: The three-page document, Your Honor.

2 THE COURT: I'm looking for the dates, though.

3 MR. HALPERN: 6 is the positive drug test, right.

4 THE COURT: Well, that's what I'm looking for, because
5 there seems to be -- it's April 1? There's something wrong
6 here. It looks like this was collected, the one I have,
7 10/29/01.

8 (Discussion held off the record.)

9 THE COURT: Oh, I see. It's the three positive drug
10 tests. You're right. That's Exhibit 6.

11 MR. HALPERN: There's only two tests.

12 THE COURT: I thought there were three.

13 MR. HALPERN: Oh, the old one. I'm sorry, that's
14 right.

15 THE COURT: There's the original one back in October.
16 So Exhibit 6 is the three positive drug tests. And then we
17 marked 7 and 8 this morning. Does that correspond to what you
18 have?

19 MS. LAWRENCE: 7 is the negative sweat patch result
20 that we were just handed and 8 is the criminal history?

21 THE COURT: Correct.

22 MS. LAWRENCE: Okay. And did Your Honor want to
23 mark --

24 THE COURT: Hold on just one second. Didn't we mark
25 as an exhibit also the memorandum --

1 MS. LAWRENCE: We did.

2 THE COURT: -- that Ms. Wertz provided on March 31
3 summarizing --

4 MS. LAWRENCE: That's my understanding, and I thought
5 we marked your court order of March 9 with the new conditions.

6 (Clerk/court discussion held off the record.)

7 THE COURT: All right. What the clerk has -- what do
8 you have for 5?

9 All right. My March 9, 2022 order is Exhibit 5.
10 Exhibit 6 is the 3/31/2022 memo from Ms. Wertz. We'll change
11 the numbering. We'll make Exhibit 7 the chronological file
12 from Probation. We'll make 8 the three positive drug tests.
13 We'll make 9 the negative drug tests from today, that I
14 received today, and we'll make 10 the criminal record. All
15 right? Hopefully the transcript won't be too confused.

16 Thank you for pointing that out.

17 **(Exhibits Nos. 7-10 received into evidence.)**

18 THE COURT: Mr. Halpern, are you ready to resume?

19 MR. HALPERN: Almost.

20 BY MR. HALPERN:

21 Q. Good morning, Ms. Wertz. The document that was produced
22 today, the negative sweat patch result, which has been marked
23 as Exhibit 8, that patch was placed on Ms. Jittaphol on March
24 18, which is the same day that the patch that tested positive
25 was removed; is that right?

1 A. That is correct, and I believe the negative is Exhibit 9.

2 THE COURT: Keep your voice up, please.

3 Q. But I'm just trying to clarify. That patch, the new
4 negative result was applied to her the same day that the
5 positive patch was taken off for testing?

6 A. That's correct.

7 Q. Okay. On Friday you responded to some questions that
8 concerned my raising an issue with Probation about whether a
9 clinical assessment was done at the Hope Center to assess
10 whether long-term residential treatment was appropriate. Do
11 you remember talking about that?

12 A. Yes.

13 Q. I'd like to mark as the next two exhibits, and you have
14 them in front of you, copies of Ms. Jittaphol's records first
15 from the Carlson detox and second from Hope Center.

16 MR. HALPERN: So I believe these would be 11 and 12.

17 THE COURT: I don't have them. You'll have to show me
18 the documents.

19 Jarrett, do you have them?

20 THE CLERK: Mm-hmm.

21 THE COURT: Okay. So you want to mark the Carlson
22 Recovery Center detox discharge nursing summary Exhibit 11?

23 MR. HALPERN: Yes.

24 THE COURT: And the treatment services contract
25 program plan Exhibit 12?

1 **(Exhibit Nos. 11-12 received into evidence.)**

2 MR. HALPERN: Well, that's the top page of the record.
3 That document is the entire Hope Center record.

4 THE COURT: Okay.

5 MR. HALPERN: It happens to have the program plan as
6 the top page.

7 THE COURT: Do you have an extra copy of these?

8 MR. HALPERN: Yes.

9 THE COURT: May I have it?

10 MR. HALPERN: I don't believe I have an extra copy.

11 THE COURT: Okay. That's okay. Why don't you keep
12 going.

13 MR. HALPERN: I have the Hope Center. I don't have
14 the Carlson.

15 THE COURT: Okay.

16 MR. HALPERN: Okay?

17 BY MR. HALPERN:

18 Q. Have you read these records before?

19 A. I do not recall reading through all the records. I just
20 received this packet right now.

21 THE COURT: Please keep your voice up. Talk into that
22 microphone. You can even pull it closer.

23 Q. Did you ever look to see whether her treatment records
24 contained a clinical report concerning whether or not a
25 residential treatment program was appropriate?

1 A. Do I recall looking in the records to see if there was a
2 report or if there was a clinical assessment if aftercare was
3 appropriate? Is that what you're asking?

4 Q. Yeah.

5 A. I remember looking through her files, but I can't recall
6 if there was a clinical assessment attached to those reports.

7 Q. Well, Probation and you knew that I was taking the
8 position that there had never been a clinical assessment at the
9 Hope Center to even evaluate whether it was appropriate for her
10 to be referred to long-term residential care. I was telling
11 Probation it never happened. Did you look in the record to see
12 if that was correct?

13 A. Are you referring to BHN's records?

14 Q. I'm referring to -- yeah, BHN is the parent -- the
15 umbrella company for both Hope Center and Carlson Recovery,
16 correct?

17 A. Yes.

18 Q. All right. So did you ever look in the records of BHN,
19 which includes both Carlson and the Hope Center, to see
20 whether, in fact, there was documentation of a clinical
21 evaluation that said she should go to long-term inpatient
22 residential care?

23 A. I don't believe so. From what happened afterwards, we
24 requested a discharge summary. That would contain that
25 information.

1 Q. Her record, in fact, doesn't contain any clinical
2 assessment at all, does it? Neither the Hope Center record or
3 the Carlson record. There is no clinical evaluation of what
4 sort of continuing treatment she needs?

5 MS. LAWRENCE: Your Honor, objection. May I explain?

6 THE COURT: Go ahead.

7 MS. LAWRENCE: I'm not sure counsel is making clear
8 what record we're referring to, the exhibit, or some records in
9 the possession of the treatment center or records in the
10 possession of Probation at the time.

11 MR. HALPERN: Let me make this clear.

12 Q. Exhibit 11 is the complete record from the Carlson
13 Recovery Center. That's the first place she went, correct?

14 A. Yes.

15 Q. And then she was transferred to another facility that was
16 part of the same company, BHN, and that was the Hope Center,
17 which was a stepdown program, correct?

18 A. Yes.

19 Q. And Exhibit 12 is her complete record from the Hope
20 Center. Do you recognize that?

21 A. Yes. I can't speak to how complete it is, because I
22 haven't been able to review it.

23 Q. And the top page of the Hope Center record is the
24 Probation 45 form that we talked about last week, correct?

25 A. Yes.

1 Q. And this is a form that is not generated by the Hope
2 Center. It's generated by Probation telling the provider what
3 services Probation is prepared to pay for, correct?

4 A. Correct.

5 Q. This document lists three things, detox, which would have
6 been Carlson, correct?

7 A. Correct.

8 Q. Short-term residential treatment, which would have been
9 the Hope Center, correct?

10 A. Correct.

11 Q. And long-term residential treatment, which, in fact,
12 didn't happen, correct?

13 A. Correct.

14 Q. When I told Probation about a phone call that I had had
15 with her clinical supervisor and gave you the name of the
16 person I spoke to, Hillary Moody, and I reported that she had
17 told me that the Hope Center had understood the Form 45 to be a
18 contract that dictated the treatment plan, did you or anyone
19 from Probation contact her to see if what I was saying was
20 true?

21 A. No.

22 Q. This is a serious issue, isn't it? If the clinical
23 director of a place where you're sending defendants thinks --

24 THE COURT: She said they didn't do it and this
25 question -- it sounds argumentative and you'll get a chance to

1 argue it. It may be premature for me to tell you, but keep
2 going to the extent you think you need to, but just put the
3 questions briefly and directly, please.

4 Q. Were you aware of Probation thinking it was a problem if
5 the Hope Center thought that the P-45 was a contract?

6 A. Can you repeat the question or break it up, please?

7 Q. Were you aware of Probation thinking it would be a problem
8 if the Hope Center thought that the P-45 was a contract that
9 required them to provide particular services independent of
10 doing a clinical assessment?

11 A. I don't believe I can speak to the thoughts and opinions
12 of the BHN staff in reference to that.

13 Q. All right. But from probation's perspective, the P-45 is
14 not a contract, correct?

15 A. It's a form that authorizes payment for a set of services.

16 Q. A set of services that were supposed to be the subject of
17 a clinical assessment by the provider. Yes?

18 A. It's a set of services that we authorized for billing
19 purposes, that the program is authorized to provide to a
20 defendant or offender that is referred for programming.

21 Q. They're authorized to provide it if there's a clinical
22 assessment determining that it's appropriate treatment,
23 correct?

24 A. I don't know if I can speak to that specifically.

25 Q. Well, who decides what's appropriate treatment, Probation

1 or the provider?

2 A. I believe, as I testified to last week, we spoke about
3 having Probation work with a provider to determine what next
4 step is appropriate in regards to treatment. As far as forming
5 a recommendation, I can't speak to that, but as providing a
6 directive to a defendant, that is something I can speak to.

7 Q. Well, I mean, you're not professionally qualified to make
8 a clinical assessment of whether somebody needs inpatient
9 residential care, are you?

10 A. I'm not a licensed clinician.

11 Q. So you rely on the assessments that are done by the
12 providers?

13 A. I rely on recommendations from the provider, as well as
14 directives of the court and orders of the court.

15 Q. When I told Probation that Ms. Moody had told me that no
16 clinical assessment had been done for her, did Probation think
17 it would be important to contact her and see if I just made
18 that up?

19 MS. LAWRENCE: Objection, Your Honor. I think we've
20 covered this.

21 THE COURT: Sustained.

22 Q. Did you review the Hope Center record to see if there was
23 some documentation of Ms. Jittaphol being told by somebody on
24 the staff that she needed to go to inpatient residential
25 treatment?

1 THE COURT: Mr. Halpern, do you mean to ask her
2 whether she did it herself or whether she understands that the
3 then supervising probation officer did it?

4 Q. Are you aware of anybody from Probation, you or anyone
5 else, reviewing the Hope Center record to see if there was
6 documentation of anybody telling Ms. Jittaphol she needed to go
7 to inpatient residential treatment?

8 A. I personally reviewed the discharge summary that the Hope
9 Center provided. I can't speak to exactly what it stated. If
10 you give me a second, I'll look at the documents just provided
11 right now to see if that recommendation was also included here.

12 Q. Well, I think the document speaks for itself, and I don't
13 want to take your time to review it now.

14 I provided Probation -- let me back up a second.

15 The violation notice that concerned her not going to
16 inpatient care, if I can find it, specifically talked about her
17 not following the direction to go to long-term inpatient
18 residential care -- oh, here it is. So this is the memo that
19 says document 21 filed on January 12. And I'll read you from
20 the second page concerning the violation. "In light of the
21 defendant's discharge from treatment against Behavioral Health
22 Network's clinical recommendation, the Probation Office
23 directed the defendant to reengage in long-term inpatient
24 treatment services." That was the crux of the violation,
25 right?

1 A. Amongst other things, yes.

2 Q. So the violation is based on the belief that BHN had done
3 a clinical assessment that resulted in a recommendation that
4 she go to long-term residential care, right?

5 A. A clinical recommendation as specified, not assessment.

6 THE COURT: Could you keep your voice up, please. I
7 wasn't able to hear that.

8 THE WITNESS: Yes. Sorry, Your Honor.

9 A. I wrote in my report a clinical recommendation, not a
10 clinical assessment.

11 Q. So it would have been okay -- she would have been in
12 violation, in your opinion, if somebody had recommended that
13 she go to long-term care even if nobody did a clinical
14 assessment to figure out whether it was appropriate?

15 A. The condition reads "per the directive of the Probation
16 Office," not based on the clinical recommendation.

17 Q. Do you think that somebody was supposed to do a clinical
18 assessment to answer the question of whether or not she was an
19 appropriate patient for long-term residential care? Was
20 somebody supposed to do that?

21 MS. LAWRENCE: Objection, Your Honor.

22 THE COURT: So you're looking at docket number 21,
23 condition 14, because I think this is what Ms. Wertz is
24 referring to, "The defendant must participate in a program for
25 inpatient or outpatient substance abuse therapy and counseling

1 if directed by the Pretrial Services Office or supervising
2 office." And the relevant question in my mind is did Probation
3 direct Ms. Jittaphol, for whatever reason, to do inpatient
4 counseling?

5 THE WITNESS: Yes.

6 THE COURT: Is that reflected in the documents
7 anywhere?

8 THE WITNESS: Yes. It's reflected in I believe some
9 of the chronological entries. That would be Exhibit 7.

10 THE COURT: And could you look at Exhibit 7 and point
11 us to what you're referring to.

12 THE WITNESS: Your Honor, it would be page 25 of
13 Exhibit 7. And the date of the interaction was 1/7/2022.

14 THE COURT: Let's see, page 25. Are you referring to
15 the part that says -- there's an entry on 1/7/2022 by Maureen
16 Curran, probation officer. It says "PO," probation officer,
17 "informed her if she does not participate in long-term care,
18 the court will be notified, as this is a treatment
19 recommendation that Probation is adhering to. Sub reports she
20 understands the court will be notified." Is that the entry?

21 THE WITNESS: Yes, Your Honor.

22 MR. HALPERN: May I continue?

23 THE COURT: Yes.

24 BY MR. HALPERN:

25 Q. So is it your view that if a defendant doesn't follow a

1 recommendation of Probation, it's a violation and it doesn't
2 matter whether or not the recommendation was appropriate,
3 whether it was supported by a clinical assessment? All that
4 matters is she didn't do what she was told to do. Is that your
5 opinion?

6 A. That is what was reported to the court as a violation.

7 Q. So I want to go back to the petition and turn to the
8 second page and the sentence that I asked you to look at
9 before, because it doesn't just say "recommendation." It says
10 "clinical recommendation." Do you see that?

11 A. Yes.

12 Q. All right. And you're not aware anywhere in her record of
13 any clinical recommendation. You're not aware of a clinical
14 assessment to determine what to do regarding long-term care.
15 It isn't in her record, is it?

16 A. There is an aftercare plan. As far as a clinical
17 assessment goes, there is not one in her file but there is a
18 recommendation from clinical staff.

19 Q. There is no recommendation requiring her -- or suggesting
20 it's appropriate to go to long-term inpatient residential care.
21 There's -- there are references in her record --

22 THE COURT: You didn't let her look in the document.
23 You said the document will speak for itself.

24 Q. Take your time and look in the document and show me where
25 it says that she's supposed to go to long-term inpatient

1 residential care.

2 THE COURT: The document is what number, Exhibit what?

3 MR. HALPERN: The Hope Center records is 12.

4 THE COURT: Okay. Thank you.

5 (Pause.)

6 A. There are two sections that I found that I could
7 reference.

8 Q. Mm-hmm. Where?

9 A. However, I don't know what page they lie on for all
10 packets.

11 THE COURT: I'm sorry, what's that?

12 THE WITNESS: I have a section that I'd like to
13 reference from the documents provided by counsel.

14 THE COURT: Okay. So you're in Exhibit 12. The page
15 is?

16 THE WITNESS: I'd have to count them.

17 THE COURT: They're not numbered. They are a series
18 of documents, so --

19 MR. HALPERN: May I approach, and see if I can --

20 THE COURT: Sure.

21 BY MR. HALPERN:

22 Q. Okay. So you pointed to a page that is about two-thirds
23 of the way through that. At the bottom it says "1 of 3."

24 THE COURT: Excuse me. Look, I can't hear you. The
25 stenographer and translators are probably not going to be able

1 to hear you. You've got a loud voice. Just try to tell me
2 loudly what page you're looking at. Can you count the number
3 of pages?

4 MR. HALPERN: Yes.

5 THE WITNESS: It's the tenth page from the back.

6 THE COURT: The tenth page from the back.

7 Is it the one that has on the top, if I counted right,
8 "Session Information" and on the bottom it says Page 1 of 3?

9 THE WITNESS: Correct.

10 BY MR. HALPERN:

11 Q. So let me ask you about --

12 THE COURT: And where on the page?

13 THE WITNESS: It is towards the bottom section where
14 it states, "Domain: Transition/Aftercare/Discharge."

15 THE COURT: I'm sorry. What does it say?

16 THE WITNESS: It's close to the bottom.

17 THE COURT: "Domain: Transition/Aftercare/Discharge."

18 THE WITNESS: Yes.

19 Q. So on this page right below there, there's a section about
20 the patient's goal. Do you see that?

21 A. Yes.

22 Q. And it says "to get back home and do an outpatient
23 program, individual actively engaged." So it doesn't say she
24 needs to go into residential placement, does it?

25 A. I was referencing the part below that, but that's --

1 Q. Let's talk about this part first.

2 THE COURT: Well, no. She -- what part were you
3 referencing?

4 Mr. Halpern, I'll tell you there are bigger issues
5 than this one. This one -- there's a finite -- this is a
6 revocation proceeding and it's important but there's a finite
7 amount of time. When you ask her to find something and she
8 said she found it, then you're going to have to let her read it
9 into the record.

10 Tell me, please, what you're referring to.

11 THE WITNESS: Below that section that defense counsel
12 mentioned it states "Objective, Aticha," the defendant, "will
13 work with aftercare specialists to discuss her aftercare plan
14 which will be determined by her treatment progress. Depending
15 on the progress, Aticha will complete programs for further
16 programming or complete IOP referrals."

17 Q. So there's no mention here of a need for long-term
18 residential placement, correct?

19 A. Not in that section, no.

20 Q. Not in any section?

21 THE COURT: Well, she said there were two references.
22 Why don't you let her show you the other one and then you can
23 question her.

24 MR. HALPERN: I'd like to finish on this page first.

25 Q. Above --

1 THE COURT: You said there's no questioning --
2 Mr. Halpern, stop making faces.

3 MR. HALPERN: I'm not.

4 THE COURT: You are. I can see you. And don't turn
5 your back to me when I'm talking to you.

6 You said to her in your question there's nothing on
7 this page or any page -- and if that's a question, then you
8 have to let her answer it.

9 MR. HALPERN: Fine.

10 Q. Can you show me the other page that references long-term
11 inpatient residential care?

12 A. It's the next page. Excuse me. Yes, it's the next page.

13 Q. Where are you looking?

14 A. It is the third addressed item where it says,
15 "Intervention: Transition/Aftercare/Discharge."

16 Q. "Aftercare specialists will work with Aticha to identify
17 her aftercare plan," right?

18 A. Yes. And then --

19 Q. And, "Depending on treatment progress, aftercare will send
20 referral to My Sister's House." That's an inpatient program?

21 A. That's a long-term residential program.

22 Q. Right. Which is going to receive an application depending
23 on treatment progress, right?

24 A. Yes. I mean, the sentence goes on.

25 Q. It doesn't say she's going to go --

1 THE COURT: Here, read the whole sentence, please.

2 MR. HALPERN: "Depending on treatment" --

3 THE COURT: No. She'll read the whole sentence.

4 THE WITNESS: "Depending on treatment progress,
5 aftercare will send for referral to My Sister's House and
6 coordinate an interview or complete an IOP referral."

7 Q. What's "IOP" mean?

8 A. Intensive outpatient programming.

9 Q. So this paragraph that you just pointed to actually poses
10 an option, depending on treatment progress, between two
11 possibilities. One is outpatient care and the other is
12 inpatient care, correct?

13 A. Yes.

14 Q. And the prior page, the paragraph above the one you
15 referenced, when her goal is go back home and do an outpatient
16 program, there's no reference here that says, no, you can't do
17 that. That's not in the cards. You have to go inpatient.
18 Right? That's not --

19 THE COURT: Excuse me. Ask a -- you know how to ask a
20 question. Ask one question. And then stop at the end of the
21 question and let her answer it.

22 BY MR. HALPERN:

23 Q. Is there any expressed objection to her goal of doing
24 outpatient treatment?

25 A. No.

1 MR. HALPERN: I would like to mark as the next exhibit
2 a letter from a physician, Dr. Stuart Gitlow.

3 THE COURT: May I see it?

4 MR. HALPERN: So this would be 13.

5 THE COURT: What is this record? I mean, what is this
6 document?

7 MR. HALPERN: It's a document of a report that I
8 provided to the court previously, the first time there was a
9 proceeding concerning the first test, of Dr. Gitlow, who
10 specializes in addiction medicine and wrote a report about
11 whether or not it was appropriate for her to be sent to
12 long-term inpatient residential care.

13 THE COURT: And this is dated January 27, 2022?

14 MR. HALPERN: Yes.

15 THE COURT: Was it provided to Probation in the course
16 of its --

17 MR. HALPERN: It was provided in discovery.

18 THE COURT: But I mean --

19 MR. HALPERN: Yes, it was.

20 THE COURT: Well, when it was filed with me, with the
21 court?

22 MR. HALPERN: Yes.

23 THE COURT: And was it discussed with Probation?

24 MR. HALPERN: Yes.

25 THE COURT: After it was filed with the court? I

1 mean, when was it discussed? I'm wondering how she can testify
2 about the letter. You just have to explain the relevance of
3 this to her testimony.

4 Q. Have you read the letter before?

5 THE COURT: No. Explain to me what you perceive to be
6 the relevance to her testimony.

7 MR. HALPERN: Dr. Gitlow prepared a report, which
8 Probation had, which identified the criteria that medical
9 professionals use to determine whether long-term inpatient
10 residential care is appropriate.

11 THE COURT: Look, we had this discussion, as I recall,
12 and the transcript will reflect, in the first hearing relating
13 to the petitions. The condition of supervised release is -- or
14 pretrial release is to follow the directions of the Probation
15 Office.

16 As I said to you before, there are -- if the defendant
17 or you or her dispute the directions, it's my understanding --
18 and I'm saying this because this is the understanding I'll
19 apply when I decide this matter -- that if there's a direction
20 and there's a disagreement with the direction, you can try to
21 persuade Probation to change the direction. You can ask the
22 court to modify the direction. But the defendant can't pick
23 and choose which direction she's going to follow. And that's
24 why I wonder about whether she should be questioned about this
25 if it wasn't presented to her before it was filed with the

1 court or wasn't -- because -- and if there was a violation, you
2 know, how consequential it is can be argued. And maybe I'm not
3 going to find a violation. It has to be proven by clear and
4 convincing evidence. But violation would be whether she was
5 directed and failed to follow direction.

6 MR. HALPERN: Well, I suppose this is a question for
7 argument, Your Honor, but I think that if you are going to
8 assess whether or not somebody should have followed the
9 direction of Probation, you have to consider the question of
10 whether the direction was a violation of the standard of
11 medical care.

12 THE COURT: And I think that's right. I think you can
13 argue that to me, because that's what I would say, if there was
14 a violation, what the weight should be. And there are -- you
15 know, there are other violations. Some are admitted and some
16 are still disputed.

17 I'm interested -- you know, if you -- I'll take this
18 as Exhibit 13 because you submitted it previously and you will
19 be able to argue the implications of it to me, but I don't
20 think it's proper use of time to question her about it based on
21 my understanding of how it came to her attention as a filing
22 with the court after the direction was given.

23 (Exhibit No. 13 received into evidence.)

24 THE COURT: If you've got something else you think is
25 very important --

1 MR. HALPERN: Let's --

2 THE COURT: Let me finish. You'll be able to answer
3 me better if you let me finish. If you have something else
4 that's very important about this alleged violation, then spend
5 a little more time on it.

6 I am interested in the drug testing, as you know, and
7 in the other -- and some more information on some of the
8 admitted violations, the failure since March 8 to attend some
9 of the prescribed treatment and counseling, and, you know,
10 starting a new job without having informed Probation so it
11 could make a decision as to whether it was appropriate. Okay?

12 MR. HALPERN: Yeah.

13 BY MR. HALPERN:

14 Q. Ms. Wertz, how long have you had the position of
15 monitoring -- in Probation, monitoring people with drug
16 addictions?

17 THE COURT: Okay. Let me just say this: We'll take
18 the Stuart Gitlow letter, January 27, 2022, as Exhibit 13 and
19 I'll need an extra copy of it at some point too.

20 But go ahead.

21 A. Are you referring to supervision?

22 Q. Yes.

23 A. Or monitoring with drug testing?

24 Q. In your position in Probation, how long have you worked
25 with people dealing with drug addiction?

1 A. Since I started.

2 Q. Which is how long?

3 A. Two and a half years ago.

4 Q. All right. Is it your routine practice, when you're
5 monitoring people, to do both sweat patch and urine tests at
6 the same time?

7 A. It is a practice I have used.

8 Q. Is it the normal practice, that you usually do both?

9 A. It's dependent on the client situation.

10 Q. So of the number of people that you're monitoring, what
11 would you estimate as the number who are doing only urines
12 versus only sweat patch versus both?

13 A. As far as cases that I supervise?

14 Q. Yeah.

15 A. The defendant is the only one that's actively on sweat
16 patch and urine testing.

17 Q. Out of how many people?

18 A. That I supervise?

19 Q. Yeah.

20 A. Presently in the thirties.

21 Q. And do the rest of them only do urine?

22 A. They're monitored in different ways. It's usually
23 dependent on the situation and circumstance.

24 Q. Of the 30, how many are doing urine and how many are doing
25 sweat patch?

1 A. I prefer not to speak to the intricacies of my caseload
2 and focus on the defendant.

3 Q. I'm just interested in the statistics. I'm not going to
4 ask you about individual people. I want to know the ratio of
5 urine testing versus sweat patch testing.

6 A. The majority are urine tested.

7 Q. Like close to 90 percent?

8 A. Of those who have a substance use condition that requires
9 testing, the majority. I can't think of the exact percentage.

10 Q. How many people are you monitoring right now who are only
11 doing sweat patches?

12 A. Presently only the defendant.

13 Q. Well, she's doing both. Other than her, do you have
14 anybody who's doing sweat patches?

15 A. Not presently.

16 Q. So every single person that you monitor, other than her,
17 is doing only urine tests.

18 A. Yes.

19 Q. Why is that? If sweat patches are a reliable good way to
20 test people, why is she the only one that's doing sweat patch
21 tests?

22 A. We believe that sweat patch is a good way for her to be
23 tested, just in --

24 Q. Why is it a good way for her but not for everybody else?

25 A. In light of things that had come up earlier during her

1 supervision. She reported not wanting to be observed by a male
2 officer during observed urine collections. In order --

3 Q. She --

4 THE COURT: Let her finish.

5 A. In order to have fidelity with testing, we decided to use
6 a sweat patch, which would be placed on her skin and absorb her
7 sweat throughout the period that the patch was worn and we
8 determined that that would be an appropriate way to test her
9 given some kind of sensitive issues that she had reported early
10 on.

11 THE COURT: And the record should reflect -- let me
12 ask a question.

13 Why did you accommodate this particular defendant's
14 request, and was it related to her sexual identity?

15 THE WITNESS: Yes, Your Honor. We found it to be a
16 reasonable request and we were willing to work with her.

17 THE COURT: What did you understand she identified as?

18 THE WITNESS: Presently identifies as a female.

19 THE COURT: And does she have, to your knowledge, male
20 or female anatomy?

21 THE WITNESS: She has male genitalia.

22 THE COURT: Go ahead.

23 BY MR. HALPERN:

24 Q. Prior to the first sweat patch that came back positive,
25 both me and Ms. Jittaphol had told you more than once that

1 there was no objection to her being observed by a man for urine
2 tests, correct?

3 A. Can I just look at the date for that sweat patch, please?

4 Q. Sure. The first sweat patch positive covered the week of
5 January 20 and was removed on January 27.

6 A. I believe it was following that sweat patch positive is
7 when we had that discussion.

8 Q. Whenever it was, it was a discussion that was had multiple
9 times before Probation started doing monitored tests. She told
10 you repeatedly, when she came in --

11 THE COURT: Well, just -- you asked a question. Stop.
12 Let her answer it.

13 Q. It's a subject that came up multiple times, correct?

14 A. Yes, between you and the defendant.

15 Q. Between me and you?

16 A. And the defendant and myself, yes.

17 Q. Oh.

18 A. Between you and myself and the defendant and myself.

19 Q. In fact, she was telling you repeatedly, when she came in
20 for urine tests, that she was fine being observed?

21 A. After that positive, yes.

22 Q. And you would routinely tell her that it wasn't necessary?

23 A. I would tell her that we would be doing an unobserved
24 urine.

25 Q. Did you tell her that it wasn't necessary to do observed

1 urines?

2 A. Stating the words "was not necessary," I do not recall
3 that.

4 Q. Did you tell me that it was a complicated issue because
5 COVID had resulted in a lot of people working remotely, so
6 there were less men available to observe?

7 A. There were on occasions sometimes less men available to
8 observe urine collection.

9 Q. If you had any suspicion that she was smuggling in urine
10 to pass these tests, is there anything you could have done
11 about it?

12 A. Yes.

13 Q. What?

14 A. We have temperature readings on urine sample cups in order
15 to make sure that the sample being provided is close to the
16 temperature of the human body.

17 Q. Did you ever do that?

18 A. Yes.

19 Q. Was it normal?

20 A. From the samples that we collected, yes.

21 Q. So you never found any indication that she was smuggling
22 in urine, correct?

23 A. No. Nor are we alleging it in any violation petition.

24 Q. After the first test came back positive, Probation renewed
25 a recommendation that she go inpatient, correct?

1 A. Yes, long-term treatment.

2 Q. After the first test came back positive, you had to
3 consider what possible explanations there were for all of the
4 negative urine tests, correct?

5 A. Correct, if we're referencing the 1/20 sweat patch,
6 because there was a prior positive.

7 Q. So one possibility was that she smuggled in urine, but
8 there was no evidence of that, right?

9 A. Correct.

10 Q. The other possibility was that she was using
11 methamphetamine very sporadically so that it tested positive on
12 this one sweat patch but tested negative because she wasn't
13 using all of the times that the urine tests covered, correct?

14 A. Correct.

15 Q. But she had given you a detailed description of her
16 addiction history, right?

17 A. I don't recall that. I know that she had reported via
18 treatment and then to Probation Officer Curran, whom we had
19 spoken about, her treatment history, but not a detailed record
20 of such.

21 Q. Did you know that her addiction history that led her to be
22 asked to be put into detox was that she was using every day,
23 multiple times every day and couldn't stop?

24 A. She reported daily methamphetamine use.

25 Q. And she also reported to the providers and to Probation

1 that she tried to stop and couldn't and that's why she wanted
2 to go into detox. You knew that, right?

3 A. Based on conversations you have told me, me and her did
4 not have that exact dialogue.

5 Q. Whether it was conversations with someone else or
6 reviewing the record, you knew that her history was that she
7 had wanted to stop. She tried to stop. She couldn't stop.
8 And she wanted to go to detox because she thought that was the
9 only way she could quit using. You knew that to be true,
10 correct?

11 A. Only from what you had told me about this case.

12 Q. So if all of these tests were accurate, if the urine tests
13 were accurate and the patch test was accurate, the use that
14 would have been indicated by all of those tests was completely
15 inconsistent with what her addiction history was, which was
16 using every day, correct?

17 A. It could -- it appears to be that, yeah.

18 Q. Were the urine tests done randomly?

19 A. Yes.

20 Q. So you wouldn't tell her days in advance when you were
21 doing them, right?

22 A. It would typically be the day of.

23 Q. And the purpose of that is to prevent the defendant from
24 not using far enough in advance of the test to test negative,
25 correct?

1 A. There's multiple purposes to that. One, so that the
2 defendant can't tamper with the specimen and, secondly, to have
3 a randomized frequency in case the defendant used on different
4 occasions.

5 Q. But one of the core ideas of doing these urine tests
6 randomly is to try to stop the defendant from scheduling their
7 use in a way to avoid detection, correct?

8 A. Yes, and similarly to how I just outlined.

9 Q. All right. And she's had eleven clean urine tests. She's
10 supposed to get tested every week. She's been tested almost
11 every week and every one has been clean?

12 A. Yes. Every urine test except for the first positive that
13 she was on supervision for.

14 Q. Would the records that Probation maintains of defendants
15 typically include something describing their addiction history?

16 A. Typically, and on the pretrial portion of supervision,
17 it's a lot of information that's reported by the defendant
18 corroborated and included in the pretrial report.

19 Q. Have you monitored a number of other people who were
20 addicted to methamphetamine?

21 A. I have supervised individuals that are addicted to
22 methamphetamine, yes.

23 Q. How many would you estimate?

24 A. Estimate, approximately five.

25 Q. And would it be fair to say that the typical usage of the

1 people that you've encountered who were methamphetamine addicts
2 is that they would use many days at a time, they'd frequently
3 binge for four or five days, or they use every day?

4 MS. LAWRENCE: Objection, Your Honor. I'm not sure
5 the pattern of other supervisees is relevant to the defendant's
6 actual usage and her experience.

7 THE COURT: The objection is overruled. You can argue
8 it's a limited sample, but if she's able -- if she knows, she
9 can answer.

10 A. It typically varies on each client. For individuals that
11 are on supervision, everyone is in different stages of sobriety
12 when it comes to using while on supervision.

13 Q. You're aware that the typical user of meth, as described
14 in literature, is someone who uses every day or four- or
15 five-day binges; you're familiar with that literature, aren't
16 you?

17 A. To an extent. I think as I just stated, it depends on the
18 client-specific information as well as usage trends and things
19 of that nature.

20 Q. The second sweat patch test that came back positive, that
21 patch was removed on March 18, right?

22 A. That is correct.

23 Q. And I notice in the list of tests, there's no urine test
24 on March 18, correct?

25 A. That is correct.

1 Q. So she came to court to see you that day to get the patch
2 removed?

3 A. She came in that day to have the patch removed, correct.

4 Q. And at that point she had had a couple of most recent
5 urine tests that were monitored, two of them, correct?

6 A. Prior to that, two have been observed urinalyses.

7 Q. So when she came to see you on the 18th, based on that
8 track record, she would have had the expectation that she was
9 going to have another urine test and it would likely be
10 monitored?

11 A. We were unable to collect a urine test on that date
12 because there were no male officers present.

13 Q. Well, you could have collected a urine test, you just
14 would have had to do an unmonitored test, right?

15 A. Yes. The court ordered specifically that we do observed
16 urine tests when we do urine test her.

17 Q. The court had ordered specifically that you do monitor
18 urine tests long before you started doing monitored urine
19 tests; isn't that right?

20 A. I don't know what you're referencing.

21 THE COURT: Actually, I think I issued that order
22 orally on March 8 and memorialized it on March 9.

23 MR. HALPERN: Okay.

24 THE COURT: So --

25 Q. Wouldn't it have been better to do an unmonitored test

1 than to do no test at all?

2 A. I can't speak to that. We were also monitoring her via
3 the sweat patch as well.

4 Q. But you knew that there were issues that I had raised
5 about the reliability of the sweat patch, right?

6 A. Yes.

7 Q. So why didn't you do an unmonitored urine test,
8 particularly given the fact that you had no reason to think she
9 was going to smuggle in urine?

10 A. Our office was following the order and the directive of
11 the court.

12 Q. So if you couldn't do a monitored test, you weren't going
13 to do anything?

14 A. Yes.

15 THE COURT: Let me ask this: Do you recall whether
16 there was a hearing in this case on March 8?

17 THE WITNESS: There was.

18 THE COURT: And did you take -- I'm not sure I
19 remember this. Was that in the afternoon?

20 THE WITNESS: I would say it was in the afternoon.

21 THE COURT: What's that?

22 THE WITNESS: I believe the hearing was --

23 THE COURT: And did you take the sweat patch off
24 before or after that hearing?

25 THE WITNESS: Following the hearing.

1 THE COURT: You took it off after the hearing.

2 THE WITNESS: I would just reference and clarify --

3 THE COURT: Go ahead.

4 THE WITNESS: The sweat patch that was worn on March 1
5 to March 8, which March 8 was the hearing, that sweat patch
6 returned negative.

7 THE COURT: Yeah, that was negative. Okay.

8 THE WITNESS: The patch put on following the hearing
9 and worn until the 18th is the test that returned positive.

10 THE COURT: So that means if, which is disputed, the
11 sweat patch is reliable, in the week before the hearing -- I
12 can check to see when it was scheduled -- the sweat patch
13 didn't show use of methamphetamine but the sweat patch put on
14 after it did.

15 THE WITNESS: That is correct, Your Honor.

16 THE COURT: Okay.

17 BY MR. HALPERN:

18 Q. Is the reason that the overwhelming majority of people
19 being monitored by Probation are doing only urine tests is
20 because Probation is aware that urine tests have greater
21 reliability than sweat patch tests?

22 A. No. It's a case-by-case basis.

23 Q. But she's the only one -- she's the only case where you're
24 using a sweat patch. So my question is whether the reason
25 you're using urine in all of these other cases is because you

1 know that urine is more reliable than a sweat patch.

2 A. So the reason why we're using sweat patch in this case,
3 and I believe I mentioned it before, not only --

4 Q. I'm not asking about this case. I'm asking about all the
5 other cases.

6 A. So --

7 Q. I'm asking whether the reason, in all of these other
8 cases, that urine tests are used and only urine tests are used
9 is because you know that urine tests are more reliable than
10 sweat patch tests?

11 A. That is not the case.

12 Q. Sweat patch tests are cheaper than urine tests, aren't
13 they?

14 A. I do not know what they cost.

15 Q. You said on Friday that it was your understanding that the
16 urine tests covered 72 hours of use, right?

17 A. If we're referencing methamphetamine --

18 Q. Yes.

19 A. -- it stays in the body for 72 hours, dependent on
20 frequency of use and dosage consumed.

21 Q. I exchanged multiple emails with you last week leading up
22 to that hearing in which I repeatedly asked you to send me any
23 documentation you had about the time period that the urine
24 tests covered. Do you remember that?

25 A. Yes.

1 Q. Did you send me anything?

2 A. I provided you with links to the PharmChem website which
3 outlines information about the sweat patch. And I believe I
4 provided you with a link to the Abbott Alere website which
5 provides information for urine testing.

6 Q. Did you send me anything that mentioned the 72 hours?

7 A. I believe that's indicated on the PharmChem website or
8 resource. I can't recall exactly.

9 Q. If you could look at the next document, which I'd like to
10 mark as an exhibit.

11 MR. HALPERN: It's there.

12 THE COURT: Why don't you give me all of them, please.

13 Q. This is "How Long Does Meth Stay In Your System?" It's a
14 publication by the American Addiction Center.

15 THE COURT: What's the next numbered exhibit?

16 THE CLERK: 14.

17 THE COURT: Okay. We'll make this Exhibit 14.

18 **(Exhibit No. 14 received into evidence.)**

19 MR. HALPERN: Thank you.

20 Q. I want to direct your attention to the first page, the
21 last sentence, "Urine. Meth can be detected in the urine
22 approximately two to five hours post ingestion and anywhere
23 from three to seven days following the last dose." Do you see
24 that?

25 A. I do see that.

1 Q. Do you have some knowledge that that's wrong?

2 A. I would be interested to see what the 114 and 15
3 attachments are that reference that.

4 Q. Okay. My question was, are you aware of anything that
5 indicates that that's wrong?

6 A. Not to my knowledge.

7 Q. What medical literature are you familiar with that says
8 that it's a 72-hour window? What have you read that says that?

9 A. As I referenced before, PharmChem provides information
10 pertaining to that.

11 Q. Do you know that it's in the PharmChem --

12 A. I believe it's somewhere on the website, but I can't speak
13 to where exactly it's located.

14 Q. So when you testified last week that it was 72 hours, you
15 actually haven't read anything that you remember that actually
16 says 72 hours; is that right?

17 THE COURT: I'm sorry. Doesn't this document say
18 that?

19 MR. HALPERN: This document?

20 THE COURT: It says one to three days. 72 hours is
21 three days. I noted this this morning. You just read it to
22 her.

23 MR. HALPERN: No, I didn't.

24 THE COURT: It says --

25 MR. HALPERN: I think you're looking at saliva below

1 that.

2 THE COURT: Oh, urine. I see.

3 Q. Three to seven days, it says. Do you see that?

4 A. Yes.

5 Q. So my question was, when you testified last week that it
6 was 72 hours, what document had you read that said it was 72
7 hours?

8 A. I believe there's a document on PharmChem's website, but I
9 can't recall exactly which document it was.

10 THE COURT: Did she send you a PharmChem document?

11 MR. HALPERN: She sent me a link to the PharmChem
12 website.

13 THE COURT: Did you read it?

14 MR. HALPERN: Yeah.

15 THE COURT: What does it say?

16 MR. HALPERN: It doesn't say anything about 72 hours
17 that I found.

18 Q. If all of these tests were accurate, the urine tests and
19 the sweat patch tests, did you form some opinion about how you
20 thought she managed to just use every once in a while when she
21 tested positive on the two sweat patches but didn't use all the
22 rest of the time that she tested negative on all the urine
23 tests and all the other sweat patch tests, given that her
24 history was that she used every day and couldn't stop?

25 A. As far as forming an opinion based on the relevant facts.

1 Q. How did she manage to do that? I mean, based on you're
2 working with her and her desperation to get into a detox
3 because she couldn't stop using every day, how did you think
4 that somehow now --

5 THE COURT: Just stop -- ask one -- you know how to do
6 this, I think. Just ask one question and stop.

7 BY MR. HALPERN:

8 Q. How did you think that she had managed this transformation
9 where now she was able to use once in a while and stop for days
10 or weeks at a time?

11 A. It's our belief that the defendant is likely using
12 methamphetamine on occasion, a small dosage, and the positive
13 result is evident in a sweat patch rather than in the urine
14 screens.

15 Q. But she tested negative on a number of sweat patch tests
16 too?

17 A. She did.

18 Q. So how do you explain this, given her history of not being
19 able to stop using every day?

20 A. We believe that she's currently using occasionally.

21 Q. Which would be completely inconsistent with her addiction
22 history?

23 THE COURT: Here, this is going to -- you'll be able
24 to argue this. Look.

25 MR. HALPERN: All right.

1 THE COURT: Look, wait. Just stop. You pointed this
2 out to me. Throughout December she was getting treatment. She
3 went into detox. She went in for one week, if I recall
4 correctly, inpatient treatment. Something intervened that in
5 certain contexts you've been emphasizing between when she was
6 using daily in October 2021 and this year.

7 Q. You've encountered defendants, whether through your
8 personal conversations with them or reviewing their medical
9 records, who have addiction histories who say, "I've got it
10 under control. I use once in a while. It's not a" --

11 THE COURT: Here, what's the question?

12 MR. HALPERN: I'm going to get to the question.

13 THE COURT: Well, no. Ask a question.

14 BY MR. HALPERN:

15 Q. Have you encountered defendants, whether personally or
16 through review of records, who tell you or tell a provider,
17 "I've got it under control? I can use once in a while. I can
18 stop. I can manage it"?

19 A. In reference to any illicit substances?

20 Q. Yeah.

21 A. Yes.

22 Q. There's no evidence that she ever said that to anyone. To
23 you, to a medical provider.

24 THE COURT: That's a different question.

25 MR. HALPERN: Yeah, it's a different question.

1 THE COURT: But she didn't --

2 MR. HALPERN: I'm asking a different --

3 THE COURT: She asked for clarification of your
4 question. You asked her whether anybody had. Now you're
5 asking about whether this defendant had. Which question do you
6 want her to answer?

7 MR. HALPERN: There are two different questions.

8 THE COURT: I know, and she didn't get a chance to
9 answer the first one. She was asking you to clarify it.

10 MR. HALPERN: I thought she did answer it.

11 BY MR. HALPERN:

12 Q. You've encountered defendants who said, "I can use
13 occasionally, it's not a problem. I've got it under control,"
14 right?

15 A. Yes.

16 Q. All right. You're not aware of Aticha ever saying that to
17 you or to anyone else, correct?

18 A. Correct.

19 MR. HALPERN: The next document which I'd like to mark
20 is an article entitled, "A Review of the Clinical Pharmacology
21 of Methamphetamine."

22 THE COURT: Is there any objection?

23 MS. LAWRENCE: No, Your Honor.

24 THE COURT: Okay. So we'll make this Exhibit 15.

25 **(Exhibit No. 15 received into evidence.)**

1 THE COURT: Again, I'm going to need extra copies of
2 these, although I think these were among the documents you
3 filed several months ago in your memo, correct?

4 MR. HALPERN: I have an extra copy.

5 THE COURT: Thank you. Do you have an extra copy of
6 14 also, "How Long Does Meth Stay In Your System"?

7 MR. HALPERN: Yes.

8 Q. I want to ask you to take a look at the third page, which
9 says 1087 at the top.

10 A. Yes, I found it.

11 Q. And there's a couple of sentences in the first paragraph.
12 "Methamphetamine has been detected in urine seven days after
13 completing a regimen of four daily ten-milligram doses." And
14 below that, "Amphetamines might be expected to be present in
15 urine for extended periods in the context of use but
16 appropriate studies have not been reported."

17 Is it fair to say you're not aware of any literature in
18 conflict with that, are you?

19 A. I don't believe I can speak on the recent literature for
20 methamphetamine use. This is the first time I've seen this or
21 read this.

22 Q. The next --

23 THE COURT: Can I ask you a question, Mr. Halpern?

24 MR. HALPERN: Sure.

25 THE COURT: It says -- and you may want to ask the

1 witness her understanding. But it says, "Methamphetamine has
2 been detected in urine seven days after completing a regimen of
3 four daily ten-milligram doses." And in one case following a
4 single 250-milligram dose. Did you understand it was four
5 daily ten-milligram doses of methamphetamine?

6 MR. HALPERN: I read this to be consistent with what
7 is described in the literature as the typical addict's usage
8 regimen, which is to binge for four to five days with four uses
9 per day and ten milligrams is an average individual use. So it
10 would be a total of 40 milligrams a day for four days. That's
11 what this is saying.

12 THE COURT: Ten milligrams a day for each of four
13 days?

14 MR. HALPERN: 40 milligrams a day.

15 THE COURT: 40 a day.

16 MR. HALPERN: Yeah. Each day taking ten milligrams
17 each time, four times a day for four days, which is the profile
18 of a typical meth binge.

19 THE COURT: All right. I'm not quite sure -- four
20 daily ten-milligram doses I would have read as ten milligrams a
21 day for four days, and in one case following a single
22 250-milligram oral dose, but that's not your understanding.
23 Okay.

24 MR. HALPERN: Actually, four daily -- no, I think I
25 got it right. Because otherwise it would have said daily

1 ten-milligram doses that -- I'm not sure. I mean, I read this
2 as 40 milligrams a day. But part of the reason that I read it
3 that way is because I know that that's the binge pattern for
4 methamphetamine. And it was her pattern too, that she didn't
5 use once a day. She used multiple times, which is typical.

6 BY MR. HALPERN:

7 Q. I want to ask about another study. Comparison of urine to
8 sweat patch test results and court-ordered testing. Do you see
9 that one?

10 A. The next packet?

11 Q. Yeah.

12 A. I do.

13 Q. And I want to ask about a particular reference here, which
14 is on page 67.

15 THE COURT: Do you have extras of all of these? Well,
16 there's only one more. Okay. So here it is.

17 Q. So I'm looking at page 67 in the paragraph that starts
18 with the words "sweat patch proponents" and it references false
19 positive rates from testing. 21 percent false positive rate in
20 cocaine detection and 7.9 percent false positive rate in opiate
21 detection in studies that are referenced in the article. When
22 I produced these studies before, did you read them?

23 A. I don't believe I read it to conclusion.

24 Q. Are you aware of medical literature like these that talk
25 about rates of false positives in sweat patch tests?

1 A. Just from what you've provided.

2 Q. But other than this article, I mean, are you aware that
3 there is medical literature readily available about rates of
4 false positives in sweat patch testing?

5 A. Yes.

6 Q. Are you aware that there are studies that talk about false
7 positive rates in the range of 20 percent for cocaine?

8 A. Yes.

9 Q. Are you aware that there are studies that talk about false
10 positive rates in the rate of eight percent for heroin?

11 A. As it's indicated here?

12 Q. Just in general. Other than this article, I mean, are you
13 aware that there's literature out there that talks about how
14 frequent false positives are with sweat patch testing?

15 A. I'm sure there's literature out there, but I can't speak
16 to that specific literature and those specific percentages that
17 you're sharing except for the ones you've outlined here.

18 Q. Have you ever looked, like just done a Google search on
19 reliability of sweat patches or false positives with sweat
20 patches? Have you ever looked into it?

21 A. No.

22 Q. If the rate for methamphetamine was comparable to this 20
23 percent rate in cocaine -- that's one out of every five tests
24 is going to produce a false positive according to this study --
25 do you have any reason to question that?

1 A. For cocaine or methamphetamine?

2 Q. For cocaine.

3 A. Do I have any reason to question the results of this --
4 the findings of this report?

5 Q. Yeah.

6 A. Not that I'm aware of.

7 Q. And we don't know how methamphetamine false positives
8 compare to coke or to heroin?

9 A. Correct.

10 Q. Okay. But in terms of the biology of methamphetamine --
11 methamphetamine is an upper, right? It's more akin to cocaine
12 than it is to an opiate, correct?

13 A. It's an upper, I can speak to that.

14 Q. All right. I want to show you one last article. This one
15 I don't have an extra copy of, but there is a copy at the desk.
16 "Improving the PharmChek Sweat Patch," and this is a
17 publication by the Department of Justice. Do you see that? Do
18 you have that, Ms. Wertz?

19 A. I believe so. It says it was "funded by the Department of
20 Justice." I don't know if that's a publication by.

21 Q. The part I wanted to ask you about is on the fourth page
22 and in particular it talks about issues that come up when the
23 person who is being tested with a sweat patch sweats a lot.

24 A. Can you reference what paragraph? The sticky fell off.

25 Q. Yeah. In the first full paragraph in the middle:

1 "Several cases have involved individuals identified as
2 methamphetamine positive who deny methamphetamine use while
3 admittedly using other illegal drugs. The individuals in these
4 cases were all in environments where profuse sweating was
5 common and possible contamination was likely."

6 Then the paragraph below, the last sentence again talking
7 about people with problematic testing, "These individuals are
8 also more likely to have labor-intensive jobs that cause
9 profuse sweating which would assist in the transfer of drugs
10 from the skin to the patch." Are you familiar with any issue
11 concerning sweat patch reliability when you're testing people
12 who sweat a lot?

13 A. I believe in the training for the sweat patch that I had
14 taken to be certified, it mentions that individuals who are in
15 settings like saunas or sweat lodges and things like that, the
16 sweat patch can fall off. In regards to contamination, I can't
17 speak to that.

18 Q. In regards to false positives, are you aware of an
19 association between sweating a lot and unreliable test results?

20 A. I'm not.

21 THE COURT: Let me -- here, let me just read the parts
22 to make sure I'm focused on the right parts.

23 First, this is -- if I didn't say so -- Exhibit 17.

24 (Exhibit Nos. 17 received into evidence.)

25 THE COURT: It says, "Several cases have involved

1 individuals identified as methamphetamine positive who denied
2 any methamphetamine use while admittedly using other illegal
3 drugs. The individuals involved in these cases were all in
4 environments where profuse sweating was common and possible
5 contamination was likely. Several recent cases have been
6 dismissed due to concerns with environmental contamination
7 influencing the patch results."

8 And then the next paragraph you read part of, it says
9 "Because most individuals tested with the patch are previous
10 drug users, they are more likely to be in an environment
11 contaminated with drugs and are therefore likely to have their
12 skin come into contact with drugs from previous use. These
13 individuals are also more likely to have labor-intensive jobs
14 that cause profuse sweating which would assist the transfer of
15 the drugs from the skin into the patch."

16 So that seems to communicate to me that people who
17 have used drugs and continue to associate with drug users and
18 sweat a lot might absorb or might have their patch contaminated
19 by drugs that somebody else used.

20 MR. HALPERN: Contamination is one issue, but a number
21 of articles that I provided the last time around -- and I think
22 this article too -- independent of contamination what that
23 paragraph is talking about are people who admitted that they
24 were using drugs. They weren't denying anything, but they were
25 denying using methamphetamine. Yet they tested positive for

1 methamphetamine. And one of the things that they had in common
2 was that they were in environments where they sweated a lot.

3 And in the other -- a number of the other --

4 THE COURT: I mean, this will be for argument, and you
5 can point it to me. This is far longer than I anticipated.
6 Now you're focused on some things that are worth attention
7 particularly.

8 What are the implications of sweating a lot? What I
9 just read indicated to me that they might -- their sweat might
10 pick up methamphetamine used by somebody else, contamination.

11 MR. HALPERN: What I'd like to do, I think, is if I
12 need to, I can provide you again with the articles.

13 THE COURT: I have them.

14 MR. HALPERN: The older ones.

15 THE COURT: I have them.

16 MR. HALPERN: All right. A number of those older
17 articles make a general association between false positives and
18 sweating. And, you know, as I --

19 THE COURT: We may end up with a lunch break, and I
20 don't think we're going to finish all of this today, which is a
21 problem for me in view of my schedule, but you should point out
22 what you want me to read. But why don't you go ahead.

23 MR. HALPERN: All right.

24 BY MR. HALPERN:

25 Q. You're aware that Ms. Jittaphol plays competitive

1 volleyball and exercises a great deal?

2 A. Yes.

3 Q. There was a delay of about five weeks between the first
4 positive test and the first court hearing. Do you remember
5 that?

6 A. The 1/20 positive sweat patch?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. By the time of the court hearing, Probation was
10 taking the position that you were no longer seeking inpatient
11 residential care, correct?

12 A. Correct.

13 Q. And was that because there's a policy that if somebody
14 tests negative for some period of time, they're no longer an
15 appropriate placement for inpatient residential care?

16 A. Are you asking me if there's a Probation policy for this?

17 Q. Well, is there a policy, whether it's probation's policy
18 or whether it's the policy of the facility.

19 A. In reference to Probation policy, which I feel is the only
20 one I can speak to, Probation does not have a policy in
21 reference to that.

22 Q. So what was the time period -- a decision was made that
23 because she had tested negative for some period of time, she
24 didn't need inpatient residential care. What's the period of
25 time that matters?

1 A. What mattered in that instance in recommending outpatient
2 treatment was that she became involved in outpatient treatment.
3 She was going to be attending Crystal Meth Anonymous. We were
4 in support of that treatment recommendation or that treatment
5 plan moving forward and that's why we didn't push inpatient
6 treatment at that time.

7 Q. Have you spoken to staff at Crystal Meth Anonymous about
8 her participation?

9 A. I have not.

10 Q. Did they provide reports?

11 A. They do not. It's an anonymous program.

12 Q. As far as you know, she's done well there other than the
13 one occasion when she didn't show up?

14 A. From what I know, she's attended those sessions. I can't
15 speak to if she's done well or if she hasn't done well.

16 Q. How often is she supposed to go?

17 A. She's supposed to go weekly on Saturdays.

18 Q. And she's also participating in a program called CPC
19 Boston?

20 A. Yes.

21 Q. What is that?

22 A. That is outpatient substance abuse treatment. She
23 participates weekly in an individual session.

24 Q. Have you talked to her provider?

25 A. Yes.

1 Q. And has she told you that Ms. Jittaphol is compliant and
2 seems to be committed to staying sober?

3 A. The provider has reported that she was compliant outside
4 that one absence. The provider provided information about her
5 readiness for change in substance use.

6 Q. The provider told you that she had adjusted well to
7 outpatient treatment and she was doing well in the program?

8 A. Yes.

9 THE COURT: Is this in the chronological reports?

10 THE WITNESS: This is referenced in the release status
11 report that was provided to the court on the 31st.

12 THE COURT: Okay. So that's an exhibit. Let me
13 just --

14 THE WITNESS: I believe it was Exhibit 6.

15 THE COURT: Let me just get it, so I can see what
16 you're referencing.

17 I think that's Exhibit 6. What page is that on?

18 THE WITNESS: It's on the third page.

19 THE COURT: Third page.

20 THE WITNESS: Third paragraph.

21 THE COURT: So it says, "It should be noted that
22 outside of the dates the defendant failed to attend a treatment
23 program, the defendant has otherwise been compliant with her
24 outpatient treatment plan. On March 31, 2022, the defendant's
25 clinician at CPC Boston provided an update regarding the

1 defendant's participation in treatment. She reported that
2 although the client has adjusted well to outpatient treatment,
3 she does not at present -- she does not present as ready to
4 acknowledge that she has a substance abuse problem. The
5 clinician further advised that the defendant is having
6 difficulties in prioritizing what is important and believes
7 additional structure is needed for the defendant to be
8 successful living independently in the community." Did I read
9 that right?

10 THE WITNESS: Yes, Your Honor.

11 BY MR. HALPERN:

12 Q. Did you talk to the counselor after reading that?

13 A. I spoke with the clinician that day prior to the -- I
14 believe the hearing was either that day or the day after.

15 Q. So this bit about she doesn't seem to acknowledge that
16 she's got a drug abuse problem, it was her acknowledgment of
17 the drug abuse problem that got her into the detox to begin
18 with, correct?

19 A. Correct.

20 Q. Did you mention that to her?

21 A. I did not. And this was her report from March 31, not in
22 reference to any conduct before.

23 Q. So up to the present day, is it fair to say you still have
24 not seen a clinical report written by anyone evaluating whether
25 or not she needs long-term inpatient residential care?

1 A. No.

2 Q. What I said is correct, you haven't seen one?

3 A. I have not seen one.

4 Q. And you agree that Probation is not qualified to make that
5 assessment; that's an assessment that needs to be done by a
6 professional?

7 A. Can you repeat the question one more time, please.

8 Q. Right. The clinical assessment of whether someone is an
9 appropriate patient for long-term inpatient residential care,
10 that's an assessment that should be done by a professional, not
11 by Probation, correct?

12 A. I'm not a clinician and I can't make a clinical assessment
13 based on that.

14 Q. You've met with her almost every week during the time this
15 case has gone on, right?

16 A. The defendant? Yes.

17 Q. If you meet with a defendant and you sense that they might
18 be using drugs, do you do something about it? Do you document
19 it? Do you take some action?

20 A. I'll have a conversation with the defendant.

21 Q. Have you ever had an occasion with her the entire time
22 you've been working with her when she showed up and you thought
23 she was under the influence of drugs?

24 A. No.

25 Q. And sometimes you visited her randomly at her house,

1 right, where she's not expecting you, correct?

2 A. They are typically a scheduled visit, but, yes, I have
3 gone to her house.

4 Q. And you never noticed anything on those visits that made
5 you think she was using drugs either, right?

6 A. I have not.

7 Q. And those visits -- how far in advance do you tell her
8 that you're going to knock on her door?

9 A. It depends on the situation.

10 Q. In general, do you try to do it on short notice?

11 A. Depending on what's going on with her, it could be the day
12 of, a day prior or a couple days prior.

13 Q. Now, on the other hand, given the amount of time that you
14 spent with Ms. Jittaphol, is it fair to say that even though
15 she may be completely sober, it can be difficult to talk to her
16 and feel like -- confident that she understands what you're
17 saying?

18 A. As far as our communications have gone, I don't believe
19 we've experienced any issues communicating with each other. I
20 routinely ask her for clarification if she needs any additional
21 information. That hasn't been a barrier for us.

22 Q. But her English takes some work. I mean, you find you
23 have to repeat yourself both in terms of her understanding what
24 you say and your understanding what she's trying to say?

25 A. To an extent, but it hasn't been a barrier.

1 Q. On March 23, that was the day she arranged to meet you at
2 her new job, right?

3 A. Correct.

4 Q. And this was a massage business?

5 A. Yes.

6 Q. How did that happen? Did she call you to arrange a visit
7 or did you call her?

8 A. I contacted her earlier in the day indicating that I would
9 like to see her in the community. And she indicated that she
10 was going to be at work.

11 Q. So she didn't try to hide the fact that she had this job?

12 A. No.

13 Q. She could have said, "I'll meet you at my house"?

14 A. Yes.

15 Q. But she didn't do that. She just told you to meet her at
16 this place where she was working, right?

17 A. Yes.

18 Q. And based on appearances, it didn't seem that she thought
19 she was doing anything wrong; is that fair to say?

20 A. In the moment, no.

21 Q. She didn't make any effort to avoid your learning that she
22 had agreed to do this job?

23 A. Yes.

24 Q. Which must have surprised you?

25 A. I was surprised that she was working there. I thought I

1 was going to the restaurant.

2 Q. Well, it must have surprised you --

3 THE COURT: I'm sorry. You thought you were going --

4 THE WITNESS: I thought I was meeting with her at the
5 restaurant that she also works at.

6 THE COURT: Okay.

7 Q. Had you approved her working at the restaurant?

8 A. I have.

9 Q. So it must have surprised you when you arrived at a
10 massage place and she told you that she had just taken a job
11 there?

12 A. Yes.

13 Q. Did you talk to her about, "Well, like, Aticha, how could
14 you do this and not realize that this is a problem?"

15 A. We talked about her employment. I was gathering
16 information about when she started, what she was doing exactly.
17 I explained that we have to notify the court, especially given
18 that I only learned about it today or that day, at the time.

19 Q. So is it fair to say that your impression was that -- it
20 wasn't that she was deliberately violating a court order but
21 that she just didn't get that she wasn't allowed to be doing
22 what she was doing?

23 A. I can't speak to her drive for that, no.

24 Q. Do you think she wants to remain sober and stop using
25 meth?

1 A. I don't know if I can speak to her wants and -- I don't
2 know if I can explain that.

3 THE COURT: Right.

4 A. Speak for her.

5 MR. HALPERN: That's all I have.

6 THE COURT: Here, let me ask one or two questions at
7 this point. Do you recall that on March 8 -- at the March 8
8 hearing I orally modified the conditions of the defendant's
9 release?

10 THE WITNESS: Yes.

11 THE COURT: And that I memorialized that the next day
12 in a written order?

13 THE WITNESS: Yes.

14 THE COURT: And did you at any time discuss those
15 modifications with the defendant?

16 THE WITNESS: Yes.

17 THE COURT: When did you -- did you do it once or more
18 than once?

19 THE WITNESS: Following the hearing, we discussed --
20 she met with me to have the sweat patch removed and we
21 discussed the new conditions that were verbally ordered.

22 THE COURT: And did that include the condition of
23 informing you about her present employment and any new
24 employment so you could determine whether, in probation's view,
25 it was appropriate?

1 THE WITNESS: Yes. At that time she clarified that
2 she was only working at the restaurant.

3 THE COURT: And that discussion was on March 8?

4 THE WITNESS: Yes, following the hearing.

5 THE COURT: And it was on March 23 that you saw her at
6 the massage parlor?

7 THE WITNESS: Yes.

8 THE COURT: Is that massage parlor the same address as
9 the massage parlor she owned that triggered this case?

10 THE WITNESS: Yes.

11 THE COURT: Had you been to that massage parlor
12 before?

13 THE WITNESS: No, Your Honor.

14 THE COURT: Did you do any investigation to see who
15 owned the massage parlor?

16 THE WITNESS: I did, Your Honor.

17 THE COURT: What did you find?

18 THE WITNESS: I found that the defendant was not the
19 owner of the new massage parlor, Emerald Massage. It's owned
20 by another individual, but I do not know his or her name off
21 the top of my head.

22 THE COURT: Did you see when ownership transferred?

23 THE WITNESS: I believe that because it's under a
24 different corporation name, business did not transfer, simply
25 that a new business opened at that location.

1 THE COURT: The ownership didn't transfer?

2 THE WITNESS: No. From what I've learned through
3 public records, the Mantra Dhevi Massage Parlor that was
4 involved in the instant offense, that was owned by the
5 defendant and the business was dissolved per court order. It
6 has since remained dissolved and is closed.

7 THE COURT: What's that?

8 THE WITNESS: That corporation, the Mantra Dhevi
9 Massage Parlor, that has since remained closed.

10 THE COURT: Oh, I see. So this wasn't a transfer or a
11 sale of ownership. It was doing business at the same place
12 under, as you understand it, a new owner.

13 THE WITNESS: Yes.

14 THE COURT: Do you know whether that owner had
15 previously worked in the defendant's massage parlor?

16 THE WITNESS: I do not know that, Your Honor.

17 THE COURT: I think that's all I have for now.

18 It's 25 of 1:00. Would you like to -- do you have
19 some further examination? Does the government have further
20 examination?

21 MS. LAWRENCE: I have some possible clarifying
22 questions I could ask.

23 THE COURT: Sure. Please.

24 MS. LAWRENCE: Okay. Should I --

25 THE COURT: Why don't you go over there, please.

REDIRECT EXAMINATION

BY MS. LAWRENCE:

Q. Ms. Wertz, when you met with the defendant after the hearing on March 8 and discussed the new conditions that the Court had imposed verbally, did you ever have the defendant sign a document indicating that you had reviewed the conditions with her?

A. No, I did not.

Q. At any point during the defendant's supervision did she sign such a document indicating that she understood the terms or conditions of her supervision?

A. I believe the order setting conditions of release is signed by the defendant, but I can't remember off the top of my head --

THE COURT: I'm sorry, the order...

THE WITNESS: The order setting conditions of release that are set by the magistrate judge.

A. I have them in front of me, if you'd like me to check.

Q. That would have been sometime last fall, correct, when those were issued?

A. Yes, when she was released on pretrial supervision.

Q. And other communications between you and the defendant would be reflected in the chronology?

A. Yes.

Q. Which is Exhibit No. 7, although I realize that chronology

1 does not cover the entire time span of the supervision; is that
2 right?

3 A. That is correct.

4 Q. Okay. Did you personally apply the sweat patches to the
5 defendant's body?

6 A. On most occasions I did.

7 Q. Do you have any training in applying the patch itself?

8 A. Yes. I participated in a PharmChek training and received
9 the certification on application and removal.

10 Q. Does anyone in your office witness your application or
11 removal -- I'm sorry.

12 Do you also remove the patch?

13 A. Yes.

14 Q. Does anyone in the office witness your application and
15 removal of the patch on a defendant?

16 A. On occasion, if I'm training an officer or showing them
17 how it's done.

18 Q. Is there anything in the record that indicates the
19 defendant ever complained about the application or the adhesion
20 of the patch to her skin?

21 A. No.

22 Q. When you removed each patch, was there any evidence of it
23 not being adhered properly to her skin?

24 A. No.

25 Q. Any evidence of tampering?

1 A. No. There was one occasion that it had started to fall
2 off. But she had applied a Band-Aid to it to keep it secured.

3 Q. Would the Band-Aid have affected the performance of the
4 sweat patch at all?

5 A. Not to my knowledge.

6 Q. Earlier you were asked whether there was a reason that the
7 defendant -- you were using a sweat patch to test the
8 defendant, correct?

9 A. Correct.

10 Q. And you explained it had initially to do with some
11 complications over observed urine testing, right?

12 A. Yes.

13 Q. You were also asked why you didn't stop the sweat patch
14 testing when the defendant agreed to observed urine testing,
15 right?

16 A. Yes.

17 Q. Is there any particular reason that you didn't stop the
18 sweat patch?

19 A. Per the court order, we were required to do the weekly
20 sweat patch testing, as well as the weekly observed urine
21 testing.

22 Q. You provided the court, either yesterday or today, with
23 some documents, is that right, regarding the use of sweat patch
24 testing by the Probation Office?

25 A. Yes.

1 MS. LAWRENCE: I don't believe we've marked your order
2 this morning as an exhibit, Your Honor, but may we do that?

3 THE COURT: Yes.

4 MS. LAWRENCE: Is that number 18?

5 THE COURT: Is that the next one, Jarrett?

6 THE CLERK: Yes.

7 THE COURT: Yes.

8 **(Exhibit No. 18 received into evidence.)**

9 BY MS. LAWRENCE:

10 Q. So the Court's order this morning dated April 4 will be
11 marked as Exhibit 18, and you provided the court with some
12 documents. I want to turn your attention to Exhibit 2.

13 What is the import of this particular messaging or
14 communication?

15 A. I don't have the exhibits labeled in front of me.

16 Q. Oh, this is the Administrative Office of the United States
17 Courts, a memorandum, dated January 30, 2001 to the Chief,
18 Probation Officers and the Chief, Pretrial Services Officers.

19 A. This is a memorandum regarding validity of sweat patch
20 testing.

21 Q. And at the top it says, "Reporting and Testing of
22 Metabolite Levels In Sweat Patches (IMPORTANT INFORMATION)" in
23 all caps. Why is that important information or was it in 2001?

24 A. That's important information. It speaks to the method
25 that PharmChem tests the sweat patches. Typically, when the

1 sweat comes onto the sweat patch, they'll test the patch, and
2 what PharmChem specifically tests for, and I believe it is
3 outlined here, they test for the metabolites which indicate the
4 broken-down chemical that the body has produced from
5 methamphetamine.

6 Q. Okay. So as I understand the memo, previously, the sweat
7 patch results had tested not only the metabolites, which is
8 after the body ingests and metabolizes the substance, but also
9 the actual substance itself, right?

10 A. Yes.

11 Q. And it says in the first paragraph that there had been
12 some court decisions suggesting that the sweat patch could be
13 contaminated in some way and therefore give a bad reading on
14 the actual level of drug that was being measured; is that
15 right?

16 A. That is correct.

17 Q. The second paragraph says to try to negate that problem,
18 the company, PharmChem, would only test the metabolites.

19 A. Yes.

20 Q. And the difference being what? Why would that be a more
21 reliable way of testing?

22 A. So that something from the environment can't contaminate
23 the patch. You would have a positive result that's based on
24 the body metabolizing the methamphetamine rather than
25 methamphetamine being present.

1 Q. So we're not even testing -- when you're looking at a test
2 result, there's no measure of the actual level of the drug
3 itself, or is it only a positive -- a positive result will only
4 be based on metabolites?

5 A. The positive result will only be based on metabolites.

6 Q. Do you know of any way a false positive of metabolites
7 could occur?

8 A. I do not.

9 Q. These next questions I'm basing on a time frame that
10 Ms. Curran supervised the defendant. So one of the violations
11 that's alleged is that the defendant did not attend the SSTAR
12 treatment program in November and December of 2021.

13 A. Yes.

14 Q. And you've reviewed Ms. Curran's notes; is that correct?

15 A. That is correct.

16 Q. You've spoken with her about the defendant's supervision?

17 A. That is correct.

18 Q. And reviewed the chron in terms of any communications,
19 right?

20 A. That is correct.

21 Q. So based on from what you know of reviewing the
22 defendant's history of supervision, was the defendant asked to
23 attend treatment at the SSTAR facility as a condition of
24 supervision in the fall of 2021?

25 A. Yes.

1 Q. Did she attend that treatment?

2 A. She did not.

3 Q. Were arrangements made to allow her another chance to
4 attend that treatment shortly after the first failed attempt?

5 A. Yes.

6 Q. Did she then attend the treatment then?

7 A. She did not.

8 Q. Do you know if the defendant had any reason for not
9 attending the treatment? Is there anything in the record that
10 you know that the defendant had a reason for not attending the
11 treatment?

12 A. The first instance when she didn't report to the program,
13 I believe the record indicated that she had overslept. And the
14 second occasion she was on her way to the program but would be
15 arriving late outside of the intake hours and the program would
16 not accept her at that time.

17 Q. And those communications -- the defendant's information is
18 recorded in her file; is that right?

19 A. Yes.

20 Q. Was the program that she attended through BHN intended to
21 be another chance beyond the two SSTAR failed attempts at
22 treatment?

23 A. Yes.

24 Q. And to your knowledge, she did attend the first two phases
25 of that treatment program at BHN, correct?

1 A. Yes.

2 Q. Have you had any issues with the defendant's willingness
3 to submit to urine testing or having the sweat patch applied?

4 A. No.

5 Q. She's been compliant in all respects with your
6 communications?

7 A. Yes.

8 Q. So the only violations are the ones that you've recorded
9 in your petition; is that correct?

10 A. Yes.

11 MS. LAWRENCE: May I have one second, Your Honor? I
12 just want to check with my co-counsel.

13 THE COURT: Yes.

14 (Pause.)

15 MS. LAWRENCE: That's all we have, Your Honor.

16 THE COURT: All right. Mr. Halpern, do you have any
17 questions limited to the redirect?

18 MR. HALPERN: Yes, very briefly.

19 RECROSS-EXAMINATION

20 BY MR. HALPERN:

21 Q. The first time when she didn't appear at the detox, do you
22 know, or did you learn how much advance notice she was given,
23 how many days in advance she was told, "Here's the program. Be
24 there on such and such a day"?

25 A. Can you just clarify which program? Is this for SSTAR?

1 The first time she was --

2 Q. Yeah, the first one. The very first time she didn't show
3 up at all.

4 A. I'm not sure how much advance notice was given to her. I
5 do believe that might be referenced in the chronological
6 records.

7 Q. Did you become aware from talking to Ms. Curran or anybody
8 else that she called Probation and told them that she couldn't
9 find anybody to take her dog and had to reschedule it?

10 A. I was not aware of that.

11 MR. HALPERN: That's all. Thank you.

12 THE COURT: Let me ask you this: Have you visited the
13 defendant's home?

14 THE WITNESS: I have.

15 THE COURT: Can you describe it?

16 THE WITNESS: She lives in a multi-unit apartment
17 complex located on a busy road in Brighton.

18 THE COURT: In Brighton?

19 THE WITNESS: Yes. It's a one-bedroom, one-bath small
20 apartment. It appears adequate for supervision. I've observed
21 no contraband or any issues at the apartment.

22 THE COURT: Does she live there alone?

23 THE WITNESS: She does.

24 THE COURT: Does she have a dog?

25 THE WITNESS: She does have a dog.

1 THE COURT: Would it be a suitable place for home
2 confinement, in your opinion?

3 THE WITNESS: Yes.

4 THE COURT: When you went and saw her at the massage
5 parlor, did you ask her questions about -- did you discuss the
6 business of the massage parlor?

7 THE WITNESS: I did.

8 THE COURT: You did?

9 THE WITNESS: Yes.

10 THE COURT: What did you say and what did she say in
11 that discussion?

12 THE WITNESS: I asked her when she started working.
13 She reported that day. I asked her about who owned the massage
14 parlor. She indicated it was not owned by her. I asked for a
15 tour of the massage studio, which she provided to me.

16 THE COURT: I'm sorry, what's that?

17 THE WITNESS: I asked for a tour of the massage
18 studio, which she provided to me, of both the first level and
19 the basement floor. The only room we did not see was a room
20 that she had a client in, which she had reported to me.

21 THE COURT: Were other people working at the massage
22 parlor at that time?

23 THE WITNESS: It was just her.

24 THE COURT: She was the only one there?

25 THE WITNESS: Yes.

1 THE COURT: Did she tell you whether the client was a
2 male or female?

3 THE WITNESS: She did not.

4 THE COURT: Do those questions suggest any further
5 questions to counsel?

6 All right. It's ten minutes of 1:00. We're going to
7 take a break. We're going to resume at 1:45 and we'll see how
8 far we get. I have some other matters this afternoon,
9 including Judge Kelley's investiture. That's at 4:00, but I'm
10 going to have to stop before that.

11 If we don't finish today, and it appears we won't, in
12 view of my schedule, I'm going to want to resume on Friday,
13 either in the morning or the afternoon. Does anybody have a
14 conflict with that? Mr. Halpern is shaking his head.

15 MR. HALPERN: I'm okay.

16 MS. LAWRENCE: I'm okay as well, Your Honor.

17 THE COURT: All right. We'll see where we are and
18 where we're going.

19 Jarrett, can you give Kate number 17 so she can copy
20 it for us.

21 THE CLERK: Okay.

22 THE COURT: All right. Court is in recess until 1:45.

23 THE CLERK: All rise for the Honorable Court.

24 (A recess was taken.)

25 THE CLERK: All rise for the Honorable Court.

1 THE COURT: Good afternoon.

2 Is there any additional evidence that the government
3 or Probation would like to present?

4 MS. LAWRENCE: Your Honor, during the break, the
5 government printed off the sort of PharmChem pamphlet that's on
6 the website which was linked -- Ms. Wertz sent us all the link
7 to this website. I thought, if it wouldn't be a problem, I
8 would admit it as an exhibit or I could re-call Ms. Wertz to
9 establish what it is. It's just simply --

10 THE COURT: Is there any objection?

11 MR. HALPERN: No.

12 MS. LAWRENCE: Okay.

13 THE COURT: I'd like -- yes, please. What's the next
14 exhibit? 19 maybe.

15 THE CLERK: Yes.

16 THE COURT: It will be admitted as Exhibit 19.

17 **(Exhibit No. 19 received into evidence.)**

18 THE COURT: Is there a particularly pertinent part?

19 MS. LAWRENCE: There's a portion in the back that
20 discusses sort of the time that the drugs stay in the system.
21 I think it's towards the second to last or last page where it
22 talks about the amphetamines, but the guide is really just sort
23 of how the patch works, what to expect from the testing and the
24 procedures, a little bit of frequently asked questions in the
25 back as well.

1 THE COURT: All right. It will have to be stapled. I
2 don't know what happened to my stapler. Here you go, Jarrett,
3 Exhibit 19.

4 Is there anything else the government would like to
5 present?

6 MS. LAWRENCE: No, Your Honor.

7 THE COURT: All right. And Mr. Halpern, would you
8 like to call the defendant?

9 MR. HALPERN: Yes, Your Honor.

10 THE COURT: Okay. Let's see. She'll have to -- for
11 the translation to work, she'll have to sit there. That's
12 fine. But I think it will be helpful if you go back there.

13 MR. HALPERN: Okay.

14 THE COURT: Would the clerk please administer the oath
15 to the defendant.

16 **ATICHA JITTAPHOL, sworn**

17 THE COURT: All right. You may proceed.

18 DIRECT EXAMINATION

19 BY MR. HALPERN:

20 Q. Ms. Jittaphol -- and this is so the translator hears me as
21 well.

22 THE COURT: Oh, you can sit.

23 THE DEFENDANT: All right.

24 Q. We're going to try the translator not translating my
25 questions. If you don't understand a question, you can say you

1 need it translated. Okay?

2 A. Yes.

3 Q. All right.

4 Why did you start using methamphetamine?

5 THE COURT: Mr. Halpern, you should have asked me
6 about doing it this way, but if it will work, it's okay.

7 What's the proposal, that she answer in English or
8 answer in Thai?

9 MR. HALPERN: Well, I think that she can understand my
10 questions without them being interpreted. She's going to try
11 to answer in English, and if she feels like she can't say what
12 she wants to say, she'll talk in Thai.

13 THE COURT: All right. Ms. Jittaphol, do you think
14 you can understand what Mr. Halpern is asking you in English or
15 would you like it translated?

16 THE DEFENDANT: Yes, I understand.

17 THE COURT: All right. And do you want to try to
18 answer in English but if you think that you'd like his
19 questions -- well, would you like to try to answer in English?

20 THE DEFENDANT: Yes.

21 THE COURT: How long have you lived in the United
22 States?

23 THE DEFENDANT: Nine years.

24 THE COURT: Nine years?

25 THE DEFENDANT: Yes.

1 THE COURT: Not since 2011?

2 THE DEFENDANT: 2012.

3 THE COURT: 2012. Okay. Okay. But if you have any
4 trouble understanding the question or expressing yourself in
5 English, just tell me and we'll have the question or the answer
6 translated. Okay?

7 THE DEFENDANT: Okay. Thank you very much.

8 THE COURT: Pull the microphone close to you and try
9 to speak loudly and clearly. Go ahead, Mr. Halpern.

10 BY MR. HALPERN:

11 Q. Why did you start using meth?

12 A. The first time I used it was a party with friends and
13 basically I use for like -- my tradition is like I do the
14 business, and -- actually, I started using from like party and
15 hang out with friends for like in general. And then like more
16 often is that because of like myself, like I'm using and then I
17 got feeling I like to do it for like more fun. And this drug
18 kind of like made me thinking about it every time when I need
19 to be happy. Also, like using for like trying to relax,
20 something like that.

21 And then like when I got to that station in my life, like
22 I was working hard, I tried to do the business, and I always
23 have to deal with like work, have to create the business, how
24 to like -- reading the paperwork from like the business and
25 things like that, and it keeps me just like -- like, I have a

1 hard time with that.

2 And then I used the meth before I truly lost my mind and
3 it keep me like -- doing work has always keeping me under
4 pressure dealing with people. And doing the paperwork, all the
5 tasks, all the documents for like the business, it made me
6 like -- I have to tackle it, the paperwork, like what the
7 English do. It would keep me more like prepared and more
8 like -- overwhelming or something like that. And I started
9 using it again more and more and more until like the COVID time
10 that my business is slow and I got like -- we closed for over
11 like five or -- four or five months. And during that time I
12 used meth every day, until like I become -- I cannot control
13 myself.

14 And every time that I have like my mental thing come up,
15 like feeling depressed or feeling in the future what's going to
16 happen with the business, what's going to happen with my
17 employment, I can't take care of the business, go for -- and
18 when I smoke, I have energy like to work, but overnight I
19 cannot control anything with my mental and my body functions.
20 I didn't go to the shop to see how everything was okay, and
21 after that, during COVID, it closed, and there was no income
22 for the business. It keep me like how I can take care of
23 business. I'm always thinking about it. Even if I'm done for
24 the day, my mind is never done because I have to take care of
25 everything, like the bills, like the reports, tasks like that.

1 It's very hard for me.

2 Q. Okay. I want to ask another question.

3 A. Yes.

4 THE COURT: Hold on just one second.

5 (Discussion held off the record.)

6 THE COURT: Go ahead.

7 Q. When COVID caused the business to shut down, were you
8 afraid the business would just collapse?

9 A. I don't understand the question.

10 Q. Can the translator translate that question, please.

11 A. Yes. I was really worried and scared about that, how I
12 can keep the business going to be successful.

13 Q. Did the methamphetamine seem to help you with depression
14 and anxiety?

15 A. At that time -- I know right now the meth is never helpful
16 for anything. It's all damaged my healthy. It's made me think
17 like not really like correctly or rightly to -- it's a
18 mental --

19 Q. How much were you using?

20 A. I used multi times during the day, like two or three
21 times. I didn't know like how much I used, but I used like
22 every day two or three times at least, when I like feeling
23 like -- when I need energy, like have to smoke, waking up,
24 things like that.

25 Q. How long does the high last?

1 A. It's overnight.

2 Q. When you smoke, how long does it last before you come
3 down?

4 A. It's about like -- after I smoke, it's about like four or
5 three hours make me like -- yeah.

6 Q. And when you were using it, how did it make you feel?

7 A. I feel I have more energy and my mind is kind of like --
8 can -- for example, if I read a book, my mind is like kind of
9 focused to reading or to do something, but it's like going fast
10 and I can focus like an hour and after that I have to smoke
11 again to make my mind in control, because it's like -- I know
12 that it's so fast and uncontrolled.

13 Q. Why did you decide to stop?

14 A. Because I observed myself. It's not okay if I feel like
15 this, because my body is functional, my brain -- like I talk to
16 people. Sometimes it's like I don't know what I'm talking
17 about. Sometimes I'm like -- it makes people around me feeling
18 like uncomfortable the way I act, the way I talk, and my body
19 function, it's liked fucked up, if I can say that, and I cannot
20 remember anything, what to do and what is first step to do,
21 because it's like I'm thinking of one thing and go to another
22 thing and go to another thing, like that.

23 And my health is like getting worse and worse and it keeps
24 me like when it's going to be done, when is this thing going to
25 be done to myself. I tried to quit every day every time, but I

1 still keep like smoking. I don't understand. Also what messed
2 it up is my body and my mind, it's like -- it's all, like, you
3 know, uncontrolled.

4 I'm very scared about if I keep doing it, I will like die
5 or I will like have something, you know, more than that. I
6 also worry about my family, what they are going to feel and
7 people around, my friends, what they're going to feel. I want
8 to stop and be better and come back to a normal life.

9 Q. Did you try to quit?

10 A. Yes.

11 Q. What happened?

12 A. I was never successful. I like tried to quit so many
13 things that I learned from the Internet. I went to a
14 meditation center, lock myself in a ten-day class to see how if
15 I can quit. It's never a success. I tried to find out how I
16 can quit, but it's another thing why do I keep smoking. So
17 it's really like -- it's very bad to me. Yeah.

18 Q. When we first met, you talked to me about going into a
19 detox?

20 A. Yes.

21 Q. Okay. From that point, the first time we met and you
22 talked about a detox, was there ever a time between then where
23 you changed your mind? Before you went to the detox, did you
24 think, well, maybe I don't want to go to a detox, or did you
25 always think you wanted a detox?

1 A. I always think I want to detox. I always keep calling you
2 and talking about it when the program will start that I was
3 waiting for to get treatment.

4 Q. When you did not go to the first scheduled appointment at
5 a detox in Fall River, was it because you decided that you just
6 preferred not to go to a detox anymore?

7 A. No.

8 Q. Your probation officer in the beginning was Maureen
9 Curran?

10 A. Yes.

11 Q. All right. And do you remember in November she told you
12 that a place had opened up at a detox in Fall River?

13 A. Yes.

14 Q. And you had been waiting a long time?

15 A. Yes.

16 THE COURT: Try to do this in a non-leading manner,
17 please.

18 MR. HALPERN: Okay.

19 Q. Did you want to go?

20 A. I wanted to go.

21 Q. How many days between when Maureen told you about a bed
22 for you and when you were supposed to be there? How many days
23 in between?

24 A. It's like we -- it's about -- the first half is about like
25 a week, but I tried to find people who can take care of my dog,

1 and I cannot find anyone, and they're telling me the cost will
2 be at least over a week or longer than that, nobody knows, but
3 I have to find some people to take care of the dog first.

4 During that time I always talk to Probation about this,
5 like I'll try to find a dog -- people to take care of him
6 first. I should say the places that hold dogs, I cannot find
7 anyone to take care of the dog because it's a little naughty.

8 Q. Did you tell Maureen before you were supposed to check in
9 at the detox, did you tell her that you were not going to be
10 able to go because of the dog?

11 A. Yes.

12 Q. And so it was rescheduled?

13 A. Yes.

14 Q. What happened the second time that you were supposed to
15 go?

16 A. The second time it's my fault that I -- I had to be there
17 on time, but it's like the traffic is bad, and I'm not
18 expecting it will take as long to get there, over an hour to
19 get there. And I looked at the map. It's about ten minutes
20 late. And I keep calling my probation that I supposed to be
21 there earlier, like ten minutes. And I keep calling, I'm
22 supposed to be there in like ten minutes. But the clinic
23 denied me.

24 And my probation was also calling to the clinic and
25 they're still not like accepting me because they say they are

1 busy, they have another patient. And then like I keep calling
2 to the clinic. They still denied me. After that, I talked to
3 probation and she said, all right, we have to find a new place,
4 but you know you have to wait a little bit, and finally, the
5 probation, she is nice and she find a new place for me, the
6 Carlson Center, shortly and I go there. I was led by her
7 telling me to go. And then I committed to the detox for like
8 21 days.

9 Q. Do you think the detox and the Hope Center helped you?

10 A. It's helped me a lot.

11 Q. Can you explain how you felt like it helped you?

12 A. All right. So for the first detox place, I stayed there
13 for seven days. They have class teaching people about the drug
14 and how the drug is and how to like to take care, self-care
15 like to -- you don't want to use -- go back to do drugs again.
16 Yeah, they give me -- they have a class every day like two
17 times a day, and have the people, different patients that used
18 the drugs and they are sharing in the meeting to the class
19 their experience. And I learned a lot from real knowledge,
20 real experience from the people in the class. It's reminding
21 me and healing me that I empathy myself and empathy what's
22 going on for this.

23 And after the detox, it's time for me to go to Hope
24 Center, and the Hope Center was kind of similar. They have
25 classes and, yeah, two times, and they have meeting for NA and

1 AA meetings. That is a good class to study in there. And I
2 learned from the people's experience and from the guest
3 speakers. It's like yeah, the knowledge has helped me a lot
4 for that. And after I did the program, that I don't want to
5 use this anymore, I don't want to be like that anymore. I have
6 to like -- but I have -- now I understand more how to -- like
7 healing myself and stay away from the drug and that situation.

8 Q. When you were at the detox and the Hope Center, did you
9 ever talk to me?

10 A. Yeah -- oh, no, during that -- excuse me. I never talked
11 to anyone.

12 Q. You never talked to any friends?

13 A. No.

14 Q. Never talked to anyone from Probation?

15 A. Excuse me. In Hope Center, I have talked to like friends
16 that -- yes, that's normal. I call my cousins, that's normal.
17 But after that I didn't contact you.

18 Q. Did you ever have a conversation with anyone from
19 Probation when you were at Hope Center?

20 A. No.

21 Q. Did you ever have a conversation with me when you were at
22 Hope Center?

23 A. No.

24 Q. Did anyone on the staff at Hope Center tell you that when
25 you finished Hope Center, you needed to go to an inpatient

1 treatment program?

2 A. No.

3 Q. Did the staff at Hope Center talk to you about different
4 kinds of treatment you could do when you left?

5 A. Yes.

6 Q. And what possible treatment did they talk to you about?

7 A. My counselor, she recommend me to come to meetings, AA and
8 NA, to keep kind of like a tracking about that. And she also
9 recommended like outpatient that I can do, and I have a chance
10 to get a meeting too. That's what she recommended.

11 Q. What did you tell the staff at Hope Center about whether
12 you wanted to go to inpatient residential treatment?

13 A. I didn't talk about inpatient or anything.

14 Q. Did you talk to them about whether or not you wanted to do
15 it?

16 A. No.

17 Q. Did you talk to Maureen Curran about whether you wanted to
18 do it?

19 A. I didn't talk to her about that.

20 Q. Did anyone at Hope Center tell you that you should not go
21 home, and that you needed to go to inpatient treatment?

22 A. Actually, one of the counselors, she was telling me that I
23 can go home in the next -- that last time -- before a week, the
24 staff and the counselor come to talk to me that what I'm
25 planning to do after you finish the program or -- I didn't know

1 when I was going to get out from there. I never know anything
2 about that. But they just recommended me like, okay, when you
3 get out, you have to take care of yourself, go to meetings and,
4 yeah, just be like strong.

5 And they talked to me like before the week was up. They
6 were telling me next week you might get out, but -- and then
7 like I didn't know exactly then. And before I get out in two
8 or three days, my counselor told me you're going to get out
9 that day. And then they talk about either have Probation or
10 like -- they want you to continue. We'll let you know or
11 something like that, because I didn't know what was going on.

12 Q. When you went home after you finished Hope Center, did you
13 think you were violating an order of the court?

14 A. I don't know.

15 Q. Did you understand that anybody had ordered that you had
16 to go into inpatient?

17 A. No.

18 Q. From the time you left Hope Center, have you ever felt
19 like you wanted to use meth again?

20 A. No. I don't want to use that again.

21 Q. Why not?

22 A. Because I need to be healthy. Different feelings from use
23 and not use. I feel more happiness than when I'm using. My
24 body is more healthy and more functional. And the fact that I
25 used a drug for like a long time, I think I still have to

1 recover and I still have like -- have to like, you know --
2 be like more creative and I feel more happy now.

3 Q. When you went to the first urine test after Hope Center,
4 what happened about whether or not you would be observed?

5 A. From the first time I just feel shy that -- that's all the
6 feeling. And after that I talked to my lawyer that -- about
7 it, and I just followed him, what he suggested, to get an
8 officer, and I'm okay with that.

9 Q. So the first time you went, did you meet with a man or a
10 woman?

11 A. I meet with a man.

12 Q. And did you talk about whether you were okay being
13 observed?

14 A. That time, honestly, I met him and he kind of interrupt me
15 like how's this go. And he ask me am I okay or not okay with
16 the people observe me. This is my first time and I don't have
17 experience about this and I was too shy to have a guy observe
18 me when I pee or something like that. I was just shy. I said,
19 "I am not sure. Maybe not." And then he just let me in to get
20 a urine test again but he didn't observe. But that's all.

21 Q. All right. And you called me after that first meeting?

22 A. Yes.

23 Q. And what did we talk about?

24 A. And then we talk about like why are you going to be shy
25 for that. I'm like I don't know. I just -- it's my

1 personal -- it's just a feeling. So I realize I need to be
2 more clearly about this. The emotional, it doesn't concern --
3 I said okay, that's a good accommodation for me. I just need
4 the people observe. I'm fine with that. I just want to finish
5 that thing.

6 Q. So did we come to some agreement about what you would do
7 the next time?

8 A. Yes.

9 Q. What did we agree to?

10 A. Yeah. I agreed to get observed.

11 Q. Did you agree to tell them that you were okay with it?

12 A. Yes.

13 Q. And did you tell them that before the first sweat patch
14 test came back positive?

15 A. Yes.

16 Q. And when you told them, when you'd go to these urine tests
17 and you told them you were okay being observed, what did they
18 tell you?

19 A. Yes, it's fine, but sometimes in the office, you can -- I
20 always followed them. I just was always okay. You can
21 observe. And I need to get it observed. But the officers --
22 depending on what they do, I don't know about -- yeah. If they
23 need to observe, I'm okay. I'm fine with that every time.

24 Q. Did they explain to you why they did not observe you?

25 A. Yes. Sometimes they said they have no staff or --

1 Q. They have no what?

2 A. No staff or just like that. I always followed them. I
3 just, you know, depend on what -- they're going to have people
4 observe or not observe, I don't always ask them.

5 Q. Before the first sweat patch tested positive, you had four
6 urine tests. Okay?

7 A. Yeah.

8 Q. Do you remember how many times you think you told them
9 that you were okay being observed?

10 A. Every time when I got -- I come to get the --

11 Q. After the first visit?

12 A. Yes.

13 Q. When you went to these tests, did you know whether or not
14 anyone was going to watch you?

15 A. I don't know that.

16 Q. Have you ever -- this whole case, from the beginning until
17 today, have you ever not shown up when you were supposed to to
18 take a test?

19 A. No.

20 Q. After the first positive sweat patch test, did Taylor talk
21 to you about the test?

22 A. No.

23 Q. When you tested positive the first time, did Taylor talk
24 to you about the fact that you tested positive?

25 A. Yeah. She told me after the result had come out. She

1 called me and --

2 Q. Did she talk to you about what you should do?

3 A. No.

4 Q. Did she ask you to admit that you used?

5 A. No. She just told me that my test was positive on the
6 patch. That's all.

7 Q. Did you tell her whether or not you used?

8 A. I already told her that I did not use any drugs or
9 anything.

10 Q. Have you ever used from the time you got out of the Hope
11 Center?

12 A. No, I never used anything.

13 Q. How do you feel yourself about what you've accomplished?

14 A. What I feel right now, I feel happy not using anything
15 like that. That puts me in a bad situation. And everything is
16 bad like when I use the drugs, but, you know, at that time I
17 had no (unintelligible) --

18 (Court reporter interrupts.)

19 Q. Say it again because we couldn't understand. You have no
20 what?

21 A. At that time before I got the treatment, it seemed like I
22 have no (unintelligible).

23 Q. No what?

24 A. No (unintelligible).

25 THE COURT: Here. Say it in Thai, please.

1 THE INTERPRETER: I believe she said consciousness.

2 THE COURT: I'm sorry. We need a whole sentence.

3 A. After I come out from the Hope Center --

4 A. (Through the interpreter) After I have the treatment, I
5 felt the difference, much difference from before. So I'm a lot
6 happier now and I feel like my health is in a much better state
7 and much stronger.

8 Q. During the time the case has been going on, do you
9 exercise?

10 A. Yes.

11 Q. Describe the kind of exercise you do.

12 A. Actually, I play volleyball and I play like three or four
13 times a week. I play like in the league. Each day it's at
14 least four hours a day for the weekdays and the weekend I play
15 like tournaments. That tournament is long hours. It starts
16 from -- it's about like at least five hours. We start like
17 9:00 to -- 9:00 a.m. to 5:00 p.m. like the weekends. And
18 that's -- I keep myself busy and exercise, and before I
19 exercise I also like warm up. Yeah, I exercise a lot.

20 Q. Do you sweat when you exercise?

21 A. Of course.

22 Q. Have you ever -- do you understand the word "smuggled"?

23 A. No.

24 Q. Have you ever brought urine with you into a urine test so
25 you could cheat the test?

1 A. Never.

2 Q. Has anybody ever talked to you about doing that?

3 A. Never. I never have.

4 Q. You've been going to a place called CPC?

5 A. Yes.

6 Q. What is that?

7 A. CPC, it's like the outpatient treatment. That's what I
8 have every Thursday.

9 Q. Does it help you?

10 A. It's helped me a lot that I have learned about like --
11 like physical -- yeah. Kind of psychology or something like
12 that. That has helped me.

13 Q. Do you have one counselor there?

14 A. One counselor.

15 Q. And you like her?

16 A. Yes. She is very nice.

17 Q. And you want to keep going or not?

18 A. Yes.

19 Q. So on March 10, that's a Thursday, you missed an
20 appointment. Why did you miss it?

21 A. My reason is from the Wednesday night I went to like an AA
22 meeting that my friend recommend me and we go together in
23 Boston on a Wednesday night. And we just like kind of had gone
24 out and I got home late. I just -- and after that I just
25 forget that I have a meeting in the morning time.

1 Q. What time was the meeting?

2 A. For Thursday with the CPC is at 9:00 a.m. to 10:00 a.m.

3 Q. Did you not go on purpose because you didn't care about
4 the requirement?

5 A. I didn't do on purpose. If I do on purpose, why did I go
6 to the AA and NA and keeping track at the clinic and, you know,
7 the treatment.

8 Q. You have been going --

9 THE COURT: Let me just pause you here. I want to try
10 to be sure I understand this.

11 So you say you went to a CMA, Crystal Meth Anonymous,
12 meeting on a Wednesday. Is that right?

13 THE DEFENDANT: No. That one is kind of broken like
14 an NA and AA meetings. It's kind of the same program as CMA.
15 But this one is kind of like -- my friend used to go there in
16 Boston and they also -- after that, he invited me to join them
17 to try like in person, in the meeting. So I tried to go there.

18 THE COURT: I'm not -- you're not answering my
19 question.

20 MR. HALPERN: I think I --

21 THE COURT: Excuse me. I want to understand this.

22 You didn't go to a CPC counseling session on March 10;
23 is that correct?

24 THE DEFENDANT: Yes.

25 THE COURT: And what time of day was that session?

1 THE DEFENDANT: 9:00 a.m. to 10:00 a.m.

2 THE COURT: And do you remember what day of the week
3 March 10 was?

4 THE DEFENDANT: It's a Thursday.

5 THE COURT: And had you gone to a CMA meeting before
6 March 10?

7 THE DEFENDANT: Yes.

8 THE COURT: One time or more than one time?

9 THE DEFENDANT: Actually, I go there once a week,
10 yeah.

11 THE COURT: So how many times had you gone to a CMA
12 meeting before March 10?

13 THE DEFENDANT: Every week like from that, Taylor, she
14 recommend me to try to get --

15 THE COURT: All right. And when was the last CMA
16 meeting before you missed the CPC meeting on March 10 that you
17 went to?

18 THE DEFENDANT: I don't understand.

19 THE COURT: Did you go to a -- when was the CMA,
20 Crystal Meth Anonymous, meeting that you went to that was on a
21 date nearest to March 10?

22 THE DEFENDANT: I went Saturday.

23 THE COURT: You went on a Saturday?

24 THE DEFENDANT: Saturday.

25 THE COURT: The Saturday before March 10?

1 THE DEFENDANT: Yes.

2 THE COURT: Then why didn't you go to the CPC meeting
3 on Thursday, March 10?

4 THE DEFENDANT: Because I got up late and I just --
5 yeah, I just passed that time of the meeting.

6 THE COURT: Because what? You got up late and what
7 else?

8 THE DEFENDANT: Not -- I don't -- I just got up.

9 THE COURT: You just got up late?

10 THE DEFENDANT: Yeah.

11 THE COURT: And what did you do -- when did you learn
12 or realize that you missed a meeting at CPC?

13 THE DEFENDANT: Yeah, that day I just missed the CPC
14 and I spoke with Taylor --

15 THE COURT: What's that?

16 THE DEFENDANT: I know after I got up I just missed
17 that class.

18 THE COURT: What time did you get up?

19 THE DEFENDANT: About like -- about like 10:00. It's
20 already past the time.

21 THE COURT: And what did you do concerning the CPC
22 meeting on March 10 after you got up and realized that you
23 hadn't gone?

24 THE DEFENDANT: I talked to my probation and then I
25 talked to like the CPC staff, who I was working with. I

1 explained to her what happened. So yeah. We just keep having
2 conversation and contact after that.

3 THE COURT: Do you remember we had a hearing in this
4 case on March 8?

5 THE DEFENDANT: Yeah.

6 THE COURT: Do you remember that I ordered you to go
7 to CMA and CPC meetings?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you remember -- well, did your
10 probation officer, Taylor, discuss those modifications to your
11 conditions of release with you after that hearing?

12 THE DEFENDANT: Yes.

13 THE COURT: Why don't you resume.

14 Let me ask you this: Does it make you nervous to come
15 to these -- does this case generally make you nervous?

16 THE DEFENDANT: Yes.

17 THE COURT: Why?

18 THE DEFENDANT: Because I'm nervous -- it's like what
19 is going to be next and what is like -- am I going to have to
20 get in jail or whatever. That's going to be -- I don't know
21 what it's about, the future. But I'm honest and accept that.

22 THE COURT: Were you worried when you came on March 8
23 that you might have to go to jail after that hearing?

24 THE DEFENDANT: Yeah.

25 THE COURT: Why don't you resume, Mr. Halpern.

1 BY MR. HALPERN:

2 Q. The Wednesday night before the day that you missed the CPC
3 appointment, you went to a meeting?

4 A. Yes.

5 Q. But it was a different kind of meeting?

6 A. Yes.

7 Q. What kind of meeting?

8 A. I think it's a different organization but the meeting is
9 the same, because they talk about drug addicts and alcohol
10 addicts. That's why they call it AA and NA meetings.

11 Q. Okay. So a Narcotics Anonymous meeting?

12 A. Yeah.

13 Q. Were you required to go to that meeting?

14 A. No.

15 Q. You went because you wanted to go?

16 A. Yes.

17 THE COURT: Here. No leading questions, please.

18 Q. And after the -- did you go with anyone to the NA meeting?

19 A. Yes.

20 Q. Who?

21 A. One of my friends. He is a psychology doctor. He invited
22 me to try the Boston one.

23 THE COURT: You're going to have to keep your voice
24 up. He invited you to try the Boston meeting?

25 THE DEFENDANT: Yes.

1 Q. The CMA meetings, do you always go the same day of the
2 week?

3 A. I try to go, yeah, on Saturday, and they said I'm missing
4 one. It's my fault. I just got up late again because I'd just
5 been out to my friend's wedding and I got home late. It's my
6 fault. I woke up late. I cannot make it that Saturday. And I
7 also sent a note to tell her that I can reschedule to do on
8 Thursday. I apologized about that; and after that I also go to
9 like the Saturday night for the CMA instead of missing CMA on
10 Saturday. I tried to catch up.

11 Q. The day that you missed the appointment was March 26.

12 A. Yes.

13 Q. Did you go to another meeting that day?

14 A. No.

15 Q. Okay. When was the next meeting you went to after the one
16 you missed?

17 A. Thursday night.

18 Q. And do you usually go on Thursday or Saturday?

19 A. Usually I go on Saturday.

20 Q. So why did you schedule Thursday?

21 A. Because it's the same meeting.

22 Q. And you usually go one day a week?

23 A. One day per week.

24 Q. Do you like the meetings?

25 A. Yes.

1 Q. Why?

2 A. That helps many people to -- like a guest speaker that
3 talks in the meeting and have like people in the meeting share
4 an experience in the meeting. That's information and knowledge
5 that I learned from people, experience that has helped me to --
6 yeah, it's really helpful.

7 Q. What time are the Saturday morning meetings?

8 A. Saturday is 10:30 to 12:00.

9 Q. On Friday night, where did you go?

10 A. My friend's wedding.

11 Q. A wedding?

12 A. A wedding.

13 Q. What time did you get home?

14 A. I got home about like 2:00.

15 Q. Now, on March 23, which was a Wednesday, you met Taylor at
16 a massage business.

17 A. Yeah.

18 Q. Right?

19 A. Yes.

20 Q. How do you know the owner of that business?

21 A. I worked with him at the restaurant.

22 Q. So you have another job?

23 A. Actually, I worked in the restaurant after I got off of
24 the treatment, and I only worked at the restaurant. And the
25 first day I go to the message shop and I meet Taylor there.

1 Q. Let me take it a step at a time.

2 A. Okay.

3 Q. Does the owner of the massage place also own the
4 restaurant?

5 A. Yes.

6 Q. All right.

7 THE COURT: What's his name? What is his name?

8 THE DEFENDANT: His name is Prasert Pathamawong.

9 THE COURT: Could you spell that, please. Do you know
10 how to spell it? Say it slowly.

11 THE DEFENDANT: Prasert.

12 THE COURT: Would the translator ask her the name,
13 please, and then tell us the name.

14 THE DEFENDANT: P-r-a-s-e-r-t.

15 THE INTERPRETER: P-r-a-s-e-r-t, Prasert first name.

16 THE COURT: What is his last name?

17 THE DEFENDANT: P-a-t-h-a-m-a-w-o-n-g.

18 THE INTERPRETER: May I repeat that, Your Honor?

19 THE COURT: Please do.

20 THE INTERPRETER: P-a-t-h-a --

21 THE DEFENDANT: Pathamawong, sorry.

22 THE INTERPRETER: I'll start again.

23 P-a-t-h-a-m-a-w-o-n-g.

24 THE COURT: Thank you. He owns the restaurant too?

25 THE DEFENDANT: Yes.

1 THE COURT: What's the name of the restaurant?

2 THE DEFENDANT: Pho O Sha, which means Thai
3 restaurant.

4 THE COURT: Perhaps the translator could translate
5 that.

6 THE DEFENDANT: P-h-o -O- S-h-a.

7 THE INTERPRETER: The name of the restaurant is Pho O
8 Sha. I'll spell it. P-h-o space O S-h-a.

9 THE COURT: Is that a Thai restaurant?

10 THE DEFENDANT: Yes.

11 THE COURT: Has that man, to your knowledge, ever
12 owned a massage parlor before?

13 THE DEFENDANT: Yes. No, actually he has the license
14 to the massage business license. I studied with him from that
15 school that I know him.

16 THE COURT: Where's the other -- what's the name of
17 his other massage parlor?

18 THE DEFENDANT: Emerald Massage.

19 THE COURT: Also Emerald?

20 THE DEFENDANT: Emerald Massage.

21 THE COURT: Well, you were working at Emerald Massage,
22 right?

23 THE DEFENDANT: Yes.

24 THE COURT: Is there a second Emerald Massage?

25 THE DEFENDANT: It's -- it's just Emerald Massage.

1 THE COURT: Is there an Emerald Massage at a location
2 different than the one you were working on on March 23?

3 THE DEFENDANT: It's the same one.

4 THE COURT: Okay. So I asked you whether he owned
5 another massage parlor in addition to Emerald Massage.

6 THE DEFENDANT: No.

7 THE COURT: Just that one?

8 THE DEFENDANT: Just that one.

9 BY MR. HALPERN:

10 Q. What type of work do you do at the restaurant?

11 A. Food delivery.

12 Q. How often do you work there?

13 A. I work there like three or four days a week. And
14 sometimes like they are busy and they call me to come to work.

15 Q. Did Taylor know that you were working there?

16 A. Yes.

17 Q. So on March 23, how did you contact Taylor? Did she call
18 you? Did you call her?

19 A. She texted me before that day, the same day, and yeah, I
20 just told her like I'm working and she said like, yeah, we can
21 meet shortly. And I -- honestly, I just started working there
22 and it was the first day that they opened and I just honestly
23 to let Taylor come to see me in the shop for -- that I'm going
24 to start working there. Yeah. I didn't hide it or anything.

25 THE COURT: What's the address of Emerald Massage?

1 THE DEFENDANT: 8 Academy Hill Road.

2 THE COURT: 8 Academy Hill Road?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is that the same address as the massage
5 parlor you owned that's involved in this case?

6 THE DEFENDANT: Yes.

7 BY MR. HALPERN:

8 Q. Did you give or sell the business to him?

9 A. Yes. I sell the business to him.

10 Q. And it was just opening?

11 A. Yes.

12 Q. And what did he ask you to do there?

13 A. I just go to set it up and cleaning up, just like general
14 work, just setting up because they didn't have anything -- they
15 want to like -- to see how the business go, and I just helped
16 him.

17 Q. Did you plan on doing massages to anyone that day?

18 A. I didn't plan to do any massage.

19 Q. But someone knocked on the door?

20 A. Yes.

21 THE COURT: No leading questions.

22 Q. What did you do when someone came to the door?

23 A. I just said we just opened. And I'm there just like
24 not -- I mean, kind of like open for like exactly that -- but
25 they just walk in. Yeah, just working on that.

1 THE COURT: Excuse me. Was that a man or a woman?

2 THE DEFENDANT: It's a man.

3 THE COURT: Is it a man you had ever seen before?

4 THE DEFENDANT: It's just an old client.

5 THE COURT: An old client?

6 THE DEFENDANT: Yeah.

7 THE COURT: Did you give him a massage?

8 THE DEFENDANT: Yes.

9 THE COURT: Did you do anything sexual?

10 THE DEFENDANT: No.

11 THE COURT: When -- did you say that you went to a
12 massage school with the owner?

13 THE DEFENDANT: Yes.

14 THE COURT: Where?

15 THE DEFENDANT: They call it Teoma institution Center,
16 Massage Therapy Center in Quincy.

17 Q. Do you have any type of certificate from a massage school?

18 A. Yes.

19 Q. What?

20 A. It's a licensed massage therapist in Massachusetts and I
21 got traditional medicine Thai massage in Thailand.

22 Q. The massage business that you ran, can you estimate how
23 many of the customers were men and how many were women?

24 A. It's 50 percent men and women.

25 Q. How many customers do you think paid by credit card?

1 A. That depends on sometimes -- most of the time they paid
2 with a credit card, yeah.

3 Q. Why didn't you tell Taylor that you were going to work at
4 the massage place?

5 A. I didn't tell her that because that place just opened and
6 we didn't know how busy or how like income that I would get
7 paid. So I come in that day just kind of to set up and have to
8 agree with the owner that what you're going to pay me or how
9 like I'm going to get paid. So just like that. Because they
10 have no customers yet, we could not agree how much pay I'm
11 going to get. Yeah, just like that.

12 Q. Did you understand that you were not allowed to take a new
13 job without getting approval from Taylor before you did it?

14 A. I'm not understand that.

15 MR. HALPERN: Can the translator translate that
16 question.

17 THE COURT: Yes. I think she may have been answering
18 it, but we don't want any ambiguity. So it's a good idea.

19 Would the interpreter please translate the question.
20 The question is: Do you understand that one of the conditions
21 of your release that I imposed on March 8 was that you not take
22 a new job without informing your probation officer and getting
23 permission?

24 A. (Through the interpreter.) I think I know about this, but
25 I'm not sure.

1 Q. So why didn't you tell her?

2 A. I tell her that I decided I will meet her at the shop.

3 Q. You missed two appointments when you overslept. You took
4 a job or agreed to at least look into taking a job that you
5 were ordered not to take without Probation telling you it was
6 okay.

7 So can you explain why the judge should believe that you
8 are going to follow his rules about what you're allowed to do
9 and what you're not allowed to do? Why should he believe you?

10 A. Actually, I just like am honest and tell the probation
11 what's going on and I told her what I'm doing right now. I'm
12 not hiding from her anything. And every order that she told me
13 I tried to catch up. Sometimes I kind of was like missing
14 something and I really apologize but I do my best to catch up
15 and to do --

16 Q. Why should the judge believe you, that you're not using
17 meth?

18 A. Honestly, I want you to trust me that I don't use crystal
19 meth anymore. I also love myself. That's why I don't want to
20 use it anymore.

21 MR. HALPERN: That's all I have.

22 THE COURT: All right. Ms. Lawrence.

23 Go ahead.

24 MS. TOCHKA: Thank you.

25 CROSS-EXAMINATION

1 BY MS. TOCHKA:

2 Q. Good afternoon, Ms. Jittaphol. Could I ask you, when did
3 you first start using crystal meth?

4 A. First time it's about like eight years ago, I think, yeah,
5 just for once in a while.

6 Q. Was your first time here in the United States?

7 A. Not really. Oh, the first time. 2010 or something. I
8 come here for two times. One time I come for like internship
9 program for one year and I go back to Thailand and I come back
10 here again in 2012.

11 Q. Did you ever use meth in Thailand?

12 A. No.

13 Q. Just America?

14 A. Just America.

15 Q. Okay. And during those eight years, did you continue
16 using meth while you were here, when you first started?

17 A. And after that, not really often. I just used more often
18 like before COVID and during COVID, too much for me.

19 Q. Okay. So before COVID were you able to use sometimes and
20 then not other times? Could you choose when you wanted to use
21 it?

22 A. Before that, yeah, I choose that I want to use like some
23 parties and fun with friends and like that. Yeah, after that,
24 to keep more -- more -- use more and more and more like that.

25 Q. Okay. When you started to use more and more and more,

1 were there times that you tried to stop?

2 A. Yes.

3 Q. And when you tried to stop, could you use occasionally and
4 then not use, or you had to use?

5 A. When I tried to stop, it never happened.

6 Q. And why is that?

7 A. Because like when I'd start using and keep me like long
8 nights not sleep and for another day, the body is lacking like
9 no -- and then I keep using again to wake up to go to work, to
10 put myself up, things like that. And then I do until my body
11 like have to sleep, and I slept about two or three hours, come
12 up and have to smoke it again, like that.

13 Q. Okay. Would it be fair to say that you used meth while
14 you were working as a massage therapist in your home?

15 A. I didn't do it at home.

16 THE COURT: I'm sorry. I think the question might
17 have been confusing. Are you asking if she used meth in her
18 home or did massage in her home?

19 MS. TOCHKA: Both.

20 THE COURT: Why don't you split them up.

21 Q. You were a massage therapist in your home; is that
22 correct?

23 A. No. I do massage at the shop that I own, the shop. And
24 at the home -- yeah, I smoke at home.

25 Q. Okay. And you were a massage therapist at the business?

1 A. Yeah.

2 Q. Did you smoke before you went to the business?

3 A. Yes.

4 Q. Did that help you get through your job?

5 A. Yes.

6 Q. All right. On January 20, you reported that you were no
7 longer self-employed as a massage therapist.

8 A. Say again, please.

9 Q. January 20, you told Probation you were no longer -- you
10 were not anymore a massage therapist; is that correct?

11 A. Actually, I still am a massage therapist all the time,
12 yeah. But I cannot go to the shop because I don't have
13 anything to go to the shop. I always smoking and stay home,
14 yeah. That makes me not respond really to any work, anything.
15 I was always smoking and staying at home. I cannot talk to
16 anyone. I was just stuck at home.

17 THE COURT: I think there's some confusion as to the
18 time period.

19 Are you talking about January 20, 2022?

20 MS. TOCHKA: Yes.

21 THE COURT: So here, why don't you ask the question
22 again and why doesn't she answer it again.

23 THE DEFENDANT: Sorry.

24 Q. A couple months ago, two months ago, you told Probation
25 you're no longer going to be a massage therapist?

1 A. Yes.

2 Q. Why did you stop?

3 A. Actually, I just have a job -- I stopped because I don't
4 have a place to work there. But I do -- doing massage with my
5 own client, like Thai people when they call me to do a massage
6 at home, something like that, I still do it. But at that time
7 I just worked in the restaurant too. You know, I keep working
8 in the restaurant until like the massage shop that my owner who
9 owns the restaurant will be opening the massage shop that I
10 recently go there and meet Taylor.

11 Q. Okay. Thank you.

12 I'm going to take you back to October of last year. Do
13 you remember signing a form with the Probation Department?

14 A. About --

15 Q. I can show you it.

16 MS. TOCHKA: If I may approach her.

17 THE COURT: Yes. What are you going with, conditions
18 of release?

19 MS. TOCHKA: Order setting conditions of release.

20 THE DEFENDANT: Thank you.

21 THE COURT: What's the next number, Jarrett?

22 THE CLERK: 20.

23 **(Exhibit No. 20 received in evidence.)**

24 Q. Ms. Jittaphol, if you could turn to the last page. Is
25 that your signature there on the last page?

1 A. Yes.

2 Q. Do you recall going through that document with the
3 probation officer?

4 A. Yes.

5 Q. And one of those conditions was that you had to abide by
6 the Probation orders in terms of inpatient or outpatient
7 treatment; is that correct?

8 That's going to be on the second page in the box.

9 Well, here, I'll come over.

10 THE COURT: We'll make this Exhibit 20.

11 MS. TOCHKA: Thank you.

12 THE COURT: You should give a copy to the clerk.

13 THE CLERK: I have one, Judge.

14 Q. Page 3.

15 A. Thanks.

16 Q. Number 2 indicates that you must participate in a program
17 of inpatient or outpatient substance abuse therapy and
18 counseling.

19 THE COURT: You're going to have to speak more loudly
20 because --

21 MS. TOCHKA: I don't have a microphone, yup.

22 THE COURT: Start that again, please.

23 MS. TOCHKA: Sure.

24 Q. Page 3 in the box, number 2 indicates you must participate
25 in a program of inpatient or outpatient substance abuse therapy

1 and counseling if directed by the Pretrial Services Office or
2 supervising officer. Is that correct?

3 A. Yes.

4 Q. Thank you.

5 MS. TOCHKA: I'll admit this --

6 THE CLERK: Got it.

7 MS. TOCHKA: You've got it?

8 THE COURT: Did you ask her if she signed it on the
9 last page?

10 Q. Is that your signature on the last page?

11 A. Yes.

12 Q. You told the court earlier that the reason you did not
13 follow the directions to go to the SSTAR program was one time
14 because of your dog and the second time because you were late;
15 is that correct?

16 A. Yes.

17 Q. On those two dates, did you immediately call your
18 probation officer to tell her --

19 A. Yes.

20 Q. -- about your failure?

21 A. Yes.

22 Q. And then the next time was December 3. Your probation
23 officer had gotten you a bed at the Behavioral Health Network
24 and you failed to go on that day, on December 3.

25 A. No.

1 Q. In December it indicates that the probation officer had
2 told you that there was a bed available and that you had
3 acknowledged that, and that on December 1 you were referred to
4 a detox service and December 3 you were notified that there was
5 a bed and that you failed to report?

6 THE COURT: What are you reading from?

7 MS. TOCHKA: I'm reading from Exhibit 6 at the bottom
8 last paragraph going into the second page.

9 MR. HALPERN: At the bottom of page 6?

10 MS. LAWRENCE: No. Exhibit 6 is the memo.

11 THE COURT: I'm sorry, the bottom of which page?
12 Exhibit 6 is the March 31, 2022 memorandum from the Probation
13 Office release status report. What page?

14 MS. TOCHKA: So the last sentence of the first page.

15 THE COURT: It says --

16 MS. TOCHKA: Indicates that December 3 the Probation
17 Office was notified that a bed was --

18 THE COURT: Do it slowly, please. It needs to be --
19 or may need to be translated. The defendant needs to
20 understand it and the stenographer, who's doing heroic work,
21 needs to be able to write it down accurately.

22 MR. HALPERN: Could you give the date of which memo
23 this is.

24 MS. TOCHKA: It's March 31, 2022.

25 Q. The last sentence of the first page begins, "On December

1 3, 2021, the Probation Office was notified that a bed was
2 available for the defendant and the Probation Office instructed
3 the defendant to report to this location for detox services.
4 The defendant failed to report as instructed."

5 Do you recall that at the beginning of December, right
6 before you entered into the treatment, that you were instructed
7 to go and you failed?

8 A. I'm not sure.

9 THE COURT: Speak up.

10 A. I'm not sure about that. I just go there by the time.
11 But I already talked to my probation about this. I'm not sure
12 what is going on, but we already had some discussion --

13 (Court reporter interrupts for clarification.)

14 Actually, I contacted my probation about this, and yeah,
15 after that I just go to detox, by the order, what she told me,
16 that we find a place to go.

17 Q. Okay. Moving on. So then in December, middle of December
18 you then went into detox, into the 15-day inpatient program,
19 correct?

20 A. I get into the detox seven days, yes. And after that it
21 is time for me to go the Hope Center for two days.

22 Q. And when you left the Hope Center you testified that you
23 then went home; is that correct?

24 A. Yes.

25 Q. And you testified you were not aware that you needed to

1 stay longer?

2 A. Actually, I -- actually, they didn't tell me I had to stay
3 there.

4 Q. They did not tell you?

5 A. They did not tell me.

6 Q. Okay. Do you recall a couple days later a conversation
7 with the probation officer telling you that you do need to stay
8 longer?

9 A. No. I didn't talk to the probation, but during that time,
10 yeah, I tried to contact her -- I tried to contact from my
11 counselor, yeah. And every -- I don't know about that, but the
12 counselor, they were telling me how long I can stay and when I
13 can leave.

14 Q. Okay. But then on January 7 you had a conversation with
15 the probation officer, Maureen, who told you that you do need
16 to stay longer and that she would be telling the court that you
17 were refusing?

18 A. No.

19 Q. You never had that conversation?

20 A. No.

21 Q. You recall that you tested positive on the sweat patch
22 between January 20 and January 27; is that correct? You tested
23 positive?

24 A. Yeah.

25 Q. Do you recall a conversation with your probation officer

1 after that, telling you you should go inpatient?

2 A. Yes. Yes, we have a talk about that, but I -- again, I
3 didn't use any drugs and I just had to explain that I didn't
4 use any drugs. So why -- they were telling me that I used
5 drugs because the patch is faulty. I need the reasons why, why
6 it tests positive, why is that happening, because I didn't use
7 any drugs. That's why I'm not accepting going to inpatient,
8 because my results is positive and I didn't use it. If I used
9 it, okay, I would accept that. Inpatient I'm fine, if I used
10 the drugs.

11 Q. Okay. So you refused to go? Yes?

12 A. Yes.

13 Q. And then on March 8 there was a hearing where Judge Wolf
14 added some conditions. Do you recall that?

15 A. Yeah, I remember.

16 THE INTERPRETER: I remember some conditions were
17 added.

18 Q. Okay. Thank you. And one of those conditions was that
19 you tell the probation officer about your employment?

20 A. Yes.

21 Q. Do you recall when you sold your business to the new
22 owners of Emerald Spa, what date that was?

23 A. It's about like September last year.

24 Q. September 2021?

25 A. 2021.

1 Q. Do you remember what date they opened?

2 A. About March -- last Monday, like last week on Monday.

3 Q. The date that the probation officer came to see you?

4 A. Yes.

5 Q. Okay. And you had been working at that man's restaurant
6 previously?

7 A. Yes.

8 Q. And that man, does he also go by the last name
9 P-a-t-h-p-o-n-g?

10 A. Yeah. Pathamawong.

11 Q. Is it two different spellings of his last name?

12 A. Yes. Pathamawong.

13 Q. When did you start talking to him about working at his new
14 spa?

15 A. We talked like for about a month or two months, something
16 like that, yes. He would hire me to go back to the work at the
17 spa too and work at the restaurant too, and yeah, just like
18 that.

19 And that exactly that he also was waiting for like a
20 document and inspection for proof.

21 Q. So what month was that, that you talked to him?

22 A. It's about like December.

23 Q. Okay. And did you ever tell your probation officer about
24 that conversation?

25 A. No.

1 Q. Why not?

2 A. Because I didn't know exactly what was going to be --
3 exactly how he can hire me and what it is. But for like a --
4 and I know exactly that they opened about Friday, to open the
5 business on Monday.

6 Q. He told you on Friday can you open it for me on Monday?

7 A. Yes.

8 Q. Why did he tell you to open it if he's the owner?

9 A. Because like -- because he wanted me to go set up and just
10 stay there, and also like he was hiring someone, the
11 electrician, and training and stuff too. It's like we would
12 work together, you know.

13 Q. And did you tell your probation officer on Friday that you
14 were going in on Monday?

15 A. Honestly, I didn't tell her on Friday.

16 Q. And why not?

17 A. I just -- in my mind I didn't know exactly I was going to
18 work at a massage place until like I have to be there and open
19 and set up, like what is going to be the agreement with the
20 owner, how he can hire me. I didn't know exactly that I'm
21 going to like sign the employment agreement and explain about
22 how much an hour that they're hiring me and everything.

23 Q. Did you expect him to come to the business that day, the
24 owner?

25 A. Yes. He like would come like after the -- I mean, like

1 the Monday -- Monday -- like he would come like at 7:00 after
2 we closed the shop and he'd come.

3 Q. The two times that you missed appointments, on March 26
4 and March 10, the CMA appointment and the CPC appointment, did
5 you tell your probation officer that day that you had missed
6 it?

7 A. Last week, yeah. I didn't let her know the same day that
8 I missed it.

9 Q. You did not?

10 A. I did not.

11 Q. Why not?

12 A. I just -- I just -- actually, it's my fault. I was busy
13 with my tournament, my volleyball tournament, and I did forget
14 to tell her. I know I'm missing that. But I was telling her
15 Monday because I thought the weekend should be their time for a
16 day off. I was just going to let her know on Monday.

17 THE COURT: Let me -- I'm sorry, we're going to have
18 to stop in just a minute.

19 I think you just said that you didn't tell your
20 probation officer because you forgot and -- hold on a second.

21 You said, "I was busy with my tournament, my
22 volleyball tournament, and I forgot to tell her." Is that what
23 you said?

24 THE DEFENDANT: Yeah.

25 THE COURT: What day was that that you had the

1 volleyball tournament?

2 THE DEFENDANT: Saturday. Oh, no, Sunday. Yeah. I
3 missed the meeting on Saturday, and then like I didn't tell her
4 exactly on Saturday, the same day.

5 THE COURT: You missed one of your appointments -- now
6 I'm getting confused. On March 26 you failed to attend a CMA
7 treatment. I don't have my calendar, but was that a Saturday?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you have a volleyball game that day?

10 THE DEFENDANT: I had volleyball at Sunday.

11 THE COURT: So why didn't you tell your probation
12 officer on Saturday, the 26th, that you missed your meeting?

13 THE DEFENDANT: In my mind I just thought I can tell
14 her on Monday. Saturday it just seemed like everybody -- her
15 day off might be like a weekend, like Saturday and Sunday, and
16 I texted her on Monday, talked to her on Monday. That's my
17 reason.

18 THE COURT: All right. I've got some more questions
19 and I assume the government does too, but I'm sorry, I have to
20 stop. I have to join my colleagues for Judge Kelley's swearing
21 in.

22 You should plan to return at 10:00 a.m. on Friday and
23 be here all day, if necessary. Are counsel available on
24 Thursday as well?

25 MR. HALPERN: This Thursday?

1 THE COURT: Yes.

2 MR. HALPERN: Yes.

3 MS. LAWRENCE: I am, Your Honor. I'm not sure about
4 co-counsel. She might have a court hearing. We're checking.

5 (Clerk/court discussion held off the record.)

6 THE COURT: I think the matter I have on Thursday may
7 need to be rescheduled. So I'll clarify this in the next day
8 or two, but I'm ordering that you plan to be here at 10:00 on
9 Thursday and available on Friday as well, if necessary. Okay?

10 MS. WERTZ: Your Honor, I'm assuming you need
11 Probation present on that day?

12 THE COURT: Yes, I do.

13 Thank you very much. Court is in recess.

14 (Proceedings adjourned at 3:33 p.m.)
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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)

I certify that the foregoing is a correct transcript
from the record of proceedings taken April 4, 2022 in the
above-entitled matter to the best of my skill and ability.

/s/ Kathleen Mullen Silva

4/7/22

Kathleen Mullen Silva, RPR, CRR
Official Court Reporter

Date