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6-6-12 Transcript

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1 STATE OF OHIO, )  
2 COUNTY OF CUYAHOGA, ) SS: STOKES, A.R., J.  
3 CITY OF CLEVELAND. )

4 IN THE MUNICIPAL COURT

5 - - -  
6 CITY OF CLEVELAND, )  
7 Plaintiff, )  
8 vs. ) 2012TRC030161  
9 FREDERICK J. PHILHOWER, )  
10 Defendant. )  
11 - - -

12  
13 Transcript of digitally recorded proceedings had  
14 Before the Honorable Judge Angela R. Stokes on  
15 Wednesday, June 6, 2012, in Courtroom 15-C.

16 - - -  
17 APPEARANCES:

18 On behalf of the plaintiff:  
19 Victor R. Perez, Chief Police Prosecutor  
20 By: Johnathan Cudnik, Assistant Police  
Prosecutor.

21 On behalf of the defendant:  
22 Jaime Serrat, Esq.

23  
24  
25 Demetrius D. Longmire

P R O C E E D I N G S

1  
2 THE COURT: This is an add-on onto  
3 the docket. This is for Frederick  
4 Philhower, 2012TRC030161.

5 In looking at the case file, Prosecutor  
6 Cudnik, there appears there was an accident.  
7 I didn't have a file when Attorney Jaime  
8 Serrat was here and he asked for this matter  
9 to be advanced for a pretrial on a Motion  
10 Hearing on June -- till June 12, 2012, at  
11 8:30 a.m. It was originally scheduled for  
12 June 19th.

13 I know it's short notice, but he asks  
14 for this case to be advanced till June 12th  
15 since there was an accident involved. I  
16 don't even know if you have an accident  
17 report, but, if you could subpoena witnesses  
18 for that pretrial on the 12th.

19 MR. CUDNIK: Okay. What's --

20 THE COURT: Should we hand you the  
21 file?

22 MR. CUDNIK: Yes.

23 THE COURT: Sure.

24 MR. CUDNIK: (Inaudible).

25 THE COURT: Sure. It's going to

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be June 12th --

MR. CUDNIK: Okay.

THE COURT: -- at 8:30 a.m., but  
this is the file.

MR. CUDNIK; Thank you.

THE COURT: Thank you.

- - -

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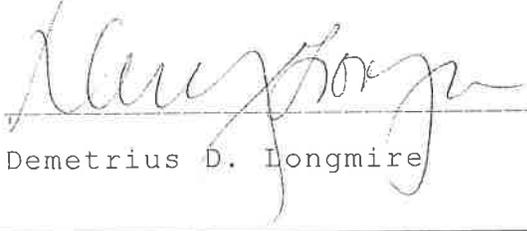
C E R T I F I C A T E

State of Ohio, )  
County of Cuyahoga, ) SS:  
City of Cleveland. )

City of Cleveland, )  
vs. )  
Frederick Philhower. )

I, Demetrius D. Longmire, court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the digitally recorded proceedings had in said Cleveland Municipal Court in the above-entitled case on the date set forth; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the proceedings; that said transcript is a complete record of the proceedings had in the hearing of said case and constitutes a true and correct transcript of the digitally recorded proceedings had therein.

Dated this 10th day of November, 2014.

  
Demetrius D. Longmire

1 STATE OF OHIO, )  
2 COUNTY OF CUYAHOGA, ) SS: STOKES, A.R., J.  
3 CITY OF CLEVELAND. )

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20 By: Jonathan Cudnik, Assistant Police  
Prosecutor.

21 On behalf of the defendant:

22 Jaime Serrat, Esq.

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25 Demetrius D. Longmire

P R O C E E D I N G S

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THE COURT: Frederick Philhower's case.

MR. SERRAT: Good morning, your Honor. Jaime Serrat for Mr. Philhower.

THE COURT: This is docket number 47.

MR. CUDNIK: Judge, I believe we have resolution.

MR. SERRAT: We do, your Honor.

THE COURT: Okay.

MR. CUDNIK: It's the City's understanding the defendant will be entering a plea of guilty on count one, Driving under the influence of alcohol and/or drugs and a plea of no contest to count four. Count four is a reckless operation. Both those pleas are forthcoming, the City moves to nolle the balance of the charges against the defendant. This will be his first lifetime alcohol-related offense.

THE COURT: Okay. Is that correct, counsel?

MR. SERRAT: That is correct, your Honor. We're ready to proceed.

1 THE COURT: Thank you. And this  
2 -- did you say this is the first OVI  
3 conviction ever in his lifetime?

4 MR. CUDNIK: Yes, Judge. I'm  
5 looking at the LEADS right now. Yep.

6 THE COURT: Thank you.

7 Mr. Philhower, on docket 47, count one  
8 the charge is Driving under the influence of  
9 alcohol and/or drugs. This is a first  
10 conviction for Driving under the influence  
11 of alcohol and/or drugs ever in your  
12 lifetime. It carries a maximum fine of  
13 \$1075 dollars. There's a mandatory minimum  
14 fine of \$375 and court costs.

15 Do you understand?

16 THE DEFENDANT: Yes.

17 THE COURT: With respect to the  
18 jail time, you are required to serve three  
19 consecutive days in jail unless you are  
20 given an opportunity to attend an  
21 alternative to jail program. That would be  
22 in lieu or instead of serving three  
23 consecutive days. That's an alcohol  
24 education program.

25 Do you understand?

1 THE DEFENDANT: Yes.

2 THE COURT: However, you could be  
3 sentenced to serve up to six months or up to  
4 180 days in jail.

5 Do you understand?

6 THE DEFENDANT: Yes.

7 THE COURT: Your driver's license  
8 has to be suspended for at least six months.  
9 It could be suspended for a period of up to  
10 three years.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: If there was an  
14 administered license suspension imposed in  
15 this case, the Court would have to give you  
16 credit for that suspension against any  
17 suspension of your driver's license imposed  
18 by the Court.

19 Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: The Bureau of Motor  
22 Vehicles will assess six points against your  
23 driver's license.

24 Do you understand?

25 THE DEFENDANT: Yes.

1 THE COURT: The citation in this  
2 case is dated May 15, 2012, operating a 2005  
3 Chevrolet, in State Route 176, northbound on  
4 Spring to Denison, in the City of Cleveland,  
5 Ohio. There was an accident involved.

6 Do you recall and understand this  
7 charge, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: It says that the  
10 prohibitive blood concentration was .132.

11 Do you recall and understand this  
12 charge?

13 THE DEFENDANT: Yes.

14 THE COURT: And to this charge is  
15 it your desire to withdraw your not guilty  
16 plea, enter a plea of guilty, with a finding  
17 of guilty to the charge of Driving under the  
18 influence of alcohol and/or drugs?

19 THE DEFENDANT: Yes.

20 THE COURT: And on docket number  
21 47, to count five, that's a change of plea  
22 to the reckless separation. Is that  
23 correct?

24 MR. SERRAT: It is, your Honor.

25 THE COURT: All right.

1 MR. SERRAT: It's number four on  
2 the docket, but that is the charge.  
3 THE COURT: You know, I have a  
4 maximum --  
5 MR. CUDNIK: Yes, Judge.  
6 THE COURT: Our numbers may be  
7 different.  
8 MR. CUDNIK: But he is pleading to  
9 reckless operation.  
10 THE COURT: Okay. So, that's  
11 count five.  
12 MR. CUDNIK: I don't know.  
13 THE COURT: Count four, I have a  
14 maximum speed, but you -- and then I have --  
15 I don't know. Maybe the Clerk's Office has  
16 these all mixed up. I'm not sure.  
17 MR. CUDNIK: There's bunch of  
18 charges.  
19 THE COURT: I know. I just want  
20 to make sure. On the journal entry --  
21 MR. CUDNIK: Yes.  
22 THE COURT: -- count 4 says  
23 maximum speed.  
24 MR. CUDNIK: Okay.  
25 THE COURT: Count 5 is the

1 reckless operation on the journal entry.  
2 MR. CUDNIK: Okay.  
3 THE COURT: That doesn't mean it's  
4 correct. Then 6 is the failure to control.  
5 MR. CUDNIK: Okay.  
6 THE COURT: So the change in  
7 plea-- then I also is another maximum speed.  
8 I know it has -- which should it be?  
9 There's change in plea to --  
10 MR. CUDNIK: Reckless operation,  
11 Judge.  
12 THE COURT: -- to the -- so I have  
13 count 5?  
14 MR. CUDNIK: Yes, Judge.  
15 THE COURT: -- to the reckless  
16 operation?  
17 MR. CUDNIK: Yes.  
18 MR. SERRAT: We're fine with that,  
19 Judge.  
20 THE COURT: Okay. Is that  
21 referred to the 90 -- the speeding charge of  
22 99 miles per hour?  
23 MR. CUDNIK: Probably, Judge. I  
24 actually don't even have a copy of the  
25 citation. I put this file together. I have

1 the accident report.

2 THE COURT: Do you both want a  
3 copy of the citations.

4 MR. CUDNIK: Yes.

5 MR. SERRAT: No, Judge, I have one.

6 THE COURT: Would you like one?

7 MR. CUDNIK: Yes.

8 THE COURT: Could you make a copy  
9 of just the front for Prosecutor Cudnik?

10 MR. SERRAT: We're fine with that,  
11 Judge.

12 THE COURT: Okay. Count 5, sir,  
13 is the reckless operation, a minor  
14 misdemeanor carrying a maximum fine of up to  
15 \$150 and court costs.

16 Do you understand?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. And this  
19 refers--

20 MR. CUDNIK: I believe it refers to  
21 the excessive speed.

22 THE COURT: Okay. Which was the  
23 99 plus miles per hour --

24 MR. CUDNIK: Yes, Judge.

25 THE COURT: -- speeding charge.

1 Do you recall and understand the reckless  
2 operation charge?

3 THE DEFENDANT: Yes.

4 THE COURT: To that charge, would  
5 you like to withdraw your not guilty plea,  
6 enter a plea of no contest and consent to a  
7 finding of guilty?

8 THE DEFENDANT: Yes.

9 THE COURT: By changing your pleas  
10 to both of these charges, sir, you are now  
11 waiving or giving up your right to have  
12 either a bench trial, tried to the Judge or  
13 a jury trial, tried to eight jurors.

14 Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: You are presumed,  
17 considered to be innocent until the City of  
18 Cleveland proves your guilt beyond a  
19 reasonable doubt if your guilt is to be  
20 proven at a trial.

21 Do you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: If you were to have a  
24 trial, sir, you have a right to remain  
25 silent. No one can force to you testify or

1 to say anything at a trial.

2 Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: You are also giving up  
5 your right to subpoena witnesses who could  
6 testify at a trial if you were to have one.

7 Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: And you're giving up  
10 your right to confront your accusers at  
11 trial.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: Have there been any  
15 threats or promises made to force you to  
16 change your plea to this charge?

17 THE DEFENDANT: No.

18 THE COURT: Are you satisfied with  
19 your attorney's representation?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you ever any  
22 questions about the rights you are giving  
23 up?

24 THE DEFENDANT: No.

25 THE COURT: Do you have any

1 questions about the penalties that can be  
2 imposed by the Court?

3 THE DEFENDANT: No.

4 THE COURT: Are you a citizen of  
5 United States?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you have any  
8 questions?

9 THE DEFENDANT: No.

10 THE COURT: No? I will accept  
11 your plea of guilty with a finding to guilty  
12 to count 1, Driving under the influence of  
13 alcohol and/or drugs. Count 2, the DUI  
14 breath test. 08-.169, that first degree  
15 misdemeanor charge will be nolleed or  
16 dismissed. The maximum speed charge will  
17 also be nolleed or dismissed. Then there's a  
18 fourth count, maximum -- count 4, the  
19 maximum speed charge will also be nolleed or  
20 dismissed. I'll accept your change in plea  
21 to the reckless operation charge. And count  
22 6 is a failure to control. That charge will  
23 be nolleed or dismissed.

24 Do you understand?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay. Do you have the  
2 accident report?  
3 MR. CUDNIK: I do, Judge. I was  
4 able to pull it. If the Court recalls, we  
5 kind of accelerated this case, but I was  
6 able to get the report. I wasn't able to --  
7 I got it yesterday, so as far as hearing  
8 from anybody, I wasn't able to contact  
9 anyone.  
10 THE COURT: That's okay.  
11 MR. SERRAT: May I address the  
12 Court? I'm sorry.  
13 MR. CUDNIK: I will note that one  
14 person has a listed Pennsylvania address  
15 with no phone number, and there's another  
16 car involved also.  
17 THE COURT: So there was one  
18 additional car involved here; is that  
19 correct?  
20 MR. CUDNIK: You know what, Judge,  
21 I'm not --  
22 THE COURT: Positive.  
23 MR. CUDNIK: I didn't even really  
24 look at it until this morning.  
25 THE COURT: That's okay.

1 MR. CUDNIK: But I think counsel  
2 has some things he wants to address.

3 THE COURT: Sure.

4 MR. SERRAT: I do, Judge.

5 I've spoken with the individual from  
6 Pennsylvania. It's property damage only.  
7 He was fully insured. He's accepted his  
8 responsibility from the very beginning,  
9 Judge. He was incarcerated for two days  
10 initially. On his own, he's taking the  
11 initiative this weekend, Judge, he's already  
12 paid for the DIP Program. I have a  
13 certificate with me if the Court wants to  
14 see it. This case was scheduled for next  
15 week, we moved it till today. I was here  
16 last week to see if I could obtain driving  
17 privileges. So, on his own, Judge, he knows  
18 how serious this was. He's -- he's -- he  
19 was sober, I want to say for almost 8,  
20 9 years. He just -- this was a slip.

21 THE COURT: I'm listening,  
22 counsel.

23 PRIVATE ATTORNEY: He's back on track,  
24 Judge. If the Court wants to see it, I can  
25 show you the certificate that indicates

1           again full payment of the course. It's for  
2           this weekend. And I would ask the Court to  
3           consider if you could sentence him today  
4           with the --

5           THE COURT:                   Well, this Court never  
6           sentences on a DUI until the Court has all  
7           the information.

8           MR. SERRAT:                   Okay.

9           THE COURT:                   But Mr. Philhower is  
10          going to attend an alternative to jail  
11          program --

12          MR. SERRAT:                   This weekend.

13          THE COURT:                   -- this coming  
14          weekend?

15          MR. SERRAT:                   Correct.

16          THE COURT:                   Okay. And then, this  
17          matter -- I will refer, if it's  
18          acceptable -- refer Mr. Philhower's case to  
19          Probation so that they can prepare a  
20          presentencing investigative report, verify  
21          the attendance at the alternative to jail  
22          program. They'll also contact any named  
23          victims, so they can have their input at the  
24          time of sentencing. Okay. And then we can  
25          come up with a date for sentencing. Also

1 I'd like you to submit to a urinalysis test  
2 today, sir. There was a fee of \$9. You  
3 have to pay that in the Probation Department  
4 if you're able to do that. And then, when  
5 Prosecutor Cudnik comments back, we can find  
6 the best date for sentencing.

7 There is a jury demand in the file, so  
8 would Mr. Philhower like to waive the jury  
9 in this matter?

10 MR. SERRAT: We've already pled, so  
11 I think it's moot, your Honor. But, yeah,  
12 the answer is yes.

13 THE COURT: Well, if he's waiving  
14 the jury, then he has to sign the jury  
15 waiver form.

16 MR. SERRAT: Would the Court  
17 entertain driving privileges, your Honor?

18 THE COURT: Not prior to the  
19 Presentencing Investigative Report.

20 MR. SERRAT: Okay.

21 THE COURT: I did say that on the  
22 last court date. Not until I have the  
23 benefit of the urinalysis test and the  
24 benefit of the presentencing investigative  
25 report and input from the victim, and, of

1 course, the defendant. But we can try to  
2 give you the earliest possible date to come  
3 back on the docket, since he's attending the  
4 Alternative to Jail Program this weekend.

5 MR. SERRAT: Right.

6 THE COURT: Now Probation does  
7 request ten business days in order to  
8 contact the victim and to prepare the  
9 report.

10 And you said there's no phone number,  
11 Attorney Cudnik?

12 MR. CUDNIK: I don't see one for  
13 the Pennsylvania person, Judge.

14 THE COURT: There's another  
15 person? There's more than --

16 MR. CUDNIK: What happened was,  
17 there was -- due to the impact from the  
18 defendant's vehicle with car number two,  
19 which is the Pennsylvania gentleman, debris  
20 from car number two looks like hit another  
21 car. There was, like -- it was parked. No,  
22 it wasn't park. It was all on the road.  
23 So --

24 THE COURT: How many vehicles were  
25 involved?

1 MR. CUDNIK: Two vehicles.  
2 MR. SERRAT: Two.  
3 MR. CUDNIK: One was struck with  
4 the direct impact and then the debris from  
5 that direct impact --  
6 THE COURT: So two others besides  
7 the defendant's vehicle?  
8 MR. CUDNIK: Correct.  
9 THE COURT: Correct? Okay. Do  
10 you have -- is there a phone number for,  
11 like, the third car or are there just  
12 addresses because --  
13 MR. CUDNIK: There's a local  
14 address and --  
15 THE COURT: -- there's --  
16 MR. CUDNIK: There's a listed phone  
17 number.  
18 THE COURT: Because at least  
19 Probation can at least call that number.  
20 For the one that they don't have a phone  
21 number, they'll have to send written  
22 correspondence --  
23 MR. SERRAT: Right.  
24 THE COURT: -- to. So that may  
25 take the two weeks. They do request ten

1           business days. We could probably do it a  
2           little bit faster if there was a phone  
3           number for the Pennsylvania address, but  
4           there's no phone number for the Pennsylvania  
5           person. Let's see. So if we go with the  
6           ten business days, that -- I have like the  
7           June 26th date.

8                     Do you think that date would be okay,  
9           counsel?

10          MR. SERRAT:                     Absolutely, Judge.

11          THE COURT:                     I think it's probably  
12          the earliest they can prepare the report.

13          MR. CUDNIK:                     Okay.

14          THE COURT:                     So that would be  
15          continued at the -- it's a joint request,  
16          City's request and the defendants request.  
17          June 26, 2012.

18                     What time would you like, counsel?

19          MR. SERRAT:                     Early the better,  
20          Judge.

21          THE COURT:                     Do you want the  
22          8:30-hour?

23          MR. SERRAT:                     I do.

24          THE COURT:                     8:30 a.m.

25                     Prosecutor Cudnik, you'll subpoena

1 witnesses?

2 MR. CUDNIK: Yes.

3 THE COURT: Try to contact them to  
4 see if there are restitution issues here.

5 MR. CUDNIK: Yes, Judge.

6 THE COURT: I'll make sure  
7 Probation receives the accident report.

8 Mr. Philhower, this case will be  
9 journalized in just a few moments. In less  
10 than five minutes, you'll be able to go to  
11 the six floor Probation Department. You can  
12 just have a seat in the courtroom and we'll  
13 let you know --

14 MR. SERRAT: Thank you, Judge.

15 THE COURT: -- as far as the file  
16 is ready to go to the Probation Department.

17 MR. SERRAT: Thanks.

18 THE COURT: Now, if there's going  
19 to be a request for driving privileges on  
20 the June 26th sentencing date, you just need  
21 a letter from your employer indicating the  
22 days and hours of employment and you need  
23 your insurance information.

24 MR. SERRAT: We already submitted  
25 that by way of motion, but we'll do it

1           again.

2           THE COURT:                   Oh, okay.

3           MR. SERRAT:                   Thank you, Judge.

4           THE COURT:                   You're welcome. All  
5 right. Well, if it's attached to the  
6 motion, that's acceptable. You don't have  
7 to resubmit it.

8           MR. SERRAT:                   Thank you.

9           THE COURT:                   You're welcome.

10                   Things that the Court may consider at  
11 sentencing, I may, but depending on what's  
12 in the report, an Interlock device, but I'll  
13 ask the Probation Department to give you  
14 that information. I may think about a  
15 continuous alcohol monitoring device. I  
16 don't know. I've just asked them to give  
17 you that information.

18           MR. SERRAT:                   Thank you, Judge.

19           THE COURT:                   Okay. You're welcome.

20   - - -

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C E R T I F I C A T E

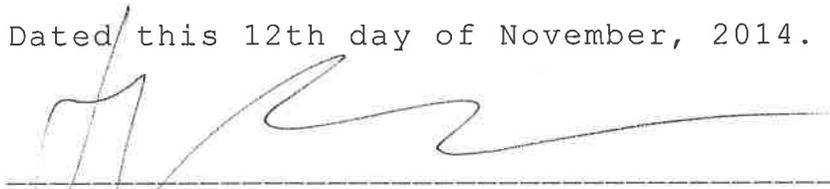
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State of Ohio, )  
County of Cuyahoga, ) SS:  
City of Cleveland. )

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Frederick J. Philhower. )

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Dated this 12th day of November, 2014.



Demetrius D. Longmire

OFFICIAL COURT REPORTER  
CLEVELAND MUNICIPAL COURT  
Cleveland, Ohio 44113

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6-26-12 Transcript

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20 By: Jonathan Cudnik, Assistant Police  
Prosecutor.  
21 On behalf of the defendant:  
22 Jaime P. Serrat, Esq.

23  
24  
25 Tanya E. Gibson

P R O C E E D I N G S

(Thereupon, the following proceedings were  
digitally recorded:)

THE COURT: Docket 61,  
Mr. Frederick Philhower's case.

MR. SERRAT: Good morning, your  
Honor, Jamie Serrat, 696-2150, on behalf of  
Mr. Philhower.

THE COURT: Good morning.

MR. SERRAT: Good morning, your  
Honor.

THE COURT: On the, in the  
Presentence Investigative Report, it seems  
to cite that there were two vehicles  
involved.

MR. SERRAT: Yes, Judge.

THE COURT: One, it says the  
presentencing officer spoke with a Ronnie  
Brolich of Yourga Trucking.

MR. CUDNIK: Okay.

THE COURT: It says Robert Rubles  
was driving a company truck at the time.

MR. CUDNIK: Yes, okay.

1 THE COURT: And that Mr., I'm  
2 sorry, Ms. Brolich indicated that \$8,636.77  
3 worth of damage was done to the truck and  
4 their insurance coverage, company, rather  
5 covered the damage, minus the \$5,000  
6 deductible that their insurance is going  
7 after the defendant's insurance company for  
8 the, to be reimbursed.

9 MR. CUDNIK: Okay.

10 THE COURT: Regarding that matter.

11 MR. CUDNIK: Okay.

12 THE COURT: Regarding the second  
13 vehicle or victim involved, a Kenneth  
14 Miller.

15 MR. CUDNIK: Yes.

16 THE COURT: It says his vehicle was  
17 damaged by debris from the accident.

18 MR. CUDNIK: Yes.

19 THE COURT: He stated he has  
20 contacted the defendant's insurance, but has  
21 had no resolution yet, and that his car has  
22 not yet been repaired.

23 MR. CUDNIK: Yes.

24 THE COURT: Was that person  
25 subpoenaed for today?

1 MR. CUDNIK: Yes, and he's local,  
2 the other person was from Pennsylvania. I  
3 don't know if they were subpoenaed. Did  
4 probation contact them, Judge?  
5 THE COURT: Well, that's the only  
6 statement that they have.  
7 MR. CUDNIK: OKAY.  
8 The court: They have a phone  
9 number and I believe they spoke to  
10 Mr. Kenneth Miller.  
11 MR. CUDNIK: Okay.  
12 THE COURT: Indicating that his  
13 vehicle was damaged --  
14 MR. CUDNIK: Yes.  
15 THE COURT: -- by debris from the  
16 accident, and that he's contacted the  
17 defendant's insurance carrier.  
18 MR. CUDNIK: Okay.  
19 The court: And has had no  
20 resolution, and that his vehicle has not yet  
21 been repaired.  
22 MR. CUDNIK: Okay.  
23 THE COURT: So maybe, Attorney  
24 Serrat, may know a little bit more  
25 information regarding that.

1 MR. SERRAT: I do, Judge.

2 THE COURT: I don't know if that  
3 individual wanted to be present. You said  
4 there was a subpoena for Mr. --

5 MR. CUDNIK: Kenneth Miller.

6 THE COURT: And he did not  
7 appear. Let me see. I do see the subpoena  
8 in the file, it says there was a bad  
9 address.

10 MR. CUDNIK: Oh.

11 THE COURT: There's a phone number  
12 in the file. I don't know if you want to  
13 reach that person, if I should reset this  
14 for another date so that person can be  
15 present, or if he wants to attend by  
16 telephone, and I could probably have a court  
17 reporter, I'm not sure.

18 MR. CUDNIK: Sure. I don't know.

19 THE COURT: Or if he wants  
20 resolution on this matter, we need to  
21 continue it so he could file the proper  
22 form.

23 MR. CUDNIK: Right.

24 MR. SERRAT: May I address that,  
25 Judge?

1 THE COURT: I think we need to get  
2 in touch with that person because they have  
3 a right to have their voice heard in this  
4 courtroom. I see a subpoena, also for --  
5 MR. CUDNIK: Mr. Rubles.  
6 THE COURT: Right, but, it says out  
7 of the county. And we, pretty much, know  
8 that the insurance carriers are going to  
9 resolve that matter.  
10 MR. CUDNIK: What's the number,  
11 Judge.  
12 THE COURT: Here, I could give it  
13 to you from the probation report. Just one  
14 second.  
15 MR. CUDNIK: It says it's a bad  
16 address?  
17 THE COURT: Oh, I'm sorry, on the  
18 subpoena it says, for Kenneth Miller, I  
19 don't know what the correct address is, but  
20 that's the subpoena. But, maybe you could  
21 check with him.  
22 MR. CUDNIK: Sure, Judge.  
23 THE COURT: When you call him and  
24 I'll hold onto this.  
25 MR. CUDNIK: Okay. I have a copy of

1 the subpoena.

2 THE COURT: Okay. All right. So I  
3 believe that Prosecutor Cudnik is going to  
4 try to reach Mr. Miller to find out what is  
5 going on, regarding the restitution issues  
6 on that matter, and whether or not he wants  
7 to be present and file restitution  
8 documents, to be considered on this case.  
9 But, I can recall this case as soon as the  
10 prosecutor comes back into the courtroom.

11 MR. SERRAT: All right. I was just  
12 going to say, Judge, I was going to provide  
13 the name of the adjustor to the individual  
14 who is handling the claim so --

15 THE COURT: -- do you want to join  
16 the prosecutor back here?

17 MR. SERRAT: Yeah, that's what I was  
18 gonna --

19 THE COURT: He's right there by the  
20 personal bailiff's desk, that's fine. Thank  
21 you.

22 \*\*\*\*\*

23 (Thereupon, a telephone conference was had  
24 outside the chamber of the court:)

25

- - -

1 THE COURT: This case is docket  
2 number 61, City of Cleveland vs. Frederick  
3 Philhower, P-h-i-l-h-o-w-e-r.

4 MR. CUDNIK: Mr. Miller, can you  
5 hear us?

6 THE WITNESS: Yeah.

7 MR. CUDNIK: Okay.

8 THE COURT: What is his full name,  
9 again?

10 MR. CUDNIK: Kenneth Miller.

11 THE COURT: Okay. Mr. Miller, you  
12 said, Kenneth Miller?

13 MR. CUDNIK: Yes, Judge.

14 THE COURT: Mr. Miller, hi, this is  
15 Judge Stokes. We have present with us,  
16 Jaime Serrat that represents the defendant,  
17 Mr. Philhower.

18 Mr. Philhower is present and  
19 Mr. Philhower is present for sentencing  
20 today, and there are two sets of victims on  
21 this case, and you are one of them. And so  
22 the reason you did not receive your  
23 subpoena, on the subpoena, the bailiffs  
24 wrote that it's a bad address.

25 I understand, from the prosecutor, it is

1 not a bad address, so I'm not certain why,  
2 you know, they wrote it's a bad address when  
3 it's not.

4 THE WITNESS: Well, what could have  
5 happened there is, that they may have went  
6 by my license. I just moved out to Rocky  
7 River with my license, about two and-a-half  
8 months ago. It could have been the  
9 Hartville address that he, actually, wrote  
10 on my license.

11 THE COURT: This is on Riverview.

12 THE WITNESS: Yes, it's Riverview  
13 Avenue, Rocky River, Ohio, 44116.

14 THE COURT: That's what it has on  
15 the subpoena so we're not certain what  
16 happened, sir. But, anyway, since the  
17 matter is, the defendant wants to go forward  
18 with sentencing today, what are you planning  
19 to do about the restitution?

20 Are you looking for restitution on this  
21 case or something that you would like to  
22 pursue, civilly, with the insurance  
23 companies, we're not certain.

24 THE WITNESS: Civilly, with the  
25 insurance company, as long as the insurance

1           company takes care of the damage on the  
2           truck, I don't have a problem. I wasn't  
3           hurt at all in the accident, that part I'm  
4           not that worried about.

5           It's, basically, it's a 2000 vehicle and  
6           it's pretty much a very, in excellent  
7           condition for the year and make that it is.  
8           So, I mean, to have that side fixed one  
9           month and then within a month and-a-half,  
10          two months, whatever it was, it happened,  
11          again. I mean, I would just like to have  
12          the paint and stuff fixed up, and the dents  
13          in the door fixed.

14          THE COURT:                I understand, according  
15          to Attorney Serrat, that Mr. Philhower's  
16          insurance company has been in touch with  
17          you, correct?

18          THE WITNESS:             Yes.

19          THE COURT:                Okay. So are you  
20          waiting, do you want to wait until that  
21          matter has been resolved before we determine  
22          if you want to pursue restitution on this  
23          case?

24          THE WITNESS:             Yeah, that will be,  
25          yeah, that will be fine because --

1 THE COURT: -- what do the parties  
2 anticipate that will be, 30 days or so?  
3 MR. CUDNIK: Do you have an  
4 appointment set up with the insurance  
5 company, sir?  
6 THE WITNESS: No, sir, I don't. I  
7 got to call them back.  
8 MR. CUDNIK: Okay.  
9 THE COURT: Okay. Well, because if  
10 things don't work out the way that you want,  
11 with respect to the insurance company, then  
12 you could pursue restitution on this case,  
13 if you so chose.  
14 THE WITNESS: Okay.  
15 THE COURT: We really need to know,  
16 that at the time of sentencing, if need be,  
17 this matter needs to be continued for 30  
18 days, you will have to be diligent about  
19 contacting or getting the estimate.  
20 MR. CUDNIK: Yes.  
21 THE COURT: We will need you to do  
22 that and, maybe, the defendant wouldn't mind  
23 passing for sentencing for another 30 days  
24 or so, I'm not sure.  
25 THE WITNESS: I could get that done

1 as soon as you need it done. If you need it  
2 done right now, my truck, I was in  
3 Cleveland, I'm down in Canton right now, I  
4 couldn't run up there and grab the truck.

5 MR. CUDNIK: We understand.

6 THE COURT: Prosecutor Cudnick,  
7 would it be better for me to pass? I'm  
8 going to have to pass for sentencing, I'm so  
9 sorry.

10 MR. SERRAT: I understand.

11 THE COURT: He's going to work on  
12 it, it's a little bit difficult because he's  
13 in Canton and Cleveland, he's going to take  
14 care of this right away.

15 MR. SERRAT: Mr. Miller, Jamie  
16 Serrat, I represent the defendant here, I  
17 have spoken to the representative from  
18 Farmer's, they accepted full responsibility.  
19 They indicated that you would be, not  
20 compensated, but he has plenty of insurance.  
21 And Megan is the one that called you from  
22 Farmer's and, like I said, don't worry about  
23 it, it will be taken care of to your  
24 satisfaction, okay?

25 THE WITNESS: All right.

1 THE COURT: Okay. So what date do  
2 the parties want to come back; I didn't  
3 bring my calender in here.

4 MR. SERRAT: I'm open, Judge.

5 THE BAILIFF: Do you want me to get  
6 it?

7 THE COURT: I pretty much know my  
8 calendar.

9 How much time do you need, Mr. Miller?

10 THE WITNESS: I could, probably, have  
11 everything straightened out around, maybe,  
12 by Friday, I could have the estimates done  
13 on the truck and the insurance.

14 MR. CUDNIK: You will definitely  
15 have that done by Friday; could you come to  
16 court next week, Mr. Miller?

17 THE WITNESS: Next week I'm going to  
18 be out of town for work. I'm going to be  
19 down in South Carolina that will be, kind  
20 of, tough.

21 MR. CUDNIK: When are you back in  
22 town?

23 THE WITNESS: Not until, possibly,  
24 the following weeks.

25 MR. CUDNIK: Okay. So, probably,

1           around the 18th?

2           THE COURT:                   I think I'm in a  
3           seminar that week, unless I put it on one of  
4           my civil days.

5           MR. SERRAT:                   Unless he gets the  
6           check by then and is fully compensated, then  
7           he wouldn't even have to come down.

8           THE COURT:                   Let me just look at  
9           this calendar here and see.

10          MR. CUDNIK:                Hold on one second,  
11          Mr. Miller.

12          THE WITNESS:             Excuse me, sir, what is  
13          the reason for me having to be there?

14          Mr. CUDNIK:             We want to make sure  
15          that you are taken care of, sir, and if  
16          there's anything that you want to say about  
17          this case. So if you want to keep this case  
18          open, so we make sure that everything works  
19          out with the insurance, because one of the  
20          aspects of this case, is that the Judge can  
21          chose to sentence on this criminal case. As  
22          far as any restitution, unless you decide to  
23          pursue it through the insurance company, and  
24          we're just, kind of, keeping it open until  
25          we know for sure what happens with you

1           because there are, actually, two cars  
2           involved and one car it appears has already  
3           been taken care of.

4           THE WITNESS:           Okay.

5           THE COURT:           Then if you decide, if  
6           you have been compensated to your  
7           satisfaction, sir, regarding the damage to  
8           your vehicle, then the date that we're going  
9           to pick, if you chose not to be present,  
10          then we could let the prosecutor know, you  
11          will not have to be present, then he would  
12          have all of the information to tell the  
13          defense attorney and the Court, the  
14          restitution would not be an issue in this  
15          matter because it's been resolved; do you  
16          understand?

17          THE WITNESS:           Okay. I got you.

18          THE COURT:           It's really up to you,  
19          we're just trying to take into  
20          consideration, whatever you would like to  
21          do.

22          THE WITNESS:           Okay.

23          THE COURT:           Do you want to pass for  
24          sentencing so you could resolve the  
25          restitution issues and then if you did get

1           them resolved, you don't have to be present  
2           on the sentencing date?

3           THE WITNESS:           Yeah, if I could get  
4           everything resolved and I don't have to be  
5           there, that would be a better thing for me.

6           THE COURT:           If not, then you will  
7           need to be present to file the green  
8           restitution form to present that  
9           documentation to the Clerk of Courts and  
10          give that information to the prosecutor; do  
11          you understand?

12          THE WITNESS:           Yes.

13          THE COURT:           All right. It's,  
14          probably, best to pass for sentencing. What  
15          about July 24th? I do have a docket, what's  
16          your schedule like?

17          MR. SERRAT:           It doesn't matter.

18          THE COURT:           Is that okay with your  
19          client?

20          MR. SERRAT:           Of course it is, Judge.

21          THE COURT:           I'll continue it at the  
22          city's request, and pass for sentencing  
23          until July 24th. I think that's a Tuesday.

24          MR. CUDNIK:           Yes, it's a Tuesday.

25          THE COURT:           What time would the

1 parties like?

2 MR. SERRAT: 8:30, Judge.

3 THE COURT: Okay, 8:30 a.m. then  
4 you will receive a subpoena once again.  
5 Well, hopefully, you will receive the  
6 subpoena this time. Please take Prosecutor  
7 Cudnik's phone number or the prosecutor who  
8 will be here in July.

9 MR. CUDNIK: I'll talk to you for a  
10 second, Mr. Miller.

11 THE COURT: If we decide everything  
12 is taken care of, we don't need to have you  
13 come in.

14 MR. SERRAT: Judge --

15 THE COURT: Wait a minute? What  
16 are you doing? Could you just wait for  
17 instructions from the Court.

18 MR. SERRAT: Because of driving  
19 privileges and things like that, could you  
20 sentence today and have a review in 30 days,  
21 and see if the matter would have be taken  
22 care of?

23 THE COURT: I think I would rather  
24 he wait. I'm just now seeing the full  
25 sentencing report which means --

1 THE COURT: I think he should be  
2 listening.  
3 MR. CUDNIK: Hold on, Mr. Miller.  
4 THE COURT: The assessment  
5 indicates alcohol dependancy and cocaine  
6 dependency. If I grant driving privileges,  
7 I mean, there are two victims here. I will,  
8 probably, be imposing an alcohol monitoring  
9 device and interlock device. I would rather  
10 wait until the victims gets this all  
11 settled.  
12 MR. SERRAT: Okay. All right.  
13 THE COURT: I know he has a concern  
14 about trying to operate a motor vehicle.  
15 MR. SERRAT: It's just for work,  
16 it's getting very difficult to go to work.  
17 It's from Seven Hills to Mentor, it's  
18 becoming a heavy burden on the family. The  
19 AA meetings he's attending is becoming a  
20 problem.  
21 THE COURT: I understand. I know.  
22 I want to be sensitive to that.  
23 MR. SERRAT: Okay.  
24 THE COURT: I know you have to make  
25 your record.

1 THE COURT: We're going to stick  
2 with the July 24th date. I think it's  
3 better to wait until I have everything.

4 MR. CUDNIK: That's fine, Judge.  
5 Mr. Miller, hold on one second.

6 MR. SERRAT: I think his damage is  
7 minimal.

8 Do you mind asking him that?

9 THE COURT: Thank you, Tanya.

10 \*\*\*\*\*

11

- - -

12 (Thereupon, the following proceedings were  
13 digitally recorded:)

14

- - -

15 THE COURT: I'll note on docket 61,  
16 that that matter was heard with a court  
17 reporter, on Frederick Philhower's case, on  
18 case number 2012TRC030161.

19

- - -

20

21

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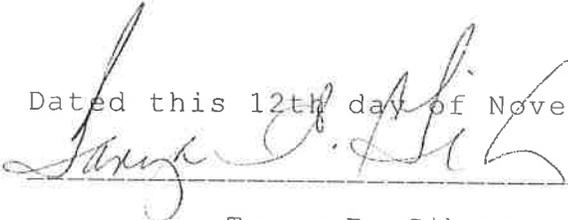
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C E R T I F I C A T E

State of Ohio,                    )  
County of Cuyahoga,            )  
City of Cleveland.             )            SS:

City of Cleveland,             )  
                  vs.                )  
Frederick Philhower.         )

I, Tanya E. Gibson, court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the proceedings in the above-captioned case on the date set forth; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the proceedings; that said transcript is a complete record of the proceedings had in the hearing of said case and constitutes a true and correct transcript of the proceedings had therein.

Dated this 12th day of November, 2014.  
  
-----  
Tanya E. Gibson

---

7-24-12 Transcript

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1 STATE OF OHIO, )  
COUNTY OF CUYAHOGA, ) SS: STOKES, A.R., J.  
2 CITY OF CLEVELAND, )

3 IN THE MUNICIPAL COURT

4 - - -  
5 CITY OF CLEVELAND, )  
6 Plaintiff, )  
7 vs. ) 2012 TRC 030161  
8 FREDERICK J. PHILHOWER, )  
9 Defendant. )  
10 - - -

11  
12 Transcript of digitally recorded proceedings had  
13 before the Honorable Judge Angela R. Stokes, on  
14 Tuesday, July 24, 2012, in Courtroom 15C.

15 - - -  
16 APPEARANCES:  
17  
18 On behalf of the plaintiff:  
Victor R. Perez, Chief Police Prosecutor.  
19 By: Angela Richardson, Asst. Police Pros.  
20 On behalf of the defendant:  
By: Jaime P. Serrat, Esq.  
21

22 - - -

23  
24  
25 MARVA M. WILSON

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

1  
2 THE COURT: Mr. Fredrick  
3 Philhower's case.  
4 MR. SERRAT: Good morning your  
5 Honor, Jamie Serrat on behalf of  
6 Mr. Philhower.  
7 THE COURT: Good morning. This is  
8 docket number 49.  
9 MS. RICHARDSON: Your Honor, (Inaudible)  
10 did receive a telephone call from the victim  
11 in this case, Kenneth Miller and he  
12 indicated that there are no restitution  
13 issues, that his insurance company handled  
14 everything.  
15 THE COURT: All right thank you.  
16 Do you have the information about the  
17 damages to the victim? Was that property  
18 damage to the victim's vehicle? Do you have  
19 the specifics regarding that?  
20 MS. RICHARDSON: No, your Honor.  
21 MR. SERRAT: I'm sorry. I do judge.  
22 It was property only. We discovered --  
23 THE COURT: How much was the  
24 property damage?  
25 MR. SERRAT: I'm sorry?

1 THE COURT: How much was the  
2 property damage.

3 MR. SERRAT: It was minimal. I want  
4 to say it was less than five hundred  
5 dollars. This was debris that was hit, that  
6 hit the vehicle. We had a conversation with  
7 -- if you recall -- outside of chambers last  
8 time we were here.

9 THE COURT: I do but I don't have  
10 all of the specifics. I know there was a  
11 prior DUI conviction on the defendant's  
12 record. That there was an accident victim  
13 whether or not the -- it was good the  
14 insurance carrier was taking care of it but  
15 this was a second O V I in his lifetime.  
16 There's just a little bit of information in  
17 the Probation report and it indicates that  
18 Mr. --

19 Who contacted you? Was that  
20 Mr. Kenneth Miller?

21 MS. RICHARDSON: Yes, your Honor.

22 THE COURT: Okay, because it says  
23 in this report -- I think there were two  
24 cars, right?

25 MR. SERRAT: Correct.

1 THE COURT: Two vehicles involved.

2 MR. SERRAT: One lives out of town,  
3 Judge. That individual had already been  
4 taken care of.

5 THE COURT: The Probation report  
6 reflects that there was \$8,636.77 worth of  
7 damage to the first vehicle. Their  
8 insurance company covered the damages. That  
9 was with Yourga Trucking Company; that  
10 Robert Rugal --- Rubal (phonetic) rather,  
11 was driving a company truck. The  
12 spokesperson, Ms. Ronnie Brolich (phonetic),  
13 indicated there was \$8,636.77 worth of  
14 damage. Your insurance covered the damages,  
15 minus the five thousand dollar deductible.  
16 And that their insurance carrier is going  
17 after this -- the defendant's insurance  
18 carrier to be reimbursed regarding the five  
19 thousand dollar deductible.

20 Then the second victim would be  
21 Mr. Miller. I don't have any information,  
22 specifics about that but I understand he  
23 states he's been made whole through the  
24 insurance carrier.

25 -- is there anything else you would like

1 to say on Mr. Philhower's behalf?

2 MR. SERRAT: I do, your Honor, with  
3 the court's permission, I did have an  
4 opportunity to review the P S I the last  
5 time we were here, Judge. I just want to  
6 convey to the Court that Mr. Philhower spent  
7 two days in jail. And right after it,  
8 Judge, he took it upon his own to realize  
9 the severity of this incident and he did --  
10 he's already completed the three-day  
11 intervention program, judge. He put himself  
12 in counseling with Hope. The Court has an  
13 assessment. I have a follow-up assessment,  
14 Judge, if I may approach, that was prepared  
15 by Fred Stevens.

16 Judge, I'm also handling -- handing you  
17 the number of AA meetings that he's  
18 conducted. The Court was aware of some last  
19 time. I now have an update that has about  
20 ten or 12 other AA meetings that he's  
21 attended to, Judge.

22 Also Judge, your Honor, I have a letter  
23 of employment (inaudible) submitted,  
24 indicating how valuable he is to the  
25 company. Judge, if I may continue.

1 THE COURT: You may.

2 MR. SERRAT: Judge, certainly he was  
3 having some marital issues, marital issues.  
4 Those things -- the wife is in court and  
5 would indicate to the Court and she's  
6 indicated to me that she's seen a 180 degree  
7 turn the way Fred's behaving 24 hours a day.

8 He wants to continue with treatment.  
9 He's hoping that the Court would allow him  
10 to continue with the treatment and continue  
11 to work and to turn his life around as he  
12 has been for the last almost two months  
13 since this incident occurred.

14 We know that this is the second one. He  
15 had a prior back in 1996. He knows he needs  
16 help and he wants to continue with the  
17 treatment as well as the meetings, your  
18 Honor. With the Court's permission he would  
19 like to have a few remarks for the Court.

20 THE COURT: Certainly.

21 MR. SERRAT: Go a head. Go a head  
22 and speak loud.

23 THE DEFENDANT: Your Honor, I'm not  
24 sure if either of the individuals that were  
25 in the accident (inaudible) are in the

1 courtroom but I have had no peace since that  
2 night. I apologize to those individuals.  
3 I'm glad to know everybody is okay from  
4 that.

5 I've taken every step that I have can  
6 think of or what was suggested to me by the  
7 treatment counselors and my sponsor at  
8 Alcoholics Anonymous to make sure that I  
9 never cause something like this again. And  
10 I deeply regret that evening and I beg the  
11 Court's mercy (inaudible).

12 THE COURT: All right thank you.  
13 Did you complete the five weeks of intensive  
14 outpatient treatment? Are you in the after-  
15 care phase at this time, sir?

16 THE DEFENDANT: I'm two sessions from  
17 completing the five weeks.

18 THE COURT: The five-week program?

19 THE DEFENDANT: Yes, your Honor.

20 MR. SERRAT: Judge, I think  
21 Fred Stevens indicated that in his follow-up  
22 letter and is recommending of course to  
23 continue outpatient treatment.

24 THE COURT: This letter references  
25 -- I'm trying to find out what they're



1 sentence. The active probationary period  
2 will be for three years. That can always be  
3 shortened. Driver's license will be  
4 suspended from the date of this offense,  
5 May 15, 2012. And that will be until  
6 May 15, 2015. The Administrative License  
7 Suspension is hereby terminated. You had  
8 insurance coverage on the date of this  
9 offense is that right? Does he have that  
10 proof.

11 MR. SERRAT: I do, Judge.

12 THE COURT: I believe he has it  
13 just from the information from the victims  
14 but --

15 MR. SERRAT: I made some notations  
16 on the copies. If the Court would excuse my  
17 mess.

18 THE COURT: Okay. That's quite all  
19 right. Thank you. The record will reflect  
20 compliance with the financial responsibility  
21 law. Now I am suspending 175 days but that  
22 is on the condition that you are to wear a  
23 continuous alcohol monitoring device, at  
24 least while you're in the treatment phase  
25 and it could always review --



1 maintained negative breathalyzer and  
2 urinalysis tests, then that's when the court  
3 can consider possibly removing the  
4 continuous alcohol monitoring device. And  
5 that device would actually be placed on you  
6 sometime today. Are you prepared for that?  
7 MR. SERRAT: I am, your Honor.  
8 THE COURT: Okay we'll have someone  
9 -- Mr. Oriti will probably --  
10 Can you ask Mr. Oriti to come to the  
11 courtroom on Mr. Philhower's case? I don't  
12 know Mr. Oriti's phone number but if just  
13 call X4930, the general number.  
14 MR. SERRAT: The cost, Judge?  
15 THE COURT: Now that I don't know.  
16 Did the Probation Department not provide  
17 with you that information, sir?  
18 THE DEFENDANT: It did, your Honor.  
19 I'm not (inaudible) I'm not sure. What I  
20 was told if I understood correctly was that  
21 monitoring system is approximately five  
22 hundred dollars a month.  
23 THE COURT: It might be; I don't  
24 know. I don't really know what it cost.  
25 THE DEFENDANT: I'm not sure if there

1 is something the Court would be able to do  
2 possibly to lower that a month.

3 THE COURT: I don't become involved  
4 with whatever company that they use.

5 THE DEFENDANT: I understand.

6 THE COURT: That's why I asked them  
7 to please provide with you that information.  
8 But Mr. Oriti will be here in just a moment.  
9 He'll let you know exactly what the cost is.  
10 Did he tell you about more than one company?

11 THE DEFENDANT: Your Honor, he  
12 explained three different tools you may want  
13 to use. The cost associated with the three.  
14 We didn't get into any in-depth conversation  
15 outside of that.

16 THE COURT: Okay.

17 THE DEFENDANT: But I'm aware of what  
18 you speak -- what you're asking.

19 THE COURT: It's better than going  
20 to the Cleveland House of Corrections.

21 THE DEFENDANT: It's a -- your Honor,  
22 pardon my interruptions.

23 THE COURT: -- so you can maintain  
24 your employment.

25 THE DEFENDANT: Pardon my

1 interruptions, your Honor.

2 THE COURT: Oh no that's quite all  
3 right but I thought long and hard about  
4 this. I mean second O V I in your lifetime,  
5 two victims here, however I want you to be  
6 able to maintain your employment and --

7 THE DEFENDANT: And I --

8 THE COURT: -- and this I think  
9 would be a good way to do that but also to  
10 safely monitor no alcohol usage and of  
11 course they will be checking urinalysis for  
12 any other illegal -- for any other  
13 substances.

14 MR. SERRAT: I don't know if you are  
15 done or not, Judge; I was going to talk  
16 about the driving privileges. I filed a --  
17 so he can go to work or else he won't be  
18 able. I filed the motion like two or three  
19 weeks ago. The Court --

20 THE COURT: He'll have an interlock  
21 device on the vehicle because even if he has  
22 an alcohol monitoring device, that doesn't  
23 mean you can't operate a vehicle. The  
24 interlock device is on the vehicle and you  
25 breathe into that. And if there is alcohol,

1           that will stop you. The alcohol monitoring  
2           device just let us know you used alcohol.  
3           So there are a lot of things going to do to  
4           protect you and to protect the community Mr.  
5           -- I mean you have to prove yourself because  
6           there are two victims out here, two sets of  
7           victims. And I know that you are  
8           remorseful. I do believe that you are  
9           remorseful but we have to have some safe-  
10          guards in place, at least for a period of  
11          time.

12       MR. SERRAT:                I know the restraint  
13       it's going to put on him but we will be more  
14       than glad to meet any condition. We just  
15       don't want him to lose his job, Judge.

16       THE COURT:                 I understand and --

17       MR. SERRAT:                 And I would --

18       THE COURT:                 I'm a trying to  
19       protect --

20       MR. SERRAT:                 I know what you're  
21       doing.

22       THE COURT:                 -- your job.

23       MR. SERRAT:                 That's why I was asking

24       --

25       THE COURT:                 -- I want you to have

1 your job.

2 THE DEFENDANT: I understand.

3 MR. SERRAT: That's why I was asking  
4 for driving privileges with any condition  
5 the Court imposes.

6 THE DEFENDANT: If he's willing to have  
7 the interlock device on the vehicle.

8 MR. SERRAT: That's fine.

9 THE COURT: I just need something  
10 indicating the days and the hours of  
11 employment.

12 MR. SERRAT: I have a letter with --  
13 judge -- the letter -- specifics.

14 THE COURT: The days and the --

15 MR. SERRAT: He can work seven days  
16 a week if they allow him. That's how bad  
17 they want him. He'll work as much as you  
18 let him work. I think that's what the owner  
19 indicated in his letter.

20 THE COURT: --

21 Well counsel, shall I recall this once  
22 you've had a chance to speak to Mr. Oriti  
23 about the costs of the interlock device and  
24 the continuous alcohol monitoring device?  
25 No, you're just going to --

1 MR. SERRAT: Judge, he will do  
2 whatever you want him to do. He just wants  
3 to go home to be with his wife, and go to  
4 work and continue with his treatment. My  
5 only problem, Judge with all due respect I  
6 have to be --

7 THE COURT: Well for me to -- I  
8 told you before the Court has to have the  
9 days and hours of employment for me to write  
10 an occupational driving privileges order.  
11 Counsel, you know that. This does not give  
12 me that information. I'm not writing an  
13 order without that documentation from your  
14 employer. Your employer can certainly fax  
15 it to the Court and I can write that order  
16 and then your attorney doesn't necessarily  
17 have to be present for that but the Court  
18 has to have a letter indicating the hours.

19 MR. SERRAT: I filed a motion --

20 THE COURT: Now I don't think this  
21 letter has it. I'll read it again but --

22 MR. SERRAT: Judge I filed a motion  
23 back in May I think it was, where I was very  
24 specific with the hours.

25 THE COURT: Are those the current

1           hours?

2           MR. SERRAT:            Yes.

3           THE DEFENDANT:        Yes.

4           MR. SERRAT:            His hours of

5           employment.

6           THE COURT:            Let me see the driving

7           -- I mean the --

8                    Can you get the insurance information?

9           That's okay. This is attached. This shows

10          -- this just shows through July 15th so I

11          need something that goes beyond

12          July 15, 2012. The insurance information --

13          attached to the motion is just through July

14          15th. The information you just showed me is

15          that the same card?

16          MR. SERRAT:            It just got renewed,

17          yes.

18          THE DEFENDANT:        It's renewed.

19          THE COURT:            So do you have the

20          renewal card? I cannot write a driving

21          privileges order unless I see that it goes

22          beyond that date, sir.

23          MR. SERRAT:            I will --

24          THE COURT:            But they can always fax

25          it to the Court. Your insurance carrier can

1 fax it to the Court. We already have it  
2 written out. The fax number if you need  
3 that -- is there one here?

4 MR. SERRAT: Judge, I'll come over  
5 tomorrow with all the details.

6 THE COURT: All right. So  
7 regarding the occupational driving  
8 privileges?

9 MR. SERRAT: If that's that's the  
10 only choice I have. Without that you will  
11 not consider it.

12 THE COURT: Well unless they fax  
13 it.

14 MR. SERRAT: Oh I'm sorry. We'll  
15 fax it. We'll fax it today.

16 THE COURT: You want it now?

17 MR. SERRAT: We'll fax it today.  
18 Yeah, absolutely.

19 THE COURT: Okay.

20 MR. SERRAT: Okay. Sorry. I  
21 misunderstood the Court.

22 THE COURT: That's okay.

23 MR. SERRAT: Thanks.

24 THE COURT: And then he doesn't  
25 have to come back.

1 MR. SERRAT: I gotcha.

2 THE COURT: But Mr. Oriti will be  
3 here to help you sign up for both of these.  
4 You pick whatever companies you want,  
5 whichever has the best rates for the  
6 interlock lock device. And that's going to  
7 be on which vehicle, the 2005 Chevrolet?  
8 Which vehicle?

9 THE DEFENDANT: (Inaudible) it's going  
10 to be (inaudible).

11 THE COURT: What's he saying?

12 MR. SERRAT: It will be the wife's  
13 car. It's an '08, '08 Chevy.

14 THE COURT: Does he understand that  
15 you will be the only person that can operate  
16 that vehicle. She won't be able to operate  
17 that vehicle. If it registers positive and  
18 you tell me she was driving that vehicle, my  
19 order is going to say that you are the only  
20 person that can operate that vehicle.

21 THE DEFENDANT: I will have my  
22 insurance fax that information over with the  
23 vehicle that we will be using.

24 THE COURT: Okay. When will that  
25 be done, sir?

1 MR. SERRAT: I'm sorry, Judge?  
2 THE COURT: When is that going to  
3 be done?  
4 MR. SERRAT: Tomorrow. I mean this  
5 afternoon, when I call the agent, I will  
6 fax it this afternoon.  
7 THE COURT: Okay so then you want  
8 to come back on my docket sometime this  
9 afternoon, Mr. Philhower; is that what  
10 you're saying, sir?  
11 THE DEFENDANT: Yes.  
12 THE COURT: That's fine with the  
13 court. I have a huge docket.  
14 MR. SERRAT: I know. What's our  
15 other choice? There is no choice unless --  
16 THE COURT: He can always come back  
17 another day if he so chooses.  
18 MR. SERRAT: Oh no, no, no, no, no.  
19 I would love to see you Judge but --  
20 THE COURT: Or it can be later. You  
21 know this is --  
22 MR. SERRAT: Okay why don't we come  
23 back later this afternoon, Judge.  
24 You want to do that?  
25 THE DEFENDANT: Yes.

1 MR. SERRAT: Okay.

2 THE COURT: But Mr. Oriti you need  
3 to meet with him to know when --

4 This continuous alcohol monitoring  
5 device is going to be placed on you today  
6 sir.

7 Did you reach Mr. Oriti?

8 THE BAILIFF: No, your Honor. He's  
9 off all week.

10 THE COURT: So who is his back up?

11 THE BAILIFF: The supervisor is going  
12 to come up. They weren't sure if it's  
13 Mr. McGlynn who was doing it next but they  
14 said they were going to send up someone, if  
15 not a supervisor.

16 MR. SERRAT: Judge, we certainly can  
17 have the insurance company fax it over. I  
18 will need to make a phone call to fax it  
19 immediately.

20 THE COURT: That's fine and I can  
21 write the occupational driving privileges  
22 out. But I just need to know your --

23 MR. SERRAT: Okay.

24 THE COURT: Does this motion have  
25 the days and hours, or is it like the letter

1 I have?

2 MR. SERRAT: No, it has the days and  
3 hours in the motion.

4 THE COURT: I see the insurance  
5 information. I don't see a letter attached  
6 to the motion from the employer.

7 MR. SERRAT: We'll fax something as  
8 well, Judge, from the employer.

9 THE COURT: It has to have a  
10 letter --

11 MR. SERRAT: I understand.

12 THE COURT: -- from your  
13 employer --

14 MR. SERRAT: Right from the  
15 employer.

16 THE COURT: -- indicating the days  
17 and hours of employment and your insurance  
18 information for me to write a driving  
19 privileges order. You have to be here to  
20 sign it once the Court writes it.

21 And then Mr. Oriti is on vacation but I  
22 understand some supervisor or this backup  
23 person, regarding continuous alcohol  
24 monitoring device and any company that has  
25 an interlock device for the vehicle.

1 MR. SERRAT: Okay.

2 THE COURT: I can always give you a  
3 time to pay date regarding your fine and  
4 court costs since you're incurring the costs  
5 of these other instruments.

6 MR. SERRAT: All right.

7 THE COURT: Okay. So I should just  
8 recall this a little later whenever --

9 MR. SERRAT: We would -- Judge could  
10 I --

11 THE COURT: Just tell me --

12 MR. SERRAT: How about -- can we --  
13 can you -- how quickly can you add  
14 something? Once I have it done, I would  
15 like to call the Court. Can we add it like  
16 tomorrow if I have it? I know you have  
17 heavy dockets every day.

18 THE COURT: We do and we have a  
19 judges's meeting tomorrow from 12:30 to two.

20 MR. SERRAT: Okay.

21 THE COURT: So that kind of cuts  
22 into that docket but you're asking me to --

23 MR. SERRAT: Thursday; what about  
24 Thursday? We'll have it done by Thursday.

25 THE COURT: Well I mean that's the

1 day of the judges's meeting --

2 MR. SERRAT: Oh I'm sorry.

3 THE COURT: -- on Thursday. So

4 you're asking me to continue the motion for

5 occupational driving privileges?

6 MR. SERRAT: Wednesday, Judge?

7 We'll have it done by Wednesday. That's

8 tomorrow.

9 THE COURT: That's fine.

10 MR. SERRAT: Okay.

11 THE COURT: Then you can also

12 submit to a urinalysis test so I'll have

13 that before -- because I don't have a

14 current one.

15 MR. SERRAT: Great.

16 THE COURT: You can do that today.

17 MR. SERRAT: Okay.

18 THE COURT: Okay.

19 MR. SERRAT: Thank you, your Honor.

20 THE COURT: What time would you

21 like Wednesday for the occupational --

22 MR. SERRAT: 8:30.

23 THE COURT: That's fine with the

24 Court.

25 MR. SERRAT: Great. Thank you very

1 much, Judge.

2 THE COURT: Just have a seat,  
3 Mr. Philhower.

4 MR. SERRAT: I'm going to take him  
5 outside for a second and bring him right  
6 back, Judge.

7 THE COURT: There is a room right  
8 over there.

9 MR. SERRAT: Okay. I'll talk to him  
10 over there. Thank you.

11 THE COURT: Mr. McGlynn.

12 This is the gentleman who is going to  
13 give you the prices --

14 Mr. McGlynn, this is Mr. Philhower. He  
15 needs information about the cost of  
16 continuous alcohol monitoring.

17 MR. MCGLYNN: Okay.

18 THE COURT: Whatever company you  
19 all choose. And any interlock company,  
20 whatever is best for his finances.

21 MR. MCGLYNN: Scram.

22 THE COURT: Yes scram. Absolutely.

23 MR. MCGLYNN: Okay.

24 THE COURT: And then he has to go  
25 down and submit to a urinalysis test.

1 MR. MCGLYNN: Is he going to be set  
2 up today or (inaudible prices) --  
3 THE COURT: He is going to be set  
4 up today on the continuous alcohol  
5 monitoring device.  
6 MR. MCGLYNN: Okay.  
7 THE COURT: He may want -- I think  
8 he wants an additional day to get a letter  
9 from his employer regarding the days and  
10 hours of his employment on the interlock  
11 device.  
12 MR. MCGLYNN: Is he being set up by  
13 tomorrow? The scam (inaudible).  
14 THE COURT: Today.  
15 MR. MCGLYNN: Before today.  
16 THE COURT: Yes. I'm suspending  
17 175 days on the condition that he has an  
18 alcohol monitoring device. Two accident  
19 victims.  
20 MR. MCGLYNN: Okay. (Inaudible)  
21 THE COURT: Absolutely. Do you  
22 want his Probation report or anything?  
23 MR. MCGLYNN: Sure. I can bring it  
24 right back up to you.  
25 THE COURT: That's this one and I

1 think I had asked for him to get this  
2 information and I believe it was given to  
3 him months ago.

4 MR. MCGLYNN: I'm sure Richard gave  
5 it to him.

6 THE COURT: I'm sure too.

7 MR. MCGLYNN: I will go over it again  
8 with him.

9 THE COURT: Yes, please. Thank  
10 you.

11 These are some things they added. I  
12 don't know if his attorney wants these back  
13 or add them (inaudible). I'll ask him but I  
14 don't want to mix them up.

15 MR. MCGLYNN: Okay.

16 THE COURT: These are things they  
17 gave these me this morning.

18 MR. MCGLYNN: You want me to take  
19 them?

20 THE COURT: Well I don't -- you'll  
21 bring them back up?

22 MR. MCGLYNN: (Inaudible).

23 THE COURT: Because I'm not sure  
24 what he wants back. Okay. Just don't mix  
25 them up.

1 MR. MCGLYNN: All right.

2 THE COURT: Okay. Thank you,  
3 Mr. McGlynn.

4 MR. MCGLYNN: You're welcome.

5 \*\*\*\*\*

6 THE COURT: Mr. Philhower, I  
7 understand that you are going to be fitted  
8 with the continuous alcohol monitoring  
9 device today, and that you would like to  
10 come back tomorrow at 8:30 regarding the  
11 occupational driving privileges motion.  
12 Correct?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. If you'll just  
15 have a seat to your right. And then you  
16 will submit to a urinalysis test today too.  
17 That will be nine dollars. Then a bailiff  
18 will escort to you the Probation Department  
19 in just a few moments okay, thank you, or at  
20 least take your files downstairs.

21 These documents, should I let  
22 Attorney Serrat -- should I hold on -- I  
23 don't know if he want me to hold on to  
24 these. I'll hold onto to them and then when  
25 he's here tomorrow I'll decide if wants

1           these placed back into his file or if he  
2           wants me to attach them to your probation  
3           report. Is that okay?  
4           THE DEFENDANT:           Yes. Yes, ma'am.  
5           THE COURT:                Okay.  
6           THE DEFENDANT:           Is that all?  
7           THE COURT:                Yes. And I'll note we  
8           can review your fine and court costs  
9           tomorrow when Attorney Serrat is here, okay.  
10          THE DEFENDANT:           Yes, ma'am.  
11          THE COURT:                Okay. All right.  
12                                   - - -  
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State of Ohio, )  
County of Cuyahoga, ) SS:  
City of Cleveland. )

City of Cleveland, )  
V. )  
Frederick J. Philhower )

I, Marva M. Wilson, court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the proceedings had in said Cleveland Municipal Court in the above-entitled case on the date set forth; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the proceedings; that said transcript is a complete record of the proceedings had in the hearing of said case and constitutes a true and correct transcript of the proceedings had therein.

Dated this 10th day of November, 2014.



Marva M. Wilson

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7-25-12 Transcript

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1 STATE OF OHIO, )  
COUNTY OF CUYAHOGA, ) SS: STOKES, A.R. J.  
2 CITY OF CLEVELAND. )

3 IN THE MUNICIPAL COURT

4 - - -  
5 CITY OF CLEVELAND, )  
6 Plaintiff, )  
7 vs. ) 2012 TRC 030161  
8 FREDERICK J. PHILHOWER )  
9 Defendant. )

10 - - -  
11  
12 Transcript of digitally recorded proceedings had  
13 Before the Honorable Judge Angela R. Stokes on  
14 Wednesday, July 25, 2012 in Courtroom 15C.

15 - - -  
16 APPEARANCES:

17 On behalf of the plaintiff:  
18 Victor R. Perez, Chief Police Prosecutor  
By: Jonathan Cudnik, Asst. Police Pros.  
19  
20 On behalf of the defendant:  
21 James Serrat, Esq.

22  
23  
24  
25 MARVA M. WILSON

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

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THE COURT: Counsel, what is your client's name again?

MR. SERRAT: Philhower, your Honor.

THE COURT: How could I forget that? Is Mr. Philhower here?

MR. SERRAT: Hopefully you'd forgot it. Yeah, he is.

THE COURT: Oh okay -- let me, I don't think they give me a journal entry but I think I still have the file.

This just needs to be journalized. This goes over there (inaudible) and we need to find this file from yesterday. Philhower.

THE BAILIFF: Here it is, Judge.

THE COURT: Thank you.

-- Mr. Philhower, I do have your file, however -- let me see if I have the journal entry. I don't. Hopefully the journalizer will be here in just a moment. This is an add-on to the docket, Frederick Philhower, 2012TRC030161. I believe it's on the docket for driving privileges.

MR. SERRAT: It is, your Honor.

THE COURT: Do you have the letter

1 from the employer and the insurance  
2 information or --

3 MR. SERRAT: Yeah. May I approach,  
4 your Honor?

5 THE COURT: Yes, you may. Thank  
6 you. Okay -- all right so you are looking  
7 for driving privileges Mondays through  
8 Fridays, from 7 a.m. to 6 p.m. On Saturdays,  
9 from 7 a.m. to 3 p.m. What time do you  
10 actually leave your residence?

11 THE DEFENDANT: About an hour prior,  
12 your Honor.

13 THE COURT: So at 6 a.m. And then  
14 you return home by what time?

15 THE DEFENDANT: It's a 45 mile drive  
16 one way. An hour, an hour lead time usually  
17 is sufficient.

18 THE COURT: Just tell me what time.

19 MR. SERRAT: So It will be seven  
20 p.m. --

21 THE COURT: What --

22 MR. SERRAT: -- your Honor.

23 THE DEFENDANT: I leave at 6 a.m. and  
24 come home by --

25 MR. SERRAT: She wants to know what

1 time you go the door (inaudible)

2 THE COURT: Six a.m. And then you  
3 get home by --

4 MR. SERRAT: Seven p.m., your Honor.

5 THE COURT: By seven p.m., okay.

6 All right. Now you're going have to have  
7 the interlock device on the vehicle. So  
8 when do you want this to be -- to take  
9 place, to go into affect? Do you plan to  
10 have that device on the vehicle tomorrow or  
11 do you need like two or three business days?

12 THE DEFENDANT: The gentleman I spoke  
13 to yesterday said he was going to install it  
14 today.

15 THE COURT: So you want me to make  
16 that effective today or tomorrow?

17 THE DEFENDANT: That would be fine with  
18 me your Honor. I won't use them until I  
19 have the interlock dice.

20 THE COURT: So do you want me to  
21 please put tomorrow or today's date?

22 MR. SERRAT: Today or tomorrow?

23 THE DEFENDANT: Today is fine.

24 THE COURT: Okay that's fine.

25 Actually I think Mr. McGlynn said he was

1 going to be here right at 8:30 but he's not  
2 here but I guess he will be coming with the  
3 order for me to sign in just -- another  
4 order for me to sign. And that will be on  
5 the 2012 Chevrolet; that's the only vehicle  
6 you'll be operating?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Okay. And are you  
9 requesting privileges to go to your  
10 Probation appointments?

11 MR. SERRAT: And AA, your Honor.  
12 Treatment counseling treatment and AA  
13 treatment.

14 THE COURT: Does he go to one site  
15 for his AA meetings? The Court has to have  
16 all of that information written in this  
17 report. I have a huge docket.

18 MR. SERRAT: I know, I know, I know.

19 THE COURT: So if you want to write  
20 out that information then I'll continue it.  
21 And I'll handle some other matters. Some  
22 people have been here since 8:30.

23 If there are particular AA meetings that  
24 you go, that's fine. I'm going include it  
25 because you have the on alcohol monitoring

1 device, and you're going to have the  
2 interlock device but I have to write it in  
3 this order. So as soon as you give me the  
4 particulars, I'll recall the case in just a  
5 few seconds. I promise.

6 Call Kevin McGlynn in the Probation  
7 Department. He needs to be here on this  
8 matter. He was supposed to be here.

9 \*\*\*\*\*

10 THE COURT: I would like to recall  
11 Mr. Frederick Philhower's case. It's an  
12 add-on to the docket, 2012TRC030161.

13 Mr. Philhower --

14 It's okay. He can step forward.

15 -- I'm granting your motion for  
16 occupational driving privileges. We know  
17 that Attorney Jamie Serrat was here earlier.  
18 Okay. And so your license was suspended  
19 from May 5, 2012 until May 5, 2015. Your  
20 motion for occupational privileges is  
21 granted subject to the following terms: The  
22 employer's name and address, Center Tyler  
23 Auto Body and Service, Inc. Located at 8700  
24 Tyler Boulevard in Mentor Ohio. Zip code is  
25 44060. The insurance carrier is Farmers.

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The policy number is 2518424-72-38. The coverage is through July 16, 2012 through January 15, 2013.

Your driving privileges will be granted from today's date as long as the interlock device is on that vehicle. July 25, 2012 through January 15, 2013. Mondays through Fridays, 6 a.m. until 7 p.m. Saturday 6 a.m. until four p.m.

An interlock device shall be installed and maintained on the 2012 Chevrolet Camaro. Vehicle identification number 2G1FT3DWXE9167616. And you have additional driving privileges set to forth in exhibit A. So you can attend AA meetings, 7593 Elmhurst Street; Independence, Ohio on Fridays. There are three hours from 730? You -- 7:30 to 10:30 p.m., 885 West Aurora Road, Northfield, Ohio, Sundays 10 a.m. to 12 -- this should 12 p.m. 6740 Broadview Road, AA meetings, Parma Ohio at St. -- what is this Colum --

THE DEFENDANT: Columbkille.  
THE COURT: Columkil --  
THE DEFENDANT: Columbkille.

1 THE COURT: Thank you. Wednesdays,  
2 7 p.m. to ten p.m. And then the treatment  
3 program at New Hope, 1440 Rockside Road in  
4 Parma Ohio, Tuesdays through Thursdays, from  
5 6 p.m. to 9 p.m.

6 You also have permission to drive to and  
7 from the Probation appointments and you have  
8 to continue wearing the scram, the  
9 continuous alcohol monitoring device until  
10 further order of the Court.

11 If this is correct, sir, then you just  
12 have to sign and date it. And these are the  
13 attachments.

14 Did you need this that your attorney  
15 highlighted? This is just for attachment.

16 THE DEFENDANT: That's your copy, your  
17 Honor.

18 THE COURT: Okay, thank you.

19 Can you just hand --

20 You need to look at it. Make sure it's  
21 accurate and then you just have to sign and  
22 date it.

23 You can hand him those documents.

24 And I need to -- how many AA meetings  
25 are you attending per week?

1 THE DEFENDANT: This includes three.  
2 I've been going to two or three a week.

3 THE COURT: So I'm going to put on  
4 the journal entry two to three per week,  
5 with signature verification to your  
6 Probation officer.

7 THE DEFENDANT: That's fine.

8 THE COURT: Okay.

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Rasean, this was a one-  
11 day pass. I did not get a journal entry. I  
12 need to get a journal entry so I can write  
13 (inaudible). Philhower. They'll hand you the  
14 file. When you get a moment. I'm okay.  
15 After you finish these individuals.

16 UNKNOWN SPEAKER: (Inaudible).

17 THE COURT: Okay.

18 You can hand that to him.

19 All right it's signed -- it needs the  
20 date underneath your name. Who can read  
21 that signature? If you could just date it,  
22 please.

23 THE DEFENDANT: The date is more  
24 legible.

25 THE COURT: Okay thank you, sir.

1           Now if you will just have a seat; this is  
2           going to be journalized in just a few  
3           moments. This will be journalized in just a  
4           moment and then you'll receive a copy. I  
5           don't know how they handle it. You may have  
6           to go down to the Clerk's Office but  
7           Mr. McGlynn will walk you through it, okay;  
8           so you can get your copies and then you will  
9           be able to leave.

10          THE DEFENDANT:            Sorry for the  
11          inconvenience.

12          THE COURT:                Oh no it's quite all  
13          right. Just have a seat, Mr. McGlynn is  
14          going to handle --

15                 You need this Mr. McGlynn?

16          MR. MCGLYNN:               Yes, I need  
17          to fax that. And I can wait for the  
18          journalization.

19          THE COURT:                Okay. Or do you want --  
20          do we call you? He has -- and then what do  
21          you do? Do you have -- you're going to put  
22          the start date and the end date?

23          MR. MCGLYNN:               I can, yes.

24          THE COURT:                Which is just these  
25          dates on this journal entry.

1 MR. MCGLYNN: I got you.

2 THE COURT: And then you are going  
3 to say see attached journal entry?

4 MR. MCGLYNN: I'll do it at the  
5 top.

6 THE COURT: Good job. Shall I --  
7 now these are the attachments to the  
8 occupational driving privileges order which  
9 Rasean is getting ready to journalize. He  
10 also journalizes and then -- but you've got  
11 to put the dates.

12 MR. MCGLYNN: Yes.

13 THE COURT: Mr. McGlynn, thank you.

14 MR. MCGLYNN: You're welcome,  
15 judge.

16 - - -

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## C E R T I F I C A T E

1  
2  
3 State of Ohio, )  
4 County of Cuyahoga, ) SS:  
5 City of Cleveland. )

6 City of Cleveland, )

7 V. )

8 Frederick J. Philhower. )  
9

10 I, Marva M. Wilson, court reporter, do hereby  
11 certify that as a reporter employed by the Cleveland  
12 Municipal Court, I took down in stenotype all of the  
13 digitally recorded proceedings in the above-captioned  
14 case on the date set forth; that I have transcribed  
15 my said stenotype notes into typewritten form as  
16 appears in the foregoing transcript of the  
17 proceedings; that said transcript is a complete  
18 record of the digitally recorded proceedings had in  
19 the hearing of said case and constitutes a true and  
20 correct transcript of the digitally recorded  
21 proceedings had therein.

22 Dated this 7th day of November, 2014.

23  
24 

25 \_\_\_\_\_  
Marva M. Wilson

---

12-13-12 Transcript

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

1  
2 THE COURT: Frederick Philhower's  
3 case.

4 Counsel, there is a Probation report  
5 here. Would you like to take a look at  
6 that?

7 MR. SERRAT: Sure, Judge.

8 THE COURT: You may approach.  
9 That's fine. Do you want me to recall in a  
10 few moments so you can look at it or --

11 MR. SERRAT: I spoke with  
12 (inaudible) I kind of know what it says so  
13 we're good, Judge.

14 THE COURT: That's fine.

15 MR. SERRAT: For the record, your  
16 Honor, Jaime Serrat, S-E-R-R-A-T; 696-2150  
17 on behalf of Mr. Philhower.

18 THE COURT: Good morning. This is  
19 docket number 12. This is a motion to  
20 remove the SCRAM device, to remove the  
21 interlock device and to amend driving  
22 privileges.

23 MR. SERRAT: It is, your Honor.

24 THE COURT: Is there anything you  
25 would like to say?

1 MR. SERRAT: Judge, I simply want to  
2 state that the facts I presented in my  
3 motion are corroborated by the report and  
4 the Probation Officer. I have not read the  
5 report, you just gave to me but I spoke to  
6 both of them, his old Probation Officer as  
7 well. He only recommends -- are you telling  
8 me I should read his recommendation?

9 Because he had -- he had -- he just switched  
10 probation officers. I spoke to --

11 THE COURT: I don't go by the  
12 recommendation whatsoever. I am going by  
13 the facts of this case --

14 MR. SERRAT: Okay.

15 THE COURT: -- his criminal record  
16 and how he's doing and if there is an  
17 accident involved in this matter, but I will  
18 certainly listen. They're not supposed to  
19 be making any recommendations to the judges  
20 but --

21 MR. SERRAT: Fair enough, Judge.

22 THE COURT: -- but I will certainly  
23 listen to everything you would like to say.

24 MR. SERRAT: Thank you, Judge. As  
25 you know, the Court was kind enough to allow

1 Mr. Philhower to remain gainfully employed.  
2 He's done so. We've attached a letter from  
3 the employer indicating the numbers of hours  
4 that he works. The Court asked  
5 Mr. Philhower to attend AA meetings. He's  
6 gone way beyond what the Court recommended,  
7 with attached documentation demonstrating  
8 that as well. The Court also indicated that  
9 Mr. Philhower continues with counseling.  
10 He's done that as well. Actually he  
11 successfully completed the program that the  
12 Court asked him to attend. He continues to  
13 do that as well. He's married. The wife is  
14 here in the courtroom to support him as  
15 well. He takes care of his daughter.

16 Judge, I simply want to state that  
17 economically this has really taken a toll on  
18 him. I think the amount is over -- any way  
19 it's a lot of money and, and that's one of  
20 the main reasons we're asking the Court to  
21 consider that. It's over four hundred  
22 dollars a month I think, Judge. And that  
23 money could be used for family and other  
24 things.

25 In summary Judge, he has done everything

1 the Court asked him to do and then some. He  
2 knows, how serious this was. He's -- the  
3 whole family, not just Fred has taken this  
4 into account and they are all going through  
5 a rehabilitation process. And it's been  
6 very successful, Judge.

7 THE COURT: So in essence you are  
8 asking the Court to remove the continuous  
9 alcohol monitoring device and remove the  
10 interlock device where there were two  
11 victims in this case and a second O V I  
12 conviction in his lifetime with no guarantee  
13 of his safety or the victims. May I have  
14 the probation report back?

15 MR. SERRAT: Sure. I agree with the  
16 Court there were two victims. There was no  
17 -- there was -- for what it's worth, Judge,  
18 it was physical damage only to the vehicles.

19 THE COURT: There wouldn't be  
20 physical damage had he not been operating a  
21 motor vehicle under the influence of alcohol  
22 and/or drugs. And his second O V I  
23 conviction in his lifetime without any  
24 regard to himself, those individuals or  
25 their property. There have to be some type

1 of devices to protect him from himself and  
2 to protect the community. Now I'm not  
3 saying he has to have all of these devices  
4 continuing but the Court is still not going  
5 to give him carte blanche driving  
6 privileges, to operate a motor vehicle 24  
7 hours a day. I'm not going to do that. And  
8 he's only been on Probation -- he hasn't  
9 been on Probation to the Court for a year.  
10 Not even a year. He was just sentenced by  
11 the Court --

12 MR. SERRAT: Six months, Judge;  
13 approximately,

14 THE COURT: Six months. I don't  
15 believe that the urinalysis test results --

16 Did you have a urinalysis test on  
17 December 11th?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Your  
20 Probation Officer has not attached that  
21 information, I believe, to this record so we  
22 will have to call deputy chief to get that  
23 information. I have to have that before I  
24 can make a ruling. I'm sorry. They should  
25 have attached it but it's not here. And

1           probably what the Court will do is maybe  
2           have the SCRAM device -- allow that to be  
3           removed. I understand the financial burden  
4           of that but I will not remove the interlock  
5           device. I cannot do that. So at least  
6           there is something in place, in case you try  
7           to operate a motor vehicle under the  
8           influence or having consumed any alcohol.  
9           But I also need the urinalysis test results,  
10          so I'm going to ask the deputy bailiff to  
11          call Dean Jenkins, X4733. The Probation  
12          Officer is Mr. David Barker. He should have  
13          had it here; it's not here but if you tell  
14          Dean --

15          THE BAILIFF:                Okay.

16          THE COURT:                 -- that we need the  
17          urinalysis test results from December the  
18          11th. They're not here. Find out when they  
19          can bring it up to the courtroom, how long  
20          will it take.

21          THE BAILIFF:                Okay.

22          THE COURT:                 And then I can recall  
23          it back.

24          MR. SERRAT:                 Thank you, Judge.

25          THE COURT:                 You're welcome.

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THE COURT: I would like to recall docket number 12, Frederick Philhower's case.

MR. SERRAT: Good morning once again, your Honor.

THE COURT: Good morning. The Probation Department placed had it in another folder and said please attach this to Mr. Philhower's -- I was not aware of that but the urinalysis tests from December 11th are all negative, and I will certainly show you that.

So I'm willing to allow the continuous alcohol monitoring device to be removed. I understand the costs but I will not allow the interlock device to be removed. So I don't know where Mr. Philhower is with respect to that issue.

MR. SERRAT: Well Judge, what he would like if at all possible, because the winter is coming he's going to be driving a van to work and or would like us to transfer to this other vehicle that he drives during the winter; if at all possible. I think

1           it's 80 bucks a piece, I think they have  
2           two of them. One car is just going to sit  
3           in the garage and not be driven at all would  
4           be -- if the Court is not going to remove  
5           it, we're asking that it be replaced with  
6           the other vehicle.

7           THE COURT:                    So you're indicating  
8           that with the prior driving privileges,  
9           which is good through January 15th of  
10          2013 --

11          MR. SERRAT:                   Correct.

12          THE COURT:                   -- and that was with  
13          respect to the Chevrolet Camaro --

14          MR. SERRAT:                   Correct.

15          THE COURT:                   -- I believe. And what  
16          is the defendant's request at this time?

17          MR. SERRAT:                   That the Camaro, the  
18          Camaro be substituted for a van, a 2003  
19          Chevy van.

20          THE COURT:                   And does Mr. Philhower  
21          has the insurance information on that  
22          vehicle?

23          MR. SERRAT:                   It's here somewhere,  
24          Judge, because I know I have it. The answer  
25          is, yes. If the Court gives me a minute.

1 THE COURT: And whose vehicle is  
2 that? That's the defendant's vehicle?

3 MR. SERRAT: I couldn't hear you,  
4 Judge.

5 THE COURT: There's a 2012 Camaro  
6 and he's asking that the interlock device be  
7 removed from that and placed on this other  
8 vehicle? And who is the owner of the 2003?

9 MR. SERRAT: He is, Judge. He  
10 doesn't want to drive the Camaro in the  
11 winter. He's going to store it and drive  
12 the van. May I approach, your Honor?

13 THE COURT: Certainly.

14 MR. SERRAT: 2002, Judge. There's  
15 the declaration page. (Inaudible) the Camaro  
16 and the van.

17 THE COURT: What is this about  
18 interlock on both vehicles? There's not an  
19 interlock on both vehicles.

20 MR. SERRAT: No, no, no. He had --  
21 he thought he wouldn't have a choice. I'd  
22 ask that I would ask you if he could -- just  
23 to save money because he does not drive the  
24 Camaro. He just drive the van. That's what  
25 he would prefer. It's a safety issue. The

1 Camaro is just not --

2 THE DEFENDANT: (Inaudible).

3 THE COURT: And so this declaration  
4 or this insurance declaration is through  
5 January 15, 2013. So you're asking for  
6 these privileges just to that date.

7 MR. SERRAT: And then we will  
8 supplement it with -- it gets renewed,  
9 automatically renewed. I don't have the  
10 file in here yet but we will.

11 THE COURT: I will re-write the  
12 order and if the information is the same --  
13 I see the policy number is the same so these  
14 will just be through January 15, 2013. But  
15 when are you going to have the interlock  
16 placed on this other vehicle, the 2002  
17 Chevrolet truck, Venture van? So when  
18 will -- when will the privileges began?

19 MR. SERRAT: He's been in contact  
20 with them. They know we're coming here  
21 today. They are waiting for a phone call.  
22 It could be -- as soon as they can do it.  
23 It could be today or tomorrow.

24 THE DEFENDANT: (Inaudible) we didn't  
25 want to do anything without your okay first.

1 THE COURT: And so everything else  
2 is the same, Mondays through --

3 MR. SERRAT: Yes.

4 THE COURT: You still work at  
5 Center Tyler Auto Body and Service?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: At 8700 Tyler  
8 Boulevard; Mentor, Ohio. Farmers Insurance,  
9 policy number 25184247238. And these  
10 privileges, what date are you asking these  
11 to begin? Is it going to be transferred  
12 today or tomorrow? I don't know. I have to  
13 put a date.

14 MR. SERRAT: Tomorrow, Judge.

15 THE COURT: So that would be  
16 December 14th through 2012 through January  
17 15th of 2013. Mondays through Fridays.  
18 This is the same, 6 a.m. until 7 p.m.;  
19 Saturdays, 6 a.m. until 4 p.m.

20 MR. SERRAT: Judge, yea, everything  
21 else will remain the same.

22 THE COURT: And what is this  
23 regarding additional driving privileges?  
24 What was this for?

25 MR. SERRAT: He wanted to attend

1 different meetings, Judge, not listed.

2 THE COURT: For all of these AA  
3 meetings?

4 MR. SERRAT: Correct.

5 THE COURT: And do you have any  
6 signature verification attached to this  
7 Probation report indicating that you've gone  
8 to any of these AA meetings?

9 MR. SERRAT: Yes, Judge. We  
10 submitted that in the motion.

11 THE COURT: No. Since then. If I  
12 am going grant you know -- your Probation  
13 Officer should have some verification. And  
14 so what is this request for driving  
15 privileges? I mean for these AA meetings?  
16 What are we talking about here? How many  
17 are you attending?

18 THE DEFENDANT: It varies, your Honor.  
19 I go to a minimum of three a week as the  
20 Court ordered. (Inaudible)

21 THE COURT: The more you are  
22 involved also. And there are two victims  
23 out here.

24 THE DEFENDANT: Yes, Judge, your Honor.

25 THE COURT: At the time of

1           sentencing, I didn't order any AA meetings  
2           whatsoever. I always go by what the  
3           professionals recommend in the assessment  
4           but I never wrote on the journal entry that  
5           you were required to attend. I'm not saying  
6           -- if they help you then that's good. But  
7           on the journal entry I never ordered -- so  
8           when say the Court ordered AA meetings; that  
9           is not true. I just say complete intensive  
10          outpatient and outpatient aftercare based  
11          upon your formal assessment recommendations.  
12          So -- you know you'll just have to get  
13          someone until you come back shortly after  
14          the 15th of January -- since you don't have  
15          -- when I sentenced before there was some  
16          guarantees with that continuous alcohol  
17          monitoring device. That's going to be  
18          removed today so you'll have to find  
19          somebody to help you go to the AA meetings.  
20          I will grant you the privileges to go to and  
21          from your job as noted and note that an  
22          interlock device should be installed and  
23          maintained on the 2000 --

24          MR. SERRAT:                   Two, Judge.

25          THE COURT:                   Two Chevrolet truck,

1           vehicle identification number,  
2           IGNDX03E02D309328 at all times; and that you  
3           do have permission to drive to and from your  
4           Probation appointments. How often do you  
5           see your Probation Officer, Mr. Barker?

6           MR. SERRAT:               Once a month, your  
7           Honor.

8           THE COURT:                So that's monthly. He  
9           sees Mr. Barker and then the SCRAM device,  
10          the continuous alcohol monitoring device  
11          shall be removed.

12          MR. SERRAT:                Great.

13          THE COURT:                Until he comes back.  
14          And then I will -- when I allowed all of  
15          that before is because you had the  
16          continuous alcohol monitoring. That's  
17          coming off, so you'll have to find someone  
18          to help to you go to the AA meetings, but  
19          you certainly can go to and from work and  
20          the Probation Department. I'm not granting  
21          like three or four, five AA meetings per  
22          week.

23                 Is there anything else.

24          MR. SERRAT:                No, Judge. Thank you  
25          very much.

1 THE COURT: You're welcome. Do you  
2 need a date to come back after the  
3 privileges --

4 MR. SERRAT: Absolutely. I mean --

5 THE COURT: What date would you  
6 like. Because he is going to have to sign  
7 this order and I have to write it and I have  
8 a lot of people waiting for their cases to  
9 be heard and I do have a meeting.

10 MR. SERRAT: Whatever day the Judge  
11 wants will be good, Judge.

12 THE COURT: Well this insurance  
13 document says it expires on --

14 MR. SERRAT: -- the 13th so it has  
15 to be on the 14th. Some where around --  
16 right around then, Judge. We will have the  
17 paperwork before then obviously.

18 THE COURT: Sure. I do not have a  
19 criminal docket on the 14th of January. The  
20 docket prior to that will be -- there is a  
21 criminal docket on January 10th. I don't  
22 know if he will have the insurance  
23 information January 10th or not.

24 MR. SERRAT: We will, Judge, yea.

25 THE COURT: Do you want that date?

1 MR. SERRAT: Yea, we do.

2 THE COURT: Continued at the  
3 defendant's request for a motion hearing,  
4 January 10, 2013. What time?

5 MR. SERRAT: Earlier the better,  
6 Judge.

7 THE COURT: At 8:30?

8 MR. SERRAT: That would be great.

9 THE COURT: At 8:30. And then you  
10 need to kind of narrow this down about the  
11 AA meetings. If I'm going to let you drive,  
12 I'm not going to permit it for like three,  
13 four, five, six a week, but if you can  
14 narrow it down and then --

15 MR. SERRAT: I will.

16 THE COURT: -- you can do something  
17 like that and then maybe friends can help  
18 you and then maybe I could do like one or  
19 two a week or something like that.

20 MR. SERRAT: Got it.

21 THE COURT: I can include that on  
22 the next Court order.

23 MR. SERRAT: Thanks, Judge.

24 THE COURT: You're welcome. He'll  
25 have to sign this order as soon as I finish

1 writing it.

2 MR. SERRAT: Got it, Judge.

3 THE COURT: It will be a few  
4 moments.

5 MR. SERRAT: Thank you, judge.

6 THE COURT: You're welcome. And  
7 then I'll give the insurance information  
8 back in just a few moments.

9 MR. SERRAT: Judge, I have an extra  
10 copy. (Inaudible) the file.

11 THE COURT: We'll attach to the  
12 driving privileges order.

13 MR. SERRAT: Okay.

14 \*\*\*\*\*

15 THE COURT: This is recalling  
16 Mr. Fredrick Philhower's case.

17 Mr. Philhower the bailiff will provide  
18 you with the occupational driving privileges  
19 order. You can review it, make sure it's  
20 accurate and then you have to sign and date  
21 it. So you review it sir.

22 Mr. Richard Oriti is on his way to the  
23 courtroom. I have to sign the interlock  
24 order also but you need to make certain it's  
25 accurate, okay. Sign and date it.

1                   And the interlock device on the 2012  
2 Camaro, I have shall be removed and placed  
3 on the 2002 Chevrolet tomorrow. Right?  
4 December 14th; is that right?

5 THE DEFENDANT:           Yes, that's right, your  
6 Honor.

7 THE COURT:               Okay. You look through  
8 it make sure it's correct and then you just  
9 have so sign and date it.

10                   (Inaudible) journalize. This needs to  
11 be journalized and then maybe by the time  
12 she finishes, maybe       Mr. Oriti will be  
13 here.

14                   I noted on your case, Mr. Philhower,  
15 that when you return on January 10th, you'll  
16 have to have a new urinalysis test and  
17 you'll pay for that. Your probation officer  
18 will help you with that. That will be for  
19 your new request for driving privileges.

20                   And when you come back as I stated  
21 before on the 10th, then maybe you can  
22 provide a list of AA meetings that you  
23 really really want to drive but I won't be  
24 able to give privileges you know like five,  
25 six, but --

1 THE DEFENDANT: I do want (inaudible).

2 THE COURT: -- but YOU narrow it  
3 down, and then when you come back on the  
4 10th, I can include that, okay.

5 THE DEFENDANT: (Inaudible).

6 THE COURT: Okay, that sounds good.  
7 Mr. Oriti should be here in just a moment.

8 You know that whole process about -

9 THE DEFENDANT: (Inaudible).

10 THE COURT: He just walked in the  
11 door.

12 Hi, Mr. Oriti.

13 MR. ORITI: Good afternoon, your  
14 Honor.

15 THE COURT: Good afternoon. For  
16 Mr. Philhower, the continuous alcohol  
17 monitoring device can be removed today.  
18 That's on the journal entry. But he does  
19 have the interlock device remain but he  
20 wants the interlock device transferred from  
21 the 2012 Chevrolet to the 2002.

22 MR. ORITI: (Inaudible).

23 THE COURT: And that's to take  
24 place tomorrow. His new privileges with the  
25 2002 vehicle actually start tomorrow. She's

1           journalizing this. There is quite a bit to  
2           journalize.

3           MR. ORITI:                   (Inaudible).

4           THE COURT:                 Yes, please.

5           MR. ORITI:                   Permission (inaudible).

6           THE COURT:                 Yes.

7           MR. ORITI:                   (Inaudible). Interlock  
8           reports they're good but they have been  
9           off-line for three days, the agency.  
10          Inaudible.

11          THE COURT:                 Why didn't anyone tell  
12          me?

13          MR. ORITI:                 I don't know if he  
14          knows because the last time it was  
15          calibrated he was good. But they haven't  
16          been able to furnish any reports for the  
17          last three days.

18          THE COURT:                 Oh. We have problem  
19          here. Are you saying because they had a  
20          problem with their computer system?

21          MR. ORITI:                 Yes, that's correct.

22          THE COURT:                 And you don't know  
23          what's going on?

24          MR. ORITI:                 Not (inaudible) short  
25          period, no.

1 THE COURT: So they still don't  
2 have any information as of today?  
3 MR. ORITI: As of today, they do  
4 not have any information.  
5 THE COURT: So why are we using  
6 this company?  
7 MR. ORITI: I just discuss that  
8 with the chief and Mr. Jenkins (inaudible)  
9 something is very wrong; very, very wrong.  
10 I've never had an agency where I could get a  
11 hold of them.  
12 THE COURT: And you're saying you  
13 can't even reach them?  
14 MR. ORITI: No. I can't reach them,  
15 e-mail, phone, anything.  
16 THE COURT: Well, why are we --  
17 MR. ORITI: I left messages. This  
18 is the first instance in (inaudible)  
19 aberration.  
20 THE COURT: So what are we doing?  
21 Were not going with a company that you can't  
22 reach.  
23 MR. ORITI: (Inaudible).  
24 THE COURT: Well then -- okay --  
25 MR. ORITI: (Inaudible).

1 THE COURT: We need to let his  
2 attorney know.

3 Mr. Philhower, I'm just now being  
4 informed by Mr. Richard Oriti that --

5 What is it called, the Guy --

6 MR. ORITI: The Interlock Guy  
7 Company.

8 THE COURT: The Interlock Guy  
9 Company, sir, for some reason our Probation  
10 staff is not -- the Probation Department  
11 cannot get in touch with anyone from the  
12 Interlock Guy Company?

13 Is that what it's called?

14 MR. ORITI: That's correct, your  
15 Honor.

16 THE COURT: And that's been for  
17 three days. So they are not able to  
18 download any information. We don't know how  
19 you are doing. Is that -- that's the  
20 problem.

21 Why was there anything in the Probation  
22 report? I don't believe -- did I -- is it  
23 over there? I think I still have it.

24 I don't think there was anything in the  
25 report advising this Court of this problem

1           when his attorney was present. So we will  
2           need contact your attorney. But the Court  
3           is not going to allow you to go with this  
4           company. Now there are other companies --  
5           MR. ORITI:                Absolutely, your Honor.  
6           THE COURT:             And the Court, I don't  
7           -- it doesn't matter to me what company you  
8           use. I leave that up to Probation. I hope  
9           that they handle it equitably and they use  
10          all these different companies and let you  
11          pick your company. It doesn't matter to me.  
12          But the Interlock Guy Company we can't reach  
13          anybody by phone, by e-mail. They're not --  
14          it's a company we cannot use. We probably  
15          need to let --

16                 Do you have a problem changing to  
17          another company?

18          THE DEFENDANT:         Absolutely --  
19          absolutely not --

20          THE COURT:             Do you want your  
21          attorney to get involved with this?

22          THE DEFENDANT:         I'm sorry.

23          THE COURT:             Because he didn't know  
24          about this. Attorney Serrat doesn't know  
25          anything about this, because I didn't know

1 anything about it.

2 THE DEFENDANT: -- I didn't know --  
3 there's been other -- and I mentioned that  
4 to Attorney Serrat and he said this is not  
5 the place to bring that up. There's been a  
6 lot of problems. Some --

7 THE COURT: Such as what?

8 THE DEFENDANT: The device keeps  
9 locking me out of my car. And very  
10 coincidentally it seems to lock me out of my  
11 car when I have a Probation appointment  
12 which -- I'm just telling you the facts,  
13 your Honor. So it happened last month and  
14 it happened again this month and I've been  
15 trying to contact somebody at the interlock  
16 Guy Company since then. I don't know how  
17 the data part works. I only know how the  
18 car part works.

19 THE COURT: So are you saying every  
20 time you have a date in Court that you can't  
21 get into your vehicle?

22 THE DEFENDANT: What I said, your Honor  
23 is when I have to go to see my Probation  
24 Officer, the device seems to get real  
25 screwy. And last month I get up to go to my

1 Probation Officer, I go to start my car and  
2 I'm locked out. It won't start. I get on  
3 the phone. They have an emergency line.  
4 Long story short, I had to scramble for a  
5 ride. More stress on other people.

6 I'm not -- I hope I'm making this point.  
7 I understand what I did and it's bad and  
8 could have been worse. I'm not here so much  
9 for myself. It's just the stress it's  
10 putting on other people. That is more true  
11 than not. And so I scrambled to get a ride,  
12 to get over to Probation officer, and I get  
13 a ride to work and (inaudible). This has  
14 been going on and on and on.

15 THE COURT: Well --

16 THE DEFENDANT: It's so -- there's been  
17 -- I don't know want to sound whiny. I'm  
18 grateful not to be in jail. I am. But it  
19 has been -- it has not been easy with any of  
20 it and --

21 THE COURT: Well 00.

22 THE DEFENDANT: I thought you guys just  
23 did it that way because --

24 THE COURT: I don't -- this is the  
25 first time I am hearing of this. I have

1 never ever heard --

2 Have you heard of this?

3 MR. ORITI: No, your Honor. As  
4 matter of fact the agency in question, has  
5 been a long standing agency we've used over  
6 several years. As of Monday, they informed  
7 me that all of Mr. Philhower's records were  
8 good. At which time I had requested  
9 (inaudible) a confirmation of those  
10 printouts. Since that afternoon, I have  
11 made an assessment call, etc. And they have  
12 been totally nonresponsive.

13 THE COURT: Well how am I granting  
14 privileges and I don't have any accurate  
15 information?

16 MR. ORITI: The SCRAM device, I  
17 believe you did --

18 THE COURT: I have that but I don't  
19 have it about the interlock.

20 MR. ORITI: That's correct.

21 THE COURT: And I have granted the  
22 request for the SCRAM device to be removed  
23 because of the -- he's done well so far in  
24 the last six months and due to the financial  
25 burdens on his family. But I don't have any

1 information -- you know I'm relying on a  
2 Probation Officer who is giving me  
3 information that's not up to date. I'm  
4 upset about it. And you know -- I shouldn't  
5 say too much about it. But when he says no  
6 violations have been reported, I'm assuming  
7 you have an up-to-date report.

8 And I think Mr. Barker is misleading the  
9 Court. I'm going to get off the bench and  
10 call Mr. Krakowski immediately. Because if  
11 I don't have -- and here I am granting  
12 privileges --

13 Can you just turn on the air condition.  
14 It is just too hot in this courtroom.

15 -- there could be a violation or it  
16 could be just fine but the Court doesn't  
17 know. Why Mr. Barker would tell me that  
18 this is current and up to date and it's not,  
19 is inappropriate. It's wrong to the --  
20 Mr. Philhower, his attorney has already left  
21 the courtroom. And when you make a phone  
22 call, they don't even answer the telephone.  
23 MR. ORITI: The voicemail box says  
24 it's full and when they get back, they'll  
25 return your call and we haven't had a

1 response in the last three days.

2 THE COURT: And you know all of  
3 this because you were trying to prepare a  
4 report for today but then nobody puts that  
5 into the report to the Court?

6 So does the Probation Department have  
7 other companies --

8 MR. ORITI: Yes, your Honor.

9 THE COURT: -- that are reliable?

10 MR. ORITI: Several.

11 THE COURT: What is the date of the  
12 last report that Mr. Barker received?

13 MR. ORITI: It should be attached.  
14 It should be somewhere in the report there.  
15 (Inaudible) Mr. Philhower approximately four  
16 months now (inaudible).

17 THE COURT: The last report here is  
18 September where Mr. Barker wrote there have  
19 been no violations. The Court is assumes  
20 it's based upon something - I'm just going  
21 to get off the bench. I've had enough.  
22 This is outrageous.

23 You can have a seat, sir.

24 THE COURT: Mr. Philhower,  
25 Mr. Krakowski is going to contact the

1 Probation Department, and whoever else he  
2 needs to contact, The Probation Officer and  
3 whoever else to find out why I don't have  
4 anything for the balance of September,  
5 nothing from October, nothing from November  
6 and nothing from December.

7 He claims that he was aware since Monday  
8 that they haven't been able to get in touch  
9 with this company, the Probation Department,  
10 but cannot -- he wants to research to figure  
11 out why current records from the balance of  
12 September, October, November, December  
13 haven't -- were not attached.

14 I'm not able to grant you privileges  
15 until this has been resolved. I don't have  
16 any problem calling Attorney Serrat to  
17 advise him of what has transpired here. The  
18 Probation Department has put you and the  
19 Court in a bad position so you don't have  
20 any driving privileges until they give me  
21 the records for the balance of September,  
22 October, November, and December.

23 And your Probation Officer -- but maybe  
24 he has them and just didn't attach them to  
25 the record. That could be. And that's a

1 good thing if they can find those records  
2 but I don't understand. They say that --  
3 they say the records are attached -- the  
4 reports are attached to the record but  
5 they're not. And if they haven't received  
6 any records since the end of September, I  
7 should have been notified by a blue form  
8 months ago.

9 But I haven't been so it -- maybe  
10 everything is okay I just don't know. But I  
11 will let Attorney Serrat know that you are  
12 kind of in a holding pattern until this  
13 Court gets the information. Sadly enough I  
14 can't generally rely on this reports that  
15 come from the Probation Department  
16 especially when they are written like this.

17 THE DEFENDANT: May I speak?

18 THE COURT: You may. But do you  
19 want to say anything without Attorney Serrat  
20 -- I don't know if you should do that.

21 Don't say a word.

22 THE DEFENDANT: Judge, (inaudible).

23 THE COURT: Do you have your phone?

24 THE DEFENDANT: I do.

25 THE COURT: You can call him from

1 courtroom if you like. You may call him --

2 THE DEFENDANT: Okay.

3 THE COURT: -- from the courtroom  
4 if you like. It's okay.

5 THE DEFENDANT: All right.

6 THE COURT: And then he might need  
7 to come back. I mean everything will be  
8 okay if Probation can give me some records.  
9 But if the Probation department can't give  
10 me anything since September, then there are  
11 no driving privileges for today. Then you  
12 are in a whole different position. But  
13 hopefully they can find them and they just  
14 weren't attached to the record. I  
15 understand about the problem from Monday.  
16 I've just been informed that. Had it not  
17 been for Mr. Oriti coming to the courtroom,  
18 I wouldn't even have known that because  
19 nobody writes it in this report.

20 THE DEFENDANT: You know the only thing  
21 that is (inaudible) -- we do have the SCRAM.  
22 We have a urine sample. We could reasonably  
23 be confident that there would be no other  
24 violations if this is monitoring me 24/7.

25 THE COURT: The Court expects all

1 documents to be in this courtroom. You want  
2 me to give you driving privileges regarding  
3 that interlock device --

4 THE DEFENDANT: I didn't say that. I  
5 just said that -- you know.

6 THE COURT: The Court -- I will go  
7 with what's reasonably (inaudible) I base my  
8 decisions upon the documentation in front of  
9 this Court.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: If I ordered an  
12 interlock and I don't have the report from  
13 the interlock device from these months,  
14 there's a problem. I'm not saying that you  
15 caused this. I don't think that. I think  
16 that there is a -- I don't know -- I don't  
17 know until they bring the documents because  
18 maybe they are downstairs. And if they're  
19 downstairs that's great. They just need to  
20 bring them up and attached them to the  
21 record. If they don't have any records,  
22 then we have a whole different problem and  
23 your attorney needs to come back to the  
24 courtroom because I will revoke these  
25 privileges. I don't understand why, I don't

1 know but I am going to keep an open mind  
2 until -- Mr. Krakowski said to give him a  
3 few moments. He said he did not realize  
4 that those records were not attached. He's  
5 known about Monday's problem. They didn't  
6 inform the judge but you know. You just  
7 have to have a seat but if you would like to  
8 call Attorney Serrat, that's fine. If you  
9 want me to call him, that's fine. You're  
10 just in awkward position until we can get  
11 the documents.

12 I won't grant privileges until this is  
13 straightened out. But I'm hoping they can  
14 do it in a few minutes.

15 THE DEFENDANT: I will try to get in  
16 touch with him.

17 THE COURT: Sure.

18 THE DEFENDANT: (Inaudible).

19 THE COURT: That's fine.

20 MR. ORITI: Your Honor --

21 THE COURT: Mr. Oriti, I thank you  
22 for letting the Court know.

23 MR. ORITI: -- just to let you know  
24 he hasn't had December. There is no  
25 December record. He has not been calibrated

1 for the month of December yet.

2 THE COURT: No.

3 MR. ORITI: That's August -- you're  
4 talking four documents. August through --

5 THE COURT: I have September. But  
6 I don't have anything for October, November.

7 MR. ORITI: Correct.

8 THE COURT: Or of course December.  
9 So why would I not have anything?

10 MR. ORITI: (Inaudible) December  
11 yet. August, September, October, November  
12 is what you should have in that record.

13 THE COURT: Right but they are --  
14 but maybe their downstairs. I'm hoping  
15 they're downstairs. But thank you. I don't  
16 think you have to wait. Mr. Krakowski said  
17 he is going to try to scramble. I tried to  
18 call Dean first but I couldn't reach Dean.  
19 It went to voicemail. He's probably at  
20 lunch or something but I don't want you to  
21 have to wait.

22 MR. ORITI: That's all right, your  
23 Honor. We will be working on that  
24 downstairs --

25 THE COURT: Thank you.

1 MR. ORITI: -- to see if we can  
2 obtain those records.  
3 THE COURT: Okay.  
4 MR. ORITI: You did receive the  
5 SCRAM report, your Honor?  
6 THE COURT: The SCRAM -- I told  
7 Mr. Krakowski, this is good. The SCRAM goes  
8 right up through December 20th. The SCRAM  
9 is great. I just don't have anything --  
10 MR. ORITI: Right.  
11 THE COURT: -- since September on  
12 the --  
13 MR. ORITI: Interlock.  
14 THE COURT: Yes.  
15 MR. ORITI: I understand, your  
16 Honor.  
17 THE COURT: Thank you, sir.  
18 \*\*\*\*\*  
19 THE COURT: This is recalling  
20 Mr. Fredrick Philhower's case.  
21 MR. SERRAT: Thank you, Judge. I  
22 had the opportunity through due diligence to  
23 inquire about the Court's request. I spoke  
24 with who appears to be an owner of the  
25 company, a Sherrie Schumann. I spoke to her

1 by phone. She is in a motel in Cincinnati  
2 and I told her that -- she gave me her phone  
3 number, her cell phone. That you may be  
4 calling her. I didn't tell her you would  
5 but that's a possibility. But she's faxing  
6 the reports to my office as we're speaking,  
7 Judge. (Inaudible) she has the capability to  
8 do that. My office is across the street in  
9 the Standard Building.

10 With the Court's permission I can go  
11 over there in a moment. But would you like  
12 to at least put on the record, her name is  
13 Sherrie Schumann. Her cell phone number is  
14 (440) --

15 THE COURT: Are you going to call?  
16 I'm not going to call her.

17 MR. SERRAT: -- 669-773. And she is  
18 familiar with the parties in this case.  
19 (Inaudible). (440)669-7773. I just talked  
20 to her five minutes ago. Sherrie Schumann  
21 or Sueman (phonetic) one of the two.

22 So I'm going to go across the street,  
23 Judge. (Inaudible).

24 THE COURT: Dean Jenkins says he is  
25 going call her too. Ask her to fax them

1           here. And you can get whatever documents  
2           you have, that's she's going to fax you.  
3           That's fine.

4           MR. SERRAT:           Can I go back with them  
5           to see if they're -- and if not I will just  
6           run across --

7           THE COURT:           That's fine. You're  
8           welcome to do that.

9                   Thank you, Dean.

10           \*\*\*\*\*

11           THE COURT:           I would like to recall  
12           Mr. Fredrick Philhower's case.

13                   Counsel, Dean Jenkins has provided a  
14           document from Lifesaver Interlock, I guess  
15           that's the same company as Interlock Guy.

16                   Is that right? Is that the same  
17           company?

18           MR. JENKINS:           Yes.

19           THE COURT:           And this was printed on  
20           Tuesday, December 11 2012. We still don't  
21           know whether the Probation Department  
22           received this information or whether the  
23           Probation Department was monitoring this  
24           case properly on a monthly basis, which they  
25           are supposed to be receiving these reports.

1 But this says the dates covered are from --  
2 you know --

3 So Dean are we still missing a 30-day  
4 period?

5 MR. JENKINS: I think maybe August.

6 THE COURT: Well I see something  
7 here. I see August 29th on one of these. I  
8 see August 29th, and I see something from  
9 September. But this says this is covering  
10 October 2nd through December 11th. So  
11 where is the information that would have  
12 been from the end of September through  
13 October? That's not here. This says dates  
14 covered October 22nd through December 11th.  
15 Unless there is something here for -- I see  
16 September. September, August. I don't --  
17 it's not here.

18 MR. JENKINS: If it's not there, it's  
19 -- then what's the company -- that's what  
20 they sent me.

21 DEFENSE COUNSEL: We asked the company  
22 specifically for September, October,  
23 November, December. That's what we asked.

24 THE COURT: This says from October  
25 22nd. So then you're missing everything

1 from October 22nd prior to that. You don't  
2 have anything from like October first,  
3 through October 22nd. It states covered  
4 October 22nd. So that's part of what's  
5 missing. And this is like October 24th.  
6 I understand but there is still a gap,  
7 unless the beginning part of October is in  
8 these documents.

9 So how is the attorney able to get  
10 through but nobody in the Probation  
11 Department is able to get through?

12 How were you able to get through?

13 MR. SERRAT: Phone number. We  
14 shared phone numbers. I called a technical  
15 Judge, I called a technical --

16 THE COURT: No I'm just wondering  
17 why Probation -- there is nothing I'm going  
18 do. I'm not granting privileges if I don't  
19 have a thorough report. It's not his fault  
20 but that -- this does not cover the dates  
21 for me to grant privileges. That's missing.  
22 I don't know if you can call this person and  
23 tell them to fax you the information from  
24 October. Why don't -- October should be  
25 here any way. As should have been November

1 but I don't know what you can do to assist  
2 him.

3 MR. SERRAT: We both spoke to the  
4 same individual, Judge.

5 THE COURT: Well, why don't you  
6 have information? This is a waste of  
7 everyone's time, and I am not granting the  
8 privileges without the proper information.  
9 It is that simple.

10 So you all can make the phone calls if  
11 you choose or otherwise I am revoking my  
12 order until this is done properly. All they  
13 have to do is provide the information for  
14 the time he has been on the interlock. If  
15 they are missing 30 days why am I going to  
16 do something -- there could have been a  
17 violation during that time period. I don't  
18 know.

19 MR. JENKINS: I can go back and  
20 try --

21 THE COURT: If you have the number  
22 or something. And the other part is -- if  
23 there -- I don't know really who made a  
24 mistake here. I don't know if it's  
25 Probation or this company. I have no idea

1 but if it's this company, there is no reason  
2 for Cleveland Municipal Court to even  
3 present this information to Probationers.  
4 He's already complained. He says it keeps  
5 locking him out of his vehicle whenever he  
6 has a Probation appointment or court date.  
7 I mean I don't know. I don't see anything  
8 about lockouts on here so I don't really  
9 know what you're talking about; I don't  
10 know. But the other part of this is if the  
11 Court grants the privileges, you might have  
12 to consider another company if we're having  
13 all of this --

14 THE DEFENDANT: (Inaudible).

15 THE COURT: -- you know. And I  
16 don't know those companies but I think --

17 MR. SERRAT: Can we set it for  
18 another company for tomorrow?

19 THE COURT: I'm sorry?

20 MR. SERRAT: Can we just schedule  
21 another company tomorrow?

22 THE COURT: He doesn't have any  
23 permission to do so until I know what  
24 happened in October. What if there was a  
25 violation. The Court doesn't know. I want

1           that information, otherwise I'm simply  
2           revoking it. But you can continue it until  
3           tomorrow. I will simply revoke -- what's in  
4           that computer I will write an order revoking  
5           all privileges until the Court has it.

6           It's not your fault. The Probation  
7           Department should have that information.  
8           And you all can do it -- all these people  
9           are waiting. This case has been called on  
10          this docket like five times. I've asked  
11          specifically to have specific information.  
12          It's still not here. I don't see the  
13          beginning of October, to October 22nd  
14          attached to the record.

15          Unless you can find it. I've looked.  
16          I've looked. I mean if you think she can  
17          give you October. If you are able to get  
18          this lady and she can access it.

19          MR. JENKINS:           I will call her one  
20          more time. (Inaudible) --

21          THE BAILIFF:           Judge (inaudible) a new  
22          date.

23          THE COURT:            No, he doesn't have a  
24          new date.

25          THE BAILIFF:           Oh.

1                   You can't leave yet.

2           THE COURT:                   He doesn't have a new  
3           date. I think Dean went downstairs to make  
4           a call, to try to get the October  
5           information. I believe that's what Mr.  
6           Jenkins stated that he was --

7           MR. SERRAT:                   Oh I didn't know.  
8           Okay.

9           THE COURT:                   Oh I'm sorry. I  
10          thought you heard Mr. Jenkins. He said that  
11          he was going to call I guess the same lady  
12          that you talked to earlier, to see if she  
13          can provide the information.

14          MR. SERRAT:                   (Inaudible) Judge I  
15          mean (inaudible).

16          THE COURT:                   Well if he's in  
17          violation, he won't be walking out of this  
18          courtroom but I don't know. And the  
19          Probation Department has not done their job.  
20          I don't know who but Mr. Jenkins said he  
21          should be back here in just a few moments.  
22          He can have a seat.

23          MR. SERRAT:                   Okay. This was not a  
24          Probation Violation Hearing. This is --

25          THE COURT:                   But if I find out about

1           it, yes -- you're asking me to rule on a  
2           motion and I'm going to revoke these  
3           privileges if there's been a violation. I  
4           just don't know.

5           MR. SERRAT:                   Okay.

6           THE COURT:                   We have all been tied  
7           up because of Probation and this company --

8           MR. SERRAT:                   I got you.

9           THE COURT:                   -- all day long.

10          MR. SERRAT:                   Okay.

11          THE COURT:                   But hopefully the  
12          October report will be just fine. I don't  
13          know. But his Probation Officer is supposed  
14          to be monitoring this monthly. I can't  
15          understand why the documents are not in the  
16          case notes in the computer or attached to  
17          the Probation report. But Mr. Jenkins said  
18          he would he was going to call that lady that  
19          you two spoke to earlier.

20          MR. SERRAT:                   (Inaudible) what's  
21          going to happen if he doesn't get it  
22          (inaudible).

23          THE COURT:                   If you want to leave  
24          and come back, that's fine. I never  
25          anticipated it would be this long. I never

1           anticipated the Probation Department would  
2           send up a report that is so improperly done.  
3           Dean Jenkins the deputy chief has been here  
4           most of the day too trying to put things  
5           together that should have been done --

6           MR. SERRAT:                    Okay.

7           THE COURT:                    -- Shari Howell and  
8           David Barker. That report should have never  
9           even been signed off by a supervisor.

10                  They're upset, you know. This is  
11                  ridiculous.

12           MR. JENKINS:                    The tech that was at  
13           Willoughby office is in en route to Akron  
14           to hook up someone else so he's unavailable  
15           to do it. And I talked to someone in the  
16           Berea office and the information that  
17           Willoughby -- so as soon as I can get the  
18           information is when this tech gets back from  
19           Akron back to Willoughby. And he's got to  
20           do an install in Akron.

21           THE COURT:                    Then all I'm going to  
22           do is revoke it. I'm not granting anything  
23           based on this information. It's just that  
24           simple. They can come back on another day  
25           and I will revoke the privileges until I get

1 the proper information because I don't have  
2 it.

3 MR. SERRAT: Judge, do you have a  
4 docket Monday?

5 THE COURT: I have a Project Hope  
6 docket Monday. So you --

7 MR. SERRAT: Project what?

8 THE COURT: Project Hope docket.

9 MR. SERRAT: Sorry.

10 THE COURT: I have that on Monday.  
11 And tomorrow I have a docket and then after  
12 that -- let's see I have a docket

13 MR. SERRAT: You said you have a  
14 docket tomorrow?

15 THE COURT: I do have a docket  
16 tomorrow.

17 MR. SERRAT: How about late  
18 tomorrow? (Inaudible).

19 THE COURT: I don't -- fine but I  
20 -- but he doesn't have any privileges until  
21 then.

22 MR. SERRAT: Well the wife is  
23 outside, I mean -- you're revoking them?

24 THE COURT: Absolutely.

25 MR. SERRAT: -- you are denying my

1 motion.

2 THE COURT: I'm revoking this  
3 because I don't have the information.  
4 Probation should have done this. I mean  
5 look at all these people waiting on this  
6 matter. This is outrageous. You know.  
7 These two Probation officers and a  
8 supervisor downstairs. This information  
9 isn't attached to the record. I don't know  
10 if it's safe to let him drive or not. I  
11 don't know.

12 And what I put in the computer, I'm not  
13 granting that until -- just the motion will  
14 just be held in abeyance until tomorrow.

15 MR. SERRAT: Okay.

16 THE COURT: That's the best I can  
17 do. So the journal entry where I --

18 Why don't the Probation Officer have  
19 nothing from October if they are supposed to  
20 be monitoring this?

21 MR. JENKINS: I'm going to find out  
22 tomorrow morning.

23 THE COURT: I have to redo all of  
24 this. The interlock device shall be removed  
25 and placed on the other --

1 MR. SERRAT: Judge, so we can sleep  
2 better, we have the SCRAM (Inaudible).  
3 THE COURT: Will you just wait a  
4 moment. You're out of control and I'm not  
5 going to accept your attitude like that in  
6 this courtroom. This is not my problem.  
7 I have to figure out how to change all  
8 of this on the journal entry --  
9 Are you able to event this to give me  
10 another journal entry?  
11 THE JOURNALIZER: Yes, sure can.  
12 THE COURT: Do you need the case --  
13 THE JOURNALIZER: (Inaudible).  
14 THE COURT: Thank you. Do you have  
15 the case number or ~~20~~ 2012 --  
16 THE JOURNALIZER: Give me one minute,  
17 your Honor.  
18 THE COURT: Okay. 2012 T R C  
19 030161.  
20 THE JOURNALIZER: That's Philhower?  
21 THE COURT: Mm-hmm.  
22 THE JOURNALIZER: Okay.  
23 THE COURT: Thank you.  
24 THE JOURNALIZER: It will take me one  
25 second.

1 THE COURT: Take your time. Take  
2 your time.

3 On this case you can step up to podium,  
4 Mr. Philhower and Attorney Serrat. Your  
5 case was actually journalized for  
6 January 10, 2013, so we're going to advance  
7 it and place it on the docket for -- you  
8 want it on tomorrow --

9 MR. SERRAT: Absolutely.

10 THE COURT: -- afternoon? And that  
11 would be December 14th. What time would you  
12 like, like two or something in the afternoon  
13 or --

14 Dean, what time do you think? And then  
15 what time -- if everything works out fine,  
16 he wants to get this transferred to another  
17 vehicle. So it shouldn't be too late. I  
18 don't know how long they work on another  
19 company (inaudible).

20 MR. SERRAT: Could we do it around  
21 the noon hour? That give us the whole  
22 afternoon, Judge to do that. I will leave  
23 message with this individual today.

24 MR. JENKINS: I am to have the  
25 information. It's supposed to be on fax

1 machine some time tonight. So --

2 THE COURT: Okay.

3 MR. JENKINS: -- based on that  
4 information we can go at 8:30 in the  
5 morning. I mean but I'm dealing with this  
6 company so I don't --

7 THE COURT: I know. And we're not  
8 going to deal with this company anymore.

9 So you want by 12 o'clock noon tomorrow?

10 MR. SERRAT: Your Honor, I want to  
11 make sure that we have the information in  
12 the court --

13 THE COURT: So what time, counsel?  
14 I have 48 cases tomorrow and I am not  
15 spending four hours on this case tomorrow;  
16 believe me. So what time? And if it's not  
17 here then, they'll have another date in a  
18 week or so but I cannot take -- all of these  
19 people have been waiting. This is  
20 ridiculous. So I don't know what time to  
21 suggest but --

22 MR. JENKINS: Ten o'clock.

23 MR. SERRAT: Ten.

24 THE COURT: All right. So it will  
25 be continued the at defendant's request for

1 a motion hearing regarding the SCRAM device.

2 MR. JENKINS: The interlock.

3 THE COURT: Right because I'm  
4 revoking everything until I have the  
5 information. So the SCRAM device is going  
6 have to remain one more day until you come  
7 tomorrow. I will hear your motion tomorrow.  
8 I'm sorry about this. It is not the Court's  
9 fault. December 14, 2012 at ten a.m.

10 MR. SERRAT: Thank you.

11 THE COURT: I know that Mr. Jenkins  
12 has tried really hard and hopefully we will  
13 have the information from October.

14 MR. SERRAT:

15 THE COURT: If everything is good  
16 for October sir, I am going grant those  
17 privileges like I did today and let you have  
18 the SCRAM device removed, but we need the  
19 October information. And then they'll also  
20 be using another company. It doesn't matter  
21 to this Court which one, and the Probation  
22 Department maybe can give you a list of  
23 various companies. Okay.

24 MR. SERRAT: Thank you.

25 THE COURT: You're welcome.

1                   Excuse me, who is that? Is that the  
2 attorney?

3           THE BAILIFF:                   The attorney said  
4 something. I'm not sure what he said.

5           THE COURT:                    Tell Jason -- tell them  
6 to come back into the courtroom.

7                   What is he saying, Jason? (Inaudible).

8                   What were your comments, counsel?

9           MR. SERRAT:                    That I'll see him  
10 tomorrow.

11           THE COURT:                   All right.

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C E R T I F I C A T E

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State of Ohio, )  
County of Cuyahoga, ) SS:  
City of Cleveland. )

City of Cleveland, )  
V. )  
Frederick J. Philhower. )

I, Marva M. Wilson, court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the digitally recorded proceedings in the above-captioned case on the date set forth; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the proceedings; that said transcript is a complete record of the digitally recorded proceedings had in the hearing of said case and constitutes a true and correct transcript of the digitally recorded proceedings had therein.

Dated this 17th day of November, 2014.



Marva M. Wilson

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1-9-13 Transcript

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1 STATE OF OHIO, )  
2 COUNTY OF CUYAHOGA, ) SS: STOKES, A.R., J.  
3 CITY OF CLEVELAND. )

4 IN THE MUNICIPAL COURT

5 - - -  
6 CITY OF CLEVELAND, )  
7 Plaintiff, )  
8 vs. ) 2012 TRC 030161  
9 FREDERICK J. PHILHOWER, )  
10 Defendant. )

11 - - -  
12  
13 Transcript of digitally recorded proceedings had  
14 Before the Honorable Judge Angela R. Stokes on  
15 Monday, January 9, 2013 in Courtroom 15C.

16 - - -  
17 APPEARANCES:  
18 On behalf of the plaintiff:  
19 Victor R. Perez, Chief Police Prosecutor  
20 By: Ashley Garrett, Asst. Police Pros.  
21 On behalf of the defendant:  
22 Timothy Kucharski, Esq.

23  
24  
25 MARVA M. WILSON

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

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THE COURT: Hello sir. How are you? Just one moment.

Did they bring up Attorney Kucharski's file for tomorrow and a journal entry? Did they bring up?

UNKNOWN SPEAKER: (Inaudible).

THE COURT: I hope so.

UNKNOWN SPEAKER: (Inaudible).

THE COURT: You are so funny. You hope so? I hope so too.

This is an add-on to the docket, Frederick Philhower's case, 2012TRC030161. He has been added to the docket, pursuant to the request of Attorney Timothy Kucharski.

Attor -- you think it's on my docket for tomorrow? I'm trying --

MR. KUCHARSKI: I believe it's on your docket --

THE COURT: It is. For 8:30 tomorrow, for a motion hearing, regarding a motion hearing. Let me see.

MR. KUCHARSKI: And an alleged probation violation.

THE COURT: Oh it's set for a

1 Probation violation hearing?

2 MR. KUCHARSKI: Correct.

3 THE COURT: Oh I'm not changing  
4 that.

5 MR. KUCHARSKI: I'm not here to change  
6 it. I'm not Mr. Philhower's lawyer.

7 THE COURT: I know. I see it's  
8 Jamie Serrat.

9 MR. KUCHARSKI: Right, it's Mr. Serrat.

10 THE COURT: It's set for a  
11 Probation violation hearing. Is that what it  
12 is set --

13 MR. KUCHARSKI: It is.

14 THE COURT: Oh.

15 MR. KUCHARSKI: And I've talked to  
16 Mr. Serrat, I've talked to Mr. Philhower.  
17 And I've tried to explain -- I've actually  
18 spoke to Mr. Oriti about this, and I told  
19 them that I would come up and try to explain  
20 to you what the results on the interlocking  
21 reading --

22 THE COURT: Well, I don't have a  
23 probation report. I don't have anything for  
24 something that's on my docket tomorrow.

25 MR. KUCHARSKI: I recognize that. I'm

1 just trying to tell you -- I know what it  
2 says. It indicates --

3 THE COURT: But I don't have  
4 anything, Attorney Kucharski, even for me to  
5 talk intelligently about this. I just see  
6 that on December 13th it was continued until  
7 tomorrow for a motion hearing. And I'm not  
8 sure what type of motion hearing it is. Let  
9 me see. I think it's about maybe removing  
10 the interlock device. I granted the motion  
11 to remove the scram device on December 13th  
12 but then his attorney wanted to come back  
13 for another motion hearing on January 10th  
14 and I have: "The interlock device shall  
15 remain in affect. See the Court's specific  
16 orders." He does not have privileges to  
17 drive to and from AA meetings. And then I  
18 have: "The interlock device on the 2012  
19 Camaro shall be removed and placed on the  
20 2002 Chevrolet.

21 Now, if there is anything other than  
22 that, I don't know -- I just --

23 MR. KUCHARSKI: And I'm not trying to  
24 --

25 THE COURT: I don't have it --

1 MR. KUCHARSKI: Right now --

2 THE COURT: -- in front me. Why

3 aren't they going to be here tomorrow? Do I

4 --

5 MR. KUCHARSKI: Oh they are going to be

6 here.

7 THE COURT: Okay.

8 MR. KUCHARSKI: I'm not -- everyone in

9 my company is either in the hospital or sick

10 and I'm in trial tomorrow. I talked to

11 Mr. Oriti. I talked to Mr. Serrat. I said

12 I'll come over today and try to explain what

13 the report says because --

14 THE COURT: Well I don't even have

15 the report to do to anything.

16 MR. KUCHARSKI: I, I understand that.

17 THE COURT: So does Attorney Serrat

18 need a continuance?

19 MR. KUCHARSKI: He potentially may

20 because I'm not going to be here and -- but

21 I wanted to explain, and maybe it would be

22 better if we continue it so I could explain

23 this --

24 THE COURT: Well I won't do that

25 until --

1 MR. KUCHARSKI: Okay.

2 THE COURT: -- Attorney Serrat  
3 comes into this courtroom tomorrow.

4 MR. KUCHARSKI: Okay. If you could --

5 THE COURT: And I see the  
6 Probation, so I'll know what's going on. I  
7 know that you made a good faith effort to  
8 certainly try to educate the Court about  
9 this.

10 MR. KUCHARSKI: Right. Because it -- I  
11 don't believe Mr. Philhower is in violation  
12 at all.

13 THE COURT: But -- I had no idea  
14 that --

15 MR. KUCHARSKI: I know you don't.

16 THE COURT: He was -- right. My --  
17 I just thought he was coming for the motion  
18 hearing to remove the interlock. I don't  
19 know anything about a potential violation.  
20 This a shock to the Court.

21 MR. KUCHARSKI: Right. And that's why  
22 I'm telling you -- I'm not looking in -- I'm  
23 trying to avoid an injustice to  
24 Mr. Philhower, being locked up or anything  
25 like that because I can tell you that

1           it's -- while it may appear as though he has  
2           a positive alcohol testing --

3           THE COURT:                   Oh I don't even know  
4           about this.

5           MR. KUCHARSKI:                I know you don't.  
6           That's --

7           THE COURT:                   Oh my gosh.

8           MR. KUCHARSKI:                -- why I am trying to  
9           educate you and tell you --

10          THE COURT:                   I can't wait to see  
11          this Probation report. My gosh.

12          MR. KUCHARSKI:               But, but the results of  
13          the interlock --

14          THE COURT:                   And I can't understand  
15          why the Probation officer didn't send me a  
16          blue form to let me know that there was  
17          positive reading for -- oh I am upset. But  
18          I'll --

19          MR. KUCHARSKI:               And --

20          THE COURT:                   I'm talking about the  
21          Probation Department for not notifying the  
22          Court. I think he's -- just from looking at  
23          the file -- I imagine when I read the  
24          Probation report later tonight, I will  
25          figure it out, but --

1 MR. KUCHARSKI: But what I am saying  
2 is this --  
3 THE COURT: These people are  
4 waiting for their cases to be called.  
5 MR. KUCHARSKI: Wait. What?  
6 THE COURT: Waiting for their cases  
7 to be called.  
8 MR. KUCHARSKI: But what I'm trying --  
9 I mean I'll wait until you finish calling  
10 --  
11 THE COURT: Okay how about that.  
12 MR. KUCHARSKI: That's fine.  
13 THE COURT: -- because they have to  
14 walk out of here.  
15 MR. KUCHARSKI: I'll wait.  
16 THE COURT: They should have been  
17 gone ten minutes ago.  
18 MR. KUCHARSKI: Right. I don't --  
19 THE COURT: Then they write me up  
20 --  
21 MR. KUCHARSKI: That's fine, your  
22 Honor, I'll wait.  
23 THE COURT: -- like it's my fault.  
24 \*\*\*\*\*  
25 THE COURT: Attorney Kucharski, now

1           on Mr. Philhower's case, I think it's just  
2           better for all parties to be here for me to  
3           do this and I cannot do it now. I really  
4           cannot. And I have to work to get to this  
5           journalizer before she leaves in a few  
6           moments but --

7           MR. KUCHARSKI:           But what I think is  
8           imperative is that at least I'm here to be  
9           able to explain to the Court exactly --

10          THE COURT:               Right. Well whoever is  
11          the proper representative on this matter --

12          -

13          MR. KUCHARSKI:           Right.

14          THE COURT:               -- and I will do  
15          whatever I deem is appropriate for tomorrow.  
16          That's the best I can do. I don't even have  
17          time to read through all of this on a case  
18          that's not on my docket tomorrow. But  
19          obviously if Mr. Philhower demands a  
20          hearing, he is going to have that hearing of  
21          course and whatever appropriate  
22          representatives are needed, you know. I can  
23          certainly grant that continuance. Whether I  
24          think they should take him into custody or  
25          not, I will wait until I have a chance to

1 read this.

2 MR. KUCHARSKI: And your Honor that's  
3 why I'm trying to -- because I think when  
4 you read it, I think it's going to shock  
5 you.

6 THE COURT: But I'll wait. I'll  
7 wait but I cannot do it right now --

8 MR. KUCHARSKI: I understand.

9 THE COURT: -- Attorney Kucharski.  
10 And I'm not making any promises. I cannot  
11 do that.

12 MR. KUCHARSKI: But your Honor if you  
13 give me two seconds.

14 THE COURT: You can but I am not  
15 going to say anything whatsoever. I am  
16 going make up my mind tomorrow. This matter  
17 is on my docket for tomorrow. But if he  
18 demands a hearing, that's fine. Then he can  
19 have the proper representatives. And I'll  
20 do what I think I should do at that time.

21 MR. KUCHARSKI: The readings on the  
22 interlock are extraordinarily high. It's  
23 going to be like a point five, point 36.  
24 And I think the Court knows that if a person  
25 has a point five, they would be dead. What

1 Mr. Philhower does is he paints in an  
2 enclosed booth and he smokes while he  
3 drives. So I've instructed Mr. Philhower  
4 how he needs to handle this. Again and  
5 there aren't any issues because I guess he  
6 went -- he called his lawyer and he told him  
7 he went to go get an alcohol test, after he  
8 tested positive and he was clear. So he  
9 instructed him again about what he needs to  
10 do and how he needs to blow in the interlock  
11 so there aren't any future problems.

12 So I just wanted to at least advise the  
13 Court the numbers are going to be  
14 extraordinarily high but they are not  
15 representative -- they are not accurate as  
16 to an alcohol consumption.

17 THE COURT: Okay.

18 MR. KUCHARSKI: They just physically  
19 couldn't happen. Quite frankly he would be  
20 dead. So, so if the Court would want, I  
21 could certainly come back another day. I  
22 just happen to be in trial.

23 THE COURT: I'll wait until his  
24 attorney is in, to see what his attorney  
25 want to be done tomorrow. And if they





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1-10-13 Transcript

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1 STATE OF OHIO, )  
COUNTY OF CUYAHOGA, ) SS STOKES, A, R, J.  
2 CITY OF CLEVELAND. )

3

4 IN THE MUNICIPAL COURT

5

6 CITY OF CLEVELAND, )  
7 Plaintiff, )  
8 vs. ) 2012 TRC 030161  
9 FREDERICK J. PHILHOWER, )  
10 Defendant. )

11

12

13 Transcript of digitally recorded proceedings had  
14 before the Honorable Judge Angela R. Stokes on  
15 Thursday, January 10, 2013 in Courtroom 15-C.

16

17

18 APPEARANCES:

19 On behalf of the plaintiff:

20 Victor R. Perez, Chief Police Prosecutor  
21 By: Ashley M. Garrett, Ass't Police  
Prosecutor.

22 On behalf of the defendant:

23 JAIME P. SERRAT, Esq.

24

25 LAURA WILLIAMS

P R O C E E D I N G S

1  
2 THE COURT: Mr. Frederick  
3 Philhower's case.  
4 Mr. Gulla, would you please hand this to  
5 the attorney, thank you.  
6 MR. SERRAT: Good morning, your  
7 Honor. Jaime Serrat, S-E-R-R-A-T on behalf  
8 of Mr. Philhower.  
9 THE COURT: Good morning.  
10 MR. SERRAT: May I refresh the Court  
11 what --  
12 THE COURT: I -- I know exactly --  
13 MR. SERRAT: I'm sorry.  
14 THE COURT: Oh, that's quite all  
15 right. You may -- oh, that's fine.  
16 MR. SERRAT: You have so many cases  
17 that's all.  
18 THE COURT: Mr. Philhower's case  
19 was continued from December 13, until  
20 today's date, regarding the interlock  
21 device; is that correct?  
22 MR. SERRAT: As well as the --  
23 THE COURT: -- regarding driving  
24 privileges?  
25 MR. SERRAT: Your Honor, the a --

1 the a -- insurance policy expired, um, on  
2 December 13, so the Court wanted us again to  
3 provide that he's current with the policy,  
4 and I have that with us, and the Court was  
5 going to entertain, as well whether the  
6 Court was going to allow him to attend some  
7 AA meetings.

8 THE COURT: Well, right now he's in  
9 a totally different position before the  
10 Court, based upon information in that  
11 report, and I believe that Mr. -- Attorney  
12 Kucharski stopped by yesterday asking me to  
13 advance this case on the docket, so he could  
14 give some testimony on the record, which I  
15 told him it was not appropriate in view of  
16 the fact that this case is on the Court's  
17 docket for today.

18 That probation report indicates that  
19 there are some possible violations, um,  
20 regarding alcohol readings on the interlock  
21 device. Attorney Kucharski stopped in  
22 yesterday because I believe he owns this  
23 interlock company?

24 MR. SERRAT: Correct.

25 THE COURT: And none of his

1 technical representatives are available due  
2 to illness, and it would really be then  
3 scheduled for a probation violation hearing,  
4 and he indicated that he's in trial today  
5 which is why he stopped by today. And he  
6 said he was going to call you, and so if you  
7 want a continuance for this probation  
8 violation hearing and for the proper  
9 individuals to be, um, present, I'd be happy  
10 to continue it.

11 There will be no driving privileges  
12 whatsoever pending the hearing and to get  
13 the information about what happened. I had  
14 no idea about any of this until  
15 Attorney Kucharski stopped in yesterday.  
16 Probation officer didn't even send me a blue  
17 form to advise the Court about any of this,  
18 so I really found out everything from  
19 Attorney Kucharski, until I read the  
20 probation report.

21 MR. SERRAT: Judge, I do have a  
22 little information if the Court wants to  
23 hear it now.

24 THE COURT: I think that you need a  
25 representative. There are different

1 readings, and I think we -- there needs to  
2 be a hearing on it, and I am not prepared to  
3 hear it today --

4 MR. SERRAT: Okay.

5 THE COURT: -- without those  
6 representatives, but I will not renew the  
7 request for driving privileges. There are  
8 no driving privileges pending. Whatever  
9 happened whether they were just mechanical  
10 malfunctions, I'm not exactly sure what  
11 happened here. I just don't have enough  
12 information to go forward, and  
13 Attorney Kucharski said he wanted one of his  
14 representatives here, but he came yesterday  
15 to explain why no one could be present due  
16 to illness.

17 MR. SERRAT: He indicated --

18 THE COURT: He did not want me to  
19 take Mr. Philhower into the custody pending  
20 that I'm not going to take him into custody.  
21 I will wait until I have more information.

22 MR. SERRAT: Great. Thank you,  
23 Judge.

24 THE COURT: You're welcome, but  
25 what date do you want, so that I can

1 understand more about, and Mr. Kucharski --  
2 Attorney Kucharski can have one of his  
3 representatives present, regarding the  
4 interlock device.

5 MR. SERRAT: It's more of whenever  
6 he is going to be available, because he's  
7 going to have to testify, obviously.

8 THE COURT: Well, he said one of  
9 his technicians. I don't know.

10 MR. SERRAT: Okay. Whenever at the  
11 Court's convenience. I'm -- I'm going to be  
12 here. You tell me what day you want me to  
13 be here. May I turn my phone on, just to  
14 look at the calendar, Judge?

15 THE COURT: Sure.

16 MR. SERRAT: Whatever is convenient  
17 for the Court. Any time next week, Judge?  
18 Does this Court have a docket -- oh, I know  
19 you're looking --

20 THE COURT: I do have a jury trial  
21 scheduled on the 17th, so the 17th and 18th  
22 will be out. The dockets are really large on  
23 the 15th and 16th and, um, but maybe late  
24 afternoon one of those days, like at three  
25 o'clock.

1 MR. SERRAT: Whatever you want,  
2 Judge, I'll be here.

3 THE COURT: And then it depends on  
4 whether Attorney Kucharski can have one of  
5 his representatives present, so --

6 MR. SERRAT: The 16th would be  
7 great, Judge, late 16th.

8 THE COURT: The 16th. I'll  
9 continue it at the defendant's request until  
10 January 16, 2013 at three o'clock.

11 MR. SERRAT: That would be great.

12 THE COURT: You can check with  
13 Attorney Kucharski if he could have his  
14 representative present.

15 MR. SERRAT: I will do that, Judge.

16 THE COURT: Okay. Because one of  
17 those readings was .02. I think -- you have  
18 the report. I don't have it in front of me  
19 any more.

20 MR. SERRAT: I don't have the  
21 report. What I do have, Judge, I --

22 THE COURT: I thought the probation  
23 report --

24 MR. SERRAT: I'm sorry.

25 THE COURT: Mr. Gulla, did you give

1           him the probation report or did I not give  
2           it to you?

3           THE BAILIFF:            You only gave me the --

4           THE COURT:                I gave -- I thought I  
5           gave you one for --

6           THE BAILIFF:            You gave me the TIP  
7           Sheet for the other guy.

8           THE COURT:                Well, there was one for  
9           Philhower. Did you hand that to -- I -- did  
10          you give that to Mr. Berman? That was  
11          for --

12          MR. BERMAN:               No. I don't have it.  
13          (Inaudible)

14          THE COURT:                Philhower, P-H- will  
15          you just hand me the reports back  
16          attorney -- um, Mr. Gulla, just hand me the  
17          reports back, please. I thought that I --  
18          yeah, it's right there. Yeah, I asked for  
19          it to be given to the attorney.

20          MR. SERRAT:               Great. I got it,  
21          Judge.

22          THE COURT:                He's finished with the  
23          probation report. There's quite a bit on  
24          here, like a missed test, a misread test.  
25          There's quite a bit. I'm not sure whether

1           there was a violation on January 2 of 2013.  
2           Then they're saying never started the  
3           vehicle on December 29. There's quite a  
4           bit. The Court -- I have no idea.

5           MR. SERRAT:                 Right.

6           THE COURT:                 That's why there needs  
7           to be a technician and that's why the  
8           privileges that he as of now, I'm going to  
9           write on the journal entry. You have  
10          absolutely no driving privileges,  
11          whatsoever.

12          MR. SERRAT:                 If it puts the Court at  
13          ease, Judge, I do have a police report for  
14          the 29th that he went there, and that he --  
15          he blew .000 per my instructions. Um,  
16          that's one of the dates listed on the  
17          report, and --

18          THE COURT:                 I think I did read  
19          that.

20          MR. SERRAT:                 Okay.

21          THE COURT:                 I did read that, and I  
22          don't have any information about the date  
23          where he misread test. There's quite a bit  
24          here. And if some of this -- I -- I have no  
25          idea.

1 MR. SERRAT: I got you.

2 THE COURT: If there are mechanical  
3 malfunctions then maybe you need to  
4 reconsider, to consider another company. I  
5 have no idea. And if these are alleged  
6 violations, then the Court is going to take  
7 appropriate actions, but until I know that,  
8 there are no driving privileges whatsoever,  
9 but you're coming back on the 16th at three  
10 o'clock.

11 MR. SERRAT: Thank you, Judge.

12 THE COURT: You are welcome.

13 - - -

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C E R T I F I C A T E

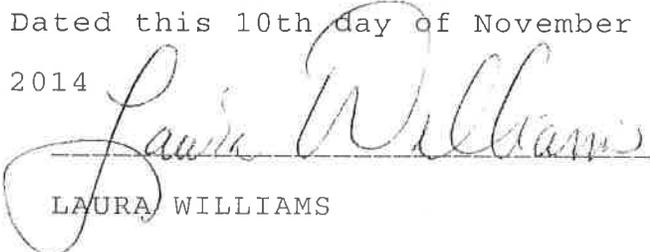
1  
2  
3 State of Ohio, )  
County of Cuyahoga, ) SS:  
4 City of Cleveland. )

5  
6 City of Cleveland, )  
7 vs. )  
8 Frederick J. Philhower. )

9  
10 I, LAURA WILLIAMS, court reporter, do hereby  
11 certify that as a reporter employed by the Cleveland  
12 Municipal Court, I took down in stenotype all of the  
13 digitally recorded proceedings in the above-captioned  
14 case on the date set forth; that I have transcribed  
15 my said stenotype notes into typewritten form as  
16 appears in the foregoing transcript of the digitally  
17 recorded proceedings; that said transcript is a  
18 complete record of the digitally recorded proceedings  
19 had in the hearing of said case and constitutes a  
20 true and correct transcript of the digitally recorded  
21 proceedings had therein.

22 Dated this 10th day of November

23 2014

24   
25 LAURA WILLIAMS

OFFICIAL COURT REPORTER  
CLEVELAND MUNICIPAL COURT  
Cleveland, Ohio 44113

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1-18-13 Transcript

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1 STATE OF OHIO, )  
2 COUNTY OF CUYAHOGA, ) SS  
3 CITY OF CLEVELAND. )

STOKES, A. R. J.

4 IN THE MUNICIPAL COURT

5  
6 CITY OF CLEVELAND, )

7 Plaintiff, )

8 vs. )

2012 TRC 030161

9 FREDERICK J. PHILHOWER, )

10 Defendant. )

11

12

13 Transcript of digitally recorded proceedings had  
14 before the Honorable Judge Angela R. Stokes on  
15 Friday, January 18, 2013 in Courtroom 15-C.

16

17

18 APPEARANCES:

19 On behalf of the plaintiff:

20 Victor R. Perez, Chief Police Prosecutor  
21 By: Ashley M. Garrett, Ass't Police  
Prosecutor.

22 On behalf of the defendant:

23 Marisa L. Serrat, Esq.

24

25 LAURA WILLIAMS

P R O C E E D I N G S

1  
2 THE COURT: All right. Regarding  
3 Mr. Frederick Philhower's case, They're  
4 taking it downstairs -- do you represent him  
5 on this matter?

6 MS. SERRAT: Yes, your Honor. I'm  
7 Jaime Serrat's daughter. And as you are  
8 aware, he's out of the state today, and his  
9 assistance could not come, so he asked me to  
10 stand in for him.

11 THE COURT: All right. Well,  
12 they're taking the file downstairs to get  
13 this added on the docket. It was supposed  
14 to be on the docket yesterday, but  
15 Mr. Philhower did not appear.

16 So Mr. Philhower and counsel, you may  
17 step up to the podium if you like.

18 All right. Mr. Philhower, I believe you  
19 know that you were supposed to go to  
20 probation yesterday and then come up to the  
21 courtroom. I held the file all day  
22 yesterday. And then I asked Mr. Oriti, he  
23 indicated that he would call you, and he did  
24 call around five minutes to five or  
25 something because the journalizer had to

1 leave at that point, and I could not hold on  
2 to the file any longer. At which time, I  
3 revoked the driving privileges completely  
4 since you did not appear.

5 I believe that you were to go to the  
6 probation department and talk to staff  
7 members regarding other interlock companies  
8 that they deemed to be pretty reliable,  
9 other than the one that you were previously  
10 using which had all kind of issues, and I  
11 still don't know whether there was alcohol  
12 use or whatever happened, because Attorney  
13 Timothy Kucharski didn't bring any of the  
14 mechanical information to this courtroom,  
15 whatsoever, and he's not the expert who  
16 would testify.

17 But I believe that Deputy Chief Dean  
18 Jenkins and Mr. Kevin McGlynn have come up  
19 with one company and also to discuss with  
20 you the cost of continuous alcohol  
21 monitoring device at least for a period of  
22 time, even if it's a couple of weeks, so the  
23 Court knows without a doubt that there's  
24 been no use of alcohol. I really don't know  
25 what occurred with the other company you

1 were using Alternative Court Services. What  
2 was that called, Life Savers?

3 PROBATION OFFICER: Life Savers is the  
4 brand name. It's a, like a court services.

5 THE COURT: So, you can give me the  
6 information if you like about the company,  
7 and then I don't know when he was to discuss  
8 continuous alcohol monitoring for a short  
9 period of time to make sure there's no  
10 problems.

11 \*\*\*\*\*

12 - - -  
13 THE COURT: Mr. Fialkowski, your  
14 file will be ready in a few moments, sir, if  
15 you could just have a seat over here. Maybe  
16 there's a misunderstandings, you really  
17 can't leave the courtroom until you go down  
18 to the Probation Department, but that's  
19 okay. It will be ready in -- is it ready  
20 already?

21 JOURNALIZER: It's done. I'm still  
22 trying to do this time-to-pay.

23 THE COURT: It's not working?

24 JOURNALIZER: The address  
25 (Inaudible), but everything else is ready.

1 THE COURT: Okay. Well, this goes  
2 in that file for Mr. Fialkowski; will you  
3 assist her?  
4 THE BAILIFF: Yes, your Honor.  
5 THE COURT: It just needs to be  
6 placed in his file. Do you want me take the  
7 file back, so I can write on the file?  
8 JOURNALIZER: Yes.  
9 THE COURT: Do you need the file  
10 any more?  
11 JOURNALIZER: No.  
12 THE COURT: He's just waiting for  
13 his time-to-pay information.  
14  
15 THE COURT: I'm sorry, Dean, did  
16 you want to put anything on the record,  
17 regarding --  
18 PROBATION OFFICER: That's up to you, your  
19 Honor. I could put, I mean, the information  
20 that I have on the record, but I think he's  
21 familiar with the SCRAM.  
22 THE COURT: You are going to have  
23 to do something, Mr. Philhower? I mean,  
24 Attorney Kucharski, could not produce -- I  
25 don't really know what happened during that

1           like three or four day period on  
2           December 27, I think, until January 4, but  
3           you're asking this Court to take a chance to  
4           give you these privileges, and I don't  
5           really know what happened. Attorney  
6           Kucharski, could not provide -- he did not  
7           bring anyone who had any -- he didn't bring  
8           any paperwork regarding that what is called  
9           a mechanical failure about the positive  
10          alcohol readings or failure to retest. He  
11          didn't bring any of that, and he said he  
12          didn't bring it to court.

13                 I understand that you need to work, and  
14          the Court wants to be able to give you that  
15          opportunity, but I have to have some type of  
16          guarantees. This company that you're  
17          thinking about I think it's pretty reliable.  
18          I don't know.

19          PROBATION OFFICER:     I mean, from my  
20          information, your Honor. They've been in  
21          business for five and a half years. And  
22          from my short conversation with them this  
23          morning, indicates that they are following  
24          what evidence based practices and enhancing  
25          their own technologies, so I mean, from my

1           indication is that they're going to be doing  
2           business for a while.  And, um, he assured  
3           me today that, I mean, that they would send  
4           reports as often as we would like them, but  
5           that would also mean that Mr. Philhower  
6           would have to be calibrated, because we  
7           would only get the reports after the  
8           calibration, so we can make the calibrations  
9           at any time period that we wanted.

10          MS. SERRAT:                   And your Honor, we  
11          would like to raise the fact that during  
12          one of the false readings after he contacted  
13          my father, he did go and seek out to get a  
14          breathalyzer done to show that he had not  
15          been drinking.

16          THE COURT:                    I am aware of all that.  
17          They went for an hour and half the last day  
18          on my docket.  I'm aware of all of that.

19          MS. SERRAT:                    Um, so we --

20          THE COURT:                    And there are also two  
21          accident victims in this matter.  The Court  
22          has the community to think about also, so --

23          MS. SERRAT:                    I'm very aware of all  
24          the facts in the case.  I've been working  
25          with my father since Mr. Philhower first

1           approached our office. We would propose  
2           that if there's any additional issues with  
3           the interlock, he would then be more than  
4           willing to put the SCRAM back on if there's  
5           really any identifying factor.

6           THE COURT:                I think it should be  
7           done at this point, because we do not know  
8           what happened with that other company. I am  
9           not saying it has to be a full 30-day  
10          period, but there has to be something in  
11          place.

12                 Is that the only company, the SCRAM  
13                 company, is that the only one? Is there  
14                 anyone that's maybe less expensive or would  
15                 they just let him pay for a two-week period,  
16                 as opposed to 30 days?

17          PROBATION OFFICER:    As SCRAM works with us,  
18          your Honor, a lot with payment. I'm sure,  
19          um --

20          THE COURT:                Would they may be  
21          allowed; like a two-week period?

22          PROBATION OFFICER:    I'm certain that he can  
23          work out some agreement with them.

24          THE COURT:                Counsel and  
25          Mr. -- thank you -- Philhower. Um, if -- do

1           you work with only one company?

2           PROBATION OFFICER:     Yes, your Honor.

3           THE COURT:             Just one company.

4           Typically, they want a 30-day payment, but  
5           if they are willing to work with you for a  
6           two-week payment, would you be willing to do  
7           that, along with your driving privileges  
8           with whatever company they come up with for  
9           the interlock?

10          MS. SERRAT:            It's -- it's all 100  
11          percent a financial concern he has. He has  
12          no problem with the SCRAM itself being on.  
13          He says he's been abstaining from drinking.  
14          It really comes down to his financial  
15          ability.

16          THE COURT:            The question is would  
17          you be willing to do that if they would  
18          allow two weeks, as opposed -- they usually  
19          would expect the full month, but maybe just  
20          two weeks, and would they put him on a  
21          two-week payment. Do you want to see if  
22          they would be gracious enough to do that to  
23          help Mr. Philhower?

24          PROBATION OFFICER:    I'm certain that they  
25          would, your Honor. I mean, because we

1 worked with them on payments.

2 THE COURT: Would they expect two  
3 week or would they let him break it up in  
4 like two different payments to help with his  
5 financial situation?

6 PROBATION OFFICER: Um, before I can speak  
7 on their behalf, I think they would take a  
8 two-week hook-up payment, but before I speak  
9 on their behalf, I would like to give them a  
10 call, just to see if they would take weekly  
11 installments or anything above and beyond  
12 that.

13 THE COURT: Or maybe he could  
14 explain more thoroughly with his counsel and  
15 you, what his financial issues are, and when  
16 you call the SCRAM representative, may be  
17 you could present those and see if they  
18 would work with him for a two-week period.

19 PROBATION OFFICER: Okay.

20 THE COURT: Do you want to try to  
21 do that, Mr. Philhower?

22 MS. SERRAT: Well, would the  
23 two-week period just be the half price of  
24 the almost \$400, so it would be,  
25 approximately, \$175 up to \$200.

1 THE DEFENDANT: Okay.

2 MS. SERRAT: Yes, we would love to  
3 talk to Mr. Jenkins about that as a  
4 possibility.

5 THE COURT: Mr. Jenkins, whatever  
6 they could do to help him, just for the  
7 two-week period and then you could let me  
8 know. Do they need go downstairs with you,  
9 so you all can talk to a representative to  
10 see how they can accommodate him for a  
11 two-week period?

12 PROBATION OFFICER: Sure. I mean, that's  
13 fine.

14 MS. SERRAT: Thank you, your Honor.

15 THE COURT: Do you want to take  
16 them?

17 PROBATION OFFICER: Thank you.

18 THE COURT: You're welcome.

19

20 THE COURT: And I think the  
21 probation officer Mr. McGlynn is bringing me  
22 the company, whatever company he selected.  
23 They have an Order that I have to sign, too,  
24 so I understand Mr. McGlynn is on his way.

25 But Mr. Philhower, is everything the

1 same from the entry that I wrote before?  
2 These privileges expired January 15. Do you  
3 have your current insurance information with  
4 you?

5 MS. SERRAT: I believe it was  
6 attached to the motion.

7 THE COURT: To the motion, okay.  
8 I'll check. I'll look. Hi, Mr. McGlynn.  
9 Do you -- I don't have your current -- the  
10 last information I'm looking in the file was  
11 through January 15, 2013. Do you have --

12 MS. SERRAT: He indicated that he  
13 provided two copies already and that he did  
14 not bring an additional copy. Whether or  
15 not --

16 THE COURT: Well, how would the  
17 Court have -- I don't know. Is it in --

18 PROBATION OFFICER: I got the probation  
19 record right here, Judge. I don't know if  
20 it would be in here.

21 THE COURT: I don't know.

22 MS. SERRAT: He indicated that my  
23 father provided it to the Court Wednesday  
24 night during the hearing.

25 THE COURT: Provided me with

1           what --

2           MS. SERRAT:                A copy of the car  
3           insurance.

4           THE COURT:                The car insurance  
5           information. Let me if it's attached to the  
6           probation report. All right. This one is  
7           through July 15, 2013, okay.

8           MS. SERRAT:                And your Honor, after I  
9           have spoke to my father there was one other  
10          thing that he wanted me to put on the  
11          record --

12          THE COURT:                Sure.

13          MS. SERRAT:                -- regarding  
14          Mr. Philhower.

15          THE COURT:                Uh-hum.

16          MS. SERRAT:                It was his  
17          understanding that whenever he left here on  
18          Wednesday night that no SCRAM was mentioned  
19          that it would not be required, and he  
20          understands Mr. Philhower was told to report  
21          to probation yesterday.

22                 Due to his work and his wife, who  
23                 normally is the provider of giving him  
24                 rides, she had medical appointments, and he  
25                 could not make, so it was my father's

1           understanding that it would not have been an  
2           issue, and he advised Mr. Philhower that if  
3           you cannot get to court without violating  
4           the Judge's Order, and driving here, that  
5           you should wait and go first thing on  
6           Friday, because there's no other possible  
7           way for him to get here.

8           THE COURT:                   Well, they did not  
9           state that on the record. He stated he was  
10          going to return the very next day and that's  
11          why I held the file. If he would have asked  
12          for January 18, I would have continued it at  
13          the defendant's request for a hearing until  
14          today.

15          MS. SERRAT:                   He --

16          THE COURT:                   That's why Mr. Oriti  
17          was trying to reach you yesterday and that's  
18          where the file went, and you also asked the  
19          Court to determine if they were -- we  
20          discussed the continuous alcohol monitoring  
21          device, and you wanted to know if there were  
22          any probation funds to assist.

23                   I have discussed that with  
24          Mr. Dean Jenkins, and he says you don't meet  
25          the criteria for assistance and that this is

1 a two-week period. I just spoke with him,  
2 but he can come up and put that on the  
3 record. I did ask if there were some funds  
4 to assist you. That would be great, but  
5 there were no funds to assist him in the --  
6 MS. SERRAT: And he believes that  
7 just because of his appearance with private  
8 counsel. I just want to notify you that I'm  
9 here pro bono, and my father has been since  
10 this matter been ongoing, just for the  
11 record. It was -- it was just what my  
12 father wanted me to express to you.

13 THE COURT: Okay. Well, there was  
14 obviously some type of miscommunication,  
15 because I would have continued this case  
16 until the 18th, but he indicated he would be  
17 here yesterday. I said, fine. I would hold  
18 the file, and I held it up until five  
19 minutes to five when Mr. Oriti called here  
20 yesterday.

21 But have you made arrangements,  
22 Mr. Jenkins told me on the phone, but have  
23 you made arrangements for SCRAM for two  
24 weeks, and if this no problems, no  
25 valuations, it's going to automatically be

1 removed at the end of the two-week period?

2 MS. SERRAT: With no court  
3 appearance required?

4 THE COURT: He would not need a  
5 court appearance. They'll be able to give  
6 me an updated report. I will put it on the  
7 docket at that two-week period. Probation  
8 should be able to give me a report from the  
9 continuance alcohol monitoring company,  
10 letting me know that there have been no  
11 violations.

12 If there is no violations, I am going to  
13 write that the SCRAM device should be  
14 removed at the end of the two-week period.

15 MS. SERRAT: Perfect, your Honor.

16 THE COURT: I am going to grant the  
17 privileges through the date of the  
18 insurance, which is, um --

19 MS. SERRAT: July 15?

20 THE COURT: Uh-huh.

21 MS. SERRAT: That -- that sounds  
22 great, your Honor.

23 THE COURT: Mr. Jenkins told me  
24 over the phone, just a few moments ago that  
25 Mr. Philhower and SCRAM made some type of

1 arrangement for the two-week period?

2 MS. SERRAT: Yes. The arrangement  
3 would be \$100 today and \$80 next week, is  
4 the financial arrangement.

5 THE COURT: You can afford to do  
6 that? You can meet the requirement,  
7 Mr. Philhower?

8 THE DEFENDANT: I can meet the  
9 requirement.

10 THE COURT: All right. The last  
11 order that I wrote regarding driving  
12 privileges for you, sir, that was on  
13 December 14 of 2012. Is everything the same  
14 that I wrote in that order before that you  
15 work for Center Tyler Auto Body and Service,  
16 Inc., at 8700 Tyler Road, I'm sorry, Tyler  
17 Boulevard, Mentor, Ohio, 44060.

18 The insurance carrier is still Farmers.  
19 That policy number is 25184247238 that  
20 coverage is from January 15, 2013 through  
21 July 15 of 2013. And these privileges will  
22 take place, now are you going to have the  
23 continuous alcohol monitoring device is that  
24 going to be placed on you today. Does the  
25 two weeks start today?

1 MS. SERRAT: Yes, your Honor. He  
2 will go out there as soon as he leaves here.  
3 THE COURT: It starts today, okay.  
4 MS. SERRAT: -- out there as soon as  
5 he leaves here.  
6 THE COURT: Okay. And the  
7 interlock -- now I don't know which company  
8 you're using. Which company is he using?  
9 PROBATION OFFICER: Ohio Interlock, Judge.  
10 THE COURT: Ohio Interlock. And  
11 when does Mr. Philhower plan to get -- did  
12 he discuss that with you and Mr. Jenkins?  
13 PROBATION OFFICER: He discussed it with  
14 him today.  
15 THE DEFENDANT: Your Honor, I am  
16 completely at your mercy and the mercy of  
17 those who is able to help me. I have  
18 limited amount of time left in the day to  
19 somehow get one vehicle to a provider to  
20 have the device removed. Then I have to get  
21 that same vehicle 40 minutes, 45 minutes to  
22 a different place to another device  
23 installed, and I somehow also have to make  
24 it to Brecksville Road, um, in Independence  
25 to get a bracelet put on.

1           I have done everything in my power to be  
2           so far on the line of caution and beyond  
3           reproach. I have respect for the mercy you  
4           showed me in this Court's Order. I've done  
5           all that -- I swear to God I have. I will  
6           do everything that needs to be done. I  
7           just -- within the restraints I have to  
8           work.

9           THE COURT:               Well, you just have to  
10          tell me what time. I don't know if you  
11          want --

12          THE DEFENDANT:           I don't know how long.

13          THE COURT:               I cannot --

14          THE DEFENDANT:           I don't --

15          THE COURT:               Okay. Just give me a  
16          date. I have to write a day on the journal  
17          entry for occupational driving privileges.  
18          So if you want these privileges to begin  
19          next week, that's what I'll write on the  
20          Order. I don't know what day you want me  
21          to. I have to write a date on the Order.  
22          So if you think that, and I thought that  
23          device of Mr. Kucharski's was supposed to be  
24          removed immediately. I thought that it was  
25          going to take place yesterday that's what

1 was represented in court, but I understand  
2 that you have to get that device removed.

3 You have to go to the other -- you just  
4 have to -- I don't know. If you don't want  
5 any of this to take effect until Monday,  
6 then that's what I will write on the journal  
7 entry.

8 MS. SERRAT: These places close at  
9 five o'clock today.

10 THE COURT: I don't know.

11 THE DEFENDANT: (Inaudible).

12 MS. SERRAT: He just informed me  
13 that they do have hours tomorrow , so if  
14 he's given the journal entry to have an  
15 effective day of tomorrow, he definitely  
16 would be able to comply.

17 THE COURT: That's okay with the  
18 Court. I just need the date.

19 MS. SERRAT: Yes, your Honor.

20 THE COURT: Which place is open  
21 tomorrow, the interlock or the --

22 THE DEFENDANT: The interlock is.

23 THE COURT: So today you are going  
24 to get the other device removed, the  
25 interlock device, removed from --

1 THE DEFENDANT: Alternative to Court  
2 Services.  
3 THE COURT: -- Alternative to Court  
4 Services, and you're going to --  
5 THE DEFENDANT: Have the bracelet.  
6 THE COURT: -- get the bracelet,  
7 And then on Saturday, the 19th, he plan to  
8 get the new interlock device on.  
9 THE DEFENDANT: If there's a way  
10 possible, and you would allow me, it can get  
11 installed today if time allows.  
12 THE COURT: Well, that's okay. It  
13 doesn't matter to the Court what day you  
14 just have to tell what date to write on the  
15 journal entry. )  
16 MS. SERRAT: Out of the abundance of  
17 caution, your Honor, we would ask for this  
18 Saturday date for the driving privileges to  
19 begin.  
20 THE COURT: The 19th?  
21 MS. SERRAT: Yes, your Honor.  
22 THE COURT: Okay, that's fine. So  
23 it would be from January 19, 2013 through  
24 um, July 15, 2013. At about that time,  
25 you'll actually be at about one year

1 anniversary of having had been on probation.  
2 And at that time, it might be right after  
3 your year anniversary which is the 24th of  
4 July, 2013. That sometimes when people come  
5 back asking the Court to reduce the  
6 suspension of your driver's license; do you  
7 understand?

8 MS. SERRAT: Yes, your Honor.

9 THE COURT: But, typically, there's  
10 no problems, no violations anything through,  
11 and including that first year anniversary  
12 period, but we could see how it goes through  
13 July 13 or 15th. Let's see.

14 And then the hours are the same, Monday  
15 through Friday, 6 a.m. to 7 p.m.; is that  
16 right?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. And I have that  
19 the interlock device shall be installed by  
20 Ohio Interlock, that's the name of the  
21 company?

22 THE DEFENDANT: That's right.

23 THE COURT: And maintained on the,  
24 and this is on the 2002 Chevrolet truck van?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Okay. Vehicle  
2 identification number, 1GNDX03E02309328 at  
3 all times pertinent to this Order. And let's  
4 see I think you have probation to drive to  
5 and from -- do you report to probation  
6 monthly?  
7 THE DEFENDANT: Monthly. And also I  
8 would, again to ere on the side of caution,  
9 if I need to go in for calibration for the  
10 interlock which is necessary; however,  
11 whenever you are going to make that, should  
12 that be written on -- I don't know what  
13 needs to be written on there, but I have to  
14 drive to that, as well. It's a different  
15 place than listed.  
16 THE COURT: Right. You're allowed  
17 to do that, but I'll note it on the entry.  
18 I think it may be every 30 --  
19 PROBATION OFFICER: Thirty days.  
20 THE COURT: Unless there is a  
21 notice of there being a problem. But, I  
22 think, typically, it's done every 30 days.  
23 PROBATION OFFICER: Typically, that's  
24 correct.  
25 THE COURT: So let's just stick

1 with the 30-day time period, unless there's  
2 some issues, and I'll note that the  
3 interlock device will just be on for 14  
4 days, so in this instance, I think it just  
5 begins today, and it will end on February  
6 first, right?

7 JOURNALIZER: Yes, your Honor.

8 THE COURT: February first. So  
9 what's the best time Mr. McGlynn to give me  
10 a report? I don't know if I should place it  
11 on the docket; I have a jury trial that  
12 day, but, um --

13 PROBATION OFFICER: I think they could  
14 probably get a report for you that day.

15 THE COURT: Um, do you want me to  
16 just place on the docket on the 4th, but  
17 then he have to pay for the weekend there,  
18 so that's not good.

19 PROBATION OFFICER: We can get a report  
20 that day.

21 THE COURT: You can give me a  
22 report on the first of February?

23 PROBATION OFFICER: We can call them and  
24 say that we need a report for the first,  
25 then have it for you that day.

1 THE COURT: That's sound good. So  
2 this case will be on the docket for February  
3 first, just a motion by the defendant for  
4 removal of the SCRAM device. You don't need  
5 to be present. If it's a good report, I  
6 would just do it on the journal entry  
7 indicating the SCRAM device has been removed  
8 and your privileges will just remain. I'll  
9 write that on everything, okay.

10 MS. SERRAT: Thank you, your Honor.

11 THE COURT: You are welcome. And I  
12 just have to write this up, and it requires  
13 your signature, and then the journalizer  
14 next door will journalize it. What have you  
15 been doing about your AA meetings?

16 MS. SERRAT: That's what we were  
17 just discussing, your Honor. He's still  
18 obviously very actively attending his AA  
19 meetings, and he thinks that they have been  
20 beneficial in his recovery.

21 Looking back to your original Order from  
22 the July 24, it does state in the docket two  
23 to three AA meetings per week.

24 THE COURT: I think that's when he  
25 had on the alcohol monitoring device.

1 MS. SERRAT: Yes, your Honor. He  
2 would love to keep attending AA, and he  
3 plans to continue attending AA if this  
4 honorable Court would allow him privileges.  
5 THE COURT: Or he hasn't had  
6 permission since the last Order of  
7 December 2 --  
8 MS. SERRAT: Yes.  
9 THE COURT: -- to drive to and from  
10 AA meetings.  
11 MS. SERRAT: Yes -- no, completely  
12 understand, your Honor.  
13 THE COURT: But, I mean, I don't  
14 know.  
15 MS. SERRAT: He would just love --  
16 we understand your caution.  
17 THE COURT: Yeah.  
18 MS. SERRAT: But he would love the  
19 permission to be able to take -- drive  
20 himself. That way, you know, he wouldn't  
21 be --  
22 THE COURT: How about we'll do  
23 this. If everything is fine through  
24 February first, oh, how many are you going  
25 to? See, I put you at risk. I put the

1 community at risk everything that you are  
2 operating this motor vehicle. But how many  
3 -- how often do you go, Mr. Philhower?

4 THE DEFENDANT: The easy answer is, as  
5 often as possible.

6 THE COURT: Well, then the Court  
7 cannot write that on the Order. I'm done.

8 THE DEFENDANT: Okay. I have --

9 THE COURT: I think you have a  
10 smart-aleck attitude, and I'm finished  
11 writing. It remains as I previously wrote  
12 it.

13 THE DEFENDANT: You Honor, I meant no  
14 disrespect.

15 THE COURT: I think so.

16 THE DEFENDANT: That's the best way I  
17 can answer the question.

18 THE COURT: I'm done. You'll find  
19 someone to get you to those meetings. I'm  
20 done.

21 This I have to write up. It will take a  
22 few moments. You can be seated. It does  
23 require your signature and the date, and I  
24 can give it to the bailiffs and they can  
25 hand it to you as soon as, um, I'm finished

1 writing, and then do I need to sign this  
2 other company's Order?

3 PROBATION OFFICER: Not the SCRAM referral.  
4 I can hand you --

5 THE COURT: Not the SCRAM, but for  
6 the interlock?

7 PROBATION OFFICER: Yes. You do have that.  
8 I believe it's in there.

9 THE COURT: That's this one?

10 PROBATION OFFICER: Yes. You can sign at  
11 the bottom and at the bottom where attached  
12 privileges.

13 THE COURT: Okay. All right.

14 And what type -- you are a mechanic, sir?

15 THE DEFENDANT: A Finishing Technician,  
16 your Honor.

17 THE COURT: What does that mean?

18 THE DEFENDANT: I paint cars.

19 THE COURT: I see. You don't have  
20 to remain standing if you don't want to  
21 stand. It will be ready in just a moment.  
22 I'll have a bailiff hand it to you.

23

24

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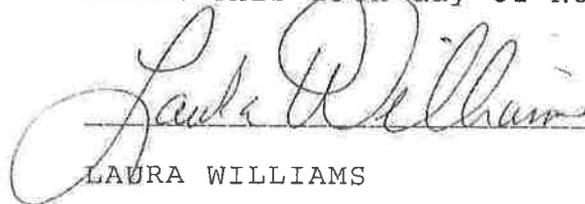
C E R T I F I C A T E

State of Ohio, )  
County of Cuyahoga, ) SS:  
City of Cleveland. )

City of Cleveland, )  
vs. )  
Frederick J. Philhower. )

I, LAURA WILLIAMS, court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the digitally recorded proceedings in the above-captioned case on the date set forth; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the digitally recorded proceedings; that said transcript is a complete record of the digitally recorded proceedings had in the hearing of said case and constitutes a true and correct transcript of the digitally recorded proceedings had therein.

Dated this 19th day of November, 2014.

  
LAURA WILLIAMS

---

2-1-13 Transcript

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1 STATE OF OHIO, )  
2 COUNTY OF CUYAHOGA, ) SS STOKES, A, R, J.  
3 CITY OF CLEVELAND. )

4 IN THE MUNICIPAL COURT

5 - - -  
6 CITY OF CLEVELAND, )  
7 Plaintiff, )  
8 vs. ) 2012 TRC 030161  
9 FREDERICK J. PHILHOWER, )  
10 Defendant. )

11 - - -  
12  
13 Transcript of digitally recorded proceedings had  
14 before the Honorable Judge Angela R. Stokes on  
15 Friday, February 1, 2013 in Courtroom 15-C.

16  
17 - - -  
18 APPEARANCES:

19 On behalf of the plaintiff:  
20 Victor R. Perez, Chief Police Prosecutor  
21 By: None present

22 On behalf of the defendant:  
23 None present

24  
25 LAURA WILLIAMS

P R O C E E D I N G S

1  
2 THE COURT: This is Docket No. 2  
3 for Frederick Philhower. The defendant's  
4 Motion to Remove the SCRAM Device is hereby  
5 granted. However, the probation department  
6 failed to provide a report on the interlock  
7 device, so the probation department is  
8 ordered to provide that information by  
9 February 13, 2013.

10 The SCRAM device will remain -- removed  
11 if there are no violations with respect to  
12 the interlock device which the report should  
13 have been here today, but it is not, so it's  
14 continued at the Court's request until  
15 February 13, 2013 at 2 p.m. for a status  
16 hearing. If in full compliance,  
17 Mr. Philhower does not need to be present on  
18 that day.

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C E R T I F I C A T E

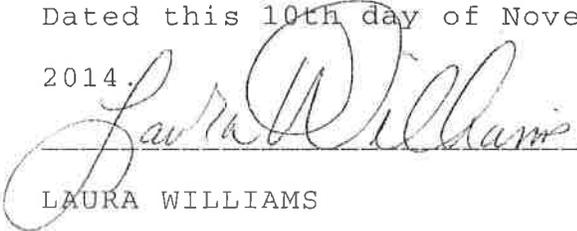
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State of Ohio, )  
County of Cuyahoga, ) SS:  
City of Cleveland. )

City of Cleveland, )  
vs. )  
Frederick J. Philhower. )

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Dated this 10th day of November,  
2014.

  
LAURA WILLIAMS

1 STATE OF OHIO, )  
2 COUNTY OF CUYAHOGA, ) SS  
3 CITY OF CLEVELAND. )

STOKES, A, R, J.

4 IN THE MUNICIPAL COURT

5  
6 CITY OF CLEVELAND, )  
7 Plaintiff, )

8 vs. )

2012 TRC 030161

9 FREDERICK J. PHILHOWER, )  
10 Defendant. )

11  
12  
13 Transcript of digitally recorded proceedings had  
14 before the Honorable Judge Angela R. Stokes on  
15 Tuesday, April 30, 2013 in Courtroom 15-C.

16  
17  
18 APPEARANCES:

19 On behalf of the plaintiff:

20 Victor R. Perez, Chief Police Prosecutor  
21 By: Joanna N. Lopez, Ass't Police  
Prosecutor.

22 On behalf of the defendant:

23 Kevin M. Cafferkey, Esq.

24  
25 LAURA WILLIAMS

P R O C E E D I N G S

1  
2 THE COURT: This is Mr. Frederick  
3 Philhower's case.

4 MR. CAFFERKEY: Thank you, your Honor.  
5 Kevin Cafferkey, C-A-F-F-E-R-K-E-Y on  
6 behalf of Mr. Philhower. Respectfully,  
7 Judge, I reviewed the probation report and,  
8 um, on Mr. Philhower, and there's -- I had  
9 some concerns. It looked like it was one  
10 day that he tested that it was two positive  
11 readings on his breathalyzer, and he's  
12 indicated, Fred indicated to me that there  
13 was a cable change after that.

14 I would highlight, Judge, that he is a  
15 caregiver to a young lady, a Hillary, who's  
16 38, and he also works full time, and, um, he  
17 just purchased a home. And he certainly  
18 would agree not to drive right now, awaiting  
19 a probation violation hearing, but he's  
20 asking if he could be allowed to leave today  
21 and come back to the violation hearing.

22 Respectfully, Judge, I'm looking if it's  
23 at all possible to have that hearing as soon  
24 as Monday of next week?

25 THE COURT: He'll be in custody

1           until that time.

2                                 - - -

3           THE COURT:                         Mr. Hurley?

4           MR. HURLEY:                        Yes, Judge.

5           THE COURT:                        We called this case,  
6           but we didn't have a public defender. This  
7           is Mr. Albert Berch. There is an officer  
8           present.

9           MR. HURLEY:                        Berch?

10          THE COURT:                        Berch, B-E-R-C-H. This  
11          is a DUS. Let me just give you the driver's  
12          license history form. I'm going to recall  
13          that in just a moment, but let me give you  
14          this -- and I have on the journal entry that  
15          the defendant was going to bring  
16          documentation, regarding January 31, 2013,  
17          per Attorney Tricarichi. I don't know what  
18          that documentation is. The prosecutor may  
19          know. I don't know.

20          MR. HURLEY:                        Thank you, Judge.

21          THE COURT:                        Thank you. Does he  
22          understand what to do, um, Tiffany?

23          THE JOURNALIZER:                    Yes.

24          THE COURT:                        He's knows. He's  
25          knows, okay. He's good to go. I'm sorry.

1  
2 MR. CAFFERKEY: Judge, respectfully  
3 would, uh, -- would, uh, Monday the 6th at  
4 11, be doable?  
5 THE COURT: Well, I have a -- on  
6 the 6th, I have a bench trial at nine  
7 o'clock, and then I have another bench trial  
8 I think at two or 2:30. Could try to  
9 squeeze a hearing. Do you want the  
10 representative present from the interlock  
11 company; is that what you're requesting?  
12 MR. CAFFERKEY: Well, I'll call him.  
13 I'll call him and see if there's an issue  
14 with this cable. Somewhat closer to the  
15 noon hour, Judge?  
16 THE COURT: Well, sure.  
17 MR. CAFFERKEY: I'll -- I'll put 11:15.  
18 THE COURT: Well, I have a bench  
19 trial I think starting at nine.  
20 MR. CAFFERKEY: At nine?  
21 THE COURT: And then I have another  
22 bench trial in the afternoon.  
23 MR. CAFFERKEY: At two, so maybe I  
24 can --  
25 THE COURT: So if you want this

1 matter, the probation violation hearing to  
2 be continued at the defendant's request  
3 until May the 6th, 2013, that's okay in  
4 between those trials.

5 MR. CAFFERKEY: That would be fine.

6 THE COURT: Probably, I don't know  
7 what's a good time. Do you want me to say  
8 one o'clock?

9 MR. CAFFERKEY: Okay, that's fine. One  
10 o'clock is great.

11 THE COURT: Because I don't know  
12 how long the morning trial will last.

13 MR. CAFFERKEY: One o'clock would be  
14 perfect.

15 THE COURT: And then the prosecutor  
16 needs a lunch break before, but you won't  
17 have to be here for the probation violation  
18 hearing. I think the other trial starts at,  
19 like at two or 2:30, so I'll say at 1 p.m.

20 And if I should notify the probation  
21 department to have the representative  
22 present from the interlock --

23 MR. CAFFERKEY: That would be fine,  
24 Judge.

25 THE COURT: -- company, then I will

1 note. Let me just make certain that they  
2 can -- do you want me to make certain that  
3 they can be here then?

4 MR. CAFFERKEY: Very good.

5 THE COURT: And I believe that  
6 Mr. Philhower asked the Court to move the  
7 interlock device from one vehicle to another  
8 one. The prior vehicle I understand is  
9 involved allegedly in OVI in Parma, and then  
10 he allegedly has violations here regarding  
11 the interlock device. I called Mr. --

12 - - -  
13 (Thereupon, a telephone conference was had  
14 in open court and on the record.)

15 - - -  
16 THE COURT: Hi, Dean, I do not know  
17 Mr. Oriti's phone number, but Mr. Philhower  
18 would like to have a hearing on Monday,  
19 May the 6th, with the representative present  
20 from the interlock company. So I was -- I  
21 have a bench trial in the morning, one in  
22 the afternoon. I was going to squeeze it in  
23 at -- squeeze it in at 1 p.m., but we need  
24 to know if the representative from the  
25 interlock company could be present at 1 p.m.

1 on May the 6th, before I can schedule it.

2 Would you be -- and I don't know what  
3 company it is?

4  
5 MR. CAFFERKEY: It's Ohio Interlock,  
6 right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I'm looking at the  
9 record now.

10 MR. CAFFERKEY: It's Ohio Interlock,  
11 Judge.

12  
13 (Thereupon, a telephone conference was  
14 had in open court and on the record.)

15  
16 THE COURT: And can he let us know  
17 if that representative can be here at  
18 1 p.m. on May the 6th? Can he let us know  
19 right now? Thank you. Bye bye.

20  
21 (Thereupon, the following proceedings were  
22 had in open court:)

23  
24 THE COURT: Deputy Chief is  
25 checking with Mr. Richard Oriti. We should

1 know in about five minutes. If the  
2 representative be able to be here on  
3 May the 6th. There's no point of me  
4 scheduling it without that interlock  
5 representative being present.

6 MR. CAFFERKEY: Okay.

7 THE COURT: But they're checking.

8 MR. CAFFERKEY: Okay.

9 THE COURT: They'll let me know in  
10 five minutes.

11 MR. CAFFERKEY: Very good. Thank you,  
12 Judge.

13 THE COURT: Thank you.

14 \*\*\*\*\*

15 THE COURT: This would be recalling  
16 Mr. Frederick Philhower's case.

17 Is Attorney Cafferkey, is he outside of  
18 the courtroom, sir?

19  
20 (Thereupon, the following proceedings  
21 were conducted at Sidebar.)

22  
23 THE COURT: Dean, Mr. Al Goodman,  
24 said he had a positive alcohol reading,  
25 right?

1 PROBATION OFFICER: Uh-huh.

2 THE COURT: Did he put that in the  
3 summary?

4 PROBATION OFFICER: Uh-huh.

5 THE COURT: I don't know where he  
6 is. I don't know where the attorney is.

7 - - -

8 (Thereupon, the following proceedings were  
9 had in open court:)

10 - - -

11 THE COURT: Did your attorney say  
12 he was coming back into the courtroom,  
13 Mr. Philhower?

14 THE DEFENDANT: I did not know he was  
15 leaving, your Honor.

16 - - -

17 (Thereupon, the following proceedings  
18 were conducted at Sidebar:)

19 - - -

20 THE COURT: I don't know where the  
21 attorney -- he was just -- I told him you  
22 would be here in five minutes. He took a  
23 little bit longer, so I guess, he left. I  
24 guess, he'll be coming back, but I'll tell  
25 him that (inaudible).

1 PROBATION OFFICER: Okay.

2 THE COURT: Thank you.

3 PROBATION OFFICER: Uh-um.

4 THE COURT: I know. I will have  
5 someone bring the record back in a few  
6 minutes, just in case the attorney wants to  
7 see it, okay.

8 PROBATION OFFICER: Okay.

9 THE COURT: Thank you, Dean, I  
10 appreciate it.

11 PROBATION OFFICER: Uh-hum.

12

13 \*\*\*\*\*

14 MR. HURLEY: No contest to the  
15 Driving Under Suspension --

16 THE COURT: Just one second,  
17 because I see Attorney Cafferkey walked in,  
18 Attorney Cafferkey, may I just recall this  
19 case?

20 MR. CAFFERKEY: Yes.

21 THE COURT: Mr. Philhower's, then  
22 I'll be right back on this one.

23 MR. HURLEY: Thank you, Judge.

24 THE COURT: And then, I'll do  
25 yours. I promise.

1 MR. BUTLER: Well, Mr. Butler walked  
2 in, too, Judge.

3 THE COURT: Well, Mr. Butler, I can  
4 only do one at a time, sir. I can only do  
5 one at time.

6 Attorney Cafferkey?

7 MR. CAFFERKEY: Judge.

8 THE COURT: Mr. Jenkins came up  
9 while you left the courtroom verifying --

10 MR. CAFFERKEY: May 6, is fine?

11 THE COURT: -- that a  
12 representative -- representative will be  
13 present from the interlock company --

14 MR. CAFFERKEY: Right.

15 THE COURT: -- or whichever  
16 interlock company it is, on May 6 at 1 p.m.

17 MR. CAFFERKEY: Thank you so much,  
18 Judge.

19 THE COURT: At this time, there's a  
20 no bond until Mr. Philhower appears before  
21 the Court for that hearing.

22 MR. CAFFERKEY: Thank you.

23 THE COURT: He'll be taken into  
24 custody, but he will be ordered return.

25 MR. CAFFERKEY: Thank you, Judge.

1 THE COURT: May 6, at 1 p.m. for a  
2 probation violation hearing, and that's  
3 really centered around two alcohol tests on  
4 April, uh, on the interlock device. I think  
5 it's April 17, 2013. One reading of .036  
6 and one .032.

7 MR. CAFFERKEY: Very good. Thank you  
8 very much, Judge.

9 THE COURT: But the representative  
10 will be -- you are welcome, sir.

11 MR. CAFFERKEY: Very good.

12 THE COURT: You can take him into  
13 custody, and if you could please give this  
14 to the journalizer.

15 THE BAILIFF: Sure.

16

17

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19

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C E R T I F I C A T E

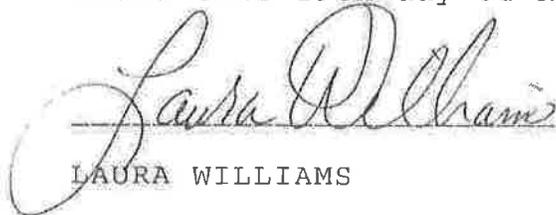
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State of Ohio, )  
County of Cuyahoga, ) SS:  
City of Cleveland. )

City of Cleveland, )  
vs. )  
Frederick J. Philhower. )

I, LAURA WILLIAMS, court reporter, do hereby certify that as a reporter employed by the Cleveland Municipal Court, I took down in stenotype all of the digitally recorded proceedings in the above-captioned case on the date set forth; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing transcript of the digitally recorded proceedings; that said transcript is a complete record of the digitally recorded proceedings had in the hearing of said case and constitutes a true and correct transcript of the digitally recorded proceedings had therein.

Dated this 19th day of November 2014

  
LAURA WILLIAMS

OFFICIAL COURT REPORTER  
CLEVELAND MUNICIPAL COURT  
Cleveland, Ohio 44113

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5-6-13 Transcript

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1 STATE OF OHIO, )  
2 COUNTY OF CUYAHOGA, ) SS STOKES, A. R., J.  
3 CITY OF CLEVELAND. )

4 IN THE MUNICIPAL COURT

5 - - -  
6 CITY OF CLEVELAND, )  
7 Plaintiff, )  
8 vs. ) 2012TRC030161  
9 FREDERICK J. PHILHOWER, )  
10 Defendant. )

11 - - -  
12  
13 Transcript of digitally recorded proceedings had  
14 before the Honorable Judge Angela R. Stokes, on  
15 Monday, May 6, 2013, in Courtroom 15-C.

16 - - -  
17 APPEARANCES:  
18 On behalf of the plaintiff:  
19 Victor R. Perez, Chief Police Prosecutor  
20 By: Joanna Lopez, Ass't Police Prosecutor.  
21 On behalf of the defendant:  
22 Kevin M. Cafferkey, Esq.

23  
24  
25 Grace Evangelou, RPR

P R O C E E D I N G S

- - -

(Thereupon, the following proceedings were conducted at Sidebar.)

- - -

THE COURT: Dean Jenkins, Deputy Chief of Probation, this is Attorney Cafferkey. I was asking him about if we get the assessment done while Mr. Philhower's in custody. I don't know if I have any funds left, I'd have to check. Or if he still has insurance then he may be able to get the assessment done. But does he still have his employment.

MR. CAFFERKEY: I think he does, but he had already called and checked in prior to any of this with Oak -- Oakview, is it?

MR. JENKINS: Oakview and Southwest Hospital.

MR. CAFFERKEY: Yeah, yeah. He already checked in there prior to any incidents, okay (inaudible) and he checked in with Oakview what it would take for an assessment and stuff like that. But then he had this issue and just didn't materialize.

THE COURT: So that's what he would

1 prefer, to get the assessment done at  
2 Oakview?

3 MR. CAFFERKEY: Well, he could have it  
4 done right now. He could have it done  
5 there, and apparently they would pay for  
6 that.

7 THE COURT: Well, I don't know that  
8 they're going to transport him.

9 MR. JENKINS: I said I don't think  
10 they'll transport him and I'm not that  
11 familiar with Oakview, whether they'll send  
12 someone out.

13 MR. CAFFERKEY: Yeah.

14 THE COURT: Maybe they will.

15 MR. JENKINS: I mean, I think they  
16 would transport him to Oakview if we knew  
17 for a fact that it was going to be a  
18 residential placement. So I think we would  
19 need an assessment that's going to say  
20 residential.

21 THE COURT: I don't know if they'll  
22 transport for an assessment.

23 MR. JENKINS: I don't think they  
24 will.

25 THE COURT: They might, but I don't

1 know, they're short staffed.

2 MR. JENKINS: Yeah. I said I --

3 THE COURT: But they might. Or if  
4 they would have someone who'd be willing to  
5 -- even if they don't go to the Workhouse.

6 MR. JENKINS: If they could even do  
7 it over the phone or something. If Oakview  
8 could --

9 THE COURT: Or if they would do it  
10 here at the Justice Center. He could come  
11 in from the Workhouse.

12 MR. JENKINS: Or I could even  
13 (inaudible) while I'm here.

14 THE COURT: Yeah.

15 MR. JENKINS: But that would mean  
16 somebody from Oakview, which would probably  
17 take some coordination.

18 THE COURT: Well, they might.

19 MR. JENKINS: I mean they might.

20 MR. CAFFERKEY: The third option is he  
21 could walk into Oakview, get the assessment,  
22 and walk right back out, having been driven  
23 by somebody else to Oakview.

24 THE COURT: Attorney Cafferkey.

25 MR. CAFFERKEY: I'm not the keeper of

1 my clients. I'm not willing (inaudible).  
2 THE COURT: You're the only person  
3 we would (inaudible).  
4 MR. CAFFERKEY: I'm not going to do  
5 this, your Honor.  
6 THE COURT: He can't (inaudible)  
7 ourselves.  
8 MR. CAFFERKEY: He'd be able to get a  
9 ride. That wouldn't a problem. But I  
10 just --  
11 THE COURT: But he might have a  
12 drink on the way. I'm not kidding. He has  
13 a severe problem.  
14 MR. CAFFERKEY: Yes, yeah.  
15 THE COURT: It's so sad.  
16 MR. CAFFERKEY: Yeah.  
17 THE COURT: I mean --  
18 MR. CAFFERKEY: I think it's jail  
19 (inaudible). I hate when grown men cry.  
20 That always gets me.  
21 THE COURT: Oh, it's so sad.  
22 MR. JENKINS: Yeah, especially for  
23 something you wouldn't do yourself.  
24 MR. CAFFERKEY: Yeah. Yeah.  
25 MR. JENKINS: (Inaudible).

1 MR. CAFFERKEY: And he's out there with  
2 people on DVs and other things like that.  
3 And it's like, you know, I'm an alcoholic.  
4 I'm not a criminal. I wouldn't hurt  
5 anybody, you know, intentionally. Right.  
6 He doesn't have any record of that. It's  
7 just alcohol. Just, you know, can't get 100  
8 percent sobriety.

9 THE COURT: Did we have issues  
10 before with the interlock device or was that  
11 (inaudible) Attorney Kucharski?

12 MR. JENKINS: Yeah. Mr. Philhower  
13 and I are long connected.

14 MR. CAFFERKEY: Uh-hmn. Good.

15 MR. JENKINS: So I've been dealing  
16 with him --

17 MR. CAFFERKEY: Some time.

18 MR. JENKINS: -- ever since he first  
19 showed up here.

20 MR. CAFFERKEY: On this case?

21 MR. JENKINS: Uh-huh.

22 MR. CAFFERKEY: Okay.

23 THE COURT: See I didn't impose any  
24 jail time when I sentenced him. Honest.  
25 Gracious. I gave him credit for five days

1           that he had served. I suspended the balance  
2           of the days. And that's his second DUI in  
3           his lifetime, but it was the first within  
4           six years. So -- but I had all those  
5           devices, so I thought well, this is a better  
6           alternative so he could have a job.

7           MR. CAFFERKEY:            Yeah, well, he did five  
8           months on the SCRAM, and he was doing good  
9           on the breathalyzer and then he changed  
10          machines to (inaudible).

11         THE COURT:                Yeah.

12         MR. CAFFERKEY:            To get (inaudible).

13         THE COURT:                So there are two  
14         victims in this case. I have both victims  
15         have been compensated to some degree. And  
16         the trucking company was seeking \$5,000  
17         deductible via the defendant's insurance  
18         career.

19                 So there were two sets of victims here.  
20         So he has to stay in custody. Plus he has a  
21         pending OVI in another jurisdiction. I  
22         don't know if there was an accident involved  
23         or not.

24         MR. CAFFERKEY:            Okay.

25         THE COURT:                But we just need a

1           date, Dean, so then I will know when to put  
2           it back on the docket. So when he can get  
3           an assessment in a certain period of time  
4           and bring it back when we have the  
5           assessment recommendations. What we  
6           probably need to know, if someone from  
7           Oakview is going to come to the Justice  
8           Center.

9           MR. JENKINS:            You don't happen to  
10          have --

11          MR. CAFFERKEY:        I don't.

12          THE COURT:            Oh, the number? Do you  
13          think it's attached to his record? Do you  
14          have his record?

15          MR. JENKINS:        No, I don't have his  
16          record.

17          THE COURT:            What did I do with his  
18          record? Do you have it, counsel, over  
19          there?

20          PRIVATE ATTORNEY:    What's that, your  
21          Honor?

22          THE COURT:            His probation report?

23          PRIVATE ATTORNEY:    No (inaudible).

24          THE COURT:            Okay. Has he  
25          (inaudible) to Oakview before?

1 MR. CAFFERKEY: I don't think so.  
2 THE COURT: Uh --  
3 MR. JENKINS: And he spoke to someone  
4 at Oakview?  
5 MR. CAFFERKEY: He said he did. I just  
6 talked to him now.  
7 THE COURT: (Inaudible) his  
8 assessment done by, Dean?  
9 MR. JENKINS: That was by TASC.  
10 THE COURT: Oh, that was --  
11 MR. CAFFERKEY: He says --  
12 THE COURT: Is it Hope Counseling,  
13 Hope and (inaudible).  
14 MR. JENKINS: Okay. There  
15 (inaudible) the same (inaudible). The  
16 SOQUIA.  
17 THE COURT: So maybe when he comes  
18 into the courtroom, depending on what he  
19 wants to do, he can let us know if he wants  
20 to use that agency, and then you can make a  
21 quick call to see who would be willing to  
22 come to the Workhouse or come to the Justice  
23 Center, and then the Probation Department to  
24 do his assessment.  
25 MR. JENKINS: Okay. Good.

1 THE COURT: Just ask him what  
2 he says oka.

3 MR. CAFFERKEY: So we're going to admit  
4 to the violation.

5 THE COURT: Is that what he wants?

6 MR. CAFFERKEY: Yeah.

7 THE COURT: All right.

8

- - -

9 (Thereupon, proceedings resumed in open  
10 court as follows:)

11

- - -

12 THE COURT: Will you please bring  
13 Mr. Philhower into the courtroom?

14 (Inaudible). He tried to tell me. I know he  
15 did. Should be Docket No. 5 for  
16 Mr. Frederick J. Philhower.

17 Your name for the record please,  
18 counsel?

19 MR. CAFFERKEY: Kevin Cafferkey,  
20 C-A-F-F-E-R-K-E-Y on behalf of Mr. Philhower.

21 THE COURT: Okay. Thank you. And  
22 we'll note that Probation Supervisor,  
23 Mr. Richard Oriti, is present along with the  
24 representative from the interlock company.  
25 And your last name is Mr. --

1 MR. PERELLA: Mr. Perella, your  
2 Honor.

3 THE COURT: Mr. Perella is present  
4 also. Attorney Cafferkey, how would Mr.  
5 Perella like to proceed?

6 MR. CAFFERKEY: I reviewed everything  
7 with my client, your Honor, and looks like  
8 he's got two positive breath tests, point  
9 03, in the point 03 range on the same day,  
10 April the 17th. And so he's going to admit  
11 those violations, your Honor.

12 THE COURT: All right. So  
13 Mr. Philhower, do you understand that you  
14 are now waiving your probation violation  
15 hearing, admitting to the violations for the  
16 interlock device, registered two positive  
17 tests for alcohol in April, April 17, 2013.  
18 Okay. That's what the record will reflect.

19 Now, we have to figure out what is the  
20 next step, okay, to try to get you help. We  
21 believe that you need a new alcohol  
22 assessment. You understand what that means?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: To determine what the  
25 true diagnosis is and what type of

1 treatment -- I don't have anymore kleenix in  
2 the courtroom. We'll get you some kleenix  
3 in a moment. Can you get some from Colleen?  
4 Mine ran out in the courtroom -- do you  
5 still have your employment, Mr. Philhower?

6 THE DEFENDANT: I do have it today,  
7 your Honor, yes. Thank you.

8 THE COURT: Because we -- you need  
9 an assessment. We have to determine if that  
10 will be paid for out of court funds, if this  
11 court has anymore funds. I'm not sure that  
12 I do; or if they'll be paid for through like  
13 your health insurance. Thanks, Mr. Oriti.

14 MR. ORITI: You're welcome, your  
15 Honor.

16 THE COURT: And what company were  
17 you -- had you thought about an agency to  
18 seek the assessment?

19 THE DEFENDANT: Actually, your Honor, I  
20 had already made phone calls prior to the  
21 violation, trying to get some help, but just  
22 didn't follow through. And I contacted both  
23 Oakview and Stella Maris. Both of them  
24 seemed to be able to take care of me right  
25 away.

1 I don't know if that situation has  
2 changed, but what Attorney Cafferkey  
3 presented to me in the back was, I'll do --  
4 I'll be honest with you, your Honor, I'm an  
5 alcoholic. I told you that from day one.  
6 I'll do anything not to go back to jail.  
7 That was the worst place in the world.

8 I'll do anything, anything in my  
9 ability. If you give me the opportunity,  
10 I'll do everything in my power, find -- to  
11 get an assessment before the end of this  
12 week. And if they say, "we'll take you in  
13 right now," I can use the medical leave act  
14 with my job. They'll find me some time  
15 there, and I'll do that. And if they say,  
16 "intensive outpatient," I'll do that. I'll  
17 do whatever it takes just not to go back to  
18 jail. Please. Please. I'm begging you.

19 THE COURT: So we need to determine  
20 who can do the assessment, how soon he can  
21 get an assessment, and whether or not you  
22 should remain at the Cleveland House of  
23 Corrections --

24 THE DEFENDANT: Please God, no.

25 THE COURT: -- pending getting

1           that assessment. Or if I were to release  
2           you, Mr. Philhower, what safeguards can the  
3           Court put in place? You know, thank  
4           goodness from the interlock device, we know  
5           the consumption of alcohol, and your being  
6           honest.

7                     But, you know, you asked me to remove  
8           the interlock device from one vehicle to  
9           another. I accommodated you, and then the  
10          vehicle that I took the interlock device off  
11          of or allowed it to be removed, is now  
12          involved in a pending fresh OVI case in  
13          Parma, which we can't talk about because  
14          it's pending.

15                    But there are two victims on this  
16          particular case, two sets of victims on this  
17          case. I know you don't want to go back to  
18          the Cleveland House of Corrections. I  
19          understand that. But I'm trying to figure  
20          out how can I protect you and how can I  
21          protect the community.

22                    THE DEFENDANT:           I can assure you, your  
23          Honor, the community is protected at this  
24          point. The impression that the last six  
25          days just had on my life, I will do -- I

1 will do what I said I will do.

2 THE COURT: What happened here  
3 with the relapse? What happened, or were  
4 you continuing to drink?

5 THE DEFENDANT: No, no, no. No.

6 THE COURT: But we just didn't  
7 catch it?

8 THE DEFENDANT: No. No, your Honor.  
9 The last --

10 THE COURT: I'm not talking about  
11 your pending case. You cannot discuss that.

12 THE DEFENDANT: I understand that.  
13 Every time I've been in front of you before  
14 this, I've not known a moment's peace. The  
15 truth is since the accident last May, I've  
16 not known a moment's peace. And that's not  
17 just because of my fear of you or this  
18 Court. It's because of the disgrace and the  
19 guilt and everything else that goes along  
20 with what I did.

21 I accept full responsibility for it. I  
22 always have. What happened was in March, I  
23 fell and I fell really hard; my back and my  
24 head. I have the hospital report, as well  
25 as so does Attorney Serrat.

1                   And instead of following up with my  
2                   regular physician, because we were so busy  
3                   at work, to deal with the pain I started  
4                   taking a lot of Aleve, and then I drank on  
5                   top of it because the alcohol would help  
6                   relieve the pain and I could get some sleep.

7                   So I'm assuming that the readings the  
8                   next morning were from the drinking the  
9                   night before. Because what I can assure you  
10                  was, I was not trying to drink and then get  
11                  in my car and drive, anything leading up  
12                  prior to this, and I looked you dead in the  
13                  eye, and that's why I feel so disgraced at  
14                  this moment, because I don't think you  
15                  believed me then, and I'm sure as hell, I  
16                  sure don't think you're going to believe me  
17                  now. But I meant it when I told you before  
18                  that I had not betrayed the trust, the mercy  
19                  that you had shown me. This time I did.  
20                  That is true. And in March I slipped and  
21                  fell. And the way I dealt with the pain was  
22                  Aleve and alcohol.

23                  THE COURT:                   And how much were you  
24                  consuming?

25                  THE DEFENDANT:            A lot.

1 THE COURT: I told Attorney  
2 Cafferkey at sidebar, that I don't know  
3 exactly how to help you the best way. We  
4 all know that you need help. Help. We're  
5 just trying to figure out what's the best  
6 thing to protect you and the community.  
7 With Aleve, what is that like aspirin?

8 MR. CAFFERKEY: Yes.

9 MR. ORITI: It's over the counter.

10 MR. CAFFERKEY: Over the counter.

11 THE COURT: But you're never  
12 supposed to consume alcohol with those type  
13 of medications, correct?

14 MR. CAFFERKEY: You shouldn't.

15 MR. ORITI: No, it's a toxic  
16 effect, your Honor, to combine alcohol with  
17 any other medication.

18 THE COURT: Yeah. That's why I'm  
19 saying -- thank you -- to protect you and to  
20 protect the community. I mean, it's amazing  
21 you lived through this. What's so horrible  
22 at the Cleveland House of Corrections? I  
23 mean, I know it's not the most pleasant  
24 place, but why does it have you in this  
25 state of mind?

1 THE DEFENDANT: Your Honor, the only  
2 way I know how to answer that question is  
3 you'd have to come and spend an hour or two,  
4 and you'd understand completely. I --  
5 willingly, I openly admit I'm sick with  
6 alcoholism. Okay.

7 But the things going on in there and the  
8 people that I'm surrounded with in there are  
9 not hopeful, I don't believe, to my  
10 condition, whatsoever. I don't. It's not  
11 up -- it's not a friendly place to be and I  
12 definitely am not -- I'm definitely not very  
13 popular there. I'm definitely the odd man  
14 out. I mean if you would just give me till  
15 the end of the week, and if I can't produce  
16 an assessment you could put me back in.

17 - - -  
18 (Thereupon, the following proceedings were  
19 conducted at Sidebar.)

20 - - -  
21 MR. JENKINS: You know, I could call  
22 Oakview (inaudible).

23 THE COURT: He said he called Stella  
24 Maris.

25 MR. JENKINS: And Oakview.

1 THE COURT: And Oakview.

2 MR. JENKINS: Well, I can call see if  
3 they got --

4 THE COURT: Do they have any  
5 openings? I mean for an assessment to be  
6 done?

7 MR. JENKINS: I can call and see.

8

- - -

9 (Thereupon, proceedings were resumed in open  
10 court as follows:)

11

- - -

12 THE COURT: What were you going to  
13 say, Mr. Oriti?

14 MR. ORITI: Excuse me, your Honor.  
15 I don't mean to interrupt the Cort. I was  
16 just going to say in reference to the  
17 Probation Department, we're sympathetic to  
18 Mr. Philhower's plight. However, I wanted to  
19 point out that had he not been brought to  
20 this position today, we're unsure if he would  
21 have admitted to his culpable alcohol abuse  
22 if not faced with the sanctions he's facing  
23 today.

24 And just for a basic recitation of what  
25 occurred in this matter, the Court allowed

1 Mr. Philhower to engage the interlock device  
2 after the SCRAM, and we will stipulate that  
3 Mr. Philhower did well five months  
4 approximately on the SCRAM without incident.  
5 However, when the Court granted his interlock  
6 privileges, he was well aware that he was  
7 not supposed to drive another vehicle, and  
8 that occurred in the other matter in an  
9 outside jurisdiction. That in and of itself  
10 would (inaudible) a probation violation right  
11 there. Then what occurred was positive  
12 blows on the box that the car that we  
13 engaged also. So we're faced with that at  
14 this point.

15 So had Mr. Philhower not been in  
16 this Court today under these circumstances  
17 where he had come to the realization of the  
18 serious alcohol abuse problem, would the  
19 community still been at risk given his  
20 actions in those matters?

21 THE COURT: All right. Thank you very  
22 much. Just one moment.

23 - - -  
24 (Thereupon, the following proceedings were  
25 conducted at Sidebar.)



1 THE DEFENDANT: I'll go anywhere you  
2 want other than back to the jail, please.  
3 MR. JENKINS: I can call them real  
4 quick.  
5 THE COURT: (Inaudible).  
6 MR. JENKINS: I'll be right back.  
7 THE COURT: So Mr. Jenkins is going  
8 to call agencies to see how quickly they can  
9 do the assessments. Then my concern is I  
10 hate for Mr. Philhower to incur the costs of  
11 the interlock device, but it's such a good  
12 indicator if someone's consumed alcohol. I  
13 mean but for that interlock device, we had  
14 an idea because of the fresh case pending,  
15 but you're innocent until proven guilty  
16 beyond a reasonable doubt on that fresh  
17 case, but the interlock -- how did you do so  
18 well with the SCRAM device when that was on?  
19 You were not consuming alcohol then were  
20 you?  
21 THE DEFENDANT: No, your Honor.  
22 THE COURT: You did pretty good  
23 then.  
24 THE DEFENDANT: I was doing very well  
25 for nearly nine months till I slipped and

1           fell. And when I hurt my back that's when I  
2           started consuming alcohol again. And once I  
3           start drinking I don't stop. So I'm -- what  
4           happens is, that's the nature of the  
5           disease. It's how it goes. And I mean you  
6           know where I've been for the last six days.  
7           You know I haven't had a drink there.

8           THE COURT:                   I hope not.

9           THE DEFENDANT:           And it hasn't been the  
10          most wonderful detox in the world. If I'm  
11          allowed to say anything good on my behalf,  
12          is that your job is to protect the  
13          community, and I understand that.

14          THE COURT:                   And you.

15          THE DEFENDANT:           There is a lot -- there  
16          are merits to my case, from day one. I've  
17          not missed a court date. I've never been  
18          disrespectful in your Court. I've done  
19          everything. I've complied, and I've tried  
20          to exceed compliance wherever possible. And  
21          I really did well for a number of months  
22          until I fell and hurt myself.

23          THE COURT:                   Right. And operating a  
24          motor vehicle -- don't say anything -- but I  
25          took the interlock device. I allowed the

1 interlock device to be removed. So that's a  
2 betrayal of the Court's trust. But you  
3 don't have to say anything regarding that.  
4 Mr. Oriti.

5 MR. ORITI: Yes, your Honor.

6 THE COURT: I mean, I'm sorry,  
7 Mr. Jenkins is making those phone calls. Do  
8 you mind waiting for just a moment?

9 MR. ORITI: Not at all, your Honor.

10 THE COURT: Because what he's  
11 trying to do is find who can do this  
12 assessment immediately. I'm not at peace  
13 releasing you to have that done. But I  
14 don't want you to have to wait day after  
15 day, after day. So that's what he's -- and,  
16 you know, one of them might even say -- I  
17 mean, had we realized this before it  
18 probably would have been better had he gone  
19 to like a place to detox. That would have  
20 been the better move when I took you into  
21 custody. But you couldn't admit anything at  
22 that point because you had not waived the  
23 probation violation hearing.

24 It would have better to go to a facility  
25 to have detoxed. They could have done the

1           assessment and then you could have maybe  
2           started residential treatment, if that's in  
3           fact what you need. But I don't know. I  
4           don't think a place will take you for  
5           detoxification now because I think over the  
6           past six days you detoxed.

7           THE DEFENDANT:           Yeah, I don't know how  
8           that really works. But I had that thought  
9           laying on that mattress more than once. And  
10          as it was already stated, again if I can put  
11          any merit on my behalf, prior to the  
12          positive blows into that interlock, there  
13          was -- I did make two phone calls. I knew I  
14          needed help. I just didn't follow through,  
15          so --

16          THE COURT:                Why didn't you follow  
17          through?

18          THE DEFENDANT:           The nature of the  
19          beast.

20          THE COURT:                I understand. Okay.

21          THE DEFENDANT:           But I can assure you  
22          this, after what I just went through for the  
23          last six days, I will do anything not to go  
24          back there. Anything. Anything in my  
25          ability, within my ability.

1 THE COURT: Oh, we should know  
2 something in a few minutes. So you don't  
3 have to stand, you may be seated.

4 Mr. Oriti, can you approach for a second.

5 MR. ORITI: Yes, your Honor.

6 - - -

7 (Thereupon, an off-the-record discussion was  
8 had.)

9 - - -

10 \* \* \* \* \*

11 THE COURT: This is recalling Mr. Frederick  
12 Philhower's case. Mr. Dean Jenkins will put  
13 on the record the information that he just  
14 ascertained from Rosary Hall.

15 MR. JENKINS: Your Honor, I just had  
16 the opportunity to speak to Art at Rosary  
17 Hall, who indicated that he has an  
18 assessment appointment available Thursday,  
19 May 9th, I believe, at nine o'clock in the  
20 morning at Rosary Hall or St. Vincent  
21 Hospital. And I mean right now he's  
22 pencilled in. I need to call and confirm  
23 that appointment.

24 THE COURT: All right. So Attorney  
25 Cafferkey and Mr. Philhower, I can suspend

1           these days on the condition that you attend  
2           this assessment at Rosary Hall Thursday at  
3           what time?

4           MR. JENKINS:                    Nine a.m.

5           THE COURT:                    At 9 a.m. And if I  
6           release you for you to do that, then it  
7           would be contingent on you wearing a  
8           continuous alcohol-monitoring device, to  
9           protect you and to protect this community,  
10          sir.

11          MR. CAFFERKEY:                No problem.

12          THE COURT:                    And I'm not removing  
13          the interlock device from the -- what  
14          vehicle is it on, the 2000 --

15          THE DEFENDANT:                2002 Chevy Venture.

16          MR. PERELLA:                 The 2002 Chevy Venture,  
17          your Honor.

18          THE COURT:                    Thank you. That's  
19          going to remain. But I don't know about  
20          driving privileges until you get this  
21          assessment done. And you have to be honest  
22          and forthright when you have this  
23          assessment. You have to be as honest as you  
24          were in this courtroom, you know, about  
25          mixing the Ad --

1 MR. CAFFERKEY: The Aleve.  
2 THE COURT: Advil, and the alcohol,  
3 the back pain.  
4 THE DEFENDANT: Yes, your Honor.  
5 THE COURT: You never told me how  
6 much you were consuming except you said a  
7 lot. How much were you consuming? Just  
8 tell us, so that when they have this  
9 assessment, if you say anything different, I  
10 am going to know you weren't telling the  
11 truth.  
12 MR. CAFFERKEY: Is it vodka?  
13 THE DEFENDANT: It's vodka and it's  
14 approximately a fifth a day. A lot.  
15 MR. CAFFERKEY: Appreciate your honesty  
16 there, Fred.  
17 THE COURT: Now, but this is my  
18 question, and I have to get you moved right  
19 away or the bus will leave you. And I don't  
20 want the bus to leave you and you spend the  
21 night over here, I mean at the Justice  
22 Center. But what is going to stop you from  
23 consuming that fifth of vodka tonight? How  
24 are we going to get this interlock device on  
25 him, I mean the SCRAM device, Mr. Oriti,

1           today?

2           MR. ORITI:                   Your Honor, if the  
3           defendant is transported back to the House  
4           of Corrections, I'll contact the alcohol-  
5           monitoring agency to engage him as soon as  
6           possible.

7                   If you want him to remain in the Justice  
8           Center, your Honor, I can see how fast they  
9           could send an installer here.

10          THE COURT:                See our biggest problem  
11          is that we cannot get anyone to come do the  
12          assessment at the Cleveland House of  
13          Corrections or at the Justice Center.

14                 So I'm kind of in a position where I  
15          have to release him in order to get the  
16          assessment, but I have to have some  
17          safeguards in place. But what is your  
18          response about the consumption of this  
19          vodka?

20          THE DEFENDANT:            The fear of jail alone.

21          MR. CAFFERKEY:            I have told him imagine  
22          180. He did six days. Do 180 days of that.

23          THE DEFENDANT:            No. Tonight will not  
24          be an issue. It will not be an issue. The  
25          person that's going to pick me up from

1           wherever it is that I'm left, but that's  
2           here back there, is my sponsor, is my AA  
3           sponsor, who already knows my situation.

4           THE COURT:                   And what will you do  
5           about, are you going back to work right  
6           away?

7           THE DEFENDANT:               It depends on the  
8           assessment, whatever the assessment says.  
9           I'm going to call my employer and let him  
10          know that I've been released.

11          THE COURT:                   But you don't have any  
12          driving privileges at this time.

13          MR. CAFFERKEY:               No.

14          THE DEFENDANT:               No, none.

15          THE COURT:                   None. So that means  
16          someone, a friend, a family member will have  
17          to get you like to your assessment. If you  
18          have to get to your job in Mentor, if you're  
19          medically able to, someone has to drive you.  
20          You cannot operate that 2012 vehicle or the  
21          2002 right now until we've had the  
22          assessment. But I can't have the interlock  
23          device removed on the 2002, just in case he  
24          decides to operate that vehicle.

25          MR. CAFFERKEY:               Okay.

1 THE COURT: I think you previously  
2 served five days, correct, in this case? I  
3 gave him credit for time served. I never  
4 imposed jail time on this case because I had  
5 all these devices in place, which you  
6 violated.

7 But let' see, and you've been in custody  
8 In this case now since April 30th. So  
9 that's one, two, three, four, five, six,  
10 seven; including today, seven days. So  
11 credit for time served 12 days. I'll  
12 suspend 168 days. But this is just  
13 contingent on the continuous  
14 alcohol-monitering device.

15 Mr. Oriti, I don't know how they're  
16 going to do that. We're getting him on the  
17 bus, so he'll be released from the  
18 Workhouse. Are they going to do this at the  
19 Workhouse this evening before --

20 MR. ORITI: Your Honor, he has to  
21 retrieve his personal -- he's got to go back  
22 to the Workhouse.

23 THE COURT: He has to go to the  
24 Workhouse.

25 MR. ORITI: We can have it done

1           there but it should be contingent he doesn't  
2           leave there until the device is on.

3           THE COURT:                I will note that, but  
4           you'll be able to call a representative --

5           MR. ORITI:                    Absolutely.

6           THE COURT:                -- from the SCRAM  
7           company?

8           MR. ORITI:                    Absolutely.

9           THE COURT:                Okay. So they'll know  
10          this. And I'm not really sure how to write  
11          this, I'm thinking about writing it that I  
12          order the days into execution and he's still  
13          serving them, but I stay it. I stay the  
14          sentence. Maybe that's a better way for me  
15          to do this.

16          MR. CAFFERKEY:            That's fine.

17          THE COURT:                I'm going to still have  
18          168 days ordered into execution, but I'm  
19          staying it. They're going to release you.  
20          And we're staying this pending the  
21          assessment results, and no further  
22          violations.

23                 Once I have the assessment results and  
24          you're following through, then I suspend the  
25          days. Do you understand?

1 THE DEFENDANT: I believe I do.  
2 MR. CAFFERKEY: He does.  
3 THE COURT: If you violate, I'm just  
4 going to --  
5 MR. CAFFERKEY: Do the time.  
6 THE COURT: -- lift that stay.  
7 THE DEFENDANT: That part I understand  
8 clearly.  
9 THE COURT: All right. And if he  
10 has the assessment, Mr. Jenkins, on  
11 Thursday, when will we have the assessment  
12 recommendations? Do you think they'll be  
13 available by the 16th of May?  
14 MR. JENKINS: I would hope so, your  
15 Honor. I can call when I call and confirm  
16 the appointment.  
17 THE COURT: Or is it better for me  
18 to place this on the docket like May 21st?  
19 I don't know.  
20 MR. JENKINS: May 21st would always  
21 be better.  
22 THE COURT: Is that fine, counsel?  
23 And if those recommendations say residential  
24 treatment, Mr. Philhower, you have to honor  
25 that. You can't make excuses about your job

1 and everything. You're expected to complete  
2 the residential treatment. If they say 30,  
3 60, 90 days, that's -- and you need to sign  
4 the appropriate releases so that Mr. Jenkins  
5 and Mr. Wallace Green can see those  
6 assessment recommendations, and your  
7 attorney, of course, can see them.

8 And then I'll continue it for a Motion  
9 hearing. That's to lift those days  
10 completely on May 21st, 2013. What time  
11 Attorney Cafferkey.

12 MR. CAFFERKEY: Ten a.m.

13 THE COURT: Ten a.m. And I'll ask  
14 for an updated report so -- and I'll stay  
15 this sentence now until May 21st, 2013, at  
16 10 a.m. And these privileges were in place  
17 until July 15th, 2013. In view of  
18 everything, because he's having the  
19 assessment, I will just indicate that there  
20 are no driving privileges--

21 MR. CAFFERKEY: That's fine, your  
22 Honor.

23 THE COURT: -- whatsoever. We  
24 can revisit that once you've had the  
25 assessment. But you can't operate any motor

1           vehicle, whatsoever. But the interlock  
2           device has to stay on for security reasons  
3           right now.

4           MR. CAFFERKEY:           Very good.

5           THE COURT:                But we can review that  
6           again also on May 20th. So if they submit a  
7           report and show that that vehicle has been  
8           operated, sir, you understand --

9           THE DEFENDANT:           I understand that.

10          THE COURT:                -- 168 days.

11          THE DEFENDANT:           I understand.

12          THE COURT:                Is that acceptable to  
13          the representative?

14          MR. PERELLA:            Absolutely.

15          THE COURT:                Is there anything else,  
16          Mr. Oriti?

17          MR. ORITI:                That would be it, your  
18          Honor. I just wanted to make clear, I think  
19          that Mr. Ber -- Perella, rather would need  
20          to have access to that vehicle prior to the  
21          May 20th court date for review, if that  
22          vehicle has been operated; is that correct?

23          MR. PERELLA:            Absolutely.

24          MR. CAFFERKEY:           No objection, your  
25          Honor.

1 THE COURT: How is that going to  
2 happen?

3 MR. PERELLA: One of our technicians  
4 can drive out to his home, facility  
5 (inaudible).

6 THE COURT: Okay. So you can make  
7 those arrangements with Attorney Cafferkey  
8 and his client.

9 MR. PERELLA: Yes, I will, your  
10 Honor.

11 THE COURT: I'll let you work that  
12 out in the courtroom, how they're going to  
13 do that. That's fine with the Court.  
14 So is there anything else?

15 MR. CAFFERKEY: Nothing further, judge.

16 THE COURT: That mean you should be  
17 released from the Cleveland House of  
18 Corrections soon; sometime this afternoon,  
19 sir.

20 THE DEFENDANT: Thank you.

21 THE COURT: And then Mr. Oriti is  
22 going to call the SCRAM representatives so  
23 they place the SCRAM device. You have a  
24 land line phone and all that, is that  
25 correct?

1                   Mr. Oriti, does he need a land line  
2 phone for the SCRAM device?

3           MR. ORITI:                   I think Mr. Philhower  
4 can weigh in on that. Yeah, I think he was  
5 engaged with the SCRAM prior. If he's  
6 prepared to go forward, the installer will  
7 be at the Workhouse tomorrow.

8           THE COURT:                 No, tonight.

9           MR. ORITI:                 Oh, tonight?

10          THE COURT:                 He's getting ready to  
11 be released tonight.

12          MR. ORITI:                 From this building,  
13 your Honor?

14          THE COURT:                 No, I have to get him  
15 on the bus in like five minutes.

16          MR. ORITI:                 Then I'll get on that  
17 right away, your Honor.

18          THE COURT:                 We need a SCRAM  
19 representative at the Cleveland House of  
20 Corrections before he's released this  
21 evening. They'll know not to release unless  
22 he has a SCRAM device.

23          MR. ORITI:                 May I make a phone  
24 call, your Honor, briefly?

25          THE COURT:                 Sure. But I was asking

1           about the land line.

2           THE DEFENDANT:           I do.

3           THE COURT:                Are you sure?

4           THE DEFENDANT:           Positive.

5           THE COURT:                Okay.

6           MR. CAFFERKEY:            Your Honor, I'm due in  
7           trial upstairs.

8           THE COURT:                I know. You can go  
9           right ahead.

10          MR. CAFFERKEY:            Thank you very much.

11          THE COURT:                Mr. Philhower, how  
12          often were you seeing your attorney, I mean  
13          your probation officer?

14          THE DEFENDANT:           Once a month, your  
15          Honor.

16          THE COURT:                Well, You'll be back  
17          before -- this may be too much to drive to  
18          and from, I mean because he doesn't have  
19          anyone to --

20          MR. JENKINS:             Judge, and in light of  
21          the situation, I think his supervision level  
22          is going to be escalated.

23          THE COURT:                Okay. I'll leave that  
24          between you and -- but taking into  
25          consideration he can't operate a motor

1           vehicle.

2           MR. JENKINS:            We'll work out a

3           reporting schedule.

4           THE COURT:            Okay. Let me get the

5           paperwork done right away, sir. So will you

6           let the bus know that there's one person

7           waiting; that he should be there

8           immediately. Please not to leave without

9           him. Do you need to speak about the

10          vehicle?

11          MR. PERELLA:            I have all his contact

12          information.

13          THE COURT:            You have everything you

14          need.

15          MR. PERELLA:            Yes.

16          THE COURT:            Thank you so much for

17          being present

18          MR. PERELLA:            (Inaudible).

19          THE COURT:            Did you hear the answer

20          that you needed to hear?

21          MR. PERELLA:            Yes. Yes, your Honor.

22          THE COURT:            Okay.

23          MR. JENKINS:            I'm going to go confirm

24          that right now.

25          THE COURT:            Thank you. And they're

1 going to give you information as to where  
2 you're going to go for that assessment  
3 Thursday at 10.

4 THE DEFENDANT: St. Vincent Charity,  
5 Rosary Hall, 9 a.m., Thursday.

6 THE COURT: Okay.

7 THE SECURITY BAILIFF: (Inaudible). Your  
8 Honor, did you want me to take him back --

9 THE COURT: Yeah, call jail  
10 transport right a way.

11 THE SECURITY BAILIFF: They're on their way  
12 up.

13 THE COURT: Linder, can you  
14 approach? He may have a seat. No alcohol  
15 consumption, Mr. Philhower. No.

16 THE DEFENDANT: No more, your Honor.

17 THE COURT: I know it's difficult,  
18 but you can't.

19 THE DEFENDANT: Not as difficult as the  
20 other, your Honor.

21 - - -

22 (Thereupon, the following proceedings were  
23 conducted at Sidebar.)

24 - - -

25 THE COURT: If I have credit for 12

1 days, I ordered 168 days into execution, but  
2 I'm going to stay it, would they release  
3 him on this?

4 THE JOURNALIZER: You wrote sentence to e  
5 stayed.

6 THE COURT: Yes, I ordered 168 into  
7 execution but I said stayed until May 21st.  
8 Would they release him then? So he's to be  
9 released from the Workhouse immediately?

10 THE JOURNALIZER: Right. Also here judge  
11 write release immediately.

12 THE COURT: I will.

13 THE JOURNALIZER: Yeah, I'm going to put  
14 on there -- okay.

15 THE COURT: Okay. And we need to  
16 do this right away.

17 THE SECURITY BAILIFF: Your Honor, the  
18 bus has already left.

19 THE COURT: Huh?

20 THE SECURITY BAILIFF: The bus has already  
21 left.

22 THE COURT: I thought you all told  
23 me the bus wasn't leaving until 2:30.

24 THE SECURITY BAILIFF: They said -- I said  
25 that they could be gone before 2:30 but

1           Officer Gaines (inaudible).

2           THE COURT:                You know what you all  
3           told me the bus would be here till 2:30.  
4           I've had enough. This is ridiculous.  
5           Mr. Oriti needs to come back, too. They  
6           just don't give me accurate information. I  
7           don't know. All right.

8                        Bobby, what do you think? Do you think  
9           that they will -- our staff will just drop  
10          him off at the Workhouse (inaudible)  
11          overcrowding. What supervisor is there?

12          THE SECURITY BAILIFF: Kathy Turner, Josh.

13          THE COURT:                Let's see, if it's just  
14          to release him, you know we could release  
15          him from here. But he's got on (inaudible).  
16          Who shall I ask for?

17          THE SECURITY BAILIFF: Ask for Greg Sims.  
18          He's here.

19          THE COURT:                I'm going to give him a  
20          call. (Inaudible) told me 2:30. I thought  
21          I had a couple minutes.

22                                       - - -  
23          (Thereupon, a telephone call was placed on  
24          the Bench.)

25                                       - - -

1 THE COURT: This is Judge Stokes.  
2 Is Greg there, please? I tell you.

3  
4 (End of telephone call.)

5 - - -  
6 (Thereupon, proceedings were resumed in open  
7 court as follows:)

8 - - -  
9 THE COURT: Were the representatives  
10 from SCRAM able to go out there?

11 MR. ORITI: They will be, your  
12 Honor, this evening.

13 THE COURT: Okay. I'm trying to get  
14 it together. Bobby, why don't you just ask  
15 Greg to come up to the courtroom.

16 Chief, we have a little situation here.  
17 We don't know if you could help us or not,  
18 the jail situation --

19 MR. SIMS: Just call them.

20 THE COURT: Thank you.

21 MR. SIMS: 1206. Make sure they  
22 don't have to take that person back from  
23 Judge Tarver. If so we'll get somebody else  
24 to transport him.

25 THE COURT: Thank you, Chief Sims.

1 MR. SIMS: Thank you.

2 THE COURT: Make the phone call,  
3 Mr. Oriti.

4 MR. ORITI: Yes, I did, your Honor.

5 THE COURT: All right.

6 Mr. Philhower, can they just move him on the  
7 JE, Greg? Can they just move him on the  
8 journal -- I mean Chief Sims, can they just  
9 move him on the journal?

10 Now, Mr. Philhower, they're making a  
11 special exception because that bus already  
12 left, but Chief Sims is allowing two of his  
13 deputy bailiffs to drop you off at the  
14 Workhouse.

15 THE DEFENDANT: I will not disappoint  
16 you again.

17 MR. SIMS: Are you going to write  
18 that on to the JE?

19 THE COURT: Oh, I forgot that,  
20 because I hadn't had permission yet, so I  
21 didn't write it. I'll write it.

22 Thank you, Dean, for scheduling his --

23 MR. JENKINS: He's all set. It's all  
24 confirmed.

25 THE COURT: Mr. Philhower, Mr. Dean

1           Jenkins is saying they confirmed your Rosary  
2           Hall appointment. A lot of people have  
3           worked to do this, sir. For yourself,  
4           please get the help you need.

5           THE DEFENDANT:           I will.

6           THE COURT:                They know --

7           THE DEFENDANT:           My actions will  
8           demonstrate my appreciation.

9           MR. JENKINS:                Thanks, judge.

10          THE COURT:                Shall I give you his  
11          record or do you have his record?

12          MR. JENKINS:            I've got his probation  
13          report.

14          THE COURT:                Okay. Thank you for  
15          everything.

16                                    - - -

17  
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