

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL, : CASE NO.: 14-1905  
: :  
Relator, : Matter Related to the Practice of  
: Law Authorized by S. Ct. Prac. R.  
-vs- : Section 13  
: :  
ANGELA ROCHELLE STOKES, : :  
: :  
Respondent. : :  
:

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RESPONDENT'S MOTION FOR DISSOLUTION OR MODIFICATION OF ORDER OF  
SUSPENSION UNDER GOV. BAR. R. V(5a)(C)(1) Exhibit A-7 through Exhibit A-13

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SCOTT J. DREXEL  
(0091467)  
Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215  
614.461.0256  
614.461.7205 (Facsimile)  
[scott.drexel@sc.ohio.gov](mailto:scott.drexel@sc.ohio.gov)  
*Relator*

HON. ANGELA ROCHELLE STOKES  
(0025650)  
Cleveland Municipal Court  
1200 Ontario Street  
Cleveland, Ohio 44113  
*Respondent*

LARRY W. ZUKERMAN (0029498)  
PAUL B. DAIKER (0062268)  
S. MICHAEL LEAR (0041544)  
Zukerman, Daiker & Lear Co., L.P.A.  
3912 Prospect Avenue, East  
Cleveland, Ohio 44115  
216.696.0900  
216.696.8800 (Facsimile)  
[lwz@zukerman-law.com](mailto:lwz@zukerman-law.com)  
[pbd@zukerman-law.com](mailto:pbd@zukerman-law.com)  
[sml@zukerman-law.com](mailto:sml@zukerman-law.com)  
*Counsel for Respondent*

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

3

4 IN THE MUNICIPAL COURT

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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  
By: Ashley M. Garrett, Ass't Police  
21 Prosecutor.

22

23

On behalf of the defendant:

24

JAIME P. SERRAT, Esq.

25

LAURA WILLIAMS



OFFICIAL COURT REPORTER  
CLEVELAND MUNICIPAL COURT  
Cleveland, Ohio 44113

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.

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MR. SERRAT: I got you.

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

MR. SERRAT: Thank you, Judge.

THE COURT: You are welcome.

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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 10th day of November  
2014

*Laura Williams*  
\_\_\_\_\_  
LAURA WILLIAMS

OFFICIAL COURT REPORTER  
CLEVELAND MUNICIPAL COURT  
Cleveland, Ohio 44113

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 Wednesday, January 16, 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 Timothy J. Kucharski, Esq.

25 LAURA WILLIAMS



P R O C E E D I N G S

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THE COURT:                    On Mr. Philhower's case, Frederick Philhower's case, which is Docket No. 48. This is his probation report, counsel.

      Shall I do yours, so that Attorney Hurley doesn't have to wait, even though -- and then they gave me one other sheet this morning which shows a negative urinalysis test result. I have to find it to attach it to the record, but they brought it up, okay.

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THE COURT:                    I would like to recall Mr. Frederick Philhower's case.

MR. SERRAT:                  Can I approach, your Honor?

THE COURT:                    Yes, please.

- - -

THE COURT:                    And, uh, Lozada, once you all take care of that matter, soon as the female bailiff -- no, I said as soon as -- I don't need you for anything else, sir. Thank you, so much.

- - -

MR. KUCHARSKI:                Good evening, your

1 Honor.

2 THE COURT: Good evening.

3 Mr. Philhower is present regarding these  
4 issues I'll say with the interlock device,  
5 and some of them say that he missed the  
6 retesting, some said a positive test, but I  
7 understand that he was told to go to the  
8 North Royalton, to the North Royalton  
9 police; is that right?

10 MR. SERRAT: He did go.

11 THE COURT: To do a breathalyzer  
12 test, and it was negative; is that right --  
13 or we don't know?

14 MR. SERRAT: It was 0000.

15 THE COURT: Thank you. So what  
16 would you say about all these issues with  
17 this interlock device?

18 MR. KUCHARSKI: I -- I can explain  
19 exactly what happened, your Honor.

20 THE COURT: Okay. And how many  
21 dates are involved here, so that I could  
22 understand?

23 MR. SERRAT: Two. The 29th, I'm  
24 sorry.

25 THE COURT: The 29th of --

1 MR. SERRAT: Three. I'm sorry. The  
2 29th, the 30th.

3 THE COURT: There's January, 2  
4 where they talk about a misread test.  
5 January 2, 2013. Then they said never  
6 started the vehicle. December 29, two  
7 thousand -- that's when it was positive for  
8 alcohol .0557. And then 3:41 p.m., it was  
9 .036, all on December 29. I don't really  
10 know, and then I don't know if they give me  
11 any other dates. They said December 27, it  
12 was positive for .0274, then it says misread  
13 test on December 27, another misread test at  
14 8:45 a.m.; and then another misread test at  
15 9:04, and then when there was a test it was  
16 positive for .0274, so it looks like there's  
17 a few dates involved here, um --

18 MR. KUCHARSKI: Which one would you  
19 like me to explain first, Judge?

20 THE COURT: Well, it doesn't  
21 matter. You could start --

22 MR. KUCHARSKI: Well, I guess I go --

23 THE COURT: -- with December 27th  
24 if you like.

25 MR. KUCHARSKI: Well -- well, I guess

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THE COURT:                   It says it was a  
misread test at 8:45 a.m. on December 27,  
2012 and then another one at 9:04 a.m., and  
then it says at 7:43 p.m., it was positive  
for alcohol .0274, and then it says that,  
um, then it goes into -- and then it says --

MR. KUCHARSKI:           If I can back up, the  
way the interlock is designed and the way  
it's used, is that it's something in there  
called a fuel-cell in there that determines  
whether there's alcohol on a person's  
breath.

So if -- if you go back, I can show the  
Court, I have -- I have his entire report  
for that -- that entire month that  
Mr. Philhower have. The fuel-cell takes,  
approximately, four to six seconds for it to  
analyze someone's breath. They can't be  
sitting there waiting and waiting and  
waiting, so it takes about four to six  
hours.

So if I -- if I then go to the first,  
the 29th, I think it was, the twenty, excuse  
me. There's on the 29th at 3:45 p.m.,

1           there's an alcohol test of .0557. If you  
2           look next to it, and I -- I think your  
3           report may have it, if not, I can show the  
4           Court on mine. It actually -- the fuel-cell  
5           takes 20.41 seconds which would indicate in  
6           the break off point for it to have a valid  
7           test is 21 seconds. So for, approximately,  
8           you know .59, 59 hundredths of a second away  
9           from it failing because of the fuel-cell.

10          THE COURT:                    Tiffany, this goes.  
11          Thank you. I'm listening.

12          MR. KUCHARSKI:                So then it does  
13          another, there's another test, um, about six  
14          minutes later, There's another positive test  
15          result, and again it's 20.39 seconds for the  
16          fuel-cell to register a reading.

17                 Now you can take a look then at the  
18          alcohol readings of .055 and .036, which is  
19          in the six minute period of time. It's  
20          impossible for someone to lose that amount  
21          of alcohol on their breath within that short  
22          period of time.

23          THE COURT:                    But why would it test  
24          positive for alcohol at any time?

25          MR. KUCHARSKI:                Because the fuel-cell

1 was going bad.

2 THE COURT: What about all these  
3 when he doesn't call back in? He's -- he's  
4 going to be on the SCRAM device or at the  
5 Cleveland House of Corrections. He needs to  
6 get rid of this. If this device doesn't  
7 work, he has an accident on his record, he  
8 might as well be on an alcohol monitoring  
9 device, where I know that, that device works  
10 without these problems, and he can be  
11 monitored 24 hours a day and no driving  
12 privileges. That way he can avoid the jail  
13 time. I just don't understand this and all  
14 these misread tests. I don't understand  
15 what that means.

16 This Court is not pleased with this, but  
17 I don't really know, Attorney Kucharski. I  
18 don't --

19 MR. KUCHARSKI: I'm -- I'm trying to  
20 explain, your Honor.

21 THE COURT: That's why he needs to  
22 think about this alcohol monitoring device,  
23 because there is not going to be any driving  
24 privileges. If this company is this bad on  
25 this matter, then you need to figure out

1 another company or have an alcohol  
2 monitoring device, where I know that there's  
3 no alcohol use, whatsoever.

4 I don't understand about why he didn't  
5 even start the vehicles, and I don't know  
6 that you can even answer that  
7 Attorney Kucharski. That's something that  
8 Attorney Serrat and his, um, and  
9 Mr. Philhower would have to explain to the  
10 Court, and I don't know what happens with  
11 those.

12 MR. KUCHARSKI: Well, I -- I can  
13 address the rolling retests and if you're  
14 asking --

15 THE COURT: And then when he never  
16 started the vehicle on these.

17 MR. KUCHARSKI: And if we go to  
18 December 21, your Honor --

19 THE COURT: Uh-huh.

20 MR. KUCHARSKI: -- and there was a miss  
21 rolling retest at 6:45 in the morning. He  
22 starts it. If everything is functioning, he  
23 misses a rolling retest. Now --

24 THE COURT: But what -- why did he  
25 miss the retest?

1 MR. KUCHARSKI: There -- there could be  
2 any number of reasons as to what's going on  
3 there.

4 THE COURT: Lord have Mercy. How  
5 come he -- why can't he explain why he  
6 didn't test -- why he didn't retest?

7 MR. SERRAT: Judge, I -- I think  
8 what I have with me is, every time something  
9 happens, and I'm not familiar with these  
10 devices, he calls four times to the  
11 probation department. He calls four times  
12 to the company. The one time I made him go  
13 to the police station. And Judge, just to  
14 corroborate with what he's saying, on one  
15 sense, the vehicle read a positive reading,  
16 within minutes, he goes to the police  
17 station, and it comes back to 0000, and --

18 THE COURT: So what do you have  
19 showing that this is malfunctioned, and this  
20 is not going to happen again? Because he's  
21 not going to be with this company, he's  
22 going to be at the workhouse, because the  
23 Court can't accept this, especially with  
24 your record and the accident involved; and  
25 maybe he needs no privileges and just needs

1 to be on an alcohol monitoring device that  
2 way I know there's no alcohol usage.

3 And if it's going bad on all these days,  
4 I mean, I just don't know. I don't know if  
5 it's mechanically, and what do you have to  
6 show that it was malfunctioning and how it's  
7 been fixed, Attorney Kucharski?

8 MR. KUCHARSKI: It indicated on the --  
9 if you look on the 20 some odd seconds the  
10 fuel-cell. Your Honor, if I can approach I  
11 can probably explain this a little bit  
12 easier if you look at my documents. I -- I  
13 can show you here. For example --

14 THE COURT: I think he needs to  
15 have a continuous alcohol monitoring device,  
16 and we don't -- and no privileges and stop  
17 this until we can figure out if there truly  
18 has been no alcohol usage.

19 MR. KUCHARSKI: Your Honor, I -- I can  
20 tell you --

21 THE COURT: But I don't want to --

22 MR. KUCHARSKI: -- from the interlock  
23 device --

24 THE COURT: -- incarcerate

25 Mr. Philhower here, but this can't continue

1 going on, but --

2 MR. KUCHARSKI: From the interlock  
3 standpoint, your Honor, I understand your  
4 concern.

5 THE COURT: Uh-hum. Because I  
6 don't want a person having driving  
7 privileges. I probably should have never  
8 granted them on this case, especially when  
9 there was an accident involved.

10 MR. KUCHARSKI: But what I was going to  
11 say, he hasn't indicated or there's nothing  
12 on any of this report that would indicate  
13 that he was driving while he had alcohol on  
14 his breath.

15 THE COURT: I don't know. I see  
16 those positive test results, but you're  
17 telling me that it was a bad fuel-cell,  
18 but --

19 MR. KUCHARSKI: Correct.

20 THE COURT: I don't know, and then  
21 all these misread tests. I don't know.

22 MR. KUCHARSKI: Well -- well --

23 THE COURT: And I think he just --  
24 no driving privileges -- enough.

25 MR. SERRAT: Judge, if I may just

1 intercede, also for what it's worth, Judge,  
2 his employers are in the back of the  
3 courtroom. The employer is also here to  
4 verify that some of this positive readings  
5 happened while at work, allegedly while he  
6 was at work the entire --

7 THE COURT: You all have an excuse  
8 for everything. I don't know. I'm not  
9 going to violate him, but he's not going to  
10 have any driving privileges.

11 THE DEFENDANT: That's fine. That's  
12 fine, good. Fine.

13 THE COURT: You know, and he can  
14 wear an alcohol monitoring device, so that  
15 this Court knows that there's no problems  
16 and maybe he can get someone to drive him to  
17 and from work until we know that there are  
18 no problems, but --

19 MR. KUCHARSKI: Your Honor, can I say  
20 something?

21 THE COURT: Yes.

22 MR. KUCHARSKI: All right.

23 THE COURT: But I'm not going to  
24 change my mind.

25 MR. KUCHARSKI: Which is fine, your

1 Honor.

2 THE COURT: And I don't want to  
3 send him to jail, but I want to make sure  
4 that he's not consuming any alcohol.

5 MR. KUCHARSKI: I can -- I can  
6 demonstrate --

7 THE COURT: And I don't feel any  
8 peace, especially when there's an accident  
9 involved, granting privileges, especially  
10 when there's an accident involved. One on  
11 his report arrest DUI conviction. I believe  
12 that was 1996.

13 MR. KUCHARSKI: Your Honor, I -- I  
14 believe I can demonstrate to this Court.

15 THE COURT: He's not going to be  
16 driving.

17 MR. KUCHARSKI: Regardless of whether  
18 he's driving or not, I would like the Court  
19 to recognize that this individual has not  
20 been drinking and driving.

21 THE COURT: I don't know.

22 MR. KUCHARSKI: Because if I can show  
23 you, if I can just show you.

24 THE COURT: So what did you do with  
25 this fuel-cell, what do you have to say

1           that it was defective?

2           MR. KUCHARSKI           the fuel-cell was taken  
3           out. That particular unit was taken out and  
4           a new unit has been --

5           THE COURT:           And you have some  
6           documentation regarding that, as well?

7           MR. KUCHARSKI:           Yes, I do. I can bring  
8           that in, too.

9           THE COURT:           But it's not here  
10          today?

11          MR. KUCHARSKI:          I didn't -- I didn't  
12          know that you were going to ask about  
13          whether that was removed or not.

14          THE COURT:           Well, yeah, because  
15          that's his excuse. He's saying it was  
16          malfunctioned. I don't know, but --

17          MR. KUCHARSKI:          I can certainly bring  
18          it in.

19          THE COURT:           He's not going to be  
20          concerned about this, because he's not going  
21          to have any driving privileges. It ends  
22          today.

23          MR. KUCHARSKI:          Which is fine, your  
24          Honor, but-- but I would like to be able to  
25          explain to the Court, so future cases the

1 Court would understand.

2 THE COURT: I hope we don't have  
3 any in the future with these kind of  
4 issues.

5 MR. KUCHARSKI: But -- but your Honor,  
6 the rolling retest that they're talking  
7 about --

8 THE COURT: Uh-hum.

9 MR. KUCHARSKI: -- I'll direct you to  
10 December 27 at 8:54.

11 THE COURT: Okay.

12 MR. KUCHARSKI: There's a rolling  
13 retest that was missed at 8:54:26.

14 THE COURT: Which date now, sir?

15 MR. KUCHARSKI: The 27th.

16 THE COURT: Okay.

17 MR. KUCHARSKI: If you look down at  
18 8:55, approximately, one minute later,  
19 whenever you miss a rolling retest, it will  
20 prompt you again to have a test.

21 Mr. Philhower took a test one minute  
22 later, and he tested clean 0.000, so well,  
23 technically, he had missed a rolling retest.

24 And your Honor, when you have an  
25 interlock on your vehicle, you can't get --

1 if a car is cutting in front of you, if  
2 there's something going on, if it's bad  
3 weather, whatever it is, and I don't know  
4 what happened on this particular day, there  
5 is a missed rolling retest, but the  
6 instructions are, and Mr. Philhower followed  
7 them exactly, that you are to take a test  
8 prior to shutting the vehicle off. He did  
9 that. That rolling retest was missed.

10 And then if you go to 9:04, there's  
11 another missed rolling retest. A few  
12 minutes later, he's prompted again to test.  
13 He tested .000. He is then prompted a few  
14 minutes after that on the same day .0000, so  
15 you can establish, so -- I understand where  
16 the Court's concern is that a person may  
17 miss a rolling retest and that may be an  
18 indication that they consumed alcohol, but  
19 I'm telling you from the data that's  
20 collected in this case, Mr. Philhower didn't  
21 consume any alcohol, so those are those  
22 instances. There's another one.

23 THE COURT: I think he's willing to  
24 not have these privileges -- they ended  
25 January 15, anyway, right, or they ended on

1           January --

2           MR. SERRAT:                   No, no --

3           THE COURT:                   The privileges?

4           MR. SERRAT:                   -- that was just the

5           submission of him, um --

6           THE COURT:                   I think the privileges

7           expired --

8           MR. SERRAT:                   That's was simply

9           because we did not --

10          THE COURT:                   -- January 15, and

11          That's it.

12          MR. SERRAT:                   -- we provided the

13          Court with insurance. I did not --

14          THE COURT:                   So he has no

15          privileges.

16          MR. KUCHARSKI:               And, again, your Honor.

17          THE COURT:                   Hopefully, he has

18          family members, friends who can help him get

19          to and from work until --

20          MR. SERRATE:                   Until when, Judge?

21          THE COURT:                   And the only way I

22          would grant him any type of privileges, he

23          would have an interlock device -- I mean,

24          um, a SCRAM device on, where he's monitored

25          for alcohol 24 hours a day, seven days a

1 week. That's it. With his record.

2 Otherwise, he needs someone to drive him  
3 to and from work. He doesn't have any  
4 driving privileges. They ended January 15  
5 anyway. Well, actually, I think I said  
6 pending this hearing that he didn't have  
7 privileges, but they were due to expire on  
8 January 15, anyway.

9 MR. SERRAT: Judge, it was simply  
10 because of the policy that we showed to the  
11 Court.

12 THE COURT: He doesn't have  
13 privileges.

14 MR. SERRAT: I'm just saying,  
15 Judge --

16 THE COURT: If he wants them he can  
17 have a continuous alcohol monitoring device  
18 that is the only way the Court can do this.

19 MR. SERRAT: He can do this. He  
20 just can't afford it, Judge.

21 THE COURT: I understand. There's  
22 nothing else I can do then. I am not  
23 sending him to jail. I don't know what's  
24 going on. It's just -- I'll giving him the  
25 benefit of the doubt. I'm not renewing his

1           privileges, and I am not sending him to the  
2           Cleveland House of Corrections. He'll just  
3           continue on active probation.

4           MR. KUCHARSKI:           Your Honor, your Honor,  
5           I -- I don't want to have Mr. Philhower not  
6           be able to drive simply because --

7           THE COURT:               Well, he'll have to get  
8           a family member or a friend to help him or  
9           someone from his job. That's it.

10          MR. KUCHARSKI:           But -- but, I'm able to  
11          demonstrate to the Court.

12          THE COURT:               But I -- no. It's not  
13          acceptable. I -- he, he understands. He  
14          accepts --

15          MR. SERRAT:               No, he doesn't. He  
16          just doesn't want to go to jail.

17          THE DEFENDANT:           I just don't want to go  
18          to jail.

19          MR. SERRAT:               He just came out. His  
20          family can't afford him going to jail.

21          THE COURT:               Well, I'm not sending  
22          him to jail. If he wants some type of  
23          driving privileges, he needs an alcohol  
24          monitoring device, so I understand, and he  
25          can't afford that, so there's no privileges,

1           and hopefully his family members or friends  
2           can help him.

3           MR. SERRAT:                    But Judge, I know that  
4           you are very conscientious of being able to  
5           maintain a family --

6           THE COURT:                    My goodness.

7           MR. SERRAT:                    -- but there's a  
8           daughter involved who is in school --

9           THE COURT:                    Then he should of  
10          thought of that before he operated a motor  
11          vehicle, had an accident, under the  
12          influence of alcohol, second one in his  
13          lifetime. He's placed himself in this  
14          position.

15          MR. SERRAT:                    I agree, Judge, for  
16          what it's worth, Judge --

17          THE COURT:                    So --

18          MR. SERRAT:                    -- I think his -- what  
19          he's done since then has been magnificent,  
20          Judge. He completed, successfully completed  
21          treatment. He's over it, and he was doing  
22          AA until the Court stopped him from doing  
23          that. He got a positive reading -- well,  
24          result from this treatment place. Judge, he  
25          had the SCRAM for over six months, not once

1 did he violate that. I think that's what  
2 the Judge, that's when you removed the  
3 SCRAM, because --

4 THE COURT: Right. And then I made  
5 the mistake of removing this, but he hasn't  
6 even been on probation for a year.

7 MR. SERRAT: Since July, I think,  
8 July, sometime, Judge.

9 THE COURT: Since July 24, 2012,  
10 the second DUI life -- the second DUI  
11 conviction in his lifetime.

12 MR. SERRAT: But at least what you  
13 have Judge, for what's it worth, since July  
14 he had the SCRAM on.

15 THE COURT: And there was a victim  
16 on this matter. Does anyone think about the  
17 victim? I'm not putting anybody else in  
18 this position, so I don't know what else I  
19 can do.

20 MR. SERRAT: He's been very  
21 remorseful, Judge, you know that.

22 THE COURT: I don't know.

23 MR. SERRAT: I just think that. I  
24 don't know how the family is going to  
25 survive, Judge, that's all I'm saying, and I

1 know that by sitting here this afternoon I  
2 know how conscientious you have been, Judge,  
3 of being able to provide for this family.  
4 His wife has numerous medical. She's on  
5 disability. She has numerous medical needs  
6 that she needs, and the kid and things like,  
7 it just makes it impossible for the family  
8 to drive him everyday back and forth to  
9 work, Judge, just to work.

10 Judge, since July, he hasn't had  
11 anything to drink or before then and there's  
12 nothing before the Court.

13 THE COURT: Well, he shouldn't.

14 MR. SERRAT: So -- I'm sorry. Way  
15 before that.

16 THE COURT: He shouldn't.

17 MR. SERRAT: I'm sorry.

18 THE COURT: He should not.

19 MR. SERRAT: No, no, I know that,  
20 but what I'm saying there's nothing before  
21 the Court, in my belief that would indicate  
22 that he did. I mean, the only evidence that  
23 you have here has been a technical  
24 difficulty that we have been trying to  
25 explain to the Court. I just -- I just hope

1           that the Court would give him another  
2           chance. I mean, and I indicated to him, as  
3           soon as he have a problem, go to the police  
4           station, and that's what he did.

5           THE COURT:               Well, this is not going  
6           to keep going on with this company. I don't  
7           know. Maybe he wants to switch companies.  
8           Maybe he needs to do something, or go on an  
9           alcohol monitoring device, but this cannot  
10          continue.

11          MR. SERRAT:               I -- I agree, Judge.

12          THE COURT:               And you know, if there  
13          was a malfunction, it should have been taken  
14          into Attorney Kucharski's company  
15          immediately. This went on for days and days  
16          and days. Why would he had not taken this  
17          to Attorney Kucharski's company immediately?

18          MR. SERRAT:               Judge, I have here --

19          THE COURT:               You know what, we're  
20          going around -- it's six o'clock. I'm  
21          supposed to be off this bench at five  
22          o'clock, and I know you patiently waited  
23          while we finished a huge docket, but if you  
24          can come up with some type of proposal. I  
25          don't know, but this --

1 MR. SERRAT: Well, can we propose --  
2 everything has been -- they've changed the  
3 equipment, Judge, and as of the violation as  
4 of January 4.

5 THE COURT: I'm done. I said that.  
6 I rendered these privileges --

7 MR. KUCHARSKI: Your Honor, if I can  
8 just say one thing?

9 THE COURT: Oh, this is ridiculous.

10 MR. KUCHARSKI: Mr. Philhower has come  
11 in. We changed the equipment.

12 THE COURT: I haven't seen any of  
13 that documentation.

14 MR. KUCHARSKI: And I'll bring that  
15 document.

16 THE COURT: And I explained to  
17 Attorney Serrat, maybe he needs to change  
18 companies, because this is not going to go  
19 on.

20 MR. KUCHARSKI: But -- but, your  
21 Honor --

22 THE COURT: You know what, if he  
23 wants to switch, that's his choice. If he  
24 wants privileges, but this is going to end.  
25 He had ample opportunities from all these

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.)

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THE COURT: Dean (inaudible)  
psychologically.

MR. JENKINS: Let me make a couple  
phone calls. I'll call Oakview.

THE COURT: Can you do Oakview,  
Stella Maris. Is there somewhere else?

MR. JENKINS: He went to that Hope  
Counseling.

- - -

(Thereupon, proceedings were resumed in open  
court as follows:)

- - -

THE COURT: What about the  
counseling place that you went to before?  
May I see the probation report? May we see  
that? You went to a Hope Counseling place  
before?

THE DEFENDANT: Not only that, I did  
the intensive outpatient through them as  
well.

MR. CAFFERKEY: He did not only do the  
three-day school but he did intensive  
outpatient.

THE COURT: He did IOP with that?

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                                    - - -

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C E R T I F I C A T E

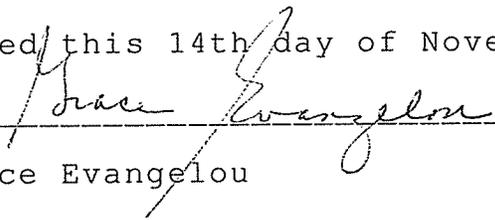
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State of Ohio,                    )  
County of Cuyahoga,            )  
City of Cleveland.             )            SS:

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

I, Grace Evangelou, 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 taped proceedings had therein.

Dated this 14th day of November, 2014.

  
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Grace Evangelou

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 PHILHOWER, )  
10 Defendant. )

11 - - -  
12  
13 Transcript of digitally recorded proceedings had  
14 before the Honorable Judge Angela R. Stokes on  
15 Tuesday, May 21, 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, Assistant Police  
Prosecutor.

21 On behalf of the defendant:  
22 Kevin Cafferkey, Esq.

23  
24  
25 Tanya E. Gibson

OFFICIAL COURT REPORTER  
CLEVELAND MUNICIPAL COURT  
Cleveland, Ohio 44113



P R O C E E D I N G S

1  
2 THE COURT: Mr. Fred Philhower's  
3 case. I need the file, RJ, please.  
4 THE BAILIFF: Yes, Judge.  
5 THE COURT: Last name is Philhower,  
6 P-h-i-l, thank you. There is a probation  
7 report, Attorney Cafferkey, that gosh, we  
8 should give you to review and if you want to  
9 review it before I, officially, call this  
10 case, you may want to, it's not a real good  
11 report at all. I know. Because there are  
12 all of those violations on the interlock.  
13 MR. CAFFERKEY: He has assessment,  
14 he's done everything.  
15 THE COURT: I read that, but  
16 they're telling me that he wants driving  
17 privileges to get to IOP and they're telling  
18 me, wait until you read that, all of those  
19 violations on the interlock device.  
20 I mean, I didn't even know about that.  
21 MR. CAFFERKEY: Me either, I called  
22 Mr. Oriti.  
23 THE COURT: Oriti.  
24 MR. CAFFERKEY: I talked to him  
25 yesterday afternoon and told him that. I

1           asked him, if he could, I'm okay with this.  
2           Mr. Oriti indicated this, he told me about  
3           it on the phone, so. But, he's happy with  
4           what he's been doing since he's been out of  
5           jail. This is all pre-jail.

6           THE COURT:                   I know. But, I never  
7           held a hearing on those violations on that  
8           interlock device because I didn't know about  
9           it, that's the problem.

10          MR. CAFFERKEY:               Did I? I think I  
11          admitted to the earlier violations already.

12          THE COURT:                   I don't think that we  
13          knew about that.

14          MR. CAFFERKEY:               He tested --

15          THE COURT:                   I don't think I knew  
16          about, well --

17          MR. CAFFERKEY:               He had two tests that  
18          he had and the result was .03, a couple of  
19          .03's tests, so he admitted to the  
20          violations.

21          THE COURT:                   I'm trying to, I don't  
22          know if they gave me, I don't know. I'll  
23          have to, I think Mr. Jenkins is on his way,  
24          anyway, he'll have to help me out.

25          MR. CAFFERKEY:               You want me to just

1           have a seat?

2           THE COURT:                Sure. I'll ask for  
3           clarification. If I included that in the  
4           last one, then great.

5           MR. CAFFERKEY:            You included the  
6           violations because he had tested positive  
7           for alcohol.

8           THE COURT:                Well, I remember that,  
9           but I don't know that I knew about it on all  
10          of those dates.

11          MR. CAFFERKEY:            I didn't either, no,  
12          they just got the results.

13          THE COURT:                That's what I'm saying.  
14          Okay. I'll recall it in a little bit, they  
15          are coming up in an a little bit. All  
16          right.

17          \*\*\*\*\*

18          THE COURT:                Mr. Philhower's case.

19          MR. CAFFERKEY:            Another satisfied  
20          customer, right, that gentlemen?

21          THE COURT:                Maybe one out of 100, I  
22          don't know.

23                 Mr. Oriti, thank you.

24                 Thank you both for your patience,  
25          Attorney Cafferkey, and Mr. Philhower, and

1 Mr. Oriti, because I know Mr. Oriti was  
2 supposed to have left at 6:00 o'clock,  
3 right?

4 PROBATION OFFICER: It's all right, your  
5 Honor.

6 THE COURT: I'm sorry.  
7 Mr. Philhower's case was on the docket today  
8 to review an updated report, regarding all  
9 conditions ordered. We needed the  
10 assessment recommendations, which I think  
11 have been placed in front of me, I just  
12 hadn't had a chance to read them and to give  
13 the Court more information, regarding the  
14 interlock device, right?

15 And so that was a little startling, the  
16 information, because I don't think that had  
17 been placed before the Court before, but,  
18 and I did grant work privileges while on  
19 home detention of the SCRAM device. So at  
20 this point, maybe, we need to move forward  
21 with the assessment.

22 PROBATION OFFICER: Your Honor, if I may --

23 THE COURT: -- and just --

24 PROBATION OFFICER: -- I don't believe the  
25 Court is, you're not acquainted with what

1 has occurred or you haven't had a chance to,  
2 obviously, read the recommendations.

3 THE COURT: I think it's for IOP,  
4 right?

5 PROBATION OFFICER: Yes. Since the last  
6 hearing, I think the recommendation came  
7 back for intensive outpatient treatment and  
8 that would be through Laurelwood Willoughby,  
9 I believe.

10 MR. CAFFERKEY: Correct.

11 THE COURT: Mr. Philhower was  
12 affixed with the SCRAM unit, as ordered by  
13 the Court, and I believe I attached the  
14 up-to-date report. Your Honor, he has been  
15 compliant with that and the house arrest  
16 portion.

17 He's back at work as of last week. We  
18 did receive the downloaded data yesterday,  
19 your Honor, from the interlock company and  
20 there were subsequent positive --

21 THE COURT: I know.

22 PROBATION OFFICER: -- alcohol blows from  
23 late April, yeah, late April, I believe,  
24 your Honor.

25 THE COURT: Because Mr. Philhower

1           appeared before the Court on, is that April  
2           30th?

3           PROBATION OFFICER:     No, he was subsequent  
4           to that, your Honor, I believe we were last  
5           here May 8th or 9th we were here?

6           THE COURT:                I'm sorry?

7           MR. CAFFERKEY:            Yes.

8           THE COURT:                Well, I have on April  
9           30th, I have no bond to be set until he  
10          appears before the Court. Then it was  
11          continued until May 6th. Then he was  
12          ordered from the Cleveland House of  
13          Corrections and they stamped that April  
14          30th.

15                 Were you taken into custody April 30th?

16          THE DEFENDANT:         Yes, your Honor.

17          THE COURT:                So he was taken into  
18          custody on April 30th and then the report  
19          that was submitted, Mr. Oriti talks about --

20          PROBATION OFFICER:     The 29th and 30.

21          THE COURT:                The 29th of April and  
22          the 30th of April. Were these violations on  
23          the interlock?

24          PROBATION OFFICER:     We did not have them,  
25          your Honor, they were was still imbedded in

1           the unit at that time. He had a prior  
2           calibration, he wasn't due in for  
3           calibration until sometime in May.

4           THE COURT:                Why are they saying  
5           April 30th when he was in custody?

6                        So you mean saying that earlier in that  
7           day he had it?

8           PROBATION OFFICER:        Correct, that morning.

9           THE COURT:                206183, 205190.

10          MR. CAFFERKEY:            I remember, Judge --

11          THE COURT:                Then he came to court a  
12          little later that day. So in a sense, I've,  
13          kind of, addressed it. But, I'm just so  
14          surprised because I just think if they would  
15          have said something different in the  
16          assessment, had they seen these readings,  
17          that's my concern?

18          PROBATION OFFICER:        As I recall, your  
19          Honor, what Mr. Philhower allocated that day  
20          he did denote that he consumed, I believe, a  
21          5th of Vodka.

22          MR. CAFFERKEY:            Right.

23          THE COURT:                But, since he was  
24          released from custody on, oh, my --

25          MR. CAFFERKEY:            The 6th.

1 THE COURT: May 6th, everything has  
2 been fine?  
3 PROBATION OFFICER: Yes, your Honor.  
4 THE COURT: No violations on the  
5 SCRAM?  
6 PROBATION OFFICER: None whatsoever.  
7 THE COURT: Did I have him on the  
8 interlock, too?  
9 PROBATION OFFICER: The interlock he did  
10 not have privileges after the 8th.  
11 THE COURT: Okay.  
12 MR. ORITI: And he was ordered not  
13 to drive that car, the last time that it was  
14 operated, per yesterday's calibration --  
15 THE COURT: Oh, I'm sorry, I didn't  
16 give occupational privileges,.  
17 MR. ORITI: No.  
18 THE COURT: Work privileges.  
19 PROBATION OFFICER: Work privileges, yes.  
20 THE COURT: All right. But, there  
21 have been no violations on SCRAM, so that's  
22 been good from May 6th to May 21st.  
23 PROBATION OFFICER: The car was not used  
24 for this calibration since April, that day,  
25 April 30th, that car.

1 THE COURT: This is regarding which  
2 vehicle, Mr. Oriti?

3 PROBATION OFFICER: That would be the Chevy  
4 truck, I believe, it was the one after  
5 Court --

6 THE COURT: -- what year is that  
7 one?

8 PROBATION OFFICER: The van, your Honor.

9 THE DEFENDANT: 2002.

10 THE COURT: On the 2012, there's  
11 a --

12 PROBATION OFFICER: There was an  
13 immobilization of that secondary car that he  
14 owns.

15 THE COURT: Right, that was done by  
16 the other court?

17 PROBATION OFFICER: Yes.

18 THE COURT: In Shaker? No, Parma.

19 PROBATION OFFICER: Parma.

20 THE COURT: Okay. And all  
21 right. The issue before us today, Attorney  
22 Cafferkey, I stayed the sentence, I  
23 suspended 168 days, and stayed that until  
24 today's date, pending this report. So in as  
25 much as he was in custody on the 30th, we'll

1           consider that penalty the 12 days that he  
2           was in custody.

3           MR. CAFFERKEY:           Thank you, Judge.

4           THE COURT:                That's the best thing  
5           we can do at this point.

6           MR. CAFFERKEY:           Thank you, Judge.

7           THE COURT:                But, this report says  
8           that Mr. Philhower hasn't started IOP,  
9           intensive outpatient treatment at Laurelwood  
10          on Mondays, Tuesdays, and Thursdays, due to  
11          travel impediments.

12          PROBATION OFFICER:    That's --

13          THE COURT:                That he's, once again,  
14          requesting driving privileges.

15          PROBATION OFFICER:    That's what is being  
16          reported, that's what he reported.

17          MR. CAFFERKEY:           Well --

18          THE COURT:                Does he not have anyone  
19          to -- how are you getting to and from work?

20          MR. CAFFERKEY:           How do you get to work?

21          THE DEFENDANT:           At this point, through  
22          the help of Mr. Oriti, I was able to outline  
23          some public transportation, that would mean  
24          to and from rides to work. As well as, my  
25          manager, who is quite fond of me, in spite

1 of being a drunk, an alcoholic, I do have a  
2 good qualities (INAUDIBLE), he's willing to  
3 take me back and forth to work.

4 THE COURT: Okay.

5 THE DEFENDANT: When I made contact,  
6 when I had my assessment, the doctor did the  
7 assessment, forwarded that over to  
8 Mr. Oriti, my attorney, and to Laurelwood,  
9 along with my insurance information, to make  
10 sure that everything would go through and  
11 that I could do my treatment there, and he  
12 said to await for a phone call from them,  
13 which I did.

14 There was an initial phone call from  
15 somebody who told me there would be a  
16 follow-up phone call. I wrote a three page  
17 letter that I don't know that you're in  
18 receipt of or not.

19 THE COURT: I believe it's right  
20 here.

21 THE DEFENDANT: On top of the first  
22 page, is the intake manager's name, and her  
23 phone number, and her extension. And when I  
24 explained to her all of the complications,  
25 the relapse, the house arrest, the bracelet,

1 the not driving, her response to me was,  
2 "Fred, you've got a mess, are you drinking?"  
3 "No, ma'am."  
4 "Can you make it to court?"  
5 "Yes, ma'am."  
6 "Please call me after you've seen Judge  
7 Stokes and let's see where we're at then."  
8 THE COURT: So the question is,  
9 Attorney Cafferkey and Mr. Philhower, how  
10 will you get to your intensive outpatient  
11 treatment program? These classes are at,  
12 what time do you get off work, usually? I  
13 wrote that order before Mr. Oriti, I just --  
14 THE DEFENDANT: It's normally 6:00  
15 p.m., your Honor.  
16 THE COURT: Okay. So then you need  
17 to, you're supposed to be at IOP --  
18 THE DEFENDANT: At 6:00, which my  
19 employer is willing to work with me on that.  
20 THE COURT: Okay. And you have to  
21 go there Monday, Tuesday, and Thursdays.  
22 THE DEFENDANT: Correct.  
23 The Court: And your job is in --  
24 THE DEFENDANT: -- Mentor.  
25 THE COURT: And this is in Lake

1           Laurelwood which is where?

2           THE DEFENDANT:           Laurelwood, which, I  
3           have a map, it's, approximately, a 15 minute  
4           drive.

5           THE COURT:                So how, what's the  
6           plan?

7                    Attorney Cafferkey, does he have a plan  
8           to be able to get there?

9                    And did they tell you how many weeks,  
10          Mondays, Tuesdays, and Thursdays?

11          The DEFENDANT:           Six weeks.

12          THE COURT:                For Six weeks.   Does he  
13          have a plan to get there?

14          MR. CAFFERKEY:           He has a way to get  
15          there, Judge.

16          THE COURT:                To and from work, and  
17          to and from his treatment for the next six  
18          weeks?

19          MR. CAFFERKEY:           To there and he'll get  
20          home.   Because I know what'll happen is  
21          that, because after he's there a little bit,  
22          he'll hook up with another good individual  
23          who is in the area that'll make sure he gets  
24          home.

25                    So I feel comfortable that he'll have a

1 way there and I'm sure that we'll get him  
2 home. So I think we're in good shape in  
3 that regard. The one concern is, that he's  
4 got a probation meeting with Mr. Barker.

5 THE DEFENDANT: Mr. Oriti and I have  
6 already discussed it.

7 MR. CAFFERKEY: Have already discussed  
8 it.

9 THE DEFENDANT: He's taken care of the  
10 other meeting.

11 - - -

12 (Thereupon, the electronic recording device  
13 unexpectedly stopped recording:)

14 - - -

15 (Thereupon, proceedings were resumed:)

16 - - -

17 THE COURT: So what do you think,  
18 Attorney Cafferkey and Mr. Philhower; is  
19 that a good plan?

20 MR. CAFFERKEY: I think that's a good  
21 plan. Historically, having been involved in  
22 this, I do know clients can get overwhelmed.

23 THE COURT: So a couple of weeks of  
24 IOP, if that is, faithfully, attended and  
25 everything is going well, then, you'll work

1 with Attorney Cafferkey and Mr. Oriti to  
2 merge you into the AA meetings?

3 MR. CAFFERKEY: Um-humm.

4 THE COURT: Is that acceptable?

5 THE DEFENDANT: That's more than  
6 acceptable.

7 THE COURT: And then you can notify  
8 me, Mr. Oriti, just via blue form --

9 PROBATION OFFICER: Certainly, your Honor.

10 THE COURT: -- would acceptable to  
11 the Court, that you now think, requesting  
12 permission for him to attend AA --

13 PROBATION OFFICER: Certainly, your Honor.

14 THE COURT: -- and all I need is  
15 that he's in compliance and then I'll just  
16 sign off on the blue form that it's fine.

17 PROBATION OFFICER: Certainly, your Honor.  
18 I'll just remind the Court, your Honor, I'm  
19 glad to help Mr. Philhower in any capacity,  
20 but that Mr. Barker is the PO of record.

21 THE COURT: Well, I know, but he's  
22 not here right now.

23 PROBATION OFFICER: Right.

24 THE COURT: I know that you'll  
25 follow through.

1           PROBATION OFFICER:     Absolutely, your Honor.  
2           THE COURT:                So if you want the form  
3           to come from Mr. Barker, that's fine?  
4           PROBATION OFFICER:     Sure.  
5           THE COURT:                But, if you could work  
6           with Mr. Barker.  
7           PROBATION OFFICER:     Absolutely.  
8           THE COURT:                Okay. Let's see, then  
9           maybe once you complete IOP, which is how  
10          many weeks?  
11          MR. CAFFERKEY:           Six.  
12          THE COURT:                There's only six, wow.  
13          And then there's aftercare, right? No?  
14          THE DEFENDANT:           There was no mention.  
15          THE COURT:                But, you all can find  
16          out about that.  
17          PROBATION OFFICER:     That's usually  
18          standard, it's, usually, aftercare with  
19          that, your Honor.  
20          THE COURT:                At some point, you have  
21          to be able to drive, again, we know that.  
22          But, you have to get a strong foundation  
23          first.  
24                    I think, Attorney Cafferkey would,  
25          probably, know about the appropriate time to

1 ask about driving privileges.

2 MR. CAFFERKEY: Yes.

3 THE COURT: Not before you complete  
4 IOP, that's why I was asking about  
5 aftercare.

6 THE DEFENDANT: Sure, I understand.

7 THE COURT: But, I think, it's  
8 great that there have been no violations  
9 between May 6 and today.

10 MR. CAFFERKEY: Yes.

11 THE COURT: I think that's good.  
12 Thank you for your letter.

13 THE DEFENDANT: Thank you for releasing  
14 me from jail. Thank you for the  
15 opportunity.

16 THE COURT: You're welcome. I'm  
17 glad to see you're doing so well and I thank  
18 you for your patience today.

19 Is there anything else I need to do?

20 MR. CAFFERKEY: The only other thing I  
21 had, Judge, is that he's currently not  
22 allowed to drive. He, certainly,  
23 understands that, but he's paying for the  
24 interlock on the vehicle.

25 PROBATION OFFICER: If he waives driving

1           privileges for the time being, we could  
2           terminate that and we could revisit that at  
3           a later date.

4           THE COURT:                    But, with it on, I  
5           know.

6           MR. CAFFERKEY:                Yeah, but, I'm just  
7           saying, for right now, he's paying for it,  
8           needlessly. If we were to allow --

9           THE COURT:                    The other car is  
10          immobilized?

11          PROBATION OFFICER:        Correct.

12          THE COURT:                    This interlock device,  
13          I know, but it's a guarantee that if he  
14          tries to operate that motor vehicle.

15          MR. CAFFERKEY:                Judge, whatever you  
16          want.

17          THE COURT:                    It's not what I want,  
18          I'm trying to make sure that he's safe and  
19          the community is safe. I wasn't aware of  
20          those high readings before, I had no idea.

21          PROBATION OFFICER:        We just received that  
22          yesterday, they went out and retrieved that  
23          data.

24          THE COURT:                    Has the other case been  
25          resolved, the one in --

1 MR. CAFFERKEY: -- not to my knowledge,  
2 Judge.

3 THE COURT: How is it immobilized?  
4 How is that vehicle, the 2012 case  
5 immobilized?

6 THE DEFENDANT: It was standard.

7 MR. CAFFERKEY: Go ahead.

8 THE DEFENDANT: It was explained to me  
9 that it was standard procedure the day, the  
10 day you get it out of impound, the bailiff  
11 comes out and immobilizes the vehicle.

12 THE COURT: There's been no  
13 conviction yet on that case, right?

14 THE DEFENDANT: No.

15 THE COURT: They do it a little  
16 differently than Cleveland.

17 PROBATION OFFICER: They do that in Parma,  
18 your Honor. I'm not certain of that  
19 paperwork, but I did see the paperwork in  
20 Parma's computer system that the  
21 immobilization was undertaken on that  
22 vehicle.

23 THE DEFENDANT: Also, on the piece of  
24 paper that I provide to Mr. Oriti, I wrote  
25 the bailiff's name and phone number which he

1           gave me.

2           PROBATION OFFICER:     That's correct.

3           THE DEFENDANT:           Also, a contact so you  
4           could verify that and he also asked me to  
5           call him in June as it got closer to the  
6           Court date.

7           THE COURT:                My concern is that he  
8           used both of those vehicles when he wasn't  
9           supposed to. I think it's a safety device  
10          so that he doesn't use the, what was that,  
11          what year was that, Mr. Oriti, the 2000?

12          PROBATION OFFICER:     2002.

13          THE COURT:                The 2002. The  
14          interlock device is on the 2002 vehicle.  
15          The 2012 vehicle is immobilized by Parma.

16          PROBATION OFFICER:     By Parma, correct, your  
17          Honor.

18          MR. CAFFERKEY:           His concern is your  
19          significant other, who you live with and own  
20          a house with, needs to drive a vehicle, is  
21          that correct?

22          THE DEFENDANT:           Right now, we have  
23          managed to salvage our relationship and then  
24          we have a major problem with her car. She  
25          needs access to that vehicle. I'm not

1           allowed to operate the van.

2           Your Honor, Mr. Oriti knows early in the  
3           stages here, that little visit on the other  
4           side of the door, created a lasting  
5           impression. I have done everything in my  
6           power to meet or exceed anything that was  
7           asked of me. I give you my word, I won't  
8           drive the vehicle. I will not attempt to  
9           drive the vehicle. I will not do  
10          that. But, my fiancée needs access.

11         MR. CAFFERKEY:           She would blow into the  
12          breathalyzer to get it started.

13         THE DEFENDANT:          She would, if that's  
14          what the Court would ask. If the Court  
15          would ask, it will be left on.

16         MR. CAFFERKEY:           Okay.

17         PROBATION OFFICER:      That's not --

18         MR. CAFFERKEY:           That's not how it  
19          works.

20         PROBATION OFFICER:      I would address the  
21          Court and say that not, usually, the  
22          standard procedure, that once you sign the  
23          contact with the interlock agency, you are  
24          the only --

25         THE COURT:                -- if his girlfriend or

1           significant other were to register positive,  
2           it would really be attributed to  
3           Mr. Philhower.

4           MR. CAFFERKEY:           Okay.

5           THE COURT:                But, this vehicle was  
6           never hers in the beginning, was it; the  
7           2002 vehicle and neither is the 2012.

8                    Are you the titled owner of the 2002 and  
9           the 2012 vehicles?

10          THE DEFENDANT:           I am the registered, I  
11          am the title holder, we're joint on the  
12          loan, your Honor.

13          MR. CAFFERKEY:           If we have an order the  
14          interlock is off the vehicle, then, I guess,  
15          the fiancee could drive the vehicle.

16          THE DEFENDANT:           That would also be  
17          added, an added person to drive me to places  
18          that I'm not allowed to drive myself  
19          (INAUDIBLE).

20          THE COURT:                Well, I think, there  
21          was so much deception going on before,  
22          asking the Court to remove the interlock on  
23          the 2002, right; is that right?

24          PROBATION OFFICER:       That's the vehicle  
25          we're dealing with, yes.

1           THE COURT:                   Or is it the 2012?  
2           First, it was on the 2012, then he asked me  
3           to remove it.  
4           PROBATION OFFICER:       No, the 2002.   The 2012  
5           was the Parma.  
6           THE COURT:                   Well, I know, he had  
7           the interlock device on one of those  
8           vehicles, and he asked me to remove it, and  
9           put it on the other one.  
10          THE DEFENDANT:           That vehicle was then  
11          put into storage.  
12          THE COURT:                   I think he's asking me  
13          too much,  
14          MR. CAFFERKEY:               Judge, you know what,  
15          Judge, we're going to withdraw. Judge, we'll  
16          withdraw.  
17          THE COURT:                   Those readings were so  
18          high, thank goodness for the interlock  
19          device, look at these high readings.  
20          MR. CAFFERKEY:               Judge, we'll withdraw  
21          it. We'll have Mr. Philhower prove what  
22          he's indicated, that he will prove and then  
23          we'll re-address it down the road, once  
24          we've build up some credibility and, you  
25          know. Thank you.

1 THE COURT: Thank you for  
2 understanding, Attorney Cafferkey.  
3 MR. CAFFERKEY: I understand.  
4 THE COURT: Okay.  
5 MR. CAFFERKEY: Okay. Very good, so is  
6 that, basically, where we're at.  
7 THE COURT: Anything else?  
8 MR. CAFFERKEY: That's it.  
9 THE COURT: And then regarding  
10 this, do you need anything else from me or  
11 you just want me to put that he has  
12 permission to attend IOP, now that we know  
13 the hours. I can just write that on the  
14 green regular journal entry.  
15 PROBATION OFFICER: That will work, your  
16 Honor.  
17 THE COURT: And in two weeks, I'll  
18 get a blue form to see if we can add the AA  
19 meetings.  
20 PROBATION OFFICER: I'll keep the Court  
21 informed, your Honor, as to Mr. Philhower's  
22 status.  
23 MR. CAFFERKEY: Right. Thank you so  
24 much, Judge.  
25 THE COURT: He doesn't need another

1 court date, unless you get it back on the  
2 docket, is that right? Or through  
3 Mr. Oriti, you could get it back on the  
4 docket that way.

5 MR. CAFFERKEY: If things are going  
6 well, I'll contact Mr. Oriti to confirm it  
7 and I'll put something in a motion.

8 THE COURT: Thank you for your  
9 great patience, Attorney Cafferkey.

10 MR. CAFFERKEY: No problem.

11 THE COURT: Thank you.

12 MR. CAFFERKEY: No problem. I got four  
13 things, big things done, sitting here. It's  
14 the quietest spot I had all week, it's  
15 great.

16 THE COURT: I'm sorry, it was such  
17 a big docket.

18 MR. CAFFERKEY: It was, actually, kind  
19 of, interesting.

20 THE COURT: Thank you for your  
21 kindness.

22 MR. CAFFERKEY: Thanks, Judge.

23 THE COURT: Thank you, Mr. Oriti.

24 THE DEFENDANT: Thanks, Judge.

25 THE COURT: You're welcome,

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sir. Thank you for your letter.

- - -

C E R T I F I C A T E

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

4

5

6

City of Cleveland,            )  
   )

7

vs.                                )

8

Frederick J. Philhower.        )

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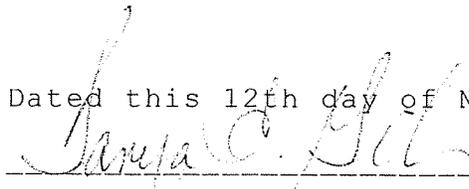
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25

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 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 12th day of November, 2014.

  
 -----  
 Tanya E. Gibson

OFFICIAL COURT REPORTER  
 CLEVELAND MUNICIPAL COURT  
 Cleveland, Ohio 44113

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. ) 2012TRC030161  
9 FREDERICK PHILHOWER, )  
10 Defendant. )

11 - - -  
12  
13 Transcript of digitally recorded proceedings had  
14 before the Honorable Judge Angela R. Stokes on  
15 Thursday, July 18, 2013, in Courtroom 15-C.

16 - - -  
17 APPEARANCES:

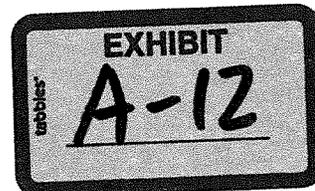
18 On behalf of the plaintiff:

19 Victor R. Perez, Chief Police Prosecutor.  
20 By: Karyn Lynn, Assistant Police  
Prosecutor.

21 On behalf of the defendant:

22 Kevin Cafferkey, Esq.

23  
24  
25 Tanya E. Gibson



P R O C E E D I N G S

1  
2 THE COURT: Mr. Philhower, I don't  
3 know that I can, actually, hear this case  
4 because they were not really able to get me  
5 much information. I have the file, of  
6 course, which we ordered.

7 But, I will listen to what you have to  
8 say. But, I don't know that I can act on  
9 this today. But, go right head, whatever  
10 you like to say.

11 THE DEFENDANT: Your Honor, do you have  
12 a copy of a motion filed on the 15th, the  
13 day I completed IOP?

14 THE COURT: You know, I think  
15 Karthan, if you look on that desk, the  
16 personal bailiff's desk, somebody faxed  
17 me --

18 THE DEFENDANT: I have an extra copy.

19 THE COURT: Karthan, if you just,  
20 you'll see it lying by itself, Karthan, that  
21 maybe what it is. Is that it?

22 THE BAILIFF: I think so, your Honor,  
23 is that it?

24 THE COURT: Somebody brought it up  
25 yesterday.

1                   So what is your request, sir?

2           THE DEFENDANT:           My request, your Honor,  
3           is that the interlock device be removed from  
4           the 2002 Chevy van and that I forfeit any  
5           driving privileges for the remainder of my  
6           sentence, regarding our case.

7           THE COURT:               Well, I'm trying to  
8           find out where there's a driving privileges  
9           order. I don't even see a driving  
10          privileges order.

11          THE DEFENDANT:           There are no driving  
12          privileges as of now, your Honor, the van,  
13          what it --

14          THE COURT:               -- well, I don't  
15          understand what you're talking about. I do  
16          not see that I granted any type of driving  
17          privileges. The last order, if this file is  
18          correct, was from May 21st, 2013, and I  
19          indicated that you were to complete  
20          intensive outpatient treatment, that you had  
21          permission to attend intensive outpatient  
22          treatment Mondays, Tuesdays, and Thursdays  
23          from 6:00 to 9:00 p.m., that you had no  
24          driving privileges at all.

25                   The SCRAM device and home detention

1           remained in effect. Let me just see, I'm  
2           just trying to see another journal entry.  
3           And, I don't, I don't see, maybe, it's in  
4           this file somewhere. I don't see that I  
5           granted occupational driving privileges with  
6           an interlock device on it.

7           THE DEFENDANT:           Your Honor?

8           THE COURT:                Unless it was --

9           THE DEFENDANT:           Your Honor, you took  
10          away my, there are no driving privileges, I  
11          am intimately aware of that. I granted that  
12          on the docket. What never happened was the  
13          interlock device was never removed from the  
14          vehicle.

15          THE COURT:                Oh.

16          THE DEFENDANT:           And it's sitting and it  
17          can't be moved. The other vehicle that my  
18          significant other --

19          THE COURT:                Right. I see back in  
20          January that I had that they were going to  
21          be removing, the interlock device was to be  
22          removed on January 18th, 2013 and a new  
23          interlock device from another company was  
24          going to be installed on the 2002 Chevrolet,  
25          due to the problems with the former company.

1                   So you're just requesting that the, I  
2                   think, there were problems with that  
3                   interlock company. Oh, you were represented  
4                   by Attorney Serrat. I don't even have a  
5                   probation report to try to refresh my  
6                   memory, but you had a violation, correct?

7                   THE DEFENDANT:            You incarcerated me as  
8                   a result of that violation.

9                   THE COURT:                 And what was that  
10                  violation?

11                  THE DEFENDANT:            Driving Under  
12                  Suspension.

13                  THE COURT:                 Was that in another  
14                  jurisdiction?

15                  THE DEFENDANT:            Yes, ma'am.

16                  THE COURT:                 Oh, I do remember that.  
17                  And what vehicle was that?

18                  THE DEFENDANT:            In a 2012 Chevy Camero.

19                  THE COURT:                 I remember and you had  
20                  asked for the SCRAM device to be removed off  
21                  of that vehicle and you drove that vehicle.  
22                  I remember, exactly, now. It's a little  
23                  hard for me to put that together when I  
24                  don't have the probation report here.

25                                 So where is the 2012 vehicle now?

1 THE DEFENDANT: As attached to the  
2 motion, it is in possession of the bank or  
3 the finance company, they repossessed the  
4 vehicle. The financial consequences of my  
5 drinking, OVI, court, everything, have been  
6 devastating.

7 As one of the first lines of that motion  
8 indicates, I did have a consultation with  
9 Attorney Cafferkey, but I was unable to  
10 afford him to represent me on this matter.

11 THE COURT: I know. But, the  
12 problem is, you're trying to come in, trying  
13 to get this Court to do something after I  
14 finished 90 cases, and these bailiffs are  
15 supposed to leave this courtroom at 9:00 am.  
16 This matter is on my docket July 30th and  
17 you want the Court to act now when I don't  
18 have the benefit of the probation report.

19 I'm just reading this motion for the  
20 first time because it was just hand  
21 delivered, yesterday, to me.

22 THE DEFENDANT: I understand the  
23 imposition --

24 THE COURT: Right.

25 THE DEFENDANT: -- and I appreciate

1 your graciousness of attempting to look at  
2 it. The reason for the urgency, is the  
3 amount of money.

4 There are doctors, Hillary and her  
5 daughter have multiple doctor's appointments  
6 per week. There's, me, I'm the bread winner  
7 of the family, there's to and from work,  
8 there is the IOP, there is the AA, all of  
9 this has put us in a rental car, and taxi  
10 cabs, on buses, we've utilized every  
11 resource we can possibly use and we're out  
12 of money.

13 But, there's a van sitting in the  
14 driveway that we can't use, which is paid  
15 for, because it has an interlock device on  
16 it. I don't want to drive, your Honor, I'll  
17 be Frank with you. I don't want anymore  
18 part of interlocks or driving, I don't.

19 THE COURT: So how have you been  
20 getting to and from work?

21 THE DEFENDANT: Hillary.

22 THE COURT: How; driving what?

23 THE DEFENDANT: You tell her.

24 THE COURT: She doesn't drive the  
25 2002 vehicle, I'm not speaking to her, I'm

1 asking you.

2 THE DEFENDANT: A rental car.

3 THE COURT: What vehicle is that;  
4 is that attached here?

5 THE DEFENDANT: No, no. That's, she  
6 rented a car. I don't have a license. I  
7 can't even rent a car so she had to rent a  
8 car.

9 THE COURT: So the 2002 vehicle is  
10 it titled in your name?

11 THE DEFENDANT: Correct.

12 THE COURT: And then it says that  
13 Hillary Colos is the co-signer on the 2012  
14 and where is, this document, does this show  
15 that the vehicle has, actually, been taken,  
16 this 2012 vehicle has, actually, been  
17 repossessed by --

18 THE DEFENDANT: If you look in the top  
19 right hand corner, Relentless Recovery.

20 THE COURT: I don't know what this  
21 is. What is that, Relentless Recovery; is  
22 that the place that came to get the car?

23 THE DEFENDANT: That's the repossession  
24 company.

25 THE COURT: Did they, actually,

1 take possession of the Camero, the 2012?

2 THE DEFENDANT: Here's another  
3 document.

4 THE COURT: Did they take  
5 possession of the 2012 Chevrolet?

6 THE DEFENDANT: Yes, they did.

7 THE COURT: When did they do that?

8 THE DEFENDANT: That document is dated,  
9 I don't recall the date.

10 THE COURT: Where it says July 2nd,  
11 2013, at 3:00 p.m.?

12 THE DEFENDANT: They took it at  
13 3:00 p.m. then.

14 THE COURT: They took that vehicle.  
15 What is the 2008 Hummer; who's vehicle is  
16 that?

17 THE DEFENDANT: That was Hillary's  
18 vehicle.

19 THE COURT: And what, was that  
20 repossessed?

21 THE DEFENDANT: Yes, your Honor, we're  
22 losing everything. We're living hand to  
23 mouth at this point.

24 THE COURT: And do you still have  
25 on the SCRAM device?

1 THE DEFENDANT: Yes, your Honor, I do.

2 THE COURT: Because I don't have, I  
3 don't have any updated report. I don't even  
4 know how you are doing on the SCRAM device,  
5 maybe well, I don't know.

6 THE DEFENDANT: I've maintained weekly  
7 contact with Mr. Oriti. Mr. Oriti and I  
8 spoke today after I'd been in your courtroom  
9 and he told me he put my completed, all of  
10 my paperwork from IOP and other information  
11 on Mr. Jenkin's desk.

12 THE COURT: They brought me  
13 something for Mr. Whitfield, I don't think  
14 Mr., I'll look to see if Mr. Jenkins, I  
15 don't see it, do you?

16 THE BAILLIFF: No.

17 THE COURT: Do you see anything,  
18 like a SCRAM device? Does Mr., I don't have  
19 anything, oh, gosh this, is ridiculous. Is  
20 Mr. Oriti still here, do you know? He's  
21 usually here until 6.

22 THE DEFENDANT: He told me he was  
23 trying to leave because his wife was ill.

24 THE COURT: Oh, they're gone for  
25 the day. I think Mr. Oriti left early for

1 the day, oh.

2 THE BAILIFF: You want me to try to  
3 call probation and see.

4 THE COURT: He believes that  
5 Mr. Oriti left early because Dianne, which  
6 is my scheduler, on my civil cases, he says  
7 that she was ill so I don't know if he left.  
8 You want to try to call his direct number or  
9 call Val at 4930 and see if he left for the  
10 day.

11 I don't think Mr. Dean Jenkins brought  
12 me anything. He brought me something here  
13 for Mr. Whitfield, but he didn't, you want  
14 to check with him, 4930 is the general  
15 number. I don't know Mr. Oriti's direct  
16 line, but 4930 is Val.

17 THE BAILIFF: Okay.

18 THE COURT: Mr. Philhower, I do not  
19 have the benefit of everything I should have  
20 here today. In reviewing your documents, I  
21 see the financial burden to your family,  
22 and, oh gosh, this is probation. One  
23 second. Just one second.

24 THE DEFENDANT: Take your time your  
25 Honor.

1 - - -

2 (Thereupon, a telephone conversation was  
3 had on the Bench between the Court and  
4 whoever:)

5 - - -

6 All right. So I'm going to grant the  
7 motion for the interlock device to be  
8 removed from the 2002 Chevrolet van. I  
9 don't know if we can reach someone in  
10 probation, but they will, probably, have to  
11 do this first thing in the morning.

12 THE DEFENDANT: Okay.

13 THE COURT: And then active  
14 probation continues with all of the other  
15 conditions remaining.

16 Is there anything else?

17 THE DEFENDANT: Not today, your Honor,  
18 no.

19 THE COURT: Not today, huh.

20 Did you reach anybody?

21 THE BAILIFF: Val said that Mr. Oriti  
22 left at 1:30 sick.

23 THE COURT: Okay. What we can do  
24 is, I can give this information, I don't  
25 know that Mr. Oriti will be in tomorrow, if

1 he's ill, or if his wife is ill. I will let  
2 him know or Mr. Kevin McGlynn that the  
3 interlock device can be removed right away  
4 and I don't know what steps you take.

5 THE DEFENDANT: That would be wonderful  
6 because then we could turn the rental car in  
7 tomorrow, that would be fantastic. Thank  
8 you, that was all that I wanted from today.  
9 And today, your, Honor again, thank you.

10 THE COURT: You're welcome.

11 THE DEFENDANT: The latest IOP that I  
12 did just complete, I will tell you was the  
13 most productive and effective. It was a  
14 tremendous experience. I learned a lot and  
15 I am very, very, very, every morning and  
16 every night, I start my day in prayer.  
17 Thank you for my freedom from alcohol and  
18 jail, and you and your family are included  
19 in my prayers.

20 THE COURT: Well, thank you.

21 THE DEFENDANT: Thank you.

22 THE COURT: That's from Windsor  
23 Laurelwood Center, is that the most recent  
24 certificate?

25 THE DEFENDANT: That's correct. And I

1 saw you look, that's a different motion than  
2 I filed today, that's the SCRAM.

3 THE COURT: This one is SCRAM.

4 THE DEFENDANT: That's for another day,  
5 we'll do that some other time, that'll be  
6 scheduled for another day.

7 THE COURT: But, this is the one.

8 THE DEFENDANT: All I needed today was  
9 the van so we could get transportation. The  
10 SCRAM, I don't know where you're going to go  
11 with that one yet, but it does cost a lot of  
12 money.

13 THE COURT: Well, are you in  
14 aftercare right now?

15 THE DEFENDANT: I've completed it, her  
16 assessment.

17 THE COURT: Well, you did the, what  
18 was this IOP?

19 THE DEFENDANT: IOP, 18 sessions, 6  
20 weeks long, very intense and very  
21 structured, lots of writing assignments.

22 THE COURT: Well, what are they  
23 recommending now?

24 THE DEFENDANT: AA meetings and my,  
25 she's met, we've had sessions together with

1 Hillary and my sponsor, and she recommends  
2 that I go to my AA meetings, and keep an  
3 honest and open relationship going with my  
4 sponsor, and that I don't drink no booze.

5 And, frankly, your Honor, whether it's,  
6 not to go to far on the deep end of the pool  
7 or offend anybody, whether it's God come  
8 down and touched me on the forehead, but I  
9 can tell you the taste of alcohol has been  
10 removed from my mouth and I just hope and  
11 pray it stays that way. I don't want  
12 nothing to do with that stuff, man,  
13 nothing.

14 THE COURT: So now, you don't have  
15 to go back to Laurelwood at all?

16 THE DEFENDANT: According to her, no.  
17 The completion summary is included in that  
18 motion. Mr. Oriti, every week Mr. Oriti got  
19 my drug, I e-mailed him my alcohol, we were  
20 tested everyday, we went and the end of each  
21 week, he got a copy of those results.

22 And every time a progress report was  
23 done, she gave me, she was not allowed to  
24 e-mail him, but she said I could e-mail them  
25 to whoever I wanted. So she gave me a copy

1 and Mr. Oriti got one every single, every  
2 time I got one, he got one.

3 We've been in touch every single time.  
4 Him and I, actually, picked out AA meetings  
5 together and we kept them on Mondays,  
6 Tuesdays, and Thursdays, just like the IOP  
7 schedule. It's, basically, the same time  
8 table so that everything stays the same. So  
9 now it's good for routine purposes and helps  
10 to keep things simple for me, because not to  
11 comply indicate your life, but I just found  
12 out today Mr. Oriti said make sure you call  
13 David Barker, my regular PO.

14 Mr. Barker informed me he's no longer  
15 going to be my PO, I'm going to meet a new  
16 guy Mr. Muhammad, I don't know who he is.  
17 So they changed my probation, so it's the  
18 third one now. Mr. Oriti and I have been in  
19 regular contact and we're on the same page,  
20 I can tell you that. And there's no doubt  
21 in my mind that he would tell you the same  
22 thing.

23 THE COURT: I believe he will let  
24 me know. So you just graduated from that  
25 July 15?

1 THE DEFENDANT: July 15th was my last,  
2 my graduation ceremony, and I got my coin  
3 and my certificate, and said a few words,  
4 and they think I made a good impression on  
5 a few of the younger people so --

6 THE COURT: That's wonderful.

7 THE DEFENDANT: I think it's a benefit  
8 all the way around.

9 THE COURT: If Mr. Oriti is here  
10 tomorrow, I'll talk to him. I'll talk to  
11 Deputy Chief Dean Jenkins, if, I don't know  
12 how much time should elapse from graduating  
13 from that program before the SCRAM device  
14 should be removed, but I'll review that with  
15 Mr. Jenkins and Mr. Oriti tomorrow.

16 THE DEFENDANT: That will be, if you  
17 would, that, I didn't even, yeah, if you  
18 will do that fantastic. But, the interlock  
19 will definitely be ordered removed tomorrow.

20 THE COURT: Absolutely, I will  
21 call them first thing in the morning.

22 THE DEFENDANT: God bless you, thank  
23 you so much.

24 THE COURT: You're welcome.

25 THE DEFENDANT: Have a good evening.

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THE COURT: Thank you for your  
patience. Thank you.

THE DEFENDANT: Thank you for you  
graciousness.

THE COURT: It's quite all right.  
Hope you do well.

- - -

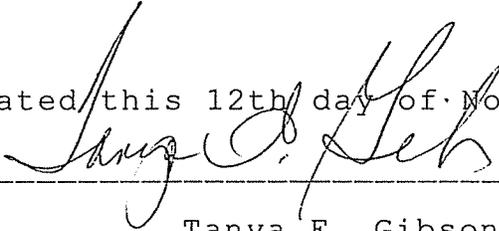
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State of Ohio, )  
County of Cuyahoga, ) SS:  
City of Cleveland. )

City of Cleveland, )  
vs. )  
Frederick J. 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 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 12th day of November, 2014.  
  
-----  
Tanya E. Gibson

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 PHILHOWER, )  
10 Defendant. )

11 - - -  
12  
13 Transcript of digitally recorded proceedings had  
14 before the Honorable Judge Angela R. Stokes on  
15 Thursday, September 4, 2013, in Courtroom 15-C.

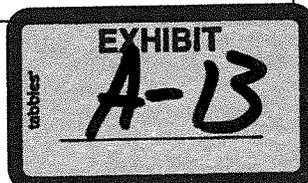
16 - - -  
17 APPEARANCES:

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

21 On behalf of the defendant:  
22 Pro se.

23  
24  
25 Tanya E. Gibson

OFFICIAL COURT REPORTER  
CLEVELAND MUNICIPAL COURT  
Cleveland, Ohio 44113



P R O C E E D I N G S

1

THE COURT: Mr. Philhower,  
Philhower, I'm sorry.

2

3

4

THE DEFENDANT: Yes.

5

6

7

8

THE COURT: All right. Now, your  
case is set for review, also. It's not set  
for a hearing on the merits. Let me see if  
they sent me anything.

9

10

11

12

13

I don't think I have anything updated  
because your case, just like the other  
gentleman, is only set for review, it's not  
set for a hearing today. So, let's see,  
what's the purpose of your motion?

14

THE DEFENDANT: To remove the SCRAM.

15

16

17

18

THE COURT: I don't think they sent  
me a SCRAM report because it's not set for a  
hearing. The only information they have is  
through April of 2013.

19

Who is your probation officer?

20

21

22

THE DEFENDANT: My current probation  
officer is a Mr. Muhammad. Mr. Oriti and I  
have been communicating on a weekly basis.

23

24

THE COURT: But, he didn't send me  
a SCRAM report.

25

THE DEFENDANT: I don't know what to

1 say to that. I talked to Mr. Oriti before  
2 filing the motion.

3 THE COURT: Right. But, they only  
4 send the report when the Court refers it  
5 back to probation and ask. So I'm just  
6 getting notice of your motion and that's why  
7 Central Scheduling set it for review, it's  
8 not heard on the merits, so you're in a  
9 little different position than that  
10 gentleman.

11 But, all I can do is ask Mr. Oriti to  
12 send me a report. They can, usually, get it  
13 in a few hours from SCRAM, from the SCRAM  
14 company. Let's see, the last time that you  
15 were in court, that was on the SCRAM device,  
16 I mean, the interlock device was removed,  
17 that was in July, right?

18 THE DEFENDANT: Yes, and I forfeited  
19 all the driving privileges.

20 THE COURT: I granted that.

21 THE DEFENDANT: I forfeited all of the  
22 driving privileges at that time.

23 THE COURT: And then you filed a  
24 motion, okay. Well, I can't rule on this  
25 until Mr. Oriti gives me the SCRAM report

1           because it's set for review, it's not set  
2           for a hearing on the merits.

3           So what we can do, he can, probably,  
4           when I ask him in the morning, he can,  
5           probably, get a report right away and advise  
6           the Court, and then I can make a ruling.  
7           But, typically, when did you have your last  
8           urinalysis test done? Did Mr. Muhammad ask  
9           you to submit to that?

10          THE DEFENDANT:           No, not on my last  
11          visit, no. My last urinalysis would have  
12          been included --

13          THE COURT:                Back in May sometime?

14          THE DEFENDANT:           July.

15          THE COURT:                July. It was negative?

16          THE DEFENDANT:           Of course. I don't use  
17          drugs, your Honor.

18          THE COURT:                Well, good.

19          THE DEFENDANT:           They've all, they have  
20          been, you, your Honor, I've been in your  
21          courtroom and you're an extremely sharp  
22          woman, you have a mind that I, you forget  
23          nothing.

24          THE COURT:                You're trying to butter  
25          me up.

1 THE DEFENDANT: No, I'm not, I've been  
2 in your courtroom that many times. All of  
3 my drugs screens have always been negative.  
4 It's not the drugs, it's the alcohol.

5 I was honest with you about that and if,  
6 anything like I've heard with the last  
7 previous view that you seem to be so very  
8 generous with --

9 THE COURT: -- their situation was  
10 a little bit different.

11 THE DEFENDANT: I understand.

12 THE COURT: They didn't have any  
13 violations and I can not rule on this until  
14 I have the SCRAM report. But, I believe  
15 that Mr. Oriti could, probably, give me that  
16 tomorrow morning.

17 THE DEFENDANT: And if the SCRAM report  
18 is clean?

19 THE COURT: Then we could, surely,  
20 give you a chance.

21 THE DEFENDANT: Thank you.

22 THE COURT: And I just hope that  
23 you'll do the right thing not to put your  
24 life or anyone else's in danger.

25 THE DEFENDANT: I again, words are

1 great, I can assure you that this whole  
2 experience and the letter that I wrote you,  
3 I meant every word of it. Going to jail was  
4 not a pleasant experience, not something  
5 that I will forget any time soon.

6 The pain and suffering I've caused my  
7 family, and the amount of times that I've  
8 needed to come to this courtroom, nothing  
9 against you, but my employer is about fed up  
10 with it and I meant what I said the last  
11 time, the taste of alcohol has been removed,  
12 however that happens.

13 THE COURT: That's good. It looks  
14 like, under your reasoning section that you  
15 did very good and that is completed. And so  
16 you could avoid a court date tomorrow, I  
17 will ask Mr. Oriti to give me an updated  
18 report from SCRAM. If it is negative, then  
19 I'm going to note that the SCRAM device  
20 could be removed.

21 THE DEFENDANT: And you're aware that  
22 house arrest is also part of this, your  
23 Honor, so that when a device is removed,  
24 then the monitoring and the house arrest  
25 would both go away?

1 THE COURT: Um-humm.

2 THE DEFENDANT: Just so we're on the  
3 same exact page. I don't want you to think  
4 that I'm trying to get anything over on you  
5 because I'm not.

6 THE COURT: Oh, I don't think that.

7 THE DEFENDANT: It's just, it's,  
8 purely, \$350 a month.

9 THE COURT: I understand and I hope  
10 that you'll do well. Because if you don't,  
11 there's only one option and that's to go to  
12 the Cleveland House of Corrections, and I  
13 know you don't want to do that.

14 THE DEFENDANT: No. And as you very  
15 well know, your Honor, the very last time,  
16 the last time I picked up alcohol, again, it  
17 was within a months time, it was within a  
18 months time and I was in the jack pot,  
19 again, that's what I have to look forward to  
20 should I put alcohol in my body, again. I  
21 thoroughly, I am thoroughly done.

22 THE COURT: Okay. Then I'm sure  
23 that Mr. Oriti has your phone number.

24 THE DEFENDANT: Phone number?

25 THE COURT: So you could call me

1 tomorrow. I don't know exactly what time he  
2 would give me the information from the SCRAM  
3 company, but I will ask him to please give  
4 me a report as early as possible, and if  
5 everything is clear, then I will say that  
6 the SCRAM device, along with the electronic  
7 monitoring, house arrest device shall be  
8 removed.

9 I'm just making sure that he has a  
10 number here, that way you don't have to come  
11 to court tomorrow. Who was your probation  
12 officer before Mr. Muhammad?

13 THE DEFENDANT: Forgive me for not  
14 remembering the name.

15 THE COURT: That's okay.

16 THE DEFENDANT: Mr. Barker.

17 THE COURT: Oh, I remember.

18 This is strange, they don't have all the  
19 pages of this report. Well, maybe, this is  
20 it.

21 So is the correct number, will he reach  
22 you at, does this say [REDACTED]

23 THE DEFENDANT: That will be,

24 [REDACTED]

25 THE COURT: Okay. 3 [REDACTED]

1           Mr. Oriti will give you a call tomorrow  
2           morning as soon as he gives me the report.  
3           Okay. You are welcome.  
4           THE DEFENDANT:           Have a good evening.  
5           THE COURT:                Thank you for your  
6           patience.  
7           THE DEFENDANT:           Thank you for seeing me  
8           and thank you for your mercy.  
9           THE COURT:                You're welcome.  
10          THE DEFENDANT:           I hope I don't have to  
11          see you, again, but it has been helpful to  
12          me.  
13          THE COURT:                I hope the best for you  
14          and your family.  
15          THE DEFENDANT:           Thank you very much,  
16          God bless you, your Honor.  
17          THE COURT:                God bless you, both.  
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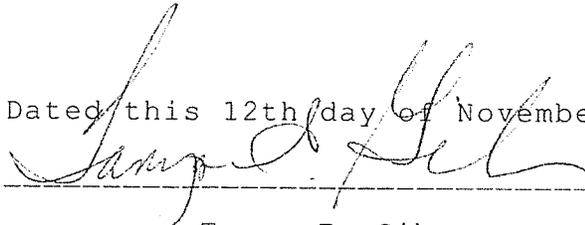
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State of Ohio, )  
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City of Cleveland, )  
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Dated this 12th day of November, 2014.  
  
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Tanya E. Gibson

CERTIFICATE OF SERVICE

A copy of the foregoing RESPONDENT'S MOTION FOR DISSOLUTION OR MODIFICATION OF ORDER OF SUSPENSION UNDER GOV. BAR R. V(5a)(C)(1), Exhibit A-7 through Exhibit A-13 has been filed via e-filing with the Supreme Court of Ohio and a service copy emailed this 20<sup>th</sup> day of January, 2015 to the following:

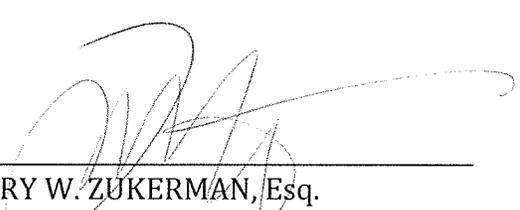
SCOTT J. DREXEL  
Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215  
[Scott.drexel@sc.ohio.gov](mailto:Scott.drexel@sc.ohio.gov)  
Relator

JOSEPH M. CALIGIURI  
Chief Assistant Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215  
[J.Caligiuri@sc.ohio.gov](mailto:J.Caligiuri@sc.ohio.gov)

KAREN OSMOND  
Assistant Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215  
[Karen.Osmond@sc.ohio.gov](mailto:Karen.Osmond@sc.ohio.gov)

AUDREY VARWIG  
Assistant Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215  
[Audrey.Varwig@sc.ohio.gov](mailto:Audrey.Varwig@sc.ohio.gov)

MICHAEL E. MURMAN  
14701 Detroit Avenue, Suite 555  
Lakewood, Ohio 44107  
[Murmanlaw@aol.com](mailto:Murmanlaw@aol.com)



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LARRY W. ZUKERMAN, Esq.  
PAUL B. DAIKER, Esq.  
S. MICHAEL LEAR, Esq.