

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) :SS
 2 COUNTY OF YANKTON) FIRST JUDICIAL CIRCUIT

3 STATE OF SOUTH DAKOTA,)
)
 4 Plaintiff,)
) 66 CRI. 22-13/ 22-30
 5 vs.)
) EVIDENTIARY HEARING
 6 TYLER JAY SCHAEFER,)
)
 7 Defendant.)

8 BEFORE THE HONORABLE CHERYLE GERING,
 Circuit Court Judge,
 9 at Yankton, South Dakota, on July 14, 2022.

10 APPEARANCES

11 For the Plaintiff:

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16 For the Defendant:

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Hearing begins at 11:57 a.m.

EXHIBITS FOR THE STATE

STATE'S EXHIBIT 1:
Violation Report from PharmChem (3 pages)
.....page 10, line 12

STATE'S EXHIBIT 2:
Violation Report retested by PharmChem (3 pages)
.....page 13, line 13

EXHIBITS FOR THE DEFENDANT

None offered

WITNESSES

STATE'S WITNESS:

MS. CHERYL STAHLECKER

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DEFENDANT'S WITNESS:

MR. TYLER SCHAEFER

Direct Examination by Mr. Fox..... page 17, line 19
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OBJECTIONS

Mr. Larsen (sustained)..... page 20, line 3

Hearing ends at 12:32 p.m.

1 (WHEREUPON, the following proceedings were had, to wit):

2 THE COURT: Let the record show that it is 11:57 a.m. on
3 Thursday, July 14, 2022. This is the time and place set
4 for hearing in Yankton County Criminal Files 22-13 and
5 22-30, both entitled the *State of South Dakota, Plaintiff,*
6 *vs. Tyler Schaefer, Defendant.* Present here in the
7 courtroom representing the State of South Dakota is
8 Yankton County Deputy State's Attorney Tyler Larsen. Also
9 present is the defendant, Tyler Schaefer, and his
10 attorney, Dan Fox.

11 We have had an off-the-record conversation which I
12 will summarize on the record. To clarify, Mr. Schaefer,
13 the allegation that you are in front of me for is that the
14 patch worn from May 18 to June 9 was positive for
15 methamphetamine at 1033 nanograms, amphetamine was present
16 for 21 nanograms, and THC was present for 3.1 nanograms.
17 Do you understand those allegations?

18 MR. SCHAEFER: Yes, Your Honor.

19 THE COURT: And, again, this is the patch that would have
20 been most recently reported. You have not previously
21 addressed this in the form of receiving any sanction.

22 The sanction that you received on June 9 was for
23 positive patches worn March 17 to March 31; March 31 to
24 April 14; April 14 to April 28; April 28 to May 7; May 7
25 to May 18; and then failing to come in for your patch

1 change on June 2.

2 So that's -- it was those violations in these two
3 cases for which I had previously ordered the 20-day
4 sanction which you did begin serving on June 9.

5 And so your client has previously denied the
6 allegations and requested a retest, which I understand has
7 been done. And your client is maintaining his denial
8 today?

9 MR. FOX: Yes, Your Honor.

10 THE COURT: The State is ready to proceed with its
11 evidence?

12 MR. LARSEN: Yes.

13 THE COURT: And, Mr. Fox, you and your client did receive
14 the retest information?

15 MR. FOX: Yes.

16 THE COURT: Okay. You may call your witness, Mr. Larsen.

17 MR. LARSEN: Thank you. The State would call Cheryl
18 Stahlecker.

19 (Officer Stahlecker sworn at 11:59 a.m.)

20 THE COURT: You may proceed, Mr. Larsen.

21 MR. LARSEN: Thank you.

22 Q (BY MR. LARSEN): Good afternoon. Could you please
23 state your name for the record -- or, good morning.

24 A Ms. Cheryl Stahlecker.

25 Q Ms. Stahlecker, where are you currently employed?

1 A Yankton County Sheriff's Office.

2 Q What is your job title with Yankton County Sheriff's
3 Office?

4 A 24/7 coordinator.

5 Q How long have you been employed as the 24/7 coordinator?

6 A Four and a half years.

7 Q As coordinator for the 24/7 program, what are your job
8 duties?

9 A I am in charge of the PBTs, the bracelets, and the patch.

10 Q Ms. Stahlecker, I would like to focus on the drug patch.
11 For your position and for the drug patch, did you receive
12 training?

13 A Yes.

14 Q What was that training that you received?

15 A Material on the computer as well as personal training with
16 the coordinator.

17 Q Who is the coordinator?

18 A Byron Nogelmeier.

19 Q Is he a state employee?

20 A He is the state 24/7 coordinator.

21 Q And so was the training you received, then, through the
22 state?

23 A Yes.

24 Q And what brand of drug patch do you use for your program?

25 A PharmChem.

1 Q Does PharmChem provide training for you as well?

2 A Yes.

3 Q Did you take that training?

4 A Yes.

5 Q Ms. Stahlecker, the training that you received, did it
6 acquaint you with how to remove the drug patches?

7 A Yes.

8 Q Did your training also include the reading and
9 interpreting of the results of those tests?

10 A Yes.

11 Q Ms. Stahlecker, can you please describe to the Court how a
12 drug patch is applied to a person?

13 A When they first come in they initial off on the patch that
14 I'm putting on them. And then I take disposable gloves
15 and wipe their arm down with rubbing alcohol. And after
16 that dries then I apply the patch.

17 Q And how long is the patch applied to a person?

18 A Up to 14 days.

19 Q And what does it do when it is on the person? What does
20 the drug patch do?

21 A It is an absorbent storage cabinet, if you will. And it
22 will absorb the drug use from 72 hours prior to the patch
23 being applied up until the day that it is taken off.

24 Q And at the end of that 14 days, is that patch then
25 removed?

1 A Yes.

2 Q And do they come to your office to have that patch
3 removed?

4 A Yes.

5 Q Are you one of the people that removes the drug patch?

6 A Yes.

7 Q And you have been trained in how to remove the drug patch?

8 A Yes.

9 Q Can you describe to the Court how you properly remove the
10 drug patch in which you were trained?

11 A They complete the right-hand side of the chain of custody
12 form. And then I take disposable gloves and disposable
13 tweezers and take off the patch. And then we take the
14 white part, the Band-Aid part of it, and put that in a
15 small baggie. And it's got a serial number that is the
16 same one that is on the chain of custody. And then I have
17 to put a strip across the opening of the small baggie that
18 also has the initials and the serial number, and then the
19 serial numbers on the large baggie. And that's all
20 sealed.

21 Q And during this process, the defendant is there watching
22 you?

23 A Yes.

24 Q And the serial numbers, the identifying information, does
25 that all have to match?

1 A Yes.

2 Q And what happens if that information does not match?

3 A They notify me that it has not been tested.

4 Q And that's PharmChem?

5 A Yes.

6 Q So they won't test the drug patch if any of that
7 identifying information doesn't match?

8 A Right.

9 Q So PharmChem tests the product; is that correct?

10 A Yes.

11 Q And then after that, do they send you the results for the
12 drug patch?

13 A Yes.

14 Q In your capacity as coordinator for the 24/7 program, are
15 you the custodian of all records?

16 A Yes.

17 Q Are those records kept in the ordinary course of business
18 for your office?

19 A Yes.

20 Q Ms. Stahlecker, are you familiar with Tyler Schaefer?

21 A Yes.

22 Q Is he present in the courtroom today?

23 A Yes.

24 (Indicating.)

25 MR. LARSEN: Let the record reflect that the witness has

1 identified the defendant.

2 THE COURT: The record will so reflect.

3 Q (BY MR. LARSEN): Ms. Stahlecker, is Mr. Schaefer
4 currently enrolled in the 24/7 program?

5 A Yes.

6 Q Is he under your supervision?

7 A Yes.

8 Q Is Mr. Schaefer currently utilizing the drug patch?

9 A Yes.

10 Q Ms. Stahlecker, I would like to draw your attention to
11 June 9, 2022. Was Mr. Schaefer present with you on that
12 day?

13 A Yes.

14 Q And on that date, did you remove a drug patch from
15 Mr. Schaefer?

16 A Yes.

17 Q When you removed the drug patch was that done pursuant to
18 your training?

19 A Yes.

20 Q Were there any signs of tampering on that drug patch?

21 A No.

22 Q After you removed that drug patch, did you ship it
23 pursuant to your training?

24 A Yes.

25 Q To your knowledge, did all of the identifying information

1 match?

2 A Yes.

3 Q And that was sent to PharmChem?

4 A Yes.

5 Q Did PharmChem, to your knowledge, test that drug patch?

6 A Yes.

7 Q Did they send you the results?

8 A Yes.

9 MR. LARSEN: May I approach?

10 THE COURT: You may.

11 MR. LARSEN: Let the record reflect I am showing the
12 witness what has been marked as Exhibit 1 for
13 identification.

14 Q (BY MR. LARSEN): Ms. Stahlecker, do you recognize that
15 document?

16 A Yes.

17 Q What is it?

18 A The first page is the matrix that has all of the
19 violations. The second page, I receive from PharmChem on
20 the drug patch results. And the third one is with the
21 specific violation.

22 Q So, Ms. Stahlecker, did you prepare pages 1 and 3?

23 A Yes.

24 Q And you stated page 2 is the document you received from
25 PharmChem?

1 A Yes.

2 Q Are all of the above documents fair and accurate copies of
3 the originals?

4 A Yes.

5 MR. LARSEN: Your Honor, I would offer what has been
6 marked as Exhibit 1 for identification into evidence.

7 THE COURT: Any objection?

8 MR. FOX: No objection.

9 THE COURT: Exhibit 1 is admitted.

10 Q (BY MR. LARSEN): Ms. Stahlecker, then I would like to
11 draw your attention to the drug patch worn from May 18 to
12 June 9. I would like to draw your attention to the second
13 page. Who is the person of interest on that page?

14 A Mr. Schaefer.

15 Q And as stated this is the drug patch worn from May 18 to
16 June 9?

17 A Yes.

18 Q Do these drug results indicate a positive indication for
19 drug use?

20 A Yes.

21 Q What drugs were detected in this drug patch?

22 A Methamphetamine at 1033 nanograms. Amphetamine with
23 21 nanograms. And THC with 3.1 nanograms.

24 Q Thank you. So that indicates positive drug usage for this
25 wear period?

1 A Yes.

2 Q Ms. Stahlecker, I would like to draw your attention then
3 to page 1. This document lays out all of the violations
4 for Mr. Schaefer?

5 A Yes.

6 Q I would like to draw your attention to the drug patch worn
7 prior to this drug patch, for the wear period of May 7 to
8 May 18. Do you see that on that document?

9 A Yes.

10 Q That was a positive drug test as well; right?

11 A Yes.

12 Q What were the levels on that drug patch?

13 A May 7: MM, or methamphetamine, 167 nanograms and amp was
14 present.

15 Q And Ms. Stahlecker, the results of this next drug patch
16 worn from May 18 to June 9, are those a higher number?

17 A Yes.

18 Q And THC is also present in this new patch, is that
19 correct?

20 A Yes.

21 Q So based upon this report, does that indicate new drug
22 usage?

23 A Yes.

24 Q For both methamphetamine and THC?

25 A Yes.

1 Q Ms. Stahlecker, were you advised by myself that
2 Mr. Schaefer was requesting a retest of his drug patch?

3 A Yes.

4 Q Did you order that retest?

5 A Yes, I did.

6 Q To your knowledge did PharmChem retest this drug patch?

7 A Yes.

8 Q And did they send you the results?

9 A Yes.

10 MR. LARSEN: May I approach?

11 THE COURT: You may.

12 MR. LARSEN: Let the record reflect I am showing the
13 witness what has been marked as Exhibit 2 for
14 identification.

15 Q (BY MR. LARSEN): Ms. Stahlecker, do you recognize this
16 document?

17 A Yes.

18 Q What is it?

19 A The lab report for the retest.

20 Q And that is for the patch worn from May 18 to June 9?

21 A Yes.

22 Q And did this retest show a positive indication for drug
23 use?

24 A Yes.

25 Q What are the results?

1 A For methamphetamine it's 1033 nanograms. Twenty-one
2 nanograms for amphetamine. And 3.1 for THC.

3 Q Ms. Stahlecker, are these results near that of the
4 original drug patch results?

5 A Yes.

6 Q Your Honor -- Ms. Stahlecker, is this a fair and accurate
7 copy of that document you received from PharmChem?

8 A Yes.

9 MR. LARSEN: I would offer what has been marked as Exhibit
10 2 for identification into evidence.

11 THE COURT: Any objection?

12 MR. FOX: No objection.

13 THE COURT: Exhibit 2 is admitted.

14 Q (BY MR. LARSEN): Ms. Stahlecker, based upon these lab
15 reports, does that indicate drug usage for the wear period of
16 May 18 to June 9?

17 A Yes.

18 Q Ms. Stahlecker, was all of the above testimony you
19 provided here today regarding the adhesion, removal of the
20 drug patch, and the shipping done pursuant to your
21 training?

22 A Yes.

23 Q And is the 24/7 program located here in Yankton County?

24 A Yes.

25 MR. LARSEN: I have no further questions of this witness.

1 THE COURT: Any questions, Mr. Fox?

2 MR. FOX: Just a few.

3 Q (BY MR. FOX): Ms. Stahlecker, you are not a chemist are
4 you?

5 A Say again?

6 Q You are not a chemist are you?

7 A No.

8 Q No. And so your training is really just relating to the
9 application and removal of the patches?

10 A Yes.

11 Q The patches are designed to be worn for a period of 14
12 days; is that correct?

13 A Up to 14 days.

14 Q Up to 14 days? So they are really not supposed to go over
15 that?

16 A No.

17 Q Okay. Do you have any idea what effect could happen if it
18 were longer than that?

19 A If they are worn longer it just continues to collect the
20 information on the client.

21 Q Do you have any idea whether it affects the reliability?

22 A No.

23 Q You don't know?

24 A It does not.

25 Q And how did you know that? Did you receive training in

1 that?

2 A From the training as well as, as long as the patch remains
3 on the client it can be tested.

4 Q Is there any reason that they don't allow them to be worn
5 for a longer period of time? For instance, to save money
6 for the participants in the program?

7 A Because sometimes it gets loose in the stickiness, because
8 the skin regenerates itself every day and at some point,
9 the patch will come off.

10 MR. FOX: I don't have any further questions.

11 THE COURT: Anything else, Mr. Larsen?

12 MR. LARSEN: Yes.

13 Q (BY MR. LARSEN): Ms. Stahlecker, when you removed this
14 patch there were no signs of any tampering or patch falling
15 off; is that correct?

16 A Correct.

17 MR. LARSEN: Nothing further, Judge.

18 THE COURT: Anything else, Mr. Fox?

19 MR. FOX: Not for this witness.

20 THE COURT: Thank you, you may step down.

21 (Testimony ends at 12:11 p.m.)

22 THE COURT: Any other evidence from the State?

23 MR. LARSEN: No. The State would rest.

24 THE COURT: Any evidence from the defense?

25 MR. FOX: Can we step out for just one moment?

1 THE COURT: You may.

2 (Brief recess taken.)

3 MR. FOX: Judge, I will call Tyler Schaefer as a witness.

4 THE COURT: Okay. Please come forward.

5 (Mr. Tyler Schaefer sworn at 12:12 p.m.)

6 THE COURT: Please have a seat. And, Mr. Schaefer, you do
7 have the Fifth Amendment right to remain silent, which you
8 would be giving up by testifying today as to this patch.
9 Do you understand that?

10 MR. SCHAEFER: Yes, Your Honor.

11 THE COURT: And, you can speak with your attorney
12 privately at any time if you are asked a question and you
13 are unsure whether you shouldn't make any response to it,
14 in light of your Fifth Amendment right. Do you understand
15 that?

16 MR. SCHAEFER: Yes, Your Honor.

17 THE COURT: Mr. Fox, you may proceed.

18 MR. FOX: Thank you.

19 Q (BY MR. FOX): Tyler, can you state your name for the
20 record.

21 A Tyler Jay Schaefer.

22 Q And Tyler, you were here when Ms. Stahlecker testified
23 about the drug patch result?

24 A Yes.

25 Q Do you have any explanation as to why the patch would show

1 positive for anything, let alone in such a large amount?

2 A The only thing -- like, okay -- my living situation at
3 home is one thing that -- I don't know. The environmental
4 -- I know how you guys feel about it. But I live at home
5 with my mom. I have a family member there that uses drugs
6 every day. And I go in his room; I help him with things.
7 I had helped him move a bunkbed, tear his bunkbed down
8 last time -- like, this was right before I went to jail
9 last time, you know what I mean?

10 And I don't know, like, you know, the whole
11 environmental -- I don't know what to do about that. That's
12 -- I think that has something to do with it, you know,
13 because I know that February 3 is the last day that I used
14 methamphetamine. And when I went to jail for six days in
15 April, that was the last time that I smoked marijuana. And I
16 promise you that. I'm not lying about this.

17 I have, like, I'm going, like, right now -- when I
18 got out of jail, I made my girlfriend take a urine sample for
19 me because I think that through having sex -- I think that
20 that's possible, I don't know. I don't know what you guys
21 think, but I think that's possible, you know.

22 I'm not showering in the same shower as my brother
23 because I think he's leaving his sweat and it is absorbing
24 into my feet, you know. I'm not sitting on the same toilet
25 as him. You know, I'm going through a lot of steps.

1 I'm currently trying to find somewhere to stay
2 besides my mom's house so I will not fail these patches,
3 because I swear to God I'm not using meth. I have not
4 ingested any meth since February 3.

5 Q Tyler, when you were in jail last time, did you lose your
6 employment?

7 A Yes, I did.

8 Q Have you since regained your employment?

9 A Yes. Just this week on Monday I started again.

10 Q And is it a condition of regaining your employment that
11 you have to take a UA?

12 A I did. And I have the result. I gave Dan Fox the paper
13 from Avera Medical Plaza, or something like that, here in
14 town. I went -- I will do that every day if I have to, to
15 show you guys that I'm not using. I will do it every day.
16 \$40 out of my pocket, you know. I will do whatever it
17 takes.

18 I'm just saying, like, I'm not using meth, and I'm
19 not smoking weed. I just passed this UA yesterday and, like,
20 I asked to get a patch put on when I was in jail, because I
21 think that, you know, because of my drug use I think that it
22 was, basically, because -- like, my heavy drug use. That's
23 why it was in my system still.

24 You guys don't think so, but I think that that could
25 have been -- well, we couldn't even see, because it was

1 against a jail policy, you know. I wish we could have
2 because --

3 MR. LARSEN: Objection. Not responding to the question.

4 THE COURT: Please ask another question. Objection
5 sustained.

6 Q (BY MR. FOX): Tyler, is there anything that you think
7 it is important for the Court to know before she makes a
8 decision or is there anything that I haven't asked you about?
9 I want to give you an opportunity to at least inform the
10 Court of anything else that you think might be important.

11 A I don't know. I took a drug and alcohol evaluation. I'm
12 going to talk to the lady -- I've got to call the lady
13 about getting enrolled in classes. I will do daily UAs if
14 I have to. Anything. I don't know -- like, you know, I'm
15 just -- I'm not using. I know I'm not using. And I just
16 hope that the Court has something where they halfway
17 believe me and give me a chance to prove it besides this
18 drug patch, because I understand it's reliable and in most
19 situations -- but there is some cases where it was found
20 unreliable. And that's all I'm saying.

21 I don't know -- you know, I guess, I know that there
22 was cases that it was unreliable in. I've seen them. And if
23 I could do anything to prove to you guys that I am not using,
24 I wish we could do that. Like I said, \$40 a day is what UAs
25 cost; I will take off pay for that you know. Whatever you

1 want, basically.

2 THE COURT: Any questions, Mr. Larsen?

3 MR. LARSEN: Yes.

4 Q (BY MR. LARSEN): So just to clarify, the last date that
5 you used was on February 3?

6 A Yes.

7 Q How much did you use?

8 A Actually, I was -- the last day I used was February 3 and
9 I was -- I got arrested on January 19. I used that whole
10 time.

11 And I was a heavy drug user for about, years, is what
12 it was. And when I say heavy, I mean -- I don't know -- you
13 know, I did a lot. You know, like, I used a needle. I was
14 an IV drug user. I would do, like, a half gram at a time in
15 one needle.

16 Q How much did you use on February 3?

17 A Probably a gram or more; right? But this was in the
18 morning. Basically, I went and got my patch changed in
19 the morning. So, like, that morning -- I don't even know,
20 you know. It was a lot.

21 Q Mr. Schaefer, you sat through that evidentiary hearing
22 where witnesses were called regarding the reliability of
23 the drug patch; correct?

24 A What's that? I didn't hear you.

25 Q You sat through the evidentiary hearing where experts were

1 called regarding the reliability of the drug patch;
2 correct?

3 A Yes.

4 Q One of those experts being Dr. Kadehjian. Do you remember
5 that?

6 A Yes.

7 Q Do you remember him testifying that the only way that a
8 drug patch can be testing positive and showing up positive
9 is if you ingest a substance; correct?

10 A Yes.

11 Q Can you explain, then, how if you claim that you haven't
12 used that it keeps showing up in your system?

13 A Okay. I looked up some cases about the drug patch. And
14 there was cases where it was found unreliable. And my
15 lawyer has them, Dan Fox has them. I don't know if they
16 could help me or not.

17 Basically, it was where someone in the house was
18 using every day. And they were around other people. That's
19 what it was. It could be where they come in the room after
20 they got done smoking and it absorbs into the air or
21 whatever. And let's say if I'm showering in the same shower
22 as somebody. You know that little foam bath mat you put on
23 the bottom of your bathtub so you don't fall and bust -- you
24 know, fall, basically? He could be sweating -- he could be
25 sweating; that could absorb it. I come in after him.

1 You know, I'm just saying that's like, I don't know,
2 you know. I really don't know, I'm just -- I promise you
3 that I've not used meth since February 3, and I was a heavy,
4 heavy drug user. When I say heavy I mean, like, I did a lot.
5 And --

6 Q So when you used a lot did you have possession of a lot of
7 methamphetamine?

8 A No.

9 Q So did you just buy it as you needed it?

10 A Pretty much.

11 Q Have you ever been in possession of a large amount of
12 methamphetamine?

13 A What's a large amount? A couple of grams? That's about
14 the most I've ever had.

15 MR. LARSEN: Nothing further, Judge.

16 THE COURT: Anything else, Mr. Fox?

17 MR. FOX: No.

18 THE COURT: You can step down, Mr. Schaefer. Thank you.

19 (Testimony ends at 12:20 p.m.)

20 THE COURT: Any other evidence from the defense?

21 MR. FOX: No, Your Honor.

22 THE COURT: Any further evidence from the State?

23 MR. LARSEN: No, Judge.

24 THE COURT: I would hear arguments from counsel, then,
25 please.

1 MR. LARSEN: Thank you. Your Honor, this Court -- I would
2 ask to take judicial notice of the evidentiary hearing and
3 the testimony of Dr. Kadehjian and the chemist from
4 PharmChem. I forget her name at the moment. But we ask
5 that the Court remember the testimony of those witnesses.

6 Dr. Kadehjian testified that the only way
7 methamphetamine shows up positive on a drug patch is if it
8 was ingested and the amphetamine metabolite is present.
9 Judge, in this case the methamphetamine not only existed
10 but it's at a higher level than the previous patch, so
11 this shows new drug usage during that wear period. The
12 amphetamine metabolite is present proving that it was
13 ingested, it wasn't environmental contamination, as
14 Dr. Kadehjian testified. It is just not possible with the
15 drug patch.

16 There have been studies upon studies about how --
17 many scenarios could try to influence the drug patch
18 regarding environmental contamination and none of those
19 studies have ever been proven. In fact, they have been
20 disproven. So Judge, the drug patch has been a very
21 reliable source of testing equipment. I will just leave
22 it at that.

23 This Court has heard my arguments regarding this
24 defendant many times. And the argument regarding
25 reliability has not changed, in fact, it's grown stronger

1 after the testimony of Dr. Kadehjian.

2 So we ask that the Court realize that not only the
3 drug patch test for the initial testing but also the
4 retest show drug usage for this wear period, and we ask
5 the Court to find that he has violated the terms of bond.

6 THE COURT: Mr. Fox?

7 MR. FOX: Thank you, Judge. I'm aware of, obviously, the
8 testimony that was in that drug patch hearing.

9 You know, I've been dealing with Mr. Schaefer,
10 obviously, for the period of all of this. And he has been
11 adamant from the beginning that that would have been his
12 last usage. And no, it doesn't make any sense
13 scientifically. You know -- and just all I can say is, he
14 has done everything he can to try to prove that he is not
15 using. And I understand that there's some limitations as
16 to those things and that, you know, UAs may measure
17 different levels and there's different concerns that go
18 along with those things. But he's never really wavered in
19 that. And as his attorney, it is my job to believe him
20 and advocate for him and I'm trying to do that, Judge.

21 I realize that, certainly, the science as shown in
22 the drug patch hearing is against us. I'm just going on
23 based on what my client tells me.

24 You know, he is a hard-working guy when he's working.
25 He's trying to do positive things. And I guess I will

1 limit that at this point, because that, really, probably
2 deals more with any possible sanctions if the Court finds
3 a violation. But I guess I would just ask you to consider
4 his testimony and the actions he's taken to try to prove
5 that he isn't using.

6 THE COURT: The Court does take judicial notice of the
7 testimony given at the evidentiary hearing in these cases
8 held on May 10, and that included the testimony of
9 Dr. Kadehjian and and Ms. DeWitt, who was from the
10 Clinical Reference Laboratory in Kansas, which tests the
11 PharmChem patches. The Court has also heard the testimony
12 of Mr. Schaefer today and it is consistent with what he
13 has stated throughout this case.

14 As I previously stated, when I weigh an individual's
15 statements who is self-interested, obviously, in the
16 outcome of their case and in avoiding sanctions, against
17 the drug patch, which has been scientifically proven to be
18 reliable: Whatever cases Mr. Schaefer is referring to, as
19 Dr. Kadehjian stated, they are old cases and I don't even
20 know specifically what they are.

21 But clearly, Dr. Kadehjian has stated, based upon his
22 decades of experience with this patch -- not any other
23 patch, but with this patch and, knowing all of the studies
24 that have been done -- he has indicated its clear
25 reliability.

1 And he has also explained that environmental exposure
2 would not result in a positive patch for any of the
3 substances shown on this patch: Methamphetamine,
4 amphetamine, or THC. As Dr. Kadehjian testified, the
5 patch is not extremely sensitive to THC, so when it shows
6 up it is not showing environmental exposure. And clearly,
7 the methamphetamine levels at 1033 nanograms, which is
8 very high, is not showing any environmental use. In fact,
9 I don't think there's any methamphetamine level that would
10 ever be established through environment.

11 Also, as Dr. Kadehjian pointed out: Even assuming
12 Mr. Schaefer was a chronic user of methamphetamine for
13 years, that would not explain why a patch worn five months
14 after -- excuse me, four months after arrest would now be
15 positive for an increased level of methamphetamine and
16 amphetamine and THC.

17 So the Court finds that the State has shown to this
18 Court's reasonable satisfaction that the defendant has
19 violated the 24/7 program by having the positive patch
20 worn from 5-18 to 6-9, positive for methamphetamine and
21 THC.

22 Mr. Schaefer has posted the \$5000 cash bond that the
23 Court had ordered associated with this violation. And so
24 the Court is going to order that that amount remain in
25 place. It will just sit here in the case, Mr. Schaefer,

1 until the case is resolved in one fashion or another. If
2 in the future you violate bond, the Court can order that
3 that bond be forfeited to the county but, for now, it's
4 going to remain in the case and sit there until the case
5 is resolved, unless I order it forfeited at some other
6 time.

7 Is the State seeking anything else?

8 MR. LARSEN: Yes, Judge. For the sanction we are
9 requesting at least a 7-day sanction.

10 THE COURT: Mr. Fox?

11 MR. FOX: Thank you, Judge. I would request, Judge -- I'm
12 sorry -- I would request the Court delay any imposition
13 until the disposition of this matter or if there was
14 another violation.

15 Mr. Schaefer just got his employment back and, you
16 know, he would -- it was tough to get done and if he loses
17 it again after being there such a short period of time, he
18 really feels like he's not going to be able to get it
19 back. And he would like the opportunity to be able to
20 come in to my office and review discovery. I realize he
21 could do that in the jail. It's a little more awkward to
22 do there.

23 And, I guess, that's really all I have to say. I
24 mean, he's shown up for everything. He's not trying to
25 avoid anything. So I would ask the Court to consider

1 that.

2 THE COURT: Well, considering the fact that Mr. Schaefer
3 has also indicated that he did do a chemical dependency
4 evaluation, I'm going to order that he comply with the
5 recommendations of that evaluation. I am going to order a
6 7-day jail term to be served in the future. Not today.
7 So you will continue to be released.

8 Obviously, if there is future positive patches,
9 warrants will be issued and it may be that you serve that
10 time, but I am not setting a specific date to serve it
11 now. It will be determined by the Court in the future.
12 But it is not waivable. And you will continue on all of
13 the same conditions as previously ordered. And, again,
14 that \$5000 cash will remain posted.

15 MR. FOX: Judge, my client has a question.

16 THE COURT: Yes?

17 MR. SCHAEFER: Can I -- is it -- would it help me to do
18 the, like, let's say, three UAs a week or five UAs a week
19 at this Avera Medical Plaza? Would that help my case at
20 all to show that I'm not using?

21 THE COURT: No.

22 MR. SCHAEFER: Not at all?

23 THE COURT: Not -- because it's a much higher level. The
24 nanogram levels of the patch go down to two nanograms.
25 And a UA, they are typically set at several hundred

1 nanograms, so it's like testing apples and oranges from my
2 perspective.

3 MR. SCHAEFER: I thought that the doctor said that there
4 were some people who could be tested daily, I thought he
5 said.

6 THE COURT: No, because he said you have to take into
7 consideration the levels that they test at because, again,
8 the levels are set differently what they report back. And
9 number two, it has to also determine they are subject --
10 UAs are subject to people trying to substitute other
11 substances for UAs or somebody else's urine for their UA.
12 And so it is also subject to challenge depending on the
13 veracity and the supervision given by the person giving
14 the UAs. So those are two reasons why. But principally,
15 the fact that these levels are this high.

16 Now, if you had a cutoff level of two nanograms for a
17 UA, I would potentially consider it. And if the person
18 who gave the UA, each one would come in and testify as to
19 the circumstance of how they gave it; that is possible.

20 But those are two of the big hurdles that you would
21 have to overcome. So I am not going to say no, absolutely
22 no. I am just going to say you have quite a few hurdles,
23 because it is apples and oranges for you to present that
24 to me. But you can talk further with Mr. Fox and maybe
25 there is some other test that you can submit.

1 But right now -- I won't say never -- but right now,
2 without those differences being accounted for, a UA, a
3 negative UA would not convince me that the patch was
4 wrong.

5 MR. SCHAEFER: Where would that be at? Where would I get
6 that? Like, I want --

7 THE COURT: I don't know of any who do UAs. That's why I
8 don't do UAs. Because I don't know that they go that low.
9 That's why I use the patch. So that's why I always use
10 the patch because it goes much lower than UAs. It goes
11 lower than the swabs because I know people use swabs
12 sometimes. They are all set way too high for my liking.

13 MR. SCHAEFER: Okay.

14 THE COURT: But you can talk further with Mr. Fox. And,
15 again, the next hearing in your cases, Mr. Schaefer, is
16 set for August -- Friday, August 26 at 1:00. But Mr. Fox
17 will tell you if that changes. That's for motions.

18 MR. SCHAEFER: Okay. I was just curious -- telling him,
19 what are there now?

20 THE COURT: Yeah, no. It's just for motions in the case
21 and deciding any motions if the case were going to trial.

22 MR. SCHAEFER: All right. Thank you.

23 THE COURT: Okay. We are adjourned.

24 (WHEREUPON, the proceedings were thereby
25 concluded at 12:32 p.m.)

COURT REPORTER'S CERTIFICATE

STATE OF SOUTH DAKOTA)
):SS
COUNTY OF YANKTON)

I, CLOVIA DEE, Official Court Reporter, do hereby certify
that the facts stated by me in the caption on the foregoing
proceedings are true; and that the foregoing proceedings were
reported verbatim through the use of the voice-writing method
and thereafter transcribed by me or under my direct
supervision to the best of my ability, taken at the time and
place set out on the caption hereto.

/s/ Clovia Dee, CVR _____

Signed this 26th day of July, 2022,
at 7:00 a.m.

	21 [1] 2/19 21 nanograms [2] 3/16 11/23 216 [1] 1/18 22 [1] 2/14 22-13 [2] 1/4 3/4 22-30 [2] 1/4 3/5 24/7 [8] 5/4 5/5 5/7 5/20 8/14 9/4 14/23 27/19 26 [1] 31/16 26th [1] 32/16 28 [2] 3/24 3/24	admitted [2] 11/9 14/13 advised [1] 13/1 advocate [1] 25/20 affects [1] 15/21 after [9] 6/15 8/11 9/22 22/19 22/25 25/1 27/14 27/14 28/17 afternoon [1] 4/22 again [7] 3/19 15/5 19/9 28/17 29/13 30/7 31/15 against [3] 20/1 25/22 26/16 Aid [1] 7/14 air [1] 22/20 alcohol [2] 6/15 20/11 all [18] 7/19 7/25 8/15 9/25 10/18 11/2 12/3 14/18 20/20 25/10 25/13 26/23 28/23 29/12 29/20 29/22 31/12 31/22 allegation [1] 3/13 allegations [2] 3/17 4/6 allow [1] 16/4 alone [1] 18/1 along [1] 25/18 also [11] 3/8 6/8 7/18 12/18 25/3 26/11 27/1 27/11 29/3 30/9 30/12 always [1] 31/9 am [8] 5/9 10/11 13/12 20/23 29/5 29/10 30/21 30/22 Amendment [2] 17/7 17/14 amount [4] 18/1 23/11 23/13 27/24 amp [1] 12/13 amphetamine [7] 3/15 11/22 14/2 24/8 24/12 27/4 27/16 another [3] 20/4 28/1 28/14 any [29] 3/21 8/6 9/20 11/7 14/11 15/1 15/17 15/21 16/4 16/10 16/14 16/22 16/24 17/12 17/13 17/25 19/4 21/2 23/20 23/22 25/12 26/2 26/22 27/2 27/8 27/9 28/12 31/7 31/21 anything [11] 16/11 16/18 18/1 20/6 20/8 20/10 20/14 20/23 23/16 28/7 28/25 APPEARANCES [1] 1/10 apples [2] 30/1 30/23 application [1] 15/9 applied [3] 6/12 6/17 6/23 apply [1] 6/16 approach [2] 10/9 13/10 April [5] 3/24 3/24 3/24 3/24 18/15 April 14 [2] 3/24 3/24 April 28 [2] 3/24 3/24 are [34] argument [1] 24/24 arguments [2] 23/24 24/23 arm [1] 6/15	around [1] 22/18 arrest [1] 27/14 arrested [1] 21/9 as [33] ask [7] 20/4 24/2 24/4 25/2 25/4 26/3 28/25 asked [3] 17/12 19/20 20/8 associated [1] 27/23 assuming [1] 27/11 at [35] attention [5] 9/10 11/11 11/12 12/2 12/6 attorney [6] 1/12 1/17 3/8 3/10 17/11 25/19 August [2] 31/16 31/16 August 26 [1] 31/16 Avera [2] 19/13 29/19 avoid [1] 28/25 avoiding [1] 26/16 aware [1] 25/7 awkward [1] 28/21	bunkbed [2] 18/7 18/7 business [1] 8/17 bust [1] 22/23 but [22] 18/4 18/21 19/24 20/19 21/17 24/4 24/10 25/3 25/18 26/3 26/21 26/23 28/3 29/10 29/12 30/14 30/20 30/24 31/1 31/1 31/14 31/16 buy [1] 23/9 Byron [1] 5/18
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