

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

UNITED STATES OF AMERICA,	:	Docket No. 04-20075
	:	
Plaintiff,	:	
vs.	:	May 6, 2010
	:	
GREGORY JAMES CATON,	:	
	:	
Defendant.	:	Lafayette, Louisiana

REPORTER'S OFFICIAL TRANSCRIPT OF THE REVOCATION HEARING
BEFORE THE HONORABLE TUCKER L. MELANCON
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

FOR THE PLAINTIFF:	DANIEL MCCOY Assistant United States Attorney 800 Lafayette Street, Ste. 2200 Lafayette, LA 70501
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FOR THE DEFENDANT:	RANDAL P. MCCANN Law Office of Randal P. McCann P.O. Box 3685 Lafayette, LA 70502
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REPORTED BY:	LARAE BOURQUE, RPR, CRR United States Court Reporter 800 Lafayette Street, Ste. 3103 Lafayette, Louisiana 70501
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P R O C E E D I N G S

(Call to order of the court.)

THE COURT: Good afternoon. Please be seated.

The next matter before the Court today is Criminal Docket Number 04-20075, *United States of America vs. Gregory James Caton*. The record will reflect that this hearing is a continuation of the hearing that initially started on March 17th, continued to March 22nd for reasons that I don't need to go into right now -- I'd ask whoever is stirring those papers, if they could kill their microphone because I'm picking them all up. Thank you.

And the record would -- well, I will say this. Let me back up. It was continued the last time because an issue came up about -- I think it was a YouTube posting, video, whatever you call those things, that allegedly the defendant, Mr. Caton, posted.

There was an issue about the date of the posting as I recall. And me being a 64-year-old -- I don't want to say technological imbecile, but something like that, and not knowing anything about YouTube, I asked my very astute and young law clerk, Ms. Singletary, to assist me a little bit. I think at some point defense counsel said, wait, Judge, I'm going to object to the Court's personnel being involved and trying to figure out what the hell this means, or something to that effect. And I said, well, okay, time out. We'll continue this thing again and

1 I'll give everybody the opportunity, the government and the
2 defendant, to get experts or do anything else they need to to
3 make sure that if the defendant or defense counsel thought the
4 Court would inappropriately rely on the interpretation of a court
5 employee to tell me what was pretty clear at the time as I recall
6 -- and, again, I haven't discussed this with Ms. Singletary
7 since. I think there's an indicator there about when it's
8 posted, that that was the issue, that it would pretty much tell
9 you when it was done.

10 The reason that was germane, as I recall, is there were
11 three allegations that were made by the probation office in the
12 supervised release hearing -- that caused the hearing. Two of
13 them were admitted by the defendant, and the one that was not
14 admitted was the one that was the production of the drug that --
15 Ms. Singletary is giving me my stuff right now.

16 And I might ask the probation officer, first of all, to
17 identify himself just so this record is as concise as it can be,
18 although I'm going on longer than I intended to, but my
19 recollection is that what's been the subject of the two hearings
20 previous as well as this one is that -- was special condition
21 number one which you had couched as violation number one. As to
22 violation number two and violation number three, the defendant
23 admitted to those. Is that true?

24 THE PROBATION OFFICER: That's correct. He admitted to
25 two and three.

1 THE COURT: And so the only issue was whether or not he
2 had refrained from involvement in the manufacture or sale of any
3 product not approved by the United States Food and Drug
4 Administration, particularly -- and I've forgotten the -- was it
5 H₃O?

6 THE PROBATION OFFICER: H₃O.

7 THE COURT: And that was -- we had testimony about how
8 H₃O -- how it's made, and we had testimony from a witness who was
9 burned by sulphuric acid as I recall --

10 THE PROBATION OFFICER: That's correct.

11 THE COURT: -- which is one of the components of H₃O,
12 and also gave some testimony about what was in place at the
13 warehouse where he was burned and where the defendant, Mr. Caton,
14 was present.

15 Now, from the probation officer's perspective, have I
16 pretty much concisely and correctly stated where we are and how
17 we got here?

18 THE PROBATION OFFICER: Yes, sir.

19 THE COURT: All right. At this time I'm going to
20 ask -- thank you, sir.

21 At this time I'd ask the attorneys involved in the
22 case, first the United States Attorney representing the
23 government, then defense counsel, to identify yourselves, and
24 after you identify yourselves, the same question to each of you.
25 You can say, yes, Judge, I think you got it pretty close, or,

1 Judge, you left out this little bitty thing, or, Judge, you
2 misstated this.

3 So first starting with the government attorney.

4 MR. MCCOY: Daniel McCoy for the United States, Your
5 Honor. And as to your question, I do believe that is a fairly
6 accurate rendition. The defendant had previously admitted to
7 violations of -- the latter two conditions, condition two and
8 three. The issue that was before you was condition one which was
9 whether or not he had continued to manufacture drugs that were
10 not approved by the FDA. The synopsis that you gave does, I
11 believe, correctly encapsulate the last two -- it might actually
12 even be three days of the various hearings that we've had on this
13 revocation.

14 THE COURT: Now, let me ask you, you said -- initially
15 you said fairly accurate and then you said accurate. When you're
16 saying fairly accurate, you're not doing -- you're not saying
17 that's close enough for government work, but you're saying,
18 Judge, I think you got it right?

19 MR. MCCOY: I'm saying I think you got it right, Your
20 Honor.

21 THE COURT: I'm just making sure we're all on the same
22 page.

23 MR. MCCOY: Yes, sir.

24 THE COURT: And defense counsel, identify yourself for
25 the record.

1 MR. MCCANN: Randal McCann on behalf of Gregory Caton.
2 And I believe the Court's summarizing of the history of this
3 proceeding is accurate.

4 THE COURT: Thank you, sir.

5 Now, does the government have any witnesses that it
6 wants to call to talk about how one can ascertain when a YouTube
7 posting, video, is actually posted?

8 MR. MCCOY: Your Honor, I don't believe we will have to
9 call a witness. If we were to call any witness, I would call
10 Special Agent Peter Orlando. However, a subpoena was issued to
11 Google for the YouTube -- for some information for the specific
12 YouTube video being the H₃O vindicated video. And I would offer
13 into --

14 THE COURT: Before you do that, do you have any
15 witnesses you'd like to call, Mr. McCann?

16 MR. MCCANN: No, sir. He's going to offer -- he's
17 going to put in a business record through the business records
18 exception, a document that he received from Google, and it in
19 fact confirms the date that that YouTube video was uploaded.

20 THE COURT: All right. And so the document he got
21 pursuant to a subpoena is a business record and it would be
22 admitted without objection?

23 MR. MCCANN: Yes, sir, it will be.

24 THE COURT: All right. Go ahead and tell me what it is
25 again and we'll label it.

1 MR. MCCOY: Yes, Your Honor. The subpoena to Google
2 was for documentation from the YouTube video. We did receive in
3 fact on May the 3rd a CD for the information requested. I have
4 one -- a one-page document that I'm going to introduce from --
5 printed out from the CD, a copy of which was given to the
6 defendant, detailing the H₃O vindicated video stating that the
7 date that it was added to the server was August 13th, 2009, which
8 would correlate to the times that we previously had discussed the
9 video being uploaded to.

10 THE COURT: And, Mr. McCann, is that your recollection
11 from the discussion that was had on the record back the last time
12 we were together? Is that the same date?

13 MR. MCCANN: Yes, sir.

14 THE COURT: Okay. Well, without objection -- what's it
15 labeled as, Mr. McCoy?

16 MR. MCCOY: I have it labeled as Government
17 Exhibit 2, Your Honor.

18 THE COURT: Okay. Now, we don't have a previous two at
19 another one of those hearings? We do not.

20 Okay. So this will be Government Exhibit 2 admitted
21 without objection. All right. And I would like to look at it
22 briefly so I can see it.

23 MR. MCCANN: Your Honor, in connection with that, at
24 the same token there's -- in connection with that, to make the
25 record complete, there was another aspect of the YouTube video

1 that also encapsulated a summary of it. I would like to offer
2 that into evidence as Defense Exhibit Number 3 if I'm --

3 THE COURTROOM DEPUTY: One.

4 MR. MCCANN: I thought we did put some things in.

5 THE COURT: All right. So this would be a document
6 that you tender as Defense Exhibit 3 and it's -- you said in
7 connection to make the record complete. Is this part of what was
8 generated pursuant to a subpoena?

9 MR. MCCANN: Yes, sir. It actually came off of the
10 internet in connection with the YouTube video.

11 THE COURT: Okay. So this wasn't part of what the
12 government got pursuant to the subpoena or was it?

13 MR. MCCANN: That's correct, sir.

14 THE COURT: It was?

15 MR. MCCANN: It was not. It was not.

16 THE COURT: Okay. You've shown that to Mr. McCoy?

17 MR. MCCANN: He actually gave it to me.

18 THE COURT: Mr. McCoy, is there any objection to
19 entering that?

20 MR. MCCOY: Without objection, Your Honor.

21 THE COURT: All right. So without objection it will be
22 admitted as Defense --

23 MR. MCCANN: It's Exhibit Number 1, Judge.

24 THE COURT: Exhibit Number 1. And I guess I need to
25 look at that just so I'm understanding.

1 (Pause)

2 THE COURT: Okay. I've looked at that, too. All
3 right. So here you go. I'll give it back to the clerk.

4 And where are we now, Mr. McCoy?

5 MR. MCCOY: Your Honor, for purposes of clarity, the
6 video that was shown to you on March 22nd in rebuttal was never
7 formally admitted into evidence. I do have a copy of that video
8 on this CD-ROM disc.

9 On this disc itself there are other videos from Greg
10 Caton. The video in particular that you viewed is clearly
11 labeled as the H₂O video. I think for just purposes of making
12 sure the record is clearly identified, I would prefer to
13 introduce this CD into evidence so that the record does maintain
14 a copy of that video.

15 THE COURT: All right. But for whatever future
16 occasion the record may serve and someone other than this judge
17 looking at it, it would be clear the way it's marked that that's
18 all the other judge should be concerned with?

19 MR. MCCOY: I believe so, Your Honor. It would be
20 clear what the video is that you viewed from the labeling of the
21 videos on this disc.

22 THE COURT: All right. And do you have any objection
23 to that, Mr. McCann?

24 MR. MCCANN: Yes, sir, I do.

25 THE COURT: Okay. And the basis for that would be?

1 MR. MCCANN: Number one, it's not relevant. The video
2 itself does not discuss sale. It does not discuss manufacture.
3 It does not discuss price. It does not discuss location upon
4 where one might be able to buy either Cansema or H₂O. It does
5 not discuss technique. It simply illustrates safety because the
6 video has Mr. Caton drinking what was otherwise deemed to be
7 unsafe. It is obviously his attempt to refute that what he
8 proposed at some time in the past was not -- was not a harm to
9 someone.

10 THE COURT: I understand the objection.

11 Now, what's the government's response to that?

12 MR. MCCOY: The government would advise the Court that
13 from its recollection the video in fact does at one point mention
14 that it's available for \$9.95.

15 THE COURT: All right. Let's go ahead and let's look
16 at it again because I've looked at it once. I believe both of
17 you believe what you're saying, and it's kind of like it's going
18 to be black or it's going to be white. It won't be gray.

19 MR. MCCANN: Your Honor, he's right. He's right.
20 There is a point in there where he talks about a package of
21 \$9.95. I just didn't recall that, but he's correct.

22 THE COURT: So do you withdraw your objection then? I
23 mean, I'm asking because I'm going to rule on the objection.

24 MR. MCCANN: I don't want to -- I don't want to
25 withdraw the objection, but I don't want you to think that I'm

1 misleading the Court either. I think he is correct.

2 THE COURT: What's the basis of your objection then
3 since you can't withdraw it other than, gee, Judge, don't break
4 it off on me right now? What's the reason to object? The
5 federal rules say you're supposed to give me a reason. It can't
6 be relevant if it's just what you admitted to. It seems like it
7 would be relevant.

8 MR. MCCANN: I don't think I have a basis for the
9 objection because I think it does -- I am very certain that it
10 mentions the price of \$9.95.

11 THE COURT: Subject to your candor with the Court, I'll
12 allow your objection to stand, but I'll overrule the objection
13 subject to me looking at it again and making my final ruling
14 after I look at it. I believe everybody is trying to shoot
15 straight with the judge, and I can't ask any more out of lawyers
16 with our memories being what our memories are.

17 MR. MCCANN: Yes, sir.

18 THE COURT: I'm going to get to watch this on my
19 screen, right?

20 MR. MCCOY: Yes, sir. I'm going to get this up as
21 quickly as possible.

22 (Video Published)

23 THE COURT: Now, I need some help about the \$9.95.

24 MR. MCCANN: Apparently there was a kit of \$9.95 that a
25 person could buy at some point; not necessarily from him, but

1 from somebody. See, when this tape was done, August, he's in
2 Ecuador.

3 THE COURT: What's the government got to say about
4 that?

5 MR. MCCOY: I think it was relatively clear from the
6 government's perspective that he mentions we sell it as a
7 concentrate. We've always sold it as a concentrate. And later
8 on shortly thereafter in the film he mentions that it's sold for
9 \$9.95. It comes in eight fluid ounces with the pH strips.

10 THE COURT: I recall that statement, Mr. McCann. How
11 about you? Do you recall that?

12 MR. MCCANN: I heard the same, Your Honor.

13 THE COURT: Okay.

14 MR. MCCANN: I think that the issue is what is the
15 depth of the prohibition of his supervised release. There is --
16 if I may, there is no documentation that would reflect that
17 Mr. Caton has actually sold anything. It's an instructional
18 video and it discussed the properties of this solution.

19 The FDA did not seize business records when they had
20 the chance. There's no controlled buys. There's no undercover
21 buys like you would do in the traditional drug scenario, and
22 there's no evidence to suggest that Greg Caton has actually sold
23 anything that he's prohibited from selling.

24 This is more instructional and more informational than
25 it is about sales. It does not specify where you can get it. It

1 does not specify how to get it, how to send money, where to send
2 money, where to send an order, how to get an order. It simply
3 says when it is sold, it's sold for \$9.95, although I do admit
4 that he used the pronoun "we."

5 THE COURT: Well, the Court will overrule the objection
6 and allow the video clearly marked so anybody who gets to look at
7 the video that I saw for the second time here today won't get
8 confused about any other video. So that's the Court's ruling on
9 that. It's admitted.

10 What's the number on that one?

11 MR. MCCOY: This will be Government Exhibit 3, Your
12 Honor. And for purposes of clarity, the video that is on the CD
13 that you viewed is titled H30 Vindicated - Volume I Safety.

14 THE COURT: Okay. So it's admitted over the objection
15 subject to the Court's ruling.

16 All right. And I have to say I think we concluded the
17 hearing when last we were together on March the 22nd with the
18 exception of this aspect of the hearing, but I may be wrong.

19 From the government's perspective, am I right or am I
20 wrong?

21 MR. MCCOY: From the government's perspective, you are
22 correct, Your Honor.

23 THE COURT: And, Mr. McCann, am I right or am I wrong?

24 MR. MCCANN: I think you are correct.

25 THE COURT: All right. Is there anything else -- I'm

1 just trying to give each of you the opportunity to do anything
2 else you think you need to do as far as putting on any evidence
3 before me, not argument. I'll give you a chance to make whatever
4 argument you want to make as it relates to everything, but is
5 there anything else the government wants to put on?

6 MR. MCCOY: No, Your Honor.

7 THE COURT: Anything else the defendant wants to put
8 on?

9 MR. MCCANN: No, sir.

10 THE COURT: All right. Well, I will give first -- I
11 don't know if the defendant would like to say anything in
12 addition to what he said previously, but this would be his
13 opportunity. Then I'll allow argument from the government and
14 then the defendant and the government will have the last crack at
15 it because they have the burden.

16 MR. MCCANN: The defendant himself has nothing further
17 to add. He's relying upon me to --

18 THE COURT: Okay. Well, go ahead, Mr. McCoy. Tell me
19 what you think and what the evidence has shown, and we'll let
20 Mr. McCann say the same thing, and then we'll figure out what the
21 judge is going to do.

22 MR. MCCOY: Certainly, Your Honor. Thank you.

23 May it please the Court: We've had several days of
24 hearings on this revocation matter. As is unrefuted by the
25 defendant, two of the three violations were admitted prior to the

1 start of this revocation proceeding.

2 The government asserts that the first condition where
3 the defendant would refrain from the sale and/or manufacture of
4 any products not authorized by the FDA as was stated in condition
5 one, that the burden has been met by the government.

6 The government would first note that this is a
7 revocation hearing under Rule 32.1 of the rules and that the
8 burden of proof is not beyond a reasonable doubt, and that the
9 government has clearly shown by a preponderance of the evidence
10 that the defendant was continuing to sell and/or manufacture
11 products that were not authorized by the FDA.

12 We had testimony from Mr. Dugas who stated that he was
13 burned by materials that are very consistent with the product
14 that was being labeled as H₃O and that was in fact the sulphuric
15 acid that he was burned by. That testimony was clearly
16 correlated by the video that you observed on March 22nd and again
17 here today where the defendant from Ecuador was making claims
18 about the H₃O product which was one of the ones that were
19 obviously not FDA approved dating back from his original arrest
20 and later guilty plea and conviction.

21 It is clear from the record and from the evidence
22 that's been adduced that the government -- or that the defendant
23 is not going to follow the instructions of the Court during his
24 supervised release. He failed to report timely and properly to
25 his probation officer of which he admitted. He failed to provide

1 regular reports to his probation officer. And, quite frankly,
2 from the government's perspective, Your Honor, he's failed to
3 obey your orders not to produce, sell and/or manufacture any
4 other FDA products. He has done that. We believe that the
5 government has shown that over the last several days that this
6 revocation hearing occurred.

7 And I believe that in terms of an appropriate sentence
8 in this matter, that I believe he should be revoked, and I think
9 the judge should take into consideration that should he be
10 revoked -- he has had several issues while on supervised release
11 in the past, and that perhaps a sentence should be handed to the
12 defendant wherein upon the completion of that sentence he no
13 longer would have to be under supervised release or supervised
14 probation of the U.S. Probation Office.

15 THE COURT: All right. Mr. McCann.

16 MR. MCCANN: Your Honor, H₃O is manufactured or was
17 manufactured -- probably still is manufactured in California and
18 it is sold.

19 At the original time frame of Mr. Caton's conviction,
20 there was no suggestion that he was out there in back of his
21 warehouse manufacturing H₃O. He didn't know how to do it.
22 Mr. Dugas clearly testified that he was burned with some acidic
23 type of acid, but it burned his skin. Obviously if what you saw
24 on the video was H₃O and Mr. Caton drank it and he put his
25 fingers in it, it could not have been the same thing that

1 Mr. Dugas was burned by at the Lumen Foods facility in Louisiana.

2 Mr. Wright testified that he received a product that
3 was not for human consumption from Mr. Caton, but that he used it
4 to clean rust. And I'll submit to you that the evidence was more
5 strongly pointing out that it was that rust remover that
6 Mr. Dugas got burned by and not some product that is considered
7 to be H_2O .

8 There were four witnesses produced by the government
9 that testified on that issue. One was Anthony Dugas, one was
10 Crystal, one was Tabitha, and the other one was Zoe. Zoe and
11 Tabitha both testified very clearly that Mr. Caton did not
12 manufacture or sell anything having to do with Cansema and H_2O .
13 In fact, Tabitha indicated to the Court that she had some Cansema
14 in her medicine cabinet at her home, that at some point in time
15 it was seized by Mr. Ormond from her medicine cabinet, but that
16 she had purchased that long before when Greg Caton got convicted
17 the first time. That's not something that she had subsequent to
18 that.

19 Crystal was impeached on multiple occasions. If you
20 recall, she admitted that she filed suit against Lumen Foods for
21 past due wages and that she held Greg Caton personally
22 responsible for not getting a raise that she thought that she was
23 owed.

24 She claimed that she saw something in the manufacturing
25 process that had Mr. Caton manufacturing an item that was

1 prohibited except that she could not offer any details. In fact,
2 her testimony was completely opposite of what Zoe and Tabitha
3 testified to.

4 I will submit to you that because of her history of
5 filing a claim for workers' compensation and for filing a wage
6 claim and for blaming the Catons for not getting a raise, that in
7 fact she was impeached and her credibility was severely tarnished
8 in front of this Court.

9 Now, other than that, Mr. Caton has been living in
10 Ecuador which he admitted to the Court was wrong. He violated
11 the Court's order in condition number two and condition number
12 three, but he offered some explanation for it. He felt as though
13 he was being targeted, that there was not a chance that he would
14 be able to prevail, and that he was wrong in his decision for not
15 coming back to the United States in October of 2007. He readily
16 admitted his guilt on that and he's asked for the mercy of the
17 Court.

18 From the standpoint of the H₃O video that's out there,
19 I reiterate the fact that the video itself is not a sale video.
20 The video is about information. It suggested that H₃O is not a
21 toxic product. He drank it. He demonstrated its pH quality by
22 dipping a litmus test stick into it, but that's not sale and it's
23 certainly not manufacture.

24 In fact, specifically the United States government has
25 not produced any sales receipts. They haven't produced any

1 documents seized from Lumen Foods or Omega Labs. They have not
2 attempted to do any undercover buys over the internet to see if
3 in fact Omega Labs or Lumen Foods or any of the other corporate
4 entities that Greg Caton has been involved in would in fact sell
5 a product to anyone.

6 The United States routinely conducts undercover
7 investigations involving narcotics and they routinely conduct
8 undercover investigations when it comes to computer solicitation
9 of a minor in child pornography, et cetera, but in this
10 particular instance they're claiming that Mr. Caton is
11 manufacturing and/or selling, but no undercover investigation has
12 been suggested and they rely upon the testimony of a witness that
13 clearly had a bias.

14 I will suggest to you that he is in fact guilty of
15 condition number two and condition number three as he has
16 admitted, but there's been no carrying of the burden of proof as
17 to condition number one.

18 THE COURT: All right. Mr. McCoy, anything else you
19 want to say?

20 MR. MCCOY: Briefly, Your Honor.

21 The government would disagree. We believe that we have
22 met our burden of proof which, again, under a revocation standard
23 is the preponderance standard, that it was more likely than not
24 that Greg Caton was continuing to be involved in the sale and/or
25 manufacture of products that were not approved by the FDA.

1 This evidence comes through the testimony that was
2 elicited by Ms. Crystal Leslie, by the testimony given by Anthony
3 Dugas, and by the videos that you were able to observe.

4 The fact is that Mr. Caton has kept this website up
5 even while he was in Ecuador, took steps to in fact make the sale
6 of products available in Ecuador and elsewhere throughout the
7 world, some of which were products that had previously been
8 banned by the Federal Drug Administration.

9 Additionally, the YouTube videos were posted, and I
10 think that those are the -- I think that the testimony that you
11 had during the revocation proceedings in connection with that
12 video clearly brings us beyond the preponderance standard that
13 Mr. Caton was involved in violating condition number one.
14 Obviously Mr. Caton has already admitted that he violated
15 conditions number two and number three.

16 Thank you, Your Honor.

17 THE COURT: All right. Let me ask first the government
18 lawyer and then the defendant's lawyer. Is there any
19 disagreement that the maximum that the defendant -- if supervised
20 release is revoked, the maximum amount of time he faces is two
21 years subject to whatever he's been in custody for since his
22 arrest and since his return from Central America?

23 MR. MCCOY: That's correct, Your Honor.

24 THE COURT: Mr. McCann, do you agree with that?

25 MR. MCCANN: I agree with that, sir.

1 THE COURT: All right. Let me say a couple of things.

2 First of all, as stated here several times today by the
3 Court and the lawyers, the defendant has admitted to violating --
4 to violation number two which would be a violation of standard
5 condition number two whereby he was supposed to report to his
6 probation officer and should submit a truthful and complete
7 written report within the first five days of each month.

8 The further information that was given to the Court by
9 the probation officer in the petition that set the hearing for
10 revocation of supervised release was that this defendant was
11 given approval from the Court to travel outside the United States
12 for employment purposes as a consultant with Global
13 Preservatives.

14 While traveling, the defendant was given permission to
15 send his monthly reports by e-mail or fax. His last monthly
16 supervision report was sent by e-mail for the month of September,
17 2007. The defendant has failed to submit a monthly report since
18 that time.

19 And further admitted by the defendant was violation
20 number three which would be a violation of standard condition
21 number three, that the defendant shall answer truthfully all
22 inquiries by the probation officer and follow the instructions of
23 the probation officer.

24 And, further, this defendant was given approval from
25 the Court to travel outside the United States for employment

1 purposes as a consultant with Global Preservatives. On
2 August 21st, 2007, he was given a travel permit to travel to
3 Guayaquil, Ecuador, from August 31st, 2007, to September 28th,
4 2007. On September 26th, 2007, Mr. Caton requested permission to
5 extend his permit to October 16th via e-mail. This request was
6 approved by the probation office on September 27th, 2007.

7 On October 16th, 2007, the defendant advised via e-mail
8 that he was having medical problems and was unable to return as
9 scheduled. On October 22nd, 2007, the defendant advised via
10 e-mail he would return to the United States on October 24th. On
11 October 24th, 2007, the defendant again failed to return as
12 scheduled citing medical problems.

13 On October 30th, 2007, the probation office contacted
14 the defendant via e-mail and instructed him to respond as soon as
15 possible with his medical status and to advise when he planned to
16 return to the United States. The defendant replied via e-mail
17 that his condition had improved and he would contact the
18 probation office within 48 hours with his confirmation
19 information and return schedule. He failed to do so.

20 The probation office once again attempted to contact
21 the defendant via e-mail on November 7th, 2007, informing him
22 that he needed to return to the Western District of Louisiana as
23 soon as possible, but the defendant failed to respond.

24 As previously stated, Your Honor ordered a warrant --
25 that a warrant be issued for the defendant on November 13th,

1 2007. His whereabouts were unknown until the time of his arrest
2 on or about October 28th, 2008, in Ecuador.

3 THE PROBATION OFFICER: Your Honor --

4 THE COURT: And, again, that's what was -- go ahead.
5 I'm sorry.

6 THE PROBATION OFFICER: That last October 28th should
7 be December 2nd, 2009.

8 THE COURT: I'm sorry. So the record should be
9 corrected. His whereabouts were unknown until the time of his
10 arrest on or about December --

11 THE PROBATION OFFICER: December 2nd, 2009.

12 THE COURT: -- December 2nd, 2009.

13 THE PROBATION OFFICER: Yes, sir.

14 THE COURT: Okay. And that's what was admitted by the
15 defendant when we started this proceeding.

16 Am I correct, Mr. McCoy?

17 MR. MCCOY: Yes, Your Honor.

18 THE COURT: And am I correct, Mr. McCann?

19 MR. MCCANN: Yes, sir.

20 THE COURT: All right. Now, let me say as it relates
21 to special condition number one -- that was the defendant shall
22 refrain from the involvement in the manufacture and/or sale of
23 any product not approved by the United States Food and Drug
24 Administration. That's what was denied by the defendant and
25 that's what was the subject of the hearing that we had that

1 initially started on March 17th, continued to March 22nd, and
2 then lastly to today's date.

3 Am I correct on that, Mr. McCoy?

4 MR. MCCOY: Yes, sir.

5 THE COURT: Am I correct on that, Mr. McCann?

6 MR. MCCANN: Yes, sir.

7 THE COURT: All right. Well, let me say, as has been
8 pointed out by the government attorney, the standard to make a --
9 or the burden of proof in a revocation hearing is by a
10 preponderance, just more probable than not probable.

11 The record before the Court, including the testimony of
12 the witnesses, particularly taking into consideration the Court's
13 view of the witnesses from within six feet of the witnesses as
14 they testified, allowing the lawyers to ask questions, but also
15 asking questions -- in any matter the Court has to make
16 credibility determinations. I've considered the relationships in
17 the past and their demeanor and how they handled themselves in
18 this proceeding.

19 As far as the documentary evidence, the record here is
20 the record. I've looked at it.

21 And I will say that based on what's before the Court, I
22 find that the government has not only met the burden of a
23 preponderance of the evidence, but I think it's met the clear and
24 convincing evidence standard if the video that was admitted into
25 evidence here today over the defendant's objection is not

1 considered. If that video is considered, in this judge's view
2 the government has proved that the defendant violated condition
3 number one, that is the sale and/or manufacture -- manufacturing
4 and/or sale of a product not approved by the U.S. Food and Drug
5 Administration, beyond a reasonable doubt.

6 So I find that the defendant has in fact violated
7 condition number one. Thus, based on his admissions, he's
8 violated -- found guilty of or admitted to violating all three
9 conditions of supervised release as alleged by the United States
10 Probation Office in the petition that was filed with this Court.

11 Now, I find this case to be particularly problematic.
12 There is no question that Mr. Caton is smart. I would like to
13 give him the benefit of the doubt, one who sits not just in the
14 chair in which I sit as a United States District Judge, but as a
15 two-time cancer survivor that I am, that he thinks he's doing
16 good, but I'm having a hard time doing that simply because of the
17 record he's made for himself and what he said in here about why
18 he did what he did as it relates to violations two and three that
19 he admitted to. You know, we all -- I tell juries frequently,
20 don't leave your common sense when you come in the courtroom
21 door, and I can't do that either. I've just got to use my life
22 experience.

23 But I think because of the violation, I think it's
24 serious. I think we can have no criminal justice system that
25 will allow anybody out on supervised release if a significant

1 number of people behaved the way Mr. Caton admitted to in
2 violations two and three and that I found he was guilty of in
3 violation number one. We'd just have to lock people up and say
4 you serve your full time and you go home. If you mess up again,
5 then we'll arrest you again. But the system can't work. So it's
6 just -- on several levels this is just really unfortunate.

7 But that being the case, I'm going to go ahead and I
8 will impose the maximum sentence that I can. I'm going to revoke
9 the supervised release. I'm going to impose a sentence of two
10 years subject to credit for time served since he came into
11 custody. If I have that date right, that would be December 2nd,
12 2009.

13 And, Mr. Caton, you know, I don't know what you do when
14 you get through with your time, but I hope as good intentioned as
15 I want to give you the benefit of being, trying to help people,
16 some people who are in my situation, that you don't do anything
17 in the United States or outside of the United States that's going
18 to get you in trouble with either the FDA, the United States
19 government, or any other government in whose country you happen
20 to be living.

21 And the deal will be when you're released from prison
22 this time, you'll be on your own and you'll be able to do what it
23 is that you want to do. I just hope you don't run afoul of the
24 law again.

25 So since I've revoked supervised release and since I'm

1 giving the defendant the maximum term, there will be -- when he's
2 released, there will be no further supervision.

3 And, Mr. Caton, believe it or not, I wish you the very
4 best of luck. For the reasons I've enumerated and probably a few
5 others, I don't find my job very pleasant here today, but it's
6 clear what my duty is, and I've tried to discharge that duty as
7 best the creator of us all has given me the ability to know what
8 that is.

9 Anything else we need to do in this case from the
10 government's perspective?

11 MR. MCCOY: No, Your Honor.

12 THE COURT: From the defendant's perspective?

13 MR. MCCANN: No, sir.

14 THE COURT: All right. Well, thank you all. You're
15 dismissed.

16 One thing that I said before was I wanted to make
17 sure -- and this will be -- goes in the record. All of these
18 letters that I got, some like I said -- or most of them I think
19 were good, but some not good on behalf of the defendant, will be
20 filed in the record of this proceeding under seal to serve as any
21 future occasion may require. They will stay with the record
22 under seal. I'm just going to leave this up here for the clerk.
23 There's a goodly number of them. All right. You're dismissed.

24 (Proceedings adjourned.)

Certificate

I hereby certify this 14th day of October, 2010, that the foregoing is, to the best of my ability and understanding, a true and correct transcript from the record of proceedings in the above-entitled matter.

/s/ LaRae E. Bourque

Official Court Reporter