

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SIXTH APPELLATE DISTRICT

C O P Y

PEOPLE OF THE STATE)	
OF CALIFORNIA,)	
)	
Plaintiff-Respondent)	
)	No. H046808
vs.)	
)	Santa Clara County No. B1583579
MICHAEL CHRISTOPHER AIRO,)	
)	
Defendant-Appellant.)	
_____)	

REPORTER'S TRANSCRIPT ON APPEAL FROM THE JUDGMENT OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
HONORABLE CHARLES E. WILSON, JUDGE

VOLUME 11
PAGES 3001 - 3031/3300
FEBRUARY 21, 2019

A P P E A R A N C E S:

For the PLAINTIFF-RESPONDENT:

ATTORNEY GENERAL OF THE STATE OF CALIFORNIA
455 Golden Gate Avenue, Room 11000
San Francisco, CA 94102

For the DEFENDANT-APPELLANT:

Sixth District Appellate Program
95 S. Market Street, Suite 570
San Jose, CA 95113

SUPERIOR COURT OF CALIFORNIA

SANTA CLARA COUNTY

HONORABLE CHARLES E. WILSON, JUDGE

DEPARTMENT 88

---o0o--- **C O P Y**

PEOPLE OF THE STATE OF)
CALIFORNIA,)
)
 Plaintiff,)
)
)
 vs.)
)
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MICHAEL CHRISTOPHER AIRO,)
)
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 Defendant.)
_____)

CASE NO. B1583579

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

Volume 11
Pages 3001 - 3031/3300
February 21, 2019

A P P E A R A N C E S:

FOR THE PEOPLE: Anne Seery
 Deputy District Attorney

FOR THE DEFENDANT: Robert Beles
 Attorney-At-Law

Court Reporter: CARLEY J. BAGATELOS, CSR
 Certificate No. CSR 13644

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1 Palo Alto, California

February 21, 2019

2
3 PROCEEDINGS

4
5 (At 3:36 p.m., court reconvened and the following
6 proceedings were held:)

7 THE COURT: All right. Let's go back on the record in
8 our afternoon calendar. I'm going to call the People versus
9 Airo. This is docket B1583579. And if I could have counsel's
10 appearance for the record.

11 MR. BELES: Robert Beles for Mr. Airo. He's before
12 the Court, Your Honor.

13 THE COURT: All right. Good afternoon, Mr. Beles.
14 And good afternoon, Mr. Airo.

15 THE DEFENDANT: Good afternoon, sir.

16 MS. SEERY: Good afternoon, Your Honor. Anne Seery
17 for the People, appearing for Ms. Lindsey Walsh.

18 THE COURT: Good afternoon, Ms. Seery. And so this
19 matter is on today for sentencing after jury trial. And so
20 Mr. Beles, do you waive arraignment for judgment and sentence?

21 MR. BELES: I so waive.

22 THE COURT: Okay. Any legal cause why judgment should
23 not be pronounced at this time?

24 MR. BELES: The only legal cause would be the filing
25 of our reconsideration motion to reconsider the new trial
26 motion, based on the two points I made in my written motion to
27 reconsider the inadequacy of the representation Mr. Airo
28 received and also to reconsider the abuse of force as found by

1 the jury as a force clause. And I would submit those on the
2 paperwork.

3 THE COURT: Okay. People wish to be heard?

4 MS. SEERY: Just simply, Your Honor, this matter has
5 already been litigated before Your Honor quite thoroughly.
6 There is nothing in this new motion that changes any of your
7 arguments or your decision. And in fact, it's the People's
8 position, on page 2, they actually misstate -- they state that
9 Your Honor implied that Trial Counsel's performance was
10 deficient. That is not at all what Your Honor concluded. You
11 said if "it's found that," never once saying "I find that." You
12 were giving all the options: If this avenue, this avenue, this
13 avenue. There was never a conclusion made by Your Honor.
14 Therefore, there is no new arguments to be made in this motion.

15 THE COURT: Okay. Mr. Beles.

16 MR. BELES: Yeah, just a remark on that. Well, the
17 Court said it didn't have to reach that point because it found
18 the second prong of prejudice wasn't present in this case. Your
19 Honor, we point out in our reconsideration motion that that's a
20 *Buck versus Davis* case. In a case like this where the
21 incompetence is on this focal point -- the main point of guilt
22 or innocence -- that really, when a court -- and the court goes
23 ahead and finds a lawyer to be incompetent and that he actually
24 damages his client's case and he called a witness that turned
25 out to be a witness, basically, for the Prosecution, that that
26 was -- that would carry with it the finding of prejudice. And
27 they're really wrapped under one concept.

28 And that's a point that we -- I'm not sure we got that

1 across, and we think that that's the main essence of the *Buck*
2 case. It's not a separate weighing process that the Court went
3 to. I understand the Court's ruling. We're making this clear
4 so if we have to appeal this case -- which apparently we will --
5 that then that -- we've set it up. We've set that issue up.
6 We've focused on it.

7 THE COURT: Okay.

8 MR. BELES: That's it.

9 THE COURT: Matter submitted?

10 MR. BELES: Submitted.

11 MS. SEERY: Submitted.

12 THE COURT: All right. And I do appreciate Counsel's
13 argument on this particular matter. I have reviewed the
14 Defense's motion to reconsider. I've read it thoroughly. The
15 Court is going to deny the motion to reconsider. I'm going to
16 rely on my previous findings and rulings. And ultimately, that
17 is still where I am in terms of my disposition of this matter in
18 terms of the motion for a new trial. And so that is again
19 denied.

20 And so, having addressed that, Mr. Beles, any legal cause
21 why judgment should not be pronounced at this time?

22 MR. BELES: No, there is not, Your Honor.

23 THE COURT: Okay. All right. Let the record reflect
24 that I have read and considered the probation report filed in
25 this matter on May 17th, 2018. The Court has also reviewed the
26 sentencing memorandums filed by the People and the Defense. The
27 Court has also reviewed the defendant's supplemental sentencing
28 memorandum. The Court would also note, with regard to the

1 defendant's initial sentencing memorandum, the Court did review
2 the attachments in terms of letters of support for Mr. Airo in
3 this matter. The Court has also received and considered the
4 victim's impact statement, and she will be given an opportunity
5 to read that statement into the record in a moment. The Court
6 has also received an impact letter from the victim's mother, and
7 she will also have an opportunity to address the Court shortly.
8 Once the victim impact statements are given, my understanding,
9 Mr. Beles, is that you would like to say -- or, the defendant's
10 brother would like to make a brief statement as well.

11 MR. BELES: That's correct. Greer Stone is present
12 here in court, and he would like to make a brief statement. The
13 defendant will not be making a statement.

14 THE COURT: Okay. So I'm going give the defendant's
15 brother an opportunity to speak in a moment as well. Okay? And
16 so after I hear from the defendant's brother and the victim and
17 her mother, the Court will give an indicated. And I'll give
18 counsel an opportunity to be further heard as to the Court's
19 indicated, and I will proceed with sentencing. And so with
20 that, and I'll also hear from Probation with regard to any
21 modifications or changes to their report. And so with that,
22 Mr. Beles, I want to give you an opportunity to present the
23 defendant's brother for a brief statement at this time.

24 MR. BELES: Mr. Stone? Do you want him to speak at
25 the podium here?

26 THE COURT: Yes, please.

27 MR. BELES: Okay.

28 THE COURT: All right. Good afternoon, sir.

1 MR. GREER: Good afternoon, Your Honor. Thank you for
2 giving me the opportunity to speak.

3 THE COURT: If you wouldn't mind stating your name for
4 the record. And again, your words should be directed directly
5 to the Court, and I will consider them as we proceed with the
6 sentencing. Okay?

7 MR. GREER: Absolutely. My name is Greer Stone.
8 That's G-R-E-E-R; Stone, S-T-O-N-E.

9 THE COURT: All right. And so you may proceed, sir.

10 MR. GREER: Thank you. I have known Michael my entire
11 life because he is my older brother. But he has always been so
12 much more than just my brother. He's also a lifelong friend,
13 was the best man at my wedding. And as my older brother,
14 probably due to his nurturing character, he truly helped raise
15 me. Michael taught me how to ride a bike, how to throw a
16 baseball. He would take care of me when I was sick. He taught
17 me how to drive a car, and he instilled in me a deep love of
18 books as well. He did all this, not because our flunked out
19 parents forced him to, but because he wanted to, because he is,
20 in his heart and soul, a caretaker. He has cared for me my
21 entire life through my life's greatest triumphs and defeats.
22 He's been supporting me truly all the way, and that is why I'm
23 here today to support him in his darkest hour.

24 My brother not only helped shape me into the man I am
25 today, but he has also helped inspire me, like he has for
26 countless others, towards my current career path. I'm an
27 attorney by training. And in fact, during law school, I
28 interned for this very same district attorney's office.

1 However, I'm proud to say that, today, I am a full-time teacher
2 at a local middle school. Michael, whether he knows it or not,
3 helped inspire me to pursue a career in teaching and a career
4 truly spent in the service of others.

5 As a teacher, Michael helped inspire countless students to
6 be better versions of themselves. He went into teaching like
7 most of us do to help young people. Michael's efforts can still
8 be seen today and is on display in this very courtroom right now
9 with so many former parents of Michael's students here to
10 support him. Michael has continued to receive an outpouring of
11 support from this community because people know he is a good
12 man. He is a man who constantly strives to better the people he
13 is around, including himself. He never stops trying to be a
14 better version of himself, and that attitude is infectious.

15 Over the past year, since his conviction, I have talked to
16 him almost daily. And I have been so proud . . . I've been so
17 proud and amazed at how he has continued to work on improving
18 himself. That internal quest that he is on to be a better
19 person continues to inspire the man that he is today. He's not
20 the same person he was yesterday, not the same person he was a
21 year ago upon conviction, ten years ago, or 20 years ago. When
22 so many others in his position may become bitter, feel like
23 their lives have ended, or just become angry at the system,
24 Michael has found an inner peace and has already set his eyes on
25 his future. He has shared with me his plans to pursue an MBA
26 degree. He has been reading books on economics and investing,
27 and he's even shared several of these investing tips, which I'm
28 excited to try out myself.

1 Through my experience as an attorney and as the current
2 chair of the Santa Clara County Justice Review Committee, I have
3 seen, firsthand, the deleterious effects that arrests and
4 convictions have on people's lives. I have worked closely with
5 impoverished communities, communities that often see
6 incarceration rates far higher than the norm. And beyond the
7 obvious frustration of incarceration, I have always been pained
8 to see how many people, even those with bright futures, have
9 those futures extinguished because they simply give up. And
10 through that, our society suffers as a result.

11 Michael has shown the exact opposite. Through his resolve
12 and his optimistic heart, he will not give up. He was doing
13 great things before this, and he plans to do even greater things
14 afterwards. As his brother, and closest friend, I really can't
15 wait to be there on the other side when he does. Thank you so
16 much for the opportunity.

17 THE COURT: Thank you, sir. And so the Court is going
18 to turn to the People. And so is the victim available at this
19 time?

20 MS. SEERY: Yes, Your Honor. Thank you. The victim
21 and her mother both would like to speak I believe the mother
22 would like to go first.

23 THE COURT: Okay.

24 MS. [REDACTED] Good afternoon, Your Honor.

25 THE COURT: Good afternoon, ma'am. Would you mind
26 stating your name for the record.

27 MS. [REDACTED] Sure. My name is Diane --

28 D-I-A-N-E -- [REDACTED] - [REDACTED]

1 THE COURT: Thank you very much. And I want to afford
2 you an opportunity to be heard as well. If you can please just
3 make sure all your comments are directed to me as the Court in
4 this matter, I would appreciate it. And so with that, you may
5 proceed.

6 MS. [REDACTED] Thank you, Your Honor. It's been
7 over four long years since my daughter [REDACTED] first told me that
8 she had been sexually assaulted as a child by the defendant.
9 She told me that she had been seeing a therapist in college
10 during her senior year and that her therapist reported the
11 incident to the authorities at the end of that year. [REDACTED] also
12 told me that a detective would be calling me for an interview
13 regarding the defendant. I was in shock when [REDACTED] told me about
14 the incident and how long it had gone on.

15 [REDACTED] was a bright, vivacious child who had always been very
16 involved in school and social activities and did very well in
17 school. [REDACTED] never let on that anything was wrong. As a
18 mother, how could I have missed that? During the past four
19 years, I have played out over and over in my head, almost daily,
20 scenarios of what had happened to my daughter. The deep
21 feelings of guilt that I have had of knowing that I had been
22 unable to stop the defendant, if only I had known or saw some
23 sort of sign, has caused me great pain. As a loving and caring
24 mother, the last thing in this world that I would ever want to
25 do is cause my child any harm.

26 Knowing that my pain is not nearly the pain my daughter
27 felt, that had been kept quietly inside of her all of those
28 years, is a difficult cross to bear. I have seen [REDACTED] s

1 demeanor change at times since the discovery of the childhood
2 sexual assault as an adult. She has been sad, anxious, and is a
3 bit withdrawn at times. The most difficult part for me is when
4 I feel her flinch when giving her an unexpected hug or a pat on
5 the back for something like getting a new job or promotion at
6 work. I, myself, have had feelings of anger, sadness, betrayal,
7 and have had -- just been distraught in general knowing that I
8 cannot change the past and that I trusted someone like this with
9 my child. I can't fix what has happened, and this will forever
10 be part of our life story, and that makes me sad.

11 In addition to all of the mixed emotions, there have been
12 feelings of great loss for my daughter. Her biological father
13 passed away from alcoholism in July of 2006. However, previous
14 to this time, the defendant was a large component of [REDACTED] not
15 having any contact with her father because of the disease and
16 how he felt it would have a negative impact on her. I know now
17 that she feels perhaps if she had had some sort of contact with
18 her father, maybe he would still be alive today.

19 The mental and physical stress of the past still persists
20 in the present, and this is something [REDACTED] has spent many hours
21 in therapy working on so she can feel better about herself and
22 to have more confidence in the world around her. It has caused
23 her not only money out of her own pocket, but time away from
24 family, friends, work, and time out of her life, with thoughts
25 about the past that shouldn't have happened to an innocent child
26 in the first place.

27 [REDACTED] and I both have a long road ahead in the healing
28 process. I ask the Court today that my words are taken into

1 consideration in deciding on the proper sentence for the
2 defendant. Thank you for your time.

3 THE COURT: Thank you very much, ma'am.

4 MS. [REDACTED] Thank you.

5 MS. SEERY: Now the victim would like to speak.

6 THE COURT: Thank you. Good afternoon, ma'am.

7 THE VICTIM: Good afternoon.

8 THE COURT: And so, for the record, I'm just going to
9 have you identified as [REDACTED] Doe, okay?

10 THE VICTIM: Yes.

11 THE COURT: And so again, welcome to our department.
12 I'm going to ask that you do the same -- all your comments and
13 your statements to be directed toward me as the sentencing
14 Court. Okay? And so, with that, you may proceed now.

15 THE VICTIM: The sexual and emotional abuse I endured
16 for years has impacted my life in ways that few can understand.
17 For 16 years, I felt confused and I thought that there was
18 something wrong with me. I believed that I must have done
19 something to have caused and deserved this abuse. I spent
20 16 years silent in both fear and denial. I couldn't believe
21 that someone who said they loved me and wanted to be my father
22 would abuse me. I was scared to speak up about the abuse
23 because I couldn't comprehend what speaking up would do. I was
24 terrified so [REDACTED] ent. When I finally understood the
25 severity of the abuse, I knew I had to do something for myself
26 and, more importantly, other children. Even though I found
27 cour [REDACTED] spe [REDACTED] defendant's abuse has had long-lasting
28 effects on me, and my quality of life has diminished because of

1 his actions. The defendant destroyed my relationships, my
2 ability to trust, and my self-worth.

3 When I first met the defendant at the elementary day care
4 center I attended, I thought he was nice. I was shy, but my
5 best friend was very outgoing and she liked him. So by
6 association, I spent a lot of time around him. The defendant
7 was the new, cool teacher at day care, and he was a lot of kids'
8 favorite. He did a lot of things that my friends and I thought
9 were cool. But as an adult, I realize he was probably breaking
10 the rules. The defendant would let us play with his phone. He
11 would take pictures of us, play music, and he would -- and kids
12 would sit on his lap and lounge all over him. During the summer
13 camp, there were about five kids -- myself included -- that he
14 would take to the other end of campus to play in a tree house,
15 just us. He was fun, treated us like we were special, and spent
16 a lot of his time focused on us.

17 When the defendant started dating my mom, I still thought
18 he was nice. He would come to my house, bring movies and
19 chocolate, and gave me gifts. He came to my birthday party and
20 even got his nails done, which made all of my friends like him.
21 The defendant knew exactly how to make everyone love him. When
22 we were alone, he told me that I was different than the other
23 kids. He told me that I was special and that I had an aura that
24 glowed and called him to me. He started to come over to my
25 house more and more. He would spend a lot of his time playing
26 with me, reading to me in my room and tucking me in to go to
27 sleep.

28 The time spent together became more and more inappropriate.

1 The defendant inserted himself in my life as my father. He
2 would pick me up from school, watch me during the afternoons,
3 and the entire summers. He was the person that I spent most of
4 my time with. Eventually, everyone treated him as though he
5 actually was my father, even though there were doubts,
6 especially considering he was only ten years older than me. It
7 seemed that most people liked him and thought he was a good guy,
8 but what no one ever saw was how he used his authority status as
9 my dad to completely manipulate me and use me for his own
10 gratification.

11 The defendant started isolating me from family and friends
12 without me even realizing it. First and foremost, I was
13 manipulated into telling my actual father that I no longer
14 wanted him in my life. All contact with my father and
15 grandparents stopped, and our relationship was completely
16 severed. The defendant was adamant that he should be my father
17 instead and insisted that I call him Dad. And he even brought
18 up adoption on several occasions. During the time the defendant
19 was in my life, my father passed away and I never did get to see
20 him again. Nonetheless, the defendant was so consumed with the
21 idea of being my only father that even after my father passed
22 away, the defendant convinced me to sell my only possession I
23 had of his. It was important to the defendant that I not keep
24 any reminders of my father. This need to remove all reminders
25 let the defendant convince my mom to change my last name to his.

26 Many other relationships of mine were greatly affected. My
27 relationship with my sister was severely undermined, and the
28 defendant made my relationship with her nearly impossible. He

1 kept me to himself, rarely giving me time to spend with her.
2 And any time that was spent around her was uncomfortable because
3 I could tell he did not want me near her. The defendant removed
4 all authority figures from my life except my mother.

5 Regrettably, the defendant's grooming and manipulation led
6 her to believe that he was trustworthy, and she was ultimately
7 taken advantage of as well. He was very persistent and would
8 never give in during an argument and always persuaded my mom to
9 make decisions based on what he wanted. I watched them argue so
10 many times, and I learned that he would yell and never back down
11 or stop the fight until he won. The defendant rarely cared
12 about what my mom wanted and spent very little of his attention
13 on her. My family was abused and ripped apart. The defendant
14 not only hurt my relationships with these people, but he
15 destroyed their relationships with me. None of us will ever be
16 able to get any of the time back we could have had with each
17 other. The defendant designed my life so that most of my time
18 was spent with him, alone.

19 Just before I started the fifth grade, the defendant moved
20 in with us and began sexually abusing me. He started by telling
21 me that if I was to be his daughter, I should be able to change
22 my clothes in front of him. He would do little things like
23 touch my leg in the car or hold my hand while walking and have
24 me sit in his lap. This eventually escalated to him kissing and
25 touching my body while I was showering. I was taken advantage
26 of as a defenseless, young child. My body was touched in ways
27 that I did not want and by a person who should not have touched
28 me. While I was too young to fully comprehend the situation,

1 the defendant was old enough to fully understand what it meant
2 to kiss a naked child ten years younger than himself. I was
3 cornered in a room while in a completely vulnerable state with
4 no way of possibly defending myself against a man twice my age
5 and twice my size. My safest option was to let him do what he
6 wanted. When I tried to tell him to stop, he became
7 argumentative and whined and told me that he was my father and
8 so it was okay. I was petrified with what he might do if I
9 continued to resist, so I would do my best to hide my body when
10 he came in, but ultimately I had to let him take advantage of
11 me.

12 My body no longer feels like it's my own. Too often, I am
13 seized by memories of the defendant touching me and kissing me
14 in the shower. Even today, I open the shower door or curtain in
15 the opposite direction that the defendant opened it because
16 opening it the same way he did causes flashbacks of the abuse.
17 The defendant's manipulation of the truth, paired with the
18 inappropriate way he touched me, led me to believe and feel that
19 I am powerless and my only purpose was to please him. Now I
20 struggle with feeling at peace and staying present when being
21 intimate with a partner.

22 Over time, I have learned that not only is it acceptable
23 but it is good for a woman to feel pleasure. Yet because of
24 what the defendant did to me, I feel timid, insecure, and frozen
25 when being intimate with a partner. Perhaps worst of all is my
26 inability to feel like an equal. I feel inadequate and still
27 feel shame and guilt the defendant forced upon me. Years of the
28 defendant's inappropriate, abusive touch combined with his

1 emotional manipulations severely impacts my ability to have
2 healthy physical or emotional relationships.

3 Not only did the defendant make it impossible for me to
4 have any form of sexual education, he would confront me every
5 time he found out that I had been intimate with someone. After
6 I had my first kiss, I wrote about it with invisible ink that I
7 needed to use a black light to read. A few days later, the
8 defendant picked me up from school. He stopped the car next to
9 a park before going home. He then proceeded to show me the
10 paper that he took from my desk in my room and used a black
11 light to read without my permission. He asked me what it was
12 about and told me that it was inappropriate and not okay for me
13 to spend any time with boys. He told me that he would help me
14 by keeping this conversation between us. He persisted to argue
15 with me until I was in tears, siding with him, telling him that
16 I loved him and that I would not do it again. It was only after
17 I convinced him that I agreed with him that he took me home.
18 This was not the only conversation like this in a parked car
19 away from my house. I felt trapped, and my only way to get home
20 was to make him believe that I was sorry and that I loved him.
21 I was scared so I said what I had to in order to get home.

22 As more time went on, we had many conversations like this
23 inside the house as well where I had to convince him that I
24 truly loved him and wanted him to be my father. On another
25 occasion, the defendant went through my text messages and found
26 a conversation I had with a friend about something sexual.
27 Again, he confronted me about it in the same fashion, arguing
28 that it was not okay, that I should only spend time with girls,

1 but would keep it between us and not tell my mother so I would
2 not get in trouble.

3 Not only did he invade my privacy on multiple occasions,
4 the defendant ingrained shame and humiliation by telling me that
5 actions with a male partner were inappropriate while, throughout
6 this time, he was continuing to kiss me all over my body when I
7 was in the shower. The defendant was teaching me that any
8 intimate act with someone other than himself was inappropriate
9 and acceptable grounds for punishment. These confrontations
10 with the defendant taught me to be submissive to both his
11 accusations and opinions. When the defendant confronted me in
12 his car, I had no way to leave or go home. I quickly learned
13 that I needed to say what he wanted to hear in order to get to
14 safety. In order to get home, I had to lie and say kind, loving
15 words to him, even though I did not want to.

16 The learned submissiveness from these confrontations with
17 the defendant have carried over into my current relationships.
18 When I am confronted or find myself in arguments, I often freeze
19 or I am unable to think or speak at all. Other times I find
20 myself agreeing when I don't want to. In both personal and work
21 relationships I often hide my feelings and do not express my
22 opinions in fear of hurting someone else's. I often
23 irrationally fear that what I say or what I do will get me into
24 trouble and I always feel anxious when trying to share my ideas.
25 I have been unable to speak up for myself or share my feelings
26 or opinions because the defendant's abuse trained me to be
27 voiceless.

28 The defendant's inappropriate boundaries have made me

1 question all of mine and even others. All too often, I am
2 pained with questions of appropriateness. When I see young
3 daughters with their fathers, I shudder in fear, questioning and
4 hoping that their fathers do not touch them like the way the
5 defendant touched me. I am always afraid for other children
6 when I see them with teachers or counselors or even their
7 parents. This is the fear that the defendant instilled in me
8 and will live there for the rest of my rife. I will always be
9 on edge, scared for others because of what the defendant did to
10 me.

11 Along with this fear, there are many other things that I
12 will never get away from my entire life; for example, my name.
13 Since the defendant's last name was my own for many years, every
14 time I fill out a job application, a background check, a credit
15 check, or any other official legal document, I always have to
16 check and fill out other last names used. And every time I do,
17 it brings to mind the abuse that I suffered for years. The
18 defendant did more than just kiss me. He psychologically
19 damaged me.

20 Today, I spend a lot of time reteaching myself boundaries
21 and how not to only give my opinion but how to have one. The
22 years the defendant was in my life, he did so much to ruin how I
23 think about the world. I spent so many years hiding. It was
24 not one thing that he did that hurt me. It was everything he
25 did that hurt me -- a combination of his lies, grooming, and
26 manipulation. To the outside world, he was charming and nice.
27 But to me, he was a monster that stalked my every moment. On
28 multiple Valentines' Days I found him -- a 22- to 24-year-old at

1 the time -- waiting at school for me -- a 12- to 14-year-old --
2 with roses. He wrote me overly affectionate love letters,
3 showed up at performances and events even when I told him not
4 to. I even found photos of me he was taking while I was
5 sleeping in a swimsuit. He showed me affection in ways that one
6 would not even want from a spouse and especially not affection
7 that one should receive from a father.

8 After the defendant and my mom broke up, he brought up
9 wanting to adopt me again. But at this time, I was already 16.
10 It was this moment when I finally was not in fear of hurting my
11 mom's feelings that I felt that I could try put a stop to the
12 abuse. I do not know what would have happened to me had I kept
13 seeing him.

14 It's difficult to describe every way this abuse has
15 affected me. It has inched its way into every aspect of my
16 life. I have spent the last six years in therapy spending over
17 \$18,000. This amount does not even include the three-year
18 therapy sessions I was fortunate enough to receive from my
19 university, nor does it include the hours spent away from
20 friends and family, my studies, or work. In order to gain
21 self-worth and heal from this crime, I have to spend my time and
22 money doing something that otherwise I would not have to do.
23 The defendant has already taken so much from me that I will
24 never get back. It is directly because of the defendant's abuse
25 that I now feel powerless, vulnerable, and even sometimes
26 worthless. I will never be free from the result of this crime.
27 Therefore, I only believe that the defendant's punishment for
28 his crime be the same. Thank you.

1 THE COURT: Thank you very much. All right. So the
2 Court, having heard the impact statement, will provide the
3 tentative decision with regard to sentence as follows: The
4 defendant is not eligible for probation, pursuant to Penal Code
5 section 1203.066, subsection (a), subsection (1). The Court
6 will sentence the defendant, or, the court-indicated will be to
7 sentence the defendant to prison for an aggregate total term of
8 15 years prison. The Court finds that consecutive sentencing is
9 mandatory, pursuant to Penal Code section 667.6, subsection (d),
10 in that the sex crimes occurred with a single victim on
11 multiple, separate occasions. The defendant, this Court finds,
12 had a reasonable opportunity to reflect on his actions and,
13 nevertheless, resume sexually assaultive behavior. Such sexual
14 assault reflected in Counts 1, 2, 3, and 4, occurred on
15 numerous, separate, and distinct occasions when the victim was
16 between the age of 11 and 13. The victim alleges that -- or
17 it's been found that the sexual assaultive behavior began in the
18 fifth grade and continued through the eighth grade. The
19 incidents happened on separate occasions while the victim was in
20 the bathroom. Specifically, the defendant would kiss the
21 victim's breasts, stomach, and buttock area. The Court has
22 considered the circumstances in mitigation and aggravation, as
23 set out in rules 4.423 and 4.421. Circumstances in aggravation
24 include the defendant took advantage of a position of trust or
25 confidence to commit the crime and, in this case, acting as a
26 father figure. The defendant also engaged in violent conduct,
27 which indicates a serious danger to society -- that being
28 violent sex offenses. Circumstances in mitigation would include

1 the defendant has no prior record, criminal record, or any
2 significant record of criminal conduct -- considering the
3 recency and frequency of prior crimes.

4 As to Count 1 -- Penal Code section 288.5, subsection
5 (a) -- the Court has selected the low base term of six years
6 prison. As to Count 2 -- Penal Code section 288, subsection
7 (b), subsection (1) -- the Court will impose full consecutive
8 sentence of low term of three years prison, pursuant to Penal
9 Code section 667.6, subsection (d). As to Count 3 -- Penal Code
10 section 288, subsection (b), subsection (1), the Court will
11 impose full consecutive sentence of the low term of three-year
12 prison, pursuant to Penal Code section 667.6 subsection (d). As
13 to Count 4 -- Penal Code section 288, subsection (b), subsection
14 (1), the Court will impose full consecutive sentence of low
15 term, three years prison, pursuant to Penal Code section 667.6,
16 subsection (d). That would be for a total of 15 years prison.

17 The defendant will also be required by statute to register
18 for the rest of his life as a sex offender, pursuant to Penal
19 Code section 290. And so, based upon that indication, the
20 Defense wish to be heard?

21 MR. BELES: Your Honor, we filed a motion indicating
22 that even at sentence, which is mandated by the statutes of
23 California -- this is actually cruel and unusual in view of the
24 type of actual occurrence here. So I filed that. That's a
25 written motion, and that's necessary to make that motion now, or
26 you can appeal that. We waive it. The only other thing I would
27 comment on -- I think the brother made clear statements
28 concerning the support that the defendant has. Half the

1 courtroom, at least, here is full of people, many of whom are
2 the prior parents of the students that he taught. So the time
3 period that he lived after these things occurred, up until when
4 his arrest, it was a very exemplary one. It's hard to find
5 letters -- I counted 33 of them -- letters that are that glowing
6 about the fact he's a good person, he's done well, he helped
7 their children with their classes, helped their families. He
8 was always there for people. So he's at -- he's had a
9 rehabilitative section of his life, which seems to be a fact.
10 That is the important part here. The -- I can't argue against
11 the mandatory sentence because the -- these are imposed by the
12 statute. That seems to be a trend in the sex crimes where -- as
13 mandatory minimums are going away in federal crimes and in drug
14 crimes. But in sex crimes, this seems to be the legislature is
15 imposing more of these mandatory consecutive and what have you
16 over the last number of years. I don't agree with those. I
17 would be arguing for a much lower sentence if I had the
18 opportunity to do so because of the way he's lived his life and
19 because of the actual nature of the case.

20 But with that, basically, at this point I would submit it.

21 THE COURT: Thank you, Mr. Beles. And for the People?

22 MS. SEERY: Yes, Your Honor. Your Honor, the People
23 disagree with the 15-year sentence. 15 years is not
24 appropriate. 15 years doesn't justify this conduct. 30 years
25 is what is appropriate.

26 THE COURT: One moment. I'm going to make sure
27 everyone understands in the audience that you're absolutely
28 welcome to be in here. We want the public here, but I cannot

1 get any responses from anyone in the audience. So please,
2 moving forward, keep all your responses to yourself so that we
3 can proceed with this hearing. Thank you.

4 MS. SEERY: Thank you. 15 years is the minimum. This
5 is -- 15 years is minimum for what conduct I would describe as
6 egregious. The defendant groomed the victim. The defendant
7 manipulated the victim. The defendant controlled the victim.
8 He isolated her. He violated a position of trust. He
9 repeatedly molested her. A conservative number that Ms. Walsh
10 put in her papers was 72 times -- not once, not twice, but 72
11 times this man violated a little girl. 72 times, this man, who
12 pretended to be her father, molested her. This abuse continued
13 for a little girl, an 11-year-old innocent girl. He stole her
14 innocence. He stole her trust. As you heard from her
15 statement, that was moving, she said -- and I found this line
16 just -- it stuck in my head: "The defendant did much more than
17 just kiss me. He psychologically damaged me." 15 years is not
18 enough.

19 Why are we here? We are here because a jury found him
20 guilty, and we are here for sentencing. So what is the purpose
21 of sentencing? It is to protect society. It is to punish the
22 defendant, and it is to deter others from this conduct, protect
23 society from a man who -- yes, we hear from everybody what a
24 wonderful person he is. I don't hear that. I hear a man who
25 repeatedly molested a little girl. And we know from these cases
26 it happens behind closed doors. It happens at home when no one
27 is around. And she gave, even in her impact statement, details
28 that are chilling -- the finding the letter that she wrote about

1 her first kiss in erasable ink that he found and pulled her
2 aside in the car, manipulation, isolation, control, repeated.

3 The number of years in prison, I understand, will never be
4 equal to the punishment he has done to her. And I explained
5 that to the victim and she and her mother know that there's no
6 number that would make her okay. But what we do when we're here
7 for sentencing is we punish and we protect. And what the victim
8 and her mother have to deal with on a daily basis, thanks to
9 him, is not minimum conduct. He has not shown remorse, and he
10 has traumatized them.

11 Your Honor went through aggravating factors. There's more.
12 He took a position of trust, he chose a vulnerable victim, and
13 he isolated her and he groomed her. The only mitigating factor
14 that the probation report can find is that he has a lack of
15 criminal history. So lack of arrests, lack of convictions --
16 that's it. Are we supposed to commend someone because you
17 actually didn't get arrested? A man who, in his own home,
18 molested the person he said was his daughter. He was a teacher.
19 He was surrounded by young girls all the time. The fact that
20 more people haven't come forward, I mean, I think we're just
21 speculating. So the one thing that we can say good for you is
22 you don't have more offenses? You don't have more victims? He
23 molested a young girl. He does not deserve the minimum. That
24 is a gift that he does not deserve. Thank you.

25 THE COURT: Thank you. Probation?

26 COURT PROBATION OFFICER: Your Honor, I think to be
27 fair to the report writer, he didn't have the benefit of the
28 victim's statement at the time that this report was authored,

1 and he didn't hear her words. He did not know that, from the
2 time this girl was young, she was isolated. She was isolated
3 and manipulated, she was kept away from her family. And he did
4 this on purpose, and he groomed her. And the Court has the
5 benefit of that statement today. And so, when you look at the
6 mitigators and the aggravators, you can weigh those and you can
7 justify a higher sentence today. Because when you see the
8 aggravators, you can see he violated a position of trust. He
9 kept her away from her family on purpose. He groomed her, which
10 is another aggravator. And she was particularly vulnerable
11 because the molestation began when she was eight years old and
12 is -- it happened, as she said, at least -- what -- 72 times.
13 She was in a shower, she was isolated in a room, he bought her
14 gifts, he kept her away from her family. He was, in her mind,
15 her father. And so when you think about the aggravators and the
16 mitigators, you could at least see a midterm sentence. And I
17 know that the author, when he wrote this report -- he could
18 justify the mitigated term because, in his mind, this teacher
19 had no criminal record and so the minimum seemed like a
20 reasonable recommendation. But when you think about what
21 society deems a just sentence, when you think about the victim
22 statement and how he was grooming her, how he isolated her, how
23 she was particularly vulnerable and the profound impact these
24 crimes have had on her life, I think, perhaps, we should rethink
25 the penalty that is just.

26 THE COURT: Okay.

27 MR. BELES: Your Honor, there's nothing that was
28 stated today by the victim that's not in this probation report,

1 that's well written. The summary of the victim statement is in
2 here. The speculation that this occurred 72 times is
3 speculation. That's not a proven fact in this case. The writer
4 of this report -- now, somehow, there's something new. There's
5 no really new evidence before this Court. This is a -- it's an
6 analytical approach by an experienced probation officer who
7 recommends 15 years. 15 years is a long time. It's a big
8 sentence. He -- he the writer of the report indicates what
9 happened, what actually occurred, that the actual was kissing
10 and, as the Court already stated -- breasts, stomach, and
11 buttocks. That's what occurred in this case. Grooming cases
12 normally advance and other things occur, and that didn't happen
13 in this case. That's a thought out well -- well thought out
14 recommendation. We join in that original recommendation.

15 And with that, I submit it.

16 THE COURT: Matter submitted?

17 MS. SEERY: Yes, Your Honor.

18 THE COURT: Submitted.

19 MR. BELES: Submitted.

20 THE COURT: The Court will proceed with sentencing.
21 Probation is denied. The defendant will be committed to the
22 California Department of Corrections and Rehabilitation for
23 15 years. The defendant will be sentenced as previously
24 indicated: As to Count 1, low base term of six years prison;
25 Count 2, low term of three years prison; Count 3, three years
26 prison; Count 4, low term of three years prison. Those
27 sentences will run consecutive for a total of 15 years prison.
28 The defendant has credits of?

1 COURT PROBATION OFFICER: 374 actual days, 56 days
2 pursuant to 2933.1, for a total of 430 days.

3 THE COURT: The defendant will receive those credits
4 against the 15-year prison commitment. The defendant is advised
5 of a subsequent five-year period of parole supervision pursuant
6 to section 3,000 subsection (b), subsection (2) of the Penal
7 Code. Restitution is ordered. Any specific amount at this
8 time?

9 MS. SEERY: No, Your Honor.

10 THE COURT: A general order of restitution is made.
11 The Court will issue a criminal protective order in this
12 matter for the period of ten years pursuant to Penal Code
13 section 136.2. The Court will sign that order today and provide
14 to the defendant. The defendant must abide by the no contact
15 with [REDACTED] Doe for the next ten years.

16 The defendant shall not own, knowingly possess, or have
17 within your custody or control any firearm or ammunition for the
18 rest of your life pursuant to section 29800 and section 30305 of
19 the Penal Code.

20 Defendant is ordered to register pursuant to section 290 of
21 the Penal Code and comply with section 290.85 of the Penal Code.

22 The Court will order a fine of \$200 plus penalty
23 assessment, pursuant to section 290.3 of the Penal Code.

24 Defendant shall submit to a blood test for evidence of
25 antibodies to the probable causative agent of acquired immune
26 deficiency syndrome -- AIDS -- pursuant to section 12202.1 of
27 the Penal Code.

28 Defendant is ordered to supply buccal swab samples, prints,

1 blood specimens, and other biological samples, pursuant to
2 section 296 of the Penal Code.

3 The Court will impose a restitution fine of 10,000, imposed
4 under formula permitted by Penal Code section 1202.4, subsection
5 (b), subsection (2). An additional restitution fine of an
6 amount equal to that imposed under Penal Code section 1202.4 is
7 imposed and suspended, pursuant to section 1202.45 of the Penal
8 Code.

9 A court security fee of \$120 is imposed, pursuant to
10 section 1465 of the Penal Code, and a criminal conviction
11 assessment fee of \$120 is imposed, pursuant to section 703 of
12 the Government Code.

13 The Court will sign the probation report, incorporate into
14 the minutes for today's proceedings as well as the Court file.

15 And so . . .

16 MR. BELES: Your Honor in relation to restitution, my
17 belief is an information belief that he hasn't got the ability
18 to pay, based on a new motorcycle worth \$500, he's been in jail
19 a year, a bank account of a couple thousand. So I believe he
20 really doesn't have to pay that at this point.

21 THE COURT: People wish to be heard with regard to
22 ability to pay?

23 MS. SEERY: No, Your Honor. Thank you.

24 THE COURT: All right. Pursuant to *People v. Duenas*,
25 the Court will impose but stay the fines and fees, pending an
26 ability to pay hearing. And so that will also be indicated.

27 Anything else, Counsel?

28 MR. BELES: No, Your Honor.

1 THE COURT: The Court will also indicate to the
2 defendant, you have a right to appeal this sentence. If you
3 wish to appeal, you must file a written Notice of Appeal with
4 the clerk of this court within 60 days from today. If you
5 appeal and you are unable to hire a lawyer, the appellate court
6 will appoint a lawyer to represent you on appeal at no cost to
7 you. You will also have a right to a free transcript and record
8 of the necessary proceedings in this court. The written notice
9 of appeal must be timely filed.

10 Mr. Airo, do you understand that?

11 THE DEFENDANT: I do, Your Honor.

12 THE COURT: And so that will be the order. And so
13 Mr. Airo, I can't say that I disagree with much of what the
14 People and Probation has indicated in terms of what your conduct
15 has led to with regard to the victim in this matter.
16 Ultimately, you will have a considerable amount of time to sit
17 down and think about what your actions have cost. Ultimately,
18 when you get released, you will also be required to register for
19 the rest of your life as a sex offender. Ultimately, I can't
20 speak to the amount of damage that you've caused in her life,
21 but I hope that you think about the effect that you've made on
22 her life moving forward and that you don't find yourself causing
23 that type of damage to any other person in our community.

24 And so with that, the matter submitted?

25 MR. BELES: Thank you. Thank you, Your Honor.

26 THE COURT: We'll take a recess.

27 (Proceedings concluded at 4:26 p.m.)

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STATE OF CALIFORNIA)
) SS.
 COUNTY OF SANTA CLARA)

I, CARLEY J. BAGATELOS, CSR, HEREBY CERTIFY: That I was the duly appointed, qualified shorthand reporter of said court in the above-entitled action taken on the above-entitled date; that I reported the same in machine shorthand and thereafter had the same transcribed through computer-aided transcription as herein appears; and that the foregoing typewritten pages contain a true and correct transcript of the proceedings had in said matter at said time and place to the best of my ability.

I further certify that I have complied with CCP 237(a)(2), in that all personal juror identifying information has been redacted, if applicable.

DATED: APRIL 19, 2019

CERTIFIED COPY

Carley J. Bagatelos, CSR
 Certificate No. CSR 13644

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