

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NW-N

HON. THOMAS RUBINSON, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF,)
)
) VS.) NO. ZM011112
)
) MARCO GUDINO,)
)
) DEFENDANT.)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, JUNE 12, 2015

APPEARANCES:

FOR THE PEOPLE: JACKIE LACEY, DISTRICT ATTORNEY
BY: JAY GROBESON, DEPUTY
18000 FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET, 18TH FLOOR
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT: GREGORY NICOLAYSEN
ATTORNEY AT LAW
27240 TURNBERRY LANE
SUITE 200
VALENCIA, CALIFORNIA 91355

LUANN MCKENZIE, CSR 5567
OFFICIAL REPORTER

1 CASE NUMBER: ZM011112
2 CASE NAME: PEOPLE VS. MARCO GUDINO
3 VAN NUYS, CALIFORNIA FRIDAY, JUNE 12, 2015
4 DEPARTMENT NW-N HON. THOMAS RUBINSON, JUDGE
5 REPORTER: LUANN MCKENZIE, CSR NO. 5567
6 TIME: A.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED)

8

9 THE COURT: ALL RIGHT. THIS IS MARCO GUDINO,
10 ZM011112. HE'S PRESENT, REPRESENTED BY MR. NICOLAYSEN.
11 MR. GROBESON FOR THE PEOPLE.

12 BOTH MR. NICOLAYSEN AND MR. GROBESON SUBMITTED
13 POST-TRIAL BRIEFS, IF YOU WILL, ARGUING THE -- IN
14 MR. GROBESON'S CASE THE SUFFICIENCY OF THE EVIDENCE TO FIND
15 THE PETITION TRUE, MR. NICOLAYSEN OBVIOUSLY ARGUING THE
16 OPPOSITE. I'VE READ AND CONSIDERED BOTH OF THOSE, AS WELL
17 AS GONE OVER THE TESTIMONY IN THE CASE IN DETAIL.

18 NEITHER OF YOU NEED TO REPEAT WHAT YOU'VE
19 STATED IN YOUR WRITTEN SUBMISSION, BUT IF YOU WISH TO
20 SUPPLEMENT IT WITH ANYTHING, I WANT TO GIVE YOU THAT
21 OPPORTUNITY.

22 MR. GROBESON?

23 MR. GROBESON: THANK YOU. NO, YOUR HONOR. I THINK
24 THE COURT'S HAD SUFFICIENT OPPORTUNITY TO REVIEW THE
25 TESTIMONY. I DON'T THINK THERE'S ANYTHING THAT NEEDS TO BE
26 FURTHER ADDRESSED.

27 THANK YOU.

28 THE COURT: OKAY. THANK YOU.

1 MR. NICOLAYSEN?

2 MR. NICOLAYSEN: YOUR HONOR, THANK YOU.

3 WE'LL SUBMIT ON THE PAPERS, AS WELL.

4 THE COURT: ALL RIGHT. FIRST OF ALL, I DO WANT TO
5 COMPLIMENT BOTH ATTORNEYS ON A CASE THAT WAS VERY WELL
6 TRIED. BOTH OF YOU WERE THOROUGHLY PREPARED. YOU BOTH KNOW
7 THE MATERIAL VERY, VERY WELL AND PRESENTED COMPELLING CASES.
8 YOU ARE TWO HIGHLY SKILLED AND PROFESSIONAL LAWYERS WHO
9 TRIED YOUR CASES HARD BUT FAIRLY AND ETHICALLY AND IN AN
10 APPROPRIATELY FRIENDLY MANNER, ESPECIALLY IN LIGHT OF THE
11 FACT THAT THIS WAS A COURT TRIAL AND NONE OF THE THEATRICS
12 THAT YOU MIGHT NEED TO SEE IN FRONT OF A JURY WERE REQUIRED,
13 AND IT WAS A PLEASURE TO TRY THIS CASE WITH BOTH OF YOU.

14 THESE CASES CAN BE HIGHLY EMOTIONAL, IN
15 PARTICULAR FOR A JURY, BUT EVEN FOR A JUDGE, BUT I HAVE BEEN
16 AND REMAIN MINDFUL THAT THIS DECISION CANNOT BE BASED ON
17 EMOTION, WHETHER THAT EMOTION BE FEAR, ANGER OR ANYTHING
18 ELSE. IT HAS TO BE BASED ON THE FACTS AND THE LAW, HERE THE
19 VERY SPECIFIC REQUIREMENTS OF THE SEXUALLY VIOLENT PREDATOR
20 LAW. I AM MINDFUL OF ALL THE APPROPRIATE JURY INSTRUCTIONS
21 THAT WOULD HAVE BEEN GIVEN HAD THE CASE BEEN TRIED TO A JURY
22 AS THOSE PRINCIPLES APPLY TO ME AS I AM EVALUATING THE
23 EVIDENCE IN THE CASE.

24 THE FIRST REQUIREMENT FOR THE RESPONDENT TO BE
25 HELD AS AN SVP IS THAT HE'S BEEN CONVICTED IN THE PAST OF A
26 SEXUALLY VIOLENT OFFENSE. IN THIS CASE THAT IS NOT IN
27 DISPUTE. OBVIOUSLY MR. GUDINO WAS CONVICTED OF THE SEXUAL
28 ASSAULT ON THE 83-YEAR-OLD VICTIM SYLVIA H. BACK IN 1993.

1 THAT WAS PROVEN VIA DOCUMENTARY EVIDENCE AND HAS ESSENTIALLY
2 BEEN CONCEDED BY MR. NICOLAYSEN. THAT'S EASY.

3 ALTHOUGH IT IS IMPORTANT IN THE WHOLE PICTURE
4 TO BE COGNIZANT OF HIS JUVENILE OFFENSES, SEXUAL OFFENSES AS
5 WELL, WHICH CONSISTED OF FORCIBLE ORAL COPULATION AT AGE 16
6 ON A 6-YEAR-OLD BOY, AS WELL AS MOLESTING A 9-YEAR-OLD BOY
7 AND AN ATTEMPT AT SOME SORT OF SEXUAL CONDUCT WITH A
8 15-YEAR-OLD. A FEW YEARS LATER IN 1991 HE MOLESTED HIS
9 9-YEAR-OLD STEPBROTHER AND 6-YEAR-OLD STEPSISTER, BOTH OVER
10 A PERIOD OF MONTHS. ALTHOUGH THEY WERE COMMITTED WHEN
11 MR. GUDINO WAS A JUVENILE AND THEY WERE COMMITTED A LONG,
12 LONG TIME AGO, THESE WERE SERIOUS, SERIOUS OFFENSES.

13 ALL RIGHT. HE'S OBVIOUSLY HAD THE CONVICTION
14 FOR A SEXUALLY VIOLENT OFFENSE. THEN IT GETS MORE
15 INTERESTING AS THE NEXT QUESTION BECOMES DOES MR. GUDINO
16 HAVE A, QUOTE, CURRENTLY DIAGNOSED MENTAL DISORDER.

17 THE FIRST THING I WANT TO MENTION ABOUT THIS
18 QUESTION IS SOMETHING THAT SHOULD BE OBVIOUS TO ANYBODY
19 OBSERVING THIS TYPE OF TRIAL. THE DIAGNOSES OF THESE
20 DISORDERS IS FAR MORE ART THAN SCIENCE. IT IS BASED ON
21 HUMAN BEINGS ATTEMPTING TO DETECT, ANALYZE AND CATEGORIZE A
22 VIRTUALLY LIMITLESS RANGE OF HUMAN BEHAVIOR OVER A PERIOD OF
23 YEARS, TRYING TO MAKE SENSE OF CONTRADICTORY DATA AMASSED
24 OVER A PERIOD OF DECADES AND TO FIT PEOPLE INTO BOXES.

25 THIS IS NOT A SCIENCE, AND THERE IS NO
26 EXACTITUDE TO IT. THERE ARE GOING TO BE UNCERTAINTIES AND
27 GRAY AREAS AND AREAS FOR INTERPRETATION THAT PROFESSIONALS
28 ARE GOING TO DISAGREE ON. IT IS THE NATURE OF THE BEAST.

1 THE FIRST WITNESS FOR THE PETITIONER WAS
2 DR. GOLDBERG, WHO DIAGNOSES MR. GUDINO CURRENTLY WITH
3 ANTISOCIAL DISORDER, ASPD. I'M NOT GOING TO CONCERN MYSELF
4 MUCH WITH ANY OF THE DOCTORS' DIAGNOSES WITH RESPECT TO
5 GUDINO'S SUBSTANCE ABUSE RELATED DISORDERS. HIS SUBSTANCE
6 ABUSE MAY BE A FACTOR IN HIS POTENTIALLY REOFFENDING OR IT
7 MAY NOT, BUT THE SUBSTANCE ABUSE RELATED DISORDERS
8 THEMSELVES ARE NOT THE TYPES OF DISORDERS UPON WHICH THE
9 FOUNDATION OF AN SVP FINDING MAY BE PROPERLY MADE.

10 SO, YES, I'M CONSCIOUS OF THE FACT THAT HE
11 STILL HAS A DRUG PROBLEM, EVEN A MAJOR DRUG PROBLEM, AND
12 WHILE THAT MAY BE A FACTOR INTO THE DISCUSSION OF HIS
13 LIKELIHOOD OF REOFFENDING, IT IS NOT MUCH OF A FACTOR, IF AT
14 ALL, IN THE EVALUATION OF PRONG NUMBER ONE, THE CURRENTLY
15 DIAGNOSED MENTAL DISORDER.

16 ASPD WAS DESCRIBED BY DR. GOLDBERG AS A,
17 QUOTE, CRIMINAL PERSONALITY, CLOSED QUOTE, THAT INCLUDES
18 FIGHTING, TRUANCY, STEALING AND AGGRESSIVE SEXUAL BEHAVIOR,
19 AND THAT INCLUDES TRAITS SUCH AS IMPULSIVITY, AGGRESSIVENESS
20 AND CALLOUSNESS. ALL OF THESE TRAITS HE SAID WERE
21 DEMONSTRATED AT COALINGA STATE HOSPITAL, SUCH AS WHEN
22 MR. GUDINO DEMEANS STAFF, YELLS AT STAFF, THROWS AND KICKS
23 THINGS AND THE LIKE.

24 AS A YOUTH HE FOUGHT, WAS TRUANT, STOLE THINGS
25 AND THEN BEGAN SEXUALLY ACTING OUT AT AROUND 13 YEARS OLD.
26 BUT THEN DR. GOLDBERG SAID, QUOTE, "WHEN YOU LOOK AT
27 GUDINO'S RECORD, HIS ANTISOCIAL BEHAVIOR IS ALMOST SOLELY
28 SEXUAL IN NATURE, SO, IN MY OPINION, HIS ANTISOCIAL

1 PERSONALITY TRAITS PREDISPOSE HIM TO COMMIT CRIMINAL SEXUAL
2 ACTS," CLOSED QUOTE.

3 I'M SORRY, I DO NOT SEE THE SUPPORT FOR THAT.
4 GUDINO HAS ENGAGED IN ALL SORTS OF ANTISOCIAL CONDUCT IN
5 COALINGA -- YELLING, THREATENING, FLOODING NURSES' STATIONS,
6 WRITING ON WALLS, BELLIGERENCE -- AND NONE OF IT HAS BEEN
7 SEXUAL IN NATURE. HE TOOK HIS SHIRT OFF ONCE OR TWICE IN
8 2009 AND MADE A COMMENT ABOUT WOMEN LIKING HIM OR BEING
9 SEXY, OR WHATEVER IT WAS, BUT THAT IS NOT ANY SORT OF
10 SUBSTANTIAL SEXUAL CONDUCT, IF IT CONSTITUTES SEXUAL CONDUCT
11 AT ALL.

12 AND WE KNOW FROM THE TESTIMONY OF PRETTY MUCH
13 EVERYONE WHO HAS EVER WORKED AT COALINGA THAT PATIENTS THERE
14 ARE IN ENGAGING IN ALL SORTS OF OVERTLY SEXUAL CONDUCT AND
15 MISCONDUCT THERE, SO IT'S NOT LIKE GUDINO HASN'T HAD THE
16 OPPORTUNITY TO DO SO, AS WELL. HE HAS HAD THE OPPORTUNITY,
17 BUT HE HASN'T DONE IT.

18 DR. GOLDBERG WENT ON TO SAY THAT IT'S GUDINO'S
19 IMPULSIVITY AND AGGRESSIVENESS THAT WERE HE TO BE OUT IN THE
20 COMMUNITY WOULD BE THE RISK AS THEY WOULD TRANSLATE INTO
21 SEXUALLY DEVIANT BEHAVIOR. IT'S JUST THAT THE HOSPITAL IS
22 SO LIMITING, ACCORDING TO DR. GOLDBERG. BUT, LIKE I SAID,
23 THAT ASSERTION WAS BELIED BY THE TESTIMONY OF MANY OTHER
24 WITNESSES IN THIS CASE THAT COALINGA IS NOT SO LIMITING AT
25 ALL IN TERMS OF THE ABILITY TO EXPRESS SEXUAL FEELINGS AND
26 TO ACT OUT SEXUALLY.

27 DR. GOLDBERG SAID THAT THE WAY FOR MR. GUDINO
28 TO DEMONSTRATE WHILE HE'S STILL IN COALINGA THAT THE RESULT

1 OF HIS ANTISOCIAL BEHAVIOR IN THE COMMUNITY WOULD NOT BE
2 LIKELY TO BE SEXUALLY ACTING OUT WOULD BE FOR HIM TO NOT BE
3 ANTISOCIAL AT ALL WHILE IN COALINGA.

4 I'M SORRY, BUT THAT DOES NOT COMPUTE FOR ME.
5 THAT WOULD BE REQUIRING GUDINO TO ESTABLISH NOT ONLY THAT
6 HIS ANTISOCIAL BEHAVIOR WOULDN'T LEAD TO SEXUALLY ACTING
7 OUT, BUT THAT HE NO LONGER ENGAGES IN ANTISOCIAL BEHAVIOR AT
8 ALL. THAT IS A BRIDGE TOO FAR. MR. GUDINO DOES NOT HAVE TO
9 ESTABLISH THAT.

10 BUT, IN ANY EVENT, THIS NOTION THAT GUDINO'S
11 GENERAL AGGRESSIVENESS WOULD, QUOTE, "TRANSLATE," CLOSED
12 QUOTE, INTO SEXUAL ACTING OUT WERE HE TO BE RELEASED IS
13 PUTTING THE CART BEFORE THE HORSE. THE ANALYSIS OF HIS
14 DANGEROUSNESS ONLY IS TO BE ENGAGED IN ONCE IT HAS BEEN
15 DETERMINED THAT HE HAS A CURRENTLY DIAGNOSED MENTAL
16 DISORDER. THAT IS PRONG NUMBER ONE.

17 GOLDBERG HAS HIM RIGHT NOW AS ASPD. OKAY. IT
18 IS A FACT THAT DR. GOLDBERG HAS CHANGED HIS DIAGNOSIS OF
19 MR. GUDINO OVER TIME. HE STARTED OUT IN 2006 WITH A
20 PARAPHILIA NOS, WITH A PERSONALITY DISORDER NOS, AND WITH
21 ANTISOCIAL PERSONALITY TRAITS. SAME THING IN 2008, ALTHOUGH
22 BY THIS TIME COALINGA HAD HIM DIAGNOSED WITH PEDOPHILE,
23 WHICH GOLDBERG DID NOT HAVE AT THAT TIME.

24 IN 2010 GOLDBERG STILL HAD HIM WITH PARAPHILIA
25 NOS, BUT NOW HE HAD HIM WITH PEDOPHILIC AND COERCIVE
26 FEATURES AND WITH A PERSONALITY DISORDER NOS WITH ANTISOCIAL
27 PERSONALITY TRAITS. HE SAID THAT HE ADDED THE PEDOPHILIC
28 DIAGNOSIS AT THAT TIME TO, QUOTE, "BE MORE DESCRIPTIVE AND

1 ADD ASPECTS OF HIS JUVENILE HISTORY," CLOSED QUOTE. I DO
2 NOT BUY THAT. IT SEEMS TO ME THAT HE WAS TRYING TO BRING
3 HIS DIAGNOSIS MORE CLOSELY IN LINE WITH COALINGA'S
4 DIAGNOSIS.

5 THIS IS NOW THE THIRD TIME DR. GOLDBERG IS
6 SEEING HIM AND WRITING A REPORT ON HIM. HE'S GOT ACCESS TO
7 ALL THE SAME INFORMATION, THE SAME HISTORICAL DATA, THE SAME
8 CASE HISTORY, AND NOW HE'S WANTING TO BRING IN ASPECTS OF
9 HIS JUVENILE HISTORY? NOTHING HAS CHANGED SINCE 2006 OR
10 2008 OTHER THAN A FEW YEARS OF NON-SEXUAL BELLIGERENCE AND
11 AGGRESSIVENESS IN COALINGA.

12 IN 2011 GOLDBERG HAD HIM WITH THE SAME
13 DIAGNOSIS, BUT BY THIS POINT COALINGA HAS DROPPED THE
14 PEDOPHILIA DIAGNOSIS. THEY ONLY HAVE HIM WITH PARAPHILIA
15 NOS AND ASPD. SO THE TABLES HAVE TURNED. GOLDBERG HAS
16 ADDED PEDOPHILIA INTO THE MIX IN 2010, WHEN COALINGA HAD IT
17 TOO, BUT NOW COALINGA HAS DROPPED IT AND GOLDBERG HAS IT.

18 IN 2013 GOLDBERG CONTINUES TO, QUOTE, "EVOLVE"
19 AND SEEMINGLY FOLLOW COALINGA'S LEAD, AND SO NOW HE
20 DIAGNOSES GUDINO AS ASPD. NO LONGER JUST THE TRAITS. NOW
21 IT'S THE FULL DISORDER. HE HAS UPGRADED IT. AND HE DROPS
22 PARAPHILIA NOS. WHY? HE SAYS BECAUSE AS HE REALLY LOOKED
23 AT THE HISTORY AND THE CRITERIA, HIS SEXUAL OFFENSES ARE
24 MORE RELATED TO HIS ANTISOCIAL PERSONALITY ORIENTATION AND
25 NOT SEXUAL DISORDER AND BECAUSE THE THRESHOLD FOR DIAGNOSING
26 PARAPHILIA HAD GONE UP.

27 BUT HERE'S THE PROBLEM WITH WHAT DR. GOLDBERG
28 HAS DONE HERE: HE HAD PREVIOUSLY STATED THAT HE DID NOT

1 HAVE ENOUGH INFORMATION ABOUT HIS BEHAVIOR PRIOR TO THE AGE
2 OF 15 TO DIAGNOSE A CONDUCT DISORDER, WHICH IS A REQUIREMENT
3 FOR AN ASPD DIAGNOSIS. SO WHEN HE TALKS ABOUT REFORMULATING
4 HIS DIAGNOSIS, THAT IS VERY HARD FOR THE COURT TO SWALLOW.
5 HE LOOKED AT THE EXACT SAME INFORMATION AND COMPLETELY
6 CHANGED HIS INTERPRETATION OF IT.

7 IN 2014 HE'S STILL GOT HIM WITH ASPD, BUT NOW
8 THERE'S NO SEXUAL DIAGNOSIS AT ALL, WHILE COALINGA STILL HAD
9 HIM WITH PARAPHILIA NOS, AS WELL AS THE ASPD.

10 FOLKS, THAT IS A LOT OF TRANSFORMATION, A LOT
11 OF REFORMULATION, AND THE TIMING OF IT IN RELATIONSHIP TO
12 THE DIAGNOSES THAT WERE COMING FROM THE COALINGA
13 PRACTITIONERS IS DISCONCERTING. I UNDERSTAND THAT DOCTORS
14 CAN AND SHOULD MAINTAIN AN OPEN MIND AND BE OPEN TO CHANGING
15 THEIR DIAGNOSIS OF A PATIENT WHEN CIRCUMSTANCES CHANGE OR
16 NEW INFORMATION IS OBTAINED, BUT THERE IS JUST A LOT OF
17 INTERNAL INCONSISTENCY HERE, THE TIMING OF THE CHANGES IS
18 TROUBLING, AND THE REASONS GIVEN FOR THE CHANGES IN
19 DIAGNOSIS ARE NOT COMPELLING.

20 WHAT ABOUT PETITIONER'S SECOND EXPERT,
21 DR. MURPHY? WHAT DID SHE HAVE TO SAY ABOUT GUDINO HAVING A
22 CURRENTLY DIAGNOSED MENTAL DISORDER? SHE ALSO CURRENTLY
23 DIAGNOSES HIM WITH ASDPD, BUT ALSO AN UNSPECIFIED PARAPHILIC
24 DISORDER. SO SHE AGREES WITH DR. GOLDBERG THAT HE'S
25 PROPERLY DIAGNOSED AS ASPD, BUT SHE HAS HIM WITH A
26 PARAPHILIC DISORDER, WHILE GOLDBERG HAS DROPPED THAT
27 PARAPHILIA NOS HE HAD PREVIOUSLY.

28 SHE CAME TO BELIEVE THAT HE IS NOT PEDOPHILIC

1 BUT RATHER AN UNSPECIFIED PARAPHILIC THE VERY WEEK OF HER
2 TESTIMONY, AND SHE DID IT WHILE BEING MINDFUL THAT HER
3 PREVIOUS DIAGNOSES WERE BEING HEAVILY CRITICIZED BY
4 DRS. ABBOTT AND FRANCES.

5 SHE SAID SHE'S GETTING AWAY FROM THE
6 PEDOPHILIC DISORDER DIAGNOSIS BECAUSE SHE'S NOW CONSIDERING
7 THE OFFENSE AGAINST THE ELDERLY VICTIM MORE. I'M SORRY, BUT
8 THAT IS REALLY PROBLEMATIC FOR THE COURT. SHE HAS EVALUATED
9 GUDINO MULTIPLE TIMES SINCE 2013, AND IT'S JUST NOW, JUST AS
10 SHE'S GETTING READY TO TESTIFY, THAT SHE TAKES A LOOK AT THE
11 MOST IMPORTANT OFFENSE, PERHAPS, COMMITTED BY GUDINO, THE
12 SEXUAL ASSAULT OF THE ELDERLY SYLVIA H., AND AT THIS POINT,
13 QUOTE, "REFORMULATES" HER OPINION?

14 SHE LET THE ATTORNEYS IN THIS CASE KNOW ON THE
15 VERY DAY SHE WAS ABOUT TO HIT THE STAND THAT SHE HAD CHANGED
16 HER DIAGNOSIS. SHE DIDN'T REALLY THINK ABOUT THE OFFENSE
17 AGAINST SYLVIA H. FOR THE LAST COUPLE OF YEARS WHEN SHE WAS
18 INTERVIEWING GUDINO, REVIEWING GUDINO'S LEGAL HISTORY,
19 REVIEWING GUDINO'S TREATMENT HISTORY, ALL THE REPORTS, ALL
20 THE DOCUMENTATION, AND THESE GIGANTIC FILES THAT ARE CREATED
21 ON THESE PATIENTS, AND SOMEHOW SHE DIDN'T REALLY CONSIDER
22 THE VERY BASIC NATURE OF THE OFFENSE THAT LANDED HIM IN
23 PRISON IN THE FIRST PLACE. I FIND THAT INCREDIBLE, AND IT
24 COLORS THE ABILITY OF THE COURT AS THE FACT-FINDER TO SEE
25 HER AS A CREDIBLE WITNESS.

26 NOW, SHE MADE THE PEDOPHILIC DIAGNOSIS IN FULL
27 AWARENESS THAT COALINGA HAD ALREADY DIAGNOSED HIM WITH THAT
28 CONDITION, AND SHE WENT ALONG. NOW SHE KNOWS THAT COALINGA

1 HAS DROPPED PEDOPHILIA, SO SHE DROPS IT TOO, JUST IN TIME TO
2 TESTIFY. THIS IS NOT THE STUFF OF WHICH CREDIBLE WITNESSES
3 ARE MADE.

4 WHAT DID SHE SAY AS TO THE REASONS SHE
5 DIAGNOSED HIM AS A PEDOPHILE? I GUESS IT WAS BECAUSE OF THE
6 JUVENILE OFFENSES, BUT SHE ADMITTED SHE KNEW ABOUT THE
7 OFFENSE AGAINST THE ELDERLY LADY AND KNEW ABOUT THE
8 RELATIONSHIP WITH THE 28-YEAR-OLD WOMAN WHEN HE WAS ON
9 PAROLE, AND SHE STILL DIAGNOSED HIM AS A PEDOPHILE. IT DOES
10 NOT MAKE SENSE.

11 AND EVEN HER JUSTIFICATION FOR DIAGNOSING HIM
12 ASPD NOW WAS BUILT ON A WEAK FOUNDATION. HIS ANTISOCIAL
13 BEHAVIOR THAT OCCURRED BEFORE AGE 15 CONSISTED OF BRINGING A
14 KNIFE TO SCHOOL AND FIGHTING A LITTLE BIT AND SOME DRUGS.
15 THAT'S IT. THIS WAS NOT A CONVINCING WITNESS ON THE ISSUE
16 OF CURRENTLY DIAGNOSED MENTAL DISORDER.

17 I DO WANT TO TURN TO THE EXPERTS WHO TESTIFIED
18 FOR THE RESPONDENT, MR. GUDINO, ON THE ISSUE OF CURRENTLY
19 DIAGNOSED MENTAL DISORDER.

20 FIRST OF ALL, DR. FRANCES EASILY DISMISSES ANY
21 DIAGNOSIS OF PEDOPHILIC DISORDER. HE DEFINED PEDOPHILIA
22 CLEARLY AS PER THE DSM AS A SPECIFIC AND PREFERENTIAL TASTE
23 FOR SEX WITH CHILDREN, NOT JUST BECAUSE THEY'RE EASY
24 TARGETS, BUT BECAUSE CHILDREN ARE ESPECIALLY AROUSING TO THE
25 PEDOPHILE. THE DISTINCTION DRAWN WAS AS TO THOSE WHO
26 SEXUALLY ASSAULT CHILDREN BECAUSE IT IS EASY TO DO SO. THEY
27 ARE BEING OPPORTUNISTIC.

28 THAT OPPORTUNISM-BASED VICTIM SELECTION IN

1 DR. FRANCES' FORMULATION IS ESSENTIALLY JUST CRIMINAL
2 BEHAVIOR. TO THE CONTRARY, THE PEDOPHILE IS SPECIFICALLY
3 AROUSED DUE TO SOMETHING INHERENT IN THE FACT THAT THE
4 VICTIM IS A CHILD. THAT MAKES SENSE TO ME.

5 AND HERE WE HAVE A SERIES OF CRIMES COMMITTED
6 BY MR. GUDINO WHEN HE HIMSELF WAS A JUVENILE AGAINST A
7 NUMBER OF JUVENILE VICTIMS, INCLUDING SOME VERY YOUNG
8 CHILDREN. THOSE CRIMES, HORRIFIC AS THEY WERE, WERE
9 COMMITTED 24 TO 26 YEARS AGO. THE ONLY OTHER SEXUAL OFFENSE
10 COMMITTED BY RESPONDENT GUDINO WAS THE SEXUAL ASSAULT IN
11 1993 WHEN HE WAS AN ADULT.

12 WAS THE VICTIM THERE AGAIN A MINOR, A CHILD
13 WHO WAS SPECIFICALLY AROUSING TO GUDINO BECAUSE SHE WAS A
14 CHILD? NO. SHE WAS 83 YEARS OLD. FRANKLY, I AGREE WITH
15 DR. FRANCES THAT THE DIAGNOSIS OF PEDOPHILIA IN THIS CASE
16 WAS ABSURD, AND THE FACT THAT SOME EXPERTS IN THIS CASE
17 DIAGNOSED HIM AS A PEDOPHILE CURRENTLY -- CURRENTLY --
18 DESPITE THE REMOTENESS OF ALL OF THE SEXUAL CRIMES AGAINST
19 CHILDREN, DESPITE THE SEX CRIME AGAINST THE 83-YEAR-OLD
20 WOMAN, DESPITE THE FACT OF THE SEEMINGLY NORMAL SEXUAL
21 RELATIONSHIP HE HAD WITH A 28-YEAR-OLD WOMAN WHILE HE WAS
22 OUT ON PAROLE FOR A YEAR AND A HALF, AND DESPITE HIS UTTER
23 LACK OF DISPLAY OF SEXUAL INTEREST IN CHILDREN OVER ALL THE
24 YEARS HE'S BEEN IN PRISON OR IN COALINGA ALMOST HAS TO
25 AFFECT ANY EVALUATION OF THE CREDIBILITY OF THE EXPERTS WHO
26 HAVE DIAGNOSED HIM AS A PEDOPHILE AT ANY POINT.

27 ALL RIGHT. SO WHAT ABOUT ASPD. IT IS THE NEW
28 TREND TO USE IN SUPPORTING SVP INSTEAD OF USING PARAPHILIAS,

1 AND THAT'S FINE, BUT WHERE IS THE SUPPORT FOR ASPD?
2 DR. FRANCES SAID THAT WITHOUT ANY DIFFERENTIAL DIAGNOSIS
3 BEING CONSIDERED YOU REALLY CAN'T RULE IT IN OR CAN'T RULE
4 IT OUT BASED ON WHAT DR. MURPHY OR DR. GOLDBERG WROTE IN
5 THEIR REPORTS. THAT IS A PROBLEM WHEN IT IS THE PETITIONER
6 WHO BEARS THE BURDEN OF PROOF HERE.

7 IT WAS UNESSENTIALLY UNCONTESTED THAT THERE
8 WERE NO SUBSTANTIAL CHANGES IN THE DSM THAT WOULD HAVE
9 CAUSED DR. GOLDBERG TO CHANGE HIS DIAGNOSIS FROM PARAPHILIA
10 NOS TO ASPD. NOTHING ABOUT GUDINO CHANGED. BUT THERE WAS
11 THAT CONFERENCE IN 2011 IN WHICH EVALUATORS WERE INSTRUCTED
12 TO MOVE AWAY FROM PARAPHILIA NOS AS A BASIS FOR SVP AND TO
13 MOVE TOWARDS ANTISOCIAL PERSONALITY ASPD.

14 THAT IS ALL FINE AND DANDY, BUT THE PATIENT
15 STILL HAS TO MEET THE ACTUAL CRITERIA FOR ASPD DIAGNOSIS,
16 HOPEFULLY WITH A DIFFERENTIAL DIAGNOSIS BEING CONSIDERED,
17 AND THAT WAS THE CHALLENGE HERE. PER DR. FRANCES YOU CAN'T
18 SAY THAT GUDINO HAS ASPD, AND YOU CAN'T SAY THAT HE DOESN'T.
19 AND, AGAIN, THAT IS A PROBLEM WHEN THE PETITIONER BEARS THE
20 BURDEN OF PROOF TO SAY THAT HE DOES HAVE IT.

21 DR. FRANCES DID ADMIT THAT GUDINO HAS ENGAGED
22 FACTUALLY IN THE BEHAVIORS THAT MEET THE CRITERIA FOR ASPD,
23 BUT HE DID TRY TO SAY THAT THOSE BEHAVIORS HAVE TO BE
24 CONSIDERED IN THEIR SITUATIONAL CONTEXT, SO ESSENTIALLY HE
25 WAS UNABLE TO MAKE A CURRENT DIAGNOSIS OF GUDINO AT ALL.

26 DR. SMITH WAS NEXT. HE DID A LOT OF HEDGING
27 AND A LOT OF BACKTRACKING AND DID NOT PRESENT PARTICULARLY
28 WELL AS A WITNESS. HE SEEMED TO THE COURT TO BE RATHER

1 GREEN AND UNCERTAIN OF WHAT HE'S DONE, WHAT HE'S SEEN AND
2 WHAT HE THINKS. HE SAID HE WAS NOT CONFIDENT IN DIAGNOSING
3 ANYTHING, BUT HE DID FEEL PRETTY STRONGLY THAT THERE WAS NO
4 PARAPHILIA HERE, BUT HE EVEN RECONSIDERED THAT LATER IN HIS
5 TESTIMONY. LIKE I SAY, DR. SMITH HEDGED REPEATEDLY ON ASPD.
6 I GIVE THIS WITNESS' TESTIMONY VERY LITTLE WEIGHT IN THIS
7 REGARD.

8 FINALLY, THERE WAS DR. ABBOTT, WHO'S, LIKE
9 DR. GOLDBERG, VERY, VERY EXPERIENCED IN THE SVP WORLD,
10 HAVING DONE 180 EVALUATIONS AND TESTIFIED 130 TIMES IN SVP
11 MATTERS. HE HAS BEEN EVALUATING MR. GUDINO SINCE 2007 AND
12 HAS RULED OUT ANY PARAPHILIC DISORDER AND FEELS THERE IS
13 INSUFFICIENT EVIDENCE OF ASPD EITHER. WHY IS THE EVIDENCE
14 OF IT INSUFFICIENT DESPITE HIS HISTORY OF BELLIGERENCE AND
15 ACTING OUT AT COALINGA? BECAUSE THERE ARE NO SYMPTOMS OF
16 THE CONDUCT DISORDER SHOWING UP BETWEEN THE AGES OF 9 AND
17 15, AND THIS IS REQUIRED FOR ASPD.

18 PLUS, SINCE HE'S BEEN IN CUSTODY ALMOST
19 CONTINUOUSLY SINCE AGE 19, IT IS HARD, IN DR. ABBOTT'S
20 OPINION, TO SORT OUT WHAT IS ANTISOCIAL PERSONALITY VERSUS
21 WHAT IS HIS REACTION TO DEALING WITH BEING IN THESE
22 INSTITUTIONS AND THE HARDSHIPS THAT THEY IMPOSE. AND WHEN
23 YOU THROW IN MR. GUDINO'S SEEMINGLY UNCONTESTED PAIN ISSUES,
24 IT IS A VERY DIFFICULT MIX TO INTERPRET.

25 THE BIG ISSUE WITH ASPD, AS WELL, IS THE FACT
26 THAT HE WAS ON PAROLE FOR A YEAR AND A HALF AND GOT INTO NO
27 TROUBLE AT ALL. HE WAS FINE APPARENTLY. HE HAD NO CONTACT
28 WITH LAW ENFORCEMENT. THIS MIGHT SUPPORT THE IDEA THAT HIS

1 OUTBURSTS AT COALINGA ARE SITUATIONAL. THERE IS JUST NOT
2 ENOUGH THERE TO SAY THAT HE HAS THE CONDITION CURRENTLY.

3 SO WHEN YOU PUT THIS ALL TOGETHER, NOBODY
4 OTHER THAN DR. MURPHY, WHO, IN THE COURT'S MIND, WAS A WEAK
5 WITNESS, DIAGNOSES RESPONDENT GUDINO WITH ANY SORT OF
6 CURRENT PARAPHILIC DISORDER. SO THAT'S OUT. GOLDBERG AND
7 MURPHY DIAGNOSED HIM WITH ASPD, WHILE FRANCES SAYS YOU CAN'T
8 SAY EITHER WAY, AND ABBOTT SAYS NO DUE TO THE LACK OF
9 SYMPTOMS SHOWING UP BETWEEN AGES 9 AND 15.

10 I'M GOING TO HAVE TO COME BACK TO THIS ISSUE
11 AS TO WHETHER THAT ELEMENT IS MET BEYOND A REASONABLE DOUBT.
12 IF IT ISN'T, THEN NONE OF THE REST OF THIS ANALYSIS MATTERS
13 BECAUSE IF THERE IS NO CURRENTLY DIAGNOSABLE DISORDER, THEN
14 THE ISSUE OF LIKELIHOOD OF REOFFENSE IS MOOT. YOU DON'T GET
15 TO PRONG TWO UNLESS AND UNTIL PRONG ONE IS SATISFIED.

16 SO LET'S SAY FOR THE SAKE OF ARGUMENT PRONG
17 ONE IS SATISFIED, THAT IT HAS BEEN PROVEN BEYOND A
18 REASONABLE DOUBT THAT RESPONDENT GUDINO HAS A CURRENTLY
19 DIAGNOSABLE MENTAL DISORDER, WHICH WOULD HAVE TO BE ASPD, IF
20 ANYTHING. THEN THE QUESTION BECOMES DOES THAT DISORDER MAKE
21 HIM A DANGER TO THE HEALTH AND SAFETY OF OTHERS IN THAT HE
22 IS LIKELY TO ENGAGE IN SEXUALLY VIOLENT CRIMES UPON RELEASE,
23 CRIMES WHICH ARE PREDATORY IN NATURE. IS THERE A
24 SUBSTANTIAL DANGER THAT HE WILL COMMIT SUCH CRIMES; THAT IS,
25 A SERIOUS OR WELL-FOUNDED RISK THAT HE WILL DO SO IF FREE IN
26 THE COMMUNITY.

27 THE KEY HERE IS THE LINKAGE. IT'S NOT JUST
28 THAT THERE HAS TO BE A SERIOUS OR WELL-FOUNDED RISK THAT HE

1 WILL COMMIT SEXUALLY VIOLENT CRIMES UPON RELEASE. THAT
2 SERIOUS OR WELL-FOUNDED RISK MUST BE AS A RESULT OF,
3 RESULTING FROM OR LINKED TO THE DIAGNOSED MENTAL DISORDER,
4 AGAIN HERE ASPD. IT'S THE DISORDER THAT MUST MAKE HIM SUCH
5 A DANGER.

6 ALL THE DOCTORS SEEM TO AGREE THAT ASPD IS
7 CLOSELY ASSOCIATED WITH GENERAL CRIMINAL BEHAVIOR. IT
8 INVOLVES AGGRESSIVENESS, IMPULSIVITY, CALLOUSNESS, LACK OF
9 CONCERN FOR OTHERS, PHYSICAL VIOLENCE OF DIFFERENT SORTS.
10 THE REALITY IS THAT IN HIS YEARS IN COALINGA, ALTHOUGH NOT
11 THAT WE KNOW OF IN PRISON OR WHILE ON PAROLE, GUDINO HAS
12 BEEN BELLIGERENT. HE'S BEEN ANGRY. HE HAS LASHED OUT AT
13 STAFF AND FELLOW PATIENTS IN MANY DIFFERENT WAYS; NOT
14 SEXUALLY, BUT IN MANY OTHER DIFFERENT WAYS.

15 HE STILL HAS A LOT OF ANGER AND AGGRESSIVENESS
16 ISSUES TO WORK OUT. THERE'S NO QUESTION IN MY MIND ABOUT
17 THAT. HE HAS DISPLAYED ANTISOCIAL PERSONALITY TRAITS AND
18 CONTINUES TO DO SO, ALTHOUGH LESS WHEN HE'S BEEN ON UNIT 9
19 WITH THE CLOSER SUPERVISION AND MORE STRUCTURE THAT ARE
20 OFFERED IN THAT UNIT.

21 BUT I SIMPLY DO NOT AGREE WITH DR. GOLDBERG,
22 AS I MENTIONED EARLIER, THAT GUDINO'S ANTISOCIAL BEHAVIOR IS
23 ALMOST SOLELY SEXUAL IN NATURE, AND I DON'T SEE HOW HE COULD
24 CONCLUDE THAT GUDINO'S ANTISOCIAL PERSONALITY TRAITS
25 PREDISPOSE HIM TO COMMIT CRIMINAL SEXUAL ACTS. WHAT IS THE
26 BASIS FOR SAYING THAT?

27 THERE REALLY ISN'T ANY. IS HE STILL
28 IMPULSIVE? YES. IS HE STILL AGGRESSIVE? YES. BUT WHAT

1 MAKES ONE REASONABLY THINK THAT HIS ACTING OUT, SHOULD HE BE
2 RELEASED, WILL LIKELY HAVE A SEXUAL COMPONENT TO IT, MUCH
3 LESS BE LIKELY TO CONSTITUTE THE COMMISSION OF A SEXUALLY
4 VIOLENT CRIME.

5 IT HAS BEEN OVER 20 YEARS SINCE HE HAS
6 COMMITTED ANY TYPE OF SEXUAL OFFENSE. I'M SORRY, BUT TAKING
7 HIS SHIRT OFF AT COALINGA AND SAYING HOW SEXY HE LOOKS JUST
8 DOESN'T CUT IT, AND IT ISN'T CLOSE.

9 I ASKED THE DOCTORS SEVERAL TIMES, "WHY DO YOU
10 THINK THIS AGGRESSIVENESS THAT HE STILL HAS WILL MANIFEST
11 ITSELF SEXUALLY," AND NOBODY OFFERED A GOOD ANSWER. ONE
12 SAID, "IT'S JUST THAT THE STRUCTURED ENVIRONMENT AT COALINGA
13 IS SO LIMITING, SO THAT'S WHY WE DON'T SEE SIGNS OF SEXUALLY
14 ACTING OUT."

15 NUMBER ONE, THAT IS SIMPLY NOT TRUE, AS
16 NUMEROUS WITNESSES TOLD US OF ALL OF THE SEXUAL ACTING OUT
17 THAT GOES ON DAILY AT COALINGA.

18 AND, NUMBER TWO, THAT'S NOT AN ANSWER TO MY
19 QUESTION. IF THE QUESTION IS, "WHY DO YOU THINK HE'LL ACT
20 OUT SEXUALLY," SAYING, "IT'S TOO RESTRICTIVE AT COALINGA FOR
21 HIM TO ACT OUT SEXUALLY" IS NOT A RESPONSIVE ANSWER. THE
22 QUESTION ISN'T, "WHY HASN'T HE ACTED OUT AT COALINGA," IT'S,
23 "WHY DO YOU THINK HE WILL ACT OUT ONCE HE LEAVES COALINGA,"
24 AND I NEVER GOT A GOOD ANSWER TO THAT QUESTION.

25 WOULD GUDINO GOING TO SEXUAL OFFENDER
26 TREATMENT IN COALINGA HAVE HELPED HIS CAUSE SO HIS SEXUAL
27 TRIGGERS MIGHT BE BETTER UNDERSTOOD AND MAYBE HE COULD HAVE
28 DEMONSTRATED TO THE SATISFACTION OF DRS. GOLDBERG AND MURPHY

1 THAT HE WAS NOT LIKELY TO REOFFEND? OF COURSE IT WOULD HAVE
2 HELPED HIS CAUSE. HE SHOULD HAVE DONE IT. BUT IT'S NOT
3 DETERMINATIVE. HE DID SEXUAL OFFENDER TREATMENT OF SOME
4 SORT WAY BACK IN RANCHO SAN ANTONIO FOR THE JUVENILE
5 OFFENSES, AND IT DID NOT PREVENT HIM FROM COMMITTING THE
6 HORRIBLE OFFENSE AGAINST SYLVIA H., SO WHY WOULD TREATMENT
7 BE A PREREQUISIT FOR FINDING HIM LESS LIKELY OR NOT AT ALL
8 LIKELY TO SEXUALLY REOFFEND THIS TIME?

9 BUT I DO WANT TO LOOK AT THIS RATIONALLY AND
10 REASONABLY. DR. GOLDBERG SAYS THAT, "WELL, IT WAS ONLY A
11 YEAR OR SO BETWEEN HIS RELEASE ON THE JUVENILE MATTER AND
12 HIS ATTACK ON THE ELDERLY LADY, THEREFORE DISPLAYING A LACK
13 OF IMPULSE CONTROL, PLUS HE'S HAD A LACK OF IMPULSE CONTROL
14 IN COALINGA, AND THAT CAN" -- UNDERLINE "CAN" -- "TRANSLATE
15 INTO SEXUAL ACTING OUT."

16 BUT IS THAT REALLY A REASONABLE CONCLUSION TO
17 DRAW? OF COURSE IT CAN TRANSLATE, BUT DOES IT CONSTITUTE A
18 SERIOUS AND WELL-FOUNDED RISK THAT HE WILL DO SO? IT HAS
19 BEEN OVER 20 YEARS SINCE HE HAS COMMITTED ANY SEXUAL OFFENSE
20 AT ALL. THERE IS NO EVIDENCE OF ANY MISCONDUCT OF ANY KIND
21 IN THE 12 YEARS WHEN HE WAS IN PRISON. WHILE ON PAROLE FOR
22 A YEAR AND A HALF NOT ONLY WAS THERE NO EVIDENCE OF ANY TYPE
23 OF MISCONDUCT OTHER THAN USING DRUGS -- NO AGGRESSIVENESS,
24 NO FIGHTING, NO SEXUALLY INAPPROPRIATE CONDUCT -- BUT, TO
25 THE CONTRARY, HE WAS ENGAGED IN AN APPARENTLY NORMAL SEXUAL
26 RELATIONSHIP WITH AN AGE-APPROPRIATE FEMALE PARTNER.

27 THEN SINCE HE GOT VIOLATED FOR FAILURE TO
28 REGISTER HE'S BEEN IN COALINGA FOR 8 YEARS. HE'S BEEN ANGRY

1 AND BELLIGERENT, YES, AND USING DRUGS, BUT THERE IS JUST
2 ZERO EVIDENCE THAT HE HAS BEEN ACTING OUT IN ANY KIND OF
3 SEXUAL WAY OTHER THAN TAKING HIS SHIRT OFF IN AN ENVIRONMENT
4 IN WHICH OTHER PATIENTS ARE ACTING OUT SEXUALLY ALL THE
5 TIME. DR. GOLDBERG ADMITTED THAT.

6 HOW CAN AN EVALUATOR NOT BELIEVE THAT SET OF
7 FACTS THAT I JUST RECITED IS SIGNIFICANT IN ASSESSING HIS
8 LIKELIHOOD OF REOFFENDING IN A SEXUAL MANNER SHOULD HE BE
9 RELEASED? HOW CAN IT BE OVERSHADOWED, IN EFFECT, BY THE
10 FACT THAT HE'S STILL USING DRUGS AND IS STILL ANGRY AND TOOK
11 HIS SHIRT OFF AND MADE A SEXUALLY RELATED BOAST SIX YEARS
12 AGO. HOW?

13 HOW CAN HE STATE THAT IN ORDER FOR GUDINO TO
14 BE ABLE TO CONTROL HIS SEXUAL IMPULSES HE NEEDS NOT ONLY
15 DRUG COUNSELING BUT SEXUAL OFFENDER TREATMENT, AS WELL? HE
16 HASN'T HAD DRUG COUNSELING OR SEXUAL OFFENDER TREATMENT, AND
17 HE HASN'T ACTED INAPPROPRIATELY ON ANY SEXUAL IMPULSES IN
18 OVER 20 YEARS.

19 DR. GOLDBERG AND MURPHY ARE REALLY BOTH
20 CONCERNED ABOUT GUDINO'S NOT HAVING BEEN THROUGH SEXUAL
21 OFFENDER TREATMENT. THEY SAY ESSENTIALLY THAT HE STILL HAS
22 DEMONSTRATED POOR IMPULSE CONTROL WHILE IN COALINGA AND THAT
23 HE GETS ANGRY AND LASHES OUT, ALBEIT NOT SEXUALLY, BUT
24 BECAUSE HE HASN'T HAD TREATMENT THEY OPINE THAT WHEN HE IS
25 OUT OF THE MORE CONTROLLED SETTING OF COALINGA THE LASHING
26 OUT OR AGGRESSIVENESS WILL TAKE ON A PREDATORY SEXUAL
27 COMPONENT TO IT AND THAT WE DON'T KNOW WHAT THOSE SEXUAL
28 TRIGGERS WILL BE, SO IF THE OPPORTUNITY TO SEXUALLY REOFFEND

1 PRESENTS ITSELF, HE IS LIKELY TO TAKE ADVANTAGE OF IT AND
2 REOFFEND.

3 BASED ON WHAT I HAVE HEARD, I AM DUBIOUS OF
4 THAT, AND THE MAIN REASON IS THAT THIS IS A MAN WITH A
5 20-PLUS YEAR RECORD IN THREE DIFFERENT SETTINGS, THOSE BEING
6 PRISON, THE COMMUNITY AND COALINGA, OF NOT ALLOWING HIMSELF
7 TO BE TRIGGERED INTO SEXUALLY INAPPROPRIATE ACTING OUT.

8 HOW CAN ONE SAY THAT IS NOT STRONG EVIDENCE OF
9 HIS ABILITY TO CONTROL HIS SEXUALLY VIOLENT IMPULSES? ARE
10 YOU TELLING ME THERE ISN'T ANY INAPPROPRIATE SEXUAL CONDUCT
11 AND SEXUAL ACTING OUT AND INDEED VIOLENT SEXUAL ASSAULTS IN
12 OUR STATE PRISON SYSTEM? OF COURSE THERE IS. DID GUDINO DO
13 ANYTHING LIKE THAT IN 12 YEARS THERE? THERE IS NO EVIDENCE
14 THAT HE DID.

15 THEN HE'S IN THE COMMUNITY ON PAROLE FOR A
16 YEAR AND A HALF, ALL THE OPPORTUNITY IN THE WORLD TO GET
17 TRIGGERED AND HAVE HIS ANGER OR AGGRESSIVENESS TURN SEXUAL,
18 AND THERE WAS NOTHING. AND THEN 8 YEARS IN COALINGA WHERE,
19 ACCORDING TO THE TESTIMONY OF SEVERAL WITNESSES IN THIS
20 CASE, IT IS A VERITABLE CARNIVAL OF SEXUAL ACTING OUT,
21 EXHIBITIONISM, OPEN MASTURBATION, INAPPROPRIATE TOUCHING AND
22 FONDLING, INAPPROPRIATE COMMENTS, VIEWING OF CHILD
23 PORNOGRAPHY, ALL OF IT, EXCEPT GUDINO HASN'T DONE ANY OF
24 THAT KIND OF THING. NONE.

25 THE PROBLEM FOR PETITIONER IN THIS CASE IS THE
26 VERY HIGH STANDARD OF PROOF. IT'S NOT JUST THAT IT IS MORE
27 LIKELY THAN NOT THAT HE MEETS ALL THE CRITERIA FOR BEING AN
28 SVP. IT'S NOT THAT THE PETITIONER MUST PROVE BY CLEAR AND

1 CONVINCING EVIDENCE THAT HE'S AN SVP. THEY HAVE TO PROVE IT
2 BEYOND A REASONABLE DOUBT, THE HIGHEST STANDARD THAT EXISTS
3 IN OUR LEGAL SYSTEM.

4 IT IS A SCARY THING TO LET SOMEONE WITH
5 MR. GUDINO'S SEXUAL HISTORY BACK INTO THE COMMUNITY. IT IS.
6 BUT THE COURT HAS TO FOLLOW THE LAW AND PUT THE PETITIONER
7 TO ITS PROOF. IT IS A PRETTY CLOSE CALL AS TO WHETHER THERE
8 IS A DIAGNOSED MENTAL DISORDER HERE, WHICH IS PRONG
9 NUMBER ONE.

10 FORGET ABOUT PARAPHILIC DISORDER. THE
11 EVIDENCE OF THAT BEING A CURRENT DIAGNOSIS WAS NOT
12 COMPELLING AT ALL. ASPD IS MUCH CLOSER. THERE IS A REAL
13 SPLIT OF OPINION ON THAT. HE'S ANGRY. HE'S BELLIGERENT.
14 HE ACTS OUT PHYSICALLY. HE MAY NOT MEET ALL OF THE
15 TECHNICAL REQUIREMENTS OF ASPD AS DESCRIBED IN THE DSM AS TO
16 THE AGE OF ONSET OF HIS CONDUCT DISORDER SYMPTOMS.

17 BUT WHEN I SAY IT'S A CLOSE CALL, THAT IS A
18 PROBLEM FOR THE PETITIONER. A CLOSE CALL IS NOT BEYOND A
19 REASONABLE DOUBT, AND THE COURT IS NOT CONVINCED BEYOND A
20 REASONABLE DOUBT THAT MR. GUDINO HAS A CURRENTLY DIAGNOSED
21 MENTAL DISORDER WITHIN THE MEANING OF THE SVP LAW.

22 EVEN IF HE DID, THE EVIDENCE OF LIKELIHOOD OF
23 REOFFENSE, PETITIONER MUST PROVE BEYOND A REASONABLE DOUBT
24 THAT HE IS LIKELY TO ENGAGE IN SEXUALLY VIOLENT CRIMES THAT
25 ARE PREDATORY IN NATURE AND THAT THERE IS A SUBSTANTIAL
26 DANGER OF SERIOUS OR WELL-FOUNDED RISK OF SUCH REOFFENSE.
27 THE EVIDENCE OF THAT IS JUST LACKING.

28 I AM NOT MINIMIZING THE SERIOUSNESS OF THE

1 OFFENSES MR. GUDINO COMMITTED AS BOTH A JUVENILE AND AS AN
2 ADULT. THEY'RE HORRIBLE, HORRIBLE CRIMES. BUT THIS
3 DECISION HAS TO BE BASED ON THE CURRENT SITUATION, NOT THE
4 SITUATION AS IT WAS IN THE EARLY 1990'S. SINCE THAT TIME,
5 OVER 20 YEARS, THERE HAS NOT BEEN A SINGLE INCIDENT OF
6 MR. GUDINO ACTING OUT IN A SEXUALLY INAPPROPRIATE WAY,
7 WHETHER IT BE IN THE STATE PRISON SYSTEM, WHILE OUT ON
8 PAROLE, OR AT COALINGA STATE HOSPITAL.

9 THIS IS DESPITE A MYRIAD OF OPPORTUNITIES TO
10 DO SO. WHILE OUT ON PAROLE FOR A YEAR AND A HALF -- A
11 PERIOD I KNOW IS NOT IDEAL IN TERMS OF LENGTH IN WHICH TO
12 EVALUATE HIM, BUT IT'S NOT NOTHING, EITHER -- HE HELD DOWN A
13 JOB, HE INTERACTED WITH THE PUBLIC, HE SATISFIED HIS PAROLE
14 OFFICER AND WAS IN A SEEMINGLY NORMAL SEXUAL RELATIONSHIP
15 WITH AN AGE-APPROPRIATE FEMALE. WHAT ELSE DO YOU WANT THE
16 GUY TO DO TO DEMONSTRATE HE'S NOT LIKELY TO ACT OUT SEXUALLY
17 IN THE COMMUNITY?

18 IN THE COURT'S OPINION, EVEN IF THE ASPD
19 DIAGNOSIS WAS TO HAVE BEEN PROVED BEYOND A REASONABLE DOUBT,
20 WHICH IT WAS NOT, PRONG NUMBER TWO WOULD CERTAINLY NOT BE
21 SATISFIED. THE EVIDENCE AS TO PRONG NUMBER TWO IS
22 SUBSTANTIALLY WEAKER THAN IT WAS ON PRONG NUMBER ONE, AND I
23 JUST DON'T SEE HOW ANY REASONABLE PERSON EVALUATING THIS
24 EVIDENCE COULD FIND THAT THIS CASE WAS PROVED BEYOND A
25 REASONABLE DOUBT. IT JUST WASN'T.

26 IN THESE CIRCUMSTANCES, WITH THESE FACTS AND
27 THIS LAW AND THE BEYOND A REASONABLE DOUBT STANDARD, THE
28 RESPONDENT'S ENTITLED TO A VERDICT THE PETITION IS NOT TRUE.

1 HE IS ORDERED TO BE RELEASED.

2 MR. GUDINO, I WANT TO TELL YOU SOMETHING, AND
3 I WANT YOU TO HEAR ME VERY, VERY CLEARLY.

4 THE DEFENDANT: YES, SIR.

5 THE COURT: YOU'RE GOING TO BE GETTING OUT, BUT YOU
6 BETTER KNOW THAT THERE WILL BE ZERO TOLERANCE OF ANY KIND OF
7 MISCONDUCT BY YOU, IN PARTICULAR SEXUAL MISCONDUCT. THE
8 LAWS ON PUNISHMENT OF SEXUAL OFFENSES HAVE GOTTEN A LOT
9 TOUGHER SINCE 1993. IF YOU DO ANYTHING LIKE THAT AGAIN OR
10 EVEN SOMETHING LESS SERIOUS THAN THAT OF A SEXUAL NATURE,
11 YOU ARE LOOKING AT LIFE IMPRISONMENT.

12 THE DEFENDANT: YES, SIR.

13 THE COURT: LIFE. DON'T DO IT, MR. GUDINO.

14 THE DEFENDANT: NO, SIR.

15 THE COURT: I STRONGLY URGE YOU TO GET AHOLD OF YOUR
16 DRUG PROBLEM AS SOON AS POSSIBLE, LIKE RIGHT AWAY, LIKE
17 FIRST THING THAT YOU DO. THIS IS A REAL ISSUE. YOU DO NOT
18 WANT TO LOSE CONTROL OF YOUR LIFE ON THE OUTSIDE, END UP
19 BACK IN PRISON FOR A VERY, VERY LONG TIME OR SPEND THE REST
20 OF YOUR LIFE IN PRISON BECAUSE YOU DO SOMETHING STUPID WHILE
21 YOU'RE ON DRUGS.

22 THE DEFENDANT: NO, SIR.

23 THE COURT: A WORD TO THE WISE. I HOPE YOU ARE
24 HEARING ME CLEARLY. GET YOURSELF INTO A DRUG PROGRAM. I
25 KNOW YOU WANT TO BE OUT THERE FREE IN THE COMMUNITY. WHAT
26 YOU REALLY NEED IS TO BE IN A RESIDENTIAL DRUG PROGRAM OF AT
27 LEAST SIX MONTHS, PROBABLY A YEAR. THERE ARE SOME GOOD ONES
28 OUT THERE. YOU HAVE COMMUNITY SUPPORT. YOU HAVE FAMILY

1 SUPPORT. YOU HAVE THE MONEY.

2 I STRONGLY URGE YOU TO GET YOURSELF INTO A
3 DRUG PROGRAM BECAUSE THE SUREST WAY TO MAKE SURE YOU
4 MAINTAIN CONTROL OVER ANY INAPPROPRIATE URGES YOU MIGHT HAVE
5 IS TO FACE AND DEAL WITH YOUR DRUG PROBLEM BECAUSE YOU KNOW
6 YOU HAVE A DRUG PROBLEM, I KNOW YOU HAVE IT, EVERYBODY IN
7 HERE KNOWS YOU HAVE IT, HOPEFULLY INCLUDING YOUR FAMILY.
8 YOU'VE GOT TO DEAL WITH IT OR YOU'RE GOING TO END UP GOING
9 TO PRISON FOR THE REST OF YOUR LIFE.

10 IF YOU REMAIN ON DRUGS YOU ARE GOING TO GET
11 YOURSELF INTO TROUBLE, EVEN IF IT'S NOT SEXUAL. YOU'RE
12 GOING TO BE FIGHTING, ASSAULTING SOMEONE, STEALING, OR
13 WHATEVER, AND YOU'RE GOING TO END UP BACK IN PRISON. LISTEN
14 TO ME. LISTEN TO WHAT I'M SAYING TO YOU. I CAN'T ORDER YOU
15 TO GET INTO A DRUG PROGRAM, BUT YOU WOULD BE VERY, VERY WISE
16 TO ATTACK THIS PROBLEM RIGHT AWAY AS SOON AS YOU GET OUT.
17 CONSIDER YOURSELF WARNED.

18 THE DEFENDANT: YES, SIR.

19 THE COURT: THAT CONCLUDES THE MATTER.

20 MR. GROBESON: EXCUSE ME, YOUR HONOR. I APPRECIATE
21 THE COURT'S EXPLANATION OF ITS REASONS.

22 THE COURT SUMMARILY STATED HE IS TO BE
23 RELEASED. MR. GUDINO HAS A PENDING CASE FOR HIS POSSESSION
24 OF DRUGS AT COALINGA STATE HOSPITAL. I TRUST THE COURT'S
25 ORDER IS LIMITED TO THE CONFINES OF THIS CASE ONLY.

26 THE COURT: IT IS.

27 MR. GROBESON: I JUST WANTED TO MAKE THAT CLEAR ON
28 THE RECORD.

1 THE COURT: YES. THANK YOU.

2 IT IS LIMITED TO THIS CASE. IF HE HAS OTHER
3 PENDING CRIMINAL MATTERS UPON WHICH BAIL HAS BEEN SET OR
4 THERE ARE OTHER RESTRICTIONS BEING PLACED ON HIS LIBERTY,
5 THEN OF COURSE MY RULING HERE HAS NOTHING TO DO WITH THOSE,
6 BUT AS TO THIS CASE ONLY HE IS ORDERED RELEASED.

7 MR. NICOLAYSEN: YOUR HONOR, I WOULD ASK THAT A
8 RELEASE ORDER BE ISSUED, AND THEN AFTER HE GETS BACK TO
9 COALINGA IF THERE'S A HOLD, OF COURSE THAT WILL BE HONORED.
10 THERE MAY OR MAY NOT BE. I'M NOT SURE.

11 THE COURT: I DON'T KNOW. THAT CASE IS NOT BEFORE
12 ME. I DON'T HAVE ANY PAPERWORK ON THAT. I DON'T KNOW WHAT
13 THAT SITUATION IS.

14 MR. GROBESON, IF YOU ARE AWARE THAT THERE IS
15 SOME HOLD, I WOULD ADVISE YOU TO ALERT THE FOLKS AT COALINGA
16 THAT HE NEEDS TO BE RETURNED TO -- AND LAW ENFORCEMENT, AS
17 WELL, TO TAKE CUSTODY OF HIM SO HE DOESN'T HIT THE STREET IF
18 THERE'S A WARRANT OUT FOR HIM. BUT ALL I CAN DO IS MAKE
19 ORDERS AS TO THIS PARTICULAR CASE.

20 MR. NICOLAYSEN: BUT WILL THIS RULING STATE HE IS TO
21 BE RELEASED?

22 THE COURT: I BELIEVE HE GOES BACK, AND HE'S RELEASED
23 FROM THERE.

24 MR. NICOLAYSEN: THAT'S RIGHT. BUT IT WILL NEED TO
25 STATE FROM THIS COURT HE IS TO BE RELEASED.

26 THE COURT: AS TO THIS CASE ONLY, YES.

27 MR. NICOLAYSEN: CORRECT.

28 THE COURT: YES.

1 MR. NICOLAYSEN: THANK YOU VERY MUCH.

2 THE COURT: AND IT WILL SO STATE.

3 MR. NICOLAYSEN: THANK YOU AGAIN FOR THE COURT'S
4 TIME.

5 THE COURT: THANK YOU.

6 THE DEFENDANT: THANK YOU, YOUR HONOR.

7 (PROCEEDINGS CONCLUDED.)

8 ---000---

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NW-N

HON. THOMAS RUBINSON, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF,)
)
 VS.)
)
 MARCO GUDINO,)
)
 DEFENDANT.)

NO. ZM011112

REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA)
) SS
 COUNTY OF LOS ANGELES)

I, LUANN MCKENZIE, OFFICIAL REPORTER OF THE
 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF
 LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1
 THROUGH 25 COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF
 THE PROCEEDINGS TAKEN IN THE MATTER OF THE ABOVE-ENTITLED
 CAUSE ON JUNE 12, 2015.

DATED THIS 13TH DAY OF AUGUST, 2015.

----- CSR 5567
 OFFICIAL REPORTER