No. _____

In the Supreme Court of the United States

EDGAR SANDOVAL CATARINO, PETITIONER

v.

STATE OF CALIFORNIA, RESPONDENT

On Petition for a Writ Of Certiorari to
The Supreme Court of California,

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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Appendix A

Decision of the California Supreme Court,
***People v. Catarino*, S271828 (May 25, 2023)**

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,
Plaintiff and Respondent,
v.
EDGAR SANDOVAL CATARINO,
Defendant and Appellant.

S271828

Fourth Appellate District, Division One
D078832

Santa Clara County Superior Court
C1635441

May 25, 2023

Justice Liu authored the opinion of the Court, in which Chief Justice Guerrero and Justices Corrigan, Kruger, Groban, Jenkins, and Evans concurred.

PEOPLE v. CATARINO

S271828

Opinion of the Court by Liu, J.

Penal Code section 667.6, subdivision (d) requires a sentencing court to impose "full, separate, and consecutive term[s]" for certain sex crimes if it finds that the offenses were committed "on separate occasions." (Pen. Code, § 667.6, subd. (d) (section 667.6(d)); all undesignated statutory references are to this code.) Defendant Edgar Sandoval Catarino was convicted of six counts of forcible lewd acts on a child under the age of fourteen and one lesser included offense of attempt. At sentencing, the court found that Catarino's seven counts of conviction occurred on seven separate occasions and sentenced him to full, consecutive terms for each under section 667.6(d).

In *Apprendi v. New Jersey* (2000) 530 U.S. 466 (*Apprendi*), the United States Supreme Court held under the Sixth Amendment to the federal Constitution that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Apprendi,* at p. 490.) Under *Alleyne v. United States* (2013) 570 U.S. 99 (*Alleyne*), this rule applies "with equal force to facts increasing the mandatory minimum" because an increase in the minimum term heightens "the prescribed range of sentences to which a criminal defendant is exposed." (*Id.* at p. 112.) But in *Oregon v. Ice* (2008) 555 U.S. 160 (*Ice*), the high court said the *Apprendi* rule does not apply to facts deemed necessary to the

imposition of consecutive as opposed to concurrent sentences, "a sentencing function in which the jury traditionally played no part." (*Id.* at p. 163.)

The question here is whether section 667.6(d), in requiring that a sentencing court impose "full, separate, and consecutive term[s]" for certain sex crimes if it finds certain facts, complies with the Sixth Amendment. We hold that it does: the rule of *Apprendi* and *Alleyne* does not apply to section 667.6(d) under the rationale of *Ice*.

I.

Catarino was charged in November 2017 with eight counts of forcible lewd acts on a child under the age of fourteen. The charging instrument alleged that he sexually abused his cousin Doe, who was nine years old at the time, over a period from June 2015 to March 2016. Each count alleged an identical range of dates during which the offense's conduct might have occurred. Catarino was convicted on six of the counts, convicted of the lesser included offense of attempt on the seventh count, and acquitted of the final count. The verdict included the same range of dates alleged on each count and did not further specify when the crimes occurred.

The prosecutor's sentencing memorandum argued that the court should find that the seven counts of conviction were all committed on "separate occasions," which would require the imposition of full-term consecutive sentencing on each count under section 667.6(d). According to the prosecutor, Doe's testimony at trial showed that at least five of the counts conclusively occurred on separate occasions and that the evidence would support a finding that the remaining counts also happened at separate times. Catarino argued that the jury

verdict did not "provide enough information to determine" which convictions constituted "separate incidents" because the jury "did not make any specific findings regarding each count." In his view, "the mere fact that the jury found [him] guilty on seven counts does not establish that they each occurred on separate occasions," and making a "separate occasions" finding based on evidence beyond the verdict would violate his rights under the Sixth Amendment.

At sentencing, the court found that Doe had testified to seven separate acts of sexual abuse. Based on this testimony and the court's instruction to the jury that it was required to " 'consider each count separately and return a separate verdict for each one,' " the court found that Catarino's seven counts of conviction corresponded to "seven separate incidents pursuant to . . . section 667.6(d)." In line with this finding, the court sentenced Catarino to full, consecutive terms on each count. It imposed the middle term of eight years on his first count and the lower term of five years on each of counts two through six. On count seven, the attempt count, it imposed a term of two and a half years, the lowest available for that charge.

Catarino appealed, arguing that sentencing him under section 667.6(d) "without having submitted to the jury the question of whether each of [his] offenses was committed on a 'separate occasion' denied [him] his Sixth Amendment right to a jury trial" under *Apprendi* and *Alleyne*. He argued that because the separate occasions finding required that his second through seventh counts "carry a full term, rather than the term that would otherwise apply under" the determinate sentencing law, it increased the minimum term for each of those offenses.

The Court of Appeal, citing *Ice*, held that the rule of *Apprendi* and *Alleyne* "do[es] not apply to the court's determination of whether to impose consecutive sentences for convictions of *multiple* criminal offenses." (*People v. Catarino* (Oct. 14, 2021, D078832) [nonpub. opn.].) It also held that on the attempt count, Catarino was erroneously sentenced under section 667.6(d), which does not apply to attempted sex offenses, and it remanded for resentencing. As a result, we do not address Catarino's attempt conviction.

We granted review to decide whether section 667.6(d) complies with the Sixth Amendment. Since our grant of review, a split of authority has emerged on this question. (Compare *People v. Wandrey* (2022) 80 Cal.App.5th 962, 978–980 [§ 667.6(d) complies with the 6th Amend. under *Ice*] with *People v. Johnson* (2023) 88 Cal.App.5th 487, 502–505 (*Johnson*) [§ 667.6(d) violates the 6th Amend.].)

II.

We begin with an explanation of the sentencing scheme here. Many sections of the Penal Code that describe a criminal offense establish three options for determinate sentences for the offense: a lower, middle, and upper term. Section 288, subdivision (b)(1), which defines Catarino's offense of forcible lewd or lascivious acts against a child under the age of fourteen, states that a person who commits that crime "shall be punished by imprisonment in the state prison for 5, 8, or 10 years."

"When a person is convicted of two or more crimes," California law generally requires a court to determine "whether the terms of imprisonment . . . shall run concurrently or consecutively." (§ 669, subd. (a).) As relevant here, several statutes affect how a court imposes concurrent or consecutive

sentences. Under section 1170.1, which is part of the determinate sentencing law, a court imposing determinate, consecutive sentences for two or more felonies is required to impose an "aggregate term of imprisonment for all these convictions," which is the sum of the "principal term," the "subordinate term[s]," and any enhancements. (*Id.*, subd. (a).) The principal term "shall consist of the greatest term of imprisonment imposed by the court for any of the crimes." (*Ibid.*) The subordinate terms "shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed," plus one-third of any applicable enhancements. (*Ibid.*)

Section 1170.1 governs most determinate sentencing. For certain sex offenses, however, the Penal Code establishes two alternative sentencing frameworks. First, under section 667.6, subdivision (c) (section 667.6(c)), "a full, separate, and consecutive term may be imposed for each violation of an offense specified in subdivision (e) if the crimes involve the same victim on the same occasion." This is "[i]n lieu of the term provided in Section 1170.1." (*Ibid.*) Section 667.6(c) is not challenged here. Second, under section 667.6(d), if the sentencing court finds that multiple sex offenses carrying determinate terms involved separate victims or were committed on separate occasions, "[a] full, separate, and consecutive term shall be imposed for each violation," and the terms "shall not be included in any determination pursuant to Section 1170.1." (§ 667.6, subds. (d)(1), (3).) These provisions apply to many sex crimes, including Catarino's. (§ 667.6, subd. (e).)

The statute prescribing the lower, middle, and upper terms for six of Catarino's seven counts of conviction set them at

five, eight, and ten years, respectively. (§ 288, subd. (b)(1).) When Catarino was sentenced in November 2018, the determinate sentencing law gave courts discretion to impose the lower, middle, or upper sentence for a defendant's principal term; that part of the law has since been amended in ways not relevant here. (§ 1170, former subd. (b).) If Catarino had been sentenced under the determinate sentencing law instead of section 667.6(d), the court could have imposed five, eight, or ten years on one of his counts of conviction, i.e., the principal term. If the court then imposed consecutive sentences for his other offenses, it would have been limited to imposing one-third of the middle term on each of the other counts, i.e., the subordinate terms. For each of the non-attempt counts, this would have been two years and eight months, which is one-third of the eight-year middle term for his offense listed in section 288, subdivision (b)(1). Alternatively, the court could have opted to impose the sentences concurrently.

The parties dispute whether the trial court could have sentenced Catarino under section 667.6(c) on the basis of the jury verdict. If the court had sentenced Catarino under section 667.6(c), the range of sentences available for Catarino's subordinate term offenses would not have been limited to one-third of the middle term described in section 1170.1. Instead, the court would have had the discretion to impose the full five, eight, or ten years for each of the non-attempt subordinate terms instead of two years and eight months. The court would also retain discretion to run the terms concurrently.

A finding under section 667.6(d) that the crimes involved separate victims or occurred on separate occasions eliminates the court's discretion. Instead, "[a] full, separate, and consecutive term *shall* be imposed for each violation . . . ."

(§ 667.6(d)(1), italics added.) A court that makes a section 667.6(d) finding cannot impose one-third of the middle term for the defendant's subordinate term as prescribed by section 1170.1, nor can the court run the terms concurrently. It must impose a full-term sentence for each offense it finds to have involved a different victim or to have been committed on a separate occasion. In Catarino's case, this means the lowest term the sentencing court could impose for each of his non-attempt subordinate terms was five years as opposed to the term of two years and eight months that would have been available if he had been sentenced under either the determinate sentencing law or section 667.6(c).

In sum, if Catarino had been sentenced under section 667.6(c) or the determinate sentencing law, the court would have had the option to impose the terms for his offenses concurrently or consecutively. If it decided to impose consecutive sentences on his subordinate terms, the lowest term it could have imposed for each of his non-attempt offenses would have been two years and eight months. Instead, because the court sentenced him under section 667.6(d), it was required to impose consecutive terms, and the lowest sentence it could impose for each of his non-attempt subordinate terms was five years. The predicate finding that enables such sentencing under section 667.6(d) is made by "the sentencing judge." (Cal. Rules of Court, rule 4.426(a).) Catarino argues that this scheme violates *Apprendi*.

III.

The Sixth Amendment protects the right of a criminal defendant to a trial by jury, and under the Fourteenth Amendment, this protection applies in state criminal

proceedings. (*Ramos v. Louisiana* (2020) 590 U.S. __, __ [140 S.Ct. 1390, 1395–1397].) Among the specific protections included in the jury trial guarantee are the right to have every element of the crime found by a jury (*United States v. Gaudin* (1995) 515 U.S. 506, 511) and the right to have the jury make those findings beyond a reasonable doubt (*In re Winship* (1970) 397 U.S. 358, 364). In *Apprendi*, the high court explained that the existence of these rights does not turn on any distinction between elements of a crime and sentencing factors. (*Apprendi*, *supra*, 530 U.S. at p. 478.) While a court may properly exercise its discretion to impose any sentence within the statutory range for a defendant's offense once that range is determined by facts found by the jury, judicial factfinding that "exposes the criminal defendant to a penalty *exceeding* the maximum he would receive if punished according to the facts reflected in the jury verdict alone" violates the Sixth Amendment. (*Apprendi*, at p. 483.) Accordingly, the high court held: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Id.* at p. 490.)

In *Alleyne*, the high court applied the rule of *Apprendi* to facts that increase the minimum term to which the defendant is exposed. "[B]ecause the legally prescribed [sentencing] range *is* the penalty affixed to the crime [citation], it follows that a fact increasing either end of the range produces a new penalty . . . ." (*Alleyne*, *supra*, 570 U.S. at p. 112.) The court explained that "[i]t is impossible to dissociate the floor of a sentencing range from the penalty affixed to the crime" and that "facts increasing the legally prescribed floor *aggravate* the punishment" for the defendant's offense. (*Id.* at pp. 112, 113.) For purposes of *Apprendi*, "there is no basis in principle or logic to distinguish

facts that raise the maximum [sentence] from those that increase the minimum . . . ." (*Alleyne*, at p. 116.) Both must be "submitted to the jury and found beyond a reasonable doubt." (*Ibid.*)

As relevant here, " 'the Sixth Amendment's restriction on judge-found facts' is 'inapplicable' when a trial judge makes factual findings necessary to the imposition of consecutive terms." (*People v. Scott* (2015) 61 Cal.4th 363, 405, quoting *Ice*, *supra*, 555 U.S. at p. 170.) In *Ice*, Oregon's sentencing scheme provided that "sentences shall run concurrently unless the judge finds statutorily described facts." (*Ice*, at p. 165.) The high court held that such judicial factfinding does not violate *Apprendi*. (*Ice*, at p. 164.) "The historical record demonstrates that the jury played no role in the decision to impose sentences consecutively or concurrently." (*Id.* at p. 168.) Instead, judges traditionally had "unfettered discretion" to decide "whether sentences for discrete offenses shall be served consecutively or concurrently." (*Id.* at p. 163.) Thus, the high court reasoned, the "core concerns" underlying *Apprendi* — "encroachment . . . by the judge upon facts historically found by the jury" and "threat to the jury's domain as a bulwark at trial between the State and the accused" — are not implicated by "legislative reforms regarding the imposition of multiple sentences." (*Ice*, at p. 169.) States may, consistent with the Sixth Amendment, enact legislation to "constrain judges' discretion by requiring them to find certain facts before imposing consecutive, rather than concurrent, sentences." (*Id.* at p. 164.)

Catarino does not dispute that *Ice* applies, at least in part, to section 667.6(d). Instead, he argues that section 667.6(d) has "two distinct consequences": first, it requires that each term imposed be a full term instead of one-third of the middle term

as authorized by section 1170.1; second, it requires that each term be imposed consecutively. The latter, he asserts, is controlled by *Ice*, while the former is not. We conclude that although the high court in *Ice* was confronted with a statutory regime that only addressed concurrent versus consecutive sentencing, its rationale is equally applicable to section 667.6(d).

As noted, if Catarino had been sentenced under the determinate sentencing law or under section 667.6(c), the trial court could have imposed concurrent sentences or partial consecutive sentences on Catarino's seven counts of conviction, i.e., a full term on one principal count and partial terms on six subordinate counts. Section 667.6(d), by contrast, requires full-term consecutive sentencing upon a finding that "the crimes involve separate victims or involve the same victim on separate occasions." Like the statutes in *Ice*, section 667.6(d) is a "specification of the regime for administering multiple sentences," which "has long been considered the prerogative of state legislatures." (*Ice*, *supra*, 555 U.S. at p. 168.) Section 667.6(d) applies only when a defendant "has been tried and convicted of multiple offenses, each involving discrete sentencing prescriptions"; it governs how these sentences run relative to each other, a "sentencing function in which the jury traditionally played no part." (*Ice*, at p. 163.) This is distinct from the *Apprendi* line of cases, which concerns "sentencing for a discrete crime, not . . . for multiple offenses different in character or committed at different times." (*Ice*, at p. 167.) Had Catarino been convicted of only one offense, section 667.6(d) would have had no effect on the sentencing options authorized by the jury's verdict. It is only because he was convicted by a jury of multiple offenses that section 667.6(d) applies to inform

how each offense's authorized sentence runs relative to each other.

Section 667.6(d)'s requirement of "full" consecutive terms is also not a "discrete sentencing prescription[]" within the meaning of *Apprendi*. (*Ice*, *supra*, 555 U.S. at p. 163.) Section 667.6(d) does not change what is a "full" term or otherwise define the sentence for any particular offense. In this regard, it differs from the statute at issue in *Alleyne*, which provided that a defendant using or carrying a firearm must " 'be sentenced to a term of imprisonment of not less than 5 years,' " but if the firearm was brandished, the sentence must be " 'not less than 7 years.' " (*Alleyne*, *supra*, 570 U.S. at pp. 103, 104, quoting 18 U.S.C. § 924(c)(1)(A)(i)–(ii).) Rather than set or change the term authorized on an individual count as the statute in *Alleyne* did, section 667.6(d) requires that the term *already authorized* (§ 288, subd. (b)(1)) be meted out as a full term. Under the high court's reasoning in *Ice*, section 667.6(d) does not define or alter the term for any particular offense in a manner that invades the historical province of the jury.

Catarino contends that section 667.6(d) "has the effect" of raising the term on each subordinate count from two years and eight months to five years in a manner implicating *Apprendi*. The Court of Appeal in *Johnson* took a similar view, reasoning that a finding under section 667.6(d) "increases the 'floor' of the range [of sentences] from two years eight months to five years." (*Johnson*, *supra*, 88 Cal.App.5th at p. 504.) But the lowest term set by section 288, subdivision (b)(1) — before any aggregation — is five years, not two years and eight months. The jury's verdict thus authorized at least a five-year sentence for each violation of this section.

In arguing otherwise, Catarino and the *Johnson* court erroneously import the term of two years and eight months authorized by section 1170.1 into the analysis of section 667.6(d)'s constitutionality. Section 1170.1, like section 667.6(d), is a "specification of the regime for administering multiple sentences." (*Ice*, *supra*, 555 U.S. at p. 168.) The high court in *Ice* explained that historically "a judge's imposition of consecutive, rather than concurrent, sentences was the prevailing practice" and that state statutes making concurrent sentencing the rule and consecutive sentencing the exception represent "modern . . . statutory protections meant to temper the harshness of the historical practice." (*Id.* at p. 169.) Here, section 1170.1 limits judges' discretion by generally requiring them to impose partial-term consecutive sentences instead of full-term consecutive sentences. Section 667.6(d) then departs from this general rule for certain enumerated sex offenses by requiring full-term consecutive sentences if the offenses "involve separate victims or involve the same victim on separate occasions." A state could, consistent with the Sixth Amendment, require full-term consecutive sentencing in all cases. By conditioning the imposition of such consecutive sentences on "certain predicate factfindings" (*Ice*, at p. 164), section 667.6(d) may be understood "to temper the harshness" of a historically authorized practice (*Ice*, at p. 169).

Just as it "would make scant sense" to "hem in States by holding that they may not . . . choose to make concurrent sentences the rule, and consecutive sentences the exception" (*Ice*, *supra*, 555 U.S. at p. 171), it would make little sense to forbid California from making partial-term consecutive sentences the rule and full-term consecutive sentences the exception. Viewed in that light, section 1170.1's authorization

of a lower term does not affect our analysis of section 667.6(d). Both rules are permissible under *Ice*, and the Legislature's adoption of one does not render the other unconstitutional. We disapprove of *People v. Johnson*, *supra*, 88 Cal.App.5th 487 to the extent it holds otherwise.

The "scope of the constitutional jury right must be informed by the historical role of the jury at common law," so it is "no answer" that Catarino was " ' "*entitled*" ' " to sentencing under section 1170.1 absent operation of section 667.6(d). (*Ice*, *supra*, 555 U.S. at p. 170.) The Sixth Amendment right does not "attach[] to every contemporary state-law 'entitlement' to predicate findings." (*Ice*, at p. 170.) Because there is "no erosion of the jury's traditional role" here, "*Apprendi*'s core concern is inapplicable" and "so too is the Sixth Amendment's restriction on judge-found facts." (*Ibid.*)

CONCLUSION

Because section 667.6(d) falls within the rationale of *Ice*, its operation does not violate the rule of *Apprendi* and *Alleyne*. We affirm the judgment of the Court of Appeal.

LIU, J.

We Concur:

GUERRERO, C. J.
CORRIGAN, J.
KRUGER, J.
GROBAN, J.
JENKINS, J.
EVANS, J.

Appendix B

Decision of the California Court of Appeal, Fourth Appellate District, Division One, *People v. Catarino*, D078832 (October 14, 2021)

Filed 10/14/21

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. EDGAR SANDOVAL CATARINO, Defendant and Appellant.	D078832 (Super. Ct. No. C1635441)

APPEAL from a judgment of the Superior Court of Santa Clara County, Cynthia A. Sevely, Judge. Affirmed and remanded for resentencing.

Ron Boyer, under appointment by the Court of Appeal, for Defendant and Appellant David Olvera.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Jeffrey M. Laurence, Assistant Attorney General, Donna M. Provenzano and Melissa A. Meth, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Edgar Sandoval Catarino of six counts of forcible lewd acts on a child under 14 and one count of attempted forcible lewd act on a

child under 14. The trial court sentenced Catarino to 35 years and six months in prison.

On appeal, Catarino argues the trial court prejudicially erred by allowing expert testimony on the statistical prevalence of false allegations of sexual abuse by children. He also asserts the court committed various errors in sentencing. Specifically, he contends (1) there was insufficient evidence to support the court's finding of separate instances of abuse requiring consecutive sentences under Penal Code section 667.6, subdivision (d);[1] (2) under the Sixth Amendment, that finding was required to be made by a jury, not the trial court; and (3) the court applied the wrong legal standard to its finding. Additionally, Catarino argues, and the Attorney General concedes, that the court erred by sentencing Catarino's attempt conviction under section 667.6, subdivision (d). We agree with the parties that the court erred by sentencing the attempt conviction under section 667.6, subdivision (d), but reject each of Catarino's other appellate contentions. Accordingly, we affirm the judgment and remand for resentencing.

FACTUAL AND PROCEDURAL BACKGROUND

On November 8, 2017 the Santa Clara County District Attorney charged Catarino with eight counts of forcible lewd acts on a child under 14. The information alleged that Catarino molested his nine-year old cousin, B. Doe, eight separate times between June 8, 2015 and March 9, 2016 in violation of section 288, subdivision (b)(1) (counts 1 through 8). The case was brought to trial the following year.

A. *The Prosecution's Case*

At trial, the prosecution called Doe, her younger sister, and her parents to testify about the molestation. Doe's mother, Angelica V., explained that

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1 Subsequent undesignated statutory references are to the Penal Code.

her husband is the brother of Catarino's mother and she is the sister of Catarino's father. The two families were extremely close before the molestation and the families lived next door to one another. When Doe was in fourth grade, she and her sister would go to the Catarino's house after school twice a week to be watched by Catarino's mother or his girlfriend, Laura D., while the girls' parents worked. In February 2016 of that year, when Angelica was about to drop her daughters at the Catarino home, Doe told Angelica that she did not want to go because Catarino would do naughty things to her.

After Doe told her mother about the abuse, Angelica and Doe's father, Pedro V., convened a meeting with Catarino and his family. Doe and her sister were not included but were being watched in the house by Laura in another room. At the meeting, Catarino denied the accusations made by Doe. Catarino's parents also did not believe Doe. Doe's parents left the meeting in anger. When Angelica and Pedro returned an hour later, Catarino was asking for Doe's forgiveness and he and his family were comforting her.

Thereafter, Doe's parents contacted the police and Doe was interviewed by Sugey Jaimez, a sheriff's office sergeant trained in child forensic interview techniques. The interview was recorded and played for the jury. Doe also testified at trial about the molestation. She told the jury that all of the incidents occurred in Catarino's bedroom. In describing the first incident, Doe stated that Catarino stood behind her, grabbed her by the waist, and put his hands under her clothing. Doe stated he touched her chest and her vagina under her clothes. Doe also testified that she could feel Catarino's penis on her buttocks. During her trial testimony and her interview with Jaimez, she stated that Catarino moved back and forth "like a worm." Doe stated she was scared and tried to push Catarino away.

After this first incident, there were other times Catarino stood behind Doe and moved in a way that she felt his penis. Doe testified that it happened more than twice. Doe also told Jaimez that Catarino would rub her vagina, which she called "pineapple," "like a hurricane" and "squish" it. Doe said that Catarino usually did not try to take off her underwear, but he would "dig in" to her vagina. He touched her vagina over her clothes more than once. Doe also testified that in a separate incident Catarino pulled her pants partway down her legs. She pulled them back up and he tried to pull them down again. In another separate incident, Catarino put his hand under Doe's shirt and touched her bra. He tried to "squish" her breasts.

During the interview with Jaimez and at trial, Doe stated that the last incident of abuse she remembered took place during a birthday party for Catarino's mother. It was late, and Doe went to lie down in Catarino's bedroom. When she woke up, Catarino was in the room. Catarino walked toward the bed and bit Doe on her upper chest. It hurt and left a mark. Doe testified that Catarino had bit her on the chest on two occasions. Angelica testified that she had once noticed a bite mark on Doe's chest, but at the time she did not know it was caused by Catarino.

In each of the different instances of abuse, Doe was scared and she tried to fight off Catarino. Catarino told Doe not to tell anyone about his actions or he would get her in trouble, and said he would not let her play video games on his PlayStation, something nine-year-old Doe cared about. Because of Catarino's threats, Doe was scared to tell her mother.

Dr. Blake Carmichael testified for the prosecution as an expert in Child Sexual Abuse Accommodation Syndrome (CSAAS). Dr. Carmichael was not familiar with the facts of this case and did not speak to any of the other witnesses. Dr. Carmichael described CSAAS as a group of concepts used to

educate people about sexual abuse, specifically the myths and misconceptions that many people hold about how a child should react to abuse perpetrated on them. In his testimony, Dr. Carmichael explained that there are five aspects to CSAAS: secrecy; helplessness; entrapment or accommodation; delayed, conflicted or unconvincing disclosure; and retraction.

Dr. Carmichael testified that secrecy relates to the dynamic of how sexual abuse occurs, typically in private by a person with whom the victim has an ongoing relationship. This dynamic often inhibits the child victim from reporting the abuse because he or she does not want to ruin the relationship (or related family or friend relationships) by causing the perpetrator to be in trouble. Dr. Carmichael next explained that helplessness describes the vulnerability a victim feels when the abuse is perpetrated by someone who should be protecting them. According to Dr. Carmichael, helplessness inhibits a victim from reporting.

Dr. Carmichael explained that entrapment and accommodation involve the coping mechanisms children employ to deal with abuse, including disassociating during the abuse, becoming fearful of the abuser, or counter-intuitively continuing to have loving and caring feelings for the abuser. The fourth aspect of CSAAS—delayed, conflicted, or unconvincing disclosure—relates to the fact that most child victims will not disclose the abuse right away, or the disclosure will occur incrementally. Similarly, a child victim's inability to accurately remember details or chronology can create a perceived inconsistency in their narratives. Dr. Carmichael explained that because of the way memory works, it is more common for a child to omit details of the abuse than make up events. During this portion of his testimony, Dr. Carmichael testified that several published studies of false allegations of child sexual abuse showed a range of two to five percent of allegations were

false. Finally, Dr. Carmichael explained the concept of retraction relates to the fact that children will sometimes deny earlier, truthful accounts of abuse.

B. *The Defense Case*

Catarino testified in his own defense. He stated he would wrestle with Doe and her younger sister, but categorically denied abusing Doe. Catarino testified he would help Doe play video games, with her sitting on his lap, and he told the jury he had on occasion spanked Doe when she misbehaved. He didn't recall his penis ever touching her or him touching her chest or vagina, but if it occurred it would have been accidental while they were playing. Catarino testified that he thought Doe was angry at him for scolding her about homework and that she made up the allegations to punish him.

Laura also took the stand. She testified that she had warned Catarino not to wrestle with Doe and her sister in the manner he did because the girls were too old for it, and she thought it was inappropriate. She also stated that Doe had complained once that Catarino had touched her chest. However, she had never seen Catarino act in a sexually inappropriate or violent way towards Doe or any other child. She had no recollection of Doe ever being angry at Catarino. Laura also testified that Doe was not fearful of Catarino and had interacted with him normally at two family gatherings after reporting the abuse to her mother. Finally, Laura testified that Doe had watched soap operas and other television shows with mature themes, including molestation.

The defense also called Catarino's father, Catarino's younger brother, Catarino's aunt (who was also Doe's aunt), two close friends, and Laura's mother, who all testified they had never seen Catarino acting inappropriately towards Doe or other children, and that Catarino was not the type of person who would molest a child. One friend testified that after the allegations were

made, she observed Doe interacting with Catarino at a family party and Doe hugged Catarino and did not seem scared of him. Catarino's father also testified that Doe did not seem scared of Catarino or to dislike him. Catarino's brother stated that he saw a slight change in Doe's demeanor after she told her mother about the abuse, in that she was more reserved and "trying to be normal."

C. *Conviction and Sentencing*

The jury found Catarino guilty on counts 1 through 6 of forcible lewd act on a child under age 14. On count 7, the jury found Catarino guilty of the lesser included offense of attempted forcible lewd act on a child under 14. The jury acquitted Catarino on the eighth count. Thereafter, the court sentenced Catarino to 35 years and six months in prison, consisting of the middle term of eight years on count 1, the lower term of five years on counts 2 through 6, and the lower term of two years and six months on count 7, with the full terms running consecutively pursuant to section 667.6, subdivision (d). Catarino timely appealed.

DISCUSSION

I

Catarino asserts the court prejudicially erred by allowing Dr. Carmichael to testify that published studies have shown false allegations of child molestation are rare. The Attorney General concedes admitting the testimony was error, but argues that it was not prejudicial.

A

Before trial, the prosecutor moved in limine to admit expert testimony concerning CSAAS. Catarino sought to limit CSAAS testimony to dispelling actual myths or misconceptions about child sexual abuse, and opposed any testimony or evidence related to statistics concerning false child sexual abuse

allegations. At the motions in limine hearing, the trial court ruled that expert testimony on CSAAS would be allowed but failed to rule on the question of statistics of false allegations.

During Dr. Carmichael's testimony, Catarino's counsel objected to his statement that "a number of research articles [have] shown somewhere between 40 and 60 percent of [victims] don't tell [about the abuse] within the first year" after it occurs. The objection led to a sidebar conversation and additional argument about whether Dr. Carmichael would be permitted to testify about research showing false allegations of abuse were uncommon. Catarino's counsel asserted that such testimony was impermissible because the expert would be substantiating the truthfulness of the testifying victim. The prosecutor responded that the testimony was permissible because it was not specific to the facts of the case. The court allowed the testimony and indicated it would provide a limiting instruction to the jury.

Dr. Carmichael then testified about three studies concerning the prevalence of false allegations of abuse. He stated he was familiar with a study from 2006 "of over 9,000 cases of child maltreatment" in which 1,000 of the incidents involved sexual abuse. Dr. Carmichael testified that of those 1,000 cases, none were found to involve false allegations by children, though some involved false allegations by parents. Dr. Carmichael then discussed two additional studies, one on "the eastern seaboard" and one from the Denver social services department, that had shown the rate of false allegations of abuse by children was between two and five percent.

In his rebuttal closing, the prosecutor referred to this testimony, stating "I want to talk about Dr. Carmichael briefly just because it was brought up just a moment ago, and [Catarino's counsel] mentioned Dr. Carmichael told you false accusations do occur. Sort of. He talked about

a study that had 9,000 cases and it was reported at zero percent. So I guess you could say there are false allegations. He did talk about that. It's a fact that they do exist, a percentage. I think the highest number he mentioned was five percent."

B

Prosecutors often elicit testimony concerning CSAAS in cases involving child sexual abuse. Such "expert testimony on the common reactions of child molestation victims is not admissible to prove that the complaining witness has in fact been sexually abused; it is[, however,] admissible to rehabilitate such witness's credibility when the defendant suggests that the child's conduct after the incident—e.g., a delay in reporting—is inconsistent with his or her testimony claiming molestation. [Citations.] 'Such expert testimony is needed to disabuse jurors of commonly held misconceptions about child sexual abuse, and to explain the emotional antecedents of abused children's seemingly self-impeaching behavior.' " (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300–1301.)

After the trial in this case, two courts of appeal held that expert testimony involving statistical evidence of false allegations is inadmissible at trial. (*People v. Julian* (2019) 34 Cal.App.5th 878, 887 (*Julian*); and *People v. Wilson* (2019) 33 Cal.App.5th 559, 570 (*Wilson*).) *Wilson*, which collected cases from around the country, observed "the clear weight of authority in our sister states, the federal courts, and the military courts finds such evidence inadmissible." (*Wilson,* at pp. 568–570.) Such testimony, *Wilson* concluded, has "the effect of telling the jury there was at least a 94 percent chance that any given child who claimed to have been sexually abused was telling the truth." (*Ibid.*) "In so doing, this testimony invade[s] the province of the jury, whose responsibility it is to 'draw the ultimate inferences from the

evidence.' " (*Ibid.*) We agree with this reasoning, and accept the Attorney General's concession that the admission of the testimony was error. (See also *People v. Collins* (1968) 68 Cal.2d 319, 327 ["the prosecution's introduction and use of mathematical probability statistics" constituted a "fundamental prejudicial error" because "it distracted the jury from its proper and requisite function of weighing the evidence on the issue of guilt" (*Collins*).)

Thus, the critical questions remaining are the appropriate standard of review and whether the error was prejudicial. We conclude that the error is not one of federal constitutional dimension, as Catarino contends. Rather, the error should be evaluated under the state law standard of *People v. Watson* (1956) 46 Cal.2d 818, 836. " 'The admission of evidence results in a due process violation only if it makes the trial fundamentally unfair. [Citation.] "Only if there are no permissible inferences the jury may draw from the evidence can its admission violate due process. Even then, the evidence must 'be of such quality as necessarily prevents a fair trial.' [Citation.] Only under such circumstances can it be inferred that the jury must have used the evidence for an improper purpose." ' " (*People v. Coneal* (2019) 41 Cal.App.5th 951, 972.) Catarino has not established that Dr. Carmichael's relatively brief testimony on the occurrence of false allegations rendered his trial fundamentally unfair.

Although the testimony supported a finding that Doe was a truthful witness, it is not the only inference the jury could have drawn. It is conceivable the jury may have inferred that false allegations occur, but are not well documented in the research, or that Dr. Carmichael was unaware of all research on the topic. The testimony also acknowledged that false accusations do occur. Thus, the prejudice standard governing errors of state law applies. (*Wilson, supra*, 33 Cal.App.5th at pp. 571–572.)

Further, "[i]n similar situations … our high court has applied" the *Watson* standard, "under which we reverse only if it is reasonably probable the defendant would have reached a more favorable result in the absence of the error." (*Wilson*, 33 Cal.App.5th at p. 571, citing *People v. Bledsoe* (1984) 36 Cal.3d 236, 251–252 [applying *Watson* standard where evidence of rape trauma syndrome erroneously admitted to prove victim was actually raped]; *Collins, supra*, 68 Cal.2d at pp. 331–332 [applying *Watson* standard where " 'trial by mathematics' so distorted the role of the jury"]; see also *People v. Prieto* (2003) 30 Cal.4th 226, 247 ["The erroneous admission of expert testimony only warrants reversal if 'it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' "].)

C

Under the *Watson* standard, we conclude the error was not prejudicial. Dr. Carmichael's testimony on the statistical evidence was limited, consisting of just two pages of transcript, and the prosecutor mentioned the evidence only briefly in his rebuttal closing argument. Critically, here, both the victim and the defendant testified extensively, allowing the jurors to directly assess their credibility. As the Attorney General points out, Doe had no motive to lie and every motive to keep the abuse secret and preserve the close family relationship between her immediate family and Catarino's family. Doe was generally very consistent in her descriptions of the incidents of molestation. She also used language appropriate to her young age and gave detailed accounts of Catarino's conduct.

In contrast, Catarino admitted he might have touched Doe inappropriately during their play and his girlfriend Laura stated she had seen this occur. Catarino's explanation that Doe was mistaken about his

contact with her did little to counteract her detailed description of the abuse. While Doe was confused by some of the questions asked by Catarino's counsel during cross-examination, she was clear that she understood the difference between a truth and a lie. Doe confirmed that the events she described occurred and were not false statements. Further, the jury was instructed on how to evaluate witness credibility and Dr. Carmichael explained he had not evaluated Doe or reviewed any of the evidence in this case.

This case can also be distinguished from *Julian*, in which the Court of Appeal determined that the trial court's admission of improper CSAAS evidence deprived the defendant of a fair trial. While *Julian* also involved a credibility dispute between a young victim and defendant, the *Julian* victim's testimony was less consistent than Doe's. Indeed, the prosecutor conceded in closing argument that the victim interviews with the investigator " 'were very different from her testimony' and there were 'some serious inconsistencies.' " (*Julian, supra*, 34 Cal.App.5th at p. 888, italics omitted.)

In addition, the defense counsel in *Julian* did not object to the evidence and instead cross-examined the expert on the statistical evidence, allowing the expert to use "that opportunity to repeatedly reassert his claim that statistics show children do not lie about being abused." (*Id.* at pp. 888–889.) Defense "counsel's questions about multiple studies only opened the door to a mountain of prejudicial statistical data that fortified the prosecutor's claim about a statistical certainty that defendants are guilty." (*Julian, supra*, 34 Cal.App.5th at p. 889.) Further, the prosecutor "asked the jury to rely on [the expert's] statistical evidence that 'children rarely falsify allegations of sexual abuse' " and "reminded jurors that [the expert] 'quoted a Canadian study for over 700 cases, not a single one where there was a false allegation.' " (*Ibid.*, italics omitted.) And defense counsel highlighted the "mountain" of

statistical evidence in his closing, directing the jurors' attention "once again, to the statistical study evidence right before they began their deliberations." (*Ibid*.) The error in *Julian*, which supported reversal on the grounds of ineffective assistance of counsel, was far more egregious than the one here.

On this record, we do not agree with Catarino that it is reasonably probable the jury would have returned a more favorable verdict absent the error. Accordingly, reversal on this ground is not warranted.

II

In several interrelated arguments, Catarino next contends the court improperly imposed consecutive sentences for the six convictions of forcible lewd act on a child under 14. He asserts (1) the Sixth Amendment required the finding of separate offenses to be made by a jury and not a judge, (2) insufficient evidence supported the trial court's finding that the offenses were committed on separate occasions, and (3) the trial court applied the wrong legal standard to find the offenses "separate." Catarino also argues that if we conclude his trial counsel did not preserve these issues for review, he was denied the effective assistance of counsel. As we shall explain, we reject these arguments and affirm the court's imposition of consecutive sentences on counts 1 through 6.

A

After the jury rendered its verdict, the prosecution filed a sentencing memorandum arguing consecutive sentencing was required under section 667.6, subdivision (d) because each of the charges of which the jury convicted Catarino occurred on separate occasions. The memorandum argued alternatively that the court should impose consecutive sentences under section 667.6, subdivision (c), which allows consecutive sentencing if the acts were perpetrated on the same occasion on one victim. Catarino filed a

memorandum in response, arguing there was an insufficient basis to impose consecutive sentences on more than four counts because the verdict forms did not identify which discrete acts constituted the offenses for which he was convicted. Catarino conceded Doe had described four separate instances of molestation during her testimony, but argued that three of seven sentences should be stayed under section 654.

At the sentencing hearing, the parties repeated the positions stated in their briefing. The trial court rejected Catarino's argument and imposed consecutive sentences for all seven convictions. The court found that "the victim testified that the defendant one, bit her chest more than one time; two, pressed his penis against her more than one time; three, touched the skin of her vaginal area, which she referred to as her pineapple; four, touched her vaginal area over the clothes more than one time; five, had her on his lap and moved like a worm one time; six, tried to take off her pants; and seven, put his hand under her shirt over her bra one time." In response to Catarino's argument that "the information and verdict forms do not provide enough on their face to determine which [discrete] acts constitute each offense," the court read aloud the jury instruction on unanimity, CALCRIM No. 3501[2], and noted that the jury was presumed to have followed the instruction. The

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2 The instruction stated: "The defendant is charged with LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS MENACE AND FEAR in Counts 1–8 sometime during the period of June 8, 2015 to March 9, 2016. [¶] The People have presented evidence of more than one act to prove that the defendant committed these offenses. You must not find the defendant guilty unless: [¶] 1. You all agree that the People have proved that the defendant committed at least one of these acts and you all agree on which act he committed for each offense; [¶] OR [¶] 2. You all agree that the People have proved that the defendant committed all the acts alleged to have occurred during this time period and have proved that the defendant committed at least the number of offenses charged."

court then stated, "the jury convicted the defendant of seven separate incidents pursuant to Penal Code section 667.6, [subdivision] (d)."

B

"Section 667.6, [subdivision (d)] requires consecutive terms for each violation of certain sex crimes (including [§ 288, subd. (a)]), 'if the crimes ... involve the same victim on separate occasions.' (§ 667.6, subd. (d).)" (*People v. King* (2010) 183 Cal.App.4th 1281, 1324 (*King*).) Under subdivision (c), the statute also authorizes the trial court to impose consecutive terms for convictions of the specified sex crimes "if the crimes involve the same victim on the same occasion." (§ 667.6, subd. (c).)

Section 667.6, subdivision (d) provides guidance for determining separate occasions: "In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions." (§ 667.6, subd. (d).) "A finding that the defendant committed the sex crimes on separate occasions 'does not require a change in location or an obvious break in the perpetrator's behavior.' (*People v. Jones* (2001) 25 Cal.4th 98, 104.)" (*King, supra*, 183 Cal.App.4th at p. 1325.)

"Once the trial court has found, under section 667.6, subdivision (d), that a defendant committed the sex crimes on separate occasions, we will reverse 'only if no reasonable trier of fact could have decided the defendant had a reasonable opportunity for reflection after completing an offense before

resuming his assaultive behavior.' " (*King, supra*, 183 Cal.App.4th at p. 1325.)

C

As an initial matter, Catarino contends that, because no jury made factual findings as to whether the offenses took place "on separate occasions," mandatory consecutive sentences are prohibited as a violation of his right to a jury trial. "However, the United States and California Supreme Courts have held that the decision whether to run individual sentences consecutively or concurrently does not implicate the Sixth Amendment right to jury trial. (*Oregon v. Ice* (2009) 555 U.S. 160, 162–165; *People v. Black* (2007) 41 Cal.4th 799, 820–823.)" (*King, supra*, 183 Cal.App.4th at p. 1324.)

No authority cited by Catarino calls this rule into question. Rather, the cases he relies upon, *Apprendi v. New Jersey* (2000) 530 U.S. 466 and *Alleyne v. United States* (2013) 570 U.S. 99, require a jury to determine factual questions that increase the punishment for a particular criminal offense. The rules announced in these cases do not apply to the court's determination of whether to impose consecutive sentences for convictions of *multiple* criminal offenses. (See *Oregon v. Ice* (2009) 555 U.S. 160, 168 [The "twin considerations—historical practice and respect for state sovereignty—counsel against extending *Apprendi*'s rule to the imposition of sentences for discrete crimes. The decision to impose sentences consecutively is not within the jury function that 'extends down centuries into the common law.' [Citation.] Instead, specification of the regime for administering multiple sentences has long been considered the prerogative of state legislatures."].) Accordingly, we reject Catarino's Sixth Amendment claim.

Alternatively, Catarino argues insufficient evidence supported the court's determination that the crimes perpetrated against Doe occurred on

separate occasions as that term is used in section 667.6, subdivision (d). This assertion is belied by the record. As the Attorney General outlines in his brief, Doe testified to *at least* six instances of abuse: (1) Doe testified the first time the abuse occurred, Catarino stood behind her so that she felt his penis, moved like a worm, and touched her vagina under her clothes; (2) Doe also stated Catarino stood behind Doe and pressed his body against her more than twice (showing a second and third separate instance that occurred standing); (3) Doe also described the instance that Catarino pulled her pants down as separate; (4) likewise, Doe described another separate incident in which Catarino called her into his room, made her sit on his lap, and grinded against her while he held her in place; (5) Doe described as a separate incident the final instance of abuse, which occurred the night of her aunt's birthday party; and (6) Doe testified that Catarino bit her chest twice, rubbed her vagina over her clothes more than once, and put his hand under her shirt and touched her bra.

This testimony was sufficient to support the trial court's determination that Catarino committed six separate acts in violation of section 288, subdivision (a), i.e. that he "had a reasonable opportunity to reflect upon his … actions and nevertheless resumed sexually assaultive behavior." (§ 667.6, subd. (d).) (See *People v. Garza* (2003) 107 Cal.App.4th 1081, 1092 ["[W]e may reverse only if *no reasonable trier of fact* could have decided the defendant had a reasonable opportunity for reflection after completing an offense before resuming his assaultive behavior."], italics added.)

Finally, we reject Catarino's contention that the trial court based its determination on an incorrect legal standard. The trial court's reference to the jury's six separate verdicts and the fact they were rendered after the court provided the jury with the unanimity instruction, does not show that

the court improperly relied only on the unanimity instruction in making its section 667.6, subdivision (d) findings. Rather, the trial court was provided with the applicable law before the sentencing hearing in briefing by both parties and in the sentencing report prepared by the probation department. Contrary to Catarino's assertion, the court's reference to the jury's separate, unanimous verdicts supported its determination of separate instances of abuse. The unanimity rule was not in conflict with such findings and Catarino has provided no reason to reject the presumption that the court knew the governing law. (See *People v. Braxton* (2004) 34 Cal.4th 798, 814 ["A trial court is presumed to know the governing law …."].)

III

Lastly, Catarino asserts the court erred by imposing a consecutive sentence on the attempt conviction. The Attorney General concedes the error, agreeing that remand for resentencing on count 7 is required. As both parties correctly point out, "[i]t is well established that the offenses enumerated within section 667.6 do not include attempted sex crimes." (*People v. Rodriguez* (2012) 207 Cal.App.4th 204, 217.)

"[W]hen a defendant is convicted of both violent sex offenses and crimes to which section 1170.1 applies, the sentences for the violent sex offenses must be calculated separately and then added to the terms for the other offenses as calculated under section 1170.1." (*People v. Pelayo* (1999) 69 Cal.App.4th 115, 124.) Thus, the matter must be remanded for the trial court to resentence Catarino in accordance with sections 1170.1 for count 7 and 667.6, subdivision (d) for counts 1 through 6.

DISPOSITION

The judgment is affirmed and the matter is remanded for the trial court to resentence Catarino in accordance with sections 1170.1 for count 7 and 667.6, subdivision (d) for counts 1 through 6.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

DO, J.

Appendix C

Order Denying Rehearing
California Court of Appeal,
Fourth Appellate District, Division One,
***People v. Catarino*, D078832 (October 19, 2021)**

Filed 10/19/21 P. v. Catarino CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. EDGAR SANDOVAL CATARINO, Defendant and Appellant.	D078832 (Super. Ct. No. C1635441) ORDER MODIFYING OPINION AND DENYING REHEARING NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on October 14, 2021, be modified as follows:

On page 1, at the end of the second paragraph, remove "David Olvera" so that it now reads as follows:

> Ron Boyer, under appointment by the Court of Appeal, for Defendant and Appellant.

There is no change in judgment.

The petition for rehearing is denied.

McCONNELL, P. J.

Copies to: All parties

Appendix D

Order Granting Review, issues limited,
California Supreme Court,
***People v. Catarino*, S271828 (January 19, 2022)**

Court of Appeal, Fourth Appellate District, Division One - No. D078832

S271828

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

EDGAR SANDOVAL CATARINO, Defendant and Appellant.

The request for judicial notice is granted.

The petition for review is granted. The issue to be briefed and argued is limited to the following: Does Penal Code section 667.6, subdivision (d), which requires that a "full, separate, and consecutive term" must be imposed for certain offenses if the sentencing court finds that the crimes "involve[d] the same victim on separate occasions," comply with the Sixth Amendment to the U.S. Constitution?

Cantil-Sakauye
Chief Justice

Corrigan
Associate Justice

Liu
Associate Justice

Kruger
Associate Justice

Groban
Associate Justice

Jenkins
Associate Justice

_____
Associate Justice

Appendix E

Motion to Limit the Use of Evidence to Dispel Myths; Motion to Exclude Introduction of Profile Evidence; Motion to Exclude Introduction of Statistical Evidence as to the Frequency of False Accusations; Motion to Exclude Hearsay under *Sanchez* (March 21, 2018)

LAW OFFICES OF THE PUBLIC DEFENDER
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. EDGAR CATARINO, Defendant	NO: C1635441 Motion to Limit the Use of Evidence to Dispel Myths; Motion to Exclude Introduction of Profile Evidence; Motion to Exclude Introduction of Statistical Evidence as to the Frequency of False Accusations; Motion to Exclude Hearsay under ***Sanchez***

1. It is anticipated that the prosecutor will introduce expert testimony to dispel alleged myths or misconceptions as to how child victims react to abuse.
   a. The defense requests a hearing outside the presence of the jury for the prosecution to specify the alleged myth, and a contested hearing as to whether or not it is actually a myth.
   b. The testimony be narrowly limited to only those items found by the court to actually be myths.
   c. The testimony to dispel a myth be limited to victims as a class.

2. The Defense moves that the prosecution not be allowed to introduce the equivalent of a profile of a victim of a molestation under the guise of dispelling numerous myths about victims of molest.
3. The Defense requests that testimony as to the percentage of false allegations of molestation be excluded.
4. The Defense requests that testimony regarding case specific out of court statements that are hearsay cannot be the basis for an expert's opinion unless they are properly established

I. USE OF EXPERT TESTIMONY TO DISPEL MYTHS

In ***People v. Bledsoe*** (1984) 36 Cal. 3d 236, 249, the California Supreme Court held that rape trauma syndrome was inadmissible to show a rape had actually occurred, but could be admissible to "disabuse[e] the jury of some widely held misconceptions about rape and rape trauma victims so that it may evaluate the evidence free of constraints of popular myths."

Subsequently, reviewing courts have held valid the use of expert testimony to dispel myths about child molest victims. However, the testimony is limited to victims as a class and not a particular alleged victim. ***People v. Roscoe*** (1985) 168 Cal. App.3rd 1093, 1098-1100; ***People v. Gray*** (1986) 187 Cal. App. 3rd 213, 218; ***People v. Coleman*** (1989) 48 Cal. 3d 112, 144. In addition, testimony not properly limited is excludable pursuant to Evidence Code section 352. (***Roscoe***, supra, at p.1100.)

II. LIMITS ON EVIDENCE TO DISPEL MYTHS

In ***People v. Bowker*** (1988) 203 Cal.App.3d 385, 394, the court considered whether or not the testimony of a child abuse accommodation syndrome expert fell within the Bledsoe exception permitting such a testimony for the narrow purpose "of disabusing the jury of misconceptions as to how child victims react to abuse." (*Id.*, at p. 392.) The court reaffirmed that: ***Bledsoe*** must be read to reject the use of CSAAS evidence as a predictor of child abuse," and found the expert's testimony had exceeded the ***Bledsoe*** exception holding that "at a minimum the evidence must be targeted to a specific 'myth' or misconception' suggested by the evidence." (*Id.*, at pp. 393-394.) The court further stated that , " In the typical criminal case, however, it is the People's burden to identify the myth or misconception the evidence is designed to rebut. Where there is no danger of jury confusion, there is simply no need for the

expert testimony." (*Id,*, at pp. 394.) In determining that the expert's testimony erroneously exceeded the permissible limits of the ***Bledsoe*** exception, the Bowker court found that the expert's testimony was tailored to fit the children in that particular case, asked for sympathy, asked that children be believed and by describing each aspect of CSAAS theory provided a scientific framework the jury could use to predict a molest occurred. The court ruled that this evidence should have been excluded. (*Id.*, at pp. 394-395.)

A. SYNONYMS ARE ALSO INADMISSIBLE

Some experts have used synonyms for the word "profile" in order to admit profile evidence of victims of child molestation. These synonyms should be excluded for the same reasons. The main synonym that is used is "patterns". This is a different word without a distinction to the jury. Both "profiles" and "patterns" should be excluded under the case of ***People v. Bledsoe***, supra. Patterns are not needed to dispel myths.

III. JURY INSTRUCTION

When testimony is introduced to dispel a myth, the jury must be instructed not to use that evidence to predict molestation has been committed.

"Beyond the tailoring of the evidence itself, the jury must be instructed simply and directly that the expert's testimony is not intended and should not be used to determine whether the victim's molestation claims are true. The jurors must understand that CSAAS research approaches the issue from a perspective opposite to that of the jury. CSAAS assumes molestation has occurred and seeks to describe and explain common reactions of children to the experience... The evidence is admissible solely for the purpose of showing that the victim's reactions as demonstrated by the evidence are not inconsistent with having been molested."

(*Bowker*, supra at p.394; ***People v. Housley*** (1992) 6 Cal.App. 4th 947, 958-959 [such instruction required sua sponte.]

IV. THE ADMISSIONS OF TESTIMONY ABOUT THE PERCENTAGE OF CHILD SEX ABUSE ALLEGATIONS THAT ARE FALSE WOULD VIOLATE MR. CATARINO'S CONSTITUTIONAL RIGHTS, INCLUDING HIS RIGHT TO THE PRESUMPTION OF INNOCENCE AND TO DUE PROCESS.

A. STUDIES REGARDING THE INCIDENCE OF FALSE ALLEGATIONS OF CHILD MOLEST ARE NOT RELEVANT EVIDENCE.

Only relevant evidence is admissible at trial. (Evidence Code section 350.) "Relevant evidence" means testimony or physical objects, including evidence bearing on the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evidence Code section 210; ***People v. Basuto*** (2001) 94 Cal.App.4th 370, 386. Evidence of so-called scientific studies on the incidence of false allegations of child molest do not constitute probative evidence as defined above. In the current case, the defense anticipates that the prosecution will seek to admit the allegedly low incidence of false allegations in order to prove that Mr. Catarino is guilty. Essentially, what the prosecutor would be asking the jury to do is find the defendant guilty because only a small percentage of child molest allegations are false. However, statistics proffered by the prosecution about other people do not have any tendency in reason to prove or disprove a disputed issue in the current case and should be excluded.

B. THE STUDIES REGARDING THE INCIDENCE OF FALSE ALLEGATIONS LACK ADEQUATE FOUNDATION.

It is anticipated that the prosecutor will offer the testimony of Blake Carmichael or Anthony Urquiza who will discuss various studies concerning the percentage of false allegations of child molest or who may discuss such percentage based upon children he has dealt with in his own practice. However, in either case, such evidence lacks an adequate foundation as there is no evidence of the methodology used in these studies from which an indicia of reliability can be drawn. (See ***State v. Parkinson*** (Idaho App. 1996) 909 P.2d 647, 654. ***State v. Parkinson***, supra, is instructive: "In an offer of proof, Dr. Chappius was asked by defense counsel for his opinion "as to the general incidence of fabrications with regard to sexual allegations made by minors." Dr. Chappius responded that in approximately twenty-five to thirty percent of the cases his office was involved in, the allegations were false. This opinion on the statistical incidence of false accusations of sexual abuse was based only on anecdotal information derived from Dr. Chappius's personal experience as a therapist in Sandy, Utah, and as a consultant to the Utah court system. Any potential inference of scientific reliability is belied by the very narrow information base and the lack of any scientific methodology underlying this estimate. Most importantly, Dr. Chappius stated that he based his determination of which allegations were false upon the outcome of court proceedings against the accused perpetrator. . . .The unreliability of Dr. Chappius's estimate is patent. . . . . Although Dr. Chappius also alluded to national research that estimated the range of false allegations to be between five and thirty percent of all sex abuse accusations, there was not evidence of the methodology used in those studies from which an indicia of reliability could be drawn, and the

very breadth of the range from five percent to thirty percent suggests a lack of accuracy and trustworthiness. The record is conspicuously lacking any explication of disciplined inquiry and methodology that would support Dr. Chappius's testimony on the incidence of false accusations of sexual abuse. The trial court correctly excluded this evidence for lack of adequate foundation under I.R.E. 702." (909 P.2d at pp. 653-654.)

Even if the expert does not opine on the credibility of the complaining witnesses in this case, his testimony would essentially inform jurors that there was a strong percent chance that the complaining witnesses were telling the truth. In *Myers*, 382 N.W.2d 91, the court found an abuse of discretion in the admission of testimony that it is "exceedingly rare: for children to lie about sexual abuse. (*Id.* at pp. 92-93.) The court rejected the state's argument that the testimony ' " was offered merely as an aid to the jury in understanding the issue of the truthfulness of children, *in general*, who claim to have been sexually abused.'" (*Id.* at p. 93.) "When viewed in light of the factual issues," the court concluded, "this contention is unrealistic. The credibility of the eight-year-old child was fighting issue between the parties . . . The prosecutor's obvious purpose in offering this expert testimony was to bolster the complainant's credibility." (*Ibid.*) The court held: "We believe the effect of the opinion testimony was to improperly suggest the complainant was telling the truth and, consequently, the defendant was guilty . . . [T]he opinion testimony crossed that 'fine but essential' line between an 'opinion which would be truly helpful to the jury and that which merely conveys a conclusion concerning defendant's legal guilt.'" (*Id.* at pp. 97-98.)

The admission of the testimony about the rate of false allegations would violate the defendant's federal and state constitutional rights. The admission of statistical evidence would violate a defendant's right to trial by jury, the right to a fair trial and the right to present a

defense under the 6th Amendment, and would also violate his due process rights under the 14th amendment.

V. *PEOPLE V. SANCHEZ* STATES THAT CASE SPECIFIC OUT OF COURT STATEMENTS THAT ARE HEARSAY CAN NOT BE THE BASIS FOR AN EXPERT'S OPINION UNLESS THEY ARE PROPERLY ESTABLISHED

The California State Supreme Court in ***People v. Sanchez*** (2016) 63 Cal.4th 665, held that case-specific statements related by a gang expert concerning the accused gang membership does constitute inadmissible hearsay because they are being offered for the truth of the matter asserted. Furthermore, hearsay statements that are testimonial trigger the "confrontation clause" under ***Crawford v. Washington*** (2004) 541 U.S. 36.

Marcos Sanchez was seen by officers running through a residence while concealing items in his waistband. When he was apprehended, officers located a handgun and a plastic baggie of narcotics on a tarp below a window that he had access to while fleeing from police. It was also alleged that Mr. Sanchez was a member of the "Delhi" street gang and the possession of the gun and drugs were for the benefit of the gang. During the trial, the prosecution had an officer testify as a gang expert about the "Delhi" street gang. The expert testified generally about the makeup and history of the gang, but then testified about specific police contacts with Mr. Sanchez. The expert relied on documents and reports from other officers who had various contacts with Mr. Sanchez and other associates of the Delhi street gang. The expert was then asked several hypothetical questions, was asked to assume similar fact and contacts to be true, and then gave an opinion that possessing a loaded firearm and drugs in those circumstances would be for the benefit of the gang.

In deciding whether an expert can still rely on hearsay evidence as a basis for their opinion, the *Sanchez* court found that the hearsay that experts rely on to form an opinion is ultimately being offered for the truth of the matter, not just as a "basis" for their opinion as was previously allowed. "Therefore, if an expert testifies to case-specific out-of-court statements to explain the bases for their opinion, those statements are necessarily considered by the jury for

their truth, thus rendering them hearsay. Like any other hearsay evidence, it must be properly admitted through an applicable hearsay exception." Furthermore, hearsay and confrontation problems cannot be avoided by giving a limiting instruction that the evidence should not be considered for its truth. (*Id.*)

The prosecution may attempt to rely on documents and reports in an effort to prove that Mr. Catarino is a person who is consistent with having molested Bethzy Doe. Since the prosecution is attempting to rely on expert testimony, the defense moves to exclude any hearsay evidence that is not properly established under any hearsay exceptions pursuant to ***Sanchez***.

March 5, 2018

Respectfully submitted,

Socorro Gonzalez
Deputy Public Defender

Appendix F

Excerpts of Reporter's Transcript Regarding Motion to Exclude Introduction of Statistical Evidence as to the Frequency of False Accusations (April 2, 2018)

false allegations of child molest, and Ms. Gonzalez had filed a brief entitled, "Motion to Limit the Use of Evidence to Dispel Myths," and we had several discussions off the record on this area, and we checked the record. Madam Court Reporter did not find any ruling from the Court. I looked at my ruling that I made because I wrote it out, and I specifically did not address that portion of Ms. Gonzalez's brief, starting on page 5 and 6. So that was my error.

So, Ms. Gonzalez, do you wish to add anything further on your brief? I thought I had ruled on it, but I didn't.

MS. GONZALEZ: So, Your Honor, basically -- I know I probably would be reiterating, but I think the *Myers* case, although it is out of state, I believe that decision does lend some guidance as to how this issue should be addressed. It's at 382 Northwest 2d, 91. In that case, the expert who testified didn't provide percentage of false allegations at a rate of false allegations. There, the Court found under the code section -- but, I think, it is very similar to our Evidence Code Section 720 as to the proper subject matter for an expert opinion, giving the rate or percentage regarding false allegations is not a proper subject area for expert opinion under Evidence Code Section 720. By providing that type of information, basically the expert would be substantiating or providing numbers as to why the person testifying in here, our complaining witness B[redacted], is telling the truth. It does create a potential for prejudice. It's misleading to the

jury, because the ultimate determination on credibility is within the realm of the jury, not an expert. So the effect of the expert's testimony --

(Reporter asks for clarification.)

MS. GONZALEZ: The expert's opinion testimony is the same as directly providing an opinion regarding the truthfulness of the victim. It properly suggests that the victim is telling the truth in this case.

THE COURT: Do you want to add anything?

MR. NICHOLS: Yes, Your Honor. Thank you. First, I'd request a point of clarification, because I understood the Defense objection was actually to Dr. Carmichael talking about statistics as it relates to delayed or unconvincing disclosure. To my recollection, Dr. Carmichael had not yet testified or had I asked him any questions about any false allegations of statistics. So if I could, Your Honor, I would initially ask for clarification as to the basis of the objection to Dr. Carmichael's testimony regarding statistics, period, whether or not they deal with false allegations.

THE COURT: I'm not sure --

MR. NICHOLS: Dr. Carmichael began to say 40 to 60 percent of children do not disclose within the first year.

THE COURT: Yes.

MR. NICHOLS: That's when an objection came up. That statement has nothing to do with false allegations or statistics relating to false allegations. I seek to

clarify what the basis for the objection was at that point.

MS. GONZALEZ: We're talking about unconvincing disclosures. My concern is that that would segue into the false allegations part. So as soon as I heard a percentage, Your Honor, I did object, and that shed light. Now we're having this more thorough discussion. If that's going to go into false allegations, I'm going to object. With regard to false allegations, I'm very specific in my moving papers.

THE COURT: So the delayed disclosures, you don't have an objection. You're more concerned about the false allegation percentages?

MS. GONZALEZ: Yes, but when we start about delayed disclosures, there is an argument that could be made that when a person is -- creates a scenario where an incident happened in the past, that creates the appearance of a delayed disclosure. So if we start getting into that area, I could see how that could lead to false allegations. That's my objection, Your Honor. So that's my concern, maybe not specifically, but my moving papers, it's with respect to false allegations. The reason why I objected when we started talking about delayed disclosure, that could easily get into false allegations and the appearance of a delay when, in fact, it's a false allegation.

MR. NICHOLS: Your Honor, I'm still seeking some clarification here. I don't understand if the Defense is objecting to any statistics being offered by this witness or simply statistics as it relate to false allegation.

MS. GONZALEZ: I'm talking about specifically, as I stated in my moving papers, false allegations. This area starts get into that with reference to these statistics, I'm going to continue to object.

MR. NICHOLS: Okay. Your Honor, I'm just trying to get that clarity. Defense counsel added a caveat a couple times she answered the question. I want to make sure I'm clear so I can tailor my response. I understand the Defense position is that there's no Defense objection to Dr. Carmichael testifying about statistics as it relates to things other than false allegations numbers. My question is, is that a correct understanding of the defense position.

MS. GONZALEZ: That's in my moving papers, yes, but if we start --

THE COURT: Counsel, it's a "Yes" or "No".

MS. GONZALEZ: Yes, that's what I'm objecting to, Your Honor.

THE COURT: The false allegations that is stated and briefed in my moving papers.

MR. NICHOLS: With that in mind, Your Honor, the *Myers* case is completely different. So the *Myers* case, first of all, is from 1986. Second of all, it's from Iowa. Third of all, it involved expert witness who was a school principal, not a psychologist or clinical psychologist. It involved an expert witness that had factual knowledge of that particular case of the victim in that case, of the facts of that case, of everything related to that specific

case, and the question that was posed to the school principal that was an expert witness in that *Myers* case was -- and I'm reading from the opinion -- "During the course of your investigation and your work with sexually abused children, have you formed an opinion as to whether or not children lie about these particular kinds of incidents?" Then the principal went on to give a very long answer about those statistically and his personal experience with -- or I should say their personal experience with working with children. A second expert witness was then asked -- who is a child abuse investigator who had interviewed the victim in that case and was called as a witness by the defendant -- was also asked, in essence, the exact same question: "Have you formed an opinion during the course of your investigations with regard to sexual abuse cases whether or not children in general tell the truth about these particular kinds of crimes?" That's not what Dr. Carmichael is going to testify about. I'm not going to ask him that question. He doesn't know any of the facts of this case. He doesn't know any of the witnesses or the victim in this case. Dr. Carmichael can testify, based on his professional base of knowledge, if you will, Your Honor, as to studies that have been conducted analyzing the number of false complaints or false allegations, studies that's have been conducted comparing the two. I'm personally aware that Dr. Carmichael is aware of several of those studies conducted in different states in different points in time and can

testify about his base of professional knowledge. Has nothing to do with the facts specific to this case or anything in any way similar to the *Myers* case the Defense is relying on.

I would note that the *Parkinson* case is also similar to the *Myers* case. It's from Idaho, 1996. A doctor was asked, an expert witness, as to his opinion as to the general incidents of fabrications with regard to sexual allegations made by minors. That's not what this witness is going to testify to, Your Honor, and he's been certified -- he's been approved by the Court as an expert witness in the area of Child Sexual Abuse Accommodation Syndrome. If there is a body of knowledge that this witness is aware of that is subsumed under that topic area that includes how often children may falsify these allegations, that is right for his expert testimony, as he indicated just a moment ago, for the purposes of educating this jury as to the CSAAS. For the reasons that this situation is entirely dissimilar from the two out-of-state cases, one of which is 20-some-odd years old and one of which is 30. We're -- it's apples and oranges, Your Honor. That's not where we are. It's doesn't apply to this particular situation, and if the Defense argument is predicated simply upon those two authorities that have been presented to the Court, I don't think either one of them carries.

THE COURT: Briefly.

MS. GONZALEZ: I'm going to reiterate Evidence

Code Section 720, Your Honor, and that is here in California. We're also dealing with -- yes, these cases are from the 1980s, but we're also dealing with an article from 1983. Any testimony regarding false allegations is outside the scope of his expertise what he's been qualified for. I'm not going to reiterate what I already said. I think it is really clear this is outside of the subject of an expert's opinion. I think it would also violate my client's right to fair trial and due process and the right to present a defense.

THE COURT: Matter submitted?

MR. NICHOLS: Yes.

MS. GONZALEZ: Yes.

THE COURT: So the Court does believe it is relevant under 352. The Court will allow the expert to go into this area. Again, there is a specific jury instruction that the Court gives regarding this expert, which the Court will give, and if there's additional language you feel is appropriate, you can discuss it for the jury. Let's get them back inside.

(Whereupon, the jury is present.)

THE COURT: The record should reflect the jury is present. The attorneys are present. The defendant is present. The Spanish language team is present. I apologize for the delay. I had to check on a prior ruling the Court had made. We had hearings for several days; so that's why it took a little bit of time.

Go ahead, Counsel.

Appendix G

Jury Verdict Forms (April 6, 2018)

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- EDGAR SANDOVAL CATARINO, Defendant.	INFORMATION NO. C1635441 VERDICT OF THE JURY

FILED
APR 06 2018
Clerk of the Court
Superior Court of CA, County of Santa Clara
BY _____ DEPUTY
T. OTWELL

VERDICT

COUNT 1 – PENAL CODE SECTION 288(b)(1) - FELONY

We, the Jury, find the defendant, EDGAR SANDOVAL CATARINO

Guilty of a Felony, a violation of California Penal Code
(GUILTY/NOT GUILTY)

section 288(b)(1), **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

JUROR # 5B
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

EDGAR SANDOVAL CATARINO,

Defendant.

INFORMATION NO. C1635441

VERDICT OF THE JURY

FILED

APR 06 2018

Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

T. OTWELL

VERDICT

COUNT 2 – PENAL CODE SECTION 288(b)(1) - FELONY

We, the Jury, find the defendant, EDGAR SANDOVAL CATARINO

Guilty of a Felony, a violation of California Penal Code
(GUILTY/NOT GUILTY)

section 288(b)(1), **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/06/18

JUROR # 8
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- EDGAR SANDOVAL CATARINO, Defendant.	INFORMATION NO. C1635441 VERDICT OF THE JURY

FILED
APR 06 2018
Clerk of the Court
Superior Court of CA, County of Santa Clara
BY _____ DEPUTY
T. OTWELL

VERDICT

COUNT 3 – PENAL CODE SECTION 288(b)(1) - FELONY

We, the Jury, find the defendant, EDGAR SANDOVAL CATARINO

Guilty of a Felony, a violation of California Penal Code
(GUILTY/NOT GUILTY)

section 288(b)(1), **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

JUROR # 8
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

EDGAR SANDOVAL CATARINO,

Defendant.

INFORMATION NO. C1635441

VERDICT OF THE JURY

FILED
APR 06 2018
Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
T. OTWELL

VERDICT

COUNT 4 – PENAL CODE SECTION 288(b)(1) - FELONY

We, the Jury, find the defendant, EDGAR SANDOVAL CATARINO

Guilty of a Felony, a violation of California Penal Code
(GUILTY/NOT GUILTY)

section 288(b)(1), **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

JUROR # 8
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- EDGAR SANDOVAL CATARINO, Defendant.	INFORMATION NO. C1635441 VERDICT OF THE JURY

FILED
APR 06 2018
Clerk of the Court
Superior Court of CA County of Santa Clara
DEPUTY
T. OTWELL

VERDICT

COUNT 5 – PENAL CODE SECTION 288(b)(1) - FELONY

We, the Jury, find the defendant, EDGAR SANDOVAL CATARINO

Guilty of a Felony, a violation of California Penal Code
(GUILTY/NOT GUILTY)

section 288(b)(1), **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

JUROR # 8
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- EDGAR SANDOVAL CATARINO, Defendant.	INFORMATION NO. C1635441 VERDICT OF THE JURY

FILED
APR 06 2018
Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
T. OTWELL

VERDICT

COUNT 6 – PENAL CODE SECTION 288(b)(1) - FELONY

We, the Jury, find the defendant, EDGAR SANDOVAL CATARINO

Guilty of a Felony, a violation of California Penal Code
(GUILTY/NOT GUILTY)

section 288(b)(1), **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

JUROR # 8
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, -vs- EDGAR SANDOVAL CATARINO, Defendant.	INFORMATION NO. C1635441 VERDICT OF THE JURY

FILED
APR 06 2018
Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
T. OTWELL

VERDICT

COUNT 7 – PENAL CODE SECTION 288(b)(1) - FELONY

We, the Jury, find the defendant, EDGAR SANDOVAL CATARINO

Not Guilty of a Felony, a violation of California Penal Code
(GUILTY/NOT GUILTY)

section 288(b)(1), **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

Natalie DeRose
Foreperson Juror # 8

LESSER INCLUDED OFFENSE TO COUNT 7

PENAL CODE SECTION 664/288(b)(1) - FELONY –ATTEMPTED LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR

We, the jury, having unanimously found the Defendant, EDGAR SANDOVAL CATARINO not guilty of **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** find the defendant, Guilty (GUILTY/NOT GUILTY) of a Felony, a violation of California Penal Code section 664/288(b)(1), **ATTEMPTED LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

For

JUROR # 8
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

PENAL CODE SECTION 288(a) - FELONY LEWD OR LASCIVIOUS ACT ON A CHILD UNDER FOURTEEN

We, the jury, having unanimously found the Defendant, EDGAR SANDOVAL CATARINO, not guilty of **ATTEMPTED LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** find the defendant _____ (GUILTY/NOT GUILTY) of a Felony, a violation of California Penal Code section 288(a), **LEWD OR LASCIVIOUS ACT ON A CHILD UNDER FOURTEEN** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: _____

_____
Foreperson Juror #_____

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

EDGAR SANDOVAL CATARINO,

Defendant.

INFORMATION NO. C1635441

VERDICT OF THE JURY

FILED
APR 06 2018
Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
T. OTWELL

VERDICT

COUNT 8 – PENAL CODE SECTION 288(b)(1) - FELONY

We, the Jury, find the defendant, EDGAR SANDOVAL CATARINO

Not Guilty of a Felony, a violation of California Penal Code
(GUILTY/NOT GUILTY)

section 288(b)(1), **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

JUROR # 8
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

LESSER INCLUDED OFFENSE TO COUNT 8

PENAL CODE SECTION 664/288(b)(1) - FELONY –ATTEMPTED LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR

We, the jury, having unanimously found the Defendant, EDGAR SANDOVAL CATARINO not guilty of **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** find the defendant, Not Guilty (GUILTY/NOT GUILTY) of a Felony, a violation of California Penal Code section 664/288(b)(1), **ATTEMPTED LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

JUROR # 8
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

PENAL CODE SECTION 288(a) - FELONY LEWD OR LASCIVIOUS ACT ON A CHILD UNDER FOURTEEN

We, the jury, having unanimously found the Defendant, EDGAR SANDOVAL CATARINO, not guilty of **ATTEMPTED LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** find the defendant Not Guilty (GUILTY/NOT GUILTY) of a Felony, a violation of California Penal Code section 288(a), **LEWD OR LASCIVIOUS ACT ON A CHILD UNDER FOURTEEN** upon the person of [redacted] Doe committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

JUROR # 8
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

PENAL CODE SECTION 664/288(a)(1) - FELONY ATTEMPTED LEWD OR LASCIVIOUS ACT ON A CHILD UNDER FOURTEEN

We, the jury, having unanimously found the Defendant, EDGAR SANDOVAL CATARINO not guilty of **LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE, AND FEAR** find the defendant, Not Guilty (GUILTY/NOT GUILTY)

of a Felony, a violation of California Penal Code section 664/288(a)(1), **ATTEMPTED LEWD OR LASCIVIOUS ACT ON A CHILD UNDER FOURTEEN** upon the person of [redacted] Doe, committed on or about and in between June 8, 2015 and March 9, 2016.

Date: 4/6/18

JUROR # 8
FOREPERSON
REDACTED COPY
ORIGINAL SEALED

Appendix H

Reporter's Transcript of Sentencing (November 9, 2018)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

---OOO---

PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF-RESPONDENT, VS. EDGAR SANDOVAL CATARINO, DEFENDANT-APPELLANT.	NO. DC SANTA CLARA CO. C1635441

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

BEFORE THE HONORABLE CYNTHIA A. SEVELY

VOLUME 12 OF 12
PAGES 3300 - 3600
NOVEMBER 9, 2018

APPEARANCES:

FOR THE PEOPLE/RESPONDENT:	OFFICE OF THE ATTORNEY GENERAL 455 GOLDEN GATE AVENUE ROOM 11000 SAN FRANCISCO, CA 94102
FOR THE DEFENDANT/APPELLANT:	6TH DISTRICT APPELLATE PROGRAM 95 S. MARKET STREET SUITE 570 SAN JOSE, CA 95113

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA JUDICIAL DISTRICT

HALL OF JUSTICE FACILITY

BEFORE THE HONORABLE CYNTHIA A. SEVELY

DEPARTMENT 36

---OOO---

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, VS. EDGAR SANDOVAL CATARINO, DEFENDANT.	CASE NO. C1635441 CHARGES:

---OOO---

SENTENCING
NOVEMBER 9, 2018

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

FOR THE PEOPLE: QUINN NICHOLS, DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT: SOCORRO GONZALEZ, DEPUTY PUBLIC DEFENDER

OFFICIAL COURT REPORTER: BARBARA H. GONZALEZ, CSR NO. 4646

---OOO---

SAN JOSE, CALIFORNIA NOVEMBER 9, 2018

PROCEEDINGS

THE COURT: THE COURT WILL CALL THE MATTER OF PEOPLE VERSUS EDGAR SANDOVAL CATARINO. APPEARANCES FROM COUNSEL, PLEASE.

MS. GONZALEZ: SOCORRO GONZALEZ FROM THE PUBLIC DEFENDER'S OFFICE ON BEHALF OF MR. CATARINO. HE'S PRESENT. HE IS IN CUSTODY, HE'S BEING ASSISTED BY THE SPANISH LANGUAGE INTERPRETER.

INTERPRETER: GOOD MORNING, YOUR HONOR. MARCELLA DICKERSON, 300773, OATH ON FILE.

THE COURT: PURSUANT TO THE STANDING INTERPRETER'S AGREEMENT, THE COURT WILL VERIFY AND ACCEPT THE INTERPRETER'S QUALIFICATIONS.

MR. NICHOLS: QUINN NICHOLS FOR THE PEOPLE, YOUR HONOR. GOOD MORNING.

THE COURT: WE ARE HERE BECAUSE THE COURT HAD ASKED FOR BRIEFING CONCERNING THE COUNTS, BECAUSE THE DEFENDANT WAS CONVICTED OF SIX COUNTS OF 288(B) AND ONE COUNT OF ATTEMPTED 288(B).

THE WORDING IN THE INFORMATION IS IDENTICAL IN ALL SIX COUNTS. THE WORDING IN THE VERDICT FORMS FOR COUNTS 1 THROUGH 6 IS ALSO IDENTICAL.

SO I HAVE READ THE BRIEFS FROM BOTH SIDES. DOES YOUR CLIENT WANT TO ADDRESS THAT ISSUE OR ONLY AT SENTENCING?

MS. GONZALEZ: NO, NOT THAT SPECIFIC ISSUE, YOUR HONOR.

THE COURT: IS THERE ANYTHING FURTHER WITH RESPECT

TO THAT ISSUE? IF YOU WISH.

MR. NICHOLS: I WAS JUST GOING TO ADDRESS THE ISSUE RAISED IN THE DEFENSE MOVING PAPERS IN REGARDS TO 654. I THINK THAT'S A RELATED ISSUE, IT'S NOT EXACTLY WHAT WE WERE TALKING ABOUT BEFORE.

BUT I ONLY WANTED TO DO THAT IF THE COURT THOUGHT THAT WAS RELEVANT TO THE DISCUSSION.

THE COURT: YOU'RE WELCOME TO COMMENT ON HERS BECAUSE YOU DIDN'T GET A CHANCE TO. SO IF YOU WANT TO BRIEFLY COMMENT, YOU'RE WELCOME TO DO THAT.

MR. NICHOLS: THANK YOU, YOUR HONOR. YOUR HONOR, THE PEOPLE WOULD ENTIRELY DISAGREE WITH THE PROPOSITION AS FORWARDED IN THE DEFENSE MOVING PAPERS THAT 654 WOULD APPLY IN THIS PARTICULAR SITUATION.

FRANKLY, THAT'S NOT WHAT 654 SAYS. THE CASE THAT'S CITED AS THE PRIMARY AUTHORITY BY THE DEFENSE FOR THEIR SUGGESTION THAT 654 WOULD MEAN THAT SOMEHOW THESE SEPARATE OFFENSES ARE AN INDIVIDUAL COURSE OF CONDUCT, *PEOPLE V. DELOZA*, A 18 CAL. 4TH, 585.

I THINK IT'S WORTH NOTING YOUR HONOR, THAT'S A THREE STRIKES CASE INVOLVING A ROBBERY OF A STORE WITH FOUR SEPARATE VICTIMS AND THE CASE CAME BACK, AND THE SUPREME COURT INDICATED THAT MANDATORY SENTENCING, MANDATORY CONSECUTIVE SENTENCING WAS NOT NECESSARY IN THAT CASE OR APPROPRIATE, BECAUSE THE COURSE OF CONDUCT OF THE DEFENDANT COMING IN THE STORE AND ROBBING THOSE FOUR PEOPLE WAS AN INDIVISIBLE COURSE OF CONDUCT; THAT THERE WAS NO TIME OR CONDUCT DIFFERENCE BETWEEN VICTIM 1, 2, 3 AND 4 IN THE

ROBBERY.

THAT BASICALLY THE DEFENDANT HAD COME IN THE STORE, ROBBED THE FOUR PEOPLE THAT HAPPENED TO BE THERE AND IMMEDIATELY LEFT THE STORE.

SO I THINK THAT LEGALLY SPEAKING, IT'S DIFFERENT FROM THE CIRCUMSTANCES WE HAVE HERE, BECAUSE OBVIOUSLY THIS IS NOT A THREE STRIKES CASE AND THIS IS A SEXUAL OFFENSE THAT HAS A SPECIFIC STATUTORY SECTION THAT RELATES TO MANDATORY CONSECUTIVE SENTENCING, PERMISSIVE CONSECUTIVE SENTENCING THAT OBVIOUSLY WASN'T DISCUSSED IN THE DELOZA CASE.

THE OTHER THING THAT'S DIFFERENT, IT'S DIFFERENT FACTUALLY BECAUSE IN THAT PARTICULAR CASE, AGAIN, WE'RE TALKING ABOUT ONE PERSON, FOR LACK OF A BETTER WAY TO PUT IT, COMMITTED ONE CRIME THAT HAPPENED TO HAVE FOUR VICTIMS.

THAT IS NOT AT ALL WHAT THE DEFENDANT DID. THE DEFENDANT'S CONDUCT AS IT RELATES TO BETSY IS DIFFERENT IN TERMS OF TIME, IT'S DIFFERENT IN TERMS OF THE LOCATION WHERE IT HAPPENED AND MOST IMPORTANTLY, IS DIFFERENT IN TERMS OF THE MANNER IN WHICH [redacted] WAS TOUCHED.

AND I CITED THAT OR I DISCUSSED THAT QUITE A BIT IN MY MOVING PAPERS WHEN WE WERE DISCUSSING PENAL CODE SECTION 667.6 D AND C, BUT I THINK THAT'S LOST A LITTLE BIT IN THE DEFENSE ARGUMENT THAT 654 WOULD APPLY TO THIS, BECAUSE FRANKLY, THAT'S JUST NOT TRUE.

TO SUGGEST THAT IT'S AN INDIVISIBLE COURSE OF CONDUCT, WHEN THE DEFENDANT TOUCHED [redacted] ON HER VAGINA AND THEN TOUCHED HER ON HER BREASTS IN THE SAME INCIDENT. THERE IS A COUPLE DIFFERENT EXAMPLES THAT ARE GIVEN IN DEFENSE MOVING

PAPERS.

THAT'S NOT TRUE BECAUSE THOSE ARE TWO SEPARATE ACTIONS THAT CAN BE DIVIDED, BASED ON HOW BETSY WAS TOUCHED. SO THE RELIANCE ON THE DELOZA CASE, AND THERE IS ANOTHER CASE CITED THAT I THINK STANDS FOR THE SAME PROPOSITION, SUGGESTS A COURSE OF CONDUCT THAT CANNOT BE CHOPPED UP INTO SMALLER PIECES.

AND AS WE DISCUSSED IN OUR EARLIER DISCUSSION RELATING TO 667.6(D) AND (C), THAT'S NOT THE SITUATION WE HAVE HERE. [redacted] TESTIMONY, SHE ACTUALLY TESTIFIED HOW SHE WAS TOUCHED AND DIVVIED UP THOSE INSTANCES BASED ON THE MANNER IN WHICH SHE WAS TOUCHED AND HOW THEY RELATED TO ONE ANOTHER IN TERMS OF ONE HAPPENING BEFORE OR AFTER ANOTHER, ONE HAPPENING AT THE SAME TIME AS ANOTHER.

AND THE DEFENSE CITED IN THEIR MOVING PAPERS THAT I HAD CONCEDED IN MY MOTION THAT THE TOUCHING OF "THE PINEAPPLE" OCCURRED DURING THE LAP INCIDENT THAT IS SOMETHING THAT IS SUPPORTED BY THE EVIDENCE.

I STAND BY MY MOVING PAPERS. THAT'S CORRECT. THAT IS SUPPORTED BY THE EVIDENCE, THAT THE PINEAPPLE TOUCHING OVER THE CLOTHES DID HAPPEN DURING THE LAP INCIDENT. WHAT IS NOT SUPPORTED BY THE EVIDENCE IS THAT THAT ONLY HAPPENED ONE TIME.

AND THAT'S SOMETHING THAT WAS DISCUSSED BY [redacted]ON THE STAND, IN HER CIC INTERVIEW, IN THE INFORMATION IN THE FRESH COMPLAINT TESTIMONY THAT THE JURY RECEIVED.

SHE TESTIFIED THAT A NUMBER OF THINGS HAPPENED MORE THAN ONCE. IN SOME CASES, MORE THAN TWICE.

NOW, THE JURY WHEN THEY ASKED A QUESTION ABOUT THE INFORMATION, THEY DIVVIED IT UP BASED ON THE MANNER IN WHICH [redacted] WAS TOUCHED, WHICH AGAIN SHE TESTIFIED HOW THOSE PARTICULAR INSTANCES RELATED TO ONE ANOTHER IN TERMS OF DID IT HAPPEN BEFORE ONE ANOTHER, AFTER ONE ANOTHER? WHERE DID THEY HAPPEN? THE TIME OF DAY, WHO WAS THERE, THE MANNER IN WHICH SHE DESCRIBED THEM AND DREW CLEAR DISTINCTIONS BETWEEN ALL OF THE FORMS OF TOUCHING THAT SHE TALKED ABOUT.

SOME OF THEM DID OCCUR AT THE SAME TIME, BUT SHE TESTIFIED TO THAT. OR OCCURRED IN SHORT TIME TO ONE ANOTHER. BUT EVEN IF THEY OCCURRED IN A SHORT TIME TO ONE ANOTHER, I THINK THE ANALYSIS UNDER 667.6 IS DIFFERENT THAN 654, BECAUSE IT'S A QUESTION OF UNDER 667.6 WAS THERE AN OPPORTUNITY FOR THE DEFENDANT TO REFLECT AND RESUME HIS CONDUCT, OR ALL THE LANGUAGE THAT THE CASE LAW TALKS ABOUT.

THAT'S NOT WHAT 654 IS TALKING ABOUT. 654 IS TALKING ABOUT ONE SINGLE CRIME, WHICH IS WHAT THE DELOZA CASE STANDS FOR. AND SO THE REASON WHY I WANTED TO ARGUE THAT TODAY IS BECAUSE THE DEFENSE MOVING PAPERS SUGGEST THE ANALYSIS IS THE SAME BETWEEN 654 AND 667.6, AND THEY'RE CLEARLY NOT.

THE REASON WHY 667.6 IS WRITTEN INTO THE STATUTE IS TO DRAW A DISTINCTION FOR THIS SPECIFIC TYPES OF CRIMES, SEXUAL ASSAULT CRIMES. SO THE SUGGESTION THAT BECAUSE THEY MAYBE HAPPENED -- SOME OF THEM MAYBE HAPPENED IN CLOSE ORDER, THAT MEANS THEY'RE 654.

WE'RE NOT TALKING ABOUT THE SAME CRIME, BECAUSE SHE WASN'T TOUCHED IN THE SAME PLACE. [redacted] TALKED ABOUT BEING TOUCHED IN ONE WAY AND THEN BEING TOUCHED IN ANOTHER WAY, AND

THEN BEING TOUCHED IN ANOTHER WAY.

EACH ONE OF THOSE REPRESENTS ITS OWN VIOLATION OF PENAL CODE 288(B)(1) SEPARATED IN TIME, DISTANCE, LOCATION, HOW SHE WAS TOUCHED, THE MANNER IN WHICH IT WAS DONE.

THE DELOZA CASE DOES NOT SUPPORT THE IDEA THAT BASICALLY, THIS IS ALL ONE CRIME.

THANK YOU, YOUR HONOR.

THE COURT: MS. GONZALEZ, DID YOU WANT TO ADD ANYTHING?

MS. GONZALEZ: YOUR HONOR, I THINK I STATED VERY CLEARLY IN MY MOVING PAPERS WHAT OUR POSITION IS. I THINK THIS WHOLE SITUATION WE'RE IN RIGHT NOW IS BASED ON THE FACT THERE IS A LACK OF INFORMATION IN THE VERDICTS REGARDING WHICH SPECIFIC ACT THEY WERE REFERRING TO.

THAT'S WHY WE'RE IN THE POSITION WE'RE IN. I DON'T HAVE ANYTHING MORE TO ADD. I THINK IT'S VERY CLEAR IN MY MOVING PAPERS WHAT MY POSITION IS WITH RESPECT TO 654 AND ALSO WITH RESPECT TO 667.6.

THE COURT: IS THE MATTER SUBMITTED JUST ON THAT ISSUE?

MR. NICHOLS: YES, YOUR HONOR.

MS. GONZALEZ: YES.

THE COURT: IN THIS TRIAL, THE VICTIM TESTIFIED THAT THE DEFENDANT ONE, BIT HER CHEST MORE THAN ONE TIME; TWO, PRESSED HIS PENIS AGAINST HER MORE THAN ONE TIME; THREE, TOUCHED THE SKIN OF HER VAGINAL AREA, WHICH SHE REFERRED TO AS HER PINEAPPLE; FOUR, TOUCHED HER VAGINAL AREA OVER THE CLOTHES MORE THAN ONE TIME; FIVE, HAD HER ON HIS LAP AND

MOVED LIKE A WORM ONE TIME; SIX, TRIED TO TAKE OFF HER PANTS; AND SEVEN, PUT HIS HAND UNDER HER SHIRT OVER HER BRA ONE TIME.

DEFENSE ARGUES BECAUSE THE INFORMATION AND VERDICT FORMS DO NOT PROVIDE ENOUGH ON THEIR FACE TO DETERMINE WHICH DISCREET ACTS CONSTITUTE EACH OFFENSE, THE COURT CANNOT DETERMINE WHICH CONVICTIONS CONSTITUTE A SEPARATE ACT.

THE JURY WAS INSTRUCTED ON THE FOLLOWING JURY INSTRUCTIONS: CALCRIM 3501, UNANIMITY WHEN GENERIC TESTIMONY OF OFFENSE IS PRESENTED.

"THE DEFENDANT IS CHARGED WITH LEWD OR LASCIVIOUS ACT ON A CHILD BY FORCE, VIOLENCE, DURESS, MENACE AND FEAR IN COUNTS 1 THROUGH 8 DURING THE PERIOD OF JUNE 8, 2015, TO MARCH 9, 2016.

"THE PEOPLE HAVE PRESENTED EVIDENCE OF MORE THAN ONE ACT TO PROVE THAT THE DEFENDANT COMMITTED THESE OFFENSES. YOU MUST NOT FIND THE DEFENDANT GUILTY UNLESS ONE, ALL OF YOU AGREE THAT THE PEOPLE HAVE PROVED THAT THE DEFENDANT COMMITTED AT LEAST ONE OF THESE ACTS, AND YOU ALL AGREE ON WHICH ACT HE COMMITTED OR EACH OFFENSE; OR TWO, YOU ALL AGREE THAT THE PEOPLE HAVE PROVED THAT THE DEFENDANT COMMITTED ALL THE ACTS ALLEGED TO HAVE OCCURRED DURING THIS TIME PERIOD AND HAVE PROVED THAT THE DEFENDANT COMMITTED AT LEAST THE NUMBER OF OFFENSES CHARGED.

"EACH OF THE COUNTS CHARGED IN THIS CASE IS A SEPARATE CRIME. YOU MUST CONSIDER EACH COUNT SEPARATELY AND RETURN A SEPARATE VERDICT FOR EACH ONE."

THE JURY IS PRESUMED TO FOLLOW THE COURT'S INSTRUCTION.

THE COURT FINDS THAT THE JURY CONVICTED THE DEFENDANT OF SEVEN SEPARATE INCIDENTS PURSUANT TO PENAL CODE SECTION 667.6(D).

NOW, DOES YOUR CLIENT WISH TO ADDRESS THE COURT ON SENTENCING?

MS. GONZALEZ: YES, YOUR HONOR.

THE COURT: HE CAN STAY SEATED. THAT'S FINE. IT'S EASIER FOR THE INTERPRETER.

THE DEFENDANT: FIRST OF ALL, GOOD MORNING, YOUR HONOR. I WOULD LIKE TO THANK GOD BECAUSE MY FAMILY IS HERE PRESENT, AND THEY HAVE SUPPORTED ME SINCE ALL OF THIS HAPPENED.

I WOULD LIKE TO BE BRIEF ON A SMALL STORY. WHEN I WAS SMALL AT FIVE OR SIX YEARS OLD, MY FATHER HAD TO IMMIGRATE TO THE UNITED STATES. HE LEFT US WITH MY MOTHER, AND WHEN I STARTED KINDERGARTEN, EVEN THOUGH I HAD FINANCIAL SUPPORT FROM HIM, I NEEDED AND I MISSED HIS LOVE.

AFTER THREE YEARS HAD GONE BY, MY FATHER DECIDED TO GO AND GET MY MOTHER. AT THAT TIME, WE REMAINED WITH OUR GRANDPARENTS AND BOTH MY MOTHER THAN FATHER MISSED MY GRADUATION FROM PRIMARY SCHOOL.

WHERE I'M HEADING THOUGH IS I DO NOT WANT MY SON TO GO THROUGH THE SAME SITUATION OF NOT SEEING HIM GROW UP. AND I WOULDN'T LIKE TO MISS HIM BEING A GOOD BOY AND A GOOD STUDENT, A GOOD SON.

WHEN I WAS 13 YEARS OLD, I HAD TO IMMIGRATE HERE. MY FATHER WENT TO PICK UP MY BROTHER AND MYSELF. IT WAS A TOUGH THING BECAUSE WE DIDN'T KNOW THE ENGLISH LANGUAGE. EVEN SO,

MY FATHER COULD SEE US GRADUATE FROM HIGH SCHOOL. THAT MADE HIM VERY PROUD OF US.

WE HAVE BEEN FAMILY AND CHILDREN, WE HAVE NOT BEEN INVOLVED IN DRUGS OR GANGS OR THINGS LIKE THAT. OUR PARENTS HAVE BEEN VERY PROUD OF US THROUGHOUT THE TIME WE HAVE BEEN HERE. MY FAMILY AND MYSELF ARE NOT IN AGREEMENT WITH THE JURY'S VERDICT.

I DO NOT KNOW IF YOU HAD THE CHANCE OF GOING OVER THE LETTERS THAT THEY SENT AND YOU CAN SEE THE TYPE OF PERSON I AM.

THE COURT: I DID READ THEM, SIR.

THE DEFENDANT: THANK YOU. WHAT I'M TRYING TO SAY IS THAT I HAVEN'T TRIED TO DEFRAUD MY FAMILY AND FRIENDS FROM THEIR SUPPORT. I HAVE NOT DEFRAUDED.

AND I WOULD ALSO LIKE TO STATE THAT MY SON NEEDS ME. HE NEEDS TO HAVE A FATHER THAT HE DESERVES. AND MY MOTHER, BECAUSE SHE IS ILL WITH THAT ILLNESS, SHE DOESN'T DESERVE TO SEE HER SON INCARCERATED.

SINCE THE BEGINNING I HAVE BEEN -- I'VE SEEN THIS AND IF YOU GIVE ME THE OPPORTUNITY OF REMAINING WITH MY SON, I WILL NOT LEAVE YOU LOOKING BAD. I WOULDN'T DEFRAUD YOU.

MS. GONZALEZ: ONE SECOND.

THE INTERPRETER: INTERPRETER'S CORRECTION. DEFRAUD IS LET DOWN.

THE DEFENDANT: I WILL NOT LET YOU DOWN.

THE COURT: ALL RIGHT.

THE WITNESS: I WOULD LIKE FOR YOU TO GIVE ME A SECOND OPPORTUNITY OF REMAINING WITH MY SON. SINCE THE VERY

BEGINNING, I HAVE FACED THIS, I STOOD UP TO THIS. AND I HAVE BEEN BEHAVING AND I'VE BEEN RESPONSIBLE OF THIS THROUGH THE AUTHORITIES. AND I WAS WITH THE GPS SO I HAVE BEEN RESPONSIBLE THROUGHOUT THIS TIME ALL OF THIS.

THE MOST IMPORTANT THING IS I HAVE BEEN RESPONSIBLE FOR THIS THROUGHOUT THE WHOLE TIME TRYING TO PROVE MY INNOCENCE. I ALWAYS BEEN HERE AND I HAVE BEEN PRESENT. YET, I HAVE TAKEN RESPONSIBILITY.

WHEN I WAS USING THE GPS, AT TIMES, I THOUGHT OF CUTTING IT OFF AND RUNNING AWAY, BUT THEN I KEPT THINKING I AM NOT GUILTY, SO I WILL FACE IT. I WAS ALWAYS FACING ALL OF THIS RESPONSIBLY.

YOUR HONOR, I GIVE YOU MY WORD IF YOU GIVE ME THE CHANCE, FIVE YEARS PROBATION, TEN YEARS PROBATION, ANYTHING I WILL DO AND TO BE RIGHT THERE WITH MY SON. I GIVE YOU MY WORD THAT I WILL STAND UP TO THIS AND I WILL BE HERE RESPONDING FOR ALL OF THIS.

THE COURT: ALL RIGHT.

THE DEFENDANT: THE MAIN THING IS I DO NOT WANT TO HAVE MY SON SUFFER THE WAY I DID WHEN I WAS LITTLE. I WANT TO BE THERE FOR HIM.

THE COURT: THANK YOU, SIR. DID YOU WANT TO ADD ANYTHING ELSE?

THE DEFENDANT: THANK YOU. YES.

THE COURT: DID YOU THINK OF SOMETHING ELSE? GO AHEAD.

THE DEFENDANT: WHEN MY SON COMES TO VISIT AND HE'S TELLING ME, "WHY DO YOU NOT PICK ME UP FROM SCHOOL? YOU DO

NOT LOVE ME ANY MORE." AND THAT BREAKS MY HEART. I WILL NEVER FORGET MY PARENTS ALSO COME OVER AND WHERE I AM RIGHT NOW, I DON'T NEED ANYTHING. THEY WILL BRING ME THE LITTLE BIT OF MONEY THEY HAVE. THEY'VE ALWAYS SUPPORTED ME.

THE COURT: THANK YOU, SIR.

THE DEFENDANT: I JUST WANT THE OPPORTUNITY TO REMAIN WITH MY SON BECAUSE I WILL SUPPLY HIM WHATEVER HIS NEEDS ARE. AND I WOULD LIKE IF YOU GIVE ME THE OPPORTUNITY TO REMAIN WITH HIM AND YOU CAN MONITOR MY BEHAVIOR IN ANY WHICH WAY YOU NEED TO.

THE COURT: THANK YOU, SIR. MS. GONZALEZ, DID YOU WANT TO ADD ANYTHING?

MS. GONZALEZ: YOUR HONOR, I DID PROVIDE THE COURT WITH MY SENTENCING BRIEF WHICH OUTLINES MY CLIENT'S SOCIAL HISTORY. I BELIEVE PART OF WHAT HE SHARED WITH THE COURT IS IN THAT SENTENCING BRIEF.

THE COURT HAS ALSO READ MORE THAN TEN, I BELIEVE THERE'S MULTIPLE LETTERS FROM FAMILY, COMMUNITY MEMBERS WHO HAVE KNOWN MY CLIENT OVER HIS LIFESPAN AND INCLUDING MORE RECENTLY, HIS FRIENDS FROM WORK AND THOSE WHO TESTIFIED IN COURT.

I'VE ALSO PROVIDED TO THE COURT MY CLIENT'S SCHOOL RECORDS, WHICH HE ALSO MENTIONED HE CAME TO THE UNITED STATES NOT KNOWING THE LANGUAGE, YET HE EXCELLED IN SCHOOL. WE ALSO HEARD FROM HIS EMPLOYERS AND WHO TALKED ABOUT HIS WORK ETHIC.

YOUR HONOR, AND I TRUST THAT THE COURT DID LOOK AT ALL THIS --

THE COURT: I DID.

MS. GONZALEZ: -- BEFOREHAND. SO WITH THAT, YOUR HONOR, I WOULD SUBMIT. I THINK EVERYTHING I'VE WANTED TO SHARE WITH THE COURT IS IN MY SENTENCING BRIEF.

THE COURT: IN THIS CASE -- DID YOU WANT TO ADD ANYTHING?

MR. NICHOLS: I'LL BE BRIEF, YOUR HONOR.

THE COURT: SURE.

MR. NICHOLS: YOUR HONOR, I TOOK THE OPPORTUNITY TO LISTEN TO MR. CATARINO'S STATEMENT VERY CLOSELY, AS WELL AS THE STATEMENT OF THE NUMEROUS FAMILY MEMBERS THAT SPOKE ON HIS BEHALF AS IT RELATES TO HIS POTENTIAL SENTENCE HERE THIS MORNING, AND AT THE PREVIOUS COURT HEARINGS.

AND YOUR HONOR, I THINK IT'S WORTH NOTING THAT NOT A SINGLE PERSON THAT SPOKE ON HIS BEHALF EVEN MENTIONED [redacted] NAME, NOT A ONE. NO LETTER, NO STATEMENT BY ANY FAMILY MEMBER. THE DEFENDANT HIMSELF, NOT A SINGLE PERSON COULD EVEN BRING THEMSELVES TO SAY [redacted] NAME IN MAKING A CLAIM FOR LENIENCY ON BEHALF OF MR. CATARINO.

NO MENTION OF THE PAIN THAT HER FAMILY WENT THROUGH, THAT THEY WENT THROUGH AFTER SUFFERING WHAT BASICALLY IS YEARS OF ABUSE AT THE HANDS OF HER COUSIN. I THINK IT SPEAKS TO THE DEFENDANT'S LACK OF ACCOUNTABILITY AND THE FACT THAT HE SAYS EVEN AS HE SITS HERE CONVICTED BY A JURY, THAT HE DISAGREES WITH THE VERDICT, AS HIS FAMILY DID AS WELL.

YOUR HONOR, HE HAS TO BE HELD ACCOUNTABLE FOR HIS ACTIONS AS HE SITS BEFORE THE COURT TODAY. HE IS COMPLETELY LACKING ANY SENSE OF REMORSE OR ACCOUNTABILITY.

AND THE FACT THAT HE AND HIS FAMILY HAVE NO

CONSIDERATION WHATSOEVER FOR HIS FAMILY MEMBER THAT HE VICTIMIZED REPEATEDLY, I THINK SPEAKS TO HIS LACK OF REMORSE AND I THINK THAT SHOULD BE TAKEN INTO CONSIDERATION, YOUR HONOR. THANK YOU.

THE COURT: ALL RIGHT. IS THE MATTER SUBMITTED?

MS. GONZALEZ: YES, YOUR HONOR.

MR. NICHOLS: SUBMITTED, YOUR HONOR.

THE COURT: THE COURT HAS READ AND CONSIDERED THE PROBATION REPORT, THE DOCUMENTS FILED BY BOTH PARTIES, AS WELL AS THE COMMENTS PRESENTED IN COURT.

THE DEFENDANT IS NOT ELIGIBLE FOR PROBATION. THE DEFENDANT'S SCORE ON THE STATIC-99R WAS 1, WHICH IS A RELATIVE LOW RISK.

THE COURT HAS CONSIDERED THE SERIOUSNESS OF THE CRIME AS WELL AS THE VERDICT OF THE JURY. THE COURT HAS NOTED THAT THE DEFENDANT HAS NO PRIOR CRIMINAL HISTORY AND TAKES INTO CONSIDERATION HIS YOUTH.

SO WITH RESPECT TO COUNT 1, THE COURT WILL PICK THE MID TERM OF EIGHT YEARS. WITH RESPECT TO COUNT 2, THE COURT WILL PICK THE LOWER TERM OF FIVE YEARS CONSECUTIVE. THE COURT WILL PICK WITH RESPECT TO COUNT 3, THE LOWER TERM OF FIVE YEARS CONSECUTIVE.

WITH RESPECT TO COUNT 4, THE COURT WILL PICK THE LOWER TERM OF FOUR YEARS -- EXCUSE ME. FIVE YEARS CONSECUTIVE. WITH RESPECT TO COUNT 5, THE COURT WILL PICK THE LOWER TERM OF FIVE YEARS CONSECUTIVE.

SO THAT'S A TOTAL OF 33 YEARS. AND THEN THE COURT WILL PICK THE LOWER TERM OF TWO YEARS SIX MONTHS FOR A TOTAL OF

35 YEARS SIX MONTHS.

DOES PROBATION HAVE ANY CORRECTIONS WITH RESPECT TO CREDITS?

PROBATION: YES, YOUR HONOR. AS OF TODAY MR. CATARINO HAS 390 ACTUAL DAYS, 34 DAYS PURSUANT TO 2933.1 FOR A TOTAL OF 424 DAYS.

AND I JUST WANTED TO NOTE FOR THE COURT THAT THE 2933 TIME THAT WAS CALCULATED WAS ADJUSTED BECAUSE OF HIS 152 DAYS PREVIOUSLY SERVED ON GPS.

THAT WAS ONLY APPLIED AS ACTUAL TIME ONLY, NOT 2933. SO THAT'S WHY THE NUMBER WAS DIFFERENT.

THE COURT: ANY OTHER CREDITS OR COMMENTS IN TERMS OF CHANGES TO THE REPORT?

PROBATION: IN TERMS OF SENTENCING WITH WHAT THE COURT JUST SPOKE OF, I DID WANT TO CLARIFY IF THOSE CONSECUTIVE TERMS ARE PURSUANT TO SUBSECTION C OR D.

THE COURT: ISN'T IT D?

PROBATION: IF THAT'S WHAT THE COURT IS ACKNOWLEDGING.

THE COURT: YES.

PROBATION: I JUST WANTED TO MAKE SURE IT WAS PURSUANT TO D.

THE COURT: SO PROBATION IS DENIED. THE DEFENDANT IS SENTENCED TO 33 YEARS AND SIX MONTHS. THE DEFENDANT HAS THE FOLLOWING CREDITS:

MR. NICHOLS: I'M SORRY, I THOUGHT YOU SAID 35 YEARS.

THE COURT: 35. THANK YOU. 35 YEARS, SIX MONTHS.

HE HAS THE FOLLOWING CREDITS OF 390 PLUS 34 IS PURSUANT TO 2800.1.

PROBATION: 2933.1.

THE COURT: ALL RIGHT. THE DEFENDANT IS ADVISED OF A PAROLE PERIOD OF 20 YEARS SIX MONTHS PURSUANT TO SECTION 3000(B)(4)(A) OF THE PENAL CODE.

THE COURT WILL ORDER A GENERAL ORDER OF RESTITUTION. THE COURT WILL ISSUE A NO CONTACT PROTECTIVE ORDER FOR 10 YEARS. THE DEFENDANT SHALL NOT OWN, KNOWINGLY POSSESS, HAVE WITHIN HIS CONTROL OR CUSTODY ANY FIREARM OR AMMUNITION FOR THE REST OF HIS LIFE PURSUANT TO SECTION 29800 AND SECTION 30305 OF THE PENAL CODE.

RESTITUTION FINE OF $10,000 IS IMPOSED UNDER THE FORMULA PERMITTED BY PENAL CODE SECTION 1202.4(B). AN ADDITIONAL RESTITUTION FINE THAT AMOUNT EQUAL TO THAT IMPOSED UNDER PENAL CODE SECTION 1202.4 IS IMPOSED, AND SUSPENDED PURSUANT TO SECTION 1202.45 OF THE PENAL CODE.

THE COURT SECURITY FEE OF $280 IS IMPOSED PURSUANT TO SECTION 1465.8 OF THE PENAL CODE. A CRIMINAL CONVICTION ASSESSMENT FINE OF $210 IS IMPOSED PURSUANT TO SECTION 70373 OF THE GOVERNMENT CODE.

A $259.50 CRIMINAL JUSTICE ADMINISTRATION FEE TO THE COUNTY OF SANTA CLARA IS IMPOSED PURSUANT TO GOVERNMENT CODE SECTION 29550, ET SEQ.

A FINE OF $300 PLUS PENALTY IS IMPOSED PURSUANT TO SECTION 290.3 OF THE PENAL CODE. THE DEFENDANT IS ORDERED TO REGISTER PURSUANT TO SECTION 290 OF THE PENAL CODE AND TO COMPLY WITH 290.85 OF THE PENAL CODE.

THE DEFENDANT IS ORDERED TO SUPPLY BUCCAL SWAB SAMPLES, PRINTS, BLOOD SPECIMENS AND OR OTHER BIOLOGICAL SAMPLES AS REQUIRED BY LAW. IS THERE ANYTHING FURTHER THAT NEEDS TO BE ADDRESSED?

MR. NICHOLS: NO, YOUR HONOR. THANK YOU.

MS. GONZALEZ: YOUR HONOR, I WILL BE FILING WITH THE CLERK --

THE COURT: SO, SIR, YOU ARE HEREBY NOTICED YOU HAVE THE RIGHT TO FILE AN APPEAL WITHIN 60 DAYS OF TODAY'S DATE. IF YOU DO NOT HAVE AN ATTORNEY, ONE CAN BE APPOINTED FOR YOU.

MS. GONZALEZ, YOU WANTED TO SAY WHAT?

MS. GONZALEZ: YOUR HONOR, YES. I WILL BE FILING PAPERWORK WITH THE CLERK. IT'S FOR THE YOUTH OFFENDER PAROLE. SO I WILL BE SUBMITTING IT TO THE CLERK RIGHT NOW, OR AFTER HE'S BEEN SENTENCED, WHICH JUST HAPPENED.

AND THEN I'D JUST ASK THE WHOLE THING GO WITH HIS PRISON PACKET.

THE COURT: DO YOU HAVE A COPY FOR COUNSEL?

MS. GONZALEZ: IF I HAVEN'T PROVIDED ONE, I WILL PROVIDE HIM WITH A COPY.

THE COURT: ANYTHING FURTHER?

MR. NICHOLS: NO.

THE COURT: OFF RECORD.

(WHEREUPON, THE PROCEEDING WAS CONCLUDED.)

---OOO---

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

I BARBARA GONZALEZ, HEREBY CERTIFY: THAT I WAS APPOINTED BY THE COURT TO ACT AS OFFICIAL COURT REPORTER IN THE ABOVE-ENTITLED ACTION; THAT I REPORTED THE SAME IN STENOTYPE AND THEREAFTER TRANSCRIBED THE SAME INTO TYPEWRITING AS APPEARS BY THE FOREGOING TRANSCRIPT; THAT SAID TRANSCRIPT IS A FULL, TRUE AND CORRECT STATEMENT OF THE PROCEEDINGS IN THE MATTER OF THE PEOPLE OF THE STATE OF CALIFORNIA VERSUS EDGAR S. CATARINO, CASE NO. C1635441, 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: _____

_____

BARBARA H. GONZALEZ, CSR NO. 4646

Appendix I
Abstract of Judgment (November 9, 2018)

FELONY ABSTRACT OF JUDGMENT—DETERMINATE

(NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED)

CR-290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: SANTA CLARA - HALL OF JUSTICE

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: Edgar Sandoval Catarino — DOB: 11/25/89

AKA:

CII NO.: A35878121

BOOKING NO.: 16010587 ☐ NOT PRESENT

C1635441 -A

-B

-C

-D

FELONY ABSTRACT OF JUDGMENT ☑ PRISON COMMITMENT ☐ COUNTY JAIL COMMITMENT ☐ AMENDED ABSTRACT

DATE OF HEARING	DEPT. NO.	JUDGE
11/09/18	36	Cynthia Sevely

CLERK	REPORTER	PROBATION NO. OR PROBATION OFFICER	
D. Winters	B. Gonzalez	A. Lynch	☐ IMMEDIATE SENTENCING

COUNSEL FOR PEOPLE	COUNSEL FOR DEFENDANT	
Q. Nichols	S. Gonzalez	☑ APPOINTED

1. Defendant was convicted of the commission of the following felonies:

☑ Additional counts are listed on attachment One (number of pages attached)

COUNT	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YR.)	CONVICTED BY: JURY	COURT	PLEA	TERM (L, M, U)	CONCURRENT	1/3 CONSECUTIVE	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (REFER TO item 6)	654 STAY	SERIOUS FELONY	VIOLENT FELONY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED: YRS.	MOS.
1	PC	288(b)(1)	Lewd/lasc act child by force	15-16	04 /06 / 18	X			M								8	0
2	PC	288(b)(1)	Lewd/lasc act child by force	15-16	04 /06 / 18	X			L								5	0
3	PC	288(b)(1)	Lewd/lasc act child by force	15-16	04 /06 / 18	X			L								5	0
4	PC	288(b)(1)	Lewd/lasc act child by force	15-16	04 /06 / 18	X			L								5	0
5	PC	288(b)(1)	Lewd/lasc act child by force	15-16	04 /06 / 18	X			L								5	0
6	PC	288(b)(1)	Lewd/lasc act child by force	15-16	04 /06 / 18	X			L								5	0

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

COUNT	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL	

3. ENHANCEMENTS charged and found to be true for PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL	

4. Defendant sentenced ☐ to county jail per 1170(h)(1) or (2)
☑ to prison per 1170(a), 1170.1(a) or 1170(h)(3) due to ☐ current or prior serious or violent felony ☐ PC 290 or ☐ PC 186.11 enhancement
☐ per PC 667(b)-(i) or PC 1170.12 (strike prior)
☐ per PC 1170(a)(3). Preconfinement credits equal or exceed time imposed. ☐ Defendant ordered to report to local parole or probation office.

5. INCOMPLETE SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

6.	TOTAL TIME ON ATTACHED PAGES:	2	6
7.	☐ Additional indeterminate term (see CR-292).		456
8.	TOTAL TIME:	35	6

Attachments may be used but must be referred to in this document.

Form Adopted for Mandatory Use
Judicial Council of California
CR-290 [Rev. July 1, 2012]

FELONY ABSTRACT OF JUDGMENT—DETERMINATE

Penal Code, § 1213, 1213.5

FELONY ABSTRACT OF JUDGMENT
ATTACHMENT PAGE

CR-290(A)

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: Edgar Sandoval Catarino

C1635441 -A | -B | -C | -D

1. Defendant was convicted of the commission of the following felonies:
This attachment page number: One

COUNT	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY: JURY	CONVICTED BY: COURT	CONVICTED BY: PLEA	TERM (L, M, U)	CONCURRENT	I/O CONSECUTIVE	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (refer to Item 5)	654 STAY	SERIOUS FELONY	VIOLENT FELONY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED: YRS.	PRINCIPAL OR CONSECUTIVE TIME IMPOSED: MOS.
7	PC	664/288(a	)(1) Attempted lewd/lasc	15-16	04 / 06 / 18	X			L								2	6
			act child by force		/ /													
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																TOTAL	2	6

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

COUNT	ENHANCEMENT	TIME IMPOSED, "S," OR "PS"	ENHANCEMENT	TIME IMPOSED, "S," OR "PS"	ENHANCEMENT	TIME IMPOSED, "S," OR "PS"	TOTAL	
						TOTAL		

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL	

4. TOTAL TIME IMPOSED ON THIS ATTACHMENT PAGE: 2 | 6

Form Adopted for Mandatory Use
Judicial Council of California
CR-290(A) [Rev. July 1, 2012]

CR-290

PEOPLE OF THE STATE OF CALIFORNIA vs.
DEFENDANT: Edgar Sandoval Catarino

C1635441 -A	-B	-C	-D

9. FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):

a. **Restitution Fines:**

Case A: $ 10,000 per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); $ 10,000 per PC 1202.45 suspended unless parole is revoked.
$_____ per PC 1202.44 is now due, probation having been revoked.

Case B: $_____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); $_____ per PC 1202.45 suspended unless parole is revoked.
$_____ per PC 1202.44 is now due, probation having been revoked.

Case C: $_____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); $_____ per PC 1202.45 suspended unless parole is revoked.
$_____ per PC 1202.44 is now due, probation having been revoked.

Case D: $_____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); $_____ per PC 1202.45 suspended unless parole is revoked.
$_____ per PC 1202.44 is now due, probation having been revoked.

b. **Restitution per PC 1202.4(f):**

Case A: $ GEN ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
Case B: $_____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
Case C: $_____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund
Case D: $_____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

☐ *Victim name(s), if known, and amount breakdown in item 13, below. ☐ *Victim name(s) in probation officer's report.

c. **Fines:**

Case A: $_____ per PC 1202.5 $_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐$___ Lab Fee per HS 11372.5(a) ☐ $_____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case B: $_____ per PC 1202.5 $_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐$___ Lab Fee per HS 11372.5(a) ☐ $_____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case C: $_____ per PC 1202.5 $_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐$___ Lab Fee per HS 11372.5(a) ☐ $_____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case D: $_____ per PC 1202.5 $_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐$___ Lab Fee per HS 11372.5(a) ☐ $_____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

d. **Court Operations Assessment:** $ 280 per PC 1465.8. e. **Conviction Assessment:** $ 210 per GC 70373. f. **Other:** $___ per *(specify)*: _____

10. TESTING: ☑ Compliance with PC 296 verified ☐ AIDS per PC 1202.1 ☐ other *(specify)*:

11. REGISTRATION REQUIREMENT: ☑ per *(specify code section)*: PC290

12. ☐ MANDATORY SUPERVISION: Execution of a portion of the defendant's sentence is suspended and deemed a period of mandatory supervision under Penal Code section 1170(h)(5)(B) as follows *(specify total sentence, portion suspended, and amount to be served forthwith)*:
Total: _____ Suspended: _____ Served forthwith: _____

13. Other orders *(specify)*: Spanish interpreter. PC29800/30305 adv. PO mod, exp 11/9/28, no contact. PC1202.05 ord. CJAF $259.50. Addt'l fees wvd
Adv 20 years, 6 mos parole. Adv 60 days appeal.

16. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT	
A	424	390	34	[ ] 2933 [✓] 2933.1 [ ] 4019
B				[ ] 2933 [ ] 2933.1 [ ] 4019
C				[ ] 2933 [ ] 2933.1 [ ] 4019
D				[ ] 2933 [ ] 2933.1 [ ] 4019

Date Sentence Pronounced: 11 09 18
Time Served in State Institution: DMH [ ] CDC [ ] CRC [ ]

14. IMMEDIATE SENTENCING: ☐ Probation to prepare and submit a post-sentence report to CDCR per 1203c.
Defendant's race/national origin: _____

15. EXECUTION OF SENTENCING IMPOSED
a. ☑ at initial sentencing hearing
b. ☐ at resentencing per decision on appeal
c. ☐ after revocation of probation
d. ☐ at resentencing per recall of commitment (PC 1170(d).)
e. ☐ other *(specify)*:

17. The defendant is remanded to the custody of the sheriff ☑ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
To be delivered to ☑ the reception center designated by the director of the California Department of Corrections and Rehabilitation
☐ county jail ☐ other *(specify)*:

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE J. Maggio — DATE 11/13/18 — 458

Appendix J
Constitutional Provisions, Statutes, and Court Rule Involved

The Sixth Amendment of the United States Constitution

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI

The Fourteenth Amendment of the United States Constitution

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.
>
> Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any

State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

U.S. Const. amend. XIV

California Penal Code section 288

§ 288. Lewd or lascivious acts; penalties; psychological harm to victim

(a) Except as provided in subdivision (i), any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b)(1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is

guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

(c)(1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars ($10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness

and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent persons and postsecondary educational institutions that serve dependent persons or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) "Dependent person" means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. "Dependent person" includes any person who is admitted as an inpatient to a

24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent person under care.

(i)(1) Any person convicted of a violation of subdivision (a) shall be imprisoned in the state prison for life with the possibility of parole if the defendant personally inflicted bodily harm upon the victim.

(2) The penalty provided in this subdivision shall only apply if the fact that the defendant personally inflicted bodily harm upon the victim is pled and proved.

(3) As used in this subdivision, "bodily harm" means any substantial physical injury resulting from the use of force that is more than the force necessary to commit the offense.

Cal. Penal Code § 288 (West) [as effective Sept. 9, 2010, to Dec. 31, 2018]

California Penal Code section 667.6

§ 667.6. Prior sex offenses; enhancement of prison terms for new offenses; consecutive terms for certain offenses; test for determining whether crimes against single victim were committed on separate occasions; additional fine for Victim-Witness Assistance Fund

(a) Any person who is convicted of an offense specified in subdivision (e) and who has been convicted previously of any of

those offenses shall receive a five-year enhancement for each of those prior convictions.

(b) Any person who is convicted of an offense specified in subdivision (e) and who has served two or more prior prison terms as defined in Section 667.5 for any of those offenses shall receive a 10-year enhancement for each of those prior terms.

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of an offense specified in subdivision (e) if the crimes involve the same victim on the same occasion. A term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense specified in subdivision (e). If the term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(d) A full, separate, and consecutive term shall be imposed for each violation of an offense specified in subdivision (e) if the crimes involve separate victims or involve the same victim on separate occasions.

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term shall be served consecutively to any other term of imprisonment and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term

shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) This section shall apply to the following offenses:

(1) Rape, in violation of paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261.

(2) Spousal rape, in violation of paragraph (1), (4), or (5) of subdivision (a) of Section 262.

(3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(4) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 286.

(5) Lewd or lascivious act, in violation of subdivision (b) of Section 288.

(6) Continuous sexual abuse of a child, in violation of Section 288.5.

(7) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 288a.

(8) Sexual penetration, in violation of subdivision (a) or (g) of Section 289.

(9) As a present offense under subdivision (c) or (d), assault with intent to commit a specified sexual offense, in violation of Section 220.

(10) As a prior conviction under subdivision (a) or (b), an offense committed in another jurisdiction that includes all of the elements of an offense specified in this subdivision.

(f) In addition to any enhancement imposed pursuant to subdivision (a) or (b), the court may also impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced under those provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to

Section 13837. If the court orders a fine to be imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

Cal. Penal Code § 667.6 (West) [as effective November 8, 2006, to December 31, 2018]

California Penal Code section 1170.1

§ 1170.1. Aggregate term of imprisonment for persons convicted of two or more felonies where consecutive term of imprisonment imposed; principal, subordinate and additional terms; enhancements

(a) Except as otherwise provided by law, and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses. Whenever a court imposes a term of imprisonment in the state prison, whether the term is a principal or subordinate term, the aggregate term shall be served in the state prison, regardless as to whether or not one of the terms specifies imprisonment in a county jail pursuant to subdivision (h) of Section 1170.

(b) If a person is convicted of two or more violations of kidnapping, as defined in Section 207, involving separate

victims, the subordinate term for each consecutive offense of kidnapping shall consist of the full middle term and shall include the full term imposed for specific enhancements applicable to those subordinate offenses.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in thestate prison or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions that the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a). This subdivision shall be applicable in cases of convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a sentence for a felony pursuant to Section 1170 or subdivision (b) of Section 1168, the court shall also impose, in addition and consecutive to the offense of which the person has been convicted, the additional terms provided for any applicable enhancements. If an enhancement is punishable by one of three terms, the court shall, in its discretion, impose the term that best serves the interest of justice, and state the reasons for its sentence choice on the record at the time of sentencing. The court shall also impose any other additional term that the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170 or subdivision (b) of Section 1168. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) All enhancements shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(f) When two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for the infliction of great bodily injury.

(g) When two or more enhancements may be imposed for the infliction of great bodily injury on the same victim in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for being armed with or using a dangerous or deadly weapon or a firearm.

(h) For any violation of an offense specified in Section 667.6, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this section, Section 667.6, or some other provision of law. Each of the enhancements shall be a full and separately served term.

(i) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

Cal. Penal Code § 1170.1 (West) [as effective January 1, 2014, to December 31, 2016]

California Rules of Court, Rule 4.426

Rule 4.426. Violent sex crimes

Currentness

(a) Multiple violent sex crimes

When a defendant has been convicted of multiple violent sex offenses as defined in section 667.6, the sentencing judge must determine whether the crimes involved separate victims or the same victim on separate occasions.

(1) Different victims

If the crimes were committed against different victims, a full, separate, and consecutive term must be imposed for a violent sex crime as to each victim, under section 667.6(d).

(2) Same victim, separate occasions

If the crimes were committed against a single victim, the sentencing judge must determine whether the crimes were committed on separate occasions. In determining whether there were separate occasions, the sentencing judge must consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect on his or her actions and nevertheless resumed sexually assaultive behavior. A full, separate, and consecutive term must be imposed for each violent sex offense committed on a separate occasion under section 667.6(d).

(b) Same victim, same occasion; other crimes

If the defendant has been convicted of multiple crimes, including at least one violent sex crime, as defined in section 667.6, or if there have been multiple violent sex crimes against a single victim on the same occasion and the sentencing court has decided to impose consecutive sentences, the sentencing judge must then determine whether to impose a full, separate, and consecutive sentence under section 667.6(c) for the violent sex crime or crimes instead of including the violent sex crimes in the computation of the principal and subordinate terms under section 1170.1(a). A decision to impose a fully consecutive sentence under section 667.6(c) is an additional sentence choice that requires a statement of reasons separate from those given for consecutive sentences, but which may repeat the same reasons. The sentencing judge is to be guided by the criteria listed in rule 4.425, which incorporates rules 4.421 and 4.423, as well as any other reasonably related criteria as provided in rule 4.408.

Cal. Rules of Court 4.426