

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPEAL NUMBER 21-2442

UNITED STATES OF AMERICA,
Appellee,

v.

DAVID CARBONARO
Appellant.

APPEAL FROM THE JULY 28, 2021 JUDGMENT OF CONVICTION
AND SENTENCE ENTERED IN THE U.S. DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA AT NUMBER 18-CR-565

APPENDIX TO BRIEF FOR THE APPELLANT

José Luis Ongay, Esquire
Attorney for Appellant

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Plymouth Meeting, PA 19462
Telephone: 484.681.1117

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¹ The Table of Contents to the Third Circuit's Appendix has been modified, as requested by the Court on the December 27, 2023 letter. Counsel removed the Government's Sentencing Memorandum, the Government's Supplemental Sentencing Position, the Defendant's Sentencing Memorandum, and the Exhibits to Defendant's Sentencing Memorandum because these documents were filed under seal and remained sealed. Counsel retained the same pagination.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

DAVID CARBONARO,

Defendant.

Docket Number

18-CR-000565

NOTICE OF APPEAL

Please take notice that on this day, Defendant David Carbonaro, appeals the sentence imposed by this Honorable Court on July 28, 2021. The Defendant has CJA Counsel, thus it has not paid the filing fee.

/s/ José Luis Ongay

José Luis Ongay

Date: August 2, 2021

CERTIFICATE OF SERVICE

I certify that I served a copy of this Notice of Appeal upon AUSA Josh Davison via email at josh.davison@usdoj.gov.

/s/ José Luis Ongay

José Luis Ongay

Date: August 2, 2021

August 25, 2021

United States District Court

For the Eastern District of Pennsylvania

United States v. David Carbonaro

Docket No. 0313 2:18CR00565-001

18CR00565-CHK

Notice IS hereby given that David Carbonaro, Defendant, In the above named case, hereby appeals to the United States Court of Appeals for the 3rd Circuit from the final Judgment and Sentence, entered In this action on the 28th day of July, 2021. This Notice IS filed Prose because, although Defendant Requested that said notice be filed by his Counsel, Jose Louis ongay, The Defendant has not received copy of any such notice and IS unable to ascertain if notice of appeal has been filed In this case, as the Defendant has requested

Dated: August 25, 2021

BY: David Carbonaro

David Carbonaro

76938-066

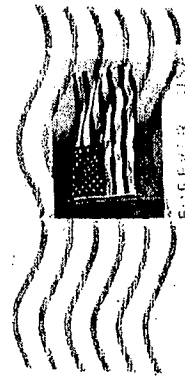
FDC Philadelphia

P.O. Box 562

Philadelphia, PA

19105

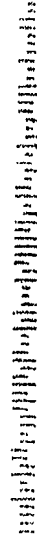
David Carbonaro
76938-066
FDC Philadelphia
P.O. Box 562
Philadelphia, PA
19105
F



PHILADELPHIA PA 190
27 AUG 2021 PM 9 L

Clerk of the Court
United States District Courthouse
601 Market Street
Philadelphia, PA 19106

19106-179659



UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

UNITED STATES OF AMERICA

v.

DAVID CARBONARO

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:18-CR-00565-CFK-001

USM Number: 76938-066

Jose Luis Ongay, Esq.
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1, 3, and 4 of the indictment.☐ pleaded nolo contendere to count(s)
which was accepted by the court.☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:2251(a), AND (e)	Production of child pornography	12/1/2015	1
18:2252(a)(2), (b)(1)	Distribution of child pornography	4/29/2018	3
18:2252(a)(4)(B),(b)(2)	Possession of child pornography	7/25/2018	4

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Cc: U.S. Attorney
Defense Counsel
Probation Office
Pretrial Services
Financial Litigation Unit
Fiscal Department
U.S. Marshal

7/28/2021

Date of Imposition of Judgment

/S/ CHAD F. KENNEY

Signature of Judge

CHAD F. KENNEY, U.S. DISTRICT JUDGE

Name and Title of Judge

7/28/2021

Date

DEFENDANT: DAVID CARBONARO
CASE NUMBER: 2:18-CR-00565-CFK-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

265 months. This includes a term of 265 months on count 1, and a term of 240 months on each of counts 3 and 4. All such terms shall be served concurrently.

☒ The court makes the following recommendations to the Bureau of Prisons:

The defendant shall receive credit for time served. The Court further recommends that the defendant enroll in a sex offender treatment program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: DAVID CARBONARO
CASE NUMBER: 2:18-CR-00565-CFK-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Life as to each of counts 1, 3, and 4. All terms to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: DAVID CARBONARO
CASE NUMBER: 2:18-CR-00565-CFK-001**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature

Date

DEFENDANT: DAVID CARBONARO
CASE NUMBER: 2:18-CR-00565-CFK-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a mental health program for evaluation and/or treatment and abide by the rules of any such program until satisfactorily discharged.
2. The defendant shall refrain from the use of alcohol and shall submit to testing to ensure compliance. It is further ordered that the defendant shall participate in alcohol treatment and abide by the rules of any such program until satisfactorily discharged.
3. The defendant shall submit to an initial inspection and examination of his/her computers, devices, programs, or other applications. The U.S. Probation Office shall conduct such inspection and examination. The defendant shall also allow the installation of any hardware or software systems which monitor or filter computer use. The defendant shall abide by the standard conditions of computer monitoring and filtering that will be approved by this Court. The defendant is to pay the cost of the computer monitoring, not to exceed the monthly contractual rate, in accordance with the probation officer's discretion.
4. The defendant shall report to the U.S. Probation Office any regular contact with children of either sex under the age of 18. The defendant shall not obtain employment or perform volunteer work which includes regular contact with children under the age of 18.
5. The defendant shall participate in a sex offender program for evaluation and treatment and abide by the rules of any such program until satisfactorily discharged. While in the treatment program, the defendant shall submit to risk assessment, psychological testing, and physiological testing, which may include, but is not limited to, polygraph or other specific tests to monitor compliance with supervision and treatment conditions.
6. The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, studies, or was previously convicted of a qualifying offense.
7. The defendant shall provide the U.S. Probation Office with full disclosure of his/her financial records, to include yearly income tax returns, upon the request of the U.S. Probation Office. The defendant shall cooperate with the probation officer in the investigation of his/her financial dealings and shall provide truthful monthly statements of his/her income. The defendant shall also notify the probation officer of any material change in economic circumstances.
8. The defendant is prohibited from incurring any new credit charges or opening additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with a payment schedule for any fine or restitution obligation. The defendant shall not encumber or liquidate interest in any assets unless it is in direct service of the fine or restitution obligation or otherwise has the express approval of the Court.

DEFENDANT: DAVID CARBONARO
CASE NUMBER: 2:18-CR-00565-CFK-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 300.00	\$ 38,000.00	\$ 0.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Victim 1	\$2,000.00	\$2,000.00	100
Victim 2	\$2,000.00	\$2,000.00	100
Victim 3	\$2,000.00	\$2,000.00	100
Victim 4	\$2,000.00	\$2,000.00	100
Victim 5	\$2,000.00	\$2,000.00	100
Victim 6	\$2,000.00	\$2,000.00	100
Victim 7	\$2,000.00	\$2,000.00	100
Victim 8	\$2,000.00	\$2,000.00	100
Victim 9	\$2,000.00	\$2,000.00	100
Victim 10	\$2,000.00	\$2,000.00	100
TOTALS	\$ 38,000.00	\$ 38,000.00	

☐ Restitution amount ordered pursuant to plea agreement \$

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DAVID CARBONARO
CASE NUMBER: 2:18-CR-00565-CFK-001

ADDITIONAL RESTITUTION PAYEES

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Victim 11	\$2,000.00	\$2,000.00	100
Victim 12	\$2,000.00	\$2,000.00	100
Victim 13	\$2,000.00	\$2,000.00	100
Victim 14	\$2,000.00	\$2,000.00	100
Victim 15	\$2,000.00	\$2,000.00	100
Victim 16	\$2,000.00	\$2,000.00	100
Victim 17	\$2,000.00	\$2,000.00	100
Victim 18	\$2,000.00	\$2,000.00	100
Victim 19	\$2,000.00	\$2,000.00	100

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DAVID CARBONARO
CASE NUMBER: 2:18-CR-00565-CFK-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 38,300.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is recommended that the defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program and provide a minimum payment of \$25 per quarter towards the amount due. In the event the entire amount due is not paid prior to the commencement of supervision, the defendant shall satisfy the amount due in monthly installments of not less than \$25 to commence 60 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
- a) one (1) Asus laptop computer, Model X555D, serial number G6NOCB10X710258;
 - b) one (1) Toshiba external hard drive, Model DTB310, serial number 871WSILJS02F;

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: DAVID CARBONARO
CASE NUMBER: 2:18-CR-00565-CFK-001

ADDITIONAL FORFEITED PROPERTY

- c) Three (3) thumb drives;
- d) one (1) iPhone SE, Model A1662, IMEI 358633074087442;
- e) one (1) Sony Cybershot digital camera, serial number 113079;
- f) one (1) Sony memory stick, 64 mb;
- g) one (1) Memorex CD-RW, 700 mb;
- h) one (1) GB Miro SD card;
- i) one (1) Kingmax Micro SD card;
- j) one (1) Transcend Micro SD card, serial number MMAGROZGUECA;
- k) one (1) Maxell Micro SD card; and
- l) one (1) Samsung Micro SD card;

CLOSED, APPEAL, FORFEITURE

**United States District Court
Eastern District of Pennsylvania (Philadelphia)
CRIMINAL DOCKET FOR CASE #: 2:18-cr-00565-CFK-1**

Case title: USA v. CARBONARO et al

Date Filed: 12/06/2018

Date Terminated: 07/30/2021

Assigned to: HONORABLE CHAD F.
KENNEY

Appeals court case number: 21-2442 USCA
FOR THE THIRD CIRCUIT

Defendant (1)

DAVID CARBONARO
TERMINATED: 07/30/2021

represented by **DAVID CARBONARO**
76938-066
PHILADELPHIA
FEDERAL DETENTION CENTER
Inmate Mail/Parcels
P.O. BOX 562
PHILADELPHIA, PA 19106
PRO SE

JOSE LUIS ONGAY
600 WEST GERMANTOWN PIKE
SUITE 400
PLYMOUTH MEETING, PA 19462
484-681-1117
Email: jlolaw@live.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

JEFFREY AZZARANO
THE LAW OFFICE OF JEFFREY
AZZARANO LLC
1500 JOHN F. KENNEDY BLVD STE
1020
PHILADELPHIA, PA 19102
215-575-9275
Email: jazzarano@yahoo.com
TERMINATED: 03/27/2019
Designation: CJA Appointment

JEREMY H.G. IBRAHIM
LAW OFFICES OF JEREMY H.
GONZALEZ IBRAHIM
P.O. BOX 1025

14

CHADDS FORD, PA 19317
215-568-1943
Email: jeremyibrahim.esq@gmail.com
TERMINATED: 08/07/2020
Designation: CJA Appointment

Pending Counts

18:2251(a), AND (e) PRODUCTION OF
CHILD PORNOGRAPHY
(1)

18:2252(a)(2), (b)(1) DISTRIBUTION OF
CHILD PORNOGRAPHY
(3)

18:2252(a)(4)(B),(b)(2) POSSESSION OF
CHILD PORNOGRAPHY
(4)

Disposition

IMPRISONMENT: 265 MONTHS;
SUPERVISED RELEASE: LIFE;
RESTITUTION: \$38,000; SPECIAL
ASSESSMENT: \$300

IMPRISONMENT: 240 MONTHS;
SUPERVISED RELEASE: LIFE;
RESTITUTION: \$38,000; SPECIAL
ASSESSMENT: \$300

IMPRISONMENT: 240 MONTHS;
SUPERVISED RELEASE: LIFE;
RESTITUTION: \$38,000; SPECIAL
ASSESSMENT: \$300

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Highest Offense Level (Terminated)

None

Complaints

None

Disposition**Disposition****Plaintiff**

USA

represented by **JOSH A. DAVISON**
U.S. ATTORNEY'S OFFICE
615 CHESTNUT ST. SUITE 1250
PHILADELPHIA, PA 19106
215-861-8425
Fax: 215-861-8618
Email: josh.davison@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed **#** **Docket Text**

12/06/2018 1 INDICTMENT as to DAVID CARBONARO (1) count(s) 1, 3, 4, KAYLA PARKER (2)

count(s) 2. (kk,) (Additional attachment(s) added on 12/7/2018: # 1 Designation Form) (kk,). (Entered: 12/07/2018)

- 12/06/2018 2 MOTION AND ORDER FOR ISSUANCE OF ARREST WARRANT AS TO DAVID CARBONARO. Signed by MAGISTRATE JUDGE MARILYN HEFFLEY on 12/6/2018.12/7/2018 Entered and Copies E-Mailed. (kk,) (Entered: 12/07/2018)
- 12/11/2018 4 PETITION AND ORDER BY USA FOR AD PROSEQUENDUM IN CASE AS TO DAVID CARBONARO. Signed by HONORABLE CHAD F. KENNEY on 12/11/18.12/11/18 Entered and Copies E-Mailed. (ti,) (Entered: 12/11/2018)
- 12/12/2018 6 Minute Entry for proceedings held before MAGISTRATE JUDGE RICHARD A. LLORET Initial Appearance/AC as to DAVID CARBONARO held on 12/11/18. The Government's Motion for Temporary Detention is granted. The Defendant is detained pending further proceedings. The case is continued to 12/14/2018 at 1:30 p.m. in Courtroom 5A. Court Reporter ESR.(ti,) (Entered: 12/12/2018)
- 12/12/2018 7 CJA 23 Financial Affidavit by DAVID CARBONARO (ti,) (Entered: 12/12/2018)
- 12/17/2018 12 Minute Entryfor proceedings held before MAGISTRATE JUDGE RICHARD A. LLORET in Courtroom 5-A Arraignment as to DAVID CARBONARO (1) Counts 1, 3, 4 held on 12/14/18. Plea entered by DAVID CARBONARO Not Guilty on counts 1, 3, 4. Counsel have 14 days to file pretrial motions. Deft. stipulated to pretrial detention pending further proceedings.Court Reporter ESR.(ke) (Entered: 12/17/2018)
- 12/17/2018 13 ORDER OF DETENTION AS TO DAVID CARBONARO THAT THE DEFT. BE COMMITTED TO THE CUSTODY OF THE ATTORNEY GENERAL FO CONFINEMENT, ETC. Signed by MAGISTRATE JUDGE RICHARD A. LLORET on 12/14/18.12/17/18 Entered and Copies E-Mailed. (ke) (Entered: 12/17/2018)
- 12/18/2018 14 SCHEDULING ORDER AS TO DAVID CARBONARO, KAYLA PARKER THAT THE CASE IS SPECIALLY LISTED FOR JURY TRIAL ON 2/19/2019, AT 9:30 AM IN COURTROOM 6A. NO LATER THAN 12/28/2018, THE GOVERNMENT SHALL PROVIDE THE DEFENDAN WITH ALL AVAILABLE DISCOVERY. THE PARTIES SHALL FILE ALL PRETRIAL MOTIONS NO LATER THAN 1/7/2019, WITH RESPONSES DUE NO LATER THAN 1/14/2019. A HEARING ON ALL PRETRIAL MOTIONS WILL BE HELD ON 1/30/2019 AT 2:00 PM IN COURTROOM 6A. NO LATER THAN 2/15/2019, THE PARTIES SHALL FILE TRIAL MEMORANDUM, ETC. Signed by HONORABLE CHAD F. KENNEY on 12/18/18.12/19/18 Entered and Copies E-Mailed. (ti,) (Entered: 12/19/2018)
- 12/20/2018 15 Arrest Warrant Returned Executed on 12/6/18. in case as to DAVID CARBONARO. (ti,) (Entered: 12/21/2018)
- 12/31/2018 18 UNOPPOSED MOTION FOR TRIAL CONTINUANCE AND FOR EXTENSION OF TIME TO PROVIDE NOTICE OF EXPERTS AND FILE MOTIONS by DAVID CARBONARO. CERTIFICATE OF SERVICE. (AZZARANO, JEFFREY) Modified on 1/2/2019 (ap,). (Entered: 12/31/2018)
- 01/02/2019 19 AMENDED SCHEDULING ORDER AS TO DAVID CARBONARO, KAYLA PARKER THAT THE DEFT'S MOTIONS (DOC. #17 AND #18) ARE GRANTED. DISCOVERY MUST BE COMPLETED BY 4/8/2019. ANY EXPERT REPORTS SHALL BE EXCHANGED BETWEEN THE PARTIES BY 4/15/2019. ALL PRETRIAL MOTIONS SHALL BE FILED NO LATER THAN 4/22/2019. RESPONSES TO PRETRIAL MOTIONS SHALL BE FILED NO LATER THAN 5/6/2019. ETC. THE JURY TRIAL IS RESCHEDULED FOR 6/3/2019 AT 9:30 A.M., IN COURTROOM 6A, ETC. Signed by HONORABLE CHAD F. KENNEY on 1/2/2019.1/3/2019 Entered and Copies E-Mailed. (tomg,) (Entered: 01/03/2019)

01/10/2019	<u>20</u>	CJA 20 AS TO DAVID CARBONARO: APPOINTMENT OF ATTORNEY JEFFREY AZZARANO. Signed by MAGISTRATE JUDGE RICHARD A. LLORET on 1/8/2019.1/10/2019 Entered. (tomg,) (Entered: 01/10/2019)
03/14/2019	<u>21</u>	NOTICE OF HEARING as to DAVID CARBONARO. STATUS HEARING SET FOR 3/27/2019 AT 4:45 PM IN COURTROOM 6A BEFORE THE HONORABLE CHAD F. KENNEY. (ctk) (Entered: 03/14/2019)
03/15/2019	<u>22</u>	First MOTION to Withdraw as Attorney by Jeffrey Azzarano. by DAVID CARBONARO. (AZZARANO, JEFFREY) (Entered: 03/15/2019)
03/25/2019	<u>23</u>	AMENDED NOTICE OF HEARING as to DAVID CARBONARO. STATUS HEARING SET FOR 3/27/2019 AT 10:30 AM IN COURTROOM 6A BEFORE HONORABLE CHAD F. KENNEY. (ctk) (Entered: 03/25/2019)
03/27/2019	<u>24</u>	Minute Entry for proceedings held before HONORABLE CHAD F. KENNEY in Courtroom 6A: STATUS HEARING - EX PARTE as to DAVID CARBONARO held on 3/27/2019. The Court conducted Ex Parte status hearing with deft and counsel, etc. Court Reporter: ESR.(tomg,) (Entered: 03/27/2019)
03/27/2019	<u>25</u>	ORDER AS TO DAVID CARBONARO THAT JEFFREY AZZARANO, ESQ., IS HEREBY REMOVED AS ATTORNEY OF RECORD IN THIS CASE. JEREMY IBRAHIM, ESQ., IS APPOINTED TO REPRESENT DEFT IN ALL MATTERS BEFORE THIS COURT. Signed by HONORABLE CHAD F. KENNEY on 3/27/2019.3/27/2019 Entered and Copies E-Mailed. (tomg,) (Entered: 03/27/2019)
04/15/2019	<u>27</u>	Consent MOTION to Continue <i>Trial</i> by DAVID CARBONARO. (IBRAHIM, JEREMY) (Entered: 04/15/2019)
04/18/2019	<u>29</u>	SECOND AMENDED SCHEDULING ORDER AS TO DAVID CARBONARO, KAYLA PARKER THAT THE MOTION TO CONTINUE TRIAL AND EXPAND TIME TO PROVIDE EXPERT NOTICE AND FILE PRETRIAL MOTIONS (DOC. #26) AND THE CONSENT MOTION TO CONTINUE TRIAL (DOC. #27) ARE GRANTED. THE JURY TRIAL IS RESCHEDULED FOR 10/15/2019 AT 9:00 A.M., IN COURTROOM 6A, ETC. Signed by HONORABLE CHAD F. KENNEY on 4/18/2019.4/18/2019 Entered and Copies E-Mailed. (tomg,) (Entered: 04/18/2019)
08/08/2019	<u>30</u>	MOTION to Preclude <i>GOVERNMENT'S MOTION FOR ORDER PRECLUDNG THE DEFENDANT FROM HAVING CONTACT WITH THE MINOR VICTIM, WITH CERTIFICATE OF SERVICE</i> by USA as to DAVID CARBONARO. (DAVISON, JOSH) (Entered: 08/08/2019)
08/08/2019	<u>32</u>	SEALED EX PARTE MOTION by DAVID CARBONARO. (FILED UNDER SEAL). (tomg,) (tomg,). (Entered: 08/09/2019)
08/08/2019	<u>33</u>	SEALED EX PARTE ORDER AS TO DAVID CARBONARO (1). Signed by HONORABLE CHAD F. KENNEY on 8/8/2019. (FILED UNDER SEAL).8/9/2019 ENTERED AND COPIES MAILED.(tomg,) (tomg,). (Entered: 08/09/2019)
08/08/2019	<u>34</u>	SEALED EX PARTE JUDICIAL DOCUMENT AS TO DAVID CARBONARO. Signed by HONORABLE CHAD F. KENNEY on 8/8/2019. (FILED UNDER SEAL).8/9/2019 Entered and Copies Mailed. (tomg,) (tomg,). (Entered: 08/09/2019)
08/16/2019	<u>36</u>	RESPONSE to Motion as to USA re <u>30</u> MOTION to Preclude <i>GOVERNMENT'S MOTION FOR ORDER PRECLUDNG THE DEFENDANT FROM HAVING CONTACT WITH THE MINOR VICTIM</i> filed by DAVID CARBONARO, <i>CERTIFICATE OF SERVICE</i> . (IBRAHIM, JEREMY) Modified on 8/19/2019 (afm,). (Entered: 08/16/2019)
09/18/2019	<u>38</u>	MOTION to Continue [<i>Unopposed</i>] by DAVID CARBONARO. (IBRAHIM, JEREMY)

(Entered: 09/18/2019)

- 09/20/2019 39 THIRD AMENDED SCHEDULING ORDER AS TO DAVID CARBONARO, KAYLA PARKER THAT THE MOTIONS TO CONTINUE (DOC. #37 AND #38) ARE GRANTED. DISCOVERY SHALL BE COMPLETED BY 11/15/2019. ANY EXPERT REPORTS SHALL BE EXCHANGED BETWEEN THE PARTIES BY 11/20/2019, ETC. THE JURY TRIAL IS RESCHEDULED FOR 1/27/2020 AT 9:30 A.M., IN COURTROOM 6A. Signed by HONORABLE CHAD F. KENNEY on 9/20/2019.9/23/2019 Entered and Copies E-Mailed. (tomg,) (Entered: 09/23/2019)
- 10/30/2019 40 NOTICE OF HEARING as to DAVID CARBONARO (1). Change of Plea Hearing set for 11/12/2019 at 2:00 PM in COURTROOM 6A before the HONORABLE CHAD F. KENNEY. (ctk) (Entered: 10/30/2019)
- 11/07/2019 41 AMENDED NOTICE OF HEARING as to DAVID CARBONARO. Change of Plea Hearing re-set for 11/19/2019 at 10:00 AM in COURTROOM 6A before the HONORABLE CHAD F. KENNEY. (ctk) (Entered: 11/07/2019)
- 11/19/2019 43 Minute Entry for proceedings held before HONORABLE CHAD F. KENNEY in Courtroom 6A: CHANGE OF PLEA as to DAVID CARBONARO held on 11/19/2019. Deft sworn. Rule 11 colloquy. Deft entered a plea of GUILTY as to Counts 1, 3, and 4 of the indictment. Pre-sentence report ordered. Sentencing to be set by the Court. Court Reporter: ESR.(tomg,) (Entered: 11/19/2019)
- 11/19/2019 44 Plea Document as to DAVID CARBONARO (tomg,) (Entered: 11/19/2019)
- 11/19/2019 45 NOTICE OF HEARING as to DAVID CARBONARO. Sentencing set for 3/19/2020 at 10:00 AM in COURTROOM 6A before the HONORABLE CHAD F. KENNEY. (ctk) (Entered: 11/19/2019)
- 11/22/2019 52 ORDER AS TO DAVID CARBONARO THAT THE GOVT'S MOTION FOR ORDER PRECLUDING THE DEFT FROM HAVING CONTACT WITH THE MINOR VICTIM (DOC. #30) IS GRANTED. Signed by HONORABLE CHAD F. KENNEY on 11/22/2019.11/25/2019 Entered and Copies E-Mailed. (tomg,) (Entered: 11/25/2019)
- 03/06/2020 54 AMENDED NOTICE OF HEARING as to DAVID CARBONARO. Sentencing re-set for 6/4/2020 at 10:00 AM in COURTROOM 6A before HONORABLE CHAD F. KENNEY. (ctk) (Entered: 03/06/2020)
- 05/14/2020 56 SECOND AMENDED NOTICE OF HEARING as to DAVID CARBONARO. Sentencing set for 9/15/2020 at 10:00 AM in COURTROOM 6A before the HONORABLE CHAD F. KENNEY. (ctk) (Entered: 05/14/2020)
- 07/15/2020 58 ORDER AS TO DAVID CARBONARO THAT JOSE LUIS ONGAY, ESQ., OF THE CJA PANEL, SHALL BE APPOINTED AS CO-COUNSEL FOR THE DEFT, ETC. Signed by HONORABLE CHAD F. KENNEY on 7/15/2020.7/15/2020 Entered and Copies E-Mailed. (tomg,) (Entered: 07/15/2020)
- 08/03/2020 59 MOTION to Withdraw as Attorney by Jeremy H. Gonzalez Ibrahim. by DAVID CARBONARO. (IBRAHIM, JEREMY) (Entered: 08/03/2020)
- 08/07/2020 60 ORDER AS TO DAVID CARBONARO (1) THAT THE MOTION TO WITHDRAW AS ATTORNEY (DOC. #59) IS GRANTED. JEREMY IBRAHIM, ESQ., SHALL BE TERMINATED FROM THIS CASE. JOSE LUIS ONGAY, ESQ., SHALL ASSUME ALL DUTIES AND RESPONSIBILITIES AS COUNSEL FOR THE DEFT. Signed by HONORABLE CHAD F. KENNEY on 8/7/2020.8/7/2020 ENTERED AND COPIES E-MAILED.(tomg,) (Entered: 08/07/2020)
- 08/24/2020 61 MODIFIED NOTICE OF HEARING as to DAVID CARBONARO. Sentencing reset for

18

10/19/2020 at 9:00 AM in COURTROOM 6A before the HONORABLE CHAD F. KENNEY. (Attachments: # 1 Courtroom Protocol, # 2 Filing Procedures) (ctk) (Entered: 08/24/2020)

- 09/24/2020 64 Consent MOTION to Continue by DAVID CARBONARO. (ONGAY, JOSE) (Entered: 09/24/2020)
- 09/30/2020 65 ORDER AS TO DAVID CARBONARO (1) THAT THE MOTION TO CONTINUE SENTENCING HEARING (DOC. NO. 64) IS GRANTED. AS SUCH, THE SENTENCING HEARING PREVIOUSLY SCHEDULED FOR OCTOBER 19, 2020 AT 9:00 AM SHALL BE CONTINUED TO A LATER DATE AND TIME TO BE DETERMINED BY THE COURT. Signed by HONORABLE CHAD F. KENNEY on 9/30/2020.9/30/2020 ENTERED AND COPIES E-MAILED.(ahf) (Entered: 09/30/2020)
- 09/30/2020 ***Terminate Deadlines and Hearings as to DAVID CARBONARO: (ahf,) (Entered: 09/30/2020)
- 10/19/2020 68 MODIFIED NOTICE OF HEARING as to DAVID CARBONARO. Sentencing reset for 12/14/2020 at 9:00 AM in COURTROOM 6A before the HONORABLE CHAD F. KENNEY. (ctk) (Entered: 10/19/2020)
- 11/30/2020 71 MOTION to Continue Sentence by DAVID CARBONARO. (ONGAY, JOSE) (Entered: 11/30/2020)
- 12/03/2020 73 ORDER AS TO DAVID CARBONARO THAT THE MOTION TO CONTINUE SENTENCE (DOC. NO. 71) IS GRANTED THE SENTENCING HEARING PREVIOUSLY SHCEDULED FOR DECEMBER 14, 2020 AT 9:00 AM IS RESCHEDULED. Signed by HONORABLE CHAD F. KENNEY on 12/3/2020.12/3/2020 ENTERED AND COPIES E-MAILED.(ahf) (Entered: 12/03/2020)
- 12/03/2020 74 NOTICE OF HEARING as to DAVID CARBONARO: Sentencing set for 4/1/2021 at 1:00 PM in COURTROOM 6A before HONORABLE CHAD F. KENNEY. (ahf,) (Entered: 12/03/2020)
- 02/16/2021 77 NOTICE OF HEARING as to DAVID CARBONARO. Sentencing reset for 6/15/2021 at 9:00 AM in COURTROOM 6A before the HONORABLE CHAD F. KENNEY. (ctk) (Entered: 02/16/2021)
- 05/14/2021 79 (Ex Parte) Ex Parte MOTION for Psychiatric Exam *For Funds to Retain a Psychologist* by DAVID CARBONARO as to DAVID CARBONARO. (Attachments: # 1 Exhibit A) (ONGAY, JOSE) (Entered: 05/14/2021)
- 05/14/2021 80 (Ex Parte) Ex Parte MOTION for Psychiatric Exam *For Funds to Retain a Psychologist* by DAVID CARBONARO as to DAVID CARBONARO. (Attachments: # 1 Exhibit A) (ONGAY, JOSE) (Entered: 05/14/2021)
- 05/17/2021 81 ORDER AS TO DAVID CARBONARO THAT THE MOTIONS ARE GRANTED. AS SUCH, DEFENSE COUNSEL IS PERMITTED TO PROCURE THE SERVICES OF THE DR. STEVEN SAMUEL, PH.D. FOR AN EXPERT BUDGET OF \$4500. Signed by HONORABLE CHAD F. KENNEY on 5/14/2021.5/17/2021 Entered and Copies E-Mailed. (tomg,) (Entered: 05/17/2021)
- 06/01/2021 82 SENTENCING DOCUMENT by USA as to DAVID CARBONARO. (FILED UNDER SEAL). (tomg,) (Additional attachment(s) added on 6/1/2021: # 1 ATTACHMENT PART 1, # 2 ATTACHMENT PART 2) (tomg,). (Entered: 06/01/2021)
- 06/01/2021 83 Sentencing Document by USA as to DAVID CARBONARO. (FILED UNDER SEAL). (tomg,) (tomg,). (Entered: 06/01/2021)

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06/01/2021	<u>84</u>	NOTICE OF HEARING as to DAVID CARBONARO. Sentencing set for 6/15/2021 at 9:00 AM in Courtroom 8B before the HONORABLE CHAD F. KENNEY. (ctk) (Entered: 06/01/2021)
06/02/2021	<u>86</u>	MOTION for Judgment and Preliminary Order of Forfeiture , <i>with Certificate of Service</i> by USA as to DAVID CARBONARO. (DAVISON, JOSH) (Entered: 06/02/2021)
06/09/2021	<u>87</u>	NOTICE: THE SENTENCING HEARING, PREVIOUSLY SCHEDULED FOR JUNE 15, 2021 AT 9:00 AM IN COURTROOM 8B BEFORE THE HONORABLE CHAD F. KENNEY, IS HEREBY CANCELLED. THE COURT WILL RESCHEDULE THIS MATTER UPON CONSULTATION WITH COUNSEL. (ctk). (Entered: 06/09/2021)
06/29/2021	<u>89</u>	SEALED LETTER BY USA AS TO DAVID CARBONARO. (FILED UNDER SEAL). (tomg,) (tomg,). (Entered: 06/29/2021)
06/29/2021	<u>90</u>	ATTACHMENT B by USA as to DAVID CARBONARO. (FILED UNDER SEAL). (tomg,) (tomg,). (Entered: 06/29/2021)
06/29/2021	<u>91</u>	SEALED MOTION by USA as to DAVID CARBONARO. (FILED UNDER SEAL). (tomg,) (tomg,). (Entered: 06/29/2021)
07/01/2021	<u>92</u>	NOTICE OF HEARING as to DAVID CARBONARO. Sentencing set for 7/28/2021 09:00 AM in Courtroom 8B before HONORABLE CHAD F. KENNEY. (ctk) (Entered: 07/01/2021)
07/12/2021	<u>94</u>	SENTENCING DOCUMENT WITH CERTIFICATE OF SERVICE by DAVID CARBONARO. (FILED UNDER SEAL) (ems) (ems). (Entered: 07/12/2021)
07/12/2021	<u>95</u>	Sentencing Document with Certificate of Service by DAVID CARBONARO. (FILED UNDER SEAL) (ems) (ems). (Entered: 07/12/2021)
07/15/2021	<u>96</u>	SEALED NOTICE AS TO DAVID CARBONARO. (FILED UNDER SEAL) (ems) (ems). (Entered: 07/15/2021)
07/21/2021	<u>98</u>	SUPPLEMENTAL SENTENCING DOCUMENT WITH CERTIFICATE OF SERVICE by USA as to DAVID CARBONARO. (FILED UNDER SEAL) (ems) (ems). (Entered: 07/21/2021)
07/21/2021	<u>99</u>	Sentencing Document with Certificate of Service by USA as to DAVID CARBONARO. (FILED UNDER SEAL) (ems) (ems). (Entered: 07/21/2021)
07/21/2021	<u>100</u>	SEALED ORDER AS TO DAVID CARBONARO. Signed by HONORABLE CHAD F. KENNEY on 7/21/2021. (FILED UNDER SEAL). 7/22/2021 Entered and Copies E-Mailed BY CHAMBERS. (tomg,) (tomg,). (Entered: 07/22/2021)
07/26/2021	<u>101</u>	SECOND SUPPLEMENTAL SENTENCING DOCUMENT WITH CERTIFICATE OF SERVICE by USA as to DAVID CARBONARO. (FILED UNDER SEAL) (ems) (ems). (Entered: 07/26/2021)
07/26/2021	<u>102</u>	Sentencing Document with Certificate of Service by USA as to DAVID CARBONARO. (FILED UNDER SEAL) (ems) (ems). (Entered: 07/26/2021)
07/29/2021	<u>103</u>	SENTENCING DOCUMENT by DAVID CARBONARO. (FILED UNDER SEAL) (ems) (ems). (Entered: 07/29/2021)
07/29/2021	<u>104</u>	SENTENCING DOCUMENT AS TO DAVID CARBONARO. (FILED UNDER SEAL) (ems) (ems). (Entered: 07/29/2021)
07/29/2021	<u>105</u>	JUDICIAL DOCUMENT AS TO DAVID CARBONARO (1). Signed by HONORABLE CHAD F. KENNEY on 7/28/2021. 7/29/2021 ENTERED AND COPIES E-MAILED BY CHAMBERS. (FILED UNDER SEAL) (ems) (ems). (Entered: 07/29/2021)

07/30/2021 106 Minute Entry for proceedings held before HONORABLE CHAD F. KENNEY in Courtroom 8B: Sentencing held on 7/28/2021 for DAVID CARBONARO (1), Count(s) 1, IMPRISONMENT: 265 MONTHS; SUPERVISED RELEASE: LIFE; RESTITUTION: \$38,000; SPECIAL ASSESSMENT: \$300; Count(s) 3, 4, IMPRISONMENT: 240 MONTHS; SUPERVISED RELEASE: LIFE; RESTITUTION: \$38,000; SPECIAL ASSESSMENT: \$300. Court Reporter: ESR. (tomg,) (Entered: 07/30/2021)

07/30/2021 107 JUDGMENT AND PRELIMINARY ORDER OF FORFEITURE AS TO DAVID CARBONARO. Signed by HONORABLE CHAD F. KENNEY on 7/28/2021.7/30/2021 Entered and Copies E-Mailed AND CC ICE. (tomg,) (Entered: 07/30/2021)

07/30/2021 108 JUDGMENT AS TO DAVID CARBONARO (1), Count(s) 1, IMPRISONMENT: 265 MONTHS; SUPERVISED RELEASE: LIFE; RESTITUTION: \$38,000; SPECIAL ASSESSMENT: \$300; Count(s) 3, 4, IMPRISONMENT: 240 MONTHS; SUPERVISED RELEASE: LIFE; RESTITUTION: \$38,000; SPECIAL ASSESSMENT: \$300. Signed by HONORABLE CHAD F. KENNEY on 7/28/2021.7/30/2021 Entered and Copies E-Mailed. (tomg,) (Entered: 07/30/2021)

08/02/2021 109 NOTICE OF APPEAL by DAVID CARBONARO RE: 108 JUDGMENT. (**FILING FEE NOT PAID - FILED BY CJA COUNSEL**). (ONGAY, JOSE) Modified on 8/2/2021 (ke,). Modified on 8/2/2021 (ke,). (Entered: 08/02/2021)

08/06/2021 110 NOTICE of Docketing Record on Appeal from USCA as to DAVID CARBONARO re 109 Notice of Appeal - Final Judgment filed by DAVID CARBONARO. USCA Case Number 21-2442 (tomg,) (Entered: 08/09/2021)

08/27/2021 112 (PRO SE) NOTICE OF APPEAL by DAVID CARBONARO re 108 Judgment. (FILING FEE NOT PAID). (tomg,) (Entered: 08/31/2021)

09/13/2021 113 TPO Form re 109 Notice of Appeal - Final Judgment : (ems) (Entered: 09/13/2021)

10/18/2021 123 Final MOTION for Order *MOTION OF THE UNITED STATES FOR ENTRY OF A FINAL ORDER OF FORFEITURE, WITH CERTIFICATE OF SERVICE* by USA as to DAVID CARBONARO. (DAVISON, JOSH) (Entered: 10/18/2021)

10/18/2021 124 FINAL ORDER OF FORFEITURE AS TO DAVID CARBONARO. Signed by HONORABLE CHAD F. KENNEY on 10/18/2021.10/18/2021 Entered and Copies E-Mailed. (tomg,) (Entered: 10/18/2021)

10/27/2021 125 TRANSCRIPT OF SENTENCING HEARING held on 7/28/2021, before Judge CHAD F. KENNEY. Court Reporter: ESR; Transcribed by: ACCESS TRANSCRIPTS, LLC. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/17/2021. Redacted Transcript Deadline set for 11/29/2021. Release of Transcript Restriction set for 1/25/2022. (tomg,) (Entered: 10/27/2021)

10/27/2021 126 Notice of Filing of Official Transcript with Certificate of Service re 125 Transcript - PDF,, 10/27/2021 Entered and Copies Emailed. (tomg,) (Entered: 10/27/2021)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, . Case No. 18-cr-565-1
Plaintiff, .
vs. .
DAVID CARBONARO, . 601 Market Street
Defendant. . Philadelphia, PA 19106
Wednesday, July 28, 2021
9:08 a.m.
.....

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE CHAD F. KENNEY
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff: U.S. Attorney's Office
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Philadelphia, PA 19106
(215) 861-8425

For the Defendant: Ongay Law
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I N D E X
7/28/21

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1 (Proceedings commence at 9:08 a.m.)

2 THE COURT OFFICER: All rise. The United States
3 District Court for the Eastern District of Pennsylvania is now
4 in session, the Honorable Chad F. Kenney presiding.

5 THE COURT: Good morning, everyone.

6 MR. DAVISON: Good morning, Your Honor.

7 MR. ONGAY: Good morning, Your Honor.

8 THE COURT: All right. We're on the record in
9 U.S. v. Carbonaro, and it's 565 of '18.

10 So Counsel, for the record?

11 MR. DAVISON: Josh Davison for the Government. Good
12 morning, Your Honor. With me is Kathryn Murray from Homeland
13 Security Investigations.

14 MS. MURRAY: Morning, Your Honor.

15 MR. ONGAY: Good morning, Your Honor. Jose Luis
16 Ongay on behalf of Mr. David Carbonaro.

17 THE COURT: All right. Everybody can be seated.

18 So I've received the following documents submitted by
19 counsel in advance of the hearing: Government's sentencing
20 memorandum; victim impact statements; documents in support of
21 restitution request; Defendant's sentencing memorandum and
22 appendix; exhibits, including Dr. Steven Samuel's expert
23 report; and two supplemental sentencing positions from the
24 Government responding to the Defendant's argument regarding an
25 ex post facto clause issue.

1 Any other documents or letters to hand up?

2 MR. ONGAY: Your Honor, I just executed three letters
3 that my client would like to submit. One is to the Court. The
4 other one, it's an apology letter to the child and also a
5 second apology letter to the mother of the child. I handed
6 copies to the Government.

7 THE COURT: And you'd like to hand those up?

8 MR. ONGAY: Yes, Your Honor, for the Court to review.
9 I do not need the documents to be filed in the record. I just
10 wanted the Court to read them.

11 THE COURT: All right. You can hand them up.

12 MR. ONGAY: Thank you, Your Honor.

13 THE COURT: All right. I've read the letter to
14 (indiscernible) Parker, dated July 28, 2021. I've read the
15 letter to Kayla Parker dated July 28, 2021. And then, the
16 letter to the Court, I will read in open court when the time
17 for allocatur comes.

18 MR. ONGAY: Thank you, Your Honor.

19 THE COURT: The two other letters, I am going to make
20 part of the record. They'll be sealed.

21 MR. ONGAY: Thank you, Judge.

22 THE COURT: Just at any point for review, so I direct
23 the staff and court clerk to arrange for their filing and
24 sealing.

25 MR. ONGAY: Your Honor, would the Court like me to,

1 this afternoon, file a motion to seal?

2 THE COURT: You can do that, yes.

3 MR. ONGAY: I'll do that so the Court can sign the
4 order.

5 THE COURT: And you can have them filed and sealed
6 that way.

7 MR. ONGAY: Okay. I'll let you lead.

8 THE COURT: Upon review at any stage, they'll be
9 there.

10 MR. ONGAY: Okay. If -- not a problem.

11 THE COURT: Okay.

12 MR. ONGAY: Thank you.

13 THE COURT: So -- and, Mr. Carbonaro, do you know why
14 we're here today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you know we're proceeding with
17 sentencing?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is there any reason why we shouldn't
20 proceed today?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. And then, Counsel, I know
23 that there were several objections to the presentence report,
24 so let's get those objections on the record.

25 MR. ONGAY: Certainly. Would you like me to address

1 them briefly or just list them?

2 THE COURT: Well, let's list them and get them on the
3 record.

4 MR. ONGAY: Sure. Your Honor, in my --

5 THE COURT: And then, I'll find out what testimony we
6 need to take in terms of those and how we need to address those
7 in terms of any testimony.

8 MR. ONGAY: Certainly, Your Honor. On Page 26 of my
9 sentencing memorandum, I allege -- I filed an objection to
10 Paragraph 26 of the PSR and, in particular, to the finding that
11 because the Defendant lived in an apartment with Minor Number
12 1, and that because he allegedly provided for her basic needs,
13 including food and shelter, Minor Number 1 was in the custody,
14 care, and supervisory control of the Defendant, and as such,
15 the base of offense level is increased by two levels.

16 If I may volunteer, Your Honor, that I -- we may want
17 to ask -- I would like to ask if the minor's mother is called
18 to testify today, which I expect will be, her -- whether she,
19 in fact, received public assistance during the time that she
20 lived with my client during -- from January 2015 to October --
21 November 2015, which I think is relevant to the question of
22 whether she had some independence, and also it's relevant to
23 the question of whether she has income to support the child,
24 which relates to one of the arguments I made in this section of
25 the memo, that she was getting that benefit and therefore

1 wasn't really using his funds to support her daughter.

2 If I am correct, than that's a valid point. If I'm
3 incorrect, then I will have to withdraw at least that portion
4 of the argument.

5 THE COURT: Uh-huh. But even if you're correct, I
6 mean, it goes beyond financial control, right? Custody, care
7 and in control.

8 MR. ONGAY: Right. But I address the other points.

9 THE COURT: Pardon me?

10 MR. ONGAY: I address all those other points on my
11 memo.

12 THE COURT: All right.

13 MR. ONGAY: Okay. In fact, I may have addressed too
14 many of the factors of the applicable guidelines section --

15 THE COURT: Uh-huh.

16 MR. ONGAY: -- to just make sure that I was very
17 thorough.

18 The next one, Your Honor, is two objections that
19 relate to computers, and that is Paragraph 36 and 37 of the
20 PSR. Those objections relate to the second group of offenses.
21 The first one relates to the first group of offenses.

22 Pretty much, I recognize on my submission that
23 those -- the application of those enhancements to the case are
24 correct. The guidelines do apply. My argument is that because
25 of the frequency and the -- that every case today will involve

1 those objections, and I cited the cases supporting that
2 position, that either the Court should not apply the
3 enhancement or the Court should consider granting a variance,
4 notwithstanding overruling the objection. That -- those are
5 the two point on that -- on those two objections.

6 THE COURT: All right. Counsel, do you want to
7 briefly respond as an overview, and I guess there's two factual
8 issues that need to be determined by the preponderance of
9 evidence, and that has to do with custody, and I think you had
10 raised an objection in terms of the sexual contact, right?

11 MR. ONGAY: No, that was withdrawn, Your Honor.

12 THE COURT: That has been withdrawn.

13 MR. ONGAY: That was withdrawn, and that was not
14 included on the memorandum that I submitted to the Court under
15 seal.

16 THE COURT: Okay.

17 MR. ONGAY: It was included, to be correct, in the
18 draft I submitted when the Court needed a draft.

19 THE COURT: Right. And when you go through the
20 sentencing guidelines and the relevant factors that can be
21 applied, the aiding and abetting is applied, right, to that --
22 in terms of the sexual contact.

23 MR. ONGAY: Right. If you -- since I did not
24 challenge it at all, yes.

25 THE COURT: All right. Well, I just want to be sure

1 because it had been originally challenged.

2 MR. ONGAY: Okay.

3 THE COURT: And I just wanted to make that part of
4 the record, if you look at how you do the analysis.

5 MR. ONGAY: Right.

6 THE COURT: Counsel?

7 MR. DAVISON: Thank you, Your Honor.

8 THE COURT: I think that comes down to custody and
9 control, right?

10 MR. DAVISON: Yes, Your Honor. And the note
11 indicates for (b) (5), that enhancement, that the language is to
12 be interpreted broadly. So even a babysitter would qualify
13 under (b) (5) for someone who is in care and custody of a child.
14 We're talking about a toddler in this instance. We're talking
15 about a toddler that is living with two adults, as the evidence
16 in the PSR reflects. That alone satisfies the Government's
17 burden beyond a preponderance of the evidence that the
18 Defendant, an adult living in that house, clearly exercises, as
19 would any adult, over a child of that age.

20 Notwithstanding that the Government is putting on the
21 co-defendant in this case as a witness at sentencing. However,
22 the Government believes that what's contained in the PSR
23 already establishes the fact that the Defendant was in
24 supervisory care and control, just by the nature of the very
25 relationship of these parties and the fact that they lived

1 together in a home. That purely establishes the relationship
2 right there.

3 THE COURT: All right.

4 MR. DAVISON: With -- would Your Honor like me to
5 address the other objections?

6 THE COURT: Uh-huh. And then, I'll give you a chance
7 to respond, Mr. Ongay.

8 MR. ONGAY: Thank you, Judge.

9 MR. DAVISON: Your Honor, with respect to use of a
10 computer, and my understanding is Counsel is asking for a
11 variance -- admitting that the enhancement applies, but asking
12 for a two-point reduction in the form of a variance.

13 The Government believes that the Government should
14 not grant such a -- that Your Honor should not grant such a
15 variance. And we believe that the final submission, with
16 regard to a-- the request for restitution from -- I'm sorry,
17 I'll just say from the final victim, who discovered in December
18 of 2021 -- sorry, December of 2020, that images of her own
19 sexual abuse that took place in the 1970s, she first learned in
20 December of 2020 that those are now proliferated around -- on
21 the internet. That alone is illustrative of the fact that a
22 computer has the power to victimize identifiable or
23 non-identifiable, or those who may be identified in the future
24 as she was, all these victims who not only underwent the sexual
25 abuse, but now proliferate their images of their sexual abuse

1 that they have to relive and they have to know that are
2 consumed by pedophiles around the world, only through use of a
3 computer because that becomes so easy.

4 And there's a reason why that enhancement applies to
5 most child pornography cases these days, because the ease at
6 which someone can manipulate their keyboard and spread these
7 hurtful images around the world. They're just that easy, and
8 Defendants, such as this Defendant and other Defendants, need
9 to know that while it is that easy, the danger is great. The
10 impact is huge. The trauma is beyond compare.

11 And there -- in this case -- and given that example
12 that actually exists in this case of a woman who had to, once
13 again, relive experiences that happened to her in the 1970s as
14 a result of the fact that this particular Defendant had those
15 images, it illustrates the justified applicability of this
16 enhancement.

17 Your Honor, the Defendant also raised, with regard to
18 a variance -- I don't believe he address it in his oral
19 comments -- about number of images and that Your Honor should
20 grant the variance and not apply that enhancement which applies
21 to the Defendant because he has -- because he had thousands of
22 images, and he's subject to the maximum enhancement for the
23 numerous images he possessed.

24 Again, not to regurgitate everything the Government
25 said, but it's clear that the number of images do matter

1 because these are numbers of victims, number of times folks are
2 victimized. There seems to be no basis not to apply in this
3 case.

4 THE COURT: Counsel?

5 MR. ONGAY: Your Honor, I want to address the
6 question of whether my client had a supervisory role over the
7 child. I think that the -- to resolve that question, we need
8 to hear from the mother of the child so that I could explore a
9 line of questions on that subject, find out what, you know,
10 what exactly Mr. Carbonaro did for the child. I don't think
11 that simply because someone lives in your home, that
12 automatically makes you legally responsible for that person,
13 even if you have a relationship with the child's mother.

14 THE COURT: I would agree if someone lives in their
15 home, they don't necessarily have custody or control. But I
16 think what I've seen so far, what's been of record so far,
17 that, you know, your client had a great deal of control over
18 that child, including being in the room with the child, closed
19 doors, for some periods of time. So even if -- I got to
20 believe the testimony is going to come out that you know, from
21 time to time, she was out, leaving the child alone with him.
22 And even if you're somebody in the house, an adult, and even if
23 it's not discussed, if you leave the child alone with an adult
24 in the house, that child [sic] has custody or control.
25 Wouldn't you agree with that?

1 MR. ONGAY: Yes, if the testimony is that she did
2 leave him alone.

3 THE COURT: I think you're right. We need the
4 testimony. What I'm going to do though is give a -- go through
5 an understanding of what I know so far and given what I -- even
6 what's been submitted today with the Court, that I'll go
7 through the objections now. But we'll reserve an opportunity
8 for you to, once again, raise the objection, once we hear from
9 Ms. Parker. All right?

10 MR. ONGAY: Thank you, Judge.

11 THE COURT: So at least we have a starting point when
12 we call -- when Ms. Parker testifies, I'll certainly let you
13 explore those areas, okay?

14 MR. ONGAY: Thank you, Judge.

15 THE COURT: How's that sound?

16 MR. ONGAY: That's perfect.

17 THE COURT: And for those who are here, interested in
18 the sentencing, and to give then some background as to what's
19 going on here, really, what we're discussing is a guideline
20 range. And the guideline range is important because, depending
21 on the enhancements to the score or the reductions of the
22 score, then we come in with a guideline, a base level number,
23 then we come in with a final number that points us to the
24 sentencing guidelines, which is a range, which the -- a
25 benchmark -- a sentencing benchmark which the Court needs to

1 first look at under Supreme Court decisions.

2 But that's not the final determining factor. It's
3 just a starting point. But it's an important starting point,
4 and that's why these objections and objections to what has been
5 submitted and then my rulings are then -- are significant
6 because they're going to play a significant part then on that
7 number, which points us to the guidelines.

8 But that's only the beginning. And there are
9 sentencing considerations after that, that have to be
10 determined before we come up -- before I come up with an
11 appropriate sentence. So we're just at the beginning stages
12 now.

13 And let me talk about the objections at this point,
14 to give us a -- to start working on a base level score. And
15 like I said, in determining that, I'll give you an opportunity
16 to revisit your objection. All right?

17 MR. ONGAY: Okay, Judge.

18 THE COURT: And as I said, the -- let's talk about
19 the ex post facto, even though counsel for the Government has
20 agreed on it. Mr. Ongay, on behalf of his client, objected to
21 the increase of the base level by four offense levels because
22 the enhancement violated the ex post facto clause because the
23 alleged depiction of the toddler took place on 10/11/2015, and
24 the infant -- or toddler increase was acted to the guideline on
25 11/1/2016.

1 And the increase is a duplicative increase because
2 both increase -- Paragraph 25 and Paragraph 23, because both
3 increase the level for a minor and the minor's age. So this
4 Court made a determination and reached out to Counsel to
5 respond to that argument and made the determination that it
6 did increase and violated the ex post facto clause.

7 And the Government agreed with that analysis, which
8 then left us with the issue of do we apply 2018, which had been
9 applied, or guidelines -- or apply 2015. Because if we were to
10 apply 2018, then there's an argument to be made that we were
11 using two different guideline ranges, and certainly, that seems
12 the circuit does not want us to do that.

13 So Mr. Piskai, then you, based on that, we -- the
14 Government and the Defense -- is this right, Mr. Ongay, that we
15 agreed to use the 2015 guideline.

16 MR. ONGAY: Yes, Your Honor.

17 THE COURT: All right. And is that what you used
18 Mr. Piskai, the 2015 sentencing guidelines?

19 MR. PISKAI: Yes, Your Honor.

20 THE COURT: All right. Now, as to PSR Paragraph 26,
21 the objection to the two-level increase because the Defendant
22 did not have supervisory responsibility over Minor Number 1, as
23 I said, at this point, I'm going to overrule that objection
24 based on what I've received so far, and I've seen -- was the
25 minor otherwise in the custody, care, or supervisory control of

1 the Defendant. I think, as the Government pointed out, that
2 that's to be broadly interpreted, and even a babysitter could
3 come to that. We'll hear what Ms. Parker says, so that's
4 subject to her saying, look, I never let him -- left him alone
5 with her. He was never alone with her. I never went out of
6 the house. You know, he was there but never had any of that.
7 Then, I'll reconsider.

8 Also, Mr. Ongay, I'll let you explore those issues in
9 terms of receiving financial support from -- financial support
10 or Government assistance, okay?

11 And then, as to the computers, I'm going to overrule
12 that objection too. This is not just somebody just hitting a
13 button several hundred times and several hundred images pulling
14 up and, by default, you know, three images, or 500 images
15 turned into 7,000 images. You know, it went beyond the run of
16 the mill accessing of images via the internet. He used
17 peer-to-peer file sharing network. He would distribute images
18 and possessed the child pornography on his computer. So even
19 taking into account, Mr. Ongay, your very excellent sentencing
20 memorandum and the cases that you did refer the Court to, I'm
21 going to overrule those objections to that increase.

22 So I think I've handled the objections, right?

23 MR. ONGAY: Yes, Your Honor.

24 THE COURT: To the record, and we've discussed them.
25 All right. And then, I'll go through with everybody's

1 sentencing considerations.

2 So for the record, I recognize United States
3 Sentencing Guidelines are no longer mandatory but are advisory
4 pursuant to the Supreme Court holding in the United States v.
5 Booker decision. Nevertheless, the Court must consider the
6 guidelines in connection with all the factors set forth in
7 18 U.S.C. 3553(a) to impose a reasonable sentence. I will
8 begin the determination of sentence by identifying the
9 statutory maximums and calculating the sentence under the
10 guidelines.

11 So as Counsel knows, this is typically script, make
12 sure that I've read it properly and gotten the maximums on
13 properly. Mr. Piskai is here.

14 Can you introduce yourself for the record,
15 Mr. Piskai?

16 MR. PISKAI: Brian Piskai on behalf of Probation,
17 Your Honor.

18 THE COURT: All right. And you'll listen carefully
19 too.

20 So I've already -- or I should say, after I made the
21 determinations, I've adopted the presentence investigation
22 report and the factual findings in the presentence
23 investigation report. I think the only issue that is left with
24 that is the issue about the determination on care, custody, or
25 control.

1 Are there any other objections that I should be
2 handling with that?

3 MR. ONGAY: No, Your Honor.

4 MR. DAVISON: No, Your Honor. If I may, though, just
5 one clarification I want to make for the record. Paragraph
6 34 -- and Mr. Piskai can correct me if I'm wrong. So there's
7 plus-four applied on that. I don't believe that's in dispute.
8 But there's an (A) and a (B) for that enhancement, (b)(4). (B)
9 was added in 2016.

10 THE COURT: Uh-huh.

11 MR. DAVISON: And that references sexual abuse or
12 exploitation of an infant or toddler. I just want to be clear
13 on the record, that there are images that satisfy (A), sadistic
14 or masochistic conduct. In other words, the Defendant was in
15 possession of those images. So I want to be clear on the
16 record, that even though we're using the 2015 guidelines, that
17 provision existed, of course, in 2015. (B) did not, but it is
18 satisfied under (A).

19 THE COURT: All right. I don't think there was an
20 objection to that.

21 MR. ONGAY: There was no objection to that, Your
22 Honor.

23 THE COURT: I think it's clarified for the record,
24 and I think you said you're going to make a -- I think there's
25 an indication you were going to make a record of that.

1 Masochistic images.

2 MR. DAVISON: I mean, I can call the agent with
3 regard to that if it's in dispute.

4 MR. ONGAY: No, Your Honor. We did not even object
5 to that enhancement.

6 THE COURT: All right.

7 MR. ONGAY: That was not by accident.

8 THE COURT: All right. So you intentionally didn't
9 make an objection to that.

10 MR. ONGAY: That is correct. I selected, after
11 careful discussions with my client on many occasions, what we
12 were going to object to, and we've revisited the issue on
13 several occasions, and that's why towards the end, we withdrew
14 one of the objections.

15 THE COURT: All right. And you're satisfied with
16 your counsel. Is that right, Mr. Carbonaro?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. So on November 19, 2019,
19 Mr. Carbonaro entered an open guilty plea to Counts 1, 3, and 4
20 of the indictment. Count 1 charged the Defendant with
21 production of child pornography in violation of
22 18 U.S.C. Section 2251(a) and (e). Count 3 charged the
23 Defendant with distribution of child pornography in violation
24 of 18 U.S.C. Section 2252(a)(2), and (b)(1). And Count 4
25 charged the Defendant with possession of child pornography in

1 violation of 18 U.S.C. Section 2252(a)(4)(B), and (b)(2).

2 As to Count 1, it carries a mandatory minimum
3 sentence of 15 years imprisonment and a maximum sentence of 30
4 years imprisonment, a \$250,000 fine, a period of supervised
5 release of five years to life, a \$100 special assessment, and a
6 \$5,000 assessment, if not found to be indigent. Is that
7 correct so far?

8 MR. DAVISON: Yes, Your Honor.

9 THE COURT: As to Count 3, it carries a mandatory
10 minimum sentence of five years, a maximum sentence of 20 years,
11 a \$250,000 fine, a period of supervised release of five years
12 to life, a special assessment of \$100, and if found not to be
13 indigent, an additional \$5,000 assessment.

14 As to Count 4, it carries a maximum sentence of 20
15 years, a \$250,000 fine, mandatory restitution, a period of
16 supervised release of five years to life, a special assessment
17 of \$100, and if found not to be indigent, an additional \$5,00
18 assessment.

19 The maximum sentence that may be imposed by the Court
20 for all offenses is 70 years imprisonment, a lifetime of
21 supervised release, a mandatory minimum of five years
22 supervised release up to a lifetime of supervised release, a
23 \$750,000 fine, mandatory restitution, a \$300 special
24 assessment, and if found not to be indigent, an additional
25 \$10,000 special assessment.

1 The 2015 guideline manual incorporating all guideline
2 amendments was used to determine the Defendant's offense level,
3 as there are ex post facto clause issues involving Count 1,
4 which preclude the application of the 2018 guidelines, USSG
5 1B1.11.

6 All right. Mr. Piskai, any corrections or comments
7 on that?

8 MR. PISKAI: No, Your Honor.

9 THE COURT: Counsel?

10 MR. DAVISON: No, Your Honor.

11 MR. ONGAY: No, Your Honor.

12 THE COURT: All right. So let's go through the
13 guidelines for the record calculations. So Count 1 is its own
14 group under 2G2.1(d)(1) Application Note 7, and is excluded
15 from grouping under 3D1.2(d). Counts 3 and 4 are grouped
16 together under 3D1.2(d), and the offense level is driven, the
17 total number of images the Defendant possessed and distributed
18 under 3D1.2(d).

19 Group 1, Count 1 production to the base level in the
20 guideline for violation of 18 U.S.C. 2251(a) and (e) is
21 2G2.1(b). That gives us a base offense level of 32. Specific
22 offense characteristics, Count 1, involved a minor who had not
23 attained the age of 12. Minor Number 1 was three years old.
24 Therefore, four levels are added to the offense level under
25 2G2.1(b)(1)(A).

1 So the specific offense characteristics, the offense
2 involved the commission of a sexual act or sexual contact.
3 Therefore, two levels are added to the offense level under USSG
4 2G2.1(b) (2) (A) .

5 And then the specific offense characteristics, the
6 Defendant lived in an apartment with Minor Number 1 and
7 provided for her basic needs, including food and shelter.
8 Since Minor Number 1 was in the care, custody, or supervisory
9 control of the Defendant, the offense level is increased by two
10 levels.

11 And as indicated earlier, Mr. Ongay, I'm going to
12 give you a chance to argue that I revisit that decision I made
13 on that level.

14 And so that brings us to an adjusted offense level
15 subtotal of 40.

16 And then we have Groups 2, Counts 3 and 4,
17 distribution and possession. The guideline for violation of
18 the base offense level, the guideline for violation of 18
19 U.S.C. 2252(a) (2), is 2G2.2, the base offense level is 22. And
20 that's under 2G.2(a) (2) [sic]. So the specific offense
21 characteristics, the offense involved the prepubescent minor,
22 who had not attained the age of 12 years. Therefore, the
23 offense level is increased by two levels, and that is
24 2G2.2(b) (2). And then the specific offence characteristic, the
25 Defendant knowingly engaged in the distribution of child

1 pornography, therefore, the offense level is increased by two
2 levels. 2G2.2(b)(3)(F). Specific offense characteristic, the
3 offence involved material that portrayed sadistic -- sadistic
4 or masochistic conduct, or other depiction of violence, and
5 therefore, the offense level is increased by four levels.

6 The Government was prepared to present images and
7 testimony on that. Counsel for the Defense has indicated with
8 discussions with his client, who obviously is present here
9 today, that they specifically did not challenge that increase.

10 Specific offense characteristic, the Defendant used
11 uTorrent, a peer-to-peer file sharing network, to distribute
12 child pornography in this case. He also possessed child
13 pornography using a computer. Since the offense involved the
14 use of a computer or interactive computer service for the
15 possession, transmission, receipt, or distribution of the
16 material, the offense level is increased by two levels, and
17 that's 2G2.2(b)(6).

18 And then specific offense characteristics, forensic
19 review of the Defendant's computer and devices revealed over
20 7,000 images of child pornography. As the offense involved
21 more than 600 images, the offense is increased by five levels
22 under 2G2.2(b)(7)(D).

23 And that brings us to an adjusted offense level of
24 37. Multiple count adjustments under 3D1.4(a), (b), and (c),
25 adjustments to the adjusted offense -- offensive level are made

1 by adding one unit, is assigned the group with the highest
2 offense level. One additional unit is assigned for each group
3 that is equally serious or from one to four levels less
4 serious. So two levels are added to Mr. Carbonaro's adjusted
5 offense level.

6 So with that, the adjusted offense level units for
7 Group 1, Count 1, is 40, and then -- so that's a level unit of
8 one, and then Group 2, Counts 3 and 4, 37. The adjusted level
9 unit is one, to give you a total number of units of two. So
10 the greater of the adjusted offense levels above 40.

11 So the increase in the offense level, the Defendant's
12 offense level is then increased by another two levels,
13 according to the number of the units assigned by the amount
14 indicated in the table at 321.4. The combined adjusted offense
15 level is thus 42, and then we move on from that level of 42 to
16 the acceptance of responsibility.

17 Defendant clearly does demonstrate acceptance of
18 responsibility for the offense. Accordingly, his offense level
19 is decreased by two levels, and that is 3E1.1(a). The
20 Defendant has assisted authorities in the investigation for
21 prosecution of his own misconduct by timely notifying
22 authorities of the intention to enter a plea of guilty,
23 accordingly offense level is increased by one additional level,
24 3E1.1(b), giving that a total offense level of 39.

25 So based upon total offense level of 39 and criminal

1 history category of I, Roman numeral I, the guideline
2 imprisonment range is 262 months to 327 months.

3 Now, other than the objection that you're reserving
4 to the care, custody, and control, are there any other
5 objections to my recitation of the guidelines?

6 MR. ONGAY: No, Your Honor.

7 THE COURT: All right. And I ruled on the objections
8 that you had. So, of course, they're of record.

9 Counsel?

10 MR. DAVISON: No objections from the Government, Your
11 Honor. Should the reviewer ever look at the record, the
12 Government, in its second supplemental position, indicated that
13 it believed that the total offense level was 38. Let me just
14 clarify right now that the Government, at that point, just
15 reduced the minus four for the ex post facto issue and
16 mistakenly did not incorporate that -- the difference it would
17 have on grouping.

18 So this is just for the purpose of explanation, but
19 the Government agrees that the total offense level is 39 and
20 the appropriate guideline range is 262 to 327 months.

21 THE COURT: All right. And so are we ready to move
22 on with witnesses?

23 MR. ONGAY: Yes, Your Honor.

24 THE COURT: All right. So this is where we are. The
25 guidelines are developed -- the sentencing guidelines are

1 national guidelines. They're used in every court, federal
2 court throughout the United States. And the idea is to get a
3 benchmark that someone being sentenced here in Pennsylvania
4 would be looking at the same benchmark, given the same history
5 and same analysis of like crimes, in Texas or California,
6 Alaska, or wherever. So the courts are starting with the same
7 benchmark, so there is not a disparity in sentencing. However,
8 at one time, they were mandatory, but the Supreme Court struck
9 the mandatory requirement of following the guidelines and
10 required then the courts to then go through sentencing factors
11 to determine the sentence.

12 So the benchmark that we look at, Mr. Carbonaro --
13 and I'm sure it was explained to you by your counsel -- is that
14 benchmark of -- that we just determined, and that is 262 months
15 to 327 months.

16 So let's look at the factors, and I think by starting
17 with the witnesses, I think we need to start there.

18 MR. ONGAY: Your Honor, if -- I apologize, but I
19 would like an opportunity to speak to my client for a minute or
20 two.

21 THE COURT: That's not -- yeah, we can do that.
22 Where do you want to do that? Here or in the office on the
23 side?

24 MR. ONGAY: I would rather do it in the office on the
25 side.

1 THE COURT: All right.

2 MR. ONGAY: Just to make sure that the conversation
3 is completely private.

4 THE COURT: All right.

5 MR. ONGAY: I apologize.

6 THE COURT: And so, Marshal, can you accommodate us
7 with that?

8 THE MARSHAL: If I may, when you say the office, you
9 mean a holding cell behind the court? Our holding cell or --

10 MR. ONGAY: Yeah, that would be fine.

11 THE COURT: That's why I said "the office."

12 THE MARSHAL: Okay. I just wanted to make sure you
13 meant that.

14 THE COURT: Yeah, I know. I meant the office, but
15 we're talking about the holding cell. We don't have a jury, I
16 guess. We can refer to this as --

17 THE MARSHALL: That's fine, Your Honor.

18 THE COURT: Counsel, how much time do you think you
19 need?

20 MR. ONGAY: It should be no more than a minute and a
21 half or two.

22 THE COURT: Okay.

23 MR. ONGAY: Say three to play it safe.

24 THE COURT: All right.

25 (Recess taken at 9:48 a.m.)

1 (Proceedings resumed at 9:55 a.m.)

2 MR. ONGAY: Your Honor, I met with my client, and we
3 discussed a subject that I wanted to discuss with him in
4 private. And based on that discussion, my client will agree
5 with my -- did agree with my recommendation to withdraw our
6 objection to Paragraph 26 of the PSR, based on the Court's
7 discussions, the Government's representations, and the Court
8 explanation on how he saw the facts and the law.

9 THE COURT: All right. And you're in agreement with
10 that discussion?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And, Counsel, you're in agreement with
13 the way I viewed it?

14 MR. ONGAY: Yes, Your Honor.

15 THE COURT: Okay. I just want to make sure that it
16 wasn't just based on my discussion. I wanted to make sure it
17 was based on your agreement with my discussion.

18 MR. ONGAY: No, I understood Your Honor's analysis of
19 the facts.

20 THE COURT: That we know of, of record, of the --

21 MR. ONGAY: Right.

22 THE COURT: Okay. So then, with that, we'll move on
23 with witnesses so we can -- I can consider everything in terms
24 of the 3553 factors.

25 MR. ONGAY: Your Honor, I would like to call, out of

1 turn, Dr. Samuel, and the Government has been kind enough not
2 to object.

3 THE COURT: Okay.

4 MR. ONGAY: Your Honor, I provided the Government and
5 the Court copies of Dr. Samuel's report, but I did bring
6 additional copies should the Court want me to mark formally
7 copies of the report when --

8 THE COURT: No, I --

9 MR. ONGAY: -- when I examine him.

10 THE COURT: I think you can mark a copy and hand it
11 up to me. You can mark it anything you like.

12 MR. ONGAY: Okay. Your Honor, the Defense will then
13 call Dr. Samuel, Steven Samuel, to the stand. And for the
14 record, Your Honor, I'd like to mark this Exhibit D-1 for
15 identification purpose, and the Government has a copy.

16 Do you want one?

17 MR. DAVISON: What are you marking?

18 MR. ONGAY: His report.

19 MR. DAVISON: Okay. Great.

20 THE COURT: And remain standing for a moment.

21 MR. ONGAY: Okay. You have that.

22 MR. DAVISON: Yes, I just want to make sure.

23 MR. ONGAY: May I approach, Your Honor, to hand --

24 THE COURT: Yes, please. Thank you.

25 STEVEN SAMUEL, DEFENDANT'S WITNESS, SWORN

1 THE COURT OFFICER: Thank you. Have a seat, please,
2 and please speak directly into the microphone and state your
3 full name for the record.

4 THE WITNESS: Okay. Steven V. Eric Samuel,
5 S-A-M-U-E-L.

6 THE COURT: And, doctor, why don't you pour yourself
7 a glass of water before you start.

8 THE WITNESS: Okay.

9 THE COURT: Take your time. We won't watch your hand
10 shaking as you do it (indiscernible).

11 THE WITNESS: The routine, yes.

12 THE COURT: (Indiscernible).

13 THE WITNESS: Okay.

14 THE COURT: All right?

15 THE WITNESS: Thanks.

16 THE COURT: All right.

17 MR. ONGAY: Your Honor, may I approach the doctor to
18 provide him a copy of the report?

19 THE COURT: Yes, you may approach. You don't have to
20 ask to approach your own witness. You can do that at will, and
21 you can move around at will, as well.

22 MR. ONGAY: Your Honor, before I go on to the
23 substance of the testimony, the Government has been kind to
24 agree to stipulate to Dr. Samuel as being qualified to provide
25 testimony as a psychologist in the evaluation and diagnosis --

1 THE COURT: Well, thank you both for that. He's
2 obviously qualified, so we'll officially qualify him as of the
3 record. I'm sure he's been qualified many times in many
4 courts, he has that look about him, so go ahead, counsel.

5 MR. ONGAY: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. ONGAY:

8 Q Good morning, Dr. Samuel.

9 A Good morning, Jose.

10 Q Okay. Now, I asked you to conduct an examination of
11 Mr. David Carbonaro. Is that correct?

12 A That's right.

13 Q And can you tell me what did I ask you to do for
14 Mr. Carbonaro?

15 A There were two things. One was, could I identify any
16 psychological disorder or a condition in him, and secondly,
17 were there any mitigating circumstances that the Court could
18 consider when sentencing him.

19 Q Okay. And can you -- before you give me your conclusions,
20 can you describe the process you followed, what you did, to
21 conduct that examination?

22 A You had sent me some records, and I started reviewing
23 those on the second page of my report, so I looked at the
24 records you had sent me during the course of the evaluation. I
25 saw him once on May 5th of this year, you were present, at the

1 federal detention center. After that, you sent me -- I believe
2 it was that day -- copies of some letters that he had written,
3 notes if you will. So I looked at records that you had sent
4 prior to my seeing him with you. Those are enumerated in my
5 report. I looked at the notes, if you will, reports,
6 statements, if you will, that he had written. So I went
7 through all that information. I read the presentence
8 investigation report, which I discussed on Page 1 of the
9 report.

10 Q Okay. And did you make any findings, Doctor, in terms of
11 diagnosis, conditions?

12 A I did. I think there's a court tab, if you will, of
13 things going on. The first thing I determined was he had
14 what's called persistent depressive disorder, also known as
15 dysthymia, D-Y-S-T-H-Y-M-I-A, that is a persisting depression
16 that causes symptoms of depression over an extender period of
17 time. I think that he's been depressed on and off at various
18 levels over the course of his life, and so I think that that's
19 a reasonable initial diagnosis. There's depression in him
20 based upon his history, sexual/physical abuse, isolation. I
21 think the isolation probably was a predicate to his -- a
22 predicate, rather, to his use of the computer by himself,
23 spending extended period of time alone.

24 So he had a persistent depressive disorder, I think, over
25 the course of his life.

1 He has attention deficit disorder, ADHD. This is a
2 disorder, it's a neurological disorder, identified early on in
3 his life. If you look at the medical records, it's identified
4 probably around age 7, that he begins to show symptoms --
5 manifest symptoms of attention deficit. He's evaluated,
6 variously, by people since that time. I think the first
7 evaluation was when he was 11.

8 He has Asperger's syndrome. This is a subset within the
9 iteration, if you will, of autism. And that's another DSM-V
10 diagnosis. And so in the report, I talk at the end about what
11 I think are the relevant issues related to Asperger's syndrome.

12 And finally, I think, as I said, he has pedophilia. This
13 is called a pedophilic disorder, non-exclusive type, excuse me,
14 attracted to females. So I concluded they were four things
15 that I was able to diagnose within a reasonable degree of
16 psychological certainty.

17 He's been treated for these disorders over the course of
18 his life. Currently, he's taking two medicines, Depakote and
19 Prozac. Depakote is a prescription medicine for bipolar
20 disorder. It really helps with emotional regulation,
21 regulation of the impulses, which I think is a major issue
22 here. Prozac is an antidepressant medicine.

23 So those are the conclusions I have with respect to the
24 diagnoses.

25 Q Okay. And now, Doctor, did you -- are you familiar

1 with -- if there are treatments or therapies that can be
2 administered to a person with Mr. Carbonaro's conditions that
3 could assist him?

4 A There's treatment for the depressive disorder by way of
5 medication and talking therapy. He's not had any ongoing
6 treatment, nor was he in treatment at the time these offenses
7 occurred, so I think that a treatment for that, standardized,
8 really shown, I think, to be pretty helpful, if you will, his
9 antidepressant medication and talking therapy, counseling.

10 The Asperger's syndrome, it really is an issue of
11 education, of trying to help the person understand cause and
12 effect. I think a signal -- symptom of that disorder is a
13 disconnect. It's an extraordinarily brain-based dysfunction, if
14 you will, which results in this compulsive need to seek out
15 certain things, for example, 1,000 Pokémon cards at one point.
16 He goes from one thing to the next and unfortunately, ends up
17 going down an illegal route, if you will.

18 So the treatment for Asperger's, it's not about getting
19 rid of it, it's about controlling the symptoms. And that would
20 apply also to pedophilia. You don't make pedophilia or
21 Asperger's go away. You control its symptoms.

22 Attention deficit disorder, medication is helpful for
23 that. I think if he participates in the treatment, I think it
24 should have the effect -- certainly, looking at the sentencing
25 guidelines, it should have the effect of reducing his risk, his

1 risk is very high right now, for sexual re-offense, or sex
2 offense recidivism, if you will, but I do think that the
3 treatment could help and reduce.

4 No one can say with 100 percent certainty whether that's
5 true or not. That's really not possible, but I think in my
6 experience, treatment over an extended period of time could
7 help reduce the risk. And the idea, again, is to rein in the
8 impulses, be able to control the emotions, around the behavior
9 that was causing us to be here today. And I think that
10 that's -- I think that's possible.

11 MR. ONGAY: Okay. I don't have anything further,
12 Your Honor.

13 MR. DAVISON: Your Honor, may I --

14 THE COURT: Thank you, Counsel.

15 MR. DAVISON: Oh, I'm sorry.

16 THE COURT: Mr. Davison, you can have a minute.

17 MR. DAVISON: May I approach, just to the lectern?

18 THE COURT: Oh, I thought we were going to sidebar
19 when you said, may we approach.

20 MR. DAVISON: Oh, no. I'm sorry.

21 THE COURT: I was a little confused there. Of
22 course.

23 MR. DAVISON: Thank you.

24 CROSS-EXAMINATION

25 BY MR. DAVISON:

1 Q Good morning, Dr. Samuel.

2 A Good morning.

3 Q You clearly are an expert in psychology. It looks like on
4 your resume, you have some affiliation with J.J. Peters
5 Institute?

6 A I did at one point, yes. I was evaluating people and
7 supervising the clinicians there. I haven't done that for
8 quite a long time now.

9 Q Okay. Was that for folks who have child exploitation
10 issues?

11 A Some of them were, yes. I saw the kids, as well as the
12 so-called "perpetrators," yes.

13 Q Okay. So you spent a good deal of time dealing with not
14 only folks who may be on the spectrum for Asperger's, ADHD,
15 what have you, but also, those who deal with pedophilia.

16 A That's right.

17 Q And you just testified that you believe, currently, the
18 Defendant's risk is high.

19 A I do believe that.

20 Q And when you say "risk," what do you mean?

21 A Risk to reoffend or sex offense recidivism. In other
22 words, the risk of repeating the behaviors captioned in the
23 records here, at this time, today, is very high.

24 Q Okay. When you spent time with Mr. Carbonaro, you had
25 already looked at all the documents associated with this case

1 that were available to you.

2 A That's right.

3 Q And was it your understanding when you interviewed him --
4 well, let me withdraw that question.

5 What was your understanding of his offender level at that
6 point, vis-à-vis, is this someone who looks at child
7 pornography or is this someone who's a hands-on offender?

8 A Looks at it, hands-on offender, both.

9 Q And to what extent did you believe he was a hands-on
10 offender?

11 A I had read in the records there was some videotaping done
12 of him, presumably, and a little kid, a little child.

13 Q Okay. But anything beyond that?

14 A Not that I can recall now, no.

15 Q Did you ask Mr. Carbonaro during your meeting with him
16 about any other hands-on offenses?

17 A No, I really focused on what he was looking at, the images
18 on the computer.

19 Q Well, wouldn't that be helpful to conduct an evaluation if
20 you knew his history of pedophilia?

21 A Yes, it would be helpful. I think I got the idea of his
22 contact with this baby sufficient enough to say that this
23 person has pedophilia. It would have been helpful, I think, if
24 I had asked him some more about that, yes.

25 Q Okay. And when --

1 A There's no question in my mind that he is vulnerable to
2 have a hands-on contact with children at this point.

3 Q And when you say "baby," you mean toddler in this case,
4 right?

5 A Yes, that's right. Toddler.

6 Q That's okay.

7 A Yes.

8 Q And when you say you didn't ask him any further questions,
9 why not?

10 A I think part of it was his level of discomfort. I was
11 trying to get him to talk with me, which is a little difficult.
12 We would start to go into a discussion of what he had done, and
13 it was pretty, I would say, pretty stilted. So I'm trying to
14 understand what he did with trying to conduct an interview. So
15 there was -- it wasn't really resist, it was just a matter of
16 his level of discomfort. I think it would have been helpful if
17 I had pursued that, but on the other hand, I had a clinical
18 interview I wanted to discuss.

19 Q So you were limited by time, establishing report,
20 et cetera, to really get all that information.

21 A I think mostly by his behavior. It wasn't time. I think
22 I would have been able to come back if I needed to. It was
23 really mostly just his discomfort with talking with me
24 generally and about this in particular.

25 Q And do you think you would be able to give a more

1 qualitative report to the Court if had more time to explore all
2 those issues?

3 A I think the diagnosis I have and the mitigating factors
4 are sufficient enough. I think I got what I needed to find.

5 Q Well, couldn't the fact that the Defendant has Asperger's
6 syndrome and ADHD and a depressive disorder, couldn't those be
7 considered aggravating factors for recidivism?

8 A Yes, they could be.

9 Q And how do you know they aren't in this case?

10 A How do I know, I'm sorry?

11 Q How do you know that they're not in this case?

12 A I would think they are aggravating factors.

13 Q Okay. Do you specifically state that in your report?

14 A No, I talk about mitigating factors.

15 Q So when you went to report about the Defendant, is this an
16 advocacy piece?

17 A Hardly so, no. I was interested in diagnosis and
18 mitigation. If you're asking me if they're aggravating, I
19 would certainly agree with that. That wasn't the focus of my
20 report, but if you're asking me if I think --

21 Q So what was the focus of your report?

22 A Diagnosis and mitigating factors.

23 Q Well, so then what are the mitigating factors?

24 A Well, they're listed in the report. I can go through them
25 if you'd like.

1 Q But we just discussed that those very same mitigating
2 factors, you just indicated that those are also aggravating
3 factors, right?

4 A They could be. Some of them could be. Certainly, his
5 diagnoses could be an aggravating factor.

6 Q So how does this help us?

7 A The idea is take a look at, again, what could the Court
8 consider in terms of mitigation. If you're asking me are they
9 aggravating, I would certainly agree with that, but the question
10 was not what are the aggravating factors, they are what are the
11 mitigating factors. And if you're asking me, are those
12 aggravating, I would say they are.

13 Q There are a wide spectrum of child predators, right?

14 A That's right.

15 Q There are some on the more, lack of a better word,
16 "benign" side, who are just voyeurs and look at child
17 pornography and there are those who are hands-on offenders,
18 right?

19 A That's right, yes.

20 Q Do you have any idea where the Defendant lies, in your
21 opinion, on that spectrum?

22 A I'm sorry, on the more malignant end, I think dangerous,
23 wishing for -- wanting to have contact.

24 Q And one could argue that the fact that he has Asperger's
25 would make him -- makes him prone to more immaturity, to

1 believe that he can relate more to children. Isn't that right?

2 A I think that's right. Yes.

3 Q And ADHD is a condition that allows an individual to focus
4 on one particular activity and persevere and be honed in on
5 that almost exclusively. Is that right?

6 A It can be if it's treated properly. ADHD, though, by
7 definition, is being distracted, but I think this fellow has
8 just the opposite problem. He gets honed in on something and
9 can't let go of it, perseverating, if you will.

10 Q But the trifecta of Asperger's, ADHD, and pedophilia could
11 be truly devastating in terms of child exploitation. Isn't
12 that fair to say?

13 A It's fair to say if it's not treated. Yes, that's right.

14 Q And do you have any indication in this case that that
15 would not be the case?

16 A I have no indication whatsoever. No.

17 MR. DAVISON: Okay. I have no further questions.

18 MR. ONGAY: Just one question, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. ONGAY:

21 Q Bottom line, Dr. Samuel, your opinion is that after you
22 examined the Defendant and you considered all the factors, that
23 if he is afforded appropriate treatment, that the risk of
24 reoffending can be significantly reduced?

25 A I think that's very likely, given the amount of time that

1 it looks like he'll spend in custody.

2 MR. ONGAY: I have nothing further, Your Honor.

3 MR. DAVISON: Just briefly, Your Honor? Just
4 recross?

5 THE COURT: Hold on one second. I'll give you an
6 opportunity.

7 So, Doctor, in terms of your testimony, I mean, where
8 would you be in terms of 30 years from now with this
9 individual, in terms of where he would be 30 years from now?

10 THE WITNESS: Well, if he gets treatment, there
11 should be, likely would be, some controlling of the symptoms.
12 Some of the disorders --

13 THE COURT: So let me ask you this.

14 THE WITNESS: Yes, yes.

15 THE COURT: Would your answer by the same for 40, 50,
16 60, 70 years from now?

17 THE WITNESS: Those disorders tend to burn out, if
18 you will, over time, given that amount, 40, 50, 60 years.
19 Those disorders tend to burn out of the system, if you will,
20 neurologically, over time.

21 THE COURT: All right. So after 20 years, what are
22 you looking at?

23 THE WITNESS: Diminished, if he gets continuous
24 treatment and responds positively to it.

25 THE COURT: And continual supervision.

1 THE WITNESS: Yes, of course.

2 THE COURT: All right. Go ahead, counsel.

3 RECROSS-EXAMINATION

4 BY MR. DAVISON:

5 Q You just mentioned that the conditions would burn out.

6 Well, which -- can you be specific? Which conditions would
7 burnout?

8 A Sure, depression. Let's talk about depression. Sorry.

9 Yes, depression is something that over time, as a person ages,
10 tends to be less symptomatic over time. ADHD, depends on the
11 individual, it can. Burnout means that the symptoms that are
12 problematic diminish over time.

13 Pedophilia, on the other hand, depends on how much
14 supervision the person is getting. So the pedophilic interest
15 that's harbored inside somebody, lack of exposure, lack of
16 opportunity, with most individuals, tends to reduce their level
17 or risk. So that's something that, over time, can be reduced.
18 Yes, that's right.

19 THE COURT: It needs to be reduced with constant
20 supervision?

21 THE WITNESS: Right. Asperger's, on the other hand,
22 tends to be a more chronic condition, so the correct answer
23 would be "reduced in who." And so again, it would depend, in
24 part, on how he responds to the treatment.

25 Q And you spent about an hour and a half with Mr. Carbonaro,

1 right?

2 A That's right.

3 Q But as you testified, it would be fair to say that you
4 would have much more psychological certainty about some of
5 these statements if, number one, you knew his full pedophilic
6 history --

7 THE COURT: Well, Counsel, let me ask you this, given
8 the nature of your cross-examination, do we have to continue
9 this sentencing and -- to allow, you know, plenty more time for
10 evaluation?

11 MR. DAVISON: That's not what I'm suggesting.

12 THE COURT: Well, that's what the record's creating.
13 I think he's identified pedophilia as a real problem.

14 MR. DAVISON: All right.

15 THE COURT: That we have a real problem here that's
16 going to persist over a long period of time with somebody that
17 needs significant amount of supervision when that individual is
18 released. And I don't know what more continued evaluations
19 could bring us, I really don't.

20 MR. DAVISON: I'm not requesting that. I'm just
21 trying to ascertain what his conclusions are based upon.

22 THE COURT: I understand that, and I think the
23 conclusions would probably be the same if we continued this now
24 and gave him another 10, 20, 30, 40 hours to review the case.

25 MR. DAVISON: Very well, Your Honor. I have nothing

1 further.

2 THE COURT: Well, what I'm suggesting is, we have a
3 record here and we're creating a record. And I want to make
4 sure the record is understood that I think I have enough
5 information that another 10, 20, 30 hours is probably going to
6 lead us into the same spot, other than maybe this doctor being
7 a clinical, moving forward, that's going to treat him on a
8 day-to-day basis. That's what I'm trying to say for the
9 record, not as a criticism of your cross, but just as in terms
10 of how I'm looking at it, unless I'm totally missing something.

11 MR. DAVISON: No, understood, and the Government was
12 not suggesting that he were to take more time. The Government
13 was -- the point of the questioning was to understand what is
14 based on Mr. Carbonaro's case and what is hypothetical with a
15 person with these conditions.

16 THE COURT: Uh-huh.

17 MR. DAVISON: And with that, I'll conclude.

18 THE COURT: All right. Mr. Ongay?

19 MR. ONGAY: One question, Your Honor, just to deal
20 with the issue straight on.

21 FURTHER REDIRECT EXAMINATION

22 Q Dr. Samuel, in your opinion, do you believe that it will
23 be beneficial to you for your opinion in this case to spend
24 additional time with Mr. Carbonaro?

25 A Well, I certainly could learn a lot more about anybody if

1 I spent more time with them, but there's nothing hypothetical
2 about my report. I think what I said is something that I
3 believe in. If I thought that there was any tentativeness, I
4 would said, I don't know what to say exactly. I need some more
5 time. But in this particular case, I relied upon the
6 information I had and I'm confident in my conclusions.

7 MR. ONGAY: Nothing further, Your Honor.

8 MR. DAVISON: No, Your Honor.

9 THE COURT: All right. Are there any more witnesses?

10 MR. ONGAY: Not from the Defense, Your Honor.

11 MR. DAVISON: The Government just has one witness,
12 Your Honor.

13 THE COURT: All right. And remind me to, if I
14 forget, to ask your client if he'd like to make a statement,
15 okay?

16 MR. ONGAY: I will, Your Honor.

17 THE COURT: When the time comes. All right. Do you
18 want to call your witness?

19 MR. DAVISON: Yes. It's going to request the
20 assistant of the Marshals, but -- great. Yes, it's Ms. Kayla
21 Parker.

22 THE COURT: All right. How much time do we need?

23 THE MARSHAL: They're already back, Your Honor.

24 THE COURT: Oh, thank you. Thank you. I appreciate
25 that. You may step down. Thank you.

1 (Witness excused)

2 THE COURT OFFICER: Can you raise your right hand,
3 please?

4 KAYLA PARKER, GOVERNMENT'S WITNESS, SWORN

5 THE CLERK: Thank you. Please take a seat, and speak
6 into the microphone, and state your full name, please.

7 THE WITNESS: Kayla Renee Parker.

8 THE CLERK: Thank you.

9 MR. DAVISON: Your Honor, may we approach extremely
10 briefly, just with Counsel, on the side?

11 THE COURT: Do we need to be on the record?

12 MR. ONGAY: Not really.

13 MR. DAVISON: I don't think so.

14 THE COURT: All right. You can take your mask off if
15 you like. That's your option. You don't have to keep it on,
16 but if you like to keep it on, you can.

17 (Sidebar off the record)

18 THE COURT: All right. Mr. Parker, I just want to
19 make sure that you understand. We went to sidebar, we were off
20 the record, but all we discussed was making sure that the last
21 witness was sworn in, and I had a distinct recollection of the
22 witness being sworn in, but I also know that Chris, the court
23 officer, is very, very good. He doesn't miss a beat, unlike
24 the judge. The judge misses a beat here and there. Chris
25 never misses a beat. In fact, he's the one that reminds me

1 when I do miss one, so with that, the witness is sworn in.

2 Counsel, you may begin your examination.

3 MR. DAVISON: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. DAVISON:

6 Q Good morning, Ms. Parker.

7 A Good morning.

8 Q Okay. I'm going to ask you, speak as closely to the
9 microphone as you can so you're audible, okay?

10 A Okay.

11 Q All right. Are you nervous at all today?

12 A Not really.

13 Q Okay. How old are you?

14 A Twenty-eight.

15 Q Where did you grow up?

16 A I grew up in Olive Hill, Kentucky.

17 Q Okay. And right now, you're in the federal detention
18 center. Is that fair to say?

19 A Yes.

20 Q And you are a co-Defendant in this case?

21 A Yes.

22 Q When you grew up, who raised you?

23 A My mother and my grandparents.

24 Q Okay. Without telling me their names, how many children
25 do you have?

- 1 A Three.
- 2 Q And when did you have your first child? How old were you?
- 3 A I was 19 when I had my first child.
- 4 Q And with whom?
- 5 A With Jacob York.
- 6 Q Okay. Who raised your first child?
- 7 A My mother.
- 8 Q Is your first child a son or a daughter?
- 9 A A son.
- 10 Q Were you still in school at the time you had your first
- 11 child?
- 12 A I had just graduated.
- 13 Q Okay. Who raised your son, your first son?
- 14 A My mother.
- 15 Q And why was that?
- 16 A When I had him, I wasn't emotionally in a place to take
- 17 care of a child.
- 18 Q And where were you living at the time after you gave birth
- 19 to your first son?
- 20 A After I had him, I had an apartment in my mom's complex
- 21 for a couple of months and then I moved to Dayton, Ohio and was
- 22 in Dayton, Ohio with my daughter's dad.
- 23 Q Okay. And his name is?
- 24 A James Robert E. Lee Hall.
- 25 Q And as you just testified, you became pregnant with his

1 child. Is that right?

2 A Yes.

3 Q Okay. And is she, your daughter, she's the one who's
4 described as Minor Number 1 in this case?

5 A Yes.

6 Q When did you give birth to her?

7 A August 13th, 2012.

8 Q Okay. How long a relationship did you have with Mr. Lee?

9 A Off and on, three years.

10 Q And who was raising or who raised your daughter?

11 A Between -- that would be between me and my daughter's
12 grandparents.

13 Q And when you say "grandparents," whose parents, yours or
14 Lee's?

15 A His.

16 Q Okay. What kind of arrangement was that?

17 A It was a verbal arrangement. I had her one year, they had
18 her the next, and it was every other year.

19 Q And was this still in the Dayton, Ohio area?

20 A Yes.

21 Q Okay. Did there come a point where your relationship with
22 Mr. Lee ended?

23 A Yes.

24 Q Was that before the birth of your daughter?

25 A Yes.

1 Q And to be clear, you only have one daughter. Is that
2 right?

3 A I only have one daughter.

4 Q Okay. So we will continue to refer to her as your
5 daughter.

6 A Yes.

7 Q All right. And that's understood, your only daughter?

8 A Yes.

9 Q When the relationship ended with Mr. Lee, where did you
10 live at this time?

11 A When the relationship ended with Mr. Lee, I moved in with
12 my grandparents. I was still in Dayton, Ohio.

13 Q Okay. Did there come a time where you became acquainted
14 with David Carbonaro?

15 A Yes.

16 Q And approximately when was that?

17 A 2013.

18 Q Okay. And do you see him in the courtroom today?

19 A Yes.

20 Q And is that him next to counsel?

21 A Yes.

22 Q At the table. How did you meet him?

23 A I met him playing video games online.

24 Q So when you say you met, when you first met, did you meet
25 in person?

- 1 A No.
- 2 Q Okay. And you met him online, as you said?
- 3 A Yes.
- 4 Q At some point, did you begin a relationship with him?
- 5 A Yes.
- 6 Q And how would you characterize that relationship?
- 7 A It was okay in the beginning.
- 8 Q When you say, it was okay, what do you -- what I'm getting
- 9 at is --
- 10 A Our relationship --
- 11 Q -- is this a romantic relationship?
- 12 A Our relationship was -- it was a romantic relationship,
- 13 yes.
- 14 Q When did you first meet him in person?
- 15 A I met him in person in -- I can't recall if it was at the
- 16 end of 2013 or the beginning of 2014.
- 17 Q Okay. And where did you meet him?
- 18 A Here in Philadelphia.
- 19 Q Okay. Well, do you know if it was within Philadelphia or
- 20 the Philadelphia area?
- 21 A It was within the Philadelphia area.
- 22 Q All right. Are you a person who is good with geography?
- 23 A Somewhat.
- 24 Q Okay. Do you remember where it was in the Philadelphia
- 25 area?

1 A I can't recall whether it was in King of Prussia or Upper
2 Darby.

3 Q Okay. Well, what were the circumstances of you meeting
4 him?

5 A I came out here to get to know him.

6 Q And how long were you communicating with him online before
7 you came out to the Philadelphia area to meet him?

8 A I'm not certain, but I want to say about six months.

9 Q And what happened when you came out to this area to meet
10 him?

11 A I came out here and I stayed with David for a while. I
12 got pregnant with our youngest kid.

13 Q Through David.

14 A Yes.

15 Q When you say you came out here, did you come out here with
16 anyone?

17 A No, it was just me.

18 Q And when you came out here, meaning the Philadelphia area,
19 where was David Carbonaro living, as far as you know?

20 A As far as I know, he was living -- I can't recall whether
21 it was King of Prussia or in Upper Darby first.

22 Q Okay. You mentioned that you became pregnant by David
23 Carbonaro. When did that occur?

24 A In February of 2014.

25 Q So at that point, how long had you -- well, withdrawn.

1 Had you been in the Philadelphia area continuously with
2 David up until the point you got pregnant?

3 A Yes.

4 Q And about how long a period of time was that, if you can
5 remember?

6 A I don't recall.

7 Q Do you know if it was months, weeks, days?

8 A I really don't recall.

9 Q Where was your daughter living at the time that you came
10 out to meet and stay with David Carbonaro in the Philadelphia
11 area?

12 A My daughter was living with her grandfather, her paternal
13 grandfather, and her paternal step-grandmother.

14 Q And what happened after you got pregnant by David
15 Carbonaro?

16 A I want to say that after I got pregnant, I went back to my
17 grandparents' house, and I stayed there until I had our child.

18 Q And when you said you went back to your grandparents'
19 house, do you mean back in Ohio?

20 A Yes.

21 Q Okay. Can you describe what it was like living with David
22 Carbonaro during this initial time, before you got pregnant?

23 A During the initial time, it was pretty good times. We
24 spent time together, just me and him.

25 Q What was your feeling about him at the time, during the

1 time before you left when you got pregnant?

2 A My feeling about him at that time was I was head over
3 heels.

4 Q Okay. When you moved back to Ohio, while you were
5 pregnant, with whom did you live?

6 A I lived with my grandparents.

7 Q And did you see your daughter during this time?

8 A Yes.

9 Q Were you living with her?

10 A For a period of time, yes.

11 Q Okay. During this time, how were you supporting yourself?

12 A I -- during this time, I was drawing on food stamps and
13 cash assistance, and for the cash assistance, I was working, I
14 can't remember, Salvation Army or JoAnn's Fabrics.

15 Q Okay. When you say "cash assistance," do you mean a form
16 of welfare payment?

17 A Yes.

18 Q And what entity or what government was providing that to
19 you, if any?

20 A It was provided with the food stamps through Ohio state.

21 Q Okay. And when did you first register for benefits in
22 Ohio in the form of food stamps, if you can remember?

23 A I don't recall.

24 Q Had it been for years before, do you know that?

25 A I've been on food stamps for off and on since I was 18.

- 1 Q And what's the longest you've held a job since you've been
2 18?
- 3 A Two years.
- 4 Q And where was that?
- 5 A At Taco Bell.
- 6 Q And how old were you at that time? What years?
- 7 A That would be 2016 to 2018.
- 8 Q Okay. And that would be the time right before you were
9 arrested in this case?
- 10 A Yes.
- 11 Q Moving back, at some point, you gave birth to your third
12 child. Is that right?
- 13 A Yes.
- 14 Q And that was in Ohio?
- 15 A Yes.
- 16 Q And that was a son?
- 17 A Yes.
- 18 Q Your second son.
- 19 A Yes.
- 20 Q What happened after that?
- 21 A After that, my second son, my daughter, and I came out to
22 Philadelphia.
- 23 Q When you say you came out, did you move to Philadelphia?
- 24 A We moved out here.
- 25 Q And you mean the Philadelphia area?

- 1 A Yes.
- 2 Q Why?
- 3 A Because I wanted to give David a chance to be a father.
- 4 Q Okay. And why did you bring your daughter with you?
- 5 A I brought my daughter with me because I wasn't comfortable
- 6 leaving her so far away.
- 7 Q Okay. When you moved to the Philadelphia area, when you
- 8 returned, do you recall when that was?
- 9 A That was in early 2015.
- 10 Q Okay. And what's your youngest son's birth date?
- 11 A My youngest son's birth date is November 20th, 2014.
- 12 Q So about how many -- or how long after giving birth did
- 13 you return to the Philadelphia area, as far as you can
- 14 remember?
- 15 A As far as I can remember, he was about three months old.
- 16 Q Okay. And when you moved back to the Philadelphia area,
- 17 do you recall where that was?
- 18 A I don't recall precisely, but I do know it's between King
- 19 of Prussia and Upper Darby. As I said, I can't recall whether
- 20 it was King of Prussia first or whether it was Upper Darby
- 21 first.
- 22 Q Okay. Did you have a car at this point?
- 23 A No.
- 24 Q How were you getting around?
- 25 A I walk.

- 1 Q Okay. But you didn't walk from Ohio, you took the bus?
- 2 A I took the Greyhound bus.
- 3 Q Okay. And then, how is it that you arrived at this home?
- 4 A I don't recall.
- 5 Q And when you moved back to the Philadelphia area in early
- 6 2015, who were you living with in this home?
- 7 A It was David, my daughter, myself, and my youngest son.
- 8 Q And can you describe what kind of home this was?
- 9 A Difficult.
- 10 Q I meant the actual -- sorry, I should have been more
- 11 specific, the location, was this an apartment, a row home, is
- 12 it a --
- 13 A It was an apartment.
- 14 Q Okay. We'll get to that in a moment. How many bedrooms
- 15 was the apartment?
- 16 A One.
- 17 Q And who slept in that bedroom?
- 18 A David and I and Luigi, my youngest son.
- 19 Q Okay. And approximately how long did you live in this
- 20 home?
- 21 A I'm not 100 percent certain, but I want to say ten months.
- 22 Q And how were supporting yourself at this time?
- 23 A At this time, I wasn't.
- 24 Q Were you receiving any public health benefits?
- 25 A Public health benefits came later.

- 1 Q Okay. Did you ever receive any welfare assistance from
2 the Commonwealth of Pennsylvania?
- 3 A Yes.
- 4 Q When was that?
- 5 A That was in 2015.
- 6 Q Okay. Approximately when?
- 7 A I don't recall for certain.
- 8 Q And what did you receive, as far as you can remember?
- 9 A I received the food stamps.
- 10 Q Do you recall how much?
- 11 A No.
- 12 Q Do you know, the apartment that you were living in, was
13 it -- did you know it to be a rental?
- 14 A I don't recall if it was or not.
- 15 Q Whose apartment was it?
- 16 A It was mine and David's.
- 17 Q When you say "yours," were you on the lease?
- 18 A Yes.
- 19 Q And how much was the rent?
- 20 A I don't recall.
- 21 Q Who paid the rent?
- 22 A David did.
- 23 Q Did you, at all, contribute towards the rent?
- 24 A I don't believe I was working at the time.
- 25 Q Did you work for -- at any point during those

1 approximately ten months that you were back in the Philadelphia
2 area?

3 A I don't recall if I was working at that time. I know
4 there was a point in time while I was in the Philadelphia area
5 that I worked in the King of Prussia Mall.

6 Q Do you know if that was the first time you came to
7 Philadelphia or the second time?

8 A No, I don't know if it was the first or the second.

9 Q How long did you work in that mall?

10 A About two, two and a half months.

11 Q And what did you do in the mall?

12 A I was working retail sales at a bamboo bedding kiosk.

13 Q And how did you commute to that job?

14 A I walked.

15 Q Okay. Well, would it be fair to say that you were not
16 walking to that job from Upper Darby?

17 A Yes, it would be fair to say that.

18 Q Okay. So then would it be fair to say that you worked
19 that job during your first stay in the Philadelphia area?

20 A I don't recall, because I'm not certain as to whether we
21 were in King of Prussia or Upper Darby the first time.

22 Q Okay. How were you providing for yourself financially?

23 A Financially, I was dependent on David.

24 Q And what do you mean by that? How were you dependent on
25 him?

1 A For a while, I wasn't working.

2 Q And why was that?

3 A I was being a stay-at-home mom.

4 Q And you were caring for your two children at this time?

5 A Yes.

6 Q And approximately during this time, 2015, what were the
7 ages of your daughter and your son?

8 A My daughter was two, and my son was only months old. He
9 was less than a year old.

10 Q Okay. During that time, that ten months or so that you
11 were there, did anyone assist you in taking care of those
12 children?

13 A Not that I recall.

14 Q Okay. Did David play any role in assisting you with those
15 two children?

16 A At times, he did.

17 Q And what do you mean?

18 A I mean, when he was at home, he did help with the
19 children's care, but more often than not, I was home alone with
20 the kids.

21 Q And why were you home alone?

22 A So that David could work.

23 Q And when did he work, generally, times of day?

24 A I don't recall.

25 Q You don't recall at all when his shifts were?

- 1 A Uh-huh.
- 2 Q Where did he work?
- 3 A He was working at Wegmans, a food store.
- 4 Q Okay. How is it -- well, who did the food shopping?
- 5 A He did.
- 6 Q Did you ever do the food shopping?
- 7 A Occasionally, I did the food shopping with him.
- 8 Q Did you ever go food shopping alone?
- 9 A No.
- 10 Q Why not?
- 11 A Because David didn't want me leaving the apartment unless
- 12 he was with me.
- 13 Q And how did you know that?
- 14 A Because he had told me.
- 15 Q When did he tell you that?
- 16 A He told me that when I moved back in with him.
- 17 Q And do you know why he didn't want you going out alone?
- 18 A He didn't trust me.
- 19 Q What do you mean by that?
- 20 A While I was in Ohio, the second -- after I was pregnant,
- 21 he got on to my Facebook account and I was conversing with
- 22 other men. And he just didn't trust me after that.
- 23 Q Did you ever leave that home, the home you stayed in in
- 24 2015, did you ever leave there alone or alone with the
- 25 children?

- 1 A No.
- 2 Q Why not?
- 3 A I was afraid of what David would do.
- 4 Q If what?
- 5 A If --
- 6 Q If he found out that you were leaving the apartment alone?
- 7 A Yes.
- 8 Q Did he ever tell you what would happen?
- 9 A I don't recall if he told me in explicit detail what would
10 happen. I do recall some of the actions he did take.
- 11 Q Why did you follow or comply with his request not to leave
12 the home alone?
- 13 A Because I was in an area that I didn't know anybody, and I
14 didn't have any family or friends in this area.
- 15 Q Okay.
- 16 A So if anything should happen, I wouldn't have anybody
17 there to help, except for David.
- 18 Q Well, what did you think could happen if you left the
19 apartment by yourself?
- 20 A I don't know, anything could happen.
- 21 Q For example?
- 22 A For example, I'm a woman by myself with two children, and
23 somebody could walk up and decide to try to take one of the
24 kids and I'd be helpless.
- 25 Q Well, had David not told you not to leave the apartment,

1 would you have left the apartment?

2 A I don't know what I -- whether I would have or not.

3 Q Can you describe what life was like for you for ten months
4 living with David Carbonaro and your two children in this time
5 around 2015?

6 A For me, it was hellish.

7 Q In what way?

8 A In that I didn't feel as if I had any control over my
9 life. I couldn't cut my hair without him saying anything. He
10 didn't want me to talk to my family. I had 30-minute phone
11 calls once a week with my family, and I had to sit there with
12 him.

13 Q And so from your testimony, are you saying he made those
14 requests of you?

15 A More like demands.

16 Q And did you comply with all of his demands?

17 A Yes, I did.

18 Q What were some of his other demands?

19 A I don't recall his other demands, the ones that I do
20 recall are the -- he didn't want me to cut my hair, he didn't
21 want me to leave the apartment without him, I wasn't to call my
22 family unless he was there, and it was just for one phone call
23 every week, 30 minutes. If I wanted to go to the library, I
24 had to have him with me. If I wanted to go grocery shopping,
25 he had to be with me.

1 Q So what did you do all day?

2 A I spent time with the kids.

3 Q Why did you comply with all of his demands?

4 A I complied because as I said already, I've never been in
5 Philadelphia with anybody except for David. I don't know
6 anybody in the area. I have no friends, no family out here, so
7 I wouldn't have any way to provide for myself if David had
8 decided to put me and the kids out.

9 Q Were you allowed to pick out your own clothes?

10 A I truly don't recall.

11 Q What don't you recall?

12 A Whether or not I was picking my own clothes out.

13 Q Did David make you do anything else?

14 A He forced anal sex on me.

15 Q And when you say "forced," do you mean by physical force
16 or some other way?

17 A Physical force.

18 Q How many times?

19 A I don't recall exact numerology, but it was multiple
20 times.

21 Q And did you make it clear to him that this is not
22 something you wanted?

23 A Yes.

24 Q Are you sure of that?

25 A Yes.

1 Q How did you communicate that?

2 A I told him verbally, "I do not like anal sex. It's very
3 uncomfortable and it's painful."

4 Q And what was his response?

5 A He doesn't care.

6 Q What was his level of involvement with -- generally, with
7 the two children?

8 A You know, generally, I don't recall how much time he spent
9 with the children.

10 Q Well, did he have any time with the children when you were
11 not present?

12 A I don't recall.

13 Q Well, you testified that you were pretty much always in
14 the apartment. Is that right?

15 A Yes.

16 Q Did you ever see the light of day during this time in 2015
17 when you were in this apartment?

18 A After I got Social Services involved, I did.

19 Q Okay. And that happened about how many months after you
20 move in?

21 A That happened about -- that would be in June or July when
22 that happened.

23 Q Of 2015?

24 A Yes.

25 Q Okay. Before that point, had -- did you see the light of

- 1 day?
- 2 A Not really, no.
- 3 Q And were you aware of any activities that David had with
- 4 your daughter?
- 5 A No.
- 6 Q You had no idea what he was doing with her?
- 7 A No.
- 8 Q Well, what was it like when you were around them?
- 9 A When I was around, I know they liked to play dress-up.
- 10 Q What do you mean by that?
- 11 A We'd have different outfits that my daughter could change
- 12 into.
- 13 Q And what do you mean by that?
- 14 A Well, just having her try on clothes.
- 15 Q And who came up with that idea?
- 16 A I honestly don't recall.
- 17 Q Well, what were these activities like?
- 18 A It just -- innocent activities, just her modeling her
- 19 clothes.
- 20 Q And she was about two to three at this time?
- 21 A Yes.
- 22 Q And what did modeling the clothes involve?
- 23 A Full outfits, like, the skirts, the tops.
- 24 Q And who was changing her into these outfits?
- 25 A I was.

- 1 Q Why were you doing this?
- 2 A We really didn't have much to do in the apartment.
- 3 Q Well, were you doing it with anyone else?
- 4 A No.
- 5 Q It was just you and your daughter playing dress-up?
- 6 A Yes.
- 7 Q There was no one else involved.
- 8 A Not during the day when David was at work. No.
- 9 Q Okay. What about at other times?
- 10 A When David was at home, he would be involved, yes.
- 11 Q Okay. Well, that's what I mean, right?
- 12 A Yes.
- 13 Q Obviously, if he's not home, he can't be involved, right?
- 14 A Right.
- 15 Q All right. So when he was home, how was he involved?
- 16 A I honestly don't recall.
- 17 Q But you recall changing her clothes for these dress-up
- 18 sessions, but you don't recall what he was doing?
- 19 A What he -- I don't recall what he did when he was
- 20 involved.
- 21 Q Okay. Did David participate in any activities with your
- 22 daughter in which you were not involved?
- 23 A I don't recall.
- 24 Q Okay. Well, why are you here today in the federal
- 25 detention center? What led to your criminal troubles here?

1 A I'm here today because David decided when I called Social
2 Services that he was going to punish me by forcing me and my
3 daughter to take photos together with my hands down my
4 daughter's pants.

5 Q Well, just backing up a bit, why did you call Social
6 Services?

7 A I called Social Services because with me being confined to
8 our apartment with the children, they weren't getting the right
9 kinds of nutrients that they needed as far as their food supply
10 went. They weren't getting the kind of activities they needed,
11 and Luigi was, our youngest son, weighed 11 pounds at the age
12 of 6 months old and had a failure to thrive.

13 Q When you say he had a failure to thrive, was that the
14 diagnosis that you understand?

15 A That was the diagnosis that the doctor gave.

16 Q Okay. And to your knowledge, you made this report to
17 Social Services in the Philadelphia area?

18 A Yes.

19 Q What happened next?

20 A The Social Services made a house call to see how things
21 were going, and they had us switch our son over to formula,
22 because I was breastfeeding with him. After they left, David
23 tells me he's got to punish me because I called Social Services
24 on him.

25 Q And did he punish you?

1 A Yes.

2 Q In what way?

3 A He forced me to take photos with my daughter with my hands
4 down her underwear.

5 Q And how soon after Social Services left did that occur?

6 A It was within a day or two.

7 Q Okay. And you've seen the photo, the image, of your hand
8 in that position. Is that right?

9 A Yes.

10 Q And you've identified that to law enforcement as your
11 hand?

12 A Yes.

13 Q And when you say that David punished you in this way, how
14 did he make you do this?

15 A He told me that if I didn't do it, he was going to put me
16 and the kids out on the streets.

17 Q And what did you understand that to mean?

18 A I understood that to mean that I would be stuck in
19 Philadelphia with no home and no money, with me and two
20 children.

21 Q And what choice did you make?

22 A I made the choice to take those photos and to ride it out
23 until I could find a way to get some help to get back to my --
24 to Ohio.

25 Q When you say you took the photos, do you mean you

1 literally snapped the camera and took the photos?

2 A No.

3 Q So what do you mean?

4 A I mean that I allowed somebody else to -- I allowed him to
5 take the photos with my hand down her underwear.

6 Q And when you say "him," you mean David.

7 A Yes.

8 Q And did he, according to your words, punish you in any
9 other way besides that one photo?

10 A There were nine photos.

11 Q And were you present when those nine photos were taken?

12 A Yes.

13 Q Who took those photos?

14 A David did.

15 Q And approximately when did he take those photos in
16 relation to this time period?

17 A It was within a day or two of me calling Social Services,
18 because they were taken within about 30 minutes of each other.

19 Q Okay. And by your testimony, you made the choice to
20 participate in those photos. Is that right?

21 A Yes.

22 Q Did anyone direct you in posing in those photos?

23 A Yes.

24 Q Who did?

25 A David did.

1 Q In what way?

2 A He told me what he wanted me to do, where he wanted my
3 hand placed.

4 Q And approximately how many times did he tell you to do
5 that, in other words, in different poses in photos?

6 A Nine.

7 Q So you made the choice to participate. Is that right?

8 A Yes.

9 Q Do you regret that choice?

10 A Yes.

11 Q Did you consider calling the police at any time?

12 A I -- at this time, I had already been through a situation
13 in my past where I tried to report another event, and nothing
14 was ever done.

15 Q When you say "this other event," is it a time when you
16 were victimized?

17 A Yes.

18 Q And generally, what event are you referring to?

19 A I am referring to the time when my stepfather molested me
20 when I was 14 to 16 years old.

21 Q And at some point, did you tell someone that he was
22 molesting you?

23 A Yes.

24 Q Who did you tell?

25 A I told my mother, and she called me a liar.

1 Q And when did you tell her, and how old were you at this
2 point?

3 A I was 14. It was shortly after it started happening.

4 Q Did you go to anyone else for help besides your mother?

5 A I tried to talk to my older sister about it, and she told
6 me that if I brought this up to anybody else, she would beat my
7 ass because I was lying.

8 Q Did you tell anyone about your stepfather molesting you
9 who believed you?

10 A Not until the time that I was 26, shortly after -- shortly
11 before I got locked up.

12 Q Okay. Now, refocusing on this period of time when you're
13 taking the photos, you made the choice to participate in these
14 nine photos, did anything else happen with respect to any
15 "punishment" that you were to receive for calling Social
16 Services?

17 A No.

18 Q Are you aware of anything or any activity that David
19 participated in with your daughter after Social Services came?

20 A No.

21 Q Before you did what you did with your daughter, when David
22 snapped that photo, had you ever sexually mistreated any child?

23 A No.

24 Q Have you done that since?

25 A No.

1 Q Did you have any desire to do that?

2 A No.

3 Q Did you enjoy any of that?

4 A No.

5 Q If you were given a free choice, according to you, would
6 you have participated in that activity?

7 A No, I would not have.

8 Q Okay. Did you ever tell anyone about what happened before
9 there was any law enforcement involvement?

10 A I hadn't brought it up yet. I was in the process of
11 talking things out with my grandparents.

12 Q Had you been communicating with your family at all? You
13 said you got 30-minute phone calls, did you communicate with
14 them about the trouble you were in?

15 A No.

16 Q Why not?

17 A They knew there was something wrong already. I didn't
18 want to drag them further in. I didn't communicate it to them
19 myself, but I did have Social Services reach out to them.

20 Q Did you -- well, why didn't you leave during this time?

21 A You know, at this -- I don't exactly recall why I decided
22 to stay after this happened.

23 Q Well, your daughter was sexually molested, right?

24 A Yes.

25 Q This is a pretty dire situation.

- 1 A Yes.
- 2 Q Why didn't you call your family and say, send me money for
3 a bus ticket, I need to get out of here?
- 4 A I didn't call them because I had no way to call them.
- 5 Q David's at work, you call them, why didn't you do that?
- 6 A I didn't have a phone.
- 7 Q What do you mean you didn't have a phone?
- 8 A I didn't have a phone. The only phone we had in the
9 house, David had.
- 10 Q So when David -- how long were David's shifts at work?
- 11 A I want to say he was working eight-hour shifts.
- 12 Q Okay. So he was gone for a significant part of many days,
13 right?
- 14 A Yes.
- 15 Q You couldn't find any way to communicate to your family to
16 get out of this situation?
- 17 A Not at that time.
- 18 Q Did there come a time where you left?
- 19 A Yes.
- 20 Q When was that?
- 21 A I left at the beginning of December of 2015.
- 22 Q And why did you leave at that time?
- 23 A I left at that time because the situation was starting to
24 escalate more and more between David and I.
- 25 Q What do you mean by that? What was escalating?

1 A The final push for me was, David wanted to take a video of
2 my daughter.

3 Q What kind of video, as far as you understood?

4 A As far as I understood, it was a very sexual video.

5 Q Do you know anything more about that?

6 A No.

7 Q Well, and this crossed the line for you?

8 A Yes.

9 Q In what way?

10 A In the fact that I never wanted my children to go through
11 anything like I had gone through, and yet, here we were sitting
12 in this apartment and they were going through worse than what I
13 went through with my stepfather.

14 Q Well, and how long after -- withdrawn.

15 When you decided to leave, how long after was that that
16 when those nine photos were taken?

17 A Those nine photos were taken -- I don't recall exactly
18 when they were taken, I believe it would have been in July.

19 Q Okay. And where did you go?

20 A I went to a shelter for abused women and children.

21 Q Where?

22 A In --

23 Q Is this in the Philadelphia area?

24 A It was in the Philadelphia area, yes.

25 Q Okay. And how were you able to do that?

1 A The Social Services had made a visit to the apartment
2 because they were making regular visits, and their last visit,
3 I told them that I wanted to get out while David was at work.

4 Q And how many prior visits were there before that, where
5 they made it to the home?

6 A I don't recall.

7 Q Well, there were prior visits, though, right?

8 A Yes.

9 Q How come you never asked them at any of the prior visits?

10 A I never asked them at any of the prior visits because
11 things seemed to be getting better, and then --

12 Q In what way were things better?

13 A And I was actually able to take the kids out, was able to
14 go to the grocery store.

15 Q How were you allowed to do that?

16 A I was walking with the kids.

17 Q But didn't David disallow that?

18 A He did, until Social Services came in.

19 Q And why would that change him or how did it change him, if
20 you know?

21 A I don't know.

22 Q Well, why do you think that was the reason?

23 A I know the social -- when I got Social Services involved,
24 that was one of the things that they were involved for.

25 Q How long did you stay at the shelter?

- 1 A I was at the shelter for a month.
- 2 Q And where did you go after you stayed at the shelter?
- 3 A I went to my grandparents in Ohio.
- 4 Q And who did you take with you?
- 5 A I took my daughter --
- 6 Q Your daughter.
- 7 A -- and my youngest son.
- 8 Q And this was at the end of 2015?
- 9 A Yes.
- 10 Q When was the next time you saw David Carbonaro?
- 11 A The next time I saw David Carbonaro was in June of 2016.
- 12 Q And what were the circumstances?
- 13 A The circumstances under that was his grandparents had
- 14 reached out to me because they found out that we had a son and
- 15 they wanted to meet him.
- 16 Q And what was your involvement in that?
- 17 A My involvement in that was that I wasn't about to let my
- 18 child go all the way to Tampa, Florida by himself.
- 19 Q So you heard about this request to have the grandfather
- 20 see your son, and you wanted to comply with that request?
- 21 A Yes.
- 22 Q And to be clear, that was David's grandfather?
- 23 A Yes.
- 24 Q And did you know who was going to be down in Tampa,
- 25 Florida?

1 A No.

2 Q So who was -- what was your understanding of where you
3 were staying when you flew to Tampa?

4 A My understanding where I was staying was at their house
5 while I was there.

6 Q Who's there?

7 A His -- David's grandparents.

8 Q Okay. Did you know if David was going to be there?

9 A No.

10 Q Did you ask?

11 A No.

12 Q And who did you make these arrangements with?

13 A I made the arrangements with David's grandparents.

14 Q They reached out to you directly?

15 A Yes.

16 Q Who paid for the trip?

17 A They did.

18 Q And you went on the trip?

19 A Yes.

20 Q And this is about the summer of 2016?

21 A Yes.

22 Q Did you have any concerns about going on this trip?

23 A I didn't have any concerns about going on this trip. I
24 figured if David was there, his family was around, and he was
25 going to be on his best behavior while his family was around.

1 Q Well, given that all you've told us today and all that you
2 indicated that you experienced with David, why would you take
3 the chance?

4 A I took the chance because I wasn't about to punish his
5 family for the deeds that he had done.

6 Q When you arrived in Tampa, did you see everyone?

7 A When I arrived in Tampa, I don't recall who picked us up
8 from the airport --

9 Q Okay. Was David there?

10 A Yes.

11 Q Were you surprised?

12 A Yes.

13 Q Why were you surprised?

14 A I wasn't -- I was under the impression that it would be me
15 and my son.

16 Q His grandfather wanted to see his grandson, right?

17 A Yes.

18 Q His grandson is by David.

19 A Yes.

20 Q It didn't dawn on you that David would be there, too?

21 A It dawned on me that he -- it was a possibility.

22 Q Okay. Did anything happen of significance besides the
23 grandfather seeing the son when you went down to Tampa, with
24 respect to you and David?

25 A We spent the week together. It was amicable week. We

1 had --

2 Q So you had a good time with David during this time.

3 A Yes.

4 Q And did that concern you at all?

5 A It didn't concern me that we were having a good time. It
6 told me that he was trying to be on his best behavior.

7 Q Did you have any romantic involvement with him down in
8 Tampa during the summer of 2016?

9 A Yes.

10 Q And what was that?

11 A We shared a bedroom while we were down there for those
12 seven days.

13 Q Okay. And you had sexual relations with him. Isn't that
14 right?

15 A Yes.

16 Q And why would you do that, given everything you've told in
17 this court, that, you know, he raped you and that he did the
18 things you say he did to you and your daughter while you were
19 living together?

20 A Honestly, I couldn't even explain because it doesn't make
21 sense to my own mind.

22 Q Now, you've been charged in this case, right? You
23 understand that?

24 A Yes.

25 Q And you have entered a plea of guilty to the one count

1 against you, you understand that?

2 A Yes.

3 Q And that's for a parent assisting in the production of
4 child pornography for a child?

5 A Yes.

6 Q And you've entered into what's called a cooperation
7 agreement. Is that right?

8 A Yes.

9 Q And you were represented by an attorney, right?

10 A Yes.

11 Q And she's here today.

12 A Yes.

13 Q And you understood the charges against you. Is that
14 right?

15 A Yes.

16 Q You decided to plead guilty?

17 A Yes.

18 Q And you understand that you're testifying here today as
19 part of that cooperation.

20 A Yes.

21 Q And is the understanding just that you tell the truth?

22 A Yes.

23 Q Is there anything else that you understand that you have
24 to do to benefit from a cooperation plea agreement?

25 A To my understanding, I cannot appeal later on if I decide

1 to change my mind, and once I'm sentenced, I've got programming
2 that I have to do.

3 Q Do you understand that according to this agreement, that
4 you will serve at least a mandatory minimum sentence in this
5 case?

6 A Yes.

7 Q And what do you understand that to be?

8 A I understand the mandatory minimum in this case to be 15
9 years.

10 Q And you understand that that's, at the very least, to
11 cover your conduct in the case that we have just discussed.

12 A Yes.

13 MR. DAVISON: I have no further questions.

14 MR. ONGAY: May I have a minute, Judge? I just want
15 to look at my notes.

16 THE COURT: Yes.

17 MR. ONGAY: I have a couple of questions --

18 THE COURT: Hold on one second. What do we need to
19 do to take a ten-minute break, from the Marshals? Can we take
20 10 minutes or do we need 15 minutes, because we're going to
21 bring the witness back up?

22 UNIDENTIFIED: I think we can do it in ten.

23 THE COURT: Pardon me?

24 UNIDENTIFIED: Ten minutes.

25 THE COURT: Ten minutes? All right. Why don't we do

1 that, all right?

2 MR. ONGAY: Thank you, Judge.

3 THE COURT: We'll take ten minutes because I want to
4 give him time and don't want to rush anybody. All right?

5 THE CLERK: All rise, please.

6 THE COURT: So it'll be, literally, ten minutes, all
7 right?

8 (Recess taken at 11:16 a.m.)

9 (Proceedings resumed at 11:26 a.m.)

10 THE COURT: Go ahead, Mr. Ongay, when you're ready.

11 MR. ONGAY: Sure. May I do it sitting down, Your
12 Honor?

13 THE COURT: Yes.

14 MR. ONGAY: Thank you, Judge.

15 THE COURT: You -- there. You can stand wherever you
16 like.

17 MR. ONGAY: Okay.

18 CROSS-EXAMINATION

19 BY MR. ONGAY:

20 Q Just a few questions, Ms. Parker. First, just so I
21 understand clearly, when you arrive from Ohio in January 2015,
22 approximately, at that time you were not receiving any type of
23 public assistance whatsoever?

24 A Correct.

25 Q None? You weren't getting any -- any check of any kind,

1 any aid?

2 A Correct.

3 Q Okay. Now, when you came from Ohio, did you have a
4 Tracfone cell phone that was active?

5 MR. DAVISON: I'm just going to object to form. Just
6 which time from Ohio?

7 MR. ONGAY: Okay. I apologize.

8 BY MR. ONGAY:

9 Q On January 2015, which would have been the second time you
10 came to -- to the Philadelphia area to go -- to come in and
11 live with my client, David Carbonaro, did you, in fact, had a
12 Tracfone that was working?

13 A I don't recall.

14 Q You don't recall. You don't recall the Tracfone at all,
15 or you don't recall if you had it at that time?

16 A I don't recall if I had it at that time.

17 Q Okay. But you did have then a Tracfone at some time?

18 A Yes.

19 Q And do you recall if at all during that ten, eleven-month
20 period in 2015 whether you actually had a phone on your own --
21 your own phone that you kept when Mr. Carbonaro would leave the
22 house -- the apartment?

23 A I don't recall.

24 Q You don't recall?

25 A No.

1 Q Is it possible that you might have had one?

2 A It's possible.

3 Q Okay. Now, that's -- just want to make it clear. So your
4 testimony is that you pretty much stayed in the apartment most
5 of the time between January and December of 2015. Is that
6 correct?

7 A Yes.

8 Q And your testimony is also that Mr. Carbonaro worked a
9 lot?

10 A Yes.

11 Q Okay. And that that was needed, because that's how the
12 bills were paid?

13 A Yes.

14 Q Okay. And that was constant, right, from January until
15 the time you decided to leave? He worked a lot?

16 A Yes.

17 Q Okay. And when he went to work, you were at home alone
18 with the children?

19 A Yes.

20 Q Okay. And when did he work? Tell me. What time of the
21 day?

22 A I don't recall exactly what time of day he worked.

23 Q Okay. If I was to suggest to you that he worked generally
24 at night, would that refresh your recollection? If it doesn't,
25 it doesn't.

1 A No.

2 Q It does not. But you would agree that when he went to
3 work, you were alone?

4 A Yes.

5 Q Okay. And when you went to work -- when he went to work,
6 and you were alone, every time that he went to work and you
7 were alone, you could have left the apartment, taken your
8 children and gone wherever you wanted to?

9 A I could have.

10 Q You could have. You could also have knocked on a
11 neighbor's door and asked for a phone, because you wanted to
12 report the difficult conditions that you were in?

13 A Yes, I could have.

14 Q You could have. And when you did have conversations with
15 your family, you could have told your family, correct?

16 A I could have told my family.

17 Q In addition to that --

18 THE COURT: Let her finish.

19 MR. ONGAY: Okay. I'm sorry. Go ahead.

20 THE COURT: She wasn't -- were you finished with your
21 answers?

22 MR. ONGAY: Forgive me.

23 THE WITNESS: It was difficult to talk about that to
24 my family, though, when David was always sitting right there
25 with us.

1 BY MR. ONGAY:

2 Q Okay. But yet you did call social services. That's your
3 testimony under oath that you --

4 A Yes.

5 Q -- called social services?

6 A Yes.

7 Q And so you were able to call and ask for help for your
8 son?

9 A Yes.

10 Q Okay. And social services came to your home on many
11 occasions once you called?

12 A Yes.

13 Q In fact, I will say there were weekly visits at the very
14 least?

15 A Yes.

16 Q Okay. And you never told social services anything about
17 the conditions in which you were living, the abuse, nothing at
18 all?

19 A Well, they knew about some of the abuse. They didn't know
20 the full extent of it.

21 Q Okay. So did you tell them that Mr. Carbonaro had raped
22 you as you discussed on your direct examination?

23 A No.

24 Q Okay. And did you tell them that he took pictures that
25 were inappropriate of your daughter as you testified, those

1 nine photos?

2 A No.

3 Q No. And correct me if I'm wrong. There are two photos
4 that your -- that -- one of them, your hand appears in it with
5 your daughter around the middle of the body. And then the
6 second photo, it's also involving you. And then the other
7 seven are only about your daughter alone in those seven
8 pictures. Is that correct?

9 A I don't actually recall.

10 Q You don't remember. Okay. Now, you didn't tell social
11 services again about those photos?

12 A No.

13 Q You did not. Okay. And when things got better, and you
14 were going to the store, to the library, I believe you said,
15 and I think you also said shopping to a supermarket nearby --
16 is that what it was?

17 A I don't actually recall where I went shopping.

18 Q But you do recall going shopping?

19 A Yes.

20 Q Okay. And at that time, you also did not take opportunity
21 to tell anybody what was going on?

22 A No.

23 Q Okay. Now, you didn't tell anybody, correct, about this
24 threat that caused you to finally leave, that he was going to
25 make an additional video involving your daughter about

1 inappropriate conduct. Is that correct? This is the first
2 time you mentioned that?

3 A Correct.

4 Q And how did you make it to Ohio? Did social services gave
5 you the money for you to pay the transportation costs for you
6 and your two children to get back home, or did you call your
7 family, and they sent you the money?

8 A I don't actually recall how I got the money to go back
9 home. I know social services was helping me by contacting my
10 family and making sure that I had a place to stay once I was
11 back out there.

12 Q Okay. But when social services was making that call, they
13 had no knowledge about the difficulties you were having with
14 Mr. Carbonaro, how he was treating you. All they were doing
15 was helping you find a place, because you wanted to leave him.
16 And the only thing you reported was your child's -- your son's
17 medical problems in failing to thrive. Is that correct?

18 MR. DAVISON: I'm just going to object to the form of
19 the question. I'm not sure what she's answering yes to. There
20 were a litany of --

21 THE COURT: Overruled. Overruled.

22 BY MR. ONGAY:

23 Q Would you like me to repeat the question? Because I know
24 it was a mouthful.

25 A No. When I called social services, I reported more than

1 just that there was a failure to thrive for my son. I told
2 them about how I wasn't being permitted to leave our apartment
3 without David being with us, how I was only permitted the
4 30-minute phone calls once a week with David's supervision
5 right there. When I made the final -- when I reached out to
6 them the final time, I did let them know that there was more
7 going on, and that's what was pushing me over the edge. I
8 didn't tell them how far it was.

9 Q All right. Thank you. And this may feel like a stupid
10 question, but I still have to ask it. You don't recall if you
11 had a phone. How did you call social services?

12 A When I called social services the first time, I called
13 from the hospital when we took our youngest son for his
14 six-month visit to weigh in.

15 MR. ONGAY: Okay. Got it. If I may have a second,
16 Your Honor? I just want to discuss something with my client.

17 (Counsel confer)

18 BY MR. ONGAY:

19 Q Ms. Parker, the last question. Do you recall being
20 interviewed by people -- officers from the State of Ohio about
21 this case?

22 A Yes.

23 Q You do. And do you remember stating during one of those
24 interviews that Mr. Carbonaro had abused you verbally but that
25 he had never abused you physically?

1 A Yes.

2 MR. ONGAY: Nothing further.

3 THE COURT: Any followup?

4 MR. DAVISON: Yes, Your Honor. Just briefly.

5 REDIRECT EXAMINATION

6 BY MR. DAVISON:

7 Q Do you recall why you responded in that way to the law
8 enforcement officials in Ohio?

9 A When I responded in that way, I wasn't taking into
10 consideration the anal sex that was forced on me.

11 Q Why not?

12 A It just -- at the time, it didn't even cross my mind that
13 that could have been considered one form of physical abuse.

14 MR. DAVISON: That's all, Your Honor.

15 MR. ONGAY: I have no questions on recross, Your
16 Honor.

17 THE COURT: All right. You may step down.

18 (Witness excused)

19 THE COURT: All right. Let me discuss the sentencing
20 factors. We'll get those on the record, and then we'll hear
21 from your client if your client would like to make a speech.
22 And then I will hear argument from both counsel on the
23 sentencing.

24 MR. ONGAY: Okay.

25 THE COURT: So after calculating the guidelines, I

1 must balance the factors set forth in 18 U.S.C. 3553 to yield a
2 sentence sufficient but not greater than necessary to reflect
3 the seriousness of the offense, deter criminal conduct, protect
4 the public and provide the Defendant an opportunity for
5 rehabilitation. I may impose a sentence outside the guidelines
6 if I believe the sentence is reasonable in light of the
7 sentencing factors set forth in 18 Section 3553(a).

8 The factors that I must consider are the following.
9 I'll go through five of them. Again, the focus is a sentence
10 that's sufficient but not greater than necessary to reflect the
11 seriousness of the offense, deter criminal conduct, protect the
12 public and provide for rehabilitation.

13 So the nature and circumstances of the offense and
14 Defendant's history and characteristics. So appearing before
15 the Court for sentencing is 27-year-old David Carbonaro who
16 pleaded guilty to the production, possession and distribution
17 of child pornography. Mr. Carbonaro produced pornographic
18 images of his ex-girlfriend's three-year-old daughter and
19 further possessed and distributed over 7,000 images of child
20 pornography from 2014 to 2018.

21 History and characteristics of the Defendant are as
22 follows. Mr. Carbonaro was born in Pinellas County, Florida.
23 And over the course of his childhood, he moved with his mother
24 and her significant others to different parts of Florida, North
25 Carolina for a brief period of time, to Seattle.

1 The Defendant had a difficult and lonely childhood.
2 His mother and his mother's husband physically disciplined
3 Mr. Carbonaro. On one occasion, the physical discipline
4 resulted in an intervention by child prevention [sic] services.

5 Mr. Carbonaro was raised with his maternal half
6 brother who abused him sexually and physically. Upon learning
7 of her son's abuse of Mr. Carbonaro, her -- his mother placed
8 the two in separate bedrooms but took no further steps to
9 protect the Defendant from his brother.

10 Mr. Carbonaro was often left alone and unattended for
11 days at a time. As a child, Mr. Carbonaro exhibited behavioral
12 and performance problems in school and persistent anxiety. At
13 age seven, he received an Attention Deficit Hyperactivity
14 Disorder, ADHD, diagnosis. At 11, a Tourette Syndrome and
15 possible occipital brain dysfunction diagnosis. He was treated
16 with Paxil, Risperdal and Concerta. At 13, he received an
17 Autism Spectrum Disorder diagnosis. At 15, he attempted
18 suicide. His mental health treatment continued until he was 18
19 when he stopped treatment ostensibly because of a lack of
20 insurance.

21 Mr. Carbonaro was monitored through an individual --
22 individualized education plan designed to address the impact of
23 his mental health problems on his education. He was able to
24 graduate from high school in 2011.

25 After his mental health treatment ceased,

1 Mr. Carbonaro began to self-medicate with alcohol. In his
2 early 20s, he became interested in child pornography. In 2011
3 or 2012, Mr. Carbonaro met Kayla Parker through an online video
4 game. In 2013, Mr. Carbonaro moved in with Ms. Kayla Parker in
5 King of Prussia. 2014, Ms. Parker became pregnant and gave
6 birth to the couple's son in Ohio where she had moved in with
7 her grandparents to receive prenatal care.

8 January 2015, Ms. Parker, the infant and her daughter
9 from a previous relationship, which would be the poor
10 individual that we're involved in -- with now, who we name
11 Minor 1 -- it's such a shame to have to put Minor Number 1 to
12 somebody that should be manifested here and seen as a person
13 and not Minor 1, understanding the protection of her
14 identity -- returned to Pennsylvania to live with Defendant.
15 Minor Number 1 lived with Mr. Carbonaro and her mother from
16 January 2015 until November 2015.

17 During that period, Mr. Carbonaro produced
18 pornographic images of Minor Number 1. He arranged photo
19 shoots of the child while she was a toddler and directed his
20 girlfriend to sexually exploit her so he could record the
21 exploitation and film Minor Number 1. Minor Number 1 has not
22 yet demonstrated any memory of her abuse, but her victimization
23 will undoubtedly affect her as she is -- grows up.

24 Ms. Parker took the couple's son and moved out in
25 2015. Mr. Carbonaro has contact with his son through his own

1 daughter with whom his son now lives. Thank goodness social
2 services and law enforcement came upon this situation before
3 much more significant damage would have been caused over the
4 years before this situation was identified.

5 Two, the need for the sentence to reflect the
6 seriousness of the offense, promote respect for the law and
7 provide just punishment for the offense. Mr. Carbonaro's
8 conduct was extremely serious. He preyed on Minor Number 1 for
9 his own sexual gratification. Doing so subjected her to a
10 lifetime of trauma.

11 He's also shared images of other female toddlers via
12 peer-to-peer file sharing tools. His personal child
13 pornography collection consisted of over 7,000 images,
14 including some that portray sadistic and masochistic conduct.
15 As the victim impact statements demonstrate, the Defendant's
16 conduct was anything but victimless. Many victims of child
17 exploitation endure significant long-term psychological and
18 physiological trauma that could last for their entire lives.

19 To some extent, Mr. Carbonaro seems to have begun to
20 consider the impact of his crime on his victims. While
21 incarcerated, Mr. Carbonaro has asked to participate in classes
22 related to his offenses. The prison employees he would --
23 asked about a particular class, which was called Sexual
24 Self-Resolution, told the Defendant that he was not familiar
25 with the class. Then Mr. Carbonaro has asked to participate in

1 a class called Victim Impact. This time, he was told the class
2 would be offered in May of 2020. Due to COVID restrictions,
3 the class never took place.

4 The need to afford adequate deterrence to criminal
5 conduct and to protect the public from future crimes of the
6 Defendant. Given the facts and the circumstances of this case,
7 a sentence within the guidelines is appropriate. I will hear
8 argument on that, and I will hear from Mr. Carbonaro on -- or
9 read his statement if he does not wish to make one in court.

10 Mr. Carbonaro's conduct requires that the sentence I
11 impose take into account Mr. Carbonaro's risk of recidivism and
12 eliminates his ability to commit future crimes against
13 children. My sentence must also serve a general deterrent to
14 produces, consumers and distributors of child pornography.

15 The need to provide the Defendant with educational or
16 vocational training, medical care or other correctional
17 treatment in the most effective manner. Mr. Carbonaro has no
18 major medical issues, and any future medical treatment and his
19 mental health issues can be adequately addressed by the Federal
20 Bureau of Prisons. So in that future medical treatment, that's
21 of a physical nature. But clearly, he has significant mental
22 health issues as described by the expert that need to be
23 addressed by the Federal Bureau of Prisons and need to be
24 addressed by him while he's serving his time -- term of
25 incarceration.

1 The vocational, educational training are not
2 immediate concerns in imposing a sentence. He may be eligible
3 for vocational or educational training as well while
4 incarcerated.

5 Mr. Carbonaro would not only benefit, but it would be
6 absolutely necessary for him to participate in sex offender
7 treatment while incarcerated. And that would also include not
8 only in periods of time -- incarceration but in terms of his
9 release and supervised release, which will be lifetime.

10 The guidelines and policy statements of the
11 Sentencing Commission and the need to avoid unwarranted
12 sentencing disparities among Defendants among Defendants with
13 similar records who have been found guilty of similar conduct.
14 I'm not aware of any pertinent policy statements or guidelines
15 issues that are present in this case.

16 So with that as a backdrop, I want to give
17 Mr. Carbonaro an opportunity to make a statement or present any
18 further evidence and, obviously, give counsel an opportunity to
19 argue for the variance. So would Mr. Carbonaro want to make a
20 statement?

21 MR. ONGAY: Just a minute, Your Honor.

22 (Counsel confer)

23 MR. ONGAY: Your Honor, my client requests that the
24 Court accepts the letter or, if the Court prefers, to read it
25 into the record.

1 THE COURT: All right. So, Mr. Carbonaro, it's my
2 obligation to ask you directly and have you answer on the
3 record, do you wish to make a statement at this time? It's
4 your right to do so. Yes or no?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. I will read the letter. It's
7 July 28, 2021, to the Honorable Chad F. Kenney, United States
8 Court -- District Court Judge, Eastern District of
9 Pennsylvania:

10 "Your Honor, thank you for this opportunity. I am
11 writing this letter instead of speaking directly to
12 you, because my anxiety is adversely affecting my
13 already poor communication skills. I would like you
14 to know I take responsibility for my actions and in
15 no way do I blame anyone else for my conduct.

16 "Now I am aware that as a result of my actions, I
17 caused damage to innocent victims. I understand now
18 that I hurt" --

19 And he uses the young girl's name here. I won't.
20 For the record, Minor Number 1.

21 "And my [sic] -- by collecting child pornography, I
22 added to the pain of other children and am very
23 sorry. I will regret my actions for the rest of my
24 life, I wish I could not only take my own [sic] --
25 take back my own actions but also take away all the

1 pain that has ever been caused by child pornography.

2 "I know there is nothing I can do to change the past,
3 but I am sure with proper treatment and therapy, I'll
4 never re-offend or cause more pain. I am sorry for
5 all that I have done, and I pray that one day God and
6 Minor Number 1 [sic] forgive my sins. I beg Your
7 Honor to have compassion and grant me a chance
8 through your leniency. I wish to prove that I can
9 and will be a better man as well as valued member of
10 society. Again, I am sorry for all the pain and
11 suffering I have caused, and I thank you for granting
12 me this opportunity. Sincerely, David Carbonaro."

13 All right. If there's nothing else in terms of
14 witness or evidence or anything to put on the record, I would
15 give the Government an opportunity to state its position and
16 then give the --

17 MR. DAVISON: Thank you, Your Honor.

18 THE COURT: -- the Defendant's counsel to have an
19 opportunity to state its position.

20 MR. DAVISON: Your Honor, the advisory guidelines in
21 this case are significant, and the Government approaches that
22 with a great level of humility. To ask Your Honor to impose a
23 sentence at the numbers that we are discussing are -- should
24 only be considered in the gravest of circumstances. And the
25 Government believes, unfortunately, that we are in one of those

1 situations here.

2 The advisory guidelines are 262 to 327 months. And
3 the Government previously asked for a guidelines sentence when
4 that range appeared to be, at least according to the
5 Government, 360 to 840 months. But considering the fact that
6 it has been adjusted, the Government is asking for a sentence
7 near the top of the guidelines of 327 months.

8 The Government is making that request for the
9 following reasons. Defendant himself has had an extremely sad
10 life. He has not been given an adequate beginning and a
11 foundation to be a functional adult given all that he endured
12 when he was a child. He was not given a basic upbringing.

13 Even with that, the Government still asks for the
14 sentence, because the Defendant is now an adult. And as can be
15 seen, whether it was through the testimony today, the evidence
16 in the PSR, the evidence at the change of plea hearing, the
17 conduct that he committed and that he is capable of preys on
18 the most vulnerable in our society. This is sad all around for
19 everyone involved, and the -- and the co-Defendant will face
20 consequences of her own.

21 Counts 3 and 4 alone carry serious sentencing
22 exposure for good reason. And that's how law enforcement came
23 upon David Carbonaro in this case. It was a hit on the fact
24 that a computer or electronic media device inside where the
25 Defendant resides, from that IP address, was distributing child

1 pornography.

2 That would be bad enough. But what the Government
3 discovered upon entry and upon examination of his materials was
4 evidence of what Your Honor heard today, that Minor Number 1,
5 who at the time was three years old, was subjected to this
6 horrific -- horrific treatment.

7 It -- the Government is not requesting restitution on
8 her behalf in this case, namely because it can't even be
9 quantified. There are so many levels of dysfunction, and there
10 are so many levels of therapy that she is going to need to
11 receive that from a consulting of experts, those experts were
12 unable to decipher where, in fact, David Carbonaro's
13 contribution lies with respect to everything else. And given
14 the fact that the government has a burden and the burden is to
15 show proximate cause of that injury and given the Defendant's
16 age -- sorry, the victim's age and her inability to recall any
17 of what has been described in court today, the Government is
18 unable to do that.

19 However, the Government can do much more for her and
20 for those who are vulnerable, namely children, with respect to
21 any sentence that David Carbonaro receives. It should be
22 lengthy, because this crime is the most serious in just looking
23 at the nature and circumstances of the offense.

24 The Defendant leveraged the co-Defendant to -- in
25 essentially aiding and abetting the sexual molestation of her

1 own daughter. The fact that that idea would even cross
2 someone's mind is disturbing enough. And the idea that the
3 motivation behind that idea was to punish another human being,
4 thereby also deriving pleasure for the Defendant. It is so
5 awful, it makes one wonder the bounds of what the Defendant is
6 capable of.

7 We heard from an expert today. From the Government's
8 perspective, the expert did not provide any mitigating
9 evidence, only suggesting the fact that every condition that
10 the Defendant suffers from, in fact, could be an aggravating
11 factor. And the Government would submit that there is full-on
12 evidence of that as can be seen in this case.

13 The Government doesn't take it lightly that this is
14 an enormous sentence that the Government is requesting. And
15 the Defense has pointed out the case of United States v. Shore
16 to indicate that in this district, a district court judge
17 sentenced to someone -- someone facing similar kinds of time to
18 the minimum, which was 180 months, for a similar charge of
19 2251(a). That's where the similarities end.

20 In that case, United States v. Shore -- if I may? We
21 would -- Judge Savage was dealing with a Defendant that
22 solicited a 12, 14 and 16-year old for sex through Facebook and
23 solicited photos of them, of which some of them responded with
24 lewd photos. That constituted the elements of 2251(a),
25 production of child pornography.

1 And Judge Savage, in looking at these cases -- and
2 I'm reading from Page 7 of his decision, 2020 WL 3791550 -- and
3 discusses the very continuum that the Government queried the
4 expert on. Quote:

5 "15 of the 83 Defendants convicted of violating
6 2251(a) in this district received no greater than a
7 15-year mandatory minimum sentence. No Defendant
8 received a sentence less than 18 months, the
9 mandatory minimum. The two Defendants with
10 Asperger's Syndrome were sentenced to 330 and 720
11 months imprisonment respectively."

12 Next paragraph:

13 "Shore's conduct was significantly less egregious
14 than the two Defendants with Asperger's. In those
15 cases, the Defendants engaged in contact with minors.
16 The Defendant sentenced to 720 months videotaped
17 himself sexually abusing the two-year [sic] -- a
18 two-year-old boy and a three-year-old girl. The
19 other Defendant with Asperger's molested and took
20 photographs of children engaging in sexual acts he
21 directed. Shore engaged in no physical contact with
22 the young teenagers."

23 So the Defense is offering this case as their prime
24 citation for mitigation. In reality, it completely supports
25 the Government's request. This was a Defendant with

1 Asperger's. Yes, the Defendant definitely suffers through
2 challenges by not being neurotypical. And this makes him act
3 in an immature fashion. And certainly, there can be mitigating
4 evidence in that.

5 However, once the line is breached to where anyone
6 puts their hands on a child or directs another, let alone the
7 child's mother, and leverages that mother to conduct those
8 acts, the fact that that individual suffers from Asperger's
9 Syndrome, as noted in Judge Savage's decision, plays much less
10 of a role. Why is that? Because the scales of justice now
11 tilt towards danger to the community. And that is,
12 essentially, why the Government is making the request that it
13 is, because regardless of any treatment that the Defendant
14 receives, he is at the highest risk given the trifecta of
15 challenges he suffers from.

16 And he has shown no evidence in the past of
17 responding to those treatment -- to those treatments in a way
18 that would in any way ameliorate or mitigate what his
19 inclinations are. His inclinations are to gather things
20 obsessively. There's the child pornography. It is -- for
21 someone who is isolated, that is exactly they are going to do.
22 And being behind the keyboard of a computer is going to
23 certainly facilitate that.

24 So the two cases cited by Judge Savage, and the first
25 one in particular, is almost a mirror image. It's videotaping

1 the sexual abuse of a three-year-old girl. That's what the
2 Defendant has done and is -- essentially, whatever Minor One's
3 future holds, this is going to be an intrinsic part of who she
4 is. And thus, the pathology continues.

5 So while the Government does have a certain level of
6 compassion for the Defendant, he's an adult, and now he is a
7 perpetrator of that pathology. And he can look back on his
8 history, but he has done no better, if not worse. And all that
9 trails from him right now, from his criminal actions, are years
10 and lives of devastation.

11 The Defendant clearly perpetrated the offense
12 involving infant and toddlers. That enhancement, rightfully,
13 so, does not apply with regard to Count 1. However, Section
14 1B1 -- sorry, 1B1.11 in the notes specifically indicates that
15 that can still be considered.

16 So even all things being equal, even if the Court
17 were to consider that this is a serious case, the guidelines
18 are appropriate, the Defendant merits a guidelines sentence.
19 If one were to take account that just because of the timing of
20 this the Defendant merited four levels lower, and we know what
21 those levels account for in the difference in time, one could
22 argue, as the Government is, that sentencing him to the top of
23 the guidelines for that alone is a just result in this case.
24 But given the overarching conduct of the Defendant, the bleak
25 outlook for him in society in the future leads the Government

1 without doubt to ask for the imposition of a sentence near the
2 top of the guidelines.

3 Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. ONGAY: May I proceed, Your Honor?

6 Your Honor, the first response to the Government's
7 presentation is going to address the remark that the Defendant
8 has shown no response to treatment. And they're correct. And
9 that is because he has had no treatment. That, in fact, was
10 one of my points in the memorandum when I compared Defendants
11 that were allowed to be pretrial released and that also had the
12 wherewithal to remain on pretrial release for a period of time
13 and the funds to pay for the treatment and then were later
14 evaluated. And in some cases, the treatment provided some
15 positive results. That did not happen here.

16 Now, the sentence of 180 months, it's not by any
17 means a slap on the wrist. The sentence of 180 months, it's
18 going to provide the Court and the Bureau of Prisons more than
19 enough time to provide the Defendant with the necessary
20 treatment that he needs to give the Defendant an opportunity to
21 reintegrate himself into society and become a productive
22 member. And it is not simply, okay, we're going to be nice
23 with you, because you just -- what you did was not that bad.
24 It is -- his conduct is extremely serious, and the sentence of
25 180 months is extremely serious also. It's not a minor

1 sentence.

2 The Government, while recognizing the difficult life
3 the Defendant had combined with medical problems that clearly
4 affected his behavior in this case and that need to be
5 addressed so that he can, in turn, reduce the chance of
6 repeating this type of conduct, while recognizing that doesn't
7 want the Court to consider the portion of the testimony of the
8 expert that says that, yes, while those are aggravating
9 factors, we can treat those factors, and he can, in fact, react
10 positively. We cannot have it both ways, Judge.

11 I understand this is an extremely serious case. And
12 if I have to think, you know, to myself how could something
13 like this happen, it's very difficult to conceive any
14 justification for the behavior of both parties, Ms. Parker and
15 Mr. Carbonaro. And I'm not here about to start destroying or
16 attacking Ms. Parker. But it is very difficult to understand
17 how both of them behaved in this way.

18 The fact is that he does have certain conditions that
19 affected his behavior and that he should be -- it would be
20 unfair for the Court to ignore those conditions. Sentencing
21 cannot simply be about warehousing. Okay? It's -- you know,
22 putting Mr. Carbonaro in jail for 25 years instead of 15, which
23 is 120 more months, doesn't guaranty the Court anything.
24 Mr. Carbonaro may be able to be properly treated, and his
25 condition can be improved. But the Government is asking the

1 Court to simply say, no, he will never improve, so we're going
2 to warehouse him.

3 The Government is trying to bring back under relevant
4 conduct the objection the Court sustained, which I understand
5 is reasonable. But it is also the law. Okay? And the
6 Defendant should not have received those four levels to begin
7 with, and the Court correctly and the Government eventually
8 agreed that he shouldn't have received those four levels. We
9 cannot on the -- bring it to the back door and try to now use
10 it against him.

11 Still, even without those four levels, he's facing a
12 lot more than 180 months. He's facing 262 months to 327
13 months. It's still an extremely long sentence for anybody.

14 I understand the Court's ruling on the variance, and
15 I'm not going to raise the issue involving Paragraph 26 of the
16 PSR regarding whether my client had custodial authority or
17 supervision over the Defendant. I understood the Court's
18 discussion of how the Court saw the facts.

19 However, I am going to discuss the realities of
20 modern technology and that computers are involved and that
21 there is an unbelievable ability for anybody to obtain an
22 outrageous amount of photos in seconds or minutes from the
23 internet. And that that problem, it's not something that I am
24 arguing for the Court to recognize for the first time. That
25 problem has been recognized by the very sentencing commission

1 who drafted the guidelines in their first and second reports on
2 child pornography. It has been recognized by many district
3 courts in this country, and it has been recognized by this very
4 district court and this circuit. And those cases are cited in
5 my case -- in my memorandum. So it's not outrageous or crazy
6 to request this Court to consider because of the ease of how
7 modern technology -- the state of modern technology and how
8 easy it is for people to get these outrageous amounts of child
9 pornography for the Court to consider that.

10 The Court can decide how much to depart. The Court
11 doesn't have to reduce the offense level by the number of
12 levels that it was increased. The Court could make a
13 determination that the Court is willing to consider a smaller
14 reduction that will, in fact, address the concerns that the
15 cases have agreed to address and at the same time still not
16 take away the impact of the enhancement.

17 So, for example, Your Honor, my client is now at
18 Level 39. If the Court was to reduce two levels only -- and in
19 one of the objections, the one that involves the 7,000-plus
20 images, that alone is a five-level enhancement. If the Court
21 was to remove -- or to reduce the offense level on a variance
22 from 39 to 37, which would be significantly lower than the
23 objection is, my client still will get the benefit of a reduced
24 sentence, and it will still be above the 180 months. It will
25 be a range of 210 to 267. And that is not an unreasonable

1 position to take if the Court accepts the merits of the
2 argument.

3 The bottom line, Your Honor, is that this case
4 involves very difficult facts. My client engaged in conduct
5 that is reprehensible. He has some biological conditions that
6 affected his ability to judge his conduct, and he should be --
7 and those factors should be considered. The Court should
8 consider those factors, should consider the factors that we
9 made -- that we raised in the sentencing memo and consider
10 granting the two-level variance and then impose a sentence
11 within that range that the Court believes is appropriate.

12 THE COURT: All right.

13 MR. ONGAY: Thank you, Your Honor.

14 THE COURT: All right. Anything else, counsel?

15 MR. DAVISON: No, Your Honor. I don't know if this
16 is an appropriate time, but as mentioned in the Government's
17 latest submission, there is a proposal as to restitution in
18 this case, and that is \$2,000 per victim, totaling \$38,000.

19 THE COURT: Okay.

20 MR. DAVISON: My understanding is that's the proposed
21 stipulation.

22 MR. ONGAY: That is correct, Your Honor.

23 THE COURT: All right. I'll accept that stipulation
24 for that.

25 All right. So in summary, in determining

1 Mr. Carbonaro's sentence, I've considered the advisory
2 guideline range of 262 to 327 months, the Government's
3 recommendation of a sentence at the top end of that guideline
4 and the Defendant's argument for a variance of 180 months and
5 then an argument for a guideline range of a different level
6 based on a two-level reduction. So I've understood that
7 argument as well; the factual findings in the presentence
8 investigation report; the statement by Mr. Carbonaro himself
9 that was handed up as well as his other letters, which we'll
10 seal and make part of the record; this -- the testimony of
11 Dr. Samuels [sic] and Kayla Parker; and all the factors set
12 forth in 3553(a).

13 So in considering the sentence and all -- the
14 sentence and where to come in in a sentence that establishes
15 the -- sufficient but not greater than necessary to reflect the
16 seriousness of the offense, deter criminal conduct, protect the
17 public -- here a very important part of the public, a very
18 special part of the public, toddlers -- and providing for
19 rehabilitation, I looked at a number of things and just --
20 we'll be within the guideline range.

21 There's no doubt that the victim was born into the
22 perfect storm here with being supervised with one sad life and
23 dysfunctional, sad life and another sad life and a
24 dysfunctional, sad life to care for her. And, obviously, this
25 was not care. This was far from it.

1 So neither of the perpetrators were -- chose how
2 they -- what environment they were born into. And I think of
3 some of the privileged environments that I look around and see
4 in terms of household, regardless of how you define it, and
5 then see what these individuals were subjected to in their own
6 lives.

7 So they were prescriptions for disaster right from
8 the beginning and with little help from the outset, especially
9 given the fact that, you know, if you look around, maybe only a
10 few percent of the people that are born into these
11 circumstances have something within themselves that are able to
12 overcome those circumstances. And we see it. We see it from
13 time to time, people that succeed tremendously despite these
14 kind of circumstances.

15 I don't know how you ever get over the kind of sexual
16 abuse, though, that these two individuals were subjected to.
17 And the fact of the matter is then it persists, and it goes
18 down the road. And that's what we have today, the perfect
19 storm coming together.

20 And at some point, you have -- you're an adult. And
21 regardless of how you ended up where you are and whether it was
22 part of your DNA structure, part of your environment, part of
23 what you learned, part of what you experienced, at some point
24 it's on you as an adult, and you're going to make decisions
25 that are going to determine -- and the course sometimes is a

1 course in the next few years, and sometimes the course is the
2 rest of your life. And it's very sad and very tragic in many
3 ways, certainly, with front and center who we keep referring to
4 as Minor 1, the very tragedy there.

5 And the only silver lining to the tragic -- to this
6 perpetrator here and the perpetrator that was in the witness
7 stand is that law enforcement, I think, and social services
8 stepped in and -- at a point in their activities that probably,
9 in one sense, saved them from the rest of their life
10 imprisonment. Because there was no -- there was not going to
11 be any stopping to this kind of conduct.

12 And the leveraging part -- the leveraging part is --
13 I don't know how much I weigh in with the leveraging part with
14 this testimony with this Defendant. From what I heard not so
15 much on the witness stand but what I heard from the -- after, I
16 just -- I agree with Defense counsel. It's hard to wrap around
17 a lot of this, because it's almost impossible to understand
18 this pedophilia for the person that doesn't have that. So it's
19 impossible to get your arms around that one.

20 I mean, how can you not protect children? How can
21 you not protect children even if you have that instinct?
22 Especially people that are under your care and control, not a
23 parent, a teacher, work or whatever, but a mother. So a mother
24 than then -- a mother that then, after being out of the
25 circumstances half a country away that then flies to Florida

1 and spends a week with a perpetrator in the same bedroom,
2 having sexual relations, knowing she had a child with a baby
3 [sic] and a week of sexual relations potentially leading to
4 another child.

5 So I am not -- I'm not buying the leveraging so much
6 here. I'm not. It doesn't take away from the nature and the
7 level of this offense. But I think there's going to be
8 perspective in that -- those nine photos. There is going to be
9 a whole different, potentially, perspective on that.

10 So I'm taking all those things into account. I've
11 taken into account the depressive disorder, the autism, the
12 Asperger's, the pushing the button a thousand times. I mean,
13 it's just, like I said, a coming together of a perfect storm.

14 But it's not as if the individual that is -- that is
15 in front of me, the Defendant here, lived in total isolation.
16 The doctor talked about Asperger's and isolation. I mean, he
17 had an opportunity here. He worked at Wegmans. He had a job
18 at Wegmans.

19 It wasn't like he didn't get out. It wasn't like he
20 didn't get out and interact. It wasn't like he didn't have an
21 opportunity to potentially get help.

22 Unfortunately, this aspect of who he is was not
23 discovered by anyone else that maybe could have stepped in and
24 said you got to help before you -- you're going to spend years
25 in jail. Unfortunately, the perfect storm is he was involved

1 with somebody that -- I didn't hear any discussions about
2 potentially getting him help and talking about help.

3 I -- and I heard about -- testimony from that one
4 apartment with this little three-year-old you're dressing up
5 for entertainment. And then, all of a sudden, the recollection
6 got very weak as to what did that look like and with you there
7 and with you present what did that look like with the Defendant
8 there.

9 So all those things have a big impact on me and a big
10 impact in terms of the tragic nature for this daughter being
11 exploited like this. And I think she was exploited by both
12 individuals and exploited and double teamed. And neither of
13 them getting each other help. And at a time where I think they
14 probably both needed it, and no one there to tell them, you
15 know, you need significant, significant help.

16 So this is where we land in a free-willing society
17 where you can come and go when you please and nobody's watching
18 you and nobody really has the time to provide the type of
19 services that would locate this. And you take two individuals
20 that are disassociated from family geographically, and nobody
21 has a chance to watch what's going on. And it's kind of
22 interesting even in the most protected families where they can
23 watch what's going on, even then it occurs.

24 And as Defense counsel says, well, what do you do
25 with somebody like my client? Do you warehouse them? And what

1 does warehouse mean? Certainly, we don't have those type of
2 facilities to warehouse people that have this kind of drive
3 that the doctor identified.

4 And then once you put them out into society, they
5 have to be supervised. And they have to be supervised at a
6 significant level. It's not, though, as if you can take a
7 probation officer and say, here, spend 24 hours, seven days a
8 week with this individual. So that's what you -- you're left
9 with, because that's almost the type of supervision that you
10 need.

11 But the sentence -- the guidelines sometimes are --
12 with child pornography, as pointed out with the case with Judge
13 Savage, the guidelines in this area really have to be looked
14 at, because there are times when 25 years is way out of line in
15 the guidelines with the type of individual and the type of --
16 the circumstances versus a case like this where there's been a
17 crossover.

18 And understand, okay, 700 images. But 7,000 images?
19 Autistic or not, this is not somebody that's sitting alone in a
20 room, not interacting with society. This is somebody at a
21 Wegmans of all places. And they -- correct me if I'm wrong, I
22 think even in a managerial or a supervisory position who had
23 opportunity to look around and say, you know, maybe I got
24 issues here. Who had an opportunity probably to go through
25 training at Wegmans to be self-aware of certain behaviors,

1 especially in interacting with other employees.

2 So that's the significance of the difference there.
3 On the other hand, we live in a society -- you can't warehouse
4 people. I mean, certainly we have crimes that require that:
5 you know, intentional murder, you know, certain sort of serial
6 recommitting of crimes. And honestly, again, I think this is
7 the direction that Mr. Carbonaro was going in if early on in
8 his behavior law enforcement hadn't come across this conduct.

9 So there are all the factors. That's all my
10 observation. I think the presentation by Mr. Ongay in his
11 filing was very good. I think the Government's presentation
12 was good, understanding that, you know, there is sympathy and
13 compassion even in a case like this for the people that ended
14 up here with their backgrounds.

15 It was -- given what was done to them, it was almost
16 inevitable that you end up in some really, really bad spot.
17 But you add the pedophilia to it, and you end up in a spot that
18 society just cannot accept, that society has to come down on,
19 that we have to respond to, even if -- even given the terrible
20 deck that was handed from the outset.

21 So within the range of 262 to 327 months. And taking
22 all that into account and understanding, you know, anywhere in
23 that range is a really, really long time, time for -- by the
24 time Mr. Carbonaro somewhere within that sentence is going to
25 come to a full realization that, hey, you know, I -- this was

1 all on me, and I've really got to figure this out, and I need
2 the treatment. That will click in.

3 But given the nature of the -- his condition and the
4 fact that he has already crossed over, there's a difference
5 between, you know, 15 years and 20 years. And that's five
6 years less exposure of toddlers to this individual. There's no
7 other way to say it. And when he does get out, and it does
8 come time for Mr. Carbonaro to get out, hopefully he
9 understands that that has to be something that he has to manage
10 every single day. And combine with his Asperger's that he's
11 got to manage every single day, and it puts a big, huge burden
12 on the probation people on supervised release, because it's
13 something that has to be incredibly managed on a thorough
14 basis.

15 So with all that in mind and based on those
16 considerations, all the considerations I've just listed,
17 including the 3553(a) factors and the sentencing guideline,
18 I'll sentence the Defendant to 265 months, which is within the
19 guideline range.

20 Do counsel or the probation officer have any
21 recommended conditions of probations that have not been
22 discussed in the presentence report? Any other conditions I've
23 not discussed and that haven't been in your report?

24 MR. PISKAI: No, Your Honor.

25 MR. DAVISON: I mean, if Your Honor is asking if the

1 Government is asking for a specific term of supervised release
2 or -- I'm not sure I understand.

3 THE COURT: No. I've already -- I'm going to -- not
4 the supervised release. That's going to be lifetime. But
5 the --

6 MR. DAVISON: Okay.

7 THE COURT: -- the --

8 MR. ONGAY: No, Your Honor.

9 THE COURT: No?

10 MR. ONGAY: Not from the Defense.

11 THE COURT: Nothing else? All right.

12 MR. DAVISON: No, Your Honor.

13 THE COURT: All right. It's the judgment of the
14 Court -- pursuant to the Sentencing Reform Act of 1984, it is
15 the judgment of the Court that Defendant, David Carbonaro, is
16 hereby committed to the custody of the Bureau of Prisons to be
17 imprisoned for a term of 265 months. This term includes a term
18 of 265 months of imprisonment on Count 1 and 240 months of
19 imprisonment on each of Counts 3 and 4, such terms to run
20 concurrently. The Court recommends to the Bureau of Prisons
21 that Defendant be placed in an institution with sex offender
22 treatment.

23 Upon release from imprisonment, the Defendant shall
24 be placed on supervised release for a lifetime term on each of
25 Counts 1, 3 and 4, such terms to run concurrently. Within 72

1 hours of release from custody of the Bureau of Prisons, the
2 Defendant shall report in person to the probation office in the
3 district to which he is released. While on supervised release,
4 the Defendant shall not commit another federal, state or local
5 crime; shall be prohibited from possessing a firearm or other
6 dangerous device; shall not possess an illegal, controlled
7 substance; shall submit to the collection of a DNA sample at
8 the direction of the United States Probation Office; and shall
9 comply with the other standard conditions that have been
10 adopted by this Court.

11 The Defendant must submit to one drug test within 15
12 days of commencement of probation and at least two tests
13 thereafter as determined by the probation officer.

14 In addition, the Defendant shall comply with the
15 following special conditions. The Defendant shall participate
16 in a mental health program for evaluation and/or treatment and
17 abide by the rules of any such program until satisfactorily
18 discharged.

19 The Defendant shall refrain from the use of alcohol
20 and shall submit to the testing to ensure compliance. It is
21 further ordered that the Defendant shall participate in alcohol
22 treatment and abide by the rules of any such program until
23 satisfactorily discharged.

24 The Defendant shall submit to an initial inspection
25 by the United States Probation Office and to any examinations

1 during supervision of the Defendant's computer and any devices,
2 programs or application. Defendant shall allow the
3 installation of any hardware or software systems which monitor
4 or filter computer use. Defendant shall abide by the standard
5 conditions of computer monitoring and filtering that will be
6 approved by this Court. The Defendant is to pay the cost of
7 the computer monitoring, not to exceed the monthly contractual
8 rate in accordance with the probation officer's discretion.

9 The Defendant shall report to the United States
10 Probation Office any regular contact with children of either
11 sex under the age of 18. The Defendant shall not obtain
12 employment or perform volunteer work which includes regular
13 contact with children under the age of 18.

14 The Defendant shall participate in a sex offender
15 program for evaluation and treatment and abide by the rules of
16 any such program until satisfactorily discharged. While in the
17 treatment program, the Defendant shall submit to risk
18 assessment, psychological testing and psychological tests --
19 which will include but is -- and psychological tests -- testing
20 which may include but is not limited to polygraph or other
21 specific tests to monitor compliance with supervised release
22 and treatment conditions.

23 The Defendant shall comply with the requirements of
24 the Sex Offender Registration Notification Act, 42 U.S.C.
25 Section 1609 -- 16901 as directed by the probation officer, the

1 Bureau of Prisons or any state sex offender registration agency
2 in which he resides, works, is a student or was convicted of a
3 qualifying offense.

4 The Defendant shall provide the U.S. Probation Office
5 with full disclosure of his financial records to include yearly
6 income tax returns upon the request of the U.S. Probation
7 Office. The Defendant shall cooperate with the probation
8 officer in the investigation of his financial dealings and
9 shall provide truthful monthly statements of his -- of this
10 income.

11 Defendant is prohibited from incurring any new credit
12 charges or opening additional lines of credit without the
13 approval of the probation officer unless the Defendant is in
14 compliance with a payment schedule for any fine or restitution
15 or obligation.

16 Defendant shall not encumber or liquidate interest in
17 any assets unless it is in the direct service of -- or fine and
18 restitution, obligation or otherwise has the express approval
19 of the Court.

20 The Court finds that Defendant does not have the
21 ability to pay a fine. The Court will waive the fine in this
22 case.

23 Is there any objection to that?

24 MR. DAVISON: No, Your Honor.

25 MR. ONGAY: No, Your Honor.

1 THE COURT: The Defendant likewise does not have the
2 ability to pay the 15,000 JVTA special assessment. Is there
3 any objection to that?

4 MR. DAVISON: No, Your Honor.

5 MR. ONGAY: No, Your Honor.

6 THE COURT: The parties have proposed a stipulation
7 regarding an order of restitution in the amount of \$2,000 as to
8 each identifiable image who has requested restitution from the
9 Defendant in this matter. Therefore, the proposed stipulation
10 would require the Defendant to provide a total of \$38,000 to 19
11 victims in this case.

12 I will approve the parties' proposed restitution, and
13 Mr. Carbonaro must make restitution in the amount of \$38,000.
14 If the Defendant fails to pay the restitution owed, each
15 recipient is to receive an approximately proportional lot of --
16 allotment of the restitution paid.

17 It is further ordered that the Defendant shall pay to
18 the United States a total special assessment of \$300 which
19 shall be paid immediately.

20 It is recommended that the Defendant participate in
21 the Bureau of Prison Inmate Financial Responsibility Program
22 and provide a minimum payment of \$25 per quarter towards all
23 amounts due. In the event the amounts due are not paid before
24 the commencement of supervision, Mr. Carbonaro shall satisfy
25 the amounts due in monthly instalments of not less than \$25 to

1 commence 60 days after release from confinement.

2 Any objections?

3 MR. ONGAY: Not from the Defense, Your Honor.

4 MR. DAVISON: Not from the Government.

5 THE COURT: All right. So ordered.

6 Any procedural errors, Mr. Piskai?

7 MR. PISKAI: No, Your Honor.

8 THE COURT: Any procedural errors?

9 MR. DAVISON: No, Your Honor.

10 MR. ONGAY: No, Your Honor.

11 THE COURT: And any objections to my discussion of
12 3553 factors?

13 MR. DAVISON: No, Your Honor.

14 MR. ONGAY: No, Your Honor.

15 THE COURT: All right. So, Mr. Carbonaro, now that
16 you've been sentenced, that is a judgment. You can appeal your
17 conviction if you believe that your guilty plea on November 19,
18 2019, was somehow unlawful or involuntary or if there is some
19 other fundamental defect in the proceedings that was not --
20 that was not waived by your guilty plea. If you choose to
21 appeal the sentence this Court has imposed, a notice of appeal
22 must be filed within 19 -- I'm sorry, must be filed within
23 14 -- did you hear that? Fourteen. Yes?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: After the entry of the judgment entered

1 against you or within 14 days of the filing of a notice of
2 appeal by the Government. If requested, the clerk will prepare
3 and file a notice of appeal on your behalf.

4 If you are unable to pay appeal costs, you have the
5 right to ask for permission and appeal in forma pauperis, which
6 means you can apply to have the Court waive the filing fee.
7 You have the right to counsel for your appeal. If you cannot
8 afford an attorney, the Court can appoint one to you.

9 Are there any other matters needed to resolve this
10 case?

11 MR. DAVISON: No, Your Honor.

12 MR. ONGAY: No, Your Honor.

13 MR. PISKAI: Counsel, do you have any other motions?

14 MR. DAVISON: There is a outstanding moment -- motion
15 for forfeiture, I think --

16 THE COURT: All right.

17 MR. DAVISON: -- that's been presented in writing.

18 THE COURT: I'm sure there's no objection.

19 MR. ONGAY: No objection, Your Honor.

20 THE COURT: It's -- motion is granted. And now the
21 Defendant is immediately released to the custody of the United
22 States Marshal Service.

23 Thank you, everyone.

24 MR. DAVISON: Thank you, Your Honor.

25 MR. ONGAY: Thank you, Your Honor.

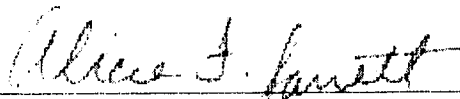
1 THE COURT: All rise.

2 (Proceedings concluded at 12:43 p.m.)

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14 C E R T I F I C A T I O N

15
16 I, Alicia Jarrett, court-approved transcriber, hereby
17 certify that the foregoing is a correct transcript from the
18 official electronic sound recording of the proceedings in the
19 above-entitled matter, and to the best of my ability.
20

21
22 
23

24 ALICIA JARRETT, AAERT NO. 428
25 ACCESS TRANSCRIPTS, LLC

DATE: October 26, 2021

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CERTIFICATE OF SERVICE

Service on the Assistant United States Attorney

I, José Luis Ongay, certify that I served two copies of the Brief and the Appendix to the Brief for Appellant upon Assistant United States Attorney Josh Davison, via first class mail at 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106.

Service on Mr. David Carbonaro

I also certify that I served Mr. David Carbonaro, 76938-066, a copy of the Appendix to the Brief via first class mail to David Carbonaro, FTC Oklahoma City Federal Transfer Center, P.O. Box 898801, Oklahoma City, OK 73189.

/s/ Jose Luis Ongay

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