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STATE OF MAINE

PENOBSCOT COUNTY, ss.  
CRIMINAL ACTION

UNIFIED CRIMINAL DOCKET COURT  
REGION NO. 5

DOCKET NO. PENCDCR-2017-00552

STATE OF MAINE,  
Plaintiff,  
VS.  
RICHARD ALAN BAILEY,  
Defendant.

**RULE 11 HEARING**

SEPTEMBER 11, 2018  
BANGOR, MAINE  
VOLUME I OF II

BEFORE:

THE HONORABLE WILLIAM R. ANDERSON  
JUSTICE OF THE UNIFIED CRIMINAL DOCKET COURT

APPEARANCES:

ON BEHALF OF THE STATE:  
ALICE CLIFFORD, ESQ.

ON BEHALF OF THE DEFENDANT:  
STEPHEN SMITH, ESQ.

REPORTED BY:

CATHY STEARNS

TRANSCRIBED BY:

eScribers, LLC  
7227 North 16th Street, Suite #207  
Phoenix, AZ 85020



1 (This matter came for hearing before The Honorable  
2 Justice William R. Anderson of the Penobscot County Unified  
3 Criminal Docket Court, Bangor, Maine, on September 11, 2018 at  
4 4:07 p.m.)

5 THE COURT: All right. So this is State of Maine v.  
6 Richard Bailey, docket number 17-552. And what's going to  
7 happen?

8 MR. SMITH: Dissipate a plea, Your Honor.

9 THE COURT: Okay. And Mr. Smith, have you been over the  
10 indictment with your client?

11 MR. SMITH: Yes, Your Honor.

12 (Pause)

13 THE COURT: So the first 20 charges, if I'm not mistaken,  
14 are all Class A; is that correct, both side?

15 MS. CLIFFORD: That's correct.

16 MR. SMITH: It is.

17 THE COURT: And they all allege the same victim?

18 MS. CLIFFORD: Yes.

19 THE COURT: Pornchai Moontri, correct?

20 MS. CLIFFORD: Yes.

21 MR. SMITH: Yes.

22 THE COURT: Okay. And then the remaining counts in this  
23 40-count indictment, are gross sexual assault against a Priwan  
24 Moontri?

25 MS. CLIFFORD: That's correct, Your Honor.



1 MR. SMITH: Correct.

2 THE COURT: The first 20 are so-called statutory crimes;  
3 Class A. And the last 20 are by any threat allegations, which  
4 are Class C?

5 MS. CLIFFORD: Yes.

6 THE COURT: Thank you. I think I gave a look and I  
7 believe they all are by any threat Class C. Okay.

8 And what is he pleading to, Mr. Smith?

9 MR. SMITH: All of the charges, Your Honor.

10 THE COURT: Okay.

11 MR. SMITH: We would waive reading it, too, Your Honor.

12 THE COURT: Well, I just want to make sure that he  
13 understands. I'm not going to read all 20 and (indiscernible)  
14 to him, but the first 20 all allege list the same type of  
15 thing, but they have a different on or about date. And they  
16 allege that you engaged in a sexual act with Pornchai Moontri,  
17 who is not your spouse, who would not, in fact, attained his  
18 14th birthday. Do you understand that charge?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. And have you been over the terminology  
21 in the allegation? In other words, what a sexual act is? And  
22 I guess, what are the major legal wording or phrases there; do  
23 you understand what a sexual act is?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Okay. And then the other 20 it's -- did



1 engage in a sexual act with Priwan Moontri, not your spouse,  
2 and you compelled or induced Priwan Moontri to engage in a  
3 sexual act by any threat. Do you understand that charge?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. Now, the Class A -- does anyone know  
6 whether the maximum then was 20 or 40?

7 MS. CLIFFORD: It was 20, Your Honor.

8 THE COURT: 20?

9 MR. SMITH: That's my recollection.

10 MS. CLIFFORD: Yes.

11 THE COURT: Okay. And the maximum on a Class C was five  
12 years. The maximum probation on a Class A was six years. And  
13 the maximum probation on the C was what, two years?

14 MS. CLIFFORD: Four.

15 THE COURT: Four years on a C?

16 MS. CLIFFORD: On this situation, yes, Your Honor.

17 THE COURT: Okay.

18 MS. CLIFFORD: And I do have that copy of the statute.

19 THE COURT: All right. I think we have a sequence number  
20 problem for the last 20, because it's the same sequence number  
21 as the first 20.

22 (Clerk to Court)

23 MS. CLIFFORD: We'll try to rectify that before this is  
24 finished.

25 THE COURT: By any threat is now a Class B offense. I

1 don't -- I'm assuming it was a Class C then, but --

2 MS. CLIFFORD: That's what I'm assuming. I do have a  
3 copy of the statute.

4 THE COURT: Was that subsection 2 at the time then, too?

5 MS. CLIFFORD: I could check that, Your Honor. There's  
6 quite a bit of --

7 THE COURT: I shouldn't say 2 -- B -- 2-B.

8 MS. CLIFFORD: Yes.

9 THE COURT: Okay.

10 MS. CLIFFORD: Yes.

11 THE COURT: And it was Class C?

12 MS. CLIFFORD: And that is -- yes. Actually, it appears  
13 it's a B.

14 THE COURT: It's a B now. I don't --

15 MR. SMITH: If the State would allow me to look over  
16 their shoulder.

17 MS. CLIFFORD: No, I'm sorry. It was a C.

18 THE COURT: It was a C?

19 MS. CLIFFORD: It was a C.

20 THE COURT: Okay. All right.

21 MS. CLIFFORD: Yup. And I do have a copy of that law if  
22 the Court wishes to see it.

23 THE COURT: All right. If you're looking at it, I trust  
24 to.

25 MS. CLIFFORD: Yeah.



1 THE CLERK: Your Honor, when I put that sequence number  
2 in, it comes up with an A --

3 THE COURT: Um-hmm.

4 THE CLERK: -- is what I'm saying.

5 THE COURT: I know. I know that's what you're saying.

6 MS. CLIFFORD: Right. I'll try and rectify --

7 MR. SMITH: I'm trying to find it right now.

8 (Clerk to Court)

9 MS. CLIFFORD: Thank you, very much, Madam Clerk.

10 THE CLERK: Yup.

11 THE COURT: At the time, A was a maximum of 20 years. C  
12 was a maximum of five years. And I believe the maximum  
13 probation, as we said, was six years for A, four years for C.

14 MS. CLIFFORD: That's correct.

15 THE COURT: And fines, I believe, were 50,000 and 5,000  
16 with a maximum -- there's no mandatory sentence at the time;  
17 do you understand all that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Now, could the plea agreement be outlined to  
20 me?

21 MS. CLIFFORD: Yes, Your Honor. The plea agreement that,  
22 as I see it, is Counts I through X would be 17 years, all  
23 suspended, six years' probation with sex offender conditions  
24 and I could certainly get into those as we need. And you do  
25 have the sheet, and Mr. Smith has that sheet.

1 THE COURT: Do we have that up here?

2 THE CLERK: I do, Your Honor.

3 THE COURT: With the schedule.

4 MS. CLIFFORD: Yeah. Counts XI through XX would be 17  
5 years, all suspended, with four years' probation. Counts of  
6 XXI through XXX, would be five years, all suspended, with four  
7 years' probation. And Counts XXXI through XL would be five  
8 years suspended -- all suspended, four years' probation. And  
9 those sentences would be consecutive to each other. And they  
10 would all have the same conditions. So that the defendant  
11 will be on probation for 18 years; 6, 4, 4, 4.

12 THE COURT: Okay. Do we know what the registration  
13 requirement was at the time?

14 MS. CLIFFORD: I believe -- there was a registration  
15 requirement I understand, Your Honor.

16 THE COURT: I'm sure it would be a lifetime if there --

17 MS. CLIFFORD: Yes.

18 THE COURT: -- was one, I'm not sure there was one in  
19 '86, but.

20 THE CLERK: I think the law changed to --

21 MS. CLIFFORD: I believe --

22 THE CLERK: -- '86 recently.

23 THE COURT: Oh, they've gone -- okay.

24 THE CLERK: (Indiscernible).

25 THE COURT: He should be aware that -- I have looked it

1 up before I came in here, this was -- there's certainly -- it  
2 looks like a lifetime sex offender registration requirement;  
3 so you're aware of that?

4 MR. SMITH: Yes.

5 THE COURT: Is that right, Mr. Bailey?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Lifetime registration. Okay. Now, you don't  
8 have to plead guilty to the charge, or no contest, whatever  
9 you're planning on pleading, because you have the right to  
10 have a speedy and public trial; you have the right to be  
11 presumed innocent, unless proven guilty beyond a reasonable  
12 doubt by the State at a trial. If there's a trial, you have  
13 the right to present your own witnesses, evidence, and  
14 testimony. And you have the right to have your lawyer cross-  
15 examine any witnesses that are called by the State. Do you  
16 understand all of those rights?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: So if there were a trial, the prosecutor  
19 would call witnesses, present evidence to try to prove your  
20 guilt. I would imagine that one or both of the alleged  
21 victims would be testifying, maybe others, I don't know what  
22 the entirety of the State's case is. Mr. Smith can cross-  
23 examine them and you can present your own witnesses, your own  
24 evidence, and your own testimony at the trial; present your  
25 side of the case. You decide you don't want to testify, the



1 jury would have to be instructed that they're to draw no  
2 conclusions that are averse to your inferences that are averse  
3 to you, because of your choice not to testify. Do you  
4 understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: After the trial was over and arguments were  
7 made by Counsel and instructions were given by the judge, the  
8 jury would deliberate. If the State proved the charges,  
9 beyond a reasonable doubt, to all 12 jurors, you would get  
10 convicted. However, if the State failed to prove the charges  
11 to all 12 jurors, beyond a reasonable doubt, you would not get  
12 convicted. On the other hand, if you're pleading guilty today  
13 and I accept the plea, you're just going to be found guilty of  
14 the charges. Do you understand all of that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: So what are you choosing to do? Would you  
17 like to have a trial? Or would you like to give up your trial  
18 rights and plead, I guess, it's -- I'm told it's no contest,  
19 to this charge -- excuse me, these charges.

20 THE DEFENDANT: Plead nolo, sir.

21 THE COURT: All right. You understand if you plead no  
22 contest or nolo, you do get convicted of the offenses?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: It'll be on your record; you've been  
25 convicted of gross sexual assault. You'll be a lifetime



1 register. You understand all that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Now, Mr. Smith, I take it, by the  
4 no contest plea, he's not actually admitting that he committed  
5 the offenses?

6 MR. SMITH: That is correct, Your Honor.

7 THE COURT: Okay. And is this an acceptable way to  
8 proceed as far as the State's concerned?

9 MS. CLIFFORD: Yes, Your Honor. The State understands --  
10 understood that's the way the defendant was going to plea.  
11 There was some indication from the victims in Counts I  
12 thorough XX, that he wanted to see the defendant formally  
13 admit to the offenses and that he thought that was crucial.  
14 The State is satisfied with the plea, because the State -- the  
15 Court finds him guilty though.

16 THE COURT: Okay. So it's very important for anybody  
17 who's pleading guilty, and maybe you could even say,  
18 especially for those who are saying they didn't do it, to  
19 understand that the person has the right to the trial that I  
20 just talked to you about. So do I assume that you've  
21 discussed this decision with Mr. Smith?

22 THE DEFENDANT: Yes, sir -- Your Honor.

23 THE COURT: Have you gone over the evidence in the case?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Have you had enough time to consider what you



1 should be doing today?

2 THE DEFENDANT: Yes, sir. Yes, Your Honor.

3 THE COURT: Do you understand if you enter the plea and I  
4 find you guilty and impose the disposition then that's it, you  
5 won't be able to reconsider it later and expect to get a  
6 trial, because you won't.

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: This will be it today. All right. Were you  
11 born in the United States?

12 THE DEFENDANT: Yes, sir, I was. Yes.

13 THE COURT: Is there anyone forcing you, threatening you,  
14 compelling you, doing anything like that to get you to plead  
15 guilty to the charges -- no contest to the charges?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: It was your decision?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Is there anything interfering with your  
20 judgment, or your decision-making ability today?

21 THE DEFENDANT: Say again, please?

22 THE COURT: Anything interfering with your judgment, or  
23 your decision-making ability today?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: All right. You're clear headed and you've



1 been able to properly consider this?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. Mr. Smith, do you believe that your  
4 client is acting in his best interest?

5 MR. SMITH: I am.

6 THE COURT: And do you think he's entering the plea  
7 knowingly and voluntarily?

8 MR. SMITH: I do.

9 THE COURT: Okay. And you understand, Mr. Bailey, if I  
10 don't accept the plea, you can withdraw it, it's like nothing  
11 happened today, and then it would still be on a trial list.  
12 Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. And I have the facts the State would  
15 be relying on if this were to go to trial?

16 MS. CLIFFORD: Yes, Your Honor. There would be testimony  
17 from both victims, and at this point these victims are in  
18 their mid-40s, that they were born in Thailand and their  
19 mother left them with her -- with their grandparents at a  
20 young age. And prior to the time the boys turned 12 and 14,  
21 their mother resumed contact with them. And that at that time  
22 she was married to the defendant. And the mother had  
23 apparently met the defendant when he visited Thailand. It's  
24 unclear how old, exactly, the mother was when she met him or  
25 when they married. However, after that time period, she moved

1 to the United States with the defendant, and the two children  
2 came with them, and lived with them.

3 THE COURT: How old, roughly, were they at the time?

4 MS. CLIFFORD: The victim in Counts I through XX was 12.  
5 And the victims in Counts XXI through XL was 14.

6 THE COURT: Uh-huh.

7 MS. CLIFFORD: And both would testify their moving here  
8 between Thanksgiving in 1985 and Christmas of 1985. And they  
9 would both testify that they spoke little, if any, English  
10 when they moved here. And that the defendant forbid them to  
11 talk to each other or their mother in their native language.  
12 They would both testify that they initially shared a room and  
13 then later were moved into separate rooms.

14 The victim in Counts XXI through XL would testify -- the  
15 named victim would testify that sometime before he started  
16 school here, the defendant took him to the shower and told him  
17 he needed to learn how to shower or wash here in the United  
18 States since it was different than it was in Thailand. And  
19 that the defendant put him in the shower and was reaching for  
20 him to teach him how to wash.

21 He did not understand what was going on at first and the  
22 defendant got into the shower with the victim and started  
23 fondling the victim's penis. And the defendant was grabbing  
24 for the victim's penis, that the defendant was putting his  
25 mouth on his penis and that the victim started moving around

1 in the shower trying to get away from the defendant. And he  
2 would report that he was trying to get away from the defendant  
3 by turning his back to him, but to no avail, he remembers the  
4 abuse escalated into oral sex, as well as anal sex.

5 And the defendant performed oral sex on him as if to show  
6 that was what he wanted, and directing the victim to perform  
7 the oral sex on him. And the victim would testify that this  
8 form of sexual abuse began to occur around the Super Bowl that  
9 year, as he remembered it was the Patriots versus the Bears,  
10 and he told the defendant he liked the Bears, because he liked  
11 their uniform. And the defendant got mad and sent him to his  
12 room. At that point, he didn't know why he was so mad.

13 Thereafter, the abuse turned into oral and anal sex. And  
14 this abuse was occurring, according to them, all the time.  
15 That it was not -- it was a fairly regular occurrence, if not  
16 weekly occurrence. At least weekly, if not more.

17 There'd be testimony from the victim in Counts I through  
18 XX, that soon after moving here to the United States with his  
19 mother and brother, they were in the kitchen, he was on the  
20 floor -- the brother and mother were in the kitchen, he was on  
21 the floor of the living room with a blanket, under a blanket.  
22 And while the others were in the kitchen, the defendant got on  
23 the floor under the blanket, and the defendant forcefully  
24 grabbed the victim's hand and shoved it down the defendant's  
25 pants, putting the victim's hand on the defendant's penis.

1           And he would say that -- would testify that later that  
2 evening, the defendant got him out of bed and took him to the  
3 basement and forced the victim to give him oral sex. And the  
4 defendant, with a harsh tone and actions -- oh, I'm sorry,  
5 with Counts XXI through XL, the victim would also testify that  
6 the defendant was threatening him that -- to hurt their mother  
7 and send them back to Thailand if the victim did not comply.

8           And the -- in the Counts I through XX, further on, the  
9 victim would -- after that specific evening, he would testify  
10 that his -- the harsh tone and the actions seemed to be  
11 telling that victim not to tell anyone, that he felt  
12 threatened not to tell, even though he did not understand what  
13 the defendant was saying. From that time on, the abuse was  
14 oral and anal sex, and that he would try to make noise when  
15 the defendant woke him up in an effort to wake up his brother.  
16 And after that period of time, the victims were put in  
17 separate rooms so that wouldn't occur.

18           The victim in Counts I through XX would testify he  
19 remembered the first incident of anal penetration happening in  
20 the spring of 1986. And the defendant penetrated him with his  
21 penis, that the defendant woke him up and turned him over and  
22 put his penis in his anus. And he remembered bleeding and  
23 going into the shower and there was blood. And his mother had  
24 asked him if there was some sort of accident, because there  
25 was blood on the sheets. He did not tell her what had

1 happened to him at that point.

2 He also remembered in 1987, after he ran away and had  
3 been gone a week, once he was returned to his home, the  
4 defendant choked him and forcefully anally raped him. Both  
5 victims indicated the abuse happened at a camp in  
6 (indiscernible), as well. Most of the abuse happened either  
7 in the bed of the truck or in the front seat of the truck, as  
8 well as in their home.

9 They had been threatened not to tell, that they and their  
10 mother would go back to Thailand and she would get hurt. They  
11 would both testify that the defendant was abusive --  
12 physically abusive to the mother.

13 The victim in Counts XXI through XL would testify that he  
14 told the defendant if he started to abuse his younger brother,  
15 the victim in Counts I through XX, he would tell. And that he  
16 believed at that time, the defendant was not abusing the  
17 younger brother, which was actually not true. The younger  
18 brother would testify that he was being abused at that point.

19 The victim in Counts XXI through XL would testify that  
20 when he was older, he began to fight back and he remembered  
21 the last time was in the defendant's truck and he said, no,  
22 and the abuse for him ended at that point. And that each boy  
23 would testify they never told each other about the abuse, and  
24 it wasn't until the victim in Counts I through XX disclosed  
25 the abuse that the older brother told him -- told his mother



1 that it had happened to him as well. And that they had never  
2 discussed the specifics of the abuse that each suffered. And  
3 that their recantation of what happened to them is very  
4 similar as to the other -- as to the -- each victim.

5 They would both testify that the defendant exposed them  
6 to gay pornography and with much focus on anal sex, and would  
7 tell them that this is what he liked. He also -- the  
8 second -- victims in Counts XXI through XL would also testify  
9 the defendant told him to find a wife that would let him do  
10 this -- the anal sex, and -- as these types of acts were  
11 forbidden in their culture. Both victims would describe how  
12 the defendant would force them to perform the oral sex on him  
13 and how he would overpower them to perform anal sex.

14 The victim in Counts I through XX would testify that this  
15 abuse happened -- or occurred approximately -- lasted  
16 approximately two to three years, and finally ended when he  
17 ran away for good when he was just about 14 years of age.

18 And the victim in Counts XXI through XL indicated that  
19 the abuse happened for the same time period and that after a  
20 period of time, he gave in, because he believed he was  
21 protecting the younger brother. And as long as he would --  
22 the defendant was threatening him that he wasn't abusing the  
23 first -- the younger brother -- that he wanted to protect the  
24 younger brother.

25 There was also some indication from some records at the



1 youth center that the victim in Counts I through XX disclosed  
2 to a Nancy Cochran (phonetic) on 12/14/89, and told her what  
3 the defendant was doing to him; that he was talking dirty to  
4 him, touching him, talked about the pornography movies,  
5 performing oral sex on him and making him perform oral sex on  
6 the defendant. And that the defendant would slap him if he  
7 refused, stated if he told anyone his mother would suffer.

8 And this was disclosed to a detective at the Penobscot  
9 County Sheriff's Department, a Brian Welch (phonetic), at  
10 approximately the same time. And then I do have the victim  
11 impact statements, Your Honor, when we get to that part.

12 THE COURT: Okay.

13 MS. CLIFFORD: And again, the victim in Counts I through  
14 XX would also testify as the regularity of this abuse  
15 occurring as frequently as the victim in Counts XXI through  
16 XL, very regularly, weekly almost, if not more.

17 (Pause)

18 THE CLERK: 4726.

19 MS. CLIFFORD: 4726, that's Count XXI through XL?

20 THE CLERK: Yes.

21 MS. CLIFFORD: I would move to amends Counts XXI through  
22 XL to 4726, sequence number.

23 THE COURT: Mr. Smith?

24 MR. SMITH: No objection.

25 THE COURT: Okay. All right. So I take it that he does

1 not agree with that description of the facts, Mr. Smith?

2 MR. SMITH: If I may, Your Honor. My client denies all  
3 of this to every degree possible. In my view, this is a very  
4 triable case; lots of proof issues, lots of credibility  
5 issues. But for reasons related to his age and his health, my  
6 client wishes to proceed.

7 THE COURT: And Ms. Clifford, is there any -- your  
8 description of the facts comes pretty much entirely from the  
9 two victims.

10 MS. CLIFFORD: That's correct.

11 THE COURT: Is there any sort of corroboration in the  
12 file anywhere?

13 MS. CLIFFORD: There is some notations from a Long Creek  
14 records. However, that person is deceased.

15 THE COURT: But that might not be admissible anyway --

16 MS. CLIFFORD: That is correct.

17 THE COURT: -- if it's something that one of the kids  
18 told --

19 MS. CLIFFORD: Yes.

20 THE COURT: -- the counselor. And any admissions or  
21 semi-admissions, or suspicious comments, or anything by the  
22 defendant?

23 MS. CLIFFORD: I believe when detectives from Bangor went  
24 out to Oregon to speak to the defendant, and they knocked on  
25 the door, I believe his first words -- or when he found out

1 why they were there, he talked about the statute of  
2 limitations. He thought there was a statute of limitations  
3 problem or that there was a statute of limitations in effect  
4 essentially.

5 THE COURT: And then after that?

6 MS. CLIFFORD: Nothing.

7 THE COURT: Did he invoke, or did he just --

8 MS. CLIFFORD: I'd have to look.

9 MR. SMITH: He spoke at length, Your Honor.

10 MS. CLIFFORD: He did speak to them at length.

11 MR. SMITH: And these allegations actually been floating  
12 around for a number of years, and he simply thought they had  
13 gone away, because of the reasons I've outlined.

14 THE COURT: Okay.

15 MR. SMITH: I'm not sure it's been mentioned, but one of  
16 the credibility issues, that there are some remarking upon, is  
17 at least are one of these victims is a convicted murderer of  
18 some repute in this area.

19 THE COURT: Right. I recognize the name. So what's  
20 the -- obviously, the outstanding thing about this plea offer  
21 is he's not going to jail, because the status is suspended, he  
22 could end up there in the future, but not now. So would the  
23 State like to speak in support of the plea offer that it's  
24 made?

25 MS. CLIFFORD: Yes, Your Honor. As the Court has

1 gleaned, this essentially does boil down to, you know, the  
2 victim's words against the defendant. And I mean in those  
3 kinds of -- and it's a fairly old case from 1986 and 1987, so  
4 that does present a set of unique problems of its own. And  
5 that coupled with -- and I believe Mr. Smith is going to get  
6 into this, but the defendant has a series of significant  
7 health issues that Mr. Smith can talk about, but that I think  
8 would be difficult for an institution if the defendant was  
9 incarcerated.

10 This was explained to the victims. I do have a statement  
11 to read from victims -- the named victim in Counts I through  
12 XX and the last sentence is, "All in all, I agree with the  
13 terms of the plea agreement."

14 THE COURT: Uh-huh.

15 MS. CLIFFORD: You have the statement from -- that I  
16 passed to the Court, as well as to Mr. Smith, from the  
17 victim -- named victim in Counts XXI through XL. And he -- I  
18 don't believe he agrees with the sentence, although I do  
19 understand from his discussions with the victim's advocate  
20 that he is appreciative of not going to trial.

21 THE COURT: Okay. And did you want to read one of these?

22 MS. CLIFFORD: Yes, I do. The victim in -- named victims  
23 in Counts I through XX did want me to read this in court:

24 "Your Honor, I am one of Richard Bailey's stepsons,  
25 the other being my brother. Richard's actions have

1 had a catastrophic impact on me, and I believe that  
2 it is important for the Court to understand this in  
3 the context of my life history.

4 I am an inmate of New Hampshire Prison for Men. I  
5 am in prison because when I was only 18, I killed a  
6 man and I have been in custody ever since. In 1993,  
7 I was sentenced to a term of 45 years imprisonment.  
8 I am now 46 years of age, and have spent 60 percent  
9 of my life in jail.

10 What Richard Bailey did to me began when I was only  
11 12-years-old. The few years that I have spent in  
12 his care, were the worst" -- and "care" is in  
13 quotations -- "were the worst years of my life.

14 Worse even than the last 26 years in prison.

15 I accept responsibility for the crime I committed.  
16 However, the responsibility for turning me into this  
17 angry alienated and despairing young man who killed  
18 a man, belongs to Richard Bailey. And he has never  
19 faced up to what he did to me. Nor has he faced up  
20 to what he did to my brother and our mother, Wane  
21 (phonetic).

22 I was born in Thailand and at the age of 4, I was  
23 abandoned by both parents, then raised by my  
24 grandparents, living on a farm in the north of  
25 Thailand. When I was 11, my mother came to retrieve



1 me and my brother and told us that she had married  
2 an American, and that she would take us to live with  
3 him in the United States, that we would have a great  
4 life, and want for nothing.

5 We came to America in December of 1985 when I was  
6 12, and within two weeks, Richard Bailey began to  
7 sexually assault me. The first time was when I was  
8 lying on the floor, covered with a blanket while I  
9 was watching television. Richard placed himself  
10 under the blanket and began to fondle me. I was  
11 terrified.

12 On another occasion, pretending to give me manly  
13 guidance, he got in the shower with me and began to  
14 explain male physiology while fondling me. At other  
15 times he would make me watch pornographic material.  
16 It wasn't long before thing graduated to sodomy. He  
17 would do such things when my mother was not in the  
18 vicinity.

19 He would take me for drives or go camping and he  
20 would sodomize me. I hated it. I hated him. I  
21 couldn't speak English, but Richard made it clear --  
22 but made it clear to me that if I told anyone about  
23 the sexual assault there would be dire  
24 repercussions.

25 At home, Richard was a tyrant, and a drunken bully

1 who was physically abusive to me, my mother, and my  
2 brother. We lived a life of fear, intimidation, and  
3 violence. No one was allowed to speak Thai in the  
4 house and we were not permitted to have friends come  
5 over. If any of our friends came to the house  
6 unexpectedly, Richard would be so mean to them and  
7 would berate us for the visit when they left.  
8 He completely controlled our lives. My mother  
9 worked several jobs and Richard made her hand over  
10 all her money to him and I had to do the same with  
11 the pocket money I earned doing a paper route.  
12 I first ran away from home to escape the abuse at  
13 age 12, only to be returned home by the police. At  
14 this stage, I spoke very little English and wasn't  
15 able to tell the police that Richard had been  
16 sexually assaulting me. I could not tell my mother  
17 at that time, because Richard had threatened that  
18 what would happen if I had told anyone.  
19 About a week later, I told her what had been going  
20 on, but she refused to believe me and punished me  
21 for telling lies. I ran away again and began a  
22 period of either living in juvenile detention  
23 centers, staying in the homes of friends, living in  
24 a treehouse, in an abandoned apartment, or finding a  
25 place of shelter wherever I could. Sometimes my



1 mother would bring food to me when I was living  
2 under a bridge.

3 When I had no food, I would steal and eventually the  
4 law caught up with me and I was punished with  
5 detention and other penalties. When at juvenile  
6 detention, I told teachers and counselors about the  
7 abuse and they reported it to their superiors. At  
8 one stage, I was going to give the evidence against  
9 Richard, but I was too scared to go through with it.  
10 A few months after I turned 18, I was involved in an  
11 incident at the local supermarket and I killed a man  
12 when I was highly intoxicated. I was tackled by  
13 Michael Scott McDowell (phonetic), a man having a  
14 much larger frame than myself and in the kneejerk  
15 reaction, I took my knife and stabbed him and he  
16 later died.

17 It was an unintentional act. I only carried a  
18 knife, because I had been living on the streets and  
19 feared violence, none the least, from an Asian gang,  
20 who had targeted me. At the moment I stabbed the  
21 manager, in the back of my mind was Richard lying on  
22 top of me and I never wanted to be in that situation  
23 again.

24 I was immediately arrested and remanded without  
25 bail. While I was waiting for trial, my mother

1 visited me and she pleaded with me not to divulge  
2 any of Richard's actions in order to protect her and  
3 her family. At the time it was clear to me that  
4 Richard had sent her to tell me this. I feared for  
5 my mother as I had witnessed Richard beat her on  
6 many occasions in the past.

7 Because of this, and against the advice of my  
8 attorney, I did not tell the Court of the abuse. If  
9 I had had a normal childhood that was free of abuse,  
10 this incident would never have happened.

11 After sentencing I spent seven years in super max  
12 prison in Maine, in solitary confinement due to  
13 infractions resulting from many anger issues. I was  
14 indeed an extremely angry man, because of how my  
15 life had turned out. I was outraged that I had  
16 ended up in prison serving a 45-year term whereas  
17 Richard had assaulted me and my brother, yet he had  
18 a good life and his actions went unpunished.

19 I felt betrayed by everyone and angry with the  
20 world. My mother eventually believed me and she  
21 divorced Richard and reached a financial settlement  
22 with him. In 2000, I found out that my mother was  
23 beaten to death when visiting Guam. I was unable to  
24 attend my own mother's funeral, because I was in  
25 prison. And this distressed me greatly.



1 My mother, Priwan, and myself had been through so  
2 much in my life, and I regret not being able to say  
3 my final farewell to her. Some of the money that  
4 Richard was due to pay my mother under the court  
5 orders was never paid either to administrator of my  
6 mother's estate, or to either of myself or my  
7 brother.

8 Had I not been in prison, I would've been able to  
9 pursue payment of the outstanding \$33,000 on behalf  
10 of myself and my brother so we would both not lost  
11 out financially.

12 I have been in prison for 26 years now. At my  
13 sentencing, Richard wrote a letter to the sentencing  
14 judge requesting leniency for me. He gave his  
15 version of my life history and he blamed the  
16 influence of my friends for causing me to do badly  
17 at school, and for skipping school. His letter  
18 stated it was my inability to live with any rules or  
19 any regulations causing me to leave the home and run  
20 off with a group of kids with no values.

21 He made up his excuses as to why I went off the  
22 rails, but the fact is that I went off the rails  
23 because he was sexually abusing me.

24 At school, despite the obvious language  
25 difficulties, I was a good student; excelled,



1 especially in mathematic. It was my dream to go to  
2 college and get a good job. In my teens, I never  
3 graduated, because I spent so long being homeless  
4 and in juvenile detention.

5 I did get a job as busboy once, but was immediately  
6 sacked, because I did not have a fixable place of  
7 abode. Richard has never visited me in prison after  
8 I was sentenced in 1993. He has only ever written  
9 to me once in 1996.

10 In December 2006, he wrote to me, he told me about  
11 his life and stated when I get out of prison we  
12 could go fishing together. He wrote, I want you to  
13 know that even though your mother is gone, that I  
14 still love you and care about what is happening to  
15 you. I may not be the greatest of fathers, but it's  
16 not because I don't care. I do.

17 As a young man, who had just arrived in the United  
18 States of America, my life was full of  
19 possibilities. Richard, singlehandedly ruined my  
20 life. He showed no real love towards me; he was a  
21 sexual pervert who became the head of my family and  
22 his abuse has lasting consequences for all of us.  
23 My brother has struggled with gambling and alcohol  
24 addictions, and my mother is dead. Richard carried  
25 out more sexual assaults against me than there are

1 current charges against him. His actions have  
2 robbed me of a normal life, which I can never  
3 reclaim.

4 Fortunately, I have since had a lot of counseling in  
5 prison and with the guidance of a wonderful Catholic  
6 priest, I found faith and a firm belief in God in  
7 the afterlife.

8 I pity Richard. He is a very flawed and perverted  
9 man who preys on younger boys. He has had a  
10 wonderful life full of international travel to  
11 southeast Asian countries. He has had young  
12 girlfriends. He lives in a nice house with his wife  
13 in Oregon. He has never shown me love and was of no  
14 support, whatsoever, in the dark years from age 12  
15 to the present time.

16 The crimes committed are now more than 30 years old,  
17 but for me, the memories are as fresh today as the  
18 days they were committed. I coexist with these  
19 horrible memories, but Richard has sauntered through  
20 life with not a care in the world and no  
21 consequences.

22 I am a fit 46-year-old, but have health issues,  
23 notably PTSD and acute anxiety. I will not be given  
24 any leniency in my sentence because of my health  
25 issues. Richard may well have some health issues,



1 but this should have little bearing on his sentence.  
2 The law held me accountable for my actions in 1993,  
3 and I expect that the law should hold Richard  
4 accountable for what he has done.

5 The passage of time does not lessen the seriousness  
6 of his crimes. He has avoided all responsibility  
7 for his actions as he spent these past 30 years  
8 living the American dream. I asked God to help me  
9 to forgive Richard. And through my strong faith, I  
10 have done this. Though it had took a lot of time to  
11 do it.

12 If I could see Richard, I would say to him, I  
13 forgive your actions -- I forgive, but your actions  
14 have, and will affect me for the rest of my life. I  
15 cannot forget what he has done, but I do forgive  
16 him.

17 That said, the law must pass a just sentence. All  
18 in all, I agree with the terms of the plea  
19 agreement."

20 And it's signed by the victim.

21 THE COURT: Okay.

22 MS. CLIFFORD: Thank you.

23 THE COURT: Comments about your client's health, Mr.  
24 Smith.

25 MR. SMITH: Thank you, Your Honor. First, let me say



1 that it's not my habit to comment on such letters, but this  
2 was a triable case and we believe that credibility issues  
3 would've been fairly significant.

4 My client suffers from very poor health. He has  
5 cardiology problems, heart problems. At one point, fairly  
6 recently, he was evaluated at a 35 percent heart capacity.  
7 He's under the regular care of a cardiologist who had  
8 previously suggested, in the letter to the Court, that he  
9 could not travel, but did clear him after a recent stress test  
10 for travel here. That does not mean that he is problem-free  
11 in terms of his heart condition. He is not. He also suffers  
12 from a variety of joint problems. And he needs surgeries for  
13 those matters. He has PTSD --

14 (Counsel confer)

15 MR. SMITH: Atrial --

16 THE DEFENDANT: Fibrillation.

17 MR. SMITH: A fib. Thank you. He has -- suffers from a  
18 fib, which is part of the cardiology issues.

19 THE DEFENDANT: Fibromyalgia --

20 MR. SMITH: (Indiscernible) --

21 THE DEFENDANT: -- neuropathy.

22 MR. SMITH: Cardiology really drives everything.

23 THE COURT: Okay. And the victim in the last 20 cases,  
24 Priwan, is he around; do you know where he is? Is he --

25 MS. CLIFFORD: Yes. He's in --



1 THE COURT: -- available or what?

2 MS. CLIFFORD: He is in Bangor, Your Honor. And he was  
3 actually in the courthouse this morning to deliver this impact  
4 statement that I gave the court to read, to me. He has told  
5 the victim witness advocate and I want to make sure that I get  
6 this -- he is glad that the defendant is being convicted, that  
7 he will be watched, so he cannot do this to any other children  
8 and will be not allowed around children unsupervised.

9 He did not want to be present at the sentencing; he never  
10 wants to see the defendant again. And as I said before, he  
11 was thankful that he did not have to testify.

12 THE COURT: Okay. Anything else from the other side?

13 MR. SMITH: No, Your Honor.

14 MS. CLIFFORD: No, Your Honor.

15 THE COURT: The bottom line is what, 54 years, these are  
16 all consecutive sentences?

17 MR. SMITH: Correct.

18 THE COURT: 17, 17, 15, and 5?

19 MS. CLIFFORD: 17, 17, 5, 5.

20 THE COURT: What's that again?

21 MS. CLIFFORD: 17, 17, 5 --

22 THE COURT: I'm sorry, so I'm wrong.

23 MS. CLIFFORD: It would be 44.

24 THE COURT: 44, yup. 18 years of probation?

25 MS. CLIFFORD: That's correct.





1 THE COURT: Could I see counsel in chambers just briefly?

2 THE COURT OFFICER: All rise.

3 (Recess from 4:50 p.m., until 4:54 p.m.)

4 THE COURT: Yes, Madam Clerk?

5 THE CLERK: (Indiscernible).

6 MR. SMITH: If the Court give me a second?

7 THE COURT: All right. So this has been a lot to digest  
8 and consider in a very brief period of time. So I'm going to  
9 indicate what I'm going to do, tomorrow morning at 8:30. So  
10 8:30 sharp, we'll be -- I'll be in here to tell you whether  
11 I'm going to accept the plea or not, and that's it until then.

12 MS. CLIFFORD: Thank you.

13 THE COURT OFFICER: All rise.

14 (Hearing concluded, recommencing in Volume II, September  
15 12, 2018 at 8:30 a.m.)

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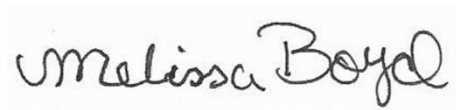
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CERTIFICATION

I HEREBY CERTIFY, that the foregoing, pages 1 through 33,  
is a true transcript of a CD recorded on Tuesday, September  
11, 2018, at the Penobscot County Unified Criminal Docket  
Court located at Bangor, Maine, of the case entitled, STATE OF  
MAINE V. RICHARD ALAN BAILEY, to the best of my professional  
skills and abilities.

October 8, 2018



Melissa Boyd  
Court-Approved Transcriber

