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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

NO. 81

KEVIN M. MINEMIER,

Appellant.

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20 Eagle Street  
Albany, New York  
May 31, 2017

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON

Appearances:

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1 CHIEF JUDGE DIFIORE: Next appeal on the calendar  
2 is number 81, the People of the State of New York v. Kevin  
3 Minemier.

4 Counsel.

5 MR. THOMPSON: Good afternoon. May it please the  
6 court. Donald Thompson representing Kevin Minemier.

7 I'd like to reserve two minutes for rebuttal, if  
8 I could.

9 CHIEF JUDGE DIFIORE: You may.

10 MR. THOMPSON: Thank you.

11 This case is a little bit different than People  
12 v. Lofton. We're only dealing with part II of the two-step  
13 process that Judge Fahey set out. And it's different in  
14 that we don't have any of the factors on the record as - -  
15 - as indicated by Judge Wilson in the last case.

16 This case stands for the propositions that the  
17 Fourth Department has said for the first time that a silent  
18 record is sufficient to deny a youthful offender  
19 adjudication, contrary to a standard that had been  
20 uniformly applied by all departments for the preceding  
21 thirty years.

22 I think it's kind of ironic that the Fourth  
23 Department, as well as the other departments, applied the  
24 higher standard before Rudolph and after Rudolph. The  
25 Fourth Department lowered their standard for what's

1 required.

2 JUDGE RIVERA: So - - - so what's missing here?  
3 What did the judge have to say?

4 MR. THOMPSON: On the first sentence, the judge  
5 said nothing at all. Simply imposed a sentence  
6 inconsistent with the youthful offender adjudication.

7 If that goes up on appeal, the Fourth Department  
8 says you're required to make and state for the record your  
9 determination with respect to the youthful offender  
10 adjudication.

11 On the second sentence, the judge said, I  
12 seriously considered youthful offender adjudication the  
13 first time around, and based upon all the information  
14 that's available to me, I deny youthful offender. And - -  
15 - and that was that.

16 We then go up on the second appeal before the  
17 Fourth Department which then says, you don't have to set  
18 out the factors for youthful offender determination; this  
19 is sufficient. That's contrary to the standard that was  
20 first applied by the Third Department in People v.  
21 Cruickshank, and then uniformly applied in each of the  
22 other departments.

23 And I'm not suggesting that there has to be a  
24 litany or a talismanic recitation of the factors that are  
25 set forth in Cruickshank.

1 JUDGE GARCIA: But would your - - - would your  
2 transcript satisfy that test proposed by Mr. Shiffrin in  
3 the case just before this?

4 MR. THOMPSON: Would my transcript?

5 JUDGE GARCIA: Yeah.

6 MR. THOMPSON: No. Mr. Shiffrin is going to kill  
7 me, but no. It wouldn't. I mean, a good example of a  
8 transcript that does is People v. Hall, same court,  
9 different judge, cited at page 11 of my reply brief. You  
10 know, that case was also held, went up to the Fourth  
11 Department, they send it back to make and determine  
12 youthful offender adjudication, and the judge said, Mr.  
13 Hall, you're not getting youthful offender adjudication,  
14 and here is why; boom, boom, boom, boom, boom.

15 JUDGE STEIN: Well, that would be great, you  
16 know, because then - - - then it makes an appellate review  
17 pretty easy. But - - -

18 MR. THOMPSON: Sure.

19 JUDGE STEIN: - - -- but it's - - - it's pretty  
20 common in sentencing determinations that the reasons, the  
21 specific reasons aren't given. And - - - and yet,  
22 appellate courts review those determinations all the time.  
23 What makes this different?

24 MR. THOMPSON: Rudolph makes it different.

25 JUDGE STEIN: But Rudolph says you have to put

1 the determination on the record. Okay. But I find it  
2 interesting that - - - that 720.10[3] requires, explicitly  
3 requires, the reasons on the record when Y.O. status is  
4 granted, and then that information has to be sent to DCJS.

5 Doesn't that imply that it's not required if Y.O.  
6 is denied?

7 MR. THOMPSON: Well, that's not the standard  
8 that's been applied for the last 30 years by the  
9 Departments under Cruick - - - the Cruickshank standard.

10 JUDGE STEIN: Well, most of those cases, as I  
11 read them, not - - - not a hundred percent of them, but a  
12 lot of them are where there is no determine - - -  
13 determination on the record. And in many of those cases,  
14 it says that, you know, no determination or reasons, and  
15 we're sending it back to make a determination. The court  
16 doesn't even say, and give us your reasons.

17 MR. THOMPSON: Um-hum.

18 JUDGE STEIN: So I think that the Appellate  
19 Division cases are - - - are, granted, a little unclear  
20 about that requirement.

21 MR. THOMPSON: They could be more clearer, but  
22 there are also many Appellate Division cases that says - -  
23 - that say it's particularly important to put your reasons  
24 on the record when you're denying youthful offender  
25 adjudication. So that - - - that's important as well, and

1 that's what we have here. Because how is an appellate  
2 court going to determine whether you've abused your  
3 discretion or not - - -

4 JUDGE STEIN: That's my question. How - - -

5 MR. THOMPSON: - - - on a silent record.

6 JUDGE STEIN: How does an appellate court make  
7 that determination in any sentencing situation?

8 MR. THOMPSON: Well, I mean, that - - - that goes  
9 to the two-part review process at the Appellate Division.  
10 They can always exercise interest of justice, essentially,  
11 de novo review of the sentencing determination; that's one  
12 part of it. But the other part is the legal determination  
13 of the abuse of discretion, and whether or not the lower  
14 court abused that discretion.

15 JUDGE STEIN: Well, why can't the - - - why can't  
16 the Appellate Division review the record and see if the - -  
17 - if the trial court's determination is supported by the  
18 record?

19 MR. THOMPSON: Well, they - - - they can always  
20 do that. They can always do that. But this determination,  
21 as Rudolph says, is different, more important than other  
22 determinations. It's not inconsistent with other  
23 determinations where factual findings have been required to  
24 require that sort of abuse of discretion reviewability.

25 JUDGE STEIN: But then why - - - why would the

1 statute specifically require it only when it's - - - when  
2 it's granted?

3 MR. THOMPSON: Well, that's a good question. I  
4 don't know why the statute would only require it under  
5 those circumstances. I know that the departments have not  
6 only required it under those circumstances.

7 JUDGE STEIN: And there are other situations in  
8 the CPL and in the Corrections Law where the legislature  
9 has specifically and explicitly said that the court has to  
10 state its reasons but didn't do that here. Should we  
11 gather anything from that?

12 MR. THOMPSON: You know, I don't think the  
13 intention of the legislature was to completely eliminate  
14 fifty percent of the appellate review that's available to  
15 the Appellate Division, and to eliminate, essentially, all  
16 review by this court by not requiring anything to be placed  
17 on the record when there's a denial of youthful offender  
18 adjudication. It - - - it doesn't seem like that would be  
19 consistent with legislative intent.

20 JUDGE RIVERA: Well - - - well, let me - - - I  
21 would like you to circle back and drill down on why you say  
22 Rudolph makes this different.

23 MR. THOMPSON: Because Rudolph says it's a  
24 different kind of a decision. It's not just any old  
25 sentencing; it's a more important decision for the youth.

1 So you know, you've got a three-time, you know, robbery  
2 first defendant who's, you know, been around the block a  
3 few times. You know, you have sentencing there. This is a  
4 different kind of sentencing, and they - - - they  
5 acknowledged that and recognized that.

6 So you know, is a little bit more required?  
7 Yeah, I think a little bit more is required. I don't think  
8 it's an onerous burden. You know, as I indicated in my  
9 reply brief, the - - - the factors that were placed on the  
10 record in People v. Hall take about a minute to read out  
11 loud. It's not a great burden to place on - - - on trial  
12 courts in the circumstance to ensure that appropriate  
13 appellate review takes place.

14 I'd like to talk about the other point in my  
15 brief - - -

16 CHIEF JUDGE DIFIORE: Yes, please.

17 MR. THOMPSON: - - - for a moment, if I could,  
18 concerning the refusal of the court, summarily, basically,  
19 to disclose statements that were submitted to the Probation  
20 Department upon a promise, apparently, by the Probation  
21 Department of confidentiality.

22 So there's two parts to this argument. One is a  
23 due-process argument. The other part is a statutory  
24 violation argument. I think short circuiting things, we  
25 don't necessarily ever have to reach the statutory

1 violation, because, of course, that statute can't confine  
2 the broader Constitutional due process, right, that the  
3 defendant has to be aware of factors, or statements, or  
4 information that are going to be used and possibly  
5 exacerbate his or her sentence, and to respond to those  
6 fairly, and - - -

7 JUDGE STEIN: Would you agree that there might be  
8 situations in which disclosing the nature of a document  
9 might reveal a confidential source?

10 MR. THOMPSON: There are, and the statute  
11 provides for that. There - - - there are - - - and there  
12 are a number of cases that say, you know, it's appropriate  
13 to redact victim names, addresses, telephone numbers,  
14 contact information.

15 JUDGE STEIN: My question is a little bit  
16 different. Might there - - - would you agree that there  
17 might be situations in which the actual substance of the  
18 document by just revealing what the substance of the  
19 document, the contents of the documents are, might end up  
20 revealing those constant - - - those confidential pedigree  
21 information.

22 MR. THOMPSON: It could if you were to reveal it  
23 verbatim, for example, in a case where a confidential  
24 source was used. But in those circumstances, you could  
25 appropriately, I submit, reveal a summary of the

1 information so that the defendant could respond to it, and  
2 at least comment on its truthfulness or its accuracy and,  
3 you know, be - - - have an opportunity to be heard before  
4 being sentenced, based upon a reliance on that information.

5 CHIEF JUDGE DIFIORE: Thank you, counsel.

6 MR. THOMPSON: Thank you.

7 CHIEF JUDGE DIFIORE: Counsel.

8 MS. MERVINE: Thank you. May it please the  
9 court. Good afternoon, Leah Mervine on behalf of the  
10 People of Monroe County.

11 I would just start with the second issue first,  
12 since that is most recent, and note that this court can  
13 really only consider the abuse of discretion standard in  
14 regard to the CPL 390.50 subdivision (2)(a) issue.

15 JUDGE STEIN: How can we - - - how can we, how  
16 could the Appellate Division, in this case, have determined  
17 whether there was an abuse of discretion without any  
18 information whatsoever about the nature of what was  
19 redacted, or anything at all? How - - - how - - - how can  
20 we do that?

21 MS. MERVINE: I think the answer is twofold, and  
22 the first part of the answer is that this issue is ready  
23 for review, and this court has created a rule for that  
24 specific review in People v. Perry. And I - - - it is my  
25 thought that perhaps this court is struggling with that,

1 because in People v. Perry, it discusses how the Appellate  
2 Division is in the best position to review the presentence  
3 investigation report.

4 And I would note that when preparing the record,  
5 it would be incumbent on an appellant who wanted to have  
6 the full PSI reviewed as it was presented to the court to  
7 be provided to the Appellate Division. If this court were  
8 to create some dicta of some sort, I would suggest that  
9 perhaps that PSI be marked as a court exhibit. But I think  
10 - - -

11 JUDGE STEIN: Before we get to that point, isn't  
12 there a question of whether the trial court should have  
13 said more on the record for - - - for the defendant to be  
14 able to - - - to respond to - - - to everything that was  
15 being considered against him?

16 MS. MERVINE: Absolutely, Judge Stein. That - -  
17 - I think that's the ultimate question raised by the  
18 appellant.

19 The People's answer is no. And in this case, I  
20 think the record is very, very clear that there were  
21 numerous reports submitted by both the - - - excuse me, the  
22 Probation Department and the defendant. And the  
23 defendant's entire sentencing packet includes opinions of  
24 experts. It includes all of his friends' opinions,  
25 laypeople's opinions about him, his friends, family. It is

1 the full picture of the defendant.

2 And the fact that there was one item that someone  
3 wanted - - -

4 JUDGE RIVERA: The court said - - - the court did  
5 say - - - considered that - - - the information of the  
6 document; did it not?

7 MS. MERVINE: Absolutely.

8 JUDGE RIVERA: So how - - - how - - - even if the  
9 defendant has had access to everything else - - -

10 MS. MERVINE: Yes.

11 JUDGE RIVERA: - - - if there is still a document  
12 that the court is relying on, why isn't he entitled to see  
13 it? That's what the statute requires.

14 MS. MERVINE: It's not that the statute requires.

15 JUDGE RIVERA: Okay.

16 MS. MERVINE: I would respectfully differ with  
17 you - - -

18 JUDGE RIVERA: Why not?

19 MS. MERVINE: - - - Judge Rivera. Because of  
20 People v. Perry. And in 390.50, the statute is clear. It  
21 says, "In its discretion, the court may excerpt from  
22 disclosure a part or parts of the report or memoranda which  
23 are not relevant to a proper sentence or", and then I'm  
24 skipping ahead, "are sources of information which have" - -  
25 -

1 JUDGE STEIN: Sources of information.

2 MS. MERVINE: Correct.

3 JUDGE STEIN: Okay. Not - - - not - - - not what  
4 information, but what the sources of the information are.

5 So here, we don't even know what the information  
6 was. We don't know whether it was a part of - - - of a  
7 mental-health report, we don't know whether it was part of  
8 a victim statement, we don't know whether it was some other  
9 thing. Maybe it was part of grand jury testimony. We have  
10 no idea.

11 MS. MERVINE: In this case, I would note that the  
12 court was very clear it was a one-page document titled,  
13 confidential to the court. I think there is some confusion  
14 that I did want to clear up in regards to the fact that  
15 there was another document attached to the PSI which is  
16 missing a page. That page was clearly provided to the  
17 defendant as he references that report as item 18 of his  
18 expert in his - - - in his sentencing report.

19 But to get back to the - - - the ultimate issue  
20 of the sources. If you have a document that is attached  
21 and it contains confidential information about a victim,  
22 and that victim does not want it to be disclosed, any  
23 portion of that document, it could reveal the source. And  
24 the way that the statute has been construed, and this goes  
25 back to People v. Perry.

1 JUDGE RIVERA: Did - - - did the court say that?  
2 Did the court say, I'm not going to turn it over because if  
3 I do, or if you know any of the content, it will reveal the  
4 source?

5 MS. MERVINE: I don't think the - - - the court  
6 did not say that, and I don't know that - - -

7 JUDGE RIVERA: Then how is anyone to know? Even  
8 within your analysis of what the statute requires, that  
9 indeed, the judge correctly exercised discretion?

10 MS. MERVINE: Two reasons. One, People v.  
11 Outley. This court presumes the sentencing court, much  
12 like a badge court being a trier of fact, considers only  
13 information that is relevant and proper. That is a  
14 presumption that is given to a sentencing court. So that's  
15 - - -

16 JUDGE STEIN: Are you familiar with our - - - our  
17 decision in Baxin? That was - - - that was a SORA case,  
18 where we held that - - - that the defendant was entitled to  
19 - - - to grand jury information?

20 MS. MERVINE: Yes. I am vaguely familiar with  
21 that holding. But this is - - -

22 JUDGE STEIN: Can you - - - can you address  
23 whether there is any relevance of that case to this case?

24 MS. MERVINE: I don't believe there is, and this  
25 is why. Because with SORA, it is a full picture of

1 something that's happened after the fact, where the court  
2 has enumerated numbers that they had, or enumerated  
3 different categories that they have to view. Sentencing is  
4 a totality. And here, the tenor of everything that was  
5 occurring was very, very evident from the record.

6 JUDGE RIVERA: Even more so. The defendant has  
7 no clue what impact this document has. And the court is  
8 saying, I considered it.

9 MS. MERVINE: Correct. And the secondary part to  
10 the response to your question, Judge Rivera, was that is  
11 where the rule in People v. Perry comes in. That is where  
12 the appellant provides that original PSI by getting a court  
13 order from the sentencing court to send it to the Appellate  
14 Division for review. And that is the key here. That is  
15 the oversight that is required.

16 And the appellate court can make a determination,  
17 as they did here, that the court did not abuse its  
18 discretion.

19 JUDGE STEIN: But - - - but as I understand it,  
20 the defendant is not asking us now - - - maybe I'm  
21 incorrect about this - - - is not asking us to make a  
22 determination as to whether that document should or should  
23 not have been disclosed or any part of it. What we're  
24 being asked to do is - - - is - - - is determine whether  
25 the trial court said enough on the record to meet its

1 obligation under the statute - - -

2 MS. MERVINE: Correct.

3 JUDGE STEIN: - - - and under due process.

4 MS. MERVINE: And I would disagree with the due  
5 process. I think that gets into a Constitutional claim.  
6 It's very clear that Executive Law 71 was not followed.  
7 This court's rule, 509 subdivision (b) was not followed.  
8 There was never a Constitutional claim, which, in  
9 appellant's reply brief, they're very clear. This is not a  
10 Constitutional claim. And the only way - - -

11 JUDGE STEIN: They're challenging the statute,  
12 but they're challenging the statute as applied in this  
13 case.

14 JUDGE RIVERA: He's not saying the statute is  
15 unconstitutional; he's just saying the judge didn't comply  
16 with the statute.

17 MS. MERVINE: Then perhaps I don't see the  
18 distinction. Because my understanding is - - -

19 JUDGE RIVERA: Well, let's assume we see the  
20 distinction. Let me go back to the statutory argument.

21 MS. MERVINE: Okay.

22 JUDGE RIVERA: Because you focused on the  
23 language. So doesn't it tell us something, that the  
24 legislature specifically chose the word "sources"; that you  
25 can't read this carve out as broadly as you suggest?

1 MS. MERVINE: I would disagree. I do think that  
2 this has been the way that this court has interpreted in  
3 its past decisions. I think that there is too much at  
4 stake. Sentencing is one of the only times that a victim's  
5 voice or someone else's voice, it could be favorable to the  
6 defendant as well, and maybe that person doesn't want the  
7 defendant to know that they're speaking up. We had a case  
8 like that - - -

9 JUDGE RIVERA: You see, that's the whole point.  
10 You're speculating, right? And that's the whole point.  
11 Nobody knows, because the judge didn't say.

12 JUDGE WILSON: Well, here's - - -

13 MS. MERVINE: The Appellate - - -

14 JUDGE RIVERA: And that - - - that's all that's  
15 at issue.

16 JUDGE WILSON: What the judge - - -

17 MS. MERVINE: The Appellate - - -

18 JUDGE WILSON: What the judge actually said was,  
19 "I would note that the information was provided on the  
20 promise of confidentiality. And so the court did accept  
21 that from disclosure to the defense."

22 MS. MERVINE: Correct.

23 JUDGE WILSON: Why does the fact that it was  
24 provided on the promise of confidentiality meet the  
25 statutory definition?

1 MS. MERVINE: Because it's the court's  
2 independent review of that documentation, and the court's  
3 determination.

4 JUDGE WILSON: But it doesn't say he did that.  
5 All he says is it was promised to be confidential. He  
6 doesn't actually say that he determined it should be  
7 confidential.

8 MS. MERVINE: She did determine that it should be  
9 confidential, Judge Wilson. She did say that I have  
10 reviewed this documentation, and I am going to go with the  
11 promise of confidentiality. And I think that's crucial for  
12 victims in the State of New York to be able to have their  
13 voices heard in this manner.

14 JUDGE RIVERA: Is the promised confidentiality of  
15 the source or of the content?

16 MS. MERVINE: I believe it is both, Your Honor.  
17 And - - -

18 JUDGE RIVERA: What - - - what tells you that?  
19 What's the source of that belief?

20 MS. MERVINE: The source of that belief is the  
21 construction of the Statute and how it was created.

22 JUDGE RIVERA: No, no, no, in terms of the  
23 document itself, since it's a promise of confidentiality.  
24 Is the promise one of keeping the name confidential, or  
25 everything that's been said confidential, or both?

1 MS. MERVINE: It's the promise that the court  
2 reviewed. The court reviewed the information and made that  
3 determination that that promise was appropriate, and that  
4 is the discretion of the sentencing court.

5 And this court would have to say - - -

6 JUDGE RIVERA: Again, I'm sorry. Perhaps I'm not  
7 being clear. What is the promise though? The promise to  
8 keep the name confidential, or the content, or both?

9 MS. MERVINE: The document confidential so the  
10 source is not - - -

11 JUDGE RIVERA: Okay.

12 MS. MERVINE: - - - revealed, Your Honor.

13 JUDGE RIVERA: All right. So where - - - where  
14 do you draw that conclusion from? What tells you that it's  
15 the source, and you argue that it includes also content  
16 that would reveal the source?

17 MS. MERVINE: If I may, Your Honor - - -

18 CHIEF JUDGE DIFIORE: Yes, please.

19 MS. MERVINE: - - - I see I'm out of time.

20 In regards to that, I believe it is the fact that  
21 the source provided the documentation to the sentencing  
22 court. The sentencing court, very clearly, reviewed this  
23 document and made the determination on the record and  
24 stated that it was determining that this document would be  
25 accepted.

1                   And - - - and I guess where I draw that from is  
2                   that sentencing court's discretion. And there is  
3                   appropriate review in this case through the Appellate  
4                   Division, and it's incumbent to keep that presumption that  
5                   the trial court is reviewing information in making the best  
6                   determination.

7                   CHIEF JUDGE DIFIORE: Counsel, how do we know  
8                   that the Appellate Division actually reviewed that  
9                   document?

10                  MS. MERVINE: Your Honor, I believe that would be  
11                  incumbent upon the appellate - - - or the appellant, excuse  
12                  me. The appellant creates the record. The appellant is  
13                  responsible for getting that document, much like the People  
14                  are responsible for getting a Darden transcript that we do  
15                  not have access to. We need to seek the court's permission  
16                  to have that sent to the Appellate Division for proper  
17                  review.

18                  And the appellant has a burden here, and we  
19                  believe that the Fourth Department was correct. There is  
20                  no litany required for youthful offender, and that that  
21                  document was properly accepted. And I would ask this court  
22                  to so find.

23                  CHIEF JUDGE DIFIORE: Thank you.

24                  MS. MERVINE: Thank you.

25                  CHIEF JUDGE DIFIORE: Counsel. Did the Appellate

1 Division review that document, have access to that  
2 document?

3 MR. THOMPSON: I don't believe they did, Judge.

4 CHIEF JUDGE DIFIORE: They did?

5 MR. THOMPSON: I believe they - - - I do not  
6 believe that they did.

7 CHIEF JUDGE DIFIORE: Do not.

8 MR. THOMPSON: I was trial counsel here, so I can  
9 speak to the proceedings throughout. And some would say  
10 that I argued for disclosure of this document loud and  
11 long, and I still have not received it. I've never seen  
12 it.

13 I - - - I don't know that the Appellate Division  
14 has seen it because I'm charged with putting together the  
15 record for the Appellate Division, and I couldn't get it.  
16 They asked - - -

17 JUDGE STEIN: You couldn't have had it sent to  
18 the Appellate Division directly?

19 MR. THOMPSON: Hmm?

20 JUDGE STEIN: You couldn't have had it sent from  
21 the Appellate Division - - - to the Appellate Division?

22 MR. THOMPSON: To the Appellate Division  
23 directly? It's never been released to me. I've never had  
24 the ability to do that. It - - - it wasn't the case like  
25 where there are grand jury minutes that will be sent by the

1 prosecution separately.

2 JUDGE STEIN: And you don't know whether the  
3 Appellate Division could have requested it independently?

4 MR. THOMPSON: I - - - I don't know whether they  
5 could have. I know that they requested of me that I send  
6 all of the presentence investigation materials that I had  
7 in my possession, and I did that. But it did not include  
8 this page, because the court would not release it to me.

9 And with respect to the concern that you raised  
10 before, Judge Stein, what about, you know, release of the  
11 content identifying the source, and that being  
12 inappropriate. Well, that could be easily solved in a case  
13 like this where the court could say, look, I don't want to  
14 release this content to the defense because I want to keep  
15 the source confidential. I'm not going to consider this  
16 for purposes of sentencing.

17 And had the court said that here, we wouldn't be  
18 arguing about point two of the brief, but the court didn't  
19 make that representation here. And, you know, the - - -  
20 the folks who did speak at sentencing spoke rather  
21 aggressively and made their feelings known.

22 You know, I would anticipate that such a separate  
23 sentencing document might include similar statements of  
24 that nature, but I - - - I don't know because I've never  
25 seen it.

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CHIEF JUDGE DIFIORE: Thank you, counsel.

(Court is adjourned)

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C E R T I F I C A T I O N

I, Meir Sabbah, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Kevin m. Minemier, No. 81 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

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