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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Case No. 2019A2310100518
Appellate Case No. 2025-002150

Letitia H. Verdin, Acting Circuit Court Judge

State of South Carolina,

Respondent,

v.

Robert D. Foster,

Appellant.

RECORD ON APPEAL

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8203

DOCKET NO. 2021-GS-23-AAK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2021

THE STATE

vs.

ROBERT DOLAN FOSTER

Hendrich

Indictment for

0162

CRIMINAL SEXUAL CONDUCT THIRD DEGREE

VIOLATION § 16-03-0654

ENTERED
ACCT. *[Signature]*

WITNESSES

Joseph B. Phillips

Greenville County Sheriffs Office

11/12/2019

ARREST WARRANT NUMBER

2019A2310100518

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT THIRD DEGREE

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That ROBERT DOLAN FOSTER did in Greenville County, on or about the 18th day of October, 2019, engage in sexual battery and used force or coercion to accomplish this sexual battery in the absence of aggravating circumstances, and/or knew or had reason to know that B.N.G. was mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish this sexual battery. This is in violation of §16-03-0654 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 102755

Geoffrey R. McKee, PhD, ABPP
Forensic Psychological Services
1224 Pickens Street, Suite 130
Columbia, SC 29201
(803) 251-3499

2 September 2021

Joshua S. Kendrick, Esq.
 506 Pettigru Street
 Greenville, SC 29601

Dear Mr. Kendrick:

Pursuant to your recent request, below is the report of my forensic psychosexual evaluation of **Robert D. Foster**, a then-21-year-old male, completed on 12/15/2000. Prior to the evaluation, I reviewed investigative reports and records supplied by your office. On 12/15/2000, I interviewed Mr. Foster at your offices in Greenville. I collected an extensive personal and sexual history from Mr. Foster and administered the Competency to Stand Trial Assessment Instrument (CAI), Information & Orientation Scale (I&O), the Personality Assessment Screener (PAS), the Trauma Symptom Inventory (TSI), and the Substance Abuse Subtle Screening Inventory-3rd Edition (SASSI-3). Following the evaluation, I scored numerous quantitative measures of sexual recidivism risk: the Static 99-Revised (S99-R), Static 2002-Revised (S2002-R), Minnesota Sex Offender Screening Tool-Revised (MnSOST-R), Rapid Risk Assessment for Sex Offense Recidivism (RRASOR), Sexual Violence Risk-20 (SVR-20), and New Jersey Registrant Risk Assessment Scale (NJ-RRAS). To assess his likelihood of success on probation, if a component of his sentencing, I scored the Salient Factor Score (SFS) which has been used for over 40 years by the US Probation Office and the SCDPPPS' Parole Risk Assessment (PRA). All tests and risk scales administered have been widely-used peer-reviewed instruments which have been researched over the past 20 years.

- Mr. Foster's clinical interview, personal and sexual history, and test/risk instruments' results (RRASOR, S99-R, S2002-R, MnSOST-R, TSI Sexual Concerns and Dysfunctional Sexual Behavior scales) suggested that he **does not** meet the criteria for Pedophilic Disorder or any other sexual deviance diagnosis.
- Mr. Foster's psychological test results (I&O, PAS, TSI, SASSI-3) do not indicate that he is malingering or faking any psychological, cognitive, or emotional symptoms to avoid or evade the legal proceedings against him. During the evaluation, he was alert, cooperative, interactive and responsive. There was no indication of active psychotic symptoms (e.g., delusions, hallucinations). His intellectual functioning likely falls within the High Average range consistent with his expressive and receptive vocabulary, his level of abstract reasoning, and his educational history. His long- and short-term memory is intact on the basis of his responses to the I&O. His affect was anxious but appropriate. His judgment and reasoning are intact and realistic. He denied thoughts of harm to himself or others.

- On the PAS, Mr. Foster produced a valid profile in which he was not exaggerating or malingering psychiatric symptoms or psychological problems. Men with similar PAS results report having problems with depression, social avoidance, and impulsivity but not psychotic symptoms or thoughts of suicide/violence.
- On the TSI, Mr. Foster produced a valid and unbiased profile in which he was neither exaggerating nor minimizing/denying psychological problems or symptoms. A TSI scale measuring depression was mildly elevated but all other scales were within normal limits suggesting that he is not currently (in the past six months) experiencing symptoms of anxious arousal, anger/irritability, intrusive thoughts/images, dissociation (momentary lapses in attention), low self-esteem, or sexual/non-sexual impulsivity and recklessness. Of direct relevance to his charges, TSI scales measuring sexual issues and inappropriate sexual impulsivity were within normal limits. His TSI results do not indicate that he suffers from Posttraumatic Stress Disorder (PTSD) or other anxiety disorders.
- On the SASSI-3, determination of whether an individual might have a diagnosis of alcohol and/or drug dependence is based on 9 different “decision rules”; any rule scored ‘Yes’ would indicate that the individual had a “High Probability of having a Substance Dependence Disorder.” (Test Manual) On the SASSI-3, Mr. Foster reported that regarding his drug use he had frequently: taken drugs to help forget feelings of worthlessness and helplessness, gotten into trouble with the law because of drugs, gotten “wiped out” (more than just high), taken drugs to improve his thinking/feeling/senses, and used drugs and alcohol at the same time. His results—assessing his alcohol and drug use in the six months prior to the alleged offenses—showed that two of the 9 ‘rules’ were scored “Yes” indicating he was suffering from Cannabis and Sedative (Xanax) dependence disorder.
- The sexual recidivism scales which follow have been the subject of dozens of peer-reviewed published research studies involving thousands of adult male convicted sex offenders over the past 20 years. In total, the instruments comprise over 40 case-specific offender, victim, and offense factors which have been shown through years of research to be statistically related to high and low levels of sexual recidivism risk. Each instrument is scored in a light most favorable to the prosecution and public safety; that the allegations against him are true. Mr. Foster’s scores (in **bold**) on the S99-R (**2**; 12 maximum), S2002-R (**4**; 16 maximum), RRASOR (**2**; 6 maximum), MnSOST-R (**-5**; 31 maximum), and SVR-20 (**3**; 40 maximum) each fell in low risk categories for sexual recidivism. Approximately 5% of convicted male sex offenders with this score would be charged with a sexual offense within the next 5 to 6 years.
- Mr. Foster’s scores on the SFS (**8**; 11 best score) and PRA (**17**; 20-41 High VOP) fell in the category of a good likelihood to complete probation without incident. On the PRA, over 77 % of SC probationers/parolees with similar scores successfully complete their community supervision; less than 5% had their probation revoked due to a new violent crime, including a violent sexual offense.

- The NJ-RRAS was developed in 1995 by a state-wide commission of academics and practitioners initiated by the state Attorney General. Its purpose was to assist prosecutors' pre-trial negotiation/sentencing decisions in sex offender cases by identifying—through numerous case-specific, research-established Individual, Offense acts, and Victim—risk factors that differentiate the *relative sexual risk/harm to others among convicted sex offenders*. Subsequent research established three tiers: Low (scores 0 to 36), Moderate (37-73), and High (74-111) sexual risk to others. Mr. Foster's score of **23** (111 maximum) fell in the lowest risk category: the male convicted sex offenders with this score are **not likely** to be placed on that state's Sex Offender Registry.

Opinions:

- It is my opinion that Mr. Foster has a factual as well as rational understanding of the proceedings against him and is capable of assisting his attorney in his case.
- It is my opinion that Mr. Foster does not meet the DSM-5 diagnostic criteria for Pedophilic Disorder or any other sexual deviance disorder.
- It is my opinion that if probation is a component of his sentencing that his likelihood of completing community supervision is good based on his low sexual recidivism, SFS, and PRA scores. However, his success on probation will depend on maintaining abstinence from recreational drugs, especially marijuana and sedative pills/substances. It is strongly recommended that he actively participate in AA/NA treatment groups to gain and retain long-term/lifelong abstinence.
- It is my opinion that given his low sexual recidivism and NJ-RRAS scores, there is **no** quantitative reason to place Mr. Foster on SC's Sex Offender Registry.
- It is my opinion that Mr. Foster **does not** meet the state's statutory definition of a Sexually Violent Predator (SVP) based on my 35+ years of evaluating, treating, and conducting peer-reviewed published research on sex offenders—including 13 years of service on the SVP Act's Multidisciplinary Team reviewing over 6,000 cases of adolescent and adult sex offenders.

Please contact me at (803) 251-3499 or at (803) 463-7573 (cell) if you have questions regarding this report or need further information about Mr. Foster. I have attached a summary of my Curriculum Vitae for your and the Court's review.



Geoffrey R. McKee, PhD, ABPP
 Board Certified in Forensic Psychology
 Affiliate Professor, Department of Neuropsychiatry (1986-2021)
 University of South Carolina School of Medicine

Geoffrey R. McKee, PhD, ABPP
Forensic Psychological Services
1228 Pickens Street, Suite 130
Columbia, SC 29201
(803) 251-3499

Curriculum Vitae Summary as of 2021

- Invited panelist, “What experts want lawyers to know”, SC Bar Convention 2020
- Board-certified in Forensic Psychology, American Board of Professional Psychology (ABPP)
- Clinical Professor, Department of Neuropsychiatry, U. of South Carolina School of Medicine (pro bono). 2007 Chairman’s Award for Outstanding Contributions to Forensic Psychiatry Training Program
- Affiliate Professor, Department of Psychiatry, Medical University of South Carolina (Pro bono)
- Private practice in criminal and domestic Forensic Psychology since 1976; licensed psychologist in AZ (1972-80), ND (1981-85), MN (1984-85), NC (1996-99; 2011-2012), and SC since 1985
- Chief Psychologist, Division of Forensic Evaluation Services, SCDMH 1998-2011.
- SCDMH member to Multidisciplinary Team of SC Sexually Violent Predator Act 1998-2011
- Chief Psychologist, Forensic Psychiatry Division, Hall Psychiatric Institute, 1986-98. Director of Training, Forensic Psychology Rotation, APA-approved clinical psychology internship
- Consultations/evaluations to state and county child protection services agencies on issues of child sexual assault (victims and perpetrators) in AZ, ND, and SC since 1976
- Child custody and parenting capacity evaluations and expert testimony for Family Courts in AZ, ND, and SC since 1976
- Forensic psychological evaluations in over 500 murder cases at state and federal level including gang- related homicides as well as other major felonies.
 - Retained by defense or prosecution for evaluation, consultation, and/or expert testimony in state and federal courts in over 200 criminal and 30 death penalty trials or appeals in SC, AZ, ND, IN, NC, CA, KY, GA, OR, MS, and TX.
 - Expert testimony before the SC Supreme Court twice.
- Past President, American Academy of Forensic Psychology, 1992-94
- Founder & President, ISA Metrics, LLC. Visual technology products to aid forensic mental health sciences investigations and training
- Invited Continuing Legal Education lectures to State Bar, Family Court judges, and public defenders’ associations in VA, WI, and SC and law students in SC and NY.
- Former Consulting Faculty, National Advocacy Center, US Department of Justice
- Former Consulting Faculty, National Advocacy Center, National District Attorneys Association
- Author, Why Mothers Kill: A Forensic Psychologist’s Casebook (2006; Oxford University Press). www.whymotherskill.com
- Publications in peer-reviewed journals and book chapters on maternal filicide, juveniles’ trial competency, homicidal and violent adolescents, MMPI/MMPI-2 profiles of adult criminal defendants/sex offenders, and criminal forensic psychology practice.
- Peer-reviewed research presentations/workshops on homicide, violent crimes, and sex offenders
- Case analyst/commentator on “Wicked Attractions” television series, 2009-final episode (2012)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 ROBERT DOLAN FOSTER,)
)
)
 DEFENDANT.)
 _____)

2021-GS-23-08203

TRANSCRIPT OF RECORD

NOVEMBER 30, 2021
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE LETITIA H. VERDIN

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

ATTORNEYS FOR PLAINTIFF:

ALEXA HOLLOWAY, ASST. SOL.
HALEY KERNELL, ASST. SOL.

ATTORNEYS FOR DEFENDANTS:

PAUL NEELY, ESQ.
JOSHUA KENDRICK, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER

20

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

COURT REPORTER NOTE: (The cases of Reginald Gillespie and Todd Richardson were heard along with Robert Foster's case)

1 **MADAM CLERK:** Your Honor, this is the case of the State
2 versus Todd Montgomery Richardson, 2021-GS-23-8199 ---

3 **THE COURT:** Could you stop for just one second? Do you
4 mind approaching?

5 (Whereupon a bench conference was held off the record)

6 (Whereupon the bench conference was ended)

7 **THE COURT:** All right. Yes, thank you.

8 **MADAM CLERK:** The case of the State versus Todd
9 Montgomery Richardson, 2021-GS-23-8199, indicted for breaking
10 and entering a motoring vehicle. And there is a restitution
11 order attached. The State versus Todd Montgomery Richardson
12 in 2021-GS-42-3565, indicted for failure to stop for a motor
13 vehicle [sic]. And 2021-GS-42-3495, indicted for burglary,
14 second degree.

15 The State versus Reginald Edward Gillespie, 2019-GS-23-
16 7186, indicted for possession of contraband in a county
17 prison. 2019-GS-23-7185, indicted for possession of a
18 narcotic drug with intent to distribute. And there is a
19 restitution order attached.

20 The State versus Robert Dolan Foster, 2021-GS-23-8203,
21 indicted for criminal sexual conduct, third degree.

22 Please raise your right hands. Do you swear to tell the
23 truth, the whole truth and nothing but the truth so help you
24 God, sir?

25 **MR. RICHARDSON:** Yes, ma'am.

1 **MADAM CLERK:** Sir?

2 **MR. GILLESPIE:** Yes, ma'am.

3 **MADAM CLERK:** Sir?

4 **MR. FOSTER:** Yes, ma'am.

5 **MADAM CLERK:** Thank you.

6 **THE COURT:** All right. Mr. Richardson, you are here
7 today to plead to breaking into a motor vehicle. That carries
8 up to five years. Failure to stop for a blue light that
9 carries up to three years, and burglary, third degree, that
10 carries up to five years. And looks like two of those cases
11 are Spartanburg cases. First, is it your understanding that
12 that's what each of those charges carry?

13 **MR. RICHARDSON:** Yes, ma'am.

14 **THE COURT:** Okay. And the Spartanburg cases, you've got
15 a right to have those heard in -- you've got a right to have
16 those heard in Spartanburg County. Do you want to give up
17 that right and have them heard today in Greenville County?

18 **MR. RICHARDSON:** Yes, ma'am.

19 **THE COURT:** Okay. Thank you.

20 Mr. Gillespie, you are here today to plead to possession
21 of a contraband by a prisoner. That carries up to ten years.
22 And possession with intent to distribute heroin, first
23 offense, that carries up to 15 years. Is that your
24 understanding?

25 **MR. GILLESPIE:** Yes, ma'am.

1 **THE COURT:** Okay.

2 And, Mr. Foster, you are here today to plead to assault
3 and battery in the first degree. That carries up to ten
4 years. Is that your understanding?

5 **MR. FOSTER:** Yes, ma'am.

6 **THE COURT:** Okay.

7 And, I'm sorry, with all our new technology, it's
8 fantastic, but one thing it's done is we don't have room for a
9 computer up here, so I'm having to pull up what you had sent
10 me.

11 **MR. KENDRICK:** I have a hard copy, Your Honor.

12 **THE COURT:** Oh, okay. Great. I was pulling it up.
13 Thank you. That's much easier on my eyes. Okay. Thank you
14 very much. Okay.

15 Have you discussed these charges with your attorney, Mr.
16 Richardson?

17 **MR. RICHARDSON:** Yes, ma'am.

18 **THE COURT:** Mr. Gillespie?

19 **MR. GILLESPIE:** Yes, ma'am.

20 **THE COURT:** Mr. Foster?

21 **MR. FOSTER:** Yes, Your Honor.

22 **THE COURT:** Are you happy with what your lawyer's done
23 for you, Mr. Richardson?

24 **MR. RICHARDSON:** Yes, ma'am.

25 **THE COURT:** Mr. Gillespie?

1 **MR. GILLESPIE:** Yes, ma'am.

2 **THE COURT:** Mr. Foster?

3 **MR. FOSTER:** Yes, Your Honor.

4 **THE COURT:** Are you under the influence of drugs or
5 alcohol here today, Mr. Richardson?

6 **MR. RICHARDSON:** No, ma'am.

7 **THE COURT:** Mr. Gillespie?

8 **MR. GILLESPIE:** No, ma'am.

9 **THE COURT:** Mr. Foster?

10 **MR. FOSTER:** No, Your Honor.

11 **THE COURT:** Has anyone forced you to plead guilty or
12 promised you anything to get you to plead guilty, Mr.
13 Richardson?

14 **MR. RICHARDSON:** No, ma'am.

15 **THE COURT:** Mr. Gillespie?

16 **MR. GILLESPIE:** No, ma'am.

17 **THE COURT:** And, Mr. Foster?

18 **MR. FOSTER:** No, Your Honor.

19 **THE COURT:** When you plead guilty you give up certain
20 constitutional rights. One is your right to remain silent
21 about these charges. Do you know that, Mr. Richardson?

22 **MR. RICHARDSON:** Yes, ma'am.

23 **THE COURT:** Mr. Gillespie?

24 **MR. GILLESPIE:** Yes, ma'am.

25 **THE COURT:** Mr. Foster?

1 **MR. FOSTER:** Yes, Your Honor.

2 **THE COURT:** You also give up your right to a jury trial.
3 At that trial your attorney could call witnesses for you,
4 cross-examine witnesses against you, and the State would have
5 to prove your guilt beyond a reasonable doubt. But when you
6 plead guilty you give up your right to a jury trial. Do you
7 know that, Mr. Richardson?

8 **MR. RICHARDSON:** Yes, ma'am.

9 **THE COURT:** Mr. Gillespie?

10 **MR. GILLESPIE:** Yes, ma'am.

11 **THE COURT:** And, Mr. Foster?

12 **MR. FOSTER:** Yes, Your Honor.

13 **THE COURT:** Each of you is pleading to at least one
14 charge that has not been indicted by the grand jury. Do you
15 want to give up that right and plead guilty today anyway, Mr.
16 Richardson?

17 **MR. RICHARDSON:** Yes, ma'am.

18 **THE COURT:** Mr. Gillespie?

19 **MR. GILLESPIE:** Yes, ma'am.

20 **THE COURT:** And, Mr. Foster?

21 **MR. FOSTER:** Yes, Your Honor.

22 **THE COURT:** And how do you plead, guilty or not guilty,
23 Mr. Richardson?

24 **MR. RICHARDSON:** Guilty.

25 **THE COURT:** Mr. Gillespie?

1 **MR. GILLESPIE:** Guilty.

2 **THE COURT:** Mr. Foster?

3 **MR. FOSTER:** Guilty.

4 **THE COURT:** Each of you has ten days from today's date to
5 appeal this plea if you so choose, but you must do so in
6 writing to this Court. Yes, ma'am.

7 (Whereupon the facts of Todd Richardson's case were
8 presented to the Court, and he was sentenced)

9 (Whereupon the facts of Reginald Gillespie's case were
10 presented to the Court, and he was sentenced)

11 **MS. KERNELL:** Thank you, Your Honor. May it please the
12 Court?

13 **THE COURT:** Yes.

14 **MS. KERNELL:** As to Mr. Foster, on 10/18/19 this 20-year-
15 old defendant sexually assaulted the 18-year-old victim, who
16 was sleeping in his sister's room in Greenville County.

17 The victim reported the defendant came into the room and
18 asked if she wanted to have sex to which she said no several
19 times. She stated he took off her pants in a forceful manner,
20 digitally penetrated her vagina and then penetrated her vagina
21 with his penis. The defendant ejaculated on her stomach. And
22 she also reported that during this assault he held his hand
23 over her throat. She said she was in shock and scared to move
24 during the assault.

25 The defendant sent Snapchat messages to the victim the

1 next morning that stated, sorry for raping you. Please don't
2 tell on me to the police.

3 He did one day in jail, Your Honor. His record is a 2019
4 conditional discharge for a possession of marijuana pled down
5 from a PWID and an auto breaking.

6 And there is no recommendation in this case, Your Honor.
7 It is straight-up to assault and battery, first degree, as to
8 sentence and also to the Registry.

9 And the victim is here. And she wishes to address the
10 Court at the appropriate time.

11 **THE COURT:** Certainly. Yes, ma'am.

12 **THE VICTIM:** On October 18th, 2019 my life was changed
13 forever in a way that I would never wish upon anyone. I've
14 been struggling with mental illness including PTSD since Dolan
15 assaulted me. I've changed everything about myself entirely
16 so that I'll never again be the person he saw that day. I'm
17 not the same anymore. I'm broken and I'll never be whole
18 again.

19 Dolan Foster ruined my life. And no matter how long he
20 is sentenced, it will never justify what he did to me, it will
21 never justify the way I think about hurting myself every day
22 that passes. It's not going to give me my life back. It's
23 not going to give me back my happiness or my sobriety. And
24 that's all I've wanted since.

25 I'm tired of being scared if I'm going to live to see

1 myself get justice and live long enough to feel safe again. I
2 haven't been able to work in two years. I've been sick every
3 single day throwing up.

4 I -- I have panic attacks every day. I have PTSD,
5 flashbacks every day. I -- I can't go out in public --
6 anybody that looks like him, I have a panic attack. I -- I
7 don't sleep anymore. I'm in constant mental and physical
8 pain. For as long as Dolan walks free, I'm going to fear for
9 my safety.

10 **THE COURT:** Thank you, ma'am, for being here. You're
11 very brave to be here and speak.

12 **THE VICTIM:** Thank you.

13 **THE COURT:** Thank you.

14 Anything else from the State?

15 **MS. KERNELL:** Nothing further, Your Honor.

16 **THE COURT:** Mr. Foster, you heard the facts as stated by
17 the solicitor, how do you plead, guilty or not guilty?

18 **MR. FOSTER:** Guilty.

19 **THE COURT:** All right. I'll accept your plea as being
20 freely and voluntarily made with the advice of extremely
21 competent counsel with whom you say you're well satisfied.
22 And the plea does have a substantial factual basis. Mr.
23 Kendrick.

24 **MR. KENDRICK:** Thank you, Your Honor. I want to start,
25 my understanding -- or explaining, I realize there's a victim

1 here. I realize this is emotionally charged. Sometimes my
2 role as an advocate for a defendant diverges from being able
3 to be a human and understand the humanity of these things.

4 So let me start by saying that I think that while Mr.
5 Foster doesn't entirely agree with the description of what
6 happened, which is why we are pleading to an A & B, first, I
7 think he is deeply remorseful for what happened. I think he
8 has spent a long time reflecting on the choices that led to
9 these events and that put him in front of you in this
10 courtroom. And he is sorry. And he accepts responsibility.

11 And that is why we are ultimately here pleading, which is
12 something that we have not tried to avoid or anything
13 different. I mean, I think we have a slightly different view
14 of the facts, Your Honor. I think that I could go into those,
15 but I think that would probably be insensitive.

16 I can, but I think Your Honor knows that an A & B, first,
17 is a set of factors, a CSC, third, is a different set of
18 factors. And we would not have pled guilty to a CSC, third.
19 So an A & B, first, is consistent with what we think happened,
20 which is an offensive act, but not quite the same as -- as
21 what the allegations were.

22 That being said, it is a serious offense. And what I
23 have spent a great deal of time with Mr. Foster dealing --
24 just trying to figure out why he is here in front of you and
25 where he might go from here.

1 So I handed, Your Honor, earlier a report from Dr. McKee,
2 who I have dealt with for 20 years. He does not say what I
3 pay him to say. And, in fact, quite the opposite, he says
4 what he sees.

5 And there's a pertinent part on page 2 where he is
6 evaluating Mr. Foster's drug use. And he says that there are
7 some feelings of worthlessness and hopelessness that led to
8 drug use. I think that has been a source of why he has found
9 himself in a courtroom despite some of the opportunities he's
10 had.

11 I believe that he is on the right track now. And that in
12 some ways is not going to satisfy the victim, whom we have
13 immense respect for for being here. But what I would like to
14 ask you to do is to help move Mr. Foster along.

15 He was obviously going off track. And the night this
16 happened, he was intoxicated. He spent a good bit of time
17 under the influence of drugs.

18 He has cleaned up. He has some opportunities that have
19 arisen, Your Honor, I think as a result of him trying to take
20 responsibility for his own life. So he has a job in Colorado
21 on December the 13th. And this is not in any way because
22 we've presumed that he would not be put in jail today.

23 **THE COURT:** I understand.

24 **MR. KENDRICK:** This is because ---

25 **THE COURT:** I understand.

1 **MR. KENDRICK:** --- I told him I think any judge wants to
2 see a plan, wants to see someone moving forward. But he has
3 been hired to work at Keystone and Ski Resort, which I spent
4 some time researching because it is not a party job out at a
5 ski vacation spot. It is very hard work. Everyone starts as
6 a lift operator. He'd like to work his way up to become a
7 teacher there.

8 He has saved his own money. He did not get help from his
9 parents. He has put down a deposit for housing. There are
10 fairly strict rules there. It is some structure, which I
11 think is really important for him. He will be up early. He
12 will work all day. And his hope is that that will lead to
13 full-time employment that will get him out of the environment
14 I think he found himself in.

15 The night this happened, people were at his house. They
16 were drinking. They were doing drugs. I think it was a bad
17 -- bad judgment call on his part. I think it was a terrible
18 set of circumstances.

19 That environment is something that I see him from a
20 younger person kind of continuing to fall into. And what has
21 happened recently appears to be him kind of take some
22 responsibility for his situation, trying to become more
23 mature.

24 So I know that sometimes we ask for probation as sort of
25 this gift, and it certainly is, but there are also serious

1 restrictions that come with this. He will be a felon. He
2 will -- that will come with its own set of punishments.

3 I do not think that there is cause to put him on the Sex
4 Offender Registry based on Dr. McKee's report. I think that
5 that report shows a very low chance of any recidivism, violent
6 crime or otherwise, which I think is extremely important to
7 Your Honor's gaging of how to punish Mr. Foster because it
8 does appear that this is not a situation that would repeat
9 itself.

10 So that being said, again, I understand that there is a
11 lot of emotion running through the courtroom. And my job is
12 to defend my client and try to fashion something that would
13 work for him. And that seems insensitive at times, so I
14 apologize for that.

15 But what we are asking for here I think would probably
16 serve the greater good. Mr. Foster does have a lot to
17 contribute. He has had a rough patch. I think alcohol and
18 drug abuse have been very difficult. I think he has a way out
19 of that.

20 And I think that if you would see fit to impose a
21 sentence like that, if we put a carrot in front of him that he
22 needs to understand that there is light at the end of the
23 tunnel, but there is certainly a stick that if you were to
24 violate in any way it could obviously be some very serious
25 consequences.

1 **THE COURT:** Does he admit that he sent that Snapchat the
2 next day?

3 **MR. KENDRICK:** Your Honor, I have seen that Snapchat. I
4 think that -- and Snapchat is weird because you can only see a
5 few different things. It is in the context of a number of
6 different messages.

7 I think we would concede that it was sent. I -- I mean,
8 I would -- I would probably -- if that was going to be
9 relevant, for example, to a prison sentence, I would want to
10 show you that there was -- there were a number of
11 conversations going on.

12 And in particular the source of that came from him
13 speaking with a friend who was present, the conversation they
14 were having about consent and that he needed to have a clearer
15 understanding of what clear consent was. And, again, that is
16 where I think this case centers. I would have to respectfully
17 disagree with the allegations.

18 And how this developed, I think that there was serious --
19 a very serious question of consent, which doesn't -- doesn't
20 make it better by any means. I think it does address some of
21 the violence that we would need to worry about in the future.

22 So, yes, he does concede that that was sent. I think
23 that in the grander scheme of the conversations going on that
24 morning, he was told by someone else, I don't think you had
25 consent. And he said, I think I did. She said, I think you

1 need a better picture of what that is because if you don't
2 have it, you're going to get yourself in a lot of trouble. So
3 there was more than just the one you heard about.

4 **THE COURT:** All right. Anything else?

5 **MR. KENDRICK:** Not unless Your Honor has any specific
6 questions.

7 **THE COURT:** I'm going to take a five minute break.

8 **MR. KENDRICK:** Okay.

9 **THE COURT:** Thank you.

10 (Whereupon court was in recess at 3:01 pm)

11 (Whereupon court reconvened at 3:15 pm)

12 **THE COURT:** Thank you. I wanted to take a break to think
13 about the facts that were presented by the State. I wanted to
14 consider the witness statement. I wanted to consider the
15 report. I wanted to consider what I had given in similar
16 circumstances and look at that.

17 This is -- I understand that the defendant doesn't agree
18 with everything put forward by the State. It might have a
19 different characterization of this. But this is simply not a
20 case in which I could consider giving you probation on.

21 The facts in this case, the fact that the case has been
22 reduced to an assault and battery in the first degree, I do
23 take into account that there has been a reduction, and your
24 attorney has certainly done you quite a service getting that
25 reduced. And I take all the facts into consideration.

1 I take into consideration the fact that you have a fairly
2 limited record, but you do have a record. I take into
3 consideration, as I said, the egregious nature.

4 And the sentence of the Court is eight years, credit for
5 the day served. And with those facts, I simply have no other
6 choice but to put you on the Sex Offender Registry. Good
7 luck. Good luck to you, ma'am.

8 **MR. KENDRICK:** Your Honor, if I could, just for the
9 record?

10 **THE COURT:** Sure.

11 **MR. KENDRICK:** I'm sorry. But for the record, you know,
12 our position under the statute with the Sex Offender Registry
13 is there has to be good cause shown, which we think requires
14 more than just the factual recitation. So we'd ask that that
15 objection ---

16 **THE COURT:** All right.

17 **MR. KENDRICK:** --- to preserve it.

18 **THE COURT:** It's noted for the record, but I just find
19 that based on the seriousness of the allegations in this case
20 that that warrants good cause. All right. Thank you.

21 (Hearing Ended at 3:18 pm)

22 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 30th day of November 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 8, 2021



Circuit Court Reporter

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 17, 2026

Respectfully submitted,

s/ Joshua Snow Kendrick

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