

STATE OF SOUTH CAROLINA FILED IN THE COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY

2018 FEB 15 AM 9:04

NINTH JUDICIAL CIRCUIT

INDICTMENT: 2017-GS-08-1190

STATE OF SOUTH CAROLINA

BERKELEY

vs.

ORDER

LAWRENCE KELLEY, JR.,

DEFENDANT.

**RECEIVED**  
MAR 12 2018  
SC Court of Appeals

This matter comes before the Court pursuant to Defendant Lawrence Kelley, Jr.'s guilty plea under *North Carolina v. Alford*, 400 U.S. 25 (1970), entered on June 2, 2017. Assistant Solicitor Anne Williams was present on behalf of the State, and Attorney Aaron Mayer was present on behalf of the Defendant. The facts presented by the State at the plea are as follows: "The 14-year old victim was living with her grandparents at the time . . . in an apartment in Goose Creek. The defendant was living across the hallway with his wife in the same apartment complex. Sometime around January 4, 2016, the grandmother saw some suggestive messages between the two on Facebook Messenger. [T]he 14-year-old told her grandmother and wrote a statement for law enforcement that she had been going over to the apartment to watch Netflix, and on a couple of occasions the defendant had touched her breasts over her clothing."

The Defendant agreed that the State could call witnesses to testify to the facts as presented at the plea. When asked "[I]f the jury heard those facts, they most probably would find you guilty beyond a reasonable doubt?," the Defendant responded, "Yes, Your Honor." The Defendant pled guilty under *Alford* to one count of Assault and Battery, Second Degree. The State dismissed one count of Criminal Sexual Conduct with a Minor, Third Degree, and recommended three years in the State Department of Corrections, suspended to a term of probation. A sexual offender evaluation was to be conducted

and submitted to the Court to allow determination of whether Defendant should be placed on the Sex Offender Registry, S.C. Code § 23-3-430, at a later date. The Defendant was sentenced to three years in the State Department of Corrections, and the balance was suspended with probation for five years with the additional terms of substance abuse counseling, if needed, and drug and alcohol testing. Credit for time served was awarded, and a sexual offender evaluation was ordered.

Sex offender evaluations were conducted by Dr. Helen Clark, Ph.D. (report dated August 16, 2017) and Dr. L. Randolph Waid, Ph.D. (report dated November 12, 2017). Each evaluation was reviewed *in camera* by the Court along with briefs submitted by Solicitor Williams and Attorney Mayer. Dr. Clark's report included multiple psychological assessments, including the Abel Assessment for Sexual Interest. Dr. Clark's report indicated "the probability of Lawrence having engaged in Child Sexual Abuse behaviors was found to be High; the risk for further sexual acting out behaviors, without treatment, was found to be Medium Risk." Dr. Clark ultimately opined that "Defendant's defensiveness throughout the evaluation process, his explanation of the sexual charges, court documentation regarding the charges, and the specific findings of the Abel Assessment caused significant clinical concern." Dr. Clark deemed placement on the Sex Offender Registry clinically appropriate. Dr. Waid's report also included multiple psychological assessments, including the New Jersey Registrant Risk Assessment Scale (NJRRAS). Dr. Waid's analysis found Defendant to be "low risk for sexual recidivism" and did not find a reason for Defendant to be placed on the Registry based on the NJRRAS scores.

After fully reviewing the reports of Dr. Clark and Dr. Waid and the briefs submitted by Counsel, this Court finds that Defendant's placement on the Sexual Offender Registry is appropriate pursuant to S.C. Code § 23-3-430(D), as good cause has been shown by the Solicitor to place the Defendant on the Sex Offender Registry. The South Carolina Court of Appeals has found the "good cause" standard of S.C. Code §23-3-430(D) was satisfied in a case in which the Defendant pled guilty

to Assault and Battery of a High and Aggravated Nature, admitted to having sex with a 14 year-old girl, and testimony indicated the defendant knew where the victim lived and lived within a half mile of her residence. *See State v. Hicks*, 377 S.C. 322 (2008). Defendant Kelley entered a guilty plea to Assault and Battery, Second Degree under *Alford*, acknowledging that the State could present witnesses to testify to the facts as presented at the plea hearing, including testimony that the Defendant had touched the breasts of a 14 year-old girl.<sup>1</sup> As noted by *State v. Herndon*, "[I]n South Carolina there is no significant distinction between a standard guilty plea and an *Alford* plea. The *Alford* plea may nevertheless offer advantages to both the state and the defendant by facilitating a more efficient trial, providing the defendant a choice that benefits her interests, or obviating a humiliating public admission of guilt.... Moreover, the defendant entering an *Alford* plea is still treated as guilty for the purposes of punishment." *State v. Herndon*, 403 S.C. 84 (2013). Defendant Kelley freely and voluntarily entered his plea under *Alford* with the knowledge that Sex Offender Registry was a potential condition of his sentence.

Further, both the State and Defense Counsel acknowledge complaint(s) for Sexual Abuse filed against the Defendant with the Virginia Department of Social Services (DSS), alleging abuse of Defendant's daughter. A letter from Virginia DSS dated August 14, 2014, states that one complaint was deemed "Unfounded for Sexual Abuse," but further stated that the "risk of future harm to the child(ren) [was] assessed as High." *See* Defendant's Opposition to Placement on Sex Offender Registry, Exhibit B. A letter from Virginia DSS dated August 31, 2017, sustained a separate Complaint for Sexual Abuse of Defendant's daughter by Defendant as "Founded" (Complaint filed June 6, 2016). *See* State's Clarification of Facts in Defendant's Response, State's 7.

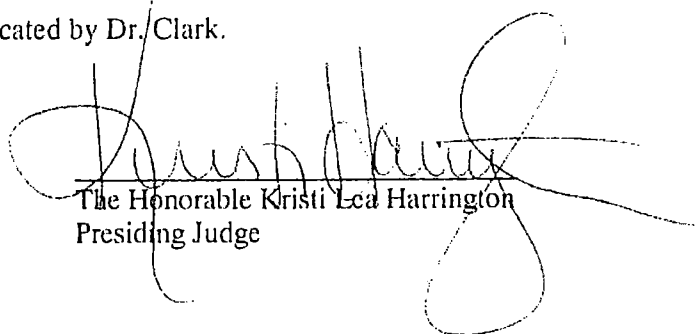
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<sup>1</sup> The State's recitation of the facts at the plea hearing noted that the Victim was 14 years old. The State's Clarification of Facts in Defendant's Response, filed December 15, 2017, states that the Victim reported the abuse first began when she was 13 years old.

In reviewing the reports of both doctors, this Court finds the interview and evaluation conducted by Dr. Clark to be more comprehensive. Dr. Clark conducted two clinical sessions on June 26, 2017, and July 12, 2017, totaling 3 hours and a testing session on July 27, 2017, totaling 3 hours. Dr. Clark's report includes a thorough discussion of Defendant's social and sexual/relationship history. Dr. Clark's report also used the Abel Assessment for Sexual Interest, which has been used in South Carolina. *See In Re Care and Treatment of Tucker*, 353 S.C. 466 (2003) (noting the Abel Assessment "measures whether someone is aroused by something that is considered abnormal, such as pedophilia"). In addition, Dr. Clark's qualifications include her position as a Clinical Member of the Association for the Treatment of Sexual Abusers and inclusion on the list of approved psychosexual evaluators compiled by the South Carolina Department of Probation, Parole, and Pardon Services

Thus, this Court finds good cause shown by the Solicitor and finds Defendant's placement on the Sex Offender Registry appropriate, as indicated by Dr. Clark.

IT IS SO ORDERED!



The Honorable Kristi Lea Harrington  
Presiding Judge

February 6, 2018  
Charleston, South Carolina