


# Memorandum

To: File (Roger Fortier)

From: Detective Peter Favreau; Manchester, NH PD 

Date: 10-03-02

Re: Derry PD Investigation

On 10-03-02, I went to the Derry Police Department to meet with Lt. Vernon Thomas. Lt. Thomas had conducted an investigation in 1984 involving Father Roger Fortier, and had agreed to provide me with any and all documents concerning that case. It should be noted that the Derry Police Department never charged Roger Fortier with a crime relating to that incident, but a good deal of information was obtained relating to his activities in their town. It should also be noted that in 1998, a male subject filed a report with the Derry Police Department alleging that he'd been assaulted by Roger Fortier in the town of Derry back in 1984. The information provided in the 1998 report is very similar to that which was provided in 1984, but due to the statute of limitations no charges were filed in that case either. The following is a breakdown of the Derry Police Department's investigation into activities by Father Roger Fortier.

1984 Investigation:

The investigation by then Officer Thomas begins in August of 1984, and is apparently the result of intelligence information gathered by the Derry Police Department relating to a male subject by the name of [REDACTED] was the owner of [REDACTED] at existed in Derry in 1984. [REDACTED] Intelligence information was obtained by the department suggesting that [REDACTED] was luring children from the arcade to his residence [REDACTED] in Derry [REDACTED] would then provide the children with alcohol, video games, and pornography, and it was suspected that he was sexually assaulting the children as well.

Based on this information, Officer Thomas conducted surveillance and spoke with neighbors who informed him that a priest (later identified as Roger Fortier) was frequenting [REDACTED] residence as well. Officer Thomas documented the remainder of his investigation which took place as follows.

08-29-84: Officer Thomas researched information on [REDACTED] and found no NCIC or Motor Vehicle information. Officer Thomas conducted surveillance that evening at

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the [redacted] residence on [redacted] A vehicle was observed in the driveway of the residence and was recorded as:

1981 Datsun 2-door color copper--Listed to Roger Fortier of 117 Youville St. Manchester, NH.

Lights in the residence were on but no one was home.

08-30-84:

Officer Thomas conducted surveillance at 06:40 hrs and found a vehicle in the driveway:

NH [redacted]--1978 Olds Delta color blue--listed to [redacted] of [redacted] NH, and a mailing address of [redacted]

Officer Thomas checked the [redacted] NH address that same morning. The house was a white Cape and it appeared that no one was home at the time. Thomas checked with Manchester Police and found no information relating to either [redacted] or Roger Fortier.

Officer Thomas returned to the [redacted] address in Derry at approximately 13:05 hrs and found the Datsun belonging to Roger Fortier in the driveway. There was loud music coming from inside the residence but no observations were made.

Officer Thomas returned to the [redacted] address in Derry at approximately 20:00 hrs. At that time he observed a male subject approximately 20 years old sitting on a chair by the front door of the residence, without a shirt on. There was a second male seated across from him who appeared to be approximately 40 years old and both men appeared to be watching television.

08-31-84:

Officer Thomas checked the [redacted] residence at approximately 12:15 hrs and observed a 1972 Buick (NH [redacted]) parked out front. Again there was music coming from inside the residence. This vehicle was still there at 18:00 hrs [redacted] car was in the driveway and remained as such throughout the day. Nothing further was noted.

09-03-84:

At approximately 08:00 hrs, an unknown woman approached Derry Officer Napoli at a convenience store to report suspicious activity [redacted] in Derry. This woman stated that a neighbor of hers named [redacted] whom she noted was the owner of [redacted] had several [redacted] in his residence and that at approximately 23:00 hrs each night, the house lit up like a Christmas tree [redacted] The woman stated further that young teen-age boys frequented the house and that a Catholic priest, whom she believed was formerly assigned to St. Thomas parish in Derry, often spent time at that residence. The woman suspected that homosexual activity was taking place at that home. She stated further that she had observed cases of beer being brought into that house on several occasions. Apparently several other neighbors were aware of "what was going on", but were afraid to get involved.

09-04-84:

At 16:30 hrs that date, Officer Thomas spoke with Rene Gingras (age 62) and Theresa Gingras (6-8-26). Both women told Thomas that they had observed young males (approx. 17-18 years old) carrying records going in and out of the [redacted] residence a [redacted] numerous occasions. The two knew one of the "young males" and identified him as [redacted] Rene and Theresa Gingras suspected homosexual activity as well, as they only [redacted]

saw males going into that residence. The two reported further that activity at that residence had picked up over the past several months and that often there are cars parked on both sides of [REDACTED] with the occupants all going to the [REDACTED] residence, and most of the "parties" take place at night. As a final note, the women reported that a Catholic priest known as "Father Roger" had frequented the home on many occasions as well.

09-06-84:

Officer Thomas did surveillance at 20:00 hrs. At that time he observed two cars in the driveway and a with male with gray hair sitting on a chair in the living room. Two other subjects were observed in another area of the house, and both were described as white males approximately 18 years old.

09-07-84:

Officer Thomas did surveillance at 20:30 hrs and observed several cars in the driveway. Also observed subject in the house, same subject he viewed on 09-06-84 (approx. 18 yoa). Thomas also viewed a white female believed to be [REDACTED]

At 20:55 hrs Thomas observed two male subjects come out of the residence and get into a red station wagon (MA reg [REDACTED]). One was the gray haired male observed the day prior. At 22:18 hrs, the red station wagon returned and a white male exited the car carrying beer. All subjects went into the home.

09-10-84:

Officer Thomas viewed home belonging to Father Roger Fortier located at 117 Youville St. in Manchester. After doing so, Thomas did a license check and learned that Fortier changed his address to 189 N. Main St. Rochester, NH. The following day, Thomas drove to Rochester to view the address and found it to be the Holy Rosary Church.

09-12-84:

Officer Thomas went to the Manchester PD where he met with Officer Steinmetz. Steinmetz provided information that Roger Fortier had been at St. John's Church in Manchester but had since transferred to Rochester. The transfer was said to be a result of rumored homosexual conduct by Fortier. The Manchester Police had information that a parishioner of St. John's church had been propositioned by Roger Fortier. The parishioner's son had also been propositioned. Thomas called St. John's parish and spoke with a receptionist who advised that Roger Fortier had been transferred to Rochester.

Officer Thomas was contacted again by Manchester Police Officer Steinmetz who had obtained further information relating to Roger Fortier. Steinmetz related that Manchester Police officer Armand Forest was a parishioner at St. John's (AKA St. Jean's church) and had information about Roger Fortier. Officer Thomas met with Forest at the Manchester Police station. Forest stated that he'd known Roger Fortier as a priest at his church for approximately 2 1/2 years. Forest stated that he had suspected Fortier as being a homosexual, and this was confirmed when Forest heard that another parishioner had been propositioned by Fortier. Forest went on to say that a known associate of Roger Fortier is a priest by the name of "Petit", who was also at St. John's for a short time. Forest suspected Petit as being homosexual as well, as he displayed very feminine mannerisms.

Forest reported that the rumor within the church was that Roger Fortier was a homosexual. Roger Fortier was the youth coordinator representing St. John's church at the West Side Catholic Regional School at the time. Forest offered the name of former Manchester Police Deputy Chief Armel Couture as possibly having more information about Roger Fortier, as Couture was a member of St. John's Parish council at the time. Officer Thomas did contact this person, but Couture had no real information to offer.

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Later that same day, Officer Thomas met again with Armand Forest who had with him a friend's son (not named). The son reported knowing Roger Fortier well, saying that he and his friends often went to Fortier's rectory apartment at Fortier's request. There Fortier would show them pornography and provide them with beer. The son went on to say that he knew Fortier was "gay", because Fortier had propositioned one of his friends. The friend was identified as 19 year old [REDACTED]. On one occasion, Fortier invited [REDACTED] to [REDACTED] house" in Derry to watch pornography and drink beer. [REDACTED] accepted and spent the night. [REDACTED] woke up to feel Fortier's hand in his [REDACTED] pants, upon which he hit Fortier. No further assaults took place and [REDACTED] stayed away from Fortier after that.

Following that incident, Roger Fortier became friendly with another friend of the above informant. This friend was identified as [REDACTED] of Manchester. It was suspected that Roger Fortier and [REDACTED] were involved in a homosexual relationship and [REDACTED] was reported to have been 14-15 years old at the time.

The informant stated further to Officer Thomas that during the summer of 1983, he himself was solicited by a priest from Merrimack, NH by the name of Phil Petit. The incident occurred on a path a St. Anselm's college in Manchester. Petit had become friendly with the informant and his friends while serving as a deacon at St. John's parish in 1982-83. At one point, Petit told the informant that he was a homosexual, and that "he could really enjoy him if he was gay". The informant stated to Petit that he was not gay, and eventually Petit became frustrated and took the informant home.

Later in the interview, the informant told Officer Thomas that he had another friend named [REDACTED], who had once told the informant that this "Father Petit" had taken him to a camp in Derry, NH, and had "tried the same ploy on him". This friend was said to have been approximately 20 years old at the time.

Following his interview with the above informant (who is not identified in the Police report), Officer Thomas spoke with former Manchester Police Deputy Chief Armel Couture. Mr. Couture was a member of the St. John's parish council and was said to have information about Father Fortier. Couture had little to offer, however, aside from information about Fortier's duties at the church etc.

09-13-84: On this date, Officer Thomas checked the [REDACTED] residence and learned that one of the young men who had been staying there was identified as [REDACTED] was no longer at the residence, however, and was believed to have returned to college.

09-16-84: On this date, Officer Thomas conducted an interview with alleged victim [REDACTED] DOB: [REDACTED] reported in the late summer of 1982 [REDACTED] was 17 yoa), Father Fortier brought him to a green cottage on a lake in Derry, NH that belonged to Fortier's friend [REDACTED]. At the cottage, the two drank beer and watched porno movies (alone). The subject [REDACTED] returned home at approximately 11:00 pm and all three subjects went to bed after that. Fortier and [REDACTED] slept in the same bedroom and during the night, [REDACTED] woke up to find Fortier with his hand on [REDACTED] buttocks [REDACTED] pulled Fortier's hand off and there was no further contact after that.

[REDACTED] told his parents what happened, and [REDACTED] father spoke with a priest from another parish (priest was not identified) to see what should be done about it. This priest told Mr. [REDACTED] that Fortier was receiving psychological treatment through the Diocese of Manchester for his problem. The [REDACTED] did not pursue this matter further

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because they believed that the church was taking care of it. Several weeks later, Fr. Fortier left St. John's for a while, presumably to be cured of his problem. When he returned, the [REDACTED] thought he was cured. Fortier had since been transferred to another church at the time of this report.

09-17-02:

On this date, Officer Thomas went to the Holy Rosary church in Derry and interviewed Fortier. Fortier was read his rights and agreed to speak with Thomas. In the interview, Fortier stated that he was friends with [REDACTED]. Fortier stated that he visited [REDACTED] frequently and that he often brought boys from the parish with him. Fortier provided the following names as those he brought to the [REDACTED] home.

[REDACTED] Manchester, NH (age 18)

[REDACTED] Manchester, NH (age 17)

[REDACTED] Manchester, NH (age 19)

Fortier was asked if [REDACTED] was a homosexual and his answer was, "I'd rather not say". Officer Thomas told Fortier that he knew [REDACTED] was a homosexual and asked if [REDACTED] had ever touched any of the boys that were brought to his home. Fortier admitted that [REDACTED] was indeed homosexual but swore he never touched any of the boys, and said that any communication regarding [REDACTED] touching the boys would be "privileged" because Fortier was a priest. When asked if [REDACTED] had ever mentioned contact with the boys during casual conversation, Fortier stated, "I'd rather not say".

Later in the interview, Fortier admitted to Officer Thomas that he was homosexual but said that none of the boys he brought to Derry knew that. Fortier admitted to the incident involving [REDACTED] but stated that it was "a big mistake" and that he regretted it. Fortier admitted further to "showing movies" to the boys and providing them with beer both at the [REDACTED] home and at the St. John's rectory, but denied engaging in any homosexual activity with any of the boys.

When questioned further, Fortier stated that he'd been friends with the boys for approximately 2 1/2 years, which Thomas noted would make them all minors at some point in the relationship. Fortier stated that he was closest to [REDACTED] and when asked if he'd ever touched [REDACTED] Fortier stated "I'd rather not say". When questioned about the other boys, however, Fortier responded "No".

When asked who else frequented the [REDACTED] residence, Fortier named several teenagers, but knew them only by first name— [REDACTED]. He also named an adult friend of [REDACTED] as [REDACTED] "who drives a maroon station wagon", and Father Ray Laferiere, the pastor of St. Joan of Ark church in Alton, NH. During the interview, it became clear to Officer Thomas that Fortier was being evasive and that he was hiding something. When confronted with this, Fortier stated that he was "afraid he would lose his priesthood".

On this same date, Officer Thomas interviewed [REDACTED] stated that he and Fortier were friends and had been so for approximately three years. [REDACTED] stated that he never had any reason to believe that Fortier was a homosexual. Fortier never touched him in any way, he said, nor did he ever proposition him. Officer Thomas spoke with [REDACTED] mother as well, and she too denied knowledge of Fortier's homosexuality. Ms. [REDACTED] had spent time herself with Father Fortier and [REDACTED] and even took her son with Fortier, [REDACTED] and Ray Laferiere on a one week vacation to Pittsburg, NH. [REDACTED] stated that she had concerns in the past about her son

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always spending time with Father Fortier and suggested to him on occasion that he should spend more time with his other friends. Each time she did that, however, Father Fortier would get depressed and would allow her son to go visit him.

went on to deny that he'd ever been shown pornography by Fortier and named the following as other people who spent time at the residence. , and a guy named

On this same date, Officer Thomas interviewed and his mother stated that he knew Fortier but not as well as has visited Fortier both at his church rectory and at the residence in Derry admitted that other boys drank beer with Fortier but said that he himself did not drink. denied any knowledge of Fortier or being homosexual.

was interviewed as well, and said that she knew Fortier also. She described Fortier's character as moody and very dependent on others. felt that Fortier had psychological problems and during the past couple years, she was concerned at time with her son and the other boys hanging around with Fortier as often as they did.

As a final note named other boys who frequented the residence.

On this same date, Officer Thomas interviewed by telephone. stated that he knew Fr. Fortier, but had no personal contact with Fortier that would lead him to believe Fortier was a homosexual. know of a friend who had a confrontation with Fortier. was approx. 17 yoa and was taken by Fortier to an unknown location in Derry, NH. At that location, Fortier asked if he wanted a "blow job". became very upset and demanded that Fortier bring him back to Manchester. Fortier did so and nothing further was said to have taken place.

Officer Thomas then questioned about his confrontation with Philip Petit in Derry. stated that this took place in June of 1979, when was 15 yoa. Petit took for a ride to a cottage in Derry (unk location) where he gave beer in what believed was an attempt to "get him drunk". Petit began to discuss his homosexuality with, asked him about masturbation, and asked him to go skinny-dipping. insisted on being brought back to Manchester, which Petit did, but Petit asked him "not to go spreading the word about him being homosexual". had no further contact with Petit after that.

09-18-84:

On this date, Officer Thomas spoke with Probation officer Brian Dennis to inquire as to why probation had placed juvenile in the custody of for Christmas in 1983. Dennis stated that he wanted a place for other than TDC, and was said to be a friend. There was a rumor that was homosexual and that he might possibly be paying for sexual favors, but the rumor was never substantiated.

09-19-84:

On this date, Officer Thomas interviewed of in Nashua, NH (employed by) reported being the former lover of and said the two lived together at in Derry, NH. Both of them had a drinking problem, as did a friend of theirs (another homosexual) named Roger

Fortier. [redacted] as cheating and [redacted] on realized the males coming over to the house were teen-agers. [redacted] told [redacted] he shouldn't hang around with the young boys. [redacted] said he was naïve and "for the right price, a man can get anything he wanted".

[redacted] and [redacted] broke up, and sometime later [redacted] saw [redacted] at a gathering. There [redacted] bragged to [redacted] about a young man named [redacted] who carried a card with him listing prices he charged for sexual favors. [redacted] had no information about Fortier molesting boys. [redacted] did name two adult homosexuals that he and [redacted] were friends with— [redacted]

On this same date, Officer Thomas interviewed [redacted] at his establishment [redacted] on [redacted] in Derry, NH. [redacted] stated that he and [redacted] were friends with [redacted] and that [redacted] had many male friends who came into his shop for haircuts.

[redacted]

[redacted] stated that he and [redacted] have tried to discourage [redacted] from continuing his contact with the boys. [redacted] believed that the boys were being paid by [redacted] for sexual favors.

07-16-98:

[redacted] files reports with the Farmington and Derry Police Departments regarding an assault that took place in 1983 or 84. [redacted] stated that he was visiting a house in Derry, NH at the time belonging to a [redacted] was dating [redacted] at the time, and slept over the house one night after drinking [redacted] recalled Fr. Roger Fortier coming into the living room where [redacted] was sleeping. Fortier disrobed, masturbated his own penis and approached the couch. There he began to perform oral sex on [redacted] soon after which [redacted] slapped him in the head.

This assault was outside the Statute of Limitations and no further investigation was conducted. [redacted] did provide the names of other possible victims.

[redacted] employed by [redacted]

[redacted] tel. [redacted] (attempts to contact [redacted] were unsuccessful at the time of this report and [redacted] mother was uncooperative).

[redacted] believed to be serving a life sentence in New York State for Armed Robbery.

END OF DERRY PD INVESTIGATION.

\*It should be noted that following the above investigation, Derry Police Officer Vernon Thomas had contact with Father Christian of the Diocese of Manchester. Officer Vernon revealed the context of his investigation to Christian and informed Christian that he was gathering information to support criminal charges against Father Fortier. Several weeks after this conversation, Officer Thomas received a call


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from Father Christian asking whether or not Thomas planned to arrest Roger Fortier. Christian explained to Officer Thomas that Roger Fortier had health problems (heart related) and the investigation was causing him a great deal of stress. Officer Thomas's answer to Christian was that he planned to complete his investigation and he would inform Roger Fortier if/when a Warrant was issued for his arrest.





# Memorandum

To: File (Roger Fortier)




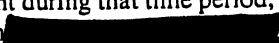
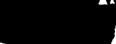


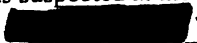
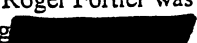
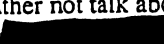
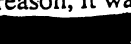
From: Detective Peter Favreau; Manchester, NH PD 







Date: 10-09-02


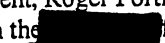


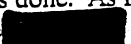


Re: 

At approximately 17:00 hrs on 10-09-02, I went to  in Manchester, NH to speak with:



 is the mother of , who was named as a possible victim of Father Roger Fortier in 1984.  name surfaced during an investigation conducted by the Derry, NH Police Department during that time period, relating to alleged sexual assaults that were being committed at a home on  was said to have had a close relationship with Father Roger Fortier, under whom  served as an altar boy at St. Jean's parish in Manchester, NH. Several of  friends suspected at the time that  may have been involved in a sexual relationship with Fortier.  was questioned by Derry Police investigators in 1984, but he denied having been abused by Father Fortier. Roger Fortier was questioned by Police investigators in that case as well, and he did not deny abusing  saying that he "would rather not talk about it". For that reason, it was suspected by the Derry Police that Fortier was abusing , but because of  denial, he was never able to gather enough evidence to support criminal charges against Fortier.

Sitting down with  and her husband, I explained to them the purpose of the NH Attorney General's investigation into the Manchester Diocese, and why I wished to speak with them and their son . The  immediately became upset, telling me that they had "buried this years ago". As far as they were concerned, Roger Fortier could "rot" in prison and they had put all of this behind them. For further information, the Fortier's advised that they had spoken with Derry Police investigators in the early 1980's, when the case involving Fortier and  was being conducted. At that time, their son  told the Police that he had never been assaulted by Roger Fortier and the  felt that the matter was closed.

Some years after that incident, Roger Fortier presided over the marriage of  and his wife, and stayed close with the  family as he'd always done in the past. It was not until the late 1990's that the  learned of Fortier's arrest and conviction for assaulting children that they realized what type of person he was and they feel that he should spend the rest of his life in jail for what he has done. As for  he continues to deny having been assaulted by Roger Fortier and the  have no reason not to believe him.  made it clear that they had no further information to offer, but agreed to pass my card on to their son  with the message to have him call me as soon as possible.

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As a final note, [REDACTED] mentioned to me as I was leaving that she had received a Christmas card from Roger Fortier about six months after the Derry investigation was conducted. In that card, Roger Fortier denied having done anything wrong to [REDACTED] recalls throwing the card away and thinking at the time that if Fortier was "innocent", he would have come to the house immediately after the Derry incident to clear things up, rather than waiting six months and sending a card.

The [REDACTED] then reiterated to me that they had no information to offer regarding Fortier's involvement in sexually abusing children and said again that they did not believe their son [REDACTED] was a victim. They then walked me to the door, asked me to keep all of this information confidential, and said that they would have [REDACTED] call me, if he chose to do so.

# Memorandum

To: File (Roger Fortier)

From: Detective Peter Favreau; Manchester, NH PD



Date: 10-09-02

Re: [REDACTED]

At approximately 17:30 hrs on 10-09-02, I went to [REDACTED] in Manchester, NH to speak with:

[REDACTED]

[REDACTED] was named as a possible victim in the Derry Police Department's 1984 investigation into alleged sexual abuse by Father Roger Fortier, that was said to have taken place in a home on [REDACTED] in Derry. Based on that information, I went to [REDACTED] this date, where I sat down with [REDACTED] and his mother [REDACTED]. Explaining the purpose of my investigation to them, both [REDACTED] were very receptive and said they would be happy to tell me what they knew.

To begin with, [REDACTED] made it clear that he was not victimized by Roger Fortier in any way. [REDACTED] explained to me that he'd met Roger Fortier through his friend [REDACTED] who served as an altar boy under Fortier at St. Jean's parish in Manchester. Both [REDACTED] and [REDACTED] became close with Fortier, and spent a great deal of time with him at both the rectory and at a residence on [REDACTED] in Derry, NH, belonging to a man named [REDACTED]. [REDACTED] did not know [REDACTED] well, but did recall going with his parents and the [REDACTED] family to a cookout at that house at some point during the early 1980's. [REDACTED] confirmed this, saying that she remembered the "cookout" and the man named [REDACTED]. The [REDACTED] family was close to Father Fortier. [REDACTED] explained, and she allowed her son to spend a great deal of time with Fortier.

Neither [REDACTED] nor his mother [REDACTED] ever suspected Fortier of being sexually abusive, and [REDACTED] said that Fortier never showed any indication that he was homosexual. Fortier never provided alcohol or pornography to [REDACTED] or to anyone that [REDACTED] knew, and [REDACTED] had no information about anyone claiming to have been assaulted by Fortier. [REDACTED] recalled being questioned by the Derry Police during their investigation (early 1980's), and he denied any assaults at that time as well.

It should be noted that when speaking of [REDACTED] told me that he and [REDACTED] had discussed the Fortier allegations after speaking with the Derry Police and [REDACTED] had always denied being a victim. [REDACTED] has would not be surprised to learn that [REDACTED] was in fact a victim, however, because [REDACTED] spent an extraordinary amount of time alone with Fortier when [REDACTED] was young, to include a trip to [REDACTED]. In [REDACTED]'s mind, it is possible that [REDACTED] was victimized and does not want to talk about it, though [REDACTED] has no first hand

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information about that. [REDACTED] stated that he would not feel comfortable talking to [REDACTED] about this again, as the two have lost touch somewhat over the past several years.

With that, the [REDACTED] told me that they had no further information to offer but said that they would cooperate in any way that they could if asked to do so in the future.

## MEMORANDUM TO FILE

TO: File (Father Roger Fortier)

FROM: Allison Vachon, AGO Investigator *AV*

RE: FORTIER FILE

DATE: October 7, 2002

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On Monday, October 7, 2002 Detective Peter Favreau and myself went to the Strafford County Attorney's Office to review the St v Roger Fortier file. In 1998 FORTIER was convicted of several counts of aggravated felonious and felonious sexual assaults against minors, [REDACTED] and [REDACTED]. He is currently serving 40-80 years at the New Hampshire State Prison.

After reviewing the file, we requested copies of several of the documents. Among the documents we received were: the defendant's appellate brief, seventeen indictments (to include eight aggravated felonious sexual assaults and nine felonious sexual assaults), sixteen mittimus issued by the Strafford County Superior Court, transcripts from interviews with

[REDACTED] FATHER ROGER FORTIER, a transcript of a one party intercept between [REDACTED] and FORTIER, arrest warrant for FORTIER and supplemental paperwork, search warrant for rectory in which FORTIER resided along with list of items seized and supplemental paperwork, and several supplemental reports from Farmington Police Officers.

END OF REPORT.

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## CONSTITUTIONAL PROVISIONS

### **New Hampshire Constitution**

#### **Part I, Article 15. Right of Accused.**

No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel. No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land; provided that, in any proceeding to commit a person acquitted of a criminal charge by reason of insanity, due process shall require that clear and convincing evidence that the person is potentially dangerous to himself or to others and that the person suffers from a mental disorder must be established. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.

### **New Hampshire Constitution**

#### **Part I, Art. 16. Former Jeopardy; Jury Trial in Capital Cases.**

No subject shall be liable to be tried, after an acquittal, for the same crime or offense. Nor shall the legislature make any law that shall subject any person to a capital punishment, (excepting for the government of the army and navy, and the militia in actual service) without trial by jury.

**STATUTORY PROVISIONS****Revised Statutes Annotated****R.S.A. § 632-A:1. Definitions.**

I-c. "Pattern of sexual assault" means committing more than one act under RSA 632-A:2 or RSA 632-A:3, or both, upon the same victim over a period of 2 months or more and within a period of 5 years.

**R.S.A. § 632-A:2. Aggravated Felonious Sexual Assault.**

I. A person is guilty of the felony of aggravated felonious sexual assault if he engages in sexual penetration with another person under any of the following circumstances:

(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.

II. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

**R.S.A. § 632-A:3. Felonious Sexual Assault.**

A person is guilty of a class B felony if he:

III. Engages in sexual penetration with a person other than his legal spouse who is 13 years of age or older and under 16 years of age; or

**R.S.A. § 639:3. Endangering Welfare of Child or Incompetent.**

I. A person is guilty of endangering the welfare of a child or incompetent if he knowingly endangers the welfare of a child under 18 years of age or of an incompetent person by purposely violating a duty of care, protection or support he

owes to such child or incompetent, or by inducing such child or incompetent to engage in conduct that endangers his health or safety.

III. In the prosecution of any person under this section, the solicitation by any person of a child under the age of 16 to engage in sexual activity as defined by RSA 649-A:2, III for the purpose of creating a visual representation as defined in RSA 649-A:2, IV, or to engage in sexual penetration as defined by RSA 632-A:1, V, constitutes endangering the welfare of such child.

## STATEMENT OF THE CASE

On August 4, 1998, a Petit Jury sitting in Strafford County Superior Court returned guilty verdicts on sixteen indictments alleging violations of RSA 632-A:2, and 632-A:3. The indictments spanned a period from 1994 to 1998, and involve two victims; J.K. and A.Y.

Indictment 97-S-936-F, a so-called "pattern" indictment alleged misconduct between May of 1994 through September of 1995, with victim, JK. That indictment alleges in pertinent part, that between the dates of May of 1994 through September of 1995, the defendant did knowingly engage in a pattern of sexual assaults against another person, not his legal spouse, who is less than sixteen years of age, in that the defendant engaged in fellatio with J.K. Also, within that time frame Indictment 98-S-451-F and 97-S-939-F were alleged to have occurred. 98-S-451-F alleged that the defendant using his authority to coerce the victim to submit and engaged in fellatio with J.K. 97-S-939-F alleges that the defendant did engage in sexual penetration with a person under the age of sixteen who was older than thirteen, J.K.

The second pattern indictment, 97-S-937-F, alleges generally the same acts but with the victim, A.Y. Within the same timeframe were indictments 97-S-943, 944, 945, 946, 940, 942 and 98-S-452, 453, 454, and 455, also with A.Y. as the victim.

Eight of the indictments are Class B Felonies: Felonious Sexual Assaults, 97-S-938, 939 with the victim J.K. and 97-S-940, 942- 946 with victim A.Y. The defendant in this case does not allege any error or abuse of discretion on the part of the trial court relative to the eight indictments alleging Felonious Sexual Assault.

## STATEMENT OF THE FACTS

The testimony at trial through A.Y., was that the defendant was a pastor in the church that A.Y. attended (TT53). That A.Y. is a Roman Catholic (TT53), and was an altar boy who assisted the defendant during mass, (TT54-55).

A.Y. testified that he would frequently stay over at the rectory, (TT56), and that he wanted to stay at the rectory because he envied his older brother, Christopher. The envy stemmed from the fact that Christopher was often taken out to eat by the defendant, Christopher received gifts from the defendant, and A.Y.'s belief was that this stemmed from the fact that Christopher stayed at the rectory, (TT56).

A.Y. testified that obtaining those benefits was a direct result of becoming closer with the defendant and staying at the rectory, (TT57).

A.Y. testified that while he was staying at the rectory, he was permitted to watch all of the T.V. channels that he wished, including Showtime and HBO. He went out to eat often and engaged in enjoyable activities such as miniature golf, attending movies, shopping, and other events that he was unable to do with his family for a number of reasons, (TT58).

A.Y. testified that the third time that he stayed over, the defendant began to make sexual advances, (TT60).

During those advances, A.Y. did not object because he had seen such activities in movies (older men and women specifically). A.Y. testified that he felt helpless because of his exposure to such movies, (TT64).

The defendant, according to A.Y. would often play pornographic movies, some of which involved homosexual themes, (TT65-66).

A.Y. testified that he took his clothes off and engaged in sexual activity with the defendant because the defendant was older, and he was at the defendant's house, (TT68-69).

Nowhere in the transcript is there any overt (or implied) reference by A.Y. relative to the defendant's position as a priest playing any role in A.Y.'s submission to the defendant's sexual advances. Further, there was never any reference that A.Y. felt any sort of coercion, nor was there any description of anything that would suggest any threats were levied against him. A.Y. did testify that he was afraid to tell his mother about the activity because, "I was scared that he might come over and try and like hurt me in some way", (TT89). Further, A.Y. testified that the defendant told him that if A.Y. disclosed the sexual conduct, that A.Y. "might get into trouble", (TT89).

The testimony of the victim, J.K., in pertinent part was as follows: The defendant was a good friend of the family, (TT182), and the defendant would often take J.K. out to eat, (TT185).

At some point, J.K.'s family's home burnt and the defendant gave J.K. and his family a place to live at the rectory, (TT182). After J.K.'s family moved from the rectory, J.K. would stay at the rectory with the defendant alone. During this time he was permitted to watch HBO, (TT185). Also during this time, the defendant provided J.K. with alcohol, (TT185, 187), and exposed him to pornographic material, (TT188). At some point, J.K. became aroused by a pornographic movie (TT190), and it was during this timeframe that the defendant made overtures and engaged in sexual conduct with him (TT190).

At one point during the trial the prosecutor inquired whether the fact that the defendant was a priest had anything to do with failure to disclose, drawing an objection, which was sustained (TT 193). Immediately after that question, the prosecutor asked why he failed to disclose to anyone concerning the sexual conduct of the defendant, and J.K. responded that he was scared that no one would believe him as opposed to the defendant because the defendant was a "nice priest", (TT194).

J.K. continued to go to the rectory and spend the night sometimes with the defendant because the defendant would take him out to dinner, go to movies, "bought him stuff", and gave him money, (TT195). The sexual contact with the defendant and J.K. ended because J.K. stopped hanging around the rectory, (TT195). During this time, J.K. thought of the defendant as a good friend, (TT208).



**ISSUES RAISED**

1. Did the Presiding Justice err in denying your Defendant's motion to dismiss indictments 97-S-936-F, 97-S-937-F, 98-S-450-F, 98-S-451-F, 98-S-452-F, 98-S-453-F, 98-S-454-F, and 98-S-455-F at the conclusion of the State's case?
2. Was there sufficient evidence presented during the course of the trial for the jury to find that your Defendant used his position of authority to coerce the victims into submitting to sex acts?

SUMMARY OF THE ARGUMENT

- I] The Trial Court erred in denying the Defendant's Motion to dismiss the indictments alleging Aggravated Felonious Sexual Assault under RSA 632-A:2, III (Motion in chambers August 3, 1998)
- A) RSA 632-A:2, III is unconstitutionally duplicitous, and as charged in this case, violates the constitutional prohibition against multiple charges in a single indictment.
- B) The indictments in the case at bar violate the Constitutional prohibition against Double Jeopardy.
- II] The Trial Court erred in allowing the indictments charging Aggravated Felonious Sexual Assault, position of authority to coerce the victim to submit, to go to the jury, as there was insufficient evidence from which any rational trier of fact could have found guilt beyond a reasonable doubt.

ARGUMENT

- I     A)     **RSA 632-A:2, III is unconstitutionally duplicitous, and as charged in this case, violates the constitutional prohibition against multiple charges in a single indictment.**

RSA 632-A:2, III is unconstitutional to the extent that it permits duplicitous indictments to be brought in contravention to this Court's ruling in State v. Patch 135 NH 127 (1991).

Although a statute will not be construed to be unconstitutional where it is susceptible to a construction rendering it constitutional, City of Claremont v. Truell, 126 N.H. 30, 39 (1985), RSA 632-A:2,III, permits a citizen to be charged with a duplicitous indictment in violation of the New Hampshire Constitution and is therefore, not susceptible to any construction rendering it constitutional.

Duplicitous indictments are unconstitutional because they fail to provide notice to the defendant, protect against double jeopardy, and guarantee a unanimous jury verdict. Patch at 128. "An indictment is duplicitous when it charges two or more offenses in one count." Id. An indictment alleging a course of conduct is not duplicitous, however, if continuous acts or omissions constitute the offense. See State v. Portigue, 125 N.H. 352, 360-61 (1984). However, an indictment must be specific enough to provide notice to the defendant, protect against double jeopardy, and guarantee a unanimous jury verdict. See People v. Keindl, 509 N.Y.S. 2d 790, 793, 502 N.E.2d 577, 580 (Ct. App. 1986). Moreover, a defendant is entitled to have a jury of his peers determine guilt or innocence based on a specific incident, rather than a series of incidents. Id.

The distinction between Patch and Portigue is the nature of the relevant statutes: the sexual assault statute is designed to proscribe discrete acts of sexual misconduct; the endangering Statute does not proscribe a discrete act or omission, but rather proscribes the purposeful disregard by a parent of the duty of care, protection, or support owed to his or her child, which may involve a single act or omission, or series of acts or omissions. See Portigue at 360-61. Since the endangering statute (RSA 639:3, I) sets forth the material element of the offense as a violation of a "duty" rather than a specific act or omission, it is not necessary for the State to charge specific incidents of parental disregard.

The "Pattern" Sexual Assault statute does not proscribe any such duty or prohibit the disregard of a duty unlike the endangering statute, there is no logical need for a sexual assault proscription based upon repetitive acts. The State need only indict the defendant on any two AFSAs or FSAs to subject the defendant to as long a period of incarceration as one pattern indictment (with the exception of two Felonious Sexual Assaults).

Pattern indictments such as those in the case at bar are fraught with risk that uncharged misconduct evidence will improperly find its way to the jury, thus making it impossible for the jury to distinguish between charged and uncharged misconduct.

In State v. Paulson, Slip Opinion No. 95-397, (decided March 18, 1999), the defendant was charged with endangering the welfare of a child under RSA 639:3, III, which states as follows:

"the solicitation by any person of a child under the age of 16 to engage in sexual activity as defined by RSA 649-A:2, III for the purpose of creating a visual representation as defined in RSA 649-A:2, IV, or to engage in sexual penetration as

defined by RSA 632-A:1, V, constitutes endangering the welfare of such child."

Relying on this Court's opinion in Portigue, the State charged and ultimately argued that course of conduct indictments relative to the endangerment statute were constitutionally permissible.

This Court disagreed and ruled that each act of soliciting a minor to engage in a single act of sexual penetration was a separate offense of endangering the welfare of the child.

The endangerment statute and the sexual penetration statute both use the singular when referring to the unlawful act, thus each act of sexual penetration would be a separate offense just as each act of sexual contact would be a separate offense.

The indictments are duplicitous irrespective of the constitutionality of the Pattern Sexual assault statute itself, and thus, are in derogation of the defendant's Constitutional rights as pled. An indictment is duplicitous when it charges more than one offense in one count, State v. Wright, 126 NH 643 (1985).

"The duplicitousness runs afoul of the requirement that an indictment inform a defendant of the charge he must meet, so that he can prepare for trial and plead any ensuing verdict as a protection against double jeopardy in any subsequent prosecution", Wright at 646, See also State v. Wong, 125 NH 610 (1986); State v. Patch, 135 NH 127 (1991); State v. Shannon, 125 NH 653, 663-664 (1984); State v. Hoyt, 114 NH 256, 257 (1974).

Patch is instructive, if not controlling in that the course of conduct indictment in Patch was held to be duplicitous. The only difference between the case at bar and Patch is that only one Felonious Sexual Assault needed to be proven in Patch while

two individual acts of Felonious Sexual Assault, (or Aggravated Felonious Sexual Assault), had to be proven in the case at bar.

This Court ruled in Patch that the "course of conduct" indictment was defective because it did not specify any particular act. In this case, the predicate offenses (at least two incidents of Felonious Sexual Assault) are not specifically alleged in the indictment. Instead, the State alleged a blanket assertion that "Fellatio" occurred on numerous weekends.

It is well settled that where the elements of an offense include the commission of predicate offenses, each predicate offense must be alleged in the indictment. United States v. Neapolitan, 781 F.2d 489, 501 (7<sup>th</sup> Circuit 1986), cert. den. 107 S.Ct. 422 (1986), is instructive. The defendant in Neapolitan was charged under the federal RICO statute which requires proof of a "pattern of racketeering activity." Such a pattern exists when the defendant commits two or more specified predicate offenses. In Neapolitan, the court held that each predicate offense must be alleged in the indictment: and, "[T]he failure to specify the underlying criminal activity in the indictment can effectively preclude the exact identification of what is being charged. RICO cannot be viewed as a complete offense distinct from the underlying crimes on which it is based." The Neapolitan court went on to hold that, "[C]rimes allegedly committed by or agreed to by [the defendant] that do not appear in the indictment cannot serve as predicate acts for the purpose of RICO" See also United States v. Davidoff, 845 F.2d 1151 (2<sup>nd</sup> Circuit 1988).

RSA 632-A:2,III requires proof of predicate offenses and State v. Bussiere, 118 NH 659 (1978), may be instructive. The defendant in Bussiere, like the defendant

in this case, was charged with a crime, an element of which was the commission of another crime. Specifically, the defendant (in Bussiere) was charged with AFSA for committing sexual penetration under circumstances involving kidnapping. The elements of kidnapping were not alleged in the indictment and this Court ruled that the indictment had to be quashed because "an indictment alleging that a victim submitted to sexual penetration under circumstances involving kidnapping must enumerate the facts establishing the necessary elements of kidnapping". Bussiere at 661. The same reasoning dictates that an indictment alleging a pattern of sexual assault (which is defined as the commission of two or more FSAs or AFSAs) must enumerate the facts establishing the necessary elements of the offense[s].

In the case at bar, the State attempted to articulate the predicate offenses, but failed. The Pattern indictments allege a wide time span, which encompasses several single count indictments alleging the exact same conduct. Had the Pattern indictments simply incorporated those single count Felonious Sexual Assault indictments there would be no duplicitous issue, and no Double Jeopardy issue. As the Pattern indictment is drafted, it cannot be said which Felonious Sexual Assault the jurors needed to find unanimously, only that they must find more than one. An indictment must be specific enough to ensure the verdict of the jury will be unanimous and the indictment in the case at bar precludes that, State v. Patch, 135 NH 127, 128 (1991).

Jury unanimity is required by RSA 625:10 and by Part 1, Article 15 of the New Hampshire Constitution. Where discrete factual predicates can provide an alternative basis for finding an element of the offense, a defendant is entitled to unanimity on

which factual predicate the jury finds as being an element of the charged offense, State v. Greene, 137 NH 126 (1993). See also United States v. Beros, 833 F.2d 455, 462 (3<sup>rd</sup> Circuit 1987). In Beros, the Third Circuit held that the government "cannot rely on a composite theory of guilt, producing twelve jurors who unanimously thought the defendant was guilty but who were not unanimous in their assessment of which act supported the verdict, [citing United States v. Duncan, 850 F.2d 1104, 1110-1113 (6<sup>th</sup> Cir. 1983)] , warning against "patchwork verdicts" and holding that "when distinct proof is required to establish distinct affirmative acts as elements of an offense, specific unanimity is necessary").

This Court's ruling in Patch should control. Patch was ultimately reversed because it was possible that not all of the jurors were considering the same act when they voted unanimously to convict. In the case at bar, the State presented evidence of a number of sexual offenses (some charged and some uncharged) thus, one cannot be sure that the guilty verdicts were the product of a unanimous decision on the same predicate acts. An indictment must be specific enough to provide notice to the defendant, protect against double jeopardy, and ensure a unanimous verdict. See People v. Keindl, 509 N.Y.S. 2d 790, 793, 502 N.E.2d 577, 580 (Ct. App. 1986).

**I B) The indictments in the case at bar violate the Constitutional prohibition against Double Jeopardy.**

The pattern indictments in the case at bar violate the State and Federal constitutional prohibitions against double jeopardy. Part I, Article 16 of the New Hampshire Constitution protects an accused citizen against multiple prosecutions for the same offense, State v. Fitzgerald, 137 NH 23, 25 (1993), State v. Gooden, 133



NH 674 (1990). Two offenses will be considered the same unless each requires proof of an element that the other does not, State v. Constant, 135 NH 254, 255 (1992).

The State Constitutional prohibition against double jeopardy does not bar simultaneous prosecution for separate charges that constitute the same offense, see State v. Soucy, 139 N.H. 349, 353 (1995), but does prohibit multiple punishments for convictions on separate charges that constitute the same offense. Fitzgerald, 137 N.H. at 25.

If the Pattern indictments pass Constitutional muster, the defendant may only be sentenced on that indictment and not on the other indictments alleging incidents within the time frame of the pattern. To sentence him on the other indictments within the time frame would constitute multiple punishments for the same offense in derogation of his rights under the State and Federal Constitutions protecting him from Double Jeopardy.

This is not a case of first impression, this Court having squarely addressed this issue in numerous opinions, notably in State v. MacLeod, 141 NH 427 (1996) and State v. Lucius, 140 N.H. 60 (1995). The succinct rule relative to whether two offenses are considered the same requires the comparison of the offenses as charged in the indictments. The Court must review and compare the statutory elements of the charged offenses in light of the actual allegations contained in the indictments, MacLeod. Multiple indictments are permissible only if proof of the elements of the crimes as charged will in actuality require a difference in evidence. State v. Stratton, 132 N.H. 451, 454 (1989). The ultimate question is "whether the

facts charged in the second indictment would, if true, have sustained the first." State v. Lucius, 140 N.H. 60, 65 (1995).

In the case at bar, with the exception of indictment number 98-S-450 (F), AFSA/coercion, the time frame of the pattern indictments for each alleged victim encompasses the indictments alleging single acts. The pattern indictment for each alleged victim specifies further that no pornographic videos were playing. The pattern indictments (97-S-936-F, J.K. and 97-S-937-F, A.Y.), charge as follows:

**"DID KNOWINGLY ENGAGE IN A PATTERN SEXUAL ASSAULT AGAINST ANOTHER PERSON NOT HIS LEGAL SPOUSE WHO WAS LESS THAN 16 YEARS OF AGE; IN THAT, ROGER FORTIER ON NUMEROUS WEEKENDS, ENGAGED IN FELLATIO WITH A YOUNG BOY WHOSE DATE OF BIRTH IS OCTOBER 8, 1983, THE CONDUCT DESCRIBED HERE HAVING OCCURRED ON THOSE OCCASSIONS WHEN NO PORNOGRAPHIC VIDEOS WERE PLAYING.**

The single incident indictments falling within the same time frame, and do not allege use of pornographic video, (97-S-938, 939, 943, 944, 945-F) charge as follows, (with the alleged victim's date of birth reflecting 9/7/79 for A.Y. and 10/8/83 for J.K.):

**DID KNOWINGLY ENGAGE IN SEXUAL PENETRATION (FELLATIO) WITH A PERSON OTHER THAN HIS LEGAL SPOUSE WHO WAS 13 YEARS OF AGE OR OLDER AND UNDER 16 YEARS OF AGE; IN THAT, ROGER FORTIER SUCKED ON THE PENIS OF A FOURTEEN (THIRTEEN) YEAR OLD BOY WHOSE DATE OF BIRTH IS SEPTEMBER 7, 1979, (OCTOBER 8, 1983)**

The double jeopardy clause of the New Hampshire Constitution prohibits this defendant from multiple punishments for the same offense as charged in the

foregoing indictments. "Under our constitution, two offenses will be considered the same unless each requires proof of an element that the other does not." State v. Crate, 141 N.H. 489 at 491 (1996), State v. Constant, 135 NH 254 at 255 (1992). "The essential inquiry on this point is whether proof of the elements of the crimes as charged will in actuality require a difference in evidence." Id. at 492.

The individual indictments in this case are actually lesser included offenses of the pattern indictments, in that; if the pattern indictment is proven, then necessarily, the Felonious Sexual assaults in the single count indictments are proven.

If cumulative punishments are sought for offenses arising out of the same transaction, the question becomes whether the crimes as charged will in actuality require a difference in the evidence, State v. Lucius, 140 N.H. 60 (1995).

The offenses are considered to be the same unless "proof of the elements of the crimes as charged will in actuality require a difference in evidence." State v. Brooks, 137 N.H. 541, 542 (1993). The test is "whether the facts charged in the second indictment would, if true, have sustained the first." Id.

In Lucius, the State charged the defendant with Solicitation of Aggravated Felonious Sexual Assault and Solicitation of Kidnapping. The indictment charging solicitation of AFSA involved the same triggering elements which gave rise to the solicitation of kidnapping. Similarly, in the case at bar, the same triggering elements which give rise to the Pattern Sexual Assault indictment are present in the Felonious Sexual Assault indictments which do not allege coercion, namely engaging in Fellatio which a person less than sixteen years of age.

In addition to the double jeopardy violation in charging both the pattern sexual assaults and the individual sexual assault, sentencing on both violates the double jeopardy protection against multiple sentences for the same offense. This Court's opinion in State v. MacLeod, 141 N.H. 427 (1996), is controlling.

In MacLeod, this Court began its' analysis with the felonious use statutes at issue in Heald v. Perrin, 123 N.H. 468 (1983). In Heald, the defendant had been convicted of both robbery while armed with a deadly weapon (armed robbery) and the felonious use of a firearm. Heald, 123 N.H. at 470. The armed robbery charge and conviction were predicated on the use of a gun in the commission of a robbery. Id. at 473. The use of the gun had elevated the offense from simple robbery, a class B felony, to armed robbery, a class A felony. The charge and conviction for felonious use of a firearm were based on the use of the same gun in the commission of the same armed robbery.

Applying the "same evidence" or "difference in evidence" test, the Court held that the dual convictions violated the State Constitution's protection against double jeopardy, Id. at 473-74. Noting that the felonious use statute covered the commission of "any felony" with "any . . . firearm," Id. at 473, the Court held:

"It is clear that in order to prove the plaintiff guilty of armed robbery, the State had to prove each and every fact that was also required to prove the felonious-use charge, and not one single fact more. Conversely, once the State had proven that the plaintiff committed the robbery while armed with a gun, no additional evidence was necessary in order to prove the elements of the felonious use of a firearm."

Heald, therefore, recognized that a defendant cannot be convicted of both an underlying felony which is enhanced by use of a gun and felonious use of a firearm

based solely on commission of the same underlying felony with the same gun. Similarly, in the case at bar, although not a felonious use statute, the State cannot convict the defendant both on the pattern statute and the underlying felonious sexual assault indictment. If the State proves the Pattern indictments, the State has proven the Felonious Sexual Assault indictments without a single additional fact. As charged, the Felonious Sexual Assault indictments are a lesser included charge of the Pattern indictment.

**II] Sufficiency of the Evidence, In position of authority/Using that Authority to Coerce the Victim to Submit.**

The evidence in support of the indictments alleging that the defendant used his position of authority to coerce the victims is inadequate to sustain those convictions on appeal. The standard of review on the sufficiency of the evidence is "viewing the evidence in the light most favorable to the State, no rational trier of fact could have found guilt beyond a reasonable doubt." State v. Richardson, 138 N.H. 162, 169 (1993).

The record fails to support a finding that the defendant was in a position of authority over the victims at the time of the sexual acts. See generally: State v. Carter, 140 N.H. 114 (1995).

In Carter, the defendant met the victim while she was a student at Spaulding Junior High School in Rochester. He was the victim's eighth grade English teacher during the 1984-85 school year and later her lunch monitor and hall monitor. It was in his capacity as hall monitor that he began to develop an intimate relationship with her.

The sexual acts at issue occurred in the fall of 1987, when the victim entered Spaulding High School. The high school adjoins the junior high school; the schools are separated by only a football field and some parking space. Moreover, some high school activities take place at the junior high school, and students taking part in these activities are subject to the authority of hall monitors there.

This Court, observing that "position of authority" is not defined in the criminal code, applied the definition found in Webster's Third New International Dictionary 146 (unabridged ed. 1961); cf. RSA 21:2 (1988); RSA 625:3 (1986); See also State v. Collins, 129 N.H. 488, 490, (1987). The definition used in Carter is as follows:

"power to require and receive submission: the right to expect obedience: superiority derived from a status that carries with it the right to command and give final decisions."

Using this definition alone, the defendant in this case did not enjoy a position of authority over either alleged victim. The defendant was the victims' parish priest. The record is void of any reference of the defendant's express or implied power to require and receive submission, the right to expect obedience or superiority derived from a status that carries with it the right to command and give final decisions over the victims. In fact, the prosecutor, frustrated by this very issue, in a blatant attempt to lead the witness, asked directly if the defendant's status as a priest contribute to the victim's failure to disclose. Although the question was rephrased, immediately after an objection, the victim responded: no one would believe me because he was a friend of the family and he was a nice priest. Clearly, even though solicited, the record reflects no indicia of authority of the defendant over the victim, J.K.. relative to A.Y. there is not even an attempt to develop "authority".

Unlike the defendant in Carter, a teacher with express disciplinary authority over students in a given school system, the victims in this case viewed this defendant at best as an adult. Consider the language this Court employed in the Carter holding:

"We reject Carter's suggestion that a teacher lacks authority over a student unless the teacher can affect the student's grades. The power to grade is not the only weapon in a teacher's arsenal, nor the only proof of authority. The victim testified to the disciplinary prerogatives of a junior high school hall monitor over a senior high school student. She also described a telling incident after she had broken off the physical aspect of her relationship with Carter. The victim had visited Carter at school to discuss a boyfriend with him, and when the conversation ended, Carter pinned her against a wall and tried to kiss her. She reacted by striking him. She testified to her fear of then being expelled, equating teachers with police officers: "you don't hit police officers, you don't hit teachers." A rational jury could have concluded that at the time of the sexual acts, Carter had the "power to require and receive submission [and] the right to expect obedience" from the victim. Webster's, supra.

Contrast the above testimony, which reflects express and rather obvious authority, the best the prosecutor in this case could muster, even after suggesting the answer: "he was a friend of the family and he was a nice priest". Similarly, in State v. Collins, 129 N.H. 488 (1987), the defendant was a psychometrist for the Derry School District. His job involved working with students having learning difficulties, including the victim, age 14, with whom he worked on a regular basis while she was in sixth and seventh grade. In Collins, there is the express authority enjoyed by any faculty member of a given educational institution. In the case at bar, not only is there any direct or inferential evidence that this defendant enjoyed a position of authority over the alleged victims, there is no evidence that either victim believed that such authority existed, even when inappropriately prompted by the prosecutor.

In addition to the absence of evidence supporting the element of "authority", there is no evidence to support the element of coercion. While it is clear that there is adequate evidence from which the trier of fact could find the defendant guilty of Felonious Sexual Assault (Class B Felony), it is equally clear that the evidence supported that this defendant seduced the young men through friendship, gifts, alcohol and the use of pornographic materials. The record is replete with the foregoing evidence but devoid of any evidence of coercion. The victims in this case submitted because the defendant was nice to them, gave them gifts, took them out to dinner, and gave them alcohol.

There was simply no evidence that the defendant ever exerted any coercive pressure. A.Y. testified that he felt some pressure, but quite tellingly, A.Y. testified that he participated in the sexual activity: "because he's older than me, and he - I felt I had to because he was older and I was in his house. So, I felt - I guess - I don't know. He's older than me, so I did." (T.T. 68, 69). This pressure illustrates the theory of criminal liability as set forth in RSA 632-A:3, II, Felonious Sexual Assault (penetration with a person less than 16 years of age but older than 13, not a legal spouse).

Endemic to the legislative intent of RSA 632-A:3, II, is the protection of younger persons from exploitation of adults who use their superior age and attendant experience to seduce. This is what A.Y. testified happened in this case, expressly. There is no need to infer, the testimony is explicit.

There is nothing in the record that a rational jury could find that the defendant used his position of authority to coerce the victim into submitting to the sexual acts.

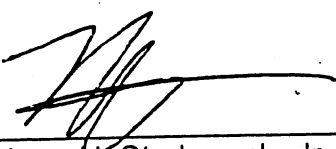


CONCLUSION

For the foregoing reasons the defendant's convictions on all indictments other than the Felonious Sexual Assault indictments should be reversed and the remaining indictments remanded back to the Superior Court for further hearing.

Respectfully submitted  
ROGER A. FORTIER  
By and through his Attorneys,  
STEPHEN T. JEFFCO, P.A.

Dated: August 5, 1999

By:   
Harry N. Starbranch, Jr., Esquire

CERTIFICATE OF SERVICE

I, Harry N. Starbranch, Jr., Esquire, hereby certify that a true copy of the foregoing BRIEF FOR THE DEFENDANT has on this date been served upon the state of New Hampshire by depositing a copy in the U.S. mails, postage prepaid, addressed as follows: Attorney General's Office, 33 Capitol Street, Concord, NH 03301.

Dated: August 5, 1999

By:   
Harry N. Starbranch, Jr., Esquire

OFFICE OF  
CLERK OF SUPERIOR COURT

STRAFFORD COUNTY

(603) 742-3065

JULIE W. HOWARD, CLERK  
DANIEL J. LYNCH, DEPUTY CLERK

8295

P.O. BOX 799  
DOVER, NEW HAMPSHIRE  
03821-0799

RECEIPT

RE: State v. Rev. Roger Fortier

Docket # 97-S-936-F etal

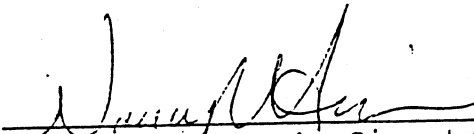
Received this day August 27, 1999 from the Strafford

Superior Clerks office: State's Exhibits 13

Exhibit 13: (Red Bank) money: \$46.83

just took money - (eng)

8/26/99  
Date

  
County Attorney's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defense Counsel's Signature

ATTORNEY GENERAL  
STATE OF NEW HAMPSHIRE

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

AUG 30 1999

8296

ILIP T. MCLAUGHLIN  
ATTORNEY GENERAL



STEVEN M. HOURAN  
DEPUTY ATTORNEY GENERAL

August 26, 1999

Lincoln Soldati, Esquire  
Strafford County Attorney's Office  
PO Box 799  
Dover, New Hampshire 03821-0799

Re: State v. Roger Fortier

Dear Mr. Soldati:

Enclosed please find the defendant's brief in the above-captioned case. The State's brief is due on September 20, 1999, and has been assigned to Assistant Attorney General Will Delker. Please review defendant's brief and let Mr. Delker know of any factual inaccuracies contained therein or any other information which may be useful to the State's position.

Thank you very much.

Sincerely,

*Mary J. Thayer*

Mary Thayer  
Legal Secretary  
Criminal Justice Bureau  
(603) 271-3671

/mjt  
enclosure

## THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

SUPERIOR COURT

At the Superior Court, holden at Dover, within and for the County of Strafford aforesaid on the ELEVENTH day of DECEMBER in the year of our Lord one thousand nine hundred and NINETY-SEVEN,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon their oath, present that:

REV. ROGER A. FORTIER  
ST. JOSEPH'S PARISH  
265 LAKE STREET  
NASHUA, NH 03060

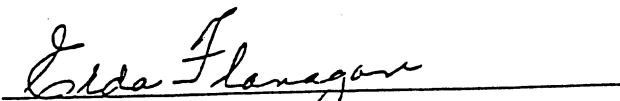
in the County of Strafford on or about OCTOBER 18TH in the year of our Lord one thousand nine hundred and NINETY-SEVEN, in the shower of St. Peter's Rectory at FARMINGTON in the County of Strafford aforesaid with force and arms,

DID KNOWINGLY ENGAGE IN SEXUAL PENETRATION WITH A PERSON OTHER THAN HIS LEGAL SPOUSE WHO WAS 13 YEARS OF AGE OR OLDER AND UNDER 16 YEARS OF AGE; IN THAT, ROGER FORTIER INSERTED HIS FINGER INTO THE ANUS OF A FOURTEEN YEAR OLD BOY WHOSE DATE OF BIRTH IS OCTOBER 8, 1983.

contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

  
County Attorney

  
Foreperson

ROGER A. FORTIER      DOB: 10-1-46      POB: NASHUA, NH      SSN: 002-34-8267

FELONIOUS SEXUAL ASSAULT      CLASS B FELONY      RSA 632-A:3

LTS

97-5946-F

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

STRAFFORD, SS

At the Superior Court, holden at Dover, within and for the County of Strafford aforesaid on the ELEVENTH day of DECEMBER in the year of our Lord one thousand nine hundred and NINETY-SEVEN,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon their oath, present that:

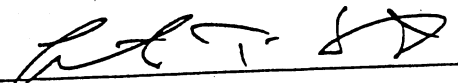
REV. ROGER A. FORTIER  
ST. JOSEPH'S PARISH  
265 LAKE STREET  
NASHUA, NH 03060


in the County of Strafford on or about OCTOBER 18TH in the year of our Lord one thousand nine hundred and NINETY-SEVEN, in the shower of St. Peter's Rectory at FARMINGTON in the County of Strafford aforesaid with force and arms,

WIT KNOWINGLY ENGAGE IN SEXUAL PENETRATION (FELLATIO) WITH A PERSON OTHER THAN HIS LEGAL SPOUSE WHO WAS 13 YEARS OF AGE OR OLDER AND UNDER 16 YEARS OF AGE; IN THAT, ROGER FORTIER SUCKED ON THE PENIS OF A FOURTEEN YEAR OLD BOY WHOSE DATE OF BIRTH IS OCTOBER 8, 1983.

contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

  
County Attorney

  
Foreperson

ROGER A. FORTIER      DOB: 10-1-46      POB: NASHUA, NH      SSN: 002-34-8267

FELONIOUS SEXUAL ASSAULT      CLASS B FELONY      RSA 632-A:3

LTS

97-S-945-F

THE STATE OF NEW HAMPSHIRE

8299

SUPERIOR COURT

STRAFFORD, SS

At the Superior Court, holden at Dover, within and for the County of Strafford aforesaid on the ELEVENTH day of DECEMBER in the year of our Lord one thousand nine hundred and NINETY-SEVEN,

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon their oath, present that:

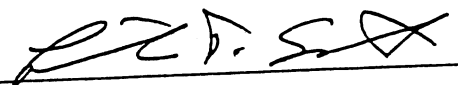
REV. ROGER A. FORTIER  
ST. JOSEPH'S PARISH  
265 LAKE STREET  
NASHUA, NH 03060


in the County of Strafford on a Saturday morning in late SEPTEMBER/early OCTOBER in the year of our Lord one thousand nine hundred and NINETY-SEVEN, in the upstairs guest bedroom at St. Peter's Rectory in FARMINGTON in the County of Strafford aforesaid with force and arms,

WIT KNOWINGLY ENGAGE IN SEXUAL PENETRATION (FELLATIO) WITH A PERSON OTHER THAN HIS LEGAL SPOUSE WHO WAS 13 YEARS OF AGE OR OLDER AND UNDER 16 YEARS OF AGE; IN THAT, ROGER FORTIER SUCKED ON THE PENIS OF A THIRTEEN YEAR OLD BOY WHOSE DATE OF BIRTH IS OCTOBER 8, 1983.

contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

This is a true bill.

  
\_\_\_\_\_  
County Attorney

  
\_\_\_\_\_  
Foreperson

ROGER A. FORTIER      DOB: 10-1-46      POB: NASHUA, NH      SSN: 002-34-8267  
FELONIOUS SEXUAL ASSAULT      CLASS B FELONY      RSA 632-A:3

LTS

97-5944-F

# The State of New Hampshire

74

OCT 13 1998

**Strafford County**

**Superior Court**

**No. 97-S-940-F**

8318

## RETURN FROM SUPERIOR COURT

Name: REV. ROGER A. FORTIER, St. Joseph's Parish, 265 Lake Street, Nashua, NH 03060

DOB: 10/1/46

Indictment     Waiver     Information     Complaint

Offense: Felonious Sexual Assault    RSA: 632-A:3

Date: Summer 1997

Disposition:    Guilty By     Plea     Jury     Court

T/N: N/A

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 7 year(s), nor less than 3 1/2 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: All year(s) of the minimum sentence is suspended; All year(s) of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing brought by the State within 35 year(s) of today's date. The sentence is consecutive to 98-S-450-451, 452, 453-454, 97-S-936, 937. The sentence is concurrent with 98-S-455 and with each other (97-S-940-F & 97-S-942-F). The Court recommends to the Department of Corrections: Sexual offender program; The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer. The defendant is ordered to be of good behavior and comply with the terms of this sentence. No contact with victim or his family. Condition of suspension that defendant pay all counseling of the victims in all cases sentenced on 10/9/98.

October 9, 1998

Date

Hon. Bruce E. Mohl

Presiding Justice

Julie W. Howard

Clerk

### MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **NH State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: \_\_\_\_\_

Date

Clerk

### SHERIFF'S RETURN

I delivered the defendant to the **NH State Prison** and gave a copy of this order to the **Warden**.

Date

Sheriff

cc:  State Police  
 Offender Recs

Dept. of Corr.  
 SRB

Pros. Attorney (LTS)  
 Stephen Jeffco, Esq.

# The State of New Hampshire

OCT 13 1998

17

**Strafford County**

**Superior Court**

**No. 97-S-942-F**

## RETURN FROM SUPERIOR COURT

8319

Name: REV. ROGER A. FORTIER, St. Joseph's Parish, 265 Lake Street, Nashua, NH 03060

DOB: 10/1/46

Indictment    Waiver    Information    Complaint

Offense: Felonious Sexual Assault   RSA: 632-A:3

Date: Summer 1997

Disposition:   Guilty By    Plea    Jury    Court

T/N: N/A

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 7 year(s), nor less than 3 1/2 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: All year(s) of the minimum sentence is suspended; All year(s) of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing brought by the State within 35 year(s) of today's date. The sentence is consecutive to 98-S-450-451, 452, 453-454, 97-S-936, 937. The sentence is concurrent with 98-S-455 and with each other (97-S-940-F & 97-S-942-F). The Court recommends to the Department of Corrections: Sexual offender program; The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer. The defendant is ordered to be of good behavior and comply with the terms of this sentence. No contact with victim or his family. Condition of suspension that defendant pay all counseling costs of the victims in all cases sentenced on 10/9/98.

October 9, 1998

Date

Hon. Bruce E. Mohl

Presiding Justice

Julie W. Howard

Clerk

### MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **NH State Prison**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: \_\_\_\_\_

Date

Clerk

### SHERIFF'S RETURN

I delivered the defendant to the **NH State Prison** and gave a copy of this order to the **Warden**.

Date

Sheriff

cc:  State Police  
 Offender Recs

Dept. of Corr.  
 SRB

Pros. Attorney (LTS)  
 Stephen Jeffco, Esq.









# The State of New Hampshire

OCT 13 1998

**Strafford County**

**Superior Court**

**No. 98-S-450-**

## RETURN FROM SUPERIOR COURT

8823

Name: REV. ROGER A. FORTIER, St. Joseph's Parish, 265 Lake Street, Nashua, NH 03060  
DOB: 10/1/46

Indictment    Waiver    Information    Complaint

Offense: Aggravated Felonious Sexual Assault   RSA: 632-A:2

Date: January 199

Disposition: Guilty By    Plea    Jury    Court

T/N: N/

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 20 year(s), nor less than 10 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: Stand committed. The sentence is concurrent with each other (98-S-450-F & 98-S-451-F). Pretrial confinement credit: from August 4, 1998. The Court recommends to the Department of Corrections: Sexual offender program; The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is to participate meaningfully and complete any counseling, treatment and education programs as directed by the correctional authority or Probation/Parole Officer. The defendant is ordered to be of good behavior and comply with all the terms of this sentence. No contact with victim or his family.

October 9, 1998

Date

Hon. Bruce E. Mohl

Presiding Justice

Julie W. Howard

Clerk

### MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the NH State Prison. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

10/9/98  
Date

Arrest: Julie W. Howard  
Clerk

### SHERIFF'S RETURN

Delivered the defendant to the NH State Prison and gave a copy of this order to the Warden.

Date

Sheriff

cc:  State Police  
 Offender Recs

Dept. of Corr.  
 SRB

Pros. Attorney(LTS)  
 Stephen Jeffco, Esq.

**Strafford County**

**Superior Court**

**No. 98-S-451-F**

8024

**RETURN FROM SUPERIOR COURT**

Name: REV. ROGER A. FORTIER, St. Joseph's Parish, 265 Lake Street, Nashua, NH 03060  
DOB: 10/1/46

Indictment     Waiver     Information     Complaint

Offense: Aggravated Felonious Sexual Assault    RSA: 632-A:2    Date: b/t February-May, 1994

Disposition:    Guilty By     Plea     Jury     Court    T/N: N/A

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 20 year(s), nor less than 10 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: Stand committed. The sentence is concurrent with each other (98-S-450-F & 98-S-451-F). Pretrial confinement credit: from August 4, 1998. The Court recommends to the Department of Corrections: Sexual offender program; The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer. The defendant is ordered to be of good behavior and comply with all the terms of this sentence. No contact with victim or his family.

October 9, 1998

Date

Hon. Bruce E. Mohl

Presiding Justice

Julie W. Howard

Clerk

**MITTIMUS**

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the NH State Prison. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

10/14/98

Date

Attest:

*Julie W. Howard*  
Clerk

**SHERIFF'S RETURN**

I delivered the defendant to the NH State Prison and gave a copy of this order to the Warden.

Date

Sheriff

cc:  State Police  
 Offender Recs

Dept. of Corr.  
 SRB

Pros. Attorney(LTS)  
 Stephen Jeffco, Esq.

**Strafford County**

**Superior Court**

**No. 98-S-452-F**

8025

**RETURN FROM SUPERIOR COURT**

Name: REV. ROGER A. FORTIER, St. Joseph's Parish, 265 Lake Street, Nashua, NH 03060

DOB: 10/1/46

Indictment     Waiver     Information     Complaint

Offense: Aggravated Felonious Sexual Assault    RSA: 632-A:2

Date: September 1997

Disposition: Guilty By     Plea     Jury     Court

T/N: N/A

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 20 year(s), nor less than 10 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: Stand committed. The sentence is consecutive to 98-S-450-451, 97-S-936. The Court recommends to the Department of Corrections: Sexual offender program; The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer. The defendant is ordered to be of good behavior and comply with all the terms of this sentence. No contact with victim or his family.

October 9, 1998

Date

Hon. Bruce E. Mohl

Presiding Justice

Julie W. Howard

Clerk

**MITTIMUS**

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the NH State Prison. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

10/14/98

Date

Attest

*Julie W. Howard*

Clerk

**SHERIFF'S RETURN**

I delivered the defendant to the NH State Prison and gave a copy of this order to the Warden.

Date

Sheriff

cc:  State Police  
 Offender Recs

Dept. of Corr.  
 SRB

Pros. Attorney(LTS)  
 Stephen Jeffco, Esq.

Strafford County

Superior Court

No. 98-S-453-F

8820

RETURN FROM SUPERIOR COURT

Name: REV. ROGER A. FORTIER, St. Joseph's Parish, 265 Lake Street, Nashua, NH 03060
DOB: 10/1/46

Indictment Waiver Information Complaint

Offense: Aggravated Felonious Sexual Assault RSA: 632-A:2
Date: On a Saturday morning in the FALL, 1997

Disposition: Guilty By Jury Court T/N: N/A

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 10 year(s), nor less than 10 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: Stand committed. All of the minimum sentence may be suspended by the Court on application of the defendant provided he demonstrates meaningful participation in a sexual offender program while incarcerated. The sentence is consecutive to 98-S-450-451, 452, 97-S-936& 937. The sentence is concurrent with each other (98-S-453 & 98-S-454). The Court recommends to the Department of Corrections: Sexual offender program; The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer. The defendant is ordered to be of good behavior and comply with all the conditions of this sentence. Condition of suspension that defendant pay all counseling costs of the victims in all cases sentenced in 1998.

October 9, 1998 Date Hon. Bruce E. Mohl Presiding Justice Julie W. Howard Clerk

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the NH State Prison. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

01/14/98 Date Arrest Julie W. Howard Clerk

SHERIFF'S RETURN

Delivered the defendant to the NH State Prison and gave a copy of this order to the Warden.

Date Sheriff

State Police Offender Recs Dept. of Corr. SRB Pros. Attorney (LTS) Stephen Jeffco, Esq.

Strafford County

Superior Court

No. 98-S-454-F

8327

RETURN FROM SUPERIOR COURT

Name: REV. ROGER A. FORTIER, St. Joseph's Parish, 265 Lake Street, Nashua, NH 03060
DOB: 10/1/46

Indictment Waiver Information Complaint

Offense: Aggravated Felonious Sexual Assault RSA: 632-A:2 Date: 10/18/97

Disposition: Guilty By Plea Jury Court T/N: N/A

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 20 year(s), nor less than 10 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: Stand committed. All of the minimum sentence may be suspended by the Court on application of the defendant provided he demonstrates meaningful participation in a sexual offender program while incarcerated. The sentence is consecutive to 98-S-450-451, 452, 97-S-936 & 937. The sentence is concurrent with each other (98-S-453 & 98-S-454) The Court recommends to the Department of Corrections: Sexual offender program; The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer. The defendant is ordered to be of good behavior and comply with all the terms of this sentence. Condition of suspension that defendant pay all counseling costs of the victims in all cases sentenced 10/9/98.

October 9, 1998

Date

Hon. Bruce E. Mohl

Presiding Justice

Julie W. Howard

Clerk

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the NH State Prison Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

10/14/98
Date

Julie W. Howard
Clerk

SHERIFF'S RETURN

I delivered the defendant to the NH State Prison and gave a copy of this order to the Warden.

Date

Sheriff

- cc: State Police Dept. of Corr. Pros. Attorney (LTS)
Offender Recs SRB Stephen Jeffco, Esq.



**Strafford County**

**Superior Court**

**No. 98-S-455-F**

**RETURN FROM SUPERIOR COURT**

8825

Name: REV. ROGER A. FORTIER, St. Joseph's Parish, 265 Lake Street, Nashua, NH 03060  
DOB: 10/1/46

Indictment     Waiver     Information     Complaint

Offense: Aggravated Felonious Sexual Assault    RSA: 632-A:2    Date: 10/18/97

Disposition:    Guilty By     Plea     Jury     Court    T/N: N/A

Sentence: A finding of GUILTY is entered. The defendant is sentenced to the New Hampshire State Prison for not more than 20 year(s), nor less than 10 year(s). There is added to the minimum sentence a disciplinary period equal to 150 days for each year of the minimum term of the defendant's sentence, to be prorated for any part of the year. This sentence is to be served as follows: All year(s) of the minimum sentence is suspended; All year(s) of the maximum sentence is suspended. Suspensions are conditioned upon good behavior and compliance with all of the terms of this order. Any suspended sentence may be imposed after a hearing brought by the State within 35 year(s) of today's date. The sentence is consecutive to 98-S-450-454, 97-S-936-937. The Court recommends to the Department of Corrections: Sexual offender program; The following conditions of this sentence are applicable whether incarceration is suspended, deferred or imposed or whether there is no incarceration ordered at all. Failure to comply with these conditions may result in the imposition of any suspended or deferred sentence. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer. The defendant is ordered to be of good behavior and comply with all the terms of this sentence. No contact with victim or his family. Condition of suspension that defendant pay counseling costs of the victims in all cases sentenced on 10/9/98.

October 9, 1998

Hon. Bruce E. Mohl

Julie W. Howard

Date

Presiding Justice

Clerk

**MITTIMUS**

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the NH State Prison. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: \_\_\_\_\_

Date

Clerk

**SHERIFF'S RETURN**

I delivered the defendant to the NH State Prison and gave a copy of this order to the Warden.

Date

Sheriff

cc:  State Police  
 Offender Recs

Dept. of Corr.  
 SRB

Pros. Attorney (LTS)  
 Stephen Jeffco, Esq.

**Strafford County**

**Superior Court**

**No. 97-S-946-F**

8029

**RETURN FROM SUPERIOR COURT**

Name: REV. ROGER A. FORTIER, St. Joseph's Parish, 265 Lake Street, Nashua, NH 03060  
DOB: 10/1/46

Indictment     Waiver     Information     Complaint

Offense: Felonious Sexual Assault    RSA: 632-A:3    Date: On or About October 18, 1997

Disposition: Guilty By  Stipulation     Plea     Jury     Court.    T/N: N/A  
(8/4/98)

Sentence: In accordance with the stipulation between the State and the defendant, a GUILTY verdict is entered.

October 9, 1998  
Date

Hon. Bruce E. Mohl  
Presiding Justice

Julie W. Howard  
Clerk

**MITTIMUS**

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the County House of Correction. Said institution is required to receive the Defendant and detain him/her until the Term of confinement has expired or s/he is otherwise discharged by due course of law.

Attest: \_\_\_\_\_  
Clerk

**SHERIFF'S RETURN**

I delivered the defendant to the County House of Correction and gave a copy of this order to the Superintendent.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sheriff

cc:  State Police  
 Stephen Jeffco, Esquire

Dept. of Corr.  
 Offender Records

Pros. Attorney