

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

2022 TERM

NO. 2022-0058

STATE OF NEW HAMPSHIRE

V.

JOHN S. CULLEN

BRIEF OF APPELLANT JOHN S. CULLEN

Donna J. Brown (N.H. Bar No. 387)
Michael G. Eaton (N.H. Bar No. 271586)
Wadleigh, Starr & Peters, P.L.L.C.
95 Market Street
Manchester, NH 03101
(603) 669-4140
dbrown@wadleighlaw.com
Oral Argument By: Donna J. Brown

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3

ISSUES PRESENTED.....4

STATEMENT OF THE CASE AND FACTS.....5

SUMMARY OF THE ARGUMENT.....15

ARGUMENT.....15

 I. As to the indictment alleging a pattern of sexual *contact*, did the trial court err when it denied the defendant’s motion to dismiss based on a claim that the evidence was insufficient to establish that the defendant committed more than one act of felonious sexual assault against a female juvenile under 13 over a period of 2 months or more?.....16

 II. As to the indictment alleging a pattern of sexual *penetration*, did the trial court err when it denied the defendant’s motion to dismiss based on a claim that the evidence was insufficient to establish that the defendant committed more than one act of felonious sexual assault against the female juvenile over a period of two months or more?19

CONCLUSION.....20

REQUEST FOR ORAL ARGUMENT.....20

RULE 16(3)(i) CERTIFICATION.....20

STATEMENT OF COMPLIANCE.....20

CERTIFICATE OF SERVICE.....21

ADDENDUM TABLE OF CONTENTS.....23

ADDENDUM.....24

TABLE OF AUTHORITIES

Cases

State v. Carpentino, 166 N.H. 9, 20 (2014).....15

State v. Fandozzi, 159 N.H. 773, 782 (2010).....15

State v. Hannon, 151 N.H. 708, 714 (2005).....15

See State v. Quintero, 162 N.H. 526, 535 (2011)5

State v. Racette, 2022 WL 1220714, at *5 (N.H., 2022).....15, 18

State v. Wilson, 169 N.H. 755, 760 (2017)15

Statutes

RSA 632-A:1, I-c.....16

RSA 632-A:2 (III)7, 13, 15, 17, 19

RSA 632-A:3.....7, 17

RSA 632-A:3 (II).....7

RSA 632-A:3(a)(1).....7

ISSUES PRESENTED

- I. As to the indictment alleging a pattern of sexual *contact*, did the trial court err when it denied the defendant's motion to dismiss based on a claim that the evidence was insufficient to establish that the defendant committed more than one act of felonious sexual assault against the female juvenile, while she was under 13, over a period of 2 months or more?
- II. As to the indictment alleging a pattern of sexual *penetration*, did the trial court err when it denied the defendant's motion to dismiss based on a claim that the evidence was insufficient to establish that the defendant committed more than one act of felonious sexual assault against the female juvenile over a period of two months or more?

STATEMENT OF THE CASE AND FACTS

In 2016, the Webster Police initiated an investigation regarding an allegation that the defendant sexually assaulted the juvenile daughter of a former girlfriend several years earlier. Apx.¹ 14-20. The 2016 investigation involved interviewing the complainant, other witnesses and setting up a surreptitious phone call between the complainant and the defendant. *Id.*

The State did not prosecute these charges until August of 2018, when the defendant was indicted on two charges alleging a pattern of sexual assault against the female juvenile (the “sexual contact” indictment and the “sexual penetration” indictment) and the State filed a related misdemeanor complaint alleging sexual assault. *See* Addendum 24-26. The three charges, combined, alleged that the subject acts occurred sometime between November 11, 2010 and December 31, 2014. Neither the indictments nor the evidence at trial alleged or established specific dates for the subject acts.

While the date of the alleged acts is usually not determinative of the sufficiency of the evidence,² the alleged dates were important to the prosecution of the two felony pattern indictments as the dates gave the defendant notice that the subject acts occurred during a period when he lived with the alleged victim and her mother in Webster, N.H. Specifically, as to jurisdiction, there was evidence that the defendant left the State of

¹ This Brief is accompanied by an Appendix, referred to herein as “Apx.”

² *See State v. Quintero*, 162 N.H. 526, 535 (2011)(“As a general rule, the exact date of an assault is not an element of aggravated felonious sexual assault”).

New Hampshire in 2014 and there was no evidence that he resided with the victim's family in Merrimack County prior to 2010.

Further, the dates alleged were important to establish that the alleged victim was in a certain age range that was an element of the respective offences: *i.e.*, under 13 years of age for the "sexual contact" charge and under 16 years of age for the "sexual penetration" charge. *Id.* Specifically, the "sexual contact" indictment contained an element that required proof that the alleged victim was under 13 years of age at the time of the alleged assaults. Addendum at 24. The State thereby fixed the time-period and pattern alleged in this indictment as occurring on or before July 4, 2013, the day before the alleged victim turned 13 years of age.³

The trial of these charges began on June 15, 2021. The defendant elected to represent himself at trial, though he had standby counsel. Apx. 3. Several trial witnesses testified about the timeline of these allegations. This testimony is relevant to this appeal for two reasons: (1) it attempts to establish the "pattern" alleged in the indictments, and specifically for this appeal that more than one act of "sexual assault" occurred over a period of 2 months or more; *and* (2) it attempts to prove the respective age elements, and specifically for this appeal that the acts alleged in the "sexual contact" indictment occurred before the alleged victim reached 13 years of age.

³ The misdemeanor complaint alleged the same sexual contact as alleged in this indictment but alleged the time period as occurring after the alleged victim turned 13 years of age. Therefore, if the State failed to prove the alleged pattern sexual contact occurred before the alleged victim's 13, the jury had the alternative misdemeanor complaint that alleged sexual contact on or after the date upon which she turned 13 years of age.

To support convictions for the two indictments alleging a “pattern of sexual assault,” the State needed to prove that the defendant committed more than one act under RSA 632-A:2 or RSA 632-A:3. See RSA 632-A:1(I-c). One of the pattern indictments against Mr. Cullen alleged that he committed a pattern of sexual assault by committing more than one act of sexual *penetration* against a person under 16 years of age under RSA 632-A:3(II)(Addendum at 25). The second indictment alleged that Mr. Cullen committed a pattern of sexual assault by committing more than one act of sexual *contact* with a person under 13 years of age under RSA 632-A:3(III)(a)(1)(Addendum at 24). As the complaining witness was 20 years old when she testified,⁴ the State therefore needed to establish her age during the conduct alleged in the two indictments.

Not only was the timeline of events important to establish the complainant’s age during relevant acts, but it was also important as the definition of pattern sexual assault requires that the State prove that the acts in question be committed “upon the same victim over a period of 2 months or more and within a period of 5 years.” RSA 632-A:1(I-c).

The State first offered the testimony of Webster Police Officer Phil Mitchell to establish that the complaining witness was interviewed about these charges in September of 2016 during a Child Advocacy Center (CAC) interview. Apx. 14. Officer Mitchell also explained that he got permission to conduct a one-party intercept phone call between the complaining witness and the defendant in September of 2016. Apx. 17.

⁴ See Apx. 45.

The next significant date in the relevant timeline was the complainant’s date of birth, which was July 5, 2000. Apx. 45. The State asked the complaining witness what her age was during her senior year in high school, and she answered, “17.” *Id.* at 46. The State then asked a series of questions in which they chronologically worked backwards to establish the complainant’s age during each year of high school and middle school. *Id.* at 46-47. The complainant acknowledged that it was “easy” to remember her age in a given year because she was born in the year 2000 and, after July 5th of each year, her age would match the last two digits of that year. *Id.* at 58. The chart below summarizes the timeline established by these questions:

Year	Age (School Year)	Grade	Page
2000	0	0	Apx. 45.
2012	11	6 th grade	Apx. 47.
2013	12	7 th grade	Apx. 47.
2014	13	8 th grade	Apx. 47.
2015	14	9 th grade	Apx. 46.
2016	15	10 th grade	Apx. 46.
2017	16	11 th grade	Apx. 46.
2018	17	12 th grade	Apx. 46.

The complainant testified that during “middle school,” she lived with her mother on Corn Hill Road in Webster, N.H. Apx. 47. When asked what grades are included in middle school, the complainant said, “Sixth through eighth” grades. *Id.* at 46. When asked how old she was in middle

school, the complainant answered, “Around 12 to 14, 15, I believe is the correct age for a middle schooler.” *Id.* She also said that she was “11 to like 13” years old in middle school. *Id.* at 47.

When asked who lived with her “during the ages of middle school,” the complaining witness testified, “My mother, myself, John Wickett for a time.” *Id.* at 48. She also testified that “there might have been a few others, but I mean, it -- it changed.” *Id.* The complainant also testified that her Great Aunt Denise, who passed away in 2017, could have been living there “at the time.” *Id.*

The State also offered the testimony of the complainant’s mother, Nichole Lafrazia. Contrary to the complainant’s testimony that she was 12-14 when the defendant lived with the family,⁵ Lafrazia testified that the defendant moved into her home “[r]ight around 2009, 2010” which would have made the complainant 9-10 years old. *Apx.* at 122. LaFrazia also testified that the defendant moved out “[a]round 2014” which would have meant that the defendant lived with the family for 4 years and not two years as testified to by the complainant. *Apx.* at 124. LaFrazia did testify that she worked a full-time job in Concord, N.H. while the defendant lived with her family in Webster and that her work hours were from 8:30 to 5:00. *Id.*

The complainant admitted that her memory as to the timeline of when the defendant lived with her family was “a little bit fuzzy.” *Apx.* 49. The complainant said that the defendant moved in with her and her mother when she was in “late sixth grade into seventh grade and all the way up to

⁵ *Apx.* at 49-50 & 59.

around eighth, I believe.” *Id.* The complainant explained that she was “like, 12 to 14” when the defendant lived with her family. *Id.*

The complainant testified that she did not recall when the defendant moved into her house, but she did recall that he lived with her family “[a]round two years, give or take a few months...” *Id.* at 50. When asked about when the defendant moved out of her home, she said that she did not remember the “exact age” but “would have to say between [age] 14 and 15.” *Id.* at 59. In a further effort to recall the period when she had contact with the defendant, the complainant said, “That would probably be, like, late sixth grade into seventh grade and all the way up to around eighth, I believe.” *Id.* at 50. It is important to note that the complaining witness would have turned 13 one month after she completed seventh grade.

As the complainant testified that the frequency and timing of the sexual assaults were connected to when she and the defendant were “home alone together,” the prosecution asked her several questions about when other people were at home. *Id.* at 55.

The complainant testified that her mother worked a “9 to 5” job in Concord, New Hampshire during the period the defendant lived with them. *Id.* at 53. The complainant usually got home from school at 2:30 or 3:00 in the afternoon. *Id.* When asked who would be at her home when she got home from school, the complainant answered, “I would either be alone or John would be there.” *Id.* This testimony established that the complainant was not always alone with the defendant between the time when she came home from school and the time her mother came home from work around 5:30 PM. *Id.*

The complainant also connected the frequency of the sexual activity between herself and the defendant to whether her Great Aunt Denise or her mother were home from work, testifying that that there would be less activity if the “house was full” or if her Great Aunt “took time off” from work. *Id.* at 56. Other than establishing that “Aunt Denise” might have worked for the State, there was no additional evidence of the aunt’s work schedule or how frequently she took time off from work as it related to the frequency of the alleged sexual assaults. *See Id.* at 96.

“Sexual Contact” Indictment

The complainant described two types of sexual acts that she claimed the defendant committed while he lived at her home. The first of these types of acts the prosecution asked the complainant about at trial were the acts set forth in Charge ID # 1533328C, the indictment alleging “sexual contact.” *See* Addendum 24. The complainant testified that “...there’s one instance where he told me to lie down with him in the master bedroom to watch Netflix and had me touch his penis.” Apx. 54. When asked about the frequency of these sexual acts, the complainant said, “Anytime that we were home alone together...” the defendant “would repeat the process of having me touch his penis...” *Id.* at 55.

The prosecution asked the complainant to explain when this sexual contact began to occur in relation to when the defendant moved into her home, and she said, “I want to say for a few months.” *Id.* When asked when this sexual contact ended, the complainant said, “right up until he moved out.” *Id.* at 58. After twice saying that she did not remember how old she was when the defendant moved out of her home, the complainant said, “I would have to say between 14 and 15.” *Id.* at 58-59.

The only other trial evidence related to the complainant's age during the alleged sexual activity was a series of text messages that the complainant exchanged with the defendant when she was 16 years old. During this exchange, the complainant texted to the defendant, "We had sexual relations when I was super young." *Id.* at 74. After an exchange of texts about whether they should discuss this topic by text, the defendant texts, "You were at the age of curiosity." *Id.* at 75. The complainant sends a reply text that says, "I was like 12."⁶ *Id.*

Other than the testimony described above, the prosecution did not establish that that the complainant was under 13 years of age when the defendant had her touch his penis. Other than the testimony described above, the prosecution did not establish this sexual *contact* was committed "over a period of 2 months or more and within a period of 5 years." *See* RSA 632-A: 1(I-c).

⁶ The defendant has not filed a motion to transfer the trial exhibits to this Court because it is his position that they are not "relevant *and necessary*" for this Court to decide the questions of law presented by the case." N.H. Supr. Ct. Rule 13(2). The only trial exhibit that is relevant to the questions of law presented in this brief is State's Exhibit #2, which was a CD with copies of text messages between the defendant and the complaining witness. Apx. at 67. A copy of this exhibit is not necessary for this Court to decide the issues of law presented by this case as these text messages were read into the record during the testimony of the complaining witness and a copy of this exhibit would be duplicative of that testimony. *Id.* Apx. at 67-89. Further, the trial court only referenced the complainant's trial testimony in its order on the defendant's motion to dismiss and did not reference either of the exhibits. Apx. at 172.

“Sexual Penetration” Indictment

The second indictment, charge ID # 1533329C,⁷ alleged that the defendant engaged in a pattern of sexual assault of “sexual penetration” with the same female juvenile (DOB 7/5/00) by inserting his finger into her genital opening on more than one occasion. As this pattern indictment alleged penetration pursuant to RSA 632-A:2, the State needed to prove that the female juvenile was under 16 years of age. The State also needed to prove that these acts of penetration were committed “over a period of 2 months or more and within a period of 5 years.” *See* RSA 632-A: 1(I-c).

In support of this indictment, the complainant testified that the defendant “would touch [her] over the clothes, and then he would go under [her] clothes and touch [her] clitoris” and then “he would go further down and penetrate [her] with his fingers.” *Apx.* at 55-56. When asked about the frequency of these acts, the complainant testified, “It honestly varied” and “[i]t could happen any – you know, several points a week depending if I was on summer vacation, or it could happen once a month if the house was full.” *Id.* at 56. Other than this testimony, there was no other testimony regarding the frequency and duration of the acts alleging digital vaginal penetration other than the witness’s earlier testimony that the complainant believed that the defendant left her home between when she was 14 and 15 years old, which by inference, would have ended any physical contact with the defendant. *Id.* at 59. As the complainant testified that the defendant lived with her family for about two years, this testimony would have put the

⁷ *See* Addendum at 25.

date that the defendant moved in with her family between her being 12-14 years old. *Id.* at 50.

After the State rested, the defendant made a motion to dismiss and argued that the “timeline was never fully established.” *Id.* at 172. The trial court denied the motion to dismiss, finding:

Viewing the evidence in the light most favorable to the State, which is the standard that applies at this stage of the proceedings, I’m going to deny your motion. I have looked at the evidence. And again, it’s – the standard is the evidence in the light most favorable to the State. [J.B.] testified that you moved into her residence sometime when she was in the sixth grade. I checked the dates. She said that within a few months of you moving in, the acts of sexual abuse started and occurred continuously until you left the residence. And given the timeline that – from her testimony, again, viewing the evidence in the light most favorable to the State, I find the State has met its burden with regards to each of the charges, so the motion’s denied. Thank you.

Id.

The defendant was convicted on all three charges, and this appeal follows.

SUMMARY OF THE ARGUMENT

This Brief raises claims that the trial court erred in denying the defendant's motion to dismiss two pattern indictments. While the State did present sufficient evidence as to each indictment that the defendant committed more than one act of sexual assault upon the same victim, it failed to establish that the acts relevant to each indictment occurred over a period of 2 months or more. Additionally, as to the indictment alleging "sexual contact," as opposed to the indictment alleging "sexual penetration," the State failed to establish that the acts occurred when the alleged victim was under 13 years of age.

ARGUMENT

A challenge to the sufficiency of the evidence raises a claim of legal error and the standard of review is *de novo*. *State v. Wilson*, 169 N.H. 755, 760 (2017). To prevail upon a challenge to the sufficiency of the evidence, the defendant must establish that no rational trier of fact, viewing all of the evidence and all reasonable inferences from it in the light most favorable to the State, could have found guilt beyond a reasonable doubt. *State v. Fandozzi*, 159 N.H. 773, 782 (2010).

Under the pattern Aggravated Felonious Sexual Assault statute, "the essential culpable act, the *actus reus*, is the pattern itself, that is, the occurrence of more than one sexual assault over a period of time, and not the specific assaults comprising the pattern." *State v. Carpentino*, 166 N.H. 9, 20 (2014); citing *State v. Hannon*, 151 N.H. 708, 714 (2005). To convict the defendant of "a pattern of sexual assault" under RSA 632-A:2, III, the State had to prove beyond a reasonable doubt that, among other things, the defendant committed "more than one act under RSA 632-A:2 ... upon

the same victim over a period of 2 months or more and within a period of 5 years.” *State v. Racette*, 2022 WL 1220714, at *5 (April 26, 2022 N.H.), citing RSA 632-A:1, I-c.

In *Racette*, the alleged victim used the word “sometimes” in describing the attempted sexual contact that was the subject of the pattern indictment. *Id.* The court held that the alleged victim’s use of this plural description of the acts in question was not sufficient to support the defendant’s conviction on the pattern sexual assault indictment. *Id.* The court made this finding because the complainant’s testimony did not demonstrate the frequency of the conduct, nor did it establish a temporal connection between discrete acts of attempted sexual intercourse. *Id.* “[V]iewing this testimony in the light most favorable to the State, no rational juror could have found, based upon this testimony alone, and without making assumptions of facts not in evidence, that the defendant attempted to engage in sexual intercourse with the complainant more than once ‘over a period of 2 months or more.’” *Id.*

I. As to the indictment alleging a pattern of sexual *contact*, the trial court erred when it denied the defendant’s motion to dismiss based on a claim that the evidence was insufficient to establish that the defendant committed more than one act of felonious sexual assault against a female juvenile under 13 over a period of 2 months or more.⁸

As to the indictment alleging a pattern of “sexual contact,” the State had to prove that: 1) more than one act occurred; 2) the acts occurred over a

⁸ See Addendum at 24.

period of two months or more and within a period of 5 years;⁹ and 3) the female juvenile was under 13 years of age at the time of the acts in question. The State's failure to prove any one of these parts of the crime required that the trial judge dismiss this charge based on insufficiency of the evidence. If the evidence did not establish that more than one act occurred, the evidence was insufficient to establish guilt. If the evidence did establish that there was more than one act, but it did not establish that the acts occurred over a period of two months or more, the evidence was insufficient to establish guilt. If the evidence did not establish that the female juvenile was not under 13 years of age during the acts, the evidence was insufficient to establish guilt.

As to applying the *de novo* standard, no rational trier of fact, viewing all of the evidence and all reasonable inferences from it in the light most favorable to the State, could have found guilt beyond a reasonable doubt that the defendant engaged in the sexual acts described in a pattern of sexual assault that occurred over a period of 2 months or more. A "pattern of sexual assault" is defined as 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. RSA 632-A: 1(I-c). As to ID No. 1533328C, the State specifically charged that the defendant committed a pattern of sexual assault in that he engaged in more than one act under RSA 632-A:3 by engaging in sexual contact by directing the

⁹ While the defendant argues that the State did not present sufficient evidence that the acts occurred over a period of two months or more, the defendant does not contest the part of this element that the State prove that the allegations occurred within a period of five years.

female juvenile under the age of 13 to touch his penis with her hand on more than one occasion.

The complainant testified that “[a]nytime that we were home alone together...” the defendant “would repeat the process of having me touch his penis...” Apx. at 55. Like the *Racette* case, the alleged victim’s use of this plural description of the acts in question was not sufficient to support this indictment because the complainant’s testimony did not demonstrate the frequency of the conduct, nor did it establish a temporal connection between discrete acts of attempted sexual intercourse. *Racette*, 2022 WL 1220714, at *5.

If the complainant had testified that the defendant engaged in sexual contact with her “anytime we were home alone together” *and* that she and the defendant were home alone together every Monday through Friday in the two-year period before he left in 2014 *and* that this happened while she was in sixth grade, there would have been sufficient evidence to convict on this indictment. If the alleged victim had testified to the above, it would have established that it 1) happened more than once; 2) over a period of 2 months or more; and 3) that she was under 13 years of age at the time it happened.

By contrast, the complaining witness testified that she was not always with the defendant every day after school for the two-year period before the defendant left her home. Apx. at 53. By contrast, the complaining witness testified that she did not recall when the defendant moved in with her family, but she thought he lived with her during the time when she was “12 to 14” years old. By contrast, while the complaining witness said the sexual acts started a few months after the defendant moved

in, there was no testimony that defendant moved in more than four months prior to the complainant's 13th birthday to establish the necessary time frame of the acts occurring over a period of more than two months. Apx. at 55.

II. As to the indictment alleging a pattern of sexual *penetration*, the trial court erred when it denied the defendant's motion to dismiss based on a claim that the evidence was insufficient to establish that the defendant committed more than one act of felonious sexual assault against the female juvenile over a period of two months or more.¹⁰

As to the indictment alleging a pattern of sexual assault under RSA 632-A:2, while the State need only establish that the complaining witness was under 16 years of age at the time the acts alleged in the pattern occurred, it must still prove that the acts occurred over a period of 2 months or more and within a period of 5 years. RSA 632-A:2, III.

When asked about the frequency of these acts, the complainant testified, "It honestly varied" and "[i]t could happen any – you know, several points a week depending if I was on summer vacation, or it could happen once a month if the house was full." Apx. at 56. Other than this testimony, there was no other testimony regarding the duration of the acts alleging digital vaginal penetration, other than the witness's earlier testimony that the complainant believed that the defendant left her home between when she was 14 and 15 years old, which by inference, would have ended any physical contact with the defendant. *Id.* at 59. While this

¹⁰ See Addendum at 25.

testimony established that multiple instances of sexual penetration occurred before the alleged victim reached the age of 16, there was no specific evidence that the pattern of sexual penetration occurred over a period of 2 months or more.

CONCLUSION

The State failed to establish a pattern of sexual *contact* as to the indictment alleging that the defendant engaged in a pattern of *felonious sexual assault* against the female juvenile, while she was under 13, over a period of 2 months or more and, therefore, the trial court erred when it denied the motion to dismiss this charge.

The State also failed to establish a pattern of sexual penetration as to the indictment alleging that the defendant engaged in a pattern of aggravated felonious sexual assault against the female juvenile over a period of 2 months or more and, therefore, the trial court erred when it denied the motion to dismiss.

The defendant requests a fifteen-minute oral argument.

Under N.H. Supreme Court Rule 16(3)(i), the defendant certifies that the appealed decision is in writing and is appended to this brief. Add. 27-47.

Pursuant to N.H. Supreme Court Rule 16(11), the defendant certifies that this brief does not exceed 9,500 words exclusive of pages containing the table of contents, table of authorities and any addendum.

Respectfully submitted,
John Wickett Cullen
By his attorneys,
Wadleigh, Starr & Peters, P.L.L.C.

Date: June 7, 2022

By: /s/ Donna J. Brown
Donna J. Brown (N.H. Bar No. 387)
Michael G. Eaton (N.H. Bar No. 271586)
Wadleigh, Starr & Peters, P.L.L.C.
95 Market Street
Manchester, NH 03101
(603) 669-4140
dbrown@wadleighlaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have e-filed a copy of the Defendant's brief to counsel for the State, Zachary Hingham on this 7th day of June 2022.

/s/ Donna J. Brown

ADDENDUM

ADDENDUM TABLE OF CONTENTS

Indictment CID# 1533328C.....24
Indictment CID# 1533329C.....25
Indictment CID# 1533330C (Misdemeanor Sexual Assault).....26
Mittimus/Sentencing Documents.....27

INDICTMENT

At the Superior Court, held at Concord, in the County of Merrimack during the AUGUST, 2018 Session, the Grand Jurors for the State of New Hampshire, upon their oath, present that

JOHN CULLEN
of LAKELAND, FLORIDA

did commit the crime of **AGGRAVATED FELONIOUS SEXUAL ASSAULT** contrary to RSA 632-A:2(III), a **SPECIAL FELONY**,

on or between the 1ST day of NOVEMBER, 2010 and the 4th day of JULY, 2013 at WEBSTER, New Hampshire

In that:

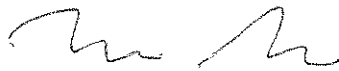
1. John Cullen engaged in a pattern sexual assault of sexual contact with a female juvenile (Date of Birth: 7/5/00) by:
 - (a) intentionally directing the female juvenile to touch his penis with her hand on more than one occasion;
 - (b) this contact can be reasonably construed as being for purposes of sexual arousal or gratification.
2. John Cullen committed this pattern sexual assault over a period of two months or more and within a period of five years.
3. The female juvenile was less than 13 years of age.
4. John Cullen was not the legal spouse of the female juvenile.
5. John Cullen committed this offense purposely.


contrary to the form of the statute, in such cases made and provided, and against the peace and dignity of the State. This is a true bill.

John Cullen
1234 Reynolds Rd. #170
Lakeland, FL 33801

CMA

State v. John Cullen
Date of Birth: 3/30/83


Grand Jury Foreman


George B. Waldron
Deputy Merrimack County Attorney

8/16/18
2018 AUG 16 PM 1 11
SUPERIOR COURT

029176

INDICTMENT

MOSC #217 18 CR 756
CHG ID# 1533328C

INDICTMENT

At the Superior Court, held at Concord, in the County of Merrimack during the AUGUST, 2018 Session, the Grand Jurors for the State of New Hampshire, upon their oath, present that

JOHN CULLEN of LAKELAND, FLORIDA

did commit the crime of AGGRAVATED FELONIOUS SEXUAL ASSAULT contrary to RSA 632-A:2(III), a SPECIAL FELONY,

on or between the 1ST day of NOVEMBER, 2010 and the 31ST day of DECEMBER, 2014 at WEBSTER, New Hampshire

In that:

- 1. John Cullen engaged in a pattern of sexual assault of sexual penetration with a female juvenile (DOB: 7/5/00) by inserting his finger into her genital opening on more than one occasion.
2. John Cullen committed this pattern sexual assault over a period of two months or more and within a period of five years.
3. The female juvenile was under 16 years of age.
4. John Cullen was not the legal spouse of the female juvenile.
5. John Cullen committed this offense knowingly.

contrary to the form of the statute, in such cases made and provided, and against the peace and dignity of the State. This is a true bill.

John Cullen
1234 Reynolds Rd. #170
Lakeland, FL 33801

CMA

State v. John Cullen
Date of Birth: 3/30/83

[Signature] 8/16/18
Grand Jury Foreman

[Signature]
George B. Waldron
Deputy Merrimack County Attorney

MCSC #217 18 OR 756
CHG ID# 1533329C

INDICTMENT

2018 AUG 16 PM 1 11
SUPERIOR COURT

029176

INFORMATION

To the Superior Court, holden at Concord, within and for the County of Merrimack on the 15TH day of AUGUST, 2018, comes now the Merrimack County Attorney in the name and on the behalf of the State of New Hampshire upon information and complaints that

JOHN CULLEN
of LAKELAND, FLORIDA

did commit the crime of **SEXUAL ASSAULT**
contrary to RSA 632-A:4(I)(c), a **CLASS A MISDEMEANOR**,

on or between the 5TH day of JULY, 2013 and the 31ST day of DECEMBER, 2014
at WEBSTER, New Hampshire

In that:

1. John Cullen engaged in sexual contact with a female juvenile (DOB: 7/5/00):
 - a) by having the female juvenile touch his penis;
 - b) this contact can reasonably be construed as being for the purpose of sexual arousal or gratification.
2. The female juvenile was 13 years of age or older and under 16 years of age.
3. John Cullen is 5 years or more older than the female juvenile.
4. John Cullen is not the legal spouse of the female juvenile.
5. John Cullen committed this offense purposely.

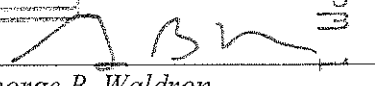
contrary to the form of the statute, in such cases made and provided, and against the peace and dignity of the State.

Whereupon the said County Attorney prays the consideration of the Court here in the premises and that due process of law may be awarded against the said defendant in this behalf to make him answer to the said State concerning the premises aforesaid.

John Cullen
1234 Reynolds Rd. #170
Lakeland, FL 33801

MOSC #217	18	CR 756
CHG ID#	1533330 C	

CMA


George B. Waldron
Deputy Merrimack County Attorney

State v. John Cullen
Date of Birth: 3/30/83

AUG 16 PM 1
 SUPERIOR COURT
 029176

INFORMATION

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Merrimack Superior Court
5 Court Street
Concord NH 03301

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. John S. Cullen**
Case Number: **217-2018-CR-00756**

Name: **John S. Cullen, Merrimack County House of Corrections 314 DW Highway Boscawen NH 03303**
DOB: **March 30, 1983**

Charging document: Indictment

Offense: AFSA - Pattern Sexual Assault GOC: Charge ID: 1533328C RSA: 632-A:2,III Date of Offense: November 01, 2010

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

January 05, 2022
Date

Hon. John C. Kissinger, Jr.
Presiding Justice

Catherine J. Ruffle
Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire 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: _____
Clerk of Court

SHERIFF'S RETURN

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

Date

Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Carley McWhirk Ahern, ESQ; Matthew J. Flynn, ESQ Defendant Defense Attorney Donna Jean Brown, ESQ
 Sentence Review Board Sex Offender Registry Other MCHOC _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: Merrimack Superior Court
Case Name: State v. John Cullen
Case Number: 217-2018-CR-756 Charge ID Number: 1533328
(If known)

STATE PRISON SENTENCE

Plea/Verdict: Guilty	
Crime: Aggravated Felonious Sexual Assault	Date of Crime: 12/01/2010

A finding of GUILTY/TRUE is entered.

CONVICTION AND CONFINEMENT

A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.

B. The defendant is sentenced to the New Hampshire State Prison for not more than 20 years, nor less than 10 years

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.

Pretrial confinement credit: ~~200~~ days.

C. This sentence is to be served as follows:

Stand committed Commencing _____

All _____ of the minimum sentence and all _____ 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 at the request of the State. The suspended sentence begins today and ends 20 years from today or release on 1533329

_____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.

D. The sentence is consecutive to case number and charge ID 1533329C
 concurrent with case number and charge ID _____

E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.

F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.

G. The Court recommends to the Department of Corrections:

Screen and/or assess for drug and alcohol treatment needs.

Sentence to be served at House of Corrections

Case Name: John Cullen 1533328C
Case Number: 18 CR 756

STATE PRISON SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. **Fines and Fees:**
Fine of \$ _____, plus a statutory penalty assessment of \$ _____ to be paid:
 Today
 By _____
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).
A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.
- B. **Restitution:**
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____
- C. **Appointed Counsel:** **NOTE: Financial Obligations, Section C is NOT a term and condition of the sentence.**
 The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
 The Court order for repayment is suspended until the time of the defendant's release from state prison.
 The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: John Cullen 1533328C
Case Number: 18CR756
STATE PRISON SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with J.B. and her immediate family either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

The defendant shall have no contact with minors under 16 years of age. Suspension is also conditioned upon successful completion of the SQT Program ordered in 153329C, unless the assessment determines defendant is other appropriate candidate.

For Court Use Only

Prison or no treatment is waived. In the absence

of completing SQT if recommended, this sentence shall be served in its entirety.

[Handwritten Signature]
1/5/2022

INDICTMENT

At the Superior Court, held at Concord, in the County of Merrimack during the AUGUST, 2018 Session, the Grand Jurors for the State of New Hampshire, upon their oath, present that

JOHN CULLEN
of **LAKELAND, FLORIDA**

did commit the crime of **AGGRAVATED FELONIOUS SEXUAL ASSAULT** contrary to RSA 632-A:2(III), a **SPECIAL FELONY**,

on or between the 1ST day of **NOVEMBER, 2010** and the 4th day of **JULY, 2013** at **WEBSTER, New Hampshire**

In that:

1. John Cullen engaged in a pattern sexual assault of sexual contact with a female juvenile (Date of Birth: 7/5/00) by:
 - (a) intentionally directing the female juvenile to touch his penis with her hand on more than one occasion;
 - (b) this contact can be reasonably construed as being for purposes of sexual arousal or gratification.
2. John Cullen committed this pattern sexual assault over a period of two months or more and within a period of five years.
3. The female juvenile was less than 13 years of age.
4. John Cullen was not the legal spouse of the female juvenile.
5. John Cullen committed this offense purposely.

contrary to the form of the statute, in such cases made and provided, and against the peace and dignity of the State. This is a true bill.

John Cullen
1234 Reynolds Rd. #170
Lakeland, FL 33801

CMA

State v. John Cullen
Date of Birth: 3/30/83

MCSC #217	18	CR 756
CHG ID#	1533328C	

[Signature]
Grand Jury Foreman

[Signature]
George B. Waldron
Deputy Merrimack County Attorney

Verdict; Guilty

INDICTMENT

[Signature]
Catherine J. Ruffe, Clerk of Court
June 16, 2021

SUPERIOR COURT

AUG 15 11 11 AM '18

029175

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Merrimack Superior Court
5 Court Street
Concord NH 03301

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

RETURN FROM SUPERIOR COURT – STATE PRISON SENTENCE

Case Name: **State v. John S. Cullen**

Case Number: **217-2018-CR-00756**

Name: **John S. Cullen, Merrimack County House of Corrections 314 DW Highway Boscawen NH 03303**

DOB: **March 30, 1983**

Charging document: Indictment

Offense: AFSA - Pattern Sexual Assault GOC: Charge ID: 1533329C RSA: 632-A:2,III Date of Offense: November 01, 2010

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

January 05, 2022
Date

Hon. John C. Kissinger, Jr.
Presiding Justice

Catherine J. Ruffle
Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **New Hampshire 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: _____
Clerk of Court

SHERIFF'S RETURN

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

Date

Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Carley McWhirk Ahern, ESQ; Matthew J. Flynn, ESQ Defendant Defense Attorney Donna Jean Brown, ESQ
 Sentence Review Board Sex Offender Registry Other MCHOC _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: Merrimack Superior Court
Case Name: State v. John Cullen
Case Number: 217-2018-CR-756 Charge ID Number: 1533329
(if known)

STATE PRISON SENTENCE

Plea/Verdict: Guilty	
Crime: Aggravated Felonious Sexual Assault	Date of Crime: 12/01/2010

A finding of GUILTY/TRUE is entered.

CONVICTION AND CONFINEMENT

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant is sentenced to the New Hampshire State Prison for not more than 20 years, nor less than 10 years.
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.
Pretrial confinement credit: 204 days.
- C. This sentence is to be served as follows:
 Stand committed Commencing _____
 _____ of the minimum sentence and _____ 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 at the request of the State. The suspended sentence begins today and ends _____ years from today or release on _____
 _____ of the sentence is deferred for a period of _____ year(s). The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____ year(s). Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed, suspended and/or further deferred. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for your arrest.
- D. The sentence is consecutive to case number and charge ID _____
 concurrent with case number and charge ID _____
- E. See Addendum to State Prison Sentence Sexual Offender Assessment and Treatment.
- F. See Addendum to State Prison Sentence Substance Use Disorder Assessment and Treatment.
- G. The Court recommends to the Department of Corrections:
 Screen and/or assess for drug and alcohol treatment needs.
 Sentence to be served at House of Corrections
 SOT program

Case Name: John Cullen 1533329C
Case Number: 18CR756
STATE PRISON SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the Probation/Parole Officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.
Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. **Fines and Fees:**
Fine of \$ _____, plus a statutory penalty assessment of \$ _____ to be paid:
 Today
 By _____
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).
A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.
- B. **Restitution:**
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____
- C. **Appointed Counsel: NOTE: Financial Obligations, Section C is NOT a term and condition of the sentence.**
 The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
 The Court order for repayment is suspended until the time of the defendant's release from state prison.
 The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: John Colton 1533329C

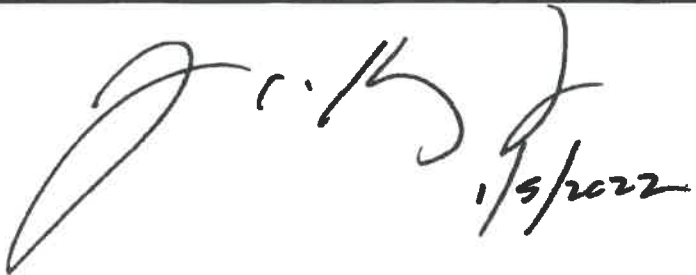
Case Number: 18-CR-756

STATE PRISON SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully in and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. Subject to the provisions of RSA 651-A:22-a, the Department of Corrections shall have the authority to award the defendant earned time reductions against the minimum and maximum sentences for successful completion of programming while incarcerated.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the
 New Hampshire State Prison House of Corrections
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, email, text message, social networking sites or through third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant and the State have waived sentence review in writing or on the record.
- H. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other: Addendum is incorporated into summary order.

For Court Use Only


A large rectangular box containing a handwritten signature and the date "1/5/2022".

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Merrimack Superior Court
5 Court Street
Concord NH 03301

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

Case Name: *State v. John*
Case Number: *217-2018-CR-756*
Charge ID: *1533329C*

Callen

ADDENDUM TO STATE PRISON SENTENCE
SEXUAL OFFENDER ASSESSMENT AND TREATMENT

The Court recommends the defendant receive an assessment for sexual offender treatment at the State Prison to determine whether, and to what extent, treatment is appropriate.

If the assessment recommends completion of the Sexual Offender Program(s) at the New Hampshire State Prison, then the defendant shall successfully complete the program(s) prior to suspension of his/her sentence. Upon successful completion of the Sex Offender Program(s) at the New Hampshire State Prison 2 years of the minimum sentence and 4 years of the maximum sentence shall be suspended subject to the other conditions of this sentence.

If the assessment recommends a form of treatment outside the prison, then 2 years of the defendant's minimum sentence shall be suspended upon acceptance into the recommended treatment. In addition to other conditions of this sentence, successful completion of treatment shall be a specific condition of the suspended sentence.

If the assessment establishes that no treatment is needed, 2 years of the defendant's minimum sentence shall be suspended subject to any other conditions imposed by this Court.

Any suspended portion of the sentence may be imposed after a hearing at the request of the State brought at any time beginning today and up to 10 years after the date the sentence was suspended.

This Addendum to State Prison Sentence is attached to, and made a part of, the State Prison Sentence imposed on the defendant this date by the Court.

Date

1/5/2022

Presiding Justice

J. C. B. J.

INDICTMENT

At the Superior Court, held at Concord, in the County of Merrimack during the AUGUST, 2018 Session, the Grand Jurors for the State of New Hampshire, upon their oath, present that

JOHN CULLEN
of LAKELAND, FLORIDA

did commit the crime of **AGGRAVATED FELONIOUS SEXUAL ASSAULT** contrary to RSA 632-A:2(III), a **SPECIAL FELONY**,

on or between the 1ST day of **NOVEMBER, 2010** and the 31ST day of **DECEMBER, 2014** at **WEBSTER, New Hampshire**

In that:

1. John Cullen engaged in a pattern of sexual assault of sexual penetration with a female juvenile (DOB: 7/5/00) by inserting his finger into her genital opening on more than one occasion.
2. John Cullen committed this pattern sexual assault over a period of two months or more and within a period of five years.
3. The female juvenile was under 16 years of age.
4. John Cullen was not the legal spouse of the female juvenile.
5. John Cullen committed this offense knowingly.

contrary to the form of the statute, in such cases made and provided, and against the peace and dignity of the State. This is a true bill.

John Cullen
1234 Reynolds Rd. #170
Lakeland, FL 33801

CMA

State v. John Cullen
Date of Birth: 3/30/83


Grand Jury Foreman


George B. Waldron
Deputy Merrimack County Attorney

MCSC #217	18CR 756
CHG ID#	1533329C

INDICTMENT

Verdict: Guilty


Catherine J. Ruffle, Clerk of Court

June 16, 2021

FILED AUG 18 PM 1:11

SUPERIOR COURT

029173

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Merrimack Superior Court
5 Court Street
Concord NH 03301

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

RETURN FROM SUPERIOR COURT – HOUSE OF CORRECTIONS

Case Name: State v. John S. Cullen
Case Number: 217-2018-CR-00756

Name: John S. Cullen, Merrimack County House of Corrections 314 DW Highway Boscawen NH 03303

DOB: March 30, 1983

Charging document: Indictment

Offense: Sex Assault Pntrte V=13-15/age dif<3yr
GOC: Charge ID: 1533330C
RSA: 632-A:4,I(c)
Date of Offense: July 05, 2013

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Misdemeanor

Sentence: see attached

January 05, 2022
Date

Hon. John C. Kissinger, Jr.
Presiding Justice

Catherine J. Ruffle
Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the Merrimack County House of Corrections. 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 of Court

SHERIFF'S RETURN

I DELIVERED THE DEFENDANT TO THE Merrimack County House of Corrections and gave a copy of this order to the Superintendent.

Date

Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Carley McWhirk Ahern, ESQ; Matthew J. Flynn, ESQ Defendant
Defense Attorney Donna Jean Brown, ESQ
 Sex Offender Registry Other MCHOC _____ _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Merrimack Superior Court

Case Name: State v. John Cullen

Case Number: 217-2018-CR-756 Charge ID Number: 1533330
(if known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: Guilty	
Crime: Sexual Assault	Date of Crime: 12/01/2021

A finding of GUILTY/TRUE is entered.

CONVICTION

This conviction is for a Misdemeanor

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant has been convicted of a misdemeanor, other than RSA 631:2-b or an offense recorded as Domestic Violence, which includes as an element of the offense, the use or attempted use of physical force or threatened use of a deadly weapon, and the defendant's relationship to the victim is:

OR The defendant is cohabiting or cohabited with victim as a _____

OR A person similarly situated to _____

CONFINEMENT

- A. The defendant is sentenced to the House of Corrections for a period of 12 months.
Pretrial confinement credit is _____ days.

- B. This sentence is to be served as follows:

- Stand committed Commencing _____
- Consecutive weekends from _____ PM Friday to _____ PM Sunday beginning _____
- _____ of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends _____ years from today or release on charge ID number _____.
- _____ of the sentence is deferred for a period of _____.

The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____.

Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

Other: _____

- C. The sentence is consecutive to case number and charge ID _____
 concurrent with case number and charge ID 1533329C

- D. The court recommends to the county correctional authority:

- Work release consistent with administrative regulations.
- Drug and alcohol treatment and counseling.
- Sexual offender program.
- _____

Case Name: John Cullen 1533330C
Case Number: 18 CR 756
HOUSE OF CORRECTIONS SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. **Fines and Fees:**
Fine of \$ _____, plus a statutory penalty assessment of \$ _____ to be paid:
 Today
 By _____
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

- B. **Restitution:**
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____

- C. **Appointed Counsel: NOTE: Financial Obligations, Section C is NOT a term and condition of the sentence.**
 The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
 The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: John Cullen 1533 330 C
Case Number: 18CR 756
HOUSE OF CORRECTIONS SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

For Court Use Only

J. C. K. J.
1/5/2022

INFORMATION

To the Superior Court, holden at Concord, within and for the County of Merrimack on the 15TH day of AUGUST, 2018, comes now the Merrimack County Attorney in the name and on the behalf of the State of New Hampshire upon information and complaints that

JOHN CULLEN
of LAKELAND, FLORIDA

did commit the crime of **SEXUAL ASSAULT**
contrary to RSA 632-A:4(I)(c), a **CLASS A MISDEMEANOR**,

on or between the 5TH day of JULY, 2013 and the 31ST day of DECEMBER, 2014
at WEBSTER, New Hampshire

In that:

1. **John Cullen engaged in sexual contact with a female juvenile (DOB: 7/5/00):**
 - a) **by having the female juvenile touch his penis;**
 - b) **this contact can reasonably be construed as being for the purpose of sexual arousal or gratification.**
2. **The female juvenile was 13 years of age or older and under 16 years of age.**
3. **John Cullen is 5 years or more older than the female juvenile.**
4. **John Cullen is not the legal spouse of the female juvenile.**
5. **John Cullen committed this offense purposely.**

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

Whereupon the said County Attorney prays the consideration of the Court here in the premises and that due process of law may be awarded against the said defendant in this behalf to make him answer to the said State concerning the premises aforesaid.

John Cullen
1234 Reynolds Rd. #170
Lakeland, FL 33801

MCSC #217 18 CR 756
CHG ID# 1533330 C

CMA

George B. Waldron
George B. Waldron
Deputy Merrimack County Attorney

State v. John Cullen Verdict: Guilty
Date of Birth: 3/30/83

Catherine J. Ruffe INFORMATION

019 11:31:16 PM
 SUPERIOR COURT
 029173

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Merrimack Superior Court
5 Court Street
Concord NH 03301

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<https://www.courts.nh.gov>

NOTICE OF REQUIREMENT TO REGISTER AS SEXUAL OFFENDER

Case Name: **State v. John . Cullen**
Case Number: **217-2018-CR-00756**

Defendant DOB: March 30, 1983

Defendant Address: Merrimack County House of Corrections 314 DW Highway Boscawen NH 03303

1. I understand I have been convicted of a sexual offense or an offense against a child that requires me to be registered with the Department of Safety, Division of State Police, Sex Offender Registry pursuant to RSA 651-B.

2. I understand that the court will send a copy of this notice to the Department of Safety, Division of State Police, Sex Offender Registry.

3. I further understand that I have a duty to report in person to the local law enforcement agency where I reside (if I reside in New Hampshire) within 5 business days after my release, or within 5 business days of establishing residence, employment, or schooling in New Hampshire. **Failure to do so may lead to my arrest and to a felony conviction.**


4. If I am not a resident of New Hampshire and do not have a principal place of employment in this state, I understand that I must register in person at the Department of Safety in Concord.

5. If I am being released into the community today, I understand **I am also obligated to indicate the address where I plan to reside. That address is:**

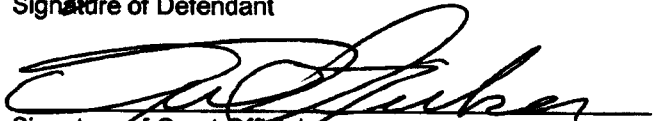
I certify I have received a copy of this notice.

01/05/2022
Date

01/05/2022
Date



Signature of Defendant



Signature of Court Official
Witnessing Signature

Case Name: State v. John . Cullen

Case Number: 217-2018-CR-00756

NOTICE OF REQUIREMENT TO REGISTER AS SEXUAL OFFENDER

NOTE – An individual charged with committing one or more of the offenses listed below, including an accomplice to, or an attempt, conspiracy or solicitation to commit any of these offenses, is required to register if the charge resulted in a conviction, a finding of guilty by reason of insanity, or an adjudication as a delinquent when the court finds that the juvenile must register.

RSA 135-E	Civil Commitment as a Sexually Violent Predator
RSA 169-B 41, II	Intentional Contribution to Delinquency
RSA 630:1,I(e)	Capital Murder
RSA 630:1-a,1(b)(1)	First Degree Murder
RSA 632-A:2	Aggravated Felonious Sexual Assault
RSA 632-A:3	Felonious Sexual Assault
RSA 632-A:4,I(a)	Sexual Assault
RSA 632-A:4,I(b)	Sexual Assault (actor 18 years or older)
RSA 632-A:4,III	Sexual Assault
RSA 633:1	Kidnapping (victim under 18 years old)
RSA 633:2	Criminal Restraint (victim under 18 years old)
RSA 633:3	False Imprisonment (victim under 18 years old)
RSA 633:7	Trafficking in Persons
RSA 639:2	Incest (victim under 18 years old)
RSA 639:3, III	Endangering the Welfare of a Child
RSA 644:8-g	Bestiality
RSA 644:9, I(a)	Violation of Privacy
RSA 644:9, III-a	Violation of Privacy
RSA 645:1, I	Indecent Exposure & Lewdness (2 nd offense within 5 years)
RSA 645:1, II	Indecent Exposure and Lewdness (victim under 18 years old)
RSA 645:1 III	Indecent Exposure and Lewdness (victim under 18 years old)
RSA 645:2,	Prostitution & Related Offenses (victim under 18 years old)
RSA 649-A:3	Possession of Child Sexual Abuse Images
RSA 649-A:3-a	Distribution of Child Sexual Abuse Images
RSA 649-A:3-b	Manufacture of Child Sexual Abuse Images
RSA 649-B:3	Computer Pornography Prohibited
RSA 649-B:4	Certain Uses of Computer Services Prohibited
RSA 650:2, II	Obscene Matter

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT
FEBRUARY TERM 2022

Granted



Honorable John C. Kissinger, Jr.
February 10, 2022

STATE

v.

JOHN S. CULLEN

217-2018-CR-00756

DEFENDANT'S ASSENTED TO MOTION TO AMEND PRE-TRIAL CONFINEMENT CREDIT

NOW COMES the defendant, John Cullen, by and through counsel, Wadleigh, Starr and Peters, and respectfully asks this Honorable Court to issue an order amending pre-trial confinement credit.

In support of this Motion, Mr. Cullen states the following:

1. On June 16, 2021, Mr. Cullen was found guilty by jury of one count of aggravated felonious sexual assault and one count of misdemeanor sexual assault.
2. On January 5, 2022 Mr. Cullen received a stand committed prison sentence of 10-20 years and a concurrent 12 month house of corrections sentence.
3. At the time of sentencing Mr. Cullen was awarded 204 days of pretrial confinement credit. However, the Honorable Court granted Mr. Cullen leave to file a motion with the Court clarifying the total pre-trial confinement days as he served some time out of state.
4. The defense has since been able to confirm Mr. Cullen's dates of incarceration and hereby seeks to amend the pre-trial confinement credit days.
5. Mr. Cullen was initially arrested by North Carolina Marshalls and incarcerated in at the

Cabarrus County Jail from December 12, 2018 through January 10, 2019. Mr. Cullen was then incarcerated at the Merrimack County House of Corrections January 10, 2019 through January 15, 2019 and June 26, 2021 through January 5, 2022.

6. Mr. Cullen was incarcerated for a total of 228 days.
7. Mr. Cullen respectfully asks this Court to amend his pretrial confinement credit days from 204 to 228.
8. Counsel has contacted the State, represented by Attorney Carley McWhirk, and she assents to this motion.

WHEREFORE, John Cullen respectfully requests this Honorable Court issue an order:

- A. Amending his sentence on charge ID 1533329C to include 228 pretrial confinement days;
OR
- B. Schedule a hearing on this motion; OR
- C. Issue an order with written finds of fact and proofs of law for any relief not granted; OR
- D. Any further relief deemed just and proper.

Respectfully submitted,
John Cullen

By his attorneys
Wadleigh, Starr, & Peters, P.L.L.C.

Dated: February 9, 2022

By: /s/ Donna J. Brown
Donna Brown, Esq. NH Bar 387
95 Market Street
Manchester, NH 03101
(603)669-4140
dbrown@wadleighlaw.com

CERTIFICATION

I certify that a copy of the foregoing motion has been e-filed to Attorney Carley McWhirk of the Merrimack County Attorney's Office on this 9th day of February 2022.

/s/ Donna J. Brown _____
Donna Brown, Esq.