

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY FOSTER,	§	
	§	No. 117, 2000
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for New Castle County
	§	Cr.A. Nos. IN98-10-0862
Plaintiff Below,	§	through IN98-10-0872 and
Appellee.	§	IN98-10-0874

Submitted: February 27, 2001

Decided: May 16, 2001

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

O R D E R

This 16th day of May, 2001, upon consideration of the briefs of the parties, it appears to the Court that:

1) Henry Foster was convicted, following a jury trial, on eleven counts of unlawful sexual intercourse first degree and one count of unlawful sexual contact second degree. He appeals from the trial court's decision denying his motion for judgment of acquittal as to one count of unlawful sexual intercourse first degree.

2) The victim, Foster's niece, was 15 years old when she reported to her mother that she had sexual intercourse with Foster when she was 9 years old. The victim said that the assaults took place after school at her grandfather's house

several times a week during the 1992-93 school year. Although she had given a statement saying that the assaults took place for a year, she was more specific in her trial testimony. The victim stated that the assaults started at the beginning of the school year and that there were no sexual assaults after the school year was over.

3) Based on this testimony, Foster moved for judgment of acquittal as to the count alleging unlawful sexual intercourse during the period from July 1 and July 15, 1993. We conclude, from our review of the record, that Foster's motion should have been granted. Viewing the evidence in the light most favorable to the State, we find that there was insufficient evidence to support a finding of guilt in light of the victim's definite statement that no assaults took place after the school year ended¹.

NOW, THEREFORE, IT IS ORDERED that the judgment of conviction as to Count XIII of the indictment is REVERSED and this matter is REMANDED for reimposition of sentence in accordance with this Order.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ *Williams v. State*, Del. Supr., 539 A.2d 164 (1988).