
June 29, 2018

Press Release - For Immediate Release

Defendant's Name: Kathy Foster
Age: 53
City and State of residence: Schuyler, NE
Criminal File Number: 18-024
Date of Offense: January 10, 2018
Date of Indictment: January 19, 2018
Date of Arraignment: January 26, 2018
Offense(s) Charged: Count 1: Possession of a Schedule I or II Controlled Substance, a violation of SDCL 22-42-5, a class 5 felony
Count 2: Ingestion of a Schedule I or II Controlled Substance, a violation of SDCL 22-42-5.1, a class 5 felony
Count 3: Possession of Suspended Driver's License, a violation of SDCL 32-12-67, a class 1 misdemeanor
Count 4: Driving With Suspended License, a violation of SDCL 32-12-65.2, a class 2 misdemeanor
Count 5: Failure to Maintain Financial Responsibility, a violation of SDCL 32-35-113, a class 2 misdemeanor
Change of Plea: January 26, 2018
Convicted of: **Count 1: Possession of a Schedule I or II Controlled Substance, a violation of SDCL 22-42-5, a class 5 felony**
Count 4: Driving w/ Suspended License, a violation of SDCL 32-12-65.2, a class 2 misdemeanor
Date of Sentencing: March 23, 2018
Officer: Officer Philip Ryan
Defense Attorney: Sam Nelson
Prosecutor: Erin Handke

Original Case Synopsis:

On January 10, 2018, at approximately 12:23 a.m., Officer Phillip Ryan of the North Sioux City Police Department discovered a vehicle parked at the Whistlestop Casino, the registered owner of which had a suspended Iowa driver's license. Shortly thereafter, Officer Ryan observed the vehicle travelling eastbound on River Drive. He stopped the vehicle and made contact with the driver, identified as Kathy Foster by Iowa Driver's License. Her driver's license proved to be suspended, and she admitted to not having insurance. Foster was arrested and searched incident to arrest. The search turned up a paper containing a substance she bought as methamphetamine. Foster admitted to ingesting the substance orally. She was transported to the Union County Jail where she voluntarily provided a urine sample. The sample tested positive for amphetamine at 3115 ng/mL and Methamphetamine at 19196 ng/mL.

Bond was revoked on March 7, 2018 due to defendant's failure to abstain from using illegal drugs or alcohol, as indicated by drug patch.

Original Sentencing Synopsis:

IT IS HEREBY ORDERED that as to the crime **Ct. 1: Possession of Controlled Drug or Substance, SDCL 22-42-5, a CLASS 5 Felony**, that the Defendant shall serve **5** (five) years in the South Dakota State Penitentiary.

It is further ORDERED that the Court shall SUSPEND the EXECUTION of the **5** (five) years of the Defendant's sentence upon the Defendant satisfying the following terms and conditions:

IT IS FURTHER ORDERED that the Defendant is placed on probation for 2 (two) years. Defendant shall sign the standard probation agreement with court services and shall obey all conditions imposed by court services even though those conditions may not have been specifically set out by the court. Defendant shall execute a wage assignment form if requested to do so by court services.

IT IS FURTHER ORDERED, that the Defendant shall be imprisoned in the Union County Jail for the term of 76 days, with 16 days credit for time served. The 60 days shall be served as follows:

1. 30 days to be served beginning October 1, 2018, at 9:00 o'clock a.m.
2. 30 days to be served beginning January 1, 2019, at 9:00 o'clock a.m.

Subject to the rules of the Union County Jail, the Defendant shall be entitled to work release, release for education or release for chemical dependency treatment or aftercare, with the Defendant to pay all costs of these releases.

IT IS FURTHER ORDERED that Court shall SUSPEND the EXECUTION of sentence upon the Defendant satisfying the following terms and conditions [checked boxes]:

1. Defendant shall obey all federal, state, tribal and local laws and be a good law-abiding citizen in all respects.
2. Defendant shall pay all fines, costs, restitution, and attorney's fees as ordered by the court. Defendant shall work out a payment schedule with court services, and if requested by court services, Defendant shall execute a wage assignment form.
3. Defendant shall not consume nor possess any alcoholic beverages of any kind, and Defendant shall not enter establishments where the sale of alcoholic beverages is the primary business.
4. Defendant shall not consume, purchase, possess, or distribute marijuana, nor controlled drugs or substances of any kind, and Defendant shall not be present where such substances are being used. Defendant shall also not possess drug

paraphernalia. Verification of any prescribed medication must be provided by Defendant to court services.

5. Defendant shall submit to urinalysis, breath or blood testing at any time requested to do so by Defendant's court services officer or law enforcement officer and Defendant shall be responsible for the costs of that testing.
6. Defendant, and Defendant's person, residence, vehicles and personal property, shall be subject to random search and seizure by any court services officer or law enforcement officer upon reasonable suspicion that Defendant is violating any provision of this court's order or of any probation agreement.
7. Defendant shall obtain a chemical dependency evaluation and comply with the evaluator's and the court's services officer's recommendations for treatment and aftercare.
8. Throughout the entire period of probation, Defendant shall enroll in and comply with the terms of the 24/7 Sobriety Program as set up through the Union County Sheriff's office or another approved South Dakota county sheriff's office and submit to testing in the form of twice daily PBTs or by SCRAM equipment, and the Drug Patch, and Defendant shall pay all costs of such programs. Court services may discontinue or restart these programs at their discretion.
9. Defendant shall enroll in and successfully complete counseling, MRT, etc. as required by court services.

IT IS FURTHER ORDERED, that the Defendant shall pay court costs of **\$104.00**; grand jury transcript fees of **\$0**; a Fine of **\$0**; and UA and Testing fees of **\$45.00** to the South Drug Control Fund; to the Union County Clerk of Courts (209 East Main Street, ~ Suite 230, Elk Point, SD 57025); it is further.

IT IS HEREBY ORDERED that as to the crime of **Ct. 4: Driving Under Suspension, SDCL 32-12-65(2), a 2 Misdemeanor**, that the Defendant shall pay court costs of **\$66.00**; grand jury transcript fees of **\$0**; a Fine of **\$100.00**; and UA and Testing fees of **\$0** to the South Drug Control Fund; to the Union County Clerk of Courts (209 East Main Street, ~ Suite 230, Elk Point, SD 57025).

IT IS FURTHER ORDERED, that the Defendant shall pay the fines as it pertains to **4: Driving Under Suspension, SDCL 32-12-65(2), a 2 Misdemeanor** within **6 (six)** months from the date of sentencing which will be 5:00 on September 23, 2018.

IT IS FURTHER ORDERED, that the Defendant shall pay the Defendant's Court-appointed attorney's fees of \$272.60 directly to the Union County Auditor, (209 East Main Street,

~ Suite 200, Elk Point, SD 57025). It is further ORDERED that Union County is awarded a Judgment for said Court Appointed Attorney Fees in this matter.

Criminal History:

This is Kathy Foster's first career felony conviction. Foster has a pending class 5 felony offense for the ingestion of a controlled substance in Union County.