**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**In Case No. 2008-0100, State of New Hampshire v. Kenneth Haley, the court on May 1, 2009, issued the following order:**

The defendant, Kenneth Haley, was found by a jury to be guilty of five counts of aggravated felonious sexual assault and five counts of felonious sexual assault. The trial court, however, set aside eight of the verdicts. The State appeals the trial court's order. We affirm.

The parties agree that the trial court in essence granted judgment notwithstanding the verdict (JNOV) to the defendant on the ground that the evidence was insufficient. The question of whether a JNOV is required because of insufficient evidence is a question of law. State v. Spinale, 156 N.H. 456, 464 (2007). On appeal, we objectively review the record to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Id. In doing so, we consider all the evidence and all reasonable inferences therefrom in the light most favorable to the State. See id. However, our review does not consist merely of a search for any evidence of guilt – "the search for sufficient evidence involves an evaluation of the evidence to determine whether a 'reasonable' jury could have found guilt beyond a reasonable doubt." Id. (brackets and quotation omitted).

Prior to trial, the trial court granted a bill of particulars and required the State to prove as an element of each charge that the assaults occurred within the time frame specified in each indictment. Of the eight charges at issue, one alleged an assault occurring between July 16 and July 31, 1994, three alleged assaults occurring between August 1 and August 15, 1994, and four alleged assaults occurring between August 16 and August 31, 1994. It is undisputed on appeal that the State was required to prove that the alleged assaults occurred within the specified time frames beyond a reasonable doubt.

For the reasons set forth in the trial court's order, we affirm. While the victim testified that the defendant sexually assaulted her repeatedly between the end of June and the beginning of September in 1994, no rational juror could have found that the specific acts alleged in the indictments at issue occurred within the time periods alleged beyond a reasonable doubt. The victim testified that she and the defendant were alone together at least once a week during the summer of 1994, and that "something happened" between them on each occasion. She testified that at first they kissed, but thereafter the defendant would "teach" her a new sex act every week or two. Although the victim was able to testify that certain acts occurred during the month of August, for example, she

was unable to differentiate between the time periods of August 1-15 and August 16-31.

The State argues that the jury could have found that the sex acts cumulated, relying upon the victim's testimony that when the defendant would teach her something new, the "other things" would not stop. While we agree that the evidence supports a finding that the defendant did not abandon one act after introducing a new one, we do not agree that the evidence supports a finding that on each occasion, every sex act that had been "taught" to the victim as of that date occurred. While there may well be sufficient evidence to find that all of the alleged sexual acts occurred during the summer of 1994, and to find that sexual acts of some sort occurred during each of the alleged time frames, no rational juror could have found that the specific alleged acts occurred during the specific time frames alleged in the indictments.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,**
**Clerk**