

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2008-0249, State of New Hampshire v. Patrick Eschenbrenner, the court on February 4, 2009, issued the following order:

The defendant, Patrick Eschenbrenner, appeals his convictions for aggravated felonious sexual assault. He argues that the State failed to present sufficient evidence that he intentionally touched the victim's genitalia and that he engaged in a pattern of conduct for a period of two months or more. We affirm.

In a challenge to the sufficiency of the evidence, the defendant must prove that no rational trier of fact, viewing the evidence in the light most favorable to the State, could have found guilt beyond a reasonable doubt. State v. Pepin, 156 N.H. 269, 280 (2007). We examine each evidentiary item in the context of all of the evidence. Id. When the evidence is solely circumstantial, it must exclude all rational conclusions except guilt. Id. Under this standard, we still consider the evidence in the light most favorable to the State and examine each evidentiary item in context, not in isolation. Id.

The defendant first argues that the State failed to present sufficient evidence of his mens rea. He argues that the State was required to prove that he intentionally touched the victim's genitalia for sexual gratification. The indictments charged the defendant with committing acts of "intentionally touching the genitalia of [the victim] under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification." The language of the indictments mirrors the language of RSA 632-A:2, II (1996) (amended 1999). The statute does not require that the State prove that the defendant intentionally touched the victim's genitalia for sexual gratification but rather that the circumstances under which he did so could be construed to be for that purpose.

The evidence in this case included testimony by the victim that: (1) during the summer of her ninth birthday, she went to her grandmother's home when her mother worked; (2) she went to the defendant's home to play with his children when she was at her grandmother's home; (3) the defendant tickled her "like every time I went there"; (4) he would tickle her in her "private areas"; (5) he would tickle her over her shorts and then "eventually he started going under"; and (6) one time he went under her underwear and touched her and then told her "not to tell anybody because I'd get in trouble." Construed in the light most favorable to the State, this evidence was sufficient to establish that the defendant intentionally touched the victim's genitalia under circumstances that could

reasonably be construed as being for the purpose of sexual arousal or gratification. See id.

The defendant also argues that the State failed to present sufficient evidence that he engaged in a pattern of sexual assault for more than two months. See RSA 632-A:2, III (2007); RSA 632-A:1, I-c (2007). The victim testified that the assaults began in the summer of 1998, that she reported the assaults to her mother who contacted the police and that the defendant assaulted her one more time in 1999. The victim's mother confirmed that she reported the assaults; testimony was also presented that the report was received in October 1998. From this evidence the jury could have concluded that the assaults took place over a period of more than two months. See State v. Giles, 140 N.H. 714, 716 (1996) (setting forth basis for supreme court's deferential review of jury's determination of witness credibility).

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**