

The order is

Exceptions overruled; judgments on the verdicts.

GRIFFITH, J. did not sit; the others concurred.

Carroll,
No. 6308.

STATE *v.* THOMAS ELLIS.

November 30, 1972.

Warren B. Rudman, attorney general, and *W. Michael Dunn*, assistant attorney general (*Mr. Dunn* orally), for the State.

William P. Shea, by brief and orally, for the defendant.

PER CURIAM. Defendant was convicted of aggravated assault on one Archie Rowe in violation of RSA 585:22 (supp.). The alleged aggravated assault occurred on the night of August 24, 1969, at the Conway Legion Hall. The defendant excepted to the denial of his motion to dismiss at the close of the State's case, and of his motion to set the verdict aside as being contrary to law and against the weight of the evidence. The sole question before us is the sufficiency of the evidence to sustain a conviction for aggravated assault. The defendant's exceptions were reserved and transferred by the Trial Court (*Keller*, C.J.).

The transcript contains substantial evidence from which a jury could find that defendant made an unprovoked assault on Archie Rowe with his fists and, further that while Rowe was lying in a pool of blood on the floor the defendant kicked him in the face. The jury could find from the evidence that solely as a result of defendant's attack Rowe sustained a fractured jaw, a fractured cheek bone, contusions and abrasions of the head, face, and arms and was admitted to the hospital in an unconscious condition.

"We think we need not labor the point that the jury could find that the attack by the defendant on [the victim] was perpetrated with such extraordinary violence and caused such serious bodily harm that it was an assault of an aggravated nature within the meaning of RSA 585:22." *State v. White*, 105 N.H. 159, 164, 196 A.2d 33, 36 (1963); *State v. Lavallee*, 104 N.H. 443, 189 A.2d 475 (1963).

Defendant's exceptions overruled.

Cheshire,
No. 6386

JAMES C. HOBART, AS CITY MANAGER OF
THE CITY OF KEENE

v.

ROBERT M. DUVAL, LABOR COMMISSIONER & a.

November 30, 1972.

Charles H. Morang, city attorney, by brief and orally, for the plaintiff.