

400-02, 213 A.2d 712, 718 (1965). Otherwise, the public confidence in such corporations could be undermined if they failed to provide adequate coverage, especially since as non-profit institutions, they exist solely for the benefit of the subscribers. Brown, *Rule Making by Adjudication in Rate-Making Proceedings – Some Notes on the Regulation of Blue Cross*, 604 Ins. L.J. 264, 268-69 (1973). However, we agree with the plaintiff that the supplemental orders 1, 2 and 3 are defective for the same reasons that the order for a ten-day reserve failed, namely that the commissioner has neglected to specify the facts underlying the orders and the record itself does not disclose any evidence other than vague unsubstantiated remarks in their support.

We do not find it necessary to review the May 14, 1973 recommendations a, b and c in view of the fact that they have no legal effect and merely represent the precatory concerns of the department. See K. Davis, *Administrative Law Text* §21.04 (3d ed. 1972).

Remanded.

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

Hillsborough
No. 6712

STATE OF NEW HAMPSHIRE V. GARY MACDONALD

December 28, 1973

Warren B. Rudman, attorney general, and Thomas D. Rath, assistant attorney general (Mr. Rath orally), for the State.

Leonard & Harkaway and William J. Groff (Mr. Groff orally) for the defendant.

KENISON, C.J. The defendant was indicted for aggravated assault. At trial the primary defense was an alibi. The jury was instructed that it could find the defendant guilty of simple assault (RSA 585:21 (Supp. 1972)), or aggravated assault (RSA 585:22 (Supp. 1972)), or bring in a verdict of not guilty. The resulting verdict of the jury was guilty of aggravated assault. The defendant's motion to set aside the verdict because not supported by sufficient evidence was denied by the Court (Cann, J.) who reserved and transferred the defendant's exceptions thereto.

The evidence disclosed that the defendant entered the home of the victim, Louis Senecal, shortly before midnight, went to his bedroom where Senecal was asleep, attacked him, choked him, punched him in the head and face and kicked him in the chest while he was on the floor. The victim received from the defendant bruises under his left armpit, and to his shoulder, his right knee and lower leg. The State police trooper testified that there was blood flowing from a laceration on his left cheek and his shirt was ripped off his back, hanging from one arm. Witnesses testified that the victim was pale, frightened and in shock.

A startling, unprovoked attack by a stranger against one sleeping in his own bedroom late at night accompanied by the violence that existed in this case constituted more than simple assault and justified the jury in finding that it was an aggravated assault. *State v. Ellis*, 112 N.H. 419, 297 A.2d 669 (1972). The fact that the defendant did not receive medical attention is not conclusive evidence that the assault was not of an aggravated nature. While the injuries in this case were not as serious as those in *State v. Lavallee*, 104 N.H. 443, 189 A.2d 475 (1963), and *State v. White*, 105 N.H. 159,

196 A.2d 33 (1963), they were perpetrated violently by dangerous means and under circumstances sufficient to justify a finding of an aggravated assault. *State v. Skillings*, 98 N.H. 203, 97 A.2d 202 (1953); Annots., 33 A.L.R.3d 922 (1970), 87 A.L.R.2d 926 (1963); see *State v. Brough*, 112 N.H. 182, 184, 291 A.2d 618, 620 (1972).

Defendant's exceptions overruled.

All concurred.

Haverhill District Court
No. 6735

STATE OF NEW HAMPSHIRE V. RICHARD A. GREENWOOD

December 28, 1973

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

Edes & Elliott (*Mr. Louie C. Elliott, Jr.* orally) for the defendant.