

Hillsborough
No. 82-019

THE STATE OF NEW HAMPSHIRE

v.

EDWIN W. PAGE, II

June 11, 1982

Gregory H. Smith, attorney general (*Michael A. Pignatelli*, assistant attorney general, on the brief), by brief for the State.

James E. Duggan, of Concord, appellate defender, by brief for the defendant.

MEMORANDUM OPINION

Defendant asserts that this court erred in the case of *Novosel v. Helgemoe*, 118 N.H. 115, 384 A.2d 124 (1978), when it concluded that sanity should not be treated as an element of crime to be proved by the State beyond a reasonable doubt, but that insanity should be an affirmative defense to be proved by the defendant by a preponderance of the evidence. *Id.* at 126-27, 384 A.2d at 130-31. The jury in this case found the defendant to be sane and convicted him of kidnapping and aggravated felonious sexual assault. After sentencing by *Contas, J.*, defendant brought this appeal, asserting that only the legislature could make the insanity defense an affirmative one.

We see no reason to reexamine our holding in *Novosel*.

Affirmed.