

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2011-0859, State of New Hampshire v. Priscilla M. Protasowicki, the court on September 25, 2013, issued the following order:

Having reviewed the parties' briefs and the record submitted on appeal, we conclude that a formal written opinion is unnecessary in this case. The defendant, Priscilla M. Protasowicki, appeals her conviction for simple assault following a bench trial in the 3rd Circuit Court – Conway District Division (Albee, J.). See RSA 631:2-a (2007). She argues that the trial court erred when it denied her motions to dismiss based upon RSA 353:3-c (2009). We affirm.

The trial court could have found the following facts. The defendant is an employee of a motel in Jackson (the Motel). The victim, Christopher Stewart, and his wife reserved and prepaid for a room at the Motel for the weekend beginning on March 19, 2011. They arrived at the Motel in the early afternoon of March 19, hoping to check-in to their room slightly early. When they learned that they could not, they asked whether they could “at least see the view from the room.” The victim and his wife observed that the defendant then became “agitated.” The victim and his wife then asked the defendant whether the Motel’s hot tub was operable. The defendant told them that the hot tub was not working and that its use was not included in their reservation. Observing the defendant “getting more and more irate,” they informed the defendant that they wanted to cancel their reservation and obtain a refund. The defendant became very upset and told the victim and his wife that she intended to call the police. The victim’s wife then left the Motel. As the victim began to leave, the defendant “grabbed on to [his] back aggressively” and pushed him out of the Motel’s entrance. The defendant was later arrested and charged with one count of simple assault. Both before trial and after the close of the evidence, the defendant moved to dismiss the charge based upon RSA 353:3-c. The trial court denied those motions and found the defendant guilty. This appeal followed.

On appeal, the defendant argues that RSA 353:3-c constitutes a defense that the State had to disprove beyond a reasonable doubt, which, she contends, the State failed to do. Cf. State v. Marchand, 164 N.H. 26, 31 (2012) (“With regard to provocation and self-defense, the State bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense or was not adequately provoked.”). Although the State counters that the defendant failed to preserve this argument for our review, for the purposes of this appeal, we assume, without deciding, that the argument is preserved. We assume also that RSA 353:3-c constituted a defense that the State had to

disprove beyond a reasonable doubt. The defendant does not assert that the trial court failed to treat her defense as one that the State must disprove beyond a reasonable doubt. Rather, she contends that the evidence does not support the trial court's presumed finding that the State met its burden of disproving her defense beyond a reasonable doubt. We conclude that there was sufficient evidence to negate the defendant's defense under RSA 353:3-c.

"To prevail upon a sufficiency of the evidence challenge, the defendant must prove that no rational trier of fact, viewing all of the evidence and all reasonable inferences from it in the light most favorable to the State, could have found guilt beyond a reasonable doubt." State v. Trebian, 164 N.H. 629, 632 (2013).

The defendant first argues that there was insufficient evidence to negate her defense under RSA 353:3-c, I. RSA 353:3-c, I, provides, in pertinent part: "All hotel keepers and all persons keeping public lodging houses or cabins may remove or cause to be removed from such establishment any guest remaining in a rental unit in violation of RSA 353:3-b or RSA 353:3-bb by notifying such guest that the establishment no longer desires to entertain him or her and requesting that the guest immediately leave." (Emphases added.). RSA 353:3-c, I, also provides that "[a]ny guest who remains or attempts to remain in a rental unit after being so requested to leave shall be guilty of a violation." For the purposes of RSA 353:3-c, I, "the term 'rental unit' shall include residential property rented for one month or less."

Even if we assume, without deciding, that RSA 353:3-c, I, allows the use of force and that the Motel's lobby constituted a "rental unit," we conclude that there was sufficient evidence from which the trial court could have found, beyond a reasonable doubt, that the victim did not violate either RSA 353:3-b (2009) or RSA 353:3-bb (2009). RSA 353:3-b prohibits a guest from "remain[ing] in a rental unit beyond the departure time and date . . . recorded at registration." RSA 353:3-bb, I(a) allows a hotel keeper to "refuse or deny any accommodations" to "[a]ny person who is unwilling or unable to pay" for them. There was evidence from which a reasonable fact finder could have found that the victim did not remain in the lobby "beyond the departure time and date" recorded at registration. There was also evidence from which a reasonable fact finder could have found that the victim was willing to pay for the room that he reserved. Viewed in the light most favorable to the State, the evidence was sufficient to support a finding that the victim paid for the room in advance. It was also sufficient to support a finding that, although the victim requested that the defendant refund his money, the defendant did not do so. In other words, there was sufficient evidence to support a finding that although the victim may have subjectively been unwilling to pay for the room, he, in fact, paid for it. Therefore, he did not violate 353:3-bb, I(a). Accordingly, we conclude that there was sufficient evidence to negate the defendant's defense under RSA 353:3-c, I.

The defendant next argues that there was insufficient evidence to negate her defense under RSA 353:3-c, II, which provides, in pertinent part:

All hotel keepers and persons keeping public lodging houses, cabins, or any rental unit may immediately remove or cause to be immediately removed by any law enforcement officer of this state, any guest who willfully denies other guests their right to quiet enjoyment of their tenancies, including but not limited to any guest who . . . [d]isturbs, threatens, or endangers other guests [or who] [v]iolates any rule of the hotel, lodging house, or campground that is posted in a conspicuous place and manner at the guest registration desk and in each guest room.

RSA 353:3-c, II(a), (d).

The defendant asserts that the victim and his wife violated properly posted Motel policies by asking to view their room before checking-in and requesting a refund. She contends that breaking those rules disturbed the quiet enjoyment of other guests. She also argues that the victim's demand for "an immediate refund" caused "a disturbance," which willfully denied the quiet enjoyment of other Motel guests. Accordingly, she argues, she was justified in forcibly ejecting the victim from the Motel.

Even if we assume, without deciding, that RSA 353:3-c, II, allows the use of force, we conclude that there was sufficient evidence, viewed in the light most favorable to the State, to negate this defense. There was evidence from which a reasonable fact-finder could have found, beyond a reasonable doubt, that the victim did not, in fact, violate any properly posted Motel policies when he and his wife asked to view their room before checking-in and for a refund. There was also evidence from which a reasonable fact-finder could have found, beyond a reasonable doubt, that the quiet enjoyment of other Motel guests was not disturbed by the victim's conduct.

For all of the above reasons, therefore, we hold that the trial court did not err when it denied the defendant's motion to dismiss under RSA 353:3-c, I, and II. To the extent that the defendant contends the trial court erred when it failed specifically to find that the elements of her defenses under RSA 353:3-c, I, and II were disproved beyond a reasonable doubt, she has failed to demonstrate that she ever argued to the court that it erred in this regard. Accordingly, the record does not demonstrate that she preserved this issue for our review. See State v. Wood, 150 N.H. 233, 236 (2003).

Affirmed.

DALIANIS, C.J., and HICKS, CONBOY, LYNN and BASSETT, JJ., concurred.

**Eileen Fox,
Clerk**