STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

DOCKET NO. Pen-25-322

STATE OF MAINE

APPELLEE

v.

JAMES WELSH

APPELLANT

ON APPEAL FROM THE PENOBSCOT COUNTY UNIFIED CRIMINAL DOCKET, BANGOR, ME

BRIEF FOR APPELLEE

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STATEMENT OF THE FACTS

On January 20, 2025, A.T. lived in an apartment in Bangor and Mr. Welsh, her neighbor, lived in an apartment across the hall. (*See* Trial Tr. 6 (June 16, 2025).) Mr. Welsh's apartment door was directly across the hall from A.T.'s apartment door. (*See* Trial Tr. 22–23.) Both apartment doors were located immediately inside the building's exterior door, with Mr. Welsh's apartment on the left and A.T.'s apartment on the right. (*See* State's Ex. 4 at 01:08 to 01:14.)[1] The hallway inside the building was shared by all of the building's residents, including those who lived in the upstairs apartments. (*See* Trial Tr. 8–9.)

At about 5:30 am on January 20, 2024, A.T. attempted to leave for work. (*See* Trial Tr. 6.) A.T. opened her apartment door and saw Mr. Welsh standing in the hallway between their apartments, very close to her apartment door. (*See* Trial Tr. 6–7.) Mr. Welsh, who was completely naked, had his back to A.T.'s apartment. (*See* Trial Tr. 7.) A.T. shut her apartment door and called the police. (Trial Tr. 7.)

Officer Nathaniel Alvarado of the Bangor Police Department responded to the scene. (*See* Trial Tr. 11–12.) Officer Alvarado walked up to the building's

[1] State's Exhibit 4, which was admitted at trial, was Officer Nathaniel Alvarado's body camera footage from when he responded to this incident.

front door, which had a large glass pane. (*See* Trial Tr. 21; State's Ex. 4 at 00:54 to 01:08.) Officer Alvarado could see through the front door that Mr. Welsh's apartment door was open and Mr. Welsh was standing inside his apartment, completely naked. (*See* Trial Tr. 21; State's Ex. 4 at 01:07 to 01:11.) Officer Alvarado opened the front door, which was unlocked, and instructed Mr. Welsh to get dressed. (*See* Trial Tr. 22; State's Ex. 4 at 01:12 to 01:14.) Mr. Welsh complied. (*See* Trial Tr. 22; State's Ex. 4 at 01:14 to 01:46.) When asked why he was naked, Mr. Welsh stated, "I was just getting a little hot." (State's Ex. 4 at 02:22 to 02:25.) Officer Alvarado issued Mr. Welsh a summons for the offense of indecent conduct. (Trial Tr. 23.)

On February 1, 2024, the State filed a complaint charging Mr. Welsh with indecent conduct (Class D), 17-A M.R.S. § 854(1)(A)(4).[2] (A. 3, 21.) A jury-waived trial was held before the trial court (Penobscot County, *Mallonee, J.*) on June 16, 2025. (Trial Tr. 1; A. 7.) After the State presented its case in chief, Mr. Welsh moved through counsel for judgment of acquittal pursuant to M.R.U. Crim. P. 29(a), arguing that the apartment building was a private place and

[2] The State charged Mr. Welsh with indecent conduct pursuant to 17-A M.R.S. § 854(1)(A)(4), alleging that he committed the offense of indecent conduct under section 854(1)(A)(2) and that at the time of the offense, he had two prior convictions for indecent conduct. The evidence offered at trial to prove the existence of Mr. Welsh's prior convictions and the trial court's findings relating to those prior convictions are not at issue in this appeal.

therefore the State had not met its burden of proving that the offense occurred in a public place, as alleged in the complaint. (*See* Trial Tr. 29-30.) The trial court ruled: "I understand the motion to acquit to be based on an argument that the space between these two apartments was not a public place and that the events that occurred, about which both witnesses testified, took place within that space. On that basis, I deny the motion." (Trial Tr. 32–33.) The trial court further stated:

> I noted in the officer's video that there was an interior lock on Mr. Welsh's door. I didn't pay as close attention, but I think there was one on A.T.'s door as well. It was clear that the individual security of each residence was maintained by those individual locks and that the hallway in between was for both private and public purposes – visitors, delivery people, visiting police officers. So I think that it is public for purposes of the statute and therefore, the motion will be denied.

(Trial Tr. 33.) The defense then rested without calling any witnesses. (*See* Trial Tr. 32–35.) After hearing closing arguments, the trial court found Mr. Welsh guilty of the offense of indecent conduct. (*See* Trial Tr. 35–40.)

STATEMENT OF THE ISSUES PRESENTED

I. **Whether the trial court erred in its interpretation of 17-A M.R.S. § 854(1)(A)(2) by determining that the shared hallway was a "public place."**

II. **Whether there was sufficient evidence presented at trial for the trial court to find that the State proved each element of the charged offense beyond a reasonable doubt.**

ARGUMENT

I. The trial court correctly interpreted 17-A M.R.S. § 854(1)(A)(2) by determining that the shared hallway was a "public place."

The Appellant challenges the trial court's interpretation of the term "public place" as used in the relevant statute, 17-A M.R.S. § 854(1)(A)(2), both in general and specifically insofar as that interpretation informed the court's denial of Mr. Welsh's motion for judgment of acquittal.

Statutory interpretation is a question of law that this Court reviews de novo. *See State v. Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96. This Court first looks to the plain meaning of the statutory language to determine the Legislature's intent, "avoiding absurd, illogical, or inconsistent results." *State v. Conroy*, 2020 ME 22, ¶ 19, 225 A.3d 1011. This Court considers the language of "the relevant provision in the context of the entire statutory scheme to generate a harmonious result." *State v. Severy*, 2010 ME 126, ¶ 9, 8 A.3d 715. "Unless the statute itself discloses a contrary intent, words in a statute must be given their plain, common and ordinary meaning, such as [the average person] would usually ascribe to them." *Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96 (alteration in original) (quotation marks omitted). "Only if the language of the statute is ambiguous will [this Court] examine the legislative history or other external indicia of legislative intent." *Id.* "A statute is ambiguous if it is

reasonably susceptible to different interpretations." *State v. Legassie*, 2017 ME 202, ¶ 13, 171 A.3d 589 (quotation marks omitted).

A. The term "public place" as used in 17-A M.R.S. § 854(1)(A)(2) is not ambiguous.

The relevant statute in this case is not ambiguous. Section 854 provides in relevant part:

> **1.** A person is guilty of indecent conduct if:
>
> **A.** In a public place:
>
> **(2)** The actor knowingly exposes the actor's genitals under circumstances that in fact are likely to cause affront or alarm.

17-A M.R.S. § 854(1)(A)(2). Subsections (1)(B) and (1)(C) both begin with the phrase "[i]n a private place," thereby distinguishing that element in those offenses from the "public place" element of subsection (1)(A). *See id.* § 854(1)(B)-(C). The statute states that the term "public place," for purposes of section 854, "includes, but is not limited to, motor vehicles that are on a public way." *Id.* § 854(2). Subsection (1)(C), in contrast to subsection (1)(A), states that a person commits the offense of indecent conduct where "[i]n a private place, the actor exposes the actor's genitals with the intent that the actor be seen by another person in that private place under circumstances that the actor knows are likely to cause affront or alarm." *Id.* § 854(1)(C). The statute

provides that "[i]t is a defense to prosecution under subsection 1, paragraph C, that the other person previously lived or currently is living in the same household as the actor." *Id.* § 854(2-A).

By asserting that the shared hallway is a "private place," the Appellant essentially argues that the State charged this offense under the incorrect statutory provision, and instead should have charged Mr. Welsh with the offense of indecent conduct under 17-A M.R.S. § 854(1)(C). However, that interpretation is inconsistent with the plain language of the statute and would lead to absurd, illogical, or inconsistent results.

First, the plain language of the statute indicates that a "public place" can include privately owned property, including motor vehicles that are located on public ways. Many motor vehicles are privately owned, and the statute does not differentiate between motor vehicles owned by individuals and those owned by various levels of government. Therefore, the Appellant's argument that the term "public property" should be defined as publicly-*owned* property must fail.[3]

[3] Additionally, the Appellant's proposal of a definition supplied by a legal dictionary is not conducive to construing the "plain, common, and ordinary meaning" of the term "public place," as this Court must attempt to do in determining whether the statutory language is ambiguous. *See Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96. Although this Court does "frequently look to dictionary definitions" when "determining the plain meaning of statutory language in the absence of a statutory definition," this Court typically consults dictionaries that contain general definitions,

Second, it would be absurd to construe a shared hallway in an apartment building as a "private place," requiring the State to have charged this offense under section 854(1)(C) instead of under section 854(1)(A). The statute provides a defense to prosecution under subsection (1)(C), which applies if the actor and the other person are formerly or currently members of the same household. That language establishes the type of "private place" that is contemplated by the statute: a space shared by members of the same household, which implies a singular residence. It would be illogical to require indecent conduct that takes place in a shared hallway of an apartment building to be charged as having occurred within a "private place" where the majority of people with access to that hallway—such as tenants of the various apartments, tenants' guests, delivery persons, and other visitors—could very rarely be argued to be members of the same household. With respect to the factual circumstances present in this case, for example, it would be unreasonable to argue that tenants of separate apartments located within the same building are living in the "same household." Further, within the context of section 854, the terms "public place" and "private place" are clearly meant

instead of specialized legal dictionaries. *Id.* ¶ 16; *see, e.g.*, *State v. Beaulieu*, 2025 ME 4, ¶ 19 n.6, 331 A.3d 280; *State v. Sloboda*, 2020 ME 102, ¶¶ 8–10, 237 A.3d 848; *State v. Hall*, 2019 ME 126, ¶ 18, 214 A.3d 19.

to encompass all locations in which this offense could be committed. There is no indication that any other third category of location might exist in which behavior that would otherwise constitute indecent conduct is not considered criminal.

Although the term "public place" is not explicitly defined within section 854, the use of that term and the term of "private place" within the context of the statute is sufficient to establish that the term "public place" is not ambiguous. This Court has previously determined that a particular term was unambiguous based on the plain language of a statute, even when that term was not defined by statute. *See Marquis*, 2023 ME 16, ¶ 15, 290 A.3d 96 (concluding that the term "other official" as used in the provision at issue was unambiguous although it was "not defined by statute" and this Court "[had] never interpreted its meaning").

When considered within the context of the statutory scheme and given its plain, ordinary meaning, it is clear that the Legislature intended for the term "public place" to include a shared hallway such as the hallway in this case. It would not be reasonable to interpret the statute as requiring the conduct alleged in this case to be charged as having occurred in a "private place," and it would be even less reasonable to assert that although the

Legislature has criminalized "indecent conduct" in both public and private places, shared hallways of apartment buildings somehow do not fit into either category.

B. Even if this Court determines that the term "public place" as used in the relevant statute is ambiguous, an examination of external indicia of legislative intent reveals that the trial court correctly interpreted the statute by determining that the shared hallway was a "public place."

The Appellant argues that section 854 is ambiguous because the term "public place" is "reasonably susceptible to competing definitions or, at least, uncertainty about the scope of its applicability." (Blue Br. 16.) On the other hand, in the very next sentence the Appellant argues that notwithstanding the ambiguity of the term "public place," the shared hallway cannot possibly be construed as a public place because it is so clearly a private place. This assertion contradicts the Appellant's first proposition; "public place" and "private place" are opposites within the context of section 854, and one term cannot be unambiguous without giving clear meaning to the other.

This Court has previously reviewed the legislative history of section 854, beginning with the recognition that "[i]ndecency statutes can be traced to the common law criminal offense of 'public indecency.'" *Legassie*, 2017 ME 202, ¶ 17, 171 A.3d 589. Maine's statute defining the offense of indecent

conduct, 17-A M.R.S. § 854, was originally titled "public indecency" when it was enacted in 1975. P.L. 1975, ch. 499, § 1 (effective Mar. 1, 1976). The provisions of the original statute were substantially similar to subsections (1)(A)(2) and (1)(B) that are effective today. Section 854(2), as originally enacted, was almost identical to that subsection in the current statute, establishing that "public place" included motor vehicles located on public ways.[4]

The Legislature changed the title of the offense to "indecent conduct" in 1995. *See* P.L. 1995, ch. 72, § 2 (effective Sept. 29, 1995). Simultaneously, the Legislature added subsection (1)(C),[5] "thereby extend[ing] the reach of the statute from exposures by an actor visible to the outside domain—from a public place or *another* private place—to exposures in the private domain where the actor and the victim were in the *same* private place." *Legassie*, 2017 ME 202, ¶ 18, 171 A.3d 589. This Court has previously noted that "[l]egislative testimony . . . suggests that the Legislature intended to criminalize an in-person exposure that would otherwise escape prosecution because the actor

[4] Originally, this provision read: "For purposes of this section 'public place' includes, but is not limited to, motor vehicles *which* are on a public way." P.L. 1975, ch. 499, § 1 (emphasis added).
[5] Section 854(1)(C) provides that a person is guilty of the offense of indecent conduct if: "In a private place, the actor exposes the actor's genitals with the intent that the actor be seen by another person in that private place under circumstances that the actor knows are likely to cause affront and alarm." 17-A M.R.S. §854(1)(C).

and the victim were in the same private place," and"[t]he legislative record further indicates that the 'affront or alarm' requirement was included [in subsection (1)(C)] to avoid criminalizing consensual private exposures." *Id.* The 1995 legislation also enacted subsection (2-A), which states, "It is a defense to prosecution under subsection 1, paragraph C, that the other person previously lived or currently is living in the same household as the actor." *See* P.L. 1995, ch. 72, § 2.[6]

The legislative history illustrates that the Legislature intended for the offense of indecent conduct to be prosecuted whether it occurs in a "public place" or "private place." These two terms encompass all possible locations in which this offense could be committed; it is unreasonable to assert that some spaces, such as the shared hallway at issue in this case, are simply not included within the contemplation of the statute. Further, the legislative history surrounding the 1995 amendment emphasizes, as discussed above, that the nature of a "private place" as used in section 854(1)(C) is not consistent with the shared hallway at issue in this case. The trial court therefore correctly interpreted the term "public place" to include the shared

[6] Subsequent amendments to section 854 are not relevant to the substance of this appeal.

hallway, and did not err in denying the Appellant's motion for judgment of acquittal on that basis.

II. There was sufficient evidence presented at trial for the trial court to find that the State proved each element of the charged offense beyond a reasonable doubt.

The Appellant contends specifically that there was insufficient evidence for the trial court to find, beyond a reasonable doubt, that the indecent conduct in this case occurred in a public place. The Appellant also contends that the evidence regarding the "public place" element was insufficient to survive a motion for judgment of acquittal, and that therefore the trial court erred in denying its motion.

The Appellant's argument as to sufficiency of the evidence relies principally on the Appellant's position regarding the statutory interpretation of the term "public place." If this Court were to accept the Appellant's proposed interpretation of the term "public place," it would logically follow that the evidence would be insufficient to prove the "public place" element beyond a reasonable doubt. However, if this Court were to affirm the trial court's interpretation of the statute as urged by the discussion above, then the Appellant's argument regarding the sufficiency of the evidence would necessarily fail.

The Appellant raises two additional points as to the sufficiency of the evidence, one relating to the "exposure" element of the offense and the other relating to the trial court's factual findings. Neither of these observations warrant vacation of the trial court's judgment in this matter.

First, the Appellant contends that there was no proof that Mr. Welsh's genitals were exposed to A.T. . The evidence presented at trial established that A.T. saw Mr. Welsh standing in the hallway outside her apartment with his back to her, but she observed that he was completely naked. Mr. Welsh's genitals were therefore completely exposed. Officer Alvarado's testimony and body camera footage from when he responded to the apartment building and observed the defendant, who was standing fully naked in his apartment with the door open, from the front, corroborated A. 's testimony. The trial court found that "clearly [Mr. Welsh's] genitals were exposed" under "circumstances that caused affront and alarm, not because A.T. saw [Mr. Welsh's genitals], but because she was worried that they would be exposed when Mr. Welsh turned around or if he turned around once she opened the door, which would be a natural consequence." (Trial Tr. 40.) Although the trial court noted that this argument was "statutorily interesting," it did not further discuss or resolve that issue.

As outlined above, the offense as charged requires proof that "[t]he actor knowingly expose[d] the actor's genitals under circumstances that in fact [were] likely to cause affront or alarm." 17-A M.R.S. § 854(1)(A)(2). This provision does not require the State to allege a particular victim as an element of the crime, nor does it require the State to prove that a particular victim actually saw the actor's genitals. Further, this provision requires the State to prove only that the exposure be "under circumstances . . . likely to cause affront or alarm," not that the exposure did in fact cause affront or alarm to any particular victim. *See State v. Smith*, 437 A.2d 639, 641 (Me. 1981) (holding that a complaint charging "public indecency" under 17-A M.R.S. § 854(1)(A)(2) was sufficient when it "allege[d] that defendant exposed himself on a public thoroughfare to passerby," noting that "[t]he indiscriminate display of one's penis to members of the traveling public is likely to prove offensive" but rejecting defendant's "assert[ion] that the names of the passersby should have been alleged to allow him to prepare his defense"). Therefore, as the trial court found, the evidence was sufficient to prove the "exposure" element of the offense beyond a reasonable doubt.

Second, the Appellant challenges the trial court's finding that Mr. Welsh was guilty of the offense of indecent conduct, which was based on the following reasoning:

> I am finding that the offense took place when the officer arrived. To stand in your doorway with the doorway open, facing the public entrance to a building, under circumstances where a person can come in that door and, in fact, when a person can be expected to come to that door, like the police officer who came, constitutes exposing your genitals in a public place.

(Trial Tr. 40.) The trial court also found that the Officer Alvarado "felt affronted, if not alarmed" during his interaction with Mr. Welsh. (Trial Tr. 40.)

Although the trial court described Officer Alvarado's first sighting of Mr. Welsh as being under the circumstances of Mr. Welsh standing in his "doorway," there is no dispute that Mr. Welsh was physically inside his apartment, albeit with the door open, when Officer Alvarado first made contact with him. (*See* State's Ex. 4 at 01:08 to 01:12.) The Appellant argues that Mr. Welsh's apartment was a private place, not a public place, and therefore Officer Alvarado's interaction with Mr. Welsh did not satisfy the elements of the offense as charged.

Notwithstanding the trial court's choice of phrasing regarding its determination that "the offense took place when the officer arrived," at that point the trial court had already found that the State met its burden of proof

as to each element of the offense charged. As noted above, the trial court found that Mr. Welsh's genitals were exposed under circumstances that were not only likely to cause affront or alarm, but did in fact cause A.T. affront and alarm. (*See* Trial Tr. 40.) As discussed above, the evidence presented at trial was sufficient to support those findings of fact. The trial court stated that Mr. Welsh's presence in the hallway while naked was "a purposeful act." (Trial Tr. 39.) Although the trial court did not explicitly find that Mr. Welsh "knowingly" exposed his genitals, the evidence presented at trial supports such a finding. For example, during his interaction with Officer Alvarado, Mr. Welsh acknowledged that he was naked, got dressed when directed to do so, and provided a reason when asked why he was naked. (*See* State's Ex. 4 at 01:14 to 02:25.) Finally, the Court determined that the hallway between A.T. 's apartment and Mr. Welsh's apartment was a public place within the meaning of section 854(1)(A). (*See* Trial Tr. 33.) The evidence presented at trial was sufficient to support the trial court's findings as to each element of the offense as charged, and this Court should therefore affirm the conviction.

CONCLUSION

Based on the plain language of 17-A M.R.S. § 854(1)(A), the term "public place" is unambiguous and the trial court correctly construed the shared hallway at issue in this case to be a "public place" within the meaning of the statute. Further, there was sufficient evidence presented at trial to support a finding that the State met its burden to prove every element of the charged offense beyond a reasonable doubt. The conviction should therefore be affirmed.

Respectfully submitted,

Dated: December 1, 2025

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CERTIFICATE OF SERVICE

As required by M.R. App. P. 7(c), I certify that I have this 1st day of December, 2025, sent a copy of this brief to the Clerk of the Law Court and Attorney Zachary Smith via email. Upon acceptance by the Clerk of the Law Court, I will deliver ten printed copies to the Law Court and two printed copies to Attorney Zachary Smith, Counsel for the Appellant, at P.O. Box 1049, 61 Main Street, Suite 21/23, Bangor, ME 04401.

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