State of Maine	Supreme Judicial Court sitting as the Law Court Docket no. Pen-25-322
State of Maine, Appellee, v. James Welsh, Appellant.	Appeal from the Penobscot County Unified Criminal Docket in Bangor

Appellant's Brief

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Statement of Facts and Procedural History

Procedural Summary

This case formally began on January 29, 2024, when the State filed a criminal complaint against the Defendant and Appellant ("Welsh"), charging him with indecent conduct. A. 21. After various procedural matters that presumably are not germane to this appeal concluded, the case was decided with a jury-waived trial in Bangor on June 16, 2025. *See* A. 7 – A. 20. The prosecution called two witnesses, A.T., *see* Tr. 5 – 9, and Nathaniel Alvarado, *see*. Tr. 9 – 28. After the prosecution rested, the court (*Mallonee, J.*) denied Welsh's Rule 29 motion for an acquittal. A. 10 – A. 14. The defense rested without calling any witnesses after Welsh decided not to testify. Tr. 33 – 35. The court heard arguments from counsel from each side and convicted Welsh of indecent conduct with an oral announcement of his judgment on the record. A. 15 – 20. A sentencing hearing was held on July 7, 2025, and the notice of appeal was filed the same day. A. 8 – 9.

Factual Summary

A.T., Welsh's neighbor, testified that on January 20, 2024, in Bangor she opened the door of her apartment and saw Welsh, a

neighbor, naked in the hallway. Tr. 6 – 7. She testified to seeing only his "back side," Tr. 7, and specified that he was in a "shared hallway" of the building, *id.* She called the police, Tr. 7, and went back inside her apartment, Tr. 8. On cross-examination she testified that she rented this apartment, for which she paid rent to a private landlord. *Id.* She then added details about the building in which this event occurred: the multi-unit building had an exterior door to a common entryway, it had a second floor, the different units had separate doors, and it was set back from the street down a driveway. Tr. 9. Alvarado, an officer with the Bangor Police Department, testified that he responded to A.T. 's call. Tr. 10 – 12. He said he could see through an exterior window to the building after he arrived and observed "Welsh standing completely naked with his hand near his genital area." Tr. 21. On cross-examination he clarified that he never saw Welsh in the hallway and instead saw Welsh through the exterior window while he was inside his apartment and the door to his apartment was open. Tr. 27. Alvarado conceded that as far he knew this was a privately owned building. Tr. 27. He confirmed that after his arrival he had to walk down the driveway to reach the apartment building and that Welsh

and A.T. were the only people he saw when he went into the building. Tr. 28.

Issues Presented for Review

(1) Whether the trial court erred in its interpretation of the indecent conduct statute.

(2) Whether the trial court erred in denying the Defendant's motion for acquittal, which was based on an assertion that the location of the relevant events was private, not public.

(3) Whether the trial court erred in its implicit finding that the relevant events occurred in a public place or otherwise erred in its determination that the facts that it found satisfied the elements of the offense as charged.

Summary of the Appellant's Argument

(1) The trial court erred as a matter of law when it interpreted *public place* for purposes of the indecent conduct statute. This issue, of course, is difficult to segregate from the court's factual findings, but the court's determination that the common area of the apartment building was a public place is unsupported by the methods of statutory interpretation that are the most relevant here.

(2) The trial court erred in this case when it denied Welsh's motion for an acquittal because the unrebutted evidence proved that the relevant events all occurred in a private place, whereas the charge alleged that they occurred in a public place. The State's theory of the case was based on the premise that a privately owned apartment building, to which the public was not invited, constituted a public place for purposes of this statute.

(3) The trial court, acting in its capacity as a fact-finder for a jury-waived trial, erred by finding as fact that the "place" in question was public, not private. This was not simply a failure of the State to produce evidence to prove a necessary element of the charged offense: the finding was plainly counterfactual. And this

was not harmless error because neither of the witnesses' observations could support this conviction. In addition, the court's rationale for its determination that the Defendant's conduct satisfied the elements of the offense relied on a different purportedly public location.

Appellant's Argument

1.1 Indecent Conduct as Charged

1. The three main arguments concern some overlapping roles of the trial court, but this discussion should begin with a review of the indecent conduct statute because it pertains to all three.

2. The statutory unit under which Welsh was charged, which is tracked by the body of the charging instrument, *see* A. 21, reads:

> 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). Welsh was charged as a repeat offender under § 854(1)(A)(4), A. 21, but his prior convictions are not in dispute and the charge otherwise would be identical.

3. The statute does not provide a comprehensive definition of *public place*, and its only guidance is to state that the term "includes, but is not limited to, motor vehicles that are on a public way." § 854(2). The term is not defined by § 2, which defines twenty-

seven other terms for purposes of Title 17-A. This statute as originally enacted did not define the term, either. *See* P.L. 1975, ch. 499, § 1, at 1332 – 1333.

4. The only Law Court case to construe the statute, as far as the undersigned counsel is aware, concerned only whether it "could be used to prosecute an individual for distributing a nude photograph." *State v. Legassie*, 2017 ME 202, ¶ 19, 171 A.3d 589. Of course, that precedent does not provide an answer to the issues raised here.

5. *Public place* has been defined as: "Any location that the local, state, or national government maintains for the use of the public, such as a highway, park, or public building." *Black's Law Dictionary* 1489 (Bryan A. Garner, 12th ed. 2024). The related term *public property* has been defined as "State- or community-owned property not restricted to any one individual's use or possession." *Id.* 1474. *Private property*, in contrast, has been defined as "[p]roperty – protected from public appropriation – over which the owner has exclusive and absolute rights." *Id.* 1474. The most recently published edition of the leading law dictionary when Title 17-A was enacted in 1975 defined *public place* as "[a] place to which

the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private," *et cetera. Black's Law Dictionary* 1394 (Henry Campbell Black, rev. 4th ed. 1968).

1.2 Methods of Statutory Interpretation

6. The interpretation of this statute "is a question of law" that the Law Court reviews on a "de novo" basis. *Legassie* ¶ 13. "In interpreting a statute, [the Court's] single goal is to give effect to the Legislature's intent in enacting the statute." *Dickau v. Vermont Mutual Insurance Co.*, 2014 ME 158, ¶ 19, 107 A.3d 621. The court "discern[s] legislative intent from the plain meaning of the statute and the context of the statutory scheme." *Cobb v. Bd. of Counseling Prof. Licensure*, 2006 ME 48, ¶ 13, 896 A.2d 271. First, the Court looks to language of the statute to see whether it "is plain and unambiguous." *Dickau* ¶ 20. *Ambiguous* means "reasonably susceptible" to more than one interpretation. *Damon v. S.D. Warren Co.*, 2010 ME 24, ¶ 10, 990 A.2d 1028. If the statutory text is deemed unambiguous, then the Court reads and applies the "plain meaning of the statutory language" within its context. *Central Maine Power Co. v. Devereux Marine, Inc.*, 2013 ME 137, ¶ 8, 68 A.3d

1262. *See also Estabrook v. Steward-Read Co.*, 129 Me. 178, 151 A. 141, 144 (1930) ("when the language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion to resort to the rules of statutory interpretation").

7. If, however, the statutory text is deemed ambiguous, the Court may rely on accepted tools to aid in interpretation. *Corinth Pellets, LLC v. Arch Specialty Insurance Co.*, 2021 ME 10, ¶ 30, 246 A.3d 586.

8. Pertinent to this case, all criminal statutes are subject to the rule of lenity and the doctrine of strict construction. *State v. Pinkham*, 2016 ME 59, ¶ 14, 137 A.3d 203. These "interrelated rules of statutory construction," *id.*, require that "any ambiguity left unresolved by a strict construction of the [criminal] statute must be resolved in the defendant's favor," *id.* (quotation marks omitted). The Supreme Court has summarized the doctrine as follows: "when there are two rational readings of a criminal statute, one harsher than the other, we are to choose the harsher only when Congress has spoken in clear and definite language." *McNally v. United States*, 483 U.S. 350, 359 – 360 (1987). "Strictly construing a statute avoids the creation of a criminal offense by inference or

implication." *State v. Whitney*, 2024 ME 49, ¶ 10, 319 A.3d 1072 (quotation marks omitted). "[L]egislatures and not courts should define criminal activity." *United States v. Bass*, 404 U.S. 336, 348 (1971).

1.3 The Trial Court Erred in its Statutory Construction

9. The court erred in its interpretation of *public place*, and it relied on that erroneous interpretation to deny Welsh's motion for an acquittal. The court, after listening to the arguments of counsel, explained that the "space" in which the events occurred constituted a public place for purposes of the statute because there seemed to be locks on the doors to the individual apartments but not the exterior door. A. 13 – 14. The court decided that the hallway "was for both private and public purposes – visitors, delivery people, visiting police officers." A. 33.

10. The statutory element in question is ambiguous because "public place," especially the "public" part of the term, is reasonably susceptible to competing definitions or, at least, uncertainty about the scope of its applicability. If "public place" is ambiguous, though, it cannot be so ambiguous that the place in question here could fall under any reasonable interpretation of the term. The hallway inside

of the apartment building to which the general public was not invited or entitled to enter, *see* Tr. 8 – 9, does not constitute a public place, and private ownership of that building, *see* Tr. 8, further supported its status as a private place.

11. Reading the rest of § 854 for context also undercuts the trial court's construction of "public place." The Legislature has chosen to expressly prohibit exposure of one's genitalia "in a private place" in two other paragraphs, *see* § 854(1)(B) and (C), thereby demonstrating its choice to prohibit specific kinds of conduct and its ability to distinguish between different surrounding circumstances for a person's conduct. It is notable, too, that the mens rea elements vary between the paragraph under which Welsh was charged and the two paragraphs that apply to private places. *Compare* § 854(1)(A)(2) to § 854(1)(B) or (C).

12. Strict construction, furthermore, would support defining *public place* in a way that resolves the ambiguity in favor of this defendant, preferably by adopting the aforementioned definition from the current edition of *Black's Law Dictionary*. The Court, if it declines this invitation, nonetheless does not need to decide in this case whether private ownership alone suffices to render a place

"private" for purposes of § 854 or whether privately owned property can be "public" if it is something like a shopping mall or restaurant because that is a question for a materially different set of facts.

13. Moreover, the court later convicted Welsh, *see* A. 19, based on Alvarado's observation of Welsh when Alvarado was outside of the building and Welsh was inside his own apartment with the door open, *see* Tr. 27. Therefore, the court construed and applied the statute to further prohibit exposure of one's genitalia inside one's own residence if visible from a common area like a hallway between apartments. This is a stretch of the "in a public place" element past the parameters that the court had earlier used to deny the motion for an acquittal, *see* A. 13 – 14, implying that a person's own apartment can constitute a public place if the door is open. Alternatively, this decision effectively would add another variety of indecent conduct to § 854, which, again, already has paragraphs that expressly apply to private places. *See* § 854(1)(B) and (C). Viewed either way, this would be an act of legislation, not statutory interpretation.

2.1 Rule 29 and Sufficient Evidence

14. After the State has rested its case at trial a defendant may move for an acquittal. M.R.U. Crim. P. 29(a). This Court "review[s] the denial of a motion for a judgment of acquittal by determining whether, viewing the evidence in the light most favorable to the State, a fact-finder could rationally find every element of an offense beyond a reasonable doubt." *State v. Standring*, 2008 ME 188, ¶ 12, 960 A.2d 1210. *See also Cyr v. Giesen*, 150 Me. 248, 108 A.2d 316, 320 (1954) ("a jury cannot be permitted to find there is evidence of a fact when there is not any").

15. "A person may not be convicted of a crime unless each element of the crime is proved by the State beyond a reasonable doubt." 17-A M.R.S. § 32. *See also In Re* Winship, 397 U.S. 358, 365 (1970) ("A criminal conviction must be supported by proof beyond a reasonable doubt of every fact necessary to constitute the crime with which [the defendant] is charged."). "'Element of the crime' means the forbidden conduct; the attendant circumstances specified in the definition of the crime; the intention, knowledge, recklessness or negligence as may be required; and any required result." § 32. "The principle that a matter not covered is not covered

is so obvious that it seems absurd to recite it." Scalia & Garner, *Reading Law*: *The Interpretation of Legal Texts* § 8 (2012).

2.2 The Trial Court Erred in Denying the Motion for an Acquittal Because There Was No Evidence to Support a Necessary Element of Proof

16. It may seem absurd to reiterate such fundamental tenets of criminal law and statutory construction, but the trial court read the relevant portion of the indecent conduct statute in a way that turned the idea of a "public place" on its head. The court then applied that upside-down idea to the evidence and concluded that the State had enough evidence in the record to allow a rational fact-finder to consider whether the State had proven its case beyond a reasonable doubt.

17. The complaint charged Welsh as follows:

> On or about January 20, 2024, in Bangor, Penobscot County, Maine, JAMES WELSH, in a public place, did knowingly expose his genitals under circumstances that in fact were likely to cause affront or alarm.

A. 21. The complaint added an allegation of two prior convictions, *id.*, but those facts are not at issue in this appeal.

18. The location of the accused person's conduct is a necessary element of proof for every iteration of indecent conduct, and in this case no rational fact-finder could have determined that there was adequate evidence that the conduct occurred in a public place, no matter which burden of proof governed.

19. This issue obviously overlaps with the issue of interpreting "in a public place," but, for purposes of reviewing the denied Rule 29 motion, it is worthwhile to note that there was simply no evidentiary support for a factual finding that Welsh's genitalia were exposed in a public place. A.T. saw Welsh in a hallway inside of a privately owned apartment building to which the general public was neither invited nor entitled to enter. *See* Tr. 6 – 9. Alvarado saw Welsh as Alvarado approached the building and Welsh was inside his own apartment. *See* Tr. 27. This conduct under these circumstances simply did not fit the offense that the State charged; or, in other words, this was a "matter not covered" by this paragraph of § 854.

3.1 Proof Beyond a Reasonable Doubt and Insufficient Evidence

20. "In reviewing a challenge to the sufficiency of the evidence, [the Law Court] review[s] the facts in the light most

favorable to the State to determine whether the trier of fact rationally could have found beyond a reasonable doubt every element of the offense charged." *State v. Rice*, 2007 ME 122, ¶ 30, 930 A.2d 1064 (quotation marks omitted).

3.2 The Trial Court Erred in Convicting Because the Evidence Was Insufficient to Support Proof Beyond a Reasonable Doubt

21. This issue is similar to the Rule 29 issue because the standard of review seems to be substantively identical. *Compare Rice* ¶ 30 *to Standring* ¶ 12. The undersigned counsel does not want to waste the Court's time with a duplicated argument. Two additional points, however, merit discussion to make it clear that, even when viewed in a favorable light for the State, the evidence could not carry the State's burden of proof.

22. First, after the defense rested the trial court explained that its judgment was based on Alvarado's observation of Welsh's genitalia when Alvarado arrived at the scene because the court, in effect, was not certain that A.T. had seen Welsh's front side and, if she had not, that Welsh's conduct would constitute the charged offense. *See* A. 19 – 20. The flaw in this reasoning, as mentioned above, is that Welsh was in his apartment, *see* A. 20 *and* Tr. 27,

and, thus, undoubtedly in a private place at that time. Indeed, he was in a private place accessible only through another private place (the common hallway) past a private driveway, and Alvarado saw him while in a private place. *See* Tr. 9, 21, and 27.

23. Second, this Court has no basis to decide the lower court made a harmless error because, in addition to being in a private place, Welsh's genitalia were not exposed to A.T. . Tr. 6 – 7. This is likewise a failure to satisfy an essential element of the offense.

4.1 Conclusion

24. The trial court erred when it denied the motion to acquit and again when it decided that the State had carried its burden of proving the offense beyond a reasonable doubt. The State chose to pursue a charge that it could not prove, and deference to the fact-finder does not extend so far that facts can be found in an illogical manner. Because this is a case where "the statute does not apply to [the defendant's] conduct," *Legassie* ¶ 22, this Court's remand order vacating the conviction must include an order for "entry of a judgment of acquittal," *id.*, rather than instructions to apply a different legal standard or to hold a new trial, *see, e.g. State v.*

Asante, 2020 ME 90, ¶ 21, 236 A.3d 464 (remanding for potential new trial because of defective jury instructions).

10/10/25
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