

**STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

LAW COURT DOCKET NO. Yor-26-114

Pat Doe,

APPELLEE

v.

Leslie Tidwell,

APPELLANT

**ON APPEAL FROM THE
YORK COUNTY DISTRICT COURT**

**BRIEF OF
APPELLANT LESLIE TIDWELL**

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STATEMENT OF FACTS

Leslie "Kiki" Tidwell ("Tidwell") owns approximately 24 acres of property located at 22 Godfrey Pond Road in York, Maine. Tr. 51. Twenty-one of those acres are subject to a conservation easement. Tr. 52. The property is a remote, oceanfront parcel situated within a fragile coastal sand dune area designated as wildlife habitat. Tr. 51–52. The property is erosion-prone. Tr. 52.

Pat Doe ("Doe") resides at [REDACTED] in York, Maine and has lived there since 2000. Tr. 34. She married Sam Roe¹ ("Roe") in 2011. Tr. 34–35. Roe has resided in the area since approximately 1984. Tr. 35, 97. The Does property is separated from Tidwell's property; access to Godfrey Cove beach requires traversing a dirt path across Tidwell's land. Tr. 35.

The path at issue has been referred to by various names during these proceedings, including "Godfrey Pond Road" and the "roadbed." Tr. 42–43. The Does claim a deeded right of way to the beach that they have used for over 40 years by foot, vehicle, snowmobile, horse, and ATV. Tr. 35–36, 87, 97. Tidwell disputes that a vehicle right of way exists, and describes the path as an unpaved, undeveloped track that runs past her driveway. Tr. 57–59. Tidwell explained that "the path didn't really exist before [the excavators] got on the scene and started bulldozing around. Tr. 58. Tidwell was required to revegetate and rehabilitate the

¹ Doe's husband is not party to a protection order, but Counsel will refer to him as "Sam Roe" in order to avoid identifying Doe. When Counsel is referring to Doe and Roe as a couple, Appellant will use "Does" in the plural.

disturbed area. Tr. 58. The parties agree the path is unpaved and made of dirt. Tr. 43.

The dispute between the parties originated, at least in part, over the use of and access to the path leading to the beach, as well as over Tidwell's placement of riprap rocks along the north corner of the beach to restore the shoreline and a river barb to protect against future ocean surges. Tr. 52–53. Tidwell had the boulders professionally placed and notified her neighbors of the purpose of the restoration work. Tr. 53. Walkers could still pass by the boulders. Tr. 53.

In approximately December of 2024, the boulders Tidwell had been pushed into the pond. Tr. 54–55. She reported this to the York Police Department and asked that criminal mischief charges be pursued against Roe. Tr. 56–57. Roe testified that he “probably did” remove the boulders because they were impeding vehicular access to the path. Tr. 85. Tidwell had the boulders replaced at her own expense. Tr. 57.

Through the summer of 2025, Tidwell undertook permitted construction activity on the property, including work involving heavy equipment. Tr. 78. As part of her building permit, Tidwell was required to produce and implement an arborist plan to revegetate the disturbed riparian area adjacent to the pond. Tr. 57, 77. Tidwell installed a split-rail fence at the end of the maintained road to delineate the riparian restoration zone while still allowing foot access. Tr. 58–59, 60. A

photograph of the fence was admitted as Plaintiff's Exhibit 6 which showed that the fence was open in the middle to allow pedestrians through. Tr. 59–61.

September 1, 2025

On September 1, 2025, Leslie Tidwell called the York Police Department to report that the Does were trespassing and harassing her. Tr. 9, 12. Officer Martin Monaco (“Monaco”), a York PD patrolman responded to 22 Godfrey Pond Road. Tr. 8–9. He traveled to the property alone in his cruiser at approximately 3:00 p.m. Tr. 9. Monaco activated his dashcam approximately two minutes before arriving on scene, consistent with his practice. Tr. 10-11 and Defendant’s Exhibit 23, Monaco’s Watchguard. The camera remained in a fixed position and did not capture a visual of the entire interaction of the parties but the audio recorded the entire time. Id.

Tidwell reported that the Does had harassed her multiple times; they had thrown the boulders into the pond, trespassed on her property, came in the middle of the night, and pushed landscaping into the pond. Tr. 17. She told Monaco she felt threatened. Tr. 17. She asked Monaco to warn the Does against trespassing. Tr. 17. Monaco declined to do so, explaining that Tidwell herself had told him that the Does had claimed a deeded right to the property. Tr. 17–18.

Monaco told Tidwell that removing and disposing of her landscaping was not a police issue, given the claimed property rights. Tr. 18. Monaco also told Tidwell it would take police time to respond to her remote location. Tr. 18–19.

Monaco acknowledged it was not unreasonable for a woman living alone in a remote location; knowing police would take time to respond; to want to protect herself. Tr. 19.

Monaco took issue with Tidwell's statement that she might obtain a firearm to protect herself because the police were not protecting her. Tr. 19. He described her reference to protecting herself as "castle doctrining (sic)" — referring to the legal rule that there is no duty to retreat from one's own property. Tr. 19–20.

Monaco acknowledged that castle doctrine is the law Maine. Tr. 20.

Monaco's interaction with Tidwell lasted approximately 19 minutes. Defendant's Exhibit 23, Monaco's Watchguard. Tidwell told him that the Does were "continuing to violate [her] private property rights and trespass on [her] property." *Id.* at 11:07. Officer Monaco said that it was civil in nature and could not help. *Id.* at 11:30. Tidwell said that the Does were driving on her private property and they don't have permission. *Id.* at 12:14. Tidwell said that, "this is the third time I've called the police and what have the police done every time? Nothing. Okay, so you want me to just tell everybody that York Police does not protect elderly females?" *Id.* at 15:25. Kiki asked Monaco to "talk to them and tell them this is not right to trespass against my property and my property rights and to threaten me." She then said, "[d]o you want me to get a gun? Do you want me to start firing at them?" *Id.* at 17:57. She said, "so what do I do to protect myself? I'm going to get a gun. I'm going to get a gun to protect myself in my

home. *Id.* At 18:07. Officer Monaco asked Tidwell, “[s]o who are you castle doctining (sic) against? Me or them? Who are you threatening?” *Id.* at 18:26. Kiki stated that “I’m not threatening you. I’m going to get protection for myself because the York police will not protect me.” *Id.* at 18:32.

Tidwell never expected Monaco to take the statement and use it against her. Tr. 81. It was an “off-the-cuff” exclamation of “what do you want me to do?” Tr. 82. Monaco did not indicate that he was recording the interaction until 18:19 of Defendant’s Exhibit 23. Shortly thereafter, Tidwell walked inside her residence.

Following the September 1, 2025 interaction, Monaco advised the Does of what occurred. Tr. 15. On approximately September 3, 2025 Monaco relayed a summary of Tidwell’s remarks, but did not share the dash-cam video. Tr. 15. Doe said she was in fear and Monaco noted it in his report. Tr. 15-16.

On September 24, 2025 Tidwell met with Monaco again, to report that Roe told Tidwell’s fence installer that the fence was going to come down. Tr. 21. Monaco reviewed a photo of the fence. Tr. 21. Monaco said it wasn’t a crime to say the fence would come down, and Tidwell would have to wait for actual damage to occur before police could take criminal action. Tr. 22. Monaco then spoke with Roe and warned him that it would be unwise to take the fence down. Tr. 23.

October 2, 2025

On October 2, 2025, Doe drove her motor vehicle down the path on Tidwell’s property toward the beach. Tr. 36-37. She dismantled the fence to allow

her vehicle through. Tr. 37-38. She pulled the split-rail sections from the posts and put them on the side of the road. Tr. 37-39. Tidwell heard the noise and looked out to see Doe tearing down the fence, taking the posts and heaving them, and taking the fence slats and heaving those. Tr. 63-64. Tidwell ran outside with her phone to attempt to video the fence destruction. Tr. 63-64. Tidwell ran down from her home yelling “I have a gun” Tr. 38-39, or “I’ve bought a gun, or I’ve got a gun.” Tr. 64. She was on her own driveway, trying to record when she made this statement. Tr. 64, 80-81. Doe testified that Tidwell was “in the roadbed” when Tidwell made the statement. Tr. 42-43. However, Doe testified that she “heard” Tidwell make the statement and that she did not see Tidwell. Tr. 45. Doe alleged that rocks were thrown at her car, Tr. 38, which Tidwell denied. Tr. 64, 83. The court expressly declined to adjudicate whether the roadbed is part of Tidwell’s property or subject to a right of way. Tr. 59-60. Tidwell offered to show the security camera footage of this incident “if the court [had] enough time” but the footage was not shown to the court or entered as an exhibit. Tr. 64.

Tidwell photographed the disassembled fence and went to the York Police Department to report the Does’ actions. Tr. 64-67. The pieces of the fence were thrown into the pond overnight and she had the fence reinstalled on October 3, 2025. Tr. 67-68.

October 5, 2025

On October 5, 2025 Leslie Tidwell again called the York Police Department.

Tr. 25. Officer Kevin Marrie (“Marrie”) responded. Tr. 25. He employed the dashcam throughout the entirety of his interaction with Tidwell. Tr. 25-26; Defendant’s Exhibit 23, Marrie Watchguard. Tidwell reported to Marrie that this was the fifth time that the Does have harassed her, and they are causing her extreme distress. Exhibit 23, Marrie Watchguard at 6:09. She reported that,

“they keep breaking my fence, coming onto my private property where they are trespassing, and they don’t have a right to be here. And they have threatened me. They come in the middle of the night. They throw everything into the pond. They’ve taken equipment, they’ve pushed the landscaping into the pond. I shouldn’t have to live like this. They are attacking me and I just want to live here peacefully.” *Id.*

Approximately twelve minutes into the exchange, after Marrie repeatedly told Tidwell he would not be taking any action, the following exchange occurred:

Tidwell: "I'm being harassed in my home." / Marrie: "Well, listen, can I explain?" / Tidwell: "You can't." / Marrie: "Can I explain?" / Tidwell: "I am not safe here by myself." / Marrie: "Ma'am." / Tidwell: "I am going to get a shotgun. I am going to blast them if you guys aren't going to do anything." / Marrie: "Okay. You'll go to jail if that's the case." / Tidwell: "I know, but..." / Marrie: "Why would you do that?" / Tidwell: "They're attacking me all the time." Exhibit 23, Marrie

Watchguard at 11:55. At the conclusion of the interaction, approximately 18 minutes into Marrie’s visit, the following exchange occurred:

Tidwell: "You folks need to stop them from harassing me." / Marrie: "Okay." / Tidwell: "And stop them from trespassing." / Marrie: "Okay. I'm going to do the best that I can to do that. Okay?" Exhibit 23, Marrie

Watchguard at 18:05.

Marrie recognized that Tidwell felt threatened and terrorized and was asking for help. Tr. 28. Marrie told Tidwell he could have summonsed the Does if the threshold was met, and could possibly arrest them but they would likely make bail. Tr. 28. He neither summonsed nor arrested the Does that day. Tr. 28-29. Officer Marrie observed that the fence had been “disassembled” with the boards removed and placed on the ground. Tr. 27. When Marrie spoke with Roe, he said he, “knew why Marrie was there.” Tr. 29. Marrie did not caution Roe about the fence. Tr. 29-30.

After October 5, 2025

On October 7, 2025 the Court granted temporary orders against the Does which were served on October 10, 2025. On October 10, 2025, Doe posted a public Facebook comment replying to Tidwell’s post stating that Tidwell told “outright lies.”

Tidwell repeatedly observed the fence be dismantled after these incidents. Tr. 68-72. She repeatedly observed the Does driving an ATV in the area where the fence had been. Tr. 71, 76. Roe testified that he “probably did do it” with respect to taking down the remainder of the fence. Tr. 90. Roe admitted to driving the ATV through the fence area while the fence was down. Tr. 91. On October 18, 2025, after the imposition of the temporary orders, Tidwell captured video of the

Does driving through the fence area when the fence was down. Tr. 75, Plaintiff's Exhibit 7.

RELEVANT PROCEDURE OF HEARING

1. The Trial Court Limited the Hearing to Two Hours Total

The court limited the hearing to two hours total. Tr. 5. At the time of the hearing, four matters were consolidated into one hearing- Tidwell's complaint for a protection order against Doe, Tidwell's complaint for a protection order against Roe, Roe's complaint for a protection order against Tidwell, and Doe's complaint for a protection order against Tidwell. At the beginning of the hearing, Roe dismissed his complaint against Tidwell. Tr. 6. Tidwell was allotted one hour to present both complaints against the Does, and Doe was allotted one hour to present her complaint against Tidwell. Tr. 5. The allocation of time was not modified based on the number of parties changing. Tr. 33. On multiple occasions, the court was interrupted by other matters. Tr. 9, 14 and 52.

Tidwell's presentation of evidence was limited by time. Tidwell testified that she had a video of Monaco's interview of her and said "(i)f we had enough time, you could listen to the whole video where he dismisses my concerns." Tr. 64. The video was not played. Tidwell had a video of the October 2nd incident from her security camera "if the Court has enough time to watch it. and you can see I do not throw a rock." Tr. 64-65. Tidwell testified that she had surveillance videos of

her fence being torn down on October 5 and October 18. Tr. 69-72. Tidwell had a chart of all the times she observed the Does on her property “[she could] provide to the Court if you would like.” Tr. 73-74.

2. The Court Limited the Scope of the Parties’ Presentation

The parties had an off the record Chambers Conference to lay out the plan for the Court’s handling of the hearing. Tr. 4. At the beginning of the hearing, Doe’s attorney referenced having a title witness. Tr. 6. This witness was never called based on the Court’s time limit, and limit of scope. The Court held that “(y)ou may all have to go to some other court to determine the rights-of-way and things of that nature. So thank you. Let’s move on.” Tr. 59-60. During Tidwell’s testimony, Tidwell indicated that she had done her own deed research and the court cut off this line of inquiry stating, “[w]e don’t need to talk about rights of way and deeds.” Tr. 83. During Roe’s testimony, he attempted to discuss whether the Does had a deeded right of access. Each time Roe mentioned the deeds, the Court redirected with “[n]ext question.” Tr. 88, 93-94. The parties were not permitted to make closing arguments; immediately upon conclusion of the testimony the court stated “[a]ll right. We’ve reached the end of the hearing. We’ve reached 4:00. I’m going to be in recess. I will give you my decision soon, meaning today.” Tr. 101.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. Whether the Trial Court Committed Legal Error By Granting Pat Doe's Protection from Harassment Complaint Against Tidwell When the Statutory Elements of Terrorizing Were Not Met by Any One of the Three Incidents.
- II. Whether the Trial Court Violated Tidwell's Right to Procedural Due Process by Limiting the Parties From Presenting Information About the Property Rights in Dispute.
- III. Whether the Trial Court Violated Tidwell's Right to Procedural Due Process by Imposing a Two-Hour Time Limit Despite the Complexities of the Case.
- IV. Whether the Trial Court Erred as a Matter of Law When it Denied Tidwell's Complaints against Doe and Roe Based on an Analysis of the Criminal Mischief Statute that Left Out the "Tampering Prong" of the Statute.

ARGUMENT

I. Based on the Facts as Found by the Court, The Statutory Elements of Terrorizing Were Not Met by Any One of the Three Incidents

The trial court's finding of a single act of terrorizing cannot stand because no individual incident satisfies the statutory elements of terrorizing, and the three incidents cannot be aggregated to cure that deficiency. Interpretation of a statute requires *de novo* review. *Anctil v. Cassese*, 2020 ME 59 ¶ 6, 232 A.3d 245, 249. The application of the law to the facts as found by the court is reviewed *de novo*. *Daigle Commercial Group, Inc. v. St. Laurent*, 1999 ME 107 at ¶ 13, 734 A.2d 667, 672.

Title 5 M.R.S. §§ 4651 *et seq* govern the issuance of Protection from Harassment (“PFH”) Orders. The Court may issue a PFH order if a Plaintiff proves by a preponderance that a defendant committed one of three definitions of “harassment.” 5 M.R.S. § 4651(2). Relevant to this argument, “harassment” is defined as either:

“Three or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to personal property and that do in fact cause fear, intimidation or damage to personal property ” 5 M.R.S. § 4651(2)(A); or

“A single course of conduct constituting a violation of” one of a number of other statutes. 5 M.R.S. § 4651(2)(C)

“Terrorizing” is one of the statutes that satisfies §4651(2)(C)’s definition.

Terrorizing is defined as:

“intentionally, knowingly or recklessly communicates to any person a threat to commit or to cause to be committed a crime of violence dangerous to human life, against the person to whom the communication is made or another, consciously disregarding a substantial risk that the natural and probable consequence of such a threat, whether or not such consequence in fact occurs, is: to place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed.”

17-A M.R.S. § 210.

While a criminal conviction for terrorizing under 17-A M.R.S. § 210 can be sustained if the defendant placed either the person to whom the threat is communicated *or* the person threatened in reasonable fear, the structure of the PFH statute is met only when the person petitioning the court is the alleged victim of the enumerated crimes. “[A] person who has been a victim of harassment...may seek relief by filing in an appropriate court...” 5 M.R.S. § 4653. The most reasonable interpretation of these two statutes is that an allegation of “terrorizing” will only support a finding of “harassment” under 5 M.R.S. § 4651 when the person petitioning the court is the victim of terrorizing. In the instant case, for terrorizing to support a finding of “harassment” Doe would need to prove each element of the terrorizing statute, including that Tidwell’s *mens rea* extended to placing Doe, specifically, in fear.

The Definition of Harassment “does not include any act protected by law.” 5 M.R.S. § 4651(2).

a.) *Mens Rea*

The significance of proving *mens rea* in this case extends beyond statutory interpretation because the subjective intent requirement of 17-A M.R.S. § 210 is constitutionally mandated by *Counterman v. Colorado*, 600 U.S. 66 (2023). In that case, the United States Supreme Court held that the First Amendment prohibits conviction for threatening speech unless it was proven that the defendant had some subjective understanding of the threatening character of the statement. *Id.* The court explained that a purely objective standard is constitutionally insufficient because it would “chill [] protected, non-threatening speech.” *Id.* at 75–76. As a direct response to this case, the Maine Legislature amended 17-A M.R.S. § 210 on an emergency basis, adding the *mens rea* requirement that the defendant act “intentionally, knowingly or recklessly” and “consciously disregard a substantial risk” that the natural and probable consequence of the statement would be to place the recipient in reasonable fear. The emergency preamble to P.L. 2024, c. 519 explicitly cited the decision in *Counterman*. Under the amended statute, the fact-finder must find that the defendant subjectively and consciously disregarded the risk that her statement would cause fear. An objective or reasonable-person standard is constitutionally and statutorily insufficient.

Finding that a defendant committed an act of terrorizing without rigorous proof of the subjective *mens rea* element treads on Constitutionally protected ground. When This Court applies the constitutionally and statutorily required

subjective standard with care it will find that the record before the trial court does not satisfy the *mens rea* requirement of terrorizing.

In order to prove terrorizing, Doe needed to prove that Tidwell

“consciously disregarded a substantial risk that the natural and probable consequence of such a threat... is to place the person to whom the threat is communicated or the person threatened in reasonable fear that the crime will be committed.” 17-A M.R.S. § 210.

In the first and third incidents, Tidwell made the alleged statements to police officers. In order to prove harassment from either of these incidents, Doe needed to prove that Tidwell consciously disregarded a *substantial risk* that the natural and probable consequence of her statements were that a law officer would communicate the statements to Doe and cause Doe fear.

The Law Court has not had occasion to address this particular fact pattern, but the text of the statute and the surrounding caselaw support the proposition that a statement made to law enforcement during a request for police assistance does not satisfy the *mens rea* for terrorizing, unless the record supports an inference that the speaker intended or expected the statement to be conveyed to the alleged victim. Other states have addressed this specific fact pattern in criminal cases and have adopted that standard.

Georgia, for example, has a similar statute to Maine’s terrorizing statute.

The Georgia Statute in question provides in relevant part:

“[a]person commits the offense of a terroristic threat when he or she threatens to commit any crime of violence... with the purpose of terrorizing

another...or in reckless disregard of the risk of causing such terror or inconvenience.” *Sidner v. State*, 304 Ga. Ct. App. 373, 696 S.E. 2d 398, 399 (2010); OCGA § 16-11-37.

The “reckless disregard” language in the Georgia statute is sufficiently similar to “consciously disregard” in Maine’s terrorizing statute to make the comparison useful in this case.

In *Sidner*, Sidner was frustrated by police inaction on noise complaints, and told responding officers “do I have to take a baseball bat and hit someone before you guys will do anything?” *Sidner*, 696 S.E.2d at 399. In that case the court explained that the focus is on the conduct of the accused and “is completed when the threat is communicated to the victim.” *Id.* at 400. A message communicated to a third party can support a conviction when “the threat is submitted in such a way as to support the inference that the speaker intended or expected it to be conveyed to the victim.” *Id.* The decision explained that Sidner’s purpose of communicating the threat to law enforcement was not to terrorize the neighbors, but rather to obtain a police response to disturbances on his block. *Id.*

In *Stephens v. State*, 271 Ga. App. 509, 610 S.E.2d 143 (2005), the Georgia Court of Appeals reversed a conviction in which the defendant wrote a letter to human resources stating that he wanted to take a gun and kill his supervisor. The HR representative shared a copy of the letter with the supervisor. *Id.* at 144. The Court found that there was not any evidence to support an inference that Stephens intended or expected the letter to be communicated to the supervisor. *Id.*

Finally, in *Steplight*, the Georgia Supreme Court reversed a conviction in which the defendant made threatening statements about a third party victim to a deputy sheriff, finding that the evidence did not support an inference that the defendant intended or expected his statements to be communicated to the victim. *Steplight v. State*, 301 Ga. 272, 800 S.E.2d 548, 552 (2017).

When evaluating Maine’s terrorizing statute in the context of an alleged threat made to an officer about a third party, The Law Court should use a similar framework and address whether the record supports an inference that the speaker intended or expected the statement to be conveyed to the victim. When this framework is applied to the first and third incidents in which Tidwell made statements to Monaco and Marrie, this Court will find that there was no affirmative evidence presented regarding Tidwell’s intent. In fact, as will be addressed below, there was affirmative evidence negating Tidwell’s intent to place Doe in fear.

b.). Tidwell’s Acts Were Protected by Law

i.). Termination of a Criminal Trespass

Under the protection from harassment statute, harassment “does not include any act protected by law.” 5 M.R.S. § 4651(2). The Law Court has held that the protected by law exception exists but explained that there are times when the identified harassing act is separable from the protected act. *Patane v. Brown*, 2002 ME 47 ¶¶ 10-11, 792 A.2d 1086, 1089—1090. Maine statute allows a person to use nondeadly force to terminate a trespass which is codified as follows:

“A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using nondeadly force upon another person when and to the extent that the person reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other person in or upon such premises.” 17-A M.R.S. § 104(1).

Using a firearm in a threatening manner without discharging constitutes nondeadly force only, and does not amount to the use of deadly force.” *State v. Cannell*, 2007 ME 30, ¶ 7, 916 A.2d 231, 234 (collecting cases.). “A threat to use deadly force is the equivalent of nondeadly force.” *State v. Glassman*, 2001 ME 91 ¶ 11, 772 A.2d 863, 867. If physically pointing a loaded firearm without firing it is nondeadly force, then the verbal suggestion of obtaining or possessing a firearm, without any physical act, is *a fortiori* nondeadly force. In the first incident, Tidwell asked whether she should obtain a gun and use it, in the second incident Tidwell stated she had a gun but did not brandish or otherwise use a firearm, and in the third incident she said she was going to obtain a firearm and use it if the officers did not help her. All three of these statements were made in the absence of a display of a firearm. As defined by *Glassman*, every one of these statements fits the definition of nondeadly force.

In the protection from harassment context, the Law Court has explicitly approved the termination of a criminal trespass as an act protected by law. *Allen v. Rae*, 2019 ME 53 ¶¶ 11–12, 206 A.3d 902, 905. In that case, Rae tried to remove Allen’s boat from the disputed property. In the process, Rae damaged the boat. The Court held that the termination of criminal trespass applies to use of force

against persons, as opposed to damaging personal property, and that the act of damaging the boat was a separate act of criminal mischief. As will be discussed in detail, below, as applied to the October 2 incident, Tidwell's verbal statement to Doe on Tidwell's own property while terminating a criminal trespass constituted nondeadly force protected by law, which categorically removes the conduct from the definition of harassment.

ii.). Conditional Statements

Even if this Court were to set aside the § 104(1) protected by law analysis, Tidwell's statement does not qualify as a "threat" within the meaning of 17-A M.R.S. § 210, because they were conditional in nature. The Law Court has held that the conditional nature of an alleged threat is directly relevant to whether it carries the natural and probable consequences of placing the recipient in reasonable fear that a crime will be committed. In *State v. DiPietro*, 420 A.2d 1233 (Me. 1980), the Law Court directed an acquittal of a terrorizing count explaining that

"the conditional nature of defendant's threat critically detracted from its having the natural and probable consequence of placing [the alleged victim] in reasonable fear that a crime of violence dangerous to human life would in fact be committed." *Id.* at 1237.

The two incidents with the officers were conditional statements that Tidwell *would* purchase a firearm and *would* use it *if* the Does continued to harass her and the police didn't help. The trial court found that these two statements were made in frustration as opposed to as an attempt to scare Doe. These conditional statements

are not consistent with a true threat and do not satisfy the terrorism statute. The incident in which Doe was directly involved, Tidwell stated “I’ve got a gun.” She did not state that she was going to use the gun, and the trial court credited the purpose of the statement as being one of deterrence, to make Doe “think twice” about committing a criminal trespass. This statement was made as a deterrent statement and is not consistent with a true threat and thus does not satisfy the terrorism statute and therefore do not satisfy the definition of harassment. Because none of the three statements satisfy the terrorism statute, they therefore do not support a finding of “harassment.”

c.). The incidents in the Instant Case

When the three incidents are examined, it is clear that no single incident supports a finding of harassment as a matter of law. For the purpose of this argument, please note that the brief addresses the incidents in chronological order whereas the trial court’s finding addressed the incidents out of order.

i. First Incident

With respect to the first incident (September 1, 2025), the Court found,

“that Tidwell, the defendant in that case, said among other things, I’ve sued a lot of people. I have a lot of attorneys. And what do you want me to do? Get a gun? Do you want me to start firing on them?” Tr. 103.

The Court found that at the time “she [was] frustrated. She’s frustrated with how the police handle things, that no one seems to be listening to her.” Tr. 103.

In this incident, Tidwell requested that officers respond to her home to take a complaint of harassment and trespassing by the Does. Tidwell was expressing fear and frustration about their actions. Tidwell specifically said she was not threatening Monaco. Monaco did not testify that he was placed in fear that the threat would be carried out. In fact, Monaco testified that Tidwell's desire to protect herself, given that it would take time for law enforcement to respond to a call for help "wouldn't be unreasonable." He also referred to her statements as "castle doctining (sic)" which he described as the legal doctrine of a person having no duty to retreat from one's own property and the legal doctrine of self-defense on one's own property. This is relevant to the identification of Tidwell's conduct as protected by law. Monaco did not testify, nor did he say in the 18 minute video of the interaction with Tidwell that he was going to relay the message to Doe. He did not tell Tidwell he was recording the interaction until the 18th minute, after the statement in question was made. To the contrary, Monaco repeatedly told Tidwell that he wasn't going to do anything about the alleged trespassing and harassment citing that it was a "civil matter" and beyond his scope as a police officer. She asked him to "talk to them and tell them that this is not right to trespass against my property and my property rights and to threaten me" to which Monaco replied that he would not take such action as it was a civil matter.

Monaco's communication with Tidwell supported Tidwell's belief that Monaco was not going to share her statements with the Does. Tidwell herself

testified that she had no intention of that statement being shared with Doe and that it had been made out frustration and fear of her situation as an older woman living by herself in an isolated area.

Two days after the communication, Monaco independently advised the Does of Tidwell's statement. He relayed a summary of Tidwell's remarks, but did not share the video of the interaction or a word-for-word restatement.

Similar to in *Sidner*, Tidwell communicated the statements to Monaco during a request for assistance regarding ongoing trespasses and harassment on the part of her neighbors. The trial court in the instant case explained that Tidwell was "frustrated. She's frustrated with how the police handle things, that no one seems to be listening to her." Tr. 103. Like in *Steplight*, and in *Stephens*, there was no evidence presented at trial that Tidwell expected or intended her statements to be communicated to Doe. For these reasons, the *mens rea* for terrorizing was not proven by Doe. Therefore, the first incident cannot support a finding of harassment as a matter of law.

ii. Second Incident

With respect to this incident, which the trial court addressed third in its findings, the Court found that Doe "heard Ms. Tidwell yelling that she had a gun, and that she saw Ms. Tidwell coming to her car. I take Ms. Tidwell's testimony as truthful, when she said, I wanted to make her think twice." The trial court

explicitly declined to address whether Doe had a right of way or easement to travel across Tidwell's property to access the beach.

On September 24, 2025, Tidwell met with Monaco to report that Roe told Tidwell's fence installer that the fence was going to come down. Monaco told Tidwell it wouldn't be a crime unless damage to the fence was done. Monaco agreed to warn Roe that it would be unwise to take the fence down.

On October 2, 2025, Doe drove her motor vehicle across Tidwell's property toward the beach. She dismantled Tidwell's fence to drive her vehicle through. Tidwell heard the noise and ran outside from her residence with her phone to attempt to video the destruction of her fence. Tidwell yelled, "I have a gun" or "I've bought a gun, or I've got a gun." Doe testified that she heard Tidwell but did not see Tidwell.

The definition of termination of criminal trespass allows someone who is "in possession or control of a premises" to use "nondeadly force" when the person reasonably believes it necessary to terminate a criminal trespass. By explicitly declining to address the property dispute, the trial court declined to make a determination about whether Tidwell was "in possession or control of a premises" when she made her statement to Doe. By issuing an order against Tidwell, the Court appears to have implicitly found against Tidwell with respect to the property dispute while denying the opportunity to present information about this essential

question. This foreclosed Tidwell from arguing that she had a “protected by law” defense to the definition of harassment.

By extension, the Court denied Tidwell the opportunity to present the criminal trespass defense to all three incidents. If Tidwell was, in fact, legally entitled to prevent a criminal trespass, then she would have been legally entitled to use nondeadly force, i.e., a threat, to terminate the criminal trespass. Even if *arguendo*, her statements to the officers constituted terrorizing, she still would have been entitled to make them in support of the termination of the trespass.

The record shows that Tidwell owned the property in question at 22 Godfrey pond Road. The Does did not claim invitation, permission, public access or other license to be on the property. The Does’ basis for their repeated presence on Tidwell’s property was a claimed deeded right of way. No deed, survey, title record or other documentary evidence was admitted to support this claim. In fact, the trial court expressly declined to address this issue. Tidwell did not concede that the Does had a right of way and stated that she had done extensive research, to which the Court responded “(s)o we don’t need to talk about rights of way and deeds... That’s beyond what I am tasked with figuring out today.” Tr. 82.

With respect to the October 2 incident, Tidwell testified that she was trying to record Doe dismantling her fence, and she was trying to get Doe to “think twice” about trespassing on her property. The trial court took this statement as support of Tidwell’s intent to terrorize Doe. Tidwell testified that she was not

intending to cause fear, but wanted to end the repeated criminal trespasses by Doe. Tidwell testified repeatedly, and explained to both Marrie and Monaco in the recorded interactions that she owned the property, that she believed that nobody had the right to use a motor vehicle to traverse her property and that she had communicated this to the Does verbally and via writing on numerous prior occasions. On this day, when she exited her home and confronted Doe on her property, Tidwell believed she was terminating a criminal trespass.

When terminating a criminal trespass, one is entitled to use nondeadly force. Unlike in *Allen*, Tidwell used only her words to try to terminate Doe's criminal trespass. Tidwell stated that "she had a gun." If brandishing but not using a firearm is "nondeadly" force, then the mere suggestion of possessing a firearm is also "nondeadly" force. Tidwell was entitled to make this statement to terminate the criminal trespass against her property.

Whether an act qualifies as "protected by law" under § 4651 (2) is a question of statutory interpretation. Whether this element was proven is a matter of law and is reviewed *de novo*. *Anctil v. Cassese*, 232 A. 3d 245, 249, 2020 ME 59 ¶ 6. In the instant case, to determine what is "protected by law" in light of 17-A § 104(1), the trial court needed to determine the property rights in dispute. The trial court's refusal to address this question is not a factual finding entitled to deference. It was a failure to perform the legal analysis the statute requires, which is an error of law. Having said that, in other cases, the Law Court has applied an abuse of discretion

standard when the trial court declines to consider a legally proper factor under a mistaken belief that the factor cannot be considered. *Smith v. Rideout*, 2010 ME 69, ¶13, 1 A.3d 441, 444. This holding seems to indicate that review of a discrete finding within an issue that is subject to *de novo* review may be subject to review under an abuse of discretion standard. The application of the law to the facts as found by the court is reviewed *de novo*. *Daigle Commercial Group Inc.*, ¶ 13,

Under any standard of review, the facts as found are legally insufficient to support the PFH order without first resolving the property question, and the order against Tidwell cannot stand without addressing that question. The order should be reversed and remanded for further proceedings with respect to the property rights.

iii. Third Incident

With respect to the third incident, (October 5, 2025), which the court addressed second in its recitation of findings, the court held that

“[t]he Court remains concerned about what happened after that, which was another interaction with the police where Leslie Tidwell said, I’m going to get a shotgun and I’m going to blast them if you don’t do anything.” Tr.

103. On October 5, 2025, Tidwell again called the York Police Department.

Marrie responded to Tidwell’s property and Tidwell told him that “[the Does] keep breaking my fence, coming onto my private property where they are trespassing, and they don’t have a right to be here. And they have threatened me.” Marrie repeatedly told Tidwell that he would not be taking any action. Tidwell said that, “I am being harassed in my home... I am going to get a shotgun. I am going to

blast them if you guys aren't going to do anything." Tidwell again asked that officers "stop them from harassing me and stop them from trespassing." Officer Marrie recognized that Tidwell felt threatened and terrorized and was asking for help. He did not tell Tidwell that he was going to communicate her statements to the Does. There was no evidence that Tidwell knew that her prior statement to Monaco was relayed to the Does.

Like in the first incident, Marrie's communication with Tidwell supported Tidwell's belief that nothing further was going to be said to or done about Doe. This was additionally supported by Doe's continued presence on Tidwell's property after the first statement was made to Officer Monaco. Doe's conduct did not exhibit evidence of fear as a result of Tidwell's first statement to Monaco. On the contrary, Doe continued to operate motor vehicles across Tidwell's property despite Tidwell's repeated requests that the Does not do so.

Similar to in *Sidner*, Tidwell communicated the statements to Officer Marrie during a request for assistance regarding ongoing trespasses and harassment on the part of her neighbors. Like in *Steplight*, and in *Stephens*, there was no evidence presented at trial that Tidwell expected or intended her statements to be communicated to Doe. For these reasons, the *mens rea* for terrorizing was not proven by Doe. Therefore the third incident cannot support a finding of harassment as a matter of law.

d.). Conclusion

Without identifying which of the three incidents carried the day, the trial court ultimately held that it was

“persuaded by a preponderance of the evidence that there is a single act that constitutes among those incidences terrorizing, and that constitutes harassment under the law by a mere preponderance of the evidence.” Tr.

104. For the reasons argued above, Doe failed to present evidence of the *mens rea* required to support terrorizing in all three incidents, and that Tidwell was not acting in a manner that was protected by law. In addition, the conditional nature of the statements does not support a finding of terrorizing.

For these reasons, no single incident described in the findings supports the definition of a single act of harassment under § 4651 (2)(C). Three incidents that do not qualify as terrorizing cannot be aggregated into one incident of terrorizing to find that harassment occurred. Nor can these three incidents support the alternative definition of harassment enumerated in § 4651(2)(A) because the trial court did not make any of the requisite findings with respect to that definition of harassment.² Because none of the three incidents supports a finding of “harassment” as a matter of law, this Court should vacate the order.

² If the trial court wanted to address the three incidents as “three or more acts” under (A) instead of as discrete incidents of terrorizing under section (C) it would have had to make findings that the three or more acts were “made with the intention of causing fear, intimidation or damage to personal property” and that they did “in fact cause fear, intimidation or damage to personal property.” Because the trial court did not make any findings specific to this definition, Appellant proceeds on the basis that the trial court intended its ruling to mean that one of the three incidents amounted to a single act of terrorizing which satisfies the (C) definition.

II. The Court violated Tidwell's Right to Procedural Due Process when it limited the parties from providing information about the Property Rights in Dispute

The trial court's categorical refusal to receive evidence regarding property rights denied Tidwell the opportunity to present her statutory affirmative defense, violating procedural due process. The violation of Tidwell's right to procedural due process requires this Court to reverse the trial court's order against Tidwell. The Law Court reviews "claims regarding procedural due process de novo." *Citibank, N.A. v. Moser*, 2024 ME 19 ¶ 8, 314 A.3d 194, 196.

The Maine Constitution prohibits deprivation of "liberty" without due process. Me.Const. Art. I, § 6-A.

"When significant rights are at stake, due process requires: notice of the issues, an opportunity to be heard, the right to introduce evidence and present witnesses, the right to respond to claims and evidence, and an impartial fact-finder." *Jusseume v. Ducatt*, 2011 ME 43, ¶ 12, 15 A.3d 714, 717 (quotation marks omitted.)

The United States Supreme Court broadly defines "liberty" as:

"The liberty preserved from deprivation without due process included the right generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Ingraham v. Wright*, 430 U.S. 651, 673 (1977).

See also Morrissey v. Brewer, 408 U.S. 471 (1972) (which holds that liberty includes freedom of movement and association). The PFH order entered against Tidwell prohibits her from entering or being near the Doe property which is a restriction on movement; it prohibits all direct and indirect contact with the Does; it

is enforceable by criminal arrest and prosecution for violation under 5 M.R.S. § 4659; and results in a federal firearm prohibitions under 18 U.S.C. § 922(g)(8). All of these consequences fall squarely within the United States Supreme Court’s recognized liberty interests.

Mathews v. Eldridge set a floor of what due process is required under the United States Constitution, which was applied by the Maine Supreme Judicial Court in *Nou v. Huot*, 2025 ME 44, ¶ 13 335 A.3d 603, 613. The Law Court described due process as a “flexible concept that calls for such procedural protections as the particular situation demands.” *Id.* at ¶ 32. (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). The “particular situation” in the instant case is a court order that restricts a property owner’s movement around her own land, her right to associate with third parties, and imposes criminal enforcement consequences. This situation demands meaningful process. The Law Court has acknowledged that due process is required in protection from harassment cases in *Doe v. Costin*, 2025 ME 23, 331 A.3d 456 and *Doe v. Tierney*, 2018 ME 101, 189 A.3d 756. In *Tierney*, the Law Court applied the “notice and opportunity to be heard” standard to a PFH hearing. *Id.*

In civil cases, the Law Court has found that a lower court’s failure to allow the presentation of an affirmative defense or a counterclaim is a violation of procedural due process. *Loft Condominium Ass’n v. Judith Moskal-Kanz*, 2026 ME 46, ¶ 12. In *Tidewater*, the condo-association filed a complaint for foreclosure

and sale against Judith L. Moskal-Kanz for failure to pay fees. *Id.* at ¶ 6. Moskal-Kanz filed an answer and counterclaim alleging a breach of the Fair Housing Act and the Americans with Disabilities Act. *Id.* The trial court did not afford Moskal-Kanz the opportunity to introduce evidence or present witnesses in support of her counterclaim. *Id.* at ¶ 14. The Trial Court ultimately found in Tidewater’s favor and ordered the foreclosure and sale of Moskal-Kanz’s condominium. *Id.* at ¶ 1.

The Law Court vacated the judgment of foreclosure because on the record presented on appeal it,

“[could not] say with certainty that the foreclosure is factually and legally independent from the counterclaim and therefore [The Law Court could not] determine whether the court properly entered a final judgment on Tidewater’s complaint.” *Id.* at ¶ 15 (quotation marks omitted.)

The Court noted that “affirmative defenses to a foreclosure complaint were “the same as those that underpin a claim... against [the condominium association] for housing discrimination.” *Id.* (quotation marks omitted.)

In this case, the trial court’s implicit resolution of the property rights against Tidwell is indistinguishable from the Tidewater trial court’s entry of foreclosure judgment without addressing the counterclaim. In both cases, a judgment was entered that was not “factually and legally independent” from the unresolved affirmative defense.

In the instant case, the parties had an off the record chambers conference to lay out the plan for the Court’s handling of the hearing. At the beginning of the hearing, Doe’s attorney referenced having a title witness. This witness was never

called based on the Court's time limit, and limit of scope. The trial court stated that, "[y]ou may all have to go to some other court to determine the rights-of-way and things of that nature. So thank you. Let's move on." Tr. 59-60. Tidwell indicated that she had done her own deed research and the court cut off this line of inquiry stating "[w]e don't need to talk about rights of way and deeds." Tr. 83. Roe attempted to discuss whether he and Doe had a deeded right of access across. Each time he mentioned the deeds, the Court redirected with "[n]ext question." Tr. 88, 93-94. Each of these items of evidence were relevant to whether the Does had any legal right to be present on Tidwell's property. Absent a finding regarding the property rights, the court did not determine whether the Does were criminally trespassing on Tidwell's property, and therefore precluded Tidwell's affirmative defense to the allegations.

As explained above, "any act protected by law" is not included in the definition of "harassment" under 5 M.R.S. § 4651(2). Using nondeadly force to protect against a criminal trespass is "protected by law" under 17-A M.R.S. § 104(1). The application of these statutes form an affirmative defense to Doe's complaint of harassment against Tidwell. The determination of whether Doe had any right to be on Tidwell's property is not "factually and legally independent" from Doe's complaint for harassment. Doe's complaint for harassment could not properly be decided in the absence of information about Tidwell's affirmative defense. Like in *Tidewater Loft Condominium Ass'n*, the denial of the opportunity to present an affirmative defense violated Tidwell's right to procedural due process and the order against Tidwell should be vacated and remanded for further

proceedings.

III. The Court Violated Tidwell's Right to Procedural Due Process by Imposing a Two-Hour Time Limit Despite the Complexities of the Case.

The trial court separately violated Tidwell's right to procedural due process by imposing a two-hour time limit on the hearing. Typically the Law Court reviews scheduling orders for abuse of discretion. *Doe v. Plourde*, 2019 ME 109, ¶ 5, 211 A.3d 1153, 1155. However, a due process challenge is reviewed *de novo*. *Citibank, N.A. v. Moser*, 2024 ME 19 ¶ 8, 314 A.3d 194.

In addition to the denial of the opportunity to present an affirmative defense as described above, the the trial court's imposed time limit denied Tidwell the opportunity to be heard in violation of her right to procedural due process. While a trial court typically has "broad discretion to control the order and timing of presentation of evidence and set and enforce reasonable time limits on testimonial hearings" *Dolliver v. Dolliver*, 2001 ME 144, ¶ 10, 782 A.2d 316, 317—318, being given "equal time" to present one's case does not satisfy the procedural due process deficiency when the trial court precludes a party from presenting a counterclaim or an affirmative defense. *Tidewater Loft Condo. Ass'n*, at ¶ 14.

In *Nou v. Huot*, the Court established an implicit four-factor test for whether a truncated hearing violates due process: (1) did the party object on the record; (2) did the court assure additional time; (3) did the party identify specific evidence it

could not present; and (4) was the decision actually affected by the constraint. *Nou v. Huot* 2025 ME 44 ¶41, 335 A.3d 603, 615.

In *Plourde*, the Law Court upheld a two hour time limit in a protection from harassment hearing. *Plourde* at ¶ 7. In that case, the Law Court upheld the decision to “control the order and timing of presentation of evidence and to set and enforce reasonable time limits on testimonial hearings.” *Id.* In that case, the Law Court recognized the “relative simplicity of the issues” underpinning the reasonableness of the two-hour time limit. *Id.* “Procedural due process requires an opportunity to be heard, not an optimal opportunity be heard.” *Bank of America, N.A. v. Camire*, 2017 ME 20, ¶ 8, 155 A. 3d 416, 419.

In the instant case, the trial court limited the hearing to two hours total. At the time of the hearing, four matters were consolidated into one hearing; Tidwell’s complaint for a protection order against Doe, Tidwell’s complaint for a protection order against Roe, Roe’s complaint for a protection order against Tidwell, and Doe’s complaint for a protection order against Tidwell. At the beginning of the hearing, Roe dismissed his complaint against Tidwell. Tr. 6. Tidwell was allotted one hour to present her complaints against Doe and Roe, and Doe was allotted one hour to present her complaint against Tidwell. The allocation of time was not modified based on the number of parties changing. On multiple occasions, the court was interrupted by other matters.

The instant case was not simple. The Court’s own statement that “property rights may have to go to some other court” demonstrates that the complexity of the

underlying dispute was beyond what the two-hour consolidated hearing could accommodate. The trial court was charged with adjudicating three separate complaints for PFH, as well as the requisite defenses to each complaint. The allegations in all three complaints were intrinsically tied to the dispute between the parties regarding whether the Does had any right to access Tidwell's property. Both sides had extensive video, audio, and documentary evidence regarding the dispute. Both sides had prepared research including the chain of title and deeds for the two properties. The complexity of this case means that imposing a two-hour time limit was an abuse of discretion under *Plourde*.

The instant case can also be distinguished from *Bank of America, N.A.* because unlike in the instant case, Camire was provided ample notice prior to the hearing regarding the time constraints. *Bank of America, N.A.* at ¶ 9. Nor was Camire able to identify what additional evidence or information he would have presented. *Id.* In the instant case, the time-limit was imposed at the beginning of the hearing, and as described above, Tidwell identified a number of items she would have presented to the court were she granted more time to do so.

In applying the *Nou* factors to this case, trial counsel did not object to the two-hour time limit on the record, but there was an in-chambers conference prior to the start of the hearing. It is unclear if the parties were given notice or opportunity to object to the two hour time limit during that off-the-record discussion. The absence of objection on the record does not constitute waiver of this issue. *De novo* review is still appropriate because the imposition of the time-limit violated Tidwell's right to procedural due process. Trial counsel referred to the time limit

on multiple occasions. The court did indicate that it would be fair to both sides but did not assure that any additional time would be available.

With respect to the third *Nou* factor, Tidwell did specify multiple items of evidence that she would have presented had she been given more time. She testified that she had a video of Monaco's interview of her which she offered to present "if we had enough time." Tidwell had direct exculpatory evidence in the form of her security camera which she indicated she could show "if the Court has enough time." Tidwell testified to having surveillance cameras and having footage of the fence being torn down. Tidwell testified to having video of the Does driving an ATV on her property, and having a written chart of all of the alleged trespasses that had occurred on her property, neither of which were entered. When Tidwell's attorney called Roe, the defendant in one of Tidwell's complaints, the trial court told counsel she could call him "very briefly." Tr. 84. Tidwell's trial counsel had to modify her presentation on multiple occasions based on the time constraints.

With respect to the final *Nou* factor, the court's decision was necessarily affected by the constraint. Every item described above was a material item of evidence directly on point to whether Doe could prove the allegation of harassment against Tidwell. The inability to present this information due to time constraints necessarily impacted the court's decision. The application of the four *Nou* factors to this case show that Tidwell's right to due process was violated.

Evaluating this case under *Plourde* and *Nou*, shows that the time limitation resulted in a violation of due process rights because it did not just remove an

“optimal opportunity to be heard” but it effectively removed Tidwell’s “opportunity to be heard.” Not only did the trial court abuse its discretion when it imposed a two-hour time limit, that two-hour time limit violated Tidwell’s right to procedural due process. The Law Court should vacate the order against Tidwell.

IV. The Trial Court Erred as a Matter of Law When it Denied Tidwell’s Complaint against the Does Based on Failing to Apply the “Tampering” Prong to Its Criminal Mischief Analysis.

As discussed above, the court may issue a PFH order if a Plaintiff proves by a preponderance that a defendant committed one of three definitions of “harassment.” Relevant to this section, criminal mischief as defined by 17-A M.R.S. §806, is one of the enumerated statutes which constitutes “harassment”. A person commits criminal mischief if he

“intentionally, knowingly or recklessly: [d]amages or destroys the property of another, having no reasonable grounds to believe that the person has a right to do so; damages or destroys property to enable any person to collect insurance proceeds for the loss caused; or tampers with the property of another, having no reasonable grounds to believe that the person has the right to do so, and thereby impairs the use of that property.” *17-A M.R.S. § 806(1)(A)*.

The trial court correctly identified criminal mischief as a single act of harassment capable of supporting an order for a protection from harassment, and correctly found that Tidwell’s fence was “taken down” by the Does. However, the trial court found that Tidwell had not proven criminal mischief because it “could not find intentional knowing or reckless *damage or destruction*” by a preponderance of the evidence. Tr. 102 The Court failed to apply the “tampered

with” definition of criminal mischief to the Does’ conduct. This legal error is subject to *de novo* review. *Nadeau v. Frydrich*, 2014 ME 154, ¶ 5, 108 A.3d 1254, 1256; *Anctil v. Cassese*, 2020 ME 59, ¶ 6, 232 A.3d 245, 249.

The third prong of criminal mischief “tampers with the property of another” is satisfied by conduct that falls short of physical damage or destruction but nonetheless renders the property unusable. *State v. Jacques*, 537 A.2d 587 (Me. 1988). In *Jacques*, the defendant entered a residence and removed the cords from two telephones, leaving the phones themselves physically intact and unbroken. *Id.* at 590. The Law Court held that the “tampers with” instruction to the jury was appropriate because the removal of the cords “impaired [the] use” of the phones. *Id.* at 591³.

In the instant case, the record supports a finding that Tidwell’s fence was erected to prohibit vehicle access across her property. Doe testified that she dismantled the fence deliberately, and did so with the express intention of driving her vehicle through. Roe admitted to completing the disassembly started by Doe and driving his ATV through the space. He also admitted to disassembling the fence on at least one other occasion. Just like Jacques removing the telephone cord tampered with the use of the phone despite not damaging the phone, disassembling

³ Other states have made similar conclusions that property does not have to be damaged to be “tampered” with. Of note, Oregon’s criminal mischief statute is similar in construction to Maine’s. The Oregon Court of Appeals held that evidence that defendants removed keys from trucks parked in a shed was sufficient to establish criminal mischief under the “tampering prong” despite no damage being caused to the property because removal of the keys impaired the owner’s ability to use the trucks. *State v. Essig*, 31 Or. App. 639, 571 P.2d 170 (1977).

Tidwell's fence tampered with the use of the fence despite not damaging the components of the fence. Tidwell paid to have the fence installed and had to pay to have it restored. The fence was tampered with in such a way as it ceased to function as a fence. It was dismantled by the Does for the express purpose of ceasing the function of the fence as a barrier to motor vehicles. The location of the fence was continuously referred in the proceedings as on "Tidwell's property." The Does claimed a right to remove the fence because they believed they had deeded access of some kind across Tidwell's property. The court specifically declined to make any findings regarding the property dispute. In the absence of any adjudicated right to be on Tidwell's property, neither Doe nor Roe had a reasonable ground to believe they were entitled to dismantle the fence and in doing so were in violation of Maine's criminal mischief statute.

Even if, *arguendo*, the Does had permission to operate their ATV across Tidwell's property, that permission does not extend to removing a fence on the property and is not a defense to criminal mischief. An ATV operator may not "[t]ear down or destroy a fence or wall on another person's land." Title 12 M.R.S. § 13157-A (22). Violation of this statute is a Class E crime. *Id.*

In this case, the trial court found the fence was "taken down." That finding establishes criminal mischief under 17-A M.R.S. § 806 (1)(A)'s "tampers with/impairs use" prong. The trial court's denial of Tidwell's complaint against Doe rested on an erroneous legal framework by only addressing "damages or destroys"

prong. The Law Court should reverse the dismissal of Tidwell's harassment complaints against the Does and remand with instructions to the trial court that its own factual findings satisfy the elements of criminal mischief as a single act of harassment under 5 M.R.S. § 4651(2)(C).

CONCLUSION

The trial court erred as a matter of law when it granted Pat Doe's complaint for a protection order against Tidwell. The trial court improperly found that Tidwell engaged in one act of terrorizing. The Law Court should vacate the Order against Tidwell and remand with instructions that the facts as found do not support a finding that Tidwell engaged in one act of terrorizing. In addition, the trial court violated Tidwell's right to procedural due process by excluding from the court's inquiry a determination of the property rights in dispute; and separately by imposing a two-hour time limit on the proceedings. The Law Court should vacate the order against Tidwell and remand with instructions that the trial court conduct a hearing consistent with its order regarding procedural due process. Finally, the trial court erred by failing to apply the "tampers with" definition of criminal mischief to Pat Doe's conduct. The Law Court should Vacate the trial court's order denying Tidwell's complaints against Doe and Roe and remand with instructions that the facts as found by the trial court require a finding that Doe and Roe engaged in an incident of criminal mischief.

Dated this 22nd day of June 2026,

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I have caused a true copy of this brief to be served via electronic service to Attorney Jens-Peter Bergen, via email at jwbergen@mainelawyer.net.

Dated this 22nd day of June 2026,

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