

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2026 ME 93
Docket: Pen-25-322
Argued: February 4, 2026
Decided: August 27, 2026

Panel: STANFILL, C.J., and MEAD, CONNORS, LAWRENCE, DOUGLAS, and LIPEZ, JJ.

STATE OF MAINE

v.

JAMES WELSH

LIPEZ, J.

[¶1] James Welsh appeals from a judgment of conviction for indecent conduct, 17-A M.R.S. § 854(1)(A)(4) (2026), entered by the trial court (Penobscot County, *Mallonee, J.*) after a bench trial. Welsh contends that there was insufficient evidence to convict him of indecent conduct because the State did not prove beyond a reasonable doubt that when he exposed his genitals, he did so “[i]n a public place,” which is an element of the offense with which he was charged. *See id.* § 854(1)(A)(2), (4). We conclude that the trial court relied upon evidence that was insufficient as a matter of law to sustain Welsh’s conviction under a proper reading of the statute but that the State presented sufficient evidence—if credited by the court—to sustain Welsh’s conviction on an alternative basis. Because the trial court expressly declined to opine on

whether the evidence underlying the State's alternative theory supported a finding of guilt, we vacate Welsh's conviction and remand the case to the trial court to make clear its findings of fact and correctly apply the indecent-conduct statute to those facts.

I. BACKGROUND

A. Facts

[¶2] When the evidence is viewed in the light most favorable to the State, the trial court rationally could have found the following facts beyond a reasonable doubt. *See State v. Wilson*, 2015 ME 148, ¶ 13, 127 A.3d 1234.

[¶3] Welsh lives in an apartment building in Bangor. On the first floor of the building, there is a small hallway that leads to a set of stairs. Welsh lives in an apartment on one side of this hallway and has at least one neighbor who occupies the apartment on the other side of the hallway. Another neighbor lives in an apartment upstairs. The tenants access the building through an exterior door that leads to the shared hallway; from the shared hallway, each apartment is accessed through a separate interior door.

[¶4] On the morning of January 20, 2024, Welsh's across-the-hall neighbor opened her door to leave for work. She saw Welsh standing in the hallway, naked. He was standing less than a foot from the door to her

apartment with his back turned toward her. When the neighbor saw Welsh, she was upset and embarrassed for herself and for him. She closed her door and called the police.

[¶5] A Bangor Police Department officer responded to the neighbor's call. When the officer arrived at the apartment building, he could see through a window that Welsh was naked in his apartment, with the door from the apartment to the shared hallway open. The officer entered the building and spoke to Welsh. At this time, Welsh was still standing in his apartment, naked, with the door open. The officer told Welsh to get dressed and Welsh did so. The officer gave Welsh, who had two prior convictions for indecent conduct, a summons for the same offense and then left.

B. Procedure

[¶6] Welsh was charged by criminal complaint with indecent conduct pursuant to 17-A M.R.S. § 854(1)(A)(4), which elevates the offense set forth in section 854(1)(A)(2) of the same statute from a Class E to a Class D crime when the defendant has two or more prior convictions for certain crimes, including, as relevant here, indecent conduct. He pleaded not guilty to the charge and waived his right to a jury trial. In June 2025, the court held a bench trial at which the State called two witnesses: Welsh's neighbor who had observed the

incident and the police officer who responded to her 9-1-1 call. The State also introduced a video of Welsh's interaction with the officer and documentation of Welsh's two prior convictions for indecent conduct.

[¶7] Welsh did not call any witnesses or otherwise present evidence to the court, but he did move for a judgment of acquittal after the State rested, *see* M.R.U. Crim. P. 29(a), arguing that the conduct at issue occurred in his apartment building, that the building is a private place for the purposes of the indecent-conduct statute, and that the State had accordingly presented insufficient evidence of a necessary element of the offense charged—that the actor engaged in the prohibited conduct in a “public place,” *see* 17-A M.R.S. § 854(1)(A)(2). The court denied the motion, reasoning that the State had presented evidence that Welsh was unclothed in the shared hallway of the apartment building, which was open to members of the public such as visitors, delivery people, and, in this case, police officers. It concluded that the hallway was distinguishable from the building tenants' private residences and was a public place within the meaning of the statute.

[¶8] At the end of the trial, however, the court made an oral finding of guilt predicated not on evidence of Welsh's actions in the shared hallway, but rather on his conduct while standing in his apartment. It explained:

I noted when [the neighbor] testified that she said only that she saw Mr. Welsh's back and that he was completely unclothed. And my first thought was that that is a—it's a purposeful act. It is a bad act, and it is in some way an illegal act. But I was not sure that it was an act that would fulfill the terms of this statute.

Then, I think that [the State's] argument is interesting that he—clearly his genitals were exposed, and they—there were circumstances that caused affront and alarm, not because [the neighbor] saw them, 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. That is a statutorily interesting argument that I think I need not resolve because 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.

Then the question is whether the officer himself felt affront or alarm? Well, he's a police officer. He's trained to deal with all kinds of people and to maintain his poise. But he's still a human. And it was pretty clear from the interaction that he had with Mr. Welsh that he felt affronted, if not alarmed. So I do find that this offense was committed.

[¶9] The court entered a judgment of conviction and sentenced Welsh to ninety days' imprisonment and imposed a \$45 fine. Welsh timely appealed. *See* M.R. App. P. 2B(b)(1).

[¶10] At oral argument, we raised an issue not fully addressed by the parties in their initial briefing: how we should proceed if we were to conclude that there might be sufficient evidence in the record to sustain Welsh's

conviction but that the basis upon which the trial court actually found Welsh guilty—his interaction with the police officer while standing inside his own apartment—was legally insufficient. We subsequently ordered supplemental briefing on this issue, which the parties provided. We accordingly address the arguments made by the parties in both their initial and their supplemental briefing.

II. DISCUSSION

[¶11] The primary question before us is whether the State proved beyond a reasonable doubt that Welsh exposed his genitals in a “public place” for purposes of 17-A M.R.S. § 854(1)(A)(2), which provides that a person commits the offense of indecent conduct if “[i]n a public place . . . [t]he actor knowingly exposes the actor’s genitals under circumstances that in fact are likely to cause affront or alarm.” On appeal, Welsh presents this as an issue both of statutory construction and of the sufficiency of the evidence. We agree that here the questions of “sufficiency of the evidence and statutory construction are intertwined, as we must determine what the elements of the crime are before we can determine whether the evidence was sufficient to establish each element beyond a reasonable doubt.” *State v. Murphy*, 2016 ME 5, ¶ 4 n.2, 130 A.3d 401. Both the statutory-interpretation and the sufficiency

questions are preserved for appellate review by virtue of Welsh's motion for judgment of acquittal.¹ We review the applicable statute de novo and the evidence in the light most favorable to the State. *Id.* ¶ 5.

A. The Meaning of a “Public Place”

[¶12] We begin with the statute under which Welsh was convicted, which, as noted, requires a showing that at the time Welsh exposed his genitals, he was “[i]n a public place.” 17-A M.R.S. § 854(1)(A)(2), (4). Welsh contends that neither the shared hallway of his apartment building nor his apartment itself constitutes a “public place” within the meaning of the statute.

[¶13] When we interpret a statute, we look first to the plain language in the context of the whole statutory scheme. *Murphy*, 2016 ME 5, ¶ 7, 130 A.3d 401. We construe undefined words and phrases “according to their common meaning.” *Id.* “[O]nly if the statutory language is ambiguous—that is, reasonably susceptible to more than one interpretation—will we consider other indicia of legislative intent,” such as legislative history. *State v. Beaulieu*, 2025 ME 4, ¶ 14, 331 A.3d 280 (quotation marks omitted). “[O]ur single goal is

¹ Although Welsh did move for a judgment of acquittal, we review the sufficiency of the evidence supporting a conviction under the same standard regardless of whether a defendant makes such a motion at trial. See *State v. Averill*, 2026 ME 48, ¶ 26 n.4, --- A.3d ---.

to give effect to the Legislature’s intent in enacting the statute.” *State v. Santerre*, 2023 ME 63, ¶ 8, 301 A.3d 1244 (quotation marks omitted).

[¶14] “Public place” is not defined by statute, but the terms “in public” and “public place” are commonly understood to refer to places to which members of the public other than the owner or occupier have at least some degree of access. *See, e.g., Tribou v. State*, 552 A.2d 1262, 1263-65 (Me. 1989) (describing a nightclub as a “public place”); *State v. Caswell*, 2001 ME 23, ¶ 20, 771 A.2d 375 (Saufley, J., concurring) (referring to a gas station as a “public place”); *State v. Gatto*, 2020 ME 61, ¶ 21, 232 A.3d 228 (noting that a defendant convicted of the murder of a child had been “reticent to take the victim out *in public* for fear that someone would recognize the obvious signs of abuse” (emphasis added)); *Public*, New Oxford American Dictionary (3d ed. 2010) (defining “in public” as “in view of other people; when others are present”); *see also* 17-A M.R.S. § 501-A(2)(A)-(B) (2026) (defining a “[p]ublic place” for purposes of the disorderly conduct statute as “a place to which the public at large or a substantial group has access, including but not limited to . . . [t]he lobbies, hallways, lavatories, toilets and basement portions of apartment houses, hotels, public buildings and transportation terminals,” and a “[p]rivate place” as “any place that is not a public place”); *cf. Murphy*, 2016 ME 5, ¶ 7, 130

A.3d 401 (interpreting the term “sexual partner” in the domestic-violence-assault statute by looking to common usage of the term in court opinions).

[¶15] Welsh rejects this common understanding in favor of a narrow reading of “public place” that would apply only to publicly *owned* property.² For support, he relies on definitions of “public place” and “public property” from Black’s Law Dictionary.³ Welsh’s argument is unavailing. “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.” *State v. Marquis*, 2023 ME 16, ¶ 14, 290 A.3d 96 (alteration and quotation marks omitted). There is no indication from the language of section 854 that “public place” is meant to be a legal term of art, and we therefore do not find Welsh’s reliance on the definitions from Black’s persuasive. To the contrary, the average person often uses terms such as “in

² Welsh also contends that, to the extent that the meaning of the term “public place” is unclear, we should apply the rule of lenity and the doctrine of strict construction to interpret the term narrowly in his favor. In support of this contention, he cites the United States Supreme Court’s statement in *McNally v. United States* that “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.” 483 U.S. 350, 359-60 (1987). But, as we explain, *infra* ¶¶ 15-18, Welsh’s proposed reading of the statute is simply not a rational one.

³ Black’s defines “public property” as “State- or community-owned property not restricted to any one individual’s use or possession,” *Property*, Black’s Law Dictionary (12th ed. 2024), and “public place” as “[a]ny location that the local, state, or national government maintains for the use of the public, such as a highway, park, or public building,” *Public Place*, Black’s Law Dictionary.

public” and “public place” to refer to various privately owned places frequented by members of the public, such as supermarkets, restaurants, or office buildings. On the other hand, people invariably refer to their own homes and living spaces from which the public is excluded as “private places.”

[¶16] The structure of the indecent-conduct statute supports interpreting “public place” in accordance with this commonly understood meaning. *See Beaulieu*, 2025 ME 4, ¶ 15, 331 A.3d 280 (“To ascertain a statute’s plain meaning, we examine the entirety of the statute, giving due weight to design, structure, and purpose as well as to aggregate language.” (quotation marks omitted)). Section 854 creates a dichotomy between “public” and “private” places: a person can commit the offense in either, albeit under different circumstances. *See* 17-A M.R.S. § 854(1)(A)-(C). As a result of this dichotomy, what is not private is necessarily public; there is no third category.⁴ Although the statute also does not define “private place,” it provides for an affirmative defense to a charge of indecent conduct in a “private place” that gives a strong clue as to that term’s meaning. *See id.* § 854(2-A). Specifically, section 854(1)(C) criminalizes the conduct of an actor who, “[i]n a private place, . . . exposes the actor’s genitals with the intent that the actor be seen by another

⁴ Welsh does not appear to dispute this; he concedes that all “place[s]” are either public or private for the purposes of the statute.

person in that private place under circumstances that the actor knows are likely to cause affront or alarm.”⁵ However, “[i]t is a defense to prosecution under [this subsection] that the other person previously lived or currently is living in the same household as the actor.” *Id.* § 854(2-A). The existence of this defense indicates that a “private place” is akin to a private “household”—a home or similar place. It ensures that people who live together—family members, dating partners, or roommates—do not commit the offense of indecent conduct when one is naked in front of the other in the place in which they both live.

[¶17] Interpreting “private place” more broadly, as Welsh suggests, to include all privately owned property, would render this defense absurd and illogical. *See Harrington v. State*, 2014 ME 88, ¶ 5, 96 A.3d 696 (“We seek to discern from the plain language of the statute the real purpose of the legislation, avoiding results that are absurd, inconsistent, unreasonable, or illogical.” (alteration and quotation marks omitted)). For instance, it would permit a person who exposes his genitals in a privately owned restaurant to evade conviction for the offense of indecent conduct if the other person who observes the act is a current or former roommate. *See* 17-A M.R.S. § 854(1)(C), (2-A). This is an unreasonable reading of the statute, and suggests that for purposes

⁵ Although we construe the statute as a whole and this subsection is instructive, we note that Welsh was not charged under this subsection of the statute.

of section 854, “private place[s]” are limited to private residences or similar locations, whereas “public place[s]” encompass all other places—anywhere accessible to members of the public.⁶

[¶18] We accordingly conclude that under the plain language of section 854, “private place[s]” are limited to individuals’ homes or other similarly exclusive places to which persons other than the owner or occupants do not have regular access. “Public place[s],” on the other hand, encompass all other places, both publicly and privately owned, to which members of the public or a substantial group other than the owner or occupants have regular access.⁷

⁶ The Legislature has also stated expressly that “[f]or purposes of [the indecent-conduct statute] ‘public place’ includes, but is not limited to, motor vehicles that are on a public way.” 17-A M.R.S. § 854(2).

⁷ While we conclude that the language of section 854 is unambiguous, we note that, even if we were to accept Welsh’s contention that the statute is ambiguous, its legislative history supports our conclusion. In 1995, the Legislature codified the substance of what is now subsections 1(C) and 2-A of the statute, governing indecent conduct in a private place toward another person in that private place. *See* P.L. 1995, ch. 72, § 2 (effective Sep. 29, 1995) (codified as subsequently amended at 17-A M.R.S. § 854(1)-(2-A)). In interpreting this amendment, we said:

The Legislature thereby extended 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. Legislative testimony by the representative who proposed the 1995 amendment suggests that the Legislature intended to criminalize an in-person exposure that would otherwise escape prosecution because the actor and the victim were in the same private place. The legislative record further indicates that the “affront or alarm” requirement was included to avoid criminalizing consensual private exposures.

State v. Legassie, 2017 ME 202, ¶ 18, 171 A.3d 589 (citing *An Act to Prohibit Private Indecency: Hearing on L.D. 179 Before the J. Standing Comm. on Criminal Justice*, 117th Legis. (1995) (testimony of Rep. William F. Reed and testimony of Marty McIntyre, Maine Coalition Against Sexual Assault)).

[¶19] Applying the plain language of section 854 to the facts of this case, Welsh’s apartment, his personal residence, is a “private place.” The shared hallway of his apartment building, on the other hand, which is used by other tenants of the building and, as the trial court found, could conceivably be used by members of the public—visitors, delivery people, or, as here, visiting police officers—is a “public place.”

B. The Trial Court’s Findings and Sufficiency of the Evidence

[¶20] We now turn to the trial court’s application of the statute to the facts of this case and Welsh’s argument that the evidence was insufficient to sustain his conviction. Although we view the evidence in the light most favorable to the State, when the trial court makes specific findings of fact in reaching its verdict, as it did here, “we review those findings for clear error and will uphold them if supported by competent evidence in the record.” *State v. Hodgson*, 2025 ME 88, ¶ 17, 345 A.3d 125 (quotation marks omitted).

[¶21] The court predicated its verdict on Welsh’s encounter with the responding police officer, finding that Welsh’s conduct of standing naked in his

The Legislature’s intent to avoid criminalizing “consensual private exposures” in private places indicates that such places are those where a consensual private exposure would be appropriate, i.e., homes, hotel rooms, or other similar locations exclusive to the owner or occupants. Accordingly, it follows that all other places where a consensual private exposure would be inappropriate—any place that persons other than the owners or occupants could conceivably access—would be “public” within the meaning of the statute.

open doorway “constitutes exposing your genitals in a public place.”⁸ For the reasons we just explained, *supra* ¶¶ 12-19, the court’s characterization of Welsh’s apartment as a “public place” was incorrect as a matter of law. Because the defendant’s presence in a “public place” is an element of the crime that Welsh was convicted of, *see* 17-A M.R.S. § 854(1)(A)(2), (4), and because the exposure upon which the court based its finding of guilt did not occur in a public place, there is insufficient evidence to sustain Welsh’s conviction on the grounds articulated by the trial court.⁹ *See Hodgson*, 2025 ME 88, ¶ 17, 345 A.3d 125.

[¶22] Had the trial evidence pertained only to Welsh’s conduct while in his apartment, our analysis would end here with a mandate vacating the conviction and directing the trial court to enter a judgment of acquittal on Welsh’s behalf. *See, e.g., State v. Wilder*, 2000 ME 32, ¶ 1, 748 A.2d 444 (“Because the evidence in this case is insufficient to support the convictions beyond a reasonable doubt . . . we vacate the convictions and remand for entry

⁸ The court found that Welsh was standing in the open doorway of the apartment. The undisputed evidence was that he was inside his apartment with the door to the shared hallway open, thus lending additional support to our holding here.

⁹ This is not to say that there is no possible consequence for Welsh’s standing naked in his apartment with the door open. Section 854(1)(B) criminalizes the act of exposing one’s genitals in a private place “with the intent that the actor be seen from a public place.” But the State did not charge Welsh under that provision.

of a judgment of acquittal.”). But as the State argues, it also presented evidence that Welsh exposed his genitals while in the shared hallway—a “public place.” We accordingly consider whether that evidence, when taken in the light most favorable to the State, is sufficient to support Welsh’s conviction. *See Murphy*, 2016 ME 5, ¶ 5, 130 A.3d 401.

[¶23] We conclude that the State’s evidence, when viewed in this light, was sufficient to establish each element of the charged offense. First, there was evidence that Welsh was in a public place—the shared hallway. Second, there was evidence that Welsh knowingly exposed his genitals—that he stood fully naked outside his neighbor’s door. Third, there was evidence from which one could find that, although Welsh was facing away from the neighbor, he exposed himself under circumstances that in fact were likely to cause affront or alarm—indeed, the neighbor testified that she was affronted and alarmed.¹⁰ And fourth,

¹⁰ The trial court suggested that the “affront or alarm” element of the offense required a victim—a person who was in fact affronted or alarmed by the defendant’s exposure. This is inconsistent with the language of the statute, which focuses on whether the exposure occurs “*under circumstances that in fact are likely to cause affront or alarm.*” 17-A M.R.S. § 854(1)(A)(2) (emphasis added); *see State v. Smith*, 437 A.2d 639, 640-41 (Me. 1981) (holding that allegation in complaint that defendant “expose[d] his penis to passersby” was sufficient to satisfy “affront or alarm” element because “[t]he indiscriminate display of one’s penis to members of the traveling public is likely to prove offensive” (quotation marks omitted)). In a related vein, Welsh asserted at oral argument that to convict him the State had to prove that he *knew* the exposure was likely to cause affront or alarm. The subsection under which Welsh was charged, however, by requiring only that the circumstances were “in fact” likely to cause affront or alarm, 17-A M.R.S. § 854(1)(A)(2), mandates no such showing of intent regarding that element. *See* 17-A M.R.S. § 34(4)(B) (2026) (“Unless otherwise expressly provided, a culpable mental state need not be proved with respect to . . . [a]ny element of the crime as to which it is expressly stated that it must ‘in fact’ exist.”). By contrast, a separate subsection of the

the State introduced evidence of Welsh's two prior convictions. This evidence, if credited by the trial court, was sufficient to support each element of the offense charged. *See* 17-A M.R.S. § 854(1)(A)(2), (4). The problem here is that the court did not appear to make any findings with respect to this evidence. *Cf. State v. Cannell*, 2007 ME 30, ¶ 10, 916 A.2d 231 (remanding for further findings where defendant's testimony, "if credited by the court, could lead to [the defendant's] acquittal"). We therefore consider how we must dispose of a criminal appeal where there may be sufficient evidence in the record to support the defendant's conviction but the trial court expressly did not rely on that evidence in making its finding of guilt, instead relying on evidence that was insufficient to support the conviction.

C. The Proper Disposition of this Case

[¶24] The State argues that we should affirm Welsh's conviction, notwithstanding the trial court's reliance on evidence insufficient to support the conviction. It notes that we have affirmed a conviction on alternative grounds on at least one occasion, *see State v. Knight*, 2009 ME 32, ¶ 10, 967 A.2d

indecent-conduct statute governing exposures in private places contains an express mens rea requirement. *Contrast* 17-A M.R.S. § 854(1)(A)(2) (prohibiting an actor from knowingly exposing his genitals in a public place "under circumstances that *in fact are likely* to cause affront or alarm" (emphasis added)), *with id.* § 854(1)(C) (prohibiting an actor from exposing his genitals in a private place "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" (emphasis added)).

723, and further contends that we may infer facts not specifically found by the trial court but consistent with the record in evaluating the sufficiency of the evidence supporting the court's ultimate finding of guilt. Welsh disagrees, asserting that because the evidence the court relied on was insufficient under a proper reading of the statute, we must vacate the conviction.

1. Alternative Basis for Conviction

[¶25] We conclude that we cannot affirm Welsh's conviction on grounds that the trial court did not rely on. The State is correct that we have affirmed a conviction on an alternative basis in a case where, following a bench trial, the court erroneously applied the law to the facts. Specifically, in *Knight*, which involved a prosecution for operating after suspension, we held that although the trial court relied on legally insufficient evidence to find that the State met its burden to prove the element of notice, any error was harmless because the court also credited other evidence that sufficed to prove notice. *Id.* ¶¶ 1, 6, 8-10. Here, however, it is not clear that the court credited the State's evidence regarding Welsh's conduct in the hallway; the court's statements regarding the events that transpired before the police officer arrived are at best ambiguous—they could be read as findings of fact, or simply as a summary of the neighbor's

testimony and the State's argument for conviction.¹¹ The court's findings are therefore inadequate to support affirmance on the State's alternative theory of the case. *See Weidul v. State*, 2024 ME 51, ¶ 34 n.10, 319 A.3d 1048 ("The proper role of an appellate court requires that one court, the trial court, have the fact-finding role and that the appellate court defer to the trial court's findings." (alterations and quotation marks omitted)).

2. Inferred Findings

[¶26] The State also argues that because Welsh did not move for special findings of fact after the court found him guilty, we can infer the requisite findings needed to support Welsh's conviction. *See* M.R.U. Crim. P. 23(c) ("In a case tried before the court without a jury, the court shall make a general finding and shall in addition on request find the facts specially."). For support it cites *State v. Brown*, where we explained that because the defendant "failed to request further findings of fact pursuant to M.R.U. Crim. P. 23(c)," we would

¹¹ As noted, *supra* ¶ 8, regarding the State's argument that Welsh committed the offense while standing in the hallway, the court stated, in part:

I think that [the State's] argument is interesting that he—clearly his genitals were exposed, and they—there were circumstances that caused affront and alarm, not because [the neighbor] saw them, 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. That is a statutorily interesting argument that I think I need not resolve because I am finding that the offense took place when the officer arrived.

“infer that the trial court found all the facts necessary to support its judgment given that those inferred findings are supported by evidence in the record.” 2017 ME 59, ¶ 17, 158 A.3d 501.

[¶27] The State’s argument is unpersuasive, however, because no factfinding about Welsh’s actions in the hallway was *necessary* for the trial court to reach its erroneous conclusion that Welsh committed indecent conduct (at least under the provision he was charged with violating) while standing in his apartment. *Cf. id.* Put another way, the trial court based its finding of guilt on events that transpired after the police officer arrived at the apartment building, when Welsh was in a private place—his apartment. The evidence that might have supported a finding of guilt under a proper application of section 854(1)(A)(4)—of events that occurred while Welsh was in the hallway, a public place—was unrelated to the trial court’s basis for finding Welsh guilty. Accordingly, if we were to make findings regarding those events, they would not be inferences; they would be independent findings of fact.¹² Such findings are beyond the scope of our domain as an appellate court. *See Weidul*, 2024 ME 51, ¶ 34 n.10, 319 A.3d 1048; *State v. Stone*, 294 A.2d 683, 688 n.6 (Me. 1972)

¹² In contrast, in cases where the trial court does not make any findings as to a necessary element of the offense charged and the defendant does not move for special findings of fact pursuant to M.R.U. Crim. P. 23(c), we will infer the necessary finding if it is supported by evidence in the record. *See State v. Dodd*, 503 A.2d 1302, 1307 (Me. 1986).

("[A]t the appellate level, we may not ourselves provide . . . findings of fact; this would be an improper invasion of the domain of the fact-finder.").

3. The Proper Outcome: Remand

[¶28] Having concluded that we cannot affirm Welsh's conviction, we next consider the scope of our remand order. Welsh contends that rather than giving the trial court an opportunity to make findings about the State's evidence that he exposed himself in the hallway, we must simply vacate the conviction because the trial court "made an expression of reasonable doubt" as to this potential alternative basis for conviction. We disagree, for two reasons.

[¶29] First, the court's statements, while somewhat unclear, do not articulate reasonable doubt about the evidence regarding Welsh's hallway activities; rather, the court simply avoided addressing the question of whether those activities would constitute indecent conduct, stating that it was "a statutorily interesting argument that I think I need not resolve because I am finding that the offense took place when the officer arrived." Because the court expressly declined to reach the issue of whether the State proved that Welsh committed the offense in the shared hallway, that remains an open question that the court must address.

[¶30] Second, counter to Welsh’s assertions, we regularly remand cases for further findings when, as is the case here, there may be sufficient evidence in the record to support a finding of guilt but the trial court committed a legal error that invalidates the conviction.¹³ *See State v. Patterson*, 2004 ME 79, ¶¶ 1, 15-16, 851 A.2d 521 (vacating a judgment of conviction for assault after a bench trial and “remand[ing] to allow the court to make clear its findings of fact and conclusions of law”); *State v. Longley*, 483 A.2d 725, 731-32 (Me. 1984) (reasoning that trial court’s conclusion of law, after a bench trial, was “susceptible to several interpretations,” one of which was erroneous, and therefore vacating the conviction and remanding the case “so that the trial justice [could], on the existing record, make fresh findings of fact” and a “redetermination of innocence or guilt”); *see also Cannell*, 2007 ME 30, ¶ 10, 916 A.2d 231 (holding that trial court failed to properly evaluate defendant’s asserted defense of justification for his use of physical force and “vacat[ing] the

¹³ This case is distinguishable from cases in which we have vacated a conviction after a bench trial because the court erred in its application of the relevant statute to the facts and there was no evidence in the record to support a finding of guilt under a proper reading of the statute. *See, e.g., State v. Jones*, 2012 ME 88, ¶¶ 1, 7-12, 46 A.3d 1125 (vacating a conviction for carrying a concealed weapon when the trial court did not make findings about whether the knives at issue were of the type prohibited by statute and there was “[n]o evidence presented at trial” and thus “no factual basis in the record to support a conclusion that [the knives were of the prohibited type]”).

conviction and remand[ing] the matter to the [trial court] for application of the nondeadly force defense to the facts already before the court”).¹⁴

[¶31] Our decision in *Patterson* is particularly instructive. There, the defendant raised a defense-of-property defense to his assault charge. *Patterson*, 2004 ME 79, ¶¶ 1, 6, 851 A.2d 521. After a jury-waived trial, the court made unrequested findings of fact that included conflicting statements regarding the applicability of the affirmative defense; it first suggested that the defendant had not generated the defense, then later erroneously indicated that the defense was inapplicable as a matter of law. *See id.* ¶¶ 7-8, 11, 14-15. On appeal, we concluded that “[b]ecause the conflicting statements of the court make it impossible for us to ascertain whether the court found that [the defendant] failed to provide sufficient evidence to generate the [affirmative] defense, or whether it concluded that the defense could not be applied as a

¹⁴ Courts in other jurisdictions take a similar approach. *See, e.g., United States v. Conners*, 606 F.2d 269, 270-73 (10th Cir. 1979) (concluding that a statute prohibiting the hunting and killing of certain migratory birds only applied to “wild” birds and, because the trial court made no finding of fact as to whether the birds at issue were “wild” or “captive-reared,” remanding the case to the trial court to make findings on this “controlling question”); *Augustin v. United States*, 240 A.3d 816, 825 (D.C. 2020) (“Where, as here, the evidence is sufficient to support a verdict of guilty in a bench trial, but the trial judge appears to have grounded the verdict on a mistaken view of the facts without (apparently) having considered and rejected the permissible factual basis, the proper course is for this court to remand the case for the trial judge to weigh the evidence afresh.”); *Ewell v. United States*, 72 A.3d 127, 130-33 (D.C. 2013) (concluding that the trial court committed legal errors in its application of the defendant’s self-defense claim and failed to make fact findings adequate for appellate review, and accordingly “remand[ing the case] to the trial court for further factual findings and reconsideration of [the defendant’s] self-defense claim under the proper . . . standard”).

matter of law, . . . we must vacate and remand to allow the court to make clear its findings of fact and conclusions of law.” *Id.* ¶ 16.

[¶32] Similarly, here, the trial court’s ambiguous statements, coupled with its erroneous conclusion that Welsh committed the charged offense while standing inside his open doorway, make it necessary for us to remand this case for further findings. Specifically, the trial court, guided by our interpretation of the statute as set forth in this opinion, must determine whether the State’s evidence regarding Welsh’s purported actions in the hallway prove him guilty beyond a reasonable doubt of indecent conduct as charged.

The entry is:

Judgment vacated. Remanded to the trial court
for further proceedings consistent with this
opinion.

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