MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO: AND-22-317

STATE OF MAINE
Appellee

v.

JACOB LABBE
Appellant

ON APPEAL FROM THE SUPERIOR COURT FOR ANDROSCOGGIN COUNTY

BRIEF OF APPELLANT

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FACTS AND PROCEDURAL HISTORY

Appellant was charged with and convicted of one count of Felony Stalking and two counts of Violation of a Protection Order after a jury trial on July 26, 2022.

Among other things, Appellant argued pre-trial and again post-trial, that the Stalking statute is unconstitutionally vague on its face and as applied. He argued that an ordinary person or Mr. Labbe himself would not realize that his conduct in this case would constitute stalking.

Mr. Labbe and his wife [redacted] were married for approximately 5-9 years. *See Trial Trial Transcript, at pp. 140:10-14.* The two also share a son together. *Id., at pp. 140:1-22*. Prior to the events in question in this matter Mr. Labbe served a three year sentence in the Department of Corrections for violations of his bail while on bail for a domestic violence charge against [redacted] *See Sentencing Transcript at p. 40:9-14.* While he was ultimately acquitted of the assault charge at that time, he was convicted for his contact with [redacted] during his incarceration awaiting trial on the assault charge. *Id.* During his incarceration, beginning in 2017, [redacted] continued amicable contact with Mr. Labbe and allowed him to have phone contact with their son. *See Trial Transcript, at pp. 201:25-202:13.* Upon his release from prison, Mr. Labbe and [redacted] remained married, although she had a boyfriend. *Id., at pp.144:20-145:9.*

Immediately upon his release, Mr. Labbe began to text and call [redacted] regarding obtaining his personal property and about visiting with his son. *Id., at p. 142:22-25.* At no point was his behavior threatening or intimidating, but more an attempt to obtain his belongings, since he had none upon getting out of prison, and about requesting to see his son. *See State's Exhibit 3 (messages).* Finally, [redacted] allowed Mr. Labbe to have his son for a visit at Mr. Labbe's house, but when [redacted] mother came to pick up the child, Mr. Labbe believed her to be intoxicated, so refused to allow the child to leave with her. *Id., at pp. 152:14-156:4.* This angered [redacted]

and that is when she decided to try and obtain a protection from abuse order against Mr. Labbe. *Id.* Unaware that such an order had issued, Mr. Labbe continued to contact her about his son and his belongings. *Id., at pp.155:21-162:14.*[1]

Mr. Labbe was eventually served with a temporary protection order, but the final page of that order said it was denied and was confusing to him, as a non-lawyer, as he reasonably believed it had been denied, so he continued to communicate with [redacted] about his stuff and his son.[2] *Id., at pp. 90:23-92:7; 94:13-96:25; See also Appendix Temporary Protection Order.* Further, the officer that served Mr. Labbe never went over the final page of the order regarding the denial and what that meant. *Id.* Again, at no time was there any threatening behavior or begging to reinstate the relationship and other than the one passing comment to his wife that he loved her, there was almost no real discussion about the parties' relationship. *See State's Exhibit 3 (messages).* In fact, [redacted] testified that their contact was "friendly" and that they had numerous conversations about their son. *Id., at p. 142:14-23.*

Despite the State's introduction of evidence of Mr. Labbe's prior violations of court orders in 2017, his "absence" from the area for three years, during which he was "unable" to see his son, the testimony of the victim that he was back in the area "when he got out," and that he had previously been on house arrest, the Court determined that Appellant was not entitled to a new trial. *Id., at pp. 141:15-24; 142:10-16; 146:14-18; 184:11-14; Sentencing Transcript, at pp.*

[1] Admittedly, there was one phone call where Mr. Labbe stated that he loved her, but then immediately moved on to discussing his personal property and seeing his son.
[2] The Court denied Appellant's ability to ask about the statement made by Mr. Labbe to Ms. Labbe's boyfriend that the protection order had been denied. *See Trial Transcript, at pp.192:12-199:23.*

3-8. Appellant objected to all of this evidence on numerous occasions. *Id., at pp. 184:9-17; 232:6-235:6; 236:21-237:5.*[3]

At the conclusion of the State's case, Appellant moved for acquittal based on insufficiency of the evidence to establish stalking and in the alternative argued that Mr. Labbe's conduct was de minimis, if a technical violation of the law, both of which the Court denied. *Id., at pp. 248:3-251:23.*

At sentencing, the Court even acknowledged that up until the protection order was served Mr. Labbe's behavior was not "threatening," that he "wasn't following her," and "not hiding or using detection devices." The Court went on to say that it was annoying behavior and may not certainly have been a crime but for Mr. Labbe's prior history. *See Sentencing Transcript generally for the Court's own statements of how Mr. Labbe's behavior would be difficult to know were criminal.*

Ultimately, the jury found Mr. Labbe guilty of all counts and the Court sentenced Mr. Labbe to 2 and ½ years on Count I and one year each on Counts II and III, all to be served concurrently. *See Sentencing Transcript, at p. 55:4-8.*

ISSUES PRESENTED FOR REVIEW

I. Whether 17-A M.R.S.A §210-A is unconstitutionally void for vagueness.

II. Whether sufficient evidence existed to convict Appellant of the crime of stalking.

III. Whether the admission of evidence of Appellant's prior history of violating court orders regarding contact with Ms. Labbe, references to him being away for three

[3] The Court did offer a limiting instruction regarding the jury's consideration of the prior court order violations. *See Trial Transcript, at p. 188:2-22.*

years and unable to have contact with his son, references to when he got "out" and a reference to house arrest, all violated Rules of Evidence 403 and 404.

SUMMARY OF THE ARGUMENT

17-A M.R.S.A §210-A is unconstitutionally vague. One need only look at the statements made by the Court at the time of sentencing for an understanding of how Mr. Labbe's behavior was not threatening, he was not engaged in following the victim, he was not using tracking or other devices to know her whereabouts, or engaging in what an ordinary person would understand might be stalking behavior. He was simply trying to get his belongings and see his son after three years in prison and he did so in a non-threatening manner. There is no way a reasonable ordinary person in his position would have known this behavior constituted stalking.

Even if the statute is not unconstitutionally vague, there was insufficient evidence to establish that Mr. Labbe's conduct constituted stalking under the statute. Again, even the Court acknowledged that fact at sentencing, but said it was his prior behavior that caused it to rise to the level of stalking.

Further, while Mr. Labbe's conduct may have been a technical violation of the temporary protection order after he was served, there was credible evidence introduced that the temporary order was confusing to a lay person as to whether it had actually been granted.

Appellant was also denied a fair trial by the introduction of evidence of prior violations of court orders in 2017, his absence from the area for three years, during which he was "unable" to see his son, the testimony of the victim that he was back in the area "when he got out," and that he had previously been on house arrest. All of this evidence made it very clear to the jury that Appellant violated court orders in 2017 and went to jail for the same. It does not take a rocket scientist to put all of these facts together and come up with that conclusion.

There can be little doubt that Appellant was significantly prejudiced by the introduction of this evidence in cumulation, despite Appellant's objections and requests for mistrial. The exact reason Maine Rules of Evidence 403 and 404 exist is to prevent the exact prejudice that resulted from introduction of this evidence.

Appellant is entitled to a new trial without evidence of prior violations of court orders in 2017, his absence for years, him getting "out," being on house arrest, and his inability to see his son and should be entitled to an acquittal on the stalking charge.

Finally, any technical violation of the laws in this case were all de minimis, at most.

ARGUMENT

I. 17-A M.R.S.A §210-A is unconstitutionally void for vagueness.

The Law Court reviews the constitutionality of a Maine statute de novo. *See State v. Nisbet*, 2018 ME 113, ¶ 16, 191 A.3d 359, 366 (*citing State v. McLaughlin*, 2002 ME 55, ¶ 5, 794 A.2d 69).

The due process clauses of the United States and Maine Constitutions "require that criminal defendants be given fair notice of the standard of conduct to which they can be held accountable." *Nisbet*, 2018 ME at ¶17 (*quoting State v. Witham*, 2005 ME 79, ¶ 7, 876 A.2d 40). Because a statute is presumed to be constitutional, *Union Mut. Life Ins. Co. v. Emerson*, 345 A.2d 504, 507 (Me. 1975), "[a] party claiming a statute is void for vagueness must demonstrate that the statute has no valid application or logical construction," *Id.* (*quoting Stewart Title Guar. Co. v. State Tax Assessor*, 2009 ME 8, ¶ 40, 963 A.2d 169). In order to find a statute void for vagueness, "[The Law Court] must find that the statute fails to define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is

prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Id.* (*quoting State v. Falcone*, 2006 ME 90, ¶ 6, 902 A.2d 141). "Such an unacceptable statute would often be 'so vague and indefinite as really to be no rule or standard at all.'" *Id.* (*quoting Shapiro Bros. Shoe Co. v. Lewiston-Auburn Shoeworkers Protective Ass'n*, 320 A.2d 247, 253 (Me. 1974))

However, "[i]n examining the sufficiency of statutory language, [o]bjective quantification, mathematical certainty, and absolute precision are not required." *See Nisbet*, 2018 ME at ¶18 (*quoting Witham*, 2005 ME 79, ¶ 7, 876 A.2d 40). Indeed, a void-for-vagueness challenge will fail "[w]here the meaning of a term can be adequately determined by examining the plain language definition or the common law definition." *Id.* (*quoting Falcone*, 2006 ME 90, ¶ 10, 902 A.2d 141). "In a facial challenge to a statute on vagueness grounds, [the Law Court] need not examine the facial validity of the statute and test its constitutionality in all conceivable factual contexts." *Id.* (*quoting State v. Aboda*, 2010 ME 125, ¶ 15, 8 A.3d 719). Rather, the Law Court assesses the "void for vagueness challenge by testing it in the circumstances of the individual case" and considering whether the statutory language was sufficiently clear to give the defendant adequate notice that his conduct was proscribed. *See State v. Police Aboda*, 2010 ME 125, ¶15, 8 A.3d 719, 724(*quoting State v. Thongsavanh*, 2007 ME 20, ¶ 36, 915 A.2d 421).

In its entirety 17-A M.R.S.A §210-A provides:

> 1. A person is guilty of stalking if:
> A. The actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person:
> (1) To suffer serious inconvenience or emotional distress;
> (2) To fear bodily injury or to fear bodily injury to a close relation;
> (3) To fear death or to fear the death of a close relation;
> (4) To fear damage or destruction to or tampering with property; or

(5) To fear injury to or the death of an animal owned by or in the possession and control of that specific person.
Violation of this paragraph is a Class D crime;

B. Repealed

C. The actor violates paragraph A and has one or more prior convictions in this State or another jurisdiction. Notwithstanding section 2, subsection 3-B, as used in this paragraph, "another jurisdiction" also includes any Indian tribe.
Violation of this paragraph is a Class C crime. In determining the sentence for a violation of this paragraph the court shall impose a sentencing alternative pursuant to section 1502, subsection 2 that includes a term of imprisonment. In determining the basic term of imprisonment as the first step in the sentencing process, the court shall select a term of at least one year.
For the purposes of this paragraph, "prior conviction" means a conviction for a violation of this section; Title 5, section 4659; Title 15, section 321; former Title 19, section 769; Title 19-A, section 4011; Title 22, section 4036; any other temporary, emergency, interim or final protective order; an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation; any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe; or a court-approved consent agreement. Section 9-A governs the use of prior convictions when determining a sentence;

D. The actor violates paragraph A and the course of conduct is directed at or concerning 2 or more specific persons that are members of an identifiable group.
Violation of this paragraph is a Class C crime; or

E. The actor violates paragraph C and at least one prior conviction was for a violation of paragraph D.
Violation of this paragraph is a Class D crime;
Violation of this paragraph is a Class B crime. In determining the sentence for a violation of this paragraph the court shall impose a sentencing alternative pursuant to section 1502, subsection 2 that includes a term of imprisonment. In determining the basic term of imprisonment as the first step in the sentencing process, the court shall select a term of at least 2 years.

2. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Course of conduct" means 2 or more acts, including but not limited to acts in which the actor, by any action, method, device or means, directly or

> indirectly follows, monitors, tracks, observes, surveils, threatens, harasses or communicates to or about a person or interferes with a person's property. "Course of conduct" also includes, but is not limited to, threats implied by conduct and gaining unauthorized access to personal, medical, financial or other identifying or confidential information.
>
> B. "Close relation" means a current or former spouse or domestic partner, parent, child, sibling, stepchild, stepparent, grandparent, any person who regularly resides in the household or who within the prior 6 months regularly resided in the household or any person with a significant personal or professional relationship.
>
> C. Repealed
>
> D. "Emotional distress" means mental or emotional suffering of the person being stalked as evidenced by anxiety, fear, torment or apprehension that may or may not result in a physical manifestation of emotional distress or a mental health diagnosis.
>
> E. "Serious inconvenience" means that a person significantly modifies that person's actions or routines in an attempt to avoid the actor or because of the actor's course of conduct. "Serious inconvenience" includes, but is not limited to, changing a phone number, changing an electronic mail address, moving from an established residence, changing daily routines, changing routes to and from work, changing employment or work schedule or losing time from work or a job.

As defined in the statute, course of conduct means "2 or more acts, including but not limited to acts in which the actor, by any action, method, device or means, directly or indirectly follows, monitors, tracks, observes, surveils, threatens, harasses or communicates to or about a person or interferes with a person's property. 'Course of conduct' also includes, but is not limited to, threats implied by conduct and gaining unauthorized access to personal, medical, financial or other identifying or confidential information."

A reasonable ordinary person in Mr. Labbe's circumstances, having not seen his son for 3 years and not having any clothing to wear upon release from prison would not understand that his conduct would fit the definition of "course of conduct"

under the statute. Even telling his wife on one occasion that he loved her and would like to see her would not be something any reasonable and ordinary person would consider fitting the definition of "course of conduct" under the statute. Texting non-threatening messages to see his son and to get his clothing seems like something any reasonable ordinary person in his circumstances would do.

The Legislature simply cannot have intended for this type of behavior to be illegal under the stalking statute and, if it did, no reasonable ordinary person could understand Mr. Labbe's behavior to constitute stalking. For this reason, the statute, as applied to Mr. Labbe, is unconstitutionally vague and he is entitled to an acquittal on that charge.

II. Insufficiency of the evidence

To the extent the statute is not unconstitutionally vague, the evidence was insufficient to convict Appellant of the crime of stalking.

The Law Court will set aside a conviction for insufficiency of the evidence only if no rational juror could have been convinced of the defendant's guilt beyond a reasonable doubt. *See State v. Logan*, 2014 ME 92, ¶ 17, 97 A.3d 121, 126(*citing State v. Robbins,*2010 ME 62, ¶ 14, 999 A.2d 936). It will view the evidence in the light most favorable to the State. *Id.* (*citing State v. Williams,* 2012 ME 63, ¶ 49, 52 A.3d 911). "The fact-finder is permitted to draw all reasonable inferences from the evidence" and "to selectively accept or reject testimony presented based on the credibility of the witness or the internal cogency of the content." *Id.* "The weight to be given to the evidence and the determination of witness

credibility are the exclusive province of the jury." *Id.* (*quoting State v. Filler*, 2010 ME 90, ¶ 24, 3 A.3d 365).

While Appellant understands a challenge to the sufficiency of the evidence is a difficult hurdle, this case begs for such a challenge. There was simply no evidence that Mr. Labbe engaged in the behavior prohibited by the statute. His past violations of bail are irrelevant to whether the conduct at issue here constituted stalking. He wanted to see his son and get his clothing and he requested these things, albeit repeatedly, but in a non-threatening manner. He also did not follow or track Ms. Labbe, and even the Court acknowledged at sentencing that his behavior was not what one would normally consider stalking.

Because there was insufficient evidence that his behavior fell within the definition of stalking, the Court should have granted his motion for acquittal.

III. Rule 404 and 403 prohibited the admissibility of Appellant's prior violation of protection and bail orders, as well as the fact that he was incarcerated previously.

The Law Court reviews a trial court's decision to admit evidence of prior bad acts pursuant to M.R. Evid. 404(b) for clear error, and its determination pursuant to M.R. Evid. 403 for an abuse of discretion. *See State v. Pillsbury*, 2017 ME 92, ¶ 22, 161 A.3d 690, 694 (*citing Steadman v. Pagels*, 2015 ME 122, ¶ 18, 125 A.3d 713).

The admissibility of evidence concerning other crimes, wrongs, or acts is limited by Rule 404(b) of the Maine Rules of Evidence. *See State v. Smith*, 612 A.2d 231, 234-35 (Me. 1992). Though such evidence may not be offered to prove the defendant's propensity to commit the crime with which he is charged, Rule 404(b) does not "prevent the introduction

of evidence which is relevant to specified facts and propositions." *Id.* (*quoting* Field & Murray, *Maine Evidence* § 404.3 at 109 (2d ed. 1987)); *see also State v. Whiting*, 538 A.2d 300, 302 (Me. 1988). Such evidence may be admitted when it is "probative of some element of the crime for which the defendant is being tried." *See State v. DeLong*, 505 A.2d 803, 806 (Me. 1986)(quoting *State v. Goyette*, 407 A.2d 1104, 1108 (Me. 1979)).

Even if evidence of prior bad acts is probative and relevant, it may still be excluded if, in the discretion of the trial court, its "probative value is substantially outweighed by the danger of unfair prejudice." M.R. Evid. 403; *see also State v. Boone*, 563 A.2d 374, 376 (Me. 1989).

In this case, admission of Mr. Labbe's prior violation of court orders was directly intended to create unfair prejudice with the jury. The stalking charge was extremely weak and the State's introduction of the fact that Mr. Labbe had violated court orders before had nothing to do with whether his conduct constituted stalking. His behavior in this case was non-threatening, over text and telephone and not out of the ordinary. His prior violations of court orders regarding contact with [redacted] was a direct attempt to do exactly what Rule 404 and Rule 403 are intended to prevent. The introduction of this evidence was to show that he was a "bad guy" and that his benign behavior in trying to retrieve his belongings and see his son, while not falling under the definition of stalking, was stalking, because he was a "bad guy." Even the Court stated at the time of sentencing that Mr. Labbe's behavior would likely not be stalking, but for his prior bad acts in violating court orders.

The unfair prejudice is compounded when one factors in the statements by [redacted] that Appellant was away for three years and when he "got out" immediately started contacting her

and that he had previously been on house arrest.[4] All of this evidence in combination served no other purpose, but to show that because Mr. Labbe had gone to jail for violating court orders previously, he was guilty of stalking.

Because this evidence was admitted solely for the purpose of unfair prejudice and to show that even though Mr. Labbe's conduct did not meet the definition of stalking, he is still a "bad person," so he should be found guilty of stalking, the Court committed clear error in allowing admission of this evidence.

IV. Even if a violation of law, Appellant's conduct constituted a de minimis violation of each count.

Pursuant to 17-A M.R.S.A §12:

> "1. The court may dismiss a prosecution if, upon notice to or motion of the prosecutor and opportunity to be heard, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds the defendant's conduct:
>
> A. Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the crime; **or**
>
> B. Did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; **or**
>
> C. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in defining the crime.
>
> 2. The court shall not dismiss a prosecution under this section without filing a written statement of its reasons." (*emphasis added*).

"Maine's de minimis statute is based on the Model Penal Code and the Hawaii Penal Code, and its purpose is to 'introduce[] a desirable degree of flexibility in the administration of

[4] Again, the Court did sustain an objection to the house arrest statement, but the jury still heard it in combination with all of the other comments.

the law.'" *See State v. Kargar,* 679 A.2d 81, 83 (Me. 1996)(*citing* 17-A M.R.S.A. §12 comment (1983)). The language of the statute expressly requires that courts view the defendant's conduct "having regard to the nature of the conduct alleged and the nature of the attendant circumstances." *Id.* "Each de minimis analysis will therefore always be case-specific." "The Model Penal Code traces the history of de minimis statutes to section 13 of England's Stephen's Draft Code of 1879. Model Penal Code § 2.12 comment (1985). *Id.,* at 83-84. As justification for the proposed section 13 it was suggested that courts should have the 'power to discharge without conviction, persons who have committed acts which, though amounting in law to crimes, do not under the circumstances involve any moral turpitude.'" Model Penal Code § 2.12 comment (1985). *Id.,* at 84.

The following factors are appropriate for *de minimis* analysis:

> "The background, experience and character of the defendant which may indicate whether he knew or ought to have known of the illegality; the knowledge of the defendant of the consequences to be incurred upon violation of the statute; the circumstances concerning the offense; the resulting harm or evil, if any, caused or threatened by the infraction; the probable impact of the violation upon the community; the seriousness of the infraction in terms of punishment, bearing in mind that punishment can be suspended; mitigating circumstances as to the offender; possible improper motives of the complainant or prosecutor; and any other data which may reveal the nature and degree of the culpability in the offense committed by the defendant.

Id., at 84 (*quoting State v. Smith,* 195 N.J. Super. 468, 480 A.2d 236, 238 (N.J. Super. Ct. Law Div. 1984)). It is appropriate for courts to analyze a de minimis motion by reviewing the full range of factors discussed in the above quoted language. *Id.* The Law Court reviews a determination of whether the de minimis statute applies in a particular case for an abuse of discretion. *See Kargar,* 679 A.2d at 83.

It is difficult to imagine that the Legislature intended for the conduct exhibited by Mr.

Labbe regarding his child and his belongings in a non-threatening manner would fall under the stalking statute. As stated above, the Court's own statements during sentencing support the arguments made herein, that there is simply no way Mr. Labbe's conduct constituted stalking, and, if it did, it was de minimis.

Further, his violations of the protection order, when it was confusing whether it was granted or denied, were also de minimis. He simply continued to request his belongings and to see his son. He made no threatening remarks and the contact was limited to the phone. Again, having been in prison for 3 years and having friendly conversations with Ms. Labbe, his behavior was hardly the type of behavior that was threatening or intimidating.

For these reasons, the Court should have granted Appellant's request to dismiss the charges based on the de minimis statute.

CONCLUSION

For all of the above reasons, Appellant is entitled to a new trial, and or acquittal of all charges in this matter.

Date: January 2, 2023

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CERTIFICATE OF SERVICE

I, Verne E. Paradie, Jr. hereby certify that I have forwarded two copies of Appellant's Brief via first class USPS to the following individuals:

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Date: January 2, 2023

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