

MAINE SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

**LAW DOCKET NO. CUM 24-299**

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**RYAN BOOTH**

Plaintiff - Appellee

v.

**AMIGO'S MEXICAN RESTAURANT**

Defendant - Appellant

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ON APPEAL FROM CUMBERLAND COUNTY SUPERIOR COURT

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**BRIEF OF PLAINTIFF/APPELLEE**

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## INTRODUCTION

On May 31, 2024, a Cumberland County jury awarded Mr. Booth \$50,000.00 for injuries sustained during an assault by one of Defendant Amigo's patrons after Mr. Booth had been removed from the premises, which was reduced to \$25,000.00 for Mr. Booth's comparative negligence. The facts adduced at trial reveal that on the evening of September 2, 2018, Mr. Booth and his assailant, Nico Acorace, had a brief physical altercation in Amigo's patio area, after which Amigo's staff decided to escort Mr. Booth off the premises. Mr. Acorace was a regular patron of Amigo's at this time, visiting the restaurant two or three times a week, and was drinking with one of its off-duty bouncers on this particular evening.

Following Mr. Booth's removal, he posed no further threat to anyone inside Amigo's patio area, nor did he did not attempt to reenter the premises or otherwise communicate with Amigo's patrons. Unfortunately, Mr. Acorace opted to reignite this dispute, storming out of the patio area to once again confront Mr. Booth and ultimately breaking his jaw.

The key distinguishing fact in this case is that when Mr. Acorace left the patio, he was accompanied by both an on-duty Amigo's bouncer (Jason Scott, now deceased) and the off-duty bouncer with whom he had been drinking (Rick Coughn). These two Amigo's employees then intervened in the subsequent physical assault of Mr. Booth and along with Amigo's owner (Bruce Mills) subsequently concocted and

advanced some fantastic and unlikely allegations to justify their actions. For example, Mr. Coughln testified that he and Mr. Scott attempted to separate Mr. Booth and Mr. Acorace outside the patio, and that everyone was urging Mr. Booth to “please leave,” notwithstanding the fact that Mr. Booth had in fact left the premises and subsequently made no effort to prolong the dispute. In order to justify these remarks, Amigo’s asserted in its interrogatory answers that after his removal, Mr. Booth was yelling at Mr. Acorace and his girlfriend over the patio fence, an assertion that was conclusively and repeatedly shown to be false at trial. Also notable is the fact that in a statement given to the Portland Police Department before his death, Mr. Scott alleged that he did not see the assault outside the patio, despite the fact that Mr. Coughln’s testimony firmly places him at the scene.

In order to explain how Mr. Booth’s jaw was broken after Mr. Coughln and Mr. Scott separated him from Mr. Acorace outside the patio, Coughln, Scott and Mills alleged that a third-party with a history of violent behavior (Chris Bibeau) just happened to pass by during the altercation outside the patio, took issue with the fact that Mr. Booth had been “asked to leave” and delivered a haymaker to Mr. Booth, breaking his jaw and otherwise dropping him. The jury learned that only Mr. Acorace, not Mr. Bibeau, was charged and prosecuted for this assault.

Based on these facts, Defendant Amigo’s contends that it had no duty of care to prevent Mr. Acorace’s assault of Mr. Booth outside of its patio. Under Maine law, it is well established that restaurants have a duty of care to prevent foreseeable harm to

their patrons. Even if Defendant is correct that under these facts, its duty to Mr. Booth terminated when he was removed from the patio, Defendant's employees subsequently created the dangerous situation that ultimately caused Mr. Booth's injury, which also gives rise to a legal duty.

## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

The following is a summary of the testimony presented at the two-day jury trial held on May 30-31, 2024 in this matter.

### **Ryan Booth**

On September 2, 2018, Plaintiff Mr. Booth travelled from Windham into Portland with his friend and roommate, Tyler Bomba, where they spent some time in the Old Port. *Trial Transcript Vol 2*. (“Vol. 2”) at 56:1 – 57:2. They first visited the Old Port Tavern, where they each had a beer and played darts. *Vol. 2* at 57:8 – 57:12. After leaving the Old Port Tavern, they saw some friends outside Amigos, so they decided to go there. *Id.* at 57: 16 – 57:19. Once at Amigos, they sat on the patio at two adjacent picnic tables that were both occupied by other patrons. *Id.* at 57:21 – 58:9.

Mr. Booth testified that as soon as he sat down, a woman at his table “banged her fist and said, get the fuck off our table.” At this point, Mr. Bomba moved down his picnic table bench and Mr. Booth relocated to Mr. Bomba’s table. *Id.* at 58:25 – 59:19. Despite the fact that he switched tables, Mr. Booth testified that he was assaulted by this woman’s boyfriend, whom he later learned was Nico Acorace. Specifically, Mr. Booth testified that Mr. Acorace grabbed him from behind and pulled him “backwards off the table back to his table by . . . in a headlock.” *Id.* at 59:20 – 60:1. Mr. Booth was then removed from the patio by an Amigo’s bouncer,

who placed him in a full nelson and dragged him backwards through the patio doors. *Id.* at 60:5 – 60:9. Once outside Amigo’s patio, Mr. Booth testified that a second bouncer came “flying out the door and grabbed him by the neck, and then I got thrown at the gate.” Mr. Booth reports that at this time, the second bouncer asked him if he wanted to get knocked out. *Id.* at 61:5 – 61:9. Mr. Booth stood up to “square up and defend [him]self, at which time Mr. Acorace hit him in the mouth from behind, breaking his jaw. “He was allowed time to come around [by the Amigo’s bouncers] and he hit me when I turned to face the guy who threw me at the fence, who was one of the employees.” *Id.* at 61:11 – 62:13.

### **Tyler Bomba**

Mr. Bomba testified that once he and Mr. Booth arrived at Amigo’s, Mr. Booth switched tables to “sit with some girls,” at which point he remembers “a woman screaming, you can’t fucking sit with us.” *Vol. 2* at 86:21 – 87:15. At that point, he told Mr. Booth to come sit at his table, and Mr. Booth complied. *Id.* at 87:16 – 87:18. Mr. Booth was then confronted on the patio by Mr. Acorace, who approached him “yelling, you got a problem?” A physical altercation between the two men ensued, and after some shoving, etc. Mr. Booth was removed from the patio. *Id.* at 87:20 – 88:21.

Mr. Bomba followed Mr. Booth out the patio door and found him sitting on the pavement attempting to catch his breath, holding his chest. A few moments later, Mr. Acorace arrived and confronted Mr. Booth again.



And then after a few - - it was, like, a brief moment, Ryan and I got to start talking to each other, and he's catching his breath. Just a few moments after, there was a few guys coming up the street, up the parking lot to us, where, I believe it was Nico that came up to Ryan and started yelling at him again. And there was a pretty large group of people that surrounded the area. And there were some people that didn't want any interference going on or anyone trying to stop it. They were . . . they treated it like a boxing match. Also, when Ryan and Nico had their altercation, Ryan did get hit in the face.

*Vol 2* at 89:2 – 90:1.

### **Rick Coughn**

As of September 2, 2018, Mr. Coughn was employed by Amigos as a bouncer, but he was not working on this particular evening. *Vol. 2* at 107:10 – 107:11. Rick Coughn had been friends with Mr. Acorace going back to 2016. *Id.* at 106:22 – 107:2.

Mr. Coughn was drinking on the patio at Amigos on the evening of September 2<sup>nd</sup>, 2018 with Mr. Acorace, his fiancée Alyssa Middleton and their friend Sara. *Id.* at 107:3 – 108:3. Despite this, Mr. Coughn testified that he did not see what happened between Mr. Booth and Mr. Acorace on the patio because he was inside getting a pitcher of beer. *Id.* at 108:6 – 108:11. At some point while he was getting his pitcher of beer, he saw Mr. Acorace “storming” out of the patio area, followed by Jason Scott, an Amigo’s bouncer who was on duty on this particular evening. *Id.* at 108:12 – 22.

In Mr. Coughlin’s words, Mr. Acorace was “all fired up” when he exited the bar. *Id.* at 109:5 – 109:8. Once he arrived in the parking lot, Mr. Coughlin saw Mr. Booth, Mr. Acorace and Amigo’s on-duty bouncer Jason Scott there. He then testified

that he and Mr. Scott tried to break up a fight between Mr. Acorace and Mr. Booth. Specifically, he tried to restrain Mr. Booth and Mr. Scott was attempting to pull Mr. Acorace away. *Id.* at 109:12 – 111:5. Even though it was his day off, Mr. Coughlin testified that he tried to break up the fight because he “wanted to make sure nothing was happening because he was still employed [at Amigo’s] and he didn’t want to shit where he eats.” *Id.*

Mr. Coughlin testified that while he and Mr. Scott was trying to break up the fight, another man just happened to come by at that particular time and strike Mr. Booth a mighty blow to the jaw that lifted him off the ground before dropping him to the pavement. On cross-examination, he identified this person as Chris Bibeau, a person who had previously been employed as an Amigo’s bouncer. He also testified that Mr. Acorace and Mr. Booth were trading punches and it was “very possible” that Nico hit Mr. Booth in the face during this exchange. *Id.* at 111:10 – 112:1; 113:19 – 114:5.

On cross, Mr. Coughlin also testified that while he was allegedly attempting to defuse the situation outside the patio, his goal was to get Mr. Booth to “leave.” This, despite the fact that Mr. Booth had already been escorted off the patio and it was Acorace, Scott and himself that followed Mr. Booth outside the patio to prolong the confrontation, a fact further emphasized during plaintiff’s redirect. *Id.* at 113:7 - 113:18; 115:10 – 116:2.

## **Michael Reynolds**

Michael Reynolds was working as an Amigo's bouncer on September 2, 2018. As of this date, his job duties included making sure nobody under 18 was able to get in, making sure no visibly intoxicated patrons gained entry and dealing with physical altercations. *Vol. 2* at 120:23 – 121:21. He testified that Amigo's did not provide any training to its bouncers "in terms of how to perform your security function," nor did Amigo's provide any instruction in terms of what to do if there was a physical fight, other than "like, general deescalating, remove people if needed. But that was the basic extent of it." *Id.* at 122:2 – 122:10. Mr. Reynolds' understanding was that "Amigo's just basically wanted people that weren't going to punch patrons." *Id.* at 122:11 – 122:14. Although Mr. Reynolds started working at Amigo's in 2018, he was aware of "at least one other person . . . that was let go for - - for being aggressive or starting fights or escalating situations." *Id.* at 123:3 – 123:16.

As of September 2, 2018, Mr. Reynolds was aware that Mr. Acorace was friends with Rick Coughlin as well as a regular bar patron that came in two or three nights a week. *Id.* at 124:6 – 124:12.

Mr. Reynolds was not on the patio when the altercation broke out between Mr. Booth and Mr. Acorace. He testified that while he was inside the restaurant, one of his 'regulars' told him that there was something going on out back and he went out to investigate. Upon arriving in the patio area, he put Mr. Booth into a "seatbelt hold" and walked him off the patio backwards. Once Mr. Booth was off the patio, Mr.

Reynolds gave him a gentle shove in the direction of the parking lot and returned to the patio area. *Vol. 2* at 124:16 – 125:24. Contrary to Mr. Coughlin’s testimony, Mr. Reynolds did not see Mr. Scott on the patio at this time. *Id.* at 140:6 – 140:8.

Once back on the patio, Mr. Reynolds encountered Mr. Coughlin and Mr. Acorace and had a brief conversation with them about what had just happened. After this conversation, Mr. Reynolds went back inside the restaurant. *Id.* at 125:25 – 126:5. As he went back inside, he heard the patio door close. Although he didn’t see them exit the patio door, he assumed that Mr. Acorace and Mr. Coughlin went out into the parking lot. *Id.* at 138:18 – 138:24.

Mr. Reynolds confirmed that after he removed Mr. Booth from Amigo’s patio, he posed no further threat. He did not hear Mr. Booth yelling over the fence in an effort to prolong the encounter, nor did Mr. Booth attempt to reenter the bar. So far as Mr. Reynolds understood, once Mr. Booth was removed from the patio, the situation was over and Mr. Booth posed no further threat to anyone. *Vol. 2* at 139:7 – 139:18.

### **Nico Acorace**

Mr. Acorace testified by video deposition that when Mr. Booth sat down at his girlfriend’s table (Alyssa Middleton) on Amigo’s patio, he was inside getting beer.<sup>1</sup> When he returned to the patio, he found Ms. Middleton and the rest of the table in a “disheveled” mood. The rest of his party apparently wanted to leave at this point, but Mr. Acorace said “why?” At this point he stood up and said “have we got a

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<sup>1</sup> The video testimony of Mr. Acorace and Ms. Middleton was not included in the Appendix, but should be part of the trial court record that was submitted to this Court.

problem?” At this point, Mr. Acorace testified that Mr. Booth simply turned around and attacked him with no further provocation.

Mr. Acorace testified that at this point, Mr. Coughlin and Mr. Scott broke up this altercation and Mr. Booth was escorted out of the “side of the building” by Mr. Scott. After Mr. Booth was removed from the patio, Mr. Acorace testified that his party stayed at Amigo’s for roughly another hour, during which time they did not see or hear Mr. Booth. Upon reaching the parking lot, he testified that Mr. Booth was there waiting for him. A physical altercation ensued, and at some point a third party happened by and punched Mr. Booth in the jaw.

Mr. Acorace also testified that as a result of this encounter, he was charged with aggravated assault, subsequently pled guilty to a lesser charge and agreed to pay Mr. Booth’s medical expenses.

**Alyssa Middleton**

Ms. Middleton testified that there was no physical altercation between Mr. Acorace and Mr. Booth outside of the patio. She testified that after the brief scuffle on the patio, Mr. Booth was removed from the patio by one of Amigo’s bouncers, but she’s not sure which one. After Mr. Booth was removed, Ms. Middleton testified that they did not encounter him again that evening. Their party simply finished their drinks, walked to their car and drove home.

**Jason Scott**

Mr. Scott was employed as an Amigo's bouncer on September 2, 2018. Although Mr. Scott was present at Amigo's as its employee on the evening of September 2, 2018, he has since passed away. At trial, the parties agreed to a stipulated statement regarding his testimony that was read to the jury at the close of Plaintiff's case-in-chief:

Jason Scott, being deceased, the parties jointly stipulate to his trial testimony in this matter as follows. Jason Scott spoke with the Portland Police Department on October 12, 2018. During this call, he confirmed that he was working the night of the incident. However, he did not see the actual assault outside the bar. Scott stated he heard from fellow bouncer, Rick Coughlin, that a man named Chris [Bibeau] was the male who assaulted Mr. Booth. Scott stated that he did see [Bibeau] outside the bar, but not inside. Scott confirmed that Bibeau was banned from the bar [for] bad behavior.

*Vol. 2* at 154:9 – 154:22.

**Bruce Mills**

Mr. Mills is the sole owner of Amigos. Contrary to Mr. Reynolds' testimony, Mr. Mills testified that as of September 2018 there was training for his doormen, including a training on verbal conflict resolution conducted by a constable. On cross, he admitted that that Amigo's had produced no documents in response to a request for production from Plaintiff requesting "a copy of all employee handbook security protocols, rules, guidelines, and all other documents utilized by you in providing security services for your patrons and staff as of September 2, 2018." *Vol. 2* at 169:12

– 170:9; 172:18 – 173:16. Mr. Mills also testified that the altercation in the parking lot occurred off Amigo’s premises, but conceded that at least one of his on-duty bouncers – Jason Scott – was also off premises as well. *Id.* at 173:17 – 174:8.

Mr. Mills was questioned about his prior interrogatory answers, which he had signed under oath on behalf of Amigo’s. When asked to identify all witnesses with discoverable information with respect to the claims and defenses in the case, he identified both Mr. Reynolds and Mr. Coughlin as “likely to say that Ryan Booth was removed from the premises and that he continued to harass both Nico and his girlfriend over the fence. On cross, he conceded that Mr. Reynolds expressly testified that he did not hear Mr. Booth harass anyone over the patio fence, nor did Mr. Coughlin provide any such testimony. *Vol. 2* at 175:14 – 176:15.

### **PROCEDURAL HISTORY**

Plaintiff initiated this lawsuit on February 11, 2021. On May 30-31, 2024, the parties engaged in a two-day jury trial. On May 31, 2024, the jury issued a verdict awarding Mr. Booth \$50,000.00, which it reduced to \$25,000.00 due to his comparative fault. Defendant filed its Notice of Appeal on June 26, 2024.

**ARGUMENT**  
**STANDARD OF REVIEW**

In reviewing a trial court's disposition of a motion for judgment as a matter of law, the Law Court "view[s] the evidence together with all justifiable inferences in the light most favorable to the party opposing the motion. The motion should not be granted if "any reasonable view of the evidence could sustain a verdict for the opposing party." *Maine Energy Recovery Co. v. United Steel Structures, Inc.*, 1999 ME 31, ¶ 6, 724 A.2d 1248, 1250, quoting *Lewis v. Knowlton*, 1997 ME 12, ¶ 6, 688 A.2d 912, 913.

Whether or not a party has breached their duty of care to another party is a question of fact for the jury. *Welch v. McCarthy*, 677 A.2d 1066, 1069, citing *Greenstreet v. Brown*, 623 A.2d 1270, 1272 (Me. 1993); *Seiders v. Testa*, 464 A.2d 933, 935 (Me. 1983). "We will not disturb a jury verdict that is supported by any credible evidence if the jury could rationally reach the result it did." *Hauser v. Bhatnager*, 537 A.2d 599, 601 (Me. 1988), quoting *True v. Ladner*, 513 A.2d 257, 265 (Me. 1986). A jury verdict "must be sustained if any credible evidence, and all justifiable inferences drawn from such evidence, viewed in the light most favorable to the plaintiff, support the verdict." *Hauser*, 537 A.2d at 601, quoting *Redlon's Inc. v. Gilman, Inc.*, 485 A.2d 661, 662 (Me. 1984). This Court has defined an inference as "a deduction as to existence of a fact which human experience teaches us can



reasonably and logically be drawn from proof of other facts.” *Ma v. Bryan*, 2010 ME 55, ¶ 7, 997 A.2d 755, 758. “We accord significant deference to jury verdicts because the jury is best situated to evaluate the credibility and demeanor of witnesses.” *Ma v. Bryan*, 2010 ME 55, ¶ 8, 997 A.2d 755, 758.

**I. THE SUPERIOR COURT CORRECTLY HELD THAT DEFENDANT AMIGO’S OWED PLAINTIFF A DUTY OF CARE**

Defendant/Appellant contends that once Mr. Booth was removed from Amigo’s patio, the special relationship generally found to exist under Maine law between restaurant owners and its patrons terminated and Amigo’s owed him no further duty of care. However, that is not where the story ends in this case.

The testimony at trial firmly establishes that once Mr. Booth was removed from the patio after Mr. Acorace’s initial assault, he presented no threat to anyone, he did not try to reenter the bar, make contact or otherwise speak with Mr. Acorace or anyone on the patio, etc. In other words, there was no reason for Mr. Acorace, Mr. Scott and Mr. Coughn to follow Mr. Booth off the patio other than to prolong the confrontation. Nonetheless, after Mr. Booth’s removal Mr. Acorace stormed out the patio door after him, accompanied by an on-duty bouncer (Mr. Scott) and an off-duty bouncer (Mr. Coughlin) who testified that he subsequently intervened in the off-premises assault of Mr. Booth out of a sense of duty to his employer. According to Coughn, Mr. Scott intervened as well, the two men attempting to separate Mr. Booth and Mr. Acorace.

As pointed out in Plaintiff’s closing argument, if Mr. Coughn and Mr. Scott did in fact separate Mr. Booth and Mr. Acorace, it is extremely unlikely that Mr. Booth’s jaw

would have been broken, which is why Coughn and Acorace concocted a story whereby a dangerous passerby just *happened* to step in and deliver a haymaker that broke Mr. Booth's jaw. The jury was free to reject this rather incredible story and conclude that Mr. Scott and Mr. Coughn facilitated the assault, especially given that Mr. Acorace, not Mr. Bibeau was prosecuted for this assault, and it appears that they did exactly that.

Based on these facts, Amigo's clearly had a duty of care to prevent foreseeable harm to Mr. Booth. In *Kaechele v. Kenyon Oil Company*, 2000 ME 39, ¶ 8, 747 A.2d 167, 170-171, a convenience store customer brought suit against the store after he was assaulted by another customer. In upholding a jury verdict in plaintiff's favor, the Law Court first noted that under Maine law "[A] proprietor of an inn, hotel, motel, *restaurant*, or similar establishment is liable for an assault upon a guest or patron by another guest, patron, or third person where he has reason to anticipate such assault, and fails to exercise reasonable care under the circumstances to prevent the assault or interfere with its execution." *Id.* (emphasis added) *citing Brewer v. Roosevelt Motor Lodge*, 295 A.2d 647, 651 (Me. 1972. "A proprietor must guard its patrons against not only known dangers but also those which it "should reasonably anticipate . . . therefore, whether [Defendant] should have anticipated the assault must be analyzed from two perspectives: first, did [Defendant] have notice that its facility generally presented a risk that third parties would assault its patrons, and second, did [Defendant] know, or should it have anticipated, that [the third party assailant] would assault a patron on the evening in question." *Id.* at ¶ 10.

Defendant contends that *Kenyon Oil* is distinguishable insofar as the assault in that case happened on the defendant's premises. However, this Court has repeatedly held that

tortfeasors can be held liable for negligent conduct on premises that they do not own or control. Regardless of whether or not the injury occurs on a defendant's premises, "the reasonable foreseeability of injury to others from one's acts or from one's failure to act raises a duty in law to proceed in the exercise of reasonable care. It is not necessary that the precise type of injury be foreseen nor the specific person injured." *Colvin v. A.R. Cable Services-ME, Inc.* 1997 ME 163, ¶ 7) 697 A.2d 1289 (Law Court rejects notion that cable box installer is not liable for injury caused on premises that it did not possess), quoting *Quinn v. Moore*, 292 A.2d 846, 850, 851 (Me. 1972) (Law Court rejects defendant subcontractor's position that it had no duty of care where defendant created dangerous condition on premises it did not own or control, causing injury to construction worker, holding that "negligence is gauged by the ability to anticipate."). "The common-law test of duty is the probability or foreseeability of injury to the plaintiff." *Colvin*, 1997 ME at ¶ 7, quoting *Brewer v. Roosevelt Motor Lodge*, 295 A.2d 647, 651 (Me. 1972).

This Court's opinion in *Belyea v. Shiretown Motor Inn, LP*, 2010 ME 75, 2 A.3d 276, is instructive, as it features facts similar to those in this case. Plaintiff Belyea and his friend decided to visit Defendant Shiretown's premises, which included a motel and lounge ("Lounge Down Under"), which was a separate business entity and a tenant of Defendant Shiretown. Belyea parked in the motel parking lot and visited the lounge, where he was assaulted by a third party. The lounge's bouncers ejected the assailant and his companion after they witnessed these two threatening to kill Belyea. Later in the evening, the bouncers decided to eject Belyea as well. As Belyea was leaving, one of the

assailants approached a bouncer and asked if Belyea was still in the lounge, to which the bouncer responded that Belyea had left. The bouncers did not escort Belyea to his car. Predictably, he was assaulted in the motel parking lot while walking to his car. No Shiretown motel employees were working at the lounge on this particular evening.

While this opinion features an appeal by Belyea of the trial court's opinion granting Defendant Shiretown (the motel) summary judgment, it is the Lounge Down Under that is in the same position as Amigo's in this case, as Belyea was a patron of the lounge and its bouncers' negligence was to blame for his assault. The *Belyea* opinion confirms that based on these facts, the lounge's motion for summary judgment was denied. In this regard, the "Superior Court found that, although Shiretown would have owed Belyea a duty of reasonable care to protect him against assault by third parties if he were a guest of the motel, it owed him no such duty when he was merely a patron of Shiretown's tenant, the lounge." *Id.* at ¶ 7. The Law Court also cited *Kaechele* for the general proposition that "[a] proprietor of an inn, hotel, [or] motel . . . is liable for an assault upon a guest or patron by [a] third person where he has reason to anticipate such assault and fails to exercise reasonable care under the circumstances to prevent the assault or interfere with its execution." *Id.* at ¶ 8.

Defendant cites *Belyea* for the proposition that "[I]n instances of nonfeasance rather than misfeasance, and absent a special relationship, the law imposes no duty to act affirmatively to protect someone from danger unless the dangerous situation was created by the defendant." The intended import appears to be that once Mr. Booth was removed from the patio, the special relationship between he and Amigo's was terminated,

therefore Mr. Scott and Mr. Coughn's off-patio acts and omissions cannot give rise to liability. This argument misses the mark. Even if Defendant is correct that the special relationship terminated when Mr. Booth left the patio, it is equally true that Mr. Scott and Mr. Coughlin created a dangerous situation by needlessly following Mr. Booth off the patio and thereby reigniting the dispute.

As of September 2, 2018, Defendant Amigo's clearly foresaw the general possibility of physical altercations taking place among its patrons, as most obviously evidenced by its employment of security staff such as Michael Reynolds, Rick Coughlin and Jason Scott, who were present at Amigo's on September 2, 2018. *See Stanton v. University of Maine System*, 2001 ME 96, ¶ 10, 773 A.2d 1045, 1050 ("That a sexual assault could occur in a dormitory room on a college campus is foreseeable and that fact is evidenced in part by the security measures that the University had implemented."), adopting the observations set forth in *Mullins v. Pine Manor Coll.*, 389 Mass 47, 449 N.E.2d 331 (1983) (Massachusetts Supreme Judicial Court holds that foreseeability of sexual assaults on college campuses "was not dependent upon evidence of prior criminal acts and that the precautions taken by the College to protect students against criminal activities would make little sense unless criminal activities were foreseeable.").

It was also foreseeable that Plaintiff would be assaulted by Mr. Acorace. At a minimum the facts at trial revealed the following: 1. Immediately prior to the off-patio assault in which Mr. Booth sustained the injury giving rise to this case, he and Mr. Acorace had a physical altercation in Amigo's patio area; 2. Plaintiff was subsequently ejected from the Amigo's patio area by an Amigo's employee; 3. Shortly after Mr.

Booth's removal, Mr. Acorace followed him out into the parking lot, accompanied by one on-duty Amigo's bouncer and one off duty bouncer; and 4. once in the parking lot, Mr. Acorace again assaulted Mr. Booth while the Amigo's bouncers either prevented any third parties from interfering with the assault or rather ineffectively attempted to break up the altercation.

Defendant cites case law from other jurisdictions for the proposition that any duty of care it may have owed Plaintiff ended after he was ejected from the bar. *See St. Phillips v. O'Donnell*, 137 Ill. App. 3d 639, 640-41, 92 Ill. Dec. 354, 355, 484 N.E.2d 1209, 1210 (1985) (no liability where tavern patron was assaulted in parking lot it did not control after the assailant was ejected for violent behavior); *Badillo v. De Vivo*, 161 Ill. App.3d 596, 515 N.E.2d 681, 113 Ill. Dec. 696 (Ill. App. Ct. 1987) (no liability where bar patron was assaulted by her car a half block away from the premises), etc. These cases do not advance Defendant's position, as they do not feature a situation akin to that found in the instant case, where the Defendant's employees accompanied the assailant off premises and intervened in the assault. As set forth above, ample facts were provided to the jury to support a verdict on this basis. Moreover, the facts adduced at trial make clear that there was no reason whatsoever for Mr. Acorace, Jason Scott or Rick Coughn to follow Mr. Booth outside of the patio area to confront him, other than to prolong the confrontation started on the patio. Not only was this assault foreseeable, the jury clearly found that it was facilitated, aided and abetted by the negligence of Amigo's employees.

The policy arguments advanced by Defendant in support of its position that the special relationship between Amigo's and Mr. Booth should terminate when he was removed from the patio are inapposite here. This is not a case where Mr. Booth was removed from the patio and assaulted by Mr. Acorace at some remote time and place relative to Amigo's. The critical distinction between this matter and the foreign cases cited by Defendant is that here, Amigo's, via the actions of its employees, inserted itself into the off-premises assault, reigniting a dispute that had been extinguished with Mr. Booth's removal from the patio. Under these facts, the special relationship articulated by this Court in *Brewer* and *Kenyon Oil* clearly survives Mr. Booth's removal. Even if the special relationship was terminated when Mr. Booth left the patio, Defendant created the dangerous situation causing Mr. Booth's injury when its employees followed Mr. Booth out into the parking lot and is therefore liable under this rubric as well. *Belyea*, 2010 ME at ¶ 9.

## **II. THE JURY CORRECTLY FOUND THAT DEFENDANT AMIGO'S BREACHED ITS DUTY OF CARE TO PLAINTIFF**

Whether or not a party has breached their duty of care to another party is a question of fact for the jury. *Welch v. McCarthy*, 677 A.2d 1066, 1069, *citing Greenstreet v. Brown*, 623 A.2d 1270, 1272 (Me. 1993); *Seiders v. Testa*, 464 A.2d 933, 935 (Me. 1983). Consistent with this well-established principle under Maine law, the trial judge correctly instructed the jury as to the elements of negligence and the findings it needed to make in order to find for plaintiff Mr. Booth:

Under Maine law, a restaurant or similar establishment is liable for an injury upon a guest or patron by another guest, patron or third person when . . . the restaurant has reason to anticipate such injury and fails to exercise reasonable care under the circumstances to prevent the injury or interfere with its execution.

Now turning to the claim of negligence, plaintiff has alleged that defendant committed negligence on September 2, 2018. To prove negligence, the plaintiff must prove it is more likely than . . . not that one, the defendant was negligent and two, the defendant's negligence was the cause of plaintiff's injury and consequent damages.

*Negligence is defined as, "doing something that an ordinary, careful person would not do, or failing to do something that an ordinary, careful person would do in the same situation. In other words, the failure to use ordinary care under the circumstances, considering all of the evidence in the case. Therefore, to prove negligence, Mr. Booth must prove that it is more likely than not that the defendant was negligent and that the defendant's negligence was a cause of plaintiff's injury and consequent damages.*

Now, you are not - - the mere fact that an injury occurred by itself does not permit you to draw any inference that the injury was caused by the negligence of, or by anyone's fault.

*Trial Transcript Vol. 1 ("Vol. 1"), pp. 54:21 – 55:20 (emphasis added).*

As set forth in detail above, ample facts supporting a finding that Defendant breached its duty of care were presented to the jury. "We will not disturb a jury verdict that is supported by any credible evidence if the jury could rationally reach the result it did." *Hauser v. Bhatnager*, 537 A.2d 599, 601 (Me. 1988), *quoting True v. Ladner*, 513 A.2d 257, 265 (Me. 1986). A jury verdict "must be sustained if any credible evidence, and all justifiable inferences drawn from such evidence, viewed in the light most favorable to the plaintiff, support the verdict." *Hauser*, 537 A.2d at 601, *quoting Redlon's Inc. v. Gilman, Inc.*, 485 A.2d 661, 662 (Me. 1984). "We accord significant deference to jury verdicts because the jury is best situated to



evaluate the credibility and demeanor of witnesses.” *Ma v. Bryan*, 2010 ME 55, ¶ 8, 997 A.2d 755, 758.

### CONCLUSION

For the reasons set forth above, Plaintiff Ryan Booth respectfully requests that Defendant Amigo’s appeal be denied in its entirety.

Dated: December 5, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that two copies of the Brief of Plaintiff/Appellee Ryan Booth have been served this date upon counsel of record by mailing copies by first-class mail, postage prepaid, addressed as follows:

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