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

LAW COURT DOCKET NO. Pen-25-475

STATE OF MAINE
Appellee

v.

JOHN J. HANSEN
Appellant

ON APPEAL from the Penobscot County
Unified Criminal Docket

BRIEF OF APPELLANT

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INTRODUCTION

Soon after he was convicted and before he was sentenced, defendant confided in Maine's Chief Forensic Psychologist that he believed his lawyer was working for a motorcycle gang hellbent on harming him and his family. To save his family, defendant informed the psychologist, he had no choice but to "succumb" to the prosecution and accept his "fate" – convictions.

Defense counsel sought a temporary commitment of defendant to evaluate his competence. He filed a motion for a new trial, expressing his concern that defendant had not been competent at trial. For four and a half months, the trial court took no action. It has never evaluated defendant's competence as of the time of trial.

Respectfully, the trial court erred by determining that, because bona fide doubts about defendant's competence arose just *after* trial, it bore no responsibility to ensure that defendant had in fact been competent at that trial. Such is a violation of *Pate v. Robinson*, 383 U.S. 375 (1966). Courts that have considered the question hold that, when doubts arise immediately after the trial and during related proceedings, *Pate* requires the court, sua sponte, to convene a hearing to evaluate the defendant's competence at the time of the trial. The trial court is perhaps the only court to hold otherwise – an outlier on this important facet of federal constitutional law.

STATEMENT OF THE CASE

This is defendant's second direct appeal; the first, Pen-24-62, still pends before the Court, as of the filing of this brief.

Following a bench trial, defendant was acquitted of some counts and convicted of others, including Class-A kidnapping. *See* 17-A M.R.S. § 301(1)(B)(2) (Count II). The Penobscot County Unified Docket (Mallonee, J.) imposed a 12-year carceral sentence, suspending all but seven years.

Following oral argument in Pen-24-62, the Court (Horton, J.) ordered the matter temporarily remanded so that the trial court could rule on a motion for a new trial that defendant had filed there before sentencing. *Order Directing Trial Court Action* of Nov. 6, 2024. The undersigned had mistakenly represented at oral argument that he believed the motion for a new trial had been withdrawn by predecessor counsel.[1]

After a protracted process, the court (Mallonee, J.) considered the parties' memoranda and entertained oral argument on August 19, 2025. On October 3, 2025, just shy of 11 months after the order of remand, the court denied the motion for a new trial.

Defendant timely appealed. This Court (Douglas, J.) granted defendant's motion, assented-to by the State, to permit the instant appeal and that in Pen-24-62 to "proceed independently" of one another. *Order on Motion Regarding Appeals* of Nov. 5, 2025.

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[1] The undersigned apologizes to the Court, the State, and defendant, personally, for his error, and he expresses his appreciation to the Court for authorizing the remand, obviating any potential need for future collateral litigation.

Because of the uncommon posture of this case, defendant offers a truncated version of the factual and procedural background. In short, this is the case of the bizarre incident in which a stepfather "kidnapped" his 13-year-old stepdaughter by taking her a few minutes down the road from the family home. The trial court found that defendant was experiencing a "distorted frame of mind," "saw himself as protecting [his stepdaughter] rather than threatening or coercing her," and acted out of a concern for her safety, believing her to be in danger from a motorcycle gang. (STr. 10-12).

I. Bona fide doubts about defendant's competence arose immediately after the trial.

At trial, defendant argued, generally, that the State failed to prove "state of mind." (*E.g.*, 2Tr. 149). Plainly, counsel argued, "Mr. Hansen was not thinking rationally" when he undertook the "kidnapping." (2Tr. 152). In other words, defendant labored under an abnormal condition of the mind. (2Tr. 152-53); *see* 17-A M.R.S. § 38.

The court found "distorted thinking in action" and "no purpose to terrorize." (3Tr. 13). Nonetheless, in its view, defendant was able to have the purpose of restraining his stepdaughter – "to keep [her] away from the motorcyclists." (3Tr. 14). That, among other findings, sufficed to establish kidnapping.

Just prior to announcing its verdicts, the judge convened an off-the-record chambers conference at which, apparently, it requested "some information" about Mr. Hansen, noting that it needed "a whole lot" to sentence him appropriately. (3Tr. 15). In that vein, a few days later, defense

counsel moved for a mental examination of defendant. A71; *see* 15 M.R.S. § 101-D(3)(A) ("[T]o evaluate the defendant's mental condition with reference to issues other than competency, insanity or abnormal condition of the mind as provided in this subsection."). A few weeks later, the court granted the motion, requesting an examination for "psychiatric conditions relevant to sentencing." A73.

Two months later, Dr. Aubrey Masilla, Chief Forensic Psychologist for State Forensic Service, authored a one-page letter to the trial court. A75. After about four and a half hours with defendant, via Zoom and in person, Dr. Masilla reported "significant concerns about his competence." A75. Specifically, she noted "concerns regarding Mr. Hansen's ability to assist counsel in a meaningful and rational manner." A75. He believed his attorney – still representing him – was "being paid by a threatening motorcycle gang to work against" his interests. A75. He discerned a large-scale conspiracy to which he "must succumb" in order to protect his family. A75. She later found he was "awaiting his fate to save his family." A101.

Dr. Masilla sought "direction from the court in how to proceed." A75. Director of State Forensic Service, Dr. Sarah Miller, requested the court "consider an additional order for a complete assessment of the defendant's competence to proceed." A76.

Within days of receiving this information, defense counsel filed an unopposed motion for such a further evaluation "to determine issues of competence." A77. Two days later, the court (Murray, A., J.) granted the motion, ordering assessment of defendant's "competency to proceed." A79.

Two-and-a-half months later, Dr. Masilla submitted the results of her evaluation. After spending another two and half hours with defendant, she found "impairments in competence-related abilities due to symptoms of a thought disorder." A83, A89. Defendant struggled to "maintain rational and coherent thoughts, feelings, behaviors, and verbal exchanges." A89. In her opinion, "the extent of these psychiatric symptoms would significantly influence how he behaves and manages legal information and decision-making." A89. This was especially so "considering who he views as the main characters of th[e] conspiracy" – his defense lawyer, the judge, the prosecutor and his wife. A89. She recommended "a psychiatric evaluation for the purposes of medication." A89.

Moreover, Dr. Masilla offered, "[T]he most important component of this entire evaluation is acknowledging Mr. Hansen's profound ability to mask his symptoms." A101.

II. The concerns about competence spurred defense counsel to file three motions.

Two weeks after Dr. Masilla's final reports were made available to him, defense counsel filed a *Motion for Temporary Commitment for Forensic Observation 15 M.R.S.A. § 101-D(4)(B)*. A104. In light of Dr. Masilla's concerns and recommendations, the defense felt it proper to undertake "a period of observation within a mental health facility to further contextualize [defendant's] presentation, possible diagnoses, and prognosis." A104. Defense counsel added, "This will allow the opinion(s) of State Forensics further insight on issues of competence and any other issue involving

[defendant's] mental or emotional condition." A104-A105. The State objected. A108.

Defense counsel also filed a request for a competence hearing. A106 He wrote, "Defendant requests that the Court make findings regarding his [c]ompetence to proceed forward in this matter pursuant," citing statute, the Sixth and Fourteenth Amendments, and cognate state-constitutional provisions. A106. Again, the State resisted, contending, "[A] competency hearing is not required." A109.

Finally, defense counsel filed a *Motion for New Trial*. A45. In it, counsel contended that, whereas "[d]efendant failed to possess the attributes of competence" during trial, he was denied a fair trial. A46.

III. The three motions sat untouched for four-and-a-half months.

Finally, in mid-January 2024, the court convened a 15-minute on-the-record discussion about the three pending motions. The court and the parties seemed to consider this a "competency hearing" relative to defendant's ability "to proceed" – *i.e.*, to sentencing. 1/16/24 Tr. 2-5. In contrast, the motion for a new trial, relative to defendant's competence at trial, was "deferred" until sentencing. 1/16/24 Tr. 2, 4, 7, 9.

Nothing other than Dr. Masilla's reports were considered by the court, and defense counsel said he was "fine" with that "in terms of the competency hearing." 1/16/24 Tr. 5. Defense counsel had "nothing further" to add about defendant's competence for sentencing. 1/16/24 Tr. 5-6. The State added that, were the court not to "defer" discussion of the motion for a new trial, it

would want opportunity to present more argument. 1/16/24 Tr. 7. The court remarked, "No, I'm going to defer that," concluding such discussion "premature." 1/16/24 Tr. 7.

The court then, on that limited record, found defendant competent to proceed to sentencing. It deemed Dr. Masilla's concerns "understandable." 1/16/24 Tr. 8. Her "apprehension" was "very reasonable," in the court's estimation. 1/16/24 Tr. 8. The court stated, "I am not in a position, and I would not second guess." 1/16/24 Tr. 8.

Nonetheless, the court interpreted Dr. Masilla's reports: She "did not, and I think, felt like she could not, say that he was not competent to proceed."[2] 1/16/24 Tr. 8-9. It did not take Dr. Masilla's testimony to confirm that belief. Rather, the court concluded, "At this point, I cannot find that he is not competent to proceed and therefore I find that he is." 1/16/24 Tr. 9.

It reiterated that it would "defer" the motion for a new trial until "the close of sentencing." 1/16/24 Tr. 9. But it determined that defendant's

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[2] *But see* A89: "Mr. Hansen's symptoms cloud his thought-processes as well as impede his ability to maintain rational and coherent thoughts, feelings, behaviors, and verbal exchanges. Mr. Hansen's psychiatric symptoms involve those directly tied to his case. I believe the extent of these psychiatric symptoms would significantly influence how he behaves and manages legal information and decision-making, especially considering who he views as the main characters of this conspiracy."

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"[H]e has impairments in competence-related abilities due to symptoms of a thought-disorder."

motion for temporary commitment was "moot," in light of its determination that defendant was competent to proceed to sentencing. 1/16/24 Tr. 9.

Neither the motion for a new trial nor defendant's competence were mentioned at sentencing, seemingly forgotten.

IV. Proceedings on remand

The court directed further briefing on defendant's motion for a new trial. Defendant reiterated his argument that a new trial was necessary in the interest of justice. Specifically, defendant argued that the trial was unfair, as the procedures to ensure his competence at trial were inadequate – a deprivation of due process. A53-A54.

Two months later, the State objected, contending that "defendant's due process rights were not violated." A63. It asserted that defendant's motion for a new trial invited the trial court to "speculate" that defendant had been entitled to a hearing to evaluate his competence at trial. A65.

Defendant countered, in his reply, that the record surely established bona fide doubts about competence at trial, even if those doubts arose only shortly after that trial. A66. He criticized the State for its contention that a competency hearing would have likely produced nothing more than that which was already in the record. A68-A69. Such was hypocritical, defendant argued, in light of the State's prior opposition to his temporary commitment – an opportunity to gather the data-points he might have used to contest his competence. A69-A70.

Yet another two months later, the court convened an oral argument, at which the parties reiterated their positions and the court took the matter under advisement.

After another month and a half, the court issued a written decision denying the motion for a new trial. Without citation to on-point authority,[3] the court reasoned that "the existence of a bona fide doubt about a defendant's competency to stand trial is determined by the evidence known to the court at the time of trial...." A37. Thus, in the court's view, "Dr. Masilla's post-trial report does not bear on whether Mr. Hansen's due process rights were violated by the lack of a pre-trial[4] hearing on his competency." A37. There was no bona fide doubt about competence before or during trial. A37. The court wrote, Dr Masilla's assessment of defendant "does not require the court to extrapolate a lack of competency backwards or even to hold a hearing on the issue." A43-A44.

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[3] At one point, *see* A36, the court wrote, "Whether the court should have done so, and whether a due process violation occurred, is determined by the evidence known to the court at the time of the event. *See Rosenthal v. O'Brien*, 713 F.3d 676, 685 (1st Cir. 2013) ("[P]ost-trial mental reports ... are of limited value in answering whether the evidence before the trial judge required him to hold a competency hearing sua sponte."). Respectfully, *Rosenthal* does not support the proposition for which the court cited it.

In fact, it implies the opposite. Were "post-trial mental reports" incapable of triggering a court's *Pate* responsibility, they would not be of "limited value." They would be of *no* value – irrelevant. Anyway, the posttrial reports in *Rosenthal* were submitted to the court some *twelve years* after the trial, during the Massachusetts equivalent of post-conviction review. *Commonwealth v. Rosenthal*, 2009 Mass. Super. LEXIS 426, ** 1, 36 (Middlesex Cnty. Sup. Ct. July 24, 2009).

[4] This is a red-herring. Defendant never argued that he was due a "pre-trial" hearing.

Nonetheless, the court recounted how defendant's trial testimony revealed "disordered thinking" and "bizarre" conduct. A33. This, though, it characterized as "concerning [defendant's] criminal responsibility, not his competency." A39. With some irony, given its failure to convene a hearing or authorize the temporary commitment defendant requested, the court found "no evidence that Mr. Hansen's apparent paranoia, delusions, and tangential speech impaired his ability to cooperate with [his trial lawyer] to conduct his defense." A42.

ISSUE PRESENTED FOR REVIEW

I. Did the lower court err by concluding that a defendant's due-process rights pursuant to *Pate v. Robinson*, 383 U.S. 375 (1966) are not implicated by bona fide doubts about his competence that arise immediately after trial and before sentencing?

ARGUMENT

I. The lower court erred by concluding that a defendant's due-process rights pursuant to *Pate v. Robinson*, 383 U.S. 375 (1966) are not implicated by bona fide doubts about his competence that arise immediately after trial and before sentencing.

A. Preservation and standard of review

Defendant's *Pate* claim is preserved by his motion for a new trial, the subsequent briefing and argument, and the lower court's consideration of that argument. *See* M.R. U. Crim. P. 51.

Review is therefore de novo – the standard applicable to constitutional rulings, which this *Pate* claim is. *Fox Islands Wind Neighbors v. Dep't of Envtl. Prot.*, 2015 ME 53, ¶ 26, 116 A.3d 940 ("We review constitutional issues de novo."); *In re Est. of O'Donnell*, 2024 ME 20, ¶ 28, 314 A.3d 197 ("We review alleged procedural due process violations de novo.").

While this Court often recites that it reviews denials of motions for a new trial for abuses of discretion, *e.g.*, *State v. Williams*, 2022 ME 24, ¶ 13, 272 A.3d 204, two caveats are important. First, abuse-of-discretion-review may be appropriate for non-constitutional issues, but it is discordant with this Court's responsibility to settle constitutional disputes. *See Lewis v. Webb*, 3 Me. 326, 333 (1825) (recognizing "duty of Judges to expound and apply" laws); 4 M.R.S. § 57 ("they must be decided"). Defendant's *Pate* claim, for instance, should not end up in federal court, this Court having opined on Maine's interpretation of the Fourteenth Amendment restrained by a malleable, deference-narrowed standard of review. Second, surely, if

defendant's federal constitutional rights have been violated, such would anyway constitute an abuse of discretion. But it makes no sense to speak of "discretion" to adhere to the Fourteenth Amendment, and trial courts would be aided by a clear – de-novo-derived – statement of law, not one filtered through a discretionary lens. *Cf. State v. Bard*, 2018 ME 38, ¶¶ 37-38 n. 6, 181 A.3d 187 (seemingly reviewing due-process-based motion for a new trial de novo).

B. Analysis

1. The *Pate* duty is appliable even when a bona fide doubt emerges only posttrial.

The Fourteenth Amendment requires a judge, on his own initiative, to convene a competence hearing in the event he becomes aware of bona fide doubts about a defendant's competence. *Pate v. Robinson*, 383 U.S. 375, 385 (1966). Maine courts interpret *Pate* to enshrine a defendant's "constitutional entitle[ment]" to "a meaningful hearing" on the question of his competence to stand trial. *Thursby v. State*, 223 A.2d 61, 67 (Me. 1966). The question in our case is whether a trial court's *Pate* duty is implicated when the bona fide doubt arises immediately after trial and before sentencing.

The Fifth Circuit has held that such timing *does* require a *Pate* hearing. "The fact that [a bona fide] doubt may not have arisen until after the trial does not take [a] case outside of the *Pate* doctrine." *Acosta v. Turner*, 666 F.2d 949, 956 (5th Cir. 1982). Rather, a court's *Pate* duty continues throughout any events that are "immediately and intimately related to the

continuous trial and posttrial proceedings." *Ibid.* For example, a doubt arising from an inquiry a day after the trial is within the *Pate* realm. *Ibid.* In contrast, *Pate* does not apply *after* sentencing when, in *separate* court-case, evidence emerges that the defendant is then possibly incompetent. *Reese v. Wainwright*, 600 F.2d 1085, 1093 (5th Cir. 1979).

A California appellate court, too, has recognized that *Pate* extends posttrial. A defendant was convicted, and the trial court ordered the appointment of a doctor to evaluate the defendant for sentencing purposes. *People v. Tomas*, 74 Cal. App. 3d 75, 80 (Cal. Ct. App. 1977). The resulting report established a bona fide doubt as to whether the defendant had been competent to stand trial. *Id.* at 88-90. The Court of Appeals held that the trial court committed a *Pate* error by failing to hold a competency hearing, necessitating a new trial. *Id.* at 91-92.

A Florida court has come to the same conclusion. A defendant was convicted of murder, and, with new counsel, the defense filed a motion for a new trial. *Tate v. State*, 864 So.2d 44, 47 (Fla. 4th D.C.A. 2003). That motion – with accompanying support – was the first indication that the defendant may had been incompetent at trial. *Id.* at 47-48. The trial court denied leave for a determination of the defendant's competence, "explain[ing] that until that time, no one had 'voiced a question about the defendant's competency to proceed.'" *Id.* at 47-48. "Under the principle recognized in *Robinson*" – its moniker for *Pate* – the Florida court found error justifying a new trial. *Id.* at 50-51.

To be sure, there is little case-law directly on point. Before deciding, in *Reese*, that the posttrial surfacing of a bona fide doubt could trigger *Pate*, the Fifth Circuit wondered, but did not decide, whether "a *Pate* violation could also occur shortly after trial as when the trial judge is considering a motion for new trial...." *Zapata v. Estelle*, 588 F.2d 1017, 1022 (5th Cir. 1979). And the Seventh Circuit identified "some question" about *Pate's* posttrial applicability – even though neither of the parties doubted it – but decided the case on other grounds. *United States ex rel. Rivers v. Franzen*, 692 F.2d 491, 496-98 (7th Cir. 1982) (assuming *Pate* is applicable, nonetheless no bona fide doubt triggering it). However, defendant is aware of no court – and the lower court cited none, either – that holds that *Pate* is inapplicable in situations like ours.

The better view is that, yes, *Pate* applies when bona fide doubts emerge soon after trial, before sentencing and in the context of an immediately related proceeding. Clearly, pre- and midtrial *Pate* claims cannot be waived. 383 U.S. at 384; *Medina v. California*, 505 U.S. 437, 449 (1992). To hold that, as soon as the trial is over, however, they may be waived would be to encourage judges to look the other way and favor inaction and foot-dragging. If state actors can avert their eyes just long enough, they could skirt their *Pate* duties. Or they might disregard without consequence any concerns that do arise soon after the verdicts, when development of a full-fledged record – perhaps via temporary commitment and a testimonial hearing, for example

– is most possible.[5] *Pate* aims to require courts to implement procedures sufficient to ensure that defendants are competent. It would be incongruous to hold that evidence of incompetence arising immediately after trial is outside its concern.

Another point of reference is 15 M.R.S. § 101-D(9). It provides for court-ordered competency evaluations *after* sentencing. Clearly, the Legislature believes that such determinations are possible and, in certain circumstances, necessary.

A further point warrants discussion. At trial, when a defendant's need to cooperate with his attorney is at its peak, just as is the need for confidentiality and privileged communications typically most heightened, defendant was not communicating with other than his lawyer. Only when Dr Masilla came to him and convinced defendant that she was not part of the conspiracy against him was it possible for someone to learn of his misunderstanding of the situation. *Pate* must be solicitous enough to require adequate hearings as soon as feasible. That is what *Pate* contemplates, 383 U.S. at 386-87, and it is what the court, respectfully, failed to do.

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[5] Our case is an example: The court did not act on the issue of competence – retroactive or "to proceed" – for four and a half months after the motion for a new trial. It did not act on defendant's motion for a temporary commitment for four and a half months. Would that considerable delay have happened had the court been aware that its *Pate* responsibility had not dissipated with the issuance of its verdicts?

2. Bona fide doubts emerged immediately after trial and before sentencing.

It is unconstitutional to proceed against a criminal defendant unless "he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and he in fact "has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960) (*per curiam*) (internal quotation marks omitted); *State v. Gerrier*, 2018 ME 160, ¶ 7, 197 A.3d 1083. There were many doubts about defendant's ability to both consult with his lawyer and maintain a "rational understanding" of the prosecution against him. Frankly, given defendant's "bizarre" (according to the trial court) actions and conspiracy-theory-fueled conduct in the incidents precipitating prosecution, this would have been a paradigmatic case of "bona fide doubts" but for defendant's profound masking.

To begin with, the court did not deny relief because of a belief that Dr. Masilla's concerns failed to establish a bona fide doubts. Its denial was instead predicated on its erroneous legal conclusion about *when* those doubts necessitated a *Pate* hearing. If judges are to be accorded considerable deference – clear-error or abuse-of-discretion review – in their estimations of doubts about competence, *see State v. Murphy*, 2010 ME 140, ¶ 3, 10 A.3d 697, then Justice Mallonee's evident doubts surely must be bona fide for current purposes too. They are not clearly erroneous.

Anyway, federal courts grant habeas relief in situations like this. In *Torres v. Prunty*, 223 F.3d 1103 (9th Cir. 2000), the Ninth Circuit upheld a

lower court's determination that California state courts unreasonably determined that no *Pate* hearing was necessary. Defendant Torres believed he was the victim of a medical conspiracy. 223 F.3d at 1105. In the middle of trial, Torres' attorney informed the judge, "Mr. Torres now believes that I am part of the conspiracy, along with your honor...." *Id*. at 1108. The state-court judge's determination that such did not generate bona fide doubts was unreasonable. *Id*. at 1109.

Another illustrative case, cited in *Torres*, is *United States v. Nagy*, 1998 U.S. Dist. LEXIS 9478, 1998 WL 341940 (S.D.N.Y. 1998). There, Defendant Nagy harbored "paranoid delusions concerning a conspiracy against him," which he sought to expose by having a trial. 1998 U.S. Dist. LEXIS 9478, ** 14-15, 19, 1998 WL 341940, ** 5-7. Though Nagy understood the roles of the attorneys and judge, his irrational understanding of the proceeding prevented him from considering or assisting counsel with the gamut of actions a litigant needs to assess and undertake. *Id*. at ** 19-20, ** 7. Thus, the court determined he was incompetent, and it ordered him temporarily committed for further evaluation. *Id*. at * 20, * 8.

Mr. Hansen believed that his lawyer was working against him. He believed the prosecutor was connected to the motorcycle gang, too. He surrendered to convictions in order to protect his family. These impediments obstructed the sort of trust a defendant must have in his lawyer if the defendant is going to assist in his own defense. These are cause for serious doubts about defendant's competence to rationally participate in his own defense.

3. The remedy is a new trial.

Nunc pro tunc or retroactive *Pate* hearings are disfavored, absent a "meaningful" opportunity to assess competence at the time of trial. *Pate*, 383 U.S. at 387 (observing "the difficulty of retrospectively determining an accused's competence to stand trial").[6] Defendant accepts the possibility that, given proper evaluation, commitment, and an evidentiary hearing, such might have still been possible in the months immediately after his trial. It is simply too late now, and a few considerations point to that conclusion.

First, the court unreasonably failed to act on defendant's motion for temporary commitment – itself a failure of procedural due process. The evidence that would have come out of commitment and observation was key to defendant's competence vel non. Because of the court's inaction, it is now lost, and that – state inaction – is precisely what *Pate* is meant to avoid. Likewise, the State *objected* to defendant's motion for commitment. It, therefore, should share responsibility for its needless obstructionism. *Cf. Zapata*, 588 F.2d at 1020 (where earlier competence hearing might have yielded better data "the state should bear some responsibility" for the lost opportunity). Otherwise, objections to requests for commitment may be weaponized to prevent defendants from obtaining evidence necessary to

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[6] Defendant notes that the time elapsed in his case since trial far exceeds that which the Supreme Court in *Dusky* held required a new trial rather than merely an opportunity to hold a retrospective competency hearing. *Compare Dusky v. United States*, 271 F.2d 385, 387-90 (8th Cir. 1959) *with Dusky*, 362 U.S. at 403 (fifteen months after pretrial determination that he was competent to stand trial, Court remands for new trial – not a nunc pro tunc hearing).

ensure their constitutional rights. *Cf. United States v. French*, 904 F.3d 111 (1st Cir. 2018) (Because prosecution could have acquiesced to timely taking of evidence but instead objected, "to the extent that memories have faded in the two years between the defendants' filing of their motion for a new trial and [reversal of order denying new trial], we place the responsibility for that possible loss of evidence at the feet of the government, not the defendants.").

Second, defendant has been receiving some nature of mental health treatment since entering the custody of the Department of Corrections. 8/19/25 Tr. 8. Whatever he might now be able to say about his beliefs is therefore unreliable on the subject. Both "fluctuating symptoms" and subsequent mental-health treatment are factors militating against the feasibility of a nunc pro tunc hearing. *People v. Rodas*, 429 P.3d 1122, 1135-36 (Cal. 2018).

We are now three years since trial began. Even more time has elapsed since defendant was supposed to be able to assist his attorney – the lawyer whom, it turns out, he believed was part of a conspiracy against him – to identify witnesses and secure evidence. By the time this Court decides this appeal, most likely, the trial will be closer to four years in the rearview mirror. By comparison, the statute of limitations for misdemeanors does not extend so long as this. *See* 17-A M.R.S. § 8(2). We know, also, that evidence of mental state "can be difficult to obtain." *State v. Cummings*, 2017 ME 143, ¶ 20, 166 A.3d 996. These road-marks indicate the bounds of what is a "fair opportunity" for defendant to establish his incompetence. A retroactive hearing would veer beyond them.

Consider again the defining characteristics of defendant's incompetence: He both believed that defense counsel was working against him and was profoundly able to mask that belief from counsel himself. Thus, any data-points that might typically be taken from counsel are of little value here. Defendant should have the opportunity to work with new counsel, one whom he trusts, and offer the resultant defense at trial. A new trial is the only way to do that.

CONCLUSION

For the foregoing reasons, this Court should vacate defendant's convictions, then remand for a new trial.

Respectfully submitted,

January 15, 2026

/s/ Rory A. McNamara

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CERTIFICATES OF FILING & SERVICE

I have filed this brief, and served opposing counsel, as listed on the briefing schedule and service list, in compliance with M.R. App. P. 1D(c), 1E and 7(c).

/s/ Rory A. McNamara