

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

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**REPLY BRIEF OF APPELLANT**

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Rory A. McNamara # 5609  
DRAKE LAW LLC  
P.O. Box 143  
York, ME 03909  
(207) 475-7810

ATTORNEY FOR JOHN J. HANSEN

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## INTRODUCTION

Defendant writes briefly to address the two thrusts of the State's argument.

I. There is a significant federal constitutional issue here, one which, respectfully, the Red Brief does not even discuss: *When* does a judge's duty under *Pate v. Robinson*, 383 U.S. 375 (1966) (per curiam) *cease*? The State, rather, merely contends that there were no bona fide doubts *at trial*. Defendant has not argued to the contrary. However, every court that has decided the issue – except the court below – holds that the *Pate*-duty extends *post-trial* to circumstances like ours.

II. The State hints that defendant has not invoked the proper procedural mechanism, as, in its view, “newly discovered evidence” must be evidence relative to guilt or innocence. As defendant will show below, that is an incorrect reading of the law: Newly discovered evidence encompasses evidence that a defendant's due-process rights have been violated, including for competence-related concerns.

## ARGUMENT

**The trial court violated defendant’s Fourteenth Amendment right embodied by *Pate v. Robinson*, 383 U.S. 375 (1966) (per curiam) and its progeny, necessitating a new trial.**

**A. The *Pate*-duty extends post-trial to proceedings after trial and before sentencing.**

The Red Brief contains cases merely discussing *whether* bona fide doubts sufficient to trigger *Pate* ever materialized. See Red Br. 12-13, citing *State v. Furrow*, 424 A.2d 694, 698 (Me. 1981) (“There is *nothing* in the record to indicate that the justice was *ever* put on notice by observation, reasonable claim, or credible source that defendant was incompetent to stand trial.”); *State v. Ledger*, 444 A.2d 404, 419 (Me. 1982) (“[T]here is *no indication* that the defendant was not competent under the *Thursby* criterion.”); *State v. Hewett*, 538 A.2d 268, 269-70 (Me. 1988) (no bona fide doubt because only question of competency was contained in “only one medical report and that report indicated competency.”) (emphasis added in all cases). The issue, though, is not *whether* bona fide doubts ever existed;<sup>1</sup> we are concerned with *when* those doubts must arise to trigger *Pate*.

Neither the trial court nor the State has cited a single case holding that *Pate* ends the instant the jury returns its verdict. Defendant has looked for one, too, and has found none. Rather, it seems that every court that has

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<sup>1</sup> There is no room for debate that bona fide doubts existed once Dr. Masilla’s concerns were made known. Certainly, her “significant concerns about [defendant’s] competence,” “concerns about [defendant’s] ability to assist counsel in a meaningful and rational manner,” and findings that he felt compelled to “succumb” to conviction in order to “save his family” are way more than enough to be bona fide. A75, A101. So, too, are defense counsel’s motions to have defendant committed and for a new trial.

decided the issue has held that the *Pate*-duty extends to post-trial proceedings, *i.e.*, to those which are “immediately and intimately related to the continuous and posttrial proceedings.” *Acosta v. Turner*, 666 F.2d 949, 956 (5th Cir. 1982); *People v. Thomas*, 74 Cal. App. 3d 75, 80, 88-92 (Cal. Ct. App. 1977); *Tate v. State*, 864 So.2d 44, 47-51 (Fla. 4th D.C.A. 2003). The State has waived any argument to the contrary.<sup>2</sup>

Indeed, a contrary ruling would reward courts for covering their eyes, and the State would have an incentive to engage in obstructionism – like objecting to commitments and competency hearings, as in our case. When bona fide doubts arise soon after trial, the Fourteenth Amendment requires a nunc pro tunc hearing about defendant’s competence at the time of trial.

**B. “Newly discovered evidence” per Rule 33 need not go to guilt or innocence.**

“Where the newly discovered evidence pertains not to the defendant's guilt, but to his competency to stand trial, we examine whether the new evidence indicates that the defendant did not have ‘sufficient ability to consult with his lawyer with a reasonable degree of rational understanding’ and ‘a rational as well as factual understanding of the proceedings against him.’” *United States v. McCarthy*, 54 F.3d 51, 55 (2d Cir. 1995), quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam) (ellipses omitted); *cf. Tate*, 864 So.2d 44, 47-51 (the defendant’s motion for a new trial was the first indication that he had been incompetent at trial).

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<sup>2</sup> The State has also not engaged with defendant’s argument, *see* Blue Brief 17-18, that review of this constitutional question is de novo.

This Court has previously accepted that general premise: New evidence need not relate to guilt or innocence. For example, in *Bard*, only after the (first) oral argument and subsequent remand led to the unsealing of a transcript documenting ex parte communications between the prosecutor and judge, defendant moved for a new trial, citing Rule 33.<sup>3</sup> *State v. Bard*, 2018 ME 38, ¶¶ 29-30, 181 A.3d 187. On appeal to this Court, Bard successfully argued that the new evidence established that his due process rights had been violated by the ex parte communications. *Id.* ¶¶ 50-55. There would have been no record of ex parte communications were the Rule-33 motion barred as untimely.

And, in *State v. True*, 2017 ME 2, ¶¶ 12, 17, 153 A.3d 106, the defendant plied a motion for a new trial based on the Fourteenth Amendment, specifically *Napue v. Illinois*, 360 U.S. 264 (1959). After the State countered that such was “untimely” – seemingly, because it was after the 14-day deadline for motions premised on other than new evidence – the defendant withdrew the motion before a hearing was held in exchange for a sentencing deal. *Id.* ¶¶ 11-12. On appeal, the Law Court denied defendant’s renewed *Napue* claims, faulting him for failing to adduce any evidence of perjury – *i.e.*, at a hearing. *Id.* ¶¶ 20-22. Had such a hearing anyway not been cognizable under Rule 33, such would be a very odd holding.

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<sup>3</sup> Judgment entered in *Bard* on July 28, 2015. 2018 ME 38, ¶ 27. But he did not move for a new trial until December 9, 2016. *Id.* ¶ 30. Given this timing, the only potential avenue for filing a timely Rule-33 motion was via the newly-discovered-evidence pathway. *See* M.R. U. Crim. P. 33 (only other deadline affords only two weeks post judgment).

In *Petgrave v. State*, 2019 ME 72, ¶ 14, 208 A.3d 371, the Court held that Rule 33 is the avenue for pursuing due-process claims of ineffective assistance at probation-revocation hearings. It recognized that “the principles underlying Rule 33” supported such a holding. *Id.*

They certainly do here, too. Our rules “shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.” M.R. U. Crim. P. 33. Yet, the State seeks a holding that would work a blanket bar on a trial court considering anything other than newly discovered evidence of guilt or innocence. Such a holding would represent a significant—and needless – procedural obstacle to newly discovered due-process concerns.<sup>4</sup>

It is also noteworthy that the evidence that first suggested defendant’s incompetence arose because of the court’s concerns, expressed just *prior to* its verdicts, that it needed to know “a lot” more about defendant. 3Tr. 15. It is the system’s fault, not defendant’s, that the needed information did not materialize on time to meet the 14-day Rule-33 deadline. That it was timely sought, though, underscores both the propriety of considering it as newly

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<sup>4</sup> Newly discovered evidence of perjury or incompetence, for example, require timely fact-finding. Were a trial court powerless to develop such a record under Rule 33’s newly-discovered prong, however, the delay would be significant. *See, e.g.*, 15 M.R.S. § 2126 (post-conviction proceedings are automatically stayed during pendency of direct appeal; defendant’s direct appeal, Pen-24-62, has been pending in this Court for over two years, as of filing).

discovered evidence *and* as evidence “immediately and intimately related to the continuous and posttrial proceedings.”<sup>5</sup>

### **CONCLUSION**

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

Respectfully submitted,

March 23, 2026

/s/ Rory A. McNamara

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Rory A. McNamara, #5609  
DRAKE LAW LLC  
P.O. Box 143  
York, ME 03909  
207-475-7810

ATTORNEY FOR JOHN J. HANSEN

### **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

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<sup>5</sup> The State has made no argument about remedy. It has waived any disagreement that a new trial, rather than a too-belated nunc pro tunc hearing, is proper.