

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Law Court Docket No. Cum-24-86

State of Maine
Appellee

v.

Saad Zacharia
Defendant/Appellant

On appeal from convictions in the Cumberland County Unified Criminal Court

BRIEF FOR APPELLANT

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PROCEDURAL HISTORY

Defendant, Saad Zacharia, was indicted on August 5, 2021, on the charges of: 1) Aggravated Assault pursuant to 17-A M.R.S. § 208(1)(B), 1604(5)(B) Class A, against Rose Heithoff; 2) Assault Class C pursuant to 17-A M.R.S. § 207(1)(A), 1604(5)(B) against Rose Heithoff; 3) Assault Class C pursuant to 17-A M.R.S. § 207(1)(A), 1604(5)(B) against Christine Bartowiak; and 4) Assault Class C pursuant to 17-A M.R.S. § 207(1)(A), 1604(5)(B) against Victoria Smith. [R. 5, 47]. On June 9, 2022, defense filed the following motions: Defendant's Motion to Suppress Illegal Arrest and the Fruits Thereof; Defendant's Motion to Suppress Physical Evidence and the Fruits Thereof; Defendant's Motion to Suppress Photo Array Evidence; and Defendant's Motion to Suppress In Court Identification. Those four motions were subsequently denied on November 11, 2022, after a hearing. [R.9-10, 34,49, 51, 56, 59].

Prior to trial, on December 4, 2023, the defense also filed four motions *in limine*, all were subsequently denied after hearing. [R. 15, 16]. A Motion to Dismiss for Undue Delay or in the Alternative a Motion for New Bail Hearing was filed on December 15, 2023, and was subsequently denied on January 4, 2024. [R. 16, 40, 61]. From January 10-12, 2024, a jury trial was held. Mr. Zacharia was found guilty on all four (4) counts. [R. 27]. The conviction on counts one and two were merged. [R. 21-22, 27]. On January 29, 2024, Mr. Zacharia was sentenced to the Department

of Corrections for six years with all but thirty-three months suspended with four years' probation on count one, and the remaining counts all concurrent with count one. [R. 18-19].

A timely Notice of Appeal was filed on February 15, 2024, [R. 21], and the case was subsequently docketed in this Court.

STATEMENT OF THE FACTS¹

Motion to Suppress:

The motion judge heard the following testimony at the hearing on the defense Motion to Suppress:

On June 16, 2021, Officer Michael Bennis of the Portland Police Department responded to a call on Congress Street near Monument Square. [Mot. Tr. 8, 10]. Officer Bennis had received information that an individual had been “poked” in the back. [Mot. Tr. 10]. Officer Bennis spoke with a woman named Rose who said she had interacted with a person after dropping books off at the library — her thermos had been knocked over and she had some “innocuous” conversation with this person. [Mot. Tr. 10]. Rose then left that area heading west on Congress Street. [*Id.*]. She was then hit from behind and she felt a sharp pain on her arm. [*Id.*]. Rose did not give any description of the person who had hit her from behind, but she did provide a description of the person she spoke with near the library: Black male, dark

¹ Additional facts may be set forth in the argument section as needed.

complexion, short, spiky hair, athletic build, and a moss green shirt.² [Mot. Tr. 11]. Officer Bennis put this description over the radio to try to find a possible suspect. [Mot. Tr. 12].

As Officer Bennis was speaking with Rose, another woman, Christine, came forward to say she had also had an encounter with a man on Congress Street: She had been body slammed from behind and felt a sharp pain, like she had been “poked.” [Mot. Tr. 13]. Christine had had a short exchange of words with this man, who she described as black, 5’8” to 5’10”, with a green shirt, and carrying a tablet. [Mot. Tr. 15].

Officer Bennis put this new information out over the radio. [Mot. Tr. 15]. In response, Officer Knight responded that he had recently dealt with a black man who also carried a tablet, and Officer Knight identified that man as Saad Zacharia. [Mot. Tr. 15; 56]. When Officer Argitis of the Portland Police Department heard this information on the police radio, he spoke with a worker who provides food via the food pantry to homeless people in the area. [Mot. Tr. 52]. That person stated that Mr. Zacharia had been at the Preble Street Resource Center earlier that day. [*Id.*]. The person then called the resource center and verified that Mr. Zacharia was currently there, likely showering. [Mot. Tr. 52].

² One of the witnesses also mentioned a backpack, but Officer Bennis was unsure if it was Rose or Christine. [Mot. Tr. 11].

Officers Bennis and Knight then went to the Preble Street Resource Center, which was closed to the public because it was under renovation. [Mot. Tr. 18, 58-59].³ Once at the resource center, a caseworker allowed the officers⁴ into the common area. Officer Knight was told that Mr. Zacharia had been allowed into the resource center to shower. [Mot. Tr. 19, 60-61]. When the officers entered the common area, they saw Mr. Zacharia standing in the area of the showers, near a sink – he was the only person there. [Mot. Tr. 19, 60].⁵ Officer Knight walked over to speak with Mr. Zacharia and they had some conversation. [Mot. Tr. 21, 61]. While they were talking, Mr. Zacharia walked over to the shower stall where he had just showered. [Mot. Tr. 61]. Officer Knight did not pat-frisk Mr. Zacharia at this time. [Mot. Tr. 69].

The shower area at the resource center was a small room with a shower in it and a chair. It is a private, one-person shower stall. [Mot. Tr. 21, 62, 68-69]. Mr. Zacharia walked into the shower stall and partially closed the door behind him. [Mot. Tr. 62].⁶ Officer Knight could see some items on the floor of the stall but was unable

³ Despite being closed, some caseworkers at the resource center would allow select people to come in and shower. [Mot. Tr. 59].

⁴ Officers Bennis and Knight were joined by Sergeant Farris when they entered. [Mot. Tr. 19]. They were later joined by Detective Hagarty and Lieutenant Goodman. [Mot. Tr. 18].

⁵ Officer Bennis's body worn camera was recording during this time and was submitted as State's Exhibit 8. [Tr. I: 188].

⁶ Officer Bennis testified that when Mr. Zacharia walked to the shower stall the door was fully open and once he walked inside, he partially closed it behind him. [Mot. Tr. 22-23]. Officer Knight testified that the door was open a little more than 3-5 inches, possibly 12 inches. [Mot. Tr. 69-70].

to identify them. [Mot. Tr. 62].⁷ Mr. Zacharia could partially be seen through the door and Officer Knight continued to speak with him while he was in the stall. [Mot. Tr. 23, 63].

Officer Bennis then decided that Mr. Zacharia needed to be removed from the shower stall. [Mot. Tr. 23, 63]. Officer Knight opened the shower stall door and ordered Mr. Zacharia to step out. [Mot. Tr. 24, 63-64]. After Mr. Zacharia was ordered from the shower stall, Officer Bennis was able to see inside the stall and he noticed personal items strewn on the shower stall floor including tweezers and a box cutter. [Mot. Tr. 26].⁸ Those items were eventually collected by Lieutenant Goodman, and after the motion to suppress was denied, the items were admitted as exhibits at trial. [Mot. Tr. 27; Tr. I: 178]. Mr. Zacharia was then arrested. [Mot. Tr. 82].

Speedy Trial:

Mr. Zacharia was arrested at the Preble Street Resource Center on June 16, 2021. [Mot. Tr. 82]. He was held for over thirty months on pre-trial bail. [R. 41]. Initially there were competency concerns in this case and on August 11, 2021, Mr. Zacharia was found incompetent to stand trial. [R. 5]. The competency issue was

⁷ Officer Bennis said he was too far away to anything specific on the floor of the stall. [Mot. Tr. 22].

⁸ Officer Knight also testified that he was not able to see the items in the shower stall until Mr. Zacharia stepped out. [Mot. Tr. 71-72].

resolved on March 16, 2022, when, after hearing, Mr. Zacharia was declared competent to stand trial. [R. 8]. A not guilty plea was entered by Mr. Zacharia on April 20, 2022. [R. 8]. A dispositional conference was held on June 8, 2022, and a motion to suppress evidence was filed the same day. [R. 9].

After the motion to dismiss was denied on November 12, 2022, a new competency evaluation was requested. Mr. Zacharia was found competent. [R. 10]. On May 11, 2023, another dispositional conference was held. [R. 12]. On this date it was noted in the Docket Record to “Expedite Trial Request.” [R. 12]. The matter was then set for Docket Call on August 8, 2023. [R. 12]. At trial call on August 28, 2023, the case was scheduled for Jury Selection on September 13, 2023. [R. 13].

This trial was not held due to a tragic motor vehicle accident involving Mr. Zacharia’s defense counsel; this accident prevented the trial from being held on this date. [R.41]. New counsel was appointed for Mr. Zacharia on September 11, 2023. [R. 14]. At Docket Call on October 30, 2023, the case was set for Jury Selection on December 11, 2023. [R. 14]. A jury was successfully seated on December 11, 2023, [R. 16], however, after selection four seated jurors came forward and told the court they were unable to sit during the trial period. [R. 41]. Over defense’s objection, a mistrial was declared. [R. 41]. Mr. Zacharia filed a Motion to Dismiss based on Speedy Trial Grounds on December 14, 2023. [R. 16, 61]. The motion was denied

on January 4, 2024, and the case proceeded to trial with jury selection on January 9, 2024. [R. 16-17].

ISSUES FOR REVIEW

- I. Whether the lower court erred when it denied the motion to suppress the physical evidence found with Mr. Zacharia, which was seized without a warrant, where Mr. Zacharia had a reasonable expectation of privacy at the shelter and in the shower stall?
- II. Whether the lower court abused its discretion when it denied Mr. Zacharia's motion to dismiss on speedy trial grounds?

ARGUMENT

I. THE LOWER COURT ABUSED ITS DISCRETION WHEN IT DENIED THE MOTION TO SUPPRESS THE PHYSICAL EVIDENCE FOUND WITH MR. ZACHARIA, WHICH WAS SEIZED WITHOUT A WARRANT, BECAUSE MR. ZACHARIA HAD A REASONABLE EXPECTATION OF PRIVACY AT THE SHELTER AND IN THE SHOWER STALL.

This Court applies a bifurcated review of a denial of a motion to suppress. This Court gives deference to the factual findings made by the trial court by reviewing for clear error. *State v. Bailey*, 2010 ME 15, ¶ 16, 989 A.2d 716, 721. “‘In contrast, a challenge to the application of those facts to constitutional protections is a matter of law that we review *de novo*,’ and a ruling on a motion to suppress based

on essentially undisputed facts is viewed as a legal conclusion that is reviewed *de novo*.” *Id.* (quoting *State v. Tozier*, 2006 ME 105, ¶ 6, 905 A.2d 836, 838) (internal citations omitted).

The Fourth Amendment of the United States Constitution provides, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Constit. Amend. IV. A warrantless search is *per se* unreasonable, subject to a few narrowly drawn exceptions. *Michigan v. Fisher*, 558 U.S. 45 (2009). Fourth Amendment protections apply to areas searched wherein the defendant holds a “legitimate expectation of privacy.” *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980). In analyzing the scope of these constitutional protections, the United States Supreme Court has explained that:

[I]n order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; *i.e.*, one that has a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.

Minnesota v. Carter, 525 U.S. 83, 88 (1998) (internal quotation marks and citation omitted). Consequently, an individual's subjective expectation must also be “one that

society is prepared to recognize as reasonable.” *Smith v. Maryland*, 442 U.S. 735, 740 (1979) (internal quotation marks and citations omitted).

It appears that this Court has not addressed the privacy rights of a homeless person while at a shelter or, more narrowly, the rights of that person while in a private shower stall within the shelter.

A. Mr. Zacharia, Who Was Homeless, Had A Legitimate Expectation Of Privacy At The Shelter Because It Was Akin To His Home.

The lower court’s conclusion that Mr. Zacharia did not have a reasonable expectation of privacy at the shelter was erroneous and requires reversal. Absent exigent circumstances or consent,⁹ “[T]he entry into a home to conduct a search or make an arrest is unreasonable under the Fourth Amendment to the U.S. Constitution unless done pursuant to a warrant.” *Steagald v. United States*, 451 U.S. 204, 211 (1981). The “physical entry of the home is the chief evil against which the Fourth Amendment is directed.” *United States v. United States District Court*, 407 U.S. 297, 313 (1972). “[W]hen it comes to the Fourth Amendment, the home is first among equals.” *Florida v. Jardines*, 569 U.S. 1, 6 (2013). “At the Amendment’s ‘very core’ stands ‘the right of a man to retreat into his own home and there by free from unreasonable governmental intrusion.’” *Id.* (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). “For purposes of the Fourth Amendment, an individual’s

⁹ The lower court did not analyze whether there were exigent circumstances or consent, rather the court focused solely on Mr. Zacharia’s expectation of privacy and the plain view doctrine. [R. 37].

home is traditionally held to be sacrosanct, making warrantless searches ‘*per se* unreasonable, subject to a few specifically established, carefully drawn and much guarded exceptions.’” *State v. Glenn*, 2021 ME 7, ¶ 18, 244 A.3d 1023, 1028 (quoting *State v. Boilard*, 488 A.2d 1380, 1383-84 (Me. 1985)).

Courts across the country appear split as to whether individuals have a reasonable expectation of privacy while staying at a homeless shelter. While some courts have found that homeless people staying at a shelter have a reasonable expectation of privacy in their living space, others have disagreed. Compare *People v. Gaffney*, 308 A.D.2d 598, 598 (N.Y. App. Div. 2003) (“The defendant had no reasonable expectation of privacy in his assigned room at a homeless shelter, given the semi-public nature of the room.”), with *Commonwealth v. Porter P.*, 923 N.E.2d 36, 44–45 (Mass. 2010) (transitional shelter resident had privacy interest in his room, similar to that of a hotel patron or guest at a boarding house). Nevertheless, the rationale set forth by a district court judge in the United States District Court in the District of Columbia in finding that the occupants of a homeless shelter had an actual expectation of privacy, is particularly compelling:

For many of the Plaintiffs their choice was between the homeless shelter and the streets. Thus, the shelter was, for them, the most private place they could possibly have gone—the place most akin to their “home.” That expectation of privacy is a reasonable one. To reject this notion would be to read millions of homeless citizens out of the text of the Fourth Amendment.

Community for Creative Non-Violence v. Unknown Agents of U.S. Marshals Serv., 791 F. Supp. 1, 6 (D.D.C. 1992).

Here, Mr. Zacharia, who was homeless, was at a homeless shelter that was closed for renovations at the time. [Mot. Tr. 18, 58-59]. The public was not generally allowed into the facility during this time. Mr. Zacharia had received permission to shower at the shelter and his personal belongings were inside the shower stall when the police officers were allowed into the common area. [Mot. Tr. 19]. Under the limited facts of this case, Mr. Zacharia had an actual expectation of privacy in the common area of the shelter. No one else but him was present when the officers arrived, and the shelter was closed to the public. This expectation of privacy is one that society would recognize as reasonable, *Smith*, 442 U.S. at 740, because the shelter was the most private place available to Mr. Zacharia – it was similar to his home. *Community for Creative Non-Violence*, 791 F. Supp. at 6.

Even if this Court declines to find that Mr. Zacharia had a reasonable expectation of privacy in the common area at the shelter, once he entered the shower stall and partially closed the door behind him, he had a reasonable expectation that he would be free from a warrantless search.

B. Mr. Zacharia Had A Reasonable Expectation Of Privacy Within The Boundaries Of The Shower Stall.

While Mr. Zacharia arguably may not have had a reasonable expectation of privacy in the common areas of the shelter, he most certainly had a reasonable

expectation of privacy within the shower stall. Although there is a dearth of caselaw on expectation of privacy in a shower stall, a person's expectation of privacy in a public bathroom stall is analogous.

A bathroom stall in a public restroom is private to the extent it is offered to the public for private, however transient, individual use. *See People v. Vinson*, 161 A.D.3d 493, 494 (N.Y. App. Div. 2018) (once the stall door was closed the defendant had a reasonable expectation of privacy while using the small, single-use restroom because at that point he was “entitled to assume that while inside he ... will not be viewed by others”); *People v. Morgan*, 558 N.E.2d 524, 526 (Ill. App. Ct. 1990) (“simple common sense” and cases from other jurisdictions persuaded the court that an individual has a privacy interest in the stall of a public restroom); *State v. Limberhand*, 788 P.2d 857, 861-862 (Idaho Ct. App. 1990) (reasonable expectation of privacy exists once inside a restroom stall); *City of Tukwila v. Nalder*, 770 P.2d 670, 673-674 (Wash. Ct. App. 1989) (individual has expectation of privacy in bathroom stall even where toilet is not completely shielded from public view); *People v. Kalchik*, 407 N.W.2d 627, 631 (Mich. Ct. App. 1987) (expectation of privacy in areas obscured by bathroom stall); *State v. Biggar*, 716 P.2d 493, 495 (Haw. 1986) (actual and subjective expectation of privacy to conduct inside closed bathroom stall); *Buchanan v. State*, 471 S.W.2d 401, 404 (Tex. Crim. App. 1971) (distinguishing the difference in privacy expectation according to whether a

bathroom stall had a door); *State v. Bryant*, 177 N.W.2d 800 (Minn. 1970) (a person inside such a stall could be said to have some reasonable expectation of privacy); *Brown v. State*, 238 A.2d 147, 149 (Md. Ct. Spec. App. 1968) (occupants of bathroom stall are entitled to the modicum of privacy its design affords). *But see United States v. Billings*, 858 F.2d 617, 618 (10th Cir.) (no reasonable expectation of privacy to areas observable below bathroom stall door and illegal activity seen from that position).

Here, the lower court rightly concluded that, Mr. Zacharia “may have had an expectation of privacy in the shower room with the door closed.” [R. 37]. (*citing Vinson*, 77 N.Y.S. at 27). However, the cases the court cited for the proposition that once Mr. Zacharia “left the shower room with the door open, he no longer had a reasonable expectation of privacy,” are inapposite. [R. 37]. (*citing People v. Mercado*, 501 N.E.2d 27, 29-30 (N.Y. 1986); *White*, 890 F.2d at 1015). An important distinction in this case is that both officers testified that they could not identify any of the items on the floor of the shower stall until the door was opened. This was not a case where the illegality was observable from outside the stall and the defendant had no expectation of privacy in these observations. *See e.g., United States v. White*, 890 F.2d 1012, 1015 (8th Cir. 1989) (no reasonable expectation of privacy for illegal activity that could be viewed through the gap between the stall door and stall wall). Nothing untoward was seen by either officer until Officer Knight violated Mr.

Zacharia's privacy rights when he opened the shower stall door and told Mr. Zacharia to exit. *Britt v. Superior Court*, 374 P.2d 817, 819 (Cal. 1962) (officers had no information that defendant was occupying the stalls for anything other than a lawful purpose).

Similarly, this is not a case where a defendant had no expectation of privacy because he was using the stall for a purpose that it was not intended. *See State v. Tanner*, 537 N.E.2d 702, 705 (Ohio Ct. App. 1988) (“[I]ndividual's subjective expectation of privacy limited when two people are in stall designed for use by one person.”); *Mercado*, 501 N.E.2d at 29-30 (two men using a single bathroom stall).

Here, Mr. Zacharia was attempting to secure his personal belongings from the shower stall where he had just showered. As Officer Knight testified this type of individual shower stall is a one-person unit where each person would leave with their personal belongings before another person went in. [Mot. Tr. 69]. As Officer Knight rightfully acknowledged, Mr. Zacharia did not invite him into the shower stall. [Mot. Tr. 70]. The video is clear that Officer Knight opened the door on his own before telling Mr. Zacharia that he needed to step out from the stall. [State's Ex. 8]. As such, the unconstitutional intrusion occurred when Officer Knight opened the door and required Mr. Zacharia to leave the shower stall without being able to privately gather his belongings.

While the items were then in plain view, they were only in plain view because of the illegal intrusion, not because they could be, or were, seen from outside the stall with the door partially closed. *State v. Alley*, 2004 ME 10, ¶ 15, 841 A.2d 803, 808 (“The plain view doctrine permits police to seize an object without a warrant if they ‘are lawfully in a position from which they can view an object, its incriminating character is immediately apparent, and the officers have a lawful right of access to the object.’”) (quoting *State v. Storey*, 1998 ME 161, ¶ 18, 713 A.2d 331, 335). The officers were not lawfully in a position to view the object because Officer Knight violated Mr. Zacharia’s Constitutional rights when he opened the stall door. Thus, the seized items were not lawfully taken pursuant to the “plain view doctrine.”

Finally, the lower court found that there was reasonable suspicion for Officer Knight to order Mr. Zacharia from the shower stall because he was a suspect in the attacks. [R. 37]. Officer Knight had the opportunity to pat-frisk Mr. Zacharia when he first approached him in the common area. [Mot. Tr. 69; State’s Ex. 8]. He chose not to do so, as he felt familiar with him. [Mot. Tr. 69, 72]. Instead, he allowed Mr. Zacharia to walk to the private shower stall and partially close the door behind him. The encounter was neither confrontational nor elevated. [State’s Ex. 8]. If the officers had a concern for their safety to justify a pat-frisk, they should have performed it when they approached him because the facts known to them at that

point did not change once he entered the stall – they knew he was a suspect in two alleged assaults and Officer Knight still felt comfortable with him.

Therefore, because Mr. Zacharia had an actual expectation of privacy once he was inside the shower stall, and that expectation is one that society would recognize as reasonable, this Court must reverse the denial of the motion to suppress.

II. THE LOWER COURT ABUSED ITS DISCRETION WHEN IT DENIED MR. ZACHARIA’S MOTION TO DISMISS ON SPEEDY TRIAL GROUNDS.

This Court “review[s] for abuse of discretion a court’s judgment on a motion to dismiss a charge for failure to provide a speedy trial.” *State v. Hofland*, 2012 ME 129, ¶ 11, 58 A.3d 1023, 1027 (citing *State v. Teachout*, 2011 ME 37, ¶ 4, 16 A.3d 155. “A speedy trial analysis requires application of a delicate balancing test that takes into account all of the circumstances of the case at hand.” *State v. Drewry*, 2008 ME 76, ¶ 12, 946 A.2d 981 (quotation marks omitted).

Article I, section 6 of the Maine Constitution secures the right to a speedy trial. Me. Const. art. I, § 6. In *Winchester v. State*, this Court recently articulated a four-factor balancing test for evaluating a speedy-trial claim, examining: (1) the length of the delay, (2) the reasons for the delay, (3) the assertion of the right, and (4) prejudice. *Winchester v. State*, 2023 ME 23, ¶¶ 14-39, 291 A.3d 707.

Here, the analysis weighs in favor of Mr. Zacharia and the charges against him must be dismissed because he was denied a speedy trial.

Length of Delay:

The speedy trial clock starts with an indictment, arrest, or formal accusation. *State v. Norris*, 2023 ME 60, ¶ 20, 302 A.3d 1, 11. There is no bright line rule as to an amount of time that constitutes excessive delay. *Winchester*, 2023 ME at ¶ 27. Mr. Zacharia was incarcerated for over thirty months while being held pre-conviction. Although he repeatedly filed motions to amend bail, those motions were denied with no reduction of his \$5,000 bail. [R. 3, 4, 10, 11, 12, 13, 14]. The motion judge determined that there was “no doubt that this is a significant period of pre-conviction incarceration.” [R. 41]. Thus, this factor weighs in favor of Mr. Zacharia.

Reason for Delay:

It was incumbent upon the lower court to determine to which party the delays could be attributed: Periods of delay occasioned by the defendant should not be counted against the State. *See State v. Spearin*, 477 A.2d 1147, 1154 (Me. 1984). Periods of delay caused by the State, including those attributable to the court, should be counted against the State. *See State v. Cadman*, 476 A.2d 1148, 1151-52 (Me. 1984). The weight to be assigned to each period of delay depends on the type of delay. In some instances, a delay can be deemed neutral if it is attributable to neither the State nor the defendant. *Norris*, 2023 ME at ¶ 24. The lower court here found that the delays could not be attributable to either Mr. Zacharia, nor the State. Thus, this factor is neutral.

Assertion of Right to Speedy Trial:

Mr. Zacharia has consistently maintained that he wished to proceed to trial as soon as possible. On December 11, 2023, a mistrial was ordered over his objection. While no formal Motion for Speedy Trial was filed before December 15, 2023, [R. 16], there was docket entry from May 2023, that clearly indicates that a trial date is to be given priority. [R. 12]. Nevertheless, the lower court found that Mr. Zacharia asserted his Speedy Trial right for the first time on December 15, 2023. [R. 42].

Prejudice:

Prejudice is assessed “in the light of the interests of defendants which the speedy trial right was designed to protect. The Supreme Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” *Barker v. Wingo*, 407 U.S. 514 532 (1972).

Mr. Zacharia was prejudiced by his on-going incarceration. The Law Court in *Winchester* noted that “The first of these three harms, oppressive pretrial incarceration, has been viewed in Maine as particularly significant, as reflected by language in our early statute providing protection to ‘[a]ny person in prison under indictment.’” *Winchester*, 2023 ME at ¶ 31 (*citing* 15 M.R.S. § 1201 (1964)).

Additionally, given his continued detention Mr. Zacharia experienced significant anxiety and concern regarding his trial and repeated evaluations of his

mental status and orders for his forced medication when he claimed he was fully competent. [R. 4, 6, 7, 8]. Mr. Zacharia certainly meets this prong of the 4-part test of being prejudiced by continued delays in his case.

Remedy:

Dismissal is the “only possible remedy” for a speedy trial violation. *Barker*, 407 U.S. at 522; *State v. Smith*, 400 A.2d 749, 752 (Me. 1979) (“The denial of the right to a speedy trial, guaranteed by the Sixth and Fourteenth Amendments of the Constitution of the United States and Article I, section 6 of the Constitution of the State of Maine, has but one extremely harsh remedy, dismissal of the charges.”).

As such, this Court should dismiss the charges against Mr. Zacharia.

CONCLUSION

For the foregoing reasons, this Court must reverse the orders granting the motion to suppress and motion to dismiss.

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CERTIFICATE OF SERVICE

I, Michelle R. King, attorney for Saad Zacharia hereby certify that on this date I made service of the foregoing Appellant's Brief and Appendix, by email and U.S. mail, to the following counsel:

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