

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

Law Court Docket No. Cum-24-86

State of Maine
Appellee

v.

Saad Zackaria
Defendant/Appellant

BRIEF FOR APPELLEE

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May 15, 2025

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PROCEDURAL HISTORY

The State agrees with and adopts the procedural history as outlined by the Appellant.

STATEMENT OF THE FACTS

August 25, 2022 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 that an individual had been assaulted by being “poked.” [Mot. Tr. 8, 10]. On scene, Officer Bennis spoke with victim Rose Heithoff who said she had interacted with a person after dropping books off at the library [*Id*]. Once she began walking west, Heithoff stated she was hit from behind and felt a sharp pain on her arm. [Mot. Tr.10]. Heithoff provided a description of the person she spoke with near the library, whom she suspected was the assailant. [Mot. Tr.11]. The description was black male, dark complexion, short, spiky hair, athletic build, and a moss green shirt. [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 Heithoff, a male approached claiming his coworker, later identified as Christine Bartkowiak, was similarly assaulted. [Mot. Tr. 12-13]. Bartkowiak told Bennis she had been “body slammed” from behind and felt a sharp pain, like she had been “poked.” [Mot. Tr. 13]. Bartkowiak

gave a similar description, adding that the suspect was wearing headphones and carrying a tablet. [Mot. Tr. 15]. Bennis also photograph's Heithoff's injury, which was a puncture wound on the back of her arm. [Mot. Tr. 17].

Based on this description, officers were able to identify a suspect, Saad Zackaria. Further, they had a lead on a location, the Preble Street Resource Center [Mot. Tr. 17, 52]. Officers went to the Resource Center, which was closed at the time because it was under renovation. [Mot. Tr. 18, 58-59]. The Resource Center functions as both a source of food and community resources for the transient population, but it is a "day shelter" only and does not provide overnight housing except in special circumstances which were not in place at the time. [Mot. Tr. 18, 59]. Staff told Officer Knight Mr. Zackaria had been allowed into the resource center to shower. [Mot. Tr. 19, 60-61]. Officers were allowed in by staff. [Mot Tr. 67] When officers entered the common area, which is a large space mostly filled with tables and chairs, he was the only person there. [Mot. Tr. 19, 60]. Mr. Zackaria was not presently showering and was fully clothed. [Mot. Tr. 61-62]. Officer Knight engaged Mr. Zackaria in conversation near the sink area and during that conversation, Mr. Zackaria walked over to the shower stall where Officer Knight observed Mr. Zackaria's belongings "scattered all over the floor." [Mot. Tr. 62].

The two continued to talk while Mr. Zackaria entered the shower stall and began to close the door, but left it about 12 inches open. [Mot. Tr. 62-63, 70]. From

his vantage point a few feet from the door, Officer Knight could observe Mr. Zackaria bent over in the stall. [Mot.Tr. 62]. Officer Knight could see items on the floor of the stall but did not identify them, despite being able to see them. [Mot. Tr. 62, 71]. Mr. Zackaria could partially be seen through the open door and Officer Knight continued to speak with him while he was in the stall. [Mot.Tr. 23, 63].

Officers decided to ask Mr. Zackaria from the stall for safety reasons. [Mot. Tr. 23, 63]. After Mr. Zackaria walked out of the shower stall, officers could see an assortment of personal items on the floor including tweezers, wire and a boxcutter. [Mot. Tr. 26]. Those items were admitted as exhibits at trial. [Mot. Tr. 27; Tr. I: 178]. It was at that juncture that Mr. Zackaria was arrested. [Mot. Tr. 82].

Speedy Trial:

With regard to the Speedy Trial issue, the State agrees with and adopts the facts as summarize by the Appellant.

ISSUES FOR REVIEW

- I. Whether the lower court erred when it denied the motion to suppress the physical evidence found in the possession of Mr. Zackaria in the open shower stall of the Resource Center?
- II. Whether the lower court properly ruled when it denied Mr. Zackaria's motion to dismiss on speedy trial grounds?

ARGUMENT

I. THE LOWER COURT CORRECTLY DENIED THE MOTION TO SUPPRESS THE PHYSICAL EVIDENCE

The Law Court applies a dual standard of review when reviewing a trial court's ruling on a motion to suppress. The Court reviews "the factual findings of the motion court to determine whether those findings are supported by the record," and will only set aside those findings if they are clearly erroneous, *State v. Bailey*, 2010 ME 15, ¶ 16, 989 A.2d 716, 721 citing *State v. Reynoso-Hernandez*, 2003 ME 19, ¶ 10, 816 A.2d 826, 830. Additionally, "a challenge to the application of those facts to constitutional protections is a matter of law that we review de novo", and thus "a ruling on a motion to suppress based on essentially undisputed facts is viewed as a legal conclusion that is reviewed de novo." *Id.*

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. Const. Amend. IV. However, anything "a person knowingly exposes to the public ... is not a subject of Fourth Amendment protection. *State v. McNaughton*, 2017 ME 173, ¶ 39, 168 A.3d 807, 818. As such, where a person "exposes an object to public view has no reasonable expectation of privacy in that object." *Id.* citing *State v. Harriman*, 467 A.2d 745, 748 (Me. 1983).

A. Mr. Zackaria Did Not Have A Reasonable Expectation of Privacy Akin To A Home In The Resource Center Where He Was Found.

The lower court's correctly ruled that Mr. Zackaria did not have a reasonable expectation of privacy in the shower stall of the Preble Street Resource Center. The Resource center was not his home and was, in fact, a shared public space.

The U. S. Supreme court has been clear that "the Fourth Amendment has drawn a firm line at the entrance to the house." *Payton v. New York*, 445 U.S. 573, 590, (1980). But there is no such line in a shared public space. In *United States v. Matlock*, the Supreme Court held that consent to search a shared premises may be given by any individual who possesses common authority over the area to be searched. 415 U.S. 164 (1974). Common authority is based on mutual use of the property by persons generally having joint access or control for most purposes. *Id.* In *Georgia v. Randolph*, the Court held that when a physically present co-occupant expressly refuses to consent, and the police cannot conduct a warrantless search, as the presence and objection of one resident trumps another's consent when both are present. 547 U.S. 103 (2006).

In the present case, staff who worked at the Resource Center allowed officers into the common space where they met Mr. Zackaria. At no point did Mr. Zackaria expressly tell officers to leave. To the contrary, he engaged in conversation with Officer Knight while walking around the space. Based on both the *Matlock* and *Randolph* standards, Mr. Zackaria had a reduced expectation of

privacy in the shared space.

The Appellant contends that the Preble Street Resource Center is “akin to his home.” [Blue Br. 13]. However, based on the very nature of a homeless services center or shelter, the *Matlock* and *Randolph* standards severely limit any reasonable expectation of privacy one can rely on in similar intuitions.

The appellant draws further comparisons to a residence and cites to *Community for Creative Non-Violence v. Unknown Agents of U.S. Marshals*. In that case, federal marshals entered, without consent of staff, into a “drop-in section in the basement.” 791 F. Supp. 1, 3 (D.D.C. 1992). “The purpose of this area is to provide emergency *overnight* shelter for homeless individuals.” *Id.* emphasis added.

Here, the Resource Center is for day use only. [Mot. Tr. 18, 59]. At the time of this incident, there was no one staying overnight.¹ *Id.* Further, Mr. Zackaria’s use of the facilities was further limited by the fact that he was only allowed access as an exception. [Mot. Tr. 19, 60-61]. The majority of the transient community was not allowed access. This limits the court’s ability to draw any comparison to the drop in section in *Community for Creative Non-Violence*.

B. Mr. Zackaria Did Not Have A Reasonable Expectation of Privacy Within The Boundaries Of The Open Shower Stall

Any expectation of privacy Mr. Zackaria may have had in the bounds of the

¹ At this time, the Oxford Street Shelter, located approximately two blocks away, provided overnight stays.

shower stall was erased by the fact that the door to the stall was never closed. As noted by the appellant, there is a dearth of caselaw on expectation of privacy in a shower stall, most agree that in order to trigger the expectation in a restroom, the door must be closed. [Blue Br. 16],

Appellant cites to *People v. Vinson*, and notes that the expectation of privacy is only triggered once the stall door was closed. [Blue Br. 17]. The New York Court of Appeals revisited this issue in *People v. Mercado* stating officers could “look through the spaces at the sides of the door in an effort to learn what was going on inside,” indicating that even when the door is closed, the right to privacy in a bathroom stall is not absolute. 68 N.Y.2d 874, 877, 501 N.E.2d 27 (1986).

The Appellant notes that the lower court came to the same conclusion and similarly distinguishes that Mr. Zackaria “may have had an expectation of privacy in the shower room with the door closed.” [Blue Br. 17, R. 37]. The lower court held that:

Defendant may have had an expectation of privacy in the shower room with the door closed. Once he left the shower room with the door open, he no longer had a reasonable expectation of privacy. *See, People v. Vinson*, (once door of public restroom is closed, occupant has reasonable expectation of privacy); *People v. Mercado*, (protection afforded by a closed bathroom stall does not apply to what the officer could see through gaps in the door[.]

[R. 37].

The Appellant focuses on the fact the officers testified “that they could not identify any of the items on the floor of the shower stall until the door was

opened.” [Blue Br. 17]. Appellant fails to address the fact that the door was never fully closed. It was only ever in various stages of open throughout the interaction; Officer Knight indicated the door was approximately 12 inches ajar [Mot. Tr. 62-63, 70]. The lower court’s treatment of *Vinson* and *Mercado* is sound. The defendant had no expectation of privacy in an open shower stall of a public building, while fully clothed, and not showering.

C. The Seizure Of The Physical Evidence Was Lawful Under the Plain View Doctrine.

The Fourth Amendment of the United States Constitution protects individuals from unreasonable searches and seizures by the government. Warrantless searches are per se unreasonable subject to a few exceptions, one of them being the "plain view doctrine". *Katz v. United States*, 389 U.S. 347. “[O]bjects falling into the plain view of an officer who is legitimately in a position to perceive the objects are subject to seizure without violating the defendant's Fourth Amendment rights. *State v. Sullivan*, 2018 ME 37, ¶ 15, 181 A.3d 178, 184 citing *Coolidge v. New Hampshire*, 403 U.S. 443, 465-66, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). In order for the plain view exception to the warrant requirement to apply, the “incriminating character” of the evidence must be “immediately apparent,” *Id.* citing *State v. McNaughton*, 2017 ME 173, ¶ 42, 168 A.3d 807. Additionally, “officers must have a legitimate reason to be in the place from which they make their observation.” *Coolidge*, 403 U.S. at 465-66, 91 S.Ct. 2022. Lastly, “the officers [must] have a lawful right of access to the

object.” *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993).

Officers in this case were in the common area, pursuant to an investigation of a stabbing, and with permission of staff, therefore lawfully present in that area. [Mot. 62, 67]. Prior to asking Mr. Zackaria out of the open shower stall, Officer Knight could see the objects on the floor, even though he did not identify them. [Mot. Tr. 62, 71]. And following a check of Mr. Zackaria for officer safety, Officers could identify the tweezers, wire, and box cutter that were consistent with the type of implements used in a stabbing, the crime Mr. Zackaria was suspected of committing. [Mot. Tr. 26-7]. Finally, in that the objects were located in a public place to which officers had a lawful right of access.

Again, it is important to note the door to the shower room was never completely closed. When Officers first arrived, the door was completely open for anyone in the Resource Center to enter. Mr. Zackaria had no need for privacy at this point; he was fully clothed and not showering at any point during this interaction. [Mot. Tr. 61-62]. Although the Defendant partially closed the door when he entered the room after police arrived, that action does not change the character of the space he occupied from a public one to a private one. Indeed, it is the character of the space which holds importance for the Fourth Amendment analysis and here the space was undoubtedly public, giving the officers a lawful right of access to seize the items in the shower room. Therefore, the items were lawfully seized under the plain view exception to the Fourth Amendment.

For the reasons stated above, this Court should rule that the lower court did not err when it denied the motion to suppress the physical evidence found in the possession of Mr. Zackaria in the shower stall of the Resource Center.

II. THE LOWER COURT CORRECTLY RULED WHEN IT DENIED THE MOTION TO DISMISS ON SPEEDY TRIAL GROUNDS

The lower court properly denied the Mr. Zackaria's motion for dismissal based on violation of speedy trial rights.

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial” U.S. Const. amend. VI. Article I, section 6 of the Maine Constitution secures the right to a speedy trial. Me. Const. art. I, § 6. This right is also protected by the Maine Rules of Unified Criminal Procedure, which permit dismissal of an indictment, information, or complaint if there is unnecessary delay in bringing a defendant to trial. M.R.U. Crim. P. 48(b)

For motions to dismiss a charge for failure to provide a speedy trial, this Court reviews for abuse of discretion of the lower court judgement. *State v. Teachout*, 2011 ME 37, ¶ 4. When determining if there has been a speedy trial violation, the Court employs 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, citing *State v. Murphy*, 496 A.2d 623, 627 (Me.1985). This “four-factor test [examines] ‘the length of the delay, the reasons for the delay, the defendant's

assertion of his right, and prejudice to the defendant arising out of the delay.” *Id.* No single factor is determinative; courts must consider the circumstances of each case and balance the conduct of the prosecution and the defense. *See State v. Joubert*, 603 A.2d 861, 864 (Me. 1992).

Length of Delay:

As noted by the Supreme Court in *Barker v Wingo*, the Court “cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate.” 407 U.S. 514, 521. In fact, this Court held in *Drewry* that a pre-trial detention of twenty-seven months “is not long enough to justify a per se finding that Drewry was denied a speedy trial.” At ¶ 13. While the lower court noted the period of time was “significant,” it must be viewed alongside the other factors of the test. [R. 41].

Reason for Delay:

As in *Drewry*, the reasons for delay in this case were varied and “a combination of actions of Drewry, the State, and the court, *Id.* at ¶ 13. There, the Court found much of the delay “attributed to the necessity of having [multiple] court-appointed attorneys... the abundance of motions filed, including many motions to suppress” and “an infectious disease quarantine at the jail.” At ¶ 14.

Factoring in the disruptive nature of COVID-19 protocols and the

subsequent backlog the court docket, all of these factors were present for Mr. Zackaria. Despite the court noting “expedite trial request” in May of 2023, the tragic car accident of then trial counsel, appointing of new counsel, a request to continue by said new counsel, all resulted in the case not empaneling a jury until December of 2023. [R. 12-14, 16, 41]. That jury was ultimately deemed deficient, resulting in a mistrial, and trial did not begin until the next month. None of these delays can be attributed to State action.

But most significant in the category of delay was Mr. Zackaria’s own mental health. “The trial, conviction or sentencing of a person charged with a criminal offense, while he is legally incompetent violates his constitutional rights of due process. *Thursby v. State*, 223 A.2d 61, 66 (Me. 1966). When “the court finds that any defendant is incompetent to stand trial, the court shall continue the case until such time as the defendant is determined by the court to be competent to stand trial. 15 M.R.S.A. § 101-D(5). This is crucial to the speedy trial analysis because “[w]hether a person is competent to stand trial implicates his or her due process rights.” *State v. Gerrier*, 2018 ME 160, ¶ 7. As a delay in trial directly impacts due process, so does the defendant’s ability to mentally process that nature of the trial and assist in one’s defense. *Id.* at ¶ 13.

From August of 2021 to May of 2023, approximately 21 months of the over 30 months he was held without trial, Mr. Zackaria was not mentally competent to stand trial and forcing him to do so would be a violation of his due process rights.

Assertion of Right to Speedy Trial:

Mr. Zackaria asserted his Speedy Trial right for the first time on December 14, 2023. [R. 16, 61]. Why the appellant notes that he consistently requested trial, no motion to dismiss was filed until over 30 months into the pre-trial detention, and within a month of his going to trial. This late assertion is not taken lightly by courts; the *Barker* Court in particular said, “failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.” *Barker v. Wingo*, 407 U.S. 514, 532 (1972).

Prejudice:

Appellant notes that 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.” *Id.* The court continues saying “[o]f these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.” *Id.* Here the court is referring to the detriment of having witnesses’ memories fade or no longer having witnesses available. *Id.*

Mr. Zackaria presented no witnesses at trial and nowhere in the record was there ever a concern that a certain witness would not be available due to a delay.

The nature of the defense was one of misidentification and challenging the State's satisfaction of the evidentiary burden. These types of defenses are not significantly prejudiced by the passage of time. *Id.* at 532.

But the *Barker* court is also concerned with the defendant's ability to "adequately to prepare his case" which brings the analysis back to incompetency findings that are at the core of this delay. An incompetent defendant cannot aid his counsel in a defense.

When applying the four-factor test the present facts, it is evident that, while there was a lengthy period of pre-trial detention, the duration of that detention stemmed mainly from effort to restore Mr. Zackaria to competency. And while there is no set amount of time to automatically trigger a right of dismissal based on speedy trial violations, there is a clear requirement for a defendant to be competent to stand trial. While the delay was lengthy, in this "delicate balancing test," it is offset by Mr. Zackaria's due process rights to be competent at his own trial. Further, Title 15 does not give the court room to maneuver once a defendant has been found not competent, as the directive from the legislature is "the court shall continue the case[.]"

Combined with the late assertion of speedy trial rights and similar due process consideration of prejudice, the Court must conclude as it did in *Drewry*, there was no violation of speedy trial rights and affirm the lower court's denial of that motion.

CONCLUSION

For the aforementioned reasons, the Court must affirm the lower court's rulings of denial to the motion to suppress evidence and motion to dismiss based on speedy trial violation.

Date: May 15, 2025

A handwritten signature in black ink, appearing to read 'Grant S. Whelan', written over a horizontal line.

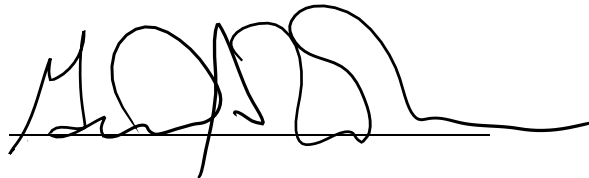
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CERTIFICATE OF SERVICE

I, Grant S Whelan hereby certify that on this date I made service of the foregoing Appellee's Brief, by email and regular mail, to the following counsel:

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