IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: 0063/2022

BETWEEN:

THE KING

and

SHEDROCK WHITE

Defendant

Appearances:

Mrs. Portia Staine Ferguson, Senior Crown Counsel for the King

Mr. Norman Rodriguez for the Defendant

2024: January 30

February 13

SHEDROCK WHITE - JUDGMENT ON FITNESS TO PLEAD: MURDER

Background

[1] Nanton, J: The Crown has indicted the Accused for one count of murder contrary to **Section 106 (1) of the Criminal Code**[1] which is alleged to have occurred on 29th July 2020.

[2] The particulars being that the Accused, at Belize City, murdered William Rubio.

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020

[3] Four psychiatric assessments have been submitted by Dr. Matus in relation to psychiatric evaluations conducted by Dr. Matus with a view to assessing the Accused's mental competency and subsequent fitness to plead. These reports are dated 7th May 2022, 7th December 2022, 15th May 2023, and 16th January 2024.

[4] The Court received a Social Inquiry Report prepared by Tiffany Taylor, Psychiatric Social Worker of the Ministry of Health.

[5] The Court also received a Prison Report prepared by Mr. Virgilio Murillo from the Kolbe Foundation dated 30th January 2024. That report included a list of Prison Rules Violations, Penal/Criminal History, Visitor History, an L-R Offender Recidivism/ Risk Level Evaluation Report and a medical report from Prison Medical Officer, Dr. Javier Novelo.

[6] The Court scheduled a fitness to plead hearing to enquire into the competence of the Accused Shedrock White to stand trial for the offence of murder. That hearing occurred on 30th January 2024 when the Court heard the evidence on oath of Dr. Matus and Virgillio Murillo.

[7] The Court now delivers its ruling.

The Law

[8] In relation to whether a Judge sitting alone can enquire into the competency of an Accused to stand trial, the Court refers to **Section 65A of the Indictable Procedure Act (IPA)**[2]

> *(1) Notwithstanding anything contained in this Act, the Criminal Code, the Juries Act or any other law or rule of practice to the contrary, every person who is committed for trial or indicted, either alone or jointly with others, for*

[2] Chapter 96 of the Substantive Laws of Belize Revised Edition 2020

any one or more of the offences set out in sub-section (2) shall be tried before a judge of the court sitting alone without a jury, ***including the preliminary issue (if raised) of fitness to plead or to stand trial for such offences.***

(2) The offences referred to in sub-section (1) are–

(a) Murder,

(b) Attempt to murder,

(c) Abetment of Murder, and

(d) Conspiracy to commit murder

[9] For this enquiry the Court is instructed by the provisions of **the IPA** which state:

Section 119

"If any accused person appears, either before or on arraignment to be insane, the court may order a jury to be empanelled to try the sanity of that person and the jury shall thereupon, after hearing evidence for that purpose, find whether he is or is not insane and unfit to take his trial."

Section 122(1)

"Where any person is found to be insane under sections 119 and 120, or has a special verdict found against him under section 121, the court shall direct the finding of the jury to be recorded, and thereupon may order the person to be detained in safe custody, in such place and manner as the court thinks fit, until the State's pleasure is known."

Section 122(2)

"The judge shall immediately report the finding of the jury (or Judge sitting alone) and the detention to the Chief Justice who shall order the person to be dealt with as a person of unsound mind under the laws of Belize for the time being in force for the care and custody of persons of unsound mind, or otherwise as he thinks proper."

[10] Section 122(2) specifically refers to the power of the Chief Justice to order that the person be dealt with as a person of unsound mind. The Court therefore expressly refers to **Section 3 of the Unsoundness of Mind Act**[3] which provides:

[3] Chapter 122 of the Substantive Laws of Belize Revised Edition 2020

(1) *"The court may make orders for the custody of persons of unsound mind so found by inquisition, and every such order shall take effect as to the custody of the person immediately."*

(2) *"Where upon an inquisition it is specially found or certified that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, it shall not be necessary, unless in the discretion of the judge it appears proper to do so, to make any order as to the custody or commitment of the person of unsound mind."*

Insanity

[11] To determine whether the Accused was insane the Court must first consider whether the accused was suffering a disease of the mind, in other words an impairment of mental functioning caused by a medical condition.

Determining Fitness to Stand Trial

[12] In **Pritchard**[4] Alderson B said that there are three points to be inquired into where a plea in bar is in issue: first, whether the incapacity is, as he put it, *"of malice or not"* – whether it is genuine; second, whether the Defendant can plead to the indictment or not; and third, whether he has sufficient intellect to comprehend the course of the proceedings in the trial so as to make a proper defence. These tests go to the root of the problem. They can be applied generally to all cases where fitness to plead is in issue.

[13] In **Taitt**[5] the Privy Council referencing **R v M**[6] stated that the following questions should be addressed: Does the Defendant understand the charges that have been made against him? Is he able to decide whether to plead guilty or not? Is he able to exercise his right to challenge the jurors? Is he able intelligently to convey to his lawyers the case, which he wishes them to advance on his behalf, and the matters which he wishes to put forward in his defence? Is he able to follow the proceedings

[4] (1836) 7 C&P 303
[5] Privy Council Appeal No 0002 of 2012
[6] [2003] EWCA Crim 3452

when they come to Court? And is he able, if he wishes, to give evidence on his own behalf? As was pointed out in **Robertson**, the quality of his instructions to Counsel or of any evidence that he may wish to give is not to the point. The emphasis is on his ability, or his inability, to do those things. As the question is one of fact for the Court, the proper time for the issue to be addressed is at the trial.

[14] The fact of a mental illness is not determinative of the issue of whether an Accused person is fit to stand trial. In **Robertson**[7] the Court held that the fact that a person suffers from delusions has been held not to deprive him of the right to be tried. In **Berry**[8] Lord Lane CJ said that a high degree of abnormality does not mean that the man is incapable of following a trial or giving evidence or instructing Counsel.

[15] **DPP v P**[9] is a case which involved the concept of doli incapax, but which is helpful in guiding how the Court should assess expert medical evidence in determining competency to stand trial. At paragraphs 52-53 of that Judgment it is stated:

> *"Medical evidence such as was put before DJ Wood will rarely provide the whole answer to the question of whether the child ought to be tried for a criminal offence. This is an issue which the court has to decide, not the doctors, although of course the medical evidence may be of great importance. But, the medical evidence must almost always be set in the context of other evidence relating to the child, which may well bear upon the issues of his understanding, mental capacity and ability to participate effectively in a trial. I have in mind for example, evidence of what the child is said to have done, how the child reacted when arrested (if he was) and how he behaved and what he said when interviewed (if he was). Other factors may also be relevant to the decision that the court has to take. If a trial begins, the court will wish to ensure that the child understands each stage of the process. That may involve some direct exchanges between the district judge or chairman of the bench and the child. The child's responses may well assist the court in deciding on the child's level of understanding. Further it may become apparent from the way in which the trial is conducted that the child's representative does or does not have adequate instructions on which to cross-examine witnesses. The court must be willing, in an appropriate case, to disagree with and reject the medical opinion. It is the*

[7] (1968) 52 Cr App R 690
[8] (1978) 66 Cr App R 156
[9] [2007] 4 All ER 628

court's opinion of the child's level of understanding which must determine whether a criminal trial proceeds.
Accordingly, it is my view that, in most cases, the medical evidence should be considered as part of the evidence in the case and not as the sole evidence on a freestanding application. Although the medical evidence might on its own appear quite strong, when other matters are considered the court might conclude that the defendant's understanding and ability to take part in the trial are greater than were suggested by the doctors and that, with proper assistance from his legal adviser and suitable adjustments to the procedure of the court, the trial can properly proceed to a conclusion."

Evidence

Dr. Matus:

[16] Dr. Alejandro Matus is a psychiatrist working for the Ministry of Health. He has a degree in medicine and a specialism in Psychiatry. He is a registered medical practitioner in Belize and has worked with the Ministry of Health for the past six years. He was deemed an expert by the Court. As a psychiatrist he evaluates patients to identify whether they have a mental disorder and if so, to treat them.

[17] He evaluated the Accused Shedrock White on four occasions and prepared written reports in respect of his findings at each evaluation. The first evaluation was in July 2022. At that time Dr. Matus diagnosed the Accused as suffering from bipolar disorder.

[18] His second evaluation was in December 2022. At that time the Accused was psychotic and for this reason Dr. Matus explained that he changed the Accused's diagnosis to schizophrenia. Dr. Matus stated that when a patient has more than six months with psychotic symptoms the usual diagnosis is schizophrenia.

[19] Dr. Matus testified that schizophrenia is a chronic mental disorder, which is diagnosed in situations where the patient has lost contact with reality and which affects the social and familial functions. The cause of schizophrenia is psychosis. Psychosis is a syndrome with many symptoms including hallucination, delusions

and poor coherence in speech. Schizophrenia is a chronic mental disorder which can be treated, but which is incurable.

[20] Dr. Matus saw the Accused for the third time in May 2023. He explained that the Accused was psychotic and as such he increased his medication. He explained that the Accused was still paranoid with hallucinations and he increased the medication with a view to reduce symptoms.

[21] On January 12th 2024 Dr. Matus found that the Accused was psychotic with grandiose delusions and anxious. He maintained the diagnosis of schizophrenia.

[22] On each occasion that Dr. Matus evaluated the Accused his opinion was that the Accused was not fit to stand trial. He explained that he based his opinion against the British trial criteria, which assesses whether the patient is competent to stand trial. The criteria assesses whether the patient can explain and give advice to the lawyer; if the patient understands how to plead and the consequence how to plead; if the patient knows the detail of the evidence; if the patient knows the proceedings in the Court room. He stated that usually if the patient fails one or two criteria then the conclusion is that he is not fit to stand trial.

[23] In the Accused's case he failed more than three criteria. He stated that the Accused can understand the charge against him, but is not fit to understand a plea, not fit to give instructions to his Counsel and not fit to follow the proceedings.

[24] He observed that most persons who are diagnosed with schizophrenia are permanently unfit. The international guideline says that if a patient has been found to be unfit on three occasions he is likely to be permanently unfit. In his opinion based on the Accused's continuous symptoms despite undergoing treatment he will likely remain incompetent to stand trial.

[25] Dr. Matus stated that the Accused has been prescribed oral treatment and receives medication which is sent to Prison by the Ministry of Health. He stated that the medication is available at the health centres throughout the country. His opinion

was that many patients suffering from mental illness who do not have the support of family members tend not to keep up with their appointments and their medical treatment.

Mr. Murillo

[26] Virgilio Murillo is the CEO of the Kolbe Foundation and Director of the Belize Central Prison. He has overall responsibility for the staff and the inmates that are in the prison and the management and operation of the facility.

[27] He is very familiar with the Accused as he is a repeat offender who has been admitted into the Prison facility as far back as 2006. He classified the Accused as a high risk violent prisoner who has had at least twelve prison infractions. He explained that most of his infractions involved attacks on fellow prisoners and guards.

[28] When asked about the Accused's medical treatment Mr. Murillo stated that he does not get involved with the psychiatric medical situations of prisoners and leaves that up to the prisons medical officer. He was not aware whether the Accused was being treated for any mental illness.

[29] He explained that the Prison has a special care building which houses inmates who are being treated for severe mental illnesses. The psychiatric nurse and the Prison's medical officer attend to these inmates, who require close monitoring and supervision. The staff ensures that their medical treatment are strictly adhered to. He says; however, that the Accused is not presently housed at that facility but is housed in a cell with 3-4 prisoners.

[30] He says that the Accused has not been able to participate in any rehabilitative programs, because of the risk of harm to the Accused himself and other inmates in the event that the Accused becomes violent.

Prison Report

[31] According to the Prison Report from Belize Central Prison, the Accused has been admitted to the Belize Central Prison on August 3rd 2020 on remand for the crime for murder. It is his 15th admission since January 2006. Many of his admissions were as a result of arrests for violent offences and some instances of larceny type offences.

[32] The Accused has 12 prison rules violations, which include violent offences such as assault.

[33] He has not completed any rehabilitation programs attributed mainly to his assaultive and violent behavior and conduct.

[34] The Accused has received three prison visits (two of which were by his sister) since his admission in 2020.

[35] The Risk level evaluation report assesses the Accused as high risk with a 74% recidivism rate.

[36] Medical Officer Dr. Javier Novelo reported that the Accused is a known psychiatric patient currently in a stable condition under treatment and housed in the remand block. He stated that the Accused has been diagnosed with schizophrenia and has been compliant with his medication.

Social Enquiry Report

[37] The report of Tiffany Taylor revealed that the Accused's father is deceased and the whereabouts of his mother are unknown. He has one surviving aunt Florence Thompson who is very ill and was unable to have a conversation. The Accused does not have a very good relationship with his siblings. His paternal brother Kenroy

stated that the Accused did not have any familial support and that he was unable to assist him. His brother James White when contacted indicated that he was not in a position to support his elder brother. His paternal sisters Prenulla White and Evelyn White similarly indicated their inability to support the Accused.

[38] The recommendations of Ms. Taylor were that the Accused seek rehabilitation for his drug addiction and that he maintain medical treatment from a mental health clinic.

Findings of the Court

[39] The Court is aware based on the authorities cited above that it is not compelled to accept the findings of the medical expert. However, the Court has placed substantial weight on the findings of the expert for the following reasons:

a) Dr. Matus has evaluated the Accused on four occasions between 2022 and 2024 and has been best placed to make an assessment of the mental condition of the Accused.

b) The British criteria applied by Dr. Matus in his assessment is consistent with the criteria described in **Pritchard** and **Taitt** by which the Court is guided.

c) With the exception of his first diagnosis (which was satisfactorily explained by Dr. Matus) the Accused has been consistently diagnosed with schizophrenia.

d) The Accused's symptoms including hallucinations and delusions have been consistent despite ongoing treatment.

e) Dr. Matus observed that the Accused has lost concept with reality a fact which this Court readily accepts. The Court itself witnessed one such episode as the Accused when speaking with the Court indicated that he speaks to his mother and sister very frequently via the phone. This could not be so as his mother's whereabouts

have been unknown most of his life and his sisters stated that they were not willing to have a relationship with him.

[40] Based on the evidence on oath of Dr. Matus and the Court's own observations of the Accused during the hearings in this matter the Court finds that the Accused is insane i.e. suffering from a disease of the mind and is also not fit to stand trial at this time for the offence of murder.

Whether and Where the Accused Should be Detained

[41] Upon the Court's finding that the Accused is insane and unfit to stand trial the Court may order that he be detained in safe custody, in such place and manner as the Court thinks fit, until the State's pleasure is known. The Court observes that detention in such a place is at the discretion of the Court by use of the word *"may"* in the legislation.

[42] The Court has not found any Belizean authority directly on point; however, the Court considered the authorities of the Privy Council in **Ag v Henry**[10] (St Lucia) and **Bissessar v Ag**[11] from the Court of Appeal of Trinidad and Tobago. Both cases considered the application of provisions[12] which are similar to **Sections 119-122 of the IPA Belize**. However, it is worth noting that the St Lucian legislative framework –specifically its Mental Health Act- explicitly provides for detention at a mental hospital. Notwithstanding that distinction, the guidance emerging from both cases is quite helpful in deciding whether, and if so, the appropriate place and manner in which the Accused should be detained.

[10] [2023] UKPC 41
[11] (Civil Appeal No P136 of 2010) (delivered 31 January 2017, unreported).
[12] Section 64- 68 of the Trinidad and Tobago the Criminal Procedure Act Chap 12:02

[43] Regrettably there are no mental institutions in Belize. It is obvious that prisons are not designed as facilities for the mentally ill. However, it is not axiomatic that persons with mental illnesses cannot be treated for their disorders at prison. While it may indeed be more desirable that the Accused be detained in a mental health facility, the absence of such a facility in Belize should not preclude the Accused from receiving satisfactory treatment for his particular disorders.

[44] Following a finding of unfitness to plead, the judge has a broad discretion under the Criminal Code to make an order as to the detention of an Accused in any such place – such place may include a mental hospital as well as it may include a prison. Section 122 clearly does not require a Judge to detain a person found unfit to plead in a mental hospital. Parliament must be taken to have intended that this was a decision best left to the trial Judge who would be better placed to make an informed assessment of adequacy of places for detention, at least, as a first step.

[45] In assessing the adequacy of places for detention the Court has considered the following:

- **a.** The Social Enquiry Report
- **b.** The Psychiatric Reports
- **c.** The Prison Reports
- **d.** The seriousness of the offence.
- **e.** Whether the Accused may be a danger to society

Constitutional Considerations

[46] The Court in the exercise of its discretion and in determining an appropriate order guides itself by the provisions of the Constitution of Belize. The relevant provisions include:

> *"5.-(1) A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say,*

(a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether established for Belize or some other country, in respect of a criminal offence of which he has been convicted;

(h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

6.-(1) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

[47] The Court reminds itself that this is an exercise of the Court's preventive and not its punitive functions. The Accused's detention made pursuant to **Sections 119 and 122 of the IPA** is not a sentence. The Accused has not been found guilty of any offence; therefore, is not being sentenced by the Court to a term of imprisonment. He has been found unfit to plead. The purpose for this order is to keep the Accused in safe custody until he can be brought to trial pending possible recovery of his fitness to plead and for no longer than the legitimate pursuit of that purpose exists.

[48] While the Court notes, as Dr, Matus opined, that the Accused may never (re) gain sufficient mental capacity to stand trial; the Court considers that continuous assessment is necessary on an ongoing basis to evaluate the propriety of the Accused's detention.

[49] The Court observes that **the IPA** is silent as to the requirement of periodic reviews. In the absence of same the Court has considered the guidance of the Privy Council in **Seepersad and Panchoo v Attorney General of Trinidad and Tobago**.[13] In that case the Privy Council found that despite the absence of a legislative provision for periodic reviews the right to periodic review of an indeterminate sentence of

[13] [2012] UKPC 4

detention was to be found in common law principle, which had been received into the fundamental rights and freedoms contained in sections 4 and 5 of the Constitution of Trinidad and Tobago.

[50] In **Bissessar** the Court of Appeal of Trinidad and Tobago similarly held that in the absence of express statutory provision for a review, the Appellant would have had, as a matter of common law principle, a right to such periodic review. Such a common law right places the onus on the executive to establish a body or appoint an individual to conduct such review. The right would include not just the fact of a review, but one which was effective to facilitate the discharge of the Appellant should it prove that he was fit to take his trial. It would therefore have required the setting up of a procedure to effect his discharge pursuant to any recommendation of the body or individual. This was held to be consistent with the right to the protection of the law and to such procedural provisions necessary to give effect to the Appellant's constitutional rights.[14]

[51] The dictum of the Caribbean Court of Justice in **Attorney General of Barbados v Joseph and Boyce[15]** per de la Bastide P and Saunders J is relevant. At para 60 of their joint judgment they say:

> "… the right to the protection of the law is so broad and pervasive that it would be well nigh impossible to encapsulate in a section of a constitution all the ways in which it may be invoked or can be infringed."

[52] Further, in **The Maya Leaders Alliance v Attorney General of Belize[16]** at para 47 Anderson JCCJ of the CCJ stated:

> *"The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts*

[14] Section 5(2)(h) of the Constitution of Trinidad and Tobago
[15] [2006] CCJ 3
[16] [2015] CCJ 15

by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However, the concept goes beyond such questions of access and includes the right of the citizen to be afforded, 'adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.' The right to protection of the law may, in appropriate cases, require the relevant organs of the state to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the state may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen's rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy."

[53] The pronouncements of Anderson JCCJ were adopted by the Privy Council in the decision of **Jamaicans for Justice v Police Service Commission**[17] and **Commissioner of Prisons v Seepersad.**[18] In which Sir Bernard McCloskey reinforced that the right to protection of the law is 'a broad spectrum right' that 'encompasses access to and the enjoyment of the fundamental rules of natural justice.

[54] These authorities reinforce the principles of natural justice by which this Court is guided and is reflected in the Court's final decision.

Disposition

[55] Pursuant to **Section 122(1) of the IPA** the Court hereby makes the following orders:

a) That the Accused Shedrock White shall be detained in safe custody at Kolbe Foundation Central Prison until the State's pleasure is known.

[17] [2019] UKPC 12, [2019] 4 LRC 117
[18] [2021] UKPC 13, [2021] 5 LRC 329, [2021] 1 WLR 4315

b) That the Accused shall be treated for his mental illness including schizophrenia in accordance with the laws of Belize governing the care and treatment of persons of unsound mind.

c) That the Accused shall be housed at the Prison in accommodations suitable for his treatment as a person suffering from mental illness.

d) That the Accused shall be entitled to periodic reviews of his mental status to determine whether he becomes fit to take his trial. These reviews shall be held every six (6) months without prejudice to any assessments that may be necessary to be conducted as part of his treatment.

e) That the outcome of each such review shall be communicated to the Accused, as soon as is reasonably practicable.

f) That should the findings/recommendations of any such review show that the Accused is fit for trial such information shall be immediately communicated to the Registrar of the Senior Courts so that the Accused can be brought within a reasonable time before a competent jurisdiction to stand his trial.

Pursuant to **Section 122(2) of the IPA** a copy of this order shall immediately be forwarded to the Honourable Chief Justice and also to the Office of the Attorney General.

Candace Nanton
High Court Judge
Senior Courts Belize
Dated 13th February 2024