IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NOS.: C 0003/2021 AND C 00032/2021

BETWEEN

THE KING

and

COLIN FRANCIS JR.

Defendant

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Ms. Romey Wade, Crown Counsel, for the Crown.

Mr. Bryan Neal for the Defendant.

2023: December 8th, 13th, and 20th.

2024: February 2nd, 15th, 23rd.

JUDGMENT

MURDER- FITNESS TO PLEAD-SAFE CUSTODY

[1] **PILGRIM, J.:** Colin Francis Jr. ("the defendant") was indicted for the offences of murder, contrary to section 117 read along with section 106(1) of the **Criminal Code**[1], ("the Code") and attempt to murder contrary to section 18 read along with section 117 of the Code. The Court has received two reports from Dr. Alejandro Matus Torres ("Dr. Matus"), a psychiatrist, dated 15th May 2023 and 18th September 2023 where he opined that the defendant was suffering from schizophrenia and owing to the effects of that disease was unfit to stand trial on those charges. The Court, based on those reports, formed the view that it appeared that the defendant was insane and unfit to stand trial, pursuant to section 119 of the **Indictable Procedure Act** [2] ("the IPA"). The Court then proceeded to try the issue of the defendant's fitness to plead as it is empowered to do by the conjoint effect of section 65A(1) and (2) of the IPA.

The Legal Framework

[2] The relevant sections of the IPA provide as follows:

> *"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.***
>
> *…*
>
> *65A.-(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 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,*
>
> *…*

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[2] Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.

65D. Where a trial is conducted without a jury, the judge shall have all the power, authority and jurisdiction which he would have had if the trial had been conducted with a jury, including the power to determine any question and to make any finding which would have been required to be determined or made by a jury." (emphasis added)

[3] These provisions empower this Court, by judge alone, on the charges in the two indictments to try the issue of fitness of the defendant to plead.

[4] It would be helpful to look to the definitions of the concepts of insanity and fitness to plead under the IPA.

[5] The Code does not define insanity for the purpose of the consideration of fitness to plead but only at the time of the offending. However, the Court would adapt the definition for this exercise as the IPA at section 119 requires a conjunctive finding that the defendant is both insane **and** unfit to plead. The Code provides as follows, where relevant:

> *"26. A person accused of crime shall be deemed to have been insane at the time he committed the act in respect of which he is accused–*
>
> ***(a) if he was prevented by*** *reason of idiocy, imbecility* ***or any mental derangement or disease affecting the mind****, from* ***knowing the nature or consequences of the act*** *in respect of which he is accused;" (emphasis added)*

[6] The common law, as indicated by the Court of Appeal in **Patrick Reyes v R**[3], presumes that all persons are sane and the burden of establishing that a person is insane rests on the defendant. That burden is discharged by proof on a balance of probabilities.

[7] The test of when a defendant is unfit to take his trial, otherwise called unfitness to plead, is helpfully set out in the Trinidadian Privy Council decision of **Taitt v The State**[4], per Lord Hope:

> *"[15] …**It is, of course, clear that a person who suffers from a severe physical or mental disability which makes it impossible for him to understand what is going on or to give instructions must be held to be unfit to plead**. It would be unacceptable for the law to*

[3] Criminal Appeal No. 5 of 1999 at p 20.
[4] (2012) 82 WIR 468.

hold that, although a deaf mute such as the defendant in R v Pritchard (1836) 7 C&P 303 was unfit to plead because he was so incapacitated that he could not instruct a defence, a person with a mental disability who was just as incapacitated was not. As Alderson B said in that case, ***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.*

[16] The fact that a person suffers from delusions has been held not to deprive him of the right to be tried…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… ***The questions that must be addressed are essentially for the court, not for the expert witnesses.*** *They can be summarised in this way: see R v M [2003] EWCA Crim 3452.* ***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 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.*

[17] As the question is one of fact for the court, the proper time for the issue to be addressed is at the trial." (emphasis added)

The evidence: Fitness to plead

[8] In the instant case to speak to the defendant's mental state the Court heard from Dr. Matus who gave oral evidence on oath. He was deemed an expert by the Court, without objection, in the field of psychiatry owing to his academic qualifications from the University of Nicaragua. He is a medical doctor with a specialty in psychiatry obtained more than 12 years ago. He has also conducted over 300 court ordered psychiatric evaluations in his 6 years as a medical officer attached to the Ministry of Health.

[9] Dr. Matus testified that he interacted with the defendant more than 5 times, and that the defendant was a regular patient of his. He testified that in his expert opinion the defendant is suffering from a mental disease which prevents him from knowing the nature and consequences of his actions, namely, schizophrenia. He further testified that schizophrenia is one of the worst mental disorders in which the patient loses contact with reality and has poor social functioning. He used the diagnostic criteria of the

American Psychiatric Association and the World Health Organization, namely, the DSM 5 to reach this conclusion.

[10] Dr. Matus opined that the defendant is not fit to plead to this charge. The basis for this conclusion is that schizophrenia affects the defendant's comprehension of reality so that defendant would be unable to follow the proceedings. He further testified that this detachment from reality would also affect his ability to instruct his lawyers and to give coherent evidence on his own behalf.

[11]Dr. Matus testified, in answer to counsel for the defendant, that there is no cure for schizophrenia, and it is a chronic medical condition. He opined that it is likely that the defendant will suffer from this disease for the rest of his life. He testified that the defendant is currently on 3 sets of medication for his illness.

Analysis

[12]The evidence of Dr. Matus that the defendant suffers from schizophrenia was unchallenged by either party. The methodology of how he came to this conclusion nor the effects of the disease, namely, that it causes a detachment from reality were not challenged by either party. His evidence was neither inconsistent nor implausible. The Court consequently accepts his evidence on a balance of probabilities.

[13]The Court consequently finds, on a balance of probabilities, that the defendant **at the time of trial**, within the meaning of section 26(a) of the Code is suffering from mental derangement or a disease of the mind, namely schizophrenia, which prevents him from knowing the nature and consequences of his actions. The Court also finds in terms of fitness, the answers to the *Taitt* questions are as follows:

i. The incapacity is genuine- Dr. Matus's evidence is uncontroverted, and as said above the Court accepts that the defendant is schizophrenic.
ii. The defendant cannot follow the proceedings because of his detachment from reality caused by a disease of the mind.
iii. The defendant cannot instruct counsel or give evidence on his own behalf for the same reason because of the disease of schizophrenia.

[14]The Court, consequently, on a balance of probabilities, finds that the defendant is unfit to take his trial.

[15] It is important to note the consequence of this finding as noted by the St. Lucian Privy Council decision of **Anthony Henry et al v AG of St. Lucia**[5]. In this case the Board considered issues touching and concerning fitness to plead and the detention of persons so found, per Lord Sales:

> *"[54]…**when a defendant is found to be "insane" (severely mentally unwell), the criminal process is postponed for the period when he is mentally unwell. Such mental ill-health is treated as a supervening impediment to being tried in the usual way, and if and when it is removed the usual process of justice can resume. Detention pursuant to those provisions is a form of preventive detention directed to serving the legitimate aim of providing appropriate treatment for a person suffering with severe mental illness. During the period of such detention, the person concerned is removed from the criminal process and made subject to the regime for treatment of severe mental ill-health**." (emphasis added)*

The issue of safe custody

[16]. The Court having found that the defendant is unfit to take his trial must then consider the question of the safe custody of the defendant while the issue of his fitness to stand trial is reviewed.

[17] Section 122 of the IPA provides:

> *"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.*
> *(2) The judge shall immediately report the finding of the jury 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." (emphasis added)*

[5] [2023] UKPC 41.

[18] The **<u>Constitution</u>** provides at section 5(1):

> *"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;" (emphasis added)*

[19] The Court interprets the conjoint effect of section 122 of the IPA and section 5(1)(a) and (h) of the *Constitution* as authorizing the pre-trial detention of a defendant found insane and unfit to take his trial while he is being evaluated and treated to determine if, or when, he would be ever fit to take his trial. The Court however is empowered by section 122(1)(a) of the IPA to keep the defendant in safe custody "in such manner and place" as it thinks fit. This is a wide statutory discretion but as with all discretionary powers they must be exercised in accordance with the law and must be exercised reasonably, justly and fairly[6].

[20] Dr. Matus has testified that the best place for this defendant is in a forensic psychiatric hospital, but Belize does not have one. In that regard the learning from the Privy Council in *Henry* is apposite as in that case the defendant was ordered not to be held at a hospital, as was a requirement of St. Lucian law, but was kept at a prison. The Board held that detention of a defendant declared unfit at a prison was not per se inhuman and degrading treatment prohibited by what would be section 7 of our *Constitution* once the defendant was provided with appropriate mental health treatment, again per Lord Sales:

> *"46. …the appellants submit that the judge was right to find a breach of their rights under section 5 of the Constitution because their detention in prison rather than in a mental hospital amounted to criminalisation of the mentally ill, without respect for their human dignity; and,*

[6] **<u>Bahamas Air Traffic Controllers Union v The Government of the Commonwealth of the Bahamas,</u>** BS 2001 SC 23 at p 24.

in the absence of periodic reviews of their fitness to stand trial, this amounted to inhuman and degrading treatment.

…

*48. **In the Board's view, the circumstances in which Mr Henry and Mr Noel were held in detention did not constitute inhuman or degrading treatment. They overstate their case. They were initially imprisoned on remand because they were accused of committing acts of violence and it was reasonably considered that they should stand trial on serious criminal charges in respect of those acts. They were then detained pursuant to sections 1019 and 1021 of the Criminal Code, on grounds of mental illness. They were provided with medical treatment for their mental ill-health during the period of their detention for which records are available. They were also subject to assessments of their mental health by psychiatrists**." (emphasis added)*

The evidence: Safe custody

[21] Dr. Matus testified, in answer to the Crown, that if the defendant stopped taking medication, he is a danger to society. He further opined that if the defendant is on medication, there is a mild to moderate risk of violence coming from the defendant according to the psychometric tests performed on him. He testified that there is a 5-10 % likelihood of him ever becoming fit for trial. He testified that in his opinion the Belize Central Prison ("BCP") is not the best place for him but indeed the best place would be a forensic psychiatric hospital which Belize does not have. He however accepted that there are twice monthly visits by psychiatrists at the BCP and that in his experience mentally ill prisoners are given their medication.

[22] The Court heard from the mother and father of the defendant who offered to take custody of the defendant. The defendant's father, Colin Francis Sr., a 67-year-old retiree said that there is space for the defendant to stay at their home which is fenced and has external locks at the front and back of the house. He said that although he may leave the home from time to time his wife would be there to care for the defendant and they would undertake to ensure that the defendant took his medication.

[23] The defendant's mother, Rosita McKenzie Francis, is a 68-year-old retired emergency medical technician. She used to give the defendant his medication before he was incarcerated and undertakes to do so again. She testified that either her husband or herself will be there to monitor him at all times.

She testified that there is no lock on the defendant's door and sees no need to put any on it if he would stay with them.

[24] The Court also heard from Virgilio Murillo who is the current Director of the BCP. He testified that there is a place there called the Special Care Unit ("SCU") where prisoners unfit to stand trial are housed. The SCU is situated immediately below the prison medical centre, and Mr. Murillo testified that this was done purposely for quicker access in case of emergencies and because of that specific location, prisoners with disabilities, including mental illness can be properly cared for, treated, and monitored. The authorities look after their feeding, bathing and personal hygiene as a whole. The authorities ensure that mentally unfit prisoners are given their prescribed medication at appropriate intervals. The medication is prescribed by the psychiatrist or the prison's medical officer. He also testified that there are regular visits by the government psychiatrist to those unfit prisoners. There is a full-time doctor attached to the SCU, a Dr. Javier Novelo. The defendant had been placed in the SCU when first remanded but he wanted to pursue programs at the BCP and consequently left the SCU. Mr. Murillo testified that there are both individual cells and shared cells and that the defendant can be housed there.

[25] The Court conducted a view of the SCU itself with the concurrence of both parties. The view was conducted in the presence of the parties and the defendant. There were recreational facilities at the SCU, a number of individual cells and shared ones. There were also hygienic facilities. The SCU was located physically right under the medical centre. The medical centre was stocked with medication, medical supplies, treatment areas and a doctor's office.

<u>Analysis</u>

[26] The Court notes the love the defendant's parents have for their son and their willingness, at their advanced age, to take the onerous responsibility of his care. The Court is however of the view that the appropriate place to keep the defendant in safe custody is at the BCP. The defendant is not the assessed harmless dementia patient given in the example by the Privy Council in *Henry*[7] who can be safely allowed to remain at his home. Dr. Matus's evidence is that the defendant is dangerous without medication and even taking medication, based on psychometric testing, there is a mild to moderate risk of him becoming

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[7] Para 33.

violent. The Court must exercise its discretion at section 122 of the IPA in a manner which balances the interest of the Belizean public with that of the individual defendant.

[27] The BCP has the space to keep him housed, even if shared. There are adequate hygienic facilities, and he would be right under the medical treatment centre if anything were to go wrong. Psychiatrists would be available to come visit him at least twice per month. The conditions at BCP are not perfect but as the Privy Council indicated in **Bell v DPP**[8] allowances must be made for local conditions and Belize's economic terrain. The home arrangement proposed by the defendant's parents seems a very ad hoc scenario in which the defendant may not get the close monitoring that he may need having regard to his scientifically assessed risk. The Court also is of the view that, despite their best intentions, that the age of his parents may present some difficulties in managing the defendant due to the assessed risk he may pose, even if properly medicated.

[28] The Court would again recall the words of the Privy Council in *Henry.* Detention, pursuant to a finding of unfitness to plead, is not punishment[9], but "the gateway into the system for treatment of persons suffering from mental ill-health" and is expressly authorized by section 5(1)(a) and (h) of the *Constitution*.

[29] The Court will consequently order that the defendant be kept in safe custody at the BCP. The Court will also order that periodic reviews of his fitness be done as was recommended by the Board in *Henry* as they accepted that the right to have such reviews was implied in what would be our section 122 of the IPA because how else would the State be able to determine "its pleasure" without those periodic assessments[10]. This assessment would provide the basis for the determination to be made that if the defendant ever becomes fit within a period where there is a prospect of him having a fair trial that one could be had. The Court is also grateful for the guidance on this issue given by Nanton J. in the local High Court decision of **R v Shedrock White**[11] in this regard[12].

DISPOSITION

[8] (1985) 32 WIR 317.
[9] Paras 54-55.
[10] Para 44.
[11] Indictment No. 63 of 2022.
[12] Paras 49-54.

[30] The Court finds that the defendant is insane and unfit to stand his trial. Pursuant to section 122(1) of the IPA the Court hereby makes the following orders:

(i) That the defendant, Colin Francis Jr., shall be detained in safe custody at the Belize Central Prison until the State's pleasure is known.

(ii) That the defendant 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.

(iii) That the defendant shall be housed at the Belize Central Prison in accommodations suitable for his treatment as a person suffering from mental illness.

(iv) That the defendant shall be entitled to periodic reviews of his mental status by an appropriately qualified medical doctor to determine his fitness to take his trial. These reviews shall be held every 6 months without prejudice to any assessments that may be necessary to be conducted as part of his treatment.

(v) That the outcome of each such review shall be communicated to the defendant, as soon as is reasonably practicable thereafter.

(vi) That should the findings of any such periodic review show that the defendant is fit for trial such information shall be immediately communicated to the Registrar of the Senior Courts, Director of Public Prosecutions, and the defendant's attorney, if any, so that the defendant can be brought within a reasonable time before a court to stand his trial.

[31] Pursuant to Section 122(2) of the IPA the Court orders that a copy of this ruling shall immediately be forwarded to the Honourable Chief Justice.

[32] The Court as a post-script would indicate that it shares the view of Dr. Matus that the proper place for persons found mentally unfit is at a forensic psychiatric hospital. It is normal that when persons are sick, with a fever or a heart attack, they are kept under constant medical supervision and care. Mental illness is no less real than a physical affliction. If persons are found unfit for trial they should also be housed in an appropriately secured forensic psychiatric hospital. In that regard this may be an appropriate time for the Executive to consider the establishment of one as a matter of priority and in accordance with paragraph 2.4.3 of the Ministry of Health and

Wellness's **National Mental Health Policy 2023-2028**. In this regard the Court orders the Registrar of the Senior Courts to deliver a copy of this ruling to the Honourable Attorney-General.

Nigel Pilgrim

High Court Judge

Dated 23rd February 2024