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**IN THE MATTER OF PART XX.1 (MENTAL DISORDER) OF THE CRIMINAL CODE
R.S.C. 1985 c. C-46, AS AMENDED 1991, c. 43**

**IN THE MATTER OF MARCUS ELAMOUR KARIJUBA
BRITISH COLUMBIA REVIEW BOARD**

BEFORE: CHAIR: B. Walter
MEMBERS: Dr. G. Laws, psychiatrist
B. Brett

APPEARANCES: Accused/Patient: Marcus Elamour Karijuba
Accused/Patient Counsel: D. Nielsen
Director: Dr. E. Zoffmann, V. Bhauruth
Attorney General: L. Hillaby

REASONS FOR DISPOSITION

1.0 INTRODUCTION

On May 29, 1998 the British Columbia Review Board (BCRB) convened a hearing to consider the fitness to stand trial and disposition of Marcus Elamour Karijuba (the accused), aged 34.

On October 31, 1997, Mr. Karijuba was charged with assault (s. 266.C.C.). On December 9, 1997 he was further charged with failure to attend court (s.145(5)C.C.). On April 14, 1998 the Provincial Court at Vancouver, B.C. found Mr. Karijuba unfit to stand trial on account of mental disorder and remanded him to the Forensic Psychiatric Institute (FPI) pending review and disposition by the BCRB.

This was Mr. Karijuba's first hearing before the BCRB. As this hearing concerned the issue of the accused's fitness to stand trial and given his attitude toward lawyers, the Board assigned Ms. D. Nielsen to represent Mr. Karijuba pursuant to s. 672.5(8)(a)C.C..

1.1 BACKGROUND

Not much information has been disclosed or obtained about Mr. Karijuba's past. He is of Sudanese descent and spent several years in Kenya prior to arriving in Canada in 1994 as a refugee. He has apparently had previous contacts with mental health services in Prince George and Burnaby. He has had two arrests.

When admitted to FPI for assessment he was considered delusional to the point of being incapable of self care and was ascribed a diagnosis of delusional disorder. He has disclosed symptoms including paranoia and voices since at least 1997. His most recent diagnosis is paranoid schizophrenia [Exhibit 7].

Although he has been consistently deemed unfit to stand trial by his current treatment providers, that issue has not been without debate. [Exhibit 7, Exhibit 8]. In an independent report/assessment dated April 8, 1998, Dr. K. Riar concluded the accused had a good understanding of and was knowledgeable about the legal system:

"Regarding the issue of fitness to stand trial, in general he has very good understanding of the legal system and court procedures. He himself is not aware of the exact charges against him apart from the charge of failing to appear in court but he does understand where he was arrested and what possible accusations are against him. In spite of this, he believes that he has not done anything wrong. He has no understanding of NCRM pleas but is well aware of consequences of being convicted of a crime. He understands very clearly the role of the judge and defence counsel but has little knowledge of Crown Counsel's role in court. In spite of this, he believes he will not get a fair trial as the judge will not be neutral and his lawyer will lie to court in order to keep him in jail. Although he does not trust anyone, he is able to communicate very well with me and also spoke to Mr. Roth in court. He has the ability to understand what goes on in court although he feels that he will not get a fair trial."

In my opinion, Mr. Karijuba should be rendered fit to stand trial. I base my opinion on his ability to know under what circumstances he was arrested, the charge of not appearing court, and being accused of being at certain places. He is well aware of the availability of pleas apart from NCRM and is very well aware of the consequences for various criminal activities. He is able to understand what will happen in court but might interpret it as everything being against him and unfair to him. In spite of his distrust of his lawyer, I feel he can communicate with him as he has done so in the past with his lawyer and with me. Finally, he still needs treatment and should stay in a mental health facility for ongoing management."

[Exhibit 9, p. 5]

Nonetheless the Court found Mr. Karijuba unfit to stand trial:

"Your counsel for this for these proceedings, Mr. Roth, has been most persuasive in his submissions for you and I'm satisfied on the evidence that I have heard from the doctors that you are suffering delusions. It's been described as paranoid or schizophrenic delusions, but

in any event, I think it's not denied that you're suffering these delusions, but that does not mean that because you are suffering from delusions you're unfit to stand trial.

I would agree with Mr. Roth that if you understood the proceedings and the consequences of the proceedings and could communicate with counsel that you comply with the statutory conditions contained in s. 2 of the Criminal Code, and it's my belief that you do understand, you do understand what the proceedings are about, and perhaps you have some understanding of the consequences of the proceedings. However, it's my belief that you distrust the court proceedings and that you feel that the judge, the court system and the lawyers are in a conspiracy against you.

Because of these entrenched delusions that you have, and that lawyers are part of the conspiracy, it's my view that you, in the totality of these circumstances, are unfit to stand trial at the present time, and I'm going to make that finding, that you're unfit to stand trial for these reasons that I've given." [Exhibit 10, p. 41]

2.0 THE MAY 28, 1998 HEARING

2.1 POSITIONS OF THE PARTIES

The Director was of the opinion that the accused remains unfit to stand trial and requires ongoing custody and treatment at FPI.

Mr. Hillaby representing the Attorney General took no position at the outset of the hearing. On behalf of Mr. Karijuba, Ms. Nielsen stated that the accused was fit to stand trial despite his distrust of the Justice System. She took no strong position as to disposition at this stage of the hearing saying that if the Board concludes that Mr. Karijuba remains unfit he should be discharged conditionally.

Because of his apparent distrust of the process and of lawyers, Mr. Karijuba was personally invited to articulate his views which in essence are that he is fit to stand trial and wishes to be out of the hospital.

2.2 EVIDENCE AT THE HEARING

(a) EVIDENCE OF THE DIRECTOR

New clinical reports as well as a social work note were submitted for the hearing [Exhibits 12, 13, 14]. It was pointed out at the commencement of the hearing that the accused refuses to communicate with Dr. Zoffmann his supervising psychiatrist because of her

perceived past role in his current legal circumstances, and because he believes she is part of a network of conspiracy which has affected his life since being disqualified from welfare, which he believes occurred in 1997.

In Summary, the Director's evidence was:

- That Mr. Karijuba continues to believe that Judges, Lawyers, Police, The Forensic System and the individuals involved are dishonest and against him. He continues to present as suspicious and hostile.
- That Mr. Karijuba has yet to respond positively to treatment and medication. Because he has been untreated for some time it may take longer to find the most effective treatment approach. Each new course of medication requires a significant period of time in order to asses it's effect and appropriate dosage.
- Mr. Karijuba has no insight into and denies his illness
- Mr. Karijuba has no supports in the community. He has been essentially homeless for some time.

In Ex 13, Dr. Zoffmann states:

"Mr. Karijuba continues to exhibit the strongly held delusions which were the basis for having been found Unfit on April 14, 1998. He believes that the Judges collude against him and wish to kill him. This delusion is expansive and it includes most people associated with the Courts, police, the welfare system and people within the Forensic Services. At times, he even expresses the notion that the entire population of the country wish to kill him and they are achieving it by arresting him. He continues to express the belief that the two security guards who wanted to shift him for the Pacific Centre Mall were sent there specifically by the Judges with the intent to kill him. He further believes that he will be harmed by the Court process. Finally, he believes that all of the lawyers are also conspiring against him and that they will lie about him.

Given the above, Mr. Karijuba is unable on account of his mental illness to understand the nature and object of the proceedings as they apply to him. He also cannot understand the possible outcomes as they apply to him. Finally, his fixed delusions regarding lawyers make it difficult in not impossible for him to openly and honestly instruct counsel."

Dr. Zoffmann also stated that Mr. Karijuba does not that believe the legal system or its potential consequences apply to him nor that the court is impartial.

(b) EVIDENCE OF THE ACCUSED/PATIENT

Ms. Nielsen took Mr. Karijuba through the standard "civics" oriented questions designed to elicit the extent of the accused's understanding of the criminal justice process. He was able to identify his index charges; the roles of the Judge, prosecutor and defence counsel; the meaning of the oath; and to define and give examples of "evidence". If he is found guilty he believes he may go to jail for some months and then be released. He does not fear physical harm. He knows what "fitness" refers to, ie. "No mental problem". He stated he does not want a lawyer to represent him in court but would talk to one if asked to do so.

With respect to his most recent arrest his memory is clear. He believes the 3 security officers involved were trying to kill him by breaking his neck. He believes that both this incident and an earlier incident last fall in New Westminster were instigated by a particular judge who directed or instructed the police/security guards in their actions/interference with him.

Rather than being universal it appears that Mr. Karijuba's paranoia and suspicions are somewhat specific. For example, while he thinks his judge is part of a conspiracy against him; he does not necessarily believe this applies to all judges. He may speak with Mr. Bhauruth and with other psychiatrists; but not with Dr. Zoffmann whom he believes directed the welfare authorities to terminate his benefits and may also have tried to influence the Review Board against him. He does not appear to distrust all police officers; only those sent by the judge to interfere with him. He believes all lawyers are "liars" but some might be helpful to him. He claims not to know why certain individuals or authorities wish him harm, although he believes that if he were wealthy and white skinned, it might be possible for him to be treated fairly.

He denies any mental health problems. If released, he would return to downtown Vancouver street life.

2.3 SUBMISSIONS

The Director, without further elaboration, maintained its opening position. Mr. Hillaby, in support of the Director's position, argued that the Board ought to defer to the Court's verdict herein insofar as the evidence submitted in both proceedings was essentially the same. He points out that it is the depth and pervasiveness of his delusional beliefs that prevent Mr. Karijuba from participating meaningfully, and therefore keep him unfit to stand trial.

With respect to disposition, Mr. Hillaby argues that it would be a mistake to return the accused to Court prematurely, and that until he is restored to fitness the protection of the public requires that Mr. Karijuba remain in the hospital. Although his index offences were not of an extremely violent nature, the depth of Mr. Karijuba's illness could reasonably be expected, if left to his own devices, to see him involved in further aggressive behaviour on the street.

Ms. Nielsen argues that in fact the Board has had the benefit of more evidence than was available to the Court. With respect to the fitness criteria in s. 2 of the C.C., Mr. Karijuba has a very good understanding of the nature and object of the proceedings (clause (a)). As to the second branch (clause (b)), he understands the consequences and indeed would prefer to serve a jail sentence than to remain in hospital. With respect to clause (c) communication with counsel, she submits that even though the accused does not trust the process he understands the duty to speak truthfully and would do so. Although he distrusts his lawyer he can communicate and is able to tell his own story should he not wish to disclose to, or instruct counsel. Moreover, she argues that Mr. Karijuba's capacity renders him sufficiently fit to defend his relatively minor charges and that it is counterproductive not to have them dealt with.

With respect to disposition she argues the accused does not require hospitalization for the protection of the public.

3.0 DISCUSSION

The Board must determine the issues of Mr. Karijuba's fitness to stand trial under s. 2, and then make an appropriate disposition under s. 672.54 C.C.

3.1 FITNESS TO STAND TRIAL

Fitness to stand trial is governed by s. 2 of the C.C.:

"unfit to stand trial" means unable on account of mental disorder to conduct a defence at any stage of the proceedings before a verdict is rendered or to instruct counsel to do so, and, in particular, unable on account of mental disorder to

- (a) understand the nature or object of the proceedings,
- (b) understand the possible consequences of the proceedings, or
- (c) communicate with counsel;"

The crux of this test is incapacity: that the individual is "unable to understand" the requirements set out in clauses (a) and (b). Unfitness does not follow from inaccurate or incorrect answers to questions designed to probe those areas. The inquiry is less

concerned with existing knowledge than with the accused patient's ability to grasp such knowledge if it is appropriately provided.

With respect to Mr. Karijuba's ability to (a) **understand the nature or object of the proceedings** he clearly and effortlessly responded to the standard questions respecting charges, roles of individuals, and key aspects of the proceedings such as evidence and the oath.

With respect to Mr. Karijuba's ability to (b) **understand the possible consequences of the proceedings**, he clearly stated that if found innocent he would "go on his way"; if found guilty he would likely serve some months in jail and then be released. He prefers this latter alternative to hospitalization. The Board is satisfied that the accused has both the understanding and capacity to satisfy this branch of the test.

With respect to Mr. Karijuba's ability to (c) **communicate with counsel**, we refer to the case of R v Taylor (1992), 72 CCC(3d) 551. That case is remarkably similar to Mr. Karijuba's. In that case the accused:

- was charged (inter alia) with assault;
- was diagnosed paranoid schizophrenic;
- believed judges and lawyers were against him;
- rejected legal representation;
- harboured doubts about the fairness or integrity of the Court process

The Court of Appeal stated that the question to be determined as to the accused's ability to communicate with counsel under clause 2(c):

"is limited to an inquiry into whether an accused can recount to his/her counsel the necessary facts relating to the offence in such a way that counsel can then properly present a defence. It is not relevant to the fitness determination to consider whether the accused and counsel have an amicable and trusting relationship, whether the accused has been cooperating with counsel, or whether the accused ultimately makes decisions that are in his/her best interests."

This has become known as the "limited cognitive capacity test". The determination is not dependent upon whether the accused is making decisions rationally or instructing his lawyer consistent with his own best interests; whether he agrees with his counsel; whether he trusts his lawyer; whether he is cooperative; whether he is delusional; whether his behaviour may be disruptive; or even whether his memory is intact.

Mr. Karijuba's memory of the events in question is quite clear. He was quite able to respond while maintaining and communicating his lack of trust in fairness and integrity of the process.

In our view, Mr. Karijuba, despite his illness is capable of communicating either to counsel or to the court, his version of the facts. He is capable of following the evidence tendered against him, and to participate meaningfully, notwithstanding he may choose not to do so.

Accordingly, we are unanimously of the view that Mr. Karijuba, on the day of this hearing is fit to stand trial on these relatively uncomplicated index charges.

3.2 DISPOSITION

With respect to disposition, it is uncontested that Mr. Karijuba is penniless and homeless. If discharged he would return to Granville Street and seek refuge in a shelter at night. He states he has gone for days without food and is prepared to do so again. In our view, there is no alternative, in order to maintain the accused's fitness, as well as in consideration the factors articulated in s.672.54, but to keep Mr. Karijuba in hospital under a narrow custodial order, pending his return to court.



Bernd Walter

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