

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CASE NO. ST-16-CR-391
Plaintiff,	)	
vs.	)	14 V.I.C. §§ 921, 922(a)(1)
	)	14 V.I.C. § 2251 (a)(2)(B)
CRAIG FRANCIS,	)	14 V.I.C. § 297 (a)(2)
	)	14 V.I.C. § 924(1)
Defendant,	)	
	)	

Cite as 19 VI Super 135U

MEMORANDUM OPINION

¶1 **THIS MATTER** came on for a Competency Hearing on July 26, 2018. The People were represented by Assistant Attorney General H. Timothy Perry. Defendant appeared and was represented by Peter Lynch, Esq.

¶2 The Court heard the testimony of Dr. Laurie McCormick McPearce, a board-certified psychiatrist and family physician, and Defendant's two sisters, Claire Francis and Nichole Francis Richardson, all of whom appeared by telephone. The Court also heard the in-court testimony of Defendant Craig Francis.

¶3 For the reasons set forth herein the Court finds Defendant is not competent to stand trial and he must be placed in a forensic unit that can provide long term psychiatric care until he becomes competent to stand trial.¹

¹ One week before the Competency Hearing, the parties filed under seal: 1) a Joint Informational Motion Re: Defendant's Mental Health Status and Proposed Course Of Action RE: Involuntary Commitment, and 2) a Joint Petition To Commit The Defendant To The Custody Of The Department Of Health And Motion For Leave To Renew And Refile Petition. Involuntary commitment requires that the Court schedule a hearing no more than two days after the psychiatrist have examined the defendant not less than 2 days before giving testimony on his/her mental state. V.I. Code Ann. tit. 19 §723(b). Therefore, the parties asked the Court, at the competency hearing, to schedule a second hearing at a time when Dr. McPearce was on-island so that she could examine the Defendant within two days of the filing of a petition. This required a date mutually convenient to the Court and to Dr. McPearce, but only when she was on-island. A hearing was eventually scheduled for June 7, 2019. But it could not be held as the Bureau Of Corrections, without notice to the Court, had moved the Defendant to an off-island facility, and the Court is precluded

¶4 Defendant Craig Francis, now age 43, has been in custody since his arrest in December 2016. Dr. McPearce met with Defendant in person on February 19, 2018. Defense counsel was also present during the examination. Dr. McPearce reviewed Defendant's legal charges and filings, his social security disability notification, and his psychiatric records from Dr. Leighman Lu, Dr. Ernest Jermin and a psychological report from Dr. Nicolette Howells Cutright and based her testimony on a combination of her observations and tests as well as background information from Dr. Lu and Dr. Cutright. The facts below are as told to the Court by the witnesses during the Competency Hearing and documents in evidence, unless a different source is indicated.

FACTS.

¶5 Defendant Craig Francis is charged with First Degree Murder and related charges for the death of his mother Jennifer Brathwaite on December 22, 2016. He is charged with repeatedly stabbing her to the head and about her body, with an unknown object. Defendant Francis has a history of mental illness. He has a long-standing diagnosis of paranoid schizophrenia beginning as an adolescent. He has paranoid delusions and fixed false beliefs. His paranoid personality causes him to have a pervasive long standing mistrust of others. At the time of the hearing he was suffering from schizoaffective disorder, which is a combination of bipolar and schizophrenia. He was also deemed incompetent

from holding a hearing in the absence of the defendant. The Court has now determined that it has the authority to commit a defendant who is not competent to stand trial, without complete reliance on the involuntary commitment procedure set forth in Title 19. Therefore, the Court will adjudge the matter based upon the testimony and documents entered into evidence during the Competency Hearing held on July 26, 2018.

to handle his own affairs, in the Family Court of the Virgin Islands, and his mother had been appointed as his guardian in February 2015.

¶6 Dr. McPearce tested defendant and found that he suffers from mild retardation and his cognitive ability is very weak. He has a low I.Q., having tested below 99% of his peers. He has extremely poor insight, difficulty understanding the nature of the crime and the nature of the proceedings.

¶7 Dr. McPearce testified that Defendant has fixed false beliefs and is mentally disturbed. He also has poor impulse control, and his dangerousness has increased over time. This makes him a danger to the community. Dr. McPearce's opinion is that Francis will inflict harm on others if he is not committed. Medication is unlikely to cure his paranoia; at best medication could only give partial improvement. At the time of the hearing he was on psychotropic medication. However, Defendant's history shows he only takes medication in a controlled setting and not voluntarily. He is taking mood stabilizing medication, but still has problems. It is unlikely his condition will improve in the future. Defendant's paranoia even prevents him from cooperating with counsel in his defense.

¶8 McPearce testified Francis is not competent to stand trial as he lacks the ability to understand the nature of the charges. Francis's low I.Q. prevents him from understanding legal concepts, which in turn prevents him from assisting his lawyer. McPearce opined he is unable to stand trial due to inability to assist his attorney, as well as his lack of understanding of the nature of the charges pending against him. She stated that he does not trust his lawyer and lacks the ability to cooperate with his counsel. He cannot assist his attorney due to his lack of insight, low I.Q. and lack of empathy.

¶9 McPearce also opined that Defendant was clearly psychotic and lacked impulse control at the time he murdered his mother on December 22, 2016. McPearce believes that Defendant was insane at the time of offense.

¶10 Defendant's sister Claire Francis is 2 years older than defendant. They grew up in the same households until 1998. She did not become aware of his mental illness until sometime around 2014 when he left prison.² She visited St. Thomas in 2015 and observed that Defendant had changed since she last saw him. He did not want to hug her; he would not shake her fiancé's hand, and Defendant mumbled to himself a lot. Claire described the Defendant as aggressive and she observed his resistance to taking medication and drinking alcohol while on medication.

¶11 Defendant's sister Nichole Francis Richardson is 2 years younger than defendant. Defendant lived with Richardson in Atlanta briefly in 2002. At that time Nichole said the Defendant was hearing voices. Richardson visited St. Thomas sometime in 2013 or 2014 and observed Defendant having a full conversation with an imaginary person. On other occasions when she called her mother from Atlanta, Nichole overheard Defendant in the background threatening their mother and using profanity. The situation was so bad that Nichole did not stay at the house when she visited St. Thomas. At that time her mother was hiding all knives, forks and any other sharp object. Nichole also stated that Defendant was drinking and not taking medication regularly, and his behavior got worse with time.

² The Court takes judicial notice that Defendant was incarcerated in October 2009 following a conviction of aggravated rape, in a matter completely unrelated to the matter at bar. The conviction was later overturned, and he was released from prison sometime in 2013.

¶12 Defendant Craig Francis testified that he does not trust his lawyer or Dr. McPearce. Defendant states his lawyer is not trying to help him. Defendant stated that he knows he is in jail in connection with his mother's death, but he did not know he is charged with first degree murder. He was quite surprised to hear, during the hearing, he is charged with intentionally killing his mother. But he does understand that the jury makes the decision, and he could identify the judge as the judge in the matter.

PRINCIPLES OF LAW

¶13 It is well-settled that the "criminal trial of an incompetent defendant violates due process." *Government of the V.I. v. Durant*, 49 V.I. 366, 376 n.12 (V.I. 2008) ("See *Medina v California*, 505 U.S. 437, 453, 112 S. Ct. 2572, 2581, 120 L. Ed. 2d 353 (1992)"). This "prohibition is fundamental to an adversary system of justice." *Id. Drope v. Missouri*, 420 U.S. 162, 172, 95 S. Ct. 896, 904, 43 L. Ed. 2d 103 (1975). "[A] state cannot constitutionally confine without more a non-dangerous individual who is capable of surviving safely in freedom." *People v. Richardson*, 52 V.I. 211, 217 (V.I. Super. 2009) quoting *U.S. v. Perry*, 788 F.2d 100, 112-13 (3d Cir. 1986).

¶14 A demonstration of dangerousness justifies deprivation of liberty by civil commitment without offending the substantive due process limitations upon government. *Id.*

ANALYSIS

¶15 Virgin Islands law does not provide a clear-cut procedure once a defendant in a criminal matter is deemed not competent to stand trial. See *People of the Virgin Islands*

v. Parrilla, 58 V.I. 148, 165-166 (V.I. Super. 2013) and *People of the Virgin Islands v. Richardson*, 52 V.I. 211, 215 (V.I. Super. 2009). However, the V.I. Supreme Court has pointed out that Virgin Islands law is not completely void of direction on how to proceed. *Government of the V.I. v. Durant*, 49 V.I. 366, 375 n.9 (V.I. 2008). In that matter, the V.I. Supreme Court vacated an order of dismissal and remanded a matter for further proceedings after the trial court dismissed charges against a defendant found not competent to stand trial. The V.I. Supreme Court states:

Title 5 V.I.C § 3637 applies not only to persons committed to a forensic unit who have been found not guilty by reason of insanity, but also to those committed "otherwise in accordance with law." See 5 V.I.C. § 3637(b). Moreover, Chapter 45 of Title 19 provides for the commitment and release of "[a]ny patient held on order of a court having criminal jurisdiction in any action or proceeding arising out of a criminal offense." 19 V.I.C. § 1201(c); see also 19 V.I.C. § 1202 (regulating procedure regarding mentally ill prisoners). Additionally, Section 723 of Title 19 provides for the involuntary commitment of mentally disturbed, alcoholic and drug dependent persons.

V.I. v. Durant, 49 V.I. 366, 375 n.9 (V.I. 2008).

¶16 Therefore, the Court will take guidance from *Durant* and invoke the various provisions in the Virgin Islands Code to order Defendant Craig Francis be placed in a forensic unit that can provide long term psychiatric care until he becomes competent to stand trial. *People v. Coaker*, Super. Ct. Crim. No. ST-10-CR-644, 2019 V.I. LEXIS 38 (V.I. Super. Ct. Apr. 4, 2019) (unpublished).

¶17 Title 5 V.I.C § 3637(a) provides for a defendant who has been found not guilty by reason of insanity or mental illness to be placed in a forensic unit until he regains his capacity. Francis has not been tried and certainly not been found not guilty by reason of mental illness. However, Title 5 V.I.C § 3637(b) provides for the release of any person

confined in a forensic unit by virtue of Title 5 V.I.C § 3637(a) *or otherwise in accordance with law*. Therefore, the Court finds that Title 5 V.I.C § 3637(b) contemplates that persons may be confined in a forensic unit for reasons other than having been found not guilty by reason of mental illness. *Durant*, at 375 n.9. Thus, the Court will order Defendant be confined to a forensic unit until he is competent to stand trial, or until he is no longer a danger to others and may be housed in a different facility.

¶18 If no forensic unit exists in the Territory, the Defendant shall remain in the custody of the Bureau of Corrections to be treated by the appropriate physicians until it makes the necessary arrangements to transfer the defendant to a forensic unit outside the territory. V.I. Code Ann. tit. 19 § 3637(a).

¶19 The superintendent or head of the forensic unit shall provide annual reports to the Court addressing the following: 1) whether Francis has regained his competency to stand trial, 2) whether Francis has regained his capacity for judgment, discretion and control of the conduct of his affairs and social relations, and 3) whether in the opinion of such superintendent or head, Francis is for the reasonable future no longer a danger to himself or others, and such reports shall be filed with the Court, and a copy to the V.I. Department of Justice. V.I. Code Ann. tit. 5 § 3637(b). At no time shall Francis be released from the forensic unit without order of the Court. V.I. Code Ann. tit. 19 § 1201(c).

CONCLUSIONS OF LAW

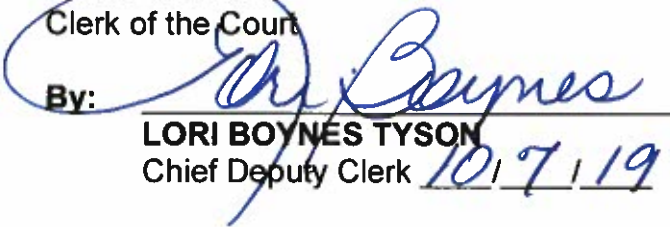
¶20 Francis has been mentally ill since he was an adolescent, at which time he was first diagnosed with paranoid schizophrenia. Based upon the testimony of Dr. McPearce, as well as Francis's sisters, the Court finds Defendant is a danger to himself and to others

if he were released. Based upon the testimony of Dr. McPearce, the Court concludes that Francis is not competent to stand trial. Accordingly, he must be placed in a forensic unit until he becomes competent to stand trial or is no longer a danger to himself or others. He may only be released upon court order after a hearing.

An Order will issue in accordance herewith.

DATED: October 7, 2019

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

By: 

LORI BOYNES TYSON
Chief Deputy Clerk 10/7/19


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands