

FORENSIC MEDICAL REPORT

VENUE: **Crown Court at X**

CASE: Regina vs. Y

PARTY

Name:

Current residence:

Date of birth: [date]

Represented by:

EXPERT WITNESS

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EXPERT'S QUALIFICATIONS AND EXPERIENCE

1. INSTRUCTIONS

- 1.1. I was instructed to assess Mr. Y's fitness to plead, learning-ability, and his suggestibility, and to make recommendations to the court about appropriate questioning, attention-spans, and approaches to cross-examination.

2. SUMMARY OF OPINION

- 2.1. Mr. Y has a mild-to-moderate intellectual disability, notably affecting his memory, calculation, understanding of time, and ability to read and write. His overall "IQ" is estimated to be between 51 and 59, which constitutes the lower end of mild intellectual disability, although some aspects of his intelligence are lower and some higher; none is in the normal range.
- 2.2. Mr. Y constitutes a party "finding it difficult to deal with abstract concepts relating to the past, present and future" and in "understanding questions where the content or form is complex or abstract", as specified in the Ministry of Justice's "Registered Intermediary Procedural Guidance Manual (2015; p.26, §3.22). Based on these specifications and on the Pritchard criteria of fitness to plead, Mr. Y would be fit to plead conditional upon his receiving assistance in communication through the use of an intermediary; based on the Pritchard criteria also, this intermediary would be required for conference and the whole trial.
- 2.3. The services of an intermediary would focus primarily on receptive and expressive communication and would be best specified by an intermediary-service such as Z, focusing on the needs of vulnerable defendants.
- 2.4. Mr. Y does not appear to be particularly suggestible or inappropriately compliant under questioning. He has a normal attention-span, despite a reduced ability to understand what he is attending to.
- 2.5. Based on the finding of intellectual disability and despite the estimation of his conditional fitness to plead (based solely on clinical opinion), it might be juridically prudent to use an assessment of fitness to plead that is specifically designed for people with intellectual disability (Everington and Luckasson, 1992). The Court might find it helpful to have a complete assessment of learning-disability, focusing on Mr. Y's academic skills (reading, writing, etc.) and/or the specific nature of his cognitive / neuropsychological deficits. I defer to counsel's and the Court's opinion on this, if any.

3. BASIS OF THE REPORT

3.1. Documentation and other evidence relied on

- 3.1.1. First statement of Mr. Y: Background and Initial Response
- 3.1.2. MG5 Form
- 3.1.3. Exhibits J1 to J230
- 3.1.4. Advice on expert, from Mr. Q, representing solicitor.

3.2. Clinical and psychometric assessment

- 3.2.1. I assessed Mr. Y over a period of 2.5 hours on [date]; he was late for the appointment, which he reports as characteristic of him, and so we were limited in what we were able to achieve in the assessment.
- 3.2.2. **Fitness to plead:** Due to his lateness, I was not able to administer the ECST-R (“Evaluation of Competency to Stand Trial - Revised”), which is a semistructured interview designed to assess dimensions of competency to stand trial (fitness to plead) that addresses both American and British criteria. However, it is feasible to estimate his fitness to plead, which I have done based on the criteria below and the other evidence gathered through assessment.
- 3.2.3. **Intellectual functioning:** In order to assess this, I used the Reynolds Intellectual Assessment Scales, Second Edition (RIAS-2; Reynolds and Kamphaus, 2015):
 - 3.2.3.1. The RIAS-2 is an individually administered test of intelligence, standardised on a scientifically derived sample of 2,154 individuals, normed for individuals between the ages of 3 and 94 years, and is a widely used and accepted test used in the determination of intellectual functioning and disability. While it is a relatively rapid assessment, it provides the same level of useful information as provided by tests that are two or three times its length.
 - 3.2.3.2. The RIAS-2 contains several individual tests of intellectual problem solving and reasoning ability that are combined to form a Verbal Intelligence Index (VIX) and a Nonverbal Intelligence Index (NIX). The subtests that compose the VIX assess verbal reasoning ability along with the ability to access and apply prior learning in solving language-related tasks. Although labeled the Verbal Intelligence Index, the VIX also is a reasonable approximation of crystallised intelligence. The NIX comprises subtests that assess nonverbal reasoning and spatial ability. Although labeled the Nonverbal Intelligence Index, the NIX also provides a reasonable approximation of fluid intelligence.
 - 3.2.3.3. These two indices of intellectual functioning are then combined to form an overall Composite Intelligence Index (CIX). By

combining the VIX and NIX to form the CIX, a stronger, more reliable assessment of general intelligence (g) is obtained. The CIX measures the two most important aspects of general intelligence according to widely accepted theories and research findings: reasoning or fluid abilities and verbal or crystallised abilities. Each of these indexes is expressed as an age-corrected standard score that is scaled to a mean of 100 and a standard deviation of 15. These scores are essentially normally distributed and can be converted to a variety of other metrics if desired.

- 3.2.3.4. The RIAS-2 also contains subtests designed to assess verbal memory and nonverbal memory. Depending on the age of the individual being evaluated, the verbal memory subtest consists of a series of sentences, age-appropriate stories, or both, read aloud to the examinee. The examinee is then asked to recall these sentences or stories as precisely as possible. The nonverbal memory subtest consists of the presentation of pictures of various objects or abstract designs for a period of 5 seconds. The examinee is then shown a page containing six similar objects or figures and must discern which object or figure was previously shown. The scores from the verbal memory and nonverbal memory subtests are combined to form a Composite Memory Index (CMX), which provides a reliable assessment of working memory and also may provide indications as to whether or not a more detailed assessment of memory functions may be required. In addition, the high reliability of the verbal and nonverbal memory subtests allows them to be compared directly to each other.
- 3.2.3.5. Moreover, the RIAS-2 contains subtests designed to assess verbal and nonverbal speeded processing. Depending on the age of the individual being evaluated, the speeded naming task (i.e., verbal speeded processing) consists of rapidly naming a series of common objects (i.e., dogs, cats, tree, cars) or geometric shapes (i.e., triangle, circle, square, star). Also depending on the age of the individual being evaluated, the speeded picture search subtest (i.e., nonverbal speeded processing) consists of the ability to find target faces in an array of faces or finding target pictures (i.e., houses and geometric designs) in an array of similar pictures. The scores from the speeded naming and speeded picture search subtests are combined to form a Speeded Processing Index (SPI), which provides a reliable assessment of speeded processing and also may provide indications as to whether or not a more detailed assessment of speeded processing may be required. In addition, the high reliability of the verbal and nonverbal speeded processing subtests allows them to be compared directly to each other.
- 3.2.3.6. It is recommended that the RIAS-2 subtests be assigned to the indices described above (e.g., VIX, NIX, CIX, CMX, and SPI). For those who do not wish to consider the memory or speeded processing scales as a separate entity and prefer to apportion the

subtests strictly according to verbal and nonverbal domains, the RIAS-2 subtests can be combined to form a Total Verbal Battery (TVB) score and a Total Nonverbal Battery (TNB) score. The subtests that compose the Total Verbal Battery score assess verbal reasoning ability, verbal memory, verbal speeded processing and the ability to access and apply prior learning in solving language-related tasks. Although labeled the Total Verbal Battery score, the TVB also is a reasonable approximation of crystallised intelligence. The TNB comprises subtests that assess nonverbal reasoning, spatial ability, nonverbal memory, and nonverbal speeded processing. Although labeled the Total Nonverbal Battery score, the TNB also provides a reasonable approximation of fluid intelligence. These two indexes of intellectual functioning are then combined to form an overall Total Test Battery (TTB) score. By combining the TVB and the TNB to form the TTB, a stronger, more reliable assessment of general intelligence (g) is obtained. The TTB measures the two most important aspects of general intelligence according to recent theories and research findings: reasoning, or fluid, abilities and verbal, or crystallised, abilities. Each of these scores is expressed as an age-corrected standard score that is scaled to a mean of 100 and a standard deviation of 15. These scores are essentially normally distributed and can be converted to a variety of other metrics if desired.

3.2.3.7. Mr. Y seemed to make a reasonably good effort and, even when he could not answer specific questions, he remained engaged. No specific measure of effort was used due to the limitations of time.

3.2.4. **Social and daily function / “Adaptive behaviour”**: I also used the ABAS-3 (Adaptive Behavior Assessment System, Third Edition; Harrison and Oakland, 2015):

3.2.4.1. This is useful for evaluating those with developmental delays, autism-spectrum disorder, intellectual disability, learning-disabilities, neuropsychological disorders, and sensory or physical impairments.

3.2.4.2. Due to a lack of time, this was partially self-report, partially through interview and estimation, which is of concern methodologically, although minor for the current purposes and instance.

3.2.4.3. It covers the following domains:

3.2.4.3.1. **Communication**: speech, language, and listening-skills needed for communication with other people (for example, vocabulary responding to questions, conversation-skills, nonverbal communication-skills)

3.2.4.3.2. **Functional (pre-)Academics**: basic skills that form the foundations for reading, writing, mathematics, and other skills needed for daily, independent

functioning (for example, recognising letters, counting, drawing simple shapes, telling time, measuring, writing notes and letters).

- 3.2.4.3.3. **Self-direction:** skills needed for independent, responsibility, and self-control (for example, making choices, starting and completing tasks, following a daily routine, following directions)
- 3.2.4.3.4. **Leisure:** skills needed for engaging in and planning leisure and recreational activities (for example, playing with other, playing with toys, engaging in recreation at home, following rules in a game)
- 3.2.4.3.5. **Social:** skills needed for interacting socially and getting along with other people (for example, expressing affection, having friends, showing and recognising emotions, assisting others, using manners)
- 3.2.4.3.6. **Community-use:** skills needed for functioning and performing important behaviours in the community (for example, getting around in the community, expressing interest in activities outside the home, recognising different facilities)
- 3.2.4.3.7. **Home/School Living:** skills needed for basic care of a home or living setting or a school or classing setting (for example, cleaning, straightening, helping adults with household or classroom tasks, taking care of person possessions)
- 3.2.4.3.8. **Health and Safety:** skills needed for protecting health and responding to illness and injury (for example, following safety-rules, using medicines, showing caution, keeping out of physical danger)
- 3.2.4.3.9. **Self-care:** skills needed for personal care (for example, eating, dressing, bathing, toileting, grooming, hygiene)
- 3.2.4.4. It generates norm-referenced scaled scores and test-age equivalents for the 11 skill-areas. It also provides standard scores, confidence intervals, and percentile ranks for the three broad adaptive domains and the summary score—the General Adaptive Composite. In addition, all scores are categorised descriptively (Extremely Low, Low, Below Average, Average, Above Average, High).
- 3.2.5. Using both of these sources of information, I then determined whether or not Mr. Y has a likely learning-disability, which is considered to be the most common developmental disorder. It is a condition that starts before adulthood, with lasting effect.

3.2.6. **Suggestibility:** I used the Gudjonsson Suggestibility Scales (1997) to assess interrogative suggestibility

3.2.6.1. Interrogative suggestibility is the extent to which an interviewee gives into leading questions or, specifically, the extent to which, within a closed social interaction, the client is likely to come to accept messages communicated during formal questioning (as in an interrogation by police), as a result of which his or her behavioural response is affected—such as agreeing with the message communicated, even when such agreement may be incorrect. The GSS scales were designed to measure, objectively, the extent to which interviewees give in to a ‘leading’ question and to negative feedback used in interrogative pressure. It is conceptually related to the idea of “gullibility” and ability to be led in thinking and the concept of reliability of the reports made by a witness. However, it may be significantly affected by problems with memory, notably verbal memory, and is constructed in a very similar fashion to the verbal memory test in the RIAS-2 and other measures of intellectual ability.

3.2.6.2. It provides a measure of immediate recall, delayed recall, yield to leading questions prior to negative feedback, shift in responses following negative feedback, yield to leading questions after negative feedback, total suggestibility, and confabulation (the process of replacing gaps in memory with imaginary recollections that they believe to be true).

4. OPINION

4.1. **Intelligence:**

4.1.1. His performance on the RIAS-2 was, on average, very low. He achieved a CIX score of 59 and a TTB score of 51; thus, his “IQ” is estimated to be between 51 and 59. This level of performance falls within the range of scores designated as significantly below average (mild to moderate intellectual disability).

4.1.2. His CIX-score exceeds the performance of less than one percent of individuals at his age and is the average score for a 9-year-old. This is a summary estimate of global intelligence, defined as the general intellectual ability to reason by drawing a logical inference or natural consequence based on the grounds of consistency.

4.1.2.1. This has significance for his fitness to plead and the manner in which he is to be examined.

4.1.3. He achieved a Verbal Intelligence Index (VIX) of 53, which falls within the significantly below average range of verbal intelligence skills and exceeds the performance of less than one percent of individuals his age. The VIX reflects the ability to deduce or infer relationships and apply knowledge to problem-solving, using words and following the system of rules associated with a language,

including language-comprehension skills. Mr. Y's score on the VIX was equivalent to the average score of an 8.5-year-old.

- 4.1.4. He achieved a Nonverbal Intelligence Index (NIX) of 75, which falls within the moderately below average range of nonverbal intelligence skills and exceeds the performance of 5% of individuals his age. The NIX reflects the ability to perceive, manipulate, or transform accurately the image of spatial patterns into other visual arrangements. Mr. Y's score on the NIX was equivalent to the average score of an almost-10-year-old.
- 4.1.5. He achieved a Composite Memory Index (CMX) of 50, which falls within the significantly below average range of working memory skills. This exceeds the performance of less than one percent of individuals his age. Mr. Y's score was equivalent to the average score of a 7-year-old.
 - 4.1.5.1. The CMX is derived from two supplementary memory subtests; it measures the ability to attend to a stimulus, register the stimulus in immediate memory, and recall or recognise the stimulus. This is of significance for his performance both in interrogation/cross-examination and the Suggestibility measure (below) and the amount of information that should be presented to him at any one time, particularly in cross-examination.
- 4.1.6. He achieved a Speeded Processing Index (SPI) of 78, which falls within the moderately below average range of speeded processing skills. This exceeds the performance of 7% of individuals his age. Mr. Y's score was equivalent to the average for a 10-year-old.
 - 4.1.6.1. This relates to the amount of information and the manner in which that information can be given to Mr. Y in order for him to process it and remember it.
- 4.1.7. Mr. Y achieved a Total Test Battery (or TTB) score of 51. This level of performance on the RIAS-2 falls within the range of scores designated as significantly below average and exceeds the performance of less than one percent of individuals his age.
- 4.1.8. Despite the above, he has an apparently normal attention-span.
- 4.1.9. On average, Mr. Y's RIAS-2 scores are exceeded by 99.7% of his age-peers. His intellectual impairment is reflected in all domains measured by the RIAS-3 including verbal abilities and language-comprehension (lowest 0.1% of his age-peers), ability to perceive, manipulate, or transform accurately the image of spatial patterns into other visual arrangements (lowest 5% of his age-peers), his ability to attend to a stimulus, register the stimulus in immediate memory, and recall the stimulus (lower than the lowest 0.1% of his age-peers), and his speed of processing (lowest 5% of his age-peers).
- 4.1.10. His scores indicate severe deficits in overall development of general intelligence relative to others at his age. Individuals earning general intelligence scores in this range frequently experience severe

difficulties acquiring information through traditional educational methods, whether in the classroom, a vocational training program, or in another setting.

4.2. **Adaptive Behaviour:**

4.2.1. Mr. Y's estimated adaptive behaviour across all but one domain is also extremely low, with the exception of Self-Care in which he is average. For the meaning of each domain, please see above, §3.2.4.3. His communication, functional academics, self-direction, leisure, social, and community-use are low or extremely low; his home-living health and safety are below average; while his self-care is average. When summed across domains of a General Adaptive Composite, and specific Conceptual, Social, and Practical composite domains, he scores in the low or extremely low area. Thus, there are some significant limitations in adaptive behaviour. From discussion with him, however, I am of the opinion that he takes more notice of his children's needs in Home-Living and Health and Safety than he does for himself, suggesting an issue of motivation in some of these domains.

4.2.2. His Functional Academics are particularly problematic and he relies significantly on other people for dealing with bills, official forms, etc. He manages his finances carefully but very basically by splitting up the amount of money he has according to the various current or expected bills within a given financial period, but is unable to budget or monitor the remaining amount. He would also seem to be functionally illiterate, which might be suggestive of the disorder dyslexia, but this should be assessed directly. It has important significance for his ability to protect his best interests when written information is provided to him, notably in forensic matters.

4.3. **Intellectual / Learning-disability**

4.3.1. A learning-disability is diagnosed on the basis of intellectual and social function. From the information provided and that gathered through the psychometrics and interview, it is reasonable to conclude that Mr. Y has a mild-to-moderate intellectual disability (the other categories being borderline, severe, and profound—the latter two indicating a worse condition). As such, he is considered vulnerable (Youth Justice and Criminal Evidence Act, 1999).

4.3.2. For a final opinion on the nature and degree of an intellectual disability, a more thorough assessment would be necessary. This would specify his level of academic achievement and/or the specific cognitive deficits in detail, depending on counsel's advice as to whether Mr. Y's level of academic achievement would be more useful for the Court or a review of his cognitive functions.

4.4. **Suggestibility:**

4.4.1. There is no evidence to support a conclusion that Mr. Y is prone to interrogative suggestibility. However, while he can misunderstand a story/narrative (i.e., distorting the story without being aware of it), he

then maintains that misunderstanding despite questions that might sway another person to change their understanding of the story. His degree of suggestibility is similar to that of the wider population rather than that of people with intellectual disability and is 10% lower than that for the average court-referral. This means that, as long as information is provided to him in a manner that he can understand, he can process it adequately and is not particularly swayed by casual interrogative pressure.

4.5. Fitness to plead:

4.5.1. I am given to understand that the criteria set down by *R v Pritchard* (*R v Pritchard* (1836) 7 C. & P. 303) are used for assessing fitness to plead, namely the ability:

4.5.1.1. to comprehend the course of proceedings of the trial, so as to make a proper defence

4.5.1.2. to know that s/he might challenge any jurors to whom s/he may object

4.5.1.3. to comprehend the evidence

4.5.1.4. to give proper instructions to his/her legal representatives

4.5.2. Additionally, in *M (John)* [2003] EWCA Crim 3452, [2003] All ER (D) 199, in reference to instructing solicitors and counsel, it was stated: "... the defendant must be able to convey intelligibly to his lawyers the case which he wishes them to advance on his behalf and the matters which he wishes them to put forward in his defence. It involves being able (a) to understand the lawyers' questions, (b) to apply his mind to answering them, and (c) to convey intelligibly to the lawyers the answers he wishes to give. It is not necessary that his instructions should be plausible or believable or reliable, nor is it necessary that he should be able to see that they are implausible, or unbelievable or unreliable..."

4.5.3. Based on the Pritchard criteria, I estimate that Mr. Y is fit to plead conditional upon the manner of communication to him both by his representative lawyers and by opposing counsel. It will be necessary to explain to him carefully why and how he can challenge jurors. He will be able to understand the course of proceedings if this communicated in small chunks of information that are presented at the relevant time—explaining to him in one large chunk will be counter-productive. His giving proper instructions and expressing his understanding and wishes intelligibly will depend on the manner of communication, which should be appropriate for a 9-year-old's cognitive function. An experienced intermediary is required.

4.5.4. Given the Pritchard criteria's reference to the required abilities: to give proper instruction to legal representatives; to comprehend the evidence; and to comprehend the course of the proceedings of the trial, the intermediary would be required for conference and the whole trial.

4.6. Achieving best evidence:

- 4.6.1. I rely significantly on Toolkits 4, 5, and 12 of the Advocate's Gateway, the first of which is called "Planning to question someone with a learning disability", all available at www.theadvocatesgateway.org.
- 4.6.2. Given that this report is conditional and has highlighted the possible need for further assessment, in the interim I recommend the following:
 - 4.6.2.1. pre-Court familiarisation, regardless of his previous experience with Court.
 - 4.6.2.2. memory-refreshment for his testimony; the use of a neutral supporter to help reduce stress and understand and navigate the physical environment
 - 4.6.2.3. he should be prompted to write out a card with the communication-rules of Court using his own words and/or images to help him keep these in mind.
 - 4.6.2.4. the approach involved in Enhanced Cognitive Interviewing and, in particular, use simple, everyday words and ensure they are concrete rather than abstract words wherever possible; Section 6 of Toolkit 4 is particularly helpful here.
 - 4.6.2.5. in particular, identifying clearly any changes in topic or line of questioning and following a logical, chronological order, while avoiding getting out of sequence. It is evident that Mr. Y has trouble with abstract concepts and ideas such as time, duration and distance, the handling of money and personal organisation, and planning and sequencing ideas.
 - 4.6.2.6. the use of a visual anxiety/frustration scale would help to identify when, for example, breaks in testimony might be helpful. His emotions will affect his ability to process information and retrieve accurate memories; stress can readily cause mental overload and the provision of inappropriate / untruthful answers, including inappropriate acquiescence or anger.
- 4.6.3. This list is not exhaustive and I defer to the expert opinion of an intermediary, as part of the requirements of the recommendations lie outside my area of expertise.

5. REFERENCES

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