

65623-6

65623-6

NO. 65623-6-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

GONZALO MORGAN,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JEFFREY M. RAMSDALL
THE HONORABLE SHARON ARMSTRONG

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

A court must order a competency evaluation whenever there is reason to doubt the defendant's competency. A defendant's conduct, based on serious-minded adherence to his religious beliefs does not signal incompetence. Two different judges on two different occasions had a colloquy with Morgan and each judge concluded that Morgan's strongly-held religious beliefs did not provide a reason to doubt Morgan's competency. Did the judges properly deny the defense motion for a competency evaluation?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS¹

The State charged the defendant, Gonzalo Morgan, with one count of first degree rape of a child and two counts of first degree child molestation (victim Y.B.).² CP 1-2. At trial, based on a lack of evidence that Morgan penetrated Y.B., the State amended the rape charge to first degree child molestation. 4/13/10 RP (A.M.) 6-9. The

¹ The State will discuss the motions for a competency evaluation in section C of Brief of Respondent, *infra*.

² Y.B. is Morgan's girlfriend's (E.H.'s) granddaughter. 4/8/10 RP 94, 100.

jury convicted Morgan of two counts of child molestation and could not reach a unanimous decision as to the third count. CP 29-31.

In his Department of Corrections pre-sentence report, Community Corrections Officer (CCO) Clifford Thurman observed that, "Morgan has yet to take responsibility for any of his offenses." CP 65. At sentencing, the court imposed concurrent indeterminate sentences with a minimum term of 72 months on each count.³ CP 33-37. Morgan timely appeals. CP 32.

2. SUBSTANTIVE FACTS

At trial, Y.B. was 12 years old. 4/8/10 RP 87. She was in sixth grade and attended Huchoosedah, a Seattle Public Schools Indian Education program. 4/8/10 RP 88; 4/12/10 RP 57-58. Y.B.'s parents are divorced and her mother lives in Montana. 4/8/10 RP 9-13, 139. Y.B. lives in a small house with her father, J.B. Sr., her brother, J.B. Jr. (17 years old at trial), and their grandmother, E.H. (J.B. Sr.'s mother).⁴ 4/8/10 RP 6-7, 14, 36-37. Morgan is her

³ The court also ordered this sentence to run concurrently with King County Cause Number 09-1-00640-3 SEA. CP 37.

⁴ Alcohol abuse is or has been an issue with Y.B.'s mother, father and grandmother. 4/8/10 RP 8-13, 33.

grandmother's boyfriend, who lived with them from 2001 until his arrest in 2009.⁵ 4/8/10 RP 35-38.

One of Y.B.'s closest friends is Seri, whose mother, Sondra Segundo, is an instructional assistant at Huchoosedah. 4/8/10 RP 103; 4/12/10 RP 57-58, 62-63, 75. Segundo and Y.B. developed a close relationship as friends. 4/12/10 RP 63. Segundo took Y.B. to cultural events like powwows, and Y.B. stayed at her house once or twice a month (sleepovers with Seri). 4/12/10 RP 64-65. Y.B. felt close to Segundo; she was someone Y.B. could tell anything to. 4/8/10 RP 136.

a. Morgan Sexually Assaulted Y.B.

Morgan sexually abused Y.B. when she was between 8 and 12 years old. Y.B. disclosed multiple incidents of sexual abuse; however, the State charged only three counts. CP 3-5; 4/13/10 RP

⁵ Morgan's arrest on January 6, 2009, was based on his assault of J.B. Jr. with a knife. 4/7/10 RP 107-08; 4/8/10 RP 138, 162-63; 4/13/10 RP 30-66. On May 6, 2010, Morgan pled guilty to a reduced charge of third degree assault under the cause number referenced in n.3, supra. Morgan's trial counsel in the instant case also represented him when he pled guilty to the third degree assault. Supp CP __, (cause number 09-1-00640-3 SEA) (sub no. 94, (Statement of Defendant on Plea of Guilty) (Attached as Appendix A).

(A.M.) 6-9. The trial court permitted Y.B. to testify about uncharged incidents to demonstrate Morgan's lustful disposition toward her. 3/31/10 RP 12-19; 4/5/10 RP 38-40.

When Y.B. was 10 years old, she and Morgan were alone in the garage. He had her sit on his lap facing him. 4/8/10 RP 111-13. Morgan put his hands on her sides and lifted her "up and down, up and down." Id. They were both clothed. Morgan's part (that only men have) touched her part (that only women have - her private area, "where she pees from."). Id. at 110, 114-16.

On another occasion, Y.B. and Morgan were in E.H.'s room, and Morgan touched her private area with his hand. 4/8/10 RP 108-11. Y.B.'s pants were down. Id. at 119-20.

Once, Morgan touched his mouth to her mouth. 4/8/10 RP 120. Morgan put his tongue inside Y.B.'s mouth; it felt "weird." Id. at 121. She pulled away from Morgan. Id. at 122. Y.B. did not recall when this happened, but it occurred at her house. Id.

Morgan also sexually abused Y.B. at her Auntie Mary's house. 4/8/10 RP 123. E.H. and her Auntie were in the dining room. Id. at 125. Y.B. and Morgan sat on the living room couch. Id. at 123-25. Morgan sat next to her. Id. at 126. He put a pillow over Y.B.'s legs. Id. Morgan touched her with his fingers and

moved his hand. Id. at 129. Y.B. did not recall if Morgan touched her private place over or under her underwear. Id. at 127.

Another time, when Morgan was naked, he grabbed Y.B.'s hand and placed it on his privates. 4/8/10 RP 130. Y.B. could not say the specific part she touched, but it was the "middle of his private part." Id. at 131. Y.B. was uncertain where this happened or how old she was, but she thought it happened after she completed kindergarten. Id. at 132.

b. Y.B.'s Disclosures.

On January 16 or 17, 2009, Sondra Segundo picked Y.B. up at her house (Seri did not accompany her mother) so that she could have a sleepover with Seri. 4/8/10 RP 137; 4/12/10 RP 68. Segundo and Y.B. sat in the driveway and talked. 4/12/10 RP 70. Y.B. told Segundo that Morgan had sexually abused her for years. Afterward, they both cried. 4/8/10 RP 139; 4/12/10 RP 70. Y.B. seemed scared (Morgan had told Y.B. not to tell anyone). Id. at 70, 119. Y.B. felt that it was the right moment to tell Segundo because nobody else was there and Morgan was in jail for assaulting J.B. Jr. 4/8/10 RP 137-38, 159-60.

The next day, Y.P. called her mother from J.B. Jr.'s bedroom. 4/8/10 RP 139. Y.B. told her mother that Morgan sexually abused her. 4/8/10 RP 139-40. Y.B.'s mother, R.M., asked to talk to J.B. Sr. 4/8/10 RP 42-43; 4/12/10 RP 143-45. R.M. told J.B. Sr. about the sexual abuse. 4/12/10 RP 145. J.B. Sr. immediately telephoned the police. 4/8/10 RP 45, 75-79.

A couple of days later, Y.B. went to Montana to live with her mother for a few months. 4/8/10 RP 47-48.

About one month after Y.B. returned to Washington, Dr. Rebecca Wiester, a physician at the Harborview Center for Sexual Assault and Traumatic Stress, examined Y.B. 4/12/10 RP 104-11. Although Y.B. was embarrassed by what Morgan had done to her, she said that Morgan (1) touched her privates under her underwear, (2) had her touch his unclothed private area with her hand, and (3) tried to stick his tongue in her mouth when he kissed her. 4/8/10 RP 142-43; 4/12/10 RP 116-20. Y.B. stated that Morgan also showed her a dirty movie that had grown-ups doing stuff to each other. Id. at 132-33.

- c. Morgan Explained That Y.B. Liked To Touch Him, And That the Family Conspired To Force Him To Move Out.⁶

On May 19, 2009 – while the defendant remained jailed for assaulting J.B. Jr. – Detective Ishimitsu interviewed Morgan about Y.B.'s sexual abuse allegations. 4/1/10 RP 8-9; Pretrial Exs. 1 (video) and 2 (transcript).⁷ After Ishimitsu told Morgan Y.B.'s accusations, Morgan replied, "false allegations." Pretrial Ex. 2 at 21-25. He stated, "Before God I said I never touched that girl." Id. at 27. Ishimitsu asked Morgan how Y.B. could have given such detailed accounts of the sexual abuse if it never occurred, Morgan said, "[T]he little girl is very smart." Id. at 52.

Morgan discussed an incident from six or seven years ago:

A long time ago, about six or seven years ago, the little girl would come in when I was alone in the room and *she wanted to touch me*. At that time, right away I told ah, the grandmother you know be careful with this little girl. *Because, she...she's ah, trying to touch me and she likes to touch me*. And I asked her not to

⁶ The court held a pretrial CrR 3.5 hearing and determined that Morgan's statements were admissible. 4/1/10 RP 4-28, 67-69; CP 55-58 (Court's written findings). Morgan briefly testified at the hearing; then, after speaking with his counsel, Morgan declined to testify further. At defense counsel's request, the court struck Morgan's testimony. 4/1/10 RP 30-46.

⁷ At trial, the court admitted redacted versions of the video and transcripts (Exs. 18 and 20).

let her in...in the room when I was there alone, that was about...around seven years ago. And then from there ah, up till now there...there was no other contact.⁸

....

[A]t that time she just...just wanted to touch me and stuff like that. And then ever since I told the grandmother you know you need to...you need to you know ah, have control of her and not let her come into the room when I'm alone.

Pretrial Ex. 2 at 9-10 (ellipsis in original).

Morgan denied anything happened in the garage or his bedroom. He stated, "Before God I am saying that that's false." Id. at 30. Ishimitsu asked Morgan if he ever had Y.B. sit on his lap. Morgan replied, "I've never done that, so. That's false allegation, before God I never touched her, no never. Before God, that's false allegation." Id. at 33. Ishimitsu said, "I notice you like to...swear under God that this did not happen?" Morgan responded, "Yes, because you have to say the truth before God you know, and that's the truth." Id.

Morgan then described what occurred at Y.B.'s Auntie's house: Y.B. stood in front of him, pulled her pants down and told

⁸ Later, Morgan conceded that Y.B.'s advances toward him might have occurred two or three times. Pretrial Ex. 2 at 40.

him to touch her. Id. He said,

She was showing me that the thing that...that little thing you know what she didn't pull it all the way down. But, then she...and I was watching TV and...and she was touching and she was ah, pulling that down and...and calling me to say that I have to...I have to touch her. I said no, no, no, no don't do that. And I was...I was ah, I was pointing at...they...they⁹ were talking and all that I know, and that's it. Then she went pulled this down so that she could show me. And I said no, no, no. And I even warned her that I was gonna tell her grandma. That's what happened (unintelligible) but that I touched her, no.

Id. at 31 (ellipsis in original). Morgan insisted that Y.B. pursued him. "She would grab me...and she would grab me, she wanted to kiss me but I just moved around (unintelligible)." Id. at 39.

Morgan offered an alternative theory regarding Y.B.'s allegations – the family "might possibly be...trying to do something against me." Pretrial Ex. 2 at 14. Morgan explained,

Well, due to the fact that when I come from work and...and ah, my wife then comes in and...and we lock ourselves in our bedroom and...and she stays there watching TV. Then ah, practically she pays more attention to me then...then (*sic*) them. And its (*sic*) ah, something like jealousy that they...they have. It is possible that they are probably planning

⁹ Y.B.'s Auntie and grandmother.

something against me that um, pretty much will be unjust. Because, they don't want me to live there with their grandmother.

Id. (ellipsis in original). Morgan believed that J.B. Jr. told Y.B. to make the false accusations. Id. at 33, 49. Morgan complained that the family is “trying to maybe accuse me of something that I didn't know or it didn't happen,” to force him to move out. Id. at 15, 17.

C. ARGUMENT

1. SINCERELY HELD RELIGIOUS BELIEFS DO NOT DEMONSTRATE INCOMPETENCE.

Morgan argues that Judge Armstrong and Judge Ramsdell erred in denying defense counsel's motion for a pretrial mental examination to determine his competency to stand trial. Specifically, he contends that neither judge put enough weight on defense counsel's opinion regarding his client's competency.

The Court should reject the claim. Although defense counsel's opinion certainly is part of a court's calculus when it considers such a motion, it is not definitive. After Judges Armstrong and Ramsdell engaged in colloquies with Morgan (and listened to defense counsel's colloquy with Morgan), each judge

concluded that there was no reason to doubt Morgan's competency. In other words, Morgan's strong religious beliefs did not render him incompetent.

a. Judge Armstrong Had No Reason To Doubt Morgan's Competency.

On March 26, 2010, trial counsel, Carey Huffman, told Judge Armstrong that he had concerns about Morgan's competency.

3/26/10 RP 2-3. Huffman said that Morgan told him,

I am God's messenger; he has told me that I am God's mediator; he told me that I am here on behalf of God; he has told me that God has blessed me and illuminated my mind so that I can defend him.

Id. at 3, 7-8. Morgan had quoted the Bible from Deuteronomy 29:17 and explained that "whoever commits an unfairness against a stranger is cursed." Id. Huffman stated that Morgan's faith-based comments were unlike those made by other defendants. Id. He had concerns about Morgan's ability to intelligently evaluate his case, his possible defenses or a plea offer. Id.

Morgan had appeared before Judge Armstrong multiple times in the previous ten months and neither of his prior attorneys

ever voiced competency concerns.¹⁰ 3/26/10 RP 5-6. The court expressed skepticism that Morgan demonstrated incompetency – as opposed to pretrial stress. Id. The court said, “I’m sure he is competent” Id. at 6. Morgan had consistently voiced his desire to go to trial; so the fact that he is “not keen on accepting a plea isn’t surprising (to the court).” Id. at 7.

The court asked Morgan whether he understood the charges. He did (the charge is having raped a little girl). Morgan knew that although there were multiple charges, his case involved one victim and, if found guilty, it could mean prison time (he understood the potential sentence range). Morgan said, “I understand but I understand that I am innocent.” 3/26/10 RP 9-10. Morgan also understood the offer to plead guilty. Morgan said, “I understand. I understand clearly, but I can’t plead guilty because I never committed the crime, ever.” Id.

¹⁰ Judge Armstrong held multiple hearings – and with two different attorneys before Huffman began his representation - on each of Morgan’s cases. See Supp CP __ (case number 09-1-00640-3 SEA) (sub. nos. 24 (omnibus order), 25 (omnibus hearing counsel - Julie Lawry, 7/14/09), 36 (notice of appearance - counsel - John Ostermann, 10/12/09), 48 (motion hearing - counsel Huffman, 2/5/10)); Supp CP __ (sub no 15 (omnibus hearing – counsel Julie Lawry, 9/25/09)). Competency appears to not have been an issue in the assault case. On page 11 of the Statement of Defendant on Plea of Guilty, Mr. Huffman signed below the following statement, “I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands this statement.” Supp CP __, (cause number 09-1-00640-3 SEA) (sub no. 94, (Statement of Defendant on Plea of Guilty) (Appendix A).

The court asked Morgan if he knew Huffman was just a lawyer (and possibly not blessed by God to represent him). Morgan responded, "I understand that God uses people." 3/26/10 RP 11. He reiterated that he did not want to plead guilty. The court asked, "And the reason is that you believe you are innocent of these charges?" Morgan replied, "No, it is not only that I believe, it is that I am innocent." Id.

In response to further questions by Huffman, Morgan said that he could not lose at trial because God protected him. Id. at 12. Morgan stated,

I prefer to go to trial so that the all powerful being -- that God can make the decision. God will say if I am going to prison; let Him say yes or no to prison. He is here. He will be in all of that. He is here right now. He is in the middle of us right now and He is inside each one of us. It is the divine spark in each of us.

Id.

The court ruled:

While it is true that he has a firmly held belief that he is innocent and that no one will find him guilty, that is not very much different from many defendants we see, except that it is cloaked in religious belief.

I believe that he is competent to go to trial.¹¹ He may be vastly surprised if the jury finds him guilty and the

¹¹ The deputy prosecutor said that based on the court's and Huffman's colloquies, Morgan clearly understood the nature of the proceedings. 3/26/10 RP 13.

jury may well find him guilty, but he has elected to choose that he is not going to be found guilty and there is no type of restoration, there is no mental illness, there is nothing that the system can do to address his situation.

He is entitled to that belief, even though everyone in this courtroom thinks it is wrong.

3/26/10 RP 14-15. The court denied the request for a competency evaluation. Id.

b. Judge Ramsdell Had No Reason To Doubt Morgan's Competency.

On April 5, 2012, after two days of pretrial hearing – which included Judge Ramsdell's review of the videotaped interview between Morgan and Detective Ishimitsu, and the court's determination that the videotape was admissible – Huffman again voiced competency concerns.¹² 4/5/10 RP 41-42. Huffman did not think that Morgan could assist in his defense because Morgan believed God had preordained a not guilty verdict. Id. at 48-59.

¹² Judge Ramsdell confirmed that Huffman's current concerns mirrored the concerns raised before Judge Armstrong. Judge Ramsdell said, "So it sounds to me like what [Judge Armstrong] was basically saying is that Mr. Morgan is convinced of the righteousness of his position and believes that no righteous God would allow a fair-minded jury to convict him." 4/5/10 RP 44-45.

Huffman thought Morgan's inability to assist counsel involved more than rejecting a favorable plea offer; it involved his inability to strategize or understand the impact that a witness might have on a jury. Id. at 48-49. The court told Huffman that Morgan may have chosen not to assist Huffman with trial strategy, but that "does not necessarily mean he's incapable of it." Id. at 49.

Huffman engaged Morgan in a colloquy. 4/5/10 RP 51-54, 56-58. Throughout their discussion, Morgan maintained his belief that God would not permit a jury to convict him, "because I'm innocent, it is unjust for me to be condemned to go to prison." Id. at 52-54. Morgan remained steadfast in his belief that God had preordained the trial's outcome. Id.

The court then had a colloquy with Morgan. 4/5/10 RP 54-56.

Q. Mr. Morgan, what I think I hear you saying is that you don't think God would let a jury convict you in this case. Is that correct?

A. That's right.

Q. And I take it -- or I understand that the reason you are saying that is because you don't think God would allow a jury to condemn you -- I think were your words -- because you are innocent?

A. That's correct.

Q. Have you ever been disappointed in God before?

A. No, Never.

Q. You've never been let down by what you thought God was going to do?

A. No, Never.

Q. Can you conceive in any way the possibility that the jury may decide that you are not innocent?

A. Yes, they could, but God is not unfair, and he won't allow it.

Q. Okay. God may not be unfair, but you also understand even the best juries sometimes make mistakes. Do you understand that as well?

A. That's right.

Q. And do you understand that by going to trial on this, even if you are innocent, you do run the risk that the jury could make a mistake and find you guilty? Do you understand that, sir?

A. I understand.

4/5/10 RP 54-55. The court stated that it seemed Morgan understood the possibility that a jury could make a mistake and convict him, even though he is innocent, and that ultimately God does not control the outcome. Id. at 56.

Huffman again asked Morgan if he believed that God controlled the trial's outcome. Morgan replied,

Well, the thing is that God controls everything. Judges, attorneys, prosecutors, they are all

appointed by the [S]upreme [B]eing. And I can't imagine that God being unjust and seeing that I am innocent would find me guilty.

4/5/10 RP at 56. Morgan struggled to make Huffman understand his deep religious conviction that God would never allow him to be condemned. Id. at 57-58. He said, "God allows everything. . . .I don't know how to explain myself. Id. at 57.

After the court and Huffman concluded their colloquies, the court said,

[T]he long and the short of it is that his assertions are predicated on his firmly held belief that he's innocent. And that's not unlike many defendants who say I'm going to trial because I'm innocent, and the jury can't find me guilty if I'm innocent. He just stakes his faith on a higher power. But it still boils down to the same assertion that he's innocent.

I would venture to guess that if Mr. Morgan were to opine what would happen if he was guilty, then God would allow the jury to convict. That's ultimately the question that the jury has to pass on. Nothing we say is going to shake him from his firmly held belief that he's innocent, number one, and, number, two, that a righteous God would never let an innocent person be condemned.

I don't know what more to say about it other than I would not want to question his belief system. If that's the way he believes, I'm certainly not in any position to question it.

Id. at 58-59¹³. The court then invited counsel “to revisit this later . . . if more comes to light that warrants it.”¹⁴ Id. at 59. Counsel never raised the issue again.¹⁵

c. The Law Pertaining To Competency.

Constitutional due process dictates that an incompetent person may not be tried, convicted, or sentenced as long as that incapacity continues. U.S. Const. amend. XIV; State v. Wicklund, 96 Wn.2d 798, 800, 638 P.2d 1241 (1982); see also RCW 10.77.050. “In Washington, a person is competent to stand trial if he has the capacity to understand the nature of the proceedings against him and if he can assist in his own defense.” State v. Ortiz, 104 Wn.2d 479, 482, 706 P.2d 1069 (1985).

¹³ The State has attached the transcripts of the motion, colloquies and trial court's ruling as Appendix B.

¹⁴ Throughout the trial, Morgan understood the nature of the charges against him. During the April 13, 2010 morning session, the State amended the information on Count I from rape to child molestation because there had not been any proof of penetration. Huffman asked the court for a moment to speak with his client. Afterward, he said, “I have discussed with Mr. Morgan the offered amendment. He understands it.” 4/13/10 RP (A.M.) 6-9.

¹⁵ One month after this hearing, Morgan pled guilty to third degree assault. Huffman represented Morgan in that case too. Huffman explicitly told Judge Ramsdell that “the defendant is competent and fully understands the statement (of defendant on plea of guilty). See n.10, supra.”

“Requiring that a criminal defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel.” Godinez v. Moran, 509 U.S. 389 113 S. Ct. 2680, 125 L.Ed.2d 321 (1993). The ability to rationally assist is a minimal requirement. State v. Harris, 114 Wn.2d 419, 429, 789 P.2d 60 (1990). The court must only ensure the defendant has the ability to understand, the ability to assist, and the ability to communicate with his attorney; it is not required to determine whether the defendant actually acted in accordance with his ability. Bell v. Evatt, 72 F.3d 421, 432 (4th Cir. 1995). The Washington Supreme Court has rejected the argument that a defendant must be capable of suggesting a particular trial strategy in order to be competent. Ortiz, 104 Wn.2d at 483. A paranoid schizophrenic may be competent to stand trial. State v. Hahn, 106 Wn.2d 885, 889, 726 P.2d 25 (1986).

The statutes governing competency proceedings, set forth in Chapter 10.77 RCW, presume that a defendant is competent and require court findings of incompetency. Under former RCW 10.77.060, when there is reason to doubt a defendant's

competency,¹⁶ the court shall order an examination and report of the defendant's mental condition. The "[p]rocedures of the competency statute . . . are mandatory and not merely directory, and failure to observe these procedures is a violation of due process." State v. Heddrick, 166 Wn. 2d 898, 904, 215 P.3d 201 (2009) (internal citations omitted). However, " '[a] reason to doubt' is not definitive, but vests a large measure of discretion in the trial judge." City of Seattle v. Gordon, 39 Wn. App. 437, 441, 693 P.2d 741 (1985).

The trial court must make the threshold determination that there is a reason to doubt the defendant's competency before a determination of competency is required. Id. The trial court may make its determination from many things, including the defendant's appearance, demeanor, conduct, personal and family history, past behavior, medical and psychiatric reports, and the statements of counsel. State v. Dodd, 70 Wn.2d 513, 514, 424 P.2d 302 (1967). A motion to determine competency does not have to be granted merely because it has been filed, and is not of itself sufficient to

¹⁶ In 2012, the legislature amended Chapter 10.77 RCW. Laws 2012 c 256 § 3, eff. May 1, 2012. The State cites to the statutes that were in effect during the pendency of the instant case.

raise a doubt concerning competency. Gordon, 39 Wn. App. at 441 (citing United States v. McEachern, 465 F.2d 833, 837 (5th Cir.), cert. denied, 409 U.S. 1043 (1972)).

“Many people legitimately base important decisions on religious faith, and place that faith in God rather than the legal system.” Ford v. Bowersox, 256 F.3d 783, 788 (8th Cir. 2000), cert. denied, 534 U.S. 1068 (2001). Accordingly, “clinicians are very careful in characterizing religious beliefs as delusional . . . especially when the religious views are shared by others.” Id. at 787.

Here, neither Judge Armstrong nor Judge Ramsdell had a reason to doubt Morgan's competency. The colloquies between the two judges, defense counsel and Morgan demonstrated that Morgan was cognizant of the proceedings and able to assist counsel in his defense. While Morgan's fervently held religious beliefs may strike the ordinary observer as odd or extreme, the law is clear that such beliefs do not necessarily render a person incompetent.

In one case, for example, the defendant was a leader of a religious cult living on a farm in Nebraska, which developed out of the teachings of another group which called itself the “*Posse*

Comitatus." The group's belief system centered around Anglo Saxon supremacy, the unconstitutionality of income taxes, and the belief in the upcoming Battle of Armageddon. See Ryan v. Clarke, 281 F.Supp.2d 1008, 1013 (D.Neb.2003). Purportedly in the name of his "God," the defendant

and others at his direction tied and chained [the victim] in a hog confinement shed; on several occasions sodomized [the victim] with a shovel handle or a pick handle to the point that the man's guts ruptured; whipped and beat [the victim]; shot off some of the victim's finger tips; partially skinned [the victim] alive; and caused the man's bones to be broken, once using a piece of lumber and a block of wood to complete the fracture of a leg with one blow. After that, [defendant] stomped [the victim] to death.

Id. at 1012.¹⁷ The defendant argued that he was incompetent to stand trial, as evidenced by his fanatically held religious beliefs and "strange notions" such as believing that God spoke directly to him.

Id. at 1032. The trial court rejected the premise, along with several medical experts' opinions that the defendant was impaired. The

¹⁷ The group received leadings from God in the following manner. "Defendant would face a group member, who would extend his right arm out at approximately a 90 degree angle from his or her body. Defendant would then place his left hand on the member's right shoulder and place his right hand on the member's right wrist. After asking Yahweh (the name used by defendant and his group for God) a question, defendant would apply pressure to the person's right arm. If the arm dropped, the answer to the question being asked of Yahweh was "no"; if the person's arm stayed up, the answer was "yes." As time went on, others in the group used this arm test, and after awhile every aspect of the lives of the Rulo group was controlled by the use of the arm test." *Id.* at 1017.

court found that “the pursuit of fanatical religious beliefs - quite often at the explicit command of the true believer’s God - is not the same as incompetence.” Id. at 1032.

In so ruling, the court cited Ford v. Bowersox, supra, another instructive case in which the defendant received a vision directing him to fast for thirty-five days so that he would be “delivered.” 256 F.3d at 787. From these visions, the defendant believed that God’s angels would assure his acquittal. He stood on his Bible in the holding area outside the courtroom, following the Bible’s directive to “stand on [God’s] word.” Id. Although his behavior may seem bizarre to most persons, the Eighth Circuit ruled that the defendant’s conduct stemmed from his “serious-minded adherence” to his religion, and not from incompetence. Id. at 787; see also Valdez v. Ward, 219 F.3d 1222, 1241 (10th Cir. 2000) (sincerely held religious beliefs do not signal incompetence).

Here, Morgan’s religious beliefs permeated the proceedings. In Morgan’s interview with Detective Ishimitsu, he often swore his innocence before God. Pretrial Ex. 2 at 27, 30, 33. Morgan told Ishimitsu about the family’s conspiracy to falsely accuse him: “It is possible that they are probably planning something against me that um, pretty much will be unjust.” Id. at 14.

Morgan also told Huffman that the allegations against him were “unjust.” He quoted the Bible from Deuteronomy 29:17, and explained that “whoever commits an unfairness against a stranger is cursed.” 3/26/10 RP 3.

Post-trial, Morgan told CCO Thurman that in his spare time, “ ‘I study the Bible.’ ” CP 64.

Given that Morgan’s belief system cannot be translated into incompetence, neither Judge Armstrong nor Judge Ramsdell erred in denying defense counsel’s motion for a competency evaluation.

Morgan claims that Judges Armstrong and Ramsdell erred because neither judge put enough weight on Huffman’s opinion. Huffman’s opinion certainly had import, but the courts also relied on other factors, such as Morgan’s conduct, appearance and past behavior.

Judge Armstrong engaged in a colloquy with Morgan and listened as Huffman asked Morgan questions. Judge Armstrong had previously seen Morgan on several occasions and never had a reason to doubt his competency (nor did either prior defense counsel). Nothing in Morgan’s demeanor or answers gave Judge

Armstrong any reason to doubt that anything, other than his strong religious convictions, impeded communication between Huffman and Morgan.¹⁸

Judge Ramsdell saw Morgan's past behavior and demeanor. On April 5, before Huffman mentioned concerns about Morgan's competency, Judge Ramsdell watched the complete videotaped interview between Morgan and Ishimitsu. Pretrial Ex. 1; Supp CP ___ (sub no. 46A (clerk's minutes) at 5). The video demonstrated Morgan's competence – his ability to understand the nature of the proceedings and charges against him.¹⁹ Morgan insisted to Ishimitsu that the allegations against him were false. He said, "I've *never had a mental ah, sickness*. I've always been centered and...and honest in what I do and I say. I don't like to lie." Pretrial Ex. 2 at 48.

Morgan has not cited any authority that requires a judge to supplant his or her opinion regarding a defendant's competency

¹⁸ During Huffman's colloquy with Morgan on 4/5/10, Morgan struggled to explain his religious convictions. Morgan said that "God allows everything" and "I don't know how to explain myself." 4/5/10 RP 57-58.

¹⁹ At the end of the interview, Morgan spoke about the assault allegations and court proceedings in that case, such as the bail amount. Pretrial Ex. 1 at 41-42. As Morgan said, the court had set bail at \$2500.00. Supp CP ___ (cause number 09-1-00640-3 SEA) (sub no. 5 (Order establishing cond. Of release \$2,500 cash/surety/transfer to wer)).

based solely on counsel's representations. In this case, Judges Armstrong and Ramsdell concluded that religious conviction, not incompetency, drove Morgan's decisions. There was no error.

D. CONCLUSION

For the reasons stated above the State respectfully asks this Court to affirm Morgan's two convictions for first degree child molestation.

DATED this 29 day of May, 2012.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
Prosecuting Attorney

By: 

RANDI LAUSTELL, WSBA 28166
Senior Deputy Prosecuting Attorney
Attorneys for the Respondent
WSBA Office #91002

APPENDIX A

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5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to testify and to hear and question the witnesses who testify against me;

(d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) The right to be presumed innocent until the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a determination of guilt after a trial.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA(S), I UNDERSTAND THAT:

(a) The crime(s) with which I am charged carries a sentence(s) of:

Count No.	Standard Range	Enhancement That Will Be Added to Standard Range	Maximum Term and Fine
1	12-12 4-12	_____	5 years \$ 10,000
			_____ years \$ _____
			_____ years \$ _____

1 The crime of _____ is a most serious offense as defined by
2 RCW 9.94A.030, and if I have at least two prior convictions on separate occasions whether in this
3 state, in federal court, or elsewhere, of most serious crimes, I may be found to be a Persistent
4 Offender. If I am found to be a Persistent Offender, the Court must impose the mandatory sentence
5 of life imprisonment without the possibility of early release of any kind. RCW 9.94A.570. [If not
6 applicable, this paragraph should be stricken and initialed by the defendant and the judge SM ____.]

7 (b) The standard sentence range is based on the crime charged and my criminal history.
8 Criminal history includes prior convictions and juvenile adjudications or convictions, whether in
9 this state, in federal court, or elsewhere.

10 (c) The prosecuting attorney's statement of my criminal history is attached to this agreement.
11 Unless I have attached a different statement, I agree that the prosecuting attorney's statement is
12 correct and complete. If I have attached my own statement, I assert that it is correct and complete.
13 If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated
14 to tell the sentencing judge about those convictions.

15 (d) If I am convicted of any new crimes before sentencing, or if any additional criminal
16 history is discovered, both the standard sentence range and the prosecuting attorney's
17 recommendations may increase or a mandatory sentence of life imprisonment without possibility of
18 parole may be required by law. Even so, I cannot change my mind and my plea of guilty to this
19 charge is binding on me.

20 (e) In addition to sentencing me to confinement, the judge will order me to pay \$500 as a
21 victim's compensation fund assessment and a \$100 DNA fee. If this crime resulted in injury to any
22 person or damages to or loss of property, the judge will order me to make restitution, unless

1 extraordinary circumstances exist which make restitution inappropriate. The judge may also order
 2 that I pay a fine, court costs, attorney fees, and other costs and fees. Furthermore, the judge may
 3 place me on community custody and I will have restrictions and requirements placed upon me.

4 (f) In addition to confinement, if the total period of confinement ordered is more than 12
 5 months, the judge will sentence me to the following period of community custody, unless the judge
 6 finds substantial and compelling reasons to do otherwise:

7 For crimes committed prior to July 1, 2000: for a drug offense, assault 2, assault of a child
 8 2, or any crime against a person where there is a finding that I or an accomplice was armed with a
 9 deadly weapon, one year; for any vehicular homicide or for a vehicular assault by being under the
 10 influence or by operation of a vehicle in a reckless manner, 18 months; for a serious violent offense,
 11 two years.

12 For crimes committed on or after July 1, 2000, and prior to August 1, 2009, as follows:

- 13 Serious violent offense: a range of 24 to 36 months.
 14 Violent offense: 18 months.
 15 Crimes against persons or violation of RCW 69.50 or 69.52 : a range of 9 to 12
 16 months.

17 For crimes committed on or after August 1, 2009, as follows:

- 18 Serious violent offense: 36 months.
 19 Violent offense: 18 months.
 20 Crimes against persons or violation of RCW 69.50 or 69.52 : 12 months.

21 The longest applicable period of community custody will be imposed. During the period of
 22 community custody I may be under the supervision of the Department of Corrections, and I will
 have restrictions and requirements placed upon me. My failure to comply with these conditions will
 result in the Department of Corrections transferring me to a more restrictive confinement status or

1 other sanctions being imposed. [If not applicable, this section should be stricken and initialed by the
2 defendant and the judge _____.]

3 (g) The prosecuting attorney will make the following recommendation to the judge: _____

4 12 mo, comm. custody, ~~30~~, ct. costs, VPA
5 DNA fee, recoupment, low end recommendation
6 on cause # 09-1-04227-2 SEA and to
7 run concurrent to this cause #

8 The prosecutor will make the recommendation stated in the plea Agreement and State's
Sentence Recommendation, which are incorporated by reference.

9 (h) The judge does not have to follow anyone's recommendation as to sentence. The judge
10 must impose a sentence within the standard range unless there is a finding of substantial and
11 compelling reasons not to do so or both parties stipulate to a sentence outside the standard range. If
12 the judge goes outside the standard range, either I or the State can appeal that sentence to the extent
13 to which it was not stipulated. If the sentence is within the standard range, no one can appeal the
14 sentence.

15 (i) The crime of _____ has a mandatory minimum sentence of
16 at least _____ years of total confinement. The law does not allow any reduction of this sentence.

17 For crimes committed on or after July 24, 2005, this does not apply to juveniles tried as adults
18 pursuant to a transfer of jurisdiction under RCW 13.40.110 (see RCW 9.94A.540(3)). [If not
19 applicable, this paragraph should be stricken and initialed by the defendant and judge (S.M.).]

20 (j) The crime charged in Count _____ includes a firearm / deadly weapon
21 sentence enhancement of _____ months.

1 This additional confinement time is mandatory and must be served consecutively to any
 2 other sentence and any other enhancement I have already received or will receive in this or any other
 3 cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and the
 4 judge G.M.]

5 (k) The sentences imposed on counts _____, except for any weapons enhancement,
 6 will run concurrently unless there is a finding of substantial and compelling reasons to do otherwise.

7 [If not applicable, this paragraph should be stricken and initialed by the defendant and judge

8 G.M.]

9 (l) For the crime of vehicular homicide while under the influence of intoxicating liquor or
 10 any drug, the sentence will be increased by two years for each prior offense as defined in RCW
 11 46.61.5055. This additional confinement time is mandatory and must be served consecutively to
 12 any other sentence and any other enhancement I have already received or will receive in this or any
 13 other cause. [If not applicable, this paragraph should be stricken and initialed by the defendant and
 14 the judge G.M.]

15 (m) Counts _____ are serious violent offenses arising from separate and distinct
 16 criminal conduct and the sentences on those counts will run consecutively unless the judge finds
 17 substantial and compelling reasons to do otherwise. [If not applicable, this paragraph should be
 18 stricken and initialed by the defendant and the judge G.M.]

19 (n) The judge may sentence me as a first-time offender instead of imposing a sentence
 20 within the standard range if I qualify under RCW 9.94A.650. This sentence may include as much as
 21 90 days of confinement plus all of the conditions described in paragraph (6)(e). In addition, I may
 22 be sentenced up to two years of community supervision if the crime was committed prior to July 1,

1 2000, or two years of community custody if the crime was committed on or after July 1, 2000. The
2 judge also may require me to undergo treatment, to devote time to a specific occupation, and to
3 pursue a prescribed course of study or occupational training. [If not applicable, this paragraph
4 should be stricken and initialed by the defendant and the judge GM]

5 (o) The judge may sentence me under the special drug offender sentencing alternative
6 (DOSA) if I qualify under former RCW 9.94A.120(6) (for crimes committed before July 1, 2001),
7 or RCW 9.94A.660 (for offenses committed on or after July 1, 2001). This sentence could include a
8 period of total confinement for one-half of the midpoint of the standard range and community
9 custody of at least one-half of the midpoint of the standard range, plus all of the other conditions
10 described in paragraph (6)(e). The judge could impose a residential treatment-based DOSA
11 alternative that would include three to six months of residential chemical dependency treatment and
12 24 months of community custody, plus all the other conditions described in paragraph (6)(e).
13 During confinement and community custody under either alternative, I will be required to
14 participate in substance abuse evaluation and treatment, not to use illegal controlled substances and
15 to submit to testing to monitor that, and other restrictions and requirements will be placed on me.
16 [If not applicable, this paragraph should be stricken and initialed by the defendant and the judge

17 GM]

18 (p) This plea of guilty will result in revocation of my privilege to drive under RCW
19 46.20.285 (1)-(3), (5)-(7). If I have a driver's license, I must now surrender it to the judge. [If not
20 applicable, this paragraph should be stricken and initialed by the defendant and the judge GM].

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2 (q) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the
3 judge finds I used a motor vehicle in the commission of this felony.

4 (r) If this crime involves a sexual offense, prostitution, or a drug offense associated with
5 hypodermic needles, I will be required to undergo testing for the human immunodeficiency virus
6 (HIV). [If not applicable, this paragraph should be stricken and initialed by the defendant and the
7 judge E.M.]

8 (s) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a
9 crime under state law is grounds for deportation, exclusion from admission to the United States, or
10 denial of naturalization pursuant to the laws of the United States.

11 (t) I will be required to provide a biological sample for purposes of DNA identification
12 analysis.

13 (u) Because this crime involves a kidnapping or unlawful imprisonment offense involving a
14 minor, I will be required to register with the sheriff of the county of the state of Washington where I
15 reside, study, or work. The specific registration requirements are described in the "Offender
16 Registration" Attachment. [If not applicable, this paragraph should be stricken and initialed by the
17 defendant and the judge E.M.]

18 (v) This plea of guilty will result in the revocation of my right to possess, own, or have in
19 my control any firearm unless my right to do so is restored by a superior court in Washington State,
20 and by a federal court if required. I must immediately surrender any concealed pistol license. RCW
21 9.41.040.

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2 (w) I will be ineligible to vote until that right is restored in a manner provided by law. If I
3 am registered to vote, my voter registration will be cancelled.

4 (x) Because this is a crime of domestic violence, I may be ordered to pay a domestic
5 violence assessment of up to \$100. If I, or the victim of the crime, have a minor child, the court
6 may order me to participate in a domestic violence perpetrator program approved under RCW
7 26.50.150. [If not applicable, this paragraph should be stricken and initialed by the defendant and
8 the judge _____.]

9 (y) Because this crime involves the manufacture, delivery, or possession with intent to
10 deliver methamphetamine, including its salts, isomers, and salts of isomers, or amphetamine,
11 including its salts, isomers, and salts of isomers, a mandatory cleanup fine of \$3000 will be
12 assessed. RCW 69.50.401(2)(b). [If not applicable, this paragraph should be stricken and initialed
13 by the defendant and the judge GM].

14 (z) Because this crime involves a violation of the state drug laws, my eligibility for state and
15 federal food stamps, welfare, and education benefits will be affected. 20 U.S.C. § 1091(r) and 21
16 U.S.C. § 862a. [If not applicable, this paragraph should be stricken and initialed by the defendant
17 and the judge GM].

18 (aa) Because the crimes I am pleading guilty to include both a conviction under RCW
19 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more
20 convictions for the felony crimes of theft of a firearm or possession of a stolen firearm, the
21 sentences imposed for these crimes shall be served consecutively to each other. RCW
22

1 9.94A.589(1)(c). [If not applicable, this paragraph should be stricken and initialed by the defendant
2 and the judge GMJ

3 7. I plead guilty to the crime(s) of Assault 3

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6 as charged in the ~~information~~ / 1st amended information. I have received a copy of
7 that information.

8 8. I make this plea freely and voluntarily.

9 9. No one has threatened harm of any kind to me or to any other person to cause me to make
10 this plea.

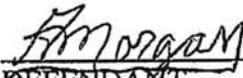
11 10. No person has made promises of any kind to cause me to enter this plea except as set
12 forth in this statement.

13 11. The judge has asked me to state briefly in my own words what I did that makes me
14 guilty of this (these) crime(s). This is my statement:

15 I am not guilty of this crime. However, after
16 speaking with my attorney and reviewing the evidence
17 I believe there is a substantial likelihood I
18 will be found guilty at trial. Therefore, under
19 North Carolina v. Alford, I agree to allow the court
20 to review the certificate of probable cause in
21 the course of accepting my plea
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12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.


DEFENDANT

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.


PROSECUTING ATTORNEY
Print Name: D. GROSS
WSBA# 27031.


DEFENDANT'S LAWYER
Print Name: Greg Huffer
WSBA# 39152

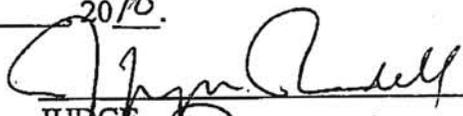
The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- (a) The defendant had previously read; or
- (b) The defendant's lawyer had previously read to him or her; or
- (c) An interpreter had previously read to the defendant the entire statement above;

and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. The defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

Dated this 6th day of May, 2010.

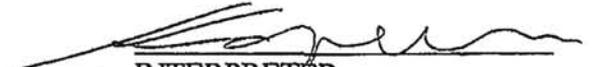

JUDGE Rmsdell

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I am a certified interpreter or have been found otherwise qualified by the court to interpret in the Spanish language and I am fluent in that language, which the defendant understands. I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, 20__.

TRANSLATOR
Print Name: _____



INTERPRETER
Print Name: Karry Feter

APPENDIX B

1 going to happen until tomorrow anyway, except for maybe
2 some isolated questions with regard to people who want
3 to be heard outside the presence of the other jurors.

4 MR. HUFFMAN: Yes, Your Honor.

5 THE COURT: I don't think that's what you
6 were getting at. Right? You're talking more about the
7 global --

8 MR. HUFFMAN: Yes.

9 THE COURT: We will get that done. Thanks,
10 folks.

11 (Lunch recess.)

12 THE COURT: Welcome back, folks. Good
13 afternoon. Please be seated.

14 MR. HUFFMAN: Good afternoon, Your Honor.

15 MR. RICHEY: Good afternoon.

16 THE COURT: I didn't mean to interrupt
17 something. Okay.

18 * MR. HUFFMAN: Your Honor, I had taken the
19 opportunity between when Mr. Morgan came in and now to
20 speak with Mr. Morgan again about this case and about a
21 potential State's offer.

22 I raised an issue with Judge Armstrong -- not Judge
23 Armstrong -- yes, Judge Armstrong -- as to competency.
24 Judge Armstrong ruled on that. She ruled after doing a
25 colloquy with Mr. Morgan. I'm not trying to hide the

1 ball in any sense, but I've spoken with Mr. Morgan twice
2 last Friday and twice today, including just today. I
3 would like to renew my motion on competency.

4 THE COURT: Can you be a little more specific
5 as to what you think the problem is?

6 MR. HUFFMAN: I would be happy to be a little
7 more specific, Your Honor. The information I provided
8 to Judge Armstrong and is no surprise to the State is
9 that I felt that Mr. Morgan was not knowingly and
10 intelligently understanding the trial that he was about
11 to enter.

12 THE COURT: Okay.

13 MR. HUFFMAN: I stated that I didn't think he
14 could actually assist me in his defense because he has
15 this -- I don't want to say unjustified and attack
16 Mr. Morgan's faith, but to me it's more than just faith,
17 which is the conclusion that Judge Armstrong came to.
18 When I discussed the case and the witnesses and the
19 anticipated evidence and the evidence that has already
20 been presented to the Court by way of videotapes and the
21 arguments of both counsel, I have spoken with Mr. Morgan
22 again and he has told me today that there is no possible
23 way that a jury can vote guilty because he has been told
24 by God that that will not happen. When I ask him, but
25 you do understand that a jury can vote guilty, I mean,

1 that's one of the possible outcomes of a trial, he tells
2 me, no, that's not possible. I've asked him: Is that
3 because God told you directly that no matter what
4 happens, no matter what people say, the jury will vote
5 not guilty? And he tells me: Yes.

6 He is also convinced of his innocence. He will, I'm
7 sure, answer the Court that he believes he is. But
8 those are in my opinion two separate concerns or issues.

9 THE COURT: Okay.

10 MR. HUFFMAN: And when I spoke with Judge
11 Armstrong, I explained that my client had told me that I
12 was a messenger of God, that I was here to mediate on
13 behalf of God, that my brain had been blessed and that I
14 was blessed so that I could represent him. Mr. Morgan
15 is not deviating from those issues. When I spoke with
16 him again on Friday at length, he confirmed all of that
17 again.

18 The question comes in -- in my opinion, I do not
19 believe that Mr. Morgan can assist me, which is one of
20 the aspects of this competency question, because no
21 matter what I try to discuss with him in regards to
22 potential witnesses or evidence, I can't get over the
23 hurdle that it has been preordained by God that it will
24 be a not guilty.

25 So I understand that Judge Armstrong has ruled on

1 this, and I'm not trying to --

2 THE COURT: Was it the same issue?

3 MR. HUFFMAN: It was the same issue, Your
4 Honor. I told the judge that I had concerns about his
5 competency because of his -- I think it's more than a
6 belief structure in religion. I think it's interfering
7 with his ability to assist me in his defense because he
8 cannot openly and intelligently discuss with me the
9 potential aspects of a defense because he can't get over
10 this preordainment by God that it is impossible for a
11 jury to vote guilty.

12 THE COURT: Did he ever have a competency
13 eval?

14 MR. HUFFMAN: No, he has not, Your Honor.

15 THE COURT: Did Judge Armstrong engage in
16 colloquy with him?

17 MR. HUFFMAN: She did, Your Honor. And she
18 also allowed me to ask questions of Mr. Morgan, which I
19 did.

20 THE COURT: Okay. And at that point in time,
21 she wasn't persuaded that he couldn't assist you?

22 MR. HUFFMAN: She was not persuaded that he
23 was incompetent stating that there was no suggestion
24 of -- and, please, Mr. Richey, step in if you think I'm
25 omitting anything. She felt that he did not have a

1 stated mental health issue, that his statements to the
2 court were not greatly different than other clients'
3 firmly-held beliefs that they were not guilty, and that
4 she found it to be no more than a firmly-held belief in
5 the client's not guilty based on a belief structure, is
6 what I recall her opinion being.

7 THE COURT: So it sounds to me like what she
8 was basically saying is that Mr. Morgan is convinced of
9 the righteousness of his position and believes that no
10 righteous God would allow a fair-minded jury to convict
11 him.

12 MR. HUFFMAN: Well, I'm not sure she said it
13 that way.

14 THE COURT: But that's what it sounded like.

15 MR. HUFFMAN: I took it that she felt that
16 his statements were no more than just because I'm
17 innocent it's not possible for a jury to find me guilty.
18 And that it was couched in faith. And what I was
19 concerned with and told Judge Armstrong is that I don't
20 think that's what's happening with Mr. Morgan, because
21 an individual could think they were guilty and still
22 believe that God had preordained the outcome and made it
23 impossible for a jury to vote guilty even though they
24 were guilty.

25 THE COURT: Sure.

1 MR. HUFFMAN: And in the same light, just
2 because an individual thinks that they are innocent,
3 that is separate from their belief that God has
4 preordained that the outcome will be not guilty.

5 THE COURT: Okay.

6 MR. HUFFMAN: And if the State thinks that
7 I'm misrepresenting, it's not my intention. Please
8 chime in.

9 MR. RICHEY: I think that's pretty accurate,
10 Your Honor. One thing that is different from what
11 Mr. Huffman was saying today from what happened --
12 whenever it was -- with Judge Armstrong, is that Judge
13 Armstrong I think was focused on whether or not the
14 defendant had an adequate understanding of the charges
15 against him and who everybody was.

16 Mr. Huffman today raised a different issue which was
17 not discussed in that hearing which was whether or not
18 the defendant can assist him. I know that's a separate
19 issue -- that it's another prong of the competency, but
20 that was not discussed at that hearing. So the Court
21 hasn't asked me for my input. I get very hesitant about
22 these issues because we usually get burned no matter
23 what we do.

24 THE COURT: Believe me, I understand. I've
25 been burned recently myself for not conducting an

1 adequate colloquy with a gentleman who wouldn't conduct
2 an adequate colloquy with me, and somehow or other I was
3 supposed to make that all better. So I'm more than
4 happy to hear any suggestions you might have.

5 MR. RICHEY: Well, my gut instinct, which is
6 totally not legally binding, but my gut instinct is that
7 Mr. Morgan does understand what's going on based on his
8 interview that we've watched and based on his
9 presentation and so on. The problem is that I don't
10 know enough about the law regarding competency to know
11 whether a belief like that does qualify as somebody who
12 doesn't have -- who is not knowingly or intelligently
13 able to assist counsel. I just don't know.

14 That's where I get very hesitant because I don't
15 want to be in the position where the Court is conducting
16 a colloquy, satisfied that he understands, but suddenly
17 there's a prong there that he's not able to assist
18 Mr. Huffman and then we are in the position of why
19 wasn't the competency evaluation ordered. I just don't
20 know the answer to that.

21 So, I don't know if the solution is to spend
22 20 minutes looking through Westlaw or if the solution is
23 to -- you know -- I have very little to offer.

24 THE COURT: That's okay. Mr. Huffman,
25 getting back to you, I want to make sure I firmly grasp

1 what you're telling me is offers have been made to
2 Mr. Morgan, you have relayed those offers to Mr. Morgan,
3 given him your best professional advice on the risks
4 inherent in not taking the offers, the benefits inherent
5 in taking the offers, and it's your belief, I guess,
6 that Mr. Morgan has really not been listening to that
7 advice because he is listening to a higher power who
8 says that he can't be convicted. Is that kind of how it
9 works?

10 MR. HUFFMAN: That is part of it, Your Honor.
11 I didn't realize that I was being ineffective in
12 explaining when we were in front of Judge Armstrong that
13 I also thought he wasn't able to assist me. If the
14 State doesn't recall that, it's possible that I didn't
15 do a very good job. I thought I was covering that as
16 well. I may have done a better job today. We always
17 improve.

18 But it goes beyond just the offer, Your Honor. It
19 goes into being able to discuss possible strategy and
20 the use of one witness over another, the benefit of one
21 witness over another, how a witness may impact the
22 situation. Being able to assist in the defense also has
23 to include being able to understand the defense and how
24 to proceed and what we're doing or what we're trying to
25 do.

1 It becomes most clearly into focus that this is
2 related to -- I don't know how to phrase it without
3 being insulting -- but this preordained belief in God's
4 control over the overcome of the jury. That becomes
5 most obvious when discussing an offer with Mr. Morgan.

6 THE COURT: It also sounds to me like what
7 you were saying before is he puts a lot of faith in you,
8 I guess, because he believes that you were the one
9 essentially chosen to provide this assistance to him.
10 It sounds to me like, to couch it in a more positive
11 light, he's deferring to your judgment in every aspect
12 except the question of whether to take a State's offer.

13 MR. HUFFMAN: I wouldn't agree with the last
14 portion that he is deferring to me on every decision,
15 but whether to take a State's offer.

16 THE COURT: It sounds to -- I thought what
17 you were saying was he's not able to assist you in
18 talking about witnesses you might want to call,
19 strategies about who you might want to cross, who you
20 might not want to cross-examine, all those calls that
21 are inherently your judgment calls in the long run. He
22 can certainly have input. There's no doubt about that.
23 But the fact that he may choose not to does not
24 necessarily mean he's incapable of it.

25 MR. HUFFMAN: Correct, Your Honor. I'm not

1 saying that a client who says I trust my attorney, go
2 ahead and run my case, that's not incompetence.

3 THE COURT: Right.

4 MR. HUFFMAN: But a client who when you
5 discuss it with them and they can't -- or it appears
6 that because of a blockade or a difficulty or hurdle,
7 that they can't assist you in it. I made the comment
8 that he's told me I'm the messenger, that I'm the
9 mediator, that my brain has been blessed to show just
10 how extreme this belief is because I think it goes
11 beyond faith. It becomes most obvious when we're
12 discussing an offer from the State, but it exists in
13 other aspects of our conversation as well.

14 I just don't think that someone can assist me in
15 their defense when the assumption is that no matter what
16 happens, no matter what the witnesses do, no matter what
17 they say, no matter what is before a jury or a judge,
18 that the decision of the jury is already preordained.

19 THE COURT: Okay.

20 MR. HUFFMAN: Because most clients would be
21 able to say, yes, I understand I could lose. I don't
22 think I'm going to. I know I'm not going to because of
23 X, Y or Z; my great witness, my great alibi, my great
24 presence in front of the jury, my great attorney. But
25 when those aren't the reasons given to me, when it's

1 just I know I'm not going to lose because God has
2 preordained this, then that's my concern.

3 THE COURT: Do you want me to conduct the
4 colloquy, counsel? Or would you like to at least start
5 the dialog? There's a part of me that's always loathe
6 to wade in where I don't know where I'm headed or what
7 they may say to me on the record. I'm more than happy
8 to do it unless you would like to at least start the
9 colloquy and maybe help me figure out where you would
10 like me to go with it.

11 MR. HUFFMAN: I would be happy to start.

12 THE COURT: Why don't you go ahead then.

13 Thanks.

14 MR. HUFFMAN: Mr. Morgan, we've talked about
15 this case --

16 THE COURT: You need to speak up a little.

17 MR. HUFFMAN: Mr. Morgan, we've discussed
18 this issue several times. And I don't want you to go
19 into the facts of the case. I don't want you to
20 necessarily go into what you and I have discussed.
21 Because everything you say is on the record, which means
22 that it's being written down.

23 But when I talk to you about God's role in this
24 case, is it true that you've told me that God has
25 preordained that the jury will vote not guilty?

1 THE DEFENDANT: Yes, because the truth is
2 that when one is innocent -- because in this case I
3 never touched --

4 MR. HUFFMAN: Again, I don't want you to talk
5 about the case. I'm just asking you about your opinion
6 on what God is going to do in your trial. I've
7 explained to the Court that you've told me that you
8 think you're innocent. But what the Court wants to know
9 is: Has God already decided what the outcome of this
10 trial is going to be?

11 THE DEFENDANT: Well, yes, because -- because
12 I'm innocent, it is unjust for me to be condemned to go
13 to prison.

14 MR. HUFFMAN: Have you told me that no matter
15 what the witnesses say, God will make sure that the jury
16 votes not guilty?

17 THE DEFENDANT: That's correct.

18 MR. HUFFMAN: And have I told you that it's
19 possible you could lose your trial?

20 THE DEFENDANT: That's right.

21 MR. HUFFMAN: Based on what witnesses say to
22 the jury and based on the jury getting to make up its
23 own mind?

24 THE DEFENDANT: That's right.

25 MR. HUFFMAN: And have you told me that

1 that's not possible, that the jury could vote guilty,
2 because God has already decided that it is not guilty?
3 Have I told you that the jury could vote guilty?

4 THE DEFENDANT: That's right.

5 MR. HUFFMAN: And you told me that that's not
6 possible because God has already decided that the jury
7 will vote not guilty.

8 THE DEFENDANT: That's right.

9 MR. HUFFMAN: And you believe that no matter
10 what happens during the jury trial that God will not let
11 the jury vote guilty.

12 THE DEFENDANT: That's right.

13 MR. HUFFMAN: And I have told you that that's
14 wrong, that you can have faith in God, but that this
15 jury in this trial can vote guilty, and that God is not
16 preordaining the outcome as not guilty. Do you remember
17 me telling you that?

18 THE DEFENDANT: That's right.

19 MR. HUFFMAN: But you still believe that God
20 has already decided that this jury trial will end with
21 the jury voting not guilty?

22 THE DEFENDANT: That's right.

23 MR. HUFFMAN: No matter what happens during
24 the jury trial?

25 THE DEFENDANT: Yes.

1 MR. HUFFMAN: No matter what the witnesses
2 say?

3 THE DEFENDANT: That's right.

4 MR. HUFFMAN: No matter what the evidence
5 shows?

6 THE DEFENDANT: That's right.

7 THE COURT: Mr. Morgan, I understand that you
8 don't think -- I'm sorry.

9 THE INTERPRETER: Go ahead, Your Honor.

10 THE COURT: Mr. Morgan, what I think I hear
11 you saying is that you don't think God would let a jury
12 convict you in this case. Is that correct?

13 THE DEFENDANT: That's right.

14 THE COURT: And I take it -- or I understand
15 that the reason you're saying that is because you don't
16 think God would allow a jury to condemn you -- I think
17 were your words -- because you are innocent?

18 THE DEFENDANT: That's correct.

19 THE COURT: Have you ever been disappointed
20 in God before?

21 THE DEFENDANT: No, never.

22 THE COURT: You've never been let down by
23 what you thought God was going to do?

24 THE DEFENDANT: No, never.

25 THE COURT: Can you conceive in any way the

1 possibility that the jury may decide that you're not
2 innocent?

3 THE DEFENDANT: Yes, they could, but God is
4 not unfair, and he won't allow it.

5 THE COURT: Okay. God may not be unfair, but
6 you also understand even the best juries sometimes make
7 mistakes. Do you understand that as well?

8 THE DEFENDANT: That's right.

9 THE COURT: And do you understand that by
10 going to trial on this, even if you are innocent, you do
11 run the risk that the jury could make a mistake and find
12 you guilty? Do you understand that, sir?

13 THE DEFENDANT: I understand.

14 THE COURT: I think I'm stuck, Mr. Huffman.

15 MR. HUFFMAN: All I can tell the Court, Your
16 Honor, is the question that the Courts asks and gets an
17 answer is completely different than the answers that I
18 receive when I ask Mr. Morgan the questions. The Court
19 is asking is it possible they could make a mistake, and
20 I hear Mr. Morgan say yes. But that's the first time
21 I've ever heard that. I'm not sure if he understands
22 the Court's question.

23 THE COURT: Counsel, I don't speak Spanish.
24 I don't pretend to be perfect. I'm just trying to work
25 with the concept that he's expressing.

1 MR. HUFFMAN: Yes, Your Honor.

2 THE COURT: It seems to me that he
3 understands that there is indeed a possibility that a
4 jury could, in his mind, make a mistake and convict him
5 even though he's innocent and that ultimately God
6 doesn't control the outcome.

7 Just for what it's worth, I don't know whether he's
8 guilty or not. That's a question for the triers of fact
9 to decide once we get there. If he's innocent, I would
10 certainly hope that God makes the right result happen.
11 But he's not telling me that that's inevitable.

12 Mr. Huffman, you wanted to say something?

13 MR. HUFFMAN: I'm just wondering if we could
14 ask the questions that the Court was just running over,
15 which is: Mr. Morgan, do you believe that God does
16 control the outcome of this case?

17 THE DEFENDANT: Well, the thing is that God
18 controls everything. Judges, attorneys, prosecutors,
19 they are all appointed by the supreme being. And I
20 can't imagine that God being unjust and seeing that I am
21 innocent would find me guilty.

22 MR. HUFFMAN: You answered the Judge's
23 question that you understand the jury could make a
24 mistake and vote guilty. Did you hear the Judge's
25 question?

1 THE DEFENDANT: Yes. A jury can make a
2 mistake, but God never makes a mistake.

3 MR. HUFFMAN: Okay. So will God let the jury
4 make a mistake in your case and vote guilty?

5 THE DEFENDANT: This is what I'm thinking at
6 the same time that God won't allow the jury to find
7 against me.

8 MR. HUFFMAN: So when you said to the Judge
9 you understand the jury could make a mistake and find
10 you guilty, does that mean that you believe God will let
11 them make that mistake and that, at the end of your
12 trial, it's possible the jury will vote guilty and God
13 will allow that to happen?

14 THE DEFENDANT: God allows everything. I
15 don't -- I don't know how to explain myself. But why?
16 Why would God allow a jury to find against me when the
17 truth is that I never -- he's a supreme being -- and I
18 never touched this girl?

19 MR. HUFFMAN: The question is not why. The
20 question is: Is it possible that God would allow the
21 jury to vote guilty in your trial, this trial that's
22 going on right now?

23 THE DEFENDANT: This is -- I don't know. I
24 don't know how to solve this problem, you know, when
25 we're talking about God allowing. If I'm innocent, how

1 will God allow -- well, I just can't conceive that God
2 would allow me to be condemned.

3 THE COURT: Counsel, I don't know that we can
4 get much further.

5 MR. HUFFMAN: Yes, Your Honor.

6 THE COURT: And I don't want to lose the
7 jurors we have.

8 MR. HUFFMAN: I understand, Your Honor. I
9 would just still make my position that when I speak to
10 him, he is unwilling to accept that God would allow a
11 jury to vote guilty.

12 THE COURT: I fully understand that. But the
13 long and the short of it is that his assertions are
14 predicated on his firmly-held belief that he's innocent.
15 And that's not unlike many defendants who say I'm going
16 to trial because I'm innocent, and the jury can't find
17 me guilty if I'm innocent. He just stakes his faith on
18 a higher power. But it still boils down to the same
19 assertion that he's innocent.

20 I would venture to guess that if Mr. Morgan were to
21 opine what would happen if he was guilty, then God would
22 allow the jury to convict. That's ultimately the
23 question that the jury has to pass on. Nothing we say
24 is going to shake him from his firmly-held belief that
25 he's innocent, number one, and, number, two, that a

1 righteous God would never let an innocent person be
2 condemned.

3 I don't know what more to say about it other than I
4 would not want to question his belief system. If that's
5 the way he believes, I'm certainly not in any position
6 to question it. In my experience, God's involvement in
7 human matters is somewhat limited on occasion.
8 Otherwise, everything would be right.

9 So, we can certainly revisit this later,
10 Mr. Huffman, if more comes to light that warrants it.
11 But I'm not sure where to go from here. I have to say
12 no at this point. Kenya, why don't we call for the 50.
13 Go ahead, Mr. Huffman.

14 * MR. HUFFMAN: I was just talking with the
15 State as to whether or not the Court was going to do
16 hardships prior to the handout.

17 THE COURT: Here's my game plan, and it may
18 be a good one; it may not. We will have to wait and
19 see. I'm going to bring them in, give them the general
20 instructions I always give, introduce you all and the
21 case a little bit, go through those questions with each
22 and every one of them to primarily get a little buy-in
23 to the possess.

24 After I do that, I will give them the hardship
25 option. And after we find out who automatically doesn't

1 want to be here anymore, then we will go to the
2 prospective juror informative handout sheet, I'll call
3 it, and go from there. The reason I would like to get
4 the hardships before we do that is so that we don't
5 waste an inordinate amount of time talking to people
6 that we were going to let go for a different reason
7 anyway.

8 MR. HUFFMAN: That's what we both thought as
9 well.

10 THE COURT: I'm not exactly sure where the
11 most elegant place is to put that, but I think after the
12 questionnaire here -- or the questions on the easel.
13 That's probably the best point. Okay?

14 MR. HUFFMAN: Thank you, Your Honor.

15 THE COURT: And I don't know where we will
16 take the afternoon recess. We will have to kind of wait
17 and see how things evolve, if that's okay with you all.

18 MR. RICHEY: Your Honor, with regard to the
19 hardships, would it be appropriate to discuss what we
20 think the length of this case is going to be?

21 THE COURT: I was going to ask you both about
22 it. I was sort of the mind we would be finishing
23 somewhere in the middle of next week. What do you
24 think?

25 MR. RICHEY: Yes. I was thinking early to

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Eric Broman, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of Brief of Respondent, in STATE V. GONZALO MORGAN, Cause No. 65623-6-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

U Brame
Name
Done in Seattle, Washington

5/29/12
Date