IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. BRIAN DAVID MITCHELL, Defendant.	**FINDINGS AND CONCLUSIONS RE: DEFENDANT'S COMPETENCY TO PROCEED TO TRIAL** Case No. 031901884 Judge Judith S. Atherton

THIS MATTER COMES BEFORE THE COURT for a determination of Defendant's legal competence to proceed to trial. On February 16-17, 2005, March 11, 2005, May 24-25, 2005, and July 7, 2005, the court convened hearings for the purpose of receiving evidence related to whether Defendant is competent to proceed to trial. Although Defendant was initially present for these hearings, he was escorted from the courtroom for disruptive conduct following the court's direct warnings that his obstreperous behavior would result in his removal. Defendant's counsel, Vernice Trease, Kimberly Clark, Heidi Buchi, Patrick Corum, Mark Helm, and Heather Brereton were present in the courtroom for the duration of the hearings. The State was represented by Kent Morgan, Clark Harms, Jeff Hall, and Alicia Cook. The court has carefully considered all relevant statutory provision and case law, each of the competency evaluation reports submitted to the court, and the evidence presented during the competency hearings. Now being fully advised, the court

concludes that Defendant is not competent to proceed to trial.

Procedural History

On March 27, 2003, over Defendant's objection, the State filed a Petition to Inquire into Competency of Defendant. On April 9, 2003, the court granted the State's petition and, pursuant to section 77-15-5, the proceedings in the case were stayed. Dr. Stephen Golding and Dr. Noel Gardner were subsequently appointed to evaluate Defendant. Their competency evaluation reports were filed with the court in September 2003. Dr. Golding concluded that Defendant was not competent to proceed, while Dr. Gardner concluded that Defendant was competent to proceed. At a scheduling hearing convened on December 11, 2003, a competency hearing was scheduled for January 27, 28, and 29, 2004. At this scheduling conference counsel for Defendant moved the court to close the competency proceedings. However, prior to the competency hearing, lead counsel for Defendant withdrew and on January 22, 2004 the court granted Defendant's motion for a continuance. New competency hearing dates were then scheduled on May 4, 5, and 6, 2004. As a result of litigation related to whether the competency hearing should be open to the public, the May 2004 competency proceedings were continued. New competency hearing dates were ultimately scheduled for August 31, 2004 and September 1 and 2, 2004. On August 3, 2004, the court denied Defendant's motion to close the competency hearing to the public. On August 31, 2004, counsel for

Defendant stipulated to Defendant's competency to proceed. At a scheduling conference convened on September 2, 2004, trial dates were scheduled for February 2005.

On November 9, 2004, counsel for Defendant filed a Petition for Inquiry into Competency to Proceed. The court ordered a new round of competency evaluations by Dr. Golding and Dr. Gardner and ordered that their new competency evaluation reports be submitted by January 4, 2005. Dr. Gardner submitted his report finding that Defendant was still competent to proceed. Dr. Golding, however, requested an additional 30 days to submit his report. On January 6, 2005, the court granted Dr. Golding's request, struck the trial dates, ordered Dr. Golding to file his report with the court by February 7, 2005, and scheduled a competency hearing for February 15 and 16, 2005. Dr. Golding submitted his report on February 7, 2005 and concluded that Defendant was still incompetent to proceed. Defendant's competency hearings were ultimately conducted on February 16-17, 2005, March 11, 2005, May 24-25, 2005, and July 7, 2005.

Legal Standard

Under Utah law, "[n]o person who is incompetent to proceed shall be tried for a public offense." Utah Code Ann. §77-15-1. A person is incompetent to proceed if he suffers from a mental

disorder[1] or mental retardation that results in either

> (1) his inability to have a rational and factual understanding of the proceedings against him or of the punishment specified for the offense charged; or (2) his inability to consult with his counsel and to participate in the proceedings against him with a reasonable degree of rational understanding.

Utah Code Ann. §77-15-2(1)-(2). See also Dusky v. United States, 362 U.S. 402 (1960) (the test for competency is whether a defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and whether he has a rational as well as factual understanding of the proceedings against him."). However, a person is presumed to be competent unless the proponent of incompetency persuades the court, by a preponderance of the evidence, that the defendant is not competent to proceed. See Utah Code Ann. §77-15-5(10).

The initial determination the court must make in this case is whether Defendant is suffering from a mental disorder. If he is not, then pursuant to section 77-15-2 he cannot be incompetent to proceed. On the other hand, if Defendant is found to be suffering from a mental disorder, then determining whether he is competent to proceed requires the court to consider a variety of factors,

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[1]During the course of the competency hearings, the parties sparred over whether a personality disorder is a mental disorder. From the court's point of view, this is a non-issue. Given the facts of the case, if Defendant has a delusional disorder, then he has a mental disorder that undermines his competency to proceed. If, on the other hand, Defendant has a narcissistic personality disorder, then he has a disorder that does not undermine his competency to proceed. Whether or not a narcissistic personality disorder is a mental disorder does little to assist the court in determining whether Defendant is competent to proceed.

including Defendant's present capacity to

> comprehend and appreciate the charges or allegations against him; . . . disclose to counsel pertinent facts, events, and states of mind; . . . comprehend and appreciate the range and nature of possible penalties . . . that may be imposed in the proceedings against him; . . . engage in reasoned choice of legal strategies and options; . . . understand the adversary nature of the proceedings against him; . . . manifest appropriate courtroom behavior; and . . . testify relevantly, if applicable.

Utah Code Ann. §77-15-5(4)(a)(i)-(vii). Central to the court's considerations is whether Defendant has the rational understanding, or the capacity to make reasoned choices,[2] required in the governing statute. Defendant lacks the required rational understanding if he has a mental disorder that prevents him from having a sufficient contact with reality; that is, it "precludes him from perceiving accurately, interpreting, and/or responding appropriately to the world around him." Lafferty v. Cook, 949 F.2d 1546, 1551 (10th Cir. 1991). A rational understanding is essential because it ensures that Defendant is not making false factual statements to his attorneys, see id., and enables him "to make

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[2]Support for this conclusion can also be found in Godinez v. Moran, 509 U.S. 389 (1993). In that case, the United States Supreme Court considered the question of whether the competency standard for pleading guilty was higher than the competency standard for standing trial. The Ninth Circuit held that in order for a defendant to be competent to plead guilty, the trial court must first determine that the defendant has the capacity to make reasoned choices among alternative courses of action. The Ninth Circuit characterized this standard as higher than the standard for determining competency to stand trial. The United State Supreme Court reversed, holding that the standards were the same. In reaching this conclusion, the Court suggested that there was no difference in meaning between "reasoned choice" and "rational understanding." See id. at 397 ("How the ['reasoned choice'] standard is different from (much less higher than) the Dusky standard--whether the defendant has a 'rational understanding' of the proceedings--is not readily apparent to us.").

decisions on the basis of a realistic evaluation of his own best interests." Id. at 1555. This is especially true in the context of Defendant's capacity to make reasoned choices about whether the presentation of a mental health defense would be in his overall best interests. According to the 10th Circuit Court of Appeals, a defendant suffering from a mental disorder that impairs his ability to recognize that he has a mental disorder and precludes him from "mak[ing] decisions on how best to present his mental state to a judge and jury," id. at 1556, does not possess the rational understanding due process requires.[3] However, it must also be noted that merely because a defendant does not permit his counsel to present a viable defense based upon his mental health, "[w]hile [this] decision may [be] legally imprudent, it cannot in and of itself constitute incompetence." State v. Woodland, 945 P.2d 665, 669 (Utah 1997).

In addition, although a defendant's courtroom behavior "may in some cases constitute relevant evidence on the issue of competency," Lafferty, 949 F.2d at 1555, physical demeanor alone "sheds no light on the extent to which [a defendant's] defense decisions are driven by a deluded perception of reality." Id.

[3]In Lafferty, the defendant was operating under a paranoid delusional system, but believed that he was not mentally ill and, therefore, refused to allow his attorney to present a mental illness defense. The Tenth Circuit held that "[t]his result cannot be reconciled with the requirements of due process." Lafferty v. Cook, 949 F.2d 1546, 1556 (10th Cir. 1991). This conclusion appears to imply that defendants who are diagnosed with a mental illness, but who also (1) contend that they are not mentally ill and (2) refuse to permit a mental illness defense, cannot be found competent to proceed.

Indeed, "a defendant suffering from [a mental] illness may outwardly act logically and consistently but nonetheless be unable to make decisions on the basis of a realistic evaluation of his own best interests." Id. Conversely, a defendant acting erratically or seemingly irrationally does not necessarily warrant the conclusion that he suffers from a mental illness that undermines his competency to proceed. Finally, if it is determined that a defendant in fact suffers from a delusional belief system, a finding of competency cannot be made simply because he acts consistently with his delusional beliefs. See id. at 1554-55 (it is inconsistent with due process for "a finding of competency [to be] made under the view that a defendant who is unable to accurately perceive reality due to a paranoid delusional system need only act consistently with his paranoid delusion to be considered competent to stand trial.").

Summary of the Evidence

Background of Defendant

Defendant was born on October 18, 1953 to Shirl and Irene Mitchell. He was the third of six children born into the Mitchell family. All of the evaluators agree that serious discord existed between Defendant's parents and that the family was highly dysfunctional. Defendant was raised in the Church of Jesus Christ of Latter-day Saints ("LDS"), as were all of his siblings. Although he was inquisitive, bright, and playful as a child, he

began to change during his early adolescent years. When he reached 13-15 years of age, he gradually started withdrawing from his family. Family members recall that Defendant would often isolate himself in his room and described him as a "loner" with few friends. In addition, although he was known for teasing and playing jokes, his treatment of his mother and siblings became aggressive, cruel, and sometimes sadistic. There were incidents of unpredictable outbursts and occasions where Defendant would upset family members by making physical and psychological threats of harm against them. At times Defendant would become withdrawn and unsociable. At some point during his adolescence he adopted his father's strict adherence to a fruit diet and would accuse his mother of trying to poison him by feeding him food other than fruit. At times he would refuse to ride his bicycle or in a car because he feared the fumes would enter his lungs and infect him. Although others described Defendant as an intellectually bright and creative individual, he generally lacked the motivation to perform well in school and, ultimately, dropped out of high school.[4] At that time, Defendant abused alcohol and became involved in considerable drug use. When he was approximately 16 years old, he had a single episode of sexually acting out when he exposed himself to an 8 year old girl.

As a result of this incident of sexually acting out, Defendant

[4]Defendant subsequently obtained his GED.

was referred for a mental health evaluation by the juvenile court. Based upon the psychological testing that was performed, the evaluator diagnosed Defendant with a "Behavior Disorder of Adolescence--withdrawing reaction with some paranoid tendencies." Golding Competency Evaluation Report at 5. See also, Skeem Competency Evaluation Report at 7. Therapy, with parental involvement, was strongly recommended, although a complete psychopathological evaluation was never conducted. He did attend several therapy sessions and seemed to improve. However, as a result of his unwillingness to keep the scheduled therapy appointments, treatment ceased and juvenile court supervision of Defendant's case ended.

When Defendant was approximately 18 he met and became friends with Karen, a 16 year old runaway, whom he later impregnated and married. During at least a portion of their marriage, Defendant worked at the shop of a cabinetmaker. Two children, a boy and a girl, were born during their relationship together, but the marriage ultimately dissolved after three years as a result of mutual drug abuse, possible domestic abuse, and infidelity. Following the divorce, Karen re-married and began seeking legal custody of her two children. Although Defendant was attending the University of Utah and apparently doing well, he feared losing custody of his son and daughter and, consequently, absconded with the children to a Hare Krishna commune in West Virginia. While at

the commune, Defendant embarked on a self-described search for God. However, after feeling pressure to become a Hare Krishna, which he believed was not right for him, he moved himself and his children to New York City where he lived in an impoverished neighborhood with an African-American woman. They subsisted on government welfare. As a result of several riots in the community, Defendant concluded that the neighborhood was too dangerous and so he and his children moved again, first to a farm and then an apartment in New Hampshire. While there, he provided for his family by working as a mechanic and collecting government welfare. During the four years he lived in the New England area, Defendant continued his search for God by sampling various Protestant faiths, Christian Science, and Buddhism. Ultimately, Defendant made the decision to return to Utah with his children and made plans to reside in a commune in Southern Utah to ensure that the children would be out of Karen's reach.

After arriving in Utah, Defendant and his brother, who had recently "rediscovered" the LDS Church, traveled to Southern Utah to inspect the commune. During this trip, Defendant, now 27, had a conversion experience that brought him back to the LDS Church. That weekend he borrowed his brother's suit and went to church. During this period of time, Defendant took several classes at the University of Utah, attended church, and became more interested in other people and more involved with his family. Within a year, he

met his second wife, Debra, and they married. Two children were born during their marriage together, but by all accounts their relationship was rife with conflict and dysfunction. Debra was apparently domineering and controlling in ways that were humiliating to Defendant. Although he would patiently suffer through this abuse, he would inevitably reach a breaking point and Defendant would respond aggressively. On the other hand, there were reports that Defendant was abusive towards Debra. In addition, there were also some allegations that Debra may have been abusive to her step-children. Although Defendant was deeply attached to his two children from his marriage to Karen, in order to preserve his marriage to Debra, he felt compelled to relinquish his parental rights to his children and place them into foster care. As part of the process for relinquishing his rights, Defendant's competency was evaluated and he was found to exhibit no symptoms of mental illness and was able to understand the consequences of his decision to allow another family to adopt his children.

As a result of the marital conflict with Debra, Defendant sought help through counseling and consented to participate in a support group. While attending this support group, he met his third wife, Wanda Barzee, who was also in an abusive relationship. As soon as Ms. Barzee and Defendant were divorced from their respective spouses, they were married in a civil ceremony on

November 29, 1985. During this time, Defendant was gainfully employed at O.C. Tanner as a die cutter and Ms. Barzee spent her time as a homemaker and practicing playing the organ. For several years, the marriage was a happy one: Defendant was more involved with his family and active in mainstream LDS Church activities, including ecclesiastical responsibilities in his local LDS ward and stake. On January 23, 1988, Ms. Barzee and Defendant were sealed together in an LDS temple and, eventually, both became temple workers in the Salt Lake LDS Temple.

It was during this time that changes began to occur. Family members recall that Defendant became more preoccupied with religious ideas and describe him as being self-righteous and increasingly adamant that he had a "special role." Both Defendant and Ms. Barzee began to isolate themselves from their families. When family members would question the two about their beliefs and conduct, they would often react defensively and appeared to become increasingly paranoid. At one point, while re-reading a talk he had given in church concerning his conversion over a decade earlier, Defendant came to the realization that his years in the LDS Church had decreased his faith and increased his pride. To him, the LDS Church had become apostate as a result of materialism and complicity with secular government and that Church leadership was superficial and hypocritical. Over time, both Defendant and Ms. Barzee increasingly viewed themselves as special, unique, and

superior because of their religious experiences and self-understanding. In 1993, as a result of co-workers' failure to attend an organ recital given by Ms. Barzee in Salt Lake City, Defendant quit his job of eight years at O.C. Tanner. They eventually stopped attending church services and withdrew from their temple assignments because they believed they would soon receive a higher and more pure calling. Based upon Ms. Barzee's inspiration in the temple one day, they made the choice to sell their worldly belongings and live in a trailer. Eventually they left the trailer and became completely homeless. Both of them sought to participate in several fringe groups including LDS fundamentalists, groups critical of the government, such as Bo Gritz, and an alternative health practices group led by Dr. C. Samuel West. All of these groups ultimately rejected Defendant and Ms. Barzee because of their overbearing attitudes with respect to their religious beliefs.

In 1995, as fulfillment of their religious calling, Defendant and Ms. Barzee commenced a journey around the country proselyting "without purse or script" and visiting sites historically significant in the early LDS Church. All of their travels were carefully documented in a treatise written by Ms. Barzee entitled "Journey Through the Land." The two lived a hand-to-mouth existence that depended upon panhandling, hitchhiking, and skillfully navigating the social welfare system. Moreover, both

appeared to be intensely preoccupied with their religious beliefs and rarely engaged in genuine dialogue with others, but constantly preached their brand of religion to anyone who would listen. In 1996, Defendant and Ms. Barzee took the Hebrew names of David, meaning "Beloved," and Eladah, meaning "God adorneth," respectively. That year they built a handcart in California and pulled it across the Golden Gate Bridge. The following year, they began to wear "garments of humility," which were robes handmade by Ms. Barzee. In 1998, they placed documents regarded by them as sacred into a handmade covered wagon they viewed as the Ark of the Covenant and pulled it from Utah to Idaho. In 1999, they built a "hand house" which they viewed as Noah's Ark and pulled it on Christmas day. The following day, Ms. Barzee took the name of Hepzibah ("My delight is in thee") Eladah Isaiah and Defendant took the name of Immanuel ("God is with us") David Isaiah.

In 2000, Defendant received a revelation commanding him to restore the law of celestial marriage--or plural marriage--a religious tenet long abandoned by the LDS Church,[5] by taking multiple wives. As a step towards fulfillment of this commandment, Defendant married an African-American woman who was seven months pregnant. This marriage quickly failed and he subsequently made an unsuccessful marriage proposal to another woman. With these

[5]LDS theology does not equate celestial marriage with plural marriage. Although plural marriage has clearly been abandoned, see Doctrine and Covenants, Official Declaration 1, celestial marriage has not. See Doctrine and Covenants 131.

failures as a backdrop, Defendant received a revelation that he was to take younger, more pliable wives between the ages of 10 and 14 and to do so by force. In 2002, Defendant wrote a treatise entitled "The Book of Immanuel David Isaiah" and delivered it to his family members and Dr. West with the threat that the failure to recognize and receive the book would result in their destruction. According to Dr. West, Defendant yelled "hellfire and damnation" from the sidewalk at him and his family until Ms. Barzee was able to pull him away. As a result of a far more threatening confrontation stemming from the delivery of this treatise, Defendant's mother obtained a restraining order against Defendant and Ms. Barzee and had them removed from her home. When local LDS Church leaders were made aware of Defendant's treatise, he was excommunicated from the Church. Defendant and Ms. Barzee subsequently retreated to a makeshift lean-to in the hills above Salt Lake City.

During this entire period of time, family members describe Defendant and Ms. Barzee as being detached, distant, and, for the most part, unresponsive in their relationship with their families. Defendant's and Ms. Barzee's criticisms of those who disagreed with their religious tenets were often harsh and arrogant. They neglected caring for or taking responsibility for their own children, exploited their relationship with their families, and were controlling, demanding, and ungrateful. They would routinely use their sense of divine guidance to justify their behavior,

including conduct that family members clearly considered immoral and inconsistent with their previous values and beliefs. Defendant's family members have indicated that he has never admitted ever having any problems and has never apologized for his behavior or the things he has done.

On March 12, 2003, Defendant was arrested and jailed for the offenses alleged in his present criminal case and in June of that year he was transferred to the Forensic Unit at the Utah State Hospital for psychological observation. During his stay, Defendant was cooperative with Hospital staff and would participate in casual conversation, although he was unwilling, for the most part, to engage in dialogue related to his mental health and personal history. Defendant spent most of his time in his room singing hymns and reading the Bible and appeared confident that events in his case would unfold as God directs.

Dr. Jennifer Skeem's Competency Reports and Testimony

On February 16, 2005, Jennifer L. Skeem, Ph.D., testified. Dr. Skeem is an assistant professor of psychology at the University of California at Irvine with a specialty in forensic psychology. At the time she provided her testimony to the court, she had held her position for approximately ten months. Prior to her employment at the University of California at Irvine, she was employed for three years as an Assistant Professor at the University of Nevada at Las Vegas where she specialized in psychology and law. Dr.

Skeem received her doctorate in clinical psychology from the University of Utah where her graduate advisor was Dr. Stephen Golding. While working toward her degree, she obtained an internship at the Utah State Hospital and spent approximately four years learning to assess and re-assess patients charged with criminal offenses for competence to stand trial. After receiving her doctorate, she was a post-doctoral fellow at the University of Pittsburgh Medical Center where she performed research related to violence risk assessment and criminal behavior. Dr. Skeem has received significant grants to study personality disorder and its relationship to crime and violence. Although she has never before testified as an expert, she has specialized training and knowledge in the area of forensic psychology and has performed numerous forensic evaluations involving competency to stand trial. Dr. Skeem has published articles and lectured extensively on forensic psychology with specific emphasis in the area of competency to stand trial and criminal defense. Several of her published articles were collaborative efforts with Dr. Golding. Dr. Skeem is a member of the American Psychological Association as well as a member of the American Psychology and Law Society.

Dr. Skeem was hired by defense counsel in 2004 to perform a forensic psychological assessment of Defendant for the purpose of determining whether he was competent to proceed in the case. Her initial psychological report was submitted to defense counsel on

September 16, 2004. Based upon the case context at that time, her interviews[6] with Defendant, and a consideration of secondary material,[7] Dr. Skeem concluded that Defendant was suffering from a delusional disorder (psychotic disorder with fixed false beliefs), but that he was nevertheless "situationally" competent. Subsequent

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[6]Dr. Skeem spent approximately 15 hours personally interviewing Defendant.

[7]Dr. Skeem indicated in her initial psychological report that she relied upon the following and other secondary materials in rendering her initial diagnosis:

1. Personal interview of Defendant's brother, Tim S. Mitchell;
2. Personal interview of Defendant's mother, Irene J.S. Mitchell;
3. Personal interviews of Defendant's former associates, Carl, Daniel, and Steven West;
4. Personal interview of members of Defendant's defense team, Heidi A. Bushi, J.D. and Randall G. Smith, M.S.W.;
5. Chronological timeline of Defendant's life through 2003;
6. Medical, mental health, and other treatment summaries of Defendant from the Salt Lake Metro Jail;
7. Materials relating to Irene Mitchell's restraining order against Defendant;
8. Defendant's criminal history report from Utah Criminal Justice Information Systems;
9. Valley Mental Health records concerning services related to Defendant's juvenile court referral in 1979, crisis intervention for drug abuse in 1972, and family issues and relinquishment of child custody in 1983;
10. Children's Service Society of Utah records concerning services related to relinquishment of child custody;
11. Family Support Center records concerning services related to alleged child abuse;
12. O.C. Tanner employment records;
13. School records from Skyline High School, Salt Lake Community College, and the University of Utah;
14. Shirl Mitchell's (Defendant's father) letter to newsperson at ABC in 2003;
15. Utah State Hospital records concerning services related to paternal grandfather's admission;
16. Book of Immanuel David Isaiah, written by Defendant;
17. Defendant's letter to Wanda Barzee dated March 19, 2003 and son dated October 31, 1992;
18. Defendant's transcriptions of Wanda Barzee's blessings, competed on August 20, 2004;
19. "Journey Through the Land" and other writings by Wanda Barzee;
20. Writings and journal of Wanda Barzee;
21. Videotape of Defendant's FBI interview;
22. Videotape of Wanda Barzee's FBI interview;
23. Competency evaluation report of Defendant by Noel Gardner, M.D.;
24. Competency evaluation report of Defendant by Stephen Golding, Ph.D.;
25. Competency evaluation report of Wanda Barzee by Nancy Cohn, Ph.D.;
26. Competency evaluation report of Wanda Barzee by Jeffrey Kovnick, M.D.
27. Professional consultation with Joel Dvoskin, Ph.D.; and
28. Professional consultation with Nancy Cohn, Ph.D.

to the submission of the initial report, questions again arose concerning Defendant's legal competence, and Dr. Skeem was asked to re-evaluate Defendant. She submitted her second psychological report on February 1, 2005. As a result of significant changes in Defendant's thinking and behavior,[8] a review of additional secondary material,[9] and a change in the case context, Dr. Skeem concluded that while Defendant still suffered from a delusional disorder, he was now no longer competent to proceed to trial.

According to Dr. Skeem, Defendant generally believes that God protects him and directs his life and decisions. He also believes that the forces of good and evil are constantly in competition for the lives of individuals and that Satan works best through good people. Therefore, he is particularly vigilant about assessing a person's behavior in order to determine whether that person is influenced by Satan and has a malignant intent towards him. Specifically, although some of Defendant's religious beliefs may be described as "classical," e.g., that the world has become wicked

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[8]Dr. Skeem spent approximately 6 additional hours personally interviewing Defendant.

[9]Dr. Skeem indicated in her second psychological report that she relied upon the following secondary materials in rendering her most recent diagnosis:
1. Personal interview of Defendant's defense counsel, Heidi Buchi, J.D.;
2. Professional consultation with Thomas Grisso, Ph.D.;
3. Professional consultation with Richard Bonnie, J.D.;
4. Salt Lake Metro County Jail medical records through January 28, 2005;
5. Report of Dennis Couch on interviews with correctional officers and inmates at the Salt Lake Metro County Jail;
6. Book of Immanuel David Isaiah, update at of January 14, 2005;
7. Subsequent competency evaluation report of Defendant by Noel Gardner, M.D.; and
8. Subsequent competency evaluation report of Defendant by Stephen Golding, Ph.D.

and must repent, many of his religious beliefs are far more extreme. Defendant believes he is the Davidic King (i.e., a modern messiah) who will testify of the truth, restore plural marriage, and suffer at the hands of the wicked in a manner similar to Jesus Christ. This suffering will be a contemporary redemptive sacrifice and is essential to the restoration of Zion in the last days. If he is convicted, Defendant believes that a period of great destruction, famine, and war will follow when God will punish the wicked and prepare the world to receive him as a true prophet. If his conviction occurs in 2005, he believes that within seven years God will deliver him from prison and from the hands of the wicked for the purpose of leading the righteous to Zion. Sometime following his deliverance from prison, Defendant believes there will be a great battle between himself, as the King of Zion, and the Antichrist, who will be a man financed by the world bank who will rise up to rule America and think of himself as God. Defendant believes that he will prevail in his battle with the Antichrist and then rule at the right hand of God. Those who have been righteous will be with him, and he will be reunited with his wives.

Dr. Skeem testified that Defendant's religious beliefs[10] have

[10]According to Dr. Skeem, Defendant also possesses a wide range of social and political beliefs. These include a rejection of traditional medicine, which, in Defendant's view, is a sham perpetrated by doctors and pharmaceutical companies for power and financial gain, and the acceptance of lymphology as a form of natural healing. He also believes in constitutionalism and a variety of related tenets such as government has drifted away from the teachings of inspired

clearly affected how he approaches his case. While reading a letter sent by the prosecution, Defendant noticed that the language was hostile. As a result of his hyper-vigilance and attentiveness to "signs" that evil forces may try to influence him, according to Dr. Skeem Defendant suddenly understood that the prosecution team had an intense hatred of him and was in league with Satan in an attempt to undermine God's plan for him. He now believes he must endure sacrifice for the salvation of the righteous and must suffer a symbolic martyrdom by passively submitting to being convicted and incarcerated.

Dr. Skeem notes that a delusion is a "false personal belief based upon incorrect inferences about external reality and firmly sustained in spite of what everyone else believes, and in spite of what constitutes incontrovertible evidence to the contrary. The belief is not one ordinarily accepted by members of the person's subculture." Skeem Competency Evaluation Report at 11 (referring to DSM-IV at 765). Put succinctly, a delusion is a fixed, false belief. Dr. Skeem readily admits that distinguishing individuals with extreme religious beliefs from individuals with religious delusions is a difficult.[11] This is especially true in Defendant's

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forefathers, political and religious leaders are "drunk with power," the government welfare system oppresses the poor and the sick, and leaders of the United Nations and World Bank are conspiring to establish a Satanic "New World Order." What is significant for Dr. Skeem is the manner in which Defendant weaves the foregoing beliefs into his own life and mission as the Davidic King.

[11]Dr. Skeem indicated in her initial report that "it is difficult to distinguish individuals with eccentric religious beliefs from those with religious delusions[, although] a handful of studies have begin to address this

case because he is a member of a religious minority and does not manifest any signs of psychosis, such as disorganized speech or hallucinations, other than delusions. The difficulty in rendering an accurate diagnosis based upon the above definition of "delusion" was described by Dr. Skeem as follows: First, the definition requires that the belief be false, and yet religious beliefs are simply unverifiable. It is difficult, therefore, to determine whether a religious belief is true or false. Second, inconsistent with the definition, non-delusional religious beliefs are often held despite contradictory evidence. This makes it difficult to determine whether a religious belief is also a "fixed" belief. Third, given the numerous religious subcultures in existence, determining whether a religious belief is one not ordinarily accepted by members of a subculture can be a difficult task.

Dr. Skeem's conclusion that Defendant's religious beliefs are delusional rather than simply extreme is based upon the suggestions of recent scholarly articles and studies that have addressed the difficulty distinguishing between extreme or eccentric religious beliefs and delusions with religious content. These articles and studies conclude that the form, rather than the content, of the belief is most important in rendering a diagnosis. That is, it is not <u>what</u> a person believes that is indicative of a religious belief being delusional, but <u>how</u> the person believes it. According to Dr.

'gray area' diagnostic issue." Skeem Competency Evaluation Report at 17.

Skeem, the over-arching principle that distinguishes a religious delusion from an eccentric religious belief is the extent to which having the belief results in negative social consequences. The greater the social difficulties the person encounters as a result of having the religious belief, the more likely the person's religious belief is delusional. Four separate factors--or dimensions--are relevant to determining whether a religious belief is delusional or merely extreme. First is the level of distress having the belief causes. If having a religious belief causes the person to be unhappy, anxious, angry, frightened, or any number of other negative emotions, there is a greater likelihood that the religious belief is delusional. Second is the level or intensity of preoccupation a person has about the religious belief. A person's religious beliefs are more likely to be delusional if the person is consumed by or entirely immersed in the belief to the extent that there is no room for anything else. Third is the level of florid spiritual experiences associated with auditory or visual hallucinations. When a person's religious beliefs result in hallucinations or false perceptual experiences, it is more likely that the religious belief is a delusion. Fourth is the extent of deterioration in functioning. If having the religious belief leaves no room for the believer to engage in the tasks of everyday functioning, the belief is more likely to be a delusional.

Based upon her interviews with Defendant and her review of the

secondary material, Dr. Skeem has concluded that there is no evidence that Defendant has florid experiences involving auditory or visual hallucinations. On the other hand, she does conclude that Defendant's religious beliefs cause him significant distress. Unlike non-delusional religious beliefs, which normally engender feelings of hope and happiness, Defendant's beliefs are associated with opposition, persecution, and alienation from people. His beliefs cause him significant emotional distress, and he struggles with feelings of inadequacy and fear about his role as the Davidic King. With respect to the preoccupation dimension, Dr. Skeem concludes that for at least the last ten years Defendant has been totally consumed by his religious beliefs. He prays about everything from what to wear and what he should eat to where he should go and what "calling" he should fulfill. He is constantly sermonizing, and it is difficult to engage him in conversations on topics that are unrelated to his religious beliefs. Finally, Dr. Skeem concludes that Defendant's religious beliefs have caused a significant decline in his ability to engage in the proper functioning of everyday life. Although Defendant at one time had a home, a secure job, and a high position in the LDS Church, his intense preoccupation with his religious beliefs has resulted in his excommunication from his church and has rendered him homeless and dependent upon the charity of others for survival. Moreover, his social functioning deteriorated drastically. Defendant's

religious beliefs have alienated him from his old social network, including his family, and he has even been rejected by individuals in ostensibly like-minded subcultural groups, such as religious fundamentalists, constitutionalists, and alternative medicine groups. As a result, Defendant has gone from social acceptance to social isolation. Moreover, based, in part, on this complete social ostracization that has resulted from his commitment to his religious beliefs, Dr. Skeem also concludes that while there may be portions of his religious beliefs that are found in some subcultural groups, Defendant's beliefs as a whole have been rejected by all relevant subcultures.

For the foregoing reasons, Dr. Skeem concludes that Defendant's religious beliefs are delusional and, therefore, that he suffers from a delusional disorder (psychotic disorder with fixed false beliefs). In addition, she also contends that Defendant's decision making about his case is simply not rational because it is based upon perceptual distortions of reality resulting from his delusional religious beliefs. Although Defendant has had a good relationship with his attorneys, he no longer speaks with them. He has sufficient capacity to comprehend and appreciate the charges against him and understand the adversarial nature of the proceedings but he experiences severe impairment in all other facets of his case. Defendant's delusional disorder has severely impaired his capacity to disclose pertinent

facts, events, and states of mind to counsel and to engage in reasoned choice about his legal strategies and options. Going to trial is what he least wants to do as a rational being, but his religious delusions compel him to insist that his trial go forward and that he be passively martyred. For Defendant, there is simply no room for discussion. Unlike a rational person who would weigh and consider different options before opting to proceed to trial, Defendant has only one option which is defined by his delusional religious beliefs. As a result, he does not review or comment on discovery material, will not raise a defense, and will not discuss legal strategies with his counsel. Defendant's religious delusions have also severely impaired his capacity to comprehend and appreciate the range and nature of the punishment he faces if convicted. While he is aware of the potential punishments, he is unable to appreciate how the penalties apply in his case. Defendant is unconcerned about his safety, he wants the maximum penalty, and he believes that God will deliver him from prison at the end of a seven year period. In addition, although Defendant basically understands the adversarial nature of the proceedings against him, he is unable to fully appreciate the role of the prosecution in his case. For him, the prosecution team is part of a secret combination in league with Satan. His delusional religious beliefs also severely impair his capacity to manifest appropriate courtroom behavior. Defendant would rather be

passively martyred than endure the stress of attending court proceedings. As a way of escaping from a situation he does not want to be a part of, Defendant engages in disruptive behavior by singing loudly. Finally, Defendant's delusional religious beliefs undermine his capacity to testify relevantly if he were to testify. As a result of his total preoccupation with his beliefs, Defendant would have great difficulty responding to questions that are unrelated to his religious convictions.

Based upon these conclusions about the effect of Defendant's delusional religious beliefs on his decision making in his case, it is Dr. Skeem's considered opinion that Defendant is not presently competent to proceed to trial.

Dr. Stephen Golding's Competency Reports and Testimony

On February 16, 2005, Stephen L. Golding, Ph.D., testified. Dr. Golding is a professor in the Department of Psychology at the University of Utah where he teaches courses in forensic and clinical psychology. He is also an adjunct professor at the S.J. Quinney College of Law at the University of Utah where he teaches courses in law and psychology. Over the past 35 years, Dr. Golding has published primarily in the area of forensic psychology with particular emphasis on issues of competency to stand trial. Dr. Golding is a member of the American Psychological Association and a Diplomate of the American Board of Forensic Psychology. Since 1986, he has been an approved forensic examiner for the Utah

Department of Human Services and, in this capacity, has conducted over 500 evaluations. Dr. Golding has testified as an expert on numerous occasions both for the State and on behalf of defendants.

Dr. Golding was appointed by the court on April 9, 2003 to conduct a competency evaluation of Defendant pursuant to section 77-15-5. His initial psychological report was submitted to the court on September 24, 2003. Dr. Golding was unable to interview or conduct any tests upon Defendant. However, he had access to numerous secondary materials and was able to directly or telephonically interview others with relevant information concerning Defendant's competency to proceed.[12] Dr. Golding

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[12]Dr. Golding indicates in his two psychological reports that he relied upon the following and other secondary material in rendering a diagnosis of Defendant:

1. Divorce records of Defendant, including Children's Service Society records, court orders and petitions, findings of fact, and custody evaluations;
2. Juvenile court and Salt Lake Valley Mental Health records;
3. Letter from Kayleen Mitchell, Ph.D. to Children's Service Society;
4. Letter from Shirl Mitchell to Harry Smith of ABC Television
5. O.C. Tanner employment records;
6. Office of Recovery Services records;
7. Psychological evaluation of J.M., Linda McNeill, M.A. and Ann Taylor, Ph.D.;
8. Salt Lake Community College records;
9. Utah Criminal History record of Defendant;
10. Writings of Defendant, including the Book of Immanuel David Isaiah and subsequent handwritten additions and letters to Wanda Barzee;
11. Writings of Wanda Barzee, including "Journey Through the Land" and other journal items;
12. Videotaped interview of Defendant;
13. Personal and/or telephonic interviews of Pamela Atkinson, David Biggs, Rick Greene, Kayleen Hill, Lisa and Tom Holbrook, Irene Mitchell, Tim Mitchell, Don Rosenbaum, Paul Whitehead, M.D., Samuel West, Elder Lance Wickman, and Dru White;
14. Brief amicus curiae of the American Medical Association in the case of Sell v. United States, 539 U.S. 166 (2003);
15. Dr. Gardner's memorandum to Judge Atherton;
16. Interviews of Defendant's counsel, Vernice Trease and Heidi Buchi, as well as Randall Smith;
17. Jail Health records;
18. Redacted, updated, and transcribed copy of the Book of Immanuel David Isaiah;
19. Report of Salt Lake Legal Defender Association investigator D. Couch

concluded that Defendant was not competent to proceed because he suffers from a psychotic spectrum disorder, likely a delusional disorder, a paranoid personality disorder, and, possibly, schizophrenia (paranoid type). On December 3, 2004, Dr. Golding was asked to conduct another competency evaluation. His second psychological report was submitted to the court on February 7, 2005. Dr. Golding again concluded that Defendant was not competent to proceed, but indicated that his level of certainty as to his diagnosis of Defendant was greater now than it was in his first report.

Dr. Golding and Dr. Skeem generally agreed that Defendant's decision making is driven by his religious beliefs and that Defendant's religious beliefs are delusional.[13] Like Dr. Skeem, Dr. Golding candidly concedes "that differentiating [extreme religious belief, overvalued ideas, and delusionality] is fraught with difficulty and that no one can claim the ability to do so with great certainty or reliability." Golding Competency Evaluation Report at 16. Dr. Golding believes that determining whether a person's religious beliefs are delusional, rather than merely extreme, cannot be done by relying solely upon the content of the

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concerning interviews with Salt Lake Department of Corrections officers and inmates;
20. Competency evaluation reports of Defendant by Jennifer Skeem, Ph.D.; and
21. Additional scholarly research not previously relied upon.

[13]Dr. Golding indicated in his direct testimony that to the extent there are differences between his and Dr. Skeem's diagnoses, he would defer to her diagnosis because she was able to personally interview Defendant.

person's religious beliefs or the types of actions that are called for by these religious beliefs. Common standards of professional diagnostic practice prohibit one from concluding that a person's religious beliefs are delusional, no matter how extreme they may appear, if these beliefs are accepted by the person's culture or subculture. According to Dr. Golding, although Defendant's beliefs are rare, they are not unique. Therefore, it would be inappropriate to conclude on these grounds alone that Defendant's religious beliefs are delusional. Nevertheless, an assessment of other factors convince Dr. Golding that Defendant's religious beliefs are, in fact, delusional.

Dr. Golding bases his conclusions upon a consideration of several factors related to Defendant's background and beliefs. Each of these factors suggest that Defendant's beliefs are delusional in nature. First, from an early age Defendant's thinking "has had a paranoid flavor . . . ." Golding Competency Evaluation Report at 17. While this condition alone is insufficient to conclude that Defendant has a mental disorder, it is an important factor that tips the balance in favor of concluding that his religious beliefs are delusional. Second, Defendant's thoughts and behavior contain elements of "passivity experiences," the notion that ones thoughts, actions, or will are controlled to some extent by another agency or outside force. Dr. Golding testified that Defendant's passivity experiences are evidenced by

the fact that his behavior is driven by what he thinks God wants him to do. Often this comes in the form of a revelation that commands him how to act. Thus, according to Dr. Golding, Defendant is doing what he must do, not what he chooses to do. Third, Defendant's thinking is referential, which is the "perception or feeling that ordinary or usual events . . . have personal significance and refers to oneself." Id. at 19. Dr. Golding provided the following example: a person is engaged in referential thinking when he interprets the ordinary event of someone touching their nose as a "sign" that Satan is about and that care must be taken. This, according to Dr. Golding, is how Defendant thinks. He routinely draws unsupportable personal inferences from ordinary events that occur in his life and is constantly on the look out to properly discern the "signs" in other people's behavior and the events that occur around him so that he can know how God wants him to act. In Defendant's case, this is an enormous burden because, as Dr. Golding testified, any misinterpretation will be at the peril of Defendant's soul. Fourth, Defendant's preoccupation with his belief system and the distress it causes him has resulted in a significant decline in his ability to function both socially and vocationally. According to Dr. Golding, Defendant's history is "littered" with social breakdown that progressed ultimately to the point where he "went right off the cliff," i.e., he lost all connection with reality and went into extreme mental illness. Once

this occurred, Defendant no longer acknowledged his close friends and abandoned his employment. He rejected, and was rejected by, all like-minded individuals. Fifth, the degree of conviction Defendant has in his beliefs goes beyond what would be expected for a mere religious zealot and causes him to engage in behavior that most people would consider very risky. Sixth, although religious zealots are often pre-occupied with their beliefs, Defendant's level of pre-occupation is far more extreme. Unlike a religious fanatic, Defendant's beliefs form an all-consuming basis for his behavior and the way in which he interacts and converses with others. Finally, unlike extreme religious or political belief systems which are directed at abstract concepts, Defendant's belief system is focused on his family members and others whom he has relied upon as friends and mentors.

Based upon his assessment of the forgoing factors, Dr. Golding concludes that Defendant's religious beliefs are not simply extreme, but that Defendant suffers from a psychotic mental disorder, namely, Delusional Disorder. As a result of having a psychotic mental disorder, Defendant's competence-related abilities are severely impaired. According to Dr. Golding, the "decisions" he makes about his case are driven by his delusional state of mind and, therefore, are not the product of "free choice," but result from delusional compulsion. Although he may have a factual knowledge of the punishment he faces, as a result of his mental

disorder he does not have a rational understanding of the potential penalties. This is borne out by the fact that Defendant apparently believes that, if he is convicted, at an appropriate time God will release him from prison. Whether he confers with counsel and to what extent he discloses to them information about his case is also governed by his delusional state of mind and referential thinking. At the moment, Defendant is not speaking to counsel because the "signs" he sees in the events surrounding him indicate that God does not want him to speak. Dr. Golding also concludes that Defendant does not have a rational understanding of and is unable to engage in reasoned choice about his legal strategies and options. His delusions make it impossible for him to have any insight into his mental disorder and would compel him to mutely sit through a trial without asserting any defense, including a mental health defense. Rather than rationally discussing his legal options, Defendant is forced to seek the maximum punishment that may be imposed. In addition, Defendant's present ability to understand the adversarial nature of the proceedings, manifest appropriate courtroom behavior, and testify relevantly are severely impaired. As a result of his delusional thinking, Defendant does not accurately perceive the roles of the prosecutors or the experts assisting him. His past disruptions in the courtroom, occasioned by the anxiety and distress his delusions create, are clearly indicative of his inability to manifest appropriate courtroom

behavior. Finally, Defendant's total pre-occupation with his delusional religious beliefs makes it impossible for him to testify about the events related to the charges.

For the foregoing reasons, it is Dr. Golding's considered opinion that Defendant is not presently competent to proceed to trial.

Dr. Noel Gardner's Competency Reports and Testimony

On March 11 and May 25, 2005, Dr. Noel Gardner testified. Dr. Gardner is a medical doctor and clinical professor of psychiatry at the University of Utah School of Medicine and is board certified in general adult psychiatry. Following medical school, Dr. Gardner interned at the UCLA Harbor Medical Center and then did his residency at the UCLA Neuropsychiatric Institute. He has had extensive experience dealing with and diagnosing patients with sever chronic mental illness. Although Dr. Gardner has not specialized in the area of forensic psychiatry, early in his career he was mentored in forensic work by an experienced colleague. From July 1988 to late 2002, Dr. Gardner was the chief of consultation psychiatry at the University of Utah Medical Center. Although his primary work does not involve determining the competency of persons in a forensic context, he has extensive experience determining the competency of persons in other contexts and he has been asked on numerous occasions to evaluate the competency of criminal defendants to proceed to trial. Dr. Gardner is familiar with and

has relied upon the proper protocol for conducting forensic competency evaluations and has testified in court many times concerning his findings. Significantly with respect to the present case, in addition to his work-related experience and education, Dr. Gardner has extensive theological training. He received his undergraduate degree in Bible languages and theology and then attended three years of seminary at Andrews University in Michigan. He has also done theology-related course work at other educational institutions. In addition, Dr. Gardner was raised in a fundamentalist religious culture and has substantial personal experience with the beliefs, thinking, processes, and world views of religious fundamentalism.

Like Dr. Golding, Dr. Gardner was appointed by the court on April 9, 2003 to conduct a competency evaluation of Defendant pursuant to section 77-15-5. His initial psychological report was submitted to the court on September 19, 2003. Although Defendant refused to speak with Dr. Gardner or allow him to conduct any psychological tests, Dr. Gardner had access to numerous secondary materials[14] and was able to directly or telephonically interview

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[14]Dr. Gardner indicated in his initial psychological report that he relied upon the following and other information in rendering a diagnosis:

1. Videotaped FBI interview of Defendant dated March 12, 2003;
2. Videotaped FBI interview of Wanda Eileen Barzee dated March 12, 2003;
3. Collected police reports from Salt Lake, Sandy, and San Diego Police Departments;
4. Interview of Defendant's mother, Irene;
5. Interview of Defendant's sister, Lisa, and her husband;
6. Interviews of Defendant's sister, Kayleen Hill, Ph.D.;
7. Review of two volume treatise written by Defendant's father, Shirl Mitchell;
8. Review of the Utah State Hospital records of Defendant's paternal

others with relevant information concerning Defendant's competency to proceed. Dr. Gardner concluded that Defendant was not suffering from a mental disease, was not psychotic, and, therefore, was competent to proceed to trial. Dr. Gardner stated that although Defendant technically and superficially satisfies the formal criteria for delusional disorder specified in the DSM-IV-TR, such a diagnosis merely describes Defendant's unusual behavior, but is not indicative of an underlying brain disease. According to Dr. Gardner, Defendant is driven not by psychotic delusions, but by narcissistic personality dynamics coupled with increasingly radical apocalyptic fundamentalist religious and radical constitutional political ideas. After this court granted Defendant's petition to inquire into his competency, Dr. Gardner was again asked to conduct a competency evaluation of Defendant. Following a re-evaluation of Defendant's competence, Dr. Gardner submitted a memorandum to the court concluding that he is "unaware of any information regarding [Defendant's] thinking or behavior that would change my original

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grandfather;

9. Review of Defendant's Utah State Hospital chart from his court-ordered evaluation;
10. Collected works of Defendant and Wanda Barzee, including the Book of Immanuel David Isaiah, the Blue Notebook, the auto-biographical narrative "Journey Through the Land," various notes, drawings, and journaling of Elizabeth Smart, Wanda Barzee, and Defendant;
11. Letter written by Defendant to is son dated October 31, 1992;
12. Letter from Kayleen Mitchell (now Hill) to Children's Service Society regarding Defendant's termination of custodial rights and placement of his two children, dated October 28, 1983;
13. Chronological timeline of Defendant's activities from 1985 to his arrest in 2003, prepared by Cordon Parks; and
14. Various timelines, observations, and documents prepared by Defendant's family members supplementing their interviews.

opinion or that would in any way alter my opinion that he was competent at the time he stipulated to competence." Gardner Mem. to Judge Atherton at 2.

Dr. Gardner, Dr. Skeem, and Dr. Golding substantially agree as to the content of Defendant's religious belief system and that his decision making is driven by his religious beliefs. However, Dr. Gardner disagrees with Dr. Skeem's and Dr. Golding's diagnosis that Defendant suffers from a delusional disorder. Dr. Gardner testified during the competency hearings that he engaged in a comprehensive differential diagnosis of defendant, that he considered all of the available, relevant material concerning Defendant and then, working inductively, sought an explanation that allowed him to meaningfully account for each bit of information. By systematically eliminating diagnoses that failed to adequately account for the available information about Defendant, Dr. Gardner asserts that he avoided the all-to-common mistake of "jumping to a conclusion" based upon mere appearances. By employing this comprehensive differential diagnosis approach, Dr. Gardner contends that he was able to arrive at the diagnosis of narcissistic personality disorder, which explains Defendant's thinking and behavior better than any of the alternative explanations, including the diagnosis of delusional disorder offered by Dr. Skeem and Dr. Golding

Dr. Gardner arrives at his diagnosis for multiple reasons, but

perhaps the most succinct statement he provides is, when Defendant's religious belief system is examined separate and apart from his grandiose self-identity, the religious views that remain, "while extreme and to some appearing to be delusional,[15] are in fact quite conventional, ordinary and directly related to his immediate cultural and subcultural environment." Gardner Competency Evaluation Report at 15. However, as defined in the DSM-IV-TR, a religious belief can only be delusional if it is "not one ordinarily accepted by other members of the person's culture or subculture." DSM-IV-TR at 821. According to Dr. Gardner, because Defendant's religious beliefs, when viewed apart from his grandiose self-identity, are accepted by a small, but distinct, sub-culture of LDS fundamentalists, the most correct explanation for Defendant's behavior is not that he suffers from a delusional disorder but from a narcissistic personality disorder.

Dr. Gardner provides a broader explanation for this general statement by detailing what he calls the "critical interface" that exists between Defendant's personality, religion, and marriage. Dr. Gardner argues that Defendant's religious belief system and his behavior are best explained by examining the interplay between his narcissistic personality, his particular type of fundamentalist LDS religious beliefs, and his marital relationship with Ms. Barzee.

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[15]According to Dr. Gardner, these religious views only appear to be delusional to those unschooled in and unfamiliar with religious fundamentalist thinking generally and fundamentalist LDS tenets and beliefs specifically.

He testified that Defendant exhibits the classic attributes of a narcissist, namely, he (1) is clearly self-absorbed and believes he is special or unique; (2) has constructed an idealized and grandiose image of himself as the single most important person on the planet and the instrument though which God will fulfill his purposes in the last days; (3) is enamored with his own importance and is pre-occupied with thoughts of success in the context of his special religious calling; (4) lacks the willingness to recognize the feelings of others, which has been particularly borne out by the specific facts of this case; (5) exhibits traits of paranoia,[16] and (6) exhibits a sense of superiority and engages in arrogant and condescending behaviors and attitudes towards others.[17]

Consistent with the DSM-IV-TR, and as manifested by the events

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[16]Dr. Gardner explains, however, that Defendant's paranoia is directly a result of his narcissism and is not consistent with the type of paranoia one would exhibit who has a paranoid personality disorder. According to Dr. Gardner, someone with a paranoid personality disorder displays profound, pervasive suspicion of his or her external social and physical environment and, as a result, they are suspicious of relationships and tend not to have close relationships. This is not, however, descriptive of Defendant. Although his relationships have been dysfunctional, he has consistently sought to develop relationships with others whether it was a marital companion, the Hare Krishna, or others.

[17]During his direct examination, while explaining the personality trait of narcissism, Dr. Gardner testified that in his opinion,

> as I watch [Defendant], what I see is a person who has, in his own religious way, put himself at the center of the ultimate purpose in the universe and he feels that he deserves special treatment, that he should be able to just simply take what he wants to fulfill his view of the world, without having empathy or understanding of how it impacts someone else in terms of empathy. And then he responds with anger, kind of this haughty sense that other people should acknowledge his sort of prophetic calling, and they deserve punishment if they don't accept his particular view. Those are the traits of narcissism that I think are predominant in what we see with [Defendant].

of Defendant's childhood, adolescence, and early adulthood, this personality disorder was clearly established early in his life and is reflected in his stunted cognitive, psychodynamic, and moral development. With respect to his cognitive development, as a result of Defendant's lack of interest and participation in school and, perhaps, his drug use, Defendant exhibits a level of thinking that one would find in fifth, sixth, seventh, or eighth grade students. It is very concrete and literal. As for his psychodynamic development, he shows a clear pattern of maladaptive early development. Defendant did not conform to the standards of his religious upbringing, he was hostile toward and both disrespectful and devaluing of his mother, he had substantial conflict with his siblings, and, unlike most well-adjusted people who admit their failings, did not acknowledge failure or ever apologized for his inappropriate conduct. As an adolescent, Defendant was diagnosed with a behavioral disorder or personality problem. According to Dr. Gardner, this pattern of development is consistent with a maladaptive personality and is not indicative of an emerging psychosis. Finally, with respect to moral development, Defendant exhibits a relatively primitive type of morality. He is egocentric, uninterested in reciprocal relationships, and highly punitive in his judgments of others. Defendant's stunted development in these areas is consistent with the personality trait of narcissism displayed by Defendant.

In addition, Dr. Gardner contends that Defendant's narcissistic personality found expression in the context of his particular type of fundamentalist religion. Defendant was raised in a culture dominated by LDS religious views.

One of Dr. Gardner's central contentions is that Defendant believes the LDS Church became apostate when it accommodated to modern life by giving up the practice of plural marriage (what Defendant calls "celestial marriage") in order to become part of the United States. In light of this belief, Defendant has attempted to methodically and systematically create a replica of the LDS Church based upon the original theological truths taught by Joseph Smith.[18] According to Dr. Gardner, Defendant is basically imitating the religious world in which he was raised and has relied upon his cultural experience to select specific, fundamental religious tenets. His attempt to "re-establish" the original doctrines of the LDS religion and have others view him as a prophet of God has included authoring a sacred religious text by means of revelation. This text, entitled "The Book of Immanuel David Isaiah," was written in King James English as a way of making it more compelling. Much of Defendant's interaction with others is spent proselyting, calling people to repentance, especially his own family and former friends, and threatening their destruction if

[18]Joseph Smith was the first prophet and president of the LDS Church, the translator of the Book of Mormon, and the recipient of most of the revelations contained in the Doctrine and Covenants.

they reject him. As a way of playing the part of a suffering servant Defendant has specifically chosen to wear Middle Eastern clothing[19] and has taken a vow of poverty as a form of both persuasion and power. This process by which Defendant has attempted to accomplish his purposes is no different, according to Dr. Gardner, than the process utilized by numerous other fundamentalists in developing their own religious ideas, beliefs, and organizations.

Finally, Dr. Gardner stated in his first psychological report that "narcissism pursues as much grandiosity as its environment allows, and is either restrained by the requirements of relationships and social discourse or requires withdrawal and isolation as protection." Gardner Competency Evaluation Report at 21. According to Dr. Gardner, had Defendant's marriage to Ms. Barzee been different, the relationship may have mitigated somewhat Defendant's narcissistic personality and behavior. Instead, the marriage relationship served the opposite purpose. Dr. Gardner contends that both of them had been "profoundly narcissistically wounded," id., in their prior relationships and had sought to repair their self-image by manufacturing a sense of self that was special and superior, i.e., grandiose. The marital relationship only served to reinforce their narcissistic needs and perceptions

[19]Interestingly, as Dr. Gardner explained in his testimony, Defendant originally asked his mother to make him garments that resembled those of Mahatma Gandhi. He wore these garments of a few days, but ultimately abandoned them because of the ridicule directed at him about the strangeness of his clothing.

of themselves and did nothing to restrain their shared sense of grandiosity. Indeed, the marriage both sustained and strengthened the narcissistic self-images of Defendant as the Davidic King and Ms. Barzee as the Mother of Zion.

Dr. Gardner argues that the confluence of these three factors--personality, religion, and marriage--provides the best and most accurate explanation for Defendant's religious belief system and behavior. His fundamentalist religious beliefs are, in most respects, simply a reflection of the religious beliefs in which he was raised. Although Defendant's particular religious convictions are accepted by relatively few people, a fundamentalist LDS sub-culture exists that accepts these religious tenets. However, when such a belief system is merged with an unmitigated narcissism that is further reinforced by a relationship with another who also espouses narcissistic views of grandiosity, the result is what we find in Defendant, namely, a person who views himself as the central prophetic figure, i.e., the Davidic King, whose existence is essential to the bringing forth of Zion in the last days. When thus viewed together, these factors support a diagnosis of narcissistic personality disorder.

In addition to his affirmative explanation for Defendant's religious belief system and behaviors, Dr. Gardner also explains why a diagnosis of delusional disorder is simply inaccurate. To begin, Dr. Gardner contends that the sole basis for suggesting that

Defendant has a delusional disorder is the fact that he has extreme, idiosyncratic religious beliefs, and, but for those beliefs, no one would suggest that Defendant is delusional. He also suggests that Dr. Skeem and Dr. Golding have mis-diagnosed Defendant because, unlike himself, they lack direct, personal knowledge of Defendant's type of fundamentalist religious experience. Dr. Gardner further argues that although Dr. Skeem and Dr. Golding contend that one of the distinguishing characteristics of a person with a delusional disorder is the intensity or heightened degree of conviction they have toward their delusional belief, there is an extraordinary history of non-psychotic individuals who willingly sacrifice their lives for their religious convictions. Defendant's willingness to be martyred, either symbolically or literally, is more consistent with the convictions of a non-psychotic religious zealot than a person suffering from a delusional disorder. Furthermore, while Dr. Skeem contends that a critical distinguishing factor between people with a delusional disorder and those with extreme religious beliefs is the heightened degree of distress delusional people experience, Dr. Gardner argues that heightened degree of distress is not a reliable way to differentiate between psychotic and non-psychotic individuals. According to Dr. Gardner, there are many non-psychotic, but religiously devout people who experience extraordinary distress because, for example, they feel they are lacking in faithfulness or

obedience and, therefore, are fearful of being rejected or punished by God. Not only is the fact that Defendant suffers distress as a result of his religious convictions not a factor that can be relied upon in determining whether Defendant is psychotic or not, Dr. Gardner argues that given his role as a suffering servant as well as the burden he carries because he believes he is a central figure in the Apocalypse, the fact that Defendant is experiencing distress is not surprising and is consistent with his religious convictions.

Dr. Gardner also contends that there are several circumstances about Defendant that are inconsistent with a diagnosis of delusional disorder. According to Dr. Gardner, delusional disorder requires a discontinuity between the delusional belief and the rest of a person's thinking. In Defendant's case, however, he has carefully and systematically incorporated specific religious beliefs into his experience that he has possessed throughout his life and he has done this in a manner that is consistent with the way non-delusional people incorporate new ideas. The required discontinuity is simply not present. In addition, although people with a delusional disorder are often paranoid about their physical and social environment, the paranoia exhibited by Defendant is inconsistent with the kind of fearfulness associated with a delusional disorder. As with most types of religious fundamentalism, rather than being afraid of his surroundings, Defendant is angry with his social environment and seeks to pass

judgment upon it. Moreover, unlike people who are genuinely psychotic and expend their efforts hiding or disguising their delusional thinking to the greatest extent possible, Defendant "appears to be compelled to make his grandiose ideas and theological beliefs historically and empirically real in the world." Gardner Competency Evaluation Report at 19. With respect to Defendant's belief that he is a prophet or spiritual guru, a person suffering from a psychotic disorder would be satisfied with simply appearing to be a spiritual leader and would not be overly concerned with the actual benefits that come from being a spiritual leader. The care with which Defendant selected the type of garment he would wear as a means of outwardly portraying his special role as a prophet, however, is clearly indicative of someone concerned primarily with the nature and substance of his role as a prophet and not merely appearing to be a prophet. According to Dr. Gardner this is another indication that diagnosing Defendant with a delusional disorder would be inaccurate. Finally, Dr. Gardner asserts that it is virtually impossible for two separate brain disorders to generate identical, comprehensive religious belief systems, with all their attendant complexities, in two different people at the same time. Because Defendant and Ms. Barzee have identical religious belief systems, it is incorrect to conclude, at least in Defendant's case, that his religious belief system is the product of a brain disease. Once again, according to Dr. Gardner,

this is simply one more indication that Defendant does not suffer from a delusional disorder, but suffers from a narcissistic personality disorder.

Based upon his diagnosis that Defendant suffers from a narcissistic personality disorder, because having a narcissistic personality does not prevent one from accurately perceiving and drawing inferences about external reality, Dr. Gardner concludes that Defendant possesses the ability to have a rational and factual understanding of his criminal case and, moreover, that he possesses the ability to consult with his counsel and participate in the proceedings with a reasonable degree of rational understanding. Dr. Gardner contends that, in light of his diagnosis, Defendant has the ability to understand the particular situation he is in and can adapt to it as he chooses. Defendant has also demonstrated that he is capable of selecting information and beliefs from his environment, incorporating them into a set of ideas, and then using that belief system to achieve his ends. Defendant certainly has the ability, according to Dr. Gardner, to understand and strategize about his case and the proceedings against him, but he is obviously unwilling to do so. While some may question his rationality because his choices appear to be self-defeating and inconsistent with his self-interest, his choices are, in fact, a logical expression of his "beliefs and values and is part of a consistent strategy that serves his ultimate beliefs and purposes." Gardner

Competency Evaluation at 5.

For the foregoing reasons, it is Dr. Gardner's considered opinion that Defendant is competent to proceed to trial.

Court's Observations of Defendant

Defendant was shackled, dressed in jail clothing, and sported a lengthy beard and long hair at all of the hearings he attended. During the initial hearings, he sat quietly and stoically between his appointed attorneys at the defense table. At his arraignment hearing held on August 2, 2004, he willingly accompanied his attorneys to the courtroom lectern and verbally pleaded "not guilty" to each offense charged in the indictment. However, at subsequent hearings Defendant began to disrupt the proceedings by loudly singing religious hymns. On December 3, 2004, the court convened a hearing for the purpose of scheduling due dates for the competency evaluation reports and a date for the competency hearing. After Defendant was brought into the courtroom and seated, he began to sing the Christmas hymn "O Come, O Come Immanuel" for 45 to 60 seconds. He was then removed from the courtroom. At the motion hearing held on January 6, 2005, as soon as Defendant was seated at the defense table, he began to sing the words "Repent for the kingdom of heaven's at hand" from the LDS hymn "The Time Is Far Spent." He was once again escorted from the courtroom. During the competency hearing held on February 16, 2005, once Defendant was brought into the courtroom and seated, he

began to sing the LDS hymn "Who's on the Lord's Side?" He was removed from the courtroom after 15 to 20 seconds. Defendant was subsequently brought back into the courtroom and he again sang the words "Repent for the kingdom of heaven's at hand" from the LDS hymn "The Time Is Far Spent." The court instructed Defendant that if he continued singing he would be removed from the courtroom. Defendant sang throughout the court's admonition and continued singing even after the court's admonition was concluded. As a result of his continuing disruptive behavior, Defendant was removed from the courtroom. The following day, after being seated, Defendant began singing the LDS hymn "High on the Mountain Top." He was again removed within 15 to 20 seconds. Although Defendant continued to be disruptive at each hearing, he was never physically or verbally abusive.

However, at the competency hearings convened on March 11, 2005, May 24-25, 2005 and July 7, 2005, Defendant disrupted the proceedings not by singing, but by shouting religious commands. At the hearing held on March 11, 2005, Defendant was escorted into the courtroom and, once seated, exclaimed, "Repent for the kingdom of heaven's at hand. Ye mockers and scorners, ye mock and scorn the Holy Son of God. You know I speak the truth." Defendant was immediately removed. At the hearing convened on May 24, 2005, after entering the courtroom for the morning session and being seated, Defendant declared, "Awaken, arise Israel. Come forth,

Babylon. Repent, repent for the kingdom . . . ." Defendant was once again removed from the courtroom. At the hearing convened on May 25, 2005, after being seated for the morning session, Defendant exclaimed, "Awake, arise, oh virgin daughter of Zion. Come forth unto the marriage, suffereth the Lamb." As he was being removed from the courtroom, Defendant began to sing the words "Repent for the kingdom of heaven's at hand," from the LDS hymn "The Time Is Far Spent." Finally, at the hearing convened on July 7, 2005, after entering the courtroom for the morning session and being seated, Defendant exclaimed, "Thus sayeth the Lord God Almighty: Except ye repent, ye shall be smitten even unto destruction by war, famine, pestilence, famine, upheaval, tempest, fire, sword . . . ." During the afternoon session, after again being seated, Defendant waited until the court spoke and then exclaimed, "Repent ye, repent ye, oh why would ye die? Return to the Lord and He will return unto you." Defendant's appearance has remained unchanged throughout all of the court proceedings and he has neither conversed nor communicated with his attorneys while in the courtroom.

Discussion

The primary determination the court must make in this case is whether Defendant's conduct is best explained by concluding that his religious belief system is delusional, as Dr. Skeem and Dr. Golding contend, or whether it is more plausible to conclude that

Defendant has a narcissistic personality coupled with extreme, but non-delusional, religious beliefs. According to the competency evaluation reports and the testimony provided at the competency hearings, Defendant believes that he is a prophet of God, i.e., "the Davidic King," with specific responsibilities that must be fulfilled such as calling people to repentance, re-instituting plural marriage, and suffering at the hands of the wicked in a manner similar to Jesus Christ. Defendant believes that if he is convicted, God will deliver him in due time and that he will be called upon to engage in a great apocalyptic battle between himself, as the King of Zion, and the Antichrist, who will be a man financed by the world bank and who will rise up to rule America and think of himself as God. All of the evaluators agree that Defendant's religious belief system is the basis upon which he makes decisions concerning his case.

The DSM-IV-TR defines the term "delusion" as a

> false belief based on incorrect inference about external reality that is firmly sustained despite what almost everyone else believes and despite what constitutes incontrovertible and obvious proof or evidence to the contrary. The belief is not one ordinarily accepted by other members of the person's culture or subculture (e.g., it is not an article of religious faith).

DSM-IV-TR at 821. It follows from this definition that if Defendant's belief system is delusional, then his ability to accurately perceive and interpret external reality is necessarily impaired. But if this is so, then his capacity to realistically

determine what is in his own best interests is also impaired. Because having the capacity to realistically determine what is in one's own best interests is nothing more or less than having the ability to make reasoned, rational choices, if Defendant's religious beliefs are delusional, then Defendant lacks the capacity to make reasoned, rational choices. Without this capacity, however, Defendant would be unable to consult with counsel with a reasonable degree of rational understanding. He would, therefore, be incompetent to proceed pursuant to Utah law. See Utah Code Ann. § 77-15-2(2). Thus, because all of the evaluators agree that Defendant's decision making is based upon his religious belief system, if that belief system is delusional, then Defendant is incompetent to proceed. On the other hand, if Defendant's belief system is not delusional, but merely extreme, then his decision making is not the result of inaccurately perceiving or interpreting external reality and he would possess the capacity to make reasoned, rational choices. If so, then he would also have the capacity to consult with his counsel with a reasonable degree of rational understanding. Thus, if Defendant's religious belief system is not delusional, then he is competent to proceed.

Defendant's religious beliefs and his behaviors are unusual. However, all of the evaluators agree that the content of Defendant's religious beliefs, and the mere fact that they are strange and idiosyncratic, does not constitute a sufficient reason

to conclude that Defendant's beliefs are, therefore, delusional. Indeed, read strictly, "the current DSM-IV definition of delusion exempts religious doctrine from pathology altogether." Joseph M. Pierre, M.D. "Faith or Delusion? At the Crossroads of Religion and Psychosis," in Journal of Psychiatric Practice, 7(3): 163-172, p.163 (May 2001). Nevertheless, although Dr. Skeem and Dr. Golding pointedly concede that determining whether a person's religious beliefs are delusional rather than merely extreme is a difficult undertaking,[20] they both contend, without contradiction from Dr. Gardner, that it is possible to determine whether a person espouses religious beliefs that are delusional.

Of particular difficulty here is the fact that the diagnoses provided by Dr. Skeem and Dr. Golding on the one hand, and Dr. Gardner on the other, are mutually exclusive and, yet, both appear to be reasonable. All of the evaluators have extensive experience assessing the mental condition of persons in the context of a competency determination. None of the evaluators relied upon obviously controversial or questionable methods in making a diagnosis, and each evaluator provided an extraordinarily detailed justification for the diagnosis he or she rendered. Nevertheless,

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[20]Dr. Golding states that "[t]here is no doubt that differentiating [extreme religious belief, overvalued ideas, and delusionality] is fraught with difficulty and that no one can claim the ability to do so with great certainty or reliability. Golding Competency Evaluation Report at 16. Dr. Skeem indicates that "it is difficult to distinguish individuals with eccentric religious beliefs from those with religious delusions[, although] a handful of studies have begin to address this 'gray area' diagnostic issue." Skeem Competency Evaluation Report at 17.

in order to determine whether Defendant's religious belief system is delusional and, therefore, whether he is competent to proceed, the court must articulate a basis for concluding that the explanation for one diagnosis is more persuasive than the explanation for the alternative diagnosis.

Dr. Gardner agreed that Defendant "technically meets the formal criteria of DSM-IV for a delusional disorder." Gardner Competency Evaluation at 14. The reason he uses the word "technically" is because "the diagnostic label is simply a descriptor of what is phenomenologically observable and does not establish an etiologic correlation." Id. at 15. In layman's terms, Dr. Gardner is simply saying that although Defendant's extreme religious beliefs have the appearance of being delusional, this fact alone in no way suggests the origin or cause of those beliefs. Although Dr. Skeem contends that the cause of Defendants's extreme religious beliefs is a mental disorder, Dr. Gardner argues that Defendant's extreme ideas have resulted primarily from the confluence of Defendant's narcissistic personality and his increasingly radical apocalyptic religious views.

Defendant embraces and experiences his religious beliefs with an intensity far beyond what is normally encountered in his religious sub-culture. Moreover, this preoccupation has severely impaired his social functioning and caused him extraordinary

distress for a considerable period of time. According to Dr. Skeem, these adverse effects experienced by Defendant are symptomatic of a delusional disorder and suggest, therefore, that Defendant's religious beliefs are delusional. Dr. Gardner rejects this assessment and argues that the world is replete with examples of non-psychotic religious believers who are highly committed to their convictions, even to the point of sacrificing their lives, who suffer significant distress and fear as a result of their beliefs, and who abandon friends, family, and employment in furtherance of their beliefs. For Dr. Gardner, the negative consequences that Defendant experiences are simply the logical outcome of the choices he makes as an individual who possesses extreme religious ideas and who suffers from a narcissistic personality. The court recognizes that there are non-psychotic individuals of numerous religious faiths who are often preoccupied, distressed and suffer from impaired social functioning as a direct result of their religious beliefs.

However, in the court's view, the extraordinary level and duration of preoccupation, distress and social dysfunction Defendant has experienced, and continues to experience, is simply not adequately accounted for by viewing these effects as logical consequences of choices made by one suffering from a narcissistic personality disorder. Narcissists possess a sense of grandiosity that results in exaggerated feelings of importance and specialness,

they require the attention and admiration of others, they find it necessary to see the best doctors, retain the best lawyers, play on the best sports team, and they are often arrogant and take advantage of others without concern.[21] As explained by Dr. Skeem, the grandiosity associated with narcissistic personality disorder often makes it difficult to work with, befriend, or form relationships with a narcissist and it often causes others to question the morality of the narcissist's conduct, but such grandiosity is not so great that it undermines a narcissist's ability to function reasonably well in society. For this reason, narcissistic personality disorder fails to adequately explain the level and duration of Defendant's preoccupation, distress, and impairment of social functioning that has resulted from his religious belief system.

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[21]The DSM-IV-TR sets forth the following diagnostic criteria for narcissistic personality disorder:

> A pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following
> (1) has a grandiose sense of self-importance . . .;
> (2) is preoccupied with fantasies of unlimited success, power, brilliance, beauty, or ideal love;
> (3) believes that he or she is "special" and unique and can only be understood by, or should associate with, other special or high-status people (or institutions);
> (4) requires excessive admiration;
> (5) has a sense of entitlement . . .;
> (6) is interpersonally exploitive, i.e., takes advantage of others to achieve his or her own ends;
> (7) lacks empathy: is unwilling to recognize or identify with the feelings and needs of others;
> (8) is often envious of others or believes that others are envious of him or her; [and]
> (9) shows arrogant, haughty behaviors or attitudes.

DSM-IV-TR at 717.

The same cannot be said with respect to delusional grandiosity. The grandiosity associated with a delusional disorder is qualitatively greater than the grandiosity found in narcissistic personality disorder. An individual suffering from delusional grandiosity does not simply view himself as better or more important than others or believes he has success and power beyond what others experience in comparable situations. Rather, such an individual possesses a global--or even cosmic--sense of grandiosity that finds expression in such colossal beliefs as he is the most important or most powerful person in the world. In a religious context, an individual suffering from delusional grandiosity will have similar types of beliefs possessed by Defendant, namely, that he is of infinite value and importance to God, that without him the work of God in the last days will be frustrated, that he is the one who will do battle with and slay the Antichrist, and that he is the chosen one to redeem Zion and rule with God at His right hand. It is the court's conclusion, therefore, that Defendant's extreme religious beliefs are more consistent with the grandiosity associated with a delusional disorder rather than the grandiosity associated with narcissistic personality disorder. Such grandiose beliefs are more likely to result in distress and social dysfunction and, therefore, a delusional disorder[22] more fully

[22]Although a diagnosis of delusional disorder is relatively rare (3 in 10,000), it appears to the court that a diagnosis of narcissistic personality disorder as an explanation for the extraordinary level and duration of Defendant's preoccupation, distress, and impaired functioning resulting from his

accounts for the extraordinary level and duration of preoccupation, distress, and social dysfunction that Defendant experiences.

Based upon the foregoing analysis, it is the court's conclusion that the preoccupation, distress, and impaired social functioning exhibited by Defendant are symptoms of a delusional disorder and are not merely the logical outcomes of choices made by someone with extreme religious beliefs who also suffers from a narcissistic personality disorder. Defendant's religious beliefs are, therefore, delusional. Because a delusional belief is one based upon incorrect inferences about external reality, see DSM-IV-TR" at 821, it necessarily follows that Defendant's ability to accurately perceive and interpret external reality is impaired and, therefore, that he lacks the capacity to realistically determine what is in his own best interests. Since having the capacity to realistically determine what is in one's own best interests is nothing more or less than having the ability to make reasoned, rational choices, it follows from the court's conclusion that because Defendant's religious belief system is the basis upon which he makes decisions concerning his criminal case, he also lacks the capacity to consult with counsel with a reasonable degree of rational understanding and is, pursuant to section 77-15-1(1), incompetent to proceed to trial. See Lafferty, 949 F.2d at 1554-55 (making decisions based upon a delusional belief system renders a

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religious beliefs is no less unusual.

defendant incompetent to proceed to trial).

Findings and Conclusions

The court finds that Defendant has present adequate capacity to comprehend and appreciate the charges against him, the range and nature of the possible penalties that may be imposed, and the adversary nature of the proceedings against him. See Utah Code Ann. § 77-15-5(4)(a)(i), (iii), and (v).

The court further finds that Defendant has an impaired capacity to disclose to counsel pertinent facts, events, and states of mind, engage in reasoned choice of legal strategies and options, manifest appropriate courtroom behavior, and testify relevantly, if applicable." Utah Code Ann. § 77-15-5(4)(a)(ii), (iv), (vi), and (vii).

The court further finds that Defendant's mental disorder substantially interferes with his relationship with counsel and, therefore, that his mental disorder has resulted in "his inability to consult with his counsel and to participate in the proceedings against him with a reasonable degree of rational understanding." Utah Code Ann. § 77-15-2(2).

Therefore, the court concludes that Defendant is incompetent to proceed to trial.

The court hereby orders Defendant committed to the custody of the executive director of the Department of Human Services for the purpose of treatment intended to restore the defendant to

competency. Utah Code Ann. § 77-15-6(1).

DATED this _____ day of July, 2005.

BY THE COURT:

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Judge Judith S. Atherton
Third Judicial District Court