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SUPERIOR COURT OF RIVERSIDE

APPELLATE DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Respondent/Plaintiff, vs. KEITH HENSON, Appellant/Defendant.	APPELLATE CASE NO.: APP004184 TRIAL CASE NO.: HEM014371

TO THE HONORABLE PATRICK F. MAGERS, PRESIDING JUSTICE OF THE SUPERIOR COURT RIVERSIDE, APPELLATE DIVISION:

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I.
INTRODUCTION

Appellant is a long time internet free speech advocate and an outspoken opponent of the Church of Scientology. Over the past several years, Members of the Church of Scientology have picketed Appellant's home and his wife's work, and Appellant has picketed the Church of Scientology. During this time, the Church of Scientology monitored Appellant's internet postings and disseminated those postings to its members. (RT, Vol. I, 232; 171:2-5.) The Church of Scientology also acquired and disseminated to its members a book written in 1990 (discussing events from the 1970's), which purportedly recounts Appellant's knowledge of explosives. (RT, Vol I, 140-141.) The complaining witnesses asserted, based on information sent to them by their church, that they were scared of Appellant. As a result, the complaining witnesses testified that they refused to walk in the area where Appellant was picketing.

Appellant was charged with one count of Criminal Threats, in violation of Penal Code §422; one count of attempted Criminal Threats, in violation of Penal Code §664/422; and one count of Interfering with Religion by Force or Threat of Force, in violation of Penal Code §422.6. (CT, Vol. I, 00001, 00006.)[1] The jury convicted only on the §422.6. As set forth herein, there was insufficient evidence presented at trial that Appellant used force or the threat of force to interfere with the complaining witnesses' religion. Further, several errors occurred during the course of the trial, including, but not limited to, restricting Appellant's presentation of evidence, limiting Appellant's right to cross-examine witnesses, admitting highly prejudicial and irrelevant evidence, and several instances of government misconduct.

II.
STATEMENT OF APPEALABILITY

This appeal is from a final judgment entered after trial and is

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[1] The Clerk's Transcripts is divided into two volumes, and each volume is numbered starting with 00001. To avoid any confusion, Appellant refers to the Clerk's Transcript, originally prepared October 4, 2001, and starting with the misdemeanor Complaint, as CT, Vol. I. The Clerk's Transcript which begins with the Notification of Filing of Appeal, will be herein referred to as CT, Vol. II.

appealable under Penal Code §1237(a). (Pen. Code, §1237(a).)

III.
STATEMENT OF THE CASE/STATEMENT OF FACTS

A. PRETRIAL RULINGS

Numerous pretrial motions were filed by both parties.[2] Respondent filed a Motion in Limine to Exclude Testimony Concerning Alleged Religious Practice, in which Respondent asked the trial court to prohibit Appellant from mentioning the "fair game" practice of Scientology. (CT, Vol. I, 000074, 000075, 000081, 000083, 000085.) Both parties filed several briefs on the issue. (CT, Vol. I, 000122, 000152, 000173, 000179, 000291.) In his briefing, Appellant argued that the Church of Scientology has an established policy which "allows any Scientologists to do all things necessary to destroy detractors of Scientology" and that "a person which is fair game 'may be deprived of property or injured by any means by any Scientologist without discipline of the Scientologist. May be tricked, sued, or lied to or destroyed'." (CT, Vol. I, 000124, citing, *Hart v. Cult Awareness Network*, 13 Cal.App.4th 777, 783.) Appellant argued not only about the "fair game" policy in general, but proffered that the policy has been specifically applied to him, noting that Scientologists have aggressively pursued him, filed several law suits against him, and repeatedly picketed his house and his wife's work. (CT, Vol. I, 000123.) Appellant also proffered a witness who would testify that he "was in the Circuit Court of Pinellas County, Florida when. . . a Scientology security guard, testified under oath that his Scientology superiors had indicated to him that [Appellant] was among the group that it considered SP's [suppressive persons] and enemies of Scientology." (CT, Vol. I, 000295.) The court granted Respondent's motion and prohibited Appellant from cross-examining Respondent's witnesses on this issue. (RT, Vol. I, 101-102.)

On March 12, 2008, Appellant filed a Motion in Limine to Exclude Evidence contained in a book entitled the Great Mambo Chicken and the Transhuman Condition ("Great Mambo Chicken") written by Ed Regis and

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[2] Because of the space limitations on a misdemeanor appeal, Appellant will only set forth those Motions which are the most relevant to his appeal.

published in 1990. (CT, Vol. I, 000116.) The book described uncorroborated accounts of events which occurred in the 1970's, including: that Appellant and his ex-wife detonated a device in the desert; that Appellant was accomplished in explosive devises; that Appellant owned a civil war replica cannon; and that Appellant owned assorted firearms. (CT, Vol. I, 000117.) Appellant argued that even if this evidence were correct, the description of legal activity which occurred in the 1970's was not evidence of intent in the instant case. (*Id.*) The court allowed the evidence in, and as set forth below, this evidence was a significant part of Respondent's case.

Respondent also filed a Motion in Limine to Exclude And/Or Limit Testimony of Kathleen Pettycrew, Bruce Pettycrew, Barbara Graham, Brent Stone and Arel Lucas. (CT, Vol. I, 00098.) Appellant filed an Opposition and proffered that the witnesses would testify that they also picketed at Golden Era, and that even when they were picketing without Appellant, the members would not use the pedestrian tunnels. (CT, Vol. I, 000146.) This evidence directly conflicts with the testimony at trial that the complaining witnesses refused to use the tunnels because they were afraid of Appellant. (*Id.*) The court granted Respondent's Motion and excluded all of Appellant's witnesses.

Respondent also filed a Motion in Limine to Exclude Lay Opinion of Detective Greer. (CT, Vol. I, 00010.) Specifically, Respondent sought to exclude a statement Detective Greer wrote in the police report which read "there does not appear to be any criminal intent or direct threat in this case." (CT., Vol. I, 000111.) The lower court granted Respondent's Motion and excluded the evidence. (CT, Vol. I, 000170.)

B. EVIDENCE PRESENTED AT TRIAL

Trial commenced on April 17, 2001, in front of the Honorable Robert H. Wallerstein, in Division 4 of the Hemet Courthouse. The government's case focused on three things: 1) Appellant's picketing; 2) Appellant's internet postings; and 3) passages from the Great Mambo Chicken Book.

1. EVIDENCE OF APPELLANT'S PICKETING

The government called Ken Hoden, who testified that he works at a

Scientology center called Golden Era Productions. He described the facility as a sound and film studio that does religious instructional films for Scientology. (RT, Vol. I, 135:12-17.) Mr. Hoden testified concerning the lay out of the property, noting that there are two pedestrian tunnels on the property which go under the highway. (RT, Vol. I, 138:3-10.)

The witness testified that he first saw Appellant in May or June of 2000 when Appellant was walking along the highway which goes over the tunnels, carrying a sign.[3] (RT, Vol. I, 138:26; 138:28; 139:2.) Mr. Hoden testified that "as the staff, the church staff would finish a meal, or were going from one building to another, [Appellant] would stand over the top of the tunnel and he would jeer or hackle at the staff in there." (RT, Vol. I, 142:22-28.) He stated that "in late May or early June [Appellant] was there [picketing] for about three months, and he would show up day after day after day for close to forty days or more." (RT, Vol I, 142:18-20.) Mr. Hoden also testified that Appellant went to the apartment complex where the Scientologists lived, took pictures as they walked out, and wrote down license plates.[4] (RT, Vol. I, 145:14-25.)

2. EVIDENCE OF APPELLANT'S ANTI-SCIENTOLOGY INTERNET POSTINGS

The Los Angeles office of the Church of Scientology monitored anti-Scientology discussions on the internet, and Appellant would purportedly make postings. (RT, Vol. I, 139:27-28.) The church would then send those postings to the complaining witnesses. (*Id.*) At trial, the government called the three complaining witnesses, who had received the postings from the

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3 Respondent filed a Motion in Limine to exclude any reference to why Appellant was picketing Golden Era. (CT, Vol. I, 00104.) The court granted the Motion, and Appellant was not allowed to introduce evidence that he was picketing to raise awareness of three deaths which had occurred at or near Golden Era, which Appellant believed were caused, at least in part, by Scientology. (CT, Vol. I, 000138.)

4 Respondent also called Mr. Petty, who testified that he was a security guard assigned to provide protection at Golden Era. (RT, Vol. I, 126:9-10.) While working at Golden Era, Mr. Petty saw Appellant walking along the highway with the picket sign. (RT, Vol. I, 126:13-14.) Mr. Petty testified that he saw Appellant with a gentleman named Mr. Rice, who was also picketing. (RT, Vol. I, 126:21-23.) Mr. Rice appeared to have a hand held global positioning system with him. (RT, Vol. I, 127:3-4.) The witness testified that Mr. Rice "appeared to be taking readings." (RT, Vol. I, 128:10-11.) He also testified that Appellant appeared to be "participating in" this event, although Appellant did not have a GPS device. (RT, Vol. I, 127:10-11.)

Church of Scientology, to testify that those postings made them scared.

One witness, Mr. Hoden testified that the Church of Scientology sent him a posting in which Appellant purportedly states "the annihilation of the church of Scientology and all its fronts is a worthy goal."[5] (RT, Vol. I, 171:2-5.) The witness also testified about another posting (Exhibit 15A) in which Appellant allegedly states "if you do want to help picket, its an impressive sight to see them getting undercover like roaches when the kitchen light is turned on." (RT, Vol. I, 172:14-16.) Mr. Hoden also testified that Exhibit Number 2 read, "oh, great. Now [a symbol] has to watch for eagles as well as cruise missiles." (RT, Vol. I, 182:8-9.) The witness testified that the symbol was used to indicate the leader of Scientology. (RT, Vol. I, 182:27-28.) The witness testified that Exhibit 10 read: "a group of rag tag SPs, all got different minds and opinions, but all of one goal." And then another person says "what's the goal" to stop the church of Scientology illegal and inhumane practices" or to "destroy it utterly without sorrow, belief system and all." And Appellant writes "either would work for me, but the later seems an easier task." (RT, Vol. I, 193:21-28.)

The postings were part of an internet discussion of the ills of Scientology, which never mentioned the complaining witnesses, and which were never sent to the complaining witness by Appellant. (RT, Vol. I, 220-221.)

3. EVIDENCE FROM THE GREAT MAMBO CHICKEN BOOK

The government also called Bruce Wagoner, who testified that he works for the Church of Scientology. (RT, Vol. II, 310:11-15.) Mr. Wagoner testified that he received "a part of a book about [Appellant] called the Great Mambo Chicken" from the Los Angeles Office of the Church of Scientology. (RT, Vol. I, 312:4-11, 139:27-28; 140:21-23.) The witness read the jury portions of the Mambo Chicken book that "concerned" him, including a passage that read:

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[5] Due to the restraint on brief length in a misdemeanor appeal, Appellant highlights some of the most relevant postings. This does not constitute a summary of all of the postings introduced at trial.

> after a while [Appellant] and Caroline [Appellant's ex-wife] had become semi professional explosive experts . . .'we were mostly going out into the desert and setting things off, mostly just bombs'. . .This was supposed to be a mock atom bomb, and indeed it worked pretty well. 'It made an incredible fire ball and a mushroom cloud. . . I mean, it was really impressive' . . . They came back next week with a device that would not only look like an a bomb explosion, it would actually work like one. . . . The core of the bomb would be a mixture of ammonium nitrate and diesel oil. . . So they set it up, lit the fuse, ran like hell, and jumped in the jeep. . . It was stunning. Everyone agreed that it was a very loud explosion, one of the best recreational bombs ever seen. . . .

(RT, Vol. I, 164:17-28, 165:1-28, 166:1-6.)

On cross, the witness was asked to finish the sentence from the end of his quote, revealing that the true sentence finished, "the Hensons walked away easy winners of the fire festival that Sunday." (RT, Vol. I, 213:23-27.) The book was discussing a social contest, not any sort of illegal activity. (RT, Vol. I, 214:5-8.) The witness acknowledged that the book was written in the early 1990's about events which had occurred in the 1970's. (RT, Vol. I, 214:13-16.) The witness was also asked if he read the cover of the book which quotes the L.A. Times as calling the book "free-wheeling and riotously funny." (RT, Vol. I, 212.)

On April 26, 2001, the jury informed the court that it was deadlocked on Counts One and Two but found Appellant guilty on Count Three. (CT, Vol. I, 000244.) On May 16, 2001, the case was set for sentencing, and the court was informed that Appellant was in Canada seeking asylum. (CT, Vol. I, 000289.) On July 20, 2001, the court found that upon Appellant's return to this country, he could decide between 365 days in jail suspended, with 180 days in jail and with three years probation or 365 days straight jail time, with no probation. (CT. Vol. I, 000318.) On May 30, 2007, Respondent was brought back to Riverside where he pleaded guilty to added Count Four, Failure to Appear, in violation of Penal Code §1320(A). (CT, Vol II, 00025-00026.) Counts One and Two were dismissed in the interest of justice, and Appellant was sentenced on Counts Three and Four to 180 days. (*Id.*) Appellant was denied bail pending the instant appeal. (CT, Vol II, 000034, 000039, 000052, 000067.)

IV.
ARGUMENT

A. THE GOVERNMENT PRESENTED INSUFFICIENT EVIDENCE THAT MR. HENSON VIOLATED PENAL CODE SECTION 422.6

Appellant was convicted of having violated §422.6, a misdemeanor. Section 422.6 provides that "No person. . .shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55."

In the instant case, there was insufficient evidence that Appellant used force or the threat of force against the complaining witnesses or that he interfered with the practice of religion.

1. THERE WAS INSUFFICIENT EVIDENCE THAT APPELLANT USED FORCE OR THE THREAT OF FORCE

Penal Code §422.6 requires the willful use of force or the threat of force. (See Pen. Code, §422.6; *In re M.S.* (1995) 10 Cal.4th 698 (finding that §422.6 expressly requires that a punishable threat be "willful".) Section 422.6 specifically provides that "no person may be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat." (Pen. Code, §422.6(c).)

In *In re M.S.* (1995) 10 Cal.4th 698, the court noted that in enacting 422.6, "the Legislature meant to proscribe 'true threats' as traditionally understood, not what might be termed 'group libel'." (*Id.* at 711.) The court defined a "A threat [as] an "expression of intent to inflict evil, injury or damage on another." (*Id.* at 710.) "[A] threat can be penalized only if 'on its face and in the circumstances in which it is made [it] is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution . . . '. "

(*People v. Mirmirani* (1981) 30 Cal.3d 375, quoting *United States v. Kelner* (2d Cir. 1976) 534 F.2d 1020, 1027.) The criminal threats statutes were "not enacted to punish emotional outbursts, it targets only those who try to instill fear in others." (*People v. Felix* (2001) 92 Cal.App.4th 905, 913.) They do not punish such things as "mere angry utterances or ranting soliloquies, however violent." (*People v. Teal* (1998) 61 Cal.App.4th 277, 281.) "One may, in private, curse one's enemies, pummel pillows, and shout revenge for real or imagined wrongs-safe from section 422 sanction." (*People v. Teal* (1998) 61 Cal.App.4th 277, 281.)

In the instant case, the evidence showed that Appellant was an outspoken opponent of the Church of Scientology and was picketing the Church's Golden Era facility. Respondent did not present any evidence that Appellant directly threatened, or even spoke to, the complaining witnesses.[6] Respondent's theory was that by making postings on the internet, where posters denounced Scientology in general, Appellant threatened the complaining witnesses.[7] Yet, Appellant's discussions about the evils of a particular religion is protected by the First Amendment. Nothing in the speech itself was a specific threat of force against the complaining witnesses.[8] As such, there was insufficient evidence that Appellant used

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6 In fact, Appellant was not convicted on the threat or attempted threat charges.

7 At trial, several exhibits were proffered in support Respondent's case against Appellant which involved postings to a Usenet (a pre web posting service which has no central server or central system owner). The government argued these postings were authenticated as a result of statements purportedly made by Appellant acknowledging authorship to law enforcement officers and statements purportedly made by Appellant during deposition testimony in a civil bankruptcy proceeding as well as other law suits. Appellant objected to the admissibility of these postings at trial on the basis of lack of proper authentication, but the objections were overruled. It is impossible to discern from the trial transcript whether Appellant did, in fact, properly authenticate the postings. It appears that during these interviews and depositions, Appellant may have initially claimed authorship but would qualify his answers saying he had made hundreds if not thousands of postings over the years, and the postings could, in fact, have been posted by someone else using his name. Appellant also stated that he could not be sure they were his. As such, these documents were never properly authenticated and should have been excluded. (See Evid. Code, §§ 1400, 1401, 1414.)

8 The government called Michael Rowe, a Riverside County Sheriff's deputy. (RT, Vol. II, 339.) Appellant told him that he wanted to take the Church down by psychological means not physical. (RT, Vol. II, 344.) Appellant told him he wanted to "either get them to

force or the threat of force.

2. THERE WAS INSUFFICIENT EVIDENCE THAT APPELLANT "INTERFERED" WITH THE PRACTICE OF RELIGION

In addition to use of force and threat of force, Respondent also had to present sufficient evidence that Appellant "interfered with" members of a religion. Penal Code §422.6 does not specifically define "interfered with" in the statute. However, the same section of the Penal Code, called the California Freedom of Access to Clinic and Church Entrances Act, provides that "'Interfere with' means to restrict a person's freedom of movement." (Pen. Code, §423.1.) "To 'restrict' means to restrain, to confine within bounds." (*Howard v. Babcock* (1993) 6 Cal.4th 409, 429, citing, Webster's New Collegiate Dict., p. 1006 (9th ed. 1988).)

The evidence at trial showed that Appellant routinely picketed the Scientology complex. (RT, Vol. I, 161:1-2.) The witnesses testified that because Appellant would picket on the overpass, the staff decided to walk under the secondary pedestrian overpass. (RT, Vol. I, 156-14-21, 316.) There was no evidence that Appellant ever left the highway or went on Church property. There was also no evidence that Appellant ever came into physical contact with church members, physically blocked their path, or physically restricted their movement in any way. The members may have chosen to walk a different path in order to avoid seeing Appellant, but nothing in Appellant's actions inherently restricted the actions of the church members. Thus, there was insufficient evidence that Appellant "interfered" with religion.

B. APPELLANT WAS PREVENTED FROM CROSS-EXAMINING WITNESSES AND FROM PRESENTING EVIDENCE ON HIS BEHALF

A defendant has the right to introduce any competent, relevant, and material evidence in support of defenses and a right to challenge the government witnesses by cross-examination; failure to allow in the evidence or permit cross-examination is error. (U.S. CONST. 6th amend; Cal. Const. article I, §15.) As set forth herein, Appellant's Sixth

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massively reform or put them completely out of business." (RT, Vol. II, 346:27-28.) Appellant stated he would accomplish this by "picketing." (RT, Vol. II, 347:1-3.)

Amendment rights were violated, resulting in an unfair trial.

1. APPELLANT WAS DENIED THE RIGHT TO PRESENT EVIDENCE ON HIS BEHALF

Under the Sixth Amendment to the United States Constitution, a criminal defendant has the right "to have compulsory process for obtaining witnesses in his favor." (*Washington v. Texas* (1967) 388 U.S. 14, 15; see also, Cal. CONST. article I, §15.) Thus, "the defendant must have a meaningful opportunity. . . to establish the essential elements of his case." (*In re Martin* (1987) 44 Cal.3d 1, citing, Westen, *The Compulsory Process Clause* (1974) 73 Mich.L.Rev. 71, 95.) In *Washington*, the United States Supreme Court noted that:

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

(*Id.* at 19; accord, *Webb v. Texas* (1972) 409 U.S. 95, 98 (per curiam).)

As set forth herein, Appellant was improperly prohibited from presenting evidence in his defense.

a. APPELLANT WAS IMPROPERLY PROHIBITED FROM ENTERING EVIDENCE THAT SCIENTOLOGY IS NOT A RELIGION

One of the elements of a violation of Penal Code §422.6 is that the defendant must, by force or fear of force, intend to interfere with an enumerated group. The statute lists the groups as: "(1) Disability, (2) Gender, (3) Nationality, (4) Race or ethnicity, (5) Religion, (6) Sexual orientation." (Pen. Code, §422.55.) Thus, the government had to present evidence that the group Appellant purportedly interfered with (by force or threat of force) was a religion or other listed group.

Appellant sought to present evidence that Scientology is not a religion and thus was not a protected group under §422.55.[9] Appellant

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[9] Appellant would have produced evidence that Scientology is not considered a religion in many countries, including Germany, France, and Greece.

argued that as an element of the crime, Respondent had to show that Scientology was an actual religion. (RT, Vol. I, 5:1-17.) The court found that "whether or not Scientology is a religion. I'm not going to take evidence on that fact. I'm going to accept it, because that's my responsibility to accept something, some entity, some unit that says that they are a church." (RT, Vol. I, 10:1-4.) By refusing to allow Appellant to present evidence that Scientology is not a religion, the lower court restricted Appellant's right to present evidence which would directly counter one of the elements of the crime. As such, Appellant's Sixth Amendment rights were violated.

b. APPELLANT WAS IMPROPERLY PROHIBITED FROM PRESENTING WITNESSES

In *Chambers v. Mississippi* (1973) 410 U.S. 284, the Supreme Court noted that "Few rights are more fundamental than that of an accused to present witnesses in his own defense." (*Id.* at 302; see also, *Faretta v. California* (1975) 422 U.S. 806, 818 (finding the rights to notice, confrontation, and compulsory process are "basic to our adversary system of criminal justice").)

As noted above, Appellant sought to introduce the testimony of five witnesses who would testify that when they picketed Golden Era without Appellant, members of the Church of Scientology would not use the pedestrian tunnels. (CT, Vol.I, 000146.) This evidence would have directly contradicted the witnesses' testimony at trial that they refused to use the tunnels because they were specifically afraid of Appellant. (*Id.*) Yet, the lower court refused to allow Appellant to present this evidence.

Appellant also sought to introduce a statement by the investigating officer that he read the postings and determined that "there does not appear to be any criminal intent or direct threat in this case." (CT, Vol. I, 000111.) The lower court again prohibited Appellant from presenting this evidence. (CT, Vol. I, 0000170.) The lower court's actions in excluding all of Appellant's witnesses, and preventing questioning concerning the officer's assessment of what happened, eviscerated Appellant's case and denied him his right to present evidence in his defense.

2. APPELLANT WAS DENIED THE RIGHT TO CROSS-EXAMINE WITNESSES

The right to cross-examination is part of the fundamental rights available to an accused. (See *Alford v. United States* (1931) 282 U.S. 687.) Wide latitude should be allowed in testing the accuracy or credibility of a witness. (*People v. Ross* (1969) 276 Cal.App.2d 729.) Restrictions upon cross-examination which go to the credibility of a witness violate the Confrontation Clause if a reasonable jury might have received a significantly different impression of the witness's credibility had the questions been allowed. (*People v. Quartermain* (1997) 16 Cal.4th 600, 624; *People v. Williams* (1997)16 Cal.4th 153, 207-208.)

As set forth above, Appellant sought to cross-examine the complaining witnesses about the "fair game" policy. Appellant proffered the declaration of a former Scientologist who asserted that he had been responsible for the implementation of the "fair game" policy. (CT, Vol. I, 000295.) This witness could have explained the policy in detail to the court, but the court would not hear the evidence. (RT, Vol. I, 95-97.) Appellant did not just want to introduce evidence of the general concept of "fair game," he was prepared to show that Scientologists had aggressively pursued him, had filed several law suits against him, and had repeatedly picketed his house. He also had a witness prepared to testify that a Scientology security guard had testified under oath that the Church of Scientology had told him that Appellant was to be considered an enemy of the church. (CT, Vol. I, 000123, 000295.) This evidence goes directly to the credibility of the witnesses and their bias against Appellant, and the refusal to allow Appellant to cross-examine the witnesses on this issue violated his Sixth Amendment rights.[10]

* * *

[10] Evidence of the use of "Fair game" has been permitted in other cases. (See *Hart v. Cult Awareness Network* (1993) 13 Cal.App.4th 777; *Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439; *Church of Scientology of California v. Armstrong* (1991) 232 Cal.App.3d 1060.)