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SUPERIOR COURT OF RIVERSIDE

APPELLATE DIVISION

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

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

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

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

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.)

