

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 06-538 JH

JOSEPH ALLEN BUTTS,

Defendant.

DEFENDANT JOSEPH BUTTS' RESPPONSE TO
GOVERNMENT'S MOTION IN LIMINE NO. 1

COMES NOW the Defendant, Joseph Allen Butts, by and through his attorney Bernadette Sedillo, and response to the Government's Motion in Limine No. 1 [Doc. 217] as follows:

The Government, in its Motion in Limine No. 1, acknowledges that the existence of the Defendant's beliefs will, by necessity, be made known to the jury. The Government gives the example of the certificate and membership card found subsequent to Joseph Butts' arrest indicating that he is an official courier for and member of the Church of the Cognizance. The Government has indicated that it intends to offer these exhibits into evidence in its case-in-chief under the theory that evidence of membership in the Church of the Cognizance is evidence of a conspiracy. The Government then asks that the defense be precluded from presenting evidence or testimony to answer or explain the exhibits the Government intends to present. Mr. Butts' defense in this case is that he did not believe he was committing a crime, believing that as long as he is acting solely in his capacity as a member and courier for his church, then he is not committing a crime and is protected from prosecution under the Religious Freedom Restoration

Act and the United States Constitution. Thus, Mr. Butts' defense is that he had not intent to commit a crime.

The first element of conspiracy is that "the defendant agreed with at least one other person to violate the law." 10th Cir. Pattern Jury Instruction 2.19. Mr. Butts' defense is that he never agreed to violate the law as he believed that he was protected by the law. Mr. Butts' beliefs are critically material and relevant to the element of his intent regarding an agreement to violate the law.

Conspiracy to commit a particular substantive offense requires at least the degree of criminal intent necessary to commit the underlying offense. United States v. Feola, 420 U.S. 671, 686 (1975).

Excluding evidence of Mr. Butts' beliefs will render this trial fundamentally unfair. "It is the materiality of the excluded evidence to the presentation of the defense that determines whether a petitioner has been deprived of a fundamentally fair trial." United States v. Solomon, 399 F.3d 1231 (10th Cir. 03/01/2005) citing Maes v. Thomas, 46 F.3d 979, 987 (10th Cir. 1995).

The right to present a defense is anchored in the "Fifth and Fourteenth Amendment right to due process and the Sixth Amendment right to compulsory process." United States v. Solomon, 399 F.3d 1231, 1239 (10th Cir. 2005). Essentially, the Government is asking the Court to preclude Mr. Butts from being able to testify in his own defense to explain his actions and to prohibit Mr. Butts' ability to challenge the prosecution's evidence. Because "[f]ew rights are more fundamental than that of an accused to present witnesses in his own defense," due process guarantees are implicated whenever the exclusion of evidence acts to obstruct this right. Taylor v. Illinois, 484 U.S. 400, 408 (1988).

The Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." Crane v. Kentucky, 476 U.S. 683, 690 (1986) (quoting California v. Trombetta, 467 U. S. 479 at 485 (1984)). "We break no new ground in observing that an

essential component of procedural fairness is an opportunity to be heard. Crane v. Kentucky, 476 U. S. 683, 690 (1986) citing In re Oliver, 333 U.S. 257, 272 (1948); Grannis v. Ordean, 234 U.S. 385, 394 (1914). Mr. Butts' "opportunity to be heard" would be an empty one if he is prohibited from explaining his beliefs when such evidence is central to his claim of innocence. By evaluating the strength of only one party's evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt. Holmes v. South Carolina, 547 U.S. 319, 126 S. Ct. 1727 (2006) (finding that a criminal defendant's federal constitutional rights are violated by an evidence rule under which the defendant may not introduce proof of third-party guilt if the prosecution has introduced forensic evidence that, if believed, strongly supports a guilty verdict).

Mr. Butts' sincerity of his beliefs is a question of fact. United States v. Seeger, 380 U.S. 163, 185 (1965). In analyzing the applicability of exemption to conscientious objectors to the war based on religious beliefs, the Seeger Court emphasized that "[w]hile the "truth" of a belief is not open to question, there remains the significant question whether it is "truly held." This is the threshold question of sincerity which must be resolved in every case. **It is, of course, a question of fact** -- a prime consideration to the validity of every claim for exemption as a conscientious objector." (Emphasis added) Id. at 185. Sincerity of belief is essentially a question of credibility. In Crane v. Kentucky, the trial court made a pre-trial ruling that the Defendant's confession was voluntary. Crane v. Kentucky, 476 U. S. 683 (1986). The prosecutor moved in limine to prevent the defense from introducing any testimony bearing on the circumstances under which the confession was obtained on the basis that such testimony was a "legal matter" that had already been determined by the court in its earlier ruling. Id. at 685. The Court granted the prosecutors motion. In its analysis, the United States Supreme Court noted that "questions of

credibility, whether of a witness or of a confession, are for the jury," and held that the requirement that the court make a pretrial voluntariness determination does not undercut the defendant's traditional prerogative to challenge the confession's reliability during the course of the trial. Id. at 688. Thus, under the same analysis, the question of Mr. Butts' credibility or sincerity of belief is a matter for the jury. The fact that the Court has made a pretrial determination that Mr. Butts' religious beliefs do not fall within the legal definition of religion and therefore do not qualify for the statutory protections under the Religious Freedom Restoration Act should not prohibit Mr. Butts' right to challenge the Government's evidence by way of testimony on the sincerity and credibility of his beliefs.

WHEREFORE, for the foregoing reasons, Defendant Joseph Butts respectfully requests that the Court deny the Government's Motion in Limine No. 1, and allow him to present evidence pertaining to the sincerity his beliefs.

Respectfully submitted,

Electronically filed 5/04/07
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May 2007, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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