Tony Alamo Christian Ministries
NEW JERUSALEM Churches Worldwide
Pastor Tony Alamo Volume 14900

Pastors Tony and Susan Alamo

TONY ALAMO'S MOTION FOR NEW TRIAL

United States District Court
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

UNITED STATES OF AMERICA	§	
v.	§	NO. 4:08CR40020-001
BERNIE LAZAR HOFFMAN,	§	
also known as TONY ALAMO	§	

DEFENDANT'S MOTION FOR NEW TRIAL

COMES NOW BERNIE LAZAR HOFFMAN, also known as TONY ALAMO, Defendant herein, and for his Motion for New Trial pursuant to the 5th and 6th Amendments to the United States Constitution and Rule 33 of the Federal Rules of Criminal Procedure, would respectfully show unto the Court the following:

1. The court committed error by denying Defendant's Motion to Suppress. The motion was based on stale information in the affidavit supporting the search warrant as well as no indicia of informant reliability nor any statement of reliability. Thus, all evidence collected during the September 20, 2008, search should have been ruled inadmissible.
2. The court committed error by failing to require the government to reveal the identity of two informants.
3. The court committed error by refusing to have the government reveal their original notes of interviews with witnesses and further refusing to inspect in camera the notes of the governmental agents or, at least, to order them preserved with the court.
4. The court committed error by refusing the defense request to see and inspect the records of Wellspring counseling center as to government witnesses Kolbek, Orlando and Eddy. This is especially true since the credibility of witnesses was the ultimate issue in the case.
5. The court committed error by refusing Defendant's request to see and inspect all FBI 302's of witness interviews. Even though the government said they did not have any that they had not turned over to the defense, the testimony of witnesses show that there were repeated and numerous interviews by law enforcement. Witness Desireé Kolbek alone testified she talked to the FBI at least 80 times.
6. The court committed error by denying the defense Rule 29 motion on the sufficiency of the evidence as to all counts, as the government failed to prove the elements of the offense alleged in the Second Superseding Indictment beyond a reasonable doubt. By count set forth below, the evidence presented was legally and factually insufficient to sustain conviction on any count:

Count 1: Summer Hagan was not supposed to go on the trip to California. There were multiple purposes of the trip, including visits to Defendant's doctors, installation of a new sound system in the California church, and shopping for and purchasing jewelry and clothing related to church activities, as well as routine church business. Summer Hagan testified she really did not know why she was going, but Alys Ondrisek testified it was their idea to go on the trip, not Tony Alamo's.

Count 2: The evidence is that Tony left California to see his sick brother in Nashville. When he returned to Fouke, Hurricane Katrina had caused a chaotic situation in the central United States and he did not want church members, including his own children, to travel during this time. One of the complaining witnesses called from California and wanted to come

home to Fouke. Tony resisted because his daughter was with them and other church members. Finally, he relented and gave permission for them to travel home to Fouke. Sex was never alleged to have occurred on this trip. There was no evidence showing the dominant purpose was for immoral purposes with Hagan.

Counts 3 and 4: All of the evidence is that Desireé Kolbek's mother visited her freely and on the two occasions came and got her and took her to the mother's home in Oklahoma. There is no evidence the purpose of the trip was for sex. In fact, Jennifer Kolbek testified as to the real purposes for her daughter's travels, which did not include sexual activity.

Count 5: Amy Eddy testified she arrived in Fouke in January, 1998, while Tony Alamo was in prison serving his sentence for a federal tax conviction. Mr. Alamo was not released from prison until July 8, 1998. He stayed in a half-way house until December, 1998. Amy Eddy's father was concerned and she went to Ft. Smith to talk to him over the phone. Her mother, Sue Davis, testified as to the reasons for Amy Eddy's transportation, which did not include sexual activity. Ms. Davis sent her back to Fouke.

Count 6: The testimony concerning the 1999, trip to Nashville, Tennessee, established that the purpose for the travel was to look at real estate and visit Mr. Alamo's sick brother. Amy Eddy testified she did not have sex with Mr. Alamo on this trip. In addition, Mr. Alamo got permission from his probation officer to travel with her and set forth the purposes of the travel on the travel request form.

Count 7: This concerned a trip to California for a legal matter that was interrupted and church members spent the night in Albuquerque, New Mexico, before returning to Fort Smith, Arkansas. Witness Orlando testified that "*I'm not sure about it, but it had to do with legal matters.*" There was no evidence of sex on this trip, either. Angela Morales testified that she and Orlando stayed in the same room and Orlando never left.

Counts 8 and 9: This was a trip from Fort Smith, Arkansas, to Huntington, West Virginia, for a deposition in West Virginia. Orlando testified that the trip to West Virginia had *"something to do with his ex-wife."* She also testified on cross examination that she *"didn't remember if they went from Ft. Smith to Memphis."* Several witnesses, including Sandford White, Angela Morales, and Sharon Alamo confirmed that a trip from Fort Smith to Memphis never occurred, as the group traveled straight from West Virginia to Memphis, Tennessee. There was no evidence of any sex on this trip. Orlando's parents were waiting in Memphis to assist Mr. Alamo in the tax trial. There was also testimony that Orlando shared a room with someone in Huntington and did not leave the room that night.

Count 10: This count concerned the substitution of office personnel in Fouke and California. Witnesses Rodriguez and Orlando were to go to the church in California to take the place of two other office workers who wanted to return to Fouke. Rodriguez merely asked if she could accompany Orlando because she wanted to go to California. There is absolutely no evidence Tony did anything to require Rodriguez to come to California or return to Fouke from California. The testimony was from Rodriguez: *"Needed someone to go with Jeanne. He asked if I wanted to go."* There was testimony that church members always travel in pairs, as referenced in the Bible. The evidence of criminal intent is totally lacking by the evidence at trial.

7. The court committed error by allowing into evidence over the objection of the defense numerous items of tangible and testimonial evidence that was clearly irrelevant and prejudicial in violation of Rules 401, 403, and 404 of the Federal Rules of Evidence. This included evidence and allegations of Defendant's relationship with adult women, his control over the ministry, his tax evasion conviction, the insinuation of hiding assets suggesting some sort of fraud, tax evasion, wage and hour violations, assault and battery, corporal punishment, and others. The cumulative effect of the irrelevant testimony operated to deprive the defendant of a fair trial.

8. The court committed error by allowing into evidence over the objection of the defendant incidents of threats of physical violence and actual violence.

9. The court committed error by allowing into evidence over the objection of the defendant the telephone tapes from monitored jail conversations as same were irrelevant to the charges in the indictment.

10. The court committed error by emphasizing the fact before the jury that the witness Jennifer Kolbek took the 5th Amendment in response to a question on cross examination by the government.

The question was irrelevant---"*Where do you live now?*"---and by first striking her testimony and then re-instating her testimony. Her credibility was unduly and irreparably damaged. It is plain error to require a witness to take the 5th amendment in front of the jury. The jury should have been excused for the discussion of the witness's privilege against self-incrimination and not told why the witness was removed from the witness stand.

11. The court committed error by allowing the government to force the witness Sue Davis to take the 5th amendment before the jury. The government knew she would and deliberately invoked the error which is prosecutorial misconduct that should have resulted in a mistrial. Again, the Court allowed her to take the 5th in front of the jury and then emphasized it, thus damaging her credibility.

12. The Court committed error by allowing the testimony of the 404 (b) witnesses.
13. The Court committed error by denying Defendant's motion for a mistrial upon the statement of the government in their initial closing argument that was an impermissible comment on Defendant's exercise of his 5th amendment right during the trial. The error could not be cured even though the court gave a curative instruction to the jury.
14. The Court committed error by denying the Defendant's Rule 29 motion on count two (2) of the Second Superseding Indictment as same was not supported by proper venue.
15. The Court committed error by allowing into evidence over Defendant's objections numerous irrelevant exhibits. The cumulative effect was to deny the Defendant a fair trial.
16. The Court committed error by denying portions of Defendant's Motion In Limine.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the convictions herein be set aside and Defendant be granted a new trial and for any other relief to which he may be entitled.

Respectfully submitted,
Jeff Harrelson, Harrelson Law Firm, P.A.

ADDENDUM TO DEFENDANT'S MOTION FOR NEW TRIAL

COMES NOW BERNIE LAZAR HOFFMAN, also known as TONY ALAMO, Defendant herein, through undersigned counsel, and for an Addendum to his Motion for New Trial filed herein, pursuant to the 5th and 6th Amendments to the United States Constitution and Rule 33 of the Federal Rules of Criminal Procedure, would respectfully show unto the Court the following:

17. The First Amendment to the United States Constitution directs that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. This language is absolute. It does not say that Congress can make laws infringing upon religious freedom only under certain circumstances or that only certain kinds of laws can be enacted infringing religious freedom. It says that Congress can make no law that so infringes.

A secular court imposes its own laws and prejudices on its proceedings and trials. It operates outside a religious context and brings its own judgment to bear on religious views and prejudices of individual jurors to the fact-finding process. Taken together, these two factors infringe upon the rights of an individual who is being tried on facts that raise conflicts between Biblical truths and the law of the land. Mr. Alamo maintains his innocence and denies he violated secular law. He feels he and his church have been targeted for prosecution for his teaching of certain Biblical principles.

Specifically, in Mr. Alamo's trial, the Government's allegations concerned, for the most part, the marrying of post pubescent females. Generally speaking, this arrangement is prohibited by secular law, or those laws made by man through representative process.

For thousands of years and in most historic and Biblical societies, such marriages were commonplace and not condemned by society or prohibited by law. *Webster's* dictionary defines *childhood* as the "state or time of being a child; state or time from birth or infancy to puberty or maturity" and defines *puberty* as "the state or quality of being first capable of begetting or bearing offspring which is marked by maturing of the reproductive organs, with the onset of menstruation in the female and the development of secondary sex characters in both sexes; the period at which sexual maturity is reached."

The age of puberty varies in different climates and environments, being from thirteen to sixteen in boys and eleven to fourteen in girls, and is commonly designated legally as fourteen for boys and twelve for girls. In hotter climates, puberty in young women can begin as early as 8 or 9.

The Bible itself is replete with such marriages; for example, in the King James Version of the Bible in I Kings 1:2, the Psalmist David was old and ill and could not stay warm. His servants sought and found a young virgin to "lie in thy bosom, that my lord the king may get heat." In the Book of Jasher, Chapter 24, verses 24–40, it is recounted how Rebecca reaches puberty at ten years old and marries Jacob's father, Isaac, who is forty years old.

The Apocrypha relates that when Mary, the mother of Jesus, was twelve years old and God had sent grace upon her, an angel of the Lord commanded Zacharias to assemble widowers and to "whomsoever the Lord shall show a sign, his wife shall she be." Joseph, an older man, was distraught because he believed he would be ridiculed because of his age difference, but followed the will of the Lord and married her.

In the early days of the settlement of this country, such marriages were common and not forbidden within the secular or religious context. But, at this time in history, adherence to this biblically-sanctioned practice brings prejudice and condemnation for preaching the Bible and common sense, such that the judge of the facts and of the law of the secular courts, are unable to fairly judge Mr. Alamo. This is based merely upon Mr. Alamo's preaching of these Biblical principles, as Mr. Alamo was not married to his accusers.

The unfair position Mr. Alamo was placed in by this trial concerned the above biblically-founded religious belief. If he

had advanced this religious belief concerning the appropriate marriage age of women during the trial in an attempt to mitigate prejudice and condemnation, he most certainly would have been misunderstood to have been justifying the acts of which he was accused and, in effect, admitting to them, even though he denies that they occurred.

A clear purpose of the Tony Alamo Christian Ministries is to preach the whole Bible, which commands all Christians to care for all the young and old men and women from an environment, a society, which bombards them through radio, television, the internet, movies, and other media with violence and clandestine sexual behavior. Keeping them within the religious community and limiting their exposure, both to this media and secular men and women until they are of marriageable age, is believed by the Church to be a God-sanctioned way of raising young men and women. Advancing this idea at trial might well have mitigated prejudice on the part of the jury but, in the secular environment of the courtroom, would have brought about the aforementioned supposition detrimental to Mr. Alamo.

The First Amendment to the United States Constitution does not contemplate placing an individual in this predicament. The forum of a secular court makes a fair trial impossible for Mr. Alamo or anybody under these circumstances. Only a trial, by a godly, orthodox tribunal, for God Himself to do the judging from the Bible without the above-referenced prejudices, could conduct a fair trial under these circumstances and avoid the religious infringement by a secular court.

18. The Court erred in failing to properly answer the jury note asking the question, "Did Tony have to have sexual contact or intercourse out of state to be charged? It happened in Fouke, AR, before trip and after return to Fouke, AR," the jury presumed and assumed [That is a whole other case about having sex before and after the trip, which we believe we can win, but the actual charges were that he had sex on the trip, and it is proven that that did not happen]. The answer, according to the jury's instructions for the charges, should have been "yes." The Court should have directed jurors to the appropriate portion of the charge which tells them, essentially, that such actual sexual contact or intercourse is inconsequential to a conviction, that the requisite intent on the part of Mr. Alamo when crossing state lines is the determining factor.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the convictions herein be set aside and Defendant be granted a new trial and for any other relief to which he may be entitled.

Respectfully submitted,

Donald E. Ervin, Attorney at Law

You can tell that the government is doing everything in its power to destroy Christian churches. The LORD is coming back to earth again soon, so get your soul right with the LORD now by saying this prayer:

My LORD and my GOD, have mercy upon my soul, a sinner.[1] I believe that JESUS CHRIST is the SON of the living GOD.[2] I believe that HE died on the cross and shed HIS precious blood for the forgiveness of all my former sins.[3] I believe that GOD raised JESUS from the dead by the power of the HOLY SPIRIT,[4] and that HE sits on the right hand of GOD at this moment hearing my confession of sin and this prayer.[5] I open up the door of my heart, and I invite YOU into my heart, LORD JESUS.[6] Wash all of my filthy sins away in the precious blood that YOU shed in my place on the cross at Calvary.[7] YOU will not turn me away, LORD JESUS; YOU will forgive my sins and save my soul. I know because YOUR WORD, the Bible, says so.[8] YOUR WORD says that YOU will turn no one away, and that includes me.[9] Therefore, I know that YOU have heard me, and I know that YOU have answered me, and I know that I am saved.[10] And I thank YOU, LORD JESUS, for saving my soul, and I will show my thankfulness by doing as YOU command and sin no more.[11]

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1 Psa. 51:5, Rom. 3:10-12, 23 **2** Matt. 26:63-64, 27:54, Luke 1:30-33, John 9:35-37, Rom. 1:3-4 **3** Acts 4:12, 20:28, Rom. 3:25, 1 John 1:7, Rev. 5:9 **4** Psa. 16:9-10, Matt. 28:5-7, Mark 16:9, 12, 14, John 2:19, 21, 10:17-18, 11:25, Acts 2:24, 3:15, Rom. 8:11, 1 Cor. 15:3-7 **5** Luke 22:69, Acts 2:25-36, Heb. 10:12-13 **6** 1 Cor. 3:16, Rev. 3:20 **7** Eph. 2:13-22, Heb. 9:22, 13:12, 20-21, 1 John 1:7, Rev. 1:5, 7:14 **8** Matt. 26:28, Acts 2:21, 4:12, Eph. 1:7, Col. 1:14 **9** Matt. 21:22, John 6:35, 37-40, Rom. 10:13 **10** Heb. 11:6 **11** John 5:14, 8:11, Rom. 6:4, 1 Cor. 15:10, Rev. 7:14, 22:14

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