



UNITED STATES
v.
BALLARD
SUPREME COURT OF THE UNITED STATES
322 U.S. 78
April 24, 1944
[5 - 4]

OPINION: DOUGLAS...Respondents were indicted and convicted for using...the mails to defraud. The indictment...charged a scheme to defraud by organizing and promoting the I Am movement through the use of the mails. The charge was that certain designated corporations were formed, literature distributed and sold, funds solicited, and memberships in the I Am movement sought 'by means of false and fraudulent representations, pretenses and promises'. The false representations charged were eighteen in number. It is sufficient at this point to say that they covered respondents' alleged religious doctrines or beliefs. They were all set forth in the first count. The following are representative:

'that Guy W. Ballard, now deceased, alias Saint Germain, Jesus, George Washington, and Godfre Ray King, had been selected and thereby designated by the alleged 'ascertained masters,' Saint Germain, as a divine messenger; and that the words of 'ascended masters' and the words of the alleged divine entity, Saint Germain, would be transmitted to mankind through the medium of the said Guy W. Ballard;

'that Guy W. Ballard, during his lifetime, and Edna W. Ballard, and Donald Ballard, by reason of their alleged high spiritual attainments and righteous conduct, had been selected as divine messengers through which the words of the alleged 'ascended masters,' including the alleged Saint Germain, would be communicated to mankind under the teachings commonly known as the 'I Am' movement;

'that Guy W. Ballard, during his lifetime, and Edna W. Ballard and Donald Ballard had, by reason of supernatural attainments, the power to heal persons of ailments and diseases and to make well persons afflicted with any diseases, injuries, or ailments, and did falsely represent to persons intended to be defrauded that the three designated persons had the ability and power to cure persons of those diseases normally classified as curable and also of diseases which are ordinarily classified by the medical profession as being incurable diseases; and did further represent that the three designated persons had in fact cured either by the activity of one, either, or all of said persons, hundreds of persons afflicted with diseases and ailments;'

Each of the representations enumerated in the indictment was followed by the charge that respondents 'well knew' it was false. After enumerating the eighteen misrepresentations the indictment also alleged:

'At the time of making all of the afore-alleged representations by the defendants, the defendants well knew that all of said aforementioned representations were false and untrue and were made with the intention on the part of the defendants to cheat, wrong, and defraud persons intended to be defrauded, and to obtain from persons intended to be defrauded by the defendants, money, property, and other things of value and to convert the same to the use and the benefit of the defendants...'

...[The respondents] asserted among other things that the indictment attacked the religious beliefs of respondents and sought to restrict the free exercise of their religion in violation of the Constitution of the United States...[The court advised the jury as follows:]

'Now, gentlemen, here is the issue in this case:

'First, the defendants in this case made certain representations of belief in a divinity and in a supernatural power. Some of the teachings of the defendants, representations, might seem extremely improbable to a great many people. For instance, the appearance of Jesus to dictate some of the works that we have had introduced in evidence, as testified to here at the opening transcription, or shaking hands with Jesus, to some people that might seem highly improbable. I point that out as one of the many statements.

'Whether that is true or not is not the concern of this Court and is not the concern of the jury—and they are going to be told so in their instructions. As far as this Court sees the issue, it is immaterial what these defendants preached or wrote or taught in their classes. They are not going to be permitted to speculate on the actuality of the happening of those incidents. Now, I think I have made that as clear as I can. Therefore, **the religious beliefs of these defendants cannot be an issue in this court.**

'The issue is: Did these defendants honestly and in good faith believe those things? If they did, they should be acquitted. I cannot make it any clearer than that.

'If these defendants did not believe those things, they did not believe that Jesus came down and dictated, or that Saint Germain came down and dictated, did not believe the things that they wrote, the things that they preached, but used the mail for the

purpose of getting money, the jury should find them guilty. Therefore, gentlemen, religion cannot come into this case.'

The District Court reiterated that admonition in the charge to the jury and made it abundantly clear. The following portion of the charge is typical:

'The question of the defendants' good faith is the cardinal question in this case. You are not to be concerned with the religious belief of the defendants, or any of them. The jury will be called upon to pass on the question of whether or not the defendants honestly and in good faith believed the representations which are set forth in the indictment, and honestly and in good faith believed that the benefits which they represented would flow from their belief to those who embraced and followed their teachings, or whether these representations were mere pretenses without honest belief on the part of the defendants or any of them, and, were the representations made for the purpose of procuring money, and were the mails used for this purpose.'

To be clear, the trial judge is saying to the jury, "You are not asked to judge the truth or falsity of the defendants' beliefs – in fact, that is not in play. You are going to be asked, however, to judge whether or not the defendants truly believe what they profess to believe."

...The Circuit Court of Appeals reversed the judgment of conviction and granted a new trial, one judge dissenting. In its view the restriction of the issue in question to that of good faith was error. Its reason was that the scheme to defraud alleged in the indictment was that respondents made the eighteen alleged false representations; and that to prove that defendants devised the scheme described in the indictment 'it was necessary to prove that they schemed to make some, at least, of the eighteen representations * * * and that some, at least, of the representations which they schemed to make were false.'...

So, after the defendants were found guilty of not really believing what they professed to believe, the Court of Appeals said that isn't fair. There must be a new trial because they were charged with making fraudulent claims. The state must prove the falsity of the claims criticized by the state since that is how they charged the defendants.

...The Circuit Court of Appeals held that the question of the truth of the representations concerning respondent's religious doctrines or beliefs should have been submitted to the jury...**We do not agree that the truth or verity of respondents' religious doctrines or beliefs should have been submitted to the jury...**The First Amendment has a dual aspect. It not only 'forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship' but also 'safeguards the free exercise of the chosen form of religion.' *Cantwell v. State of Connecticut*.¹ 'Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.' **Freedom of thought, which includes freedom of religious belief, is basic in a society of free men.** West

¹ Case 1A-R-011 on this website.

Virginia State Board of Education v. Barnette.² **It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. Murdock v. Pennsylvania.³ As stated in Davis v. Beason⁴: 'With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with.'**

See Prince v. Massachusetts.⁵ So we conclude that the District Court ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents.

...The judgment is reversed...[The case will not be sent back to determine the truth or falsity of the initial representations.]

DISSENT: STONE/ROBERTS/FRANKFURTER...I am not prepared to say that the constitutional guaranty of freedom of religion affords immunity from criminal prosecution for the fraudulent procurement of money by false statements as to one's religious experiences, more than it renders polygamy or libel immune from criminal prosecution. I cannot say that freedom of thought and worship includes freedom to procure money by making knowingly false statements about one's religious experiences. To go no further, if it were shown that a defendant in this case had asserted as a part of the alleged fraudulent scheme, that he had physically shaken

² Case 1A-S-9 on this website.

³ Case 1A-R-017 on this website.

⁴ Case 1A-R-002 on this website.

⁵ Case 1A-R-019 on this website.

hands with St. Germain in San Francisco on a day named, or that, as the indictment here alleges, by the exertion of his spiritual power he 'had in fact cured * * * hundreds of persons afflicted with diseases and ailments', I should not doubt that it would be open to the Government to submit to the jury proof that he had never been in San Francisco and that no such cures had ever been effected. In any event I see no occasion for making any pronouncement on this subject in the present case.

The indictment charges respondents' use of the mails to defraud...by false statements of their religious experiences which had not in fact occurred. But it also charged that the representations were 'falsely and fraudulently' made, that respondents 'well knew' that these representations were untrue, and that they were made by respondents with the intent to cheat and defraud those to whom they were made. With the assent of the prosecution and the defense the trial judge withdrew from the consideration of the jury the question whether the alleged religious experiences had in fact occurred, but submitted to the jury the single issue whether petitioners honestly believed that they had occurred, with the instruction that if the jury did not so find, then it should return a verdict of guilty...Since the indictment and the evidence support the conviction, it is irrelevant whether the religious experiences alleged did or did not in fact occur or whether that issue could or could not, for constitutional reasons, have been rightly submitted to the jury. Certainly none of respondents' constitutional rights are violated if they are prosecuted for the fraudulent procurement of money by false representations as to their beliefs, religious or otherwise...

On the issue submitted to the jury in this case it properly rendered a verdict of guilty. As no legally sufficient reason for disturbing it appears, I think the judgment below should be reversed and that of the District Court reinstated.

DISSENT: JACKSON...I should say the defendants have done just that for which they are indicted. If I might agree to their conviction without creating a precedent, I cheerfully would do so. I can see in their teachings nothing but humbug, untainted by any trace of truth. But that does not dispose of the constitutional question whether misrepresentation of religious experience or belief is prosecutable; it rather emphasizes the danger of such prosecutions.

The Ballard family claimed miraculous communication with the spirit world and supernatural power to heal the sick. They were brought to trial for mail fraud on an indictment which charged that their representations were false and that they 'well knew' they were false. The trial judge, obviously troubled, ruled that the court could not try whether the statements were untrue, but could inquire whether the defendants knew them to be untrue; and, if so, they could be convicted.

I find it difficult to reconcile this conclusion with our traditional religious freedoms.

In the first place, as a matter of either practice or philosophy I do not see how we can separate an issue as to what is believed from considerations as to what is believable. The most convincing proof that one believes his statements is to show that they have been true in his experience. Likewise, that one knowingly falsified is best proved by showing that what he said happened never did happen. How can the Government prove these persons knew something to be false which it cannot prove to be false? If we try religious sincerity

severed from religious verity, we isolate the dispute from the very considerations which in common experience provide its most reliable answer.

In the second place, any inquiry into intellectual honesty in religion raises profound psychological problems. William James, who wrote on these matters as a scientist, reminds us that it is not theology and ceremonies which keep religion going. Its vitality is in the religious experiences of many people. 'If you ask what these experiences are, they are conversations with the unseen, voices and visions, responses to prayer, changes of heart, deliverances from fear, inflowings of help, assurances of support, whenever certain persons set their own internal attitude in certain appropriate ways.' If religious liberty includes, as it must, the right to communicate such experiences to others, it seems to me an impossible task for juries to separate fancied ones from real ones, dreams from happenings, and hallucinations from true clairvoyance. Such experiences, like some tones and colors, have existence for one, but none at all for another. They cannot be verified to the minds of those whose field of consciousness does not include religious insight. When one comes to trial which turns on any aspect of religious belief or representation, unbelievers among his judges are likely not to understand and are almost certain not to believe him.

And then I do not know what degree of skepticism or disbelief in a religious representation amounts to actionable fraud. James points out that 'Faith means belief in something concerning which doubt is theoretically possible.' Belief in what one may demonstrate to the senses is not faith. All schools of religious thought make enormous assumptions, generally on the basis of revelations authenticated by some sign or miracle. The appeal in such matters is to a very different plane of credibility than is invoked by representations of secular fact in commerce. Some who profess belief in the Bible read literally what others read as allegory or metaphor, as they read Aesop's fables. Religious symbolism is even used by some with the same mental reservations one has in teaching of Santa Claus or Uncle Sam or Easter bunnies or dispassionate judges. It is hard in matters so mystical to say how literally one is bound to believe the doctrine he teaches and even more difficult to say how far it is reliance upon a teacher's literal belief which induces followers to give him money.

There appear to be persons—let us hope not many—who find refreshment and courage in the teachings of the 'I Am' cult. If the members of the sect get comfort from the celestial guidance of their 'Saint Germain,' however doubtful it seems to me, it is hard to say that they do not get what they pay for. Scores of sects flourish in this country by teaching what to me are queer notions. It is plain that there is wide variety in American religious taste. The Ballards are not alone in catering to it with a pretty dubious product.

The chief wrong which false prophets do to their following is not financial. The collections aggregate a tempting total, but individual payments are not ruinous. I doubt if the vigilance of the law is equal to making money stick by over-credulous people. But the real harm is on the mental and spiritual plane. There are those who hunger and thirst after higher values which they feel wanting in their humdrum lives. They live in mental confusion or moral anarchy and seek vaguely for truth and beauty and moral support. When they are deluded and then disillusioned, cynicism and confusion follow. The wrong of these things, as I see it, is not in the money the victims part with half so much as in the mental and spiritual poison they get. But that is precisely the thing the Constitution put beyond the reach of the prosecutor, for the price of freedom of

religion or of speech or of the press is that we must put up with, and even pay for, a good deal of rubbish.

Prosecutions of this character easily could degenerate into religious persecution. I do not doubt that religious leaders may be convicted of fraud for making false representations on matters other than faith or experience, as for example if one represents that funds are being used to construct a church when in fact they are being used for personal purposes. But that is not this case, which reaches into wholly dangerous ground. When does less than full belief in a professed credo become actionable fraud if one is soliciting gifts or legacies? Such inquiries may discomfort orthodox as well as unconventional religious teachers, for even the most regular of them are sometimes accused of taking their orthodoxy with a grain of salt.

I would dismiss the indictment and have done with this business of judicially examining other people's faiths.