

Jesus Malverde in the Courtroom
May guilt be inferred from religious beliefs?

Note to Editor:

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I. Introduction - Argumentum Ad Absurdum

Consider these hypothetical¹ situations:

A Jewish man is killed and Mr. Amir is charged. The prosecution begins its opening statement with, “Mr. Amir is a very religious man. His religion tells him that there is a strong enmity between him and Jews², and his religion tells him that one of his highest callings is to kill Jews in the name of his religion.”³”

Mr. Arjuna is convicted of manslaughter. At sentencing, Mr. Arjuna tells the judge how very sorry he is for causing his friend’s death. The prosecution counters that, “Mr. Arjuna is not at all remorseful for the death because his religion tells him that the victim is not even worthy of sorrow and that it is wrong to lament for the dead.”⁴

Mr. Firon is found to have three women living in his house, and he is charged with polygamy. The prosecution argues, “Mr. Firon’s religion commands him to ‘marry women of your choice, two, or three, or four’.⁵ He is just following his religion, but that is against the law.”

Mr. Smith is charged with severely beating a Black man. The prosecution argues that Mr. Smith had motive to beat the man because “Mr. Smith believes that some people rejected God and ‘God did cause a skin of blackness to come upon them’.⁶ And, what does Mr. Smith’s God want him to do? Mr. Smith’s religion tells him that ‘thou shalt beat in pieces many people.’⁷”

Mrs. Johnson is murdered after leaving her husband for another man. The murder is particularly brutal, involves severe genital mutilation, and some parts of the victim’s body are never located. Mr. Johnson is charged. During opening statement, the Prosecution argues “Mrs. Johnson committed adultery. Mr. Johnson’s religion requires that a person who commits adultery be put to death.⁸ Parts of Mrs. Johnson’s body were never found. Mr. Johnson’s religion demands that he eat human flesh and drink human blood.⁹ Mr.

¹ Many of the references to religious texts and religious practices are contrary to modern practice of the referenced religion. No disrespect is meant towards any religion.

² Holy Qur’an Sura v. 84 (Islam)

³ Sahih Bukhari, Volume 1, Book 2, Number 25 (Islam)

⁴ Bhagavada-Gita Ch. 2, p.11 (Hinduism)

⁵ Holy Qur’an Sura iv. 3 (Islam. As for mainstream Judaism and Christianity, see as examples I Kings 14:8 read in context with 2 Samuel 5:13 and 1 Chronicles 14:3; as to Latter Day Saints, see for example D&C 132: 1, 38)

⁶ 2 Nephi 5:21 (Latter Day Saint)

⁷ 3 Nephi 20:19 (Latter Day Saint)

⁸ Leviticus 20:10 (Judaism and Christianity)

⁹ Luke 22:19-20 (Christianity)

Johnson's religion demands that he perform genital mutilation¹⁰, and Mrs. Johnson's genitals were severely mutilated."

These examples should be readily recognizable as improper attempts to solicit religious bias¹¹, and a reasonable judge should not allow these types of obvious attacks on religion. Courts, however, have recently been quite tolerant with attempts to solicit bias against those with less popular religious beliefs, even though "[t]he purpose of the rule¹² [excluding evidence of religion] is to guard against the prejudice which may result from disclosure of a witness's faith. The scope of prohibition includes unconventional or unusual religions."¹³

Of late, courts seem to have few reservations about allowing religion based attacks on those who venerate Jesus Malverde as a saint. This article criticizes the departure from the traditional rule excluding references to a person's faith.

II. Veneration – What makes a Saint?

Most religions have venerated ancestral figures, such as the Roman Catholic Saints, Siddharta Gautama in Buddhism, Mohamed in Islam, The Ten Gurus of Sikhism, and Moses in Judaism. Historically, the venerated were accepted as such by the popular will of the adherents to the particular religion, but the modern approach leans more towards official systems of canonization.

Jesus Malverde is an ancestral figure who is primarily venerated by Roman Catholics in the State of Sinaloa, Mexico. Although the Roman Catholic Church has not officially canonized Jesus Malverde as a saint, he is nonetheless venerated and believed to be a saint by many devout Roman Catholics. He is commonly viewed as a patron saint of the poor, of the sick, of bandits, and of drug dealers. Each year thousands visit the shrine standing over Malverde's grave in Culiacán, and thousands more light candles at smaller Jesus Malverde shrines in Mexico and the United States.

There are over 10,000 identified Catholic saints¹⁴, but like Jesus Malverde, not all of the saints are formally recognized by all Catholics. As examples, on September 14, 1975, Pope

¹⁰ Genesis 17:10-14 (Christianity and Judaism)

¹¹ See *Prosecutorial Misconduct* ©2008 Bennett L. Gershman, §10:28, "As a general rule, any inquiry or reference to a witness' religious beliefs is improper. Such an allusion is often used to prejudice the jury, and has no relevance on issues of credibility. The rule against inquiring into religious beliefs is grounded in the constitutional bars against religious persecution contained in the First Amendment." See also Standards of Judicial Administration, Standard 10.20; Penal Code §1127h; California Code of Judicial Ethics, Canon 3B(5); Federal Rules of Evidence, Rule 610 (Religion to prove credibility) and Rule 403 (More prejudicial than probative); Code of Civil Procedure §231.5

¹² Federal Rule of Evidence 610 provides that "Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced."

¹³ *United States v. Sampol*, 636 F2d. 621, 666 (D.C. Cir. 1980).

¹⁴ www.catholic.org, last visited April 23, 2010

Paul VI canonized Elizabeth Ann Seton, as the first American-born saint, but the Orthodox Catholic Churches¹⁵ do not recognize Elizabeth Ann Seton as a saint. Similarly, on August 20, 2000, the Russian sect of the Orthodox Catholic Church canonized Russian Czar Nicholas II as a saint, yet neither the Greek nor Roman sects of the Catholic Church recognize Nicholas II as a saint.

Saint Christopher, like Saint Jesus Malverde, is one of the many saints who were proclaimed saints by popular approval, but in 1969 the Roman Catholic Church concluded that there was little historical evidence to suggest that Christopher the person even existed. Thus, when the church revised its calendar, Saint Christopher was removed. As of 1969, “Saint Christopher” the person ceased to be a fully accredited saint in the Roman Catholic Church, yet the Roman Catholic Church continues to approve of limited devotion to Saint Christopher. The Eastern Orthodox Catholic Churches recognize Christopher as a saint with a veneration date of May 9. This begs the question even as to the meaning of the term “saint”. If Christopher is still worthy of limited devotion, it would logically appear that he is some sort of saint, even if his very existence is in question.

The question of who is and who is not a saint becomes more muddled when considering that many sacred writings refer to all of the faithful as being saints¹⁶ and many churches refer to all of their members as saints.

Considering the amount of confusion among major churches about who is and who is not a saint, it is reasonable to argue that Jesus Malverde is a valid saint to those who venerate him as a saint.

III. Veneration of Jesus Malverde as evidence of guilt

Some law enforcement agencies have adopted the idea that Jesus Malverde is the patron saint of drug dealers and, hence, veneration of Jesus Malverde is evidence of drug sales.

¹⁵ Most Orthodox Christians no longer consider themselves to be “Catholics”, but rather believe they are part of “the One, Holy, Catholic and Apostolic Church” with the word “catholic” generally meaning the whole Christian body. On the American continent, the Eastern Orthodox Church was established in 1794 in Alaska and called itself “Russian Greek Orthodox Catholic Church”. The Russian branch is now officially called the “Russian Orthodox Church outside of Russia”. The word “catholic” is used in the broadest sense in this paper so as to include the many churches that make use of the word in name, creed, or beliefs. Thanks to Father Alexey Chumakov for providing background information on the Russian Orthodox Church and for directing the author to other authoritative sources of Church information.

¹⁶ See as examples: 1 Samuel 2:9; Psalm 30:4; Psalm 34:9; Psalm 50:5; Acts 9:13; Acts 9:32; Romans 1:7; Romans 15:25; Romans 16:15; 2 Corinthians 1:1; 2 Corinthians 13:13; Ephesians 1:1; Doctrine & Covenants 57:1& 4; 2 Nephi 9:19; Mosiah 3:19; Moses 7:56; Sri Guru Granth Sahib pg. 1354

The matter of *People v. Marin*¹⁷ provides a typical example of how veneration of Jesus Malverde is used to prove drug sales. Mr. Marin was allegedly found to be in possession of methamphetamine. He was charged with possession for sale even though the quantity of narcotics was small and law enforcement did not find the normal indicia of sales, such as scales, pay and owe sheets, packaging materials, or large sums of money. To distinguish between possession for personal use and possession for sale, the prosecution relied heavily on Mr. Marin's alleged veneration of Jesus Malverde.

During trial, the arresting officer testified that a "photograph of Jesus Malverde in a little plastic charm" was found in Mr. Marin's bedroom. The officer went on to explain that veneration of Jesus Malverde is "an indicator of someone's involvement in some type of narcotic activity" and a "lot of people who are involved in the sales of narcotics worship that photograph of Jesus Malverde, they have charms, they have head busts, they have photographs on the wall."

It is of note that no one challenged Mr. Marin's faith or sincerity. His veneration of Jesus Malverde was presented as a genuine spiritual belief, yet the officer was allowed to use those beliefs as proof of guilt.

The officer went on to testify that Jesus Malverde "was called a narco saint from everybody in Sinaloa that was involved in the narcotic sales because he helped them get a good deal and get their narcotics across the border, protect them from, from being robbed and protect them from being caught by law enforcement." The officer repeatedly described Jesus Malverde as "a saint for the narco traffickers", and went on to state that Jesus Malverde's "not really a saint".

In *U.S. v. Rivas*¹⁸ the court acknowledged that Jesus Malverde "is venerated by many people in Sinaloa, Mexico who are not drug traffickers", yet the court still allowed Malverde to be described to the jury as "The Narco Saint". Indeed, most courts to consider veneration of Jesus Malverde have allowed it to be used as evidence of drug sales¹⁹.

Use of Jesus Malverde veneration to infer guilt is not limited to the prosecution. In *U.S. v. Flores*²⁰, drugs were found in a vehicle, and the two occupants each claimed the other

¹⁷ Superior Court of California, County of Kern, case BF101210A

¹⁸ United States District Court for the District of Nebraska, 02CR3205, 2003 U.S. Dist. Lexis 18687

¹⁹ See as examples *U.S. v. Briseno* (10th Cir. 2006) 163 Fed. Appx. 658, 2006 U.S. App. Lexis 1258; *U.S. v. Pruden* (9th Cir. 2008) 304, Fed. Appx. 551, 2008 U.S. App. Lexis 27508; *U.S. v. Lopez* (10th Cir. 2009) 334 Fed. Appx. 880, 2009 U.S. App. Lexis 12401; *U.S. v. Lopez-Gutierrez* (District of Utah 2006) 2006 U.S. Dist. Lexis 86319 ; *U.S. v. Robles* (District of Utah 2004) 313 F. Supp. 2d 1206; *People v. Rodriguez*, 2009 Cal. App. Unpub. Lexis 7560; *People v. Martinez*, 2008 Cal. App. Unpub. Lexis 10251; *People v. Parra*, 2008 Cal. App. Unpub. Lexis 8884; *People v. Hernandez*, 2008 Cal. App. Unpub. Lexis 465; *People v. Islas*, 2003 Cal. App. Unpub. Lexis 6142

²⁰ 362 F.3d 1030 (8th Cir. 2004)

owned the contraband. Counsel for one of the defendants elicited testimony associating the other defendant with Jesus Malverde and then went on to elicit testimony to the effect that Jesus Malverde is known as the patron saint of drug traffickers and the patron saint of bandits.

IV. Patron Saint of “Hoe, Hoe, Hoe!” – Where do we draw the line on admission of religious beliefs?

Before cases involving Jesus Malverde, we appeared to have a single bright-line rule concerning use of religion to prove propensity or character: it was forbidden.

Now, we appear to have two rules. The traditional rule is still applied in most cases, but from an examination of cases that discuss Jesus Malverde, it appears the emerging “Malverde Rule” excludes religious beliefs that are officially sanctioned by a religion’s leaders, but allows the use of religious beliefs that are not officially sanctioned.

Because the “Malverde Rule” favors officially sanctioned beliefs but punishes fringe beliefs, the rule violates the Establishment Clause²¹.

More frightening is that the emerging rule makes valid each hypothetical situation presented in the Introduction of this paper because each hypothetical is based on fringe beliefs that are not officially sanctioned.

Applying the “Malverde Rule” to other saints yields ridiculous possibilities.

Saint Nicholas is one of the most popular saints in the world. He is a patron saint of both Russia and Greece and is prominently displayed in many parts of the world around Christmas²² and The Feast of Saint Nicholas²³. Nicholas is also the patron saint of prostitutes and thieves. If the standards applied to Malverde were applied to Nicholas, police evidence lockers could overflow during the holiday season as Nicholas shrines are seized.

Besides namesake churches throughout the world, Saint Rita of Cascia has schools named after her in Chicago and Aurora, IL. Rita is also commonly held to be the patron saint of murderers since she prayed for the death of her own children. If Rita’s faithful began receiving the treatment given to Malverde’s faithful, they would all be suspected of murder.

Chicago also has a church named after Saint Cajetan, the patron saint of gamblers. A Minnesota town is named after Adrian of Nicomedia as are many churches and schools.

²¹ At least one court has also recognized that Malverde veneration is almost exclusively limited to Hispanics, so targeting the religious faithful fringes on racial profiling (see *State v. De La Rosa*, 208 P.3d 1012, 228 Or. App. 666 (Or. App., 2009))

²² December 25 in Western churches, and January 7 in Eastern churches.

²³ December 19 in Western churches, and December 6 in Eastern churches.

Adrian is also known as the patron saint of arms dealers. Saint Juan Soldado, who has a large shrine in Tijuana, Mexico, is venerated as the patron saint of illegal immigrants.

Each of these saints, like most saints, is also patron over other groups and places. Besides being the patron saint of the noted unfavorable occupations, Nicholas is also patron saint of sailors, fishermen, merchants, pharmacists, archers, and pawnbrokers, and he is the patron saint of many countries, cities, schools, and churches as well.

Even the patron saint of lawyers, St. Genesius, is also the patron saint of clowns.

V. Conclusion

It can reasonably be argued that a person's faith is probative on the issue of guilt or innocence. If a baggie of marijuana were found between a devout Rastafarian and a devout Muslim, most would agree the Rastafarian is the most likely owner of the contraband. Most would also agree that a member of the Fundamentalist Church of Jesus Christ of Latter Day Saints²⁴ is probably more likely to be guilty of polygamy than a Roman Catholic priest. However, our system of jurisprudence places reasonable controls on the use of evidence, such as prohibiting the use of illegally seized evidence, barring evidence that is more prejudicial than probative, and excluding of evidence covered by various privileges.

Use of Jesus Malverde veneration to prove guilt runs contrary to well established restrictions on the use of evidence and launches a new rule that offends the Constitution. Some drug dealers may venerate Jesus Malverde, but it does not logically follow that those who venerate Jesus Malverde are drug dealers. Such an argument is akin to saying that some drug dealers are Black, so someone who is Black is a drug dealer. Both arguments are ridiculous and offensive.

As defenders of the accused, how can we return to the rule prohibiting use of religion to show character or criminal propensity? The answer is in the Introduction – by showing the absurdities that result from departure from the rule.

If religion is probative, shouldn't the defense be entitled to know the religious background of each witness? If religion is probative, shouldn't the defense be allowed to attack each witness with passages from sacred writings as well as with the moral failings of other practitioners of their faith? Since each religion is at somewhat prejudiced against the others, shouldn't jurors be required to disclose their religious beliefs?

Argumentum Ad Absurdum

²⁴ Not to be confused with the Latter Day Saints, who are also known as Mormons. The Latter Day Saints church excommunicates members who practice polygamy.