

1 STATE OF ILLINOIS)
2)
3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PEOPLE OF THE STATE OF)
7 ILLINOIS,)
8 Plaintiff,)

9 vs.) No. 20 CM 1338

10 MICHAEL M. PENKAVA,)
11 Defendant.)

12
13 ELECTRONICALLY RECORDED REPORT OF
14 PROCEEDINGS had in the above-entitled cause before
15 the Honorable MARK R. GERHARDT, Judge of said Court
16 of McHenry County, Illinois, on the 23rd day of
17 December, 2021, at the McHenry County Government
18 Center, Woodstock, Illinois.

19 APPEARANCES:

20 MR. PATRICK D. KENNEALLY,
21 McHENRY COUNTY STATE'S ATTORNEY, by
22 MR. ASHUR YOUASH, (Via Zoom) &
23 MR. MICHAEL PETTIT, (Live)
24 Assistant State's Attorney
On behalf of the Plaintiff,

MR. PHILIP A. PROSSNITZ,
On behalf of Michael M. Penkava,

EKL, WILLIAMS & PROVENZALE, by
MR. TERRY A. EKL,
Counsel for Colin Scott,
Case No. 20 CM 1337

1 THE COURT: I will call the matter of the State
2 versus Michael Penkava and Colin Scott. I will
3 bring in Mr. Youash, Mr. Scott and Mr. Penkava from
4 the Zoom portal.

5 MR. PROSSNITZ: Good morning, your Honor.
6 Philip --

7 THE COURT: Wait until we get the folks here,
8 Mr. Prossnitz.

9 MR. PROSSNITZ: Okay.

10 THE COURT: Good morning, Mr. Youash. Can you
11 hear me?

12 MR. YOUASH: Good morning, Judge Gerhardt. Yes,
13 I can.

14 THE COURT: Good morning, Mr. Scott. Can you
15 hear me?

16 MR. SCOTT: Yes, I can. Good morning, your
17 Honor.

18 THE COURT: Good morning, Mr. Penkava. Can you
19 hear me?

20 MR. PENKAVA: Yes, I can, your Honor. Thank
21 you.

22 THE COURT: All right. Names for the record?

23 MR. PROSSNITZ: Good morning, your Honor.
24 Philip Prossnitz on behalf of Michael Penkava.

1 MR. EKL: Good morning, your Honor. Terry Ek1,
2 E-k-1, on behalf of Mr. Scott.

3 MR. PROSSNITZ: Also, your Honor, because my
4 client is appearing by Zoom, I went ahead and
5 prepared a waiver pursuant to Illinois Supreme Court
6 order MR 30370. I have reviewed it with him as well
7 as the underlying order. He's signed it.

8 MR. EKL: Your Honor may recall, we addressed
9 this issue on behalf of Mr. Scott already.

10 THE COURT: I do recall that. I don't need the
11 order itself, Mr. Prossnitz.

12 MR. PROSSNITZ: Okay. It's just I referenced it
13 in --

14 THE COURT: I understand.

15 Mr. Penkava, I'm showing you defendant's
16 waiver pursuant to Illinois Supreme Court rule order
17 MR 3070. Did you read that document?

18 MR. PENKAVA: Yes, I did, your Honor.

19 THE COURT: Did you discuss it with
20 Mr. Prossnitz?

21 MR. PENKAVA: Yes, we did.

22 THE COURT: Do you have any questions about it?

23 MR. PENKAVA: No question, your Honor.

24 THE COURT: Did you understand it?

1 MR. PENKAVA: Yes, sir.

2 THE COURT: And on the second page there, did
3 you sign it?

4 MR. PENKAVA: Yes, I did.

5 THE COURT: Do you understand that you have the
6 right to be here personally in court today?

7 MR. PENKAVA: Yes, I do.

8 THE COURT: Do you understand that you have the
9 right to be present in court on all critical matters
10 in your proceeding?

11 MR. PENKAVA: Yes, your Honor.

12 THE COURT: Do you understand that I would
13 consider that today is one of those days?

14 MR. PENKAVA: Yes.

15 THE COURT: Do you understand that by waiving
16 it -- excuse me, by entering into this waiver,
17 you're giving up your right to be here personally
18 and your appearance via Zoom or teleconferencing
19 would have the same force and effect as if you were
20 in the courtroom with us at this time?

21 MR. PENKAVA: Yes.

22 THE COURT: Knowing and understanding these
23 things, do you wish to appear remotely?

24 MR. PENKAVA: Yes, I do, your Honor.

1 THE COURT: Has anyone forced, threatened or
2 coerced you in order for you to do so?

3 MR. PENKAVA: No, your Honor.

4 THE COURT: Has anyone promised you anything in
5 exchange for appearing remotely?

6 MR. PENKAVA: No.

7 THE COURT: The Court finds that there has been
8 a knowing, willful and voluntary waiver of in-court
9 appearance. Any objection to proceeding in that
10 fashion, Mr. Youash?

11 MR. YOUASH: No objection, Judge.

12 THE COURT: All right. And I would note
13 Mr. Youash is appearing remotely as well, although
14 we do not require a waiver from him. Anything
15 before we begin?

16 MR. YOUASH: Nothing from the State, Judge.

17 MR. EKL: Nothing on behalf of Mr. Scott.

18 MR. PROSSNITZ: Nothing on behalf of
19 Mr. Penkava.

20 THE COURT: All right. Now, the matter comes
21 before the Court today for the Court's decision on
22 the motion to quash which was filed back in August
23 by Mr. Prossnitz on behalf of his client and joined
24 by Mr. Ekl on behalf of his client which is asking

1 the Court to quash Paragraph 8 of two subpoenas
2 which were issued previously based on a claim of
3 clergy-penitent privilege.

4 Paragraph 8 in that subpoena as issued by
5 the State reads: All documents, reports and minutes
6 generated by the judicial committee formed on or
7 about July 27, 2006, for Arturo Hernandez-Pedraza.

8 The Court has reviewed the following: The
9 cases of People versus Diercks, D-i-e-r-c-k-s, from
10 the 5th District, 1980, found at 88 Ill. App. 3d
11 1073; People versus Thomas from the Second District,
12 2014 found at 2014 Ill. App. 2d 121001; People
13 versus Campobello, C-a-m-p-o-b-e-l-l-o, Second
14 District case from 2004 found at 384 Ill. App. 3d
15 619; People versus Thodos, T-h-o-d-o-s, Second
16 District case from 2015, found at 2015 Ill. App. 2d
17 140995; Doe, that's D-o-e, versus Catholic Diocese
18 of Rockford, a Second District case from 2015 found
19 at 2015 Ill. App. 2d 140618; People versus Burnidge,
20 two separate cases in that matter, a Second District
21 case 1996 found at 279 Ill. App. 3d 127 and the
22 Supreme Court case from the Illinois Supreme Court
23 in 1997, found at 178 Illinois 2d 429.

24 I've also looked at 325 ILCS 5/4 and taken

1 in account 735 ILCS 5/8-803 which reads: A
2 clergyman or practitioner of any religious
3 denomination accredited by the religious body to
4 which he or she belongs, shall not be compelled to
5 disclose in any court, or to any administrative
6 board, or agency or to any public officer, a
7 confession or admission made to him or her in his or
8 her professional character or as a spiritual advisor
9 in the course of the discipline enjoined by the
10 rules or practices of such religious body or of the
11 religion which he or she professes, nor to be --
12 excuse me, nor be compelled to divulge any
13 information which has been obtained by him or her in
14 such professional character or as such spiritual
15 advisor.

16 I've received and considered the testimony
17 of witnesses in this matter, and I have reviewed
18 evidence. I've also considered the arguments of
19 counsel.

20 The Court finds, concludes and orders as
21 follows: Defendants Scott and Penkava are clergy
22 for the purpose of Illinois law based on their
23 status as elders on July 27, 2006, of their church
24 of the Jehovah's Witnesses. The Jehovah's Witness

1 faith has a detailed and thorough clergy-penitent
2 process. That process includes -- this is not a
3 total description thereof -- the confession of a
4 sinner or a report of sin, that two elders initially
5 approach a sinner, that if the matter involves an
6 allegation or a confession of child abuse, they will
7 check with -- they being the elders, will check with
8 the legal department to see if reporting is
9 required. Such reporting requirements vary from
10 state to state. The elders will determine if the
11 sinner is repentant. The elders will involve a
12 third elder in the case of child abuse and if there
13 is no confession, confront the sinner. There will
14 be a meeting with an innocent spouse. I would note
15 that in this meeting, what this sinner said to the
16 elders is not reported to the spouse.

17 The next step would be that if the sinner
18 is repentant, there would be a public reproof
19 reported to the congregation, and if not, the sinner
20 would be excommunicated. The end of that process
21 would be a summary of notes known as a judicial
22 committee report is created. That report is the
23 gist of Paragraph 8 and the subject of this motion.

24 The Court further finds that consulting

1 with legal does not ruin a clergy-penitent
2 privilege. This step is covered in the portion of
3 the statute which reads: Nor may compel to divulge
4 any information which has been obtained by him or
5 her in such professional character or as such
6 spiritual advisor.

7 Turning our attention to the case of Thodos
8 that I mentioned earlier. In that case, the
9 prosecution made an argument that the clergy, who is
10 named Sutter, that his privilege was waived once he
11 discussed the defendant's admission with other
12 people. The Thodos case states, and this is from
13 Paragraph 25, and it quotes from Snyder versus
14 Poplett, 98 Ill. App. 3d, 359, a plain reading of
15 this clergy-penitent statute reveals the design to
16 protect those communications between clergymen and
17 laymen that originate in confidence that they will
18 not be disclosed.

19 Further down that paragraph, in discussing
20 whether or not the presence of a third party may
21 destroy that privilege, the Thodos (indiscernible)
22 stated, rather, if the third person is regularly
23 engaged in aiding the clergymen or practitioner in
24 giving spiritual advice, the privilege will survive.

1 It then also references the Diercks case,
2 D-i-e-r-c-k-s, that I mentioned earlier that I
3 reviewed.

4 In the case at hand, legal served the
5 purpose of aiding both defendants in giving
6 spiritual advice, that being a portion of the
7 Jehovah's Witness clergy-penitent process. The
8 conversation with Eloina, E-l-o-i-n-a, Hernandez
9 does not defeat the privilege regarding the
10 conversation between the defendants and Arturo
11 Hernandez-Pedraza.

12 I would note initially that she was not
13 present with the conversation that I mentioned
14 earlier in the initial discussion with Arturo
15 Hernandez. That's one of the steps in the process,
16 and she did not hear what Mr. Hernandez-Pedraza
17 stated to the elders, nor was that related to her in
18 the spousal -- innocent spouse meeting.

19 Although she personally is not regularly
20 engaged in aiding the clergymen, the innocent
21 spouse, as she is in this matter, is regularly
22 engaged in aiding the clergymen in giving spiritual
23 advice. The innocent spouse is just that, innocent,
24 not a confessor as known to Illinois law.

1 As spelled out in Thodos, which we just
2 referenced, it is not that the intent spouse gives
3 spiritual advice, it is that the innocent spouse
4 aids the clergymen in giving spiritual advice which
5 is a regular step of the Jehovah's Witness
6 clergy-penitent process as detailed by the witness,
7 Mr. Miller.

8 Eloina, as the innocent spouse, was
9 indispensable to the work of the defendants -- both
10 defendants' clergy-penitent process. As such, the
11 clergy-penitent privilege existed and still exists
12 between the defendants and Arturo Hernandez-Pedraza,
13 and any portion of the judicial conference -- excuse
14 me, judicial committee report pertaining to this
15 privilege is not obtainable by the State.

16 However, how is one to know if the contents
17 of the report pertains only to privileged
18 information? Case law in the statute itself make it
19 clear that the privilege exists only to, quote,
20 confession or admission and any information which
21 has been obtained by him or her, being clergy, in
22 such professional character or as such spiritual
23 advisor.

24 I'm going to turn our attention to the

1 motion drafted by Mr. Prossnitz and adopted by
2 Mr. Ekl on behalf of their clients. In the prayer
3 for relief as contained in that motion which was
4 filed August 3, 2021, Mr. Prossnitz asks for three
5 items of relief, the last one being a general such
6 other relief as this Court deems just and
7 appropriate. The first paragraph in that request
8 for relief is Paragraph A, granting this motion to
9 quash Paragraph No. 8 in the two State subpoena
10 duces tecums No. 1, returnable August 25, 2021, and
11 No. 2, returnable August 31, 2021. B,
12 alternately -- actually, Mr. Prossnitz worded it as
13 alternatively.

14 MR. PROSSNITZ: Alternatively?

15 THE COURT: Alternatively. Thank you. I
16 stumbled over that. Alternatively, ordering all
17 materials supplied pursuant to Paragraph A be held
18 and viewed in camera until such time as the Court
19 hears testimony and receives evidence as to the
20 confessional process of the Kingdom Hall Jehovah's
21 Witnesses' faith so as to determine if the documents
22 are privileged. Now, that process of hearing about
23 that has already occurred.

24 Based on my inability -- the Court's

1 inability to know if what is in the judicial
2 committee report is privileged, the Court denies the
3 relief requested in Paragraph A but grants the
4 request by the defendants as -- and as agreed to by
5 the State in their closing argument, that the Court
6 should review the documents pursuant to the relief
7 requested in Paragraph B.

8 The report, and again this is the judicial
9 committee report, as requested in Paragraph 8 of the
10 subpoenas has been reviewed in camera, and although
11 highly redacted so as to remove any privileged
12 information, is tendered to the State. Now,
13 Mr. Youash, I know you're not here personally, but I
14 can give those to Mr. Pettet from your office who is
15 seated here. Is that okay with you?

16 MR. YOUASH: Absolutely, and thank you, your
17 Honor.

18 THE COURT: Sure. Let me just find where I put
19 those. I'm handing to Mr. Pettet a redacted
20 version, the original in Spanish. Also, the
21 interpretation is done by one of our interpreters
22 here, Ms. Natalie Karnick and also put her
23 certification on the back of that. So Spanish and
24 English version, hand that to Mr. Pettet.

1 Mr. Youash, I don't know for the sake of
2 brevity, you want me to give a copy to Mr. Prossnitz
3 and Mr. Ekl at this time?

4 MR. YOUASH: Your Honor, I would defer to the
5 Court there, if that makes -- to do so if they
6 haven't received them already.

7 THE COURT: Well, it's your subpoena. That's
8 why I'm asking you.

9 MR. YOUASH: I have no objection.

10 THE COURT: I'll tender the same that I just
11 tendered to Mr. Pettet to Mr. Prossnitz and to
12 Mr. Ekl.

13 MR. PROSSNITZ: Thank you, Judge.

14 THE COURT: You are very welcome.

15 MR. EKL: Thank you.

16 THE COURT: I'm also at this time going to give
17 Exhibit B which was admitted during the hearing to
18 the clerk's office. One moment. That was People's
19 Exhibit B, madam clerk.

20 Now, there were other subpoenaed items
21 which the Court received which at this time I'm able
22 to give to the State. I did not make any copy of
23 those, however. One is the response to subpoenas.
24 Give me a moment. This one is from Marco Ortiz

1 which I think we had mentioned earlier which
2 indicates he no longer served as the secretary.
3 I'll hand those to Mr. Pettet.

4 MR. PETTET: I'll acknowledge receipt, your
5 Honor.

6 THE COURT: The other is a document entitled
7 response to subpoenas that is authored by Jose Luis
8 Martinez. I'm going to give that to Mr. Pettet in a
9 moment along with an envelope that contained the --
10 it's entitled confidential elders' file 2006, Arturo
11 Hernandez-Pedraza which is what the judicial
12 committee meeting -- judicial committee meeting
13 document was contained in. It's now empty. I'm
14 going to give that to Mr. Pettet in a moment. I'm
15 going to hang onto the document because it helps
16 further explain some items.

17 Another item that was contained as returned
18 in the subpoena is known as organized to-do
19 Jehovah's will. I believe from what Mr. Martinez
20 wrote in his response is Chapter 14. It arrived to
21 us in Spanish. I'm going to hand the Spanish copy
22 to Mr. Pettet. Also, instead of having Ms. Karnick
23 interpret that, she found readily available in the
24 public domain, the English version. So I'll give

1 both of those to Mr. Pettet.

2 I also received something that is not
3 specifically mentioned in Mr. Martinez's response.
4 It was given to us in Spanish, and Ms. Karnick was
5 kind enough to translate it to English which took
6 some time and effort, quite frankly. It's entitled,
7 and I apologize if I mispronounce this, the Atalaya,
8 A-t-a-l-a-y-a, dated January 1.

9 A VOICE: Atalaya.

10 THE COURT: Atalaya, thank you. January 1,
11 1997.

12 Now, looking at the subpoena, I'm not
13 exactly sure where that comes into play other than,
14 give me a moment, in the original subpoena duces
15 tecum, there is a request for a copy of the
16 Watchtower from that date, January 1st of 1997.
17 Quite frankly, based on the format that this is in,
18 I'm not certain that that is the Watchtower of
19 January 1, 1997 because in the response to subpoena,
20 Mr. Martinez also lists that Item No. 7, the one we
21 are talking about, asks for a copy of the Watchtower
22 dated January 1, 1997. The Spanish congregation
23 does not have a physical copy of this Watchtower but
24 provides the version found on <https>, et cetera,

1 www.wol.jw.org. So I believe that is what this
2 document is. And I'll hand that to Mr. Pettet.

3 I would note that in the Spanish language
4 version at the back side, there are pages that
5 Ms. Karnick, the interpreter, pulled out as being
6 duplicate pages found within the Spanish original.
7 Handing the items to Mr. Pettet.

8 MR. PETTET: Thank you.

9 THE COURT: Now, just to confuse matters,
10 because it's been all crystal clear so far, there
11 was also a document which I don't believe was asked
12 for that was supplied to me, and when I say asked
13 for, I don't believe it was asked for by way of the
14 subpoena, but I believe the parties are already in
15 possession of this and I'll explain.

16 I mentioned to you gentlemen later at some
17 earlier court date that I was receiving information
18 without return envelopes on them, and I'll get to
19 that in a moment. One of them, I believe, came from
20 either Mr. Prossnitz or Judge Meyer. It's the
21 contents that include a court order signed by Judge
22 Meyer some time ago and it includes transcripts and
23 some other documents pursuant to a court order that
24 Mr. Prossnitz authored -- I believe Mr. Prossnitz

1 authored on January 28, 2021. Do you recall that,
2 Mr. Prossnitz?

3 MR. PROSSNITZ: Well, I know the order. But if
4 I had supplied anything to the Court, there would be
5 a cover letter.

6 THE COURT: There would be a what?

7 MR. PROSSNITZ: If I supplied anything to this
8 Court, there would be a cover letter with c.c. to
9 Mr. Youash and Mr. Ekl.

10 THE COURT: Then I assume I received these from
11 Judge Meyer. That's not -- it's not really
12 important where it came from. The order that I'm
13 referencing is a January 28, 2021, order in
14 Case 19 MR 1149.

15 It indicates that there were a number of
16 things being provided to me, to Mr. Ekl, to
17 Mr. Prossnitz and to you, Mr. Youash, regarding that
18 case. And I believe one of the documents is one of
19 the ones that was also provided by Mr. Martinez.
20 And I have the Spanish language version of it, but I
21 also have an English translation. And what it is is
22 a letter to the governing body of elders of the
23 Spanish congregation of Jehovah's Witnesses in
24 Crystal Lake, care of Colin Scott. It's dated

1 September 26, 2006. It was sent by the Christian
2 Congregation of Jehovah's Witnesses at the address
3 in Patterson, New York.

4 Is everybody familiar with the document I'm
5 talking about?

6 MR. PROSSNITZ: I am not off the top of my head,
7 your Honor.

8 MR. EKL: Nor am I, Judge.

9 THE COURT: Mr. Youash?

10 MR. YOUASH: Judge, I can't say that I am. I do
11 know there were a number of documents that we
12 received based on a court order that Mr. Prossnitz
13 had filed in regards to the 19 MR case. Just not
14 knowing exactly what document you are looking at, I
15 think it wouldn't be a safe assumption for me to say
16 that I have received that.

17 THE COURT: Okay. And the reason I believe that
18 everybody does is because it was included in the
19 documents I received with Mr. Prossnitz's draft
20 order in the envelope which I believe was from Judge
21 Meyer, and I assume by the way it was packaged, that
22 it's one of the documents listed on the front page
23 of that order where it says document rider 4, 5 and
24 9, although the actual listing of what was on 4, 5,

1 and 9 is not included.

2 I have a letter I just referred to. I have
3 an English copy, basically, of the Spanish document
4 I just mentioned translated by Heather Oland in the
5 State of Maryland.

6 Does any of this ring any bells with
7 anyone?

8 MR. PROSSNITZ: Unfortunately, no.

9 MR. EKL: Does not for me either, Judge.

10 THE COURT: Mr. Youash?

11 MR. YOUASH: Judge, I -- I can't say that I
12 remember.

13 THE COURT: All right. I'm going to hold onto
14 that until we are all here in person. I'm not going
15 to give that yet, although, I may, at a future court
16 date when we are all available. So I'm going to
17 give the response to subpoenas and that envelope I
18 mentioned to Mr. Pettet.

19 Now, continuing down the path of mystery
20 documents, I also received an envelope which I
21 mentioned to you folks some time ago that has no
22 return address, has no information other than
23 documents provided in it, and I do not know where it
24 came from. It contains the same letter I just spoke

1 of from September 26, 2006, this one translated into
2 English, a letter from October 16, 2006, from the
3 Christian Congregation of Jehovah's Witnesses in
4 Patterson, New York, to the body of elders in the
5 Spanish congregation. Another letter or document
6 from November 3rd of 2006 which appears to be a
7 letter back from the Spanish congregation elders.
8 Another document, which oddly enough is a copy of
9 the judicial committee report, the one that's been
10 the subject of this whole motion to quash. The
11 other is a letter from January 17, 2019, which
12 concerns basically an unrelated case concerning
13 Mr. Arturo Hernandez. Another judicial committee
14 report dated June 20, 2019, which would appear to
15 involve that I just mentioned, the unrelated case.
16 Certificate of translation from Ms. Oland in
17 Maryland. A letter from March 8th of 2016 from the
18 body -- excuse me, from the headquarters Christian
19 Congregation Jehovah's Witnesses in Wallkill, New
20 York, to the body of elders in the Spanish
21 congregation. And another letter from June 26,
22 2019, from the Christian Congregation in New York to
23 the body of elders of the Spanish congregation.

24 I don't believe any of that was in response

1 to a subpoena unless someone can tell me otherwise.

2 MR. EKL: Judge, I can tell you that I have
3 absolutely no knowledge that that material was sent
4 to you pursuant to a subpoena.

5 THE COURT: Mr. Prossnitz?

6 MR. PROSSNITZ: Same. And my concern is
7 somebody's trying to interfere with the process.

8 THE COURT: I don't know. I don't know if I'd
9 go that far.

10 Mr. Youash, do you have any idea where this
11 came from?

12 MR. YOUASH: Judge, I don't have any idea where
13 it came from.

14 THE COURT: Okay. Just so I can be clear about
15 this, I've identified these documents that are in
16 the envelope I just mentioned, I have not read them.

17 MR. PROSSNITZ: Thank you.

18 THE COURT: Obviously, I have already read the
19 one that's contained in there which is the judicial
20 committee report that's at the issue of Paragraph 8
21 of our current subpoena. But otherwise, I'm not
22 going to disseminate these. I will keep these
23 confidentially until this case resolves. And if
24 there is no need to address them, they will most

1 likely be destroyed at that time if there is no
2 other need for them.

3 Is everybody clear on that, Mr. Youash?

4 MR. YOUASH: Yes, your Honor.

5 THE COURT: Mr. Prossnitz?

6 MR. PROSSNITZ: Yes. And we agree with that
7 process.

8 THE COURT: Mr. Ek1?

9 MR. EKL: I agree, Judge.

10 THE COURT: All right. And then I know I'm
11 backtracking and going over, but we will hold onto
12 those other documents we mentioned concerning that
13 one letter that I think was already given to both
14 sides. I'll hang onto that until everybody is
15 available when we can be back together.

16 So moving onto that, the next issue on our
17 agenda today is the State filed a motion I believe
18 on Tuesday. It's entitled People's motion in limine
19 to admit statements of Eloina Hernandez.

20 Mr. Youash?

21 MR. YOUASH: Yes, your Honor.

22 THE COURT: What would you like to do?

23 MR. YOUASH: We would ask that -- we would just
24 ask that be set for hearing.

1 THE COURT: Mr. Prossnitz and Mr. Ekl, do you
2 need time to respond in writing?

3 MR. EKL: I think we -- I think we should file a
4 written response, Judge, although, I believe your
5 Honor's orders, findings from today eliminate any
6 need for a hearing on this motion.

7 THE COURT: That I don't know. I would note
8 that I have already looked at McQueen and Flatt that
9 are referenced by Mr. Youash in that motion since I
10 think it was given to me on the earlier motion.

11 Mr. Prossnitz, do you need time to respond?

12 MR. PROSSNITZ: Yes, please.

13 THE COURT: All right. How much time do you
14 gentlemen need?

15 MR. PROSSNITZ: Judge, I'm -- I'm off the
16 following week. If -- I'd like to move this along.
17 I know everyone else would. One moment, please.

18 MR. EKL: Judge, if I could interject something?

19 THE COURT: Sure.

20 MR. EKL: Could we just simply set this matter
21 down for a bench trial and take this motion either
22 immediately prior to the bench trial or in
23 conjunction with it? I don't think this requires a
24 separate evidentiary hearing.

1 THE COURT: Mr. Youash?

2 MR. YOUASH: Judge, we would object to that.

3 THE COURT: Well, I can pick a bench trial date,
4 and we can set this short of the bench trial,
5 Mr. Ekl, so at least we can hopefully have some
6 finality.

7 MR. PROSSNITZ: So getting back, if I could have
8 to January 7 to respond, please?

9 THE COURT: Mr. Ekl, you too?

10 MR. EKL: That's fine.

11 THE COURT: January 7 to respond, Mr. Pros --
12 Mr. Youash, any time to reply?

13 MR. YOUASH: Judge, just a week.

14 THE COURT: That takes us to the 14th of
15 January.

16 Now, let's look at a bench trial date.
17 When do you fellows want a trial?

18 MR. PROSSNITZ: I'm sorry, Judge, when will the
19 hearing be on the --

20 THE COURT: I don't know yet. I'm going to set
21 the bench trial, and then we will work backwards.

22 MR. PROSSNITZ: Okay.

23 MR. EKL: What does your calendar look like,
24 Judge?

1 THE COURT: It's black with gold letters on the
2 front.

3 MR. EKL: Are you looking at February, or are we
4 looking at March?

5 THE COURT: Well, I guess I would ask first, how
6 long do you expect this to take?

7 MR. EKL: Based upon your Honor's rulings today,
8 I cannot imagine this would require more than a
9 couple of hours.

10 THE COURT: Mr. Youash?

11 MR. YOUASH: Your Honor, I don't think more than
12 two days. I would agree with that.

13 THE COURT: Well, if we do one day, I can fit
14 you in on February 25, March 2 or March 4. If we
15 are going to take two, I guess I could reserve the
16 2nd and the 4th of March.

17 MR. PROSSNITZ: I would request March 2 or
18 March 4, whichever is convenient to all parties.

19 MR. EKL: That works for me.

20 THE COURT: Mr. Youash, March 2?

21 MR. YOUASH: March 2 will work, Judge.

22 THE COURT: All right. I'm going to keep clear
23 the 4th also just in case. So we will schedule it
24 for both those days just in days in hopes that we

1 will be efficient and not need the 4th, but we will
2 reserve both those dates.

3 MR. EKL: Is that 1:30, Judge?

4 THE COURT: 1:30 on both those dates.

5 Mr. Youash, when do you want your hearing
6 on the other motion?

7 MR. YOUASH: Judge, I would defer to the Court's
8 calendar. If you want to go a week or two before
9 that, that would be fine.

10 THE COURT: How about February 3rd? That's
11 about a month before that?

12 MR. EKL: Your Honor, I have a ski trip
13 scheduled for the 3rd and 4th.

14 MR. PROSSNITZ: Is something --

15 MR. EKL: What are you smiling about?

16 THE COURT: I was going to make a wise comment
17 that you could appear via Zoom like Mr. Youash,
18 perhaps, from the slopes, but that might be too much
19 to ask from you.

20 MR. EKL: I thought it was going to be a wise
21 comment like my wife saying you're too old to be
22 skiing still.

23 THE COURT: Didn't cross my mind.

24 MR. EKL: Thank you. I appreciate that.

1 MR. PROSSNITZ: Is anything available the week
2 of January 17, Judge? Because I believe this will
3 be a short motion hearing.

4 MR. YOUASH: I would agree with that, Judge. I
5 don't believe that there will be much in the form of
6 evidentiary. So I agree with that.

7 THE COURT: I have two set on the 19th. I have
8 two set on the 21st. I have a motion in limine set
9 on the 20th that perhaps that might be a date to do
10 it, but that's the matter with Ms. Shott who is a
11 pro se litigant with a very lengthy motion in
12 limine. So I'm not sure we want to --

13 MR. PROSSNITZ: Thinking Friday.

14 THE COURT: -- attempt that. Friday the 21st I
15 have a bench trial -- it looks like two bench trials
16 set on the 21st.

17 MR. PROSSNITZ: And I'm sorry --

18 THE COURT: The 27th and 28th is wide open right
19 now.

20 MR. EKL: That works.

21 THE COURT: Which would you fellows like?

22 MR. PROSSNITZ: 28th. What time, Judge?

23 THE COURT: 1:30. Mr. Youash, you okay with
24 that?

1 MR. YOUASH: I'm okay with that, Judge.

2 January 28th at 1:30?

3 THE COURT: Yes.

4 MR. YOUASH: Okay.

5 THE COURT: I almost hate to kind of bring this
6 up, but I'm a little unclear on your motion,
7 Mr. Youash.

8 Part of your motion makes an assumption
9 that the defendants are going to file a motion or
10 make a request. Is that correct?

11 MR. YOUASH: I believe, Judge, it was just based
12 on that defendants would exercise the
13 clergy-penitent privilege to explore -- to preclude
14 this testimony from coming in.

15 THE COURT: Now, you ask in your prayer for
16 relief -- the only thing you ask for in your prayer
17 for relief is for me to conduct a hearing.

18 MR. YOUASH: Yes, Judge. Again, I believe that
19 hearing and your ruling on that hearing would
20 (indiscernible) certain communications will be able
21 to come in for trial.

22 THE COURT: I think you misunderstand what I'm
23 saying, Mr. Youash.

24 I basically just granted your motion

1 because I've given you a hearing. It's kind a
2 catch-22, isn't it?

3 MR. YOUASH: Well, I don't know that in your
4 granting -- oh, I see what you're saying. So I
5 guess I would ask, then, that a ruling be made on
6 whether or not that testimony or any sort of
7 communications from Ms. Hernandez would be
8 permissible or admissible at trial.

9 THE COURT: Well, let me --

10 MR. PROSSNITZ: Is it --

11 THE COURT: Wait. I'm just trying to streamline
12 this issue.

13 I think what you're asking me to say is is
14 her interaction with the defendants covered or not
15 covered by the clergy-penitent privilege, I think
16 that's what you're asking me. But the way you're
17 phrasing it is you're asking me to deem whether it's
18 admissible or not, and there may be a whole variety
19 of other reasons that it may or may not be outside
20 of that privilege.

21 MR. YOUASH: Well, I guess, Judge, what I'm
22 looking for is a ruling on specifically whether or
23 not the privilege will apply. If there are other
24 reasons for it to be inadmissible, I'm sure those

1 could be addressed at trial. What we'd like to kind
2 of get a ruling on is whether or not specifically
3 based on clergy-penitent privilege your Honor would
4 rule those communications in it. So --

5 MR. EKL: And your Honor, I think you've already
6 ruled on that today, that the communication was --

7 THE COURT: What do you think I've ruled?

8 MR. EKL: The communication with Eloina was part
9 of the clergy-penitent process of the Jehovah's
10 Witness church, and I think you have ruled on it
11 already. So I don't know what a hearing established
12 ever change.

13 MR. PROSSNITZ: Furthermore to that, Judge --
14 and Mr. Youash and all the parties, we talk quite
15 freely outside of court and communications.
16 Eloina's testimony might vary. There are some
17 different versions, and the defendants might have
18 their own different versions. I think this is best
19 handled at trial.

20 THE COURT: I think you folks missed a few
21 things I said.

22 As I stated in my earlier decision, which
23 may or may not pertain to Mr. Youash's motion,
24 Eloina is not the confessor or the one making the

1 admission. None of the cases I listed address that
2 issue. They all talk about statements of a
3 confessor. None of the documents, none of the cases
4 submitted by counsel address this issue.

5 MR. YOUASH: Judge, that's the State's position
6 as well.

7 THE COURT: So Mr. Youash, is there any
8 possibility you can quickly amend your motion so we
9 know what relief you're asking for?

10 MR. YOUASH: I can work on that, Judge.

11 THE COURT: Can you get that to Mr. Prossnitz
12 and Mr. Ekl in a prompt manner that would still
13 allow them enough time to file the written responses
14 by, I think it was January 7, gentlemen?

15 MR. PROSSNITZ: Correct, Judge.

16 THE COURT: Is that okay?

17 MR. YOUASH: Judge, I'm sorry. If I could have
18 until the 28th, Tuesday of next week?

19 THE COURT: I think if you get it to them by
20 then, they can probably have their response on file
21 by the 7th, is that correct gentlemen?

22 MR. EKL: I believe so, Judge, yes.

23 MR. PROSSNITZ: Yes, Judge.

24 THE COURT: We will give you leave to 28th to do

1 that, Mr. Youash.

2 MR. YOUASH: Thank you, your Honor.

3 THE COURT: Anything else or any questions?

4 MR. YOUASH: Nothing from the State, Judge. And
5 Judge, I apologize. If I can just take a brief
6 moment? I just want to make sure I have the right
7 dates, March 2, 2022, for trial, hearing on
8 January 28, 2022 -- I'm sorry, March 2 and March 4
9 for bench trial, January 28 regarding the hearing.

10 THE COURT: Correct.

11 MR. YOUASH: I will amend our motion by
12 December 28.

13 THE COURT: All right. Anything else from
14 Mr. Prossnitz or Mr. Ekl?

15 MR. EKL: No, your Honor.

16 MR. PROSSNITZ: No, Judge.

17 MR. YOUASH: Judge, lastly, I would also
18 acknowledge receipt of all of the documents from
19 Mr. Pettet on behalf of Mr. Pettet and will tender
20 any documents that -- handed over as copies to
21 defense, we will get those over to them as well.

22 THE COURT: Correct, Mr. Pettet?

23 MR. PETTET: That is correct, Judge.

24 THE COURT: Mr. Prossnitz?

1 MR. PROSSNITZ: That's fine. And just in --
2 Mr. Youash, in terms of this order that I'm
3 drafting, I have it in front of me. How would you
4 like to review it, sir? Through Mr. Pettet?

5 MR. YOUASH: Mr. Pettet. I trust his capability
6 in confirming with the State and the decision that
7 was just handed down. So I would be fine with him
8 reviewing it.

9 THE COURT: Now, one last thing from the Court.
10 I would expect on the 28th we would also take the
11 time to have a conference to go over the documents
12 from presumably Judge Meyer at that time. So if you
13 can both look at what you may have received and that
14 case that I mentioned from Judge Meyer. Understood,
15 Mr. Youash?

16 MR. YOUASH: Understood, Judge, and that's
17 January 28?

18 THE COURT: Yes.

19 MR. YOUASH: Thank you, Judge.

20 THE COURT: Understood gentlemen?

21 MR. PROSSNITZ: Yes, Judge.

22 MR. EKL: Yes, your Honor.

23 THE COURT: All right. That is all. Thank you.

24 MR. YOUASH: Thank you very much. You guys have

1 a great holiday.

2 MR. EKL: Thank you.

3 THE COURT: Merry Christmas.

4 MR. YOUASH: Merry Christmas to you too, Judge.

5 MR. PROSSNITZ: Thanks, Mr. Youash. I'm just
6 going to rewrite it so it's a little bit neater.

7 THE COURT: All right. I'm sure Mr. Pettet will
8 review it.

9 Mr. Penkava, Mr. Scott, I'm going to remove
10 you from the Zoom portal at this time. Thank you.

11 MR. PENKAVA: Thank you, Judge.

12 MR. SCOTT: Thank you, your Honor.

13 THE COURT: You're welcome.

14 MR. YOUASH: Thank you, again, for me allowing
15 to Zoom in, Judge?

16 THE COURT: You're welcome, Mr. Youash. Enjoy
17 your time off.

18 MR. YOUASH: Yes. Merry Christmas.

19 THE COURT: Merry Christmas.

20 (Which were all the proceedings
21 had in the above-entitled cause
22 this date.)

23

24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)

5 I, JUDY CARLSON, an official Court Reporter
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