

STATE OF ILLINOIS            )  
  )  
COUNTY OF McHENRY        )

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS        )  
  )  
vs.    ) Case No.: 20CM001338  
  )  
MICHAEL M PENKAVA                         )

**PEOPLE'S MOTION IN LIMINE TO ADMIT STATEMENTS OF ELOINA HERNANDEZ**

**NOW COME** the People of the State of Illinois, by their attorney, **PATRICK D. KENNEALLY**, State's Attorney for McHenry County, Illinois, through one of his duly appointed Assistants, **ASHUR Y. YOUASH**, and moves this Honorable Court for a pretrial ruling regarding the admissibility of the testimony of Ms. Eloina Hernandez, and in support thereof states as follows:

1. That the above captioned case is scheduled for decision on defendant's Motion to Quash Subpoena on December 23, 2021.
2. That at trial the People intend to call Ms. Eloina Hernandez to testify to conversations she had with the defendants regarding her husband sexually abusing their daughter which constitutes the evidence of the defendants violating provisions of the Abused and Neglected Child Reporting Act, 325 ILCS 5/2 . (See Exhibit A, translated statement of Ms. Eloina Hernandez.)
3. That upon information and belief Ms. Hernandez' did not regularly assist the defendants in the spiritual development of any penitents within the Kingdom Hall of Jehovah's Witnesses - Crystal Lake.
4. That upon information and belief Ms. Hernandez was not essential to the spiritual development of her husband, Mr. Arturo Hernandez-Pedraza.
5. That Illinois law is clear in its application of the clergy-penitent privilege to communications with third parties, protecting disclosure of communications only where 1) the third party is essential to the spiritual development of a penitent, or 2) that the third party regularly assists in the spiritual development

of penitents. See *People v. Thodos*, 2015 IL App (2d) 140995; see also *People v. Burnidge*, 178 Ill. 2d 429, citing *Wong Sun v. United States*, 371 U.S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963); see also *People v. Campobello*, 348 Ill. App. 3d 619.

5. That upon information and belief the defendants will be moving to bar the testimony of Ms. Eloina Hernandez citing clergy-penitent privilege based on the Jehovah's Witnesses' subjective definition of their own confessional process.

6. That although the People may be able to take an interlocutory appeal if the testimony is barred midtrial, it would severely complicate the matter, cause the court to have to declare a mistrial pending the result of the appeal, and put the People in an unnecessarily and unfairly disadvantageous position. See *People v. McQueen*, 115 Ill. App. 3d 833 (2 Dist. 1983), see also *People v. Flatt* 82 Ill. 2d 250 (Ill. 1980).

7. That it is critical that this court issue a pretrial ruling regarding the admission of the testimony of Ms. Eloina Hernandez.

WHEREFORE, the People request that this court conduct a pretrial hearing and issue a ruling on the People's Motion *in limine* regarding the testimony of Ms. Eloina Hernandez.

Respectfully submitted,

/s/ Ashur Y. Youash

ASHUR Y. YOUASH  
Assistant State's Attorney

PATRICK D. KENNEALLY  
McHenry County State's Attorney  
McHenry County Government Center  
2200 N. Seminary Ave.  
Woodstock IL 60098  
(815)334-4159

On Thursday July 22, 2021 I met with Eloina Hernandez at the McHenry County State's Attorney's Office along with Assistant State's Attorney Neil Adams. The meeting took place in Spanish and I translated.

Mr. Adams began by telling Ms. Hernandez that because this was an important matter he wanted her to work really hard to remember as many details as possible about the occurrences of 2006. He also told her that he only wanted the truth from her and that was foremost in any discussions we would have that day or in the future.

Ms. Hernandez described a meeting that she had with Michael Penkava, Colin Scott and Alfonso Mahecha on a Sunday in 2006 in the basement of the Kingdom Hall. She stated at that time she repeated to the elders what her six-year-old daughter Carolina had told her regarding her father, Arturo Hernandez, sexually abusing her. She indicated that she was called to the meeting by the elders and that they gave her some bible verses. She stated she was not there for a confession and was not there for counseling. She was there simply to answer the elders' questions about the sexual abuse of Carolina Hernandez by Arturo Hernandez. During the meeting the elders made it clear to her that she could go to the police about the matter.

After we began the meeting we were joined by Assistant State's Attorney Ashur Youash and State's Attorney Patrick Kenneally.

She further stated that she used to be a Catholic and that confession for Jehova's Witnesses is different from in the Catholic religion. She stated that people only go to confession for "grave" sins. For instance she stated that she has never "confessed" as a Jehova's Witness because she has not committed one of the sins that are required to be confessed.

She said that she received two letters from Colin Scott and later sent me scanned emails of two cards she had actually received from Michael Penkava.

She stated that public reprovals are rare at her congregation and that they only happen once every other year or so.

She said the current elders of the congregation, to the best of her knowledge, are Jose Vasquez, Jose Luis Martinez, Isidro Arteaga, Colin Scott, and Marcos Ortiz.

She stated that she initially asked Carolina if someone was touching her because she recognized repeated bedwetting as a sign of sexual abuse from her past experiences.

She stated that after Arturo had been publicly reproved he asked her for forgiveness in front of her two young children in the automobile for what he had done to Carolina.

This summary of the statements of Eloina Hernandez was prepared by Neil J. Adams, and reviewed by me for accuracy.



8-4-2021

Leopoldo Fabian

Date

