

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY**

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiffs,

v.

MICHAEL PENKAVA,
Defendant.

Case No. 20CM1338

Katherine M. Keefe
Clerk of the Circuit Court
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McHenry County, Illinois
22nd Judicial Circuit

PEOPLE’S RESPONSE TO DEFENDANT’S MOTION IN LIMINE #1 AND #2

NOW COME the People of the State of Illinois, by and through Patrick D. Kenneally, State’s Attorney for McHenry County, and his duly appointed assistant, ASHUR Y. YOUASH, and respectfully request that this Court grant in part and deny in part Defendant’s Motion in Limine #1 and #2. In support of said motion, the People state as follows:

I. The People Have No Objection to Defendant’s Motion in Limine #1 Seeking to Enter Hearsay Statements.

Defendant seeks to admit self-serving hearsay statements. In support of this request, the Defendant alleges that he received direction from an attorney in New York as to the child abuse reporting requirements with respect to an instance of child abuse reported to him on July 27, 2006. Defendant further alleges that this direction, whether correct or incorrect, is what he relied upon in ultimately not reporting to authorities the information he was told.

Statements made by Defendant to the police or other witnesses in this case, are inadmissible, as they are hearsay statements which do not fall under any of the exceptions to the bar against hearsay statements. *See People v. Berry*, 172 Ill. App. 3d 256 (1st Dist. 1988). An admission of a party is a statement made by Defendant offered against him, not statements “offered by [D]efendant . . . to support [D]efendant’s own position.” *Id.* at 261. Consequently,

any statements made by Defendant in this case cannot be offered by Defendant as an exception to the bar against hearsay statements under the exception for admissions of a party. *See id.*

While the People would normally object to such testimony based on the Illinois Rules of Evidence and case law prohibiting self-serving hearsay statements, we have no objection here. As the decision to not report resulted in twelve more years of progressively worsening sexual, physical, and psychological abuse upon a child who was six years old at the time, the State welcomes any and all testimony from any and all persons involved in the decision making to not report sexual abuse of the child, X.X., reported to the Defendant on July 27, 2006.

WHEREFORE, the People have no objection should the Court grant Defendant's Motion in Limine #1.

II. The People Request that this Court Deny Defendant's Motion in Limine #2 Seeking to Allow Remote Testimony of a Witness During Trial.

A. Witness is vital to an affirmative defense now being raised by Defendant.

Defendant is raising the defense of following "advice of counsel" in his most recent attempt to explain why he failed to report child abuse disclosed to him on July 27, 2006. Specifically, the Defendant states that he relied on this advice in deciding to not report the incident to the authorities as required under mandated reporting laws of Illinois. Defendant is a member of the clergy, and therefore, a mandated reporter pursuant to 325 ILCS 5/4. The statute reads in pertinent part:

(a) The following persons are required to immediately report to the Department when they have reasonable cause to believe that a child known to them in their professional or official capacities may be an abused child or a neglected child:

....

(9) Any member of the clergy.

....

(e) Whenever such person is required to report under this Act in his capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, or as a member of the clergy, he shall make report immediately to the Department in accordance with the provisions of this Act and may also notify the person in charge of such institution, school, facility or agency, or church, synagogue, temple, mosque, or other religious institution, or his designated agent that such report has been made. Under no circumstances shall any person in charge of such institution, school, facility or agency, or church, synagogue, temple, mosque, or other religious institution, or his designated agent to whom such notification has been made, exercise any control, restraint, modification or other change in the report or the forwarding of such report to the Department.

325 ILCS 5/4

B. The People Request That this Witness be Required to Appear in Person to Testify at Trial.

Defendant states he relied on advice given to him by counsel. It is inferred that this counsel was sought with respect to whether, under the mandated reporting laws of the state of Illinois, he was to report the sex abuse of child X.X. he was made aware of on July 27, 2006. Under Illinois law, a mandated reported is required to.....

The Illinois mandated reporting statute speaks to when an individual seeks advice from someone else with their organization with respect to reporting requirements, and says in pertinent part:

(m) Any person who knowingly transmits a false report to the Department commits the offense of disorderly conduct under subsection (a)(7) of Section 26-1 of the Criminal Code of 2012. A violation of this provision is a Class 4 felony.

Any person who knowingly and willfully violates any provision of this Section other than a second or subsequent violation of transmitting a false report as described in the preceding paragraph, is guilty of a Class A misdemeanor for a first violation and a Class 4 felony for a second or subsequent violation; except that if the person acted as part of a plan or scheme having as its object the prevention of discovery of an abused or neglected child by lawful authorities for the purpose of protecting or insulating any person or entity from arrest or prosecution, the person is guilty of a Class 4 felony for a first offense and a Class 3 felony for a second or subsequent offense (regardless of whether the second or subsequent offense involves any of the same facts or persons as the first or other prior offense).

325 ILCS 5/4

Additionally, this Court, in its standing order, speaks to witnesses at trial in its standing order entered on November 24, 2020. Specifically, #3 of the standing order reads “Witnesses shall wear masks or face coverings, except as directed when testifying”. As masks or face covering would not be required for a remote appearance, the People infer that this Court does not expect that witnesses for a trial, bench or jury, must appear in person. Furthermore, the People is unaware that the courts in our county have ever previously allowed a witness to testify remotely, either pre-pandemic or during the pandemic.

Lastly, it appears, after review of documentation provided by the order entered by Judge Meyers on January 28, 2021 on case 19MR1149, that there was specific communication directed between the Defendant and individuals identified with the initials “SFS” and “SFG” with respect to the reporting requirements of the sex abuse reported to the Defendant on July 27, 2006. Without knowing the identity of the attorney the Defendant seeks to have testify remotely, the People are unable to ascertain if either of these individuals is the witness

Defendant now seeks to testify remotely. The People would ask that additional identifying information be provided by the Defendant prior to this ruling.

WHEREFORE, the People pray that this Honorable Court deny Defendant's Motion in Limine #2 seeking to allow remote testimony of this witness.

Respectfully submitted,



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