



STATE OF ILLINOIS)
)
) SS.
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
COUNTY OF MCHENRY, STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
Plaintiff,)
)
vs.)
)
Michael Penkava)
Defendant)
&)
)
)
)
)
)

20 CM 1338

STIPULATIONS

Now come the People of the State of Illinois by Patrick D. Kenneally the State’s Attorney of McHenry County and the Defendant Michael Penkava, by and through his attorney Philip Prossnitz, the Defendant [REDACTED] by and through his attorney Terry Ekl, the parties hereby agree and stipulate as follows:

- 1) The Defendants in 2006 were Elders at the Kingdom Hall of Jehovah’s Witnesses in Crystal Lake, located at 5303 Terra Cotta Rd. in Crystal Lake, McHenry County, Illinois 60012, and as such were “members of clergy” for purposes of 325 ILCS 5/4.
- 2) The December 16, 2021 testimony of John Miller and the February 25, 2022 testimony of Bradley Kelm in this matter is admissible as substantive evidence for purposes of trial in this matter.
- 3) Defendants [REDACTED] and Penkava continue to assert, as they have throughout this litigation, and by entering into these Stipulations in no way waive their clergy-penitent privilege under 8-803 of the Code of Civil Procedure afforded a member of the clergy under 325 ILCS 5/4. More specifically, Defendants continue to assert as they have throughout this case that pursuant to their clergy-penitent privilege under 8-803 of the Code of Civil Procedure any information obtained in the Jehovah Witness’s confessional process, including but not limited to the

testimony of [REDACTED] was and is privileged and confidential by Illinois law and relieves them of any mandatory reporting requirement to the Illinois Department of Children and Family Services.

*The admissibility of [REDACTED] testimony
95 Defendants have argued throughout
this case*

- 4) ~~Should Judge Gerhardt grant the State's Motion to Admit the Testimony of [REDACTED].~~
Both Defendants continue to state their objection to ~~that ruling for reasons as argued before the Court on Thursday, February 24, 2022 and as argued throughout this case, i.e. that the Jehovah Witness's confessional process includes, among others matters, statements from [REDACTED]~~
- 5) Recognizing that courts look with favor upon stipulations as they promote disposition of cases, simplification of issues and the saving of expense to litigants, ~~should Judge Gerhardt grant the State's Motion to Admit the Testimony of [REDACTED]~~ the Defendants ~~are prepared to stipulate to the authenticity, not admissibility, of the December 16, 2021 transcript of the testimony of [REDACTED] before Judge Gerhardt instead of calling [REDACTED] live.~~
- 6) In addition to her testimony on December 16, 2021, if called to testify at trial, [REDACTED] would state that the "meeting" with the Defendants and [REDACTED] that she refers to in her December 16, 2021 testimony occurred at the Kingdom Hall of Jehovah's Witnesses in Crystal Lake in McHenry County and identify the Defendants in open court.
- 7) [REDACTED] was the daughter of [REDACTED] [REDACTED] is the individual referred to as having been sexually abused by [REDACTED] December 16, 2021 testimony.
- 8) The parties stipulate that after the meeting described in [REDACTED] December 16, 2021 testimony, the Defendants had "reasonable cause" to believe that [REDACTED] was an "abused child" for purposes of 325 ILCS 5/4.
- 9) If called to testify, Detective David Eitel, with the Crystal Lake Police Department, would testify that on October 18, 2018, Defendant Michael Penkava appeared at the Crystal Lake Police Department and authored Exhibit 1, a written statement, and that Exhibit 1 is a true and exact copy of the written statement provided by Defendant Michael Penkava. The Defendants do not stipulate to admissibility of Exhibit 1 and maintain that it is subject to the clergy-penitent privilege under 8-803 of the Code of Civil Procedure. *THIS EVIDENCE IS ONLY ADMISSIBLE AGAINST PENKAVA & NOT DEFENDANT [REDACTED]* *If admissible*
- 10) If called to testify, Detective David Eitel, with the Crystal Lake Police Department, would testify that on October 18, 2018, Defendant [REDACTED] appeared at the Crystal Lake Police Department and authored Exhibit 2, a written statement, and that Exhibit 2 is a true and exact copy of the written statement provided by Defendant [REDACTED]. The Defendants do not

stipulate to the admissibility of Exhibit 2 and maintain that is subject to the clergy-penitent privilege under 8-803 of the Code of Civil Procedure. *If admissible*
This evidence is only admissible against [redacted] and not Defendant Penkava.

11) The Defendants do not stipulate to the admissibility of Exhibit 3 and maintain that it is subject to the clergy-penitent privilege under 8-803 of the Code of Civil Procedure. Defendants [redacted] and Penkava continue to assert the clergy-penitent privilege as they have throughout this litigation, and by entering into this foundational Stipulation on Exhibit 3 to avoid a Custodian of the Records appearing, in no way waive their clergy-penitent privilege under 8-803 of the Code of Civil Procedure afforded a member of the clergy under 325 ILCS 5/4 (g). More specifically, Defendants continue to assert as they have throughout this case that pursuant to their clergy-penitent privilege under 8-803 of the Code of Civil Procedure any information obtained in the Jehovah Witness's confessional process, including but not limited to the testimony of [redacted] was and is privileged and confidential by Illinois law and relieves them of any mandatory reporting requirement to the Illinois Department of Children and Family Services.

12) Moreover, the trial court ruled on December 23, 2021 that the majority of Exhibit 3 is to be redacted and gave the parties a redacted version in open-court on December 23, 2021.

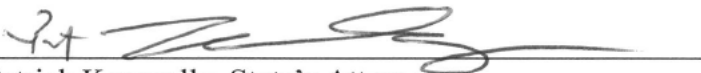
13) To avoid a Custodian of the Records from appearing the parties stipulate as to the foundation only that Exhibit 3 is regularly maintained as part of the regular course of religious/business activity at the Kingdom Hall of Jehovah's Witness in Crystal Lake and was created as part of the regular course of religious/business activity at the Kingdom Hall of Jehovah's Witnesses in Crystal Lake. The redacted version shows that Defendants and [redacted] authored Exhibit 3 and sent it to the Christian Congregation of Jehovah's Witnesses, 2821 Route 22, Patterson NY, 12563-2237.

14) The October 22, 2019 testimony of Defendant Michael Penkava in [redacted] [redacted] is admissible as substantive evidence for trial in this matter against Michael Penkava only, but may not be considered in the trial of [redacted]

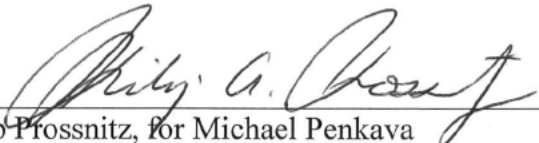
15) No report was made by the Defendants to the Illinois Department of Children and Family Services in 2006 or thereafter regarding [redacted] confession or [redacted] statements regarding the alleged abuse of [redacted] daughter.

16) ~~For purposes of trial, the court shall consider and take judicial notice of all prior testimony and exhibits in previous hearings in this matter, including the State's Motion to Admit and the Defendant's Motion to Quash.~~ *PRIOR TESTIMONY*

AGREED AND STIPULATED BY AND BETWEEN THE PARTIES: ~~to Admit and the Defendant's Motion to Quash.~~ *MOTION TO QUASH AND MOTION TO ADMIT*


Patrick Kenneally, State's Attorney

3/1/22'
Date


Philip Prossnitz, for Michael Penkava

3/2/22
Date


Terry Ekl, for 

3-2-22
Date

16) For purposes of trial, the court shall consider and take judicial notice of the prior testimony heard and exhibits entered during hearings on the "Defendant's Motion to Quash" and the "State's Motion to Admit the Statements of [REDACTED] and the Confession of [REDACTED] and consider the Court's decision given on December 23, 2021 for the purposes of determining whether the clergy-penitent privilege under section 8-803 of the Code of Civil Procedure applies to the confession of [REDACTED] made to the Defendants on or about July 27, 2006 and/or any statements made by [REDACTED] to the Defendants on or about July 27, 2006.

