

STATE OF MICHIGAN 738 JUDICIAL DISTRICT ORI320025J PIN: M3922508	REGISTER OF ACTIONS	CASE NO: 11-1955-SM D01 SM STATUS: PEND
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JUDGE OF RECORD: HERRINGTON, DAVID B. P-40360
JUDGE: HERRINGTON, DAVID B. P-40360

STATE OF MICHIGAN v

CTN: 321100013701

TCN:

SID:

ENTRY DATE: 10/03/11

OFFENSE DATE: 02/01/07

VEH:

CDL:

PAPER PLATE:

DOB: 07/22/1939 SEX: M RACE:

DLN:

VEH YR: VEH MAKE:

VIN:

VEHICLE TYPE:

BAR NO.

P-56690

Telephone No.

(248) 353-3600

DEFENSE ATTORNEY ADDRESS

KUTINSKY, ERIC I.,

24460 TELEGRAPH RD

SOUTHFIELD MI 48033

OFFICER: TPR. J. BERG

DEPT: MICHIGAN STATE POLICE

PROSECUTOR: RUTKOWSKI, TIMOTHY J

P-49965

VICTIM/DESC:

COUNT 1 C/M/F: M 7226332

PACCH722.6332

ABUSE- FAILURE TO REPORT

ARRAIGNMENT DATE: 10/27/11

PLEA:

PLEA N-GLTY

PLEA DATE: 10/27/11

FINDINGS:

DISPOSITION DATE:

SENTENCING DATE:

FINE

COST

ST.COST

CON

MISC.

REST

TOT FINE

TOT DUE

0.00

0.00

0.00

0.00

0.00

0.00

0.00

0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

BOND HISTORY:

RCPT DT	NO.	ACTION	TYPE	CHECK	AMOUNT	STAT	CLRK
10/27/11	D278947	10/27/11	10% DEPOSIT		500.00	OPEN	MMP

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
02/01/07		
1	ORIGINAL CHARGE ABUS FAILURE	MMP
09/27/11		
1	AUTHORIZATION OF COMPLAINT DATE PROS RUTKOWSKI, TIMOTHY J	MMP P-49965
09/30/11		
1	COMPLAINT ISSUANCE DATE WARRANT SIGNED & ISSUED MAG TESTOLIN, JESSICA LE	MMP MMP P-71373
10/03/11		
	FILING DATE 093011	MMP
10/05/11		
	REC'D & FILED AMENDED COMPLAINT & WARRANT AMENDING POLICE AGENCY REPORT NUMBER.	MMP MMP
10/20/11		
1	WARRANT RECALL FILED ABUS FAILURE SPOKE TO TROOPER MCCOMB & HE WILL GET US	EMM EMM

STATE OF MICHIGAN
73B JUDICIAL DISTRICT
52nd JUDICIAL CIRCUIT

AMENDED WARRANT
MISDEMEANOR

CASE NO.: 201000137
DISTRICT: 11-1955-SM
CIRCUIT:

District Court ORI: M320025J

Circuit Court ORI: M320025J

250 E. Huron, East Axa, MI 48413 989-205-9987

THE PEOPLE OF THE
STATE OF MICHIGAN

Defendant's name and address
V JEROME GEORGE FRANDLE
1030 S. WILDWOOD ST.
WESTLAND, MI 48186

Victim or complainant
Tpr. Jason Berg

Complaining Witness

D Sgt. [Signature]

Date: On or about

2/1/2007-2/8/2007

Co-defendant(s)

City/Twp./Village

Bingham Township

County in Michigan

Huron

Defendant TCN

Defendant CTN

32-10000137-01

Defendant SID

Defendant DOB

07/22/1939

Police agency report no.

M39-225-08

Charge

See below

Maximum penalty

DLN Type:

Vehicle Type

Defendant DLN

STATE OF MICHIGAN, COUNTY OF HURON

To any peace officer or court officer authorized to make arrest: The complaining witness has filed a sworn complaint in this court stating that on the date and the location described, the defendant, contrary to law,

COUNT 1: CHILDREN - ABUSE - FAILURE TO REPORT

did knowingly fail to report suspected child abuse or neglect; contrary to MCL 722.633(2). [722.6332]
MISDEMEANOR: 93 Days and/or \$500.00

Upon examination of the complaint I find probable cause to believe defendant committed the offense set forth. THEREFORE, IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, I order you to arrest and bring defendant before the court immediately, or the defendant may be released when a cash or surety bond is posted in the amount of \$5,000 for personal appearance before the court.

10-5-11
Date

(SEAL)

Judge [Signature]

Bar no. 71373

By virtue of this warrant the defendant has been taken into custody as ordered.

Date

Peace Officer

OCT - 5 2011

COPY

STATE OF MICHIGAN
IN THE 73B DISTRICT COURT FOR THE COUNTY OF HURON

PEOPLE OF THE STATE OF MICHIGAN,

V

File No. 11-1955-SM

JEROME GEORGE FRANDLE,

Defendant, _____/

MOTION TO DISMISS HEARING
BEFORE THE HONORABLE DAVID B. HERRINGTON, DISTRICT JUDGE
Bad Axe, Michigan - Friday, February 10, 2012

APPEARANCES:

For the People: SUZANNE KROHN (P70560)
Chief Assistant Prosecuting Attorney
Huron County Building, Rm. 103
250 E. Huron Avenue
Bad Axe, Michigan 48413
(989) 269-9255

For the Defendant: TIMOTHY M. LESSING (P54394)
Freedman, Lessing, Kutinsky &
Freedman, P.C.
24460 Telegraph Road
Southfield, Michigan 48033
(248) 353-3600

Recorded and Transcribed by: Tamara M. Plotter, CER 6078
Certified Court Recorder
(989) 269-7988

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BONNIE KONING

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WITNESS: DEFENDANT

NONE

EXHIBITS

IDENTIFIED

ADMITTED

NONE

OF 2011. APPROVED FOR RELEASE IN 2010

1 Bad Axe, Michigan

2 Friday, February 10, 2012 - 3:09 p.m.

3 THE COURT: People of the State of Michigan versus
4 Jerome George Frandle, 1-1-1-9-5-5-S-M. Mr. Frandle is here
5 with his lawyer Mr. Lessing. The People are represented by
6 assistant prosecuting attorney Suzanne Krohn. The matter is
7 before the Court on the People's Motion to Use Similar Acts
8 Evidence and the Defendant's Motion to Dismiss. Ms. Krohn,
9 are the People prepared to proceed?

10 MS. KROHN: Yes, your Honor.

11 THE COURT: Mr. Lessing, are you prepared to go
12 forward at this point?

13 MR. LESSING: We are, your Honor. Due to the
14 unexpected arrival of Mr. Kutinsky's child, we were not--I was
15 not aware of the motion for similar acts until last night when
16 I opened the file. It had been put into the file. And we
17 have not filed a response. I would suggest, if the Court is
18 so inclined that maybe we could handle my motion first. I can
19 certainly try to address the motion and if it seems like it's
20 something we need more input from me, I'd be happy to brief it
21 at another time. I don't--I wanna economize as much as we can
22 everyone's time.

23 THE COURT: Very well. Ms. Krohn, any objection to
24 adjourning the People's motion to another point in time based
25 on Mr. Lessing's representations?

1 MS. KROHN: No, your Honor.

2 THE COURT: We'll address scheduling at the
3 conclusion of this hearing. That being said, Mr. Lessing,
4 it's the defendant's motion. You have the obligation of going
5 forward. The People have the burden to carry in this case.
6 So you may proceed.

7 MR. LESSING: Thank you, your Honor. As, your
8 Honor, is no doubt aware, today is the date and time set for
9 our motion to dismiss the charges against Mr. Frandle based
10 upon the lack of any evidence establishing that he qualifies
11 under the statute specifically, 722.622 with respect to having
12 the status as a required reporter under the statute.

13 Obviously the Court has reviewed this in advance.
14 There is a dispute as to what status, if any, Mr. Frandle
15 holds with respect to this organization. I think that the
16 response by the People is probably the most telling as to the
17 true nature of the allegations against him and the substance
18 thereof. Other than some conclusory--or conclusory
19 allegations that he, in fact, is a similar functionary in this
20 alleged organization and that therefore qualifies him under
21 the statute, they have really provided no evidence whatsoever
22 despite it being their burden to do so today.

23 They supply a number of attachments to their
24 response to the motion, which are--at least the bulk of them
25 are rank hearsay at best. They are internet copies of

2025 RELEASE UNDER E.O. 14176

1 obituary notices relative to a number of individuals that
2 indicate that they are presiding or doing something. Those
3 are not admissible for the purposes of this hearing. They are
4 hearsay. They would not be admissible at the time of trial
5 unless, of course, they perhaps brought someone in who would
6 be able to testify that they were there and they were the ones
7 that oversaw this process. But for the purposes of the
8 Court's evaluation today, they really serve no purpose because
9 they are hearsay.

10 The real meat of the issue is the fact that the
11 individuals who are of this faith--

12 THE COURT: What is the faith Mr. Lessing?

13 MR. LESSING: You really raise an important point
14 there. There is not specific denomination at all as these
15 individuals subscribe to. They believe in Jesus Christ. They
16 believe in what the bible says. There is no denomination.
17 There is no name for these--for the group of people that
18 believe in this form of worship. There is no unified
19 structure. There is no unified chain of command. There, in
20 fact, is nothing. That is why the prosecution cited nothing.
21 They want to show that he had some level of authority or some
22 level of supervisory ability in this "organization" but they
23 can't even identify the name of the organization that he
24 somehow has authority for.

25 This organization or these individuals, they're not

1 recognized by the state or the federal government as an--as an
2 organization. And, in fact, as the prosecution concedes in
3 paragraph six, in order to fall into the classification of
4 similar functionary, they have to be a recognized religious
5 body, denomination, or organization. They've provided no
6 evidence or proof whatsoever that there is a recognized
7 religious body, denomination, or organization. There's no
8 federal tax exempt status with respect to these individuals.
9 There is no--there's not even a website that specifically
10 identifies the name of these people and what "denomination" or
11 religious body they adhere to.

12 They are believers in their religion. They believe
13 in the bible. They believe in the tenants and the teachings
14 of Jesus Christ. And they follow that. The fact that they
15 call themselves workers or in some cases ministers is of no
16 merit whatsoever with respect to the prosecution's case. The
17 fact that an individual calls themselves something or holds
18 themselves out to be something does not make it so. It does
19 not qualify them under the statute. Mr. Frandle could walk
20 around saying that he's the president of the United States but
21 he could never be impeached by the United States Senate
22 because he is not, in fact, the president of the United
23 States. The fact that he calls himself something does not in
24 any way implicate his legal status in a court of law. And
25 that is really the crux of this issue.

1 The prosecution believes that because these people
2 call themselves ministers that they somehow fall into the
3 categories under the statutes. It's simply not true. They
4 call themselves ministers because the bible tells them to call
5 themselves ministers. Specifically Section 2 Corinthians 6-4
6 indicates in the King James Bible in all things present
7 ourselves as ministers of God in much patience and afflictions
8 and necessities and in distress. In Romans 15-16 King James
9 Bible it indicates that you should be ministers of Jesus
10 Christ to the Gentile ministering the gospel of God and
11 offering up of the Gentiles that might be acceptable.

12 They follow the tenants of the bible. We are going
13 to get into a very very slippery slope when we start
14 prosecuting people based upon their faith. That is a very
15 difficult tenant. It's a very very difficult thing to prove.
16 And it creates constitutional implications that are well
17 beyond anything that we wanna try and tackle in this
18 particular case.

19 It should be noted that while this statute is what
20 it is--and I am in no way diminishing the value of the statute
21 or why it's in place because I do believe that the statute has
22 purpose--this is not a statute where you are criminalizing the
23 particular acts of an individual. Mr. Frandle had nothing at
24 all to do with this alleged abuse. He had nothing at all to
25 do with it happening; with it--anything at all to do with the

1 abuse. He is not the "bad actor" in this case. He is merely
2 someone who got information and now because of the way he
3 holds himself out in his religion, he's being prosecuted
4 because of that. That's a very dangerous proposition for us
5 to undertake. Where you've got people who are strong
6 believers in a faith and suddenly you're going to open them up
7 to potential prosecution where they have no basis whatsoever
8 to establish that they were mandatory reporters.

9 He is not ordained. He is not--he has no degree in
10 theology. He has no recognition by the State of Michigan to
11 perform any task whatsoever that an ordained minister, priest,
12 rabbi would. He doesn't even have a college degree. He has a
13 high school diploma. What he has is a strong belief in God.
14 He has a belief that if you believe in God that we should
15 follow in Jesus's footsteps and he has done what many of these
16 other people have done. He has eliminated his worldly
17 possessions and he goes from house to house talking about God.
18 That does not qualify someone under the statute as a mandatory
19 reporter.

20 Ah mandatory reporters under the statute are
21 designated that because they have intimate knowledge of child
22 sexual abuse. They have the ability and are trained to see
23 child sexual abuse and are able to see when there's a problem
24 and therefore report. They are--they are in that situation
25 not because they call themselves leaders in Jesus but because

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1 they've got the training and education and their recognized
2 legal status that requires them to do that.

3 The People's case is weak. It's weak as evidenced
4 by their response. They have nothing--nothing to support the
5 allegation that he is a similar functionary, other than saying
6 it's so in their attachments to these documents. The most--if
7 it is--if you wanna call it that, the most damning thing that
8 they have is a letter from Mr. Frandle himself, in which, by
9 the way, he's cooperating with the state police to try and
10 work out this issue. He writes underneath his name minister.

11 But again, that's not a legal status. It's not even
12 a religious status because no one of any religious authority
13 has called him a minister. He can't perform any of the
14 functions that a minister can perform in the State of
15 Michigan. It's simply--

16 THE COURT: What are those types of functions?

17 MR. LESSING: Well a minister if they're
18 acknowledged by the state can perform marriages. They can
19 theoretically perform baptism. I guess it depends on your
20 religion, they can perform baptisms. Those things don't
21 happen. They wanna say that because he was someone who spoke
22 at funerals that somehow he's providing a function that is the
23 equivalent of a minister.

24 First off, no evidence whatsoever has been provided
25 about what, if any, activities were performed by him at these

1 alleged funeral interactions. In itself, the attachment of a
 2 Google search is clearly hearsay. They would never come in at
 3 trial in this case. That's it. That's the best that they
 4 have to establish that he is a "similar functionary".

5 The real trouble with the allegation or the charge
 6 is that it's secondary. Not only do they have to prove as a
 7 matter of law that Mr. Frandle is a similar functionary in
 8 these--in this non-existent religious doctrine but in order to
 9 qualify under the statute under the case law that we've
 10 provided the bad actor also has to be proven to be a religious
 11 functionary in this thing. There's no evidence whatsoever
 12 about his background; what he does; why he qualifies under the
 13 statute--nothing. Nothing.

14 THE COURT: On what do you base the statement that
 15 the bad actor has to be found to be a member of the
 16 organization?

17 MR. LESSING: It's in our--it's in our citing of our
 18 statutes. There's a case called People v Beardsley. It's
 19 attached I believe, your Honor. And it indicates that the--

20 THE COURT: I'm familiar with that. But I'd like
 21 you to tell me what part of the statute you think it relates
 22 to.

23 MR. LESSING: I'm sorry, your Honor. I missed that.

24 THE COURT: Can you connect Beardsley and a
 25 particular statute?

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1 MR. LESSING: Yes. Beardsley specifically looked at
2 722.622 and determined that as a matter of law it's not
3 sufficient to just say that the alleged failure to report that
4 individual was in the capacity that qualifies under the
5 statute. You must also show that the individual who was the
6 alleged bad actor was also in a capacity that qualifies under
7 the statute. It's very clear--black letter law under the
8 Beardsley case.

9 Either way, neither of these individuals qualifies
10 under the definition of the statute. Clearly the legislature
11 did not intend this to be a qualification under the statute.
12 They're looking at licensed and recognized individuals in
13 organizations. There is no evidence whatsoever of that in
14 this case. And it's simply--it's not appropriate.

15 My mother was a nun. She was a Catholic nun before
16 I was born; before she met my father. She regularly goes into
17 people's houses and they have bible study and they talk about
18 things. They talk about Jesus. They talk about the bible.
19 My mother could never be charged with--under this statute as
20 being a religious functionary. We enter a dangerous dangerous
21 territory when we're gonna start telling people when they talk
22 openly about their religion that they're gonna be subjecting
23 themselves to criminal prosecution for doing it. There's a
24 reason why we separate these things.

25 This is not an instance where there is a--you know,

1 we wouldn't even be here; this motion wouldn't have been filed
2 if he were an ordained priest. Clearly that would qualify
3 under the statute. But it doesn't. We're not here for that.
4 He has no formal training whatsoever; no theology training
5 whatsoever; no training at all that would qualify him to make
6 determinations about child abuse; and certainly no
7 qualifications that would make him fit into the very tight
8 parameters of this statute.

9 For that reason this case has to be dismissed.
10 There's nothing the prosecution has come forward with today,
11 which is their burden that would prove with evidence that
12 would be admissible at the time of trial that he qualifies
13 under this statute. And therefore we think that the case
14 should be dismissed and we would ask that it be dismissed
15 today. Thank you.

16 THE COURT: Thank you Mr. Lessing. Ms. Krohn?

17 MS. KROHN: Thank you, your Honor. This religious
18 organization was started way back in the early 1900's by Wayne
19 Irvin. Some may not admit to that; some may try and say that
20 someone else started this. But this religion has been around
21 for quite a long time on this.

22 Their beliefs are basically following the New
23 Testament. And as far as the ministers or the clergy members
24 of this group, they follow what Jesus basically stated to the
25 disciples. Jesus commissioned this or ordained the disciples

1 and sent them out in pairs to go and preach the gospels; go
2 house by house; living in each house; preaching the gospel to
3 several different people.

4 That's basically what these ministers or workers is
5 what they're called do. They travel in same sex pairs. They
6 go from house to house. They stay in the homes of the members
7 and they preach to them. They have different meetings. There
8 are gospel meetings in which the workers actually preach the
9 gospel or scripture to their members similar to what a
10 minister or a priest or a rabbi would do during their
11 religious meeting.

12 There's also conventions, which I would state would
13 be kind of similar to a mega-church where an evangelist stands
14 before their congregation and preaches to them. During these
15 conventions different members throughout the states go and
16 they meet and they listen to the workers preach.

17 Based on speaking with members of this religious
18 organization as well as doing extensive research so far in
19 regards to this religious organization, it's the People's
20 understanding that Mr. Frandle is an overseer or a head worker
21 of the State of Michigan in this religious organization.
22 As a matter of fact, that was actually stated when Mr. Frandle
23 was arraigned on this charge; that he is an overseer of this
24 religion, which does not have a name. It's a non-
25 denominational Christian religion that's nameless to the

1 members. It's often called the Faith or has other names by
2 persons who are not members of it in order to just kind of
3 state what religion they're talking about.

4 And as far as it not being recognized, this
5 religious organization is--has different members or groups or
6 fields throughout the world. There's different fields in
7 basically ever single state of the United States. There is
8 fields in Australia, in Ireland, in England. So this is a
9 recognized religious organization that is referenced to in the
10 definition for members of the clergy.

11 Also in my research and from my understanding a
12 worker cannot perform marriages because they are not ordained
13 by an organization. That's not to say that they're not
14 ordained by God. The definition of ordained is to invest by
15 power. When one is ordained by an organization, they have the
16 backing of that organization. However, when someone is
17 ordained by God or from their faith like the disciples were,
18 they are backed by God. That is basically what they follow.
19 And also, yes, the People do rely upon the letter that's
20 Exhibit A where Mr. Frandle himself holds himself out as a
21 minister. If he was not a minister as he is trying to state
22 today, then he would not have signed minister underneath his
23 name.

24 It's the People's position that he is trying to pick
25 and choose as to what he is or what he should be considered as

1 based on the situation. At the time, he was not facing any
 2 trouble. He had no problem recognizing himself or holding
 3 himself out as a minister. However, now that he is facing
 4 criminal charges, he's trying to state that he is not a member
 5 of the clergy; he is not a minister; he has not performed any
 6 similar functionaries as a minister or a member of the clergy,
 7 which the People state he does.

8 Also, in our last exhibit, Exhibit P, he holds Mr.
 9 Briggs out as a minister. He specifically states that he is a
 10 minister of the faith. That he--that Mr. Briggs had no home
 11 or property of his own just like all the other ministers of
 12 the faith. So at the time, Mr. Frandle is stating that Mr.
 13 Briggs is also a minister. But now since he has this charge
 14 against him, he's trying to state no, no he's not a minister.
 15 He does not perform similar---or acts that would cause him to
 16 be a similar functionary of a minister.

17 And the People's position is that, yes, they are
 18 clergy members. Yes, they do perform similar functions. They
 19 go and they preach the gospel. They, as what you would expect
 20 when you walk into a Methodist or a Catholic or a Protestant
 21 church, you have your minister or priest preaching the gospel
 22 to you. They officiate at funerals, which is what you would
 23 expect when you go to a funeral under the Methodist or
 24 Catholic or Protestant faith.

25 There is also baptisms and communions, which are

1 held. And these are done in conformity to the standards set
2 by the workers of this religious faith. There's all these
3 things that are done that the workers do that are similar to
4 what a minister or a priest or a rabbi or a similar
5 functionary would do. So the People would state that he is a
6 clergy member and we would ask the Court to deny the motion.
7 Thank you.

8 THE COURT: Thank you Ms. Krohn. Mr. Lessing?

9 MR. LESSING: Just address a couple of quick things,
10 your Honor.

11 THE COURT: Sure.

12 MR. LESSING: First, as the prosecution points out,
13 there is no church; there is no building that he holds himself
14 out as as a minister. I want to clarify something. Mr.
15 Frandle's not saying that he doesn't consider himself a
16 minister. He does consider himself a minister as the bible
17 considers all of us ministers of the word of God. We're not
18 trying to step away from that. He's not, as a matter of
19 convenience, sometimes calling himself a minister and
20 sometimes not. The question becomes, is that the definition
21 that fits within the statute. And clearly it does not.

22 This is a biblical definition of the word minister
23 as cited by the couple of things I've pointed out. There's
24 lots of references in the bible that we're all ministers of
25 the word of God. That's what he's holding himself out as.

1 He's not holding himself out as a member of the clergy, which
2 is required under the statute.

3 One of the things that they point out is they follow
4 the teachings of Jesus and that the original apostles were
5 ordained and I don't--I don't really say this to be silly.
6 But, you know, perhaps if Jesus Christ himself were here and
7 had ordained him and we had actual legal evidence of that,
8 then maybe we would be facing a different issue. But that's
9 not what the prosecution is saying. They're saying that 2,000
10 years ago something happened and now symbolically these people
11 try to follow in those footsteps and now somehow they should
12 be persecuted because of it. That's inappropriate.

13 Let's talk about evidence. I appreciate the
14 argument of the prosecutor. She did a fine job. She has not
15 produced a shred of evidence to establish what she's trying to
16 prove today. This is it. This is the motion to dismiss. The
17 court rules and the case law says they have to come forward
18 with admissible evidence to substantiate the claims that
19 they're making against the defendant in order to overcome this
20 motion. It's not my burden. I don't have to come forward
21 with a shred of evidence to substantiate why he isn't a member
22 of the clergy. It's their burden to establish that he is.
23 Nothing has been brought forward to this Court. Nothing.
24 Other than a letter from him saying that he calls himself out
25 to be a minister, which we freely admit. He is a minister.

1 We're all ministers according to his beliefs of the word of
2 God. That's it. They cannot rely on argument to overcome a
3 motion to dismiss. It's simply not appropriate under the
4 court rules and under the case law.

5 If they have evidence that he's performing baptisms,
6 then they should have brought someone here to say that he's
7 performing baptisms. If they have evidence that he's
8 ordained, then someone should be testifying today at this
9 hearing that he's ordained. None of that has happened. And
10 they have not even come close to meeting their burden.

11 One last thing. You had asked me and you caught me
12 off the cuff so I'm not always great off the cuff. Under the
13 statute it specifically says 722.622--the first part of the
14 statute says that you're a mandatory reporter. The second
15 says you have to report where there's evidence of maltreatment
16 by a parent, which is clearly not the case; a legal guardian,
17 which I have not heard that that was the case; any person
18 responsible for the child's health or welfare, which there's
19 been no allegation whatsoever relating to that; or by a
20 teacher, a teacher's aide, or member of the clergy. That's
21 specifically in the statute. It requires that this alleged
22 malfessor also be a member of the clergy. And there's been no
23 evidence whatsoever to establish that that is true. It's even
24 one more step removed.

25 I think that the evidence in this case is severely

1 lacking. I think that both on a legal basis and a
2 constitutional basis this case needs to be dismissed. And I
3 would ask that the Court do that today. Thank you.

4 THE COURT: Thank you Mr. Lessing. Anything else
5 Ms. Krohn?

6 MS. KROHN: No, your Honor.

7 THE COURT: What's your position with regard to Mr.
8 Lessing's argument regarding evidence?

9 MS. KROHN: Your Honor, acknowledging that the other
10 exhibits that are contained within the response is hearsay, I
11 would leave it up to the Court to take that with whatever
12 weight it decides to take.

13 THE COURT: Is it correct to say that you anticipate
14 producing evidence at trial with regard to the letter, which
15 is Exhibit A and then the letter, which is Exhibit P? Is that
16 a fair statement?

17 MS. KROHN: Yes, your Honor.

18 THE COURT: Any reaction to that Mr. Lessing?

19 MR. LESSING: That may be true, your Honor, but
20 again, the best you could read from that piece of evidence is
21 that he signed his name as a minister. And there's nothing
22 about anything in that letter--'cause he's not required to
23 testify, which describes the functions that he performs as a
24 minister or prescribes in any way that he qualifies under the
25 statute as a similar functionary. They have to establish that

1 would intend on bringing at trial. It's the People's position
 2 that it is not necessary to have a full blown--almost like a
 3 trial in regards to a motion to dismiss where we would have to
 4 bring in each and every person in order to have them testify
 5 as to what they saw Mr. Frandle do and what he performed as
 6 what we are calling a functionary of his--as a minister of his
 7 church.

8 MR. LESSING: I couldn't disagree with that more. I
 9 think that today is the date and time. It's a motion to
 10 dismiss. This is--this is the opportunity for them to, for
 11 lack of a better way, put up or shut up. Show me what you've
 12 got that establishes that you think that a crime has been
 13 committed here. And they have not done that. If I were
 14 charged with a crime, I'm entitled to that. I'm entitled to
 15 have them show me what they've got. And when the time comes
 16 to show it, they have to show it. If they don't, it's just
 17 like not having an officer available to testify on a traffic
 18 ticket. If he's not here; he's not here. The case has to be
 19 dismissed. If they have testimony that they wanted to get in,
 20 they could have brought it via affidavit; they could have done
 21 it any number of different ways. But they didn't today and I
 22 think that it's appropriate to dismiss the case. Not just for
 23 that basis but for all of the reasons. I don't believe he
 24 qualifies in any event no matter what evidence they bring or
 25 lack thereof.

1 THE COURT: Very well. Anything else Ms. Krohn?

2 MS. KROHN: Well, your Honor, if the Court feels

3 that it's necessary, the People could call one person--

4 THE COURT: Well it's not--

5 MS. KROHN: --as a witness.

6 THE COURT: --it's not necessarily the Court's call

7 Ms. Krohn. That would be your call. And I don't want to

8 inject the Court's position, if any, into the proceedings.

9 And so that's completely up to the People.

10 MS. KROHN: Well, your Honor, the People would call

11 Bonnie Koning.

12 THE COURT: Bonnie who?

13 MS. KROHN: Koning.

14 THE COURT: Koning. Bonnie Koning, if you would

15 approach the witness stand right here please. Would you

16 please raise your right hand?

17 COURT RECORDER: Do you solemnly swear or affirm

18 that the testimony you are about to give shall be the truth,

19 the whole truth and nothing but the truth, so help you God?

20 MS. KONING: Yes I do.

21 COURT RECORDER: You may be seated.

22 MR. LESSING: Your Honor, if I could just briefly

23 place an objection on the record. The prosecution had the

24 opportunity to respond to my motion, both in writing and in

25 their response. I was on rebuttal. I'm not sure now after

1 they've closed their response why it would be appropriate to
 2 allow them to bring a witness in light of arguments that I've
 3 been making from the beginning but I do object.

4 THE COURT: Well this is a pretrial motion. And I
 5 don't see anything that's prejudicial or improper about having
 6 a witness testify. And so the objection is overruled. Ms.
 7 Koning, would you please pull that microphone a little bit
 8 closer to you so we can hear you? And speak up so we can hear
 9 you. Thank you.

10 BONNIE KONING
 11 called at 3:38 p.m. by the People and sworn in by the court
 12 recorder, testified:

13 DIRECT EXAMINATION

14 BY MS. KROHN:

15 Q Good afternoon. For the record, could you please state your
 16 full name and spell your last name?

17 A Bonnie Koning--K-o-n-i-n-g.

18 Q Thank you. And I apologize, it's kind of spur of the moment.

19 A I understand.

20 Q Um are you familiar with the defendant, Jerome Frandle?

21 A Yes I am.

22 THE COURT: Can you speak up Ms. Koning?

23 THE WITNESS: Yes I am.

24 BY MS. KROHN:

25 Q And how are you familiar with him?

1 A I have been with Mr. Frandle at many religious services. In
2 fact, Mr. Frandle baptized me when I was 12 years old.
3 Q And do you remember your baptism?
4 A Yes I do.
5 Q And how was that done?
6 A I was baptized in Lake Huron and it was an immersion like is
7 in the bible.
8 Q And is that following the faith that you belong to?
9 A Yes.
10 Q And is there a name for your religion?
11 A There's not a recognized name. Um we want to follow the bible
12 in that Jesus did not give himself a name--a religious name.
13 There are many people have given this group a name but it is
14 definitely an organization even though it is not recognized as
15 a um organization for tax purposes. But it is a definite
16 organization.
17 Q Okay. And what is Mr. Frandle's place in this organization?
18 MR. LESSING: Object to foundation, your Honor.
19 BY MS. KROHN:
20 Q Are you familiar with his status?
21 A Yes, Mr. Frandle--
22 MR. LESSING: Same objection. Go ahead.
23 THE COURT: Well the objection is overruled based on
24 the last answer. So the objection is overruled. Make sure
25 you have a proper foundation Ms. Krohn. Go ahead.

1 BY MS. KROHN:

2 Q Are you familiar--based upon um your contacts with Mr.
3 Frandle, are you familiar with his status in this
4 organization?

5 A Yes.

6 Q And what is that?

7 A He has been an overseer in the State of Michigan for the last
8 several years. I couldn't give you an exact number of years.
9 Um in which he is responsible for placing meetings in homes
10 where there are Sunday morning meetings. Um he's responsible
11 for deciding elders for those meetings. And he's--

12 Q What are elders?

13 A The person that leads the meeting or cares for the people of
14 that ah group in that home. He's also responsible for ah
15 sending out the other ministers in the state. He, along with
16 other overseers, makes decisions and pairs them and sends them
17 to specific fields. And those fields are defined as to the
18 areas that that pair of ministers would preach in.

19 Q And um have you ever seen Mr. Frandle perform ministerial
20 duties himself?

21 MR. LESSING: Object to foundation in that it
22 requires a definition of the word minister.

23 THE COURT: Overruled. Go ahead.

24 BY MS. KROHN:

25 Q Go ahead.

1 A Could you repeat that question please?
2 Q Have you ever seen Mr. Frandle perform ministerial duties
3 himself?
4 A Yes I have. Like I say, he baptized me himself. I've seen
5 him baptize many other people. He ah preaches at conventions,
6 I believe he's having gospel meetings at this time or has just
7 recently in Standish, Michigan on Sunday afternoons. Um he ah
8 preaches at conventions when there's like five or six hundred
9 people; sometimes maybe more--800. Um he preaches at those
10 events. Um he does--he does services for funerals. Um I
11 believe he had a part in a funeral just recently when he had
12 asked for an adjournment.
13 Q Have you ever been to a funeral at which he officiated?
14 A Yeah. Several.
15 Q Okay.
16 A As have many of the other folks here in this room.
17 Q Anything else?
18 A He would do anything that I would expect a minister to do or a
19 clergy of any faith. Um he does not perform marriages.
20 Q Okay. That's about the only thing?
21 A That's about the only thing I can think of.
22 Q Um have you ever had occasion to take communion while Mr.
23 Frandle was leading it?
24 MR. LESSING: Object to the form of the question--
25 leading; object to foundation.

1 THE COURT: It's not a leading question so that's
2 overruled. As to foundation, can you lay more foundation Ms.
3 Krohn?

4 MS. KROHN: Sure.

5 THE COURT: Sustained.

6 BY MS. KROHN:

7 Q Um does your religious faith take communion?

8 A Yes.

9 Q And ah who oversees or who leads that?

10 A That is done on Sunday morning in the homes where we would
11 meet. Um and so that's done mostly by the elder. But then
12 again, Mr. Frandle's the clergy that would define who that
13 elder is. He's the one who sets up the elders at each
14 meeting.

15 Q Does he--does he set up communions or is that just something
16 that is done?

17 A It's something that is done--

18 MR. LESSING: Object to foundation, your Honor.

19 THE WITNESS: --every Sunday.

20 MS. KROHN: Your Honor, she just stated.

21 THE COURT: It's overruled.

22 MR. LESSING: Just so I can clarify my objection.
23 I'm sorry.

24 THE COURT: Go ahead.

25 MR. LESSING: I don't know that she's established

1 that she knows what he's does when he's there as far as
2 setting up who does what and when. If she can testify that
3 she's been standing there when he's determined how communion
4 is going to be done, then "setting up a communion". I haven't
5 heard any foundation to establish that. Otherwise it's
6 hearsay and speculation.

7 THE COURT: Ms. Krohn?

8 MS. KROHN: I'll withdraw that.

9 THE COURT: Sustained.

10 BY MS. KROHN:

11 Q Are you familiar with Mr. Darren Briggs?

12 A Yes.

13 Q And how?

14 A Mr. Briggs was in our home just prior to when the event
15 happened.

16 Q The event that Mr. Frandle is currently charged for not
17 reporting?

18 A Yes.

19 Q Okay. And um--

20 A He was in our home wrestling with our boys.

21 Q Okay. And do you know what Mr. Briggs--based on him being in
22 your home and you seeing, do you know what Mr. Briggs' status
23 was in the--

24 A Yes.

25 Q --religious--and what was that?

1 MR. LESSING: Object to foundation, your Honor.

2 THE COURT: Well the objection's overruled because
3 the witness testified that Mr. Briggs was in her home and she
4 observed his status in this organization. That's the way the
5 Court interpreted the answer. Go ahead.

6 MR. LESSING: Well I understand that she believes
7 that she understands his role. But she has not testified and
8 has not been voir dired on whether or not she understands the
9 hierarchy of this organization; who's in charge; by what
10 doctrine that they establish who does these things; what
11 paperwork or documentation allows them that authority. Simply
12 having him in this house and saying that he's a minister is
13 not an issue of dispute. The issue is what authority he has.
14 And that was my understanding of the question. And if she can
15 answer that because she has first-hand knowledge, then it is
16 not a foundational issue. But I have not heard that she has
17 first-hand knowledge of the organizational structure of this
18 non-denominational faith.

19 THE COURT: Ms. Krohn, more foundation?

20 BY MS. KROHN:

21 Q Sure. How long have you been a member of this faith?

22 A All my life.

23 Q And you've learned about it through preachings and gospel
24 meetings and everything else?

25 A I've witnessed it all my life.

1 Q Okay. Are you familiar with the hierarchal steps?
2 A Absolutely.
3 Q And how does--how does that go?
4 A There's an overseer that's over the east part of the United
5 States. There's an overseer that's over the western part.
6 That person has overseers that are under him that are over
7 each state. And so the person that's over the east coast
8 would have the overseers that are over each state in that area
9 under him. And then each overseer of each individual state
10 has their group of ministers or clergy, whatever you wanna
11 call them that are two and two in their state.

12 So you do have a hierarchy. You have your regional
13 overseer; you have your state overseers, which is what Mr.
14 Frandle is; and then you have your field workers, which are
15 two and two in their specific areas of the state.

16 Q Okay. Thank you. And do you--I guess we already covered what
17 Mr. Frandle does or what you saw him do. Um the workers, did
18 you have occasion to see them perform their duties?

19 A In the fields?

20 Q Yes.

21 A Yes, absolutely.

22 Q And what did they do?

23 A They can officiate at funerals; they have gospel meetings on
24 whatever evenings. They rent halls or public buildings to
25 have um their services in. They provide invitations to try to

- 1 invite people to come into those meetings. Um that's--at
 2 their time when they're in their field and then there are
 3 special meetings where they leave their field and they go to
 4 maybe another field or another area to um have special
 5 meetings there.
- 6 Q And what do they do--have you ever been to a special meeting?
 7 A Lots of them.
- 8 Q And what do they do--or the workers do at the special
 9 meetings?
 10 A They sit up at the front and they provide preaching to the
 11 congregation.
- 12 Q So they take turns preaching?
 13 A Absolutely, yup.
- 14 Q Okay. Ah anything else?
 15 A Those are basically the things that they do.
- 16 Q So basically the workers will do the same things as an
 17 overseer except for they don't preach at conventions?
 18 A Oh they all preach at conventions. Mm-hmm.
- 19 Q Okay.
- 20 A They sit up front and they have their agenda as to who's--
 21 which the overseer provides is the agenda--as to who's going
 22 to speak in each of these meetings. And ah he does the same
 23 thing. He comes up with a schedule as to who is going to go
 24 to which conventions and has been sent to whatever state for
 25 their conventions. Ah he decides who is going to go to what

- 1 special meetings and he sends whoever he chooses to those
 2 meetings to preach there. And he works with the other
 3 overseers in the other states to do that.
- 4 Q Okay. And you said earlier that the overseers determine who
 5 goes where?
- 6 A Absolutely.
- 7 Q Um do the workers do that or is that strictly the overseer who
 8 does that?
- 9 A The overseer is the one that makes that decision--all those
 10 decisions.
- 11 Q Okay. So the workers do everything that an overseer does
 12 except they don't make the decisions as to who goes to which
 13 field?
- 14 A Right. Or they don't make decisions as to where meetings are
 15 as to where ah the homes are for the Sunday morning meetings,
 16 they don't make the decision as to who elders are. That's all
 17 the overseer's decisions.
- 18 Q Okay. And where did Mr. Briggs fit in this hierarchy?
- 19 MR. LESSING: Object to foundation, your Honor.
- 20 MS. KROHN: Your Honor, she stated that she was
 21 familiar with what he did earlier.
- 22 THE COURT: The objection is overruled. The witness
 23 has testified as to knowledge of the hierarchal nature of this
 24 organization. Go ahead.
- 25 THE WITNESS: Could you repeat your question please?

1 BY MS. KROHN:

2 Q Sure. Where did Mr. Briggs fit in this hierarchy?

3 A He was one of the workers or ministers in our field at the
4 time that this happened--that the time of the incident
5 originally happened. Um so he would have been placed in our
6 area by Mr. Frandle because Mr. Frandle was the overseer over
7 Mr. Briggs at the time.

8 Q Okay. So at the time Mr. Briggs was a worker and Mr. Frandle
9 was the overseer?

10 A Absolutely.

11 Q Um and you also--you kind of referred to him as a minister as
12 well. Is that your understanding of a worker or an overseer
13 is basically another word for a minister or?

14 A You know, whatever word you wanna use, he was definitely
15 performing the work of a minister, a clergy, whatever word you
16 wanna use. Um he was preaching to us; he was performing--you
17 know, we look up to him. We have always looked up to the
18 ministers in our area or the overseers especially.

19 Q Did you seek on them for spiritual guidance?

20 A Sure.

21 Q Okay.

22 A Absolutely.

23 Q Okay.

24 A And, you know, our children are all taught to look up to them
25 too because they are the ministers and they come to our home.

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1 Our children are all taught to respect them and to honor them
2 and that's why our children are in a very um tough situation
3 when things are not done right.

4 Q Okay. Thank you.

5 A Thank you.

6 MS. KROHN: I have nothing further.

7 THE COURT: Cross-examination?

8 MR. LESSING: Yes, your Honor.

9 CROSS-EXAMINATION

10 BY MR. LESSING:

11 Q Ma'am, are you an overseer?

12 A Absolutely not.

13 Q Have you ever been an overseer?

14 A No.

15 Q Have you ever been a worker?

16 A No.

17 Q Have you ever been ah--have you ever held any status at all in
18 the faith?

19 A No. I'm a member.

20 Q Ah have you ever been present during a meeting between the top
21 level of overseers that you talked about that are two of them?

22 A No. They don't allow members to come to those meetings but
23 there are several of those meetings and we know when they are.
24 It's just that we are not invited.

25 Q Have you ever been present at the sub-level where there's

- 1 regional overseers having meetings?
- 2 A No. We don't--we're not invited to oversee meetings.
- 3 Q Have you ah ever been present when there's been a meeting by
4 an overseer determining who should be ah a worker or an elder
5 at a particular function?
- 6 A No. We get the list after they make their decisions and it
7 shows where they decided to put everybody.
- 8 Q Have you ever seen a handbook that describes the job
9 responsibilities of an overseer?
- 10 A No.
- 11 Q Have you ever seen an organizational chart that describes the
12 job responsibilities or the responsibilities of an overseer?
- 13 A No. Just by what we see them do.
- 14 Q Have you ever ah had ah any religious documentation provided
15 to you that shows the power and authority of an overseer?
- 16 A They don't have a handbook.
- 17 Q So would it be fair to say that anything you "know" about the
18 religious organization you've been told by someone?
- 19 A No. It's by what I see.
- 20 Q Okay. But you haven't sat in meetings where Mr. Frandle was
21 appointed an overseer allegedly of a particular area, have
22 you?
- 23 A No. It's based on his behavior; what he does; and what he--
24 how he behaves; how he ordains other people; what he--where he
25 puts everybody. I mean we all know the position he has.

- 1 Q So your information about what you believe the organizational
2 structure of this group is based upon what you've observed
3 over the years?
- 4 A No. It's not just based on observation. It's based on mostly
5 observation. But we also have our lists of where he puts
6 people. Um we have--
- 7 Q Sorry. I didn't mean to cut you off. Did you have more you
8 wanna say?
- 9 A We have all of the list that he puts out that tells where he's
10 assigned people and when they're gonna speak and where they're
11 going and we have all of that.
- 12 Q And what evidence of any kind of paper nature do you have to
13 establish that you have an intimate knowledge of the actual
14 decision-making process being made by these overseers with
15 respect to the faith?
- 16 A Can you repeat that please?
- 17 Q Well you've said that these overseers are in some level of
18 responsibility over the faith, correct?
- 19 A Mm-hmm.
- 20 Q That's a yes?
- 21 A Yes.
- 22 Q And that's based upon, I think you said, what you've observed,
23 correct?
- 24 A Yes.
- 25 Q But I'm asking you what you can cite with respect to the

- 1 meetings--the decision-making that's happening by these
 2 alleged overseers that show what authority any of them
 3 actually have, other than what you've been told as you've been
 4 brought up in the faith? Do you have anything other than what
 5 you've been told as you've been brought up in the faith?
- 6 A Like I stated, he provides documents that show us what he's
 7 doing. We see it. We're not involved. He does not allow
 8 members to be involved in his decision-making. It's done
 9 strictly by the ministers and the overseers.
- 10 Q Would it be fair to say that with respect to the decisions
 11 that are being made by the overseers and the organizational
 12 responsibility of the overseers, you don't have any first-hand
 13 knowledge, do you?
- 14 A I don't attend the overseer meetings.
- 15 Q So you don't have any first-hand knowledge of who has what
 16 authority and from where that authority is derived, do you?
- 17 A I certainly can see what the authority does.
- 18 Q Okay. But I asked a specific question. You don't have any
 19 first-hand knowledge of who has what authority and from where
 20 they divine that authority, do you?
- 21 A I have a book that shows who is in what position.
- 22 Q Okay. Have you brought that with you today?
- 23 A Sure.
- 24 Q Where is that?
- 25 A Ah right over here. Do you want to admit that?

1 Q Well I'll look at it first.
2 A Do you want me to do that?
3 Q Ah as to your first-hand knowledge is that all that you have
4 is a book that you were given?
5 A No. I have several lists at home--all kinds of 'em. I don't
6 bring 'em all with me. I didn't know that I was going to need
7 to.
8 Q I understand that. I didn't know you were going to be
9 testifying today either.

10 MR. LESSING: May I approach, your Honor?

11 THE COURT: You may.

12 BY MR. LESSING:

13 Q What is that?
14 A This is the worker's lists for the United States and all over
15 the world.
16 Q Can you show me anywhere in that document where the authority--
17 --ah where the religious authority that vests these people with
18 power is identified?
19 A No. Like I told you, they don't have a handbook that does
20 that.
21 Q Other than that being some sort of a directory of people--
22 A Mm-hmm.
23 Q --is it anything else?
24 A It's a directory and it shows the overseer at the top of each
25 one. And it's the hierarchy of--

1 THE COURT: Mr. Lessing, do you wanna have the
2 exhibit admitted before we have testimony about it or not?

3 MR. LESSING: I never really had an opportunity to
4 review it. She's proffering it as proof and I'm trying to
5 voir dire her based on that.

6 THE COURT: Well I don't see the witness proffering
7 it as proof. I see the defendant proffering it as proof of
8 something. But in any event, we have a witness that's
9 answering questions about a document that has not been
10 admitted yet so.

11 MR. LESSING: Your Honor, I don't need to ask any
12 more; I don't need it admit it. No.

13 BY MR. LESSING:

14 Q So let me ask again. Have you seen any canons of religious
15 authority that vests either Mr. Frandle or any of these
16 overseers with any religious authority?

17 MS. KROHN: Your Honor, I object as to asked and
18 answered. This was asked several times and she's stated
19 several times that there is no handbook.

20 THE COURT: Mr. Lessing?

21 MR. LESSING: If that's what her answer is. If the
22 answer is no, then that's fine. I have no problem moving on.

23 THE COURT: The question was whether or not she is
24 aware of any canons, which is a more specific term. The
25 objection is overruled. However, the witness has testified

1 several times that she's not aware of any handbook or other
 2 detailed printings or documents but go ahead.

3 MR. LESSING: Your Honor, based upon the witness's
 4 testimony, I would move to strike any testimony that she has
 5 had regarding the organizational makeup of this
 6 nondenominational group of people. She has indicated that she
 7 is not an overseer. She has no personal knowledge of the
 8 meetings; what happens; how the organization is determined,
 9 other than, you know, what I--what I expect she's saying based
 10 upon what she's been told throughout the years. That is not
 11 foundational basis to establish as a matter of law that an
 12 individual does have some religious authority in any
 13 particular organization. It would be no different than me
 14 saying that I have an understanding of how I-B-M works; that
 15 there's a president and there's some vice-presidents and there
 16 are other subordinates to that. I don't have any personal
 17 knowledge of that. I'm making--that's basically conjecture
 18 based on what I've been told throughout the years. If they
 19 wanna have someone that's gonna testify to that, fine. But I
 20 would move to strike as a lack of foundation now that I've had
 21 an opportunity to voir dire the witness on those issues.

22 THE COURT: Ms. Krohn?

23 MS. KROHN: Your Honor, she was able to give
 24 testimony in regards to the hierarchy of this based on a
 25 lifetime of being within this faith. It's something that she

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1 has learned throughout the years. It's something that she's
2 learned her entire life. It would be no different from anyone
3 in this room being able to list a hierarchy of the religion
4 that they belong to in regards to--or from what they have
5 learned throughout their life being a part of that religion.
6 It's something that's taught. It's not--none of us are going
7 to be able to testify in regards to what started the religion
8 because--that we belong to--what started my religion or
9 defense counsel's or the particular religion that the witness
10 belongs to because none of us were alive then. We didn't come
11 up with it; all we know is what we've learned throughout our
12 entire lives. And it's the same thing.

13 MR. LESSING: It's not the same. The difference,
14 your Honor, is that she's being put on the stand to proffer
15 evidence in a court of law as to the obligations, duties, and
16 responsibilities of this individual under the faith hierarchy.
17 And she's testified that she doesn't know what those are. She
18 just observes them and goes by what she's told and has been
19 taught. That's not sufficient. You can't describe the job
20 functions of the vice-president of I-B-M by making assumptions
21 about what they do because you've observed them in practice.

22 Someone who actually knows what the job functions
23 are. An overseer that's primarily responsible for that
24 person. That could be somebody that theoretically could
25 testify. A person of the faith who has literally no role in

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1 the organizational structure at all as alleged can't testify
2 to that unless she has personal knowledge. And that's the
3 basis of our foundational objection. She does not have
4 personal knowledge. Certainly because it's being proffered to
5 prove the truth of the matter asserted. And that's the
6 fundamental basis of hearsay. It's foundationally defective
7 because it's hearsay. She may think that she has some
8 knowledge on the topic but she can't prove that she does.

9 THE COURT: The witness has testified about her
10 participation in an organization and her observations
11 throughout her life based on her participation in this
12 organization. The witness has testified at some length with
13 significant detail about the operations of this organization
14 and the observed roles of various participants in the
15 organization, including workers and overseers. And for those
16 reasons, based on the witness's testimony for which the Court
17 finds there is proper foundation, the objection is overruled.

18 BY MR. LESSING:

19 Q Now ma'am, now you said you were baptized?

20 A Yes.

21 Q Do you have an understanding of, based on the bible, what the
22 original baptism was intended for?

23 A Are you referring to scripture as to how a person should be
24 baptized?

25 Q No. Do you understand why people are baptized? I'm sorry. I

1 jumped ahead. Let me stop. I assume that when you say
 2 someone is baptized, you are following--as you've talked about
 3 in the faith, you're following the steps of Jesus, is that
 4 correct?

5 A That's what we're all trying to do.

6 Q Do you know why Jesus Christ baptized people?

7 A Absolutely. And it's the reason why I was baptized and why
 8 anyone else would have been baptized.

9 Q What was the religious implication of Jesus Christ baptizing a
 10 person?

11 A It was so that a person would understand the need of ah
 12 putting to death the sins that are within us and going forward
 13 to try to live a new life with Christ.

14 Q You would agree, would you not that the--when Jesus Christ
 15 baptized someone it was to remove the stain of the original
 16 sin, correct?

17 A Absolutely.

18 Q And Jesus--

19 THE COURT: Mr. Lessing, can you tell me where we're
 20 going with this?

21 MR. LESSING: She's talking about--

22 THE COURT: You've asked her about baptism, okay?

23 MR. LESSING: Yes.

24 THE COURT: We're talking about whether or not
 25 there's a religious organization of some type. And what role,

1 if any, the defendant had in it. With regard to MCL 722.622,
 2 tell me how the line of questioning you're going down right
 3 now is relevant to these proceedings.

4 MR. LESSING: I presume the prosecution is going to
 5 use the testimony that she provided--that she was allegedly
 6 "baptized" by Mr. Frandle as evidence of his status under the
 7 statute. I am attempting to debunk the fact that he actually
 8 does anything of any religious status in performing a
 9 "baptism" under the faith.

10 THE COURT: Isn't that kind of like attempting to
 11 prove a negative? Something like that.

12 MR. LESSING: Not at all. I think if she answers
 13 truthfully that her answer will establish what I'm trying to
 14 get at.

15 THE COURT: Go ahead.

16 BY MR. LESSING:

17 Q I don't remember the--I think you had answered--you would
 18 agree that when Jesus Christ baptized someone, he had the
 19 power of God and he was literally removing sin from that
 20 person's body, correct?

21 A That's what he died for so that a person could have that done.

22 Q Do you believe that one of the overseers in this faith has the
 23 ability to literally remove a person's sin from their body?

24 A Baptism is a symbol. Okay? It's done by a minister but the
 25 true baptism and the true meaning of baptism has to be within

- 1 the person themself in order for it to do any good. However,
2 the symbol is done whether that person means it or not.
- 3 Q Fair enough. And similarly when you talk about communion, you
4 understand that the ah--the original last supper the bible
5 tells us that Jesus Christ literally turned the bread and the
6 wine into body and blood. You understand that, correct?
- 7 A No. I don't.
- 8 Q Okay. You don't believe in that?
- 9 A I believe what the bible says but I don't believe he actually
10 turned it into blood and into.
- 11 Q Would you agree that the communion that you talk about is
12 merely symbolic in nature in the faith?
- 13 A What are you asking?
- 14 Q You indicated that elders sometimes perform communal services.
- 15 A Mm-hmm.
- 16 Q Would you agree that that is symbolic in nature?
- 17 A Yes it is. Yes, it's symbolic of the actual death of Christ
18 when he died and when he provided those emblems to those
19 disciples to take. We take that in remembrance of him.
- 20 Q And when you talk about an elder in the faith, an elder could
21 be anyone. It could be the father of the family in whose home
22 a particular thing is happening, correct?
- 23 A An elder is whoever the overseer decides to make over that
24 meeting. It's whoever he decides to put in that position.
- 25 Q And they don't have to have any particular religious training

1 to--

2 A No.

3 Q --"do communion", correct?

4 A No. There's some biblical reasons why a person should or
5 should not be an elder.

6 Q And are you aware of elders performing baptisms?

7 A No. They do not.

8 Q And on what authority do you know that that's true?

9 A Because I've been to many many baptisms through my life.

10 Q You've never seen an elder perform a baptism?

11 A Never ever seen an elder perform a baptism.

12 Q Have you ever seen a non-worker perform a baptism?

13 A No. I've never seen that either.

14 Q But you can't say as a matter of fact that it's not allowed by
15 the organization, can you?

16 A I would be very surprised because it's never been.

17 Q Surprise is one thing but can you say as a matter of fact that
18 it's not allowed by the organization?

19 THE COURT: Relevance Mr. Lessing?

20 MR. LESSING: If anyone can do it, it speaks to the
21 question of whether or not he has any heightened status by
22 doing it. And if she can't provide any testimony as to
23 whether anyone can do it, then it goes to that issue.

24 THE COURT: Go ahead.

25 THE WITNESS: The question again?

1 BY MR. LESSING:

2 Q As a matter of fact, can you speak to the issue of whether or
3 anyone can be designated by a overseer or otherwise to perform
4 a baptism?

5 A Yeah. He would decide who's going to do the baptism.

6 Q If an overseer came in and identified an elder and said you
7 are gonna perform the baptism, that would be okay in the
8 faith, would it not?

9 A It's never been done that I know of.

10 Q Are you aware that it cannot be done?

11 A I'm sure things can be done all kinds of ways but it's never
12 been done that I've ever seen.

13 Q Take that as a--

14 A But I'm sure there's other witnesses that could verify that
15 also.

16 Q Are you aware of how the--

17 MS. KROHN: Your Honor, I would ask that the
18 defendant not speak to people who are seated in the courtroom.

19 MR. LESSING: I didn't see him speak to anyone.

20 MS. KROHN: I just did.

21 THE COURT: I'm gonna ask you to instruct your
22 client to not be conversing with anybody else in the courtroom
23 while the proceedings are pending.

24 MR. LESSING: Fair enough, your Honor. I did not
25 see him do that and I wasn't aware.

1 THE COURT: That's fine. Go ahead.

2 MR. LESSING: I hadn't told him before not to do
3 that.

4 THE COURT: Go ahead.

5 MR. LESSING: I was unaware of that as a rule.

6 THE COURT: Go ahead.

7 DEFENDANT FRANDLE: Sorry.

8 BY MR. LESSING:

9 Q Are you aware of the business dealings--the financial affairs
10 of these overseers and how money is moved and who does the
11 accounting and the books and records for the faith?

12 A They don't have books and records. I am aware of ah a share
13 of it. They try to keep it very secretive. Um they don't
14 really want anyone to know where they have their money or
15 where it's at. But I am aware and I do know of situations and
16 um I can testify to that at another time if you need me to.

17 MR. LESSING: I don't have anything further. Thank
18 you.

19 THE COURT: Redirect?

20 MS. KROHN: No, your Honor.

21 EXAMINATION

22 BY THE COURT:

23 Q Ms. Koning, you mentioned that--or you testified that there
24 are conventions, is that right?

25 A Absolutely, yeah.

- 1 Q And who organizes the conventions if you know?
- 2 A The overseers.
- 3 Q Are there fees for renting space for conventions to be held in
4 or?
- 5 A No. Members um of the faith have um property. And the
6 overseers ah would take money that's given from the members
7 and put buildings up on these properties. And so the
8 convention grounds are a number of buildings--(inaudible) a
9 pretty good size.
- 10 Q Are there any convention grounds in the State of Michigan that
11 you are aware of?
- 12 A There's three.
- 13 Q Where?
- 14 A One in Carsonville; one in Alma; and one in Vanderbilt.
- 15 Q Where in Carsonville?
- 16 A Ah I believe it's on Snover Road; um it's owned by Jim Klaty.
17 As far as I know he still owns it. Um some convention grounds
18 are being put in trust names.
- 19 Q Very well. You testified that Mr. Briggs was a worker, is
20 that correct?
- 21 A Yes sir. We would call a worker or a minister.
- 22 Q And what types of things is it that Mr. Briggs would do as
23 part of this organization?
- 24 A Preach the gospel; um he would rent--he and his companion,
25 which his companion at that time is here also.

1 Q Who's that?

2 A Um Mr. Bill Denk.

3 Q Bill Denk. How do you spell the last name?

4 A D-e-n-k.

5 Q Very well. Go ahead.

6 A Um they would rent places to have gospel meetings in which we
7 ah was able to secure a room at the North Branch High School
8 that they could use um for their meetings. Um they had
9 meetings at several different locations.

10 Q Would Mr. Briggs assist in the organization and planning of
11 those meetings?

12 MR. LESSING: Sorry to do it to you, your Honor, but
13 object to foundation.

14 THE COURT: Well you don't have to apologize for
15 that. It's a legitimate objection.

16 BY THE COURT:

17 Q Do you know whether or not Mr. Briggs would participate in the
18 planning and organization of those meetings?

19 A Between he and his companion, Mr. Denk, they would make those
20 decisions.

21 Q And on what do you base that testimony? Would you--did you
22 ever hear Mr. Briggs have discussions with people about a
23 meeting being planned or organized?

24 A Yeah. They asked me to see about getting this place for them--
25 -for their meeting.

1 Q Have you ever attended a meeting at which Mr. Briggs presided
2 over or assisted?

3 A Yes. Yes. When they have their meetings, both of them speak.
4 They both preach at that time.

5 THE COURT: Very well. Thank you Ms. Koning. Any
6 questions in light of the Court's questions Mister--I beg your
7 pardon--Ms. Krohn?

8 MS. KROHN: No, your Honor.

9 THE COURT: Mr. Lessing?

10 RECROSS-EXAMINATION

11 BY MR. LESSING:

12 Q Just one. These three cites that you mention in Michigan you
13 called them convention cites. These are people's property;
14 it's farmland or it's a building or something like that and
15 one of the members of the faith have said yes, you can come in
16 and you can hold your--whatever it is you're gonna do here at
17 this location, is that correct?

18 A They own the property. But the overseers would collect money
19 from the members to put up the buildings on the property for
20 the meetings; for ah dining sheds; ah sleeping quarters;
21 bathrooms; washing areas.

22 Q Your money helped pay for those too?

23 A Yes.

24 MR. LESSING: Thank you.

25 THE COURT: Ms. Krohn?

1 MS. KROHN: No, your Honor.

2 THE COURT: Very well. Thank you Ms. Koning. You
3 may step down.

4 (At 4:14 p.m., witness excused)

5 MS. KONING: Thank you.

6 THE COURT: Any other proofs Ms. Krohn?

7 MS. KROHN: No, your Honor.

8 THE COURT: Mr. Lessing, any proofs?

9 MR. LESSING: Well, your Honor, I wasn't prepared to
10 have to combat the witness testimony today. I certainly, if
11 the Court feels it's necessary, I can--I'm certain that I can
12 bring witnesses to counter the assertions made. I think that
13 my objections with respect to foundation made clear the very
14 thin line between what Ms. Koning "knows" and what she
15 believes that she knows. And it's not in any way, you know,
16 giving her a hard time. I think that there's a difference
17 between believing you know something because you've been told
18 that over years and having actual legal knowledge of
19 something. I understand the Court has ruled with respect to
20 my objections of foundation, but that does not mean that the
21 Court can't take into account the weight of an individual's
22 testimony in that regard.

23 And I think that the weight should be given very
24 little given the fact that she's literally had no actual role
25 of any classification in this faith, other than being a member

1 of the faith and her ability to testify regarding its
 2 structure is suspect at best.

3 THE COURT: Very well. And, again, Mr. Lessing, I'm
 4 not suggesting that you should present evidence or witnesses
 5 but do you desire to present any testimony or witnesses?

6 MR. LESSING: Your Honor, at this time, no. I mean
 7 it's--I think we've beat the horse to death at this point.

8 THE COURT: I wanna make sure that you have had the
 9 full opportunity to present your position.

10 MR. LESSING: Other than my original objection to
 11 any testimony being taken today, no. I mean I'm not--I'm not
 12 prepared to do it today. It would not be something that I
 13 could do under these conditions.

14 THE COURT: Do you wish to have the matter set down
 15 the road so that you have the opportunity to present
 16 testimony?

17 MR. LESSING: No, your Honor.

18 THE COURT: Very well. Thank you Mr. Lessing. Well
 19 the critical issues underlying the defendant's motion to
 20 dismiss are whether or not under MCL 722.622 the defendant is
 21 a member of the clergy as defined by the act. The defendant
 22 also has argued the need for Mr. Briggs, given his role in the
 23 reporting duty as outlined in the statute as a part of this
 24 organization as well.

25 And with regard to Mr. Frandle's role, based on the

1 testimony of Ms. Koning, the Court finds that Mr. Frandle is,
2 in fact, a member of the clergy of the organization as
3 testified to by Ms. Koning. Ms. Koning testified, again, at
4 some length and in significant detail about a clear
5 hierarchical structure with a division of duties and different
6 authorities that rest with various members of this
7 organization. It appears as though the organization may be
8 referred to as the Faith or if that's not correct, it is
9 simply an organization, which the Court finds is, in fact, a
10 religious organization based upon the testimony of Ms. Koning
11 who, in fact, has testified that she's been a member for
12 basically all of her life.

13 The organization conducts apparently baptisms and
14 other religious activities. It is involved in preaching the
15 gospel and conducting special meetings and conventions and
16 other various activities, which again, the Court finds to be
17 activities that are part of a recognized religious body or
18 organization. And I find that this is or that there is a
19 recognized religious body or organization that exists to which
20 Mr. Frandle is a member--and specifically a member of that
21 clergy.

22 And I find that his particular function is that of a
23 minister or other religious practitioner or similar
24 functionary, again, based upon the detailed testimony of Ms.
25 Koning.

1 Regardless of the findings that are set forth in the
 2 Beardsley case, the Court, for the record, does find that Mr.
 3 Briggs is a member of this organization as well. He's
 4 apparently a worker or minister with apparently defined duties
 5 based on the participation and observations of Ms. Koning as
 6 testified to by her, which I'm not going to reiterate. The
 7 record contains those observations.

8 For those reasons and based on the fact that the
 9 Court finds Ms. Koning to be credible, the defendant's motion
 10 to dismiss is therefore denied. This matter needs to be set
 11 for a hearing on the People's motion to use similar acts
 12 evidence and the matter needs to be scheduled for trial. And
 13 so if we can get a hearing date please.

14 COURT RECORDER: February 23rd at 3:00 p.m.

15 MR. LESSING: I think--I think that that's okay,
 16 your Honor.

17 THE COURT: Very well. I believe it's the same date
 18 as the other matter. Is that right Tammy?

19 MR. LESSING: Yes. I wasn't planning on being here
 20 for the other matter but I guess I can.

21 THE COURT: Oh, I see.

22 MR. LESSING: That's okay.

23 THE COURT: Mr. Lessing, if you find that when you
 24 get back to your office you would prefer a different date, the
 25 Court will work to accommodate your schedule. All right?

1 MR. LESSING: Thank you, your Honor.

2 THE COURT: So for now it's February 23 at 3:00 p.m.
3 for the hearing on the People's motion to use similar acts
4 evidence. With regard to a trial date, Mr. Lessing, how much
5 time do you need to be prepared for trial?

6 MR. LESSING: May I address just a housekeeping
7 matter so I understand my status--

8 THE COURT: Yes.

9 MR. LESSING: --of where we are. Am I to understand
10 that the Court is denying the motion to dismiss as--I'm trying
11 to figure out whether you've just made rulings as a matter of
12 law or whether you have just ruled that there are questions of
13 fact as to his status under the statute, which is really for
14 the jury to decide because it makes a difference.

15 THE COURT: I have made various findings and fact as
16 related to this organization and Mr. Frandle's participation
17 in the organization. And I think in conjunction with that
18 there are matters of fact that, of course, are up to the jury
19 to determine. The case will proceed to trial.

20 MR. LESSING: I hate to do this to you but I'm
21 trying to figure out what you've ruled as a matter of law and
22 what you've ruled for the jury to decide.

23 THE COURT: I have ruled as a matter of law today
24 that Mr. Frandle is a member of the clergy as defined by the
25 statute for the reasons that I've stated on the record. It's

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up to the jury to decide whether or not he was a person that was required to report it. The ultimate issue, meaning whether or not the prosecution proves the case beyond a reasonable doubt is up to the jury.

MR. LESSING: Okay. Given that--and I'm not aware of any claim that there's any risk of flight or anything like that, I would ask that the Court give us an opportunity to brief a motion to stay for the purposes of an appeal on that issue so that we can--rather than having to do it twice, we can figure out what the actual status of Mr. Frandle is. It's obviously an issue that's gonna require some weighing in as a matter of law. I don't expect the Court to rule. I would like you to rule on the issue of stay today but I don't expect you to. I think that it's appropriate. There's no allegation that there's any time sensitive issue. Certainly Mr. Frandle has no issue with waiting while this matter is stayed. But because of the allegations being made and because of his status in the community, there is a lot of import to whether or not he is convicted of a crime. And then has to deal with it on appeal a year or two years later, whatever the case may be.

THE COURT: Are you saying that you're planning on filing a motion to stay? Is that what you're saying?

MR. LESSING: I'm asking if the Court would entertain the same. And that's why I bring it up now because

1 we're trying to figure out trial dates and things like that.
 2 I don't wanna jamb the schedule of the Court.

3 THE COURT: Right. I'm going to deny the
 4 defendant's request for a stay.

5 MR. LESSING: Fair enough, your Honor.

6 THE COURT: As of right now. If you wanna file a
 7 motion, you can file a motion. But based on your oral request
 8 for a stay today, the request is denied.

9 MR. LESSING: Fair enough, your Honor. With respect
 10 to trial then as far as dates, I don't believe--and if I'm
 11 speaking out of turn, I apologize--but I don't believe that
 12 I've seen any witness lists or anything on behalf of the
 13 People that will bear on whether or not I could proceed to
 14 trial immediately or whether there's people that I need to
 15 conduct discovery of and things like that.

16 THE COURT: Well the prosecuting attorney, Mr.
 17 Rutkowski, executed a pretrial statement on November 23. It's
 18 a printed form Mr. Lessing. And that has various witness
 19 names on it. And Ms. Krohn, you're rising?

20 MS KROHN: Yes, your Honor. Sorry. It also states
 21 that there may be additional witnesses depending on how the
 22 404b motion goes. It's the People's belief that there may be
 23 one or two other witnesses that aren't endorsed on the
 24 pretrial. It all depends on how that motion goes.

25 THE COURT: What the Court is going to do is we're

1 going to schedule a trial at this point. And we're going to
2 schedule--we've already scheduled the motion date. But the
3 trial will be scheduled significantly out or appropriately
4 further down the road so that any pretrial issues can be fully
5 addressed and witness lists prepared and any exhibits and
6 other pretrial issues can be fully addressed. So I'm thinking
7 that a trial date sometime in April or May.

8 COURT RECORDER: We have April 24th.

9 THE COURT: April 24th Mr. Lessing?

10 MR. LESSING: Would it be okay with the Court, when
11 we're back on the 23rd if there's some major problem, I can
12 let you know then about the 24th. Is that okay? It's just
13 hard to figure that out without spanning three days in my
14 schedule.

15 THE COURT: Sure. I would say when you get back to
16 your office, rather than--rather than dealing with it on the
17 23rd, why don't you call the recorder when you get back to
18 your office next week--

19 MR. LESSING: Okay.

20 THE COURT: --and you can speak with the recorder
21 about various dates and then that can be cleared with the
22 prosecutor office so there can be some preplanning of trial
23 dates at that point. All right?

24 MR. LESSING: Fair enough, your Honor. I appreciate
25 that.

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MS. KROHN: So tentatively it'll be April 24th unless there's some sort of problem?

THE COURT: I think that's a fair statement-- tentatively April 24. But that is a tentative date.

MR. LESSING: Thank you.

THE COURT: You're welcome. Anything else Ms. Krohn?

MS. KROHN: No, your Honor. Thank you.

THE COURT: Very well. Thank you counsel.

MR. LESSING: Thank you for your time this afternoon, your Honor.

THE COURT: You're welcome. Off the record.
(At 4:26 p.m., hearing concluded)

COPY

STATE OF MICHIGAN)
)
COUNTY OF HURON)

I certify that this transcript, consisting of 61 pages, is a complete, true, and correct transcript, to the best of my ability, of the proceedings and testimony taken in this case on February 10, 2012.

Dated: March 21, 2012



Tamara M. Plotter, CER 6078
73B District Court
Huron County Building, Room 105
250 E. Huron Avenue
Bad Axe, Michigan 48413