

APPENDIX 4

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO, CENTRAL DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,

v.

[REDACTED],

Case No. [REDACTED]

NOTICE OF MOTION AND MOTION
TO QUASH SUBPOENA TO TESTIFY;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
PASTOR GARY [REDACTED]

Dept. V3

Date:

Time:

Hon.: Eric M. Nakata, Judge

NOTICE OF MOTION TO QUASH SUBPOENA TO TESTIFY

Please take notice that Pastor Gary [REDACTED] hereby moves for an order to quash the subpoena to testify in the above-captioned case. The motion is based on the clergy-penitent privilege (Cal. Evid. Code § 1034). In support of this motion, the movant submits the Memorandum of Points and Authorities and the declarations of Gary [REDACTED] and Kevin Snider.

Dated: December 23, 2021



Kevin T. Snider, Attorney for Pastor Gary [REDACTED]

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

On August 7, 2020, [REDACTED] came to Calvary [REDACTED] [REDACTED] to speak with a member of the clergy, Pastor Gary [REDACTED] in order to seek spiritual help. As an ordained minister since 2009, and Pastor of Calvary [REDACTED] [REDACTED] [REDACTED], Pastor [REDACTED] provided spiritual counsel to Mr. [REDACTED]. It is Pastor [REDACTED] custom to hear confidential matters from those in his church or others who seek spiritual solace. Mr. [REDACTED] is a member of the church and no third party was present at the time of their communication. Pastor [REDACTED] is asserting the clergy-penitent privilege.

ARGUMENT

Section 1034 of the Evidence Code provides in part that "...a member of the clergy, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege." Here, Pastor [REDACTED] claims the privilege. It is long settled law in California that penitential communications are subject to privilege. *In re Lifschutz*, 2 Cal. 3d 415 (1970).

CONCLUSION

Based on the foregoing, the motion to quash should be sustained.

Respectfully submitted,



Kevin T. Snider, Attorney for Pastor Gary [REDACTED]

DECLARATION OF GARY [REDACTED]

I, Gary [REDACTED] am not a party to the above-captioned case, and if called upon I could and would testify truthfully as to my own personal knowledge, as follows:

1. I serve as the pastor of Calvary [REDACTED] [REDACTED] and have held that position since 02/01/2021.
2. I am a duly ordained minister and have been so since 08/01/2009.
3. In my capacity as a minister it is my custom to hear confidential matters from those seeking spiritual help, comfort, counsel, repentance, and prayer. This frequently includes confession of sin, temptation, and deep emotional, psychological and spiritual needs.
4. During such spiritual counsel, what is communicated remains strictly confidential unless directed by the person seeking help to share the information with others. As a pastor that must bear the spiritual burdens of congregants and others, it is important that there be a strong level of trust so people know that I can keep their secrets. If that trust is broken, I cannot perform this task that God has given me to do. Therefore, it is my duty as a pastor to keep such conversations completely private.
5. On or about 08/07/2020 [REDACTED] came to the church to talk to me to seek spiritual help. Mr. [REDACTED] is a member of my church. There were no third parties present when we spoke and he requested that I keep our communication private.
6. Because the nature of the communication was of the kind that I ordinarily would keep confidential as a pastor providing spiritual counsel, I am exercising my duty to maintain the clergy penitent privilege.
7. On 03/15/2021 I was present in this Court and asked to testify. Judge [REDACTED] informed the prosecutor, Robert Knox, that I should not testify due to the clergy penitent privilege.

He said even if he asked that I testify, the defendant could then claim Clergy Privilege. As such, I was not required to testify.

8. I did not order a transcript, but remember the exchange between the judge and Mr. Knox on 03/15/2021.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and of my own personal knowledge. Executed this Twenty-Third Day of _____
December, 2021, in the City of [REDACTED], California.

[REDACTED]

DECLARATION OF KEVIN T. SNIDER

I, Kevin T. Snider, am not a party to the above-encaptioned case, and if called upon I could and would testify truthfully, as to my own personal knowledge, as follows:

1. I am the attorney for Pastor Gary [REDACTED]
2. On December 23, Pastor [REDACTED] forwarded an e-mail exchange that he had with

Deputy District Attorney Robert Knox which read,

Pastor [REDACTED]: Sorry, my Bluetooth disconnected... and the phone hung up. I will call my Lawyer, and give him your information. I understand what you are saying.

Attorney Knox: Okay, thanks. He can either e-mail me or reach me at my desk phone. But, per our prior agreement, if you can come to court on Monday 1/3/22 at 8:30 a.m. in V3, we can discuss more then. If I don't hear from your lawyer before then, feel free to bring him with you on that Monday.

3. Pastor [REDACTED] informed me by telephone that he wished to assert the clergy-penitent privilege.
4. I thus e-mailed Mr. Knox as follows:

Dear Mr. Knox,

This office represents Pastor Gary [REDACTED]. The purpose of this e-mail is to provide notice that, if called upon to testify, Pastor [REDACTED] will be asserting the clergy penitent privilege pursuant to Cal. Evid. Code § 1034. If a subpoena is issued, our office will accept service.

Sincerely,

Kevin Snider

5. Mr. Knox e-mailed a subpoena to me and replied, in part as follows:

Mr. Snider:

Attached as a PDF is Pastor [REDACTED]'s subpoena. I'm happy to discuss in case we can come to an understanding, but I don't think the privilege applies in this circumstance.

6. Accompanying this Declaration is a true and correct copy of the subpoena that Mr.

Knox sent as an attachment mentioned in his e-mail.

7. I have submitted this motion to an attorney service for filing this same evening.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and of my own personal knowledge. Executed this Twenty-Fourth Day of December, 2021, in the County of Sacramento, California.



Kevin T. Snider, Attorney for Pastor Gary [REDACTED]

[Proposed ORDER]

The motion to quash to the subpoena of Pastor Gary [REDACTED] is **SUSTAINED**.

DATED: _____, 202__

Eric M. Nakata, Judge of the Superior Court