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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

The State of Washington,

Plaintiff,

No. 13-1-01546-8

vs.

SMITH, ALAN JUSTIN

Brief in Opposition to a Finding of Clergy
Privilege

Defendant.

**ISSUE PRESENTED: DOES DEFENDANT'S CONFESSION TO MURDERING HIS WIFE
FALL UNDER THE PRIEST-PENTINENT PRIVILEGE?**

**ANSWER: NO. WENDELL MORRIS WAS NOT ACTING AS "CLERGY" FOR CITY
CHURCH WHEN THE DEFENDANT ADMITTED TO THE MURDER, NOR WAS HE AN
ORDAINED AND/OR LICENSED PASTOR, ASSOCIATE PASTOR, STAFF MEMBER OR
CLERGY MEMBER FOR CITY CHURCH AT ANY TIME.**

1. FACTS

Sometime between the late evening hours of Sunday, February 10 and the early morning hours of Monday, February 11, 2013, Susann Smith was brutally murdered in her Bothell home. Based upon the type of violence inflicted on Susann (almost two dozen blunt force and sharp force injuries exclusively to her face and head and associated defensive

ORIGINAL

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1 wounds), the lack of any evidence of forced entry, burglary or sexual assault, and the context of
2 the relationship between Susann and defendant, her estranged husband (a poisonous divorce
3 and custody battle), defendant became an early "person of interest" in the murder.

4 In the weeks and months that followed the murder defendant remained a "person of
5 interest" for investigating police. A number of search warrants were served on defendant and
6 his property. In addition to the pressure of the police investigation there was intense scrutiny
7 from local media (both print and television). The public scrutiny led to a number of newspaper
8 articles and televised news reports regarding the yet unsolved murder, and defendant's
9 potential role. Details from the investigation, contained in the various affidavits in support of the
10 various search warrants, were outlined in the continuing media coverage. Defendant and his
11 new girlfriend, Love Thai, added to the media attention by their own behavior, some of it
12 deliberately attention seeking.

13 In this context defendant initially met Wendell Morris. Morris was a member of the
14 City Church since 2010 and a small group leader since 2011. City Church has hundreds of
15 small groups (called "City Groups") that are led by volunteers at homes, coffee shops and other
16 locations where people can build relationships in a smaller setting outside of church services.
17 Morris was not an employee in any capacity of City Church. Morris was not a pastor, associate
18 pastor, nor a staff member at City Church. Morris had come to the City Church from Eastside
19 Baptist Church in Tacoma. Morris had been a member of City Church for approximately three
20 years when he initially met defendant. According to Morris he left Eastside Baptist and joined
21 the non-denominational City Church in a deliberate attempt to lower his profile, and give up his
22 status as a "licensed" minister at Eastside Baptist. Morris was eager to become merely a man
23 of God among other men of God. Morris was deliberately not acting as a minister, pastor or in
24 any official capacity. Although Morris had disclosed he had been a "licensed" minister on his
25 Volunteer Application, dated July 7, 2011, he was not considered a pastor at the City Church.

26

1 The duties, expectations, guidelines, benefits and operational policies for staff at City Church
2 are laid out in a 50 page employee handbook.

3 At Eastside Baptist Morris had been a "licensed minister" also known as an "assistant
4 minister", but not an "ordained minister". At Eastside Baptist the difference between the two
5 types of ministers is fairly profound. A "licensed" minister is essentially a volunteer, someone
6 who believes they are called to preach the word of God. They are specifically not acting in a
7 pastoral role. At Eastside Baptist they are neither on staff or paid. There is no certificate from
8 the State, but there is a certificate from the church itself. A "licensed/assistant" minister could
9 not engage in counseling or perform the sacraments without the supervision or permission of a
10 senior/ordained minister. Licensed ministers are specifically prohibited from performing
11 Communions, Baptisms, Weddings or Funerals without the specific authorization of the Pastor.
12 A "licensed/Associate" minister is aware that that they have no duties other than those assigned
13 to him by the Pastor.(Attached A) A licensed/assistant minister has no authority to make
14 decisions. An "ordained" minister is generally a graduate of a divinity program, and is tested for
15 his knowledge regarding the bible and Christian doctrine prior to becoming ordained and
16 licensed by the State. An ordained minister can baptize, give Holy Communion, and hold a
17 pastoral post, as directed by the Pastor. In the Baptist faith there is no "confessional" such as
18 one would find in a Catholic church. In the Baptist denomination an individual confesses directly
19 to God, without the intermediary of a pastor, minister or priest. When Morris left Eastside
20 Baptist and joined City Church he ceased to be a member of Eastside. For the past 27 years
21 the Pastor at Eastside Baptist has been Arthur Banks.

22 Defendant initially met Morris and his wife, Amanda, at a potluck hosted by another
23 Church member, Jeri Hall, in the Belltown area of Seattle. When Morris met defendant at this
24 potluck he was aware that defendant was a "person of interest" in the murder of his wife. During
25 this potluck defendant and Morris spoke briefly, but had no meaningful conversation.

26

1 On Sunday, June 23, 2013 defendant and his girlfriend Love Thai were asked to
2 leave the 9:30 am service at the Kirkland branch of the City Church, and were told that they
3 were no longer welcome at any of the various campuses of the City Church. This exclusion was
4 based on both the nature of what defendant was suspected of doing, the inappropriate behavior
5 that defendant and Ms Thai engaged in while in church, and their stated intent to seek publicity
6 to air the "injustice" being done to defendant. This exclusion upset defendant and Ms Thai.
7 Later that same day, June 23, defendant and Ms Thai called Morris and spoke to both Morris
8 and his wife, Amanda. The four set up a meeting at the South Lake Union Starbucks for later
9 that day.

10 Defendant and Ms Thai drove to the Starbucks the afternoon of June 23. Ms Thai
11 joined Wendell and Amanda Morris inside the Starbucks, while defendant remained outside in
12 his SUV. Thai indicated that defendant was upset and out in the car. Morris soon exited the
13 Starbucks and joined defendant inside the car. Morris indicated to defendant that he was
14 willing to share the Word of God, but that it was imperative that defendant be honest with him.
15 According to Morris defendant appeared distraught, stating his life was in "chaos", and that he
16 felt "trapped by the tornadoes all around him", and that he was in over his head dealing with the
17 mental health issues of Ms Thai. Morris told defendant that before he could help and support
18 him he needed to know if he had anything to do with his wife's murder. Morris indicated that
19 anything said would remain between the two of them. Defendant did not initially answer, then
20 stated that the car wasn't a "safe" place to talk, eventually suggesting that he and Morris take a
21 walk. As the two men were walking defendant turned to Morris and stated "About what you
22 asked me about in the car, the answer is yes." When asked to clarify defendant stated, "Yes, I
23 did it to her". Defendant then broke down sobbing and crying. Defendant then began giving
24 reasons why he killed Susann Smith – that she was abusive to him and the children, was
25 manipulative, and reminded defendant of his own mother. Defendant then stopped, and stated
26 that these were just "justifications". Regarding his confession to murdering his wife, defendant

1 told Morris, "I respect what you do with this information, because at this point I am walking off
2 the ledge, I'm walking off the ledge."

3 The two talked about repentance, and forgiveness, and defendant eventually expressed
4 the desire to be baptized that evening. The group (Amanda Morris, Wendell Morris, Love Thai
5 and defendant) went to the Citadel Church in Des Moines, but was unable to get defendant
6 baptized. Morris offered to perform the baptism himself, as they could find no other alternative.
7 Ultimately, Morris baptized defendant at Alki Beach in West Seattle around 2:00 am. The
8 baptism of defendant by Morris was contrary to the policies Eastside Baptist, as defendant was
9 no longer member there, and had no specific authorization from Pastor Banks. City Church's
10 position on baptism is that normally it is a ceremony performed by the pastoral staff, however,
11 pursuant to the New Testament, any Christian brother can perform a baptism. According to
12 Morris he and his wife had recently discussed this issue, and had come to the belief that based
13 on their reading of the Bible there was no prohibition of him performing the baptism ceremony.

14 When defendant and Morris ultimately parted company it was Morris' belief that
15 defendant was going to turn himself in to police. It had been Morris' plan to have defendant turn
16 himself in that night to police, but this plan had been sabotaged by the acting out and mental
17 health issues of Love Thai. Over the course of the next two days defendant and Morris talked
18 several times on the phone and via text. Morris stated to defendant that his path was clear, and
19 that everything was pointing defendant toward what he needed to do next, i.e. turn himself in to
20 the police. When it became apparent that defendant no longer had plans to turn himself in,
21 Morris called the Bothell PD the evening of June 25 and told the on duty sergeant that
22 defendant had confessed to his wife's murder to him two days previous. Morris was interviewed
23 at length by detectives the following day, June 26, 2013. During the course of this interview with
24 police Morris was clear that he was not a minister at City Church, and had not been acting in
25 that capacity, i.e. being a minister, for several years. Morris indicated to police that he very
26 deliberately chose The City Church to worship at as it was a non-denominational church and

1 that he did not want the title of minister. Morris was equally clear that he was not acting as a
2 minister during defendant's confession, but as "a man of God", and that defendant's confession
3 to murder was not given under any type of clergy privilege.

4 Detectives contacted the administration at the City Church, specifically Troy
5 Anderson, the Church's legal counsel, and Jason Michalski, the campus pastor at the City
6 Church's Belltown campus. According to the two, to become a member of the City Church an
7 individual must attend "The Belong Class". According to Church records neither defendant nor
8 Ms. Thai had attended a "Belong Class". The records did indicate that Ms. Thai and defendant
9 had joined the on-line community in March and April respectively. It was also confirmed that
10 neither Morris nor his wife were pastors or staff at The City Church. When Morris contacted
11 Church officials to inform them of the confession from defendant he confirmed that the
12 interaction between he and defendant was not at church or a church event but simply a time
13 when he and defendant had scheduled to meet up. The City Church staff also produced a copy
14 of their employee handbook. In the handbook the issue of "Clergy Confidentiality" is specifically
15 discussed on page 45. In pertinent part the section reads (Attachment B):

16
17 *Prior to engaging in counseling with any person, the Pastoral staff should inform
the counselee that he or she may share information disclosed with other Pastoral
staff and that the Pastoral staff reserves the right to report the contents of the
disclosure to governmental authorities when he or she deems it appropriate in his
or her sole discretion.*

20 **2. LEGAL ARGUMENT**

21 **Morris not Clergy at City Church**

22 The clergy/penitent privilege is found in RCW 5.60.060(3) and provides:

23
24 *A member of the clergy, a Christian Science practitioner listed in the
Christian Scientist Journal, or a priest shall not, without the consent of the person
making the confession or sacred confidence, be examined as to any confession
or sacred confidence made to him or her in his or her professional character, in
the course of discipline enjoined by the church to which he or she belongs.*

1
2 The clergy/penitent privilege is a creature of statute, apparently having no root in the
3 common law. See 5A KARL B. TEGLAND, WASH. PRAC., EVIDENCE LAW AND PRACTICE,
4 Sec. 501.89. The most informative criminal case dealing with Washington's priest/penitent
5 privilege is State v Glenn, 115 Wn App 540 (Div. 2, 2003). Glenn establishes the framework for
6 a trial court's analysis of whether the privilege applies. Initially, the party claiming the
7 priest/penitent privilege bears the burden in establishing the relationship existed. *Id.* at 555,
8 citing Dietz v. Doe, 131 Wash. 2d 835, 844 (1997). The evidentiary standard for meeting the
9 burden is a preponderance of the evidence. Glenn at 546, citing State v. Karpenski, 94 WnApp
10 80, 102-03 (1999). As with any testimonial privilege, the priest-penitent privilege is strictly
11 construed, although the word "confession" is to be broadly construed. Martin 137 Wn2d. at 789.

12 For the clergy/penitent privilege to attach, the statements must have been made (1)
13 to a member of the clergy (the necessary relationship); and (2) as a confession in the course of
14 discipline enjoined by the church (communication made in the right context). Further, the
15 privilege only attaches only to confidential communications. Glenn at 546, citing State v Martin,
16 91 WnApp 621, 632, affirmed by State v Martin, 137 Wash2d 774 (1999). To determine
17 whether the privilege applies the trial court asks whether (1) it attached to the statements at
18 issue; and (2) whether the party claiming the privilege waived it. *Id.*

19 The term "clergy" is defined by statute, RCW 26.44.020(11), and means any regularly
20 licensed or ordained minister, priest, or rabbi of any church or religious denomination. The
21 courts have used this definition to determine the meaning of the term 'clergy' in RCW
22 5.60.060(3). State v Buss, 76 WnApp 780, 785 (1995). The Martin court recognized that to fit
23 within the definition of 'clergy' the person must be ordained. Martin 137 Wn2d at 783-84, citing
24 Buss 76 WnApp at 784. In the instant case it is undisputed that Wendell Morris was a
25 "licensed/assistant" minister at one time from Eastside Baptist Church in Tacoma, but not an
26 "ordained minister". This is a difference with a meaning. Within the Eastside Baptist Church a

1 licensed/assistant minister was essentially a volunteer who felt compelled to preach the word of
2 God. As a licensed/assistant minister Morris had no duties other than those assigned to him by
3 the Pastor of Eastside Baptist. Morris could not perform a baptism or any of the sacraments
4 absent the direct authorization of the Pastor of Eastside Baptist.

5 Whatever Morris' status had been at Eastside Baptist, however, it is clear that Morris
6 was not acting as a "minister, priest, rabbi" for City Church at the time he initially met defendant,
7 on June 23 when the defendant confessed to murdering his wife, or at any other time since
8 Morris had joined City Church. Morris had never been a pastor, associate pastor or staff
9 member at City Church. All he had been was a City Group leader, and the City Church has
10 hundreds of small groups. It is not just Morris who states that he lacked the status of pastor or
11 clergy, but the leadership at City Church itself. To follow defendant's reasoning that defendant's
12 confession was somehow a privileged communication would require a leap in logic to conclude
13 initially, that Morris' status at Eastside Baptist somehow fits the statute(despite being gone for
14 two years and not having been authorized by Pastor Banks to do anything involving
15 defendant); but more importantly, that somehow Morris' status as a "licensed" minister at
16 Eastside Baptist follows him throughout his life, despite leaving the church where he was
17 licensed, joining another church (City Church) and despite all efforts he made to not act in a
18 pastoral capacity at City Church. To make a finding that Morris was acting in a "professional
19 character" would run contrary to the opinions of all of the people who actually are involved in
20 determining who acts for City Church, and the person actually alleged to be acting as clergy,
21 Morris himself. The Washington Court of Appeals Division 1 has further refined the
22 requirements to be considered a "clergy member" by noting that "whether a clergy member is an
23 ordained clergy member is determined by 'ordination within one's church or religious
24 denomination' and whether the ordained clergy member was functioning in a clerical capacity."
25 "Jane Doe" v President of Church of Jesus Christ of Latter-Day Saints, 122 Wn App 556, 566
26 (2004) quoting State v Motherwell, 114 Wn 2d 353, 359 (1990). This is clearly a status that

1 Morris lacked within City Church. To paraphrase the Glenn court, the conversation between
2 Morris and defendant was not a conversation made with the necessary relationship, nor a
3 conversation made in the right context.

4

5 **Morris Not Acting in a "Professional Capacity"**

6 In Martin, the State Supreme Court stated that it is the "clergy member receiving the
7 confidential communication [who must] be enjoined by the practices or rules of the clergy
8 member's religion to receive the confidential communication and to provide spiritual counsel."
9 Martin 137 Wn2d at 784, citing State v Martin, 91 WnApp at 627. One element of the privilege
10 requires the clergy member to be acting in a professional capacity, not a personal capacity. Id
11 at 785. The Martin Court indicated that the following cases were from states that had similar or
12 identical clergy-penitent statutes and have interpreted them similarly to the Court of Appeals:
13 People v McNeal, 175 Ill.2d 335 (1997) (penitents brother, a clergy member, was not acting in
14 professional capacity at the time of communication); Bonds v State, 310 Ark. 541 (1992)
15 (statements to clergy member who was employer not privileged); State v Barber, 317 N.C. 502
16 (1986) (friend was not clergy member at time of statement); Masquat v Maguire, 638 P.2d. 1105
17 (Okla. 1981) (statements to a nun in her capacity as a hospital administrator and not as a clergy
18 member were not privileged). Wendell Morris had no "professional capacity" within City Church
19 to be acting in when he spoke to defendant.

20 It is instructive to note the facts where the courts in Washington have found that
21 members of a church were acting as clergy in a professional capacity such to allow the
22 invocation of the priest-penitent privilege, and to contrast those facts with the facts in the instant
23 case. In Motherwell, three church members of the Community Chapel, an evangelical Christian
24 church, provided spiritual counseling to its membership. One of the primary purposes of this
25 church was to engage in all-encompassing counseling that touched on all aspects of a
26 member's life. The three defendants in Motherwell were all employed as paid religious

1 counselors at the Community Chapel. In the course of their counseling each was told of
2 separate incidents of child abuse. Each defendant was convicted at the trial court level of failing
3 to report the child abuse to authorities within 48 hours as required by statute. The court
4 ultimately found that two of the defendants were acting as religious counselors, not ordained
5 ministers, when they heard of the child abuse, thus not being able to invoke the privilege. The
6 third defendant was an ordained minister, who was functioning in that capacity at all relevant
7 times he heard of the child abuse and the court ultimately held that the information he heard fell
8 under the priest-penitent privilege. Motherwell 114 Wn2d at 360.

9 In Buss, the defendant admitted to sexually abusing a 3 year old child. She ultimately
10 made statements to a non-ordained "family minister" at her Catholic church. This "family
11 minister" was an assistant to a priest and, due to a priest shortage, helped carry out the work of
12 the church by providing a young adult ministry, a formerly married persons ministry, and other
13 services. Buss 76 WnApp at 782. The court ultimately found that the "determination in
14 Motherwell that non-ordained counselors are not "clergy" cannot be factually distinguished from
15 the present case." Id at 785. Thus, the statement was found to not be privileged, and was
16 properly allowed at trial. Buss was later overruled to the extent that it held that the defendant
17 must be constrained by religious obligation to make confession, Martin making it clear that it
18 was the clergy member receiving the confidential communication who must be enjoined by his
19 religion to keep it confidential. Martin 137 Wn2d at 789.

20 In Martin, the ordained minister and pastor of the Evangelical Reformed Church of
21 Tacoma, Rich Hamlin, received a phone call from defendant's mother, asking the pastor to meet
22 with her son. Part of the doctrine of the Reformed Church "includes as an essential element of
23 ...worship service a confession followed by a time of silence intended to remind the
24 congregation of the need to repent of personal sin and receive the Lord's assurance and
25 forgiveness." Id at 779. The pastor ultimately went to defendant's apartment, met with
26 defendant, and was told that defendant had assaulted his infant child. Police ultimately found

1 out about the conversation between the pastor and defendant, and attempted to depose the
2 pastor. The pastor claimed priest-penitent privilege, and initially refused to describe the
3 conversation between himself and defendant. The court found that the statements made to the
4 pastor did fall under the priest-penitent privilege, finding that it was the pastor who must be
5 enjoined by his church to keep the communication confidential, as described above. The court
6 further contrasted the situation in Martin with that in Buss: "Even if we agreed with that decision
7 of the Court of Appeals, Division 1, the case is distinguishable because it involved
8 communications to a non-ordained assistant to a priest and not communications to an ordained
9 minister or priest." Id. at 790.

10 In Glenn, defendant was a youth pastor at the Bethel Christian Assembly Church in
11 Tacoma. Church elder George Eide had a vision that defendant was involved in pornography
12 with "active participation". On the advice of the senior pastor of Bethel Christian Eide contacted
13 defendant and arranged to meet with him to discuss the vision. During the course of the
14 conversation, Eide left the room several times to talk to the senior pastor by phone. Defendant
15 ultimately confessed to sexually abusing a number of children. Defendant was then
16 summonsed to a meeting of the church's Council of Elders at the senior pastor's home. Both
17 ordained and non-ordained persons were at the meeting. The details of defendant's statements
18 to Eide were not revealed, although defendant indicated a desire to apologize to the
19 congregation and the victim's families. It was suggested that he write a letter instead. The trial
20 court initially found that Eide was not clergy, but reconsidered this when it was discovered that
21 Eide had performed a wedding ceremony 9 months after hearing the confession. The trial court
22 ultimately held that this indicated Bethel Christian considered Eide clergy, and thus the court
23 held the priest-penitent privilege applied.

24 In Jane Doe, John Roe sexually abused his two daughters. He was member of the
25 Church of Jesus Christ of Latter Day Saints (LDS). One of the daughters disclosed the abuse to
26 the Bishop of the Church ward, Bishop Hatch. Bishop Hatch met with Roe and his wife, and

1 ultimately did not report the abuse to civil authorities. Three years later the new ward Bishop,
2 Bishop Wade, was advised by one of the daughter's friends of the abuse. Wade reported the
3 abuse to the Stake President, who convened a stake disciplinary council to address the sexual
4 abuse allegations and to consider formal church discipline. During the stake disciplinary council
5 Roe admitted to the sexual abuse. The council decided the appropriate discipline was
6 disfellowshipment. LDS procedures require an RCDA (a summary of the disciplinary
7 proceedings and the decision of the council) when the discipline is disfellowshipment or
8 excommunication. The LDS church did not report the allegations to civil authorities. In the civil
9 suit that followed the LDS church claimed that the disciplinary council fell under the priest-
10 penitent privilege. The Court ultimately agreed, indicating that the presence of the non-ordained
11 stake executive secretary did not vitiate the confidentiality privilege. Jane Doe 122 WnApp at
12 567.

13 What is obvious when reviewing the various cases outlined above, is the degree to
14 which either the statements at issue were made during the course of church sanctioned
15 counseling sessions or disciplinary meetings (Motherwell, Glenn, Jane Doe), or made to the
16 ordained pastor of the church (Martin), and the complete absence of such facts in the instant
17 case. Neither City Church nor Eastside Baptist had any role, official or otherwise, in the
18 meeting and conversation that Wendell Morris and defendant had on June 23, 2013. Neither
19 church sanctioned the meeting, and Morris had no authority from either church to hear any
20 confession in any kind of professional capacity in that church's name. The instant situation is
21 far more akin to that in the Buss case, where the individual who heard the confession to child
22 abuse was described as a "family minister", who provided ministry to various groups for the
23 church due to a shortage of priests.

24

25 Statement not Confidential

26

1 The priest/penitent privilege only attaches to confessions. RCW 5.60.060(3).

2 "Determination of the definition of 'confession'...is to be made by the church of the clergy

3 member." Martin 137 Wn2d at 787. "[T]he religious entity, and not the courts, should 'decide

4 what types of communications constitute confessions within the meaning of a particular

5 religion." Id. at 786-87. In the instant case, Morris is adamant that the conversation between

6 himself and defendant was not in any fashion privileged. The police specifically questioned him

7 on this point on June 26. "I was definitely not in that car operating as a licensed minister and I

8 honestly....I haven't been in that mindset since I left Eastside."(Attached C) In Martin the court

9 "found a communication was a "confession" because the clergy member receiving the

10 communication considered it to be a confession." Glenn at 548, citing Martin 91 WnApp at 628.

11 The reverse of this is equally true-if the church does not consider the statement privileged it is

12 not up to the defendant to say otherwise. The Employee Handbook for City Church is

13 dispositive of this issue (assuming the Court would make the leap that Morris was somehow

14 acting in the guise of clergy for City Church). The handbook specifically states "Pastoral staff

15 reserves the right to report the contents of the disclosure to governmental authorities when he

16 or she deems it appropriate in his or her sole discretion." By the very terms of how City Church

17 discusses disclosure of potentially sensitive information to civil authorities, any such

18 conversation is not privileged, and City Church reserves the right to disclose as they see fit.

19 "[T]he religious entity, and not the courts, should 'decide what types of communications

20 constitute confessions within the meaning of a particular religion.' " Martin 137 Wn2d at 786-87

21 (quoting Martin 91 WnApp at 628).

22 As with any privilege granted by statute, such privilege can be waived. The mere

23 presence of third persons during a confidential communication in some instances may vitiate the

24 privilege. Id. The privilege protects only successful confidences. Id. The holder of a privilege

25 can waive said privilege. Assuming again, arguendo, that Morris was acting in the capacity of

26 clergy, and that the statement to Morris by defendant was "confidential", defendant waived any

1 such privilege. Immediately after admitting to Morris that he had in fact murdered his wife
2 defendant stated that he "respected" whatever Morris did with the information. In context, this
3 comment cannot be construed as anything other than acknowledgement and permission to go
4 to the civil authorities with the information. This course of action is precisely what Morris took
5 after defendant changed his mind about turning himself in to the police.

6 Defendant makes two logical leaps that are not borne out by either the facts or the
7 law. Initially, defendant repeatedly makes the claim that "Wendell is a licensed minister;
8 therefore, he is a member of the clergy." This claim due to the fact that Morris had been
9 "licensed/assistant" minister at Eastside Baptist. This is an arguable claim, given the amount of
10 time since Morris had left Eastside Baptist and joined the City Church, and the fact that any
11 authority he had to act in any type of pastoral role only came from the express authorization of
12 Pastor Banks, which is completely lacking in this case. More importantly, this completely
13 misses the point. RCW 5.60.030(3) requires that for the privilege to apply that any "confidence
14 made to him...in his...professional character, in the course of discipline enjoined by the church
15 to which he...belongs." When Morris left Eastside Baptist and joined the City Church, he
16 ceased to be a member of Eastside. Any clerical role Wendell Morris may have had with
17 Eastside Baptist ended when he left the church. Morris was a member of the City Church on
18 June 23, 2013, not Eastside Baptist.

19 The defendant also claims that Morris' actions make him a member of the clergy for
20 City Church. This flies in the face of how City Church defines for itself its pastoral staff and its
21 City Group members. It also is contrary to the statutory definition of clergy, which includes the
22 language "regularly licensed or ordained". There is no evidence that Morris was licensed or
23 ordained by City Church at any time. To follow defendant's argument would be to completely
24 make the "regularly licensed or ordained" language surplusage. Defendant is attempting to
25 bootstrap a status that Wendell Morris had three years previous, with a different church, onto
26

1 the framework of the church that he attended at the relevant time. This argument also
2 completely ignores the “professional character” language in RCW 5.60.030 (3).

3 Wendell Morris is obviously a deeply religious and spiritual individual. Morris clearly
4 attempts to let his Christian faith guide his personal life and actions. Morris enthusiastically
5 spreads the Word of God, and acts in a manner he considers consistent with his Christian
6 beliefs. Leading a Christian life does make a Wendell Morris the private individual into Wendell
7 Morris the cleric for City Church.

3. CONCLUSION

When defendant admitted to murdering his wife to Wendell Morris on June 23, 2013, Morris was not "clergy" as defined by statute, nor was he acting in the capacity of clergy at the time. Wendell Morris has never been a member of the pastoral staff at City Church, nor has he ever been a staff member. Defendant's admission to murder was not made within the necessary relationship, nor was it in the right context to fall within the priest-penitent privilege under RCW 5.60.060(3).

DATED this 3 day of April, 2014.

Respectfully submitted,

**MARK K. ROE
Prosecuting Attorney**

CRAIG S. MATHESON, #18556
Deputy Prosecuting Attorney

ATTACHMENT A

Guidelines for Associate Ministers

The following guidelines have been established in order to provide a standard of ethics and behavior for ministers associated with Eastside Baptist Church. All ministers united will agree to be governed by these guidelines in order to be recognized as an Associate Minister of the church. No Associate Minister, licensed or ordained, has authority other than that granted to them by the Pastor. Associate Ministers fall under the authority and supervision of the Pastor. The Pastor will provide a curriculum of gifts as much as possible.

The Associate Ministers of Eastside are expected to display the highest moral and Christian character at all times. It is imperative that the ministers of God carry themselves in a Christian manner which is above reproach. Failure to do so will result in appropriate action being taken, which may include dismissal from the pulpit for a period of time to be determined by the Pastor. It is further expected that each minister will display loyalty to both the pastor and the church. This loyalty will in turn reap the loyalty of the pastor and the church.

Guidinglight will license ministers in accordance with the following:

1. Licensing of Ministers:

- a. Before licensing a minister, the Pastor will evaluate and discuss the minister's call, sincerity, and purpose of entering the ministry.
- b. The Licensed/Associate Minister must be aware that he/she has no duties other than those assigned to him by the Pastor.
- c. Licensed/Associate Ministers will not perform any of the following without the authorization of his Pastor: Communion , Baptism, Dedications, Weddings, or Funerals.

2. Procedures:

- a. A temporary license will be issued for a period of one year. During this year instruction on the duties, responsibilities, and accountability of a minister will be provided.
- b. At the conclusion of one year, the Licentiate will be evaluated on his/her conduct, sincerity, and performance. Upon a satisfactory evaluation of the Licentiate's performance and conduct, a permanent license may be issued.

3. Ordained Ministers:

- a. The Ordained Minister will be governed under the same guidelines as the Licentiate. The Ordained Minister has no special authority by the virtue of his/her ordination.
- b. The Ordained Minister should provide a copy of his/her Ordination Papers. These Ordination Papers should be from a bonafide Baptist Church.

4. Ordination of a Minister. Licentiates will be ordained in the following cases after a thorough examination:

- a. Church and Pastor's need.
- b. Called to Pastor a Church.
- c. Called to a specific ministry.

5. Speaking Engagements. Request for Associate Ministers to speak locally or at another church should be cleared through the Pastor.

6. All Associate Ministers are expected to attend the Educational functions of the church, i.e. Church School, Bible Study, and Prayer Meeting. Before an Associate Minister is assigned to another aspect of the church's ministry, they must first prove themselves faithful to the Word.

Note: In the absence of the Pastor, the Chairman of the Board of Deacons is in charge, unless you have been assigned a particular function. If you are assigned a function, the Deacons will be aware and support you. No established procedure will be changed in the absence of the Pastor without his approval.

The above guidelines are provided to ensure unity in the ministerial staff and harmony in the body of Christ at Eastside Baptist Church.

I have received and read the above Guidelines and have no problem adhering to them.

Date _____

Associate Minister

Rev. Dr. Arthur C. Banks, Pastor

ATTACHMENT B

Prayer

Our times of prayer and waiting on God, both private and corporate, are critical to the ongoing success of what God is doing in our church. Pastors must make prayer times a priority and set an example for the church to follow.
These meetings are generally scheduled at the following times:

| | |
|---------------------------|---------------------------|
| Sunday | 8:15 AM |
| Tuesday | 10:00 AM (Ladies) |
| Wednesday | 9:30 AM (Staff at church) |
| Wednesday | 6:15 PM |
| Saturday | 7:00 AM (Men) |
| Saturday | 8:30 PM (Intercession) |
| One Prayer Watch per week | |

Pastoral Care

Pastors must make room on their weekly schedule for pastoral care with people as needs arise. Written counseling guidelines are provided, but Pastors are encouraged to consult with the Executive Pastor concerning any questions regarding counseling.

Clergy Confidentiality

Prior to engaging in counseling with any person, the Pastoral Staff should inform the counselee that he or she may share information disclosed with other Pastoral Staff and that the Pastoral Staff reserves the right to report the contents of the disclosure to governmental authorities when he or she deems it appropriate in his or her sole discretion.

The Bible

Please remember that the Pastoral Staff uses the NKJV translation of the Bible throughout the church in every department and in all teaching and preaching and notes to maintain consistency and help people memorize Scripture.

Attitude

Pastoral Staff must always have a "can-do" attitude about everything in The City Church and with people. Pastoral Staff must even express denied requests in a positive light.

Fellowship

Pastoral Staff must give themselves to more fellowship and meal times with people in The City Church.

Initiative

We encourage all Pastors to take spiritual initiative in ministering to people and helping meet needs in the church.

ATTACHMENT C

**STATEMENT OF WENDELL MORRIS
HOMICIDE INVESTIGATION
JUNE 26, 2013**

13-3354

Morris: Absolutely.

O'Bryant: This conversation.

Morris: Yeah.

O'Bryant: Uhm..we were..we were..I was just talking to you about uhm..your discussion with Alan in the car.

Morris: Uh-huh.

O'Bryant: And uh..from what you said uhm..because there was a concern whether, you know, you being a licensed minister and him talking to you as a licensed minister or was he talking to you..explain to me what you just said.

Morris: Yeah, no, no, no. When I sat in that car with him and I..and I..I prefaced honesty and I sat down and started talking to him with my Bible open, I never mentioned anything about..hey, I'm a licensed minister, you can trust me that these things are confidential. I never said anything to that effect. Uhm..I..I never approached it that way, he wasn't looking at it that way. I told him when..when I opened my Bible at the beginning, I'm a man of God, you know, me..me and Amanda look to make disciples, we look to preach the Gospel so this is going to be the Word-based, this is what I want to give you. God wants to speak to you. This is not me, I'm not superman. He had mentioned his counselor and psychology plenty of times. I never went into, you know, well you know..just the same way you can trust your psychologist, you can trust...I mean, I never said anything like that. I definitely was not in that car operating as a licensed minister and I honestly..I haven't been in that mindset since I left Eastside. I was trying to get out of that mindset and do it without the title being the thing that was helping me do it, you know what I mean?

O'Bryant: Yeah.

Morris: You're supposed to be it and so that was a big reason why I came to City Church 'cause I knew they wouldn't say, oh, you're a licensed minister, he's a licensed minister and then I operate as a licensed minister at the church so no, no, no. In all my dealings with my City group and especially specifically one-on-one situations like that whether it's Harrison or him, I never mentioned I'm a licensed minister, I never operate like a licensed minister, say things like, you understand if you tell me something, that

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I'm..I just don't even think about any of that stuff. I just..I just..I'm just trying to be a man of God so no, he..he never had any idea in that setting, in that car at the beginning that..oh, I'm talking to a licensed minister and so this is..you know..this is a special situation and that's why I can open up. The reason why I encouraged him to be honest with me and open up is because I told him, if you're honest with me, and anybody I've ever dealt with, I've said..and I told him my background with some of the kind of different people I dealt with, foster kids and this and that, I said..I always tell them, if you're honest with me and you're serious about giving to the Lord, I'm all in. I will be faithful and I will stay..I will stay connected no matter what but I said..they..(unintelligible) honest with me so I can trust you and you need to be hon..honestly going after God and what he has for you and that..that's why I was prefacing the Bible the whole time I tell him, this is what I'm here for, prayer and this, you know. And so uhm...

O'Bryant: That night when he talked to you, you said the sincerity that you saw in him led you to believe that he was going to move into the direction of actually coming forward to talk...

Morris: Oh absolutely. Absolutely but..when he..when he confessed and then he..he looked at me and said..and you can..I respect what you do with it, I knew..I mean, I just..you know..I mean I obviously realized like..wow, this dude really respects me. I mean, come on..that's not just saying that.

O'Bryant: Right.

Morris: For him to put me in that position 'cause he ultimately...and I knew he knew..he's a man of God.

O'Bryant: Right.

Morris: He knows it. He knew I couldn't, you know, just oh..I'm gonna keep this...no, no, no, no, you know, and I never..led him to believe that to the extreme of I'm gonna disobey God for you or anything like that but then at the same time when he said that, it was just..I..I was just so excited 'cause I just really felt like..okay, here we go. I'm gonna finish, I'm gonna finish giving the rest of these scriptures to him, you know, so that he can..he can finish his business with the Lord and then I'm gonna talk to him about..as I've been telling my confession, what the next step is. You know, it's not just telling me, now you need to obey the laws of the land and send me to..to the authorities, you know, and so I had the scriptures in my head, I'm