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IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF

CP-14-CR-2421-2011

CP-14-CR-2422-2011

v.

GERALD A. SANDUSKY,

PETITIONER.

HONORABLE SENIOR JUDGE
JOHN M. CLELAND

TYPE OF PLEADING:

ADDENDUM TO RESPONSE TO
COMMONWEALTH'S ANSWER,
REQUEST TO AMEND

FILED ON BEHALF OF:

PETITIONER, GERALD A. SANDUSKY

COUNSEL FOR PETITIONER:

ALEXANDER H. LINDSAY, ESQUIRE
Pa. Supreme Court Id. No. 15088

J. ANDREW SALEMME, ESQUIRE
Pa. Supreme Court Id. No. 208257

THE LINDSAY LAW FIRM
110 EAST DIAMOND STREET, STE. 300
BUTLER, PENNSYLVANIA 16001
PHONE 724.282.6600
FAX: 724.282.2672
Email: al.lindsay186@gmail.com

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DEBRA S. LAMBL
PROTHONOTARY
CENTRE COUNTY, PA

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-14-CR-2421-2011	DEBRA O. BEEBE PROthonary CLERK OF COURT 2016 MAY -2 PM 12:13 FILED FOR RECORD
	:	CP-14-CR-2422-2011	
	:		
v.	:		
	:		
GERALD A. SANDUSKY,	:	HONORABLE SENIOR JUDGE	
PETITIONER.	:	JOHN M. CLELAND	

ADDENDUM TO RESPONSE TO COMMONWEALTH’S ANSWER, REQUEST TO AMEND
AND AMENDMENT OF CLAIM IN LIGHT OF COMMONWEALTH’S ANSWER

AND NOW COMES, Petitioner, Gerald A. Sandusky, by and through his counsel, Alexander H. Lindsay, Jr., Esq., and J. Andrew Salemme, Esq., and the Lindsay Law Firm, P.C., and files this Addendum to Response to the Commonwealth’s Answer, Request to Amend and Amendment of a Claim in light of the Commonwealth’s Answer.¹

The Commonwealth argued, in its most recent Answer, that Allan Myers was unavailable to be called as a witness. Assuming *arguendo* that this is true then Mr. Myers statements denying any abuse are statements against his pecuniary interest and are admissible under Pa.R.E.

¹ Pa.R.Crim.P. 905 permits the amendment of a petition at any time and provides that amendment should be freely allowed to achieve substantial justice. Recently, the Pennsylvania Superior Court in *Commonwealth v. Brown*, 2016 PA Super 73, noted that the Pennsylvania Supreme Court, “has condemned the unauthorized filing of supplements and amendments to PCRA petitions, and held that claims raised in such supplements are subject to waiver.” *Brown, supra* at *13 n.12 (citing *Commonwealth v. Reid*, 99 A.3d 470, 484 (Pa.2014)); *see also Commonwealth v. Mason*, 130 A.3d 601 (Pa. 2015). However, where the court considers the filing or expressly allows supplementation the claims are accepted. *See Brown, supra; cf. Commonwealth v. Boyd*, 835 A.2d at 816 (Pa. Super. 2003); *Commonwealth v. Dennis*, 950 A.2d 945, 959 n.11 (Pa. 2008). As noted by the *Brown* Court, “in both *Reid* and *Mason* the issue was the addition of supplemental claims. In this case, there were no claims added by Appellant’s supplement. Instead, Appellant only sought to supplement the record for claims that had been properly pled in the amended PCRA petition.” *Brown, supra* at *13 n.12. Herein, Mr. Sandusky is not presenting a new claim, but presenting an additional argument based on the Commonwealth’s position.

804(b)(3), where he retained Attorney Andrew Shubin to file a civil action against Penn State on his behalf. The relevant rule provided at that time,

Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. In a criminal case, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Pa.R.E. 804(b)(3).²

Thus, counsel would have been ineffective for not presenting this material exculpatory and impeaching evidence. If Mr. Myers was unavailable there is arguable merit to the claim because the Commonwealth would not have been able to introduce inconsistent statements by Mr. Myers in his absence because of both the Pennsylvania rules of evidence, Pa.R.E. 613, and the respective federal and state confrontation clauses.

Similarly, counsel could have no reasonable basis for not using this material exculpatory evidence and impeachment evidence in light of the Commonwealth's reliance on Michael McQueary to describe the incident with alleged Victim #2, Allan Myers, where the Commonwealth could not, by law, introduce any inconsistent statements by Myers without running afoul of the confrontation clauses or giving Mr. Myers an opportunity to explain any

² The current rule reads similarly:

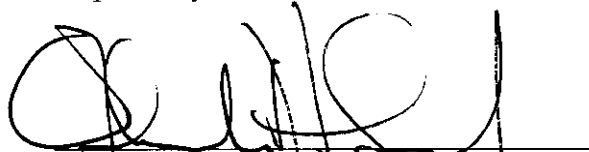

Statement Against Interest. A statement that:

- (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability;

Pa.R.E. 804(b)(3)(A).

inconsistency. Finally, Mr. Sandusky suffered actual prejudice because had there been evidence that there was no Victim #2 in the Penn State shower it would have called into question Mr. McQueary's trial testimony, which was inconsistent with his own prior statements that he made regarding hearing slapping sounds and seeing an arm before seeing Mr. Sandusky and a boy in the shower. Further, evidence from the alleged victim that he was not abused and had in fact lived as an adult with the Sanduskys, asked Mr. Sandusky to stand in as his father on senior night, requested the Sanduskys attend his wedding, and traveled ten hours to attend a funeral in support of Mr. Sandusky would lead to a reasonable probability that one juror would have concluded that Mr. Sandusky was not guilty of the pertinent crimes charged, resulting in a different outcome.

Respectfully submitted,


ALEXANDER H. LINDSAY, JR. ESQ.
Pa. Supreme Court Id. No. 15088
J. ANDREW SALEMME, ESQ.
Pa. Supreme Court Id. No. 208257

THE LINDSAY LAW FIRM
110 East Diamond Street, Suite 301
Butler, Pennsylvania 16001
Phone: 724.282.6600
Fax: 724.282.2672
Attorneys For Gerald A. Sandusky

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of May, 2016 he caused an exact copy of the foregoing document to be served in the manner specified, upon the following:

Hand Delivery

Honorable John M. Cleland, Sr. Judge c/o Office of the Court Administrator and
Office of the Clerk of Courts of Centre County
Centre County Courthouse
102 South Allegheny Street
Belleville, PA 16823

Assistant Attorney General Jennifer Peterson
Office of the Attorney General – Criminal Prosecutions Section
16th Floor Strawberry Square
Harrisburg, PA 17120

Respectfully submitted,



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Pa. Supreme Court Id. No. 15088
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Fax: 724.282.2672
Attorney For Gerald A. Sandusky