

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

COMMONWEALTH OF PENNSYLVANIA

vs.

GERALD A. SANDUSKY

No. CP-14-CR-2421-2011;

CP-14-CR-2422-2011

TO THE HONORABLE JOHN M. CLELAND, SENIOR JUDGE, SPECIALLY PRESIDING:

**COMMONWEALTH'S RESPONSE TO MOTION FOR
BAIL MODIFICATION AND NEW MATTER**

And now, this 7th day of February, 2012, comes the COMMONWEALTH OF
PENNSYLVANIA, by Linda L. Kelly, Attorney General of the Commonwealth of Pennsylvania
and files the within response to DEFENDANT'S MOTION FOR MODIFICATION OF BAIL:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. The Commonwealth is aware that the DEFENDANT has a number of
grandchildren and that some of those grandchildren live in the Centre County

region. The specific number of grandchildren and their residences is not known to counsel for the Commonwealth.

10. The Commonwealth is without knowledge about whether DEFENDANT'S minor grandchildren have expressed sadness at being unable to have contact with DEFENDANT since November 5, 2011 and proof is demanded.
11. The Commonwealth is without knowledge about whether DEFENDANT'S children desire DEFENDANT to have contact with his minor grandchildren at his home and to have contact with his minor grandchildren via mail, phone, e-mail, text and Skype. However, the Commonwealth is aware that Jill Thomas, ex-wife of DEFENDANT'S son, Matthew Sandusky, strenuously objects to her three minor children having any contact whatsoever with DEFENDANT. Furthermore, a psychologist has provided an opinion, to a reasonable degree of psychological certainty, that Jill Thomas's 3 minor children need counseling as a result of contact with the DEFENDANT.
12. Admitted.
13. The Commonwealth objects to the DEFENDANT's request to modify his bail conditions to a) permit him to have visitation in his home with his minor grandchildren with such visiting grandchildren being accompanied for the entire visit by at least one parent; b) to permit DEFENDANT to have visitation in his home with adult friends, with prior approval of the Centre County Probation Department as the Centre County Probation Department deems reasonable, and c) to permit DEFENDANT to leave his residence in the company of other members of his defense team and with the prior approval of Centre County Probation

Department for the alleged purpose of assisting his attorneys, private investigators and unspecified "other professional individuals" retained by the DEFENDANT in the preparation of his defense.

14. The Commonwealth asserts that its reasons therefore include, but are not limited to:

- 1) DEFENDANT is charged with sexual offenses committed for 15 or more years against **children**. DEFENDANT'S victims were all children with whom DEFENDANT had close, even family-like relationships. The victims were children who placed their trust in DEFENDANT. The parent or parents of the victims were persons who placed their trust in DEFENDANT. That trust was horribly violated. Although DEFENDANT'S children may trust DEFENDANT, that trust is misplaced. Some victims of DEFENDANT allege they were molested in DEFENDANT'S home while DEFENDANT'S wife was in the house. Nothing has changed which would render the DEFENDANT'S household now safe, when it was unsafe for children from at least 1994 through 2008. DEFENDANT'S bail modification request should be **denied**.
- 2) DEFENDANT was fortunate to be granted house arrest when he is alleged to have committed at least 52 sexual offenses against innocent children. The Commonwealth believes that DEFENDANT should be in jail. He has been granted the privilege of being confined in his own home, which is spacious and private and where he can eat food of his own preference and sleep in his own bed at night. House arrest is not meant to be a house party. Contact visits

do not occur in the Centre County Prison and should not occur during DEFENDANT'S house arrest. He should not be treated like other defendants who are on house arrest for Driving Under the influence or other misdemeanors. This DEFENDANT is categorically different from other defendants and should be treated differently from others on house arrest in Centre County. DEFENDANTS bail modification request should be **denied**.

- 3) When a defendant is charged with offenses the seriousness of which result in the setting of bail beyond a defendant's ability to pay, he or she is incarcerated while awaiting trial. This frequently occurs for defendants charged with multiple felonies, as in the instant case. While incarcerated, a defendant does not get released to assist his counsel or private investigators with his defense. There is no provision in the Rules of Criminal Procedure for a defendant to be furloughed for defense assistance. House arrest is akin to incarceration, albeit in the comfort of one's own home. Furthermore, it is misleading to suggest that DEFENDANT'S assistance is needed in locating witnesses he knows when he has retained professional investigators to locate these purported defense witnesses. DEFENDANT'S bail modification request should be **denied**.

15. While DEFENDANT promises to abide by all terms and conditions imposed upon him if his bail is modified, there are no conditions which are sufficient to insure the safety and peace of mind of the Centre County community and the entire Centre region if DEFENDANT is permitted to have contact with children or to circumvent house arrest under the pretense of assisting in preparing his defense.

The only conditions which supply such safety are those which completely disable DEFENDANT as though he were incarcerated in a secure correctional facility.

16. For the aforementioned reasons as well as those contained in the NEW MATTER attached hereto, the Commonwealth opposes any modification of DEFENDANT'S bail conditions.

Accordingly, the Commonwealth strongly opposes any bail modifications for DEFENDANT. It is respectfully requested that DEFENDANT'S Motion to Modify Bail be **DENIED.**

NEW MATTER

1. The DEFENDANT, Gerald A. Sandusky, is charged with 52 counts of felony and misdemeanor sexual offenses against children, spanning at least 15 years. Sandusky's misdeeds, chronicled in two presentments issued by the 33rd Statewide Investigating Grand Jury, paint a portrait of a predator who used his positions as both founder of a charity to help at-risk children and current and former football coach at Penn State, to find, lure and sexually assault children.
2. The Commonwealth has learned that neighbors of DEFENDANT have expressed grave concerns about DEFENDANT being repeatedly observed outside the confines of his house, which borders on a playground. Several individuals from the adjacent elementary school have expressed concerns for the safety of children at their school and in the adjacent neighborhood. Such concerns will only mushroom if DEFENDANT is permitted to roam at will outside his home. The

Attorney General has received multiple complaints about DEFENDANT being outside, raising concerns for the children in the neighborhood and at the school nearby. Concerned citizens have questioned how DEFENDANT can be on **house** arrest and be observed outside the house to which he is to be confined. See EXHIBIT 1, attached. The public has concerns for the safety of the community under the present conditions. Those concerns will only multiply if DEFENDANT is granted more privileges, as sought in the DEFENDANT'S Motion for Modification of Bail Conditions.

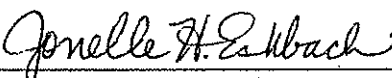
3. In order to allay the genuine fears of the community, DEFENDANT should be confined to his house. This confinement should be absolute confinement which precludes his being outside the home entirely unless he is leaving the home, accompanied by his supervising Electronic Monitoring officer, for the purpose of necessary medical treatment. He should be forbidden to be outside his home in proximity to a school playground, where his presence alarms teachers and members of the public. Presently, the Conditions of Electronic Monitoring/In Home Detention/Bail Supervision permit DEFENDANT to be outside his home. This condition should be modified to prevent DEFENDANT from being outside his home for any reason other than traveling to and from medical treatment. These conditions deviate from those of regular Centre County In-Home detainees. However, this case is categorically different from any other and justifies specialized conditions for the safety and security of the community in which DEFENDANT has been permitted to remain while facing multiple felony sexual assault charges.

5. The Trial Court has discretion to alter the conditions of bail pursuant to Pa. R.Crim. P. 529. The Trial Judge should consider and evaluate the information about the DEFENDANT as it relates to the release criteria in Pa.R.Crim.P. 523. These considerations include the nature of the offenses charged and any aggravating or mitigating factors bearing upon the likelihood of conviction and any other factors relevant to whether a defendant will comply with bail conditions. The comments to PA.R.Crim.P. 523 indicate that in domestic violence cases, the Court may consider whether the defendant is a danger to the victim. It is analogous that, in the present case, the Court should consider whether DEFENDANT is a risk to his previous victims or children in the community where he is residing.

WHEREFORE, The Commonwealth respectfully requests that the Trial Court modify the conditions of DEFENDANT's Electronic Monitoring to prevent him from leaving the walls of his house for any reason other than to be accompanied by his Supervising Electronic Monitoring Officer.

Respectfully submitted,

LINDA L. KELLY
Attorney General

By: 
Jonelle H. Eshbach
Senior Deputy Attorney General

**PENNSYLVANIA OFFICE OF ATTORNEY GENERAL
BUREAU OF NARCOTICS INVESTIGATION
AND DRUG CONTROL
January 26, 2012**

SUBJECT: Gerald Arthur Sandusky

**TO: Probation Officer Ron Millward
Centre County Adult Probation and Parole Department
102 S. Allegheny St., Room 403
Bellefonte, PA 16823**

**THRU: Frank Fina
Chief Deputy Attorney General**

**THRU: Agent Randy Feathers, Regional Director
Bureau of Narcotics Investigation and Drug Control**

**FROM: Agent Anthony L. Sassano, NAII
Bureau of Narcotics Investigation and Drug Control**

As you may recall, we spoke the other day concerning Mr. Sandusky being outside his residence shoveling snow on Saturday, 1-21-12. This call was to inquire as to Mr. Sandusky's bail conditions and specifically, what restrictions were imposed in his Electronic Monitoring/In Home Detention Bail Program.

Yesterday, I received a call from a neighbor of Mr. Sandusky who related the following. He indicated that he has observed Mr. Sandusky standing on his deck outside the rear of his residence. Furthermore, he advised me that yesterday, he spoke to a teacher and a student intern at the elementary school directly behind Mr. Sandusky's residence and they both expressed concern for the safety of the children at the school. They advised the neighbor that yesterday they had the children outside for recess as it was a warmer day, and that they both witnessed Mr. Sandusky on his rear house deck watching the children play.

The neighbor expressed his opinion that either Mr. Sandusky is not following the rules concern house arrest and no action is being taken by the Centre County Adult Probation and Parole Department or that Mr. Sandusky is being given special treatment outside the rules of the program. Additionally, the neighbor advised me that he spoke to you or a representative of the program, expressing his opinions and concerns.

This memo is merely to pass along information to you which I received concerning your client. I have no personal knowledge concerning this issue.

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA : No. CP-14-CR-2421-2011;
: CP-14-CR-2422-2011
vs. :
GERALD A. SANDUSKY :
: DEE
: PRO
: CENT

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DEBRA C. IMMEL
PROTHONOTARY
CENTRE COUNTY, PA

I, Jonelle H. Eshbach, Senior Deputy Attorney General, Attorney for the Commonwealth,
at Attorney General's Office, 16th Floor, Strawberry Square, Harrisburg, Pennsylvania, 17120,
hereby certify that I served a true and correct copy of the Commonwealth's Response to Motion
for Bail Modification and New Matter on:

by email and first class mail, postage prepaid at Harrisburg, Pennsylvania on the date noted below.

Date: February 17, 2012

BY: *Jonelle H. Esbach*
JONELLE H. ESBACH
Senior Deputy Attorney General
Attorney for the Commonwealth