

IN THE COURT OF COMMON PLEAS OF  
CENTRE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. CP-14-CR-2421-2011;  
: CP-14-CR-2422-2011

vs.

GERALD A. SANDUSKY

TO THE HONORABLE JOHN M. CLELAND, SENIOR JUDGE OF SAID COURT:

COMMONWEALTH'S MOTION FOR CHANGE OF VENIRE

FILED FOR RECORD  
2012 JAN 31 2:13  
DEBRA C. JAMES  
PROthonary  
CENTRE COUNTY, PA

AND NOW, this 31<sup>st</sup> day of January, 2012, comes the Commonwealth of Pennsylvania, by and through the Attorney General of the Commonwealth of Pennsylvania who presents the within Motion for Change of Venire and respectfully avers as follows:

1. For the reasons articulated below, and in the interests of justice, the Commonwealth respectfully requests that this Honorable Court grant its Motion for Change of Venire.
2. The standard for evaluating a motion for change of venire is well settled "[t]he trial court's decision on . . . motions for change of venue/venire rests within the sound discretion of the trial judge, whose ruling thereon will not be disturbed on appeal absent an abuse of that discretion." *Com. v. Robinson*, 581 Pa. 154, 194-196, 864 A.2d 460, 484 (2004).
3. Further, the Pennsylvania Supreme Court has held:

The factors to be considered by a trial court in determining whether there should be a change of venue or venire are as follows:

The mere existence of pretrial publicity does not warrant a presumption of prejudice. If pretrial publicity occurred, its nature and effect on the community must be considered. Factors to consider are whether the publicity was sensational, inflammatory, and slanted toward conviction rather than factual and objective; whether the publicity revealed the accused's prior criminal record, if any; whether it referred to confessions, admissions, or reenactments of the crime by the accused; and whether such information is the product of reports by the police or prosecuting officers. If any of these factors exists, the publicity is deemed to be inherently prejudicial, and we must inquire whether the publicity has been so extensive, so sustained, and so pervasive that the community must be deemed to have been saturated with it. Finally, even if there has been inherently prejudicial publicity which has

saturated the community, no change of venue [or venire] is warranted if the passage of time has significantly dissipated the prejudicial effects of the publicity.

*Com. v. Bomar*, 573 Pa. 426, 471-472, 826 A.2d 831, 858 (Pa. 2003)(internal citations omitted).

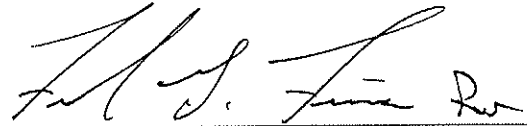
4. Here, the complete saturation of the Centre County community by coverage of this matter and, indeed, the unique nature of that community itself, requires that the jury be selected from another county.
5. There can be absolutely no doubt that the media coverage of this matter has been spectacular in its breadth and intensity. The nature of the crimes committed, and the location and circumstances of their commission, have catapulted this case into the national conversation.
6. As this court is aware from its own experience, a legion of reporters has produced the kind of publicity which must be the very definition of extensive, sustained, and pervasive.
7. The unblinking eye of the press has been focused on a case which is without analogue or peer in the history of this Commonwealth. Perhaps an early 20<sup>th</sup> Century Pittsburgh trial implicating Frick or Carnegie might have presented parallels; but, truly, this case is necessarily unique.
8. As our Supreme Court noted in *Bomar*, the mere fact of publicity alone does not require a change of venire. The Commonwealth respectfully submits that it is the combination of the pervasive publicity and the unique nature of the Penn State community which requires that change.
9. The relationship of Penn State University to the community which surrounds and supports it is special. The life of the University and Centre County are inextricably intertwined; both philosophically and economically. The citizens of Centre County feel a laudable and proper sense of ownership of, and participation in, the fortunes of Penn State. To ask members of that community to breakdown that alloy and insulate themselves from the institution which informs so many aspects of their lives is asking too much. It is unfair and impracticable.
10. Certainly, there has been no passage of time which would allow dissipation of the effect of these crimes upon the community. Indeed, that cloud seems only to lower further.
11. The Commonwealth recognizes that this framework for analyzing a request for change of venire anticipates that it will be the *defendant* making such a request. Here, the Commonwealth is impelled to request the change with an awareness of the peril for both sides if the jury is culled from the Centre County community.

12. As noted above, it is most often the case that it is the defense that seeks a change of venire when the issue is pervasive publicity regarding a criminal case. In the instant case, however, the publicity has been so pervasive and penetrating, and the public comments and, indeed, judgments offered have been so widespread, that the Commonwealth cannot limit its concern only to the potential of prejudice to the Commonwealth's case. In the present extraordinary circumstances, the Commonwealth must necessarily consider more than how best to protect a guilty verdict, should one obtain, through the appellate process. Most importantly, the Commonwealth must join with this court to safeguard the defendant's right to select a jury from a venire least contaminated by public comment and least susceptible to conscious or unconscious bias for or against the former University employee whose acts could be viewed as bringing the University into disrepute.
13. The Commonwealth must stress that this Motion expresses no editorial view of the motivation or capacity of any member of the Penn State community who might be called to serve as a juror. Any such person would undoubtedly try his or her level best to serve faithfully.
14. This Motion is made, however, in recognition of the irresistible truth that prospective jurors from Centre County would face a Gordian knot of conscious and even subconscious conflicts and difficulties which the most skillful voir dire could not identify and untangle.
15. The Commonwealth respectfully submits that this change of venire is necessary to ensure fundamental fairness for both sides.
16. The argument might be made that the national coverage of this case has created a uniform saturation across the state; so that the problems of creating a jury pool are really all the same, no matter the county. The Commonwealth emphatically disagrees. It is not hyperbole to say that the people living and working in this county have a deep psychological and economic investment in Penn State. It will not be possible at trial for the Commonwealth to divorce the crimes committed from their context. It is simply a fact that other, even adjacent, counties have a less intimate connection with Penn State. Recent events underscore an association between the community and University which is admirable but, ultimately, incompatible with jury service.
17. The Commonwealth wishes to emphasize that a change of venue will not be necessary for several reasons.
18. First, it is logistically impractical to hold the trial anywhere else. Witnesses for both Defendant and the Commonwealth reside in Centre County; and proximity to the scenes involved will be important.

19. Second, it is proper and desirable that Centre County be the *site* of justice in this matter. Precisely because of the unique relationship between the community and school described above, it is important that the trial and verdict unfold there.

WHEREFORE, the Commonwealth requests that this Honorable Court grant its Motion for Change of Venire.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. McGettigan", written over a horizontal line.

Joseph McGettigan  
Senior Deputy Attorney General  
Commonwealth of Pennsylvania  
Office of Attorney General  
Criminal Prosecutions Section  
16<sup>th</sup> Floor Strawberry Square  
Harrisburg, PA 17120

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CERTIFICATE OF SERVICE

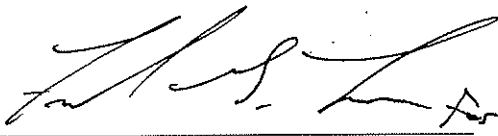
I, Joseph McGettigan, Senior Deputy Attorney General, Attorney for the Commonwealth,  
at Attorney General's Office, 16<sup>th</sup> Floor, Strawberry Square, Harrisburg, Pennsylvania, 17120,  
hereby certify that I served a true and correct copy of the Commonwealth's Motion for  
Continuance of Preliminary Hearing on:

Joseph L. Amendola, Esquire  
110 Regent Court  
Suite 202  
State College, PA 16801-7966

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

I certify under penalty of perjury that the foregoing is true and correct.

Date: January 31, 2012

BY:   
JOSEPH McGETTIGAN  
Senior Deputy Attorney General  
Attorney for the Commonwealth

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