

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

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

**COMMONWEALTH'S RESPONSE TO ORDER OF COURT  
DIRECTING PRE-TRIAL DISCOVERY**

AND NOW, this 29<sup>th</sup> day of February, 2012, the Commonwealth of Pennsylvania, by Linda Kelly, Attorney General for the Commonwealth of Pennsylvania, Frank G. Fina, Chief Deputy Attorney General, and Jonelle H. Eshbach, Senior Deputy Attorney General, respectfully files the following Response to the Trial Court's Order of February 13, 2012, directing pre-trial discovery.

**INTRODUCTION**

The Trial Court's Order of February 13, 2012, directs that the Commonwealth shall disclose evidence that it agrees is discoverable; declare that discoverable evidence is not in its possession; and state its objection to disclosure for each category of information the Commonwealth deems not to be discoverable, with an explanation therefore. Therefore, the Commonwealth sets forth the following categories of information which it submits are not subject to discovery in this instance:

1. Grand Jury matters;
2. Ongoing investigations/uncharged offenses;
3. Private personal information not relevant to witness credibility;
4. Statutorily protected items such as juvenile arrest records, psychological evaluations, etc.;

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CENTRE COUNTY, PA

In the first instance, it is submitted that the Commonwealth is not required to turn its entire file over to defense counsel, but need only disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial. United States v. Bagley, 473 U.S. 667, 675 (1985). The prosecution is not required to turn over every piece of evidence which might possibly assist the preparation of the defense. U.S. v LeRoy, 687 F.2d 610, 619 (2d Cir. 1982). Nor is the prosecution obligated to reveal evidence relating to fruitless leads followed by investigators. Commonwealth v. Crews, 640 A.2d 395, 406 (1994). Relevant in the instant case is evidence relating to the credibility of witnesses, which must be disclosed. Giglio v. U.S., 405 U.S. 150, 154 (1985). A Brady/Giglio violation occurs where evidence is suppressed by the government and there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. Kyles v. Whitley, 514 U.S. 419 433-434. (1995).

With this framework well established, the Pennsylvania Supreme Court decided Commonwealth v. Paddy, 800 A.2d 294 (2002) and Commonwealth v. Cam Ly, 980 A.2d 61 (2009). These cases demonstrate that the Commonwealth is in the best position to assess the materiality of evidence in its possession and, the potential for constitutional error resulting from suppression of that evidence by the Commonwealth. In the latter case, the withholding of evidence deemed exculpatory was held not to be prejudicial, in that the court held that it was not reasonably likely that the outcome would have been different had the conflicting identifications by the witness been disclosed. Likewise, in the former case, the suppression of existence of another subject who superficially appeared to be a potential suspect was deemed not to have been prejudicial, because although at first glance the evidence was exculpatory, it was not deemed to have had any chance of altering the outcome of the trial.

In each instance, the prosecutors made correct judgments about whether the evidence truly held the potential to alter the outcome of the case and those judgments were upheld by the Pennsylvania Supreme Court. Although the

evidence might have, at first glance, appeared material, the prosecutors made accurate assessments about discoverable evidence in capital murder cases.

The **Grand Jury matters** are covered by the Investigating Grand Jury Act, 42 Pa.C.S. Section 4541 *et. seq.* Section 4544 b(2) provides that the Supreme Court, in response to an application by the Attorney General, shall designate a judge of the court of common pleas to be the supervising judge of all matters occurring before that grand jury. Attached hereto as Exhibit 1 and 2, are the empaneling orders for the 30<sup>th</sup> and 33<sup>rd</sup> Statewide Investigating Grand Juries, the relevant investigating bodies for this case. The functions of the supervising judge include maintaining the secrecy of the proceedings and granting approval for the disclosure of matters occurring before the investigating grand jury. See 42 Pa.C.S. Section 4549(b). Furthermore, the Pennsylvania Supreme Court has recently delivered strong direction concerning the secrecy of grand jury proceedings. See *In re Dauphin County*. Accordingly, matters related to these investigating grand juries remain secret and may only be revealed with the permission of the supervising judge. Accordingly, the Commonwealth submits that these matters are not subject to discovery without the approval of the supervising judge of the grand jury.

Closely related to the secrecy of the investigating grand jury matters are **ongoing investigations** by the 33<sup>rd</sup> Statewide Investigating Grand jury and any presently uncharged criminal conduct stemming from the ongoing grand jury investigations. Disclosure of such matters violates the investigating grand jury act and has the additional negative consequence of potentially compromising those investigations. Accordingly, the Commonwealth submits that these matters are not subject to discovery without the approval of the supervising judge of the grand jury.

A third type of information that the Commonwealth submits is not subject to discovery is **irrelevant personal information** concerning various individuals which was came to the Commonwealth's attention as a part of the investigation and has no bearing whatsoever on the credibility of any witness. Rather, this is information which is confidential, would not be relevant or admissible and would have the effect of subjecting those individuals to public

opprobrium. There is a very limited amount of information that falls into this category. Accordingly, the Commonwealth submits that this information is not discoverable. In the alternative, an *in camera* review of this material by the Trial Court is suggested.

Finally, the Commonwealth, pursuant to its investigation, has obtained psychological evaluations concerning certain victims in the case. These are **statutorily privileged**, pursuant to 42 Pa.C.S. Section 5944, Confidential communications to psychiatrists or licensed psychologists. Similarly, the Commonwealth has obtained police reports for juvenile arrests of an individual who is not a charged victim in this case. This information is statutorily prohibited from disclosure by the Juvenile Act, 42 Pa.C.S. Sections 6307 – 6308. Accordingly, the Commonwealth submits that this information is not discoverable. In the alternative, an *in camera* review of this material by the Trial Court is suggested.

In the next section, the Commonwealth replies to each specifically requested item, stating its reason for withholding the information requested, explaining that in some instances, items will be provided that were not previously provided or that the evidence is not in the possession of the Commonwealth.

**COMMONWEALTH'S RESPONSE TO DEFENDANT'S  
MOTION TO COMPEL COMMONWEALTH TO PROVIDE  
REQUESTED PRE-TRIAL DISCOVERY MATERIALS**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
- 7a. Page 17- Grand Jury  
Page 49-50 - Grand Jury  
Page 58-59 - Grand Jury  
Page 62 - Continuing Investigation

Page 83-84 - Grand Jury  
Page 104 - Grand Jury  
Page 186-188 - Continuing Investigation  
Pages 191-193 - will be provided with this response  
Page 194-199 - Continuing Investigation  
Pages 208-210 - Continuing Investigation  
Pages 212-214 - Continuing Investigation  
Page 216 - Grand Jury  
Pages 217-219 - Ongoing Investigation Grand Jury  
Pages 222-223 - Ongoing Investigation  
7b. Pages 1, 3, 4, 5, 6, 7, 8, 12, and 13 - Redaction of addresses only  
Pages 19, 21 - Addresses redacted  
Page 22 - Grand Jury  
Pages 23, 24, 25, 28, and 29 - Redaction of addresses only.  
Page 31 - Grand Jury  
Pages 32, 33, 35, and 36 - Redaction of addresses only  
Pages 38, 41, 42, and 43 - Redaction of addresses and phone numbers.  
Pages 45, 48, 51, 53, 55, and 56 - Redaction of addresses only.  
Page 60 - Grand Jury and address redacted.  
Pages 63, 67, 68, and 69 - Addresses redacted.  
Pages 70, 71, 72, 73, 75, 77, 78: Address and phone numbers redacted.  
Pages 80 and 81 - Addresses redacted.  
Page 82 - Grand Jury.  
Page 86 - Address redacted.  
Page 87 - Ongoing investigation.  
Page 88 - Address and phone number redacted.  
Pages 90, 91, 92, 93, 94, 95, 97, 98, 99, 101, and 103 - Address redacted.  
Page 105 - Grand Jury.  
Page 108 - Phone number redacted.  
Pages 112 – 124 - Address redacted.  
Pages 127 and 129 - Address redacted.  
Pages 134, 137, 138, and 139 - Address redacted.

Page 140 - Grand Jury.  
 Pages 141, 142, 145, 147, and 150 - Address redacted  
 Page 156 - Grand Jury.  
 Pages 154 and 158 - Address redacted  
 Page 159 - Grand Jury.  
 Page 162 - Grand Jury.  
 Page 167 - Grand Jury.  
 Pages 177 and 178 - Grand Jury  
 Pages 181 and 184 - Address redacted.  
 Page 185 -Grand Jury -Ongoing Investigation.  
 Page 201 - This item will be provided with this response.  
 Page 202 - Redacts victims address and phone number  
 Page 204 - Redacts victims address  
 Page 206 - Redacts victims address  
 Page 207 - Redacts address  
 Page 211 - Redacts address  
 Page 220 - Was turned over in its entirety  
 Page 221 - Redacts witness address  
 Page 224 and 225 - Illegible copies  
 Page 229 - Grand Jury  
 Page 230, 231, 232, 233, 234 and 235 - Address and phone number redacted.  
 Page 236 - Grand Jury/ongoing investigation.  
 Page 237, 238, 239 - Grand Jury.  
 7c. Page 1 - Redacts victim's mother's telephone number  
 Page 3 - Redacts address and phone number  
 Page 6 - Redacts address and phone number.  
 Page 7 - Redacts address and phone number  
 7d. 1. Regarding CYS Interview disc dated 11/21/08, this item was previously sent and this is not a redacted copy. Clinton County Children and Youth Services apparently have some software necessary for listening to this interview. The interview is audible but the picture cannot be seen on the Commonwealth's copy.

2. Residential phone records for household of Victim 1 - Redacted because they reveal victim's families phone numbers.
3. PennDOT records for OLN's as listed are for JNET photos of the Defendant and witness Steven Turchetta and Joseph Miller. The individual driver's license information was not obtained and cannot be turned over. Items are JNET photographs. The Commonwealth submits the photographs are irrelevant.
- 7e. Item E - Psychological records. This is privileged information pursuant to 42 Pa.C.S. Section 5944 (Confidential communications to psychiatrists or licensed psychologists).
- 7f. This item requests the Defendant's employment records. These employment records are equally accessible to the Defendant. However, the Commonwealth will provide this discovery.
- 7g. The report referenced in this request is the report of the 1998 investigation. The Defendant has already received a copy of this investigation minus the psychological reports and juvenile arrest records. It is the Commonwealth's position that the psychological reports and juvenile arrest records are privileged pursuant to 42 Pa.C.S. Section 5944 (Confidential communications to psychiatrists or licensed psychologists) and 42 Pa.C.S. Section 6301 *et seq.* (The Juvenile Act).
- 7h. This information contains the address of the Victim #7 obtained through PennDOT and need not be disclosed pursuant to the Trial Court's Order of February 13, 2012.
- 7i. The items sought herein are psychological evaluations are protected by 42 Pa. C.S. §5944. (Confidential communications to psychiatrist or licenses psychologists.)
- 7j. This items also refers to the 1998 University Park Police Department investigation and it has already been turned over (see item 7g.)
- 7k. This items references reports prepared by John Miller and John Seasock. The Commonwealth is not in possession of any report prepared by John Miller. The Commonwealth is in possession of a report prepared by John Seasock, a psychologist. This report is subject to privilege pursuant to 42 Pa. C.S. §5944.

The Commonwealth asks that if the Trial Court deems this to be potentially discoverable, it conduct an *in camera* review prior to making this determination.

- 7l. These items are juvenile criminal investigations by State College Police Department. As such they are subject to the confidentiality provisions of 42 Pa. C.S. §6301 *et seq.* Sections 6307 – 6308. If the Trial Court deems this information to be discoverable, in as much as it does not concern a charged victim in this case, the Commonwealth respectfully requests the Trial Court conduct an *in camera* review of the records prior to their disclosure.
- 7m. This item refers to the same Penn State University Police Department investigation as referenced in 7g and 7j. This item has already been turned over in discovery.
- 7n. This item also refers to the item referenced previously in letter 7g, 7k, and 7m. This report has already been turned over in discovery. This item also further references psychological reports previously referenced in 7k. The Commonwealth incorporates by reference its answer in 7k. This item also requests any and all documents from the Centre County District Attorney's office as well as copies of communications from then District Attorney Ray Gricar as to his decision not to prosecute the Defendant. Those documents, if they ever existed, are not in the possession of the Commonwealth of Pennsylvania, Office of Attorney General. This item further indicates that psychological evaluation was conducted on an unknown individual and requests that report. The Commonwealth asserts that this item is the same psychological report referenced in 7i and 7k and those responses are incorporated by reference.
- 7o. 1. This item requests an incident investigation report by the Bellefonte Borough Police Department for Matthew Heichel. This is the same item referenced in 7g and 7l and that response is incorporated by reference.  
2. This item is also the same item referenced in 7g and 7l and the above response is incorporated by reference.
- 7p. This item references Pennsylvania Attorney General Office's supplement 8 through 13.



Supplement No. 8 will be provided with this response.

Supplement No. 9 will be provided with this response.

Supplement No. 10 will be provided with this response.

Supplement No. 11 will be provided with this response.

Supplement No. 12 will be provided with this response.

Supplement No. 13 will be provided with this response.

7.q. This item references Attorney General's supplemental reports Nos. 14 through 20. These items were previously provided with redactions for witness phone numbers and addresses.

7.r. This item references Attorney General's supplemental reports, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, which have previously been provided.

Defendant is requesting Attorney General's supplement reports Nos. 1 through 7.

Supplement No. 1 was turned over in the second installment of discovery provided on or about January 23, 2012.

Supplement No. 2 contains financial reporting on the Defendant which will be turned over.

Supplement No. 3 was already provided.

Supplement No. 4 was already provided.

Supplement No. 5 is the Defendant's employment records as previously referenced in Item 7f.

Supplement No. 6 was already provided.

Supplement No. 7 was already provided.

Supplement No. 10 will be provided with this response. See 7p.

Supplement No. 20 will be provided with this response.

7s. This item references the complete Children and Youth Services report. This item has already been provided with the exception of victim psychological reports which are protected pursuant to 42 Pa.C.S. § 5944.

7t. This item references Attorney General's Supplemental reports 28, 29 and 30. These items were previously provided with addresses and phone numbers redacted.

- 7u. This item references Attorney General's Supplemental report Nos. 21 through 26. These items were provided with addresses and phone numbers redacted.
- 7v. This item references Attorney General's Supplemental report Nos. 28, 30 and 31. Supplemental report No. 28 was not redacted. Supplemental 30 was redacted for address and phone number. Supplemental 31 was not provided because this references ongoing investigation.
- 7w. This item will be provided with this response.
- 7x. This item references Office of Attorney General's Supplemental reports No. 32, 33, 35 and 36. Number 32 and number 33 will be provided with this response. Supplemental 35 and Supplemental number 36 are Grand Jury.
- 7y. Grand Jury. This item avers that the ongoing grand jury investigation subpoenaed all child abuse cases for specific years and in specific locations in the Commonwealth. This is incorrect and the Defendant is misinterpreting the report. The Commonwealth objects to disclosure of any of the information sought in y, because it is Grand Jury related.
- 7z. This item references the Grand Jury investigation and discloses that photographs were obtained as part of the investigation. The defense counsel may view the photographs upon making arrangements with the Pennsylvania State Police.
- 7aa. This item references the Penn State University documents for the Outback Bowl held in Tampa, Florida, in 1999. These items were previously turned over to the Defendant.
- 7bb. This item references information from the Marriott River Center regarding the Penn State Football team's stay there in 1999. This item was previously turned over to the Defendant.
- 7cc. This item references copies of Penn State University police incidents obtained in the investigation. The Commonwealth avers that these reports are not relevant to the ongoing investigation or prosecution of the Defendant and have no reference or relevance to the Defendant.
- 7dd. Grand Jury.

- 7ee. This item is erroneous in as much as it requests emails No. 52 and 220. In fact, the supplement references the obtaining of 52,220 emails. This will be provided with this response.
- 7ff. This has already been provided.
- 7gg. This item requests an interview information for SCI Mahanoy inmate. It is averred that this information is not relevant.
- 7hh. This item was provided with a redacted address.
- 7ii. Grand Jury.
- 7jj. This item requests expert consultations/investigative reports and the like, received by the Pennsylvania State Police or Attorney General from any experts. The Commonwealth certifies that at this time there are none.
- 7kk. The Commonwealth declines to provide a specific witness list and advises that every individual named in the discovery has the potential to be a witness in trial.
- 7ll. The Commonwealth respectfully has absolutely no idea what is being requested in this item and avers that no "victim ideology used in the identification of potential witnesses" exists.
- 7mm. The Commonwealth declines to provide any information requested in 7.m.m. The Commonwealth is not required to provide the defense with any and all irrelevant or fruitless leads.
- 7nn. This item is non-existent and therefore cannot be provided.
- 7oo. The Commonwealth has provided all reports, except those which are not discoverable, from the Pennsylvania State Police and the Pennsylvania Office of Attorney General. The Commonwealth is not in possession of any other Federal, County or Sheriff or local agency reports relevant to this investigation.
- 7pp. There are no polygraph tests in this case, nor are any of the other items sought with regard to polygraphs in existence or relevant in this case.
- 7qq. The names of any Pennsylvania State Police troopers who have investigated this case are contained in the reports provided to the Defendant.
- 7rr. The names of any Attorney General agents/investigators who have investigated this case are contained in the reports provided to the Defendant.
- 7ss. Grand Jury.

- 7tt. The Commonwealth has provided and will continue to provide all discoverable reports by the Pennsylvania State Police and the Office of Attorney General.
- 7uu. These items are previously discussed. The 1998 report was turned over with the exception of addresses and phone numbers and other such identifying information having been redacted. See 7g,j,k. and m.
- 7vv. This item was also previously covered, it is the Clinton County Children and Youth Services report referenced above, excluding the psychological evaluation of Victim 1 in 7s.
- 7ww. This references high school records for Victim 1. The Commonwealth is not in possession of any information relative to testing performed in kindergarten through sixth grade for Victim 1. The Commonwealth has provided the Defendant everything it has in regard to Victim 1's school records.
- 7xx. This item requests information from Albright College and PSU Behrend regarding its investigation. The Commonwealth avers that it has no reports in its investigation regarding either of these colleges.
- 7yy. This item was previously addressed in several prior paragraphs. See 7g,j,k,m and uu.
- 7zz. Subpoena 1141 is Grand Jury and will not be turned over. All other matters obtained pursuant thereto have already been turned over.
- 7aaa. All of the subpoenas are Grand Jury and will not be turned over. It should be noted that are not 1,140 subpoenas. Defendant errs in assuming that all of the subpoenas between 1 and 1,140 were issued for this case and also errs in assuming that all of these subpoenas were issued by the same Grand Jury.
- 7bbb. These items were already turned over in prior discovery.
- 7ccc. This item was already turned over with address and phone numbers redacted.
- 7ddd. This item was turned over with address and phone numbers redacted.
- 7fff. With regard to the photographs referenced in this item, relevant photographs may be reviewed by arrangements with the Pennsylvania State Police.
- 7ggg. This is Grand Jury and subpoenas will not be provided. It is averred that none of the evidence requested in this item is exculpatory and that anything relevant has already been turned over.
- 7hhh. Grand Jury.

- 7iii. The item requested in this is in error. There is no reference to a fax in report number 10 and no attachment thereto.
- 7jjj. There is no indexing for attachment in this item.
- 7kkk. Grand Jury.
- 7lll. Addresses and phone numbers only redacted.
- 7mmm. Grand Jury and address redacted.
- 7nnn. Grand Jury and address redacted.
- 7ooo. Page one will be provided in its original form. Page two is redacted and redacted material will not be disclosed.
- 7ppp. Redacted for addresses.
- 7qqq. Redacted for addresses.
- 7rrr. Redacted for addresses.
- 7sss. Redacted for addresses.
- 7ttt. Redacted for addresses.
- 7uuu. Redacted for addresses.
- 7vvv. Redacted for addresses.
- 7www. Redacted for addresses.
- 7xxx. The photographs requested in this item may be viewed by appointment with the Pennsylvania State Police.
- 7yyy. The photographs requested in this item may be viewed by appointment with the Pennsylvania State Police.
- 7zzz. Redacted for addresses.
- 7aaaa. These items were previously provided.
- 7bbbb. Redacted for addresses and phone numbers.
- 7cccc. The may be viewed by appointment with the Pennsylvania State Police.
- 7dddd. Clinton County Children and Youth Services report relative to Victim 1 has been turned over. The Centre County Children and Youth Services report relative to Victim 6 has been turned over. All other reports are expunged due to statutory requirement.
- 8. This is a conclusion which merits no response.
- 9. This is a conclusion which merits no response.
- 10. This is a conclusion which merits no response.

11. The Commonwealth recognizes the possibility that the Court may decide to conduct an *in camera* review of any Children and Youth Services files requested by the Defendant in his motion to compel and determine if any such files contain Brady/Giglio material. The Commonwealth also recognizes the possibility that the Court may conduct an *in camera* proceeding with respect to psychological evaluations conducted on victims in an effort to determine if any such reports contain Brady/Giglio material.

WHEREFORE, the Commonwealth respectfully submits that it has provided to the Defendant all discoverable items requested in its good faith efforts to settle the discovery issues between the parties without Trial court intervention. It is further respectfully requested that the Commonwealth and counsel for the Defendant attempt to resolve this matter without trial court intervention for the extent that it can be done, leaving unresolved issues for the trial court's action.

Respectfully Submitted,

By: Jonelle H. Eshbach  
JONELLE H. ESHBACH  
Senior Deputy Attorney General  
Criminal Prosecutions Section  
OFFICE OF ATTORNEY GENERAL  
Criminal Prosecutions Section  
Strawberry Square, 16<sup>th</sup> Floor  
Harrisburg, PA 17120

Date: Feb. 29, 2012

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	: No. CP-14-CR-2421-2011;
	: CP-14-CR-2422-2011
<b>vs.</b>	:
	:
<b>GERALD A. SANDUSKY</b>	:
	:

**CERTIFICATE OF SERVICE**

I, Jonelle H. Eshbach, 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 Response to Order of Court Directing Pre-Trial Discovery 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: February 29, 2012

BY: *Jonelle H Eshbach*  
JONELLE H. ESHBACH  
Senior Deputy Attorney General  
Attorney for the Commonwealth

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