

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

COMMONWEALTH OF PENNSYLVANIA :

VS. :

GERALD A. SANDUSKY :

CP-14-CR-2421-2011
CP-14-CR-2422-2011

FILED FOR RECORD
2012 FEB 13 A 9
DEBRA C. IMHEL
PROTHONOTARY
CENTRE COUNTY, PA

MEMORANDUM AND ORDER

Defendant's Motion for Early Release of Grand Jury Testimony

John M. Cleland, Senior Judge

February 13, 2012

The Defendant has filed a Motion for Early Release of Grand Jury Testimony. He requests that I direct the Pennsylvania Office of Attorney General to give to him copies of the transcript of testimony of any witness who testified before the grand jury and who will be testifying at the Defendant's trial.

Because the motion must be directed to the Supervising Judge of the Statewide Investigating Grand Jury, rather than to me, the motion will be denied.

The charges filed against the Defendant arose out of an investigation conducted by the Thirty-Third Statewide Investigating Grand Jury. Pennsylvania Rule of Criminal Procedure 240 provides that the rules that control investigating grand juries, with limited exceptions not applicable to this case, also control statewide investigating grand juries.

Pennsylvania Rule of Criminal Procedure 228, 229 and 230 define the responsibilities of the Supervising Judge of a grand jury concerning the preparation of a record of the proceedings before the grand jury, the control of the transcript, and the disclosure of testimony and release of the transcript. Pa.R.Crim.P. 229 directs that "the court shall control the original and all copies of the transcript and shall maintain their secrecy."

As provided in Pa.R.Crim.P. 230(B)(2) "When a witness in a criminal case has previously testified before an investigating grand jury concerning the subject matter of the charges against the defendant, upon application of such defendant the court shall order that the defendant be furnished with a copy of the transcript of such testimony..."

The Comment to Rule 229 makes clear that the "Reference to the court in this rule and in Rule 230 is intended to be to the supervising judge of the grand jury."

Therefore, the Defendant's motion seeking an early release of grand jury transcripts must be directed not to me, but to the Supervising Judge of the Thirty-Third Statewide Investigating Grand Jury.

I note, however, that a limitation in Rule 230(B)(2) could cause potentially disruptive delays in the presentation of the Commonwealth's case at trial. The rule provides that a transcript of the trial witness' grand jury testimony "may be made available only after the direct testimony of that witness at trial." This presents practical difficulties in assuring an orderly and expeditious trial because of the delays, which the Commonwealth will have to endure after presenting the

testimony of any of its witnesses who also testified before the grand jury. Court may have to be adjourned after each such witness testifies on direct examination to permit counsel for the Defendant to read and study the grand jury testimony and, perhaps, request additional time to conduct further investigation to prepare appropriate cross-examination.

Because trial has been tentatively set for May 14, 2012, the Office of Attorney General is encouraged to work with the Supervising Judge to develop a procedure to provide the subject transcripts to the Defendant on a schedule which balances the appropriate interests of maintaining the secrecy of the grand jury while still assuring the trial can proceed without unnecessary disruption.

Therefore, I enter the following:

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

COMMONWEALTH OF PENNSYLVANIA :
VS. : CP-14-CR-2421-2011
GERALD A. SANDUSKY : CP-14-CR-2422-2011

ORDER

AND NOW, February 13, 2012, for reasons stated in the foregoing Memorandum, and it appearing the motion must be directed to the Supervising Judge of the Thirty-Third Statewide Investigating Grand Jury, the Defendant's Special Motion for Early Release of Grand Jury Testimony is denied.

By the Court:


John M. Cleland, S.J.
Specially Presiding

FILED FOR RECORD
2012 FEB 13 A 9:30
DEBRA C. IMEL
PROTHONOTARY
CENTRE COUNTY, PA