

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

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

MEMORANDUM AND ORDER

DATED: November 5, 2015

Counsel for the defendant, Gerald A. Sandusky, has filed a petition under the Post-Conviction Relief Act. Associated with that petition, counsel has also filed a request for discovery seeking information on a variety of subjects from a variety of sources. I scheduled argument on the defense discovery requests to be held on October 29, 2015.

The afternoon before the scheduled argument the Attorney General of Pennsylvania, Kathleen G. Kane, issued a press release. The press release appeared to assert that the Hon. Barry Feudale, the presiding judge of the investigating grand jury which investigated the circumstances eventually leading to the charges filed against the defendant, had been involved in some way in the leak of secret grand jury information regarding the Sandusky investigation.

As a result, on October 29, 2015, I entered an order directing the Attorney General "to disclose under seal, any information of which she is aware...that Judge Feudale and/or prosecutors of the Office of the Attorney General in any way orchestrated, facilitated, cooperated in, or arranged for disclosure of otherwise secret grand jury material in this case." On November 4, 2015, the Attorney General filed a timely

response under seal to my order; to which counsel for the defense filed a response under seal later in the day.

Concerned that the Attorney General's response merited some clarification, I entered an order directing her to appear today at 1:00 p.m. at the Pennsylvania Judicial Center to answer questions from me and defense counsel regarding her response. The order to appear was in accordance with the terms of my October 29, 2015 order. The proceeding was held in camera with only the Attorney General, the Commonwealth attorney, the defense attorney, the court reporter and me present.

I ordered the hearing to be held in camera to assure that if any secret grand jury information was discussed or disclosed, it would not be subject to disclosure to anyone other than those present, all of whom had been administered or were covered by a grand jury secrecy oath.

As provided in the attached order, because the hearing did not, in fact, result in the disclosure of any otherwise secret grand jury information, the previously imposed seal will be lifted and the responses of the Attorney General and defense counsel, and a transcript of today's proceeding when prepared, will be open to public inspection.

In defense counsel's request for discovery he sought information regarding the processes of the investigating grand jury to determine if abuses of the grand jury proceeding had deprived the defendant of his right to due process. Normally, such a request would be more appropriately directed to the currently presiding judge of the investigating grand jury, the Hon. Norman A. Krumenacker. Because, however, the Attorney General had apparently asserted in her October 28, 2015 press release that Judge Feudale and attorneys of the Office of Attorney General had been involved in

leaking or orchestrating grand jury leaks, it became apparent that I needed to address that specific issue and accordingly issued the orders that led to today's appearance by the Attorney General.

The Attorney General testified under oath for approximately one-half hour, answering questions both from me and defense counsel. While the transcript of her testimony will be filed in due course, suffice it to say that, in summary, she testified that she is aware of no information, including emails or oral or written communications, that either prove to her, or persuade her, that Judge Feudale and/or any attorneys for the Office of Attorney General orchestrated, facilitated, cooperated in, or arranged for the disclosure of otherwise secret grand jury information in this case. She testified that it was not her intention in any way to have given that impression in her October 28, 2015 press release.

Because the Attorney General has clarified whatever interpretation might have been applied to her October 28, 2015 press release and testified, under oath, that she has no information implicating Judge Feudale or any attorneys of the Office of Attorney General in the participation in any grand jury leaks in this case, I will deny the defendant's discovery request regarding the grand jury procedures in deference to consideration of any subsequent request made by defense counsel to Judge Krumenacker.

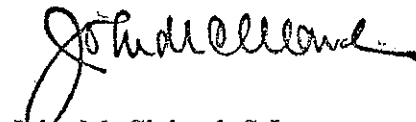
A ruling on the remaining defense requests for discovery of information regarding other issues in the case will be addressed in a subsequent order.

ORDER

AND NOW, November 5, 2015, in consideration of the foregoing, it is ordered as follows:

1. That the seal previously imposed on documents filed by the Attorney General and defense counsel on November 4, 2015 is lifted.
2. That the transcript of the hearing held in camera today when filed need not be filed under seal.
3. That the defendant's discovery requests "regarding the investigating grand jury process" as detailed beginning at page 17 of the "List of Specific Discovery Requests" filed on September 29, 2015 is denied, without prejudice to filing such a request with the Hon. Norman A. Krumenacker, the supervising judge of the grand jury.
4. That ruling is reserved on the remainder of the requests for discovery contained in the said list of requests.

BY THE COURT:


John M. Cleland, S.J.
Specially Presiding