

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

June 4, 2012

It occasionally happens that judges are presented with complicated, even controversial, motions on the eve of trial. One such set of motions has been presented by several of the alleged victims in this case, referred to as victim numbers 3, 4, 5, and 7, and supported by an amicus brief presented by various national and state victims' organizations.

The alleged victims, who have heretofore been identified only by numbers, ask that during the trial of the case their identity be concealed, that they be permitted to use a pseudonym, and that steps be taken to restrict any distribution of their personal information.

I could rule on the motions with the entry of a summary order and without any reasoned statement to support the order. It seems unwise to do so in this case, however, because the motions have a sympathetic appeal and to dismiss them without any explanation might lead to confusion and misunderstanding. I understand, of course, that the fuller, and final, analysis and explanation of the

issue must await the considered judgment of our appellate courts, and perhaps the legislature.

While I have not formally sought the position of counsel for the Commonwealth and the Defendant, I have discussed the issue with them in conferences during the progress of the case, and as recently as last Wednesday in the final pre-trial conference after these motions were filed. Counsel for the Defendant has not expressed an objection to the alleged victims' request. Counsel for the Commonwealth represented to the Court that they have discussed this issue with all of the alleged victims, and explained to them that it is the Commonwealth's position that the motions have no legal basis.

Having considered the issue, it is my view that there is no support in Pennsylvania law for offering anonymity to an adult witness because the witness is one of a class of victims of a particular form of crime. It may well be in a specific and unique case that a particular witness, for any number of reasons, ought to be protected with a pseudonym. But only one of the alleged victims who filed such a request in this case supported it with evidence of potential harm, and even that affidavit asserted the kinds of generalized traumatic impact from testifying that would occur to any patient in treatment.

During the pre-trial phases of this case all reasonable efforts have been made by the Court and by counsel both for the Defendant and Commonwealth to protect the identity of the alleged victims. That effort will continue through jury selection. While I will make every effort to be sensitive to the nature of the alleged victims' testimony, once the trial begins the veil must be lifted.

Courts are not customarily in the business of withholding information. Secrecy is thought to be inconsistent with the openness required to assure the public that the law is being administered fairly and applied faithfully. Consequently, there must be justifications of public policy that are very deep and well-rooted to support any measure which interferes with the public's ability to observe a trial and to make their own judgments about the legitimacy of their legal system and the fairness its results.

Under our system of criminal law charges are brought against a defendant for conduct that offends "the peace and dignity of the Commonwealth." It is old language that reflects an ancient value: ours is not a system of private retribution carried out at public expense. A criminal prosecution is not brought to vindicate the rights of only a victim of crime, but to vindicate the rights of the public as a whole to live secure and peaceful lives. A prosecutor's duty is to use the resources of the office to promote the public good in its many manifestations, not only to obtain private retribution for a specific victim.

Because the purpose of our criminal justice system is to protect our collective welfare, every citizen has a civic duty to participate in the operations of the system to assure it works for our collective benefit – as a witness, as a juror, even as an observer in the courtroom. As citizens we have certain responsibilities to protect the safety and security of the community as a whole, and to that end each of us has a duty to the community to testify when called to do so regarding the facts of an alleged crime – no matter how personally unpleasant fulfilling that duty may be.

I understand that such theoretical considerations may be of little comfort to an alleged victim for whom the experience of testifying will be intensely personal. Nevertheless, it is important to remember why we ask witnesses to do what they do.

It is argued in the motions that for an alleged victim of a sexual assault to fulfill that responsibility is so uniquely embarrassing that the person should be protected by being able to conceal his name. But why should only that class of witnesses be protected? No victim of crime, after all, is spared the trauma of crime's effects — and the severity of the trauma does not necessarily mirror the nature of the crime. Even “minor” crime can have major psychic consequences. Arguably any victim of any crime would prefer not to appear in court, not to be subjected to cross-examination, not to have his or her credibility evaluated by a jury — not to put his name and reputation at stake. But we ask citizens to do that every day in courts across the nation.

Given the circumstances of this specific case, counsel and the Court will cooperate when possible to protect the privacy of all witnesses, to protect their personal information, and to be sensitive to challenges presented by the nature of the testimony that will be offered.

Of course, it is also to be hoped that various news organizations that will report on the trial will use what has become their professional custom to protect the privacy of alleged victims.

Therefore, I enter the following:


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ORDER

AND NOW, June 4th, 2012, in consideration of the foregoing, it is
ordered as follows: The motions of Alleged Victims 3, 4, 5, and 7 requesting that
they be permitted to testify using a pseudonym is denied.

By the Court:


John M. Cleland, S.J.
Specially Presiding