

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

John M. Cleland, S.J.
February 29, 2012

FILED FOR RECORD
2012 FEB 29 P 3:58
DEBRA C. IMEL
PROTHONOTARY
CENTRE COUNTY, PA

The Defendant has filed a motion seeking an extension of time to reply to the Commonwealth's response to the Defendant's motion to compel discovery and to file his omnibus pretrial motions. He has also asked for a continuance of the previously scheduled trial date. The request seeking an extension of time will be granted and the request seeking to postpone the trial will be denied.

The motion recites in paragraphs 18 and 28 that the Commonwealth does not oppose either request. Since there is no dispute over the requested relief, an order deciding the motion will be entered without the necessity of holding an argument or hearing.

On Monday, February 27, 2012, the Defendant filed his motion seeking the requested continuances. Also on that day, the Court received a letter from the Commonwealth offering an explanation why it had not complied with this

Court's Order of Feb. 13, 2012.¹ That Order directed the Commonwealth to explain why it believed the Defendant was not entitled to certain information requested in his requests for discovery. Although the Court's order directed the Commonwealth to reply by February 20, the Commonwealth did not do so and extended its apology. The letter explained that "any delay is not the result of the Commonwealth's resistance to compliance, but rather by the nature, scope, and volume of the materials involved." The letter continues "it is fair to say that his (the Defendant's counsel) preparation of the case has not been hindered in any way by whatever minor delay has occurred." The letter then states that the response previously ordered to be filed on February 20 would be filed by March 2. The Commonwealth had not filed any request to extend the schedule contained in the Court's February 13 Order.

It is important to note that the schedule for the progress of this case was established, and agreed to, at a meeting between the Court and all counsel on January 9, 2012. A May 14th trial date was agreed on, and then we worked backward to establish the various scheduling deadlines as embodied in the Court's order dated January 10, 2012. Except for delays caused by the Commonwealth's inability to deal with "the nature, scope and volume of the (discovery) materials involved" the schedule as established by agreement at the January conference has been complied with.

DEFENDANT'S MOTION TO (1) EXTEND THE TIME FOR FILING OMNIBUS PRETRIAL MOTIONS TO MARCH 22, 2012; AND (2) EXTEND THE TIME TO

¹ Although the letter was dated and mailed on February 23, 2012, the Centre County Court Administrator received it on February 27th.

**REPLY TO THE COMMONWEALTH'S RESPONSE TO DEFENDANT'S
APPLICATION FOR BILL OF PARTICULARS AND MOTION TO COMPEL
DISCOVERY.**

The Defendant's motion states that all counsel have been in regular contact, but "due to the voluminous nature of the documents in the possession of the Commonwealth....the Commonwealth has not yet completed the process of providing the Defendant with the information requested...." (para. 10) although "the Commonwealth attorneys are diligently working on these matters and acting in good faith in an attempt to provide Defendant's counsel with the required information in compliance with the Court's February 13th Order...." (para. 12). Given the volume of materials the Commonwealth has and will provide, according to the motion, "Commonwealth attorneys have indicated they have no objection to an extension of time" to file the omnibus pretrial motion. (para. 18).

As acknowledged by the Commonwealth, the Defendant's inability to meet the scheduled time for filing responses to the various outstanding discovery disputes and to file his omnibus pretrial motions is directly attributable to the Commonwealth's inability to process the Defendant's discovery requests. It seems incongruous that this should be the case since the fact that such requests would be made can hardly have come as a surprise; nevertheless, the Defendant's inability to comply with the previous scheduling deadlines is not of his making, is not opposed by the Commonwealth, and his motions will be granted.

MOTION FOR CONTINUANCE OF TRIAL

Jury selection has been scheduled to begin on May 14th. The Defendant, in a motion to which the Commonwealth does not object (para. 28), requests that the trial be postponed until "mid-July 2012."

As a basis for the request the Defendant recites the time required to locate and interview witnesses identified by the Commonwealth's discovery materials (para. 23); to issue subpoenas to various agencies and individuals to produce records (para. 24); to engage the services of experts and review their reports (para. 25); and to accommodate witnesses who will be unavailable to testify in May (para. 26).

It must be remembered as a starting point in evaluating the Defendant's request to postpone the trial that trial is still two and a half months – ten and one-half weeks – away. There is no assurance at this point that any delay of the trial to mid-July will not, in turn, give rise to subsequent issues prompting a request for still more delay. Delay has a way of begetting delay. Therefore, the postponement of a trial should be the last resort, and granted only after all other attempts to remedy the impediments to the conduct of a prompt trial have been exhausted.

First, the Defendant states his investigators' efforts to locate and interview witnesses have been frustrated because "the Commonwealth has redacted the addresses and phone numbers of these individuals in the materials it has provided to the Defendant." (para. 23). To address this issue, the Commonwealth will be directed to turn over to the Defendant's attorney the addresses and phone numbers of any witnesses identified in the

Commonwealth's discovery materials within seven days.² If the Commonwealth believes providing such information regarding any specific witness is not justified under the law then the Commonwealth may file a motion for protective order as permitted by Pennsylvania Rule of Criminal Procedure 573(F).

Second, in support of the request to delay the trial, the motion states that defense counsel: (a) "anticipates" the need to obtain and review records from "various agencies and individuals" and to interview "potential witnesses" these records may reveal. (para. 24); (b) "anticipates the need" to engage the services of expert witnesses who will "most probably" testify at trial, and who will need time to review material and prepare their expert opinions; and (c) "anticipates" that certain witnesses "will be unavailable to testify in May 2012."

Despite the fact that the Commonwealth does not oppose the Defendant's request, these unsupported references to unidentified witnesses who might testify about unspecified issues are simply not sufficient, in my view, to justify a delay in the already agreed on trial date.

Contingencies may subsequently arise which will require a change in the trial date; but the reasons for doing so must be concrete and specific, and such that they can be addressed only by a change of the trial date and not by any other remedial measures which might be taken by counsel or the Court. Absent extraordinary circumstances presented by either the Commonwealth or the Defendant, postponement of the trial date will only be considered if required by

² This would not include, of course, addresses and phone numbers contained solely in the records of the investigating grand jury. A request for that information would have to be directed to the supervising judge of the grand jury.

the demands of selecting a jury and providing for their care, conflicting demands on courtroom space, or similar logistical complications.

Therefore, I enter the following:

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ORDER

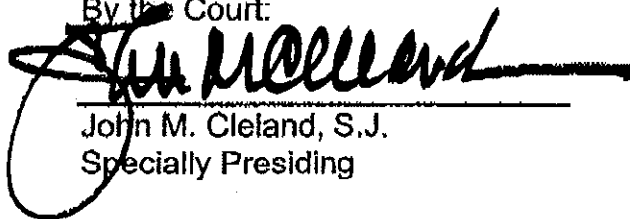
AND NOW, February 29, 2012, in consideration of the foregoing Memorandum, it is ordered as follows:

1. That the Defendant's Motion for Extension of Time to File Omnibus Pretrial Motion to March 22, 2012 from March 1, 2012 is granted.
2. That the Commonwealth's Answer to the Defendant's Omnibus Pretrial Motion shall be filed on or before March 29, 2012.
3. That the argument and/or hearing on the Defendant's Omnibus Pretrial Motions scheduled to be held on April 5, 2012 shall be held as previously scheduled.
4. That the Defendant's Motion to Extend the Time to file a reply to the Commonwealth's response to the Court's February 13th order is granted, and the Defendant's reply shall be filed on or before March 16, 2012.
5. That the Commonwealth shall supply within seven days the addresses and phone numbers of any witnesses identified in the Commonwealth's

discovery materials, except as otherwise excused by the requirements of preserving grand jury secrecy or subsequent order of this Court.

6. That the Defendant's Motion to Continue the Trial is denied.

By the Court:



John M. Cleland, S.J.
Specially Presiding