

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.  
March 13, 2012

FILED FOR RECORD  
2012 MAR 13 A 9:03  
DEBRA C. IMEL  
PROTHONOTARY  
CENTRE COUNTY, PA

The Defendant has filed an Application for More Specific Bill of Particulars asserting that the Commonwealth has failed to provide sufficiently specific details regarding the crimes alleged in the Information. Because the Commonwealth explained at argument on the Defendant's Application that it cannot provide more specific details, the Defendant's Application will be dismissed as moot.

On February 13, 2012, I entered an order directing the Commonwealth to specify the time, date, and location of any offenses, and the age of the victim at the time, or explain its inability to do so.<sup>1</sup> The order was framed in accordance with the long standing law of Pennsylvania that the Commonwealth must supply

<sup>1</sup> This is, of course, an entirely different matter from evidence the Commonwealth may have to provide to the Defendant as "discovery" material under Pa.R.Crim.P. 573, or as exculpatory material which must be provided as required by Brady v. Maryland, 373 U.S. 83 (1963). Any disputes over what material must be included in discovery will be determined in a separate proceeding.

a date "fixed with reasonable certainty" when a defendant is accused of having sexually assaulted a child. Commonwealth v. Levy, 23 A.2d 97 (Pa. 1941). As the Pennsylvania Supreme Court subsequently explained, if the Commonwealth does not fix a date with reasonable certainty it "would violate the notions of fundamental fairness embedded in our legal process," Commonwealth v. Devlin, 333 A.2d 888, 891 (Pa. 1975), because otherwise a defendant is not provided sufficient notice to meet the charges and prepare a defense, Commonwealth v. Gibbons, 784 A.2d 776 (2001). A long line of Pennsylvania cases has refined and applied this standard to various factual situations involving assaults against children,<sup>2</sup> and provides the Commonwealth greater latitude when the alleged crimes involve sexual offenses against a young child.<sup>3</sup>

However, the Commonwealth stated at argument that it cannot provide further details beyond what it has already supplied in its Bill of Particulars. Therefore, any order directing the Commonwealth to supply details would be a

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<sup>2</sup> See, for example, Commonwealth v. Niemetz, 422 A.2d 1369 (Pa. Super. 1980); Commonwealth v. Fanelli, 547 A.2d 1201 (Pa. Super. 1988); Commonwealth v. Groff, 548 A.2d 1237 (Pa. Super. 1988); Commonwealth v. Bethlehem, 570 A.2d 563 (Pa. Super. 1989); Commonwealth v. Szarko, 616 A.2d 26 (Pa. Super. 1992); Commonwealth v. Luktisch, 680 A.2d 877 (Pa. Super. 1996); Commonwealth v. G.P., 765 A.2d 363 (Pa. Super. 2000); Commonwealth v. Jette, 818 A.2d 533 (Pa. Super. 2003); Commonwealth v. G.D.M. Sr., 926 A.2d 984 (Pa. Super. 2007); and Commonwealth v. Brooks, 7 A.3d 852 (Pa. Super. 2010).

<sup>3</sup> The Commonwealth can meet this burden, for example, with evidence in addition to that provided by the victim. See Commonwealth v. Groff, *supra*, which held "...in order to ensure a fair trial for the defendant, the Commonwealth should conduct a thorough examination and come forward with any evidence with indicates when the alleged crime is most likely to have taken place." 548 A.2d at 1241.

futile act since the Commonwealth has explained it cannot supply the details requested.

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, March 13, 2012, for reasons explained in the foregoing  
Memorandum, it is ordered as follows:

The Defendant's Application for More Certain Bill of Particulars is  
dismissed as moot.

FILED FOR RECORD  
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DEBRA C. IMMEL  
PROTHONOTARY  
CENTRE COUNTY, PA

By the Court:

  
John M. Cleland, S.J.  
Specially Presiding

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GERALD A. SANDUSKY : CP-14-CR-2422-2011

ORDER

AND NOW, MARCH 13, 2012, to carry out the agreement reached between counsel, it is ordered as follows:

1. The names of persons heretofore identified as Victims 1 through 10 shall remain protected under the seal of the Court and may not be disclosed by any person, except pursuant to court order or other authorization of the court.
2. Any subpoena seeking records regarding the alleged victims who have been publicly identified to date only as Victims 1 through 10 from child welfare agencies; physicians, hospitals or other medical providers; mental health providers; schools; social service agencies; or the like, shall have affixed to the front of the subpoena in at least 18 point type the following notice:


NOTICE

BY ORDER OF THE COURT OF COMMON PLEAS OF CENTRE COUNTY PENNSYLVANIA, DATED MARCH 13, 2012, ANY PERSON OR AGENCY RECEIVING THIS SUBPOENA IS NOTIFIED THAT THE NAME OR ANY IDENTIFYING INFORMATION OF THE PERSON FOR WHOM THE RECORDS OR OTHER INFORMATION IS SOUGHT IS PROTECTED BY THE SEAL OF THE COURT.

UNDER POTENTIAL PENALTY OF CONTEMPT OF COURT, THE PERSON'S NAME OR IDENTIFYING INFORMATION MAY NOT BE DISCLOSED TO ANY PERSON EXCEPT AS REQUIRED TO COMPLY WITH THIS SUBPOENA.

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PROTHONOTARY  
CENTRE COUNTY, PA

By the Court:

  
John M. Cleland, S.J.  
Specially Presiding