

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

MEMORANDUM ORDER

May 30, 2012

The Defendant filed a motion on May 25, 2012 to postpone the jury selection scheduled to begin on June 5, 2012. The motion contained references to secret grand jury matters and was, therefore, filed under seal pursuant to my order.

FILED FOR RECORD
2012 MAY 30 2 11:12
DEBRA C. JEMEL
PROthonARY
CENTRE COUNTY, PA

During the afternoon of Tuesday, May 29th, I held an *in camera* hearing on the Defendant's motion.

After considering the positions of both the Defendant and the Commonwealth, I have determined that the Defendant's motion will be denied.

The allegations that have given rise to this prosecution have resulted in continuing investigations and related litigation, in several forums, civil and criminal, some of which are shielded by statutory secrecy. These overlapping events have created shifting and intermingled currents of compounding complexity involving legal, procedural, evidentiary, ethical and logistical complications. Defense counsel requests that I grant a delay of the start of the

Defendant's trial and has presented four reasons for requesting a delay that can be addressed in this memorandum order, and one which, because of grand jury secrecy, cannot.¹

Inability of experts to attend trial or be prepared to assist the defense.

One expert is a jury consultant who is currently engaged in selecting a jury in another case. While she has predicted that she will be available by the end of July to become involved in this case, that cannot be assured. In any event, defense counsel has spent many years selecting juries in Centre County and I have not been presented with any evidence that his expertise will be meaningfully supplemented by the assistance of such an expert. Defense counsel reports that a second expert, a mental health professional, has not been able to prepare his reports because he has not yet been given access to grand jury material he needs to develop his opinion. However, even if the trial is delayed, the grand jury material would be released by the Supervising Judge of the grand jury on the same schedule for the future trial date as the material would have been released for the current trial date, thereby presenting then the same problem facing us now. Since a postponement of trial will not make the mental health expert any more or less available, a continuance is of no benefit to the defendant.

Impending surgery of defense counsel's paralegal/investigator. While it can be readily acknowledged that the loss of an assistant on the eve of trial can be problematic, defense counsel is not without other resources; and while the

¹ Although the issue cannot be specifically identified in this order, I have considered it and have determined that it does not merit granting the requested continuance, either standing alone or in combination with the other reasons.

paralegal/investigator would be helpful during trial, there is no representation that he would be indispensable. Mr. Rominger serves as Mr. Amendola's co-counsel, and other attorneys have been engaged to assist in specific aspects of the Defendant's defense.

Difficulty in reviewing the discovery material provided by the Commonwealth. The amount of material that I have ordered the Commonwealth to provide in discovery has been significant. No doubt sorting the wheat from the chaff has been time consuming. Again, however, the defense team is assuredly capable, even as the trial is ongoing, of sorting through the material to determine what is useful to the defense and what is not.

The inability to call Gary Schultz and Timothy Curly because they have asserted their Fifth Amendment privileges and refuse to testify. Counsel for both Mr. Schultz and Mr. Curly have informed Mr. Amendola that their clients will not testify as witnesses at the Defendant's trial whenever it is scheduled because of the legal complexities in their own pending prosecutions. Since there is no possibility the witnesses will testify there is no reason to delay the trial on that basis.


As a practical matter, if the Defendant's trial were delayed to provide defense counsel additional time to address the issues which he argues merit a continuance there is no reasonable assurance that the issues will be resolved in the foreseeable future. It is equally as likely, and perhaps more likely, that the immediate issues will simply be replaced by issues even more complex as this

prosecution and its related litigation unfolds, causing even more requests for delay.

While I certainly do not doubt the sincerity of defense counsel in requesting a continuance, the reality of our system of justice is that no date for trial is ever perfect, but some dates are better than others. While June 5th does present its problems, on balance and considering all the interests involved – the defendant's right to a fair trial, the alleged victims' right their day in court, the Commonwealth's obligation to prosecute promptly, and the public's expectation that justice will be timely done -- no date will necessarily present a better alternative.

Therefore, it is ORDERED as follows: The Defendant's motion to continue jury selection is denied.

By the Court:


John M. Cleland, S.J.
Specially Presiding