

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

COMMONWEALTH OF PENNSYLVANIA,

v.s.

GERALD A. SANDUSKY

No. CP-14-CR-2421-2011
CP-14-CR-2422-2011

MOTION TO FOR LEAVE TO FILE BRIEF IN SUPPORT OF
THE VICTIMS'¹ MOTION TO PROCEED BY PSEUDONYM

COMES NOW, the National Center for Victims of Crime, the National Crime Victim Law Institute, Pennsylvania Coalition Against Rape, Pennsylvania Coalition Against Domestic Violence, Dauphin County Victim/Witness Assistance Program, the Crime Victims Alliance of Pennsylvania and the Network of Victim Assistance and move this Honorable Court, within its discretion, for leave to participate as *amici curiae* in support of the victims' motions to proceed by pseudonym, and to file the *Amici Curiae* brief submitted together with this Motion. In support of this Motion *Amici* state as follows:

1) The National Center for Victims of Crime (National Center), a nonprofit organization based in Washington, DC, is the nation's leading resource and advocacy organization for all victims of crime. Dedicated to serving individuals, families, and

¹ The term "victim", as used in this motion, is merely the use of a legal term of art and not a commentary on defendant's guilt or innocence. "Victims" nationwide are now afforded rights in the criminal justice system; rights which exist independent of others in the criminal justice process. See Douglas E. Beloof, "Constitutional Implications of Crime Victims as Participants," 88 Cornell L. Rev. 282, 286 (Jan. 2003). The criteria for obtaining "victim" status varies among jurisdictions, however, since many victims' rights attach pretrial, if not pre-charging, the determination of who is a "victim" cannot be a factual determination dependent on defendant's guilt or innocence. See generally Douglas E. Beloof, Paul G. Cassell & Steven J. Twist, *Victims in Criminal Procedure* 52 (2d Ed. 2006). In Pennsylvania "victims" is a legislated term which recognizes that "victims" have rights throughout the entire criminal justice system. Cf 18 P.S. § 11.102.

communities harmed by crime, NCVC, among other efforts, advocates laws and public create resources and secure rights and protections for crime victims to help victims rebuild their lives. To further its mission, NCVC provides training and educational programs to the public, including service providers and law enforcement.

2) The National Crime Victim Law Institute (NCVLI) is a nonprofit educational and advocacy organization located at Lewis and Clark Law School, in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education, and resource sharing. NCVLI accomplishes its mission through education and training; promoting the National Alliance of Victims' Rights Attorneys; researching and analyzing developments in crime victim law; and providing information to crime victims and crime victims' attorneys through its website, www.ncvli.org. NCVLI also participates as *amicus curiae* when a case presents an issue of importance regarding crime victims' rights and interests. This case involves issues that crime victims' fundamental rights to privacy, protection, and fair treatment.

3) The Pennsylvania Coalition Against Rape (PCAR) is a private non-profit organization. Founded in 1975, PCAR is the oldest anti-sexual violence coalition in the country and is widely respected at both the state and national levels for its leadership to prevent sexual violence. Over the past 37 years, PCAR has successfully worked as an agent of change-educating society about the severe and long-lasting impact of sexual violence, confronting victim-blaming attitudes, challenging injustice, advocating for policies for victims of sexual violence to provide them with the compassion, privacy and dignity they deserve. At the core of PCAR's success is its statewide network of 51 rape crisis centers that provide counseling, crisis intervention, referral services; hospital, court and police accompaniment; prevention education,

and community outreach. PCAR member centers offer confidential crisis support 24 hours a day, seven days a week. PCAR has been at the forefront of fighting to preserve the confidentiality of victims. It is critical that we join with our colleagues in advocating for the safety and privacy of victims. We believe that it is possible to balance the need of the public to know information while honoring crime victims' need for safeguarding their personally identifying information.

4) The Pennsylvania Coalition Against Domestic Violence (PCADV) is a private non-profit organization that provides services and advocacy on behalf of victims of domestic violence and their minor children. PCADV was established in 1976 and in its 30 years of operation, PCADV has grown to a membership of 60 organizations across Pennsylvania that, collectively, have provided safety and refuge to nearly two million victims and children from every corner of the Commonwealth. Our member programs provide a range of life-saving services, including emergency shelters, hotlines, counseling programs, safe home networks, legal and medical advocacy projects, and transitional housing projects for victims of abuse and their children. Victim confidentiality is a key component in every aspect of our work, as it enables victims to come forward to seek services and assistance without fear of retribution or retaliation. PCADV and its member programs are, thus, uniquely vested in maintaining strict confidentiality for victims of domestic violence and other victims of interpersonal crime in all stages of the criminal process.

5) Dauphin County Victim/Witness Assistance Program wishes to extend its support for the *amici curiae* brief protecting the privacy and safety of the victims in the Jerry Sandusky case. VWAP's mission is to ensure all crime victims are treated with dignity and respect while ensuring they are not traumatized further within the justice system. Allowing the victims in this

case to maintain a level of anonymity while testifying in this very high profile case is a vital mechanism to ensuring their privacy and safety without jeopardizing the integrity of the criminal case they are participating in. We fully support this endeavor.

6) The Crime Victims Alliance of Pennsylvania is a group of advocates, organizations, survivors and our allies committed to ensuring crime victims' voices are heard in all facets of the justice system. We fully support the *amici curiae* brief to protect the interest of the victims' privacy in the Sandusky case and implore the judge to allow the victims in this case to be free from undue scrutiny throughout the criminal justice process.

7) Network of Victim Assistance (NOVA), is a non-profit community-based organization, based in Bucks County, Pennsylvania. NOVA's mission is to serve the Bucks County community by providing direct support to victims of sexual assault and other personal violations and to advance the rights of victims through advocacy and prevention education programs. NOVA strives to develop programs and services which empower individuals and promote respect for the privacy, uniqueness and dignity of all people.

8) While Pa.Rule of Appellate Procedure 531 expressly provides that anyone interested in an appellate matter may file an amicus brief, the rules are silent as to whether an amicus brief may be filed at the trial level.

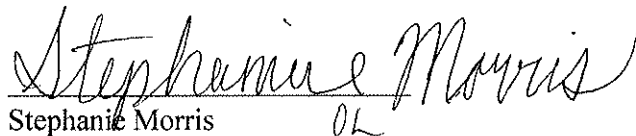
9) However, a review of case law, reveals there is no precedent *against* considering an amicus position; in fact, there are several appellate court cases that note an amicus brief was considered at the trial court level without any criticism of such action. *See, e.g., Altshuler v. Pennsylvania Liquor Control Bd.*, 729 A.2d 1272, 1274 n.5 (Pa.Comm. Ct. 1999) (noting filing of amicus brief with trial court); *Cherry Valley Assocs. v. Stroud Twp. Bd. of Supervisors*, 109 Pa. Commw. 246, 530 A.2d 1039 (1987) (noting the trial court denied the appellants' request to

intervene but permitted and considered appellants' amicus brief); *Cf. Newberg v. Board of Public Edu.*, 330 Pa.Super.65, 69, 478 A.2d 1352, 1354 (1984) (reviewing standing of appellate who participated in trial court proceedings as amici curiae); *In re. Petition to Amend Home Rule Charter of City of Pittsburgh*, 69 Pa. Commw. 292, 450 A.2d 802 (1982) (noting that one who appears in the trial court as an amicus curiae does not have standing to appeal).

10) Additionally, *Amici* submit that their contribution is critical to the Court's thorough review of the scope of the victims' rights to privacy, which if not considered now at the trial court level, will escape appellate review as the wide public disclosure of alleged victims' identities will have already occurred, not only rendering an appeal moot but eliminating any hope of remedy for these victims.

11) In light of the broad public policy implications, including the effect upon these victims and the chilling effect upon other victims from reporting similar crimes and the complexity of the law on the issue of victims' privacy rights, *Amici* request that this Honorable Court accept and consider its brief, attached hereto, on behalf of future victims whose ability to have their cases heard in Pennsylvania courts may be hampered by an adverse decision in this court.

Respectfully Submitted,


Stephanie Morris

NATIONAL CENTER FOR VICTIMS OF CRIME
Bar No. 87191
2000 M Street, NW-Suite 480
Washington, DC 20036
Phone: (202) 467-8700
Facsimile: (202) 467-8701
Counsel for Amici Curiae

MARGARET GARVIN
NATIONAL CRIME VICTIM LAW
INSTITUTE AT LEWIS & CLARK LAW SCHOOL*
OR Bar #04465; MN Bar #294226
310 SW 4th Ave, Suite 540
Portland, Oregon 97204
Phone: (503) 768-6819
Email: nevli@lclark.edu
*Law School is not amicus and is listed for location purposes only

Certificate of Service

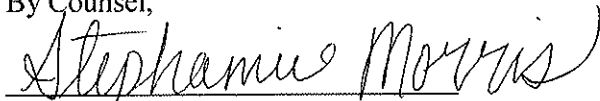
I hereby certify that a true and accurate copy of this Motion for Leave to File Amicus Curiae has been sent on this 29th day of May, 2012 by U.S. Mail, First Class and by facsimile to Counsel for the Government and the Defendant at:

Jonelle Harter Eschbach, Esq.
Senior Deputy Attorney General
Office of Attorney General
1600 Strawberry Square, 16th Flr.
Harrisburg, PA 17120

Joseph L. Amendola, Esq.
110 Regent Court – Suite 202
State College, PA 16801-7966
Fax: (814)234-6013

FILED FOR RECORD
2012 MAY 29 P 4:12
DEBRA C. IMEL
PROTHONOTARY
CENTRE COUNTY, PA

The National Center for Victims of Crime
By Counsel,



Stephanie M. Morris *OL*

Pa. Bar No. 87191
2000 M St. NW – Suite 480
Washington, D.C. 20036