

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	:	

ORDER

AND NOW, March 20th, 2012, upon consideration of the Commonwealth's Response to Order of Court Directing Pre-Trial Discovery and of the Defendant's Response to it, it is ordered as follows:

1. That the Commonwealth, to the extent it may not have already done so, shall disclose all information it is required to disclose by Pa.R.Crim.P. 573(B)(1)(a-g).¹
2. That the Commonwealth shall disclose to counsel for the Defendant the record of any juvenile adjudication of any witness which the Commonwealth intends to call to testify at trial if the said record contains an adjudication for any offense which would be admissible to attack the credibility of an adult pursuant to Pa.R.E. 609(d). The Commonwealth is

¹ This includes, of course, the obligation to disclose any material that would fall within the scope of Brady v. Maryland, 373 U.S. 83 (1963). The Brady obligation makes no distinction between exculpatory and impeachment evidence. United States v. Bagley, 473 U.S. 667 (1985).

² Although the Commonwealth asserts that reports of psychological evaluations

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not required to include in its disclosure any adjudication for drug and/or alcohol violations.

3. That the Commonwealth shall disclose to counsel for the Defendant the current addresses and phone numbers of the alleged victims, and their addresses and phone numbers as of the date of the alleged offenses, to the extent such information is in the possession of the Commonwealth.
4. That unless the Commonwealth establishes to the satisfaction of the Court, within seven days, that the said reports are privileged despite being in the Commonwealth's possession,² then any psychological evaluations of any alleged victims shall be delivered, under seal, to counsel for the Defendant.³ Other than reading the reports, counsel for the Defendant

² Although the Commonwealth asserts that reports of psychological evaluations of alleged victims which are in its possession are protected by the Psychiatrist/Psychologist-Patient Privilege, 42 Pa.C.S. §5944, the Commonwealth has not asserted the prerequisites required by the statute to conclude the privilege exists, namely that any communications made by an alleged victim were made within the treatment relationship with a therapist, and that the communications were confidential. To the extent that the Commonwealth suggests that I review the reports it contends are protected by the privilege *in camera* to determine whether they are subject to discovery, I conclude that such an option is not permitted under Pennsylvania law. See Commonwealth v. Johnson, 663 A.2d 720, 724, ftn 3 (Pa. Super. 1995) ("...even the trial court's *in camera* review of ... the psychotherapy files was error." Citations omitted.) The fact that the reports are in the Commonwealth's possession complicates the analysis and distinguishes this situation from the line of cases represented by Commonwealth v. Kyle, 533 A.2d 120 (PaSuper.1987) and Commonwealth v. Kennedy, 604 A.2d 1036 (Pa.Super.1992).

³ The only objection raised by the Commonwealth to the disclosure of these psychological evaluations is the application of the Psychiatrist/Psychologist-Patient Privilege. It is my understanding, therefore, that but for the one objection raised, the Commonwealth concludes the reports are otherwise discoverable.

shall make no use of the information contained in the reports without the prior authorization of the Court.

5. That to the extent the Commonwealth objects to the disclosure of any information associated with any past or ongoing investigation of a statewide investigating grand jury, the objection is sustained, subject to the following:
- a. Counsel for the Defendant must first make his request for information to the Supervising Judge of the Grand Jury.
 - b. If the Supervising Judge determines the information sought may not be disclosed because of considerations of grand jury secrecy, then I will abide by that decision.
 - c. If the Supervising Judge determines that the information sought is not associated with any past or ongoing grand jury investigation, or if it is so associated nevertheless authorizes me to direct its disclosure if the information is otherwise appropriate under Pa.R.Crim.P. 573 or any applicable Pennsylvania Rule of Evidence, then I will reconsider counsel's request.

By the Court:



John M. Cleland, S.J.
Specially Presiding