

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

COMMONWEALTH OF PENNSYLVANIA )

vs. )

GERALD A. SANDUSKY )

Nos. CP-14-CR-2421-2011 &  
CP-14-CR-2422-2011

*Commonwealth Attorneys:*

*Frank G. Fina, Esquire*

*Joseph McGettigan, Esquire*

*Jonelle H. Eshbach, Esquire*

*Defense Attorneys:*

*Joseph L. Amendola, Esquire*

*Norris E. Gelman, Esquire*

*Karl E. Rominger, Esquire*

**POST-SENTENCE MOTIONS**

TO THE HONORABLE JOHN M. CLELAND, SENIOR JUDGE SPECIALLY PRESIDING  
IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA:

AND NOW, comes the Defendant, GERALD A. SANDUSKY, through his attorneys, Joseph L. Amendola, Esquire, Norris E. Gelman, Esquire and Karl E. Rominger, Esquire, who respectfully represent the following:

1. On or about November 5, 2011, the Defendant was arrested in Criminal Information No. CP-14-CR-2422-2011 by Cpl. Scott F. Rossman of the Pennsylvania State Police, Avondale Barracks and Agent A.L. Sassano of the Pennsylvania Office of Attorney General and charged with various offenses stemming from conduct which allegedly occurred on diverse dates between January 1994 and December 2008, in College Township, Centre County, Pennsylvania and various other locations.

2. On or about December 7, 2011, the Defendant was arrested in Criminal Information No. CP-14-CR-2421-2011 by Trooper Robert Yakicic of the

Pennsylvania State Police, Bureau of Criminal Investigations, and Agent A.L. Sassano of the Pennsylvania Office of Attorney General, and charged with additional offenses stemming from conduct which allegedly occurred on or about January 1997 to December 2008 in College Township, Centre County, Pennsylvania and various other locations.

3. Following a jury trial in June 2012, the Defendant was found guilty in the above-captioned matters on forty-five (45) counts of the Criminal Informations filed against him including eight (8) counts of Involuntary Deviate Sexual Intercourse, seven (7) counts of Indecent Assault, nine (9) counts of Unlawful Contact with a Minor, ten (10) counts of Corruption of Minors, ten (10) counts of Endangering the Welfare of Children, and one (1) count of Criminal Attempt to Commit Indecent Assault.<sup>1</sup>

4. On October 9, 2012, this Court imposed an aggregate sentence of not less than thirty (30) years nor more than sixty (60) years in state prison with credit for one hundred twelve (112) days served on the aforementioned counts

**I. MOTION IN ARREST OF JUDGEMENT AND/OR FOR A NEW TRIAL**

5. In regard to the offenses of Involuntary Deviate Sexual Intercourse in violation of 18 Pa. C.S.A. Section 3123(a)(7) - (F-1) as set forth in Counts 1, 2, 17 and 36 of Criminal Information No. CP-14-CR-2422-2011, and in Counts 1, 2, 7 and 8 of Criminal Information No. CP-14-CR-2421-2011, the Defendant submits:

a. The evidence produced against him by the Commonwealth at his trial was insufficient to sustain the verdict because the Commonwealth failed to establish the Defendant engaged in deviate sexual intercourse with the purported victims

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<sup>1</sup> The Court dismissed Counts 16, 18, 19 and 33, and the Defendant was found not guilty in regard to Counts 7, 24 and 28 of Criminal Information No. CP-14-CR-2422-2011.

who were less than sixteen (16) years of age when the Defendant was four (4) or more years older than those purported victims and not married to them.

b. The verdict was against the weight of the evidence because the Commonwealth failed to establish the Defendant engaged in deviate sexual intercourse with the purported victims who were less than sixteen (16) years of age when the Defendant was four (4) or more years older than those purported victims and not married to them.

6. In regard to the offenses of Unlawful Contact with Minors in violation of 18 Pa. C.S. A. Section 6318(a)(1) – (F-1) as set forth in Counts 4, 9, 21 and 38 of Criminal Information No. CP-14-CR-2422-2011, and in Counts 4 and 10 of Criminal Information No. CP-14-CR-2421-2011, the Defendant submits that:

a. The evidence produced against him by the Commonwealth at his trial was insufficient to sustain the verdict because the Commonwealth failed to establish the Defendant did intentionally have contact with a minor for the purpose of engaging in activity prohibited under Chapter 31 of the Crimes Code relating to sexual offenses.

b. The verdict was against the weight of the evidence because the Commonwealth failed to establish the Defendant did intentionally have contact with a minor for the purpose of engaging in activity prohibited under Chapter 31 of the Crimes Code relating to sexual offenses.

7. In regard to the offenses of Unlawful Contact with Minors in violation of 18 Pa. C.S.A. Section 6318(a)(1) – (F-3) as set forth in Counts 13, 25 and 29 of

Criminal Information No. CP-14-CR-2422-2011, the Defendant submits that:

a. The evidence produced against him by the Commonwealth at his trial was insufficient to sustain the verdict because the Commonwealth failed to establish the Defendant did intentionally have contact with a minor for the purpose of engaging in activity prohibited under Chapter 31 of the Crimes Code relating to sexual offenses.

b. The verdict was against the weight of the evidence because the Commonwealth failed to establish the Defendant did intentionally have contact with a minor for the purpose of engaging in activity prohibited under Chapter 31 of the Crimes Code relating to sexual offenses.

8. In regard to the offenses of Endangering Welfare of Children in violation of 18 Pa. C.S.A. Section 4304(a)(1) – (F-3) as set forth in Counts 6, 15, 23 and 27 of Criminal Information No. CP-14-CR-2422-2011, and Counts 6 and 12 of Criminal Information No. CP-14-CR-2421-2011, the Defendant submits that:

a. The evidence produced against him by the Commonwealth at his trial was insufficient to sustain the verdict because the Commonwealth failed to establish the Defendant, being a parent, guardian, or other person supervising the welfare of a child under eighteen (18) years of age did knowingly endanger the welfare of the child by violating a duty of care, protection or support.

b. The verdict was against the weight of the evidence because the Commonwealth failed to establish the Defendant, being a parent, guardian, or other person supervising the welfare of a child less than eighteen (18) years of age did

knowingly endanger the welfare of the child by violating a duty of care, protection or support.

9. In regard to the offenses of Endangering Welfare of Children in violation of 18 Pa. C.S.A. Section 4304(a)(1) – (M-1) as set forth in Counts 11, 31, 35 and 40 of Criminal Information No. CP-14-CR-2422-2011, the Defendant submits that:

a. The evidence produced against him by the Commonwealth at his trial was insufficient to sustain the verdict because the Commonwealth failed to establish the Defendant, being a parent, guardian, or other person supervising the welfare of a child under eighteen (18) years of age did knowingly endanger the welfare of the child by violating a duty of care, protection or support.

b. The verdict was against the weight of the evidence because the Commonwealth failed to establish the Defendant, being a parent, guardian, or other person supervising the welfare of a child less than eighteen (18) years of age did knowingly endanger the welfare of the child by violating a duty of care, protection or support.

10. In regard to the offense of Indecent Assault in violation of 18 Pa. C.S.A. Section 3126(a)(8) - (F-3) as set forth in Count 3 of Criminal Information No. CP-14-CR-2422-2011 and in regard to the offense of Indecent Assault in violation of 18 Pa. C.S.A. Section 3126(a)(7) – (F-3) as set forth in Count 3 of Criminal Information No. CP-14-CR-2421-2011, the Defendant submits that:

a. The evidence produced against him by the Commonwealth at his trial was insufficient to sustain the verdict because the Commonwealth failed to establish the Defendant did have indecent contact with purported victims or caused the

purported victims to have indecent contact with him for the purpose of arousing sexual desire in himself or in the aforementioned purported victims and the purported victims were less than sixteen (16) years of age and the Defendant was four (4) or more years older than the purported victims and the Defendant and the purported victims were not married.

b. The verdict was against the weight of the evidence because the Commonwealth failed to establish the Defendant did have indecent contact with purported victims or caused the purported victims to have indecent contact with him for the purpose of arousing sexual desire in himself or in the aforementioned purported victims and the purported victims were less than sixteen (16) years of age and the Defendant was four (4) or more years older than the purported victims and the Defendant and the purported victims were not married.

11. In regard to the offense of Indecent Assault in violation of 18 Pa. C.S.A. Section 3126(a)(7) – (M-1) as set forth in Count 9 of Criminal Information No. CP-14-CR-2421-2011, the Defendant submits that:

a. The evidence produced against him by the Commonwealth at his trial was insufficient to sustain the verdict because the Commonwealth failed to establish the Defendant did have indecent contact with the purported victim or caused the purported victim to have indecent contact with him for the purpose of arousing sexual desire in himself or in the aforementioned purported victim and the purported victim was less than thirteen (13) years of age and the Defendant and the purported victim were not married.

b. The verdict was against the weight of the evidence because the Commonwealth failed to establish the Defendant did have indecent contact with the purported victim or caused the purported victim to have indecent contact with him for the purpose of arousing sexual desire in himself or in the aforementioned purported victim and the purported victim was less than thirteen (13) years of age and the Defendant and the purported victim were not married.

12. In regard to the offenses of Indecent Assault in violation of 18 Pa. C.S.A. Section 3126(a)(8) – (M-2) as set forth in Counts 8, 12, 20 and 37 of Criminal Information CP-14-CR-2422-2011, the Defendant submits that:

a. The evidence produced against him by the Commonwealth at his trial was insufficient to sustain the verdict because the Commonwealth failed to establish the Defendant did have indecent contact with purported victims or caused the purported victims to have indecent contact with him for the purpose of arousing sexual desire in himself or in the aforementioned purported victims and the purported victims were less than sixteen (16) years of age and the Defendant was four (4) or more years older than the purported victims and the Defendant and the purported victims were not married.

b. The verdict was against the weight of the evidence because the Commonwealth failed to establish the Defendant did have indecent contact with purported victims or caused the purported victims to have indecent contact with him for the purpose of arousing sexual desire in himself or in the aforementioned purported victims and the purported victims were less than sixteen (16) years of age and the

Defendant was four (4) or more years older than the purported victims and the Defendant and the purported victims were not married.

13. In regard to the offenses of Corruption of Minors in violation of 18 Pa. C.S.A. Section 6301(a)(1) – (M-1) as set forth in Counts 5, 10, 14, 22, 26, 30, 34 and 39 of Criminal Information No. CP-14-CR-2422-2011 and Counts 5 and 11 of Criminal Information No. CP-14-CR-2421-2011, the Defendant submits that:

a. The evidence produced against him by the Commonwealth at his trial was insufficient to sustain the verdict because the Commonwealth failed to establish the Defendant, being of the age of eighteen (18) or upward, by any course of conduct, corrupted or tended to corrupt the morals of any minor less than eighteen (18) years of age or enticed or encouraged such minor in the commission of an offense under Chapter 31 (relating to sexual offenses).

b. The verdict was against the weight of the evidence because the Commonwealth failed to establish the Defendant, being of the age of eighteen (18) or upward, by any course of conduct, corrupted or tended to corrupt the morals of any minor less than eighteen (18) years of age or enticed or encouraged such minor in the commission of an offense under Chapter 31 (relating to sexual offenses).

14. In regard to the offense of Criminal Attempt to Commit Indecent Assault in violation of 18 Pa. C.S.A. Section 901/3126(a)(8) – (M-2) as set forth in Count 32 of Criminal Information No. CP-14-CR-2422-2011, the Defendant submits that:

a. The evidence produced against him by the Commonwealth at his trial was insufficient to sustain the verdict because the Commonwealth failed to establish the Defendant attempted to commit indecent assault by the doing of an act



which constituted a substantial step toward the commission of the offense of indecent assault with purported Victim 7 and thereby did attempt to have indecent contact with purported Victim 7 or to cause purported Victim 7 to have indecent contact with him for the purpose of arousing sexual desire in either person when purported Victim 7 was less than sixteen (16) years of age and the Defendant was more than twenty (20) years of age and the Defendant and purported Victim 7 were not married to each other.

b. The verdict was against the weight of the evidence because the Commonwealth failed to establish the Defendant attempted to commit indecent assault by the doing of an act which constituted a substantial step toward the commission of the offense of indecent assault with purported Victim 7 and thereby did attempt to have indecent contact with purported Victim 7 or to cause purported Victim 7 to have indecent contact with him for the purpose of arousing sexual desire in either person when purported Victim 7 was less than sixteen (16) years of age and the Defendant was more than twenty (20) years of age and the Defendant and purported Victim 7 were not married to each other.

15. The Defendant submits the Court erred when it denied the Defendant's motion to dismiss Counts 36 through 40 inclusive of Criminal Information No. CP-14-CR-2422-2011 which involved allegations concerning purported Victim 8 on the basis the Commonwealth failed to establish the offenses alleged in Counts 36 through 40 inclusive occurred within the timeframe between November 20 and November 27, 2000 as set forth by the Commonwealth in its Amended Bill of Particulars filed on May 18, 2012.

16. The Defendant submits the Court erred when it permitted the Commonwealth to introduce the hearsay testimony of Ronald Petrosky concerning the statement purportedly made by James Calhoun to him and others concerning his observations in the shower relating to purported Victim 8.

17. The Defendant submits the Court erred in denying the Defendant's application for a more specific bill of particulars by Order dated March 13, 2012 stating the issue was moot in part because the Commonwealth had clearly represented it could not provide the Defendant with a more specific bill of particulars. The Defendant submits, by denying the Defendant's application for a more specific bill of particulars, he was unduly prejudiced in the preparation of his defense for trial, especially in light of the timeframe which he and his defense team had to prepare his defense in his cases.

18. The Defendant submits the Court erred in denying the Defendant's motions to dismiss Counts 1 through 12 inclusive in Criminal Information No. CP-14-CR-2421-2011 and Counts 1 through 6 inclusive, Counts 12 through 15 inclusive, Counts 16 through 23 inclusive, Counts 24 through 27 inclusive, and Counts 32 through 35 inclusive of Criminal Information No. CP-14-CR-2422-2011 on the basis that the charges set forth in those counts of the aforementioned Criminal Informations were so general and nonspecific that the Defendant could not adequately prepare a defense to those charges and was irreparably prejudiced at trial in presenting a defense to them, especially in light of the brief period of time the Defendant had to prepare defenses to those charges.

19. The Defendant submits the Court erred in denying the Defendant's pre-trial motion for a hearing on his *writ of habeas corpus* inasmuch as the Court denied Defendant's motion to hold a hearing on the Defendant's *writ* which would have required

the Commonwealth to present testimony to establish sufficient evidence for those charges as set forth in Counts 7 through 11 inclusive, Counts 28 through 31 inclusive, and Counts 36 through 40 inclusive of Criminal Information No. CP-14-CR-2422-2011 to be considered by the jury at his trial.

20. The Defendant submits the Court erred in denying Defendant's motion to dismiss charges filed against him due to the expiration of statute of limitations, and more specifically submits:

a. The statute of limitations expired prior to the Defendant's arrest on November 5, 2011 in regard to those offenses dealing with alleged Victims 2, 3, 4, 5, 6, 7 and 8 as set forth in Counts 7 through 40 of Criminal Information CP-14-CR-2422-2011 and alleged Victim 10 as set forth in Counts 7 through 12 of Criminal Information CP-14-CR-2421-2011 since all of the aforementioned offenses allegedly occurred prior to the effective date of an enlarged statute of limitations which became effective on August 27, 2002.

b. The statute of limitations in effect at the time of the commission of the Defendant's alleged illegal conduct had expired prior to the Commonwealth filing charges against the Defendant on November 5 and December 7, 2011.

21. The Defendant submits the Court erred in denying his motions for a continuance filed on or about March 22, 2012 (Omnibus Pre-Trial Motion), May 9, 2012 (Motion for Continuance) and May 25, 2012 (Motion for Continuance), which violated his right to due process under the Sixth Amendment of the U.S. Constitution as applied to the Commonwealth through the Fourteenth Amendment as well as under Article I, Section 9,

of the Constitution of the Commonwealth of Pennsylvania for the following reasons including, but not limited to:

a. The Commonwealth provided the Defendant and his counsel with thousands of pages of discovery, discs, photos, and other materials, including copies of hard drives from three (3) computers, at various times beginning on January 17, 2012, and, thereafter, on January 23, 2012, March 7, 2012, March 12, 2012, March 27, 2012, April 27, 2012, May 4, 2012, May 9, 2012, May 14, 2012, May 16, 2012, May 18, 2012, May 24, 2012, May 31, 2012, June 4, 2012, June 8, 2012 and June 15, 2012.

b. The Defendant also filed a Request for Bill of Particulars with the Commonwealth on or about January 18, 2012, and thereafter filed an Application for an Order for Bill of Particulars on or about January 24, 2012 and a Motion to Compel the Commonwealth to Provide Defendant with Pre-Trial Discovery Materials on or about February 6, 2012.

c. Following a hearing on February 10, 2012, the Court entered an Order on February 13, 2012 regarding Defendant's Motion To Compel Pre-Trial Discovery as a result of which the Commonwealth subsequently provided additional discovery materials to Defendant's counsel on or about March 7, 2012 and March 12, 2012 comprised of hundreds of pages of information.

d. Following a hearing on February 10, 2012 and by Order dated February 13, 2012, the Court directed the Commonwealth to answer portions of the Defendant's Bill of Particulars including the exact time, date, and location of any offense giving rise to the particular offenses as alleged in the Informations, the exact age of the alleged victim on the date of the offense, or an explanation from the Commonwealth as to

why it could not provide certain information in the event the Commonwealth failed to comply completely with the Court's Order.

e. The Commonwealth provided Defendant's counsel with a Bill of Particulars dated February 21, 2012 on or about March 1, 2012 as well as a Response to the Order of Court Directing Pre-Trial Discovery on or about February 29, 2012 in which it failed to provide the Defendant with a number of items, materials and documents he had previously requested in his Bill of Particulars and Motion to Compel Discovery.

f. In its Response dated February 29, 2012 to the Court's Order dated February 13, 2012 directing the Commonwealth to provide discovery to the Defendant, the Commonwealth alleged various reasons why it could not or would not provide certain materials to the Defendant and stated its position that many of the materials requested by the Defendant constituted Grand Jury materials which were non-discoverable, certain matters were irrelevant, and other information concerning psychological evaluations, juvenile adjudications and juvenile police investigations, and Children and Youth Services' reports and related information were confidential and/or privileged and not subject to discovery by the Defendant.

g. On or about March 2, 2012, the Defendant filed an Application for an Order for a More Specific Bill of Particulars which was followed by a hearing on March 12, 2012.

h. In its Order dated March 13, 2012, the Court dismissed the Application for a More Specific Bill of Particulars as moot stating, in part, the Commonwealth had clearly represented it could not provide the Defendant with a more specific Bill of Particulars.

i. On or about March 6, 2012, the Defendant filed a Response to the Commonwealth's Response to the Court's Order Directing Pre-Trial Discovery, following which the Court entered an Order on March 20, 2012 directing the Commonwealth to disclose to counsel for the Defendant any juvenile adjudication records of Commonwealth witnesses, addresses and phone numbers of the alleged victims at the current time and at the time the alleged offenses were committed, and any psychological evaluations of alleged victims unless the Commonwealth established to the satisfaction of the Court the evaluations were privileged despite being in its possession.

j. The Defendant filed his omnibus pre-trial motion pursuant to the Court's Order dated February 29, 2012 on or about March 22, 2012, which included a motion for continuance, and the Commonwealth filed its Answer to Defendant's Omnibus Pre-Trial Motion on or about March 29, 2012.

k. The Court denied the Defendant's motion for continuance by Order dated April 5, 2012 with the provision that the commencement of jury selection would begin on June 5, 2012.

l. The Defendant submitted pre-trial supplemental discovery requests to the Commonwealth numbered First through Fiftieth Supplemental Pre-Trial Discovery Requests in response to discovery materials which the Commonwealth provided to Defendant's counsel in batches of hundreds, and at times thousands, of pages of materials on January 17, 2012, January 23, 2012, March 7, 2012, March 12, 2012, March 27, 2012, April 27, 2012, May 4, 2012, May 9, 2012, May 14, 2012, May 16, 2012, May 18, 2012, May 24, 2012, May 31, 2012, June 4, 2012, June 8, 2012 and June 15, 2012 along with numerous discs, hundreds of photos, Second Mile database

information containing voluminous amounts of materials on a thumb drive, and a portable hard drive containing all the information found on three (3) computers seized from the Defendant's home.

m. The Defendant and counsel obtained initial discovery materials from the Commonwealth on or about January 17, 2012, and thereafter received additional discovery materials on January 23, 2012, March 7, 2012, March 12, 2012, March 27, 2012, April 27, 2012, May 4, 2012, May 9, 2012, May 14, 2012, May 16, 2012, May 18, 2012, May 24, 2012, May 31, 2012, June 4, 2012, June 8, 2012 and June 15, 2012.

n. The Defendant, through counsel, provided the Commonwealth with fifty (50) discovery requests dated December 29, 2011, February 6, 2012, February 25, 2012, March 12, 2012 (2), March 21, 2012, March 27, 2012 (2), March 28, 2012 (2), April 3, 2012 (5), April 4, 2012 (2), April 9, 2012 (2), April 10, 2012, April 13, 2012 (4), April 16, 2012 (2), April 18, 2012 (4), April 19, 2012 (3), April 24, 2012 (2), May 3, 2012 (4) and May 4, 2012 (10) and then ceased requesting additional discovery due to time constraints imposed by the Court's denying Defendant's motions for continuance and proceeding with commencement of trial.

o. The Commonwealth, aside from providing some initial discovery materials on January 17, 2012, January 23, 2012, March 7, 2012, March 12, 2012, and March 27, 2012, did not provide Defendant or his counsel with any additional discovery materials until April 30, 2012 when Defendant's counsel received over two hundred (200) pages of additional discovery materials from the Commonwealth.

p. The Defendant filed a Second Motion to Compel discovery with this Honorable Court on or about May 3, 2012 in response to the Commonwealth's failure to provide many of the requested discovery materials requested in his First through Fiftieth Supplemental Requests for Discovery.

q. On May 4, 2012, the Commonwealth provided additional discovery materials to Defendant's counsel consisting of over one hundred (100) pages of documents, nine (9) CDs of information and a portal hard drive containing information from three (3) computers seized from the Defendant's residence on June 21, 2011.

r. The discovery materials provided by the Commonwealth to Defendant's counsel on April 27, 2012, May 4, 2012, and thereafter, provided Defendant's counsel with additional information concerning the Defendant's cases which led to the necessity for Defendant's counsel to provide the Commonwealth with additional supplemental discovery requests in order to obtain further necessary information to assist counsel in attempting to adequately prepare the Defendant's cases for trial.

s. Due to the number of potential witnesses who became known to the Defendant and his counsel following receipt of the Commonwealth's discovery materials in these matters in March, April, and May, 2012, and who needed to be interviewed by Defendant's investigators prior to trial, the Defendant's investigators required a substantial amount of additional time to locate and interview these witnesses known and unknown at that time.

t. As a result of the issuance of subpoenas *duces tecum* to various agencies, institutions, entities and individuals, and as a result of the Court's order dated May 10, 2012 requiring the production of various documents and information, the



Defendant and his defense team received voluminous amounts of materials from the aforementioned agencies, institutions, entities and individuals continuously thereafter up until and during trial. In response to the Defendant's issuance of over forty (40) subpoenas *duces tecum* to various agencies, institutions, entities and individuals to produce records and information relating to the Defendant's cases which the Defendant believed were critical to the preparation of his defense, the Defendant and counsel received voluminous amounts of materials in response to those subpoenas in late May and early June which needed to be reviewed by the Defendant, his counsel, and other members of the defense team, and which necessitated further investigation by the Defendant's investigators.

u. The Defendant and his defense team, as a result of the ongoing receipt of the aforementioned thousands of pages of discovery and other materials, discovered potential witnesses, potential additional documents, and other information which required further investigation in order to adequately prepare Defendant's cases for trial. During May 2012 alone, the Defendant and counsel received the following pre-trial discovery materials from the Commonwealth: a) May 4, 2012 – 200 pages of discovery materials and (8) discs which included hundreds of Second Mile photographs, a thumb drive containing voluminous amounts of Second Mile database camp information and a portable hard drive containing all of the materials found in 3 computers which were seized from the Defendant's residence as a result of the execution of a search warrant on June 21, 2011; b) May 9 and May 14, 2012 – over 2,000 pages of additional discovery materials plus 12 discs; May 16, 2012 – 60 pages of discovery materials; May 18, 2012 - 50 pages of discovery materials; May 24, 2012 – over 2,200

pages of discovery materials, approximately 700 pages of which were non-Grand Jury materials, and 3 discs; May 31, 2012 – 50 pages of additional discovery materials plus 3 discs; June 4, 2012 – 10 pages of additional discovery materials and 1 disc; June 8, 2012 – 1 disc; and June 15, 2012 – 4 pages and 1 disc. Making copies of all the aforementioned materials received in May alone required many hours of time-consuming photocopying at the Defendant's office since the materials were highly confidential, in part, due to the Court's order prohibiting the disclosure of the accusers' names, and could not be provided to a third party photocopying entity for purposes of copying materials to provide to other members of the defense team including the Defendant, co-counsel, the chief private investigator/paralegal and other investigators.

v. As a result of the voluminous amounts of information received by the Defendant from the Commonwealth by way of pre-trial discovery materials in March, April and May 2012 and due to the need to obtain additional discovery materials in order for Defendant's experts to effectively assist the Defendant in preparation for his trial, Defendant's counsel filed another motion for a continuance on or about May 9, 2012 which the Court denied by Order dated May 21, 2012.

w. The Commonwealth, on or about May 18, 2012, filed Amended Criminal Informations and Amended Bills of Particular which set forth dates of alleged occurrences and numbers of times of alleged illegal conduct by the Defendant different from those dates and numbers of alleged incidents set forth in the Commonwealth's original Criminal Informations and Bills of Particular which had to be reviewed by the Defendant, his counsel, and the remainder of his defense team to determine the inconsistencies between the original filings of these documents and the

amended filings on May 18, 2012. These amended filings may have led to the establishment of potential alibi defenses to some or all of the charges filed against the Defendant in these matters. The Defendant, counsel, and the remainder of his defense team needed additional time to review and investigate these new timelines, dates, and number of occurrences as set forth in the Commonwealth's Amended Criminal Informations and Bills of Particular filed on or about May 18, 2012.

x. The Defendant submits his jury consultant was a necessary and vital part of his defense team in the jury selection process due to the sensitive nature and number of charges filed against him, the number of alleged victims and the ongoing extensive media coverage locally, statewide, and nationally regarding his cases, and it was critically important for the Defendant to have the assistance of his jury consultant in the jury selection process. The Defendant submitted correspondence from his jury consultant to the Court certifying her unavailability to assist in Defendant's jury selection process in early June.

y. The Defendant was unable to utilize the professional services of Fred S. Berlin, M.D. and Ph.D., who is an Associate Professor and Director of the Sexual Behavior Consultation Unit at the Johns Hopkins Hospital Sexual Disorders Unit in Baltimore, Maryland to assist him in his cases due to the inability of Dr. Berlin to review the thousands of pages of discovery materials prior to a June trial, including information which was received in the later part of May 2012, and render meaningful professional advice to the Defendant in his preparation for trial as well as effective assistance at Defendant's trial. The Defendant represented to the Court, in his request for a continuance, that Dr. Berlin needed at least until July 2012 to properly review and

evaluate the aforementioned information and effectively assist the Defendant in the preparation of his defense.

z. Had the Court granted the Defendant's motions for a continuance, the Defendant would have been permitted to present certain psychiatric testimony concerning the characteristics of alleged victims of pedophiles as well as characteristics of a pedophile as a result of legislation which was enacted shortly after the Defendant's trial concluded, being the Act 75 which amended 42 Pa. C.S. Section 5920 specifically relating to how the concepts of transference and misattribution applied to the testimony of alleged victims and how those alleged victims might truly believe to have been abused by the Defendant when, in reality, they were not. See Commonwealth v. William Polk, Massachusetts SJC-10867.

aa. The Defendant submits the Court erred in not allowing the Defendant's expert witness, Dr. Elliot Akins, to provide rebuttal testimony to the testimony of the Commonwealth's expert on Histrionic Personality Disorder. Dr. Atkins would have testified concerning the flaws in the Commonwealth's expert's testimony.

bb. Most, if not all, of the discovery materials provided to the Defendant by the Commonwealth were highly confidential and sensitive in nature and, as a result of the Court's pre-trial order, could not be disclosed to third parties, thus precluding Defendant's counsel from engaging third party photocopying businesses to assist him in the copying process of these voluminous amounts of materials for distribution to other members of the defense team including the Defendant. Counsel's photocopying equipment malfunctioned during the evening of May 24, 2012 which further limited his ability to photocopy these materials in a timely fashion and delayed the

reproduction of these materials until the last few days of May, just days before commencement of jury selection on June 5, 2012.

cc. The Defendant's private investigator/paralegal, who had assisted the Defendant and counsel in the investigation and preparation of his defense from very early on in the Defendant's cases suffered from a medical condition which eventually required surgery and prevented him from assisting Defendant and counsel at his trial. This individual was thoroughly familiar with the various facets of the Defendant's cases, and, due to his requirement to take considerable amounts of pain medication during the later part of May and June, he could not be present at Defendant's trial to assist him and counsel at trial.

dd. The Defendant was precluded from calling Timothy Curley and Gary Schultz, whom the Defendant believed to be critical witnesses regarding to the allegations involving alleged Victim 2, due to their pending charges. Counsel for the Defendant was advised both men would invoke their Fifth Amendment privileges if called as witnesses by the Defendant at his trial.

ee. The Court's denial of the Defendant's motions for continuance prevented Defendant's counsel from having the needed time to prepare the Defendant's cases and interfered with the Defendant's constitutional right to counsel as guaranteed to him under the due process clauses of the U.S. Constitution and the Constitution of the Commonwealth of Pennsylvania. Given the trial commencement date beginning with jury selection on June 5, 2012, given the ongoing receipt of thousands of pages of discovery materials through the end of May into June 2012, which required a line-by-line review in order to determine the potential significance of these materials to the Defendant's cases,

given the need to review numerous discs, tapes, thumb drives, and a portable hard drive which contained additional thousands of pages of materials, given the ongoing receipt of literally thousands of pages of discovery materials from the Commonwealth along with receipt of voluminous amounts of materials provided to the Defendant's counsel as a result of the issuance of over forty (40) subpoena *duces tecum* by Defendant's counsel to agencies, institutions, entities and individuals, the Defendant submits the Court's denial of his motions for continuance as late as May 30, 2012 prevented the Defendant and his defense team from having the needed time to prepare his cases for trial and interfered with his constitutional right to counsel. As late as May 9, 2012, after a number of the aforementioned third party agencies, institutions, entities and individuals had filed motions to quash the subpoenas *duces tecum* issued to them by the Defendant, the Court directed many of those parties to provide Defendant's counsel with at least portions of the materials requested by the Defendant in those subpoenas. These materials were then provided to the Defendant by the aforementioned parties from beginning in mid-May and continuing through jury selection which left little, if any, time for those materials to be copied and distributed to all members of the defense team, and reviewed and assimilated into the Defendant's cases at his trial.

ff. Despite Defendant's request for a continuance as early as March 22, 2012 and continuing thereafter with motions for a continuance filed on May 9 and 25, 2012, the Court declined to grant the Defendant even one (1) continuance with the only accommodation being to the Grand Jury supervising judge by delaying the start of Defendant's trial from May 14, 2012 to June 5, 2012 to allow the Grand Jury

supervising judge to complete his review of Grand Jury materials for possible distribution to the Defendant just prior to trial.

22. The Defendant submits the Court erred in denying defense counsels' motion to withdraw their representation in the Defendant's cases on or about June 5, 2012 just prior to the commencement of jury selection on the basis that, by denying the Defendant's motions for continuance as late as May 30, 2012, the Court prevented counsel from having the needed time to adequately prepare the Defendant's cases for trial and interfered with the Defendant's constitutional right to counsel under our federal and state constitutions due to the time constraints imposed upon counsel and the Defendant by the Court and for the reasons previously set forth in Defendant's Post-Sentence Motion.

23. The Defendant submits the Court erred in refusing to give jury instructions on the failure of any of the alleged victims to make a prompt complaint to authorities based upon the Court's view of "the research" which led the Court to believe that, in the area of child sexual abuse, such an instruction was not "an accurate indicia of honesty and may be misleading". See Commonwealth v. Snoke, 525 Pa. 295, 580 A.2d 295, 297 (1990); Commonwealth v. Berkowitz, 133Pa. Super. 190, 193-94, 2 A.2d 516 (1938); Commonwealth v. Jones, 449 Pa. Super. 58, 68, 672 A.2d 1353, 1358 (1996); Commonwealth v. Lane, 521 Pa. 390, 555 A.2d 1246 (1989).

24. The Defendant submits the Court erred in its instruction to the jury concerning character testimony when the Court required the jury to weigh the testimony of the Defendant's character witnesses against all of the other evidence in the case instead of the charge requested by Defendant's counsel that "a criminal defendant must

receive a jury charge that evidence of good character (reputation) may, in and of itself, (by itself or alone) create a reasonable doubt of guilt and, thus, require a verdict of not guilty". See Commonwealth v. Neely, 522 Pa. 236, 241, 561 A.2d 1, 3 (1989).

25. Due to the Court's conflicting charge to the jury on character testimony, the Defendant submits it is now impossible to ascertain which instruction the jury relied on in reaching its verdicts.

26. The Defendant submits the combined effect of the Court's refusal to charge the jury on the failure to make a prompt complaint and the Court's mandating that the jury "weigh" the Defendant's character testimony against the other evidence in the cases severely impaired the defense as set forth by the Defendant to the jury.

27. The Defendant submits the Court erred when it denied the Defendant's motion objecting to the prosecutor commenting adversely on the fact that Defendant did not testify at trial.

28. The Defendant submits the Court erred in denying defense counsel's objection to the introduction of computer-generated drawings depicting alleged Victim 2 in the shower on Penn State University Campus standing on a platform, thus depicting the alleged Victim 2 as being considerably taller than the person whom Mike McQueary said he allegedly saw in the shower with the Defendant on February 1, 2001.

29. The Defendant submits the Court erred in refusing to permit the Defendant to present testimony to the jury from the security guard, principal, and other personnel at Central Mountain High School asserting that alleged Victim 1 had fabricated a story about an unknown adult male connected to The Second Mile



Program confronting alleged Victim 1 in a bathroom at Central Mount High School. High school personnel would have testified that alleged Victim 1 made a false allegation regarding this matter, and that videotape in the hallway outside said bathroom clearly showed that: 1) no adult males entered said bathroom during the timeframe in which alleged Victim 1 said he had been confronted by an adult male inside said bathroom, and, 2) alleged Victim 1 did not enter said bathroom during that time period. This evidence would have called into question the credibility of the entirety of the testimony of alleged Victim 1.

30. The Defendant submits the Court erred in denying Defendant's motion to dismiss due to a lack of due process and nonspecificity of the allegations contained in the Criminal Informations filed against him specifically pertaining to Counts 1 through 12 as set forth in Criminal Information No. CP-14-CR-2421-2011 dealing with the Defendant's alleged illegal contact with alleged Victims 9 and 10 and in Counts 1 through 6, 12 through 27 and 32 through 35 of Criminal Information No. CP-14-CR-2422-2011 dealing with the Defendant's alleged illegal contact with alleged Victims 1, 3, 4, 5, and 7 on the basis that the allegations presented by the Commonwealth prior to trial and the evidence presented by the Commonwealth at trial were so general and nonspecific that the Defendant could not adequately prepare a defense to those charges. Due to the failure of the Commonwealth, during the pre-trial and trial phases of his cases, to provide the Defendant with reasonable certainty and sufficient particularity as to the dates of the commission of the aforementioned alleged offenses in order for the Defendant to adequately prepare his defense, his due process rights were violated under the Sixth Amendment to the U.S. Constitution as applied to the

Commonwealth through the Fourteenth Amendment as well as under the due process clause of the Constitution of the Commonwealth of Pennsylvania.

31. The Defendant submits the Court erred in denying the Defendant's motion to compel the Commonwealth to provide Defendant with requested pre-trial discovery materials relating to all information the Commonwealth had obtained concerning the six-hundred-member jury pool selected in the Defendant's cases. Defendant's counsel received information just prior to trial the Commonwealth had initiated secret background searches on each of the six hundred (600) members of the Defendant's potential jury pool which was much broader and much more detailed than any ordinary and typical NCIC search which might have been conducted on potential jurors in a criminal prosecution and the Commonwealth used its team of investigators and other governmental employees, governmental financial resources, and governmental privilege and access to obtain such information much of which was available only to the Commonwealth through access to information bases which a private citizen including the Defendant could not access and potentially included such areas of investigation as to each potential juror's occupation, political affiliation, debts, liens, bankruptcies, judgments, and political contributions made by the prospective jurors.

32. The Defendant submits the Court erred in denying Defendant's motion for sequestration of trial jurors during Defendant's trial and jurors may have been exposed to controversial media reports which occurred during the course of the trial including, but not limited to, allegations that the Defendant had sexually abused his adopted son.

33. The Defendant submits the Court erred in denying the Defendant's objection to the Commonwealth attorney describing the Defendant as a pedophile and sexual predator in his closing remarks to the jury.

## **II. MOTION FOR RECONSIDERATION FOR MODIFICATION OF SENTENCE**

34. The Defendant submits the Court abused its discretion in sentencing the Defendant to an aggregate period of incarceration of thirty (30) to sixty (60) years by imposing consecutive mandatory sentences as opposed to concurrent sentences. The Defendant submits the Court's sentence was excessive and tantamount, as the Court stated at Defendant's sentencing, to a life sentence which the Defendant submits is in violation of his rights under the Sixth and Eighth Amendments to the U.S. Constitution as applied to the Commonwealth through the Fourteenth Amendment as well as under the due process clause of the Constitution of the Commonwealth of Pennsylvania. *Commonwealth v. Mastromarino*, 210 Pa. Super. 128, 2 A.3d 581, 2010 Pa. Super. Lexis 1491.

## **III. MOTION FOR HEARING ON COURT ORDERED OPINION OF RESTITUTION AND COURT COSTS**

35. At sentencing, the Court ordered the Defendant to pay costs of prosecution and restitution, the amount of which the Defendant currently disputes, as a result of which he requests a hearing on same.

## **IV. MOTION FOR LEAVE OF COURT TO FILE AMENDED POST-SENTENCE MOTION NUNC PRO TUNC**

36. Counsel for the Defendant continues to review issues raised during the pre-trial and trial phases of the Defendant's cases including a review of the trial transcripts in his cases.

37. A review of the aforementioned issues and materials has not been completed at the time of the filing of the Defendant's post-sentence motions.

38. The Defendant believes that, after he and his counsel complete their review of the aforementioned materials, there may be additional grounds upon which to file an amended post-sentence motion to include issues which have not been addressed in this initial filing document, as a result of which the Defendant requests an additional fourteen (14) day period to file an amended post-sentence motion.

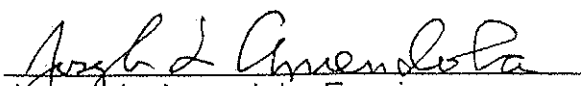
39. Counsel for the Defendant, therefore, respectfully request an additional fourteen-day period in which to file an amended post-sentence motion on behalf of the Defendant, if necessary.

#### **V. RESERVATION OF INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS**

40. The Defendant incorporates Paragraphs 1 through 39 inclusive as if more fully set forth herein.

41. Although not set forth in this Post-Sentence Motion, the Defendant specifically reserves any ineffective assistance of counsel claims he may have until the post-conviction relief action stage of his cases in the event his claims for a new trial are denied on direct appeal.

Respectfully submitted,

BY:   
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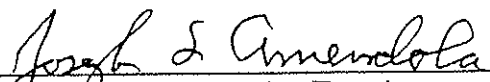
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Date: October 18, 2012

### VERIFICATION

I verify that the statements made in the foregoing are true and correct. I understand that false statements are made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Joseph L. Amendola, Esquire

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

COMMONWEALTH OF PENNSYLVANIA

vs.

GERALD A. SANDUSKY

Nos. CP-14-CR-2421-2011 &  
CP-14-CR-2422-2011

*Commonwealth Attorneys:*

*Frank Fina, Esquire  
Joseph McGettigan, Esquire  
Jonelle H. Eshbach, Esquire  
Joseph L. Amendola, Esquire  
Karl Rominger, Esquire*

*Defense Attorneys:*

**CERTIFICATE OF SERVICE**

AND NOW, this 17<sup>th</sup> day of October, 2012, I, Joseph L. Amendola, hereby certify that I have, this date, served a copy of the foregoing document, by:

**Hand Delivery**

Hon. John M. Cleland, Senior Judge  
c/o Ms. Maxine Ishler, Court Administrator  
Centre County Courthouse  
102 South Allegheny Street  
Bellefonte, Pennsylvania 16823


**Mailed U.S. Mail, First-Class**

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