

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**

John M. Cleland, S.J.

June 21, 2012

FILED FOR RECORD  
2012 JUN 21 A 9:02  
DEBRA C. JIMMEL  
PROTHONOTARY  
CENTRE COUNTY, PA

The defense has moved to dismiss counts 36, 37, 38, 39, and 40 of the Information at #CP-14-2422-2011 because the evidence produced at trial was inconsistent with the allegations contained in the Amended Bill of Particulars filed on May 18, 2012.

To prevail the defense must first prove that such an inconsistency has been established.

The Information in counts 36 through 40 alleges various acts that occurred on a Thursday or Friday evening in November 2000.

The Amended Bill of Particulars states the acts occurred between November 20 and November 27, 2000 on a Thursday or Friday evening, on a weekend when the football team had an away football game.

Specifically, the defense argues that the Commonwealth produced witness Rob Petrosky who testified about events that occurred during the fall of

2000. My recollection of his testimony was that the incident occurred before a home game, or perhaps before the team was going to Ohio State. I have not asked the court reporter to check the record because his precise testimony is of no consequence to the ruling on the defense motion.

The defense presented the testimony of Richard Anderson, an assistant football coach during the 2000 season, who testified that a football media guide stated the last football game of 2000 was a home game on November 18 against Michigan State.

The defense argues that since the only evidence in the case is that the last game of 2000 was on November 18; and since the Bill of Particulars states the events occurred between November 20 and 27 on a weekend when the football team had an away game; therefore there is a fatal inconsistency which requires that the counts be dismissed.


It is apparent, however, that an inconsistency between the Commonwealth's proof and the Bill of Particulars has not been established on the record produced at trial.

The defense made no request that judicial notice be taken that the last football game of 2000 was a home game on November 18. Therefore, whether that is accepted as a fact depends on the jury's willingness to accept as credible its source, namely the witness, Mr. Anderson, and an unidentified media guide.

Therefore, since no inconsistency has been indisputably established

Between the allegations in the Amended Information, the Amended Bill of Particulars, and the Commonwealth's evidence produced at trial, the defense motion to dismiss Counts 36-40 is denied.

By the Court:



John M. Cleland, S.J.  
Specially Presiding