

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

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CENTRE COUNTY, PA

MEMORANDUM AND ORDER

June 4, 2012

"Non-party media entities"<sup>1</sup> (referred to in this Memorandum collectively as "Media") have filed an expedited motion to intervene and to clarify the Court's May 30, 2012 Decorum Order which, in part, controls conduct of reporters in the courtroom during the trial of this case. Specifically Media seeks a clarification of paragraph 7 of the order regarding the use of electronic devices.

For reasons explained in this Memorandum, the motion to intervene will be granted, but the motion to clarify the Decorum Order will be denied. The Decorum Order, however, will be modified in response to the Media's motion.

Factual Background:

<sup>1</sup> They are ABC, Inc. (on behalf of WPVI-TV), Advance Publications, Inc. (publisher of the *Harrisburg Patriot-News*), The Associated Press, CNN, *The Daily Collegian*, Dow Jones & Company, Inc. (publisher of *The Wall Street Journal*), Dow Jones Local Media Group, Inc. (publisher of *The Pocono Record*), ESPN, NBCUniversal, Inc. (on behalf of WCAU-TV), The New York Times Co. (publisher of *The New York Times*), Philadelphia Media Network, Inc. (publisher of *The Philadelphia Inquirer*), The Scranton Times, L.P. (on behalf of *The Citizen's Voice and Standard-Speaker*), and Tribune Company (on behalf of *The Morning Call*).

On May 30, 2012 I entered a "Decorum Order Governing Jury Selection and Trial." The order establishes policies for the public and press who wish to attend the trial in this matter. Specifically regarding the media, the order details, among other things, the allocation of reserved media seating in the courtroom, the creation of a satellite courtroom reserved exclusively for media use, location of interviews, permission for reporters to carry backpacks into the courtroom, press credentialing processes, and a procedure to assign pool reporters to cover jury selection. The text of the full order is available on the court's website: [www.co.centre.pa.us/media](http://www.co.centre.pa.us/media).

Paragraph of the May 30, 2012 Decorum Order reads as follows:

7. Electronic Devices:

a. No member of the public will be permitted to possess in Courtroom 1 any cell phone, laptop computer, smart phone, or similar electronic device. Anyone possessing such a device will not be permitted to pass security and enter the Courthouse.

b. Only reporters with proper credentials, as determined by the Sheriff, will be permitted to possess or use in Courtroom 1 or the satellite courtroom any cell phone, laptop computer, smart phone, or similar electronic device. Such devices may be used during trial for electronic based communications. **However, the devices may not be used to take or transmit photographs in Courtroom 1 of the satellite courtroom; or to record or broadcast any verbatim account of the proceedings while court is in session.** (emphasis in the original).

The Decorum Order was entered after I met on May 15, 2012 with reporters representing both the print and electronic media in a committee formed by the Pennsylvania Association of Broadcasters ("PAB") and the Pennsylvania Newspaper Association ("PNA") which was created to anticipate and resolve media coverage issues that might arise during trial. I had also met previously

with technical representatives of the electronic media to understand their concerns about coordinating the parking of satellite uplink trucks, problems in running electronic cabling, and Internet connectivity issues.

These meetings were part of an on-going series of media-court meetings that began even before the preliminary hearing in this case. The original Decorum Order, which controlled the preliminary hearing arrangements,<sup>2</sup> was entered on December 6, 2011 and was drafted with considerable, and appreciated, technical assistance from the PAB and the PNA. The original order, which prohibited any form of electronic communications from the courtroom, was subsequently modified to permit it in an order dated December 12, 2011.

The essential terms of that order have remained in place and have governed each subsequent hearing and argument that I have conducted since the preliminary hearing. At the beginning of each hearing I have cautioned all reporters present in the courtroom that the Order prohibited the simultaneous, verbatim transmission of any proceedings in the courtroom, and that a violation of the prohibition could result in sanctions including loss of media credentials for the reporter and his or her media outlet. (See, for example, the Order date February 6, 2012: Paragraph 1(d)(iii): "...Such devices, however, may not be used to take or transmit photographs in the Courtroom, or to record or transmit any verbatim account of the proceeding.")

Controlling Authorities:

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<sup>2</sup> While the preliminary hearing was conducted by The Hon. Robert Scott, the Decorum Order was entered on my authority as the assigned trial judge.

The Supreme Court of Pennsylvania has promulgated Rule of Criminal Procedure 112. The Rule is titled: "Publicity, Broadcasting, and Recording of Proceeding."

Paragraph (A) of the Rule provides:

"The court or issuing authority shall:

- (1) prohibit the taking of photographs, video, or motion pictures of any judicial proceedings or in the hearing room or courtroom or its environs during the judicial proceeding; and
- (2) prohibit the transmission of communications by telephone, radio, television, or advanced communication technology from the hearing room or the courtroom or its environs during the progress of or in connection with any judicial proceeding, whether or not the court is actually in session."

Paragraph (C) of the Rule provides:

"Except as provided in paragraph (D)<sup>3</sup>, the stenographic, mechanical, or electronic recording, or the recording using any advanced communication technology, of any judicial proceedings by anyone other than the official court stenographer in a court case, for any purpose, is prohibited."

In addition, Canon 3(7) of the Code of Judicial Conduct, also adopted by the Supreme Court of Pennsylvania, reads:

"Unless otherwise provided by the Supreme Court of Pennsylvania, judges should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions...."

While the literal text of Rule 112 and Canon 3(7) might be read to prohibit electronic based communications such as tweeting and texting, I determined that the rule must be read in the context of a definition of the term "broadcasting" since the title of Rule 112 specifically uses that word, as does Canon 3. In the context of the Rule and the Canon, my interpretation of the term "broadcast"

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<sup>3</sup> Paragraph (D) is not relevant to the present discussion.

meant that it prohibited the simultaneous transmission of a verbatim account of the proceeding and, therefore, the Rule would not prohibit tweeting or texting as long as the communication did not include a verbatim account. As noted, I have cautioned reporters at each argument or hearing of this restriction.

While several other Pennsylvania trial judges have adopted similar interpretations of the Rule and Canon and permitted tweeting, micro blogging or similar electronic communication from the courtroom, the Criminal Procedural Rules Committee described this as a "misinterpretation" of the Rule. Personal Communications Devices in the Courtroom Report dated 1/10/2012, p. 24. The Committee's Report sought comment on a proposed rule that would explicitly ban such conduct.

Because my interpretation of the term "broadcast" would not include a prohibition of electronic communication *per se*, I concluded that whether to permit electronic communication, and in what form, was left to the sound discretion of the trial judge. It could reasonably be anticipated that given the definition of "broadcast" as I applied it a judge's decision about whether to permit such electronic communication could vary from trial to trial, even during a trial, and depend on a variety of factors that might impact the judge's ability to assure a fair trial could be conducted.

Media Motion:

The Media motion recites that their representatives, upon questioning the Court Communications Manager of the Administrative Office of Pennsylvania, were advised that verbatim accounts of what was said in court were prohibited by

the Decorum Order.<sup>4</sup> (para. 4). The motion then asserts, "The AOPC's interpretation is inconsistent with the text of the Order and this Court's previous orders governing pretrial proceedings...." (para. 5).<sup>5</sup>

The Media argues "the use of such (direct) quotations in the electronic based communication from the courtroom should not be restricted because:

- It would "risk diminishing the accuracy of reports on the trial." (para. 7).
- Prohibiting the use of direct quotations is impractical and difficult to implement and "(t)here is no workable way for reporters to avoid using any direct quotes in their text-based reports..." (para. 8).
- "Using direct quotes in reports from the courtroom does not prejudice any interest or in any way impede the judicial process." (para. 9).
- "(A)ny restriction on reporting direct quotations would be unconstitutional." (para. 10).

The bullet points merely summarize the more extended arguments made in support of the Media's request that I clarify paragraph 7 of the Decorum Order. The Media seeks assurance that they may "include direct quotations from the proceedings in their electronic based communications while court is in session." (wherefore clause).

Analysis:

While I was comfortable with my interpretation of Rule 112 and Canon 3(7), I clearly understood that my definition of "broadcast" might be pushing the

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<sup>4</sup> The Decorum Order specifically provides that media inquiries should be directed to that office.

<sup>5</sup> In fact, the advice given by the Communications Manager was precisely consistent with both my previous written orders and my verbal directions to reporters in open court.

boundaries of the Rule and Canon to their limits. Clearly the Criminal Rules Committee thought so.

Permitting reports from the courtroom while court is in session did not, in my view, constitute "broadcasting" as long as the reports did not contain simultaneous verbatim quotations. It is readily apparent from the allegations in the Media's motion, however, that the standard I applied in my definition is confusing to reporters, unworkable, and, therefore, likely unenforceable.

If reporters are permitted to electronically transmit reports from the courtroom while court is in session and which contain verbatim accounts of the proceedings, it cannot be considered anything other than exactly the kind of broadcasting explicitly prohibited by the Rule.

Therefore, based on the Media's own arguments, I am compelled to rescind paragraph 7 of the Decorum Order. While I will permit reporters to bring their electronic "tools of the trade" into Courtroom 1 and the satellite courtroom, they must not be in a mode that permits transmission of any form of communication to any person or device either in or out of the Courthouse or Courthouse Annex.

Accordingly, I enter the following:

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ORDER

AND NOW, June 4, 2012, in consideration of the foregoing, it is ordered as follows:

- 1. The Non-Party Media Entities Motion to Intervene is granted.
- 2. The requested relief is denied.

It is hereby further ordered that Paragraph 7 of the Decorum Order dated May 30, 2012 shall be amended to specifically provide that while credentialed reporters admitted to Courtroom 1 or the satellite courtroom may possess and use specified electronic devices as "tools of the trade" such devices shall not be set in a mode that permits transmission of any form of communication to any person or device either in or out of the Courthouse or Courthouse Annex.

By the Court:

  
John M. Cleland, S.J.  
Specially Presiding