

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-199-2016  
 :  
 SHERRI L. SCARANTINO, :  
 Defendant :

**OPINION AND ORDER**

On February 16, 2016, following a hearing, the Court accepted as knowing, intelligent and voluntary, Defendant's plea of guilty to count 1, firearms not to be carried without a license, a misdemeanor one offense.

On December 14, 2014, the Defendant was allegedly engaged in a domestic dispute with a Ty Kimble. During this dispute, she possessed a 9mm Glock handgun. Further investigation revealed that she did not have a permit to possess the firearm while outside of her home. She illegally possessed the firearm inside her vehicle.

During Defendant's guilty plea hearing, a purported relative of Ty Kimble asked to speak. The Court allowed her to do so. Among other things, she indicated that the Defendant was responsible for the murder of Mr. Kimble and should have been charged with first degree murder.

It is not disputed that at some point during the domestic dispute when the Defendant possessed the handgun it was discharged, fatally wounding Mr. Kimble.

On March 2, 2016, Defendant filed a Motion to Exclude Certain Testimony and Submission of Statements at Sentencing. Argument was held before the Court on April 4, 2016.

Defendant submits that the Court must preclude Mr. Kimble's family and friends from submitting victim impact statements and other correspondence to the Court for sentencing consideration. Furthermore, Defendant argues that the Court must preclude Mr. Kimble's family and friends from speaking at the sentencing as purported "victims."

The first responsibility of the sentencing Judge is a factfinding responsibility; the judge must be sure that he has before him "sufficient information to enable him to make a determination of the circumstances of the offense and the character of the defendant." *Commonwealth v. Doyle*, 418 A.2d 1136, 1340 (Pa. Super. 1979). The second responsibility of the Sentencing Judge is an application and explanation responsibility; the judge must apply to the information he has gathered the statutory guidelines specified by law, and then explain on the record how that application has resulted in the sentence imposed. *Commonwealth v. Doyle, Id* at 1341; *Commonwealth v. Sypin*, 491 A.3d 1371 (Pa. Super. 1985).

At sentencing, however, it is an abuse of discretion, as a denial of due process, for the sentencing court to consider irrelevant factors. *Commonwealth v. Smithton*, 631 A.2d 1053, 1056 (Pa. Super. 1993). While the Court is presumed to be capable of identifying and properly disregarding irrelevant evidence or evidence that is mostly prejudicial and inflammatory, a sentence must be vacated when "it reasonably appears from the record that the trial court relied in whole or in part upon an impermissible factor." *Commonwealth v. Bethea*, 379 A.2d 102, 106 (Pa. 1977).

While the death of Mr. Kimble was tragic, it is not this Court's responsibility

nor duty to override the decision of the District Attorney. As represented during the argument in this matter, after a purported thorough investigation, the District Attorney concluded that the shooting of Mr. Kimble was justifiable self-defense. The District Attorney further concluded, within his discretion, to charge the Defendant with solely the one count of carrying a firearm without a license.

There is no basis upon which this Court can conclude that Mr. Kimble's family members or friends were victims of the crime of which the Defendant pled guilty. The charge against the Defendant did not implicate the fatal shooting. It is not a "but for" test. There must be far more of a connection than a loosely connected concatenation of events. See *Smithton*, supra.; *Commonwealth v. Ali*, 112 A.3d 1210 (Pa. Super. 2015).

### **ORDER**

**AND NOW**, this \_\_\_ day of April 2016, following a hearing and upon consideration of Defendant's Motion to Exclude Certain Testimony and Submission of Statements at Sentencing, said Motion is **GRANTED**. The Court is constrained to preclude Ty Kimble's family and friends from submitting victim impact statements and other correspondence for sentencing consideration. Furthermore, the Court will preclude Ty Kimble's family and friends from speaking at sentencing unless it is relevant to the crime of which the Defendant pled guilty or another appropriate sentencing factor.

A copy of this Order shall be provided to a representative of Mr. Kimble's family by the District Attorney's office.

By The Court,

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Marc F. Lovecchio, Judge

cc: Eric Linhardt, Esquire (DA)  
Donald F. Martino, Esquire  
Victim/Witness Coordinator  
APO  
Gary Weber, Lycoming Reporter  
Work file