

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-199-2016
 :
 SHERRI L. SCARANTINO, : Motion Challenging Restitution
 Defendant : Assessed by Lycoming County

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 April 20, 2016, following a hearing, and after considering all of the relevant sentencing factors, the court sentenced Defendant to pay the costs of prosecution, pay a fine in the amount of \$250 and be placed on probation for a period of three years under the supervision of the Lycoming County Adult Probation office.

Subsequent to Defendant's sentencing, the District Attorney submitted and the Clerk of Courts assessed costs against Defendant in the amount of \$9,570.50. The vast majority of these costs (\$8,919.00) consisted of crime lab user fees in the amounts of \$196.00, \$2,119.00, \$368.00, \$5,210.00 and \$1,026.00.

In a motion filed on May 24, 2016, Defendant requested that the Court vacate these costs. The hearing on Defendant's Motion was held on June 27, 2016.

The relevant facts are not in dispute. On December 14, 2014, Defendant was allegedly engaged in a domestic dispute with Ty Kimble. During this dispute, she possessed a 9mm Glock handgun. At some point during the domestic dispute when Defendant possessed the handgun it was discharged, fatally wounding Mr. Kimble.

Following the shooting, Defendant returned the firearm to her home. The firearm was eventually seized at Defendant's home following the execution of a search warrant. Defendant admitted during an initial police interview that the weapon seized from her home was in fact used by her inside her vehicle.

Further investigation revealed that she did not have a permit to possess the firearm while outside of her home.

The first cost item is \$196.00 for DNA testing. Two vials of blood from Mr. Kimble were submitted to the Pennsylvania State Police Bureau of Forensic Services Wyoming Regional Laboratory for testing. The one dried blood sample was prepared for DNA analysis. The other dried blood sample was packaged for return.

The next cost item was \$2,119.00 related to serology testing. Swabs were taken from the grip, trigger and slide of the handgun. No blood was detected on the handgun although the swabs were prepared for DNA analysis.

A hair was obtained from the action of the Glock handgun and was identified as one human hair fragment. Due to the lack of a root on this hair fragment, it was deemed unsuitable for nuclear DNA analysis.

Swabs were taken from suspected blood on the passenger door below the armrests, from the outside of the rear passenger door, from the area of the head and from the area of a pool of blood. Blood was identified from some of these areas and prepared for DNA analysis.

Presumptive chemical testing indicated the presence of blood on an apparent

piece of fingernail and the piece of fingernail was prepared for DNA analysis.

As well, chemical testing indicated the presence of blood on the substrate swab from the smear on the road and the fingernail clippings from Mr. Kimble.

Finally, a buccal DNA collection from Defendant was prepared for DNA analysis.

The next cost item was for \$368.00. The Glock pistol and the magazine were examined for the presence of latent prints. No identifiable latent prints were developed.

The next item was for \$5,160.00. Various swabs from the grip, trigger and slide of the Glock handgun, the swab of blood from the passenger door below the armrests, the swab of blood from the outside of the rear passenger door, the apparent piece of fingernail from the front passenger door stitching, the swab of blood from the smear on the road and the swab of blood from the pool of blood were all tested for DNA.

The final item was for \$1,026.00 and was submitted on July 15, 2015. This cost was incurred as a result of determining the presence of gunpowder or primer residue and the functionality of the firearm.

In general, and as indicated on the state police request for forensic analysis, the purpose of the testing was as follows: "Test weapon and compare with fired bullet recovered from Sirius Radio in vehicle. Compare live ammunition with fired bullet. Check casings found in vehicle for markings from weapon. Check weapon for blood and trace. Hair found on gun to be prepped for DNA. Compare blood swabs with victim's blood sample. Coat to be sent for ballistics for distance determination. Victim's fingernail scrapings to be

tested for DNA. Recovered fingernail from vehicle to be tested for DNA. Buccal swab of suspect provided.”

All of the documents involving the collection and testing of evidence, including the fee statements, referenced the case description and/or offense type as “homicide.”

Generally speaking, the defense argues that the Commonwealth was involved in a homicide investigation and conducted numerous tests to determine if a homicide occurred. The Commonwealth concluded, following its investigation, that a homicide did not occur. Accordingly, costs should not be assessed against Defendant in connection with a crime that she did not commit. Defendant argues that these costs never would have been incurred if the case consisted solely of carrying a firearm without a license.

The Commonwealth contends, however, that all of the testing was necessary to prove that Defendant possessed the gun outside of her home. The Commonwealth contends while it had Defendant’s statement, there was no corroborating evidence and that it needed to prove that Defendant possessed and fired the weapon inside the vehicle.

“In any case where a defendant is convicted and sentenced to pay the costs of prosecution and trial, the expenses of the District Attorney in connection with such prosecution shall be considered a part of the costs of the case and be paid by the defendant.”

16 P.S. § 1403.

The Commonwealth has the burden of justifying by the preponderance of evidence the costs to be imposed on a defendant at sentencing. *Commonwealth v. Coder*, 490

Pa. 194, 415 A.2d 406, 410 (1980). While the District Attorney may recoup costs of prosecution, said costs can only be recouped to the extent that the expenses are “necessary to the prosecution.” *Id.* Otherwise stated, section 1403 provides for only “necessary” expenses. *Commonwealth v Weaver*, 76 A.3d 562, 574 (Pa. Super. 2013).

While the Court understands the Commonwealth’s position, it agrees with Defendant that had this not been a murder investigation, a vast majority of the testing would have never been done. Although the District Attorney could not proceed on Defendant’s statement alone due to the *corpus delicti* rule, only a small portion of the assessed costs relate to Defendant’s possession of the firearm.

To show that Defendant possessed a firearm without a license, the Commonwealth needed to show that: (1) Defendant carried a firearm in a vehicle or concealed on or about her person; (2) Defendant was not in her home or her fixed place of business; and (3) Defendant did not have a lawfully issued license for carrying the firearm. Pa.SSJI 15.6106.

The weapon that Defendant possessed in this case was a Glock 9mm pistol. To show that this weapon met the definition of a “firearm” the Commonwealth had to show that the barrel length was less than 15 inches or the overall length was less than 26 inches and the Glock pistol was operable or capable of being converted into an object that could fire a shot. 18 Pa.C.S. §§6102, 6106; *Commonwealth v. Gainer*, 7 A.3d 291, 298 (Pa. Super. 2010).

The court finds that the following items of costs were necessary to prove the

elements of the crime of carrying a firearm without a license:

\$368 for the examination of prints on the Glock pistol and magazine to determine if there was independent evidence of Defendant's possession of the firearm;

\$1,026 to determine distance based on gunpowder/primer residue and the firearm's functionality;

\$365 of the \$2,119 related to serology testing, consisting of the \$50 handling fee, \$79 for blood testing of the swab from the grip, trigger, and slide of the Glock; \$98 for the DNA prep of the swab from the grip, trigger and slide of the Glock; \$40 to test hair from the action of the Glock; and \$98 to prep the buccal DNA swab from Defendant; and

\$1340 of the \$5,210 related to DNA testing, consisting of the \$50 handling fee; \$645 for analysis of buccal DNA from Defendant and \$645 for DNA analysis of the Q1 swab from the Glock handgun.

The other costs were for items such as the testing of Mr. Kimble's blood and fingernails and the blood stains outside of the vehicle, which related to the homicide investigation and not Defendant's possession of the firearm inside the vehicle.

ORDER

AND NOW, this ___ day of August 2016, following a hearing argument, the Court **GRANTS** in part Defendant's Motion to Modify the Costs of Prosecution. The costs of prosecution assessed against Defendant shall include only those referenced in this Opinion. The total amount of these costs is \$3,099.

By The Court,

Marc F. Lovecchio, Judge

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