

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-6592016  
:   
vs. :   
:   
:   
CHARLES MITCHELL, :   
Defendant :

**OPINION AND ORDER**

This matter came before the court on the Commonwealth’s motion to preclude testimony at sentencing. The relevant facts follow.

On January 26, 2018, Defendant pled guilty to involuntary manslaughter, a misdemeanor of the first degree. At his guilty plea hearing, Defendant admitted he was driving a tractor trailer on Route 15 and he struck an individual who was outside of his vehicle on the side of the roadway. Defendant admitted that he had been talking on his phone at the time of the incident and that he had been driving beyond the time limits imposed by the regulations and falsifying his log books to indicate otherwise. After the court accepted Defendant’s guilty plea, defense counsel requested extra time at sentencing, because he intended to present testimony from three witnesses that a red vehicle cut off Defendant right where the roadway narrowed from two lanes to one lane, which “forced” Defendant to the side of the road. Defense counsel asserted that the proposed testimony would prove “other causes for the accident.” The Commonwealth objected to this proposed testimony and filed a motion to preclude such.

At the argument on the Commonwealth’s motion, the Commonwealth argued that the proposed testimony went to Defendant’s guilt, not sentencing. Defense counsel

argued that Defendant conceded he was fatigued and distracted but wanted to present the testimony to show the full nature and circumstances of the offense.

The court must afford counsel for both parties the opportunity to present information and argument relative to sentencing. Pa. R. Crim. P. 704(C)(1). The law clearly requires the court to consider the nature and circumstances of the offense at sentencing. *Commonwealth v. Burns*, 765 A.2d 1144, 1150 (Pa. Super. 2000) (“In imposing sentence, a sentencing court is required to consider ‘the particular circumstances of the offense and the character of the defendant.’”); *Commonwealth v. Franklin*, 446 A.2d 1313, 1318 (Pa. Super. 1982) (the court must thoroughly examine the facts and circumstances of the crime); see also 42 Pa. C.S. §9781(d)(1) (“In reviewing the record the appellate court shall have regard for: (1) The nature and circumstances of the offense and the history and characteristics of the defendant...”); 42 Pa. C.S. §9721 (“the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant.”). Even the Commonwealth’s motion and the case cited therein indicate that the court must consider the particular circumstances of the offense. Commonwealth’s Motion, ¶ 15.

Unfortunately, the law does not seem to clearly delineate what evidence is properly considered such and what constitutes contesting one’s guilt or a lack of acceptance of responsibility for the crime. It is difficult to make such a determination in a vacuum without first hearing the proposed testimony and seeing the way the testimony is presented and argued at sentencing. Therefore, the court will deny the Commonwealth’s motion to

preclude the testimony and, at a minimum, permit defense counsel to create a record. The court does not know what weight, if any, it will place on the evidence. What the defense counsel may argue as mitigating evidence of Defendant being faced with a sudden emergency of being cut off, the Commonwealth may argue is aggravating evidence that, due to his distraction and fatigue, Defendant veered off the roadway and struck a defenseless individual outside of his vehicle rather than staying on the roadway and braking and honking at the person inside the protection of his or her vehicle who allegedly caused or contributed to the accident. Furthermore, if it appears that Defendant is not really admitting his guilt of the crime, the court has the power to *sua sponte* direct the withdrawal of Defendant's guilty plea. See Pa. R. Crim. P. 591 ("At any time before the imposition of sentence, the court may, in its discretion...direct, *sua sponte*, the withdrawal of a plea of guilty or nolo contendere and the substitution of a plea of not guilty.").

### **ORDER**

**AND NOW**, this 26<sup>th</sup> day of April 2018, the court DENIES the Commonwealth's Motion to Preclude Testimony.

By The Court,

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Marc F. Lovecchio, Judge

cc: District Attorney  
George Lepley, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work file