

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: OCTOBER 12, 2012)

STATE OF RHODE ISLAND

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CA. K2-2012-0439A

V.

JKIAH THOMAS,

Alias John Doe

DECISION

Unforeseen vs. Unintended Consequences

STONE, J. The case before this Court is the sentencing of Defendant J’kiah Thomas (“Thomas”) charged with criminal violations on the following four counts in the shooting death of Brandon Anderson (“Anderson”) on December 31, 2011. Count 1—manslaughter in violation of R.I. Gen. Law § 11-23-3; Count 2—violation of R.I. Gen. Laws § 11-47-5 possession of a firearm, to wit, a .9 millimeter Smith & Wesson handgun after having previously been convicted in the State of Rhode Island of a crime of violence, to wit, Felony Assault with a Dangerous weapon. In consideration of the plea, Count 3—in violation of R.I. Gen. Laws § 11-47-11 possession of a firearm without a license; and Count 4—in violation of R.I. Gen. Laws §11-41-2 fraudulently receiving stolen goods with a value over \$500 dollars were both dismissed at the time of the plea.

When an individual decides to take possession of a gun that is not legally his and sells it to another individual on the street, the consequences of his actions are unforeseen and usually unintended. A Richland County Sheriff, Leon Lott, from Columbia, South Carolina makes this

point when he states that, "...probably 90 percent of them, most of our crimes are committed on the street, our murders and robberies, there's going to be a stolen gun in it.", and "These individuals are not going to a store to buy a gun."¹ While many defendants think no longer about their actions than it takes them to spend the quick buck they make on the sale of the stolen gun, the consequences of their actions linger much longer for the families of the victims that stolen gun kill, and in the case at hand, for the family of Brandon Anderson, a young adult whose life was cut short due to a stolen handgun.

I

Facts and Travel

On December 31, 2011 at approximately 4:07 p.m., officers from the West Warwick Police Department ("WWPD") were dispatched to 65 Industrial Lane, Apartment # 3, in the City of West Warwick to investigate a report of gun shots coming from inside the apartment. Officers entered the apartment and found a male, later identified as Brandon Anderson, lying on the bedroom floor with a gunshot wound to the head. Anderson was transported to Kent County Hospital where he was later pronounced dead.

On scene, it was learned that a twenty-two year old male identified as J'kiah Thomas ("Thomas") (D.O.B. 12-02-1989) had fled the apartment in which the shots were fired from. Thomas was detained by Providence Police later that evening and transported to WWPD where he was questioned and released. Over the next ten days, Thomas gave numerous variations of events and circumstances surrounding Anderson's death.

Several weeks later on January 10, 2012, West Warwick detectives were assisted by Providence and Cranston police in apprehending Thomas in Providence, Rhode Island for

¹Pinsker, A. Sheriff: *Most Violent Crimes Committed with Stolen Guns*. Watch Fox News, 14 March 2011. <http://www.midlandsconnect.com/news/story.aspx?list=~%5Cnews%5Clists%5Crecent&id=592758>

firearms violations. During questioning, Thomas admitted that he had “accidentally” shot Anderson on the afternoon of December 31, 2011. Thomas stated that he and Anderson were in Anderson’s bedroom at the time and they were getting ready to host a New Year’s Eve party. Thomas stated that he and Anderson possessed and shared three firearms: a .22 caliber semi-automatic pistol; a .22 caliber revolver; and a .9mm semi-automatic pistol; and that these firearms were displayed out in the open inside the bedroom. Thomas stated that he and Anderson were joking around with each other and at one point, Anderson pushed him, so he pushed him back. Thomas stated that Anderson was holding the .22 caliber semi-automatic in one hand and the .9-mm semi-automatic in the other hand. Thomas stated that he then picked up the .22 caliber revolver from the top of the bureau and raised it up toward Anderson. He stated that, as he did so, the weapon accidentally fired striking Anderson in the head. After Anderson had been shot, Thomas stated that he was nervous and removed two of the three firearms from the apartment. Thomas stated that he hid these firearms down by the riverbank prior to fleeing the scene.

A

Background of the Stolen Gun

On December 11, 2011, Robert Sullivan (“Sullivan”) returned home from a vacation with his girlfriend to discover that some of his personal belongings were missing from his apartment, including his .9–millimeter Smith and Wesson handgun. After the West Warwick police began to investigate the matter, it was discovered that Mr. Sullivan’s step-daughter had a party at her apartment; against the orders given to her by Sullivan, which, resulted in the larceny of jewelry and the Smith & Wesson gun which had been secured in a safe in a drawer at the home.

The Department of Justice ran a firearm trace on the weapon used in Anderson's death.² This trace discovered that Mr. Sullivan had purchased the gun lawfully on May 19, 1993, at the Gun & Dive Shop in Westerly, Rhode Island. Upon purchase of the gun, Mr. Sullivan kept the gun safely and securely in his possession until his weeklong vacation.

On the evening of December 2, 2011, Sullivan's step-daughter, Ashley Miller, allowed a group of men and women into her apartment for the evening, a group that included a man by the name of Nathan Dipietro ("Dipietro"). The State has proved that Dipietro is the man that stole the gun from the home of Mr. Sullivan on December 2, 2011. Dipietro was sentenced to ten years with two years to serve and eight years suspended with probation on August 23, 2012 for the larceny and sale of a stolen firearm.

After stealing the .9-millimeter gun, Dipietro, along with his brother Frank Dipietro made contact with two individuals by the name of Brandon Anderson and J'kiah Thomas who were interested in purchasing the stolen gun. The Dipietro brothers, with the fifteen year old girlfriend of one of the brothers, then drove to the apartment of Brandon Anderson and sold the gun in question to Anderson and Thomas, thus placing a stolen gun into the hands of two young men who lacked knowledge and experience in the safe use of a firearm.³ The young girlfriend later stated to police, "When Nate and Frank sold the gun to the defendant, Thomas said, 'If you can get any more guns, I'll buy them.'" Based on these events, the State of Rhode Island charged and sentenced Frank Dipietro with feloniously receiving stolen goods and property to wit a .9-mm Smith and Wesson pistol belonging to Sullivan, and Frank Dipietro was sentenced to five years at the ACI suspended with 5-years probation for his actions.

²See Appendix ATF Firearm Trace Summary and National Tracking Center Trace Request Form.

³See Appendix # 3.

On December 31, 2011, less than one month after Nathan Dipietro stole the gun from the premises of Sullivan, Anderson was dead—killed by a single gun-shot to the head by the stolen .9-mm Smith and Wesson. Brandon Anderson was killed by one of his best friends J’kiah Thomas when the two men were engaged in playful banter with a stolen gun that accidentally discharged. A gun that was lawfully purchased almost twenty years earlier by a Fire Marshall and a law abiding citizen, has become the culprit for a heinous crime all because a teenage boy stole the weapon without foreseeing or intending any consequences as a result of his criminal actions. These unfortunate events led J’kiah Thomas to plead guilty to unlawfully killing Brandon Anderson without malice aforethought. In particular, Mr. Thomas accidentally discharged a firearm, which resulted in the death of Mr. Anderson, a beloved friend.

B

Stolen Guns and the Effects Upon Society

Where did they get the gun? This is one of the most basic and usually unanswered questions when a case presents itself inside the courtroom walls. The reality of the present situation is that in almost every case, the gun was stolen; either by the defendant themselves, or by the person they purchased it from—for drugs, money, power or protection. Jim Kessler, research director of the Americans for Gun Safety Foundation states in a *USA Today* article that “a stolen gun is like gold to a criminal because it can be quickly resold without fear of it being traced.”⁴ The Foundation released findings in their latest report which included that it is twenty three times more likely that a firearm will be stolen then used by a child to commit suicide or cause accidental injury or death, and that more than eighty percent of firearm thefts are from homes and cars. Furthermore, the report found that federal prosecutors rarely bring charges for

⁴Locy, T. States with High Crime See More Guns Stolen. *USA Today*. 12 Dec. 2002.
http://usatoday30.usatoday.com/news/nation/2002-12-17-guns-usat_x.htm

possession or sale of stolen guns, proven by the fact that in 1999 and 2000 they prosecuted 708 stolen gun cases when during that time span 286,000 guns were reported stolen in the United States.⁵ *Supra* at FN 4.

According to a study by the Bureau of Alcohol, Tobacco and Firearms “(ATF)” and supported by the National Institute of Justice, 13 percent of all arrestees that were interviewed admitted to having stolen a gun. This study went on to note that almost all of the arrestees stated that they believed it was easy to find and buy a gun. Data from the ATF also indicates that traces of guns have dropped 48 percent even though gun crime has increased.⁶ This is supported by the fact that in 2002, there were 3,108 traces conducted on guns and only 1,612 traces in 2003.⁷ Furthermore, the ATF compiled a study on juveniles and stolen guns in the mid 1990’s that provided some staggering statistics. In 712 trace investigations conducted by the ATF in 1993-1994 it was discovered that 27 percent of the juveniles had been given the firearms by individuals other than parents or guardians and 22 percent had obtained firearms in burglaries or other thefts. In addition, 16 percent of the firearms were purchased on the street and 15 percent of the juveniles had taken the guns from their own homes.⁸ Bureau of Alcohol, Tobacco and Firearms, U.S Dep’t of the Treasury, *The ATF Juvenile Firearms Information 2* (1995). The study also revealed that 32 percent of firearms used by juveniles in committing violent crimes were taken in burglaries and other thefts and 25 percent were obtained by juveniles from persons other than parents or guardians and finally 21 percent were purchased on the street.⁹

⁵Locy, T., *Supra* at note 4

⁶Noyes, D. Hot Guns: ‘How Criminals Get Guns’. *Frontline. PBS Newshour* 2005. 1995-2012 WGBH Educational Foundation. <http://www.pbs.org/wgbh/pages/frontline/shows/guns/procon/guns.html>

⁷LaBella, L. How Legal Weapons Fuel Gun Crime. *Hartford Courant*. 16 July 2006. Copyright 2006, Hartford Courant. http://www.cagv.org/issues_whatwecando.htm

⁸ Juvenile Justice Reforms Initiative in the States, Program Report. p.6. The National Criminal Justice Association. Oct. 1994. U.S. Dep’t of Justice, *Guns Used in Crime 5* (July 1995). http://www.ojjdp.gov/pubs/reform/ch1_c.html

⁹ LaBella, L., *Supra* at note 7.

While a concern in the United States is our gun laws, it should be note for comparison that “in Russia, consumers can buy a long-barreled firearm only with a police permit, which requires a clean criminal sheet, a diploma from a gun safety course and a medical certificate of sanity.”¹⁰ While in the United States the laws do vary from state to state, most buyers need to clear an F.B.I. criminal background check to be approved to purchase a firearm.

According to the Bloomberg School of Public Health at John Hopkins University, approximately 500,000 guns are stolen each year from private citizens while 27,000 firearms are reported stolen from licensed gun dealers and more than 3,700 firearms are stolen from common carriers that transport guns.¹¹

In a study conducted by the National Institute of Justice in 1986 it was determined that 76 percent of gun thieves stole guns when they came across them not because they were looking to specifically steal a gun, making it what they called an “opportunity crime.” In addition the study noted that 70 percent of gun thefts were done to sell or trade the gun to someone else rather than to obtain the gun for personal use. Finally, the study noted that most gun thefts, 84 percent, occurred in private residences.¹²

¹⁰Kramer, A. Importing Russia’s Top Gun. *The New York Times*. 14 August 2012. <http://www.nytimes.com/2012/08/15/business/a-kalashnikov-factory-in-russia-survives-on-sales-to-us-gun-owners.html?pagewanted=all& r=0>

¹¹Fact Sheet: Stolen Guns. Feb. 2003. Bloomberg School of Public Health. John Hopkins University. The Center for Gun & Policy Research. <http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/>

¹²Wright, J. & Rossi, P. *Armed Criminals in America: A Survey of Incarcerated Felons*, 1983. ICPSR08357-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 1994. doi:10.3886/ICPSR08357.v1. <http://www.rkba.org/research/wright/armed-criminal.summary.html>

C

Facts of the Shooting Incident

During the afternoon hours of December 31, 2011 Brandon Anderson and J'kiah Thomas were at home in Mr. Anderson's apartment at 65 Industrial Avenue in West Warwick, Rhode Island cleaning, rapping, and preparing to host a New Year's Eve party for their friends that evening. While the two men were discussing their plans for the evening they began to horseplay around with the three guns that the two men had in their possession, including a .9-millimeter Smith & Wesson, a .22 caliber revolver and a .22 caliber semi-automatic pistol. Two of these three guns were confirmed to be stolen guns;¹³ both were obtained through larcenies at the gun owner's homes in different parts of Rhode Island. While the two men were joking around with each other Anderson pushed Thomas while holding the .22 caliber revolver in one hand and the .9 millimeter semi-automatic pistol in the other hand. Anderson pushed Thomas, who in turn pushed Anderson back, Anderson then raised both guns up, pointed them at Thomas and asked him what he was going to do about it. In reply Thomas picked up the .22 caliber semi-automatic from the top of the bureau where it was located and raised it up towards Anderson. As this was occurring, the weapon accidentally fired striking Anderson in the head. After Anderson had been shot, Thomas became nervous and removed two of the three firearms from the apartment and hid them down by the riverbank behind the apartment, then fled the scene without staying to provide Anderson with any aid and without calling for medical or emergency assistance.

The aforementioned facts were confirmed by the Medical Examiner who stated that the direction of the wound along with the suspected gun-shot residue and stippling on Anderson's

¹³On December 12, 2010 it was reported to the Gloucester Police that a Ruger 10-22 rifle, a Ruger Mark 22, a Ruger 100GP. 357 and a Tangfolgio .380 were stolen from a home on Pine Orchard Road. The guns were believed to be loaded when they were stolen. A trace report completed by the ATF confirmed that the .22 caliber semi-automatic and the .22 caliber pistol recovered by the riverbank at the crime scene were the guns stolen from the Gloucester home a year earlier.

right hand showed that this was not a self-inflicted wound and instead a likely homicide. The Medical Examiner also determined that a projectile from a firearm entered Mr. Anderson's head through his nose and then almost straight to his brain causing a terminal wound channel.

II

Sentencing

On August 8, 2012 J'kiah Thomas plead to a charge of manslaughter and possession of a firearm in a violent crime. Pleading to these charges the Defendant faced up to 30 years incarceration, with an agreed cap of 10 to 18 years to serve with the balance of the sentence suspended.

During the opportunity to provide a statement to the Court, Thomas said, "I loved Brandon like my brother; he was my best friend. This wasn't supposed to happen, but I take responsibility for my role in this situation. I want his family and the Judge to know that I left the scene because I panicked; but I did try to help. I feel a lot of emotional pain, guilt and remorse for leaving him because as a friend, you are not supposed to leave." The Defendant went on to say "I ask the Judge to consider having leniency in his sentencing. I don't believe I'm a bad person, but I have made bad decisions. I have two sons at home that I would like to raise the right way with morals and principles and make sure that they don't fall into the same cycle as I did."

The Defendant is a 22-year-old male who was born in Rhode Island and has lived here his entire life. He is the son of Yasmina Thomas and Carter Thomas and has two younger brothers aged 17 and 15. Additionally, he has three sisters on his father's biological side, which he has no relationship with. The Defendant has a good relationship with his family and has two

children aged four and six months. The Defendant grew up in a middle class home with a mother who is a Barrington School Teacher and a father who works for the Office of the Massachusetts Department of Corrections. The Defendant was unemployed at the time of his arrest and has had a few short term jobs. The Defendant has obtained his GED while incarcerated at the ACI and has been diagnosed with ADHD.

The Defendant's mother also provided a statement to the Court in regards to her son and his sentencing. She stated that the Defendant comes from a good family, that he is highly intelligent and loving, stating that he is the "rescuer in the family, he is always trying to help someone." Mrs. Thomas acknowledges that her son must serve time for his crimes; she only asks the Court to allow some of his sentence to be served on home confinement at her home. She would like to see him enroll in a service-learning program at Roger Williams University where he would be able to do something positive and constructive to honor his friend. Both the Defendant's mother, and step-father—a correctional officer and former military police officer, are deeply concerned about the depression, post-traumatic stress and detriment a prison sentence of sixteen to eighteen years will cause the Defendant. With first-hand experience of what prison does to an individual, Mr. Thomas believes a lengthy prison sentence will leave the Defendant with no hope that there is anything out there for him anymore and stated that "[r]e-living the accident is a sentence. He will not be able to forgive himself. He has to live with this every day."

The mother's view of her son seems to be at odds with the facts of this case. While the mother describes her son as intelligent, loving, and always trying to help someone, the Court finds this conclusion contrary to the Defendant's conduct. In reading through the pre-sentence report concerning the Defendant's criminal history, the Court was paused to opine, "Houston,

we've got a problem.” The Defendant’s conduct historically can be described in three words: rage, anger, and hostility. It is particularly illuminating that the victim’s mother believes in her heart that this was not an accident and that the Defendant murdered her son. Given the Defendant’s propensity for violence this Court finds it charitable that the State has only charged him with manslaughter. His best friend is dead, shot at point blank range, and the only person who can tell what happened is the Defendant who altered the crime scene, hid two of the three weapons and otherwise distanced himself from the crime. Illustrative of his anger is the Defendant’s previous case where, as a juvenile, he stabbed another man nine separate times with an ice pick because the man called the Defendant’s girlfriend a “fat bitch.”¹⁴ The Defendant’s actions resulted in such serious injuries that the State waived him out of the Family Court and charged him as an adult. He was initially charged with assault with intent to commit murder, later amended to felony assault with a dangerous weapon in exchange for the Defendant’s plea. Charging the Defendant with manslaughter is truly giving him the benefit of the doubt.

In preparation of sentence, this Court with agreement of the prosecution and defense attorney, met jointly with the victim’s mother and sister along with the Defendant’s mother and step-father. Brandon’s mother stated that in her heart she did not believe this shooting to be accidental, rather that the Defendant murdered her son. Ms. Anderson further stated that she believes the Defendant only cared about himself and how much time he must serve. She also noted that if only Defendant had called 911 her son may still be alive today. Tracy Anderson views the Defendant as a “violent person,” who transformed her son into someone she no longer

¹⁴In a previous criminal matter, State v. Thomas, CA. No. K2-08-0389A, the Defendant assaulted the victim, then proceeded to stab the victim with the ice pick in the left side of the neck, in the front of the left breast, in the side of the left breast, in the left side mid-way, in the left shoulder, below the left shoulder blade, in the left lower back two times and in the left lower stomach area.

knew. Furthermore, Ms. Anderson also stated that prior to the victim befriending the Defendant he had never gotten into trouble with the law.

This Court also had the opportunity to speak with the victim's sister, Katelyn Anderson, in regards to the case and the upcoming sentencing. Katelyn remarked that she is upset, angry and hurt that her brother is no longer here and that she along with her mother, have not accepted that "he is gone".

In preparing the pre-sentence report for the Defendants sentencing, Mr. Robert Sullivan also provided an impact statement saying that he would like to see Nathan Dipietro, the man responsible for stealing the gun from his home and putting it in the possession of Anderson and the Defendant, serve some time at the ACI for his actions and robbery of the Sullivan home.

a.

Defendant's Prior Criminal History

The 22 year old Defendant has the potential to serve 12 years as a violator on a previously imposed sentence. That sentence was imposed back in 2008 for felony assault with a dangerous weapon. Defendant, through his counsel, has agreed to a sentence of 30 years with a cap of 18 years to serve and a minimum of 10 years to serve. Through counsel, Defendant made an argument that this shooting was an accident and the Court should give great consideration to leniency, particularly in light of the view expressed by the victim's mother that "whether the Judge sentences him to prison for the rest of his life, or he is released, nothing really matters because I'm still not going to have my son."

There are several relevant considerations that the trial court may legitimately take into account in determining the appropriateness of a sentence to be imposed. The trial justice may consider the severity of the crime, the possibility of rehabilitation, the deterrence to others, and

the appropriateness of the punishment for the crime involved. State v. Upham, 439 A.2d at 913 (R.I. 1982) ; State v. Ouimette, 479 A.2d 702, 705 (R.I. 1984).

In deciding what sentence to impose, the Court looks at Defendant's prior history with the criminal justice system. The Defendant was previously convicted of felony assault with a dangerous weapon, to wit stabbing another man with an ice pick in the neck multiple times, in which he was sentenced to fifteen years with two years and six months to serve and the balance suspended with probation, restitution and 500 hours community service. Additionally, at the time of his arrest on the current charge the Defendant was not compliant with completing the conditions of his probation that he was currently on, he failed to document his community service hours and inconsistently attended substance abuse counseling.

b.

Defendant Charged with Infractions While Incarcerated

It is also interesting to note that while awaiting the trial of this case, the Defendant has been repeatedly charged with infractions during his incarceration at ACI. Such infractions are as follows:

1. Defendant has been charged with fighting another inmate—received twenty-five days of disciplinary confinement and twenty five days loss of good time;
2. During a previous incarceration Defendant was charged on May 8, 2012 with disobedience for giving false information to a correctional officer resulting in the loss of privileges for five days and five days good time;
3. On February 16, 2010 Defendant was charged an infraction for making written threats resulting in disciplinary confinement of twenty days and loss of good time of twenty days;

4. On October 7, 2009 Defendant was charged with disobedience resulting in twenty one days of disciplinary confinement and twenty one days loss of good time;
5. On July 11, 2009 the Defendant was charged with assault on an inmate that included spitting which resulted in him being confined for sixty days and loss of sixty days good time;
6. And on March 29, 2009 charged with fighting another inmate resulting in twenty one days of confinement and twenty one days loss of good time.

III

Analysis

The Defendant is charged with manslaughter in violation of R.I. Gen. Laws. § 11-23-3, which reads that “every person who shall commit manslaughter shall be imprisoned not exceeding thirty (30) years.” Manslaughter is the unlawful killing of a human being without malice aforethought, either expressed or implied. State v. Lillibridge, 454 A. 2d 237, 248 (R.I. 1982). In the State of Rhode Island manslaughter is not defined by statute, and therefore it has the same meaning as at common law. State v. Fenik, 45 R.I 309, 121 A.2 18 (1923). To find criminal liability for involuntary manslaughter under the criminal negligence theory, evidence of the defendant’s awareness of the victim’s peril and his failure to act are not sufficient to support a conviction. To find criminal liability for failing to act, there must first exist a legal duty to act, imposable by either the common law or by statutory mandate. State v. McLaughlin, 621 A.2d 170, 175 (R.I. 1993). Furthermore, criminal culpability premised on a failure to provide medical attention requires that proximate causation be established. For example, it must appear that decedent’s death was imputable to such failure, or that life might have been prolonged if proper medical attention had been provided. State v. Wheeler, 496 A.2d 1382, 1390 (R.I. 1985).

It is the position of this Court that had the Defendant taken any responsibility for his actions, called for help, and remained by the side of his best friend, Brandon Anderson may very well still be with us today. Not only did the Defendant fail to render any aid to his best friend, but rather, he took affirmative steps to hide his culpability and diminish the appearance that he had any involvement in the shooting. This includes running away from the apartment immediately after the shooting, failing to call for aid, disposing of two of the three weapons in a nearby river bank and providing the police with multiple untruthful statements about what had occurred and his involvement. These statements include giving the impression that Brandon Anderson had committed suicide or in the alternative, accidentally shot himself. After the shooting occurred, the Defendant left the apartment, went to the neighbors and proclaimed, “Oh My God! Oh My God! Brandon shot himself.”¹⁵ When the Defendant finally admitted to a set of facts that could have plausibly occurred on December 31, 2011 in the apartment of Brandon Anderson, he still refused to take responsibility, saying to police that he “did not touch the trigger nor was the hammer cocked in a firing position.” The Defendant’s recollection of the facts that occurred is eerily similar to his lack of memory in his assault with the ice pick in which he claims to have “blacked out.” His version of events is completely and totally at odds with the report produced by the West Warwick Police Department that the gun was in a safe and operable condition and test fired multiple times without malfunction. A semi-automatic weapon can only be fired when the hammer is back and released or when the triggered is pulled.

While Defendant readily acknowledges that he is sorry that he left his friend there to die, this Court finds the statement disingenuous and believes that his professed concern is a result of the conversation this Court had with the two mothers. Had the Defendant immediately called the

¹⁵ This is the first, of many versions of the shooting that the Defendant would tell in hopes of covering up what had occurred, and in attempt avoid any responsibility for his actions.

police and attempted to get help for his friend while staying by his side, the Court would be swayed to stay closer to the 10-year side of his sentence. The Defendant's conduct immediately following the shooting gives the Court deep concern. Instead of showing compassion and concern by calling for aid, the Defendant did whatever he could to cover up what had happened by running from the scene, being void of any responsibility, giving the impression that the victim committed suicide or accidentally shot himself. *Rule one: you never leave your fellow soldier, comrade or friend on the battlefield!* This charade went on for almost two weeks. Such behavior by the Defendant can only be described as selfish, egotistical, arrogant and superficial. His concern was not for his friend, but rather, to relieve himself of any responsibility for what had occurred. These factors coupled with his prior criminal activity and lack of regard for discipline and rules causes this Court to tilt away from the minimum sentence suggested by Defendant's counsel and closer to the recommended 18 years as recommended by the State.

Under the Rhode Island Superior Court sentencing benchmarks, the sentencing recommendation for voluntary manslaughter in conjunction with other significant criminal activity is 10 to 15 years. This benchmark is to be used as a guideline for the Court in determining sentence to impose while considering in conjunction with all of the mitigating and extenuating factors that are presented in this case.

IV.

Conclusion

The Court hereby imposes sentence of 30 years on Count 1 manslaughter with 16 years to serve and the balance suspended with probation, and 10 years on Count 2, possession of a firearm, to wit, a .9 millimeter Smith & Wesson handgun after having previously been convicted in the State of Rhode Island of a crime of violence, to wit, Felony Assault with a Dangerous

weapon in violation of Rhode Island General Laws to run concurrent with Count 1. In consideration of the plea, Count 3 possession of a firearm without a license and Count 4 fraudulently receiving stolen goods with a value over \$500 dollars were dismissed at the time of the plea. Additionally, the Court imposes 10 years on the violation of probation on case number K2-08-0389A to run concurrent with the herewithin sentence as was agreed upon by the parties in the plea agreement. Defendant is to receive credit for time served prior to the sentencing.

APPENDIX

1. ATF Firearm Trace Form
2. National Tracking Center Trace Request
3. Smith & Wesson Centerfire Pistols Safety Instruction & Parts Manuel

National Tracing Center Trace Request

Phone: 1-800-788-7133 Martinsburg, WV 25405 Fax: 1-800-578-7223

FOR NTC DATA ENTRY ONLY

Page 1 of 2 - Trace Request Information

NOTE: * - Required Entry Field (Must be completed for trace processing)
 ** - Required Entry With Listed Data Response (See back for codes and options)

Part I - Trace Initiation Information

1a. Date of Request	1b. Priority**	Routine <input type="checkbox"/>	Urgent (Justification required) <input type="checkbox"/>	For NTC Data Entry Only <input type="checkbox"/>
Justification				
1c. Special Instructions				

Part II - Crime Code Information

2a. NCIC Crime Code**:	2b. Project Code, Project Title, or other Initiative (If you wish to obtain a Project Code, contact the Chief, Firearms Tracing Branch, ATF National Tracing Center)**:
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Part III - ATF Agent Requesting Trace

3a. Organization Code*	3b. Phone Number: Fax Number: E-Mail:	3c. ATF Special Agent's Name (Last, first, middle)
3d. Badge Number	3e. ATF Case Number	3f. Field Office

Part IV - Other Agency Requesting Trace

4a. ORI Number*	4b. Phone Number: Fax Number: E-Mail:	4c. Other Agency Officer's Name (Last, first, middle)
4d. Badge Number	4e. Other Agency Case Number	4f. Department/Unit
4g. Mailing Address		

Part V - Firearms Information

5a. Serial Number* (From Frame or Receiver)	5b. Obliterated (If yes, complete Part IX) Yes <input type="checkbox"/> No <input type="checkbox"/>	5c. Firearms Manufacturer*
5d. Type*	5e. Caliber*	5f. Model*
5g. Country of Origin* (Importer required if other than U.S.)		
5h. Importer*		5i. Additional Markings

Part VI - Possessor Information

6a. Name (Last, First, Middle, Suffix)				6c. Alias Date of Birth		
6b. Alias (If given) (Last, First, Middle, Suffix)						
6d. Height	6e. Weight	6f. Sex	6g. Race (Check one only)	6h. Address - Route Number		
			American Indian or Alaskan Native <input type="checkbox"/>			Asian <input type="checkbox"/>
			Black or African American <input type="checkbox"/>			Hispanic <input type="checkbox"/>
			Native Hawaiian or Other Pacific Islander <input type="checkbox"/>			White <input type="checkbox"/>
6g. Other (Specify) _____ <input type="checkbox"/>						
6i. Apt. Number	6j. Street No.	6k. Direction	6l. Street Name		6m. City	
6n. County		6o. State	6p. Zip Code (Nine Digit Number)		6q. Country	
6r. Date of Birth	6s. Place of Birth		6t. Possessor's ID Number		6u. ID Type/State	

The information in this report must be validated prior to use in any criminal proceedings.

Part VII - Associate Information

7a. Name (Last, First, Middle, Suffix)

7b. Alias (If given) (Last, First, Middle, Suffix)

7c. Alias Date of Birth

7d. Height

7e. Weight

7f. Sex

7g. Race (Check one only)

American Indian or Alaskan Native Asian Black or African American Hispanic Native Hawaiian or Other Pacific Islander White Other (Specify) _____

7h. Address - Route Number

7i. Apt. Number

7j. Street No.

7k. Direction

7l. Street Name

7m. City

7n. County

7o. State

7p. Zip Code (Nine Digit Number)

7q. Country

7r. Date of Birth

7s. Place of Birth

7t. Associate's ID Number

7u. ID Type/State

Part VIII - Firearm Recovery Information

8a. Recovery Date*

8b. Street Number

8c. Direction

8d. Street Name

8e. Suffix

8f. Route Number

8g. Apt. Number

8h. City*

8i. County

8j. State*

8k. Zip Code

8l. Country

8m. Additional Information

Part IX - Obliterated Serial Number Information

9a. Serial Number Category (Check one of the following serial number categories)

Restoration Pending Serial Number Restored Partial Serial Number Unable To Restore Serial Number Attempt to Obliterate Serial Number Research/Review Multiple Serial
Number Combinations

9b. Serial Number Being Submitted _____

NOTE: On partial serial numbers enter * where character was unable to be recovered.

9c. Obliteration Method Used (Check all that apply)

AG - Worn by Age DR - Drill ES - Electric Scribe FI - Filled In GC - Grinder Course GS - Grinder Smooth GV - Grinder Concave PD - Peened PN - Punch SB - Scratch Pointed/BROA SN - Scratch Pointed/NARR OR - Other

9d. Additional Remarks, Firearms Markings, Possible Serial Number Combinations, or Other Special Instructions

Instructions For Completing ATF Form 3312.1 - National Tracing Center Trace Request

General Instructions - *Required Data Entry Fields And **Available Options/Codes Listed For Reference

The information requested on this form is needed to initiate a trace request. All fields marked with an asterisk (*) indicate required entry data fields. All areas so marked must be completed in order to effectively and expeditiously execute the trace request. Fields marked with a double asterisk (**) indicate areas of required data entry with available options and codes listed for reference (refer to lists below to determine the appropriate entry and correct nomenclature).

Required Entry Fields Include:

- Question 1b**** - (Justify Urgent Trace) See Priorities listed below
- Question 2a*, 2b**** - Include Project Code and list NCIC Code
- Question 3a*** - Office Organizational Code For Use by ATF Requestor Only
- Question 4a*** - ORI - NCIC Originating Requestor Identifier
- Question 5a*, 5c*, 5d*, 5e*, 5f*, 5g* & 5h*** - Verify Data
- Question 8a*, 8h* & 8j*** - Confirm Recovery Data to be submitted

Question 1b - Trace Priority (Entered Numbered Qualifier to Justify Urgent Trace Request)

NOTE: An urgent trace is deemed necessary when the violations are significant and circumstances warrant or require that the firearm be traced without undue delay. Examples of this are: to hold a suspect, provide probable cause, officer and public safety, etc. The following are examples of significant violations.

- | | | | |
|-------------------------|---------------------------|--------------------------|---|
| 1 - Assault | 3 - Kidnapping | 5 - Rape/Sex | 7 - Terrorist Threat |
| 2 - Bank Robbery | 4 - Murder/Suicide | 6 - Terrorist Act | 8 - Other (specify circumstance) |

Question 2a - NCIC Crime Codes (Enter one code only. For complete listing refer to NCIC Manual)

0098 Found Firearm	1301 Aggravated Assault (Family)	2899 Stolen Property	5212 Possession of Weapon
0199 Sovereignty	1311 Aggravated Assault (Police)	2999 Damage Property	5399 Public Peace
0299 Military	1399 Assault	3599 Dangerous Drugs	5499 Traffic Offense
0399 Immigration	1499 Abortion	3699 Sex Offense	5599 Health - Safekeeping
0907 Homicide (Police)	1602 Threat (Terroristic)	3799 Obscenity	5699 Civil Rights
0911 Homicide (Suicide)	1702 Material Witness (Federal)	3802 Cruelty Towards Child	5799 Invasde Privacy
0999 Homicide (Street)	2099 Arson	3803 Cruelty Towards Spouse	5899 Smuggling (Customs)
1099 Kidnapping	2199 Extortion	3999 Gambling	5999 Election Laws
1101 Rape	2299 Burglary	4099 Commercial Sex	6099 Antitrust
1199 Sexual Assault	2399 Larceny	4199 Liquor	6199 Tax Revenue
1201 Robbery (Business)	2411 Unauthorized Use of Auto	4899 Obstruction Police	6299 Conservation
1204 Robbery (Street)	2499 Stolen Vehicle	4999 Flight - Escape	7099 Crimes Against Person
1211 Bank Robbery	2599 Counterfeiting	5099 Obstruct	7199 Property Crimes
1212 Car Jacking	2699 Fraud	5199 Bribery	7299 Morals
1299 Robbery	2799 Embezzlement	5201 Altering Identification on Firearm	7399 Public Order Crimes
		5211 Explosives	8100 Escape (Juvenile)

Question 5d - Type of Firearm

- C = Combination** - A weapon designed to be fired from the shoulder which is fitted with both a rifled barrel 16" or greater in length and a smooth-bore barrel 18" or greater in length with an overall length of 26" or more.
- M = Machine Gun** - A weapon of handgun, rifle or shotgun configuration designed to automatically fire more than one shot, without manually reloading, by a single function of the trigger.
- P = Pistol** - A weapon which includes single shot and both single or double-action semiautomatic handguns fitted with a barrel(s) with an integral chamber design or having a chamber(s) permanently aligned with the barrel.
- PR = Pistol/Revolver** - A weapon which includes both single and double-action handguns having a breechloading chambered cylinder designed with a repetitive function based on rotation.
- PD = Pistol/Derringer** - A weapon which includes single barrel, super-posed (over/under) and multi-barrel configuration handguns based on a hinged or pivoting barrel small frame pistol design.
- R = Rifle** - A weapon designed to be fired from the shoulder which discharges a single projectile through one or more rifled barrels 16" or greater in length with an overall length of 26" or more.
- S = Shotgun** - A weapon designed to be fired from the shoulder which discharge a single or multiple projectiles through one or more smooth-bore barrels 18" or greater in length with an overall length of 26" or more.

Paperwork Reduction Act

This request is in accordance with the Paperwork Reduction Act of 1995. The information collection is used by Federal, State and local law enforcement officials to request that the Bureau of Alcohol, Tobacco, Firearms and Explosives trace firearms used or suspected to have been used in crimes.

The estimated average burden associated with this collection of information is 6 minutes per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

BASIC RULES OF GUN OWNERSHIP¹

NEVER point a firearm at anyone or anything you do not intend to shoot.

Before handling any firearm, understand its operation.

ALWAYS have your firearm pointed in a safe direction.

Keep your firearm unloaded when not in use.

Treat every firearm as if it were loaded.

Never pass your firearm to another person until the cylinder or action is open and you visually check that it is unloaded.

Place your finger inside the trigger guard only when you are ready to fire.

If you must carry a loaded firearm, **ALWAYS** carry it with the muzzle pointing in a safe direction. Never carry or store firearms with the hammer in the cocked position.

DO NOT allow a firearm to be used by individuals who do not understand its safe operation and the rules of safe gun handling.

BE SURE all accessories, such as holsters and grips, are compatible with the firearm and that the accessories do not interfere with safe operation.

When transporting your firearm, be sure your firearm is unloaded and that the cylinder or action is open.

Store your firearm unloaded. Safe and secure storage is one of your most important responsibilities.