

**STATE OF RHODE ISLAND
SENTENCING MEMORANDUM**

**RE: State of Rhode Island v. Daniel Biechele
K1/2003-0653A**

May 10, 2006

Before imposing the sentence on the defendant Daniel Biechele, the Court would like to speak about the nature and purpose of imposing criminal sentences, and the process of fashioning an appropriate sentence for a defendant, and the nature of the crime to which the defendant has pled guilty.

Criminal sentences are designed to relate to one or more of the sociological and penal goals of retribution, deterrence, incapacitation and rehabilitation. Retribution is one of the oldest theories of punishment. Retribution responds to the need to maintain respect for the law, suppress acts of private vengeance, and render justice and the punishment deserved for engaging in unlawful conduct. The goal of deterrence is aimed at preventing future conduct of a similar nature by impressing on others the serious consequences of breaking the law.

Incapacitation is an important consideration when it is necessary to restrain a defendant from causing future danger or damage to society at large. Rehabilitation is aimed at the prospect of returning the defendant to society as a law abiding citizen.

In Rhode Island, the Court formulates an appropriate sentence through various multidimensional factors related to these sentencing goals.

There are five factors the Court must consider in imposing a sentence. These factors are: the severity of the crime, the defendant's personal, educational, and employment background, his potential for rehabilitation, societal deterrence and the appropriateness of the punishment. The Court has carefully considered the information that it has received related to these factors.

After a review of the pre-sentence report, the Court believes that the defendant has a good employment and educational background, and appears to have been a

productive member of society. The Court finds that the defendant receives excellent grades in his college course work and comes highly recommended from his past employers. The defendant appears to be from a good family background, has a healthy relationship with his new wife, his parents, his sister, his extended family and his friends. Letters written by family members, friends, and friends of the family indicate that the defendant is well liked, demonstrates honesty and good will in his day-to-day dealings, and has a spirit of helpfulness. There is nothing in the defendant's background to suggest any previous criminal convictions or criminal tendencies. The Court understands that defendant took on a job that required dealing with pyrotechnics because of his love for and interest in music and live musical performances.

The defendant also appears to have a high potential for rehabilitation. When considering this element, the trial justice must consider a defendant's attitude toward society, his sense of remorse, and his inclination and capacity to take his place as

an honest and useful member of society. Based on defendant's dealings with the Court in this case, his willingness to accept responsibility for his actions, the letter he wrote for purposes of the pre-sentence report, and his allocution here today, the Court finds the defendant credible and believes he has the attitude and remorse consistent with rehabilitation.

The defendant has also handwritten letters of apology to each family of the victims which shall be made available to the families by the Court at a later date.

Social deterrence is also a factor the Court considered when fashioning a sentence for the defendant. It is certainly important and essential that similar dangerous pyrotechnic use is avoided in the future. The entire Rhode Island fire code legislation has been extensively revised in response to this tragedy. The Court sincerely hopes the horrific consequences of the defendant's actions and defendant's subsequent prosecution and guilty plea to a felony offense will alert others of the need to make safety the foremost priority when using

pyrotechnics or similar fire-related displays in entertainment or other public venues.

The severity of the crime and the appropriateness of the punishment are factors that deserve explanation under the circumstances of this case.

In Rhode Island, when a person causes the death of another, it could be classified as several different offenses which involve different levels of culpability. The highest culpability offense is murder in the first degree, which requires a specific intent to kill or requires engaging in a specific felony offense, the commission of which causes death. To be convicted of second degree murder, a defendant would have to have malice, which would not be the specific intent to kill, but would involve actions that demonstrated an extreme indifference for the sanctity of human life.

The manslaughter statute addresses homicides that contain less culpability than murder. The manslaughter statute includes both involuntary and voluntary manslaughter.

Voluntary manslaughter occurs when an intentional death results from a voluntary act that occurs without malice aforethought, in the heat of passion, and is the product of adequate legal provocation. Involuntary manslaughter does not involve an act which by its nature signifies malice. Involuntary manslaughter, by definition, is an unintentional homicide without malice aforethought committed either in the performance of a lawful act with criminal negligence, or in the commission of an unlawful act not amounting to a felony. If the death results from a lawful act, committed without malice or criminal negligence, no crime has been committed.

There is nothing in the record of this case to indicate the defendant ever intended to harm anyone through his unlawful use of pyrotechnic devices within the Station nightclub. However, it is clear that the defendant is not without criminal culpability, as he has admitted to committing an unlawful act which proximately caused death, meaning that death was a natural and foreseeable result of the pyrotechnic use under the

circumstances present in the Station nightclub that night. This result may not have been probable, but it was certainly not due to some intervening, superceding cause that would exonerate the defendant. Thus, the Court must fashion a sentence to account for the defendant's admitted culpability, but also must consider that the level of culpability is much less than intentional murder and many other crimes.

The defendant has pled guilty to involuntary manslaughter, by proximately causing the deaths of one hundred individuals during the commission of an unlawful act, igniting the pyrotechnic devices without the appropriate authorization or permits required by law. This is known as "misdemeanor manslaughter." This term refers to the misdemeanor nature of the unlawful act, and does not mean that the crime is a misdemeanor, as all forms of involuntary manslaughter are felonies under Rhode Island law.

There is no sentencing benchmark or guideline for involuntary manslaughter in Rhode Island. The statute allows

the Judge broad discretion of between 0 – 30 years. Because of the lower level of culpability involved with the crime of involuntary manslaughter, some states define the crime of involuntary manslaughter as a misdemeanor, not a felony, and thus punish acts of involuntary manslaughter with considerably lower prison sentences, or no prison sentence at all. According to the State's attorneys in this case, statutory guidelines range from 1 year to 30 years in other states throughout the country.

In this case, as I have indicated, there has been a plea entered by the defendant to 100 counts of misdemeanor manslaughter as a result of his act of igniting pyrotechnic devices without the required licenses and permitting process required by state law.

That crime, by definition, in Rhode Island, is a misdemeanor.

The sentencing parameters negotiated by the State of Rhode Island with the attorneys for the defendant with the

approval of this Court, exposes the defendant to a term of 15 years, no more than 10 of those years to be served by the defendant at the Adult Correctional Institution.

Therefore the Court may impose a sentence of time to be served upon the defendant from zero to ten years, with the remaining time up to 15 years to be a suspended sentence and probation.

The system of justice which we enjoy in these United States is without a doubt the most objective, fair and sensitive of any system in our human experience.

Yet, at its best, our system is still not perfect and is sometimes inadequate to mete out justice in every situation, in every case, and to every person's satisfaction.

The rule of law which we diligently apply to our criminal cases is unable often times to bring satisfaction to the society it serves resulting in mistrust, confusion and feelings of inadequacy.

Some high profile cases such as O.J. Simpson, Martha Stewart, Rodney King, and the recent case of Zacarias Moussaoui of our 9/11 tragedy come to mind as some of the more controversial criminal cases of recent times, which have resulted in a division of opinion regarding their outcomes.

After presiding over these Station fire cases for almost 2 ½ years, I fear this case may fall within that category.

Over the last two days I have heard the virtual voice of Rhode Island lamenting the loss of 100 of its very talented, hard-working and fun-loving young men and women.

I have heard and seen mothers, fathers, sisters, brothers, and sons and daughters of the dead ask why did this happen, how did it happen, and how can we ever cope with the depth and breadth of the enormity of the loss each victim represents.

All are voices of anguish, despair and, above all, love for all those wrenched from the families of their grieving loved ones.

The State of Rhode Island, through the Department of the Attorney General and the defense team representing the defendant have made presentations here this afternoon and have presented informative pre-sentence memoranda.

The State has recommended that the defendant receive the full ten years to serve per the negotiated plea, and the defense team has urged no incarceration and requests a period of community service be served by the defendant.

Despite the measured, articulate and erudite presentation by each side in this case, this Court finds that neither the State's recommendation nor the defense's recommendation are appropriate in this case.

This Court must sentence the defendant for the offense for which he has pled guilty. That offense is misdemeanor manslaughter occasioned by the defendant's conduct in not obeying the law regarding pyrotechnic uses.

The outcome of that violation was a proximate cause of the death of one hundred innocent victims.

Despite the horrific outcome of these actions, this Court must impose a sentence which reflects the nature of the crime committed by this defendant.

What truly makes this case so serious and devastating to the families of the victims and to the Rhode Island community is the sheer, almost incomprehensible amount of life lost as a result of the defendant's crime and the profound and everlasting effect it has had and will continue to have on the loved ones of the deceased.

This Court is most acutely aware that there is no sentence which could be imposed today, or sustainable by law, which could possibly reflect the value of the lives lost or in any way bring back the wonderful, unique people into the lives of those who love them – or to extinguish the pain that all experience on a daily basis.

This Court must render a sentence taking into account the devastating outcome of this crime, however, the law

requires that the sentence be predicated on the nature of the offense and not solely on the basis of the outcome of it.

In addition to the severity of the crime, this Court must consider the defendant's personal profile, his potential for rehabilitation, societal deterrence and appropriate punishment.

In this case the defendant Daniel Biechele has pled guilty to these charges. He has accepted personal responsibility for his actions. From the time of the defendant's plea in February, through his allocution to the Court today, the Court finds as a fact that the defendant has shown genuine and heartfelt remorse for his role in this crime.

Finally, it is most important to note, and admittedly hard for some to understand or distinguish, that the commission of this crime was totally devoid of any criminal intent on the part of the defendant.

Mr. Biechele, counsel, please approach the Clerk's desk.

Mr. Biechele, the greatest sentence that can be imposed upon you has been imposed upon you by yourself, that is, having to live a life time knowing that your actions were a proximate cause of the death of 100 innocent people.

This Court can only fashion a sentence according to law and not according to the results of your actions.

Any attempt by me or others to correlate any sentence imposed with the value of these lives, or any other yardstick that may be applied, would be a dishonor to the memory of the victims of this tragedy.

You and the victims' families will forever be mindful of that fateful night, and it is not within the power of this or any court to fashion a sentence reflective of the enormity of this tragedy.

Robert F. Kennedy quoted the great Greek poet Aeschylus:

“Even in our sleep, pain which cannot forget, falls drop by drop upon the heart until, in our own despair, against our will, comes wisdom through the awful grace of God.”

That may be all that anyone so touched by this loss can expect to look forward to in the future.

This offense does require a period of incarceration as a result of this criminal act.

The Court will, therefore, sentence you to _____ years to serve, _____ years suspended and place you on probation for a period of _____ years.