

**IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO**

STATE OF OHIO	:	Case No. 11C000116
Plaintiff	:	
- vs -	:	Appellate No. *
KELLY A. COX	:	
Defendant	:	JUDGE PAUL H. MITROVICH

- - - - -
TRANSCRIPT OF PROCEEDINGS

Transcript of Change of Plea Proceedings had before the Honorable Paul H. Mitrovich on the 23rd day of January, 2012 in the Court of Common Pleas, City of Chardon, County of Geauga and State of Ohio.

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APPEARANCES:

For the State of Ohio:
David Joyce, Prosecuting Attorney
Nicholas Burling, Asst. Prosecuting Atty.

For the Defendant:
Mark Marein, Esq.
Steven Bradley, Esq.

- - - - -
Anita L. Comella, RPR
Official Court Reporter
Gauga County Court of Common Pleas
100 Short Court
Chardon, Ohio 44024

Proceedings written by Mechanical Stenography
Transcription Produced via Computer

*No Eleventh District appeal filed as of date of transcription

P R O C E E D I N G S

1
2 THE COURT: You may be
3 seated.

4 Mr. Joyce.

5 MR. JOYCE: Thank you, your
6 Honor. May it please the Court. At
7 this time it is the understanding of
8 the state of Ohio that the defendant
9 will enter a plea of guilty to Count
10 One of the indictment, that being,
11 Aggravated Vehicular Homicide, a
12 violation of R.C. 2903.06(A)(1)(a) a
13 felony of the second degree. She'll
14 also enter a plea to Count Two of the
15 indictment that is Operating a Vehicle
16 While Under the Influence of Alcohol,
17 Drug of Abuse, or Combination of Them,
18 a misdemeanor of the first degree in
19 violation of R.C. 4511.19 (A)(1)(f).
20 Count Three to wit Aggravated
21 Vehicular Homicide in violation of
22 R.C. 2903.06(A)(2)(a) a felony of the
23 third degree. Count Four to wit
24 Operation in Willful or Wanton
25 Disregard of the Safety of Persons or

1 Property, a minor misdemeanor, a
2 lesser included offense of Count
3 Four -- excuse me, a minor
4 misdemeanor. And Count Five, your
5 Honor, a lesser included offense of
6 Count Five and that would be Attempted
7 Failure to Stop After an Accident in
8 violation of R.C. 2923.02(A) which
9 conduct if successful would constitute
10 a violation 4549.02(A) a felony of the
11 fourth degree. And the Sixth and
12 Seventh Count, your Honor, that she
13 would enter a plea in violation of
14 Endangering Children in violation of
15 R.C. 2919.22(C)(1) misdemeanors of the
16 first degree.

17 The state will not oppose
18 judicial release whenever the
19 defendant would be eligible and that
20 the parties agree that the misdemeanor
21 counts are all to be merged into any
22 sentence that is imposed by this
23 Court. As well as the Third Count,
24 that being the Aggravated Vehicular
25 Homicide, merges into Count One for

1 purposes of sentencing, your Honor.
2 And that the Count One is a second
3 degree felony, any time imposed by
4 this Court would be considered
5 mandatory actual time.

6 THE COURT: Are you-- is
7 the state requesting an amendment of
8 the indictment as to Count Five at
9 this time?

10 MR. JOYCE: That is
11 correct, your Honor.

12 THE COURT: Very well. Let
13 the record reflect that the Court
14 approves the amendment of the
15 indictment from a felony of the third
16 degree to felony of the fourth degree
17 which would be Attempted Failure to
18 Stop after an Accident.

19 MR. JOYCE: Thank you, your
20 Honor.

21 THE COURT: Counsel, is
22 what prosecution stated, correct?

23 MR. MAREIN: It is, Judge.
24 We have had an opportunity to spend
25 about close three hours this morning

1 discussing the proposed plea with
2 representatives of the state, my
3 partner Mr. Bradley and Kelley Cox.

4 We have had, just so that the
5 record is clear, and I want it to be,
6 that we have had ample opportunity to
7 review all the evidence. Mr. Joyce's
8 office provided us with everything
9 that we requested. There's never been
10 a question regarding that which we
11 were entitled to. And that which we
12 did not receive. So we're fully
13 satisfied that we have been able to
14 make an intelligent and informed
15 decision here.

16 This plea proposal is exactly
17 what we've discussed. My client knows
18 that you're going to ask her a bunch
19 of questions. I believe that--

20 THE COURT: Is your client
21 prepared at this time to enter a plea
22 of guilty as was discussed by
23 Mr. Joyce?

24 MR. MAREIN: Yes, Judge.

25 THE COURT: Would you

1 approach the bench along with your
2 client?

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4 [Complies]

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6 THE COURT: You are Kelly
7 A. Cox?

8 THE DEFENDANT: Yes.

9 THE COURT: Ms. Cox, do you
10 understand what these proceedings are
11 all about?

12 THE DEFENDANT: Yes.

13 THE COURT: Your attorney
14 represents that you're here today to
15 enter a plea of guilty to the charges
16 that are made in the indictment. Do
17 you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: And has anyone
20 promised you anything in exchange for
21 such a plea? Now I understand that
22 Mr. Joyce read into the record and it
23 has been filed in this case what is
24 called a plea agreement. But this
25 plea agreement is only a

1 recommendation. Do you understand
2 that?

3 THE DEFENDANT: Yes.

4 THE COURT: That the
5 attorneys are entitled to recommend to
6 the Court what they think ought to
7 occur in a case. It does not make any
8 recommendations for sentencing; that
9 may be taken up at a later time.
10 However, at this point there is a
11 recommendation that you plead guilty
12 but there are no agreements with the
13 Judge that you will get a particular
14 sentence. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, the Court
17 will explain to you in a minute that
18 the Court has allowed an amendment of
19 the indictment so the charges I will
20 explain to you in a minute are reduced
21 somewhat.

22 But you must understand that any
23 sentence that is made in the case is
24 solely the prerogative of the Judge.
25 The attorneys can recommend and there

1 will come a time when they may
2 recommend to the Court a particular
3 sentence on your behalf, but the Judge
4 is the only person that can sentence
5 you and he is not obligated by
6 anything that anyone has said or
7 promised by-- about a sentence. Do
8 you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right.

11 Now, I'm going to ask you a
12 series of questions and this process
13 is a long process and it is couched in
14 terms of determining that you fully
15 appreciate what it is that you're
16 doing because you are facing a prison
17 sentence. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. So
20 my first question to you is your age?

21 THE DEFENDANT: Forty-two.

22 THE COURT: And how far did
23 you go in school?

24 THE DEFENDANT: High school or
25 12th and then I took college.

1 THE COURT: Have you had
2 any other education?

3 THE DEFENDANT: I had a year
4 and a half of college.

5 THE COURT: And what kind
6 of work have you done over the years?

7 THE DEFENDANT: Childcare.

8 THE COURT: And are you
9 able to read and write the English
10 language?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you
13 understand what it is that you read in
14 the English language?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you had
17 any drugs or alcohol of any kind
18 before coming to court today,
19 prescribed drugs or otherwise?

20 THE DEFENDANT: No.

21 THE COURT: Nothing?

22 THE DEFENDANT: No.

23 THE COURT: Have you had
24 any times in your life in which you
25 were adjudicated an incompetent

1 person?

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3 [Discussion between defense attorney and client
4 had off the record]

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6 MR. MAREIN: Judge, may I
7 have a moment?

8 THE COURT: Yes.

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10 [Further Discussion between defense attorney
11 and client had off the record]

12 - - - - -

13 THE DEFENDANT: No.

14 THE COURT: All right.

15 Is there a clock around here?

16 Do we have a clock? Show her your
17 watch. Can you tell me what time the
18 watch says?

19 THE DEFENDANT: 11:00 o'clock.

20 THE COURT: And what's the
21 date today?

22 THE DEFENDANT: Oh boy.
23 January 19th. I don't know. I'm
24 trying to think.

25 THE COURT: What date do

1 you think it is?

2 THE DEFENDANT: You know,
3 Judge, I don't know. Maybe the 19th.
4 20th. I don't know.

5 THE COURT: Okay.
6 Are you a United States citizen?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, the
9 charges made against you are, in Count
10 One, is an Aggravated Vehicular
11 Homicide. It is a felony of the
12 second degree and it carries a
13 possible prison term of a minimum of
14 two years to a maximum term of eight
15 years. There is a mandatory sentence
16 of two years so that means that the
17 Court upon your pleading guilty must
18 impose a prison sentence. Do you
19 understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: There is also a
22 fine of up \$15,000 and your driver's
23 license will be suspended for life.
24 Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: Now, Count Two
2 is Operating a Vehicle Under the
3 Influence of Alcohol or Drugs. It is
4 a misdemeanor of the first degree and
5 it carries a possible jail sentence of
6 up to 180 days and a fine of up to
7 \$1,000. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Also carries a
10 driver's license suspension of six
11 months to three years.

12 Count Three is a charge of
13 Aggravated Vehicular Homicide and it
14 is a felony of the third degree. And
15 it carries a possible prison term of
16 one-- minimum of one year to a maximum
17 of 36 months -- or 60 months, I'm
18 sorry. Carries a maximum fine of up
19 to \$10,000 and a driver's license
20 suspension of three years to life.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Now, this is
24 the type of charge that the agreement
25 discusses and says that it merges into

1 Count One. So that although you may
2 be convicted of or plead guilty to
3 this charge, the sentencing is part
4 and parcel of Count One. Do you
5 understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, Count Four
8 is a charge of Reckless Operation. It
9 is a minor misdemeanor and carries a
10 fine of \$150-- to \$150. Do you
11 understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Count Five has
14 been amended by the state of Ohio and
15 it is now a charge of Attempted
16 Failure to Stop After the Accident and
17 it is a felony of the fourth degree.
18 A felony of the fourth degree carries
19 a possible prison sentence of a
20 minimum of six months to a maximum
21 term of 18 months and/or up to \$5,000
22 a money fine. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And your
25 driver's license will be suspended for

1 a period of three months-- or 6 months
2 to three years.

3 Count Six is a charge of
4 Endangering Children. It is a
5 misdemeanor of the first degree and
6 that carries a possible jail term of
7 up to 180 days and up to a money fine
8 of \$1,000.

9 Count Seven is a charge of
10 Endangering Children, a misdemeanor of
11 the first degree and again it carries
12 a jail sentence of up to 180 days or
13 six months and/or up to \$1,000 a money
14 fine.

15 Now, do you understand what it
16 is that you are charged with in the
17 indictment?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you
20 understand the penalties you face if
21 you enter a plea of guilty here today
22 on any or all of these charges?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, you are
25 not required to enter a plea of guilty

1 here today. You have certain rights
2 and those rights are unique to you.
3 You may have a jury trial. A trial in
4 which 12 persons will determine your
5 guilt or innocence. You're entitled
6 to have an attorney to represent you
7 throughout all the stages of the
8 proceedings. And if you cannot afford
9 one, the Court will appoint one to
10 represent you.

11 You have a right to take the
12 witness stand to testify in your own
13 behalf and you have a right to refuse
14 to testify against yourself. You have
15 a right to confront the persons who
16 accuse you and you have a right to
17 subpoena persons to testify in your
18 behalf.

19 In addition, if you were to go
20 to trial and you were convicted in
21 such a trial, you would have a right
22 to an appeal. If you enter a plea of
23 guilty here today there will not be a
24 trial and likewise there cannot be an
25 appeal. Do you understand all those

1 rights?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, do you
4 understand that you would waive, that
5 is, give up all those rights?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, regarding
8 the sentencing in this case, we're not
9 going to do that today. We'll do that
10 at other time. But you have to be
11 aware that upon being sentenced to
12 prison as part of the sentence the
13 parole board may extend any stated
14 prison sentence that the Court would
15 impose upon you, if you do violate any
16 rules of the prison system. Do you
17 understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: The parole
20 commission have the authority to
21 extend your time -- it's called bad
22 time -- to extend your time based on
23 your failure to abide by the rules and
24 regulations. Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: And upon your
2 release from prison you may be placed
3 on post-release control. The
4 post-release control is a system where
5 the prison system will have control
6 over your activities and that may last
7 for a period of a minimum three years
8 to a maximum term of five years. Do
9 you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you have any
12 questions about anything that we've
13 discussed so far?

14 THE DEFENDANT: No, sir.

15 THE COURT: Very well,
16 ma'am.

17 Counsel, do you have anything
18 that you have to bring up --

19 MR. MAREIN: Judge, the
20 only --

21 THE COURT: -- for the
22 record?

23 MR. MAREIN: -- the only
24 thing I would ask is you had inquired
25 relative to the merger of the two

1 Vehicular or Aggravated Vehicular
2 Homicide counts which would be Count
3 One and Count Three. And just, I
4 suppose, just to recapitulate what is
5 in the plea agreement, the
6 misdemeanors would merge as a matter
7 of law.

8 THE COURT: Well, the
9 terminology I take issue with but the
10 result is the same.

11 MR. MAREIN: Okay.

12 THE COURT: They would not
13 merge. They are by statute to be
14 served concurrently.

15 MR. MAREIN: That's
16 acceptable.

17 THE COURT: So it's a
18 matter of terminology.

19 MR. MAREIN: Okay. I
20 understand that.

21 THE COURT: But you end up
22 with the same place.

23 Anything else?

24 MR. MAREIN: No.

25 THE COURT: Very well.

1 What is your plea, ma'am, to
2 Count One a charge of Aggravated
3 Vehicular Homicide a felony of the
4 second degree?

5 THE DEFENDANT: Guilty.

6 THE COURT: Tell me what
7 happened on the day of the event, May
8 23rd, 2011.

9 THE DEFENDANT: I was driving
10 home from my son's baseball game. And
11 the weather was getting bad. And I
12 did not notice anything in the road
13 because it was-- the trees were coming
14 down. And I honestly thought I hit a
15 deer. And my daughter said no -- my
16 God, we-- I think we hit a deer. And
17 the window was shattered. My
18 daughters were crying so I dropped
19 them off at home. And then I came
20 back. And it was a quarter of a mile
21 from the accident.

22 THE COURT: Anything to
23 add?

24 MR. MAREIN: [Indicating
25 negatively]

1 THE COURT: And, ma'am,
2 what is your plea to Count Two
3 Operating a Vehicle Under the
4 Influence, a misdemeanor of the first
5 degree?

6 THE DEFENDANT: Guilty.

7 THE COURT: And tell me
8 what occurred there. Were you
9 drinking?

10 THE DEFENDANT: Yes, earlier in
11 the day, yes.

12 THE COURT: And how much
13 did you have to drink?

14 THE DEFENDANT: Maybe a glass
15 like this [Indicating]

16 THE COURT: But you agree
17 that you had something to drink that
18 day?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And as I recall
21 from last week the testimony indicated
22 that you said you had taken
23 prescription drugs?

24 THE DEFENDANT: I have--

25 THE COURT: Did you take

1 prescription drugs on that day?

2 THE DEFENDANT: I took a
3 Vicodin at 2:00 o'clock, yes.

4 THE COURT: Anything else
5 on Count One?

6 MR. MAREIN: [Indicating
7 negatively]

8 THE COURT: And what is
9 your plea to Count Three, Aggravated
10 Vehicular Homicide a felony of the
11 third degree?

12 THE DEFENDANT: Guilty.

13 THE COURT: And do you have
14 anything to say about this count?

15 THE DEFENDANT: I'm sorry. I
16 don't--

17 THE COURT: I understand
18 that. That's not the issue at this
19 point.

20 We have to get through this and
21 I have to ask you these questions. I
22 want the record to be clear as to what
23 you're doing and that you understand
24 what these proceedings are all about.

25 So do you agree that you by your

1 actions took another person's life?

2 THE DEFENDANT: Yes.

3 THE COURT: And what is
4 your plea to Count Four, Reckless
5 Operation?

6 THE DEFENDANT: Guilty.

7 THE COURT: Anything else
8 on Count Four?

9 MR. MAREIN: No, Judge.

10 THE COURT: And what is
11 your plea to Count Five Attempted
12 Failure to Stop After the Accident, a
13 felony of the fourth degree?

14 THE DEFENDANT: Guilty.

15 THE COURT: And did you
16 fail to stop? You already said that
17 you left the scene and went home.

18 THE DEFENDANT: Yes.

19 THE COURT: And that was
20 how far?

21 THE DEFENDANT: A quarter of a
22 mile.

23 THE COURT: And then you
24 returned?

25 THE DEFENDANT: Yes.

1 THE COURT: And how long of
2 a time had elapsed?

3 THE DEFENDANT: Minutes because
4 I just took my two daughters out of
5 the car. There was glass all over.
6 They were crying.

7 THE COURT: And what is
8 your plea to Count Six?

9 Endangering Children, a
10 misdemeanor of the first degree?

11 THE DEFENDANT: Yes. Guilty.

12 THE COURT: There were
13 children in the car?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And Count
16 Seven, what is your plea to Count
17 Seven?

18 THE DEFENDANT: Guilty.

19 THE COURT: And that's the
20 charge of Endangering Children, a
21 misdemeanor of the first degree?

22 THE DEFENDANT: Yes.

23 THE COURT: We don't have a
24 plea agreement, a written plea
25 agreement, other than what you have

1 here?

2 You have signed this agreement,
3 Ms. Cox, and you agree with it?

4 THE DEFENDANT: Yes.

5 THE COURT: Very well. The
6 Court will accept your pleas of guilty
7 on Counts One through Seven.

8 Pardon me?

9 THE DEFENDANT: [Indicating]

10 THE COURT: The Court with
11 defer sentencing in the matter, refer
12 the case for a presentence report, and
13 the Court will continue the bail. And
14 the bail is what again? Personal?

15 MR. MAREIN: Judge, I do
16 think it's a personal bond.

17 MR. JOYCE: Personal
18 recognizance bond.

19 MR. MAREIN: And she is with
20 court supervised release. She is
21 regularly reporting to Susan Doudican,
22 is that right?

23 MS. DOUDICAN: Yes, sir.

24 THE COURT: Mr. Joyce, do
25 you have anything to add to these

1 proceedings?

2 MR. JOYCE: Not at this
3 time, your Honor.

4 THE COURT: Now, Ms. Cox,
5 we had some difficulty in getting you
6 to comply with meeting with the
7 psychologist to determine your
8 competency and I don't want a repeat
9 of that. You're going to have
10 meetings with the probation department
11 and they're going to ask you questions
12 about your background.

13 And my advice to you is to be as
14 honest as you possibly can because
15 they're going to write down everything
16 you say. And what you say is going to
17 be used to determine what your
18 sentence will be.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is there
22 anything else?

23 MR. MAREIN: No.

24 THE COURT: Mr. Joyce, is
25 there anything else that we have to

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take up at this time?

MR. JOYCE: Not at this
time, your Honor.

THE COURT: Very well.
Court will stand adjourned.

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[Proceedings Adjourned]

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CERTIFICATE

I, Anita L. Comella, Registered Professional Reporter, Notary Public, and Official Court Reporter for the Geauga County Common Pleas Court, Chardon, Ohio do hereby certify that as such reporter I took in machine shorthand the proceedings had in said court in the above-mentioned cause; that my notes were transcribed by me or under my supervision into typewritten form as appear in the foregoing Transcript of Proceedings; that said transcript is a complete record of the proceedings had in the trial of said cause, and constitute a true and correct Transcript of Proceedings had therein.

Anita L. Comella, RPR
Official Court Reporter
Court of Common Pleas
Gauga County, Ohio

Date: _____