

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

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

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TRANSCRIPT OF PROCEEDINGS

Transcript of Sentencing Proceedings had before the Honorable Paul H. Mitrovich on the 25th day of February, 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 P. Joyce, Prosecuting Attorney
Nicholas A. Burling, Asst. Pros. Atty.

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

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100 Short Court
Chardon, Ohio 44024

Proceedings written by Mechanical Stenography
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*No Eleventh District appeal filed as of date of transcription

PROCEEDINGS

1
2 THE COURT: Good morning,
3 ladies and gentlemen.

4 We're here today for sentencing
5 in the case of *State of Ohio v. Kelly*
6 *Cox*, Case Number 11 C 116.

7 Gentlemen, are you ready to
8 proceed?

9 MR. JOYCE: Yes, your
10 Honor.

11 THE COURT: Does the state
12 have a statement?

13 MR. JOYCE: At this time,
14 your Honor, some members of the Henry
15 family would like to speak.

16 THE COURT: I want the
17 state's statement and recommendation
18 first.

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

21 At this time I'd ask-- first,
22 may it please the Court, I'd like to
23 publicly thank the Henry family,
24 especially Linda, Kim, and Adam for
25 the class and dignity that they have

1 shown throughout these proceedings.
2 As tragic as they are, they have been
3 very decent about all that's gone on
4 here.

5 Secondly, your Honor, on May
6 23rd of last year the fabric of two
7 families was torn. Unfortunately in
8 one instance irreparably and another
9 one is here before you today for
10 sentencing.

11 Ms. Cox is obviously as the
12 Court is well aware from competency
13 exams and the presentence
14 investigation has had problems in her
15 past. But with those problems she's
16 made choices, and unfortunately most
17 of those were poor. And on that day,
18 she was the one who chose to in fact
19 take a Vicodin and put the bottle to
20 her head and pull the trigger and the
21 unintended victim of this was Judge
22 Charles E. Henry.

23 There is nothing this Court can
24 do to bring Judge Henry back. There
25 is nothing that can bring him back or

1 bring anything to the Henry family at
2 this point in the sentencing of Ms.
3 Cox.

4 I've known you for many years,
5 Judge, and I know you will do the
6 right thing. And we ask this Court to
7 fashion a sentence commensurate with
8 her activity. Thank you.

9 On behalf of the Henry family,
10 your Honor, I would ask that Polly
11 Whiting speak first.

12 MS. WHITING: Good morning.

13 THE COURT: Good morning.

14 MS. WHITING: My name is
15 Polly Henry Whiting.

16 [Pause] Not a good start. I'm
17 sorry, your Honor.

18 I'm Judge Chip Henry's younger
19 sister. I'm the youngest of six kids
20 and my brothers and my sister are my
21 best friends.

22 I'm a high school reading
23 teacher in Naples, Florida but I flew
24 in to Cleveland yesterday in order to
25 be here with my family to ask you for

1 the maximum prison sentence for
2 Mrs. Cox because it's clear to me,
3 your Honor, even after pleading
4 guilty, she still has not accepted
5 responsibility for her actions.

6 Right now I and the rest of the
7 family are incensed with Mrs. Cox's
8 lack of honesty even after she pled
9 guilty. When a plea agreement was
10 established when Ms. Cox approached
11 your bench, your Honor, you asked Ms.
12 Cox how much she had to drink prior to
13 the accident. And after taking an
14 oath to tell the truth in this court,
15 she lied to you. She told you that
16 she drank only one glass.

17 Your Honor, the analysis of her
18 blood showed its alcohol content to be
19 .28 percent, more than three times the
20 legal limit allowed to drivers. She
21 knows this fact and yet she persists
22 in claiming that she drank only one
23 glass.

24 Your Honor, you asked Ms. Cox
25 what happened when she hit my brother

1 and kept driving, leaving him to die.
2 For all she knew he could have been
3 alive and saveable, and yet she
4 answered your question with another
5 blatant lie. She said that she
6 thought she hit a deer, before that
7 she thought she hit a raccoon, and
8 before that a mailbox.

9 The truth here is that had there
10 been a trial there would have been
11 testimony about comments made in her
12 car that she had in fact hit a person.

13 In planning for this statement
14 today I asked myself essentially what
15 is the purpose for penalizing a
16 criminal, and I learned that there's
17 four basic principles. The first is
18 for retribution, your Honor. My
19 family does not have any desire for
20 retribution or revenge. Nothing can
21 bring Chip back. Nothing can bring
22 him back to those of us who loved him
23 in life and will miss him until we
24 die.

25 Another principle is to take the

1 criminal out of society and place her
2 in jail or prison where she's not able
3 to hurt anybody else. Ms. Cox is yet
4 to admit all of her crimes, and
5 because of this she is just as
6 dangerous, if not more, than that
7 night, May 23rd 2011.

8 The third principle is to deter
9 the criminal from repeating the
10 offense. Ms. Cox, and her family for
11 that matter, clearly need to feel the
12 entire weight of this punishment for
13 crimes.

14 And finally, and maybe most
15 hopeful for the Cox family, criminal
16 punishment can be an opportunity for
17 rehabilitation. If Ms. Cox is given
18 the maximum sentence, nine and-a-half
19 years in prison, she will be released
20 from prison when she is, I believe,
21 52, one year younger than my brother
22 was when he was killed.

23 My brother is gone forever. In
24 an attempt at objectivity Ms. Cox has
25 her whole life ahead of her. She is

1 the one who has some hope here. She
2 has a hope for a new life. Her
3 mother, her father, her spouse, her
4 children, her siblings, they all can
5 have a little bit of hope that Ms. Cox
6 can rehabilitate herself with the help
7 of others. I've personally witnessed
8 such transformations over and over
9 again.

10 But, your Honor, unless Ms. Cox
11 admits all her wrong which I don't
12 think she ever will do unless she
13 experiences the full weight the
14 punishment, a maximum sentence, there
15 is no hope for her. She will be as
16 lost to her loved ones as my brother
17 is to us.

18 Thank you for your attention.

19 THE COURT: Thank you.

20 MR. JOYCE: Your Honor,
21 next will be his brother, Jim Henry.

22 MR. JIM HENRY: Good morning,
23 your Honor.

24 THE COURT: Good morning.

25 MR. JIM HENRY: My name is Jim

1 Henry. I'm Chip's older brother.

2 My family knows that no one will
3 leave the courtroom happy today. On
4 the early evening that this happened
5 Chip and I were scheduled to pick our
6 Mother up at the airport. The flight
7 was delayed. I went out for a run and
8 Chip went for a bike ride. My road
9 was safe and Chip's was not.

10 It should have been a joyous
11 occasion at the airport that night.
12 Instead what occurred, I sat my Mom
13 down and told her of the death of her
14 son. It was devastating to see my
15 Mom's pain and then to witness Linda,
16 Kim and Adam's world turn upside down.

17 I still agonize wondering to
18 this day about the time that Chip had
19 to brace for the lethal impact. I
20 only pray that it was brief or not at
21 all. And I cringe thinking about him
22 on the side of the road alone and
23 suffering. I can only hope that he
24 didn't see the car that hit him speed
25 away without even the glow of a

1 brake-light in sight.

2 Your Honor, Ms. Cox has never
3 taken responsibility for her actions.
4 Driving with a blood alcohol content
5 at over three times the legal limit
6 Ms. Cox had to have known that she
7 shouldn't have been driving with her
8 children that evening. Yet together
9 with her lawyers she has exhausted
10 every option to block the release of
11 her blood alcohol content, again to
12 avoid taking responsibility, and
13 contend this was an unfortunate
14 incident. Failing, and therefore
15 realizing that she has no case, Ms.
16 Cox has pled guilty and requests
17 leniency.

18 Your Honor, our family seeks a
19 maximum penalty. Chip has a wide
20 extensive family. This includes two
21 brothers, Dan and Pat, and their
22 families who couldn't be here today,
23 and together with a large network of
24 friends whom in so many cases are just
25 like family, we're placing our trust

1 with you in this decision. Thank you.

2 THE COURT: Thank you.

3 MR. JOYCE: Next, your
4 Honor, the state would call Kim Henry,
5 Judge Henry's daughter.

6 MS. KIM HENRY: Hi, your Honor.
7 My name Kim Henry. I'm the daughter
8 of Chip Henry.

9 I would like start off by saying
10 how disappointed I am in Mrs. Cox's
11 actions not only on the night of May
12 23rd but every day since.

13 On May 23rd Mrs. Cox killed my
14 Dad and since then she's been
15 insulting my family by lying to them
16 and at one point she even came in and
17 lied to their face.

18 It's obvious to me that she's
19 only thought about herself this entire
20 nine months. She's not thought about
21 my family or their feelings at all.
22 Mrs. Cox has also made this healing
23 process as difficult as possible.
24 She's left us with a lot of unanswered
25 questions.

1 To me the most important
2 question is why did she leave my Dad
3 on the side of the road to die? What
4 type of person doesn't even call 911?

5 I want Mrs. Cox to know that my
6 Mom was there that night. She went
7 looking for my Dad when he didn't come
8 home from his bike ride. She knew
9 exactly where to look for him, since
10 he took the same bike ride almost
11 every night.

12 My parents have been married for
13 28 years. Anybody who knew them knew
14 that they had an amazing marriage.
15 They have the type of marriage that
16 you don't see these days. My parents
17 still had many years left together.
18 They had big plans. Mrs. Cox stoled
19 those years from them. She stoled
20 their dreams of their adventure-filled
21 retirement.

22 Mrs. Cox didn't just steal my
23 Dad from us but she also stoled part
24 of our happiness. And it sounds kind
25 of cheesy. It's also really hard to

1 explain. I think it's an emotion that
2 you can't really understand unless
3 you've lost somebody who is extremely
4 close to you.

5 In November my brother told me
6 that he was going to propose to his
7 girlfriend, Ashley. I was so happy
8 that they were going to get married,
9 but I ended up crying myself to sleep
10 that night for hours. This was what
11 my Dad lived for. He had been waiting
12 his whole life to be a part of these
13 moments with his children, our
14 engagements, our marriages, our kids.
15 He wanted to be there for every single
16 one.

17 Mrs. Cox didn't just take my Dad
18 away from us but more importantly she
19 took us away from him. She took these
20 moments from him and that's just
21 really really hard for me to deal
22 with. Knowing that he won't ever be
23 there when we need him the most and he
24 won't be there to walk me down the
25 aisle or hold his grandchildren.

1 I ask today that Mrs. Cox
2 receive the maximum sentence. When
3 she's released she'll still be younger
4 than my Dad was when she killed him.
5 She'll still be able to live these
6 happy moments with her children that
7 she took from us.

8 I hope that she gets the help
9 she needs while she's in jail. My Dad
10 would hope the same. He would hope
11 that she turns out to be the type of
12 person that her children actually want
13 to be around and that her children
14 want to share these moments that we
15 can no longer have.

16 THE COURT: Thank you.

17 MR. JOYCE: Lastly will be
18 his son, Adam Henry, your Honor.

19 MR. ADAM HENRY: Your Honor, my
20 name is Adam Henry. Chip was my Dad.

21 I'm here to tell you about the
22 affect that my father's death has had
23 on me. My father's death and the
24 series of events that have followed
25 have been awful. My world has turned

1 upside down.

2 This happened on May 23rd when I
3 received a call from my Mom telling me
4 I needed to get on a plane and fly
5 home because my Dad was dead and I
6 wasn't going to get a chance to say
7 goodbye. I can't tell you how awful
8 that trip was. That trip home I felt
9 so alone. I was sitting in an airport
10 with tears in my eyes surrounded by
11 thousands of people and I just have
12 never felt so alone.

13 And this pain and this
14 loneliness continues. And it
15 continues when I have a question about
16 refinancing my mortgage and I can't
17 call my Dad for help. And it
18 continues as I plan for my wedding and
19 he's not here to see how happy I am.
20 It continues as this woman, Kelly Cox,
21 repeatedly denies responsibility for
22 her actions. And it continues every
23 time I hear my father's death labeled
24 an accident.

25 In my mind this was completely

1 avoidable. His death was a direct
2 result of one person's bad choices and
3 it is not an accident.

4 My father was an amazing man and
5 inspiration to many. He was inspiring
6 as a husband, as a father, as a
7 brother, a son, a friend, a public
8 servant, and he always led by example.

9 The example of how to live a
10 successful, fulfilling life will be
11 with me forever. Unfortunately my Dad
12 will not.

13 I am here today to plead with
14 Kelly to take responsibility for her
15 actions. One of the many things my
16 father-- one of the many things my
17 father taught me was the importance of
18 holding yourself accountable. He
19 taught me that taking responsibility
20 and holding yourself accountable was a
21 part of growing up. It was a part of
22 apologizing for your mistakes and it
23 is a part of healing.

24 I would like to tell Kelly that
25 she has taken more away from my family

1 than she will ever know. She left my
2 father on the side of the road to die
3 and for that there is no excuse. I
4 would like her to stop making excuses.

5 A part of the judicial process
6 was to write a letter to the Court, an
7 impact letter, to explain the effect
8 my father's death had on me. I
9 couldn't write a letter to the Court;
10 instead I wrote a letter to my Dad and
11 I'd like to read that letter today.

12 I started off: Dear Dad, I miss
13 you and I can't believe you're gone.
14 I miss when we were able to talk every
15 day and I'm mad at myself for not
16 asking you anything important. I
17 never asked you how you proposed to
18 Mom. I know you must have been
19 nervous. But I don't know.

20 I don't know how that you knew
21 she was the one. I never asked you
22 how you became a judge. I know that
23 path that you took and all the hard
24 work that you put in, but how did you
25 know it was your calling? I never

1 asked you if you were proud of me. I
2 know you love me but how am I doing in
3 your eyes? To me that's really what's
4 important; that's what matters. I
5 don't think I ever asked you any of
6 these things and now I'll never have
7 the chance.

8 A lot has changed since you were
9 taken from us eight months ago. I am
10 living at home now with Mom trying to
11 figure out how to start picking up the
12 pieces.

13 I could never have survived this
14 without being close to Mom, Kim and
15 Grandma and Ashley and the rest of our
16 family. By the way I'm engaged now.
17 You met Ashley while you were -- you
18 and Mom were visiting in Denver.

19 Ashley and I often talk about
20 the short time we all got to spend
21 together on that trip. I'm so glad
22 you were able to meet her and I will
23 cherish those memories forever.

24 Kim started a new job in the
25 senate. She has always-- she has been

1 there a week but I can tell she really
2 likes it. Because you are not around
3 to help I am now going through her new
4 employee benefit information to help
5 her start saving for retirement and
6 pick the right insurance coverage. I
7 remember when you helped me do that
8 same thing.

9 Her and Andrew are still very
10 close. They even started looking for
11 a house together. Don't worry. I'm
12 keeping an eye on them for you but it
13 is easy to see that they are perfect
14 for each other. And they are both so
15 happy together. It's just hard to
16 think about you not being around to
17 walk her down the aisle.

18 Mom is doing really okay. I
19 know she is absolutely crushed without
20 you but she is still there for all of
21 us who depend on her. We have all
22 gone through a lot. But at the end of
23 the day she still has to close her
24 eyes and fall asleep without you next
25 to her. And that tears me apart to

1 think about. It really is the hardest
2 part for me.

3 I try, but it is hard to know
4 that there is nothing I can do to help
5 her because there is nothing I can do
6 to bring you back. All the plans you
7 had together, the trips you would
8 take, the grandchildren you would
9 spoil, all that has changed.

10 I know she has-- I know she is
11 surrounded by friends and family who
12 all want to help, but nothing can ever
13 replace you.

14 I keep hearing there is a reason
15 this happened. People keep trying to
16 justify this horrible situation with a
17 master plan of some kind, but I just
18 don't see it. And the problem is the
19 only person who would be able to help
20 me figure it out is you and you're
21 gone.

22 And that brings me to Kelly Cox.
23 Kelly killed you because of the bad
24 choices she made in her life. She was
25 drunk when she hit you and I don't

1 know how to deal with that. This was
2 not an accident in any sense that I
3 can justify. This was just plain
4 unnecessary. So how am I supposed to
5 handle that fact? You should still
6 be here.

7 I don't know what the
8 appropriate punishment is for her for
9 her actions but I have come to grips
10 with the fact that nothing will bring
11 you back. I just wish you were still
12 here.

13 THE COURT: Thank you.
14 Counsel?

15 MR. JOYCE: Nothing more a
16 behalf of the state, your Honor.

17 THE COURT: Does the state
18 have a recommendation at this time?

19 MR. JOYCE: We would ask
20 the Court to fashion a sentence that's
21 commensurate with her activities and
22 with the family's wishes, your Honor.

23 THE COURT: Approach the
24 bench.

25 You can back off. You don't

1 have to --

2 MR. MAREIN: Judge, I'll be
3 brief.

4 THE COURT: Mrs. Cox, are
5 you all right? You can sit down if
6 you wish but you'll have to sit in
7 front of the bench.

8 MR. MAREIN: She'll be all
9 right.

10 Judge, we have had the
11 opportunity to review that presentence
12 report. We've read that report as
13 have you in conjunction with a rather
14 extensive, lengthy psychological from
15 the Summit County Court Diagnostic
16 Clinic.

17 I don't think that I am putting
18 myself out there when I say that this
19 is an incredibly troubled woman that
20 stands to my left. I'm not here to
21 excuse her conduct. There is no
22 excuse. All that we have just heard
23 from Charles Henry's family, how do
24 you respond to that? He was a good
25 man. He didn't deserve his fate. We

1 can't bring him back. And all that
2 has been described as a loss in the
3 future, that's all true as well.

4 This woman has had horrific life
5 experiences. I am not gon'na spread
6 on the record -- you know what I'm
7 talking about, what happened to her
8 years ago. There is not a person in
9 this courtroom that would not be
10 affected significantly. There is no
11 wonder this woman's been
12 self-medicating herself for years.
13 Why she got behind the wheel of that
14 motor vehicle, I don't know.

15 Ohio law gives you a plethora of
16 alternative sentences. An Aggravated
17 Vehicular Homicide by very definition
18 predicated on a violation of 4511.19,
19 the DUI statute, requires that
20 somebody be drunk and somebody die on
21 account of somebody's operation of a
22 motor vehicle.

23 And the Ohio legislature has
24 said we start at two years and the
25 court has upwards to nine -- or to

1 eight years to impose for a violation.
2 So how do we go from two to eight?
3 Well, I would think that you have to
4 look at who it is that's standing
5 before you. Judge, she's pathetic. I
6 mean, truly pathetic. These are not
7 crocodile tears.

8 And I read those 70-plus
9 letters, and I know those letters came
10 from the heart. And I've heard not
11 only in the letters but I've heard
12 today that she cannot and will not and
13 refuses to accept responsibility. She
14 accepts responsibility. She's gon'na
15 talk to you. She's scared. She
16 cries. She completely destroyed her
17 life. She took away something that
18 can never be replaced in the Henrys'
19 life.

20 She has no record of a felony
21 nature. She has a DUI conviction
22 about 17 years ago. She's a Mom. She
23 too has a loving family that sits back
24 there that's crushed.

25 And at the end of the day, she's

1 gon'na have a long time-- whatever it
2 is -- I mean, look at her. She's
3 going to go to Marysville. Do you
4 think this is going to be easy time?
5 So I suppose somebody could respond
6 and say: Well, it shouldn't be.
7 She's gotta pay. She's paying. And
8 she'll continue to pay.

9 But beyond the fact that this
10 was a sitting Common Pleas Court
11 Judge, there is not an aggravating
12 circumstance in her background that
13 would warrant anything beyond a two
14 year minimum sentence.

15 Now, at the end of the day
16 you're the one that's gon'na impose
17 the sentence and Steve Bradley and I
18 are gon'na leave and the families are
19 gon'na walk out of here. Nothing can
20 change what happened and Kelly's
21 gon'na have this on her mind forever
22 because it's now part of who she is.

23 She does have some things to say
24 to you. I would ask that you give her
25 that opportunity after you hear from a

1 couple of members of her family. I
2 think her husband, Gary, wants to say
3 something. And if it would please the
4 Court may he have that opportunity?

5 THE COURT: Yes.

6 MR. MAREIN: Gary.

7 MR. GARY COX: My name is Gary
8 Cox. I'm Kelly's husband.

9 On behalf of our entire family I
10 wish to express our deepest sympathies
11 and prayers for the entire Henry
12 family. We can only imagine how
13 difficult these past days and months
14 have been for you. We wish we could
15 take back the events of May 23rd 2011
16 but we cannot. We can only hope and
17 pray for healing and grace and
18 blessing of your family.

19 Kelly is a good person who has
20 made a tragic mistake. And we hope
21 this time of confinement will bring
22 her greater peace and healing.

23 MR. MAREIN: Cathy Hanna.
24 This is her sister.

25 MRS. HANNA: I'm Cathleen

1 Hanna, sister of Kelly.

2 I want to say on behalf of my
3 mother, my siblings and the rest of
4 the entire family we would like to
5 express our utmost sympathy to the
6 loved ones of Judge Henry. We know
7 the loss of your son, your husband,
8 your brother, and your father is
9 devastating to loose him in a horrific
10 senseless accident. It must be truly
11 unbearable. Please accept our
12 sincerest apologize. My family prays
13 daily that that God helps each of
14 you -- sorry -- in this most tragic
15 time and challenging time.

16 Thank you.

17 MR. MAREIN: Judge, I would
18 ask for something a little unusual. I
19 know that Kelly must address you but I
20 think as a matter of closure I'd ask
21 that she be permitted to turn around
22 and look at the Henry family and talk
23 to them.

24 THE COURT: Kelly Cox you
25 may address the Court and state

1 whatever it is you wish the Court to
2 consider in your sentence.

3 MR. MAREIN: Kelly talk to
4 him.

5 Go ahead.

6 THE DEFENDANT: I am so sorry
7 for what I've taken from every one of
8 you. And it was -- words can't relate
9 to you what I have done.

10 I know how it feels to lose
11 somebody in a drop-- like seconds
12 they're gone and you never have that
13 time to say goodbye. And I know how
14 desperate and how sad that feels. And
15 I am so sorry. And I pray for you, my
16 children pray for you. I-- there is
17 nothing. Nothing more than I wish I
18 could just go back to that day to--
19 Yes. Was I drinking? Yes, I was.
20 And I would have never, ever,
21 maliciously ever have hurt anybody and
22 ever let anybody stay on the side of
23 the road. Never. Ever. Never.

24 THE COURT: Is there
25 anything else you want to say?

1 MR. MAREIN: We're prepared
2 to proceed, Judge.

3 THE COURT: Well, it should
4 be no surprise to anyone that a motor
5 vehicle is a lethal instrument and we
6 should all be reminded of that when we
7 operate our vehicles on the road. On
8 any given day someone driving a motor
9 vehicle because of carelessness or
10 inattention can cause injury or death
11 to another person using the highway.

12 The law in those cases, however,
13 generally takes the attitude that
14 there was no intent to injure and so
15 we put a label on this as negligence
16 and we do not attach criminal
17 responsibility.

18 However, where someone uses
19 alcohol to excess and disregards the
20 law and operates a motor vehicle that
21 causes the death of another human
22 being, we label such action as
23 irresponsible and egregious. For such
24 irresponsibility the law prescribes
25 severe penalties and punishments.

1 This is because a person who wants to
2 operate a motor vehicle has the
3 opportunity to consider the extent of
4 his actions before he ingests alcohol
5 and decides to drive.

6 So, therefore, we take the view
7 in the law that you assume the risks
8 of driving while intoxicated and
9 therefore all of the events that occur
10 after you make that decision are your
11 responsibility.

12 Kelly Cox, your drinking and use
13 of drugs has brought you here for
14 sentencing. It is-- it was your
15 choice to drink and drive. It was
16 your disregard of the law and the
17 security of others using the highway
18 which caused the death of the victim.
19 If you had exercised just a little bit
20 of judgment, you wouldn't be here
21 today.

22 From reading the presentence
23 report and the police report I take it
24 that your husband was either present
25 at the game that you attended with

1 your son or he was close by and you
2 could have had him drive you and the
3 children home. You had a cell phone.
4 You could have called somebody. You
5 could have called a cab, if one was
6 available. You could have called a
7 neighbor. You could have done any
8 number of things. You could have
9 asked a parent at the game to take you
10 home because you were not in condition
11 to drive at that time.

12 Apparently this is not the first
13 time that you have been intoxicated
14 and violated the law but on the
15 previous episode you didn't learn from
16 that experience.

17 You have a history of drinking.
18 And like most persons who drink, it is
19 all about you. You drink because you
20 wallow in self-pity and thus you do
21 not take responsibility for your
22 actions.

23 You look upon this death as a
24 horrible accident in which the role
25 that you played is minimal. You feel

1 you're a victim of circumstance. Your
2 explanations minimize your
3 responsibility for the death.

4 In my reading of the presentence
5 report, the police report, the mental
6 evaluation, and your plea to the Court
7 I have concluded that you have no real
8 remorse for your actions, only
9 excuses.

10 You say you are sorry for your
11 actions but you continue to advance
12 reasons why you are not fully
13 responsible for the death. You know
14 that you killed another human being
15 and left him at the roadside to die.
16 And you insist that though you hit--
17 that you thought that you hit a deer,
18 a mailbox, or that a raccoon ran in
19 your path, and you had to swerve. At
20 your plea hearing you said: I didn't
21 see anything in the road. Which
22 explanation is correct?

23 There is evidence, however, that
24 you immediately knew what you had done
25 because you said: I think I hit

1 someone. I think I hit someone does
2 not mean a deer or a mailbox.

3 The severe damage to your car
4 alone should have alerted you that
5 something dire had occurred and a
6 reasonable and sober person would have
7 stopped to determine what the facts
8 were that had occurred.

9 At your plea hearing you told me
10 that the weather was bad, again trying
11 to justify your claim that you didn't
12 see the victim on the bicycle.

13 However, a witness testified under
14 oath that the weather was clear.
15 Certainly he testified that a storm
16 was brewing; however, he testified
17 also that at some distance he saw your
18 automobile; that he heard the impact;
19 and when he got to the scene, he was
20 able to discern your car disappearing
21 over the rise in the road. So it was
22 clear enough and light enough to see
23 others on the road.

24 Your blood alcohol test was .284
25 and this was three hours after the

1 event. You told me at the plea
2 hearing when I asked you how much you
3 had to drink you said one glass, and
4 in fact you held up your fingers to
5 indicate a small glass. [Indicating]

6 What you didn't seem-- what you
7 don't seem to realize is that at the
8 time you were tested you were two
9 and-a-half times over the legal limit
10 of .08. This means you were highly
11 intoxicated and incapable of operating
12 a motor vehicle, let alone making
13 other decisions.

14 Now I understand in applying
15 what I'm about to say about
16 mathematical formulas that it's not
17 true in all cases and there are--
18 because of individuals and
19 circumstances the numbers may vary;
20 however, it is pretty much
21 mathematical regarding blood alcohol
22 evaluations related to the amount that
23 you ingest.

24 We assign a .03 percent alcohol
25 for every three ounces of alcohol you

1 ingest whether it's wine, beer or
2 whiskey. Your body dissipates alcohol
3 at the same rate of .03 percent per
4 hour. This means that on a reading of
5 .284 you had consumed approximately 9
6 and-a-half drinks. Not a small glass.

7 The test was taken three hours
8 after the event and, therefore,
9 mathematically if you carry out the
10 extrapolations of the numbers, you
11 ingested approximately 12 and-a-half
12 drinks.

13 If a test had been taken
14 immediately at the time of the event
15 at the scene, you were probably tested
16 somewhere in the nature of .37 blood
17 alcohol, percent blood alcohol. At
18 this reading you should have been
19 comatose or at least close to it.
20 This all shows that you have a high
21 tolerance for alcohol.

22 The point is, even if you use
23 these calculations as I've just
24 explained to you only as a guide, the
25 numbers show that you had ingested

1 much more than you claimed.

2 On top of all that you said you
3 ingested Vicodin, and we don't know
4 what affect that had on you and your
5 system.

6 You chose to maintain a position
7 in which you minimized the events with
8 the hope of minimizing your
9 responsibility but your excuses are
10 contrary to reason and common sense.

11 Your intoxication rendered you
12 incapable of proper reasoning at the
13 time and, therefore, you also put your
14 children in the car and further
15 endangered their lives.

16 It is my experience working with
17 people who have an alcohol and drug
18 problem that there are two types:
19 Those who get off of drugs and stay
20 off -- drugs or alcohol and stay off,
21 and lead productive lives. And there
22 is a second group who wallow in their
23 self-pity and remain addicts and
24 alcoholics for the rest of their life.

25 The people who get off of drugs

1 and alcohol are those who face up to
2 their responsibilities, admit their
3 wrongdoing, take active steps to
4 address their problems.

5 The second group are full of
6 excuses and blame everyone else for
7 their problems. After you are
8 released from prison, unlike the
9 victim, you will have a life left to
10 live and you will have an opportunity
11 to have a relationship with your
12 children. It is up to you how you
13 live that life. You can be a
14 responsible and good citizen but you
15 have to take the steps to accomplish
16 that goodness. No one can do it for
17 you. Nobody can help you. You have
18 to want to do it and you have to take
19 the responsibility to do it.

20 Your irresponsible actions have
21 destroyed two families, the Henry
22 family and your own. I hope for your
23 sake that from here on out you take
24 responsibility for your actions and
25 you make the proper amends.

1 Very well. This Court has
2 considered the overriding purposes and
3 principles of felony sentencing set
4 forth in Section 2929.11, those being
5 to protect the public from future
6 crime by the defendant and others and
7 to punish the defendant, using the
8 minimum sanctions that the Court
9 determines accomplishes the purposes
10 without imposing unnecessary burdens
11 on the state.

12 In determining the most
13 effective way to comply with these
14 purposes and principles this Court has
15 considered all of the relevant
16 factors: The need for incapacitation,
17 deterrence, rehabilitation and
18 restitution, including the facts
19 relating to the seriousness of the
20 defendant's conduct, and the impact
21 this has on the victims, and the
22 factors relating to the likelihood of
23 the defendant's recidivism as set
24 forth in Section 2929.12 and the
25 factors set forth 2929.13, the record,

1 the presentence report, the
2 recommendations of the probation
3 department, the statements of counsel,
4 and the psychological evaluation, the
5 victim impact report, and the
6 statements from the family and
7 friends.

8 The Court finds under Section
9 2929.12(B) that the victim suffered
10 serious physical harm, that is,
11 through death, and that the defendant
12 was highly intoxicated and left the
13 scene of the event. Under Section
14 2929.12(B) the offender has a prior
15 conviction of OVI, and has not
16 responded to previously imposed
17 sanctions, and has demonstrated over
18 the years a pattern of alcoholic
19 abuse. The offender in the Court's
20 view shows no genuine remorse.

21 Under Section 2929.13(B)(2) the
22 Court finds physical harm occurred to
23 the person, that is, death, and under
24 2903.06(A)(1)(A) the Court must impose
25 a mandatory minimum sentence. After

1 weighing the seriousness and
2 recidivism factors, prison is
3 consistent with the purposes and
4 principals of sentencing and that the
5 offender is not amenable to any
6 available community sanction.

7 The Court finds that the maximum
8 sentence is warranted as the offender
9 committed the worst form of the
10 offense. The Court finds further that
11 the failure to impose a prison
12 sentence would demean the seriousness
13 of the offense and would not protect
14 the public.

15 Therefore, Kelly Cox, it is the
16 sentence of this Court that you will
17 serve on Count One a term of eight
18 years imprisonment for the crime of
19 Aggravated Vehicular Homicide in
20 violation of Section 2903.06(A)(1)(a)
21 of the Revised Code. Your driver's
22 license will be suspended for the rest
23 of your life. And you will make
24 restitution to the family for burial
25 and funeral expenses.

1 Count Two: Operating a Motor
2 Vehicle Under the Influence under
3 4511.19(A)(1)(G) you will serve a term
4 of 6 months. Your driver's license
5 will be suspended for a period of
6 three years; that three years will run
7 consecutive to the life suspension of
8 Count One.

9 Regarding Count Three,
10 Aggravated Vehicular Homicide in
11 violation of Section 2903.06(A)(2)(a)
12 merges with Count One.

13 Count Four, Reckless Operation
14 in violation of Section 4511.20(A) the
15 Court imposes a fine of \$150.

16 On Count Five, Attempted Failure
17 to Stop After an Accident in violation
18 of Section 4549.02(A) the Court
19 sentences you to a term of
20 imprisonment of one and one and-a-half
21 years to be served consecutive to the
22 sentence imposed in Count One. Your
23 driver's license will also be
24 suspended for a period of three years
25 and that suspension will be

1 consecutive to the license suspension
2 of life in Count One.

3 Count Six, Endangering Children
4 in violation of the Section
5 2919.22(C)(1) the Court imposes a
6 sentence of 6 months.

7 And on Count Seven, Endangering
8 Children in violation of 2919.22(C)(1)
9 the Court also imposes a period of six
10 months.

11 Regarding Count One and Count
12 Five, Count five shall be served
13 consecutive to Count One. The Court
14 finds the failure of the Court to
15 impose consecutive sentences would
16 demean the seriousness of the offense
17 and would not sufficiently punish the
18 offender, nor protect the public, and
19 that the sentences are not
20 disproportionate to the seriousness of
21 the offender's conduct and the danger
22 the offender poses to the public in
23 Section 2929.14(E)(4).

24 The harm caused by the multiple
25 offenses was so great or unusual that

1 no single prison term for any of the
2 offenses committed as part of a single
3 course of conduct adequately reflects
4 the seriousness of the offender's
5 conduct under 2929.14(E)(4)(A).

6 The Court further finds that the
7 defendant had a prior OVI and that
8 further the victim suffered serious
9 physical harm and that the offense
10 occurred in the presence of two of the
11 defendant's minor children, and the
12 defendant does not display remorse for
13 her actions.

14 Regarding Count Two, Four, Six
15 and Seven, those counts being
16 misdemeanors or minor misdemeanors
17 shall be served concurrent with Counts
18 One and Three.

19 The defendant will receive
20 credit for one day spent in
21 incarceration.

22 Kelly Cox, I also have to inform
23 you that you shall be subject to
24 post-release control for a period of a
25 mandatory term of three years on Count

1 One and Count Three. And the
2 post-release control means a period of
3 supervision by the adult parole
4 authority after release from
5 imprisonment. If you violate
6 post-release control sanctions, all of
7 the following apply: [1] that the
8 adult parole authority may impose a
9 more restrictive post-release control
10 sanction [2] the parole board may
11 impose the duration of the
12 post-release control and [3] the
13 parole board may impose an additional
14 prison term provided that the prison
15 term cannot exceed nine months and the
16 maximum cumulative prison term for all
17 the violations during the period of
18 post release control cannot exceed one
19 half of the original prison term [4]
20 if the violation of a post-release
21 control sanction is also a felony, you
22 may be prosecuted for the felony. And
23 in addition to any sentence imposed
24 for the new felony, the Court may
25 impose a prison term subject to a

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specified maximum for the violation.

It is also my obligation to inform you that after you have completed the mandatory portion of your sentence you may be eligible for earned credits toward reduction of your sentence. Your counsel and/or the prison authorities will explain the program to you at a later date.

Is there anything further to accomplish at this time?

MR. MAREIN: No.

THE COURT: Very well. You may take her.

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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: _____