

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

Case No.: 2010 CF 1469
Division: C

PETER FELIX ARMSTRONG,

Defendant.

ORDER GRANTING AMENDED MOTION FOR POST-CONVICTION RELIEF AS TO
COUNT ONE

THIS CAUSE came before the Court upon the Defendant's Amended Motion for Post-Conviction Relief filed on February 16, 2015. The Court conducted a limited evidentiary hearing on January 8, 2016. Having considered the motion, the record, the evidence adduced at the evidentiary hearing, applicable law, the arguments of counsel, and being otherwise fully advised in the premises, the Court finds that the Defendant's Amended Motion for Post-Conviction Relief should be granted for the reasons set for below.

Background

The Defendant was charged with DUI manslaughter (Count 1), leaving the scene of a crash involving death (Count 2), DUI with damage to property without serious injury (Count 3) and leaving the scene of a crash involving unattended property (Count 4). Attachment 1. The Defendant entered a plea of nolo contendere to Counts 3 and 4. Attachment 2. After a jury trial, the Defendant was found guilty as charged as to Court 1 and guilty of the lesser-included offense of leaving the scene of a crash involving property damage as to Count 2. Attachment 3, at 419. The Defendant was sentenced to 15 years in state prison for DUI manslaughter followed by one year of probation as to Count 3. The Defendant was sentenced to time served as to Counts 2 and

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4. Attachment 4. The Defendant's judgment and sentences were affirmed on direct appeal. See Armstrong v. State, 119 So. 3d 445 (Fla. 1st DCA 2013).

As to Counts 1 and 2, it is abundantly clear that the Defendant was driving a car that struck and killed a man, named Paul Shirley, riding his bicycle. The Defendant's blood alcohol level, as determined from a blood draw hours after the crash, was 0.17. Attachment 3, at 179.

At trial, the Defendant chose not to testify. Attachment 3, at 315-316. However, the passenger in the Defendant's vehicle, Brittany Stanley, did testify. Ms. Stanley was dating the Defendant at the time of the crime. Attachment 3, at 98. Initially, Ms. Stanley was driving that night, but, according to Ms. Stanley's testimony, the Defendant wanted to drive so badly he grabbed the steering wheel and forced the car into a parking lot. Id., at 107. In the parking lot, the Defendant and Stanley exited the car and got into an argument. Id. Stanley reluctantly returned to the car as a passenger.

Ms. Stanley testified that the car traveled down Highway 98 towards Gulf Breeze and that:

There was a noise, and the car – there was a hit of something and the main thing I recall I was jostled because I didn't have my seat belt on and the sun glass came in.

Attachment 3, at 109.

After the crash, Stanley testified that she asked the Defendant what happened and she testified "I don't really think he said anything." The Defendant "just kept driving." When the car came to stop, the Defendant "reached over and opened [Stanley's] door and pushed [her] out of the vehicle and then told [her] to get out and go." Attachment 3, at 111-112. The Defendant drove off after a confrontation with a man (the evidence established this man to be named Christian Briscoe) who told the Defendant, "You hit someone on the bike." Id.

In addition to Stanley's testimony, the State presented an eyewitness named Christian Briscoe. Mr. Briscoe testified that he was driving that night and he observed another car that was swerving as if the driver was intoxicated. This second car cut in front Mr. Briscoe's car, narrowly avoiding a collision. Concerned that the driver was intoxicated, Mr. Briscoe slowed to increase his distance from this car. Attachment 3, at 46.

Mr. Briscoe testified that he did not see the person on the bicycle prior to the crash, but he saw a yellow-ish reflector. Id., at 49-50. Then, Briscoe saw sparks coming over the hood of the second car. At first, Briscoe thought this car had struck a mail-box, but "when [he] came upon the spot," he saw "there was a gentleman...crumpled up into a bike." Concluding that the man was dead, Briscoe called 911 and pursued the vehicle. Attachment 3, at 50-51.

Eventually, the car Briscoe was following stopped and Mr. Briscoe was able confront the driver, the Defendant. Despite Briscoe informing the Defendant that he had struck a person, the Defendant did not surrender his keys to Briscoe. Mr. Briscoe's side of the confrontation was recorded because he was on the telephone with 911. Attachment 3, at 61-68.

As summarized above, the record conclusively shows that the Defendant was driving the car that struck Mr. Shirley and the bicycle he was riding, causing Mr. Shirley's death. Further, the State was able to definitively demonstrate that the Defendant's blood alcohol level at the time of the crash was above the legal limit.

Claims of Ineffective Assistance of Counsel

Generally, in order to prevail on a claim of ineffective assistance of counsel, the Defendant must show both deficient performance by counsel and resulting prejudice from the deficient performance. Strickland v. Washington, 466 U.S. 668, 686 (1984). In other words, for the Defendant's ineffective assistance of counsel claims to be successful, he must prove that that

his counsel's performance was unreasonable under the "prevailing professional norms" and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Taylor v. State, 3 So. 3d 986 (Fla. 2009). The Sixth Amendment requires reasonably effective counsel, not perfect or error-free counsel. See Terrell v. State, 9 So. 3d 1284, 1288 (Fla. 4th DCA 2009).

As to the prejudice prong, under Strickland, "[t]he likelihood of a different result must be substantial, not just conceivable." Harrington v. Richter, 131 S.Ct. 770, 792 (2011). "Post-conviction relief cannot be based on speculative assertions." Jones v. State, 845 So. 2d 55, 64 (Fla. 2003). For a Strickland claim to be meritorious, a defendant must show that he was deprived of a fair trial, a trial whose result is reliable. Strickland, 466 U.S. at 687.

Post Conviction Proceedings in this Case

The Defendant initially filed a motion for post-conviction relief on November 12, 2014. The Defendant requested and was granted leave to amend the motion. The amended motion was filed on January 5, 2015. The Court dismissed the Defendant's amended motion on February 3, 2015 for failure to comply with the oath and content requirements of rule 3.850. The Defendant filed an amended motion on February 16, 2015.

On June 4, 2015, the Court ordered the State to show cause why the Defendant was not entitled to relief as one of his claims. On June 23, 2015, the Defendant filed a motion to amend the pending motion for post-conviction relief. On July 2, 2015, the Court denied the Defendant's motion for leave to amend because the Court had issued an order to show cause and the Defendant had previously been granted leave to amend. Fla. R. Crim. P. 3.850(f)(6).

The State replied to the Court's order to show cause on June 30, 2015 and conceded that an evidentiary hearing was required. On August 27, 2015, the Court granted a limited

evidentiary hearing solely on the issue of whether counsel was ineffective for failing to call an accident reconstruction expert to testify at trial. The Court held an evidentiary hearing on this claim. The Defendant was represented by retained counsel at all times in these post-conviction proceedings.

Claim Counsel was Ineffective for Failing to Call Accident Reconstruction Expert

The Defendant claims that his counsel was ineffective for failing to present an accident reconstruction expert as a defense witness at trial. The Defendant presented substantial evidence at the evidentiary hearing in support of the claim.

To be sure, the failure to call an accident reconstruction expert does not automatically constitute ineffective assistance of counsel. See Smith v. State, 154 So. 3d 1191 (Fla. 4th DCA 2015). “Ordinarily, where, as here, the defendant has identified specific exonerating testimony which could have been provided by an expert, an evidentiary hearing will be required to determine whether the decision not to present the expected testimony was tactical or an unprofessional failure on the part of appointed counsel.” Terrell v. State, 9 So. 3d 1284, 1289 (Fla. 4th DCA 2009).

The Defendant’s counsel did retain an accident reconstruction expert, but failed to give the expert the information necessary to conduct his analysis. Ms. Herndon conceded as much. See Transcript of Evidentiary Hearing (“EH”), at 71. Despite the expert’s documented request for such information, Ms. Herndon failed to do so. Due to this specific deficiency on the part of Ms. Herndon, the Defendant proceeded to trial without any reconstruction expert analysis to present to the jury. In fact, at trial, Ms. Herndon was not even aware of what such analysis would actually reveal.

On the other hand, at the evidentiary hearing, the Defendant presented an accident reconstruction expert who opined that, based on his review of the evidence, the accident was unavoidable.¹ EH, at 43. Defendant's trial counsel, Ashley Herndon, herself concluded that the expert testimony adduced at the evidentiary hearing "would have made a huge difference in the outcome of the case." EH, at 73. Ms. Herndon gave no reasonable explanation for her failure to provide Mr. Bloomberg with the information he needed to conduct a reconstruction of the crash. Rather, she simply said that it was a "complete miscommunication" and that "very well may have been [her] fault." EH, at 77.

In addressing such a case, the Supreme Court of New Hampshire explained:

Further, had trial counsel consulted an expert, such as Lakowicz, he could have learned that another defense was available to him—that the accident was **unavoidable, regardless of the driver's impairment**. Had trial counsel consulted an expert, such as Lakowicz, **he could have been able to present an affirmative case that the defendant's impairment did not cause the accident**.

* * *

"Defense counsel may not fail to conduct an investigation and then rely on the resulting ignorance to excuse his failure to explore a strategy that would likely have yielded exculpatory evidence." Gersten, 426 F.3d at 610. "[F]ailing to present exculpatory evidence is not a reasonable trial strategy." Id. at 611.

State v. Whittaker, 158 N.H. 762, 774-5, 973 A.2d 299, 309-10 (2009)(emphasis added).

The Court finds this analysis persuasive. Ms. Herndon's failure to provide the necessary information to Mr. Bloomberg constitutes deficient performance and cannot be considered a reasonable trial strategy. In addition, this deficiency deprived the Defendant of a fair trial.² The

¹ See Daigle v. State, 848 So. 2d 1233, 1234 (Fla. 2d DCA 2003)("Daigle correctly argues that the State was required to prove the manner in which he operated his vehicle caused or contributed to the cause of the crash.").

² To be clear, the Court is not concluding that the Defendant would necessarily be acquitted at a retrial. The evidence presented at trial may entitle the jury to accept or reject expert testimony that the Defendant could not have avoided hitting Mr. Shirley's bicycle, particularly in light Mr. Briscoe's testimony. See Daigle v. State, 848 So. 2d 1233, 1234 (Fla. 2d DCA 2003). The Court

expert witness testified at the evidentiary hearing that, in his opinion, the accident was unavoidable, even if the Defendant has not been speeding and possessed a normal reaction time. The Court is compelled to conclude there is a reasonable probability that a jury would accept this testimony and acquit the Defendant of DUI manslaughter.

At an evidentiary hearing on a post-conviction motion, “the defendant has the burden to prove a claim of ineffective assistance of counsel at an evidentiary hearing on a Rule 3.850 motion. **Once the defendant presents evidence to support the claim, however, the State has a burden to present contradictory evidence.**” Pennington v. State, 34 So. 3d 151, 154-155 (Fla. 1st DCA 2010)(citations omitted)(emphasis added). It is abundantly clear that the State did not meet its burden to present contradictory evidence. Indeed, the State introduced no evidence at the hearing to refute the testimony of the defense witnesses. Instead, the State relied upon previous trial testimony. When a Defendant meets his evidentiary burden of showing an entitlement to post-conviction relief, and the State fails to present contradictory evidence, there is no evidentiary basis to support a conclusion that the Defendant is not entitled to relief. See Polite v. State, 990 So. 2d 1242, 1244 (Fla. 3d DCA 2008)(“The State was unable to provide competent substantial evidence that rebutted Polite’s allegations. Polite is therefore entitled to post conviction relief...”).

DUI Manslaughter Conviction

As to the Defendant’s conviction for DUI manslaughter, the Court finds that the Defendant demonstrated an entitlement to post-conviction relief based on counsel’s failure to present exculpatory evidence in the form of an accident reconstruction expert. Therefore, this

is merely finding that there is a reasonable probability that the expert testimony presented could have changed the trial’s outcome.

Court does not need to address the Defendant's other claims as to the conviction for DUI manslaughter (Count 1).

Remaining Convictions

The Defendant is not entitled to post-conviction relief regarding Counts 2, 3 or 4, however. Regarding Count 2, Counsel's failure to introduce evidence which would support a defense that the crash was unavoidable has no bearing on the fact that the Defendant left the scene of the crash. In other words, even if the accident was unavoidable, the Defendant's decision to flee the scene is undisputedly criminal and the evidence of the Defendant's guilt on that point is beyond question. Likewise, the Defendant's convictions for Count 3 and 4 pertain to conduct that occurred after the fatal crash and expert testimony regarding that crash would not be relevant.

None of the claims for post-conviction relief entitle the Defendant to post-conviction relief regarding Counts 2, 3 or 4. First of all, the boot print evidence on the trunk of the Defendant's car is not even particularly relevant to those counts. Therefore, any error regarding the boot print evidence is harmless regarding Counts 2, 3 and 4.

The validity of the blood draw would be relevant to Count 3, but the Defendant has not demonstrated that his plea to Count 3 (or Count 4 for that matter) was invalid, involuntary or otherwise subject to collateral attack. Furthermore, law enforcement clearly had probable cause to compel a blood draw based on the facts and circumstances of this case.³ See Montes-Valeton v. State, 141 So. 3d 204, 207 (Fla. 3d DCA 2014).

³ Moreover, the statute itself states that "The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of the test taken at the direction of the law enforcement officer. § 316.1932(f)(3), Fla. Stat. Although the Defendant relies on the dissent by Judge Ervin, it important to bear in mind that this Court is bound by the *majority* opinion in Smallridge v. State, 918 So. 2d 601 (Fla. 1st DCA 2005). The statute imposes no duty

Counsel's tactics in cross examining Christian Briscoe did not deprive the Defendant of a fair trial as to Count 2. Regardless of counsel's tactics in cross-examining Mr. Briscoe, the record conclusively demonstrates the Defendant knew or should have known he was involved in a crash that at least involved property damage and it is undisputed he failed to stop.

Accordingly, it is **ORDERED and ADJUDGED** that the Defendant's Amended Motion for Post-Conviction Relief filed is hereby **GRANTED as to Count 1**. The judgment and sentence previously entered by this Court for Count 1 (DUI Manslaughter) are hereby **VACATED and SET-ASIDE**. This case is reset for the entry of a plea or a trial on the merits as to Count 1.

The Defendant's convictions and accompanying sentences as to Counts 2, 3 and 4 remain undisturbed by this order.

DONE and ORDERED in Chambers at Milton, Santa Rosa County, Florida on this 29th day of February, 2016.



JOHN F. SIMON, JR.
Circuit Judge

JFS/lcw

Certificate of Service: (See Next Page)

on law enforcement to inform an arrestee of the right to take an independent blood test. Even Judge Ervin conceded that, "the officers may have been under no legal obligation to inform appellant of such right." Smallridge, 918 So. 2d at 608 (Ervin, J., concurring and dissenting).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing order has been furnished via regular U.S. Mail (*unless otherwise indicated*) to:

✓ Michael Ufferman, Esq.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(*via electronic delivery*)

✓ Zachary Brost, Assistant State Attorney
First Judicial Circuit
(*via electronic delivery*)

✓ Don Pumphrey, Jr., Esq.
P.O. Box 1818
Tallahassee, Florida 32302
(*via electronic delivery*)

✓ Peter Felix Armstrong, DC # P47265
Holmes Work Camp
3182 Thomas Drive
Bonifay, Florida 32425-4238

on this 1st day of March, 2016.

✓ *Close*

DONALD C. SPENCER, Clerk of Court

BY: *Carolyn A. Peterson*
Deputy Clerk

ATTACHMENT # 1

RACE: W SEX: M DOB: 07/19/1982 SS#: [REDACTED]

- 1) DUI - DUBAL MANSLAUGHTER
- 2) LEAVING THE SCENE OF A CRASH INVOLVING DEATH
- 3) DUI - DUBAL DAMAGE TO PROPERTY OR PERSON WITHOUT SERIOUS INJURY (9812)
- 4) LEAVING THE SCENE OF A CRASH INVOLVING UNATTENDED PROPERTY

AMENDED INFORMATION
AMENDING THE INFORMATION PREVIOUSLY FILED ON DECEMBER 3, 2010

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA
 IN THE CIRCUIT COURT OF SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

vs

PETER FELIX ARMSTRONG,
 Defendant

FILED
 SANTA ROSA COUNTY
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WILLIAM EDDINS, STATE ATTORNEY FOR THE FIRST JUDICIAL CIRCUIT OF FLORIDA, PROSECUTING FOR THE STATE OF FLORIDA, CHARGES THAT **PETER FELIX ARMSTRONG**, on or about **November 26, 2010**, at and in Santa Rosa County, Florida, did unlawfully drive or be in the actual physical control of a vehicle while under the influence of alcoholic beverages, any chemical substance set forth in Section 877.111, Florida Statutes, or any substance controlled under Chapter 893, Florida Statutes, and was affected to the extent that his normal faculties were impaired, or with a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood, or with a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath, and by reason of such operation of the vehicle did cause or contribute to causing the death of a human being, to-wit: **Paul Shirley**, in violation of Sections 316.193(1) and 316.193(3)(a)(b)(c)3.a., Florida Statutes. (F2-L8)


COUNT 2: AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT **PETER FELIX ARMSTRONG**, on or about **November 26, 2010**, at and in Santa Rosa County, Florida, being the driver of a vehicle involved in a crash occurring on public or private property, to-wit: **IJS 98**, resulting in the death of **Paul Shirley**, did unlawfully fail to immediately stop the vehicle at the scene of the crash or as close thereto as possible, and did fail to remain at the scene of such crash until he had fulfilled the requirements of Section 316.062, Florida Statutes, in violation of Section 316.027(1)(b), Florida Statutes. (F1-L7)

COUNT 3: AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT **PETER FELIX ARMSTRONG**, on or about **November 26, 2010**, at and in Santa Rosa County, Florida, did unlawfully drive or be in actual physical control of a vehicle while under the influence of alcoholic beverages, any chemical substance set forth in Section 877.111, Florida Statutes, or any substance controlled under Chapter 893, Florida Statutes, and was affected to the extent that his normal faculties were impaired, or with a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood, or with a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath, and, by reason of such operation of the vehicle did damage or contribute to causing damage to the property or person of another, to-wit: **Marcus Avalos**, in violation of Section 316.193(3)(a)(b)(c)1., Florida Statutes. (M-1)

COUNT 4: AND YOUR INFORMANT AFORESAID, PROSECUTING AS AFORESAID, ON HIS OATH AFORESAID, FURTHER INFORMATION MAKES THAT PETER FELIX ARMSTRONG, on or about November 26, 2010, at and in Santa Rosa, Florida, being the driver of a vehicle which collided with or was involved in an crash with any vehicle or other property which was unattended, and which crash resulted in any damage to said vehicle or property, did fail to immediately stop and either locate and notify the operator or owner of the vehicle or other property of his name, address, and the registration number of the vehicle he was driving, or failed to attach securely in a conspicuous place in or on the vehicle or other property a written notice giving his name, address, and the registration number of the vehicle he was driving, and did fail without unnecessary delay to notify the nearest office of a duly authorized police authority, in violation of Section 316.063, Florida Statutes. (M-2)

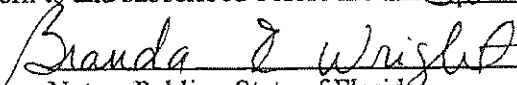
STATE OF FLORIDA
COUNTY OF SANTA ROSA

Before me personally appeared the undersigned Assistant State Attorney for the First Judicial Circuit of Florida, being personally known to me, and who first being duly sworn, says that the allegations set forth in the foregoing information are based on facts that have been sworn as true, and which if true, would constitute the offense there charged, that said Assistant State Attorney has received testimony under oath from a material witness or witnesses for the offense and that this prosecution is instituted in good faith.



ASSISTANT STATE ATTORNEY
JENNIE KINSEY
PO BOX 12726
190 GOVERNMENTAL CTR
PENSACOLA, FL 32591-0000
FLORIDA BAR NO.:0307350
PHONE: (850) 595-4611

Sworn to and subscribed before me this 20th day of October, 2011


Notary Public - State of Florida



ATTACHMENT # 2

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IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY,
FLORIDA

STATE OF FLORIDA

Plaintiff,

vs.

Case No. 10-1469-CF

PETER FELIX ARMSTRONG,
Defendant.

PLEA TO COUNTS 3 AND 4

JURY SELECTION

Proceedings held in the above-styled cause before the
Honorable David Rimmer, Circuit Court Judge, commencing
on Monday, the 3rd day of January, 2012, at the Santa
Rosa County Courthouse, 6865 Caroline Street, Milton,
Florida.

For the State: JENNIE KINSEY
Assistant State Attorney
190 Governmental Center
Pensacola, Florida 32502

For the Defendant: ASHLEY HERNDON
Dewrell & Herndon
1261 A Eglin Parkway
Shalimar, Florida 32579

Reported by: THERESA (TERRI) DANIELSON
OFFICIAL COURT REPORTER
Santa Rosa County Courthouse
6865 Caroline Street
Milton, Florida 32570
(850)981-5593

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P R O C E E D I N G S

(Defendant Present)

(Courtroom 101)

THE COURT: Are you and Ms. Herndon still ready to go?

MS. KINSEY: We are, Judge.

MS. HERNDON: There's one preliminary issue to address regarding Counts 3 and 4 of the Information which is a misdemeanor DUI involving property damage.

THE COURT: Okay.

MS. HERNDON: And leaving the scene of unattended property.

THE COURT: Okay.

MS. HERNDON: My client, Mr. Armstrong, is present and at this point he would plan to withdraw his previously entered plea of not guilty on those two counts and enter a plea of no contest with the understanding that sentencing would be deferred until the completion of the trial on the felony counts.

THE COURT: All right. And that's Counts 3 and 4, correct?

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MS. HERNDON: Yes, sir.

THE COURT: Okay. Do we have a written plea agreement? If not --

MS. KINSEY: Judge, I have not reduced it to writing since it's misdeameanors.

THE COURT: I'll go through it with him. Mr. Armstrong, would you stand, please? Would you raise your right hand?

WHEREUPON

PETER FELIX ARMSTRONG,
the defendant, having been sworn testified as follows:

THE COURT: Yes, Your Honor.

All right. Please state your name.

THE DEFENDANT: Peter Felix Armstrong.

THE COURT: All right, sir, in Case Number 10-1469, you are charged in Counts 3 and 4. Count 3 DUI with property damage, carries a maximum penalty of one year in jail. And Count 4, leaving the scene of an accident, and it carries a maximum penalty of 60 days in the county jail.

Do you understand the nature of these charges and the max penalties?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Your attorney

1 indicates that you want to enter a plea to these
2 charges; sentencing will be deferred until your
3 Counts 1 and 2 are tried. Is that your
4 understanding?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Has there been any
7 representation to you as to what sentence you
8 are going to receive on these two Counts 3 and 4
9 for which you are about to plead?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. You need to
12 understand the rights you give up when you enter
13 a plea.

14 You have a right to go to trial and make
15 the State prove these counts against you. You
16 have a right to be represented by your lawyer,
17 and the right to challenge the State's witnesses
18 and the State's evidence, and the right to call
19 witnesses of your own and introduce evidence of
20 your own. You also have a right not to be
21 required to testify. And if you get convicted,
22 you have a right to appeal. But when you enter
23 a plea you give up all those rights so there is
24 no trial and there's no appeal. Do you
25 understand that?

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THE DEFENDANT: Yes, sir.

THE COURT: Is this what you want to do?

THE DEFENDANT: Yes, sir.

THE COURT: Anybody force, threaten, or promise you anything to get you to do this?

THE DEFENDANT: No, sir.

THE COURT: Is this what you want to do of your own free will?

THE DEFENDANT: Yes, sir.

THE COURT: Have you had any drugs or alcohol in the last 24 hours?

THE DEFENDANT: No, sir.

THE COURT: Have you had a chance to talk about this with your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Are you satisfied this is in your best interests?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Then as to Count 3, DUI with damage to property or persons without serious injury, how do you plead?

THE DEFENDANT: No contest.

THE COURT: As to Count 4 leaving the scene of a crash involving unattended property, how do you plead?

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THE DEFENDANT: No contest.

THE COURT: All right. I'll accept his plea and find it is free and voluntary and knowingly entered. There's an arrest report in the file that provides a factual basis for the plea. And the sentencing will be deferred until Counts 1 and 2 are resolved.

MS. HERNDON: Thank you, Judge.

THE COURT: Thank you, sir.

MS. KINSEY: And, Judge, I don't think it is an issue, but just for purposes of the record, it's a 90 day on leaving the scene. It's a strange misdemeanor.

THE COURT: Okay. Thank you.

MS. KINSEY: I have two things for the court file; a stipulation and an Amended Discovery that I have already provided to the Defense.

THE COURT: Okay.

MS. KINSEY: Thank you. And we are probably going to take a half-day on Thursday. So all day tomorrow and half day on Thursday.

THE COURT: All right. So Wednesday and half day Thursday.

MS. HERNDON: Yes.

ATTACHMENT # 3

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IN THE CIRCUIT COURT
IN AND FOR
SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

Case No.,: 10-1469-CF

PETER FELIX ARMSTRONG,

VOLUME I

Defendant.

JURY TRIAL

The above-entitled cause came on for JURY TRIAL, on
January 4th, 2012, before the Honorable David
Rimmer, Circuit Court Judge, at the Santa Rosa
County Courthouse, Milton, Florida, before Teresa
Emmanuel, Court Reporter.

APPEARANCES:

FOR THE STATE: JENNIE KINSEY, ESQUIRE
Assistant State Attorney
190 Governmental Center
Pensacola, Florida 32502
FOR THE DEFENSE: ASHLEY SMITH HERNDON, ESQUIRE
Dewrell & Herndon
1261 A. North Eglin Parkway
Shalimar, Florida 32579

TERESA EMMANUEL, COURT REPORTER
6865 Caroline Street
Milton, Florida 32570
850 981-5594

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1 Pensacola.

2 Q Okay. Thank you. Did something happen
3 that drew your attention to another vehicle on the
4 road?

5 A There was a car swerving in and out --

6 Q Okay.

7 A -- of the lane. Looked like they were
8 drunk, yeah.

9 Q Would you tell the jury about that?
10 What's the first thing that you saw with this car
11 that drew that car to your attention?

12 A The car came around me, went into the fast
13 lane which is the left side and he swerved back into
14 the slow lane which is the right side and almost hit
15 me so I backed off, and I just, you know, stayed,
16 you know, back away from the vehicle because it was
17 swerving in and out so -- .

18 Q So initially you were in the -- ?

19 A Slow lane.

20 Q Thank you. And then when it passed you,
21 how close -- why did you think that it was going to
22 hit you?

23 A It was about, you know, approximately a
24 car length or a half a car length in front of me
25 when it swerved.

1 Q Okay. Now, you said where it struck the
2 pedestrian or the bicyclist. Did you actually see
3 the person on the bicycle?

4 A No, I didn't see the person on the
5 bicycle, but I seen a yellow reflector.

6 Q How far back had you gotten at that point?
7 Were you right behind him? You said you had backed
8 off so how far ahead -- ?

9 A Approximately, like, ten car lengths.

10 Q A head of you?

11 A Yes, ma'am.

12 Q Okay, but could you still see the car that
13 had been swerving?

14 A Yes, I could.

15 Q When you saw the car cross over on to the
16 shoulder, what -- did you see anything else? What
17 did you see?

18 A There was a mail box, and it was
19 approximately right in front of the old antique
20 place right before the flea market.

21 Q Okay. Did you see anything usual about
22 the car as it crossed over on to the shoulder?

23 A Yes, when it crossed over I thought it was
24 going to hit a mail box so you can see a mail box
25 some what. It's got like a green reflector, and

1 then I seen a yellow-ish reflector. It was kind of
2 like small -- somewhat small, but then I see -- and
3 as he went over on the dotted -- you know, the solid
4 line, like, exactly when he went over on into the
5 line, that's when I seen sparks coming, like, over
6 the hood of the car.

7 Q Okay, and I know that you -- we've asked
8 you a lot of questions about this case. This is the
9 first time that the jury is hearing it. Would you
10 explain to the juror what you saw with regard to the
11 sparks coming over the car that you just mentioned?

12 A I mean, once the guy went over to the
13 shoulder and was on the side of the solid line, you
14 know, I seen the sparks and, you know, I thought it
15 was a mail box or whatever, but when I came upon the
16 spot where I seen that, there was a gentleman, you
17 know, crumpled up into a bike.

18 Q Where were the sparks coming from the car?

19 A On the passenger side and you can see
20 sparks coming over the hood of the car and the top
21 of the hood.

22 Q And the top -- I'm sorry?

23 A Coming over the top of the hood of the
24 car, the roof.

25 Q Okay.

1 A It was on the passenger side.

2 Q Okay. Did that car stop?

3 A No, he didn't even break. He, you know,
4 he just kept going after he hit that, after he hit
5 the person on the bicycle, you know, he kind of
6 drove perfectly after that, you know, until we
7 started to get on the side street.

8 Q Okay. Let me ask, when you get up to
9 where the area is where you see the sparks, what did
10 you see?

11 A Right in front of the mail box a gentleman
12 crumpled up in a bicycle.

13 Q Did you stop right there or what did you
14 do?

15 A I slowed down, and I notice that the
16 gentleman was, you know, dead so I decided to pursue
17 the vehicle and call 911.

18 Q So was that man moving at all on the road?

19 A No.

20 Q And do you have some first aid or
21 paramedic training or anything like that?

22 A Well, I did volunteer up in New York, but
23 I'm certified CPR, and blood born pathologist, and
24 all that so -- but I seen that, we knew -- you know,
25 I knew the gentleman was dead.

1 DISPATCH: All right, sir -- .
2 MR. BRISCOE: Give me your keys.
3 Give me your keys. Give me your keys now.
4 Give me your keys. Dude, you just hit
5 somebody on a bike, man.
6 THE DEFENDANT: No, I didn't.
7 MR. BRISCOE: Yes, you did, on 98.
8 Sir, yes, you did. Just give me your keys.
9 DISPATCH: Sir, sir, sir, sir.
10 MR. BRISCOE: Yes, ma'am.
11 DISPATCH: You do not need to engage
12 him in case it could become physical. Okay?
13 Where are you guys at?
14 MR. BRISCOE: We're on Shell Drive.
15 DISPATCH: What is the address?
16 MR. BRISCOE: I don't know, ma'am.
17 What's the address? (Unintelligible)
18 DISPATCH: What kind of vehicle is
19 it?
20 MR. BRISCOE: Don't go back in the
21 car. I'm serious, man. All right, Dude.
22 DISPATCH: Sir, sir -- .
23 MR. BRISCOE: Look at your car, man.
24 Look at your car, in front of your car.
25 DISPATCH: Sir, sir.

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MR. BRISCOE: Yes.

DISPATCH: I need for you to answer the questions that I'm asking to get help to you.

MR. BRISCOE: Get in the car.

DISPATCH: What type of vehicle is it? Sir? What type of vehicle is it?

MR. BRISCOE: 5176 Carroll Drive.

DISPATCH: Can you tell me what type of vehicle it is? I asked you three times.

MR. BRISCOE: The vehicle is a -- what is that? A Mazda. She just laid down on the ground. Mazda what? Mazda, gray Mazda.

DISPATCH: What's the tag number?

MR. BRISCOE: It's 5126HS, and now he's taking off again.

DISPATCH: 5126HF.

MR. BRISCOE: Oh, God. He just ran into Asta Vista Drive, parallel with 98, and he ran a stop sign. He's way ahead of us. Baby, what street is this?

DISPATCH: Where's he at now?

MR. BRISCOE: Wheeler Road.

DISPATCH: So you guys are on Wheeler

1 Road. What direction on Wheeler Road?

2 MR. BRISCOE: Wheeler Road, Wheeler
3 Road, north on Wheeler Road.

4 DISPATCH: North bound, okay. Can
5 you still see him?

6 MR. BRISCOE: Yes, I can. I hope
7 that guy on the bike is all right.

8 DISPATCH: Okay. Did you -- when you
9 called in, did you ask for an ambulance for
10 the guy on the bicycle?

11 MR. BRISCOE: The lady I told get an
12 ambulance right away. Making a turn left on
13 Keystone Drive.

14 DISPATCH: The vehicle just took a
15 left on Keystone Drive, Kelly.

16 MR. BRISCOE: We're headed west on
17 Keystone Drive, right behind Midway Fire
18 Department. I'm in the GMC green van. I
19 know. I know. All right.

20 (Unintelligible).

21 DISPATCH: Do you still see the
22 vehicle?

23 MR. BRISCOE: Yes, I do. We're still
24 going this way on Keystone.

25 DISPATCH: The Mazda (unintelligible)

1 The complainant is in a green GMC van. The
2 officers responding are in an emergency so
3 if you see them, I want you to get out of
4 their way. Where are you at now?

5 MR. BRISCOE: We're still on
6 Keystone, left.

7 DISPATCH: The complainant is in a
8 green GMC van (unintelligible).

9 MR. BRISCOE: And the car is in front
10 of me. He's coming to a stop.

11 DISPATCH: He hit him on a bicycle, a
12 Mazda. It's in there.

13 MR. BRISCOE: There's a cop behind
14 us.

15 DISPATCH: I'm sorry, the Mazda.

16 MR. BRISCOE: I can hear a cop behind
17 us because my radar is going off. The guy
18 made a left on -- on New Height. He went
19 that way. He went that way, that way, that
20 way. He went that way.

21 DISPATCH: Okay. Did you just talk
22 to the deputy?

23 MR. BRISCOE: Yes, it's a sheriff,
24 yeah, I know. I'm at the address that I
25 told you, the lady just got out of the car,

1 and she laid down on the ground so get
2 another deputy over there.

3 **DISPATCH:** Okay. Can you still see
4 the vehicle?

5 **MR. BRISCOE:** It was a Mazda, a gray
6 Mazda.

7 **DISPATCH:** Are you (unintelligible)
8 or are you stopped?

9 **MR. BRISCOE:** I slowed down and
10 stopped, the sheriff -- I don't know which
11 way he went. He took a right on 98.
12 (unintelligible).

13 **DISPATCH:** Sir, when you stopped,
14 which direction did the car go?

15 **MR. BRISCOE:** The car made a left
16 towards (unintelligible).

17 **DISPATCH:** Sir, what's your last
18 name?

19 **MR. BRISCOE:** I don't know. She just
20 made a U back towards that address. I have
21 no idea.

22 **DISPATCH:** Sir, what's your last
23 name?

24 **MR. BRISCOE:** I don't know. The
25 sheriff went that way. It's a gray Mazda on

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98, gray Mazda, four door.

DISPATCH: The complainant is no longer -- he stopped. All the deputies are -- .

MR. BRISCOE: Midway, but we don't know which way he went afterwards, the sheriff.

DISPATCH: When you stopped, which direction did the car go?

MR. BRISCOE: The car made a left towards 90 with this road, New Hope.

DISPATCH: He took a left towards New Hope.

MR. BRISCOE: He was on New Hope, but then he went straight on New Hope and he -- 98, we drove back on New Hope. We're going to make a right and now look for the vehicle. I make -- I'll come up here and make a right and look towards this way.

DISPATCH: Sir, what's your last name?

MR. BRISCOE: Briscoe, Christian Briscoe.

DISPATCH: B-R-I-S-C-O?

MR. BRISCOE: E.

1 DISPATCH: What's your first name?

2 MR. BRISCOE: Christian.

3 DISPATCH: Where are you at?

4 MR. BRISCOE: I'm sitting west on
5 (unintelligible) -- towards 98 and left on
6 New Hope.

7 DISPATCH: Where are you at right
8 now, sir?

9 MR. BRISCOE: Coming to a stop sign
10 right here (unintelligible) road
11 (unintelligible).

12 DISPATCH: And where are you at?

13 MR. BRISCOE: I'm turning left on
14 Sioux Trail. Is that Sioux? Sioux, Sioux
15 Trail. But we were on New Hope heading
16 south towards 98 and we stopped and we
17 turned left on New Hope at the truck.

18 DISPATCH: Where are you at right
19 now?

20 MR. BRISCOE: I'm coming to a stop
21 sign right here. What's this road? Nathan
22 and Calle.

23 DISPATCH: You're at Nathan and
24 where?

25 MR. BRISCOE: Nathan and Calle.

1 DISPATCH: How do you spell that?

2 MR. BRISCOE: C-A-L-L-E.

3 DISPATCH: Calle, okay.

4 MR. BRISCOE: I don't see his car any
5 more.

6 DISPATCH: Listen -- where do you
7 need the complainant who seen the whole
8 thing happen, where do you want him to stay
9 because he's just driving around because he
10 witnessed him hit him.

11 Okay. Sir, what I need you to do is
12 I need you to go back to the scene where the
13 gentleman on the bicycle was hit, and I need
14 you to wait in your vehicle because you're
15 going to have to make a witness statement,
16 okay?

17 MR. BRISCOE: Okay, not a problem.

18 DISPATCH: I need you to go back
19 there. Do not get out of your vehicle.
20 Stay in your vehicle and on scene till the
21 deputies arrive, okay?

22 MR. BRISCOE: All right.

23 DISPATCH: Do not approach the
24 deputies. We will let them know that you
25 are coming in your vehicle.

1 A I grew up there since I was a child.
2 Q Okay, and how old are you now?
3 A I am 29.
4 Q Do you know Peter Armstrong the defendant
5 in this case?
6 A Yes, ma'am.
7 Q How do you know him?
8 A Long time friends.
9 Q Did you guys go to high school together?
10 A We did.
11 Q Were you close friends?
12 A Yes.
13 Q On November 26th, 2010, the day of this
14 incident, were you with Mr. Armstrong?
15 A Yes.
16 Q And at the time, were you two friends or
17 were you dating or what was the nature of -- ?
18 A We were dating.
19 Q How long had you been dating?
20 A About a month.
21 Q Let's start with during the day that day,
22 the 26th. Do you remember if you were with
23 Mr. Armstrong that day during the day?
24 A Yes, I was.
25 Q What were you doing that day?

1 different than that this morning?

2 A I may have. I was concerned that he was
3 angry and had been drinking. I was worried about
4 that. He was really angry, and I didn't think he
5 should be driving.

6 Q Did you also tell me that you were
7 concerned about the amount of alcohol that he had?

8 A Yes, I didn't see the amount, but I knew
9 there was something wrong.

10 Q So you start driving. As you were
11 driving, what happens?

12 A He wanted to drive so he verbally said he
13 wanted to drive and he grabbed the wheel to pull us
14 over so we pulled over.

15 Q Did that frighten you?

16 A It did, yes, ma'am.

17 Q And so when he yanks the wheel and you
18 pull over, where did you pull over?

19 A I believe it was the I-Hop parking lot.

20 Q And is that the one in Fort Walton?

21 A Yes, ma'am, just a few -- a mile -- a few
22 blocks away from the bar.

23 Q And what did you do at that point?

24 A I got out of the car. He got out of car
25 and we had an argument.

1 Q About what?

2 A I didn't want him to drive. I wanted to
3 drive.

4 Q And as a result of that argument, what
5 happened?

6 A He was driving and wanted me to get back
7 in the car, and I was nervous because my purse was
8 in the car. I didn't know how I was going to get
9 anywhere without my purse and cell phone and
10 driver's license. I had to fly back to Atlanta the
11 next day, and so I was concerned but I got back in
12 the car as a passenger.

13 Q So when you leave -- was there a time
14 while you were standing having this argument with
15 him about driving where you were opposed to getting
16 back in the car?

17 A Yes, ma'am.

18 Q And eventually did you decide to get back
19 in the car?

20 A I did.

21 Q Okay. So you get back in the car, and who
22 is driving now?

23 A Peter is driving.

24 Q And where were you seated in the car?

25 A The passenger seat. I was not wearing a

1 seat belt, and I was facing the passenger window.

2 Q Why is that?

3 A I was angry with him.

4 Q Was there anyone else in the car with the
5 two of you?

6 A No, ma'am.

7 Q So you leave Fort Walton and as you -- do
8 you make any stops on the way from Fort Walton into
9 the Gulf Breeze area?

10 A Now that I can remember. We just went
11 straight to Gulf Breeze.

12 Q And what road were you traveling down?

13 A 98.

14 Q While you were on 98, will you tell the
15 jury what happened?

16 A There was a noise, and the car -- there
17 was a hit of something and the main thing I recall I
18 was jostled because I didn't have my seat belt on
19 and the sun glass came in.

20 Q Is that the glass from the sun roof on the
21 car?

22 A Yes, ma'am.

23 Q And when the sun roof comes down or when
24 you feel the hit and the glass comes down from the
25 sun roof, are you still facing towards the window?

1 A The sun roof glass I remember.

2 Q Is that the car that you guys were in that
3 night?

4 A I guess so, yes.

5 Q All right. Once you feel this hit and the
6 glass comes down, you said you turned forward, what
7 did you do at that point?

8 A I asked what happened.

9 Q What was Mr. Armstrong's response?

10 A I don't really think he said anything.

11 Q Did he stop the car?

12 A No, ma'am.

13 Q What happened. Where did -- what did he
14 do? Where did he go?

15 A We just kept driving.

16 Q Okay. I mean, are you -- are you asking
17 any other questions or was that it? Just once, what
18 happened? Drive north.

19 A I think I may have asked several times
20 what happened, what happened, many times.

21 Q And did he ever respond to you?

22 A I don't believe so.

23 Q Eventually do you turn into a neighborhood
24 off of 98?

25 A We did.

1 Q What neighborhood was that?

2 A It was where he lived.

3 Q Okay. Once you turn off into the
4 neighborhood, what happened from there?

5 A He said someone was following us and so he
6 stopped the car and reached over and opened my door
7 and pushed me out of the vehicle and then told me to
8 get out and go, and then I saw the people that were
9 following us get -- the man get out of his car, and
10 Peter was out of his car and they were talking, and
11 I heard him say, you hit someone on the bike, and
12 then I saw Peter got back in the car and the man got
13 in the car and he followed him.

14 Q You said Peter got back in the car. Did
15 Mr. Armstrong stay at that scene?

16 A No, ma'am.

17 Q Where were you left?

18 A In the neighbor's house or yard. I was
19 just in the yard.

20 Q So what do you do at that point?

21 A I just went and sat on this porch. Nobody
22 seemed to be at the house and I sat for a while. I
23 didn't know what to do, and I just went and walked
24 down to where his house was and went and sat on his
25 back porch.

1 Florida Department of Law Enforcement?

2 A Twelve years.

3 Q Twelve years, okay. Were you -- ?

4 MS. KINSEY: May I approach the
5 witness?

6 THE COURT: Yes.

7 Q (Ms. Kinsey) I am going to show you
8 what's been introduced as State's Exhibit Number 6.
9 Were you sent the blood of Peter Armstrong to
10 identify whether or not there was a presence of any
11 alcohol?

12 A I was.

13 Q Okay. Did you test that blood?

14 A I did.

15 Q Would you please tell the ladies and
16 gentlemen what your results were for his blood
17 alcohol level?

18 A Okay. The blood alcohol level there's two
19 results. It's tested twice. It's 0.173 and 0.174
20 grams of ethyl alcohol per 100 milliliters of blood.

21 Q Why is it tested twice?

22 A There's several reasons for that.
23 Conducting an analyze more than once insures that
24 accuracy of the test. It gives you two results that
25 both have to agree with one another. It's also

IN THE CIRCUIT COURT
IN AND FOR SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME III

PETER FELIX ARMSTRONG,

Defendant.

CASE NO.: 10-1469 CF

DIVISION: "C"

FILED
SANTA ROSA COUNTY
CLERK'S OFFICE
2012 APR 30 A 7:57

JURY TRIAL BEFORE

THE HONORABLE DAVID RIMMER

Proceedings held in the above-styled cause commencing on the 5th day of January, 2012, at the Santa Rosa County Courthouse, 6865 Caroline Street, Milton, Florida.

APPEARANCES

FOR THE PLAINTIFF:

JENNIE KINSEY, ESQUIRE
Assistant State Attorney
190 Government Street
Pensacola, Florida 32502

FOR THE DEFENDANT:

ASHLEY SMITH HERNDON, ESQUIRE
Dewrell & Herndon
1261 A North Eglin Parkway
Shalimar, Florida 32579

ALSO PRESENT:

PETER FELIX ARMSTRONG, DEFENDANT

REPORTED BY:

J. ELAINE TYREE, R.P.R.
Santa Rosa County Courthouse
6865 Caroline Street, Box H
Milton, Florida 32570
(850) 981-5596

ORIGINAL

1 P R O C E E D I N G S

2 THE COURT: Thank you. Please be seated.
3 Okay. Where are we now?

4 MS. HERNDON: Judge, at this point the Defense
5 would rest.

6 THE COURT: Okay. And your client does not
7 wish to testify?

8 MS. HERNDON: That is correct.

9 THE COURT: Okay. I need to then inquire of
10 Mr. Armstrong. Would you stand, please, sir, and
11 raise your right hand?

12 Do you swear or affirm the evidence you're
13 going to give will be the truth, the whole truth,
14 and nothing but the truth?

15 THE DEFENDANT: Yes, sir.

16 Whereupon, the witness,

17 PETER FELIX ARMSTRONG,

18 having been duly sworn by the Court testified on his
19 oath as follows:

20 THE COURT: All right. Please state your name.

21 THE DEFENDANT: Peter Felix Armstrong.

22 THE COURT: All right. Sir, have you had a
23 chance to discuss with your attorney whether or not
24 you wish to testify in this case?

25 THE DEFENDANT: Yes.

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THE COURT: And what is your decision?

THE DEFENDANT: I would not like to testify.

THE COURT: Okay. Do you realize that you have the right to testify and, if you choose not to, the State cannot make any comment on that and the jury cannot draw any inferences from your decision not to testify? Do you realize that?

THE DEFENDANT: Yes, sir.

THE COURT: And of course if you do testify, the State can cross examine you just like they can any other witness. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. And do you feel that you have been explained by your attorney the advantages and disadvantages of testifying?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. And is it your own personal decision not to testify?

THE DEFENDANT: Yes, sir.

THE COURT: Do you feel that anybody has put any pressure on you not to testify?

THE DEFENDANT: No, sir.

THE COURT: Okay. Thank you, sir. All right.

MS. HERNDON: Judge, at this time we would renew our motion for judgment of acquittal.

1 Would the defendant and his counsel please rise and
2 harken to the jury's verdict.

3 THE CLERK: We the jury find the defendant,
4 Peter Felix Armstrong, guilty of D.U.I. manslaughter
5 as charged in the Information.

6 As to Count 2, guilty of leaving the scene of a
7 crash involving property damage, a lesser included
8 offense, so say we all.

9 THE COURT: All right. Anything before I
10 discharge the jury?

11 MS. HERNDON: No, Your Honor.

12 THE COURT: All right. Ladies and gentlemen,
13 thank you very much for your jury service. There's
14 one last thing I want to do for you before you
15 leave. And I want to give each of you a copy of the
16 United States Constitution and the Declaration of
17 Independence. It's just a little thing that we give
18 out to jurors as a token of our appreciation for
19 your willingness to serve.

20 You can take it home, and you can see in there
21 that under the Sixth Amendment everybody accused of
22 a crime has a right to a fair and impartial jury and
23 a public trial. And that's the part that you played
24 in this case.

25 So again, thank you very much. And at this

ATTACHMENT # 4

**STATE OF FLORIDA
IN THE CIRCUIT COURT OF THE 1st JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY FLORIDA**

STATE OF FLORIDA,

-vs-

PETER FELIX ARMSTRONG
Defendant.

UCN: 572010CF001469XXAXMX
Case Number: 10001469CFMXAX
OBTS#: 5701087141

Judgment

PROBATION VIOLATOR
 COMMUNITY CONTROL VIOLATOR

RESENTENCE
 RETRIAL

The defendant PETER FELIX ARMSTRONG being personally before the court represented by ASHLEY SMITH HERNDON, the attorney of record and the state represented by JENNIE MARIE KINSEY and having entered a plea of Nolo-Contendere to the following crime(s):

SEQ #	CNT #	CHARGE	LVL
1	1	316.193.3c3a DUI MANSLAUGHTER 316.193.1 316.193.3a3a 316.193.3b3a	DGR Felony Second Degree
2	2	316.061 (LIO) LEAVING SCENE OF ACCIDENT WITH PROP DAMAGE	Misdemeanor First Degree
3	3	316.193.3a1 DUI-DUBAL DAMAGE PROPERTY/PERSON W/O 316.193.3b1 SERIOUS INJUR 316.193.3c1	Misdemeanor First Degree
4	4	316.193.3c1 DRIVING UNDER INFLUENCE PROPERTY DAMAGE	Misdemeanor First Degree

COUNT 2 – A/G TIME SERVED IN COUNTY JAIL

COUNT 3 – A/G 1 YEAR PROBATION FOLLOWING DOC SENTENCE

COUNT 4 – A/G TIME SERVED IN COUNTY JAIL

- The __ PROBATION __ COMMUNITY CONTROL previously ordered in this case is revoked.
 The PRIOR ADJUDICATION OF GUILT IN THIS CASE IS CONFIRMED and no cause having been shown why the defendant should not be adjudicated guilty.

It is ordered that the defendant is hereby Adjudicated Guilty of the above crime(s).

STATE OF FLORIDA
IN THE CIRCUIT COURT OF THE 1st JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY FLORIDA

STATE OF FLORIDA,
-vs-
PETER FELIX ARMSTRONG
Defendant.

UCN: 572010CF001469XXAXMX
Case Number: 10001469CFMXAX

Sentence
As To Count 1

The defendant, being personally before this court, accompanied by the defendants' attorney of record, ASHLEY SMITH HERNDON and having been adjudicated guilty herin, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown,

(Check applicable provision)

- and the court having on 03/20/2012 deferred imposition of sentence until this date 03/20/2012
- and the court having previously entered a judgment in this case on _____ now resentsences the defendant
- and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

IT IS SENTENCE OF THE COURT that:

- The Defendant is hereby committed to the custody of the Department of Corrections.
- The defendant pay a fine pursuant to section 775.083, Florida Statutes, plus a 5% surcharge pursuant to section 950.25 Florida Statutes, as indicated on the Fine/Costs/Fee Page.
- The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED:

For a term of Minimum 4.00 year(s) Maximum 15.00 year(s) – COUNT 1 = 4 YEAR MIN/MAND

In the event the defendant is ordered to serve additional split sentences, all incarcerations portions shall be satisfied before the defendant begins service to the supervision terms.

STATE OF FLORIDA
IN THE CIRCUIT COURT OF THE 1st JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY FLORIDA

STATE OF FLORIDA,
-vs-
PETER FELIX ARMSTRONG
Defendant.

UCN: 572010CF001469XXAXMX
Case Number: 10001469CFMXAX
OBTS#: 5701087141

Other Provisions
As To Count 1

It is further ordered that the defendant shall be allowed a total of 475.00 day(s) credit for such time incarcerated before imposition of this sentence.

ALL COUNTS CONCURRENT

CREDIT FOR TIME SERVED:

- The Department of Corrections shall apply the original jail time (To be used for Resentencing credit and to compute and apply credit for time served and the and after VOP and VOCC.) gain time awarded pursuant to section 944.275 Florida Statutes. (Pre October 1, 1989)
- The Department of Corrections shall apply the original jail time credit and to compute and apply credit for time served and unfortified gain time awarded during prior service of incarceration of the split sentence pursuant to section 948.06 (6) Florida Statutes. (Post October 1, 1989)
- Defendant is allowed credit for _____ days credit county jail served between date of arrest as a violator and date of resentencing. The Department of Corrections shall apply original jail credit awarded and shall compute and apply credit for actual time served in prison and any earned and unfortified gain time awarded prior service on:

CASE NO:

COUNT

pursuant to section 944.276 Florida Statutes.

FEL-FILED
SANTA ROSA COUNTY
CLERK'S OFFICE
2012 MAR 20 PM 3:51

Defendant PETER FELIX ARMSTRONG Case Number 10-1469CF

Other Provision, continued:

Consecutive/Concurrent _____ It is further order that the sentence imposed for this count shall run
As To Other Counts (check one) _____ consecutive to _____ concurrent
with the sentence set forth in count _____ of this case.

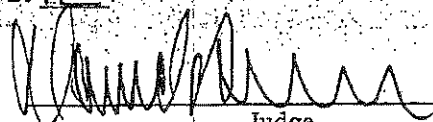
Consecutive/Concurrent _____ It is further ordered that the composite term of all sentences imposed
As To Other Convictions for the counts specified in this order shall run
(check one) _____ consecutive to _____ concurrent
with the following:
(check one)
_____ any active sentence being served.
_____ specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Santa Rosa County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by the Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further ~~recommends~~ ordered 50 hours community service and 1 year Probation following DOC sentence

DONE AND ORDERED in open court at Santa Rosa County, Florida,
This 20th day of MARCH, 2012



Judge

Armstrong

ATTACHMENT # 5

OBTS Number		ARREST / NOTICE TO APPEAR		1. Arrest		2. Notice to Appear		Juvenile	
5701087141		FLORIDA HIGHWAY PATROL		1		1		<input checked="" type="checkbox"/>	
Agency ORI Number		Agency Report Number		Agency Arrest Number		Agency Report Number			
5400HP5		FHPA10OFF049975		FHPA10OFF049975		FHPA10OFF049975			
Charge Type		Weapon Seized/Type		Location of Offense (Business Name, Address)					
<input type="checkbox"/> 1. FELONY <input checked="" type="checkbox"/> 2. TRAFFIC FELONY <input type="checkbox"/> 3. MISDEMEANOR <input type="checkbox"/> 4. TRAFFIC MISDEMEANOR <input type="checkbox"/> 5. ORDINANCE <input type="checkbox"/> 6. OTHER		1. Yes 2. No N/A		US-98 / FULLER DRIVE, MIDWAY					
Locations of Arrest (Include Name of Business)		Date of Arrest		Time of Arrest		Booking Date		Booking Time	
4737 BAY BREEZE DR, GULF BREEZE		11/27/2010		1:24 AM					
Jail Number		County ID Number		Other Local Number		FDLE Number		SOC Number	
Name (Last, First, Middle)		Aliases							
ARMSTRONG, PETER FELIX									
Race		Sex		Date of Birth or Age		Height		Weight	
W-White B-Black O-Oriental/Asian		W M		07/19/1982		6-01		180	
Eye Color		Hair Color		Complexion		Build			
Brown		Brown		MED		MED			
Scars, Marks, Tattoos, Unique Physical Features (Location, Type, Description)		Indication of Alcohol Influence		Indication of Drug Influence					
None		Y N UK		Y N UK					
Local Address (Street, Apt. Number)		(City)		(State)		(Zip)		(Phone)	
Permanent Address (Street, Apt. Number)		(City)		(State)		(Zip)		(Phone)	
1750 KELL ROAD, GULF BREEZE, FL 32563								(770) 729-8679	
Business Address (Name, Street)		(City)		(State)		(Zip)		(Phone)	
Driver's License State / Number		Social Security Number		INS Number		Place of Birth		Citizenship	
Florida / A652-666-82-259-0						FLORIDA		USA	
Co-Defendant Name (Last, First, Middle)		Race		Sex		Date of Birth or Age		<input type="checkbox"/> 1. Arrested <input type="checkbox"/> 2. At Large <input type="checkbox"/> 3. Felony <input type="checkbox"/> 4. Misdemeanor <input type="checkbox"/> 5. Juvenile	
Co-Defendant Name (Last, First, Middle)		Race		Sex		Date of Birth or Age		<input type="checkbox"/> 1. Arrested <input type="checkbox"/> 2. At Large <input type="checkbox"/> 3. Felony <input type="checkbox"/> 4. Misdemeanor <input type="checkbox"/> 5. Juvenile	
Charge Description		Counts		Statute Violation Number		Violation of Section (ORD)			
D.U.I. MANSLAUGHTER		1		316.193(3) (a)(b)(c) 3		1			
Activity		Drug Type		Amount/Unit		State Attorney Number		Court Number	
N/A		N/A		N/A					
<input type="checkbox"/> PC <input type="checkbox"/> Caples <input type="checkbox"/> AC <input type="checkbox"/> BW <input type="checkbox"/> FW <input type="checkbox"/> PW <input type="checkbox"/> Jun. PU <input type="checkbox"/> Citation		Date Issued		Writ. Act.		<input type="checkbox"/> Domestic Viol. Inj. <input type="checkbox"/> Order of Arrest			
Charge Description		Counts		Statute Violation Number		Violation of Section (ORD)			
LEAVING SCENE OF CRASH WITH DEATH		1		316.027 (1)		30			
Activity		Drug Type		Amount/Unit		State Attorney Number		Court Number	
N/A		N/A		N/A					
<input type="checkbox"/> PC <input type="checkbox"/> Caples <input type="checkbox"/> AC <input type="checkbox"/> BW <input type="checkbox"/> FW <input type="checkbox"/> PW <input type="checkbox"/> Jun. PU <input type="checkbox"/> Citation		Date Issued		Writ. Act.		<input type="checkbox"/> Domestic Viol. Inj. <input type="checkbox"/> Order of Arrest			
The undersigned certifies and swears that he/she has just and reasonable grounds to believe, and does believe that the above named Defendant committed the following violation of law: On the 26th day of November 2010 at 10:26 <input type="checkbox"/> A.M. <input checked="" type="checkbox"/> P.M. (Specifically include facts constituting cause for arrest.) Peter Felix Armstrong was traveling west on US-98 in the community of Midway near the Fuller Drive intersection. Armstrong had one passenger in the vehicle with him, Ms. Brittany Leigh Stanley. Paul Lee Shirley was on his bicycle traveling west on the US-98 shoulder in the community of Midway near the Fuller Road intersection. Shirley had a red lamp on the rear of his bicycle and a clear light on his head. Armstrong veered onto the US-98 westbound lane shoulder and struck the rear of Shirley's bicycle. Shirley and his bicycle were thrown forward and came to final rest on the US-98 westbound lane shoulder. Armstrong then left the scene of the crash and continued traveling west on US-98. Other drivers that had witnessed the crash began to follow Armstrong. Armstrong traveled approximately two miles and made a left turn onto New Hope Drive. Armstrong stopped his vehicle and confronted a witness that had been following him. The witness told Armstrong that he had hit someone or something on US-98. Armstrong returned to his vehicle and pushed his passenger, Brittany Stanley out of the car. Armstrong began traveling south at a high rate of speed on New Hope Drive. Armstrong traveled into the driveway of 4737 Bay Breeze Drive, Gulf Breeze, FL 32563 and struck the rear of a SUV belonging to Marcus Edward Avalos. (Trooper Chris Roper is the crash investigator on this crash) Avalos exited his home to witness Armstrong walk from the wooded area located just south of his driveway. When Avalos ask Armstrong what had happened, Armstrong ran west into the wooded area at the New Hope Drive And Bay									
Mandatory Appearance in Court		Location (Court, Room Number, Address)		Time		Date			
<input checked="" type="checkbox"/> Mandatory Appearance in Court <input type="checkbox"/> You need not appear in Court but must comply with instructions on Reverse Side.		Santa Rosa County Court House, Hwy 90 East, Milton, FL		Jan 04		2011		9:00	
I AGREE TO APPEAR AT THE TIME AND PLACE DESIGNATED TO ANSWER THE OFFENSE CHARGED OR TO PAY THE FINE SUBSCRIBED. I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED BY THIS NOTICE TO APPEAR, THAT I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST SHALL BE ISSUED.									
Signature of Defendant / Juvenile and Parent or Custodian									
<input type="checkbox"/> Miranda Warning <input type="checkbox"/> Hold for Other Agency Name:		Verified By		Date		Bond: Charge #		Bond: Charge #	
				11/27/2010		\$ 25,000.00		\$ 100,000.00	
<input type="checkbox"/> Hold for First Appearance <input type="checkbox"/> Do Not Bond Out. Reason:		Sworn to and subscribed before me, the undersigned authority this _____ day		Returnable Court Date		Returnable Court Time			
		27		01/04/2011		9:00 am			
I swear or affirm the above and attached statements are true and correct.		Sworn to and subscribed before me, the undersigned authority this _____ day November 2010		Release Date		Release Time			
Officer's / Complainant's Signature		Name / Title of Person Authorized to Administer							

[Signature]
 11/27/10

NARRATIVE CONTINUATION

1. Offense 2 Juvenile 1. Original 2. Supplement 1

Agency (DB) Number FLC 54HP05	Agency Name FLORIDA HIGHWAY PATROL	Agency Report Number FHPA100FF049975
Original Date Reported 112710	Case Reference ARMSTRONG, PETER FELIX	

Breeze Drive intersection. The Santa Rosa County Sheriff's Department responded to the area to locate Armstrong and his passenger. Shirley died at the scene of this crash due to the injuries he received when Armstrong's vehicle struck his bicycle. The Sheriff's deputies located Stanley at Armstrong's address and located Armstrong in the area of 5283 Soundside Drive. Both Armstrong and Stanley were transported to the Bay Breeze Drive crash scene. Both Stanley and Avalos identified Armstrong as the driver in both crashes. I placed Armstrong under arrest for leaving the scene of a crash involving death. As I talked to Armstrong, he had the odor of an alcoholic beverage on his breath. He had received several small cuts and scratches when he had ran through the woods. Armstrong's eyes were bloodshot and watery. He seemed to have trouble holding his eye lids open. Armstrong's face was red and his speech was slurred. When Armstrong stood stationary, he swayed back and forth. LifeGuard Ambulance Service arrived and obtained a blood sample from Armstrong. Trooper Roper transported Armstrong to the county jail. While at the jail, I told Armstrong that I had finished my crash investigation and was now conducting a criminal investigation into DUI. I then read Armstrong his rights and he stated he understood his rights. Armstrong attempted FST's in the jail TV area. (Results of FST's listed in my DUI detection report) I told Armstrong he was now under arrest for DUI also. I read and explained implied consent warnings to Armstrong. Armstrong refused to give a sample of his breath on 11/27/2010 at 3:12 AM. Armstrong refused to give a statement reference both crashes.

FILED
 SANTA ROSA COUNTY
 CLERK'S OFFICE
 2010 NOV 30 P 3:14

Report Contains	Referred Report Number(s)		
Officer(s) Reporting CPL ROBERT W. HARRIGILL	ID. Number 1922/874	Troop A	Date 11/27/10
Officer Reviewing (If Applicable)	ID. Number	Routed To	Referred To
Assigned To	By	Date	
Case Status	Clearance Type 1. Arrest 2. Exceptional 3. Unfounded	Arrested A-Adult J-Juvenile	Date Cleared
Arrest Number FHPA100FF049975	Number Arrested		