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Division I  
State of Washington

Court of Appeals No. 74916-1

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**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON**  
**DIVISION ONE**

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STATE OF WASHINGTON,

Respondent,

v.

JOHN CALVIN COLEMAN III,

Appellant.

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Appeal from the Superior Court of Washington for King County

No. 14-1-02763-6 SEA

Honorable Mariane C. Spearman

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**APPELLANT'S OPENING BRIEF**

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## I. INTRODUCTION

The case relates to an incident of hit and run that allegedly occurred on October 20, 2013, in King County, Washington. Defendant John Coleman III (“Mr. Coleman”) was convicted along with Defendant Malika Pa (“Defendant Pa”) for hit and run - felony. Defendant Pa was charged with vehicular homicide, vehicular assault, hit and run – felony with a death, and two counts of reckless endangerment. (Transcript, (“RP”) 10.22.15, 7:14-16). Mr. Coleman was alleged to have failed to follow the statutory requirements for a hit and run and was charged with violating RCW 46.52.020(1), (4)(a) or (b). On March 18, 2016, the trial court sentenced Mr. Coleman to the bottom range of 41 months. The offender score of Mr. Coleman was 2, seriousness level of 9, with a standard range of 41 to 54 months in confinement. Mr. Coleman’s counsel requested an exceptional sentence below the standard. The trial court failed to even attempt to determine whether there were any mitigating circumstances to impose an exceptional sentence with respect to Mr. Coleman. The trial court’s reasoning for not imposing a sentence below the standard range was that if the court did so, the State would just file an appeal and they would be back in the same place. The Court did not go through any analysis of the mitigating factors. Thus, the sentence in the standard range is an abuse of sentencing discretion. Moreover, the joint trial in

this case substantially prejudiced Mr. Coleman since he was only charged with the hit and run felony while Defendant Pa was charged with more serious counts, including vehicular homicide. The evidence adduced on behalf of Defendant Pa contributed to the jury's decision against Mr. Coleman.

A notice of appeal was filed on March 18, 2016 based on the following assignment of errors.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in not severing Mr. Coleman's trial from the Defendant Pa's trial.
2. The trial court erred in not imposing a sentence below the standard range to Mr. Coleman stating that it did not have the legal authority to do so.
3. Mr. Coleman was denied effective assistance of counsel.

### **A. Issues Pertaining to Assignments of Error.**

- i. The trial court erred by not severing Mr. Coleman's trial from Defendant Pa's trial.
- ii. The trial court abused its discretion by not imposing a sentence outside the standard range.
- iii. Mr. Coleman was denied effective assistance of counsel during his trial.

## **III. STATEMENT OF THE CASE**

### **A. Background.**

On October 20, 2013, Defendant Pa was hanging out with her friends in Seattle in the morning hours. (Case summary and request for

bail, p. 1). Defendant Pa had apparently been drinking alcohol before going to the International House of Pancakes (IHOP), where she met up with several other folks. (Id.). The group remained at the IHOP for nearly an hour. (Id.). At approximately 3:30 a.m. the group was seen in several cars at a gas station where Defendant Pa was again seen drinking a “Four Loco,” an alcoholic drink. (Id.). Defendant Pa drove her mother’s car with three passengers and Mr. Coleman drove his car with one passenger. (Id.). The passengers in Defendant Pa’s car were worried about her driving and told her to slow down. (Id.). However, she was “dancing to the music while speeding” and driving like she was “invincible” and “swerving” on the road. (Id.). She was racing the other cars and using the oncoming lane to pass while driving on 23rd Ave S. (Id.).

Mr. Coleman was also on 23rd Ave S and he slowed to make a left turn onto S. King St. (Id.). He began his turn when Defendant Pa was speeding several car lengths behind him. (Id.). She crossed over the double yellow lines into the oncoming lane, accelerating to pass him. (Id.). She crashed into Mr. Coleman’s car with such incredible force that her car ended up sliding on its side, slamming the roof into a light pole. (Id.).

The passenger in front seat, Natsanet Teke, was ejected through the car’s sun roof and died within the hour. (Id.). Another passenger, Kalani Duell fractured her femur and Briana Manson suffered soft

tissue injuries. (Id.). Defendant Pa fled the scene. (Id.). Defendant Pa was later returned to the scene by her mother and sister an hour after the crash. (Id.). A blood test for substances did not show drugs or alcohol. (Id.). The prosecution alleges that Mr. Coleman and his passenger also fled the scene and there was no record that he contacted the Seattle Police or Fire Departments. (Id.). Mr. Coleman stated that he had a friend at the scene call 911, and that he reached out to the family of the deceased after the accident. (RP 03.18.16, 1126:20-22). The statement given by Mr. Coleman to the police was that he stayed at the scene until the time the ambulance came. (RP 11.04.15, 795:7-12).

#### **B. Procedural History.**

Mr. Coleman was charged under Count 3 for a hit and run – felony under RCW 46.52.020(1), (4)(a) or (b) on the basis of the Information filed by the State. (*See Information*). A complaint was filed as Cause No. 14-C-02763-6 SEA before the Superior Court of Washington for King County. A case investigation report containing the certificate of probable cause was submitted by the Seattle Police Department on February 14, 2014. (*See Case Investigation Report*). The charges against Defendant Pa included Count 1 – Vehicular Homicide, Count 2 – Vehicular Assault, Count 3 – Hit and Run – Felony, Count 4 & 5 – Reckless Endangerment. (*See Information*).

Both defendants entered a plea of not guilty. (RP 10.27.2015, 198:18-19). A joint jury trial was conducted in the case. Neither Mr. Coleman nor Defendant Pa testified in the case. (RP 10.22.16, 112:5-9).

On November 9, 2015, by a joint verdict, a unanimous jury found defendants guilty of the offense alleged. (RP11.09.15, 1092:4-5). Mr. Coleman was found guilty of the crime of hit and run felony as charged in Count 3 of the Information. On March 18, 2016, the trial court found Mr. Coleman guilty of the offense charged. Considering the nature of the charge alleged against him and his effort to compensate the victim's family, Mr. Coleman filed a sentencing memorandum requesting exceptional sentencing below the standard range. However, the trial court sentenced Mr. Coleman with a standard range of 41-54 months and a maximum term of 10 years and/or a fine of \$20,000.

#### **IV. SUMMARY OF ARGUMENT**

The State alleged that after the incident on October 20, 2013, Mr. Coleman: (1) did not call the police, (2) did not give his name to the police, (3) did not wait for the emergency squad to arrive, (4) did not provide any information for insurance, (5) did not assist the women involved in the accident that were on the sides of the road, and (6) did not assist the women with the broken leg. Mr. Coleman's situation is more of a technical violation and a mistake made in an extremely

chaotic situation. Mr. Coleman did not cause the accident. He made his friend call 911. In fact, Mr. Coleman stayed at the scene until the ambulance arrived. (RP 11.04.15, 795:7-12). Later, he called the police and gave a complete statement, which is a different situation from Defendant Pa. Mr. Coleman stated that he was extremely panicked in the situation and stayed at the scene longer than the co-defendant, Defendant Pa. (RP 10.22.15, 40:25, 41:1-3; RP 03.18.16, 1127:16, 1128:13-14). This factor is relevant to mitigation in this case, even though not relevant to conviction. (RP 03.18.16, 1126:10-11).

The trial court erred in not severing the two charges in the Indictment. A joint trial in this case was highly prejudicial to Mr. Coleman's case because the charge against him was just a single count hit and run – felony. However, Defendant Pa was charged with more serious offenses under the counts of Vehicular Homicide, Vehicular Assault and Reckless Endangerment. By conducting the joint trial of Mr. Coleman with Defendant Pa, Mr. Coleman was highly prejudiced in properly defending his case. The evidence which ought to have been produced for his defense was not properly brought before the court due to the joint trial and ineffective assistance of counsel. All evidence provided focused mainly on Defendant Pa.

Further, Mr. Coleman's counsel sought from the court an exceptional sentencing below the standard in his sentencing memorandum. (RP 03.18.16, 1127:6-8). However, the trial court noted

that it actually wishes to give Mr. Coleman a sentence below the standard range, but held that it could not legally do so. (RP 03.18.16, 1133:12-14). The court erred in holding that since Mr. Coleman did not cause the accident, the court will not be able to give an exception down. (RP 03.18.16, 1133:5-9). By doing so, the trial court imposed Mr. Coleman a sentencing range same as Defendant Pa, who was actually responsible for the accident and the death of the deceased. (RP 03.18.16, 1133:9-12). The trial judge concluded the sentencing of Mr. Coleman with the bottom range of 41 months, as the court believed it did not have the authority to go below that range without any substantial or compelling reason, but the court conducted no analysis as to the mitigating circumstances presented by Defense. (RP 03.18.16, 1133: 13-15). The offender score of Mr. Coleman was 2, seriousness level of 9, with a standard range of 41 to 54 months in confinement. Here, the trial court's ground for refusing to impose a sentence below the standard range to Mr. Coleman is clearly an abuse of discretion. Mr. Coleman was also prejudiced by his counsel's ineffective assistance because the evidence is clear that his counsel failed to cross-examine witnesses, and failed to call witnesses who could have attested that Mr. Coleman did stay on the scene after the accident. These witnesses were readily available. Counsel also failed to provide a witness that could provide foundation for admitting audio of Mr. Coleman yelling to call 911. In view of these aspects, Mr. Coleman

requests this Court to reverse the sentence and remand the case back to the trial court.

## V. ARGUMENT

### A. The trial court erred by not severing Mr. Coleman’s trial from the Defendant Pa’s trial in this case.

#### i. The trial court has discretion to conduct separate trials to avoid manifest injustice.

“[S]eparate trials of jointly charged defendants is entrusted to the discretion of the trial court[.]” State v. Hoffman, 116 Wash. 2d 51, 74, 804 P.2d 577, 589 (1991) (citing State v. Grisby, 97 Wash.2d 493, 507, 647 P.2d 6 (1982), cert. denied sub nom. Frazier v. Washington, 459 U.S. 1211 (1983)). Separate trials are favored if the defendants seeking severance can demonstrate that “a joint trial would be so manifestly prejudicial as to outweigh the concern for judicial economy.” Id. at 590-91 (citing State v. Philips, 108 Wash.2d 627, 640, 741 P.2d 24 (1987)). Thus, courts allow severance of trials if “the conflict is so prejudicial that defenses are irreconcilable, and the jury will unjustifiably infer that this conflict alone demonstrates that both are guilty.” Hoffman, 116 Wash. 2d at 74 (citing Grisby, 97 Wash. 2d at 508).

Moreover, the courts “have the discretion to review an issue raised for the first time on appeal when it involves a ‘manifest error affecting a constitutional right.’” State v. Sublett, 176 Wash. 2d 58, 127, 292 P.3d 715, 749 (2012) (quoting State v. Easterling, 157

Wash.2d 167, 173 n. 2, 137 P.3d 825 (2006)). “[U]nder [the Rule of Appellate Procedure] 2.5(a), the court will address manifest error affecting a constitutional right for the first time on appeal.” Id.

By its terms, RAP 2.5(a) applies to all errors not objected to at trial: “The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: ... (3) manifest error affecting a constitutional right.” We have regularly required RAP 2.5(a)(3) analysis any time a party raises a constitutional error to which they did not object at trial.

Sublett, 176 Wash. 2d at 151–52.

In the instant case, Mr. Coleman was charged on a single count of hit and run – felony. Mr. Coleman’s involvement in the accident, as opposed to Defendant Pa, is clearly distinguishable from the facts of the case. Mr. Coleman had been driving his vehicle slowly and was not involved in any reckless driving, he was simply making a left turn. There was no concerted action among Mr. Coleman and Defendant Pa in taking part in the alleged crime. Here, the State alleges that Mr. Coleman failed to satisfy all of the statutory requirements of what a person is supposed to do following an auto accident.

However, Mr. Coleman stated that he made his friend call 911 after the accident. (RP 03.18.16, 1126:20-22). Mr. Coleman was extremely panicked in the situation and stayed at the scene longer than the Defendant Pa. (RP 03.18.16, 1127:16, 1128:13-14). He also called the police back and left his number to give a complete statement. (RP

10.22.15, 41:1-5; RP 03.18.16, 1127:22). Detective Thomas Bacon (“Officer Bacon”), the police officer for the City of Seattle, testified that he received three voice messages from Mr. Coleman stating that he will come and talk to him about the incident. (RP 10.22.15, 37:13-15; 41:1-16; 46:6-13). Mr. Coleman admitted his involvement in the incident and he gave his full name and information to Officer Bacon. (RP 10.22.16, 41:22-25). Officer Bacon explained a text message the victim’s sister received from Mr. Coleman that expressed his condolences. Mr. Coleman said that he had his friend call an ambulance before leaving the scene. (RP 11.04.15, 800:20-25, 801:1-25, 802:1-6). Mr. Coleman’s statement was that he remained on the scene until the ambulance came. (RP 11.04.15, 795:7-12).

Here, Defendant Pa’s case involved the charges of vehicular homicide, vehicular assault, hit and run – felony with a death, and two counts of reckless endangerment. Mr. Coleman was not charged with the cause of the accident. He was only charged with hit and run – felony with a death. The particular charge against Mr. Coleman was just that he was at the scene, and he left the scene without providing the necessary information. However, the jury was exposed to the evidence as a whole for a homicide where the driver left the scene, leaving a dying friend on the sidewalk and another friend with a fractured leg. The State projected Mr. Coleman’s act with all the evidence related to the vehicular homicide and assault. There is clear

evidence that Defendant Pa had been recklessly driving her vehicle and even the passengers in her car were apparently asking her to slow down. The court sentenced Mr. Coleman with almost the same sentence as Defendant Pa. In fact, Defendant Pa's conduct endangered Mr. Coleman, as her vehicle hit his as he was making a left turn. The jury was also taken out to see the Defendant Pa's vehicle to give them an idea of the amount of damage that was inflicted on the vehicle before it rested against the pole. (RP 10.22.15, 82:1-3). This caused the jury to make decisions based on their emotions rather than the rule of law. The jury was actually made to see the homicide being committed and all such evidence turned out very seriously against Mr. Coleman who had only been charged with a hit and run. (RP 11.02.15, 600:21-25). Therefore, even though the accident was caused solely due to Defendant Pa's reckless driving and arrogant conduct, the entire evidence related to Defendant Pa affected Mr. Coleman's single count of hit and run – felony. Mr. Coleman clearly made his friend call 911 and had contacted the police voluntarily to provide his statement. This evidence got lost in all the testimony and evidence in regard to Defendant Pa. Here, there was no way the jury could not hear all the evidence against Defendant Pa and not unjustly infer the evidence against Mr. Coleman. Thus, the joint trial was highly prejudicial to Mr. Coleman.

**B. The trial court abused its discretion by not imposing a sentence outside the standard range.**

**i. Substantial and compelling reasons allow the trial court to impose a sentence above or below the standard range.**

“[A] court must generally impose a sentence within the standard sentence range. It may, however, impose a sentence above or below the standard range for reasons that are ‘substantial and compelling.’” State v. Fowler, 145 Wash. 2d 400, 404, 38 P.3d 335, 338 (2002) (quoting RCW 9.94A.120(1) & (2)). The Sentencing Reform Act of 1981(SRA) “contains a list of aggravating and mitigating factors ‘which the court may consider in the exercise of its discretion to impose an exceptional sentence.’” Id. (quoting RCW 9.94A.390). The court has rejected criminal history as a mitigating factor. (See State v. Armstrong, 106 Wash.2d 547, 551, 723 P.2d 1111 (1986) (rejecting criminal history as a mitigating factor).

“[T]he list of mitigating factors is not exclusive, any reasons that are relied on for deviating from the standard range must ‘distinguish the defendant’s crime from others in the same category.’” Fowler, 145 Wash. 2d at 405 (quoting State v. Gaines, 122 Wash.2d 502, 509, 859 P.2d 36 (1993)). Further, “[a] sentencing court may not, in imposing an exceptional sentence, take into account the defendant’s criminal history and the seriousness level of the offense because those are considered in computing the presumptive range for the offense.” Id.

(citing State v. Nordby, 106 Wash.2d 514, 518 n. 4, 723 P.2d 1117 (1986)).

Thus, appellate review of a sentence would determine: (1) if “the record supports the reasons given by the sentencing court for imposing an exceptional sentence,” (2) “whether the reasons given justify the imposition of an exceptional sentence,” (3) whether the sentencing court’s reasons are “substantial and compelling,” and (4) “whether the sentence is clearly excessive or clearly lenient under the ‘abuse of discretion’ standard.” Id. at 405-06 (citing RCW 9.94A.120(2); RCW 9.94A.210(4)).

Mitigating factors will be substantial and compelling if: “(1) the trial court did not base an exceptional sentence on mitigating factors necessarily considered by the legislature in establishing the standard sentence range, and (2) the mitigating factors are sufficiently substantial and compelling to distinguish the instant crime from others in the same category.” State v. Garcia, 162 Wash. App. 678, 683, 256 P.3d 379, 381 (2011), publication ordered (July 28, 2011) (citing State v. Law, 154 Wash.2d 85, 95, 110 P.3d 717 (2005)).

As aforementioned, “[u]nder RCW 9.94A.535(1), a court may impose an exceptional sentence below the standard range ‘if it finds that mitigating circumstances are established by a preponderance of the evidence.’” State v. Hull, 185 Wash. App. 1005 (2014), amended on denial of reconsideration (Feb. 12, 2015), review denied sub nom.

State v. Hull, 184 Wash. 2d 1003, 357 P.3d 665 (2015) (quoting RCW 9.94A.535(1)). “Unlike aggravating factors, for which the statutory list is exclusive, the list for mitigating factors is only illustrative.” Id. (citing RCW 9.94A.535(1)). In addition, “[a] trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons.” State v. Embry, 171 Wash. App. 714, 731–32, 287 P.3d 648, 658 (2012) (citing State v. Lord, 161 Wash.2d 276, 283–84, 165 P.3d 1251 (2007)).

In the instant case, the trial court failed to use its discretion when the court did not consider whether Mr. Coleman is entitled to an exceptional sentence below the standard range. Mr. Coleman’s counsel sought from the court an exceptional sentence below the standard range. (RP 03.18.16, 1127:6-8). Even though the trial court noted that it actually wishes to give Mr. Coleman a sentence below the standard range, it stated that it could not legally do so. (RP 03.18.16, 1133:12-14). This is clearly erroneous because the trial court has discretion to allow a sentencing below the standard range if there are substantial and compelling reasons. Here, Mr. Coleman’s sentence is clearly excessive because he has been sentenced to a term of the bottom range 41 months, but was still sentenced to the same amount of time as Defendant Pa, who was the cause of the accident and vehicular homicide. Further, the sentencing court may not take into account Mr. Coleman’s criminal history and the seriousness level of the offense

while considering exceptional sentence. Mr. Coleman's case involves mitigating factors that enable a deviation from the standard range because it distinguishes Mr. Coleman's crime from Defendant Pa in the same category. Mr. Coleman was simply making a left turn when his car was hit by Defendant Pa's. He made a friend call 911 and waited until the ambulance arrived before leaving. He later contacted the police regarding the incident. These are not actions that should be punished the same as someone who actually caused the death of a young woman.

Even more compelling, the victim's family spoke on Mr. Coleman's behalf at the sentencing hearing and noted that Mr. Coleman did attempt to provide for the victim's daughter. The victim's brother stated the following:

THE COURT: And who are you in relation to Mr. Coleman?

MR. MANNING: Well, Natsa was my sister, so --

THE COURT: Okay.

MR. MANNING: We would like the Court to know he was very apologetic. He reached out to us. He tried to provide for Natsa's daughter. He did everything right in our eyes. I mean, we know it was an accident, but he -- he was really remorseful, and we --our family wants -- we want you to know that. He dealt with this situation like a person that showed he was sincere, he was remorseful, and we just felt we had to tell you that.

Nevertheless, the court refused to even consider the mitigating factors. Therefore, the trial court was erroneous to hold that it did not have the legal authority to impose a sentence below the standard range in this case.

**ii. The trial court abused its sentencing discretion in this case.**

“A defendant generally cannot appeal a standard range sentence[.]” State v. Hull, 185 Wash. App. 1005 (2014), amended on denial of reconsideration (Feb. 12, 2015), review denied sub nom. State v. Hull, 184 Wash. 2d 1003, 357 P.3d 665 (2015) (citing RCW 9.94A.585(1)). A defendant “can appeal a failure by the sentencing court ‘to comply with procedural requirements of the [Sentencing Reform Act of 1981, chapter 9.94A RCW,] or constitutional requirements.’” Id. (citing State v. Osman, 157 Wash.2d 474, 481–82, 139 P.3d 334 (2006)).

Where a defendant appeals a sentencing court’s denial of his request for an exceptional sentence below the standard range, ‘review is limited to circumstances where the court has refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range.’

Id. (citing State v. Garcia–Martinez, 88 Wash.App. 322, 330, 944 P.2d 1104 (1997)). (emphasis added)

“‘A court refuses to exercise its discretion if it refuses categorically to impose an exceptional sentence below the standard range under any circumstances; i.e., it takes the position that it will never impose a sentence below the standard range.’” Id. (quoting Garcia–Martinez, 88 Wash.App. at 330). “‘The failure to consider an exceptional sentence is reversible error.’” Id. (quoting State v. Grayson, 154 Wash.2d 333,342, 111 P.3d 1183 (2005); see also State

v. Jones, 169 Wash. App. 1034 (2012) (“Where a court fails to recognize that it has discretion to impose an exceptional sentence, its failure to do so is reversible error.”).

In State v. Jones, 169 Wash. App. 1034 (2012), the defendant appealed the sentencing court’s conclusion that it did not have legal authority under RCW 9.94A.589 to run the sentence of defendant for cocaine possession concurrently with a revoked sentence. The court of appeals noted that “[w]e can ... review a court’s decision to impose a standard range sentence in ‘circumstances where the court has refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range.’” Id. at \*1 (quoting State v. McGill, 112 Wn.App. 95, 99–100, 47 P.3d 173 (2002)). The court noted that “[a] ‘trial court’s failure to exercise its discretion [is] an abuse of discretion.’” Id. (quoting State v. Flieger, 91 Wn.App. 236, 242, 955 P.2d 872 (1998)). The court noted that because the trial court did not consider whether it had discretion to order the sentence for cocaine possession to be served as a mitigated exceptional sentence under RCW 9.94A.535, the court of appeals remanded for further proceedings consistent with its opinion.

In the instant case, the trial court’s reasoning for not imposing a sentence below the standard range to Mr. Coleman is that the State would appeal and the case will be remanded back again. (RP 03.18.16, 1134:17-19).

The Court stated the following:

“If I were to impose a sentence below the standard range I’m certain the State would appeal and we’d be back here again.”  
Id.

Clearly, this is not a ground for refusing a sentence below the standard range. According to the court, even though Mr. Coleman did not cause the accident, the court would not be able to give an exception down. (RP 03.18.16, 1133:5-9). In fact, the court opined that Mr. Coleman’s sentencing range would be the same as Ms. Pa, who was actually responsible for the accident and the death of the deceased because she did not have any criminal history. (RP 03.18.16, 1133:9-12). The court failed to use its discretion while imposing sentencing even though Mr. Coleman’s counsel requested an exceptional sentence below the standard range. Like Garcia–Martinez, the trial court in this case refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range. The trial court also failed to determine whether there were any mitigating circumstances to impose an exceptional sentence on Mr. Coleman. Thus, the trial court’s failure to use its discretion by providing a specific basis for the sentence, ruling out the substantial and compelling reasons in this case, is a reversible error.

**C. Mr. Coleman was denied effective assistance of counsel during his trial.**

“A successful ineffective assistance of counsel claim requires the defendant to show that counsel's performance was deficient and that the defendant was prejudiced by the deficient performance.” In re Crace, 174 Wash. 2d 835, 840, 280 P.3d 1102, 1105 (2012) (citing Strickland v. Washington, 466 U.S. 668 (1984)). “[P]rejudice [is defined] as the ‘reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” Id. (quoting Strickland, 466 U.S. at 694). “‘A reasonable probability is a probability sufficient to undermine confidence in the outcome.’” Id. (quoting Strickland, 466 U.S. at 694).

In the instant case, Mr. Coleman was prejudiced by his counsel’s ineffective assistance during the trial of his case. The Counsel failed to address the court about the manifest injustice that could have occurred in conducting a joint trial in the case because the offense alleged against Mr. Coleman was less grave than what has been charged against the co-defendant Pa. Mr. Coleman’s counsel also failed to cross-examine numerous witnesses during the trial that could have given insight as to Mr. Coleman’s actions after the accident, such as him staying until the ambulance arrived. (RP 10.28.15, 313:12-14; 332:4, 356:19-20, 368:15-19; Tr. 11.02.15, 573:24, 592:13, 560:17-18; Tr. 11.03.15, 671:7).

The state marked as an exhibit Mr. Coleman's conversation with Officer Bacon on October 22, 2013, subject to redactions. Mr. Coleman's counsel did not object to it assuming to agree on further argument. (RP 11.03.15, 753:9-25, 754:1-13). The statement included the sentence "No, I didn't make an attempt to call the police department." (RP 11.03.15, 773:1-21). Mr. Coleman's counsel objected to admitting the statement, under the rule of completeness, without the next line "I did make" – However, counsel later agreed to offer it on cross, but failed to do so. (Id.). Even though Mr. Coleman stated that he made his friend call 911 and stayed in the scene until the ambulance arrived, Mr. Coleman's counsel did not call witnesses who could attest that he stayed on the scene as state and they were readily available. Counsel also failed to produce a witness that would lay a foundation to admit the audio tape where Mr. Coleman could be heard shouting out to call 911 from the scene. The court heard the tape outside the presence of the jury, but would not allow counsel to play it while questioning Detective Bacon, since he could not lay a proper foundation for admitting it. (RP 11.04.15, 862:10, 874:25). But the court told counsel that it could be played if Mr. Coleman or another witness at the scene testified. (Id.) Mr. Coleman's counsel failed to ever bring the audio tape up again.

Further, during the trial, Mr. Coleman's counsel argued that the statute does not actually obligate Mr. Coleman to contact the police as

an exclusive option. (RP 11.03.15, 773:22-25; 774:1-24). He argued that the first thing that the statute requires is that Mr. Coleman exchange information with the driver or passengers and he complied with it by reaching out to the family. (Id.). The court was not sure as to who was contacted by Mr. Coleman, whether the driver's family or the deceased girl's family, and noted that it would think about it later. (Id.). According to the court, the aspect of reaching out to the family of driver or deceased as to satisfy Mr. Coleman's obligation under the statute as a strict liability is to be ascertained. (RP 11.03.15, 775: 1-25). However, Mr. Coleman's counsel did not address this issue later and he did not raise this crucial issue again while questioning any witnesses.

Additionally, Mr. Coleman's counsel did not argue on the issue related to application of Miranda rights to Mr. Coleman. The court found the statements made to Detective Bacon over the phone were not a custodial interrogation, so the statements were admissible. (RP 10.22.15, 116:23-25, 117:1-5). Mr. Coleman's counsel never questioned or objected to this issue. Thus, the conduct of Mr. Coleman's counsel was deficient. There is more than a reasonable probability that, but for counsel's unprofessional errors, Mr. Coleman could have had a different result of his case.

Based on the foregoing, Mr. Coleman requests the Court to reverse his sentencing and conviction.

## VI. CONCLUSION

Wherefore, this appellant, John Calvin Coleman III, respectfully requests that this Court reverse the conviction and sentence.

DATED this 14<sup>th</sup> day of October, 2016.

Respectfully Submitted,

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**PROOF OF SERVICE**

I, Corey Evan Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on October 14, 2016, I caused to be served the document to which this is attached to the party listed below in the manner shown next to their name:

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