

REALTIME UNEDITED TRANSCRIPT ONLY

1 THE COURT: Good morning and welcome. We're here
2 today to do a criminal trial. I'll tell you a little bit about
3 the case that the trial will be about. On May 11, 2012 at
4 approximately 1030 in the evening five teens were traveling in
5 a Honda Accord heading southbound on wells gate national
6 parkway at Camp Pendleton. Suddenly the vehicle careened into
7 the median and crashed into a light pole. One of the
8 passengers, a 17 year-old Courtney Walls was killed in the
9 crash. In the front seat Sidney Young was injured. No other
10 vehicles were involved in the accident, and according to the
11 passengers, 18 year-old Riley Gardner was allegedly sending
12 text messages on a cell phone while driving and she's been
13 charged or he's been charge would vehicle manslaughter and
14 that's why we're here. If the courtroom deputy would call the
15 case.

16 THE CLERK: Calling matter no. 1 on calendar, case
17 number criminal 13-9897, United States versus Riley Gardner set
18 for jury trial.

19 THE COURT: Will the parties state their appearances
20 for the record.

21 MR. KAPLUN: Your Honor, I'm Assistant United States
22 Attorney Brian Kaplun of the United States.

23 MS. CHIMA: I'm Assistant United States Attorney
24 Floyd Black for the United States.

25 MS. CHIMA: I'm Alexandra Chime for the defendant

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1 Riley gardener.

2 MS. CARRILLAS: Your Honor I am Michelle Carrillos
3 for defendant Riley Gardner.

4 THE COURT: We're running a little behind, so I'll
5 do this rather quickly. But first the trial would start off
6 with the process called voir dire. At that time the judge
7 would ask the jurors questions. The sole purpose of the
8 questions is to sort out whether the jurors can be fair and
9 impartial to both sides and fair SIM will I means that you'll
10 decide the case based on the fact that's you'll hear in this
11 courtroom and not any other facts that you hear outside or
12 other life experiences that you have.

13 So typically one of the questions that I would ask, I
14 would ask lots of questions so I'll just ask one question to
15 all of you. And if the answer is no, raise your hand.
16 Otherwise don't do anything.

17 Can all of you be fair and impartial in this case? No
18 one -- raise your hands if you can. Say yes if you can.
19 Nobody can? Okay. Everybody can be fair. Wait. Okay.
20 Everybody can be fair and impartial. So we're ready to go.
21 Okay.

22 The courtroom deputy will give the jury the oath.

23 THE CLERK: Members of the jury, please raise your
24 right hands.

25 Jury sworn.

1 THE CLERK: Thank you. Please be seated.

2 THE COURT: Members of the jury, now that you have
3 promised to be fair to the participants I will give you some
4 instructions. The job of being a juror is an important one.
5 You must listen carefully to what each witness says. If the
6 witness tells different stories it is your job to decide what
7 really happened. You must decide who to believe or not to
8 believe. Not form an opinion until you have heard all the
9 evidence. The defendant is presumed to be intent. If you were
10 to vote right now you would have to find the defendant not
11 guilty because you have not heard any evidence against him.
12 You can only convict if you find that the Government has proven
13 the case beyond a reasonable doubt.

14 And just again a preliminary note to all of us that the
15 oath that you took is basically a promise, a sake red promise
16 that you're going to list not to the evidence and be fair.

17 Counsel, you may proceed with your opening statements.

18 MR. KAPLUN: Ladies and gentlemen of the jury,
19 texting while driving has become a national epidemic. Every
20 year nearly 500,000 people are injured and 6,000 people killed
21 because drivers are talking texting and e-mailing behind the
22 wheel. The evidence will show that this is exactly what
23 happened on May 11, 2012 when Riley Gardner was driving a car
24 full of his friends after a party late on a rainy night.
25 Witnesses will testify that he was sending a text message to

1 his girlfriend while he was driving and lost control of his
2 vehicle on the slippery wet road ultimately colliding with a
3 light pole. That collision caused the death of 17 year-old
4 court Walls. It also resulted in serious injuries to another
5 passenger Sidney Young. You will hear Mr. Young describe the
6 lasting impact of Mr. Gardner's gross negligence and the result
7 the injuries have had on his quality of life. Thank you.

8 THE COURT: Thank you. Does the defense wish to
9 make an opening statement?

10 MS. CHIMA: Yes. Yes, Your Honor. Ladies and
11 gentlemen of the jury, the evidence will show that, while my
12 client may have been texting his girlfriend before the
13 accident, he was not distracted at the time of the accident.
14 He had already thrown the phone to his passenger and was
15 focused on the road. In fact, witness wills testify that they
16 passed two other vehicles that had spun out on the same road
17 because of the poor weather conditions. This was an
18 unfortunate accident pure and simple, not the result of
19 inattentiveness or negligence by Mr. Gardner. Thank you.

20 THE COURT: The Government may call its first
21 witness.

22 MR. KAPLUN: Your Honor, we call our first witness
23 Ms. Sidney Young.

24 THE COURT: Mr. Young, please come up to the witness
25 stand.

1 THE CLERK: Please raise your right hand.

2 Witness sworn.

3 THE CLERK: You may be seated.

4 Q BY MR. KAPLUN: Please state your name and age for the
5 record?

6 A My name is Sidney Young. I am 18 years old now.

7 Q Tell us what happened on the evening of May 11, 2012?

8 A Well, it was a Friday and I had just come to town to spend
9 the weekend with my cousin Javier. We went to a party after
10 his soccer team had just won the championship game. So
11 everyone was pretty excited. At one point some people decided
12 to go get something to eat. Javier and I decided to go. I had
13 hit it off with one of hoof of Javier's friends Riley. He was
14 cool find to I got in the front seat of Riley's car and Javier
15 and right got in the back with Courtney.

16 Q What happened then?

17 A Well, Riley was driving along with his cell phone when his
18 cell phone rang. He looked at it and must have seen a text
19 message because he said something like Taylor is driving me
20 crazy. He then started texting. He didn't slow down or
21 anything, and it was raining and at night which definitely was
22 not cool and it made me very edgy. He later tossed the phone
23 into my lap or rather dropped it right before the crash.

24 Q Tell us what you remember about the accident.

25 A It's kind of a blur but I do remember that we skidded,

1 then slammed into a light pole on the freeway median. The
2 paramedics had to pry me out of the car but they couldn't save
3 chord any because the pole hit the car right where she was
4 sitting in the backseat.

5 Q Describe your injuries from the accident please?

6 A I couldn't feel my right leg and foot which got crushed in
7 the accident. I couldn't even clench my right fist to bang on
8 the car door to get out. At the ER I was in so much pain I
9 could barely answer the doctor's questions. The doctors told
10 me three ribs were broken, and that's why every breath hurt so
11 much. I couldn't move the toes on my right foot. They did
12 surgery on me that night to put a metal rod and pins in my leg
13 which will have to be replaced eventually. And it was a very
14 painful experience.

15 Q Any long-term consequences from the accident?

16 MS. CHIMA: Objection. Irrelevant, Your Honor.

17 THE COURT: Objection overruled. You may answer the
18 question.

19 THE WITNESS: The worst thing is the pain in my back
20 and legs. I can't sit through a class period so therefore
21 college is ruled out. I can't take a desk job let alone go to
22 a movie or a game. My hand goes numb now doing daily things
23 like texting, working on a computer, playing video games. I
24 had planned to be a commercial airline pilot, but all that's
25 out the window now. I am 18, and my entire life is messed up

1 because of this. Riley let some girl get under his skin
2 instead of paying attention to the road and it almost cost me
3 my life which eventually is kind of what happened anyway.

4 MR. KAPLUN: Thank you, Sidney. Nothing further,
5 Your Honor.

6 THE COURT: Does the defense have any questions for
7 this witness?

8 MS. CHIMA:

9 Q Yes. Thank you. We do, Your Honor. Mr. Young, have you
10 ever used a cell phone while operating a vehicle?

11 MR. KAPLUN: Objection. Irrelevant, Your Honor.

12 MS. CHIMA: Question withdrawn.

13 Q Mr. Young it was raining hard the night of the accident,
14 was at any time?

15 A Yes.

16 Q Isn't it true you passed two other cars that had spun out
17 of control on Wells Gate National Parkway that night?

18 A Yes. But that would make it even more of a reason for
19 Riley to have within driving more carefully.

20 Q You testified that Mr. Gardner tossed the phone or dropped
21 it into your lap. Did he say anything to you when he did that?

22 A Not that I remember.

23 MS. CHIMA: Thank you Mr. Young. No further
24 questions.

25 THE COURT: Redirect?

1 MR. KAPLUN: Yes, Your Honor. Very briefly.

2 THE COURT: You've seen now cross-examination which
3 is the defendants or the lawyer's opportunity to test the
4 direct testimony that you initially heard. Now redirect
5 testimony is not -- these questions on redirect are not for the
6 purpose of like rehashing or going over the same thing again.
7 He's limited to questions that specifically cover topic that's
8 the other lawyers just asked. So it gets narrower -- the scope
9 gets narrower and narrower. You may.

10 MR. KAPLUN: Yes, Your Honor. Very briefly.

11 Q Mr. Young, within how many seconds of the collision was
12 Mr. Gardner's exit?

13 A I don't know. Like I said before, it was all kind of
14 fuzzy, but it was right before the accident like a few seconds.

15 Q Did you ever tell Mr. Gardner to stop texting?

16 A I did but he played it off. I didn't want to badger him
17 too much because I thought that would cause an even more of a
18 distraction when we were already in a bad driving situation.

19 MR. KAPLUN: Thank you. Nothing further,
20 Your Honor.

21 THE COURT: Mr. Young, you may step down.

22 MR. KAPLUN: Next we would like to call Mr. Javier
23 Perez.

24 THE COURT: Mr. Perez, would you come up.

25 THE CLERK: Please raise your right hand.

1 Witness sworn.

2 THE CLERK: You may be seated.

3 Q BY MR. KAPLUN: Please state your name and age for the
4 record?

5 A Javier Perez. I'm 17.

6 Q Can you tell us what happened on the evening of May 11,
7 2012 please?

8 A My cousin Sidney had been visiting from out of town so we
9 decided to penalty assessment Austin crasher's house hang out
10 and play some fool. From there around 10:30 we all decided to
11 go pile into the car and go running and get some burgers.
12 Riley was driving. Sidney road shotgun. Me, Alex and Courtney
13 were in the backseat.

14 Q How did you know Courtney?

15 A Courtney was my girlfriend. We dated for about three
16 months.

17 Q What happened next?

18 A As soon as we got out of the driveway, I believe Taylor
19 Bowling had sent a text to Riley and he got very aggravated so
20 he texted her back like right away. And then from there like
21 immediately she texted him back and after that they were just
22 going back and forth with each other.

23 Q Tell me about the road conditions that night.

24 A It was raining. We were on the parkway and I think it was
25 hard for Riley to see because I mean, the next thing I remember

1 was we were sliding down the road. And he lost control of the
2 car.

3 Q Then what happened?

4 A The passenger side of the car toward the back, we must
5 have hit the median pretty hard because the car was wrapped
6 around it. Alex and I were able to get out and so did Riley
7 but the light pole was literally part of the car where Courtney
8 was sitting and it seemed like she didn't make it.

9 Q What about Sidney? Was he able to get out of the car by
10 himself?

11 A No. Sidney's door was all bent out of shape. He was
12 pinned inside and couldn't move. Somebody driving must have
13 called 911 because within a few minutes the ambulance had
14 arrived on the scene. Yeah. But there was nothing they could
15 do. Yeah. They used the jaws of life to get Sidney the out of
16 the car. He was pretty jacked up and yelling about the pain
17 and injuries he was in.

18 MR. KAPLUN: Thank you, Mr. Perez. No further
19 questions.

20 THE COURT: Any questions on cross-examination?

21 MS. CHIMA: Yes, Your Honor.

22 Q Mr. Perez, what is your relationship to Mr. Young?

23 A We're cousins. Our mothers are sisters.

24 Q Isn't it true that just before the accident in this case
25 you saw two cars that skidded off the road on the parkway?

1 A Yeah. That's true. All the more reason Riley should have
2 been paying attention keeping control of the car.

3 Q Mr. Young earlier testified that defendant had already
4 stopped talking and actually through the phone on the passenger
5 seat before the accident occurred. Is that true?

6 A No. I didn't see him do that.

7 MS. CHIMA: Thank you, Mr. Perez. No further
8 questions.

9 THE COURT: Redirect?

10 MR. KAPLUN: No, Your Honor.

11 THE COURT: Mr. Perez, you may step down. Next
12 witness, counsel.

13 MR. BLACK: Next we call Ms. Tracy Gardner.

14 THE COURT: Ms. Gardner please come to the stand.

15 THE CLERK: Please raise your right hand.

16 Witness sworn.

17 THE CLERK: You may be seated.

18 MR. BLACK:

19 Q Please state your name and age for the record.

20 A My name is Tracy Gardner. I'm 46.

21 Q What is your relationship to Riley Gardner?

22 A I'm his mother.

23 Q Are you testifying voluntary for the prosecution today?

24 A No. I was served with a subpoena requiring me to testify.

25 Q Your Honor, we would ask permission to treat Ms. Gardner

1 as a hostile witnesses?

2 THE COURT: Hostile witnesses is a little different.
3 It's exactly what the word means, that this witness is hostile
4 to the position of the person asking the questions. Once the
5 judge declares this witness hostile, the lawyer can ask
6 different questions he can ask.

7 Granted.

8 MR. BLACK:

9 Q Did your son Riley own a Honda Accord on May 11, 2012?

10 A It was technically my car, but because he gets good grades
11 and obeys my curfews, I sometimes let him use it in the
12 afternoon and on weekend nights.

13 Q Did he own a cell phone at the time?

14 A Well I pay the phone bill. It's a family plan. But he
15 has an exclusive use of phone if that's what you mean.

16 Q Did you ever right in the car while your son was driving?

17 A Yes. Quite often.

18 Q Did you ever witness him using his selling phone to send
19 text message while driving the vehicle?

20 A Sometimes but only when we were stopped at traffic.

21 Q Did you or anyone else advise your son that it was
22 dangerous to text while driving?

23 MS. CHIMA: Objection. Hearsay.

24 THE COURT: Objection is overruled.

25 THE WITNESS: No.

1 MR. BLACK:

2 Q Well, did you ever take the steps to prevent him from
3 texting while he was driving? Did you take his phone or
4 driving privilege as way?

5 A That wasn't necessary. My son has had to grow up quickly
6 since his father was killed in a car accident several years
7 ago. He takes driving very seriously. He knows the
8 consequences of being reckless. He's very responsible.

9 Q Was it responsible of him to send text messages while he
10 was driving a car full of kids on a rainy night?

11 MS. CHIMA: Objection. Argumentative.

12 THE COURT: Sustained. Do not answer the question
13 Ms. Gardner.

14 MR. BLACK: No more questions.

15 THE COURT: Defense counsel, any questions for this
16 witness?

17 MS. CHIMA: Yes, Your Honor.

18 Q Ms. Gardner, are you always able to control your son's
19 behavior?

20 A No parent can guarantee that. Especially when their kids
21 are technically adults. But Riley has worked hard to gain my
22 trust since his father's death. I have full confidence in him.

23 MS. CHIMA: No further questions.

24 THE COURT: Redirect?

25 MR. BLACK: No further questions.

1 THE COURT: You may step down Ms. Gardner. Thank
2 you. Counsel, any other witnesses?

3 MR. BLACK: Yes, Your Honor. The Government calls
4 CHP officer Chris Jones.

5 THE COURT: Officer Jones, please come to the
6 witness stand.

7 THE CLERK: Please raise your right hand.
8 Witness sworn.

9 THE CLERK: You may be seated.

10 MR. BLACK:

11 Q Please state your name and occupation for the record.

12 A Chris Jones. I'm a California Highway Patrol officer.

13 Q And how long have you been employed with CHP?

14 A Two years.

15 Q How many traffic accidents have you been called into over
16 that period of time?

17 A Well, including everything from fender benders to major
18 collisions involving death, approximate 500.

19 Q Approximately what percentage of those accidents involved
20 distracted drivers?

21 A Distraction is a major cause of accidents. Probably half
22 of all accidents can be traced back to distraction in a variety
23 of forms such as kids screaming in the backseat or changing the
24 radio station, dropping french fries on your lap or talking on
25 the phone.

1 Q What percentage of the accidents involving teenagers have
2 you been called to as a result of a distraction caused by
3 texting while driving?

4 A Probably about 10 percent.

5 MS. CHIMA: Objection Your Honor. The witness is
6 guessing.

7 THE COURT: Officer Jones, on what are you basing
8 your estimate?

9 THE WITNESS: Well, I know that statistically 21
10 percent of fatal car crashes involving teenagers are the result
11 of cell phone usage. That coupled with my recollection of the
12 actual accident scenes I have been to leads me to estimate that
13 half of those were caused by texting.

14 MS. CHIMA: Objection, Your Honor. There's no
15 evidence that this witness is qualified to provide statistics.

16 THE COURT: All right. I'm going to ask the jury to
17 disregard the reference to statistics but allow officer Jones'
18 estimate of the percentage of accidents she personally has
19 witnessed that were the result of texting. Please continue.

20 MR. BLACK:

21 Q Can you tell the Court what you remember about the evening
22 in question?

23 A I remember the evening very well. It was raining and as
24 often happens when it rains we receive so many calls that we
25 had to stop responding to noninjury accidents. Just after 1030

1 p.m. a call came over the radio that there was an injury
2 accident on Wells Gate National Parkway. I was in the
3 vicinity; so I responded immediately. I was the first to
4 arrive at the scene.

5 Q Can you describe the scene you first discovered officer
6 Jones?

7 A The first thing that crossed my mind when I approached was
8 that this did not look good. It was a single car accident
9 involving a red Honda Accord and a light pole. The car was
10 literally wrapped around the light pole, bent at the point of
11 the rear passenger side door. I knew that if someone was in
12 that seat, he or she was going to be in bad shape. I saw three
13 people exiting the car and I called for an ambulance and
14 paramedics before getting out of my squad car.

15 Q Then what did you do?

16 A I approached the vehicle to determine if there was anyone
17 still in the car and if so what their medical conditions were.

18 Q And what did you discover?

19 A That there were two people trapped in the car both
20 severely injured. The victim in the front passenger seat was
21 conscience and the other one in the back was not.

22 Q So what did you do next?

23 A About that time the paramedics and ambulances arrived
24 along with several other quad scars. We were unable to get the
25 victims out of the doors of the cars so we had to use the jaws

1 of life to pry the car open.

2 Q And then what happened?

3 A The medical teams took over and rushed the front seat
4 passenger to the hospital. The woman in the backseat was
5 pronounced dead.

6 Q And did you question the three other people in the car?

7 A I did. I determined Riley Gardner had been driving the
8 vehicle. I tested him to confirm he had not been drinking and
9 driving. He had not.

10 Q And did you determine anything else at the time?

11 A The two other passengers indicated that Mr. Gardner had
12 been texting on his cell phone just before the accident.
13 Mr. Gardner admitted to this. We placed him under arrest for
14 vehicle manslaughter.

15 MR. BLACK: No further questions.

16 THE COURT: Defense counsel any questions for this
17 witness?

18 MS. CHIMA: Yes, Your Honor.

19 Q Officer Jones, how many accidents occurred on May 11, 2012
20 between the hours of 9 p.m. and midnight?

21 A As I indicated earlier we stopped responding to none
22 injury accidents because of the volume of fender benders
23 brought on by the rain. That being said I think the department
24 responded to five injury accidents between the hours.

25 Q And was anyone arrested as cause of those accidents?

1 MR. BLACK: Objection Your Honor relevance.

2 MS. CHIMA: Your Honor I'm trying to show that rain
3 was the cause of many accidents that night including the one
4 that is the subject of this prosecution.

5 THE COURT: I'm going to allow it. Officer Jones
6 please answer the questions to the best of your knowledge.

7 THE WITNESS: I personally did not have cause to
8 arrest anyone else that evening, but I know one other driver
9 was arrested by my co-worker for suspicion of drunk driving.

10 Q So there were five injury accidents between 9 p.m. and
11 midnight on May 11, 2012 and only two drivers were arrested my
12 client and someone suspected 6 someone driving under the
13 influence; is that correct?

14 A To the best of my knowledge.

15 Q Do you know what was determined to be the cause of the
16 other accidents I've indicated on the accident reports?

17 A Not all of them.

18 Q And the ones you have firsthand knowledge of, what was
19 listed as the cause of the accident?

20 A Unsafe road conditions caused by inclement weather.

21 MS. CHIMA: No further questions.

22 THE COURT: Redirect.

23 MR. BLACK: Just briefly, Your Honor.

24 Q Officer Jones, in your personal experience as a CHP
25 officer does a driver need to be texting at the exact moment of

1 a collision for it to be the primary cause of distraction
2 leading to that accident?

3 MS. CHIMA: Objection. Counsel is calling for a
4 hypothetical.

5 THE COURT: Sustained.

6 MR. BLACK: No further questions, Your Honor.

7 THE COURT: You may step down officer Jones.
8 Counsel any other witnesses?

9 MR. BLACK: Yes, Your Honor. The Government calls
10 Dr. Jan Smith.

11 THE COURT: Dr. Smith please come to the witness
12 stand. This witness is a little different as you see. This
13 witness is an expert witness. An expert witness is different
14 than other witnesses. The first thing the witness will talk
15 about is their credentials, their expertise, their education,
16 their experience. Then they'll offer opinions and the opinions
17 usually relate to things that the common juror wouldn't know.
18 So it's a bit of a teaching tool.

19 THE CLERK: Please raise your right hand.

20 Witness sworn.

21 THE CLERK: You may be seated.

22 MR. BLACK:

23 Q Please state your name and occupation for the record.

24 A Jan Smith PHD. I'm an expert in the field of
25 transportation safety.

1 Q Would you tell us about your educational background?

2 A Sure. I earned a bachelor of science degree in Physics
3 from the university of Arizona. Over the ten years after that
4 I completed course work to earn my PHD also in the field of
5 physics. In addition I have extensive technical training
6 related to transportation and accident reconstruction. Over
7 the past 30 years I have participated in no less than 75
8 training seminars both in Arizona and California on topics
9 ranging from vehicle crash dynamics, technical and advance
10 accident bio-mechanics of vehicle movement, computer-aided
11 diagramming of accident scenes, and trajectory factors. I have
12 also participated in a number of seminar over the past several
13 years on the topic of distracted driving.

14 Q Can you tell us about your work in the area of
15 transportation safety?

16 A I have worked in the area of accident reconstruction and
17 traffic investigations for the last 30 years. I served as an
18 investigating officer for the Phoenix police department for 20
19 years. In that role I became knowledgeable about injury
20 patterns, mathematical analysis of crashes, the use of computer
21 applications to determine the cause of collisions and crash
22 severity analysis. I have retired from the police department
23 ten years ago and moved to San Diego where I joined a
24 consulting firm specializing in accident reconstruction.

25 Q Have you previously testified in court about the safety

1 impact of texting and driving?

2 A Yes. Over the last five years I have testified in courts
3 on eight separate collisions in cases involving distracted
4 drivers.

5 Q From what sources have you obtained your information about
6 the impact of talking on a cell phone while driving?

7 A There have been numerous studies by Government agencies
8 insurance companies and universities regarding the impact of
9 texting and talking while driving. Those studies are based not
10 only upon a review of accident reports but also on clinical
11 experiments.

12 Q Is texting while driving a common practice among young
13 drivers?

14 A Yes. A recent study showed that drivers account for 150
15 billion text messages. Young drivers those between the ages of
16 16 and 21 spend approximately 60 percent of those messages
17 compared to the population as a whole.

18 Q Let's get specific about the impact of texting upon the
19 reaction time of a driver. Have you conducted any research on
20 the topic?

21 A Yes. We've conducted an experiment where red light is
22 mounted on the winds shield of car at eye level to similar the
23 brake lights of a car in front. On a straight empty airstrip,
24 the test drivers were given mobile phones popular among young
25 drivers including a blackberry and iPhone. Our researcher rode

1 shotgun in the test vehicle to trigger the red light and
2 monitor the driver's results. On each trial the driver
3 responded six times to the light. We then deleted the slowest
4 reaction time. There were a total of ten drivers in the test
5 all between the ages of 16 and 21. Driver reaction time were
6 tested at both 35 miles per hour and 70 miles per hour and were
7 tested first without any distraction and then while sending
8 texts.

9 Q What were your findings?

10 A The average reaction time at 35 miles per hour for a
11 non-distracted driver was .4 seconds. The reaction time at the
12 same speed reduced to .6 seconds when the driver was reading a
13 text, and to .7 seconds when the driver was sending a text. At
14 70 miles per hour the non-distracted driver's reaction time was
15 almost the same, .39 seconds while the time for sending and
16 reading texts were both about the same .62 seconds.

17 Q Can you tell me how much further a car will travel in that
18 amount of time at those speeds?

19 A Traveling at 35 miles per hour a person reading a text
20 message will travel an extra 21 feet before hitting the brakes
21 and a person sending a text will travel an extra 29 feet. At
22 70 miles per hour a person reading or sending a text message
23 will travel another 38 feet before hitting the brakes.

24 Q So is it fair to say that looking away from the road for
25 even a fraction of a second to send or read a text message is

1 an unsafe practice?

2 A Yes.

3 MR. BLACK: No further questions, Your Honor.

4 THE COURT: Cross?

5 MS. CARRILLAS: Yes, Your Honor.

6 Q Dr. Smith, are you being paid by the prosecution to
7 testify in this case?

8 A I do receive a fee to provide my expert testimony.

9 Q And did you examine any of the evidence regarding the
10 accident in this particular case?

11 A No I did not.

12 Q Are you aware that the defendant Mr. Gardner says he was
13 not texting at the time of the accident?

14 A I was not aware of that.

15 Q Are you aware that it was raining on the night of the
16 accident?

17 A I was not aware of that, no.

18 Q Wouldn't the rain on the street be more likely to
19 contribute to a driver losing control of a car than sending or
20 receiving a text message?

21 A There's almost no condition more dangerous for a driver
22 than texting. In fact, in the study I mentioned before, it was
23 shown that reaction times for texting drivers are substantially
24 slower than drunk drivings.

25 MS. CARRILLAS: Objection Your Honor. The witness

1 has not responded to the question.

2 THE COURT: Objection sustained. Dr. Smith, just
3 respond to the question.

4 THE WITNESS: In my experience, yes. There are a
5 lot of accidents when it rains.

6 MS. CARRILLAS: No further questions.

7 THE COURT: Redirect.

8 MR. BLACK: Yes, Your Honor.

9 Q Would the combination of texting while driving on a rainy
10 night increase the chances of an accident?

11 A Yes. Driving in the rain is dangerous and texting at the
12 same time only creases reaction times.

13 MR. BLACK: No further questions Your Honor. The
14 prosecution rests its case at this time.

15 THE COURT: So at this point of the trial the
16 defense has a decision to make. But one of the things you have
17 to remember is at the beginning of the case the judge gave you
18 instructions about how the defendant is presumed innocent and
19 how the burden of proof to prove the case beyond a reasonable
20 doubt is on the Government. So at this point the defense could
21 take the position that the Government has not met their burden
22 and they don't have to present any evidence. The defendant has
23 a constitutional right not to testify and you couldn't hold
24 that against him if he chose to exercise that right. So that's
25 what would happen during a regular trial right now. The

1 defense would be making that decision whether to present a case
2 and to whether or not the defendant would testify.

3 THE COURT: The defense may call their first
4 witness.

5 MS. CARRILLAS: We call Mr. Riley Gardner.

6 THE COURT: Mr. Gardner, please come to the witness
7 stand.

8 THE CLERK: Please raise your right hand.

9 Witness sworn.

10 You may be seated.

11 MS. CARRILLAS:

12 Q Please state your name and age for the record.

13 A My name is Riley Gardner. I'm 18.

14 Q Could you tell me about yourself and your family?

15 A I'm a high school senior now. I live with my mom and
16 three younger sisters. I watch my sisters after school until
17 my mom gets home from work. Then I go to my job and get back
18 at 10. I do homework. Then I go to bed. My dad died in a car
19 accident about six years ago so it's just the five of us at
20 home.

21 Q Tell us what happened on the evening of May 11, 2012?

22 A Well, our soccer team had just won the regionals. Mom let
23 me have the car. So my next door neighbor Alex Williams and I
24 picked up our friend Javier, his girlfriend Courtney, and his
25 cousin Sidney. We all went to a party. I promised to meet

1 Taylor Bowling, another friend of mine, for coffee later at the
2 wireless cafe. I figured she'd do and wouldn't care when I
3 showed up.

4 Q What happened at the party?

5 A We played pool, hung out. At one point a couple of us
6 decided to get something to eat at Chandelier's. Javier,
7 Courtney, Sidney, Alex and I were in the car and we were on the
8 parkway when my phone rang with a text message from Taylor. It
9 said ADN CB now.

10 Q What did you understand that to be main?

11 A That meant any day now. Call back now. All caps meant
12 the message was serious. It's like yelling. She was driving
13 me crazy. She knew I needed some space to be with my friends
14 and we were going to meet up later.

15 Q What did you do then?

16 A I text messaged her back soon but a minute later my cell
17 rang again and she's texting now in all caps. I had it. It
18 was late and raining. So I just hit the reply. Then tossed my
19 phone to Sidney and asked him to top NTWD which means no
20 texting whaling driving. I wanted Taylor to get the picture I
21 would be in touch with her as soon as I could.

22 Q What happened after that?

23 A Next thing I know the car is skidding out of control and
24 hits a pole. I'm very sorry about Courtney. And also that
25 Sidney got hurt. I know their parents will always blame me for

1 everything but I don't think it was really any fault. It was
2 just an accident. The road was slippery and actually we saw
3 several years that had skidded out of control that night.

4 Q How much time passed between when you tossed the phone to
5 Mr. Young and when the car started skidding out of control?

6 A I don't know exactly but maybe a couple minutes.

7 MS. CARRILLAS: Thank you. No further questions,
8 Your Honor.

9 THE COURT: Counsel?

10 MR. KAPLUN: Yes, Your Honor.

11 Q You estimate it was a couple minutes about between the
12 time you tossed your phone to Mr. Young and when the car
13 started skidding, but wasn't it merely seconds later?

14 A No. It didn't definitely happen right away.

15 Q Mr. Gardner, how many times in your life would you
16 estimate you have sent text messages while operating a motor
17 vehicle?

18 A I have no idea.

19 Q Would it be fair to say you've sent at least a hundred
20 text Miss messages while operating a motor vehicle?

21 A I don't keep count but yeah that's probably true. I've
22 got a lot going on. It's not a big deal because I can text
23 without looking at my cell.

24 Q Isn't it true, Mr. Gardner, that texting requires glances
25 at the keyboard and screen, even for the most proficient users?

1 A Yes but I glance and down and back real quick.

2 Q What about reading text messages? You have to look at the
3 screen to read it right?

4 A Of course but again I can just look down really fast.

5 Q You said you asked Mr. Young to text your friend NTWD.
6 Did he send that message?

7 A No. I don't think so.

8 Q Mr. Gardner you admitted that you probably sent more than
9 100 text messages while driving. I would remind you that
10 you're under oath. Do you expect us to believe that right
11 before the accident in question you asked Sidney Young whom you
12 just met to intervene in an argument with your girlfriend and
13 text message her NTWD no texting while driving?

14 MS. CARRILLAS: Objection Your Honor.

15 MR. KAPLUN: I withdraw the question. No further
16 questions.

17 THE COURT: Counsel, do you have any redirect?

18 MS. CARRILLAS: Yes.

19 Q Mr. Gardner were you sending a Tess message at the time
20 the vehicle collided with the light pole?

21 A No I was not. By then I had already tossed the cell phone
22 to Sidney.

23 MS. CARRILLAS: Thank you. No further questions.

24 THE COURT: Mr. Gardner you may step down. Defense
25 counsel your next witness, please.

1 MS. CARRILLAS: The defense calls Alex Williams to
2 the stand.

3 THE COURT: Mr. Williams please come to the witness
4 stand.

5 Witness sworn.

6 You may be seated.

7 MS. CARRILLAS:

8 Q Please state your name and age for the record.

9 A Alex Williams 17 years old.

10 Q What were you doing on the evening of May 11, 2012?

11 A I was playing pool at Austin Crasher's with Riley, Javier,
12 and his cousin Sidney. At around 1030 or so we headed over to
13 Chandelier's in Riley's car to get something to eat. Javier
14 and I sat in the backseat with Javier's girlfriend Courtney.
15 Sidney sat with Riley in the front.

16 Riley was texting something to Taylor Bowling. He was
17 dating her, and I guess she was getting clingy, calling and
18 texting him a lot. She and I used to be friends, and I know
19 she tends to smother people. The road was slick, and when
20 Riley saw a couple of cars on the side of the road, he threw
21 his phone to Sidney and asked him to text Taylor for him.
22 Riley is actually a really good driver. We traveled a lot.

23 Q What happened next?

24 A Well, everything seemed to go into slow motion. We
25 skidded toward the median and then there was a terrible sound

1 when we crashed. I'll never forget that sound. The next thing
2 I know Sidney is yelling about his hand and his leg and Javier
3 and yelling and we need to help Courtney. Javier, Riley, and I
4 managed to get out of the car.

5 Q Then what happened?

6 A It was pretty obvious there was nothing we do to help
7 Courtney. The car hit the pole right where she was sitting.
8 It also messed Sidney up, and we were all trying to get him
9 out. Someone must have called 911 because they arrived fast.

10 MS. CARRILLAS: Thank you. No further questions.

11 THE COURT: Cross?

12 MR. KAPLUN: Yes, Your Honor.

13 Q Is it fair to say that because you were in the back of --
14 in the backseat you couldn't see everything that actually
15 happened in the accident?

16 A Well, things did happen pretty fast but I know the crash
17 wasn't because Riley was texting because he handed off the
18 phone to Sidney before that.

19 Q How long after Mr. Gardner handed off the phone to
20 Mr. Young did the accident occur?

21 A A couple minutes.

22 Q How long have you known Riley Gardner?

23 A Since first grade. We're next door neighbors.

24 Q Is it fair to say that you are good enough friends that
25 you would do just about anything for him?

1 A Absolutely. We've always say we've got each other's back.

2 Q Would you be willing to lie under oath to protect him?

3 MS. CARRILLAS: Objection Your Honor.

4 THE COURT: Overruled. The witness will answer the
5 question.

6 THE WITNESS: No, I wouldn't do that.

7 THE COURT: Overruled. The witness will answer the
8 question.

9 THE WITNESS: I would not do that.

10 MR. KAPLUN: I have nothing further, Your Honor.

11 THE COURT: Any redirect?

12 MS. CARRILLAS: No, Your Honor. The defendant
13 rests.

14 THE COURT: Okay. The witness may step down.

15 Ladies and gentlemen of the jury we will now hear the
16 parties closing arguments. Then I will provide you with some
17 instructions on the law and how you should conduct your
18 deliberations.

19 MR. BLACK: Your Honor, ladies and gentlemen of the
20 jury, accidents happen. But this was no accident. Let's be
21 honest. I'm pretty sure each and every one of you has at least
22 sent one text message while driving before. It was a mistake.
23 When that mistake leads to the death of a Young woman, amends
24 must be made, especially when that death could have easily been
25 prevented.

1 Mr. Gardner could have passed the phone to any one of the
2 passengers in the car, and they could have temporarily received
3 or sent text messages for him. It was a pure selfish act. No.
4 It was more than a selfish act. It was an arrogant act and an
5 act that killed. Accidents do happen, but the evidence proves
6 that this was no accident. This was a negligent choice by
7 Mr. Gardner which led to the untimely death of a beautiful
8 Young woman who had a bright future ahead of her. I ask each
9 and every one of you to find Mr. Gardner guilty. Thank you.

10 THE COURT: Thank you, counsel. The attorney for
11 Mr. Gardner may now address the jury.

12 MS. CARRILLAS: Thank you, Your Honor.

13 Ladies and gentlemen, the Government has proved nothing
14 beyond the fact that my client was driving on a rainy night and
15 involved in a car accident similar to many others that same
16 evening, two of which were on the same road. He admitted that
17 he had responded to a couple text messages from his girlfriend
18 but at the time of the accident his cell phone was not on him.
19 He had tossed it to his passenger Sidney Young. The road
20 conditions were not ideal and you heard testimony that my
21 client Mr. Young to let his girlfriend know he couldn't travel
22 while texting in these conditions. It is terrible and
23 unfortunate that Mrs. Walls was killed and Mr. Young was
24 injured. In this accident, however, Riley was not negligent.
25 He was just a kid taking his friends out for a burger on a

1 rainy night. He was just trying to be as careful adds he could
2 on a rainy night. Driving is dangerous and accidents happen.
3 You should finds him not guilty on this case. Thank you.

4 THE COURT: Thank you, counsel. Counsel for the
5 Government may make a rebuttal argument at this time.

6 MR. BLACK: Thank you, Your Honor. Ladies and
7 gentlemen, this is not just an unfortunate accident. This
8 accident ended one person's life and caused serious permanent
9 injury to another. Were it not for Riley Gardner's gross
10 negligence behind the wheel on that rainy night in May,
11 Courtney Walls would still be alive and Sidney Young would
12 still be pursuing his dream of becoming a pilot. Riley Gardner
13 should be punished for his negligence. Thank you.

14 THE COURT: Okay. Now you're going to hear jury
15 instructions. Basically it's the road map for the jurors as to
16 what the law is in the case. So you'll take the law and apply
17 the law as to what you decide the facts are in this case.

18 Members of the jury I will now explain the rules you must
19 follow in deciding in this case. A copy of these rules will
20 also be available for you in the jury room. In key siding what
21 the facts are you may have to decide what testimony you do and
22 do not believe in full or in part. You may consider the memory
23 of a witness any mote tiffs a witness may have for testifying a
24 certain way and the general reasonableness of the testimony.
25 Here are the legal standards that apply in this case. One, the

1 Government has the burden of proving each fact beyond a
2 reasonable doubt. Proof beyond a reasonable doubt is proof
3 that leaves you firmly convinced that the defendant is guilty.
4 Two, in order to find the defendant guilty of vehicular
5 manslaughter you must find the defendant's conduct was grossly
6 negligent and his grossly negligent conduct caused the death of
7 another person. Three, a person acts with gross negligence
8 when he acts in a reckless way that creates a high risk of
9 death or great bodily injury and a reasonable person would have
10 known of that risk. Four, the punishment provided by law for
11 this crime is for the Court to decide. You may not consider
12 punishment in deciding whether the Government has proved this
13 case against the defendant beyond a reasonable doubt. Five,
14 when you go to the jury room, choose someone to be your
15 foreperson. That person will preside over your discussions and
16 speak for you here in court. But otherwise has no greater vote
17 or authority than any other juror. It is your duty as jurors
18 to discuss this case with one another in the jury room. Each
19 of you must make your own decision but only after considering
20 all the evidence and discussing it fully with your fellow
21 jurors. Do not be afraid to change your opinions if the
22 discussion persuades you that it it should but do not make a
23 decision simply because other jurors think it is right or
24 simply to reach a verdict. Your verdict must be unanimous.
25 All jurors must agree and must be based solely on the evidence

1 provided in part and the law I instruct you. -o when you reach
2 a verdict, your foreperson will fill out the verdict form, sign
3 it, date it and tell the Court that you are finished.

4 The jury may retire to reach its verdict. You have 20
5 minutes to decide the case. Courtroom deputy please swear the
6 courtroom deputy.

7

8 THE COURT: All right. Let's have a seat and wait
9 for the verdict. We may have up to 20 minutes. So we can look
10 at each other and stair or you can ask questions. You could
11 ask questions. I'll answer any question that you have. My
12 life is an open book or if we have a question of one of the
13 volunteer prosecutors or volunteer defense lawyers, you can ask
14 them almost anything. Their life is not such as open book as
15 mine. So any questions from anyone in the audience? Someone
16 has got to have a question. No? Back there.

17 THE WITNESS: So we're kind of used to on TV seeing
18 the lawyers walking around.

19 THE COURT: Right.

20 THE WITNESS: Is this a standard practice right
21 here?

22 THE COURT: That's a great question. The question
23 is do you usually see lawyers walking around in the courtroom
24 and here they went straight to the lectern and asked questions
25 and didn't move around. That points out a difference between

1 in some respects television and real life. But in real life as
2 well -- I was a state court judge for nine years. In state
3 court that's where you see the walking around and approaching
4 jurors and approaching witnesses. Federal court is much more
5 formal and the vast majority of the judges make the lawyers
6 stand at the lectern and if they wanted to show the witness
7 something or present something for the -- to the witness, they
8 would always have to ask my permission and then I would give
9 them permission to go to the lectern or go do something else.
10 They may want to get a board to demonstrate something but they
11 would first have to ask permission. That's not true in every
12 federal courtroom. It's up to the judge. But most of the
13 judges in federal court make the lawyers stands at the lectern.

14 THE WITNESS: Thank you.

15 THE COURT: There was another question someone had.

16 So on the topic of the media, so I'm a really big fan of
17 law and order especially SVU. How real is the screen play in
18 regards to the actual courtroom?

19 THE COURT: Someone asked me that question
20 yesterday. I've never seen law and order. I don't want very
21 many legal shows. I don't have a good perspective. I've seen
22 some movies. I would say this. Every significant case that
23 I've -- that has been reported by the media has never been
24 reported accurately. I'll go back and read the newspaper or
25 see a story on TV and say I didn't say that. That didn't

1 happen that way. So the portrayal of the media at least from
2 my seat is not necessarily factually accurate although maybe
3 some of the lawyers who watch this tough -- go ahead.

4 PLAINTIFF ATTORNEY2: I think I've seen just about
5 every episode of law and order and SVU and I can tell you that
6 it's realistic in some ways. For example they spend a lot of
7 time arguing about suppression and illegal searches and things
8 like that that is very much what happens in the actual practice
9 of law. It's not realistic because nobody ever has to write
10 anything and everything is two seconds worth of verbal back and
11 forth. And obviously none of us speak as well and have lives
12 as interesting as life on television. So it really kind of
13 depends -- the drama makes things a little bit different than
14 they would be in real life. But there's some ways in which law
15 and order is at heart a little bit closer to what really
16 happens where you really start getting way way out there is
17 really any other kind of lawyer show where all the cases are
18 ridiculously dramatic and everybody is, you know, having all
19 kinds of hysterical scenes in court. And that kind of thing
20 doesn't normally happen. There's also a lot fewer actual
21 conspiracies in the real world. Most of us are not so
22 organized to actually be plotting to frame people do things
23 like that. The legal argument on Law and Order, they'll cite
24 cases that are actually real cases.

25 THE COURT: And one of my favorite movies of all

1 time is my cousin Vinney. As funny as that movie is, I've seen
2 it as a teaching tool for lawyers and judges so many times as
3 crazy as it is as to how you do something and how you don't do
4 something. So even out of a comedy, you can pick up some
5 tidbits about the practice of law and how lawyers should act or
6 shouldn't do things. Any other questions? I have a question
7 for the prosecutor and defense lawyer. How do you feel when
8 jurors are deliberating on your case and there's nothing you
9 can do anymore? How do the prosecutors feel and how does the
10 defense feel during deliberations?

11 MR. BLACK: Helpless.

12 PLAINTIFF ATTORNEY2: I think for the prosecution,
13 when your jury is deliberating, you tend to replay everything
14 that happened in the case and you think about how you could
15 have done certain things better. Maybe you wish you had made
16 an additional argument in closing. For the prosecution, we
17 have to persuade 12 people to agree to find the defendant
18 guilty, and I think in real life persuading 12 people to agree
19 on anything can be difficult. But in a criminal trial where
20 the burden is high and the prosecution is especially hard. So
21 I think when the jury is deliberating, at least for me, I tend
22 to replay everything and criticize I should have done this
23 better or I should have asked this question. And so that's
24 what I'm doing the entire time the jury is deliberating.

25 DEFENSE ATTORNEY3: You know for the defense is

1 depends on how bad the evidence is against your client. If
2 it's really bad you kind of feel like I've done what I can do
3 and it's up to the jury and just sort of leave it in their
4 hands. It's when you may have an innocent client that it's
5 just terrifying when the jury is deliberating. That's the
6 worst feeling in the world. So it just -- I guess it depends.
7 Obviously we do the same thing of going back and saying I
8 forgot to attack this piece of evidence. You know, but that's
9 the point where there's sort of no return in the trial level.

10 THE COURT: And from the judge's perspective it's a
11 little different. When I was in state court, if I thought the
12 prosecution's case was extremely weak but it wasn't weak enough
13 I could dismiss it, I was thinking about, if the verdict is not
14 guilty whether I would let the prosecution proceed again with a
15 second trial. So it's a little different than in federal
16 court. In federal court all I'm thinking to myself is please
17 reach a verdict, any verdict, because, if they don't reach a
18 verdict, I have to do the trial all over again. So in my line
19 I'm saying reach a verdict. So it sounds kind of silly but
20 it's a very practical concern. I had a criminal trial where
21 one of my -- usually my law clerks don't work on criminal
22 trials but this particular law clerk wanted to and it was kind
23 of a complex case. So she worked on it and she was convinced
24 that the defendant was guilty. The jurors found him not
25 guilty. She was crushed. I was just -- it was -- that's what

1 the jurors decide. I'm not invested in the result. I just
2 respect the jury and bring on the next case. My attitude was
3 okay let's go get a cup of coffee and take a break and she was
4 going to walk the city and reflect on the wrong result that the
5 jurors had reached. So you have to have some faith and trust
6 in the system and jurors -- jurors get it right most of the
7 time they get it right.

8 Any other questions? Back here.

9 THE WITNESS: I was wondering -- I work for the
10 bankruptcy court and we don't use realtime recording. I was
11 just curious about if all district courts use it and if it
12 makes it more convenient for attorneys on -- the prosecutor and
13 the defender to have access to transcripts of the hearing. How
14 quickly does that happen?

15 THE COURT: A couple of things. Some of you may not
16 know what realtime is. I don't have it. It's available.
17 Typically on my bench I have a computer screen and realtime is
18 that the court reporter is taking down everything that is being
19 said. So I can look at the screen and see exactly what's been
20 said. So for example in a trial if I'm a little confused, I
21 may look at it. There's an objection made, I'll go look at
22 exactly what the question is or someone has said something and
23 there's a motion to strike and I may not be on top of my game.
24 I'll look at the screen to make sure I saw or I heard what I
25 thought I heard. Not all -- so I think most judges use

1 realtime. I know that one judge in Spring Street just went
2 back to realtime. They were using the voice recorder before.
3 I don't know the reason why but he was using realtime now.
4 It's a great tool. I don't know I don't let the lawyers have
5 realtime and it's more in the civil context. I don't because
6 civil lawyers like to bring motions overnight so they'll end up
7 using the transcripts to bring motions the following day and so
8 to me it causes mischief. So I don't let the lawyers use the
9 realtime. If they want to purchase day Liz which means that
10 that's actually -- the realtime hasn't been proofread and
11 certified. So if they want to purchase day Liz from the court
12 reporter, that's fine. So what that means is over the course
13 of the evening the court reporters prepare a transcript of
14 exactly what's been said that day and the lawyers come in the
15 morning and they can have it.

16 THE WITNESS: Sorry. I'm Kipp Morales from Lyons
17 cowl attorney academy no. 5. Thank you so much for having us
18 here. This is really special for our students. I know that
19 they're very excited.

20 My question is would you as a judge prefer a none jury
21 trial or a jury trial?

22 THE COURT: I prefer a jury trial. It sounds so
23 lazy but they decide. I'm so used to that role that, you know,
24 I control the courtroom. Even you maybe saw some of that
25 today. We started a little late so I cut part of my script out

1 just to move it on. So I'm used to managing and watching and
2 trying to anticipate what's going to happen. I see that as my
3 role. And then the jurors decide in a criminal case guilt or
4 innocence.

5 Less so in a civil case. I've had more judge trials in
6 civil settings, lawsuits involving money. I think I've only
7 had two or three maybe four criminal cases that have waived
8 jury to me and that's in 17 years -- 16 years. So it doesn't
9 happen that often. But it's just that I respect the role of
10 the jury in the cases. So that would be my preference going
11 in. If you want to waive, let's go. Any other questions?
12 Someone over here.

13 THE WITNESS: How do you know if a witness is
14 actually telling the truth?

15 THE COURT: How do you know if a witness is telling
16 the truth? One of the things that we didn't go over, there's a
17 list of things in jury instructions that tell you things that
18 you can look at. It could be an inconsistency. It could be a
19 variety of things. It's just as it is in real life. How do
20 you know when a friend is telling you the truth or not telling
21 you the truth? And it's not a science and you do the best that
22 you can, but there are certain -- some concrete things that you
23 could -- you could look at. If the witness said right after
24 the accident the light was green and then at trial he says the
25 light was red, well, you could argue that it was fresher in his

1 or her mind right after the accident. On the flip side, you
2 could possibly argue that the person was in a state of shock
3 and really wasn't proceeding really well. So there's arguments
4 to be made on both sides, and people just come into court with
5 their someone sense and their life experiences and do the best
6 that they can. And jurors in criminal cases -- so you have 12
7 jurors. You have 24 eyes. And I think when they go back -- I
8 was a juror once, but I think when they go back and they have
9 the collective observations of 12 people in their discussions,
10 I think they're having a very good discussion about why
11 somebody should be believed or why somebody shouldn't be
12 believed. And that's why generally I think they get it right.
13 Once maybe you're half asleep but the 11 others are awake or
14 see something that someone else doesn't -- doesn't necessarily
15 see.

16 That doesn't really answer your question but it's just
17 like life.

18 THE WITNESS: Yeah.

19 THE COURT: It's like life in general. You make the
20 best judgment you can. Go ahead.

21 THE WITNESS: What happens if you see an
22 inconsistency but the lawyer, the attorneys don't point it out?

23 THE COURT: It depends on the setting. I'm more in
24 tune in a criminal case because the defendant has a right to
25 competent counsel. So I'm more inclined in a criminal case

1 maybe to get into it if the defendant isn't receiving competent
2 counsel. Aside from that setting, I won't get involved.
3 Everybody is a big boy, big girl. And I let them try their
4 case the best they can. And unless in that narrow setting
5 where I see that the defendant's constitutional rights of
6 effective counsel is -- we're coming close to it, then I would
7 get involved in the situation. But it doesn't -- it happens
8 pretty rarely that I've become concerned about that particular
9 issue. Any other? Go ahead.

10 THE WITNESS: Can I ask what a grand jury is?
11 Because I see that on TV.

12 THE COURT: A grand jury is composed of -- it's also
13 different than -- I was telling a joke. The lawyers would
14 appreciate it. When I take a plea I talk about a grand jury
15 is. But a grand jury are jurors -- do we have a verdict?

16 THE COURT: Yes.

17 THE COURT: Last question. In federal court, in
18 order to be -- for someone to be indicted on a felony, a group
19 of jurors that are impaneled have to decide whether or not
20 there's cause to believe that a crime was committed and that
21 this defendant did it. Once that happens, then that person is
22 officially indicted and the case proceeds against them. So
23 it's a -- the first check on the Government's power to bring a
24 case against somebody. In state court the grand jury is used
25 less and people proceed by way of preliminary hearing. So the

1 Government would file an information in state court. They can
2 do that here, but we file an information. And then the
3 Government would present evidence at a preliminary hearing to a
4 judge and then the judge would decide, that one judge instead
5 of a group of up to 23 grand jurors would decide that there's
6 probable cause to believe that a crime was committed and that
7 this particular person committed the crime.

8 All right. Let's see what happens. What I'm thinking
9 when I'm waiting for the jurors to come out is they have a
10 verdict form. I'm making sure that everybody is behaving and I
11 get the verdict form. I'm making sure that it's dated and
12 signed, that the boxes are checked appropriately. And I'm just
13 procedurally just making sure that we're ready to go. So
14 that's -- so I'm a little nervous making sure when they come
15 out to see how they're behaving and then that I have a
16 foreperson, that that foreperson is clear and doesn't blurt out
17 anything I don't want them to blurt out.

18 THE COURT: Has the jury reached a verdict?

19 THE JUROR: Yes.

20 THE CLERK: May I have the verdict, please.

21 THE COURT: Will the courtroom deputy please read
22 the verdict.

23 THE CLERK: United States District Court Central
24 District of California, in re United States of America,
25 plaintiff, versus Riley Gardner, defendant, criminal 14-1234

1 verdict form.

2 We the jury in the above entitled case find the defendant
3 as charged in the indictment not guilty. Dated May 20, 2014 by
4 the foreperson.

5 THE COURT: I guess we don't proceed to sentencing
6 with the not guilty. I'm shocked. In federal court everyone
7 is always guilty. I'm just kidding. I'm kidding.

8 DEFENSE ATTORNEY3: Your Honor can we ask that bond
9 be exonerated right now?

10 THE COURT: Bond is exonerated. One ever the things
11 I was saying we go back and look at the verdict. I also have
12 to keep a poker face. I'm not supposed to have any expression
13 of what's going on so nobody knows what's happening. So the
14 script goes on if he was found guilty that we would proceed to
15 sentencing. And then at sentencing, the judge would get they
16 call it a PSR, a presentence report, and that presentence
17 report would tell me everything about that person's past and
18 their upbringing, their background, any other crimes they may
19 have committed before. And then it would give the Court
20 recommendations as to how to sentence this particular person.

21 So I wasn't sure how was it scripted? Do you want to go
22 forward and pretend there was a sentencing or are we running
23 out of time?

24 DEFENSE ATTORNEY3: We're willing to waive the
25 sentencing argument. We're kind of short for time unless the

1 prosecution wants to.

2 PLAINTIFF ATTORNEY2: We try not to sentence people
3 who have been acquitted.

4 DEFENSE ATTORNEY3: That's not what I heard.

5 THE COURT: So any of the jurors -- typically you
6 don't get to talk about -- they'll talk about it to the lawyers
7 afterwards but I don't necessarily get to talk to jurors and
8 ask them why you decided which way you decided. Does anybody
9 want to talk about how -- did the jurors look at the evidence
10 in this particular case? Any volunteers? No? I mean, it's
11 great because you know, there was something to talk about from
12 both sides; right? Each side had something to say. If we say
13 in a criminal case, if the scales of justice are equal, being
14 equal, then the Government hasn't met their burden of proof.
15 So at the end of the day if you really don't know what
16 happened, that's reasonable doubt and that would be a verdict
17 of acquittal. Anything to add to that?

18 THE JUROR: I know they questioned that whether or
19 not they would believe that the driver actually did toss his
20 phone over and say texting while driving but he said his
21 girlfriend was being clingy and I know when someone is being
22 clingy you'll have any excuse not to talk to them. So I
23 thought that was reason. And also, there must have been enough
24 reaction time, even if it was a few seconds, the reaction was
25 found to be a fraction of a second which means there would have

1 been enough reaction time for him to stop. And maybe because
2 of the weather conditions, the vehicle wasn't capable of coming
3 to a complete stop right before.

4 THE COURT: Those are great points and that's one of
5 the most interesting points to me is that the juror used the
6 Government expert to make a point to prove the defendant not
7 guilty. That I'm sure if we had enough time, that might have
8 been an argument that the defense lawyer might have made. But
9 that's a risk that the prosecution has to face that their
10 expertise or their expert is going to give actually evidence
11 for the defense to make that argument that -- because even the
12 prosecution was implying -- was causing you to doubt or asking
13 questions to cause you to doubt how can this be minutes? But
14 you turned around so what even if it wasn't minutes, a second
15 or two that's enough time to react. It's interesting. Any
16 other jurors? How did you pick your foreperson? Go ahead.

17 THE JUROR: Okay. Well, I thought Young was kind of
18 like -- I thought she could be -- he or she could be considered
19 like a hostile witness because she said seconds when everybody
20 else said minutes. But like through this accident when they
21 are life was ruined or something, she like had her dreams
22 crushed. So I mean, that kind of has a reason for you to say
23 seconds over minutes.

24 THE COURT: It's kind of you're talk about how
25 people perceive things. Time is an interesting thing how

1 witnesses perceive time. Because something that can take a few
2 seconds people will say later on that it was a few minutes.
3 Time slows down and it's so hard to estimate. So how did you
4 pick a jury -- your foreperson?

5 THE JUROR: He volunteered.

6 THE COURT: He volunteered. Okay. All right. Any
7 other questions before we break? I think we're right on time.
8 Okay.

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