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Between the Lines

Uncharted Territory: The Anatomy of a Texting While Driving Vehicular Homicide Case

By Tara Jenswold*

On October 24, 2010 at approximately 12:32 p.m., a Ford Windstar operated by a 19-year old Stephanie Kanoff struck and killed 21-year old Dylan Elefson as he was walking behind his stalled Toyota Corolla in the right travel lane of East Johnson Street, a heavily traveled street in Madison, Wisconsin. Dylan, a college student, was on the way to work at a local mall when his muffler became detached and started dragging. In response, Dylan pulled over to the far right of the lane, put the hazard lights on, and got out of his car to investigate. Dylan then called his father, who told his son to get back in the car and drive the short distance to work, where his father agreed to meet him. Dylan hung up the phone and walked around the rear of his car to get back in. In anticipation of Halloween, Dylan was wearing brightly colored neon clothing, including baggy neon green pants as part of a Halloween costume. Witnesses who passed through the area in the minutes before the crash specifically recalled seeing Dylan and his bright clothing.

At the same time Dylan was experiencing car trouble, Stephanie Kanoff was less than two miles away, leaving the restaurant where she worked. Upon leaving work, Kanoff pulled out of the parking lot and headed east on West Johnson Street, which turns into East Johnson Street almost immediately.

East Johnson Street is a four-lane street, with two travel lanes in each direction and a posted speed limit of 25 miles per hour. During the three-four minute drive between the restaurant she worked and where Dylan was, Kanoff passed through eight controlled intersections. She told police that she had green lights at all of those intersections and was driving around the speed limit as she drove in the right lane. Kanoff described traffic as heavy or "car after car."

According to Kanoff, as she approached Dylan, she attempted to move into the left lane, but was unable to do so because there was a car next to her. She said that after she saw the car next to her, she looked back to her lane, just in time to see the car in front of her make a sudden lane change into the left lane. Kanoff said that at that moment she saw Dylan, who she described as a young male, wearing black, massively tight pants and a red shirt, but the other car's sudden lane change left her inadequate time to avoid him. She claimed that as soon as she saw him, she slammed on her brakes with both feet, but by that time, it was too late. Kanoff's van hit Dylan, catapulting him up on to the windshield before pinning him between the van and his car. Dylan then became entangled in the

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undercarriage of the van and was dragged 88 feet before Stephanie Kanoff's van came to a stop.

Stephanie Kanoff's version of what happened was the only one that police would have in immediate aftermath of the crash. Dylan Elefson was unconscious at the scene and never regained consciousness before he died. While there were people on scene when the police arrived, nobody had actually witnessed the crash. The driver of the car that Kanoff claimed made the abrupt lane change in front of her was nowhere to be found. In Stephanie Kanoff's mind, the crash was merely an unavoidable accident. It was not her fault.

Anybody who has any experience investigating or prosecuting a vehicular crimes case knows that crashes are very rarely, if ever, unavoidable accidents. More often than not, crashes are far more complex than they appear at first glance. Knowing this, the Dane County Critical Traffic Investigation Team, a multi-agency team that includes a dedicated prosecutor, launched a full investigation into the crash. On the most fundamental level, the team sought to determine how and why the crash happened. More specifically, how did a driver traveling at a relatively low rate of speed, in broad daylight, run right into an individual dressed in brightly colored neon clothing? Why did Stephanie Kanoff not see Dylan or his car? Why, if she was traveling at such a low speed, could she not avoid him? These were some of the questions that the team sought answers to as they probed deeper into the investigation.

The answer to these questions would come from a combination of sources: including witness interviews, physical evidence at the scene, and a complete reconstruction of the crash. Members of the crash team set out to piece the events of that day together. While the case detective, Mindy Winter, began seeking out and interviewing witnesses, Trooper Ryan Zukowski, collected and analyzed the evidence at the scene so he could complete a reconstruction of the crash. Because Stephanie Kanoff was the only witness to the actual crash, Detective Winter knew it was crucial that she follow up with her.

In the multiple conversations Detective Winter had with Kanoff in the days and months after the crash,

Kanoff maintained that she had done everything that she could have that day, and it was the car in front of her who abruptly swerved and left her no time to avoid Dylan. Kanoff claimed that she was attentive and doing nothing other than watching traffic as she approached Dylan. She specifically denied talking on the phone at the time of the crash, although she did admit to placing a call to her mother as she was leaving work. In a meeting two days after the crash, Detective Winter sought clarification about the timing of that call, and asked to see the call log in Kanoff's phone. Looking at the Kanoff's phone prompted Detective Winter to inquire whether the phone had texting capabilities. Kanoff admitted that it did, and immediately volunteered that she had sent one text to her manager at work as she drove in the minutes before the crash. She claimed that she composed this 108 character text just as she was leaving the parking lot of the restaurant. According to Kanoff, she tried to send the message, but for some reason, it failed to send. Kanoff insisted that at that point, she put the phone on the passenger seat of the van, where it remained until after the crash.

During the discussion of Kanoff's phone activity, Detective Winter and Kanoff looked at her phone together. As they did, Detective Winter noticed that there were some inconsistencies in what the phone revealed and what Kanoff told her. It was clear that Kanoff was not being entirely forthcoming. As a result, Detective Winter sought consent to conduct a forensic examination of Kanoff's phone, to which Kanoff agreed.

A forensic examination of the phone and a subsequent review of the phone records confirmed that Stephanie Kanoff's phone activity in the minutes leading up to the crash was more extensive than she admitted to. The records revealed that Stephanie Kanoff's phone was consistently in use during the four minutes leading up to the crash; four outbound phone calls were made, two outbound text messages were composed, and two inbound text messages were received. Kanoff's cell phone activity began as she left the restaurant at 12:28:14 and continued until 12:32:47, when she called her mother to tell her she hit someone. One of the text messages was the 108 character message to Kanoff's manager that Kanoff admitted composing. Contrary to what Kanoff said, the message was sent, with a time stamp of 12:31:42, over three minutes

after Kanoff left the restaurant parking lot. The last cell phone activity noted before the crash was an outgoing text message - "call me"- that was composed, but never sent. Extensive forensic examination of the phone confirmed that this final text message was composed sometime between 12:32:06 and 12:32:47, the approximate time of the crash.

While Detective Winter gathered critical information about Stephanie Kanoff's actions in the moments leading up to the crash, the reconstruction of the crash would shed additional light on what happened that day. Trooper Zukowksi determined that Kanoff's van was traveling between 25-29 miles per hour when it hit Dylan's car. Before it hit the car, Kanoff's van struck Dylan, throwing him up on her windshield and dragging him 88 feet before coming to a stop. Trooper Zukowski found no evidence of pre-impact braking or any evasive maneuver on Kanoff's part prior to impact. At the time of the collision, the Toyota was stopped with its right passenger side tires approximately 18 inches of the curb, and that the impact was an in-line collision, meaning that the van hit the car in almost perfect alignment. Trooper Zukowski found no physical evidence on scene that suggested that another car had been traveling in front of Kanoff. Additionally, despite media efforts to locate witnesses to the crash, no witnesses came forward.

Where did this information leave the crash team? What had the investigation revealed? At a minimum, they now knew that contrary to what Stephanie Kanoff initially told police, she was not just watching traffic as she approached Dylan and his stalled car that day. She was using her phone, and using it a lot. They also knew that there was no physical evidence to support Kanoff's claim that there was a car in front of her that prevented her from seeing Dylan until it was too late. Furthermore, there was no evidence that Kanoff slammed on the brakes as soon as she saw Dylan. In fact, there was no evidence that she braked at all, as it took her 88 feet to stop her van after hitting Dylan. With the investigation complete, it was clear that this crash was not an unavoidable accident that Stephanie Kanoff maintained it was. As it turns out, it was Stephanie Kanoff's fault.

Convinced that the crash was not merely an unavoidable accident, the question was whether Stephanie Kanoff would be charged criminally for causing the death of Dylan Elfson. At the time of the crash, Wisconsin did not yet have a texting while driving ban in effect. Wisconsin's texting while driving law was passed several months prior to the crash, but was not technically effective until two months after the crash. Even if it had been in effect at the time of the crash, a violation of the law would have only resulted in a civil infraction, and would have had relatively no bearing on a criminal homicide prosecution. Wisconsin's texting law is a civil traffic offense, with no provisions addressing drivers who injure or kill someone while texting and driving.

Realistically speaking, as prosecutors, we believed that the only potentially viable charge under Wisconsin law was Homicide by Negligent Operation of a Motor Vehicle. In contemplating this charge, the question was whether Stephanie Kanoff's conduct rose to the level of criminal negligence; meaning did it create an unreasonable and substantial risk of death or great bodily harm? And if it did, could we establish that Kanoff should have known that her conduct created that risk? These were the elements that we would have to prove beyond a reasonable doubt to support the charge.

At first glance, it may not appear to be a particularly onerous standard, but the reality of the situation was that in Wisconsin, prosecutors historically struggled with proving criminal negligence in vehicular cases. The charge was often reserved for drivers who engaged in conduct that to most people, would be considered reckless conduct. Most cases involved drivers traveling at extremely high rates of speed; drivers who had consumed alcohol or drugs, but were not legally impaired; or drivers who violated multiple traffic laws. While the trend was improving, at the time of this crash, prosecutors were still facing challenges obtaining convictions for negligent vehicular homicide. Unquestionably, the challenge is in part, due to the proverbial "There but for the grace of God go I" mentality that is prevalent among jurors in these cases. We knew that mindset would likely be held by jurors in this case given the prevalence of

texting while driving in our society. We knew that we would be hard pressed to find many people who had not texted or otherwise used their phone while driving. On top of that, this was the first time in Wisconsin, a texting driver would be charged with vehicular homicide. We were treading into uncharted territory.

After careful consideration of all the facts, we decided to move into that uncharted territory and Stephanie Kanoff was charged with Homicide by Negligent Operation of a Motor Vehicle for the death of Dylan Elefson. It was our position that Kanoff engaged in a criminally negligent course of conduct in the moments leading up the crash, and that it was that course of conduct that caused Dylan's death. The evidence was clear. In the four minutes prior to the crash, as Kanoff drove her 4000 pound minivan down a crowded street, through eight controlled intersections, she continually manipulated her

phone, alternating between making calls and composing and reading text messages. The manipulation of her phone required her to take her hands off the wheel, and her eyes off the road. Instead of scanning the roadway and being alert to her surroundings and other traffic, she was fixated on her phone. Had she been alert and paying attention, she would have seen Dylan in his bright neon clothing, or his car with its flashers on, and she would have moved over, like every other driver who passed him before her had done. Satisfied that the evidence established that Stephanie Kanoff's criminally negligent conduct caused the death of Dylan Elefson, we charged her with one count of Homicide by Negligent Operation of a Motor Vehicle. We were convinced that this was not an unavoidable accident, but would a jury be?

This is part one of a two-part article concerning the prosecution of this case. The second installment will appear in the next edition of Between the Lines.



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