

# TRIAL DRIVE

by David Hill

## CHARACTERS:

**JASON PALMER**

**GREGG LUKE**

**CINDY WIPATENE**

**KARL SA'ANGA**

**REBECCA STEPHENS**

**MANDY JAKES**

**CARISSA JAKES**

**JEFF HOLMES**

**CONSTABLE HARRIS**

**MR CULLEN (Defence Lawyer)**

**REGISTRAR**

**JURY (up to 12 people) (\*)**

**JURY FOREMAN**

**CINDY'S MUM AND DAD (\*)**

**GREGG'S MUM (\*)**

**MELIA (Gregg's Sister)**

**SCHOOLFRIENDS (4-5) (\*)**

**ATHOL CLARK**

**REPORTER**

**MS CHAN (Prosecution Lawyer)**

**COURT CRIER**

**JUDGE BABIC**

(\*) Some of these may be non-speaking parts.

**SCENE ONE:** Five chairs (two in front; three behind) are arranged like the seats of a car. Enter **JASON, CINDY, KARL, GREGG, REBECCA**. They sit. **JASON** is in driver's seat. **JEFF HOLMES** enters, stands on one side. **MANDY** and **CARISSA JAKES** enter; stand on other side.

GREGG: Hey, Jason? Doesn't this heap have seatbelts?

CINDY: Don't be a wimp, Gregg. Jason'll look after us, eh, Jase?

JASON: No worries. Cindy's right. Trust me!

*(For rest of scene, characters can mime suitable actions.)*

KARL: Jeez, take it easy, Jase. It's not a Space Shuttle blastoff.

CINDY: Loosen up, Karl. Don't get your Jockeys in a jangle.

REBECCA: My seat belt won't do up.

GREGG: My seat belt won't do anything!

JASON: Stop worrying! I told you - trust me.

CINDY: Hey, Fraser Road! My Nana used to live here.

REBECCA: Mind the gravel. Jason, you'll skid!

JASON: That's not a skid. This is a skid!

GREGG: Jeez, Jason. Watch it!

CINDY: Woo-ooo! Go, Jase!

REBECCA: No, don't, Cindy! Jason, slow down!

JASON: Watch this. I'll do a real snake!

KARL: Hey, Jase -

GREGG: Slow down, eh, mate!

MANDY: There's a car coming real fast, Carissa.

CARISSA: Get the horses over to the side. He's - stupid idiot!

JASON: Wanna see a hand-brake slide? Here we go!

CINDY: Yeah, Jase! Cool!

GREGG: Shut it, Cindy! Jase -

REBECCA: Jason, slow down! Please!

HOLMES: Who's this bloody maniac? Watch the bend, mate! Watch it!

*(The five people in the "car" all jerk suddenly. CINDY, GREGG, REBECCA fall to ground and lie still. CONSTABLE HARRIS enters, stands still.)*

JASON: Karl! Karl, you OK?

CONSTABLE: Karl Hatiatia Sa'anga. Aged 17. Bruising. Sprained wrist.

KARL: Yeah, I - Hell, that hurts! Where's Becca?

CONSTABLE: Rebecca Jane Stephens. Aged 16. Fractured thighbone, concussion.

*(KARL helps REBECCA up. They exit.)*

JASON: Hey, Gregg? Mate, did you....

CONSTABLE: Gregg Joseph Luke. Aged 17. Severe spinal injuries. Now a paraplegic. In a wheelchair.

*(MANDY, CARISSA, JEFF HOLMES help GREGG up. They exit.)*

JASON: Ci - Cindy? Where -

CONSTABLE: Cindy Maureen Wipatene. Aged 16. Severe head injuries. Broken neck. Died at scene.

*(REGISTRAR and REPORTER enter.)*

REGISTRAR: Jason Ralph Palmer. Aged 17. You are charged under the Land Transport Act 1998, Section 36, 1a, with Dangerous Driving Causing Death and Dangerous Driving Causing Injury. How do you plead?

JASON: No! I didn't mean to -

REGISTRAR: How do you plead?

JASON: I.....Not Guilty.

REGISTRAR: At today's Depositions Hearing, Judge Patel decided there was enough evidence for a case to be brought. Palmer chose Trial by Jury. The case is set down for October 7th, in the District Court.

*The class may pause here and discuss -*

*What do you think of Jason's behaviour in SCENE 1?*

*What do you think about the behaviour of the others?*

*What do you think about Jason's plea of Not Guilty?*

**SCENE 2: Classroom set up room as District Courtroom. (See diagram, Copysheet 8) CINDY stands, exits. JURY, COURT CRIER, REGISTRAR, MS CHAN, MR CULLEN, JASON, REPORTER take places. CINDY'S MOTHER and FATHER, GREGG'S MOTHER and MELIA (his sister), JASON'S PARENTS, several SCHOOL- FRIENDS sit in public gallery.**

REPORTER: On the first day of The Crown versus Jason Ralph Palmer, the jury was selected and its foreman appointed. The list of witnesses was read. Then -

REGISTRAR: Silence, please. All stand for Judge Babic.

*(Everyone stands. JUDGE enters, bows to court. Lawyers bow back. Everyone sits.)*

REGISTRAR: Jason Ralph Palmer, the Crown alleges that on Saturday, March 6, at around 4pm on Fraser Road, by driving in a dangerous manner, you did cause the death of Cindy Maureen Wipatene, and serious injury to Rebecca Jane Stephens and Gregg Joseph Luke. You are charged with one count of Dangerous Driving Causing Death and two counts of Dangerous Driving Causing Injury. How do you plead?

JASON: Not - Not Guilty.

GREGG'S MOTHER: 'Not Guilty'! Oh, Jason!

COURT CRIER: Silence, please!

MS CHAN (stands): Your Honour, I appear for the Crown in this case.

JUDGE: Thank you, Ms Chan.

MR CULLEN (stands): Your Honour, I appear for the accused, Jason Palmer.

JUDGE: Thank you, Mr Cullen. Ms Chan, you may begin your case.

MS CHAN: Your Honour, the Crown states that on Saturday, March 6, at around 4pm, Jason Palmer was the driver of a 1987 Toyota Corolla car which crashed on Fraser Road, causing the death of Cindy Wipatene and severely injuring Gregg Luke and Rebecca Stephens. We will produce witnesses who will state that the accused was driving in a reckless manner, and ignored pleas to slow down. Other witnesses will testify to seeing the car driven at excessive speed. We also have

evidence from Constable Harris, attending officer at the crash, and from Mr Athol Clark, a vehicle testing inspector.

JUDGE: Thank you, Ms Chan. Please go on.

MS CHAN: Call Rebecca Stephens.

COURT CRIER: Rebecca Stephens!

*(REBECCA enters, stands in witness stand.)*

COURT CRIER: Do you solemnly, sincerely and truly declare and affirm that you will tell the truth, the whole truth, and nothing but the truth?

REBECCA: Yes.

JUDGE: Now, Rebecca, I'm going to say to you what I usually say to young witnesses. Take your time when you answer. If you don't understand a question, or if you want it repeated, just say so. And most important, be completely truthful. Is that clear?

REBECCA: Yes.

JUDGE: Go on, Ms Chan.

MS CHAN: Thank you, sir/ma'am. Rebecca, I'm going to ask you some questions about events before the crash. All right?

REBECCA: OK.

MS CHAN: When the accused Jason Palmer was driving along Fraser Road, where were you sitting?

REBECCA: In the back. Between Gregg and Karl.

MS CHAN: Were you happy with the way the accused was driving?

REBECCA: No. He was going real fast, and doing wheelies and stuff. He was being a total idiot.

MR CULLEN: Objection!

JUDGE: Yes. Rebecca, just answer the question.

REBECCA: Sorry.

MS CHAN: And Rebecca, would you please explain to the court what you mean by "wheelies"?

REBECCA: Oh.....making the car speed up suddenly, so the wheels skid.

MS CHAN: Did you ask the accused to slow down?

REBECCA: Yeah. I was scared, 'cos I couldn't do my seatbelt up.

MS CHAN: What did the accused do when you asked him to slow down?

REBECCA: He - He just laughed and kept going.

MS CHAN: Did anyone else in the car ask the accused to go slower?

REBECCA: Gregg did. And I think Karl sort of asked.

MS CHAN: And did Mr Palmer take any notice?

REBECCA: No. He kept going fast.

MS CHAN: Thank you, Rebecca. No further questions.

JUDGE: Mr Cullen, do you wish to cross-examine?

MR CULLEN: Thank you, sir/ma'am. Rebecca, you said that Karl - Karl Sa'anga, Your Honour, whom the Defence will call as a witness - "sort of asked" Mr Palmer to slow down. What did he say, exactly?

REBECCA: Something about "You're not on a space rocket", or stuff like that.

MS CHAN: I see. A sort of joke?

REBECCA: Dunno. Could have been.

MR CULLEN: Perhaps Mr Palmer thought you were all joking? That you were actually enjoying going fast, and wanted him to keep driving that way?

MS CHAN: Objection.

JUDGE: I think we'll let the witness answer this. Go on, Rebecca.

REBECCA: No. He couldn't have. Gregg was getting angry, and I was shi- I was really freaked out.

MR CULLEN: No more questions.

JUDGE: Do you wish to re-examine, Ms Chan?

MS CHAN: No, Your Honour. I call Gregg Luke.

COURT CRIER: Gregg Luke!

*(REBECCA sits in public area. GREGG enters, in wheelchair. He takes the oath.)*

MS CHAN: Mr Luke, could you tell us where you were in the car that the accused was driving along Fraser Road?

GREGG: In the back. Next to Becca.

MS CHAN: And how was the accused driving?

GREGG: Fast. Really fast. He was doing wheelies and hand-brake skids in the gravel.

MS CHAN: Did you say anything to him?

GREGG: I told him to slow down. Told him twice. Becca - Rebecca - was asking him, too. He didn't take any notice.

MS CHAN: Can you describe what happened then?

GREGG: We went ripping past these two girls on horses. There was this corner coming up. Jase was going way too fast. Becca and I both started yelling at him. Then the car was going end over end. That's all I can remember.

MS CHAN: Yes, and -

GREGG: He just walked away from it. How about me, eh? When am I bloody gonna walk away from anything?

MS CHAN: No further questions.

JUDGE: Mr Luke, I am aware what a terrible result this crash has had for you. But you'll understand that I have to ask you to just answer the questions. Nothing else, please.

GREGG: Yeah. OK.

JUDGE: Mr Cullen? Cross-examine?

MR CULLEN: Thank you, sir/ma'am. Mr Luke, you've told us that you and Rebecca Stephens asked Mr Palmer to go more slowly.

GREGG: Yeah.

MR CULLEN: How about Cindy Wipatene? Did she ask Mr Palmer to slow down?

CINDY'S MUM: Why drag my girl into this?

GREGG: Yeah. Her family's had a hell of a time, eh?

JUDGE: Mr Luke - please answer the question.

MR CULLEN: Did Cindy ask Mr Palmer to slow down?

GREGG: No.

MR CULLEN: What did she say?

GREGG: She was going "Cool" and "Go!", and stuff like that.

MR CULLEN: So she was urging Mr Palmer to drive fast.

GREGG: Well...yeah. But she didn't -

MR CULLEN: No more questions, thank you.

JUDGE: Re-examine, Ms Chan?

MS CHAN: Yes, sir/ma'am. So, Mr Luke, you and Rebecca asked the accused more than once to slow down. Did Karl - Mr Sa'anga?

GREGG: Yeah. He said something about "Don't try to be a space pilot". But he was serious.

MS CHAN: So three of you wanted the accused to drive more slowly. But he didn't?

GREGG: No, he didn't.

MS CHAN: Thank you, Mr Luke. Call Jeffrey Holmes.

COURT CRIER: Jeffrey Holmes!

*(GREGG sits in public area. HOLMES enters, takes oath.)*

MS CHAN: Mr Holmes, on the afternoon of March 6, you were working in a paddock beside Fraser Road - is that correct?

HOLMES: Yeah. I was doing some fencing. Our farm runs along both sides of the road.

MS CHAN: Will you tell the court what you saw.

HOLMES: I heard this car coming up the road. The engine was revving. He came round the bend about 400 metres away, and he was all over the road. I could hear the stereo thumping away, so I guessed it was some young hoon.

MR CULLEN: Objection.

JUDGE: Sustained. Just answer the question, Mr Holmes.

MS CHAN: What time was this happening?

HOLMES: Four o'clock - give or take a couple of minutes.

MS CHAN: And then what happened?

HOLMES: He came up the straight flat out. Typical young lunatic speed.

MR CULLEN: Objection.

JUDGE: Sustained. Mr Holmes, please keep to the facts. The court will ask for your opinions if it needs them.

MS CHAN: Go on.

HOLMES: There's this corner with a 50k sign on it. He was doing much more than that. I heard him put on the brakes and start skidding. Then he went off the road, flipped about three times, through the fence and into the power pylon. I - I didn't want to go and look. Those kids.... hell, it was a mess. There was a girl on the ground by the car, and a guy half-under it. And there was another girl inside, all scrunched over. I yelled to her, but she didn't say anything; didn't move.

MS CHAN: No further questions.

JUDGE: Mr Cullen?

MR CULLEN: Thank you, Your Honour. Mr Holmes, you obviously know Fraser Road well?

HOLMES: Been living there 17 years, yeah.

MR CULLEN: And you've known older drivers - not just young ones - get into trouble in the gravel there?

HOLMES: A few.

MR CULLEN: Including you, I believe. Your ute went off the road in the same area, in June last year?

MS CHAN: Objection! Mr Holmes' driving is not the issue here.

JUDGE: Sustained. The jury will ignore that question.

MR CULLEN: No more questions, sir/ma'am.

MS CHAN: Call Carissa Jakes.

COURT CRIER: Carissa Jakes!

*(HOLMES exits. Carissa enters, takes oath.)*

MS CHAN: Now, Carissa, you and your sister Mandy were on Fraser Road on the afternoon of March 6?

CARISSA: Yes, Miss.

MS CHAN: What were you doing?

CARISSA: We were riding our horses up the road. We take them along there most weekends. They've got grazing in Puketapu Road. That's just, like, round the corner.

MS CHAN: What did you see?

CARISSA: About 4 o'clock, we heard this car coming really fast and loud towards us. Polly started to get scared, and -

JUDGE: Polly? I thought your sister's name was Mandy?

CARISSA: Yeah. Polly's her horse.

JUDGE: I see. Please go on, Ms Chan.

MS CHAN: So what happened then, Carissa?

CARISSA: Mandy and me got our horses right over to the side of the road. Then the car hooned past. The stereo was like, really loud, and the engine was revving heaps.

MS CHAN: Did you see who was driving?

CARISSA: Jase. We were on his side of the car.

MS CHAN: Do you mean the accused, Jason Palmer clearly?

CARISSA: Sorry. Yeah.

MS CHAN: Did you see anyone else in the car?

CARISSA: Becca - Rebecca Stephens - in the back. She looked scared.

MS CHAN: Could you see Jason Palmer clearly?

CARISSA: Yeah, he was laughing.

MS CHAN: What happened after the car passed you?

CARISSA: It was like, doing wheelies and swerves. And when it got to the corner, it just went straight off the road. It was like, unreal. It flipped over, and flipped over again. And then Mandy started screaming and the horses were bucking and stuff. But I heard this BANG! And when I looked, it had hit the power pylon.



MS CHAN: Thank you, Carissa.

MR CULLEN: No questions, Your Honour.

JUDGE: Thank you, Carissa. You can stand down. (CARISSA joins public.)

MS CHAN: Your Honour, I have a sworn statement from Carissa's younger sister, Mandy Jakes. As you will see, Mandy's evidence is almost identical to Carissa's. Since she still finds it very distressing to talk about the crash, I thought a written statement would be preferable. I have copies for Your Honour, and for the Registrar to read to the court.

JUDGE: Was video evidence considered?

MS CHAN: It was, sir/ma'am. But talking about the crash in any way is extremely painful to Mandy. A written statement seemed more satisfactory.

MR CULLEN: No objection to the written statement, Your Honour.

*(REGISTRAR reads Mandy's statement - CLASS MAY WRITE ONE IF THEY WISH - which is a repeat of Carissa's evidence.)*

MS CHAN: I call Constable Joel Harris.

COURT CRIER: Constable Harris!

*(CONSTABLE HARRIS takes oath.)*

MS CHAN: Constable, you were the officer attending the crash scene on Fraser Road, on the afternoon of March 6?

CONSTABLE: Yes, Ma'am.

MS CHAN: Please describe the scene when you arrived.

CONSTABLE: I responded to a 111 call made by Mrs Dulcie Ropati. Mrs Ropati is a neighbour of Mr Holmes. He had stopped her car and asked her to phone for an ambulance and the police. I arrived and found a Toyota Corolla car on its side against a power pylon, approximately 65 metres from the road.

MS CHAN: What did you do?

CONSTABLE: Since I arrived before the ambulance, I gave first aid to the injured at the scene. A young woman whom I later found to be Rebecca Stephens was unconscious beside the vehicle. Gregg Luke was lying half-under the car. The front passenger part of the vehicle was extensively damaged, and I could see an occupant who turned out to be Cindy Wipatene. Ms Wipatene did not respond to my calls. Jason Palmer and Karl Sa'anga were standing beside the vehicle, along with Mr Holmes.

MS CHAN: Did you take statements?

CONSTABLE: The ambulance arrived soon after I reached the scene. The driver and I ascertained that Cindy Wipatene was dead. With the assistance of Mr Holmes, Karl Sa'anga and the accused, we managed to move the vehicle enough to free Mr Luke. He and Rebecca Stephens were taken by ambulance to hospital. I then took statements from Mr Holmes, Mr Sa'anga and the accused, and from Carissa and Mandy Jakes.

MS CHAN: When you spoke to the accused, what did he say?

CONSTABLE: I asked who had been driving the vehicle. The accused replied, "Me. I was just stuffing around. The steering must have screwed up or something." Then he asked "Are Gregg and Cindy going to be all right?"

MELIA: Bit late for that!

COURT CRIER: Silence!

JUDGE: I will remind members of the public that they must remain silent while evidence is being heard. If there are further interruptions, I may ask for the public gallery to be cleared.

MS CHAN: Constable Harris, will you describe what you found when you examined the nearby area of Fraser Road.

CONSTABLE: I found no signs of the vehicle having braked before it left the road. Yaw marks on the gravel surface showed where the vehicle had lost control on a left-hand bend. Skid tests and further measurements indicated that the vehicle was travelling at approximately 85km/h when the driver lost control. The advisory speed for the bend is 50 km/h.

JUDGE: Mr Cullen.

MR CULLEN: Constable, what was visibility like at the time of your investigations? Where was the sun?

CONSTABLE: It was low in the sky, sir.

MR CULLEN: Low enough to be in a driver's eyes?

CONSTABLE: Depending on where he was facing. The car was proceeding approximately north-north-west. The sun was some distance to the left-hand side of the road.

MR CULLEN: But if a driver had been looking in that direction, the sun could have been a problem?

MS CHAN: Objection. The witness is being asked to comment on something which may not have happened.

JUDGE: I think we'll let Mr Harris answer that.

CONSTABLE: I suppose it could have been. But the sun was at least 30 degrees off to the left.

MR CULLEN: Constable, you spoke to the accused at the scene. Can you describe his emotional state?

CONSTABLE: He was shaking, and seemed very shocked. When I informed him that the ambulance officer had pronounced Cindy Wipatene dead, he began to sob, and became incoherent.

MR CULLEN: Thank you. No further questions.

MS CHAN: Your Honour, I call Athol Clark.

COURT CRIER: Athol Clark!

*(CONSTABLE sits in main part of court. ATHOL CLARK enters, takes oath.)*

MS CHAN: Mr Clark, will you tell the court your occupation, please?

CLARK: I'm a vehicle testing inspector, employed by Test-Drive Ltd.

MS CHAN: Did you inspect the vehicle involved in a crash on Fraser Road on March 6?

CLARK: Yes.

MS CHAN: Please tell the court the result of your inspection.

CLARK: The 1987 Toyota Corolla had suffered extensive damage. The front windscreen and both left-side windows were shattered. The front passenger side was crushed. Paint traces and impact marks indicate that this was the part of the vehicle which struck the power pylon. Damage to the roof and other external surfaces support witnesses' statements that the car had flipped several times.

MS CHAN: Did you find any evidence of mechanical failure that may have contributed to the crash?

CLARK: The vehicle had a current Warrant of Fitness. Tyres were good, though the tread on the left rear one was worn. Hand-brake and foot-brakes were in good working order. The steering system to the front left-hand wheel had been damaged in the crash, but I found no sign of any other pre-existing faults. Two of the seat belts were partly caught in the legs of seats.

MS CHAN: No further questions.

JUDGE: Mr Cullen?

MR CULLEN: Mr Clark, you said that one tyre had a worn tread. Presumably that wear would make the vehicle less safe on the road?

CLARK: Yes, but only slight-

MR CULLEN: That's all. Thank you.

MS CHAN: That concludes the case for the prosecution, Your Honour.

JUDGE: Thank you, Ms Chan. Since the time is now 12.48, I think we'll break for lunch. The court will reconvene at 1.45 with the case for the Defence.

REGISTRAR: All stand.

*(Everyone stands. JUDGE bows to court. LAWYERS bow back. JUDGE exits.)*

*A 5-10 minute break can now follow. During the break, you could discuss:*

- a. What features of the Court procedure surprised you?*
- b. Is there anything in the trial so far that you would like explained further?*
- c. How does the character you are acting feel about Jason at this stage?*

**SCENE 3:**

REGISTRAR: All stand, please.

*(Everyone stands. JUDGE enters, bows to court. LAWYERS bow back. Everyone sits.)*

REGISTRAR: The Crown versus Jason Ralph Palmer on charges of Dangerous Driving Causing Death, and Dangerous Driving Causing Injury.

JUDGE: Mr Cullen, would you like to begin your case for the Defence?

MR CULLEN (stands): Thank you, sir/ma'am. The Defence does not dispute that this crash occurred, with its tragic consequences. We do not dispute that the accused, Jason Palmer was the driver of the vehicle at the time. What the Defence will try to show is that other factors may have contributed significantly to the crash. We will also show that the accused feels deep remorse for his actions, and is most unlikely ever to offend in such a way again. I call the accused, Jason Palmer.

COURT CRIER: Jason Palmer!

*(JASON moves to witness stand, takes oath.)*

MR CULLEN: Mr Palmer, you were the driver of the Toyota car in this crash?

JASON: Yeah, I was.

MR CULLEN: When did you tell this to the attending officer - Constable Harris?

JASON: At the crash. Soon as he arrived.

MR CULLEN: Mr Palmer, had you been drinking before the crash?

JASON: No, I hadn't. I don't drink and drive.

MR CULLEN: Your Honour, I have here a medical report which states that no trace of alcohol was found in the accused's blood sample taken just after the crash.

JUDGE: Thank you, Mr Cullen. To the Registrar, please.

MR CULLEN: We've heard from three witnesses how they asked you to slow down and stop doing wheelies. Why didn't you?

JASON: I thought they were joking. And Cindy was telling me to keep going faster. She was laughing.

GREGG: Don't you blame - *(He stops.)*

MR CULLEN: Were you showing off for Cindy? Trying to impress her?

JASON: Yeah. Yeah, I was.

MR CULLEN: Did you feel you were in control of the vehicle?

JASON: Yeah. I mean - I was doing these skids and going pretty fast. But I was handling it, till that last corner. Then it got away from me.

MR CULLEN: Is there anything else you wish to add?

JASON: No. Except.....I'm really sorry. I'm never gonna get over what happened to Cindy and Gregg. And Becca. I'd give anything if it hadn't happened. I'll never drive like that again.

MR CULLEN: Thank you, Mr Palmer.

JUDGE: Ms Chan, do you wish to cross-examine?

MS CHAN: Thank you, sir/ma'am. Mr Palmer, how long have you held a full driver licence?

JASON: About...two months.

MS CHAN: Two months. Yet you felt you had enough experience to drive fast down a gravel road, doing wheelies and hand-brake skids, and still be in no danger?

MR CULLEN: Objection. That is a statement, not a question.

JUDGE: I think the question content is clear. You may answer, Mr Palmer.

JASON: I thought it was OK.

MS CHAN: You've heard witnesses say they couldn't fit their seatbelts properly. Why didn't you stop the car until the belts were secure?

JASON: I just didn't think of it. I thought they'd get them done up in a minute.

MS CHAN: You said you thought Mr Sa'anga and Mr Luke and Rebecca Stephens were all joking when they asked you to slow down, is that right?

JASON: Yes.

MS CHAN: But Mr Luke and Rebecca asked you *several* times to slow down. Why didn't you take any notice?

JASON: I dunno.

MS CHAN: Were you trying so hard to show off to Cindy Wipatene that you deliberately ignored the pleas of your other friends? Even though you knew you were putting their lives at risk?

JASON: I - No. I thought they were joking.

MS CHAN: No further questions.

JUDGE: Re-examination, Mr Cullen?

MR CULLEN: Thank-you, sir/ma'am. Mr Palmer, was there anything to stop people from being able to do up their seatbelts? The belts were all in working order, weren't they?

JASON: Yeah. They were all OK. Couple of them might have been a bit tangled up, but they were OK.

MR CULLEN: Your Honour, I call Karl Sa'anga.

COURT CRIER: Karl Sa'anga!

(JASON moves back to Accused's area. KARL enters, takes oath.)

MR CULLEN: Mr Sa'anga, you were a passenger in the car driven by Mr Palmer at the time of this crash?

KARL: Yeah. That's right, Your Honour.

MR CULLEN: You only call the Judge "Your Honour". You don't need to call me anything.

KARL: OK. Sorry.

MR CULLEN: Where were you sitting in the vehicle?

KARL: In the back. On the left.

MR CULLEN: While Mr Palmer was driving, did you say anything about "going like a space rocket"?

KARL: I can't remember the exact words. But when he took off, I said some thing about "You don't have to do a Space Shuttle blastoff".

MR CULLEN: Sounds like a joke. Did the accused seem to think it was a joke?

KARL: I.....I dunno. He might have.

MR CULLEN: Thank you. Now, Mr Sa'anga, was anyone else in the car joking about Mr Palmer's driving? Anyone else who seemed to be enjoying the speed and excitement?

KARL: Yeah. I....I think Cindy was.

CINDY'S MUM: No! No, that can't be right.

COURT CRIER: Silence, please.

MR CULLEN: By "Cindy", you mean Cindy Wipatene? (KARL nods.) Would you answer in words, please?

KARL: Yeah. Her - Cindy.

MR CULLEN: What sorts of things did she say to the accused?

KARL: She was going "Cool, Jase!" and "Go!", and stuff like that. And telling us not to worry about our seatbelts.

MR CULLEN: And was the accused taking notice of what she said?

KARL: You mean, did it make him keep going fast?

MS CHAN: Objection. That is not the question.

JUDGE: Sustained. Help your witness a little more, Mr Cullen.

MR CULLEN: I'll rephrase, Your Honour. Mr Sa'anga, Cindy Wipatene was excited, and calling out to keep going fast. Do you think this affected the accused's driving?

KARL: It could have done, yeah. I reckon he was trying to show off for Cindy.

MR CULLEN: When you spoke to the accused after the crash, when he realised Cindy was dead, and Mr Luke appeared to be badly injured, how did he seem then?

KARL: He was crying and going on. He was a mess.

MR CULLEN: No further questions.

JUDGE: Ms Chan?

MS CHAN: Thank you, sir/ma'am. Mr Sa'anga, when you made your Space Shuttle comment to the accused, did you mean it as a joke?

KARL: No. I was freaked out.

MS CHAN: And what did the accused do?

KARL: He just laughed.

MS CHAN: And when Mr Luke and Rebecca asked him to slow down, did you think they were joking?

KARL: No. You could tell they were scared.

MS CHAN: Some of you couldn't find seatbelts, or couldn't do them up properly. What did the accused say?

KARL: He said not to worry, or something like that. I don't remember exactly.

MS CHAN: No further questions.

JUDGE: Mr Cullen?

MR CULLEN: No re-examination, thank you. Your Honour, that is the case for the Defence.

JUDGE: Thank you, Mr Cullen. Prosecution may now make their closing addresses to the jury. Ms Chan for the Crown.

MS CHAN: Your Honour, Members of the Jury. There is no question that the accused, Jason Palmer, was the driver of the car involved in the fatal crash of March 6. The question for you to decide is "Was Jason Palmer's driving at the time dangerous?" Appeal Courts both here and overseas have long held that you should apply an objective test deciding whether or not driving is dangerous. It is worth considering the noteworthy English case of *R v Gosney* [1971] 2 QB 674, [1971] 3 All ER 220 (CA) Lord Justice Megaw said "In order to justify a conviction there must be a situation which, if viewed objectively, was dangerous. There must also have been some fault on the part of the driver, causing the situation." Consider the facts of this case. Palmer was not only driving with little or no regard for the safety of his passengers, but his driving was full of fault. He was speeding. He was deliberately skidding. He ignored the speed advisory sign. He was putting his own amusement ahead of the safety of his passengers.

You have heard the accused claim he thought that Gregg Luke, Rebecca Stephens and Karl Sa'anga were all joking when they asked him to slow down. You have also heard these witnesses make it very clear that they were not joking. All three were frightened by his reckless driving. Yet the accused ignored their pleas.

Attempts have been made to suggest that the metalled road and low sun may have contributed to the crash. This has been discredited by the evidence of Constable Harris, the attending officer. The accused also claimed that the car's steering "must have screwed up or some thing", yet the expert evidence of Mr Clark the Vehicle Inspector

found no such mechanical failure.

The fact that some passengers in the vehicle were not wearing seatbelts does not lessen the accused's responsibility. Rather, it is another sign of his carelessness that he made no attempt to make sure his passengers put on those belts.

The tragic loss of one young life, and the lasting damage to others caused by this event must be severely treated. Has the accused shown real remorse for his actions? He claims to be sorry, but he has chosen to plead 'Not Guilty', thus putting victims and their families through the pain of reliving the experience. He is still trying to shift responsibility to Cindy Wipatene, the car, anything but himself.

Members of the Jury, the accused and any other drivers who may be tempted to behave like this need to have the nature and results of such actions brought home to them. You can best do this by finding him Guilty of the charges of Dangerous Driving Causing Death, and Dangerous Driving Causing Injury.

JUDGE: Thank you, Ms Chan. Mr Cullen, are you ready to sum up for the Defence?

MR CULLEN: Yes, Your Honour. Your Honour, Members of the Jury. The Defence does not dispute that the accused was the driver of the vehicle involved in this dreadful crash. Nor does it deny that Mr Palmer made mistakes.

Every one of us makes mistakes some time when we drive. The tragedy for Mr Palmer is that he will have to live with the results of his mistakes for the rest of his life.

In spite of what the Crown has said, you can see that the accused does feel remorse. You heard him say - and I quote - "I'm never going to get over what happened. I'd give anything if it had never happened. I'll never drive like that again." These are the words of a young man who has learned a terrible lesson.

Members of the Jury, surely for a relatively inexperienced driver like the accused, the combination of gravel road, bend, and low sun make a dangerous combination. They cannot be ruled out as contributing factors.

I ask you to imagine the mood in that car as it set out. Five young people, excited and noisy, the stereo going. Young men and women carried away by the excitement of the moment, never thinking that anything could go wrong for them. I think we can all remember feeling as Mr Palmer must have been feeling then.

I also wish to mention the seatbelts. Yes, the accused should have made, sure his passengers put them on. But those passengers had a responsibility as well.

CINDY'S MUM: Oh no, it's -

GREGG: Come on! You -

COURT CRIER: Silence!

MR CULLEN: All I ask is that you bear that painful fact in mind. Members of the Jury, the accused is a young man with a future in front of him. He accepts that his actions deserve punishment. I submit to you that his



punishment began the moment that car hit the power pylon, and will never stop for the rest of his life. I ask you to bear that in mind as you consider your verdict.

JUDGE:

Thank you, Mr Cullen. Members of the Jury, there are several points I wish to make before you retire to consider your verdict.

The accused is charged under the Land Transport Act of 1998, with Dangerous Driving Causing Death and Dangerous Driving Causing Injury.

As Ms Chan pointed out for the Crown, over the years a variety of appeal courts have held that for driving to be considered dangerous it must pass the objective test and there must be some degree of fault by the driver.

Also, the Act says that even if an accused did not imagine anyone being hurt as a result of his or her driving, they can still be charged under the Act.

Certain facts are not in doubt. Crown and Defence accept there was a crash causing - very sadly - death and injury. The accused was driving the car involved. What you must decide is whether his driving was dangerous.

You have heard evidence from witnesses who say they asked the accused to slow down. The accused has stated that he thought they were joking. You have heard that Ms Wipatene was urging him to keep driving fast. The attending officer and a vehicle safety inspector have given technical evidence, and eye-witnesses have commented on the speed at which the car was being driven.

You must decide only on the basis of the evidence presented in this court.

Anything else you may have heard or read about this case or people involved in it must not be taken into account as you decide your verdict.

You may change your mind. If, as you discuss the evidence, you find yourself altering your opinion, then that is perfectly acceptable.

You have heard from Mr Cullen that simply because the defendant showed lack of experience it should not be considered dangerous. In considering that issue I should draw your attention to a judgement given by Mr Justice Fenton Atkinson when the English Court of Appeal in 1963 considered an appeal in the case of R v Evans. He said "It is clear that if a man adopts a manner of driving that the jury thinks is dangerous to other road users in all the circumstances, then on the issue of guilt it matters not whether he was deliberately reckless, careless, momentarily inattentive or even doing his incompetent best.

If you need to refer to any evidence presented during the trial, please ask.

A written transcript of all evidence is available. If you wish to have an aspect of the case or a point of law explained, then the court will do this.

You are asked to try and reach a unanimous verdict - one where you all agree. When you have done this, your Foreman will tell the official acting as Jury Escort. The Court will then hear your verdict.

If you cannot agree on a verdict, and really feel you will not be able to agree, the Foreman will inform the Jury Escort of this.

REGISTRAR: All stand.

*(Everyone stands. JUDGE bows and exits.)*

REGISTRAR: The jury will now retire to consider their verdict.

*(The jury should now go to a different place and discuss their verdict. When they have agreed, or if they agree, they will tell the jury escort.*

*Meanwhile, those left in class can discuss their own verdict. The friends and parents of Jason, Cindy and others, plus Gregg, Rebecca, Karl and other witnesses could say what their character thinks. Then others can speak.)*

#### **SCENE 4:**

**(Everyone takes their court place. JASON stands in dock. JURY enter. JUDGE also enters. Everyone sits, except JASON.)**

REGISTRAR: Members of the Jury, have you unanimously decided on a verdict?

FOREMAN: Yes, we have. (OR) No, we cannot reach a verdict.

*(IF THE JURY CANNOT REACH A VERDICT, THE JUDGE WILL SAY "Since you cannot reach a verdict, the trial will be held again with a new jury. The date will be set, and all parties notified". THE JUDGE WILL THEN EXIT, AND THE PLAY ENDS.*

*IF THE JURY HAS REACHED A VERDICT, THE PLAY GOES ON.)*

REGISTRAR: Is the accused Guilty or Not Guilty.

FOREMAN: Guilty. (OR) Not Guilty.

*(IF THE VERDICT IS 'NOT GUILTY', THE JUDGE WILL SAY "Jason Ralph Palmer, the jury has found you Not Guilty of the charges brought against you. You may leave the courtroom." THE JUDGE THEN EXITS, AND THE PLAY ENDS.*

*IF THE VERDICT IS 'GUILTY', THE JUDGE WILL PRONOUNCE SENTENCE. S/HE MAY DO THIS STRAIGHTAWAY. S/HE MAY SET A LATER DATE FOR SENTENCING.*

*THE JUDGE WILL NOW EXIT TO DECIDE THE SENTENCE - SEE NOTES ON COPY SHEET 7. WHILE S/HE IS OUT, THE REST OF THE CLASS CAN DISCUSS WHAT SENTENCE THEY THINK SHOULD BE IMPOSED.*

*WHEN READY, THE JUDGE WILL RETURN AND DELIVER THE SENTENCE, AND EXPLAIN WHY S/HE HAS CHOSEN THIS SENTENCE. THE ACCUSED IS THEN LED FROM THE DOCK, AND THE PLAY ENDS.)*

## **SOME DISCUSSION TOPICS**

- 1. Are there any ways in which the trial seems unfair to anyone?**
- 2. Are there any parts of the trial procedure that should be changed?**
- 3. Do you think special, different sorts of sentences should be imposed on people who behave like Jason behaved? What sort of sentences?**
- 4. Think about the character you played (or about a character who interested you). Did your character feel satisfied with the way the court was run? With the verdict? With the sentence (if there was one)?**
- 5. Drivers below the age of 25 get involved in more injuries causing death and/or injury than older drivers. Why?**
- 6. What idea/suggestions do you have for reducing the accident rate among young drivers?**