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Mobile Devices: Don't Let Good Reception be Game Over

CLE DESIGNED TO REVIEW THE IMPACT OF
ALLEGATIONS OF CELL PHONE USE IN THE CONTEXT OF
PERSONAL INJURY AND CIVIL RIGHTS LITIGATION

By: Brittany E. Bakshi and Donald L. Carmelite

What Are We Here to Discuss?

- Legal implications of cell phone use in a personal injury case and in a civil rights action



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"How Smart Phones Hijack Our Minds"

Nicholas Carr, WSJ October 7-8, 2017

- Average person uses their smart phone 80 times per day or 30,000 times per year
- 2015 Gallup Survey found greater than 50% of the respondents could not imagine life without an Iphone
- Adrian Ward, Cognitive Psychologist
 - Mounting evidence that using a smart phone or hearing one ring or vibrate produces distractions that make it harder to concentrate impeding reasoning and concentration

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"How Distracted Are We?"

January 2018 Consumer Reports

- What are the distractions
 - 41% use hands to send text
 - 37% use hands to play music on a smart phone
 - 20% use hands to access the web or compose or read email
 - 8% watch videos on their phone while driving

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"How Distracted Are We?"

January 2018 Consumer Reports

- Who's the most distracted?
 - Men
 - Millennials and Gen Xers
 - <http://abcnews.go.com/Nightline/video/shocking-videos-show-teen-drivers-moments-crash-29917238>

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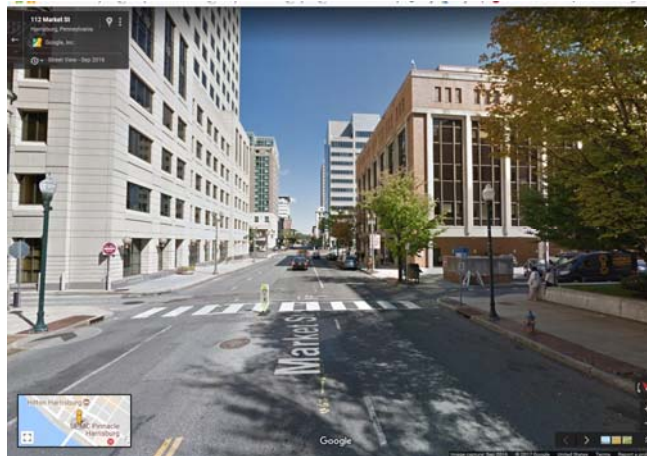
"How Distracted Are We?"

- Should Texting be prohibited or restricted?
 - At least 83% support some form prohibition or restriction on texting
 - 100% favor restrictions
 - 94% favor driver imposed restrictions
 - 50% want government enforced restrictions

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The Scene



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What Claims Can Be Filed?

- Parson Wentz – negligence, punitive damages
- Jason Lurie – negligent entrustment
- Duggie Peterson – negligence
- Rodger Badell – section 1983 civil rights (first and fourth amendment)
- Robert Raft – section 1983 civil rights (fourth amendment)

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Negligence Claim with Claim For Punitive Damages Based on Cell Phone Use

- Allegations against Parson Wentz:
 - "Defendant Wentz's negligence consisted of the following: (a) using a cell phone while operating a motor vehicle;"
 - ✦ Is this allegation enough to support a claim for punitive damages?

Allegations of Cell Phone Use Sufficient to Support a Claim for Punitive Damages

- Majority of Courts require: allegations of cell phone use + aggravating circumstances.
 - Lopez v. Wilson, Northampton County
 - Thompson v. Fox, Northampton County
 - Figueroa v. Ferraira, Northampton County
 - Pietrulewicz v. Gil, Lehigh County
 - Gugliotti v. O'Rourke, Luzerne County
 - Leonard v. Sthlabach, Crawford County
 - Xander v. Kiss, Northampton County

Evidence Sufficient to Overcome Summary Judgment – Punitive Damages

- Motion for Summary Judgment to dismiss punitive damages claim against Wentz, would the claim survive?
 - Paszkowski v. Kleintop, Northampton County
- What if Wentz had only been speaking on his cell phone, not receiving a text?
 - Gunsallus v. Smith, Centre County

Negligent Entrustment Claim

- Allegations Against Jason Laurie:
 - "Defendant Laurie knew or should have know that Defendant Wentz would operate the vehicle owned by Defendant Laurie while operating a cell phone."
 - Are these allegations sufficient?
 - ✖ Good v. Witt, Berks County

Evidence Sufficient to Overcome Summary Judgment

- Under what circumstances is the negligent entrustment claim against Jason Laurie dismissed?
 - Good v. Witt, Berks County
- Under what circumstances is the negligence claim against Dougie Peterson dismissed?
 - Gallatin v. Gargiulo, Lawrence County

Negligence Based on Texting a Driver

- Allegations against Dougie Peterson:
 - "Defendant Peterson was negligent in texting Defendant Parson while knowing Defendant Parson was operating a motor vehicle."
 - Is this allegation sufficient?
 - Gallatin v. Gargiulo, Lawrence County

Discovery Issues with Cell Phones

- Can Prescott compel the production of Wentz's cell phone records?
 - Reilly v. Lanzerotti, Monroe County
 - Dietrich v. Buy-Rite Liquidators, Inc., Northumberland
- If Wentz's cell phone company erased the data, could Wentz face a spoliation sanction?
 - Barclay v. Douglas, Monroe County

Trial Issue

- How to authenticate cell phone records
 - Commonwealth v. Koch, Pennsylvania Supreme Court

First Amendment Rights

- Is it free speech to photograph, film, or otherwise record police officers conducting their official duties in public?
 - Fields v. City of Philadelphia, 862 F.3d 353 (3d Cir. 2017)
 - ✦ Amanda Geraci
 - ✦ Richard Fields

Fourth Amendment Rights

- What protections does the fourth amendment provide to cell phones?
 - Riley v. California, 134 S. Ct. 2473 (2014)
 - ✦ David Leon Riley
 - ✦ Brima Wurie

PA Wire Tap and Surveillance Act, 18 Pa. C.S. 5702

- Is it a violation of the Wire Tap Act to surreptitiously record Police in the performance of their duties?
 - Commonwealth v. Henlen, 564 A.2d 905 (PA 1998)
 - Kelly v. Borough of Carlisle, 622 F.3d 248 (3d Cir. 2010)

Source Material

- Cases cited
- "How Smart-Phones Hijack Our Minds" Nicholas Carr, WSJ Sat/Sun Oct. 7-8, 2017
- "Diving While Distracted" Greg Gardner, Consumer Reports, January 2018
- Tort Talk, Dan Cummings www.torttalk.com