

# JUSTICE *for* KIPP

Would the hit-and-run driver pay  
the price for killing a child?

By ROBERT C. YEAGER

**K**IPP TURNER and his father, Ted, were walking home from a video store in north Scottsdale, Ariz., under a darkening sky. It was about 7:40 p.m., April 12, 1994. Four days earlier they had celebrated Kipp's 11th birthday. As they walked along the dirt-strewn edge of Frank Lloyd Wright Boulevard, which was under construction, a huge car lumbered around a curve and bore down on them.

"Kipp, move!" Ted yelled. Then he heard the thud and saw his son fly through the air and slam to the ground. Ted screamed and ran toward Kipp. He knelt, cradling the boy's limp form in his arms. The sedan kept going.

It was later determined that the car's right front corner hit Kipp's hip and leg first. Then his upper body

smashed down on the car, and his head slammed into the top of the fender. On impact his back, pelvis and hips were broken, his skull fractured.

Scottsdale police detective Shawn Twitchell arrived at the scene and began his investigation. As he inspected the roadway, he noticed yellowish sparkles, shards of amber plastic radiating out from the point of impact like a jeweled fan. Carefully, he gathered up every piece. Many were no bigger than a fingernail, but one, about the size of a quarter, contained three words: "Made in U.K."

At the autopsy the next morning, the medical examiner found a similar sliver of amber plastic and tiny paint chips embedded in Kipp's clothing. They matched paint chips found at the scene of the accident. Back in the office, Twitchell pains-



**For Him**—Debbi Luck, with photo of son Kipp, turned her grief into a crusade.

takingly pieced together the bits of plastic until he could make out the numbers and letters of the manufacturer's codes.

An officer was dispatched to a local car dealership that specialized in British autos. Soon Twitchell got a call. They were in luck: only one company in the world used that part. The plastic came from a right turn-signal lens found only on a Bentley or Rolls-Royce made after 1981, and the paint was used only on models made after 1984.

### **Bits of Evidence.**

Twitchell requested a computer check of registered owners of the luxury cars and came up with approximately 60 names and addresses in the north Scottsdale area. Two teams of police officers hit the streets. At the fourth home on their list, one team met a man outside waving good-bye to guests, who were getting in an airport van.

The police explained to Edward Palenkas, 67, why they were there, and asked to inspect his 1986 Rolls for damage. Palenkas invited them into his den. When they asked again to see his car, Palenkas, a retired businessman, cooled. "I don't think I can do that," he said. Picking up his phone, he called his attorney.

Police also caught up with Palenkas's guests at a nearby hotel. They said that Palenkas had mentioned hitting a sign the previous night on his way home from a local restaurant.

The next morning, just 36 hours

after Kipp's death, Twitchell arrived at the Palenkas residence with a search warrant. He placed Palenkas under arrest and began examining the Rolls-Royce with crime-lab specialists. They found dents consistent with the impact of hitting a young boy. They also discovered fabric fibers, bits of human tissue and what appeared to be blood spots. Snagged in cracked paint on the top of the car's right front fender was a tiny clump of white fibers. In the house's kitchen police found insurance documents and a newspaper with an article about Kipp's fatal accident.

That morning police booked Edward Palenkas on charges of manslaughter and hit-and-run.

**K**IPP'S MOTHER, Debbi Luck, divorced from his father, was on vacation with her husband, Graham, in Hawaii when they were awakened at 1 a.m. "We've been contacted by the Scottsdale police," an officer said. "Your son's been in a car accident. I'm terribly sorry—it was a fatality."

Debbi slumped to the floor, screaming.

When first told of Palenkas's arrest, Debbi felt an overwhelming sense of relief. Days later that changed to anger after she heard that prosecutors were seeking only a hit-and-run charge.

A staffer from the Maricopa County, Arizona, prosecutor's office explained to Debbi that Palenkas had taken no alcohol test that could

show if he had been impaired, and without it a manslaughter conviction was unlikely. Better to go for the lesser charge and win.

A manslaughter conviction for a first-time offender carried a maximum sentence of 21 years in prison. The maximum penalty for a hit-and-run violation with no prior record was two years—even if the accident had resulted in a fatality. First-time offenders, moreover, were commonly let off with probation, and served no time. Outraged, Debbi vowed to fight for a manslaughter charge and to close the absurd gap in the law.

On April 27, Debbi and Ted faced a battery of television and newspaper reporters. “My son was murdered on April 12th,” she said, blaming Palenkas. “He ran down a little boy, and left his lifeless body by the side of the road and never looked back. Because Mr. Palenkas fled the scene, we can’t say he was intoxicated. But somebody out there knows the truth. Please, if you saw anything that night, call the Scottsdale police.”

Somebody already had. A week after the accident, a waitress at the steakhouse where Palenkas had dined the evening of the accident called Twitchell and said Palenkas had appeared drunk and had stumbled when getting up from the bar.

### **The Gamble.**

As the facts came out, public outcry mounted. With testimony from the waitress and several other restau-

rant employees suggesting Palenkas had been drunk, prosecutors now had enough evidence to obtain a manslaughter indictment from the Maricopa County grand jury. Deputy county attorney Neil Miller, a 36-year-old woman, was assigned to prosecute the case. And Debbi found an ally in Patti Noland, who chaired the Arizona State Senate’s Judiciary Committee. She agreed to introduce a bill that would stiffen the penalty for leaving a fatal accident.

But the case against Palenkas, free on \$225,000 bail, moved slowly. Delay after delay was granted. Debbi attended the hearings faithfully, even if they lasted only ten minutes.

Miller reassured Debbi that in many ways the delays were a godsend, enabling them to prepare as thorough a case as possible. Still, there was one nagging question. Miller was puzzled by how little blood there was on the car. She suspected Palenkas had wiped it off, but how could she prove it?

Chief deputy attorney Paul Ahler suggested testing the fender with luminol, a compound that glows a bright greenish color when it comes into contact with even faint traces of blood. Miller decided to try it. In December technicians ran the test.

**A**T THE state legislature, Debbi had a chance to present her case. In the high-ceilinged hearing room, Debbi’s voice echoed softly. She pointed out how public outrage over drunks who kill or

injure others had led to laws that boosted the penalty for such drivers. But hit-and-run drivers were not severely punished. Noland's Senate Bill 1027, she continued, would be a giant step toward getting Arizona's laws back into sync. The bill proposed upping the maximum penalty from two to seven years for leaving an accident that the driver caused and that resulted in serious injury or death; minimum jail time would be 25½ months.

As Debbi spoke, she gestured to a poster-size picture of Kipp she'd brought to the hearing—the last photo taken of him. He was wearing his favorite baseball hat embroidered with Woody Woodpecker. “The penalty for taking my son's life, as it stands now in Arizona, is a maximum of two years,” she declared. “The penalty for stealing the cactus that's in the picture behind him is significantly higher. I just want to know, where are the priorities?”

The bill sped through the legislature, and on April 12, 1995—the anniversary of his death—Kipp's Law was signed by the governor. Kipp's Law, however, came too late to affect Kipp's case.

### **The Verdict.**

The trial began on June 20, 1995. Debbi sat in the courtroom each day, clutching her son's baseball cap.

The prosecution laid out their evidence linking Palenkas to Kipp's death—the blood and fibers, the paint chips, the shattered blinker, the

dented fender. Employees from the restaurant where Palenkas had been before he hit Kipp testified that he had appeared drunk. The bartender said he had asked Palenkas for his car keys. Palenkas refused to give them up. Miller wanted all this testimony to show how reckless Palenkas had been and to establish he was guilty of manslaughter.

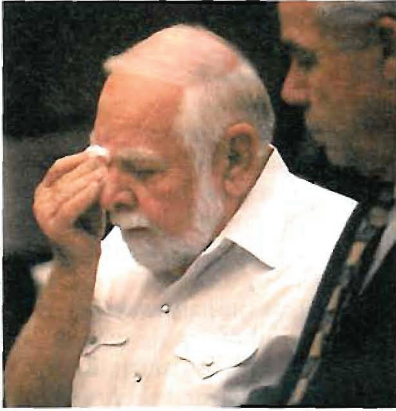
Miller and her assistant, deputy county attorney Patrick Gann, saved some of the most dramatic testimony for last. Gann called Steve Garrett, the Scottsdale Police Department's crime-lab manager, to the stand. Garrett first explained that the mysterious white fibers discovered in the chipped paint on the fender were the type found in paper towels or tissue.

Gann then asked Garrett about the luminol test. Garrett described how he'd applied luminol and an even more blood-sensitive chemical to the right fender. The testing found faint traces of blood. It also revealed a streak running down the fender's side. The streak had not been caused by blood. It happens that luminol also reacts with chemicals found in some household cleaners.

Might this indicate, Gann asked, “that the fender could have been washed off?”

Garrett framed his answer carefully: “That would be one possibility,” he responded, “that there was blood present and it was washed off.”

So there it was, all laid out: invisible traces of blood on the dented fender; paper fibers caught in the



9. AP PHOTO/TRIBUNE NEWSPAPERS

**Reckoning—** Edward Palenkas cries as the sentence is read.

cracked paint; a liquid streak running down the side. The jury was left to consider the implication that Palenkas knew he had run Kipp down, and he had tried to wipe away the boy's blood.

Palenkas had a different story. He didn't deny that his car had struck and killed Kipp. His own lawyer, Marc Budoff, admitted in his opening argument, "This case is not about whether Ed Palenkas's Rolls-Royce hit Kipp Turner. It did."

Palenkas did deny that he had been drunk or reckless that night. He challenged testimony of the restaurant employees that he appeared to be drunk, and he denied he'd been asked for his car keys. He also denied wiping blood from the car.

Budoff countered the prosecution's suggestion that Palenkas had wiped blood from his car by citing testimony of the medical examiner,

who noted that Kipp's injury would not have left a lot of blood behind. Palenkas, Budoff argued, simply didn't realize he'd hit a boy wearing dark clothing and walking on a poorly lighted road. He thought he'd hit a construction barricade. It could have happened to anyone.

On July 12, 1995, after three days of jury deliberations, the court clerk read the verdict. For the second count, leaving the scene of an injury or fatal accident, she read, "Guilty." Debbi's heart pounded.

For the first and most serious count, reckless manslaughter, she paused, then said, "Guilty."

Crying, Debbi threw her arms around Miller and Gann.

At midnight that night—just nine hours after Edward Palenkas's conviction—Kipp's Law took effect.

*Edward Palenkas was sentenced to 10½ years in prison. He appealed, and on November 5, 1996, the appeals court ordered a new trial because of a prosecution error.*

*Debbi got what she wanted in a pre-trial plea agreement: Palenkas pleaded guilty to manslaughter and leaving the scene of a fatal accident. In the plea he admitted to driving while impaired, and striking and killing Kipp. While he received no prison sentence beyond the time he'd already served, he had to perform service for Mothers Against Drunk Driving or a similar organization and give them \$20,000.*

*For Debbi, the larger victory—Kipp's Law—belongs to her and her son.*