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Video Evidence

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The impact of recorded video evidence on the judicial process has been unprecedented: When confronted with a video recording of their alleged actions, many accused change their pleas from “not guilty” to “guilty.” But video evidence is not infallible. Even the clearly shot, properly authenticated and comprehensively documented video can be ruled inadmissible in a Canadian court of law.



By James Careless

No matter how good it is, video evidence is inadmissible if it cannot be shown to be relevant to the case at hand. “For instance, showing video of a hammer with dried blood and hair on it is not relevant unless it can be linked to the murder,” says Elliott Goldstein. He is a Woodbridge, Ont., lawyer; an acknowledged video evidence expert who lectures at the Ontario Police College, and the author of the two-volume book, *Visual Evidence: A Practitioner’s Manual*. “However, showing video of this hammer and the skull of the deceased, and being able to illustrate that the hammer head fits into the damaged skull of the deceased, is relevant.”

The rule of thumb: Do not let the quality and any apparent/imagined implications of the video cloud your judgment. For this evidence to be allowed in court, “it must be shown that the video evidence is relevant,” says Alberta Crown prosecutor Jonathan W. Hak, Q.C.

Unquestioned authenticity

We live in an age where recorded video can be edited to rearrange the chronology of events depicted, distort the passage of time, and show events out of sequence and context. The digital recording process, which usually involves ‘compressing’ video data to save hard drive space, can lead to data loss and affect image quality. If the chain of custody of the video evidence is not proven (e.g., because of inadequate documentation) the video evidence can be ‘thrown out of court’.

“In the old days, video images were recorded on videotapes,” Goldstein says. “When it came to submitting them as evidence, there was no problem: You just took the original tape into court and played it for the judge and jury. But today most [surveillance] video is recorded on hard disk drives, which are routinely wiped as new data comes in. This means that the video evidence has to be downloaded onto a DVD or digital tape, requiring very careful procedures, witnessing, and documentation to prove that you have an unedited ‘exact duplicate copy’ of the original.”

Hak echoes Goldstein’s concerns: “The party tendering video evidence must establish how the video was recorded, what impact the recording process had on the captured video, whether the exporting of the video evidence has further comprised the reliability of the images and whether all relevant video has been obtained of the incident in question.” As a result, “video evidence must be authenticated in order to gain admissibility in court. Authentication can be accomplished by witnesses familiar with the video content — for example, the person who captured the video images — or technically, showing that the images have not be altered in any improper way. This is a requirement of both the Canada Evidence Act and common law.”