



Using Dash Camera Video in Civil Litigation



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The widespread availability of portable recording devices has led to a litigation atmosphere in which video evidence has become of utmost importance. In order to lend credence to their claims during the criminal trial process, many police departments have added dash cameras to their duty cruisers. Lawyers who work primarily in civil litigation have found that these videos can also be extremely useful.

In order to use dash camera videos to a client's advantage in civil litigation, it is necessary to understand why these videos are powerful and how they can be used in court. Remember that many jurors have grown to expect the type of crystal clear evidence that they see presented on popular television programs. Using dash camera video is an excellent way to meet the evidentiary demands of modern juries.

Understanding How Dash Camera Videos Affect Civil Litigation

Dash camera videos are widely used in civil litigation because they provide reliable evidence to judges and juries. This form of evidence is considered reliable because it is very difficult to alter videos. Dash camera videos can be used by both plaintiffs and defendants.

Video Evidence Supplants All Other Evidence

In general, videos presented in court supplant or *supersede* all other evidence.

Dash camera videos are considered a more reliable source of evidence than the testimony of any one individual. The reliability of videos is the major reason that they have become so popular in legislation.

As evidence, all videos must be presented during discovery. Attorneys for both parties may change their decisions regarding whether or not to pursue summary judgment given the strength of video evidence. In many situations, defendants will settle outside of court if they are aware that strong video evidence against them will be presented before the judge and jury.

Using Dash Camera Videos in Civil Litigation

Almost all attorneys now believe that it is preferable to use dash camera video in civil litigation whenever possible. Of course, attorneys for both plaintiffs and defendants must decide when using video evidence will be most beneficial. Videos can be used either during summary judgment or during a trial.

Remember that it is essential that videos be turned over during the discovery process. The failure to turn over videos may lead to the inability to use this potent form of evidence as part of a case. Turning over videos well in advance of discovery deadlines can also help convince the other party to settle outside

Using Dash Camera Videos During Summary Judgment

Attorneys who are entering a summary judgment, or asking that the judge make a decision regarding the merits of the case before a full trial, may wish to use dash camera videos to prove their assertions. In general, most attorneys prefer to use dash camera videos during summary judgment only when it is very likely that the judge will rule in their favor.

Using dash camera video that is ambiguous during summary judgment can be problematic. While judges have a stronger understanding of evidence than do juries, they are also more likely to be critical than juries when weighing such evidence. It is best to review the judge's previous summary judgments involving dash camera videos before using a video as part of a summary judgment motion.

Using Dash Camera Videos During Trial

Dash camera videos can add credence to a jury trial. Many attorneys prefer to use dash camera videos during trial because they are extremely persuasive. Witnesses who contradict the evidence seen in dash camera videos are likely to be dismissed by juries as presenting inaccurate reports of an incident.

Most jurors are familiar with basic video technology and will readily accept dash camera videos as a form of evidence.

Jurors will almost always consider videos more reliable than eyewitness accounts of an incident. Videos are particularly potent if no eyewitnesses are available.

Concerns to Address when using Dash Camera Videos in Litigation

When using dash camera videos during litigation, it is important to consider the concerns that judges and juries might raise about such videos. The primary claims that will be raised revolve around a video's providence and ambiguity. Jurors and judges may also be concerned about *video spoliation*. Carefully review these concerns and understand how to address them prior to introducing video evidence in court.

Video Providence

A video's origin is often referred to as its *providence*. Jurors and judges will carefully evaluate the source of a video when weighing its worthiness as evidence. In general, dash camera videos are recorded and stored by policing agencies.

However, some private security companies, truck fleets and other transportation businesses also use dash camera videos. Judges can be critical of these videos, especially if the recording was initiated after an incident had already begun. Jurors may be less prejudiced about such videos than judges.

Claims of Spoliation

In a court of law, *spoliation* refers to the intentional or negligent alteration, destruction or damage of a piece of evidence. Videos that are of very low quality or have not been properly stored may have suffered from spoliation. An individual who has intentionally or negligently damaged evidence is called a *spoliator*.

Agencies and companies that are unable to provide videos of given incidents may be accused of spoliation. This is particularly true if an agency has a policy of recording throughout a shift. If video is unavailable when it should have been recorded, the agency or individual in question may be accused of spoliation. In some states, spoliation is a criminal offense.

If a judge can reasonably infer that spoliation of substantial evidence has occurred, a summary judgment may be entered on that basis. Such judgments almost always find against the spoliator.

Ambiguous Videos

It is important to evaluate ambiguous videos before using them in civil litigation. Ambiguous videos are those videos that show only a partial view of an event. The recording may have been turned on after an incident began or may have been turned off before the incident concluded. It is very difficult to anticipate what juries will

believe when viewing ambiguous videos.

Before presenting an ambiguous video in court, carefully consider how opposing counsel might spin the video. Opposing counsel may be able to place doubt about the video's validity in the minds of the jury. Crafting a strong dash camera video usage policy can help prevent ambiguous video issues.

Crafting an Effective Dash Camera Video Usage Policy

It is essential that any agency or company that wishes to use dash camera videos craft a strong policy regarding the recording, storage and usage of such videos. This policy can be presented in court as proof that an agency or company has carefully considered video usage. Ideally, such policies are put into place *before* an agency or company begins using dash cameras.

Creating a Video Policy

When creating a video policy, it is important to look ahead to how videos will be used. Will they be used primarily in criminal or civil litigation? Will videos be used primarily to prove that officers or employees followed protocol in a given situation? Who will evaluate the videos before they are shown in court?

The video policy should be written in clear but legally binding language. Copies of the policy should be made available to all

employees of the agency or company. Remember to carefully weigh expectation of privacy laws in a given state before crafting a policy. In some situation, it may not be possible to use dash camera videos. Case law pertinent to the geographic area should be reviewed when crafting a video usage policy.

Providing Staff Training

It is essential that staff members be thoroughly trained in the proper use of dash cameras. All staff members should sign a form that acknowledges that they have received training. Staff members should also be provided with a copy of the dash camera video usage policy. Be sure to keep an outline for all training sessions in a readily accessible file. Judges and juries may wish to review training procedures.

It is essential that individuals who will be responsible for using dash cameras are given hands-on training with the actual camera equipment. Individuals who must testify in court regarding dash camera video evidence should be prepared to answer basic technical questions.

Expert Evidence Evaluation Process

If there are any doubts about a dash camera video's providence or legitimacy, an expert should be called in to evaluate the video. Establish a procedure for contacting experts in the dash camera video usage policy. This will discourage spoliation.

A Final Note on Using Dash Camera Videos in Civil Litigation

Laws governing the usage of dash camera videos in civil litigation vary from state to state. This is a relatively new area of law, so it is important to consider precedents from case law when deciding how such evidence will be used. Remember that dash camera videos that have been properly recorded and stored are invaluable evidence in any civil case.

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