

Slow motion videos—help or hinder?

16/09/2016

Crime analysis: Jenny Wiltshire, Head of General Crime at Hickman & Rose solicitors, explores the implications of slow-motion video replays on a jury verdict.

What is the background to this report?

Recent research conducted by the Proceedings of the National Academy of Sciences in the United States of America (PNAS) has found that viewing murder in a 'slow-motion replay' video in the courtroom results in a jury being three times more likely to return a verdict of guilty.

What has been behind the increased use of slow-motion video replays in the courtroom?

Viewing video evidence in slow-motion replay can provide a clearer picture of what happened and sometimes reveals crucial detail not apparent in the available real-time footage. However, the increased use of slow-motion video footage is largely due to the increased availability of high-quality video evidence—generated by smartphones and the estimated 4–6 million CCTV cameras installed within the UK. The vast majority of this video footage is now recorded in a digital format that can easily be viewed in slow-motion.

Hickman & Rose have successfully defended a number of criminal defendants by utilising slow-motion footage to prove their innocence. A split-second defensive move—or an entirely innocent act—can appear aggressive until the actions of everyone involved can be untangled and examined in detail in a slow-motion replay.

In one notable murder case, the prosecution alleged that our client had kicked the victim on the ground, and our client maintained he had stepped over the victim. The video evidence was apparently ambiguous—however, when we slowed the video down our client was subsequently acquitted.

What has been the approach to the submission of this type of evidence in the UK and what implications does it have for criminal trials?

CCTV and video evidence—whether showed in slow-motion or not—is treated as documentary evidence within the Criminal Procedure Rules (CPR). And if the rules are followed properly slow-motion footage can be incredibly useful—to both prosecution and defence lawyers.

However, rules laid down by the Information Commissioner mean that CCTV is normally deleted within 30 days. Many serious charges are brought outside that time, and the defence will not have the CCTV evidence available therefore, unless the police chose to collect it. The controversial conviction of Glyn Razzell has been widely criticised because the police failed to obtain CCTV which the defendant had said would establish his innocence.

Even when CCTV is collected, the defence have no automatic right of access. The Crown will only disclose it, if it considers it might help the defence, an issue that is often itself contested.

Under the current UK legal framework the prosecution, therefore, often controls what video evidence the jury see.

How does the use of slow-motion video replay affect the assessment of intent, or harm caused? Does it make a major difference if juries are shown videos/recordings in a slow-motion replay, or in real-time replay?

Watching an alleged assault in slow-motion may create the impression that the defendant had ample time to consider their actions. A claim of self-defence, using reasonable force in the honest but mistaken belief that a defendant was under attack, may be seriously undermined if the jury can second-guess the defendant on a much slower version of what took place.

Showing the normal version may not eradicate that impression from the jurors' minds. The research published in PNAS shines a valuable light on this problem, and may open a further avenue to challenging the use of slow-motion replay evidence.

What best practice tips can you offer to prosecutors when using this sort of evidence, for example, in what circumstances should it be used, and how should it be presented to court?

The aim of the prosecutor is to win their case. 'Best practice' is not a concept to which it is required to have regard. The standing Crown Prosecution Service instructions to prosecutor's state merely that: 'the trial process itself can deal with allegations of unfairness'.

However, to avoid unfairness at the outset, the Crown should ensure that slow-motion replay is used only where it adds some clear probative benefit. It will also notify the defendant early in the case of the intention to use slow-motion replay, giving reasons. To make the benefits of a slow-motion replay equally and fairly available, unused video evidence should be served at the earliest practical point.

In reality, the onus will rest on the defence to raise the issue of fairness, and to apply under section 78 of the Police and Criminal Evidence Act 1984 to exclude slow-motion video evidence where there is a real risk of it creating an unconscious bias. At the very least they may obtain a warning to the jury from the judge not to assess the defendant's subjective state of mind based on the slower version.

Is there a danger that the use of this technology places too much emphasis on the level of violence involved, rather than the assessment as to whether the crime was premeditated or not?

These are issues which arise only at the stage of sentencing, at which point the judge has a very broad discretion to take account of the evidence at trial.

Have there been any controversial cases which were decided on the basis of this evidence, that is, cases subject to appeal?

We are not aware of any cases before the Court of Appeal that addressed the fairness or admissibility of slow-motion video evidence. However, the court has said in the past 'as technology develops, evidential practice will need to evolve to accommodate it'.

Can we expect to see the wider use of technology to collect evidence in the future, for example, police officers wearing body cameras and using smart devices to record information?

The police will undoubtedly continue to use all technology lawfully at their disposal to collect evidence. As technology advances in the future, the capacity of the police to collect evidence will increase.

In a noteworthy example, from 2016 the majority of frontline police in this country will now wear body cameras, a move that the Black Lives Matter campaign in the United States has been demanding without much success so far.

What are your final thoughts about slow motion footage?

Slow-motion footage of a violent act, when employed by the prosecution to shock the jury, can distort the jurors' view of what took place. However, this must be weighed against the utility of this evidence to defence lawyers more generally. The best protection against the bias identified by the American researchers is probably an alert defence team.

Interviewed by Tracey Clarkson-Donnelly.

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