

Crime scene investigations

Mark Solon discusses the limitations of CCTV evidence and why expert witnesses and lawyers may need to look a little deeper than face value to make the most of the evidence at trial

Rarely a month goes by when there is not an incident involving close circuit television (CCTV) in the news. Most recently – and controversially – CCTV footage released in December 2012 appeared to raise questions about some aspects of the police account of the altercation between Conservative chief whip Andrew Mitchell and officers at the gates of Downing Street, amid reports that one corroborating witness was not even present at the scene.

Although in Mitchell's case CCTV helped to corroborate his version of events, the value of CCTV is unquestionable, both as a means of identifying the perpetrator of a crime and in verifying or disputing the version of events put forward by a witness in a criminal or civil case.

Unsurprisingly, there has been a significant increase in CCTV cameras in our streets, buses, trains and private homes, and the number of court cases where CCTV evidence is relied on has correspondingly increased. But while CCTV evidence can assist a judge and jury in their deliberations,

like most technology it is ever changing, and is certainly not without imperfection.

Collation of evidence

The sheer scale of CCTV footage in this day and age means that police officers must be skilled and experienced in recovering and reviewing evidence. But cutbacks in the police have meant it is difficult to sustain dedicated CCTV units.

According to Mick Harrison, Force CCTV Liaison Officer for Kent Police, the London terrorist bombings of 7 July 2005 highlighted deficiencies in London police force's CCTV analysis capability. With four major crime scenes a CCTV trawl was necessary and officers who had been involved in CCTV analysis of the terrorist bombing of the Baltic Exchange in 1992, Bishopsgate in 1993 and Canary Wharf in 1996, were plucked out from posts ranging from domestic violence units, local CID offices or crime squads and put together to form a dedicated team.

However, writing on the National Police Improvement Agency's website as a guest

blogger, Mr Harrison says: "When the riots hit the UK in the summer of 2011, the UK's police service again found itself lacking the bulk CCTV recovery skills required."

The riots led to a number of prosecutions where CCTV evidence formed the centrepiece of the prosecution's case, including the charge of murder against four men alleged to have killed three others in Winson Green as a result of running them over in what the prosecution labelled a "modern day chariot charge".

David Thorne is an ex-police officer who now runs CCTV specialist Demux Video Services, and assisted the defence in that case. He discovered an additional CCTV camera that had been overlooked by the police and was relevant to the timeline put forward by the prosecution. "It changed the way the prosecution opened the case and the men were acquitted, although not just as a result of the CCTV footage," says Thorne.

However, in a separate case arising from the riots, Darrell Desuze, of Bath Road, Hounslow, pleaded guilty to the manslaughter of Richard Mannington

Bowes after he was caught punching Mr Bowes on CCTV camera. He received an eight-year sentence.

Digital CCTV cameras require a considerable memory span and can be quite expensive to run over time, and many have a thirty day cycle after which the earliest images will be recorded over. Prosecution agencies therefore have to be quick to obtain CCTV evidence as it may be deleted and irrecoverable after a set period.

Report writing

Expert witness report writing requires skill, in-depth training and an awareness of what one's duties as an expert witness are. First and foremost, an expert's duty is to the court and an expert must point out any flaws, shortcomings or uncertainties in the evidence before them. If an expert forms an opinion of the evidence but on subsequent review or in light of new evidence changes their mind, they are duty bound to notify the court of this.

People expect CCTV footage to be like a DVD but in reality, CCTV records far fewer frames per second, meaning that a fast punch can be thrown between frames and

not necessarily recorded.

Furthermore, an expert must satisfy themselves that they have seen all the relevant original footage before coming to any conclusion. Thorne says: "In many cases the prosecution seem to think that an expert witness does not need access to original CCTV footage and provide a DVD copy of the original." However he adds: "It is important to say that you want to see the original. Solicitors don't tend to do this as a matter of course.

"Copying it to DVD does change it and compress it so you may miss out on one freeze that can explain why the defendant acted in the way he did."

Thorne gives the example of a defendant charged with assault who maintains he punched the victim only after the victim threw a bottle at him. "If a bottle is thrown there may only be one freeze with the flash of light and if it is not converted onto the DVD you wouldn't see it. If the defendant has said 'I punched the man because he threw a bottle at me' it becomes difficult to maintain that line of defence."

An expert must approach the evidence entirely independently irrespective of who

is paying them, and present their honest and unbiased opinion on the evidence in front of them. However, the way an instructing solicitor puts a question to an expert can help to achieve this.

When a solicitor instructs an expert they often want a quick answer to a question and to get there via the most direct route. If they want to know if the CCTV evidence shows the defendant holding a knife, they may ask if he or she was holding a knife. "A cross examining barrister will usually ask 'what were you asked to do and how did you go about it?,' Thorne comments.

"If you were specifically asked if the person was holding a knife it's a yes or no answer. But if the solicitor asked you to explain what the person in the red jumper is doing that is much more powerful than if you're given a specific question."

Similarly where a traffic offence has taken place, Thorne points out that it is far better for a solicitor to ask what number plate can be seen rather than asking the CCTV expert to confirm that number plate XYZ can be seen on screen. "You produce the report and can go into court hand on heart and say you didn't know the number."

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Clearly the difficulty is that this sort of analysis takes far longer.

One further step to avoid bias is to look at the prosecution's report only after analysing the evidence, not before, so that the expert's view is not weighted by what they have already seen or read. The key is to be clear as to what a solicitor is asking you to do and make sure it is in writing.

Evidence in court

When it comes to presenting CCTV evidence to a judge, and particularly to an inexperienced jury, it is important for an expert to prepare well, producing the medium in a way the jury can easily understand, says Thorne.

Fleeting images are easily missed and Thorne adds: "It's just like when you watch your favourite film a few times, each time you see new things. For the jury it's key to bring out the salient points."

Thorne typically produces a story board of those salient points to include in the jury's bundle so the barrister can encourage the jury to make their own notes onto the still to remind themselves of the facts. CCTV footage can be replayed on request

by the jury but some barristers insist it is done so under tightly controlled courtroom

clearer and more accessible now but like everything else it changes all the time."

"You need to be able to produce the medium in a way the jury can easily understand"

conditions, while others are happy for the jury to watch the images on a DVD among themselves.

An expert witness needs to be expert in their own field and trained to fully discharge their duties as an expert witness. However, when it comes to CCTV evidence it also helps if the expert is a natural inquisitive investigator.

Many CCTV experts are former policeman who have this instinct as well as experience of giving evidence in court. They are minded, for example, to look at important but subtle time differences between images and ask whether that would account for any gaps in the story.

An understanding of the latest technology is key, as Thorne observes: "CCTV is much

CCTV will rightfully continue to prove invaluable to the court and, if anything, its value can be expected to increase as its quality improves.

As the number of CCTV cameras increases so too can the frequency on which it is relied on in court.

The pressure is on experts to ensure that the right weight is attributed to CCTV and that it is a tool for justice, and will add to the evidence of expert witnesses in court.



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