

COPS WEARING CAMERAS: LET EVERYONE BEWARE

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“Be careful what you wish for, you may receive it.”

~ W.W. Jacobs, *The Monkey’s Paw* (1902)

In the aftermath of the Ferguson, Missouri police shooting, the debate over whether law enforcement officers should be forced to wear video-cameras on duty is again national news. Many citizens believe that such cameras will prevent, or at least reduce, excessive use of force by law enforcement officers, which it may. In cases involving allegations of wrongful arrest, illegal stop-and-frisk and excessive use of force, video evidence could prove helpful, if not dispositive, to victims of unlawful conduct by law enforcement officers. It could also help law enforcement officers by reducing citizen complaints and false claims of misconduct against them.

However, video evidence of investigatory stops, questioning and arrests will also show suspect conduct and statements, including admissions and statements against interest, both before and after an arrest. Thus, such video evidence poses a potential, and often substantial, legal obstacle that many suspects, and their defense counsel, would rather not have to overcome in their subsequent attempts to obtain a favorable plea agreement or a not-guilty finding from a jury. As anyone who

has ever watched an episode of “*Cops*” or other similar shows, videos of arrests often limit subsequent exculpatory strategies that may have otherwise been available to a suspect in the absence of video footage.

Last year, in the debate regarding the NYPD’s stop-and-frisk policy, a federal judge in Manhattan issued a “Remedies Opinion,” in which she recommended that officers start to wear body-cameras in order to protect citizens from unlawful stops and searches. In that case, *Floyd, et al. v. The City of New York*, U.S. District Judge Shira Scheindlin found that because of racial profiling in the NYPD’s use of stop-and-frisk policies, the use of body-worn cameras by NYPD officers would address a number of problematic issues.

According to Judge Scheindlin, video recordings “will provide a contemporaneous, objective record of stops and frisks, allowing for the review of officer conduct by supervisors and the courts. The recordings may either confirm or refute the belief of some minorities that they have been stopped simply as a result of their race, or based on the clothes they wore, such as baggy pants or a hoodie. Second, the knowledge that an exchange is being recorded will encourage lawful and respectful interactions on the part of both parties. Third... by creating an irrefutable record of what occurred during stops, video recordings may help lay to rest disagreements that would otherwise remain unresolved.”

Traditionally, motion picture film had generally been admissible if it was properly

authenticated with: (1) evidence relating to the circumstances surrounding the taking of the film; (2) evidence detailing the manner and circumstances surrounding the development of the film; (3) evidence in regard to the projection of the film; and (4) testimony by a person present at the time the motion pictures were taken that the pictures accurately depict the events as that person saw them when they occurred. *Id.* at 17 (citing *Balian v. General Motors*, 121 N.J.Super. 118, 125 (App.Div. 1972), *certif. denied* 62 N.J. 195 (1973)).

However, with the modern prevalence of digital video-recording rather than film, the proponent of such evidence no longer needs to meet the requirements of film development and projection. Pursuant to *New Jersey Rule of Evidence* (“N.J.R.E.”) 801(e), a video recording is a “writing,” which is generally admissible as evidence under the hearsay rules if it is properly authenticated. *State v. Loftin*, 287 N.J.Super. 76, 99-100, *certif. denied* 144 N.J. 175 (1996). Such video “writings” may be authenticated “by evidence sufficient to support a finding that the matter is what its proponent claims.” *N.J.R.E.* 901.

In deciding whether to admit a video recording made by a law enforcement officer in a criminal prosecution, a trial court must first determine whether the recording evidence “is sufficiently audible, intelligible, not obviously fragmented, and, also of considerable importance, [or] whether it contains any improper and prejudicial matter which ought to be deleted.” *State v. Driver*, 38 N.J. 255, 288 (1962). Video evidence must “accurately reproduce [] phenomena actually perceived by the witness.” *State v. Wilson*, 135 N.J. 4, 14-17 (1994).

