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ANALYSIS



Video Evidence and the Emergency Doctrine



This article discusses the courts' increasing reliance on video surveillance for deciding motions, especially for those where the emergency doctrine was raised, and details several cases where video surveillance was used as key evidence.



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Evidence

By Andrea M. Alonso and Kevin G. Faley | August 21, 2023 at 12:00 PM



In *Pappas v. New York City Transit Authority*, 174 N.Y.S.3d 728 (2nd Dept 2022), the court granted summary judgment to the defendants who submitted surveillance footage in support of their argument that plaintiff's claim was barred by the emergency doctrine. In recent cases involving the defense of the emergency doctrine, courts have relied on video surveillance in deciding motions for summary judgment. The improvement in camera and video quality and prevalence of cameras in society have made this a growing trend that will continue and benefit litigants.

The Emergency Doctrine

The emergency doctrine is set forth in The New York Pattern Jury Instruction 2:14 and provides as follows:

"A person faced with an emergency and who acts without opportunity to consider the alternatives is not negligent if [they act] as a reasonably prudent person would act in the same emergency, even if it later appears that [they] did not make the safest choice or exercise the best judgment. A mistake in judgment or wrong choice of action is not negligence if the person is required to act quickly because of danger. This rule applies where a person is faced with a sudden condition, which could not have been reasonably anticipated, provided that the person did not cause or contribute to the emergency by [their] own negligence."

An emergency situation is typically one in which an actor has little or no time for thought, deliberation or consideration or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct. 8b N.Y. Jur. 2d *Automobiles* §986, Westlaw (updated May 2023).

The emergency doctrine may protect a driver from liability where the driver, through no fault of his own, must take immediate action to avoid being cut off. Generally, the determination of the existence of an emergency and the reasonableness of the actor's actions are for the trier of fact. *Emergency Doctrine*, Cornell L. Sch. Legal Info. Inst.,

https://www.law.cornell.edu/wex/emergency_doctrine (last visited July 18, 2023). However, as we will see, there are exceptions.

In *Pappas*, the plaintiff Donna Marie Pappas and her husband, George W. Pappas, allegedly sustained personal injuries when their vehicle was struck in the rear by an MTA bus. The Supreme Court granted the defendant's summary judgment motion based on the emergency doctrine. The Second Department affirmed the holding of the lower court based on the bus surveillance video which clarified the conflicting testimony of the parties.

The plaintiff claimed that their vehicle was stationary in front of the bus for 5 to 10 seconds when the defendants' bus struck them from the rear. The surveillance footage demonstrated that the plaintiffs' vehicle moved into the bus lane directly in front of the bus and, without warning, "stopped abruptly despite having a green light in its favor." The court found that the surveillance video "eliminated any triable issues of fact."

In *Anderson v. Metropolitan Transportation Authority*, 174 N.Y.S.3d 398, 399 (2nd Dept. 2022), the deposition testimony of the plaintiff and bus operator presented differing accounts of the accident and which party was at fault. If there were no video available, this evidence would present a clear question of fact precluding either party from prevailing on a summary judgment motion. However, the bus surveillance video submitted by the defendants "eliminated any triable issues of fact." The court found that the video showed that "the plaintiff was operating his vehicle in the left turn lane, next to the bus, and then, without warning and despite adequate space in front of the bus, changed lanes directly in front of the bus, in a manner that did not give [the bus driver] adequate time to avoid the accident. The video established, prima facie, that [the bus driver] was confronted with an emergency not of his own making, leaving him only seconds to react and virtually no opportunity to avoid the collision."

The courts in *Rodriguez v. New York City Transit Authority*, 99 N.Y.S.3d 508 (1st Dept. 2019) and *Ariza v New York City Transit Authority*, No. 90, NYSCEF, N.Y. Sup. Ct. Queens Cnty, (Nov. 30, 2022), came to the same conclusions after reviewing bus surveillance footage. In both cases, the court deemed that the surveillance footage eliminated questions of fact and granted the defendants' motions for summary judgment.

In *Rodriguez*, the plaintiff was allegedly injured when the bus on which she was a standing passenger came to a sudden stop, causing her to fall. The bus driver merged into the left lane and applied the brakes when a bicyclist suddenly appeared in the parking lane adjacent to defendants' bus, and seconds later fell into the bus' driving lane. The court found that the surveillance footage showed that if the bus driver had not reacted in the manner in which he did, the bus would have struck the bicyclist.

In *Ariza*, the plaintiff was allegedly injured when the bus on which she was a passenger came to a "hard stop [that] was violent and unusual." The bus surveillance footage showed that an unidentified car maneuvered around the bus to pass in front of it and abruptly stopped for no apparent reason. The bus driver slammed on the brakes to avoid an accident but was unsuccessful and rear-ended the vehicle. The court found that the surveillance video clearly demonstrated that the bus driver was confronted with an emergency situation that was not of his own making and was not responsible for the accident.

Evidence of surveillance footage can also be used by plaintiffs to defeat a defendant's motion for summary judgment. For instance, in *Hodnett v. Westchester County Department of Public Works and Transportation*, 122 N.Y.S.3d 111 (2nd Dept. 2020) the court denied summary judgment as the surveillance video demonstrated that plaintiff's stopped vehicle was observable from at least four blocks away; the bus did not slow down as it approached the stopped vehicle, and the bus crossed the double-yellow line into the lane of oncoming traffic to pass the stopped vehicle.

Widespread Use of Cameras

In the cases mentioned above, surveillance footage was the determining factor in the courts' decision to either grant or deny a summary judgment motion. These cases reflect the enormous reliance courts are placing on video evidence.

The increased use of technology in daily life and the ubiquity of cameras—they are on buildings, public roadways, vehicles and even doorbells—make it easy to obtain video surveillance and it is persuasive evidence. But, get this footage quickly as some video cameras are on a loop and tape over the very surveillance that can make or break your case.

Video surveillance systems are installed by businesses, the government and individual citizens who seek to protect their property and deter crime. From 2015 to 2018, the number of installed surveillance cameras in the United States grew nearly 50 percent, from 47 to 70 million. Stanislava Ilic-Godfrey, *Artificial Intelligence: Taking on a Bigger Role in Our Future Security*, U.S. Bureau Lab. Stats. (May 2021), <https://www.bls.gov/opub/btn/volume-10/investigation-and-security-services.htm>.

For example, cameras with enhanced software at a traffic lights can alert police to the movement of a stolen vehicle. With the quality of cameras improving and their widespread use in our society, the inclusion of video footage in pretrial motions will continue to increase and can only help the more deserving party.

Conclusion

In cases where the affirmative defense of the emergency doctrine is raised, a video recording often sheds light on the contradicting claims of the parties. It is important to note that although video surveillance provides an objective snapshot of the events leading up to the emergency, the surveillance footage alone may not paint the complete picture. Depending on the placement of the camera, there may be a blind spot that the lens cannot quite capture.

The emergency doctrine applies to a person's "perceived" emergencies and, as a result, the application of this doctrine is often a question left for the jury; however, if the camera footage demonstrates that one party's description of the accident is clearly fabricated or in error (thus compromising that party's credibility) then courts are very willing to take that question from the jury and decide a motion for summary judgment to the party whose version is supported by the video evidence.

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