



FOR *the* DEFENSE

March 2018

"Do not withhold good from those to whom it is due, when it is in your power to act."

Proverbs 2:27

Greetings from Craig Reese



As I sit in my office on this beautiful Friday afternoon, I rejoice in having a dry day or two ahead of us. I am sure that many of you are as tired of all this rain as am I. But, as those of us who have lived in Texas a long time know, if you don't like the weather, just wait a day and it will change. I know that most of us are looking forward to spring and outdoor activities. I am ready to spend some time on my bicycle. I hope that you have a great spring break (if you are fortunate enough to take some time off) and that we see some more dry days ahead. Of course, by the time I get around to writing this introduction to our newsletter again, we will be complaining about the Texas summer and the heat. One thing we never complain about around here is our clients. We greatly appreciate the opportunity to assist you with your legal needs. We continue to work hard to provide great legal representation at an affordable rate. Thanks for being our clients.

Video Surveillance Footage, a Key Weapon in the Defense Arsenal



Brandon Wentworth

We all know that video surveillance footage can be a powerful tool in personal injury litigation. Video footage can confirm or

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Welcome to the latest edition of Fletcher Farley's Newsletter, which we hope you find interesting and helpful.

If you have any comments, questions or would like more information from us, please contact Doug or Joanna.

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SAVE THE DATE



April 27, 2018

contradict a given plaintiff's account of their accident and give insight into the actual severity of a plaintiff's claimed injuries. Juries pay close attention to video footage presented at trial. When that footage shows that the plaintiff's version of the liability facts is inaccurate or that the plaintiff may not be quite as injured as they claim, a jury can turn against even the most sympathetic plaintiff.

Courts, of course, are charged with determining which evidence is admissible at trial and which evidence is not. In particular, our evidence rules say that relevant evidence should be admitted for the jury's consideration but may be excluded if its "probative value" is substantially outweighed by a danger of unfair prejudice. In other words, even relevant evidence can be excluded if its main impact is simply to cause the jury to like or dislike a party, rather than to allow the jury to determine what is true and not true. Thus, it is common for plaintiffs to make the argument that unflattering video surveillance evidence should be excluded because it is "misleading" or "taken out of context" or some other excuse. At the end of the day, the court has broad discretion in deciding whether to exclude evidence as prejudicial.

The Supreme Court of Texas recently considered what to do in a case where a judge excluded relevant video evidence without ever even looking at it. In *Diamond Offshore v. Williams*, an offshore worker claimed to have sustained debilitating injuries that kept him from working. His employer obtained surveillance footage of him performing work and being physically active after the alleged injury and sought to present it at trial to show that his injuries were not as extensive as alleged. The plaintiff presented the usual arguments about how the selected footage was not a fair depiction and would prejudice the jury. The trial court agreed with the plaintiff and excluded the evidence without conducting any review of the footage. The jury eventually brought back a \$10 million verdict for the plaintiff.

On appeal, the Supreme Court of Texas held both that a trial court must review this type of evidence before deciding whether to exclude it as prejudicial and that this particular evidence was probative and admissible. Accordingly, the defendant will now be granted a new trial where the jury will have the benefit of reviewing the surveillance footage.

This was clearly a positive outcome for the defense, and we would hope that the Supreme Court of Texas's guidance on this issue would be closely observed in trial courts throughout the state. However, cases like this also make us mindful of the risks of going to trial in certain venues. Yes, this particular case appears to have worked out for the defendants (for now at least), but what if the judge had reviewed the video and still decided to exclude it? The plaintiff would have had more of a leg to stand on, and the defendant may not have enjoyed the same outcome on appeal.

Thus, this case is further evidence for the importance of venue in determining trial and case handling strategy. A trial judge has broad discretion in determining admissibility of evidence. In the case discussed above, the video surveillance footage was crucial for the defense in both limiting damages and impeaching the plaintiff's credibility. The trial court, on the other hand, understood the surveillance footage to be unfairly prejudicial. A plaintiff-friendly judge may be less willing to draw

Save the date for the Texas Law Update 2018 in Dallas at the Double Tree By Hilton Dallas Near the Galleria

8:00AM - 5:00PM

More information coming soon!



the distinction between evidence that is unfairly prejudicial on the one hand and evidence that is simply beneficial to the defense on the other. Clearly, the judge's decision in this regard can greatly affect outcomes. We must remember that even the most reasonable jury cannot come to the right decision if it does not get to consider all of the evidence.

While we hope to see more outcomes like this, we are always cognizant that the ever-changing judicial landscape in Texas requires us to look closely at venue and evidentiary considerations as we litigate these cases. In any event, we look forward to continuing to work for just results on behalf of our clients, and we appreciate every opportunity that we have to do so.

Conflicts Resolved

Fletcher Farley Secures Summary Judgment

[Joanna Salinas](#) and [Lindsay Todd](#) secured summary judgment for a Central Texas City and its law enforcement officers in an excessive use of force claim. The officer had been called to a local store to investigate a theft claim when the husband of the accused barged into the room where the investigation was being conducted and refused to leave. Claimants accused the officer of using some take-down technique to make the claimant fall as he was being escorted from the room by the officer, resulting in him breaking several ribs, and they claimed that no force should have been used due to the claimant's advanced age. The Court agreed with Fletcher Farley that the store surveillance video and the officer's body cam proved that no take down tactic had been used and that the claimant had just stumbled as he was leaving. Additionally, the officer was justified in asking and compelling the claimant to leave since he was interfering with an on-going investigation and refused the officer's commands. All claims asserted against the City and its officers were dismissed by summary judgment.

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