

Body Worn Camera Training and Technical Assistance

Dominique Burton: Welcome to part 2 of podcast with Todd Maxwell interviewing Seth Stoughton, Assistant Professor at the University of South Carolina School of Law.

Todd Maxwell: You've hit on two important topics we've discussed in some of our BJA regional and national meetings, and one being compliance, and the second being video and juries thinking CSI effect and wanting to see video and think that solves everything. And like you said, once you apply forensic analytics to the video, some of these things because of different things like key frames and such; sometimes they look more dramatic on the video.

But once you slow them down and start analyzing, you can see that they weren't as dramatic as they first appeared. So, it's going to be interesting to see how some of this plays out and thank you for bring up those topics.

Seth Stoughton: Sure, sure thing. It's that idea of drama. I use a slightly different phrase with this concept that I call deceptive intensity. And it's not a scientific concept, there's no -- I can't just give you an easy set of rules or guidelines that you can use to measure it or apply it. But the idea of deceptive intensity is that our brains are developed in a way to make sense of what our eyes tell them. We compensate for movement. So let me ask you a question. Todd, have you ever gone walking anywhere?

Todd Maxwell: Yes.

Seth Stoughton: Have you ever walked anywhere?

Todd Maxwell: Of course.

Seth Stoughton: OK. Do you ever walk in the woods at all or walk outdoors?

Todd Maxwell: I do.

Seth Stoughton: Does that ever make you motion sick?

Todd Maxwell: It does not.

Seth Stoughton: No. Did you ever see the movie Blair Witch Project?

Todd Maxwell: It did make me motion sick, yes.

Seth Stoughton: Yes. And what were they doing when you got motion sick? Probably just walking, there was a number of scenes in that movie where they're walking or moving through the woods or in different scenes. And I had exactly the same reaction, when I saw the Blair Witch Project. I got motion sick. And I'm not even moving I'm just sitting in a theater. So, why would we get motion sick watching a video but not when we we're actually doing the motion? It's because our bodies, our brains, our eyes, know how to compensate for that movement.

When we watch the video, our brains try to compensate a little bit for us but of course we're not actually moving and that's why we get motion sick. In other words, we see that and there's an exaggerated amount of movement compared to the movement that we would perceive if we were actually doing the movement ourselves, rather than watching it on screen. And this is -- it sounds a little bit complicated but it's actually very easy to demonstrate.

If you take a BWC or cell phone camera for that matter, and you put it right on your forehead, and you look at something and you keep your eyes focused on -- on a light or a light switch or anything. And you use your nose to spell your name in the air, your eyes will stay pretty much focused on whatever it is that you are looking at. But then if you take that video and you watch the video it is going to look really jarring; movements back and forth and up and down, it's going to look like there was a lot more movement than there actually was.

That's the core idea of deceptive intensity and it's particularly important in the use of force context. When an officer is close to someone, particularly with a chest-mounted body camera, the person may look larger than they actually are. And any amount of physical contact that moves the camera may look exaggerated. The sad fact of it is, communities perhaps, many communities at least, most want body cameras to resolve questions about use of force incidents. But that may be where they are least useful, just because of the

limits, like deceptive intensity. And note that I'm not saying they're not useful.

Todd Maxwell: Right.

Seth Stoughton: They're going to still have tremendous value. We just need to be very careful about not exaggerating the value that they'll provide.

Todd Maxwell: That's a very good point. So we've had a lot of discussions in our regional meetings among grantees about a policy involving officer's right to review a video before making a statement. And you've discussed the documentation process and how viewing videos sometimes alters people's opinion, especially juries and such, on what has happened. How in your opinion, does watching the video by the officer before making a statement affect their memory or their documentation process?

Seth Stoughton: Well, there are -- there are two different contexts that I think we could discuss, here. One is just sort of an information gathering context. Like for example, if I'm an officer and I'm getting that list of stolen goods from the homeowner whose house has been burglarized, should I be able to go back and watch that video to make sure that I get the list right? Or maybe I don't want to take notes at the time; I just rely on the video so that I can later go back and use it to write the report.

I don't think anyone has any trouble with that, when the purpose of watching the video is to get to the underlying factual information about what was said or what happened. In the use of force context though, we have a slightly different question. What actually happened matters in a use of force analysis. But the more important question is what the officer perceives and whether it was reasonable.

And here, what I would generally suggest to police executives and policy makers is that officers shouldn't watch a video, either their own or someone else's, before they do a use of force report or at least not the first iteration of a use of force report. That's for a couple of reasons. First, what matters is the officer's perception and watching a video doesn't really help an officer develop that perception.

In fact, it may actually change the officer's perception even without the officer being aware of it. Human memory is fallible. There are a couple different steps in human memory. We take in information, we encode information on our brains, and then we access that information again. That makes it sound a lot like a hard drive, right?

Todd Maxwell: Right.

Seth Stoughton: Human memory is not a hard drive, though. Every time we access that memory, there's the potential for error that our memory will actually change without us even being aware of it. There've been some fascinating studies in which the researchers have been able to create entirely false memories in individuals that they're talking to. Not through hypnosis or anything like that, just through casual conversation.

So, what does that mean for officers? Well, it means that if officers watch the video, they may not be recording the perception in the report, they may not be reporting on the perception that they had at the time. They may be, excuse me, reporting on the perception they had after watching the video. And of course, that's not actually the useful information.

The other reason that I would caution police executives and policy makers to not have officers watch video before doing a preliminary use of force report is because it can put officers in a really tough spot and I'll give you an example, one that I've seen or at least one that is based on one that I've seen. An officer is interacting with someone who is belligerent and angry sounding and sees the person ball their fists. The officer uses force preemptively to take the person into control safely before any resistance can become violent.

In watching the video, however, the officer realizes that he was mistaken. The person did not actually ball their fists. At that point, you have put the officer into a moral dilemma. What do they write on the report? I would like to believe that all officers will say I perceived the suspect as having balled their fists, and in watching the video that turned out to be wrong. But that's what I perceived at the time. But officers are human, and if there's a way to avoid getting ourselves into trouble, generally we're going to do that.

So at least some number of officers are going to watch that video and look for some other way to justify, after the fact, the use of force. I don't think that's good for anybody. I don't think it's a good practice for officers to get into. I don't think it's a good practice because it denies the policy agency the opportunity to engage in retraining or counseling that can help officers improve use of force skills. So, I generally think creating that sort of moral dilemma is unnecessary and avoidable.

Todd Maxwell: Thank you for -- oh, go ahead.

Seth Stoughton: No, no, go ahead, please.

Todd Maxwell: The -- one last question, unless you had some more you wanted to elaborate on that topic.

Seth Stoughton: Oh, just very quickly, with regard to use of force specifically. I think it's fine if officers or supervisors review video at some point. I would just like it to be after a preliminary statement. So, I'll give you two possible options. One, the officer writes a preliminary statement, watches the video and what we know is most of the time, they're going to match. But in case they don't match, the officer or a supervisor writes a supplementary report.

Now, yes, that could cause some PR problems. But just because something might be difficult to explain, doesn't mean that you do it -- you avoid doing it rather, because that's the right way to do it. So, even if that causes some PR problems that's an opportunity for the agency to explain to prosecutors, the Plaintiffs' Bar and the public generally, that human memory is fallible and that's really what matters. Human perception is fallible and that's really what matters in the use of force context.

The other option is for an officer and an immediate supervisor to not ever watch the video, because frankly, it's irrelevant to them. The officer's use of force was based on their perceptions and as to that officer, what does it matter if the video matches their perceptions?

Someone should watch the video, maybe the supervisor, maybe someone in internal affairs, maybe someone in training, because the relevant question for them will be was the officer's perception reasonable based on the objective underlying facts that we get from the video? So, it may be the case that the officer writes a report, submitting his perceptions and those perceptions are -- excuse me, the video is reviewed not for the purpose of making sure the officer's perception were entirely accurate.

But for the purpose of determining whether they were reasonable, which is of course, the legal standard for a use of force. It may be that if agencies do that, they might find that there are some common mistakes, that a group of officers are making the same mistake and that's the kind of thing that's important because then it can be addressed with training.

Todd Maxwell: Right. Well, thank you for -- for that. The last question is basically, what important advice would you give to an agency that is considering implementing the body-worn camera program?

Seth Stoughton: Try and think your way through as much of you -- as you can, getting as many opinions as you can. One of the things that keeps me up at night and that's only a slight exaggeration, is the number of agencies that have implemented body-worn camera systems, essentially on a flinch. The public wants it, so somebody buys it and they put them into action, some of them without even policies or procedures to govern the use of the camera systems.

So there are so many important dimensions that need to be thought through, to implement a successful BWC program. What have other agencies done that's been successful, what other agencies done that haven't been? How are those agencies like your agency? How are those communities like your community? How do you solicit information from the stake holders?

The public, of course, are an important stake holder. But also, the officers because you don't want to implement a body-worn camera system and watch morale come crashing down because officers are upset that the brass are going big brother on them.

Do the people in the agency who are going to be reviewing the video, have the training that they need to not just use the body camera system, but to really understand the videos that they're watching, and also to explain those videos to anyone that they may be showing it to, including the media, lawyers, and judges.

So, all of that we can wrap up in sort of the single most important piece of advice, which is slow down, think it through and work with as many people as you can. When you do that you're more likely to be successful and as to the elements that are unsuccessful, you're more likely to have earned yourself some leeway.

Everybody makes mistakes. If I'm working with you, I will understand and appreciate those mistakes. If I'm not in the picture, then I'm going to blame you for your mistakes rather than feeling like I am part of creating solutions to them.

Todd Maxwell: Those are all great points. Thank you for taking time to talk with me today and I'm grateful you could actually share your knowledge on all these important topics.

Seth Stoughton: My pleasure. Thank you again for having me, I really enjoyed it.

Todd Maxwell: We encourage law enforcement justice public safety leaders whose agencies are interested in learning more about the implementation of body-worn camera programs, to visit the body-worn camera worn toolkit at www.bja.gov/bwc.

This toolkit offers a variety of resources the agencies can use to help with the adoption and use of community engagement, policy development, data collection, officer training, educational purposes. We also encourage listeners to share and promote those resources with your colleagues and staff. Lastly, all these resources were created for you. So if you have any feedback, please submit your ideas for new content through BWC support link at the bottom of the homepage.

This is Todd Maxwell from the Bureau of Justices Body Worn Camera Program, signing off. Thank you for listening today.

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