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Law-enforcement experts: Video evidence helps, but doesn't tell whole story

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Provided by Tropicana Resort and Casino.

A still frame from security camera footage of Atlantic City police's June 15, 2013 arrest of David Connor Castellani, 20, of Linwood, along Pacific Avenue in Atlantic City.



Related YouTube Video



Posted: Monday, October 7, 2013 9:00 am

By WALLACE McKELVEY, Staff Writer

Surveillance technicians followed an underage drinker's interaction with police outside Tropicana Casino and Resort this summer, and the video they recorded likely will be key evidence in a lawsuit that could spend years in the courts.

That video already has led to calls for increased scrutiny of Atlantic City's Police Department. Civil rights and law-enforcement experts, however, say there are limitations to visual evidence, and many other factors - which could be explored if the case goes to trial - can contribute to incidents of excessive force.

"It's sort of like pornography; you know it when you see it," said Shelley Stangler, a trial attorney not affiliated with the case.

Law-enforcement officials have cautioned against a rush to judgment. Currently, the police department and Atlantic County Prosecutor's Office are investigating, and Mayor Lorenzo Langford has called for federal and state authorities to oversee the process.

"Sometimes it's quite obvious, and sometimes it's not so clear," said Ray Hayducka, a police chief in Middlesex County and spokesman for the New Jersey State Association of Chiefs of Police. "I learned a long time ago not everything is what it appears to be."

Meanwhile, the criminal attorney for David Connor Castellani, the 20-year-old Linwood man at the center of the controversy, is trying to obtain footage from inside the casino. As of Saturday, it remained unclear if such footage exists or what it would show.

According to the civil lawsuit Castellani filed Tuesday in U.S. District Court in Camden, Castellani was removed from Tropicana on June 15 for underage drinking. A spokeswoman for Tropicana said the casino does not comment on pending litigation.

Regardless what happened inside the casino, Tropicana's surveillance footage picked up, at 3:04 a.m., Castellani speaking with a group of officers on an adjacent sidewalk. He's initially seen with his hands behind his back, waiting to be restrained, but police allow him to make a call and then cross Pacific Avenue.

At 3:10 a.m., amid a volley of words and gestures - the video doesn't have audio and the other party, presumably the police, is not seen - police tackle Castellani to the ground. Five officers are seen striking Castellani with batons and knees as Castellani holds

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onto one officer's waist. About a minute later, a sixth officer releases a K-9 as Castellani lies face-down in the street.

Castellani, of Linwood, still faces criminal charges of aggravated assault on an officer and a police dog, disorderly conduct and resisting. His injuries required 200 stitches and ongoing physical therapy, his parents say.

The value of video

Local activists, who say they've documented allegations of police misconduct in Atlantic City for years, saw the video as bolstering their cause.

"Having it on video makes a difference," said Steven Young, president of the local chapter of the civil-rights

organization National Action Network.

In some ways, Young was correct.

Alexander Shalom, senior staff attorney at the American Civil Liberties Union of New Jersey, has litigated cases against the Camden and Newark police departments. In such cases, which aren't filed on behalf of any individual client, video can help bring out the truth amid conflicting testimony.

"The availability of video is a good accountability tool," he said. "It protects police against allegations that are unfounded, and it protects citizens against misconduct."

Video isn't always available, of course. Not every incident takes place under the gaze of security cameras. Equipped police vehicles may not be parked in full view of an arrest. In some cases, officers prevent passersby from recording arrests. And, even if the video exists, not all plaintiffs have the resources or knowledge to acquire it.

But the spread of inexpensive closed-circuit television equipment and cellphone technology is changing that, Shalom said. The ACLU has launched a smartphone app to help citizens record encounters with authorities.

"Outside a casino in Atlantic City, an officer would be naive to think they won't be taped," he said.

As shown by the global media attention Castellani's arrest received, the presence of video also allows a legion of Internet commenters and TV broadcasters to speculate about an incident while it's still being investigated.

Hayducka, a South Brunswick policeman since 1989, said video is a "great starting point," but has to be viewed within the context of the situation. Often, he said, it doesn't tell the whole story.

"I don't know the facts of Atlantic City, but just because it's on video and doesn't look good doesn't mean there's not a logical reason why it occurred," he said.

As an example, Hayducka said, he once investigated an officer seen on camera throwing a person to the ground during the course of an arrest. His investigation revealed the officer had tried three times to restrain the person and was justified in using that limited amount of force.

In another case, from California, video showed an officer slamming a person's head against the top of a car.

"What you couldn't see is (the suspect) grabbing the officer's groin," he said. "It doesn't show all angles."

Stangler, the trial attorney, said video, like a photograph, has an important place in the courtroom.

"There are always instances where one has to look at it in connection to the whole incident," she said. "Does it show the whole incident? Is it cut off at a certain time? Was it taken from a certain angle? But, certainly, it's extremely helpful for everybody."

Stangler, who has practiced law for more than 30 years, said visual evidence provides juries a "clear record" of the incident and limits the number of potential interpretations.

That quality of video eliminates some of the "he said, she said" problems associated with civil-rights cases, Shalom said.

"No matter what happened, the police can't say, for instance, that the defendant pulled a gun," he said. "We can see what happened."

Defining 'excessive'

For police officers, the guiding principal for how and when to use force is defined by the state Attorney General's Office:

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"A law enforcement officer may use physical force or mechanical force (such as a baton) when the officer reasonably believes it is immediately necessary at the time to overcome resistance directed at the officer or others; or to protect the officer, or a third party, from unlawful force; or to protect property; or to effect other lawful objectives, such as to make an arrest."

In practice, complications arise. The outcome of complaints and lawsuits often rests on the question of how much force was reasonable.

As with many aspects of the job, Hayducka said, the law affords police officers a great deal of discretion. When the question does arise, he said, complaints are decided administratively based on the preponderance of the evidence. In a courtroom, cases are decided "beyond a reasonable doubt."

"We all operate in the gray area," he said. "Everything's on a case-by-case basis."

Stangler, who has litigated many excessive-force cases for clients, said she believes the definition is fairly simple. "If you can gain compliance by putting handcuffs on somebody, there's no need to beat them," she said. "Basically, the level of force cannot exceed that that is being used against (the officer), if there is legitimate resisting."

"Often they claim it when there is none," she added.

Shalom said the general barometer of reasonableness leads to one basic question that requires a great deal of pre-trial discovery and testimony to answer: Did the officer use only the amount of force necessary to effectuate their purpose?

"We do see lots of police officers beating a reasonably subdued subject and then engaging the K-9 unit when the suspect seems to be restrained on the ground," he said. "That, I don't understand."

Culture vs. individual

Excessive-force incidents can occur in the most transparent police forces, but civil rights experts say they are often a symptom of larger deficiencies in discipline and training.

Ideally, Shalom said, departments should have a mechanism in place to identify misconduct before it leads to costly lawsuits and out-of-court settlements.

"The idea is, if there are four complaints against Officer Jones, maybe none of them get your attention on their own, but the volume should cause, not disciplinary action, but additional scrutiny," he said. "That might just mean remediate an officer's behavior: Make sure they know the way they thought they should handle something is not the right way."

Hayducka said developing an expectation of accountability is key to a department avoiding problems down the line.

"If they're held accountable, they'll act according to the department's culture," he said. "Generally, (officers) know if there's an allegation, they'll be investigated, and most officers want to do the right thing."

Training also teaches officers how to conduct themselves on the street, when they'll have seconds to respond with the "reasonable" level of force, Hayducka said.

"If (the suspect) is complying, generally it's going to go a lot smoother," he said. "If you think they're going to be combative, there are all sorts of factors you take into consideration."

Such as: Is the suspect armed or aggressive? Do you have backup? What are the physical abilities of the officer? Is the officer the same size as this suspect? Does the officer have the ability to subdue this person alone or should they wait for backup?

And then there's the human factor. The officer's mental and physiological state also plays a role, but that, too, is addressed in training, Hayducka said.

"That's why most agencies try to do realistic training; they put them through scenarios," he said. "The more training you have, the more proficient you are, but you never know until you're in that situation."

But in the absence of proper discipline, supervision and training, a culture can develop that's permissive of misconduct.

Without it, Shalom said, "you get a system where police officers know they cannot be held accountable, know they can act with impunity, and you see more instances of misconduct."

Shalom said a highly publicized video can be indicative of larger institutional problems. It shows the system may not be working to address problem officers before their acts are recorded and widely distributed.

"Everyone thinks of Rodney King as one seminal event, but what was going on in Los Angeles was a culture of police brutality," he said. "Rodney King was merely the poster child."

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In 2011, the ACLU filed a petition showing Newark sustained only one of 261 complaints of misconduct, including excessive force, against its officers. The resulting federal investigation led the department to adopt a policy this August of releasing data about Internal Affairs investigations. That information is typically unavailable to the public - except through litigation - because it concerns personnel matters.

One of the officer's named in Castellani's lawsuit, Sterling Wheaten, appears as a defendant in at least six others alleging excessive force. Internal Affairs documents obtained through one of Wheaten's cases show 21 complaints against the officer over a three-year period between 2008 and 2011. All of the complaints were exonerated, not sustained or administratively closed.

However, the second officer named in Castellani's suit, Darrin Lorady, does not appear in records from state Superior or U.S. district courts. The other four officers have not yet been named.

The legal process

Issues of supervision and training are at the heart of most excessive force cases, said Stangler, the trial attorney.

"It's one of the hardest things to prove, but it's the most important to prove," she said.

During the discovery phase of a legal proceeding, Stangler said, the plaintiff's attorney typically needs to pore through discipline files, Internal Affairs reports, performance evaluations and training logs. The paper trail helps create a snapshot of life in the department that can help explain why an alleged excessive force incident happened.

"What you need to do is understand what kind of discipline has been imposed by the police department with respect to all their police officers, not just the ones involved in the incident," she said.

Stangler said the Internal Affairs records, for instance, will show whether civilian complaints were properly investigated or if officers were "given a slap on the wrist." State law requires biannual training in the use of force, she said, and the records should reflect that.

The documents are typically subject to confidentiality orders, such that only the litigants can access them.

Even so, Stangler said, most departments fight vigorously to keep them from the defense. What counsel is able to review is a subject of dispute in every case, she said.

"The police are not inclined to release information without a fight, even if the law permits it," she said.

In general, Stangler said, most of these cases take about two years to resolve from initial claim to trial.

"These are always defended vigorously," she said. "They don't settle easily or quickly, and they require a great deal of litigation as a general principle."

In addition to punitive damages, the Castellani case is seeking a declaratory judgment that departmental policies are "illegal and unconstitutional" and for the six officers to be prevented from continuing to serve.

Although a certain number are settled out of court, with no such demand for reform, Stangler said, most civil filings concerning allegations of excessive force seek to change the system.

Stangler hasn't followed up with all the departments she has helped clients file suit against, but believes one or two have changed their policies as a result.

"I think they tend to be a bit more cautious, and hopefully it does help in revisiting training and supervision," she said. "So the supervisory officers are more careful in the future."

"I would like to believe that," she added.

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