



Roll Call Reporter

December
2015

LEGAL UPDATES FOR MARYLAND LAW ENFORCEMENT OFFICERS

QUESTION: Is a police officer's narrative testimony at trial during the playing of a dash or body cam recording, or other crime scene video, proper lay witness testimony?

ANSWER: Yes. Narrative testimony (or simultaneous commentary) from an officer during the playing of police recordings is allowable if the testimony is based upon personal observation; is rationally based; and is helpful to establish a clear understanding of the officer's testimony or the determination of a fact in issue.

CASE: *Labria Paige v. State of Maryland*
Court of Special Appeals
Decided November 30, 2015

The Shoplifting

On April 14, 2013, at 1:30 p.m., Thea Salley, a loss prevention agent with the Macy's Department store located in the Columbia Mall, was observing broadcasts from the approximately 97 closed circuit televisions located throughout the store. Salley was an

experienced loss prevention officer (six years' experience) who had attended yearly seminars that taught her how to apprehend, escort, and detain individuals suspected of shoplifting. She observed a man roaming around in the women's department. She watched the man approach three females, which included Labria Paige, as well as a 14-year-old and a 16-year old. One of these three was carrying a large Downton Locker Room bag, and another was carrying a black handbag. All three were making random selections of merchandise from the racks without looking at either the price tag or the sizes of the respective items. They would drape the merchandise over their arms, concealing the contents of the bags.

Salley watched as Paige selected a leather jacket, a yellow shirt, and some leggings, and then threw them over her arm. Then Paige and the two juveniles went to the fitting rooms. The three stayed in the stall for about ten minutes.

Because there were no cameras in the fitting room stall, Salley left her post in the loss prevention observation room, and went to the fitting room area. She then entered a stall that was located opposite the one occupied by Paige and the juveniles. Salley was able to see into

this other stall because there were broken slats on the bottom of the door. As she crouched down to get a better view, Salley observed the merchandise going into the black bag and the Downtown Locker Room bag. Salley saw Paige placing items into the Downtown Locker Room bag.

Paige and the juveniles exited the stall when the man she had seen before called out to them. The three left the stall together, carrying a few items. Paige and the juveniles put a few of the items down, but one of them was still carrying the Downtown Locker Room bag. It appeared to Salley that the bag had been filled because it was larger than it was before the three of them took the bag into the stall. Salley then entered the stall and noticed that although the three had entered with six items, only two remained behind.

Paige and the juveniles proceeded past twelve cash registers, without paying, towards a store exit. After each walked out the door, Salley called out a code in her radio that instructed other loss prevention officers to stop and detain them. After some resistance, the three were escorted to the loss prevention office.

Paige confessed and was eventually taken from the scene by Howard County police officers. She was charged with theft under \$1000.00.

The “Narration” of the Surveillance Video at Trial

At trial, Salley was allowed to “narrate” the events depicted in the surveillance video. Prior to viewing the video, however, Salley testified that the video was recorded and kept in the ordinary course of business for Macy’s, that she was a custodian of records for the store, that she watched the video in question, and that this

video was consistent with what she personally observed on the day in question.

As the jury viewed the video, Salley explained, or more correctly, “detailed” what was taking place in the recordings and how she controlled the cameras and the different camera angles. She identified Paige and the others and described how they were dressed and what they were doing. Salley also pointed out how, in her opinion, the bag carried out of the stall was larger than when it had been carried in. Finally, she described the recordings of Paige and the others leaving the store without paying.

The Conviction and Appeal

Paige was convicted of theft under \$1000 and sentenced to 18 months, with all but six months suspended. She appealed.

The pertinent issue on appeal was whether the trial court abused its discretion in permitting the Loss Prevention Officer to narrate the events depicted in the closed-circuit camera footage. Specifically, Paige contended that Salley’s “narration” of the recorded events amounted to improper lay opinion testimony.

The Decision on Appeal:

In reaching its decision, the Court of Special Appeals first noted that, pursuant to the Maryland Rules of Evidence, a lay witness may testify to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to develop a clear understanding of the witness’s testimony or the determination of a fact in issue. Personal knowledge of and personal experience related to the matter are the keys.

Here, Salley had operated the surveillance cameras on the day and question and had



personal experience in viewing surveillance videos and establishing the conduct necessary to an apprehension for shoplifting. Thus, her testimony, including her “narration” of the recorded events, was helpful to the jury. For these reasons, Paige’s conviction was affirmed.

NOTE: This case is important because of the increased use of dash and body cameras by law enforcement agencies. At trial, and even at pre-trial motions, officers can be expected to be called upon to describe in chronological sequence the images on the recordings as it related to their perspective of what was taking place. Narration, however, is not interpretation, and officers will not be allowed to “interpret” audio or video evidence, as that would invade the role of the jury. So, while it is allowable to explain, it is not allowable to interpret.

*By John F. Breads, Jr., Director of Legal Services,
Local Government Insurance Trust*

This publication is designed to provide general information on the topic presented. It is distributed with the understanding that the publisher is not engaged in rendering legal or professional services. Although this publication is prepared by professionals, it should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

