

Chicago Daily Law Bulletin

Volume 158, No. 54

Missing videotape kills case

People v. Kladis

The short list of evidence prosecutors had to hand over during discovery in misdemeanor cases under *People v. Schmidt*, 56 Ill.2d 572 (1974), seemed to be limited to the names of witnesses; any confession; evidence negating guilt; the arrest report; and results of scientific testing, such as Breathalyzer reports. *People v. Schmidt*, 56 Ill.2d 572 (1974).

Rejecting a narrow interpretation of *Schmidt* — in a case where prosecutors appealed from an order that dismissed a misdemeanor case as a discovery sanction after the defendant requested the tape of her DUI arrest but the evidence was destroyed — the Illinois Supreme Court expanded the list to include video recordings.

"In the nearly four decades since we decided *Schmidt*, video recordings made by in-squad car cameras in misdemeanor DUI cases have become as relevant to the issue of proving or disproving guilt as the materials specifically mentioned in *Schmidt*." *People v. Kladis*, 2011 IL 110920 (Dec. 30, 2011).

Here are highlights of Justice Charles E. Freeman's opinion (with omissions not noted in the text):

This court addressed the scope of discovery required in a misdemeanor case nearly 40 years ago in *People v. Schmidt*. There, the defendant was charged with a misdemeanor DUI. She sought pretrial discovery of various reports, including a driving while intoxicated arrest report, which the state refused to produce.

In holding that the requested report should have been tendered to the defendant, we observed that it was only one of a number of items a misdemeanor defendant may discover:

"The state is required to furnish defendants in misdemeanor cases with a list of witnesses, any confession of the defendant, evidence negating the defendant's guilt and, in this particular case, the results of the Breathalyzer test. Additionally, the report which the defendant seeks will be available at trial for use in impeachment of the prosecution witness who prepared it."

This ruling was based on "the discovery provided for by case law and statute" at that time and distinguished its limited scope from the broader discovery available for felony cases under our Rule 411.

Our decision to limit discovery in misdemeanor matters was based on "our awareness of the very substantial volume of less serious cases and the impact upon their expeditious disposition" if broader discovery were required.

We concluded that there was "no reason to depart from the view" that the scope of discoverable items noted in that opinion was "adequate for the lesser offenses" at the time of that ruling.

The state misapprehends our decision in *Schmidt* and interprets it in a far too narrow manner.

Schmidt determined the scope of discovery in misdemeanor cases by considering relevant decisions, statutes and custom and practice as it existed in 1974. From this survey, the *Schmidt* court drew together a number of items which share important evidentiary value and are relevant to those charged with offenses in crafting a defense.

Indeed, our case law with respect to discovery at that time was clear. We previously held that pretrial discovery "presupposes a range of relevance and materiality which includes not only what is admissible at the trial, but also that which leads to what is admissible." *Krupp v. Chicago Transit Authority*, 8 Ill.2d 37 (1956).

TRIAL NOTEBOOK



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The state overlooks the nature and relevancy of these discovery items, instead focusing on the incorrect concept that *Schmidt* set forth a rigid list which it believes should remain static and not take into account the fundamental changes which have occurred in law and society since that ruling.

Relevancy is "determined by reference to the issues, for generally, something is relevant if it tends to prove or disprove something in issue." *Bauter v. Reding*, 68 Ill.App.3d 171 (1979). In the nearly four decades since we decided *Schmidt*, video recordings made by in-squad car cameras in misdemeanor DUI cases have become as relevant to the issue of proving or disproving guilt as the materials specifically mentioned in *Schmidt*.

As such, allowing their discovery furthers the objectives of pretrial discovery to "enhance the truth-seeking process, to enable attorneys to better prepare for trial, to eliminate surprise and to promote an expeditious and final determination of controversies in accordance with the substantive rights of the parties." *D.C. v. S.A.* 178 Ill.2d 551 (1997).

Since the time of *Schmidt*, the use of video recordings as evidence at trial has become a common practice to allow a defendant the opportunity to present an effective defense and to further the truth-seeking process.

We recently reaffirmed the general admissibility of such evidence (*People v. Taylor*, 2011 IL 110067), and courts across the country are increasingly relying on video recordings to present an objective view of the facts in a case.

In sum, we conclude that the routine video recording of traffic stops has now become an integral part of those encounters, objectively documenting what takes place by capturing the conduct and the words of both parties. We therefore hold that this important and relevant evidence falls within the scope of materials held to be discoverable under *Schmidt*. We therefore clarify that under *Schmidt*, these video recordings are discoverable in misdemeanor DUI cases.

This conclusion is supported by several recent legislative enactments regarding recordings of traffic stops made by law enforcement officers.

Although the passage of these laws occurred subsequent to the defendant's arrest in this case, the great importance placed by the General Assembly upon the production and preservation of video recordings made by squad car cameras during law enforcement actions confirms our recognition of their significant evidentiary value and relevance.

In late 2008 our legislature mandated that Illinois State Police squad cars be equipped with recording equipment. 20 ILCS 2610/30(b). The law specified that both video and audio must be captured and required that these recordings be maintained for a storage period of at least 90 days before being destroyed. 20 ILCS 2610/30(f).

The following year, the General Assembly clarified and broadened the production and preservation safeguards for police recordings. It established the general rule that when any law enforcement agency makes an in-squad video and audio

recording in connection with either law enforcement or investigative duties, that recording shall be retained for a minimum period of 90 days. 720 ILCS 5/14-3(h-15).

Significantly, the legislature has also mandated an extended period of storage for certain recordings. Where “the recordings ... are made as a part of an arrest or ... are deemed evidence in any criminal, civil or administrative proceeding” they cannot be destroyed except “upon a final disposition and an order from the court.”

We note that this heightened protection is triggered either where, as here, an arrest occurred or where the recording is considered to be evidence in any criminal, civil or administrative proceeding. Significantly, the General Assembly placed no restriction on this latter factor, encompassing all proceedings.

The transcript of the debates of the 2009 enactment reveals that the General Assembly intended

that the routine recording of traffic stops by squad car cameras would be of benefit to both citizens and law enforcement agencies by providing an objective record of what occurred during the encounter.

These enactments express the clear legislative intent that the purpose of recording traffic stops and preserving these recordings for later production is to assist in the truth-seeking process by providing objective evidence of what occurred between the law enforcement officer and the citizen.

The General Assembly enacted these laws with the view that these recordings could be useful to both the state and the defendant.

If the recording reflects the defendant committing an offense, the state could use it to cement his or her guilt. The reverse is also true: If the recording does not clearly reflect commission of a crime, the defendant could use it in support of his or her defense.

In either instance, the recording assists the trier of fact in seeking the truth and at arriving at a just result.

The state contends, however, that requiring discovery of video recordings in misdemeanor DUI cases is unduly burdensome and will delay the judicial process.

Noting that the limited scope of misdemeanor discovery set forth in *Schmidt* was partially driven by consideration of the large number of misdemeanor actions and the desire to efficiently move them through the system, the state contends these same considerations apply with equal force today.

We believe that the particular facts of this case undermine the state's general assertions.

The record indicates that defendant's request was not one that was unique in any way. The state never formally objected to the request nor did it contend that it fell outside of *Schmidt*.

The video recording is relevant and admissible evidence

because it reveals what transpired during the traffic stop which serves to further the truth-seeking function of a trial. This evidence may be helpful to both the defendant and the state. Indeed, the flow of cases actually going to trial may be eased upon allowing defendants and their counsel to review these recordings: Those which reflect events favorable to the state may result in defendants willing to enter pleas which they otherwise may not have contemplated.

This also advances the purpose of our DUI statutes to ensure that our roads remain safe from impaired drivers.

In sum, we hold that the trial court did not abuse its discretion in finding that the video recording of the defendant's stop and arrest was subject to discovery in her misdemeanor DUI case and that the state committed a discovery violation by allowing the destruction of the recording.

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