

Maricopa County Attorney's Office Prosecution Policies and Procedures

CHAPTER CHARGING, GRAND JURY, EXTRADITION	EFFECTIVE DATE 09/22/2021	PROCEDURE # 1.2.1
SECTION CHARGING GENERALLY: REVIEW OF VIDEO EVIDENCE		
DISTRIBUTION TRIAL ATTORNEYS	REVISION DATE 10/5/2021	REVISION # 1

Video evidence, which may include evidence like officer body worn camera video, surveillance video, or cell phone videos, can be the single most important piece of evidence in a case when it captures the crime being committed or it is the basis for the identification of the person who committed the crime. The following policy ensures that DCAs review the most relevant portions of any video evidence as early in the case as possible. When dealing with numerous or lengthy videos, DCAs should work with the case agent to identify and review the most relevant portions of the video to comply with this policy.

A. DCAs Must Review Critical Videos Before Charging

If a DCA is aware of video in the possession of law enforcement that captures the crime being committed so that it would likely be dispositive of the question of guilt for a fact finder or it is the only basis for identification, the charging DCA must view the recording(s) before charging the crime.

1. Examples

A case involving an assault on an officer or a resisting arrest that is captured on a body worn camera will, in most cases, be the dispositive piece of evidence for a jury or judge as to whether the person committed the crime. Attempting to describe in writing what happened during a fight or struggle is extremely difficult and the best evidence – the video – needs to be reviewed before a charging decision is made. Unless the exception in (A)(2)(b) below applies, the relevant video should be viewed before charging the case.

A case involving a crime that is directly captured on surveillance video, such as a shoplift or an armed robbery of a convenience store, and the only basis for identification is the video itself, falls under the intent of this policy. That video should be reviewed prior to charging the case. On the other hand, if the identification is supported by other means such as eyewitness identification, confession, co-defendant identification, or physical evidence like DNA or fingerprints, the video is an important piece of evidence but is not the only basis for identification.

A drug possession case would not usually fall under this section of the policy. In most cases, we have the physical evidence of the drugs to show the officer did indeed find drugs. However, there could be exceptions depending on the facts of the case. For example, if the defendant claims the drugs were planted or something of that nature during the arrest, the video could be dispositive of that issue and should be reviewed.

A DUI case would not usually fall under this policy. In most DUI cases, the most important evidence showing impairment is the scientific test of the driver's blood or breath. While things captured on video may provide corroboration for those results, the video is not likely to be dispositive in those cases. It is possible, however, that, in a given case, the video could be the dispositive piece of evidence. For example, if the defendant claims during the arrest that they were not driving and the driver would have been captured on a body worn or dash mounted camera, that video should be reviewed.

2. Exceptions:

- a) This policy does not apply to recordings which constitute sexual exploitation of a minor, when the recording(s) have been viewed by law enforcement or a medical professional and the content of the recording is documented in a written report.
- b) A bureau chief may allow an exception to this policy if all the following are true:
 - i. The case presents a reasonable likelihood of conviction based on the available evidence;
 - ii. The suspect poses an immediate threat to the victim or community; and
 - iii. There is sufficient corroborating evidence of the crime and the identity of the suspect as the perpetrator.

The reasons for granting an exception must be documented in PbK. If an exception to this policy is made, every effort should be made to view the relevant recording(s) prior to any probable cause proceeding. If law enforcement does not have the video by the probable cause proceeding, it must be viewed as soon as it is provided to MCAO.

B. Claims of Video Exoneration

Any claim that evidence exonerates a defendant must be taken seriously and investigated. Because video evidence may quickly and completely exonerate a defendant, if a defense attorney claims that a video recording exonerates their client of an offense, the identified video must be reviewed as quickly as possible. In this situation, DCAs should not allow a guilty plea to be entered until the video has been reviewed.