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SB 94 – Crimes and Offenses: Crimes Against Public Order and Safety

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CRIMES AND OFFENSES

Offenses Against Public Order and Safety: Amend Part 1 of Article 3 of Chapter 11 of Title 16, Title 17, and Article 72 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, Relating to Wiretapping, Eavesdropping, Surveillance, and Related Offenses, Criminal Procedure, and When Public Disclosure of Agency Records is Not Required, Respectively, so as to Provide Improved Processes and Procedure for Law Enforcement During the Execution of Their Official Duties and for the Release of Information to the Public; Provide For Law Enforcement Officials to Record Matters Occurring in Private Places or During the Execution of a Search Warrant; Require a Procedure for Enhancing Witness Identification Accuracy; Provide for Definitions; Provide For Written Policies Relating to Witness Identification Protocol; Provide for Policy Requirements; Prohibit Suppression of Evidence Under Certain Circumstances; Change Certain Provisions Relating to the Release of Certain Audio and Video Recordings; Provide for Related Matters; Provide for Effective Dates; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 16-11-60, -62 (amended); 17-5-21 (amended); 17-20-1, -2, -3 (new); 50-18-72 (amended)
BILL NUMBER:	SB 94
ACT NUMBER:	173
GEORGIA LAWS:	2015 Ga. Laws 1046
SUMMARY:	The Act allows a law enforcement officer, in the course of his or her official duties, to use devices to videotape or record the activities of a person. Public disclosure of agency records related to audio and video recordings from law enforcement devices is not required except in certain circumstances. The Act requires law enforcement agencies to adopt written

policies and procedures for witness identification of a suspected perpetrator. The Act provides a number of required policies that law enforcement agencies must incorporate into their procedures.

EFFECTIVE DATE:

O.C.G.A. §§ 16-11-60, -62, 17-5-21, 50-18-72, July 1, 2015; §§ 17-20-1, -2, -3, July 1, 2016

History

Eyewitness identification is not foolproof.¹ Witnesses can misidentify innocent people in police line ups or in photographs.² That misidentification can lead to a wrongful conviction and an innocent person in jail.³ When a witness is asked to make a suspect identification in a live or photographic line up, law enforcement personnel or the line up procedures can influence the outcome.⁴ Law enforcement personnel may consciously or unconsciously encourage

1. *See, e.g., The Causes of Wrongful Conviction*, INNOCENCE PROJECT, <http://www.innocenceproject.org/causes-wrongful-conviction> (last visited Oct. 11, 2015) (crediting eyewitness misidentification for 235 of 325 wrongful convictions that the Innocence Project has exonerated based on DNA evidence).

2. Paula Rotondo, *Senate Bill 94 Wants to End Wrongful Convictions*, 13WMAZ (Feb. 27, 2015), <http://www.13wma.com/story/news/local/2015/02/27/senate-bill-94-wants-to-end-wrongful-convictions/24146263/>.

3. Michelle Wirth, *Bill Aimed at Ending Wrongful Convictions Passes Senate*, 90.1 WABE (Mar. 2, 2015), <http://wabe.org/post/bill-aimed-ending-wrongful-convictions-passes-senate> (explaining that the Georgia Innocence Project has been able to overturn multiple convictions because of DNA evidence where the victim made a positive identification of the defendant). The Georgia Innocence Project is a nonprofit organization that works to obtain DNA testing for inmates where “DNA analysis could prove guilt or innocence and adequate DNA testing was not available at trial.” *About Us*, GA. INNOCENCE PROJECT, <http://www.georgiainnocenceproject.org/about-us/> (last visited Oct 11, 2015).

4. *See, e.g.*, Video Recording of House Judiciary Non-Civil Committee Meeting, Mar. 18, 2015 (Meeting 2) at 30 min., 29 sec. (remarks by Sen. Charlie Bethel (R-54th)), <http://www.house.ga.gov/Committees/en-US/CommitteeArchives146.aspx> [hereinafter House Video]; *id.* at 38 min., 30 sec. (remarks by Mr. Danny Porter, Gwinnett County District Attorney); Kristina Torres, *ACLU Warns About Body Cameras*, ATLANTA J.-CONST., Apr. 10, 2015, at B2, available at 2015 WLNR 10460628; Rotondo, *supra* note 2; Wirth, *supra* note 3.

a witness to make a particular choice,⁵ leading to unreliable witness identifications and potential wrongful convictions.⁶

Previously, Georgia’s law enforcement agencies had different policies, or no policy at all, relating to eyewitness identifications.⁷ In the past, some law enforcement agencies opposed similar bills, but those agencies now support what eyewitness identification experts call the best practices for ensuring the reliability of eyewitness identifications.⁸ In an attempt to codify and standardize policies and procedures that are currently taught at the Georgia Public Safety Training Center,⁹ Senator Charlie Bethel (R-54th) and Majority Leader Bill Cowsert (R-46th) introduced Senate Bill (SB) 94 during the 2015 legislative session.¹⁰

By the time SB 94 was enacted, it also encompassed portions of House Bill (HB) 430.¹¹ Representatives Chuck Efstoration (R-104th), Alex Atwood (R-179th), Bert Reeves (R-34th), Eddie Lumsden (R-12th), Mandi Ballinger (R-23rd), and Andrew Welch (R-110th) introduced HB 430 during the 2015 legislative session.¹²

HB 430 proposed modernization measures for current search and seizure laws that were “previously implemented and drafted in 1966.”¹³ The legislation expanded the definitions of several items to reflect changes in technology and court decisions.¹⁴ Recognizing the

5. Rotondo, *supra* note 2 (noting cases where law enforcement officials have “encouraged” witnesses to choose a particular suspect).

6. *See* Wirth, *supra* note 3.

7. *Id.*; Rotondo, *supra* note 2; *see also* Melanie Ruberti, *LaGrange Police Ahead of Curve on New State ID Law*, *LAGRANGE DAILY NEWS*, June 1, 2015, available at 2015 WLNR 16212722 (noting the LaGrange police department already has the procedures contained in SB 94 in place, but other Georgia law enforcement agencies have until July 2016 to adopt the policies).

8. House Video, *supra* note 4, at 36 min., 45 sec. (remarks by Mr. Danny Porter, Gwinnett County District Attorney); *see* Wirth, *supra* note 3; *see also* Ruberti, *supra* note 7 (explaining that the LaGrange Police Chief worked with lawmakers to develop SB 94 and that the LaGrange Police Department has continuously modified its procedures to remain current with new information including, for example, using “blind administration” for photo line ups to ensure the officer conducting the line up is unaware of the suspect’s identity to protect against unintentional clues for a witness).

9. House Video, *supra* note 4, at 29 min., 44 sec. (remarks by Sen. Charlie Bethel (R-54th)).

10. SB 94, as introduced, 2015 Ga. Gen. Assem.

11. *Compare* 2015 Ga. Laws 1046, with SB 94 (SCS), 2015 Ga. Gen. Assem., and HB 430 (HCS), 2015 Ga. Gen. Assem.

12. HB 430, as introduced, 2015 Ga. Gen. Assem.

13. Video Recording of House Proceedings, Mar. 24, 2015 at 1 hr., 39 min., 10 sec. (remarks by Rep. Chuck Efstoration (R-104th)), <http://www.gpb.org/lawmakers/2015/day-35> (discussing a portion of SB 94 that absorbed HB 430).

14. *See, e.g.*, HB 430 (HCS), § 1-1, p. 2, ln. 52–59, 2015 Ga. Gen. Assem. (expanding the definition

events in Ferguson, Missouri and “across the county,” HB 430 also provided that law enforcement officers could use devices (body cameras), in the course of their official duties, to record the activities of other persons.¹⁵ Body cameras have garnered some public support with the growing number of police-involved fatal shootings.¹⁶ Many police departments are already using the technology.¹⁷ HB 430 never passed the House,¹⁸ but SB 94 carried portions of HB 430 into law.¹⁹

Bill Tracking of SB 94

Consideration and Passage by the Senate

Majority Leader Bill Cowser (R-46th) and Senator Charlie Bethel (R-54th) sponsored SB 94.²⁰ The Senate read the bill for the first time on February 10, 2015.²¹ The bill was assigned to the Senate Judiciary Non-Civil Committee, and the Committee favorably reported the bill by substitute on February 24, 2015.²²

The Committee’s changes were minor, removing a provision requiring law enforcement agencies to provide written copies of their new policies to the Georgia Peace Officer Standards and Training Council.²³ The substitute also added a provision providing that a

of “peace officer” to include university or college law enforcement, district-attorney employed law enforcement, and probation officers); *id.* § 1-2, p. 4, ln. 99–106 (adding a definition for “device” to include electronic equipment); *id.* § 1-2, p. 6, ln. 186–96 (changing definition of “property” to remove specifications of tangible property); *see also* *Brundige v. State*, 291 Ga. 677, 680, 735 S.E.2d 583, 586 (2012) (finding that the term “tangible evidence” in then O.C.G.A. § 17-5-21(a)(5) did not include “‘amorphous heat loss’ captured by [] thermal imaging”).

15. HB 430 (HCS), § 2-1, p. 22, ln. 737–39, 2015 Ga. Gen. Assem.; House Video, *supra* note 4, at 53 min., 50 sec. (remarks by Mr. Danny Porter, Gwinnett County District Attorney).

16. *See, e.g., Body-Worn Cameras are Assets for Police, Public*, MARIETTA DAILY J., Apr. 16, 2015, available at 2015 WLNR 11062114 (“[A] body-worn camera is an asset for both the officer and persons involved in an encounter with an officer.”) [hereinafter *Body-Worn Cameras*]; Torres, *supra* note 4 (“[P]olice can use body cameras to hold officers accountable and provide credible evidence during investigations.”).

17. *See, e.g., Body-Worn Cameras, supra* note 16.

18. State of Georgia Final Composite Status Sheet, HB 430, May 14, 2015.

19. *Compare* 2015 Ga. Laws 1046, with HB 430 (HCS), 2015 Ga. Gen. Assem.

20. Georgia General Assembly, SB 94, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SB/94>.

21. State of Georgia Final Composite Status Sheet, SB 94, May 14, 2015.

22. *Id.*

23. *Compare* SB 94 (SCS), § 1, p. 2, ln. 34, 2015 Ga. Gen. Assem., with SB 94, as introduced, § 1, p. 2, ln. 33–35, 2015 Ga. Gen. Assem.

court may consider the failure to comply with the bill in relation to the exclusion of identification evidence; however, such failure does not automatically require exclusion'.²⁴ The Senate read the bill for the second time on February 25, 2015.²⁵ The Senate read the bill for the third time and unanimously passed the bill on February 26, 2015.²⁶

Consideration and Passage by the House

Representative Alex Atwood (R-179th) sponsored SB 94 in the House of Representatives.²⁷ The bill was read for the first time on March 2, 2015, and was assigned to the House Judiciary Non-Civil Committee.²⁸ The bill was read for the second time on March 3, 2015.²⁹ On March 19, 2015, the House Committee favorably reported the bill by substitute.³⁰ The House Committee made several substantial changes to the bill.³¹ For example, Committee Chairman Rich Golick (R-40th) moved to amend SB 94 to include HB 430, and the Committee approved the amendment.³² However, the House Committee made no substantive changes to the *existing* language of SB 94.³³ On March 24, 2015, Representatives Chuck Efstration (R-104th), Sharon Cooper (R-43rd), and Golick offered a floor amendment.³⁴ This amendment renumbered several sections and removed a section specifying qualifications for investigators employed by district attorneys.³⁵ The House adopted the floor

24. SB 94 (SCS), § 1, p. 3, ln. 60–62, 2015 Ga. Gen. Assem.

25. State of Georgia Final Composite Status Sheet, SB 94, May 14, 2015.

26. *Id.*; Georgia Senate Voting Record, HB 94 (Feb. 26, 2015).

27. Georgia General Assembly, SB 94, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/SB/94>.

28. State of Georgia Final Composite Status Sheet, SB 94, May 14, 2015.

29. *Id.*

30. *Id.*

31. *Compare* SB 94 (HCS), 2015 Ga. Gen. Assem., *with* SB 94, as passed Senate, 2015 Ga. Gen. Assem.

32. House Video, *supra* note 4, at 44 min., 20 sec. (remarks by Rep. Rich Golick (R-40th)).

33. *Compare* SB 94 (HCS), 2015 Ga. Gen. Assem., *with* SB 94, as passed Senate, 2015 Ga. Gen. Assem.

34. SB 94 (AM 29 2400), 2015 Ga. Gen. Assem.

35. *Id.*

amendment, read the bill for the third time, and passed it by a vote of 137 to 29.³⁶

Reconsideration and Passage by the Senate

When the Senate reconsidered the bill as passed by the House, Senators Bethel and Jesse Stone (R-23rd) proposed an amendment to the bill.³⁷ Majority Leader Cowsert proposed a minor amendment to Senators Bethel and Stone's amendment.³⁸ Senators Bethel and Stone's initial amendment removed lines one through 1079, all provisions relating to searches with and without a warrant.³⁹ The amendment replaced these provisions with a change to Code section 17-5-21 clarifying that intangible things, information, or data could be included as evidence of a crime.⁴⁰ The amendment also removed all provisions related to wiretapping, eavesdropping, and surveillance;⁴¹ it replaced them with an amended definition for "private place" in Code section 16-11-60;⁴² and it clarified circumstances in which eavesdropping, surveillance, or communication interception is lawful.⁴³ Further, the amendment changed the effective dates by making all provisions effective on July 1, 2015, except Section 4, which becomes effective July 1, 2016.⁴⁴ The Senate adopted both amendments, and the amended bill passed the Senate by a vote of 48 to 4.⁴⁵ It was then returned to the House for a vote on the Senate amendments.⁴⁶

36. Georgia House of Representatives Voting Record, SB 94 (Mar. 24, 2015).

37. SB 94 (AM 29 2466), 2015 Ga. Gen. Assem.

38. SB 94 (AM 29 2474), 2015 Ga. Gen. Assem. Senators Bethel and Stone also joined Majority Leader Cowsert to propose this amendment. *Id.*

39. *See* SB 94 (AM 29 2466), p. 1, ln. 1–2, 2015 Ga. Gen. Assem.

40. *Id.* § 3, p. 2–3, ln. 50–70.

41. *See id.* p. 1, ln. 1–5.

42. *Id.* § 1, p. 1, ln. 17–22.

43. *Id.* § 2, p. 1–2, ln. 24–48.

44. *Id.* § 6, p. 3, ln. 95–97.

45. Georgia Senate Voting Record, SB 94 (Apr. 2, 2015).

46. State of Georgia Final Composite Status Sheet, SB 94, May 14, 2015.

Reconsideration and Passage by the House

The House agreed to the Senate’s amendments and passed SB 94 by a vote of 100 to 65.⁴⁷ On April 9, 2015, the bill was sent to Governor Nathan Deal (R), and it was signed into law on May 6, 2015.⁴⁸

The Act

The Act amends Article 3 of Chapter 11 of Title 16, Title 17, and Code section 50-18-72 of the Official Code of Georgia Annotated.⁴⁹ The Act attempts to increase identification of witnesses through new processes and procedures and allow police officers to wear body cameras during their official duties while providing improved public disclosure.⁵⁰

Section 1 of the Act amends the definition of “private place” to mean a place where “there is a reasonable expectation of privacy.”⁵¹ Section 2 of the Act revises paragraph (2) of Code section 16-11-62 to allow a law enforcement officer or his or her agent to use a device while performing his or her official duties to observe, photograph, videotape, or record activities of people in the presence of the officer.⁵² These two sections were originally a part of HB 430.⁵³

Section 3 of the Act expands paragraph (5) of subsection (a) and subsection (b) of Code section 17-5-21, which relates to grounds for issuance of a search warrant, to include “instruments, articles or things, any information or data, and anything that is tangible or intangible, corporeal or incorporeal, visible or invisible” as evidence to show probable cause.⁵⁴ This change allows for video footage to be included as evidence of a crime.⁵⁵ Furthermore, Section 3 of the Act allows for the use of any device by a peace officer executing a search

47. Georgia House of Representatives Voting Record, SB 94 (Apr. 2, 2015).

48. State of Georgia Final Composite Status Sheet, SB 94, May 14, 2015.

49. 2015 Ga. Laws 1046, at 1046.

50. *Id.*

51. O.C.G.A. § 16-11-60(3) (Supp. 2015).

52. O.C.G.A. § 16-11-62(2) (2011 & Supp. 2015); House Video, *supra* note 4, at 44 min., 20 sec. (remarks by Rep. Rich Golick (R-40th)).

53. House Video, *supra* note 4, at 44 min., 20 sec. (remarks by Rep. Rich Golick (R-40th)).

54. O.C.G.A. § 17-5-21(a)(5) (Supp. 2015).

55. *See id.*

warrant or other personnel assisting in the execution of such warrant.⁵⁶

Section 4 of the Act adds three new Code sections: 17-20-1, 17-20-2, and 17-20-3.⁵⁷ These Code sections provide policies for law enforcement agencies to implement when conducting “live lineups, photo lineups, or “showups”⁵⁸ The purpose behind the procedures is to implement the best practices and to protect the rights of those accused of crimes.⁵⁹ Additionally, new Code section 17-20-3 allows the court to consider a failure to comply with requirements of the written policies when there is a challenge to an identification procedure, however, “such failure shall not mandate the exclusion of identification evidence.”⁶⁰ This section gives the courts power to suppress or exclude evidence of an identification based on failure to meet the written policies’ minimum requirements.⁶¹

Section 5 of the Act adds a new paragraph prohibiting public disclosure of audio and video recordings taken by law enforcement officers where there is a reasonable expectation of privacy and no pending investigation.⁶² This paragraph helps ensure the privacy of individuals who are recorded in areas where there is a reasonable expectation of privacy, such as a private residence.⁶³

56. O.C.G.A. § 17-5-21(b) (2013 & Supp. 2015).

57. See 2015 Ga. Laws 1046, § 4, at 1048–49 (amending Title 17 by adding Chapter 20).

58. O.C.G.A. § 17-20-2 (Supp. 2015). A showup is an identification procedure where a witness is presented with a single individual and asked to verify that the individual is the offender. O.C.G.A. § 17-20-1(5) (Supp. 2015). Law enforcement agencies must adopt written policies to include the minimum number of fillers in a live line up or photo line up and how each live line up, photo line up, or show up should be conducted. O.C.G.A. § 17-20-2 (Supp. 2015).

59. See Electronic Mail Interview with Sen. Charlie Bethel (R-54th) (June 11, 2015) [hereinafter Bethel Interview].

60. O.C.G.A. § 17-20-3 (Supp. 2015).

61. House Video, *supra* note 4, at 34 min., 15 sec. (remarks by Sen. Charlie Bethel (R-54th)).

62. See O.C.G.A. § 50-18-72(a)(26.2) (Supp. 2015). The new paragraph only allows for the following six people to gain access to the records:

(A) A duly appointed representative of a deceased’s estate when the decedent was depicted or heard on such recording; (B) A parent or legal guardian of a minor . . . ; (C) An accused in a criminal case . . . [where] such recording is relevant to [the] criminal proceeding; (D) A party to a civil action . . . [where] such recording is relevant to the civil action; (E) An attorney for any . . . persons identified in (A) through (D) . . . ; or (F) An attorney for a person who may pursue a civil action . . . [where] such recording is relevant to the potential civil action.

Id.

63. See, e.g., House Video, *supra* note 4, at 57 min., 8 sec. (remarks by Rep. Ed Setzler (R-35th)).

*Analysis**Consequences for Witness Identification*

The Act's purpose in regard to witness identification was to codify best practices so that the rights of the criminally accused are protected.⁶⁴ Gwinnett County District Attorney Danny Porter noted that this Act was years in the making and has been the culmination of meetings with the Georgia Association of Criminal Defense Lawyers, experts at the Innocence Project, and experts in the field of eyewitness identification.⁶⁵ The Act's policies ensure the reliability of eyewitness identification.⁶⁶ One unforeseen consequence of the Act might be the cost of training personnel to properly follow the new standards, but very little training should be needed because the Act is an attempt to codify best practices.⁶⁷

Intended Consequences for Police Officer Body Worn Cameras

Parts of HB 430 were incorporated into SB 94 because of national movements to hold police more accountable in light of fatal police-shooting.⁶⁸ Body cameras can expose officer misconduct, improve officer training, provide evidence for trials, and increase accountability and transparency among law enforcement agencies and their communities.⁶⁹ These benefits will help build trust between police and the community.⁷⁰ Similar motivations led the United Kingdom to adopt mandatory body cameras for their police several years ago.⁷¹ The increased prevalence of police-worn body cameras in the United Kingdom helped “speed[] up justice,” protect victims,

64. Bethel Interview, *supra* note 59.

65. House Video, *supra* note 4, at 36 min., 45 sec. (remarks by Mr. Danny Porter, Gwinnett County District Attorney).

66. *Id.*

67. *Id.* at 29 min., 9 sec. (remarks by Sen. Charlie Bethel (R-54th)).

68. *Id.* at 53 min., 50 sec. (remarks by Mr. Danny Porter, Gwinnett County District Attorney). During a seven-year period ending in 2012, a white police officer killed a black person nearly two times a week. Kevin Johnson, et al., *Local Police Involved in 400 Killings per Year*, USA TODAY (Aug. 15, 2014), <http://www.usatoday.com/story/news/nation/2014/08/14/police-killings-data/14060357>.

69. See *Developments in the Law-Policing: Chapter Four: Considering Police Body Cameras*, 128 HARV. L. REV. 1794, 1797 (Apr. 2015) [hereinafter *Developments in the Law*].

70. See *id.* at 1799.

71. *Id.*

and defuse potentially violent situations.⁷² The goal of the Act is to help reduce instances of officer–civilian conflict.⁷³

Unintended Consequences for Police Officer Body Worn Cameras

Now that officers are allowed to wear body cameras during the course of their official duties, several unintended consequences could result: (1) a lack of privacy to the citizens, (2) public access to footage, and (3) the questionable objectivity of the video footage when used as evidence.⁷⁴

First, because the officers are allowed to use body cameras at any time during the course of their official duties, any interaction with an officer could be recorded, including interaction that occurs where citizens expect personal privacy, such as in a home.⁷⁵ These concerns were debated in the House Non-Civil Judiciary Meeting on March 18, 2015, but the Committee determined that having video footage outweighed privacy concerns.⁷⁶ Second, the Act grants certain public persons access to videos taken where a reasonable amount of privacy is expected.⁷⁷ Furthermore, it is not clear if those filmed will be allowed to request deletion of the footage of private places by officers.⁷⁸ This uncertainty may lead to unintended violations of privacy or the Fourth Amendment.⁷⁹

Finally, the reliability of the video footage itself is a concern.⁸⁰ The objectivity of video footage in light of its technical limitations is

72. *Metropolitan Police Officers Start Wearing Body Cameras*, BBC NEWS (May 8, 2014), <http://www.bbc.com/news/uk-england-london-27313500>.

73. See House Video, *supra* note 4, at 53 min., 12 sec. (remarks by Mr. Danny Porter, Gwinnett County District Attorney). Support for a reduction in officer-civilian conflict has been demonstrated in a study conducted in Rialto, California where officers were randomly assigned to wear a body camera system. MICHAEL D. WHITE, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE 17 (2014), available at <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>. The study found that “shifts without cameras experienced twice as many incidents of use of force as shifts with cameras.” *Id.* at 20.

74. See *Developments in the Law*, *supra* note 69, at 1808–14.

75. See House Video, *supra* note 4, at 57 min., 8 sec. (remarks by Rep. Ed Setzler (R-35th)).

76. See *id.* at 59 min., 23 sec. (remarks by Mr. Danny Porter, Gwinnett County District Attorney).

77. See O.C.G.A. § 50-18-72(a)(26.2) (Supp. 2015).

78. See *Developments in the Law*, *supra* note 69, at 1809 (noting the lack of policies surrounding videotaped interviews of sexual assault victims).

79. *Id.* at 1796.

80. *Id.* at 1812–13 (describing the technological limitations of the camera, like the camera’s perspective and breadth of view).

one concern.⁸¹ The Supreme Court has relied on video footage to determine if a police officer was justified in using potentially deadly force in response to a high-speed chase.⁸² However, an empirical study has shown that even video footage is subject to multiple interpretations depending on the cultural outlook of the individual viewing the video.⁸³ Therefore, those viewing the footage in a court could be susceptible to their own biases, leading to inconclusive or false determinations of what actually happened based only on that video footage.

Choyce W. Middleton & Jenna B. Rubin

81. *Id.*

82. *Scott v. Harris*, 550 U.S. 372, 391–93 (2007) (Stevens, J., dissenting) (describing how the actions taken in a video tape were not “objectively” reasonable, as the majority suggests, because the lower court judges, and the Supreme Court justices, are watching the same video and coming to opposite results).

83. Dan M. Kahan et al., *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837, 903 (2009).

