



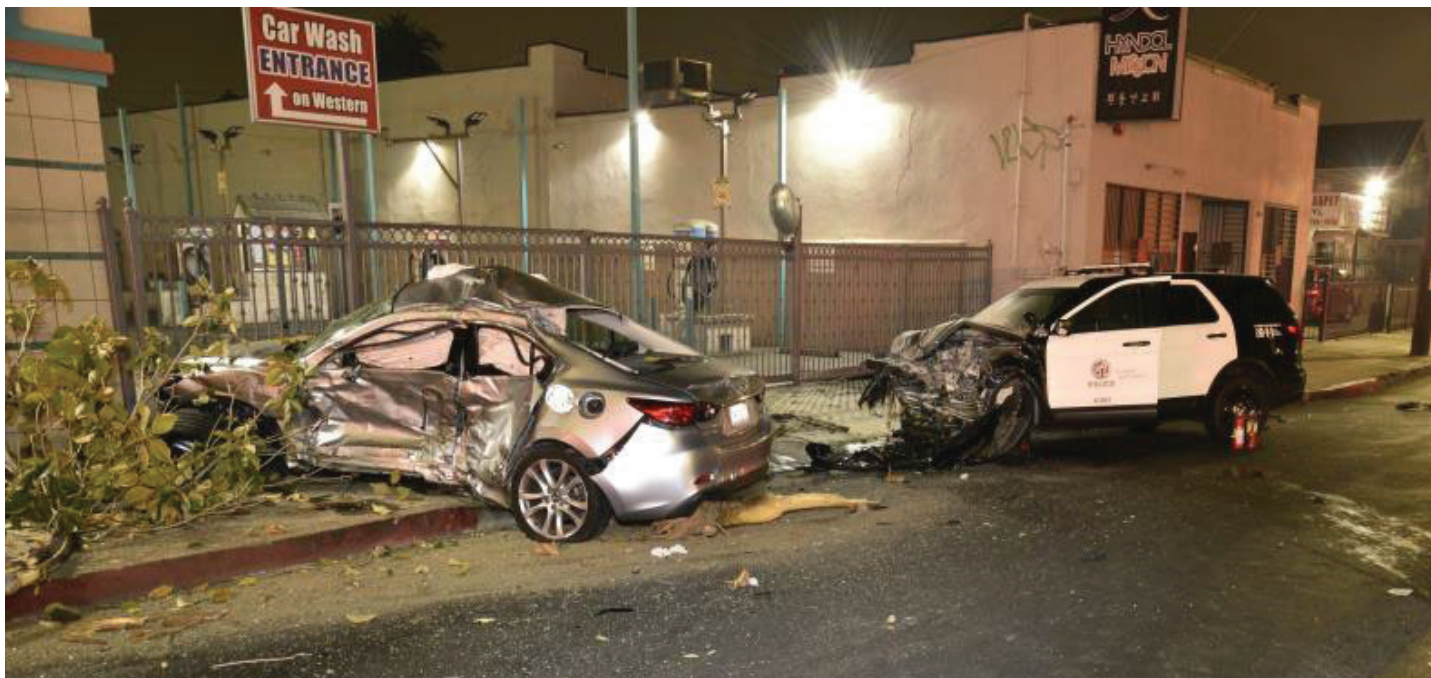
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LAPD officer was responding to a call with lights and siren, but he failed to slow at an intersection and the result was a vicious T-bone collision. Defense sought to keep the photo out of evidence.

Big crash, big problem

GETTING COLLISION PHOTOS AND VIDEOS INTO EVIDENCE WHEN THE DEFENSE ADMITS LIABILITY BUT OBJECTS TO YOUR EVIDENCE

The strategic use of accident photographs and videos can be a game-changer for plaintiffs' lawyers during a jury trial. These visual aids hold immense benefits, often pivotal in helping jurors understand the gravity of the situation and make informed decisions. Our clients go through life-changing events, usually through no fault of their own, with only one opportunity to present their case to a jury of their peers. As lawyers, we need to maximize that opportunity to show jurors the full impact of what happened to our injured client. To that end, it is critical in most cases for a jury to have the full scope of the accident, including how crushing the blow was to our helpless client.

Accident photographs and videos serve as powerful tools for humanizing the plaintiff's case. By providing jurors with a tangible, visual representation of the incident – seeing the wreckage, the scene, or the injuries firsthand can connect jurors on a deeper emotional level with the plaintiff's suffering. This connection is crucial in personal-injury cases, where the plaintiff's pain and losses may otherwise remain abstract concepts. A well-selected series of photographs or video clips can make the situation crystal clear. Jurors can easily grasp the severity of the injuries, the dynamics of the accident, and the extent of property damage, reducing the risk of

misinterpretation and ensuring a more informed decision. These visuals can also bolster credibility and authenticity.

When plaintiffs' lawyers present evidence of the crash in court, it demonstrates transparency and honesty, reinforcing the belief that the plaintiff has nothing to hide. Jurors are more likely to trust attorneys who provide a complete picture, and this trust can significantly influence their verdict.

And, accident photographs and videos can be a potent weapon for countering defense attempts to downplay the injuries or shift blame. In a "he said, she said" situation, a compelling visual can be the key to persuading jurors.

Visual evidence benefits jurors

Visual evidence, such as photographs and video clips, hold countless benefits in jury trials. These visuals leave a lasting impression in our memory banks and transmit messages at warp speed – our eyes can process a staggering 36,000 visual messages per hour. Not to mention, they make complex accidents a lot easier to grasp. Instead of leaving the jury guessing or daydreaming about what the crash looked like, we can show them real evidence of it – no more room for speculation, just concrete evidence that paints a crystal-clear picture of our client's ordeal.

It's worth noting that about 40 percent of individuals respond more favorably to visual information compared to plain text. It's like looking at a picture and instantly replaying the experience in your mind. And there's more – visuals can supercharge the learning process by up to 400 percent and ignite our imaginative faculties, making it even easier to process information at lightning speed.

Another benefit of using visual evidence is its ability to transcend language barriers. In diverse jury settings where members might have varying language proficiencies, visual representations act as a unifying force. Photographs and videos become a universal language that transcends individual backgrounds or linguistic skills, ensuring everyone comprehends the information at hand. We want to make sure everyone gets the picture, quite literally.

Setting the stage

Let's set the stage: Your client is involved in a major crash. One that is clearly the defendant's fault and obviously causes injury. The defense, in a shift from their traditional chess move of showing jurors property damage photos (typically in low visible property damage cases), now moves in limine seeking an order to exclude all photographs and videos of the crash. Not only are these photos and video a powerful tool to use at trial, they are admissible under the law, even if liability is admitted.

In one of our recent cases against the LAPD, an officer was speeding down the road responding to a call with lights and sirens on. Protocol still requires the officer to drive with reasonable care and slow down through intersections to avoid accidents. In our case, rather than slowing down at the intersection to make sure traffic was clear, the officer continued speeding and caused a vicious T-bone collision with our client's sedan.

The defense lawyers, in a strategic maneuver, entered into a stipulation of liability prior to the trial's commencement. This stipulation essentially narrowed the scope of the upcoming trial to be exclusively centered around the extent of our client's injuries. As the trial date drew near, the motive behind this tactical decision became clearer, as we received a motion in limine aimed at barring all evidence and testimony pertaining to the circumstances surrounding the collision and its aftermath. Remarkably, in a case involving a car crash, the defense sought to preclude any discussion concerning the crash itself or the subsequent events that transpired. As you will learn in this article, we successfully opposed that motion.

Defense arguments

The key defense argument in these situations stems from their admission of liability, no matter how close to trial that admission comes. It sounds something like, "we already admitted that we caused the crash, so why do jurors need to know how the crash happened?" In our case, they tried to exclude critical evidence, such as:

- Testimony of the plaintiff and the defendant driver
- Testimony of the first responders to the scene (police, fire, EMTs)
- Testimony from plaintiff's family and friends
- Testimony from accident reconstruction experts
- Every single photograph and video, including surveillance footage and dashcam footage, depicting the collision

This motion, however, is generally based on thin statutory and case law. In our case, the defense cited Evidence Code section 350, claiming that the evidence was irrelevant because this would be a "damages only" trial. They also cited Evidence Code section 352 to argue that even if the evidence is relevant, the prejudice to the defendant would outweigh the probative value of the evidence because, essentially, the photographs and videos of the crash would inflame the passions of the jury.

The defense further argued that the magnitude of the impact held no relevance because the nature and severity of the Plaintiff's injuries could be fully substantiated through the examination of her medical records and the expert testimony presented. In support of this assertion, they highlighted the fact that the Plaintiff's treating physician had conducted a comprehensive evaluation of her injuries without using accident videos or photographs as part of his assessment.

Importantly, and not unique to big impact crashes, the Plaintiff did not remember the crash itself. So, the defense argued that any evidence pertaining to the crash is inconsequential in relation to her pain and suffering. This contention arises from the fact that our client experienced amnesia until her awakening in the hospital, leading the defense to argue that any pain, suffering, emotional distress, or other non-economic damages directly connected to the crash itself should be deemed irrelevant and inadmissible, given her inability to recall the incident as it transpired.

Applicable case law

As an initial matter, a judge has broad discretion when deciding whether photographs are relevant. (*Christ v. Schwartz*, (2016) 2 Cal.App.5th 440, 449-50). In *Christ*, the court held that post-collision photographs were relevant because, even in cases where "liability for an auto accident is admitted, evidence on how the accident happened is probative to show the force of the collision, which is an indicator of injury or lack thereof to

passengers.” (*Id.* at 450.) The court also determined the photographs were probative in illustrating witness testimony of the impact of the collision and formulating medical expert opinion about the nature and extent of the injuries suffered. (*Ibid.*)

Moreover, it is well recognized that courts even have discretion to admit photographs of vehicle damage without supporting expert testimony to show the relationship between the damage and plaintiff’s injury. (*Christ*, 2 Cal.App.5th at 447-450.) This is because photographs and videos of the scene of an accident may be “highly pertinent” independent evidence. (*People v. Turner*, (1990) 50 Cal.3d 668, 706.)

Indeed, a trial court has discretion to determine whether evidence may be shown to a jury without supporting expert testimony, and expert testimony is not required when a subject is “within the realm of common knowledge” and not “sufficiently beyond common experience that the opinion of the expert would assist the trier of fact.” (*Christ*, 2 Cal.App.5th at 449.) The *Christ* court went on to conclude that the likelihood of prejudice is slim, and that “a jury is ordinarily quite capable of correlating outward appearance of damage with likelihood and extent of injury.” (*Id.* at 449-50.)

Getting photographs and videos into evidence

To successfully counter the defense’s motion, you can employ a strategic approach centered on a few compelling arguments. First and foremost, it is essential to cite the pertinent case law outlined above, thus establishing a persuasive precedent that underscores the relevance of this evidence. This legal reference serves to demonstrate to the presiding judge that the introduced evidence is not only pertinent but also devoid of undue prejudicial effects. Moreover, it reinforces the confidence that a jury possesses the requisite competence to assess the evidence judiciously and, subsequently, to render a well-informed verdict.

In our case, the defendant did not contest that the collision had caused the injuries for which the Plaintiff sought treatment during her initial hospitalization. However, they vigorously disputed various critical aspects, including the nature and scope of her past and future non-economic damages, her ongoing pain and injuries, as well as the long-term implications of her injuries on her life.

Remarkably, the defendant even refuted the necessity of extensive future medical care for the Plaintiff. We argued that it was imperative for the jury to have access to the accident scene photographs and videos, as they played a pivotal role in allowing the jury to gauge the “outward manifestation of damages in relation to the likely extent of injury,” akin to the precedent set in the *Christ* case.

In response to the claim that Plaintiff’s treating physician did not review the photographs as part of his treatment, we pointed to the fact that Plaintiff’s treating doctor performed emergency surgery and that it would be nonsensical for him to review the photographs before proceeding with urgent surgery. We also highlighted the fact that the medical experts on both sides, including defendant’s retained orthopedic experts, testified that they all reviewed the videos and photographs of the crash in forming their opinions in the case.

The defense argument that Plaintiff’s accident amnesia should bar introduction of the photographs and videos also fell flat. If anything, the fact that a Plaintiff cannot recall the details of an accident on account of her severe injuries makes that evidence even *more* relevant. When a jury hears that a Plaintiff does not recall the details of the accident, they will wonder why not. Is it because the accident was minor and perhaps Plaintiff is exaggerating this? Or is it because the accident was significant, which could perhaps explain why Plaintiff was knocked out and doesn’t remember? They should be entitled to see the photos

and videos to determine if what they say matches up with what Plaintiff and her experts claim on the stand.

Finally, to counter the defense argument that the photographs are irrelevant to pain and suffering, we argued that it is a question of fact for the jury to decide whether or not the severity of the impact affects Plaintiff’s past and future non-economic damages.

Using the key caselaw above with proper argument will help get a judge to rule in your favor on this critical motion.

Keeping expert accident reconstruction testimony in

In cases where liability has been conceded, especially those involving significant impacts, the defense not only endeavors to bar the introduction of actual photographs and videos depicting the collision, but also seeks to preclude the testimony of your accident-reconstruction expert, as well as any animations or reconstructions crafted by this qualified expert.

Accident-reconstruction experts, including ours in the case against the LAPD, rely on photographs and video evidence to re-create the scene to better assist the jury and the court in understanding the facts of the case. Such accident reconstruction based on photographs and the like is admissible in civil trials. (See e.g., *Dirosario v. Havens* (1987) 196 Cal.App.3d 1224, 1232.)

Moreover, photographs of an accurate reconstruction of an event in issue are admissible as illustrative evidence. (*People v. Cummings* (1993) 4 Cal.4th 1233, 1291.)

So, while the defense will try to wash out your accident-reconstruction expert at the same time they try to exclude the photographs and videos, both attempts should fail under relevant California law.

Closing thoughts

We know that photographs, video clips, and other visual aids can be powerful tools to use in jury trials, and it is important that we harness these potent tools to their fullest potential, employing them as frequently and proficiently as

possible. If the defense tries to exclude the use of these key visual aids, do not falter, and instead cite the key cases and make your argument to the judge. They will want jurors to look at the case through a microscope and see only what they want them to see.

But the very essence of our jury system hinges on the premise that peers make informed decisions based on the entirety of the evidence before them. When crucial evidence is withheld, this system is jeopardized and cannot function

as intended. As legal advocates, our duty is clear: We must lay out all pertinent evidence before the jury, enabling them to craft the most informed and just decision possible. This means providing them with an unobstructed view of the full extent of our client's suffering and the losses incurred due to the defendant's negligent actions.

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