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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Head v. John Doe,*
2026 BCSC 184

Date: 20260204
Docket: M185379
Registry: Vancouver

Between:

Arthur Ari-Douglas Head

Plaintiff

And

John Doe and Insurance Corporation of British Columbia

Defendants

Before: The Honourable Mr. Justice Veenstra

Reasons for Judgment

The Plaintiff, appearing in person:	A. Head
Counsel for the Defendant, Insurance Corporation of British Columbia:	G. Kim
Places and Date of Hearing:	Vancouver, B.C. November 18, 2025
Place and Date of Judgment:	Vancouver, B.C. February 4, 2026

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Introduction

[1] This is the continuation of a summary trial brought by the defendant, Insurance Corporation of British Columbia ("ICBC"), which seeks to dismiss this action pursuant to Rule 9-7 of the *Supreme Court Civil Rules*. In reasons for judgment given in April 2024, and indexed at 2024 BCSC 692 (the "First Summary Trial Judgment"), I ordered that the summary trial application be adjourned for purposes of cross-examination, then continue before me.

The First Summary Trial Judgment

[2] The factual background to this matter is summarized at paras. 4-7 of the First Summary Trial Judgment:

> [4] On or about April 16, 2017, Mr. Head was operating a yellow 2009 Harley Davidson and was travelling with a group of other motorcyclists on Highway 1 south of Boston Bar, BC. Mr. Head was driving on the right of the right lane. He was injured when his motorcycle left the highway. He suffered significant injuries, including some memory loss.
>
> [5] Among the motorcycles behind Mr. Head was one driven by Mr. Johnston. Mr. Johnston braked suddenly upon seeing the plaintiff leave the highway. He was hit from behind by yet another of the motorcycles, driven by a Mr. Ash.
>
> [6] The result has been a series of court actions. Mr. Johnston sued Mr. Ash. Mr. Ash sued Mr. Johnston. And Mr. Head sued ICBC, alleging that Mr. Head:
>
> > … was operating a motorcycle in a careful and prudent manner, in a northbound direction on Highway No. 1, at or near the Town of Boston Bar … when suddenly and without warning, an unidentified motorcycle, being operated in a negligent manner by the Defendant, John Doe, in a northbound direction on Highway No. 1, attempted to pass the Plaintiff causing a collision which forced the Plaintiff's motorcycle off the highway.
>
> [7] The action was commenced pursuant to the then-applicable provisions of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, which allowed a tort claim to be commenced against ICBC as a nominal defendant where the names of the owner and driver who caused an accident were unascertainable.

[3] The evidence of Mr. Head supporting this claim is summarized at paras. 31-32 of the First Summary Trial Judgment:

> [31] In the affidavit filed on October 23, 2023, Mr. Head gives evidence with respect to the events of April 16, 2017. He deposes that he recalls

> moving toward the left side of the right lane in order to avoid some potholes, that at about the same time a motorcycle in the left lane swerved toward him, contacting him and causing him to correct to the right. His motorcycle started to drift to the shoulder of the road, which was covered in sand and salt. He tried to make his way back, but there was another motorcycle beside him who surged toward him, effectively forcing him onto the shoulder as the road curved to the left.
>
> [32] I understand from the plaintiff's submissions that there may have been a time when he did not recall what happened on April 16, 2017. In his affidavit, he deposes that at a subsequent time, he had "a triggered sudden recall" which allowed him to provide the evidence in his affidavit.

[4] The First Summary Trial Judgment described the course of this litigation at paras. 9-26. At paras. 27-30, it summarized briefly the evidence of Mr. Johnston, who was riding behind Mr. Head at the time of the accident and who deposed to having had a GoPro camera installed at the front of his motorcycle. Mr. Johnston's affidavit evidence of his own recollection was summarized as follows at para. 30:

> a) At the time of the accident, all the other motorcycles ahead were veering left and following the road, but Mr. Head's motorcycle went straight ahead and drifted in the sand to the right of the lane, then tumbled two times on the shoulder area.
>
> b) He did not see anything interfere with the plaintiff's motorcycle in a way that could have caused the plaintiff to lose control.
>
> c) He did not see any motorcycle attempting to pass the plaintiff's motorcycle or force it off the highway.

[5] The video produced by Mr. Johnston was described at paras. 33-36:

> [33] The video is 2:19 in length. A date stamp on the bottom-right corner of the video shows a date of 2014/08/12.
>
> [34] Mr. Head's yellow Harley Davidson is readily identifiable ahead of Mr. Johnston. It is one of about ten motorcycles in view. Initially, the motorcycles are spread out over two northbound lanes. At about the 45-second mark, the road narrows to a single northbound lane as the group approaches the Alexandra Tunnel. As the motorcycles are sharing the one northbound lane, it appears that roughly half are on the right side of the lane (perhaps two to four feet from the right edge) and roughly half are on the left side of the lane (perhaps two to four feet from the yellow line).
>
> [35] At about the two-minute mark of the video, the road widens again so that there are two northbound lanes. As the road widens, Mr. Head can be seen to navigate without issue what appear to be some filled potholes just to the right of the dashed white lines separating the two northbound lanes (the asphalt is a darker colour). Mr. Head's yellow motorcycle stays to the right. It does not appear that any other motorcycle is close to him.

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> [36] At about the 2:11 mark, the highway curves to the left. Mr. Head can be seen to get closer and closer to the right edge of the right lane. At that point, the nearest motorcycles to him are in the left lane. At about the 2:13 mark, Mr. Head can be seen continuing more or less straight as the road gradually curves to the left. He enters the shoulder, which appears to be primarily sand or gravel at this point. His brake lights come on as do those of the motorcycle behind him. At the 2:15 mark, his motorcycle can be seen flipping over above a cloud of dust. The video ends very quickly thereafter.

[6] The other key evidence at the initial summary trial hearing was an expert report by a forensic examiner, Mr. McKay, who examined the video to determine whether there were any reliability, accuracy or technical concerns about it. His conclusion was summarized at para. 44:

> He thus concluded that the subject video file was consistent with a continuous recording that was absent of any reliability, accuracy or technical concerns, that it had not been re-formatted, converted or edited, and that it can be considered a “camera original”.

[7] The First Summary Trial Judgment described at paras. 45-51 and 52-64 respectively the positions advanced by ICBC and Mr. Head with respect to the summary trial. Various legal principles with respect to appropriateness for summary trial were set out at paras. 65-71.

[8] At paras. 72-78, legal principles applicable with respect to “Authentication of Electronic Real Evidence” are considered. The first case reviewed is *Animal Welfare International Inc. v. W3 International Media Ltd.*, 2013 BCSC 2193, in which Justice C. Ross dealt with objections to the authenticity and reliability of various computer files drawn from a database by way of an SQL query. At paras. 61-64, she noted that:

> [61] Authentication in this context requires that the Court be satisfied that the records are what they purport to be. W3 submits that the threshold is a low one and can be satisfied by direct or circumstantial evidence, citing *R. v. Wilder*, 2002 BCSC 1333 at para. 288 [*Wilder*].
>
> [62] W3 submits that it is not sufficient for a party opposing admissibility to allege falsification of evidence without more. The mere potential for falsification of electronic evidence is not in itself grounds to conclude that the evidence is not admissible, see: *Bell Express Vu Limited Partnership v. Rodgers* (2007), 52 C.P.C. (6th) 312 (Ont. S.C.J.).

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> [63] W3 submits further that the authentication threshold does not require parties to show that no one else could have altered the evidence by proving, for example, continuous possession of the evidence in issue and a lack of opportunity for anyone else to interfere with it, citing *Wilder* at para. 289:
>
> > [289] The failure of the Crown to prove continuity of the evidence potentially affects the authenticity of the evidence. However, providing there is some evidence of authenticity, issues of continuity go to the weight of the evidence, not its admissibility. Moreover, Canadian case law makes it clear that proof of continuity is not a legal requirement and that gaps in continuity are not fatal to the Crown's case unless they raise a reasonable doubt about the exhibit's integrity. [Citations omitted]
>
> [64] W3 submits that the reliability component of the principled approach has occasionally been the source of confusion and error on the part of parties opposing admissibility. The question at the admissibility stage does not involve an assessment of the likelihood that the evidence is accurate or true. The Supreme Court of Canada has emphasized that the reliability component of the principled approach involves a much lower standard of "threshold" reliability, as distinct from the "ultimate" reliability, the latter of which relates to the amount of weight to be accorded the evidence once admitted. When assessing the admissibility of a hearsay statement, a trial judge is limited to determining whether there are sufficient indicia of reliability to afford the trier of fact a satisfactory basis to assess the truth of that statement. See, for example, *Starr* at para. 54; and *R. v. Hawkins*, [1996] 3 S.C.R. 1043 at para. 75.

[9] At paras. 65-66, Justice Ross concluded that the evidence had been "sufficiently authenticated and meets the requirements of threshold reliability", and that the potential for error would go to weight and not admissibility. She noted the following points at para. 65:

- W3's conduct in relation to pre-trial production of the Database is not a bar to the admission of the evidence that is the subject of this application, although it may be a factor in assessing the weight of such evidence;
- W3 did produce prior to trial a disc of a size comparable to that of the disc submitted as the Database at trial (3.4 GB). AWI has had the opportunity to inspect this disc and to have it examined by an expert prior to trial;
- while there is a possibility that values in the Database could have been altered, there is no evidence that such alteration has occurred and given the opportunity to check the accuracy of the information in the Database against invoices, price lists, the Sales Reports and other documents generated pre-termination, such possibility is remote;
- the evidence of Ms. Wong and Patrick Sharp provides sufficient authentication for the pre-termination Database Discs and that of Ms. Wong and Ms. Huang for the balance of the evidence;

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- Ms. Huang gave evidence and was available for cross-examination with respect to the SQL queries that she created. The scripts that she used to obtain the reports were produced and available to be reviewed by AWI for deficiencies; and
- Ms. Wong and Ms. Huang described comparisons that they conducted that provide circumstantial guarantees of trustworthiness.

[10] Authentication was considered in the criminal law context in *R. v. C.B.*, 2019 ONCA 380, where Justice Watt said:

> [64] The requirement of authentication applies to various kinds of real evidence. Authentication involves a showing by the proponent of the evidence that the thing or item proffered really is what its proponent claims it to be: Kenneth S. Broun, ed., *McCormick on Evidence*, 7th ed., vol. 2 (Thomson Reuters, 2013), at 212, pp. 4-5.
>
> [65] Authentication is the process of convincing a court that a thing matches the claim made about it. In other words, it is what its proponent claims it to be. Authentication is intertwined with relevance: in the absence of authentication, the thing lacks relevance unless it is tendered as bogus. Thus, authentication becomes necessary where the item is tendered as real or documentary evidence.
>
> [66] At common law, authentication requires the introduction of some evidence that the item is what it purports to be … The requirement is not onerous and may be established by either or both direct and circumstantial evidence.
>
> [67] For electronic documents, s. 31.1 of the [*Canada Evidence Act* ("*CEA*")] assigns a party who seeks to admit an electronic document as evidence the burden of proving its authenticity. To meet this burden, the party must adduce evidence capable of supporting a finding that the electronic document is what it purports to be. Section 31.8 provides an expansive definition of "electronic document", a term which encompasses devices by or in which data is recorded or stored. Under s. 31.1, as at common law, the threshold to be met [page14] is low. When that threshold is satisfied, the electronic document is admissible, and thus available for use by the trier of fact.
>
> [68] To satisfy this modest threshold for authentication, whether at common law or under s. 31.1 of the *CEA*, the proponent may adduce and rely upon direct and circumstantial evidence. Section 31.1 does not limit how or by what means the threshold may be met. Its only requirement is that the evidence be capable of supporting a finding that the electronic document "is that which it is purported to be". That circumstantial evidence may be relied upon is well established … This accords with general principles about proof of facts in criminal proceedings, whether the facts sought to be established are preliminary facts on an admissibility inquiry or ultimate facts necessary to prove guilt.
>
> [Citations omitted.]

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[11] At para. 78, Justice Watt confirmed that satisfaction of the evidentiary threshold for authentication renders the evidence admissible, in the sense that it is available to the trier of fact for ultimate evaluation. It does not follow from admissibility that the trier of fact must find that the evidence is in fact what it claims to be. It is up to the trier of fact to determine the weight to be assigned to the evidence.

[12] In the First Summary Trial Judgment, the Analysis begins at paras. 78-79:

> [78] In my view, this is a case in which, if the court concludes that the video evidence should be considered reliable and given full weight, then it may well be appropriate for the plaintiff's claim to be decided by way of a summary trial. I say that notwithstanding that, with reference to the factors from *Gichuru*, the plaintiff's claim—should he be in a position to establish liability—is likely significant given his injuries, there is no particular urgency, and there is on the face of it a credibility issue with respect to the competing evidence of Messrs. Johnston and Head. On the other side of the *Gichuru* analysis, the question of liability is not complex and would resolve the action in its entirety, and the costs and delay of taking this matter to a conventional trial would be significant.
>
> [79] If the video can be considered to be a reliable "silent witness", unsullied by human frailties, then it will likely be that "other admissible evidence" that will make it possible to find the facts necessary to determine liability. The question, then, is whether the court has sufficient evidence to authenticate the video in order both to determine its admissibility and to determine what weight to assign to it.

[13] At paras. 80-82, I noted that Mr. Head's former lawyer had not taken advantage of an opportunity to examine Mr. Johnston in the context of a related action. I then commented that:

> [83] In my view, it would be wrong to deprive Mr. Head of the opportunity to cross-examine a key witness on liability on the basis that he should have taken advantage of the Rule 7-5 examination. To second-guess the decision of the lawyer at the time, with the benefit of 20-20 hindsight as to how the case has proceeded over the course of the subsequent two years, and to use that as a basis to deprive Mr. Head of the ability to cross-examine Mr. Johnston, would be unfair to Mr. Head. I take into consideration at this point the possibility that, in the absence of cross-examination, his case could be dismissed without any consideration of the merits: *Stephens* at para. 8.
>
> [84] In my view, there are stark differences between Mr. Head's evidence and that of Mr. Johnston. The video may well be capable of providing the court with a means to resolve those credibility issues, but in my view, there are questions about the provenance of the video during the four years from

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> 2017 to 2021, and a lack of evidence as to how it was copied from medium to medium to the point that it came into evidence at this summary trial. That evidence will go both to the authentication of the video and to its reliability. Mr. Head should have an opportunity to adduce that evidence and put it before the court for purposes of this summary trial application.
>
> [85] Mr. Head should also have the opportunity to cross-examine Mr. Johnston on the issues he has identified with respect to Mr. Johnston's prior statements.
>
> [86] I conclude that there are conflicting material facts and that cross-examination of Mr. Johnston should be ordered.

[14] Finally, I considered at paras. 87-89 whether any other cross-examinations should occur. I concluded that:

a) There was no basis on the material then before me to order that Mr. McKay be cross-examined, but I raised the possibility that the need to do so might arise based on what was learned from Mr. Johnston's cross-examination; and

b) In fairness, the defendant should also have an opportunity to cross-examine Mr. Head.

[15] The summary trial application was adjourned generally pending these cross-examinations, with each party having liberty to apply should issues arise with respect to finalizing the evidentiary record.

Cross-Examination Evidence

[16] The cross-examination of Mr. Johnston occurred on September 19, 2024. Although the transcript was titled "Examination for Discovery", given that what was ordered was a cross-examination, it is my view that the transcript should be treated as a cross-examination transcript, serving as evidence at large on this summary trial. This is of significance because Mr. Johnston passed away in October 2025, and is no longer available as a witness. [I note that, even if I had not considered the transcript to be a cross-examination transcript, I would have admitted the full transcript into evidence under the principled exception to the hearsay rule: *Yamakami v. Whittey*, 2012 BCSC 57 at para. 3.]

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[17] The cross-examination transcript is 28 pages, and includes questions asked of Mr. Johnston by Mr. Head as well as by ICBC's lawyer, Ms. Kim, followed by further follow-up questions from Mr. Head.

[18] Mr. Johnston was asked several questions about what he recalled of the April 2017 accident involving Mr. Head. He recalled seeing Mr. Head's yellow bike, but did not recall having a good view of it at the time Mr. Head went off the road.

[19] Mr. Johnston was asked questions about when and where he purchased the GoPro camera – he said that he purchased it in about 2014 from a Harley Davidson dealer in Kamloops, and that it was permanently mounted on his bike and set to come on when the bike is started and to turn off when the bike goes off. He said that the camera was intact and undamaged in the accident of April 16, 2017.

[20] Mr. Johnston was asked about the procedure for downloading video from the card. He explained:

> You take the camera off the bike. You take the little chip out. Then you go in the house and put it on the big computer.

[21] Mr. Johnston confirmed that the "little chip" he referred to was an SD card. He advised that he had only had the one SD card for that camera.

[22] Mr. Johnston said that after the accident, his motorcycle was taken by a tow truck to a towing yard in Hope and then to "Barnes in Langley". He retrieved the camera from Barnes in Langley two days after the accident. He confirmed that he still has the original SD card, and agreed to produce it.

[23] Mr. Johnston said that he was the first one to view the video after he retrieved the camera, which he did four or five days after the accident. He said that he was with his wife when he viewed the video, and that it was his wife who downloaded the video because he is "kind of computer illiterate". Mr. Johnston also confirmed that he provided a copy of the video file to his lawyer as soon as he had retained counsel.

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[24] Mr. Johnston said that he has never played the video back in any other format, and that the video was never altered at any point. He confirmed that he was not aware of any technical issues with his camera or with the SD card.

Subsequent Proceedings

[25] At the cross-examination, Mr. Head requested access to the original SD card on which the video had been recorded. Mr. Johnston's law firm emailed Mr. Head on October 21, 2024, advising that they had requested the SD card and seeking information as to what should be done with it. On October 30, 2024, the law firm emailed again to advise that they had the SD card, and advised that Mr. Johnston no longer had the original GoPro camera. They advised that the SD card would be made available at their office to any expert that Mr. Head might hire. It appears from a further series of emails in late November 2024 that there had not been any communication in response from Mr. Head.

[26] ICBC chose not to cross-examine Mr. Head, despite having been given the right to do so in the First Summary Trial Judgment.

[27] The matter came back before me as an application for directions on May 7, 2025. At that time, I provided a schedule for the filing of any further evidence, and directed that there be a Judicial Management Conference on September 3, 2025. The plaintiff at this time – and at two subsequent conferences – indicated that he wished to retain an expert to rebut Mr. McKay's report, but that he was having difficulty with that.

[28] There was some suggestion from Mr. Head at those conferences that part of his difficulty may relate to ICBC having contacted too many potential experts. In response, ICBC filed affidavit evidence confirming that the only expert ICBC had contacted in respect of this matter was Mr. MacKay.

[29] At the conference on September 3, 2025, I gave the plaintiff leave to file further evidence by September 17, 2025, scheduled the conclusion of the summary trial hearing for a half-day on November 18, 2025, and directed a further conference

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on September 26, 2025. On September 26, 2025, I provided a further brief extension to the plaintiff to file materials. The continuation of the summary trial was heard as scheduled on November 18, 2025.

Other New Evidence

[30] Three additional affidavits were tendered for purposes of the summary trial.

[31] Mr. Head submitted an affidavit which attached some printouts from the internet about authentication of video evidence. He also attached a printout from an online AI tool which says “Deepfake Detected”, which Mr. Head said reflected the tool’s analysis of the video from Mr. Johnston. The printout went on to identify that:

> The transcript appears to be from a recording where someone repeatedly says “Thank you.”

[32] The defendant filed two affidavits. One was from a legal assistant, with emails and other brief evidence supporting what I have noted above under the heading “Subsequent Proceedings”. The second was from the expert, Mr. MacKay, who said that there was an audio track on the recording that he was provided to analyze, but that it was blank.

Positions of the Parties

ICBC

[33] ICBC submitted that the cross-examination transcript confirms that the electronic file that was shared amongst the parties was taken directly from Mr. Johnston’s SD card. ICBC says that the evidence as to how the electronic video file went from the camera attached to Mr. Johnston’s motorcycle to the Johnstons’ computer to Mr. Johnston’s lawyer makes it unrealistic to believe that there has been any tampering, particularly in light of the analysis performed by and conclusions reached by Mr. MacKay. There is simply no evidence of tampering, and no reason to believe that the video file did not remain intact throughout its handling.

[34] ICBC says that there is no reason not to believe Mr. Johnston’s evidence about the date/time-stamp on the video, and that the incorrect date/time-stamp does

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not undermine the reliability, credibility, continuity or admissibility of the video recording.

[35] ICBC says that the AI-generated report about the video is of no evidentiary value. There is nothing to indicate its methodology or any assurance of reliability. ICBC says that Mr. Head's evidence with respect to this issue is speculative and unsupported.

[36] ICBC says that Mr. Head has been given every opportunity over some three years to rebut the video evidence and the expert evidence in support of it, but that the best that Mr. Head has been able to put forward is internet printouts and his own speculation that ultimately do not provide a basis to discount the video.

The Plaintiff

[37] Mr. Head reiterated his concerns about the reliability of Mr. Johnston's evidence. Those concerns were summarized at paras. 57-60 of the First Summary Trial Judgment. Mr. Johnston's evidence on cross-examination was not significantly different than what is summarized in those paragraphs.

[38] Mr. Head argued that the fact that the time stamp on the video showed 2014 is not just a failure to properly set the camera. He expressed the view that any Harley Davidson dealership would, in installing a camera, inevitably have ensured that the time stamp feature was properly set, and suggested that any variation in the time stamp must be deliberate and symptomatic of tampering.

[39] Mr. Head referred to a number of primarily U.S. criminal law judgments on the importance of establishing a chain of continuity with respect to real electronic evidence like the video in this case. He says that because the camera was left unattended for at least two days in a towing yard, the Court cannot safely conclude that the video was not tampered with.

[40] Mr. Head said that he did not take steps to review the original SD card, even though he had requested it, because he was of the view that the electronic files

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would have been changed just through the SD card having been removed from the camera and the video file having been downloaded by Mr. Johnston and his wife back in 2017. Mr. Head expressed the view that metadata can be easily altered, and that it would have been necessary to have the original camera in order to be certain of the accuracy of the video. He suggested that there was a lot of software available in 2017 that would permit manipulation of metadata.

[41] Mr. Head took issue with Mr. MacKay's approach, including his reliance on analysis of metadata.

[42] Mr. Head argued that the video should not be considered, that Mr. Johnston's evidence should be discounted as non-reliable, and that the only reliable evidence is his own.

Analysis

[43] I am satisfied on the basis of Mr. Johnston's evidence that the basic requirements of admissibility are met with respect to the video evidence. I do not agree that a complete and unbroken chain of custody must be established beyond doubt in order to make a video recording like this admissible. As demonstrated in both *Animal Welfare* (in the civil context) and *R. v. C.B.* (in the criminal context), that is not the law in Canada.

[44] Mr. Johnston's evidence establishes how the video camera was set up, what happened to the camera and SD card after the accident, how he retrieved the camera two days later, and how the electronic video file was downloaded and provided to his lawyer. Nothing in his evidence suggests any action that would have changed the content of the video. In my view, that is adequate authentication to render the video admissible. I accept the basic proposition referenced in both the *Animal Welfare* case at para. 62, and in the *Bell Express Vu* case that it cites, that the mere potential for falsification of electronic evidence is not in itself grounds to conclude that the evidence is not admissible.

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[45] The proposition cited in *Animal Welfare* at para. 63 from the *Wilder* judgment is also relevant:

> [289] The failure of the Crown to prove continuity of the evidence potentially affects the authenticity of the evidence. However, providing there is some evidence of authenticity, issues of continuity go to the weight of the evidence, not its admissibility. Moreover, Canadian case law makes it clear that proof of continuity is not a legal requirement and that gaps in continuity are not fatal to the Crown's case unless they raise a reasonable doubt about the exhibit's integrity. [Citations omitted]

[46] In my view, there is more than adequate evidence of authenticity in this case to render the video evidence admissible.

[47] The more significant question in this case is the reliability of and the weight to be assigned to the video evidence. In my view, the arguments that Mr. Head has made with respect to the video evidence are largely speculative. There is simply no basis to disbelieve Mr. Johnston's evidence as to the provenance of the video evidence, nor is there any basis to believe that it was tampered with in the two days between the accident and Mr. Johnston retrieving the camera and SD card.

[48] In my view, the fact that the date and time on the camera do not match the date and time of the actual accident have been adequately explained and are not unusual. Mr. Head's suggestions to the contrary amount to little more than speculation.

[49] I accept Mr. MacKay's opinion evidence that upon careful examination of the electronic video file, there were no edits, breaks or gaps in the video footage, and that as a result, there was no obvious editing or manipulation of the video footage. I also accept that the analysis he performed with respect to the internal metadata of the file, as well as the frame-by-frame analysis he described, all as detailed at paras. 39-43 of the First Summary Trial Judgment, support his conclusion that the subject video file was consistent with a continuous recording that was absent of any reliability, accuracy or technical concerns, that it had not been re-formatted, converted or edited, and that it can be considered a "camera original".

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[50] I can give no weight to Mr. Head's AI-generated report suggesting the video is a "deepfake". Much of what the report does say appears to be in reference to what is in an audio-track, while Mr. MacKay's evidence is that the audio-track while existent was blank. More importantly, there is nothing in the record to verify the methodology used by or otherwise provide a basis to assess the validity of what is essentially a machine-generated opinion.

[51] Mr. Head's internet research turned up a May 15, 2025 consultation report from the United States Federal Court's Committee on Rules of Practice and Procedure. That report proposed for consultation a new Rule 707 for the Federal Rules of Evidence that would provide a framework for acceptance of machine-generated evidence. What is set out in that document is of course from a foreign country where it is not yet even a rule. More significantly, however, it is clear from the consultation document that what is being proposed is a process by which any machine-generated evidence would have to be supported by detailed evidence as to the process, the inputs, and the development of the machine learning process itself, applying the same standards as for the evidence of an expert witness under Rule 702. No such evidence has been put forward in the present case.

[52] This is a summary trial application in a case in which there is conflicting evidence. However, even where there is conflicting evidence, it may be that other admissible evidence will make it possible for a summary trial judge to find the facts necessary for judgment to be given: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.) at para. 55.

[53] In this case, given my conclusion that the video evidence is reliable, it acts as a reliable "silent witness" that provides cogent evidence of what happened on April 16, 2017, with that evidence being "unsullied by human frailties": *Nelson v. Lafarge Canada Inc.*, 2013 BCSC 1552 at para. 4. As in *Nelson*, it is my view that the video evidence in this case appropriately allows this action to be determined on a summary trial.

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[54] I conclude that Mr. Head's assertion that the accident of April 16, 2017, was caused by an unidentified motorcycle being operated in a negligent manner that caused Mr. Head to leave the road is contradicted by reliable video evidence and is not established on a balance of probabilities. In light of that conclusion, his claim cannot succeed.

Conclusion

[55] The action is dismissed. If there are any submissions as to costs, they should be made within six weeks of this judgment, with any submission in response to be made within four weeks thereafter.

"Veenstra J."

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