IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.

CASE NO.: 16-2013-CA-6030-XXXX
DIVISION: CV-B

STONEY GLOVER,

PLAINTIFF,

v.

SCHINDLER ELEVATOR CORP.
and ONE INDEPENDENT SQUARE,

DEFENDANTS.
______________________________/

ORDER COMPELLING PRODUCTION OF SECURITY VIDEOTAPE FROM DAY OF ACCIDENT

This case came before the Court on December 9, 2013, for a hearing on a Plaintiff's Motion to Compel Production of Video Surveillance of the 7/26/11 Accident. The Court has considered the argument of counsel for the parties.

Plaintiff Stoney Glover alleges in this action that he was injured when the elevator in which he was riding suddenly dropped several floors. He has served a Request for Production of Documents on Defendant One Independent Square ("One"), seeking, among other things, all surveillance tapes of himself. Defendant One denies that it has any post-accident surveillance tapes of Plaintiff but admits that it has a security videotape of Plaintiff, made on the day of the accident, showing Plaintiff walking around the lobby of the building after he exited the elevator in which he had been a passenger. The security videotape was made as a regular business practice of Defendant One. Because it documents the actual accident or its immediate aftermath, the videotape is akin to eyewitness testimony. Unlike post-accident surveillance by a defense-

retained private investigator, the videotape at issue here is not work product. *Target Corp. v. Vogel*, 41 So.2d 962, 963 (Fla. 4th DCA 2010)(video of the accident itself was not work product prepared to aid counsel in trying the case; distinguishing *Dodson v. Persell,* 390 So.2d 704 (Fla. 1980), which involved post-accident surveillance of plaintiff by an investigator).[1] *Cf. State Farm Fire and Casualty Co. v. H Rehab, Inc.,* 56 So.3d 55, 56 (Fla. 3d DCA)(remanding with directions that defendant be permitted to take plaintiff's deposition before _*surveillance*_ video was produced), *cert. denied*, 66 So.3d 302 (Fla. 2011). In *Muzaffarr v. Ross Dress for Less*, 941 F. Supp. 2d 1373, 1375 (S.D. Fla. 2013), a slip and fall case, a federal district court in Florida distinguished, in the discovery context, the two types of videotapes:

> In this case, the videotape depicts the incident giving rise to the Plaintiff's complaint. While it could be offered for impeachment value, the primary evidentiary value of such a tape is as proof of the underlying facts surrounding the incident. Therefore, the videotape should be produced to the Plaintiff prior to her deposition.

The most recent Florida opinion on the issue appears to be *McClure v. Publix Super Markets, Inc.*, ___ So.3d ___, 2013 WL 5924982 (Fla. 4th DCA 11/6/2013)(not yet final). In *McClure*, the appellate court held that whether to require production of a store security tape in advance of an injured plaintiff's deposition was a matter within the discretion of the court. It further held that, because in the case before it the trial court's decision to allow the defendant to withhold the security tape until after the plaintiff's deposition did not represent a departure from the essential requirements of the law, certiorari did not lie. *Id.* at 1.

In an thoughtful dissent, the Honorable Martha Warner observed that "in Florida the vast

---

[1] The First District Court of Appeal cited the *Target* case when issuing a *per curiam* affirmance in *Dollar General Corp. v. Babcock,* 75 So.3d 434, 435 (Fla. 1st DCA 2011); however, because it is a "PCA," the opinion has no precedential value.

weight of authority rejects the withholding of security video until after the plaintiff's deposition is taken, unless *specific factual circumstances* in a particular case provide for a contrary result." *Id.* at 5. She also noted that, because "[t]he video reflects the actual occurrence of the accident[,] [v]iewing the video may not only promote truth-seeking but foster settlement in cases of disputed liability. On the other hand, to withhold the video, as with the withholding of any other witness statement or photographs, would only result in the type of surprise and trickery that the rules of civil procedure were designed to eliminate." *Id.*

In the present case, there is no record evidence reflecting in any substantial way that Plaintiff is likely to falsify his testimony to accord with what he may see on the security videotape. His interrogatory answer that he had never before been a plaintiff or a defendant, while technically not true (he has been a party to lawsuits arising out of business disputes; he has been a petitioner in a bankruptcy action; etc.), ignores the fact that Plaintiff likely interpreted the question to ask whether he had ever before been a plaintiff or a defendant in an action such as the current one, *i.e.*, one in which someone was physically hurt. No party has cited the Court to any previous personal injury or product liability action involving Plaintiff.

Under the particular circumstances of this case, where the video is not post-accident surveillance but routine security tape depicting the accident or its immediate aftermath; where work product is therefore not involved; and where there is no reason, apart from rank speculation, to assume that Plaintiff, if he watches the video before his deposition, will modify the testimony he would otherwise provide, there is no reason to withhold the tape until after the Plaintiff's deposition is taken.

ACCORDINGLY, it is **ORDERED** that Plaintiff's Motion to Compel Production of Video Surveillance of the 7/26/11 Accident is granted, and Defendant One Independent Square, LLC, shall produce the videotape in question to Plaintiff's counsel at least ten days before Plaintiff's deposition.

ENTERED on December 9, 2013, in Jacksonville, Duval County, Florida.

ORDER ENTERED

DEC 1 1 2013

/s/ KAREN K. COLE

Circuit Judge Karen K. Cole

Copies to:

Jason S. Miller, Esquire
Attorney for Plaintiff Stoney Glover
76 South Laura Street, Suite 1100
Jacksonville, Florida 32202

Richard P. Hermann, II, Esquire
Stuart A. Weinstein, Esquire
Carol Conway, Esquire
Attorneys for Schindler Elevator Corporation
2400 East Commercial Boulevard, Suite 1100
Ft. Lauderdale, Florida 33308

Michael S. Tyson, Esquire
Attorney for One Independent Square, LLC
Post Office Box 2753
Orlando, Florida 32802