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## Should Crime Scene Photos Ever Be Deleted?

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## Commentary

# Should Crime Scene Photos Ever be Deleted?

### The Issue

There are two general opposing positions regarding deleting photographs of a crime scene. In a recent laboratory update (internet based because of COVID-19), the Virginia Department of Forensic Science raised an issue that warrants discussion: “DFS position - Best (and most transparent) practice - any image captured in the course of processing a crime [scene] should be retained, no matter the quality or the intent (or lack thereof, such as an accidental shutter depress [sic])” [1]. With conventional film, this was never an issue. There was no option to delete an image. With digital images, however, the option exists and should be considered when establishing good policy and procedure. Edward Robinson summarized it well:

The basis for the guideline/recommendation of not deleting pictures goes back to the use of film when it was illogical to remove a frame in the middle of a strip of film. With digital cameras, it is technically possible (and technically feasible) to delete a digital image if it is out of focus or the camera settings... are not correct [2].

The ASTM International standard has been under recent review. The committee has worked on a draft for a new proposed standard or revision regarding crime scene photography [3]. Issues regarding deleting digital images are important.

One position regarding deleting digital images is that unintended or poor-quality photos may be deleted. This allowance must consider local and state guidelines and policies and procedures within the various agencies and jurisdictions. Another position is that a photograph should never be deleted.

A middle-ground approach is suggested in this opinion brief. A distinction might be made between the crime scene photos taken in an attempt to accurately document the scene (the work in progress) and the crime scene photos that have been taken back to the agency and entered as evidence (the end product). A reasonable protocol for deleting crime scene photos as the scene is processed should be considered. Much like correcting a typo in a police report, documenting each deleted mistake with a second peer reviewer or extensive paper trail is not practical. Overprocessing crime scenes can often raise additional issues in court. For example, if a word in a police report has been misspelled, correcting the inaccurate word to make it accurate and then moving forward appears to be a common-sense approach. It could be argued that this same logic applies to working a crime scene photographically (to accurately document what was found). Instantly correcting obvious blunders seems reasonable.

A “gap” in photograph sequencing may pose an issue in court without notes and testimony to justify the gap. Crime scene photos, therefore, should not be deleted after leaving the scene, exposing a void or variation in number sequence. Any absence of photos could potentially raise suspicion and introduce problems in court. However, on scene, under specific circumstances, it appears there may be a reasonable argument that it is prudent to delete unwanted photographs as the scene is being processed. Justification for deleting images (while working a scene) may have potential benefits in court in the pursuit of justice. Deleting images may avoid confusion, deter misrepresentation of the scene, and thwart unnecessary and meaningless courtroom objections and questions.

For example, if images #2203 and #2204 are followed by a “junk shot” (that does not accurately help document the scene), then deleting the junk shot (#2205) will ultimately be replaced by a new #2205, and no number sequencing will be lost. This deletion of a bad photo is contingent upon the camera settings and the deletion taking place prior to capturing the next image. Only the last image captured can be deleted in order to preserve the numeric sequence. Testifying to this type of deletion would be an easy explanation in court.

Studies prove that using false photographs can conjure up fake memories for 50 percent of the test subjects [4]. Further research supports false narratives producing false memory [5]. Such research may support the premise that all photographs

should be taken with a policy in place to accurately document the scene as it was found, eliminating photos that do not accurately depict the scene.

Photographs have little credibility beyond that of the photographer's word. A trustworthy crime scene photographer is essential for providing truthful, accurate, and relevant meaning about the scene to the courtroom. Transparency is important, but the actual truth of the scene rests primarily on courtroom testimony.

### **Three Real-Life Contexts Where Deleting Photographs Might Make Sense**

#### *Inaccurate Photos*

These would be images that misrepresent what the photographer knows to be the truth of the scene (e.g., distortion of the scene, inaccurate perspectives, or any other aspect that might mislead the court).

If a crime scene photographer takes a photo on scene and recognizes it as misleading, regardless of his or her level of training and experience, immediately deleting it seems the responsible action and should be accepted as a guidepost within agency protocol development. Deleting a "bad image" on the scene will not interfere with the number sequence. Photographers who identify a photograph as inaccurate should be provided the discretion to delete the image.

#### Specific Examples

- A photo is taken of an item of evidence with the lens setting initially set on an extreme wide angle. The photo makes the evidence appear to be located 30 feet or so from a back door. The photographer knows, in fact, that the evidence is no more than 10 feet. After a quick review on scene, prior to moving forward with other photographs, the image is considered "off" and immediately the photographer identifies a problem that needs to be fixed. The less-than-accurate (or even deceptive) photo is deleted and immediately replaced by an accurate photo after the lens has been properly adjusted. The photo is retaken to more accurately depict the truth of the scene, and the number sequence is maintained.
- A crime scene photographer is sent out to document the exact lighting of a hotel parking lot where a homicide

occurred in the early morning hours at a specified time. The hotel manager is ready to testify to what he saw, but the issue is what the hotel manager could have actually seen under the lighting conditions at that specific time when he made the call. Bracketing is used until the image is acquired that most accurately represents the precise lighting of the scene at that specified time. Instead of 30 images, the best and only the most accurate image is entered into evidence (supporting or contradicting the testimony of the hotel manager). All other images are deleted so that they do not compete with the image that most accurately represents the scene at the specific time of the murder. Once inside the courtroom, the crime scene photographer then testifies (under oath) that this single picture is an accurate representation of the lighting of the crime scene at that specified time and at that location from that position on that specific date when the photograph was taken.

### *Distractions and Embarrassments*

Photos taken that are unrelated to the scene (that would prove a distraction to the court) should be considered for deletion on scene. Distasteful or embarrassing photos (intentional or unintentional) might best be considered for deletion instead of entered as evidence.

#### Specific Examples

- During a search warrant, the crime scene photographer, while taking overall photographs, initially does not realize that a vice officer, having a little fun, has discovered a sex toy during the search. Just prior to taking an overall photo of the room, the vice officer manages to edge the item into the picture frame as the flash goes off. Might it be wise to delete this image immediately and retake the room as it was found, not as it was altered by an attempt on one officer's part to joke around?
- During the documentation of a dead body, all mental focus and attention of the photographer may be on a specific area to capture evidence. Once the photo is taken, private parts are inappropriately displayed (unnecessary and unrelated). Might it be prudent to delete the image and retake it by capturing exactly what needs to be captured, without the distraction?
- While waiting for a search warrant, the sun rises over an amazing landscape. Without much thought, the crime scene photographer grabs an image of the natural beauty.

Although inspiring, it is unrelated to the case. Should a photo like this be entered as evidence?

### *Misinformation*

As a photographer is moving through the scene, the photographer might accidentally mislabel a crime scene scale. Once the photograph has been taken and immediately reviewed on scene, what if the wrong date, item number, or any misinformation is discovered? Might this be grounds for deleting the photo and retaking it? Retaking the photograph with an accurate representation of the evidence and deleting the mistaken information seems logical.

### **Conclusions**

Crime scene photography defaults to the credibility of the photographer. Just as a misspelling should be corrected in a police report, the accurate documentation of a crime scene calls for immediate correction when mistakes are made. It could be argued that communication, including photos, should be accurate. A let-the-picture-speak-for-itself approach may promote complete transparency, but it sadly may also foster miscommunication. Requiring photos to be maintained that misrepresent the scene, distort the truth, or prove distasteful and embarrassing may not be helpful. Photos that simply portray mistaken information appear to be counterintuitive to best practices in the name of full transparency. Facts are established while on scene. Therefore, deleting photos after the images leave the scene should be avoided without justification once the number sequence has been established.

If a crime scene photographer interjects his or her own bias or alters the scene in any way to shape a narrative that diverges from fact, this is not a policy or procedure issue, it is a personnel problem. Plans for the immediate dismissal of any crime scene photographer who has an agenda contrary to the simple truth of the scene should be a deletion upon which everyone can agree.

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