

May 22nd, 9:00 AM - May 25th, 5:00 PM

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Leo Groarke

University of Windsor, Department of Philosophy

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On Dove, visual evidence and verbal repackaging

LEO GROARKE

*Department of Philosophy
University of Windsor
Windsor, Ontario
Canada
groarke@uwindsor.ca*

ABSTRACT: In “Image, Evidence, Argument,” Ian Dove defends an intriguing ‘middle ground’ between those who argue that there are “visual arguments” (notably Groarke) and skeptics who argue that there are not (notably Johnson). I discuss one of Dove’s key examples, proposing a different analysis of it, arguing that there are problems with the “verbal repackaging” of the argument he suggests.

KEYWORDS: Doggett, Dove, Groarke, Johnson, repackaging, visual argument, visual evidence

1. INTRODUCTION

In an important article on visual argument Dove (2012) has proposed a position on visual arguments that is situated somewhere in between defences of the claim that there are visual arguments (offered by commentators like Groarke, 1996 and Blair, 1996), and the scepticism espoused by others (like Fleming, 1996 and Johnson, 2005). In the end, Dove declares that he is uncertain whether there are visual arguments but argues strongly in favor of the claim that “visual evidence” has a role to play in many arguments. In particular, Dove maintains that “photographic images can fill an evidentiary role in which the image acts as a verifier, corroborator or refuter of some claim within an argument” (Dove, 2012, p. 379).

In the process of developing his views, Dove highlights some key issues that arise in the study of visual arguments. In a number of important ways, I think his discussion is illuminating, but I will take issue with his general approach to the issues he discusses. It proceeds by analysing *prima facie* visual arguments in a way that separates their verbal and visual components, rendering their core argumentative components as verbal at the same time that it assigns an important, but fundamentally different role to their visual components. I shall describe this approach as an attempt to “verbally repackage” visual arguments because it reorganizes what seem to be obvious visual arguments in a way that allows one to move their argumentative aspects to the verbal realm. This approach may make such arguments more acceptable to those who reject the idea that there are visual arguments but I shall argue that it misrepresents the examples Dove discusses. In doing so, I will focus on his analysis of an important legal case in California in which the use of visual evidence is the central issue in the trial.

2. ON VISUAL EVIDENCE

In my discussion I take a “visual argument” to be any argument which includes components (premises, conclusions, evidence, etc.) which are visual rather than verbal. Most visual arguments mix verbal and visual cues. They are in this sense “multi-modal” and are visual and verbal at one and the same time. In this discussion my interest is Dove’s attempt to minimize the role that visual elements play within arguments. It is in this regard significant that he does not reject their role entirely. He recognizes that there are times when an appeal to visual evidence of some sort is a key component of the attempt to establish the truth of some conclusion. One important contribution he makes to the discussion of visual arguments is some key examples that he uses to demonstrate this point.

Dove’s examples do not lead him to the conclusion that there are visual arguments – at least so long as we understand “visual arguments” as arguments which have visual premises. He tries to account for the role of the visual in cases where this appears to be the case in a different way, by conceding the importance of the visual, but by assigning it a role different from the role of premise. One might describe this strategy by saying that Dove ascribes the visual a role in argumentation but not within argument itself.

Dove’s account begins with an analysis of the role of diagrams in mathematical reasoning. This convinces him that visual evidence can “verify” a mathematical conclusion, even though it does not have a role in the reasoning that leads to it. As he puts it: this “account of visual evidence as verifier etc., when applied to the case of diagrams in mathematics, solves a long-standing problem for mathematical practice. Namely, if diagrams aren’t a legitimate component of mathematical reasoning, why are so many mathematical texts littered with them? The answer, of course, is that they are a legitimate part of the reasoning. Their role, however, isn’t one of premise, but of evidence.” (Dove, 2012, p. 388)

This distinction between premise and argument on the one hand, and verifier and evidence on the other, seems to me to highlight some central issues in the discussion of visual argument. In the current context the important point is that it allows Dove to give images a role in argument (as “evidence” and/or “verifier”) without making them a component of arguments themselves. While I have some doubts about Dove’s analysis of the role of images in mathematical reasoning (for a contrasting view see Barwise & Ethcmendy, 1996), my concern in this paper is his attempt to apply it to visual arguments more broadly. To this end, I want to consider his discussion of a 1948 California trial he describes as “an odd legal case.”

In *The People v. Doggett*, a married couple (the Doggetts) were convicted of a crime of “oral sexual perversion.” For reasons I will outline, I think that this is a landmark case from the point of view of visual argument. It was one of the first times that photographic evidence played a key role in the trial. In a situation in which there were no eye witnesses to the acts in question, the Doggetts were ultimately convicted on the basis of photographs they had taken of the sexual act in question. In view of this, the decision at the trial turned on a paradigm-breaking question: whether photographic evidence could be used to establish the guilt of the accused.

On the face of it, the Doggett trial seems to be a very a clear case of visual argument. The photographs presented by the prosecution performed the role of premises that lead to the conclusion that the couple committed the illegal act the prosecution charged them with. While Dove is willing to grant that the visual evidence played a key role in the decision, he reconstructs the argument at the trial as the following verbal argument:

- (1) If the Doggetts engaged in the illicit act, then they should be convicted.
- (2) The Doggetts engaged in the illicit act. So,
- (3) The Doggetts should be convicted.

In proposing this analysis of the argument at the trial, Dove undertakes what I have described as verbal repackaging, taking a *prima facie* visual argument and turning it into a verbal argument, which eliminates the role that visual images seem to obviously play within it. As Dove himself points out, “the logic of the case” is, when the argument is construed in the way that he suggests, a simple *modus ponens* which leaves “no room for the photo” in the logic of the argument.

Dove does have an answer to the obvious response that his account of the argument at the Doggett trial fails to acknowledge the role of visual evidence in the Doggett case. For he does not deny its significance and tries to account for it by granting the photographic evidence an important role outside the argument as he portrays it. He explains his account by writing that: “One doesn't infer the truth of the claim [that they engaged in a crime of sexual perversion] from the photo, one perceives it.... I distinguish the process of inferring, in which a claim garners support conditionally upon the acceptance of some other claims, from the process of perception, whereby one apprehends the truth or falsity of a claim...” (Dove, 2012, p. 384). Here we have another version of Dove's earlier distinctions between premise and evidence, between argument and verifier. An argument is, on his account, a way to *infer* the truth of a view; a verifier is, in contrast, something that allows us to *perceive* it as true. In the Doggett case, “The photo doesn't support the claim logically, as logical support is about the flow of truth values ... from a reason or set of reasons to a conclusion. Instead, the photo merely verifies truth without offering logical support.” (Dove, 2012, p. 384)

I shall argue that this way of understanding the argument in the Doggett case is in a number of ways mistaken. But first I want to say that it may have some initial plausibility if we compare its way of dealing with visual evidence to normal cases of seeing. For these are cases in which it would seem wrong to always say that one *infers* what one sees from the act of seeing. If we are at the market and I look at someone on the midway and declare “There's Fedalya” we would not normally say that this claim is the conclusion of an argument which I *infer* from my act of seeing. Outside of philosophical arguments about the external world and the veracity of perception, I don't infer that Fedalya is there, I simply see her. Using Dove's terminology, we would say that what I see provides me not with premises, but with evidence that allows me to *perceive* or *verify* that Fedalya is there. Such seeing is not, one might conclude, an instance of argument, though it may verify the premises that are elaborated within an argument, as when I reason that “Fedalya's there, so she

isn't attending her anatomy class today." By dealing with all instances of visual evidence in this way, Dove attempts to explain their role in argument without granting them a role as premises in an argument.

3. UNDERSTANDING DOGGETT

Granting that the Doggett case is a test case for an account of visual argument, there are a number of problems with Dove's reconstruction of the reasoning at the trial. In principle, one can summarize the prosecution's argument at any criminal trial in the way that Dove does; as an instance of the following *modus ponens*.

- (1) If the accused engaged in the illicit act, then they should be convicted.
- (2) They engaged in the illicit act. So,
- (3) They should be convicted.

Though this paraphrase isn't incorrect, it is not a helpful summary of the reasoning at a trial. As we can see in the Doggett case, it gives us little insight into the arguments that take place at the trial. It is especially notable that it fails to highlight the specific issues of debate that the prosecution and defence address in making their arguments for and against the charges that the judge or jury must consider.

In the Doggett case, Dove's version of the argument at the trial leaves out the key issues that are contested by the prosecution and defence. Much more fundamentally, it misdirects us, pointing us away from, rather than toward the issues that need to be addressed. In part it does so because it leaves out the visual evidence which is the crux of the trial. In ordinary cases of seeing, one might say that one perceives what one sees rather than inferring it, but it is a mistake to jump to Dove's assumption that acts of seeing need to be understood as instances of perceiving rather than inference. The Doggett case is of interest in the study of visual argument precisely because it is a paradigm example which shows that this is not the case. We fundamentally misconstrue the trial if we think that a juror shown the photographs at the trial can simply look at them and perceive that it is true that the Doggetts committed the acts in question. The whole reason there is a trial is because it is, at the outset of the proceedings (and in the Appeal Court), an open question whether they provide convincing evidence that this is so.

Reading Dove's summary of the case, one would not know that the arguments at trial focused very pointedly on the photographs and the question of whether they were credible evidence that showed the Doggetts were guilty. This was not something that could simply be perceived. It was, rather, something that had to be established and inferred from a great deal of subsidiary argument. It was the photographs plus these arguments – not a simple viewing of the photographs – that allowed the jury to verify the claim that the Doggetts were guilty as charged. The best verbal summary of the prosecution's argument at the trial is not, therefore, the one that Dove provides, but the claim that the Doggetts are guilty of sexual perversion because the photographs in question showed them to be so. This is a better summary precisely because it highlights the role of the photographs in the argument in a situation in which it is their credibility which is the main issue that

must be discussed. The best verbal summary of the trial is, therefore, one that pointedly directs us to the visual evidence as its principal component.

In the trial, this makes the locus of the dispute between the prosecution and the defence the question whether the photographs were reliable. The defendants' position is recorded in the Appeal Court decision, which notes that "by these defendants it is earnestly contended that these photographs were not sufficiently verified or authenticated to make them admissible into evidence, and that without them the corpus delicti was not established and there is no evidence in the record showing that this offense was committed." In making the contrary case, the prosecution went to elaborate lengths to prove the photographs were authentic and not "faked." Among other things, it photographed the contents of the Doggetts' apartment to show that furniture in the photographs was theirs; proved that the camera that took the photographs belonged to Mr. Doggett; established that the photographs were developed in a darkroom they had put together in their apartment; and had witnesses testify that the people in the photographs were the Doggetts.

When the Doggetts original conviction was appealed, the arguments at the Court of Appeal focused on the question whether visual, photographic evidence, could be a basis for the conclusion that they were guilty. In this way, what was on trial in the appeal of the Doggett case was the use of visual arguments in California courts, and the circumstances in which photographs could be permitted to decide the question whether someone should be convicted of a crime. The case broke new ground in California jurisprudence because it was the first time the California courts permitted photographic evidence in a situation in which the person who took the photographs refused to testify to the fact that they were genuine. This significantly broadened the grounds under which photographic evidence could be accepted by the court.

As Judge Barnard wrote in his decision (California Court of Appeals, 1948):

The general rule is that photographs are admissible when it is shown that they are correct reproductions of what they purport to show. This is usually shown by the testimony of the one who took the picture. However, this is not necessary and it is well settled that the showing may be made by the testimony of anyone who knows that the picture correctly depicts what it purports to represent....

It was rather conclusively shown that these were actual and genuine photographs, taken by one of the defendants themselves. There was nothing to justify a contrary inference and no other possible explanation either appears or was attempted. Under these particular circumstances it must be held that a sufficient showing was made in this regard and that these photographs were properly admitted into evidence.

The lesson is that one cannot, in a case like this, simply look at photographs and "perceive" or "verify" that what they appear to depict is in fact the case.

It is in this regard significant that we can easily imagine a situation in which a trial like the Doggett trial proceeded differently. If the defence had pointed out that the man in the photographs had a tattoo on his left hand, that Mr. Doggett did not, and that there was another man in the same building who looked like him and had

the tattoo, then this would be strong evidence that the photographs had been faked and were not admissible as evidence. This and many other possibilities are open at the beginning of the trial. The only way to resolve them is by invoking the visual elements of the argument. In part this reflects the fact that one strand of the history of photography is a history of doctored photographs. Their possibility prevents one from simply looking at the photographs in the Doggett trial and perceiving that the Doggetts were guilty of the acts in question. This makes the case a situation in which visual evidence is part of an argument which requires that the jurors infer – not simply perceive – that the Doggetts did what the photographs depict.

Once we recognize that the Doggett case presents us with a situation in which visual evidence is the basis for the court’s inference that the Doggetts were guilty, it is hard to avoid the conclusion that a good summary of the argument at trial should identify the verbal and the visual components it contains. One way to do so is by diagramming the argument in a way that recognizes all these elements. The following diagram can serve this purpose:

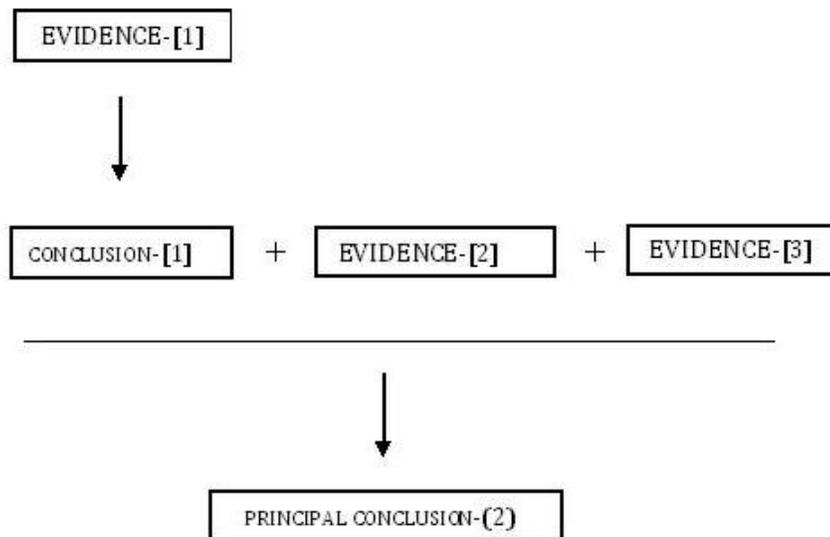


Figure 1: The Argument Against the Doggetts

Understanding the diagram’s components as follows:

EVIDENCE-[1]: Verbal and visual evidence used to establish that the photographs presented to prove the crime had been committed are authentic and reliable (“true”).

CONCLUSION-[1]: The photographs presented to prove the crime had been committed are acceptable as evidence.

EVIDENCE-[2]: The content of the photographs, which appears to depict the Doggetts engaged in the illegal act.

EVIDENCE-[3]: The evidence that the act is illegal under the California criminal code.

PRINCIPAL CONCLUSION-[2]: The conclusion that the Doggetts are guilty.

Within this diagram I have left open the question whether the visual evidence portrayed in this diagram is best described as “visual premises.” I leave that for another. What matters here is that this evidence is the basis of the inference that convicts the Doggetts of sexual perversion. While my diagram does not attempt to capture all the nuances of the prosecution’s arguments at the trial and the appeal, I propose it as a much better outline of the structure of the argument than the summary that Dove has suggested.

4. CONCLUSION: A NOTE ON VERBAL REPACKAGING

In this paper I have argued that Dove’s attempt to verbally repackaging the visual arguments at the Doggett trial is unsuccessful. In light of this conclusion, I want to end my discussion with some general comments about verbal repackaging, in part because the same approach to visual arguments plays a role in Johnson’s critique of visual argument. Johnson seems to have it in mind when he writes (Johnson, 2005) that “For every visual argument, there will exist a verbal counterpart of that argument; *but not vice-versa* [his italics]” and “Visual argument depends on verbal argument” but “*there is no evidence of a dependence the other way* [his italics]... The practice of argumentation as we have it today has developed largely out of verbal argument: whether spoken or written. The apparatus that surrounds it (the notions of premise, conclusion, enthymeme, missing premise, internal argument objection, criticism) all are verbal in character.”

Though I disagree with Johnson’s views, this is not because I reject the verbal repackaging of visual arguments. Such repackaging plays an essential role in their discussion. Sometimes it is helpful just because it is not feasible to reproduce the visual components that visual arguments contain. In other situations, verbal repackaging can promote the discussion of visual components and isolate aspects of them that warrant discussion and debate. This is something that I grant. My arguments in this paper should not, therefore, be taken as a rejection of verbal repackaging. What I reject is the suggestion that verbal repackaging somehow shows that there are no visual arguments or that the business of reasoning and arguing is ultimately verbal and can be contained within a verbal paradigm.

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