



CELL PHONE SPOILIATION TRAPS DRIVER

Defendants purposely and significantly deleted data and damaged a phone after receiving a preservation letter. The judge found the defendants negligent for intentionally destroying evidence, and levied spoliation sanctions such that the jury would be notified and instructed to incorporate these facts in their deliberation, which led to defendants paying more than they initially planned to pay.

SITUATION

Vehicle entered the turn lane to make a left turn from a highway to a local road. A dump truck swerved in front of the vehicle, and the vehicle struck the back of the dump truck and the vehicle driver sustained serious injuries.

As a matter of practice, counsel for the driver of the vehicle sent a preservation letter to opposing party to preserve the dump truck driver's phone, and they refused to provide the phone. Eventually, the judge issued an order for the dump truck driver to surrender the phone. When it was surrendered, it was damaged to the point it was non-operational. The explanation was that the phone was dropped on a gravel driveway.

Practice: Cell Phone Data Forensics

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Services Utilized

- Cell Phone Data Extraction and Analysis
- Cell Phone Damage Inspection
- Fraud Detection
- Spoliation

About ESi

For over 30 years, ESi has leveraged its multidisciplinary team of engineers, scientists, and professional technical staff to investigate many major accidents and disasters. Our technical expertise, hands-on experience and state-of-the-art facilities, combined with diagnostic, analytical and physical testing capabilities create an ideal environment for quickly identifying and interpreting the facts of a particular case.

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SOLUTION

Upon examination of the truck driver's phone, it was determined the battery was not provided with the phone, and the SIM card and SIM card tray were detached from the phone. In examining the device, it was also determined there were significant scratches on the phone's motherboard.

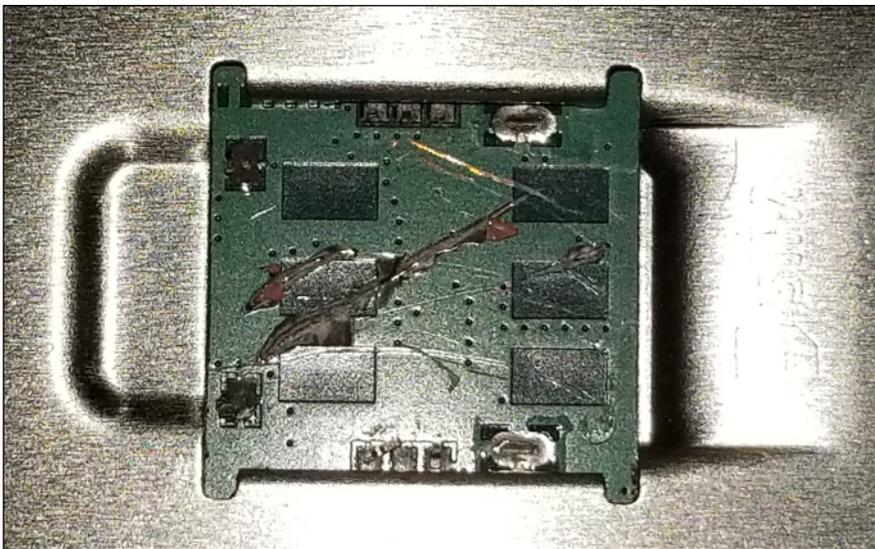
After further investigation, it became obvious the damage to the phone was inconsistent with a simple drop on a gravel driveway, as alleged by the truck driver's statements. The internal motherboard scratches, the removed SIM card, and its tray, indicated a more deliberate act than a simple drop on gravel. Additionally, a special extraction of data from the non-operational phone revealed data was deleted after the preservation letter was sent.

RESULTS

Council for the vehicle owner submitted a motion for findings of spoliation of evidence and requested sanctions. The judge found the dump truck driver negligently or intentionally destroyed, mutilated, or altered the evidence within the cell phone.

As a sanction for spoliation, the court determined the jury would be instructed "This Court has determined that the defendants repeatedly spoliated evidence in this case. In apportioning fault, you are instructed that the combined fault of the two defendants must be equal or greater than 50%."

Following this order, the dump truck driver settled the case, paying significantly more than they had been willing to prior to the jury instruction direction.



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and Forensic Investigation

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WHY ESi.

ESi has fulltime technical professionals and consultants in every coast-to-coast office available to collect, examine, interpret, analyze, evaluate, and report incident site data, from all available sources, across all industries. Cell phones, as well as other electronic data devices, are increasingly becoming noted as sources for housing this type of incident data. ESi has personnel specifically trained in downloading that data from cell phones and cell phone providers, in a manner acceptable to the court system, insurance companies, and any other incident stakeholder.