

12/9/2025 4:07 PM
TIANA P. GARNER, CLERK

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

██████████ Individually and)
as Administrator of the Estate of ██████████)
██████████ deceased,)
)
Plaintiff,)
)
vs.)
██)
██)
and ██████████)
)
Defendants.)

Civil Action Number:

██████████

ORDER GRANTING MOTION FOR SANCTIONS

Plaintiff, ██████████ Individually and as Administrator of the Estate of ██████████
██████████ deceased, (██████████ filed a Motion for Sanctions Based on ██████████'s
Spoliation of Evidence. After consideration of all matters of record and the applicable and
controlling law, this Court finds as follows:

This is a wrongful death case. On May 5, 2023, ██████████ was a passenger on a non-
emergency medical transport bus operated by ██████████. As
██████████'s employee was making a turn, ██████████ fell allegedly causing his hemodialysis
catheter to become dislodged. The incident caused internal and external bleeding which resulted
in Mr. ██████████'s death. Plaintiff alleges that the driver failed to properly restrain Mr. ██████████ and
that she negligently operated the bus. ██████████ has denied liability.

The bus had two cameras - one facing the inside of the bus and one facing the outside.
The cameras were running at the time Mr. ██████████ was being transported and the footage was
available. Plaintiff sent a preservation letter to ██████████ but the entire video footage was not

preserved.

Spoliation is ‘the destruction or failure to preserve evidence’ that is relevant to ‘contemplated or pending litigation.’ Sheats v. Kroger Co., 336 Ga. App. 307 (2016). See also Silman v. Associates Bellemeade, 294 Ga. App. 764 (2008). It must first be shown that (1) the spoliated evidence existed and (2) that the party charged with failing to preserve it had sufficient custody or control over the evidence at the time litigation was contemplated. American Cas. Co. of Reading, Pa. v. Schafer, 204 Ga. App. 906 (1992). Both of these preliminary elements have been satisfied in this case.

A defendant’s duty to preserve evidence arises when it has actual or constructive notice of potential litigation. Phillips v. Harmon, 297 Ga. 386 (2015). The Phillips Court set forth several circumstances that would put a defendant on notice that a plaintiff was contemplating litigation. Among those factors would be the type and extent of the injury; the potential financial exposure if faced with a finding of liability and the frequency with which litigation occurs in similar circumstances. That Court concluded in part that “It may be appropriate to consider, in determining whether the defendant actually did or reasonably should have foreseen litigation by the plaintiff, not only what the plaintiff did or did not do after the injury and before evidence in question was lost or destroyed, but also what the defendant did or did not do in response to the injury. . .”

This Court has weighed five (5) factors in its evaluation of this Motion: (1) whether the party seeking the sanction was prejudiced as a result of the destruction of the evidence, (2) whether the prejudice can be cured, (3) the practical importance of the evidence, (4) whether the party who destroyed the evidence acted in good or bad faith and (5) the potential for abuse if the

evidence is not excluded. Phillips v. Harmon, 297 Ga. 386 (2015); Carpenter v. Auto Owners Ins. Co., 220 Ga. App. 539 (1996).

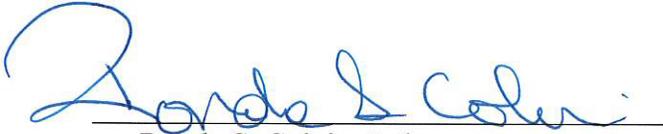
Based on the foregoing, this Court finds that the Plaintiff's Motion is proper and shall be GRANTED. The Court finds that [REDACTED] failed to preserve the recordings of the subject incident which is material evidence pertaining to this matter and will prejudice Plaintiff. The evidence is important and the prejudice cannot be sufficiently cured with other evidence. The Defendant had an obligation to preserve all of the video footage and failed to do so. While some portions of the video recordings were preserved, [REDACTED] did not preserve all of the footage and has not set forth an explanation for failing to do so. Lastly, the potential for abuse is great and it is this Court's duty to protect the judicial process and its integrity.

The Court has wide latitude in determining appropriate sanctions to fit the circumstances of the case. Therefore, the following sanctions shall be imposed in this case:

(1) This Court hereby makes a finding that [REDACTED] spoliated video recordings from the date of the incident and

(2) This Court will give a jury instruction that (a) [REDACTED] had a duty to preserve relevant evidence; (b) [REDACTED] failed to preserve that evidence and (c) the jury may presume that the video evidence that Defendant failed to preserve would have favored [REDACTED]'s case and disadvantaged [REDACTED]

SO ORDERED this 9th day of Dec, 2025.


Ronda S. Colvin, Judge
State Court of Gwinnett County