

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JASON SHACKELFORD, as personal  
representative of the estate of KATI JO  
SHACKELFORD and on behalf of  
KATI JO SHACKELFORD’S statutory  
beneficiaries

Plaintiff,

v.

WEST COAST FREIGHTLINE, LLC, et  
al.

Defendants.

CASE NO. C20-5492 BHS

ORDER DENYING PLAINTIFF’S  
MOTION FOR SANCTIONS DUE  
TO SPOILIATION OF EVIDENCE  
AND RESERVING RULING ON  
PLAINTIFF’S MOTION TO  
EXCLUDE

This matter comes before the Court on Plaintiff’s motion for sanctions due to  
spoliation of evidence, Dkt. 31, and Plaintiff’s motion to exclude, Dkt. 33. The Court has  
considered the briefings filed in support of and in opposition to the motions and the  
remainder of the file and hereby rules as follows.

**I. FACTUAL & PROCEDURAL BACKGROUND**

On August 30, 2017, at approximately 2:30 a.m., Kati Jo Shackelford was killed  
after colliding with Defendant Harbans Singh’s semi-truck. Dkt. 1-1, ¶¶ 60–63. Singh

1 was parked in a gore point on the side of the State Route 512 highway, which Plaintiff  
2 alleges was negligently parked. *Id.*, ¶ 52. Plaintiff, Ms. Shackelford’s brother and  
3 personal representative of her estate, brings negligence claims against Singh and his  
4 employer, Defendant West Coast Freightline (“WCF”), and requests punitive damages  
5 under California state law. *See id.* at 10–22.

6 On July 15, 2021, Plaintiff filed a motion for sanctions due to spoliation, Dkt. 31,  
7 and a motion to exclude, Dkt. 33. Plaintiff argues that WCF improperly destroyed  
8 Singh’s driver record of duty status and requests that the Court impose adverse jury  
9 instructions and a presumption that the destroyed evidence was harmful to Defendants.  
10 *See* Dkt. 31 at 1–3. Plaintiffs additionally move to exclude any evidence pertaining to  
11 Ms. Shackelford’s toxicology report and any evidence related to her alleged intoxication  
12 pursuant to Federal Rule of Evidence 403. *See* Dkt. 33 at 1–3. On July 26, 2021,  
13 Defendants responded to the motion for sanctions, Dkt. 38, and to the motion to exclude,  
14 Dkt. 35, opposing both motions. On July 30, 2021, Plaintiff replied. Dkts. 40, 42.

## 15 II. DISCUSSION

### 16 A. Motion for Sanctions due to Spoliation

17 Federal regulations require that all motor carrier drivers record the driver’s duty  
18 status for each 24-hour period. 49 C.F.R. § 395.8. Drivers are required to keep their  
19 records of duty status current to the time shown for the last change of duty status. *Id.* at  
20 (f)(1). A driver’s status may be off duty, sleeper berth, driving, or on-duty not driving. *Id.*  
21 at (b).

1 Plaintiff asserts that Defendants destroyed Singh’s record of duty status for August  
2 28, 2017 and August 29, 2017. Dkt. 31 at 5. WCF’s 30(b)(6) designee, CEO Paul Suner,  
3 testified during his deposition that Defendants destroyed Singh’s record of duty status  
4 logbook six months after the August 30 accident. Dkt. 32, Ex. 4, at 83:15–23. Plaintiff, in  
5 turn, subpoenaed the Washington State Patrol (“WSP”), who produced photographs taken  
6 at the accident scene and copies of Singh’s daily logs for August 25 through 29, 2017.  
7 *See* Dkt. 38 at 3; Dkt. 39, Ex. B.

8 Plaintiff additionally asserts that Singh failed to start a log for August 30, 2017,  
9 the day of the accident. Dkt. 42 at 2. Defendants admit that Singh did not stop at midnight  
10 on August 29, 2017 to complete the logbook for that day and start the logbook for August  
11 30, 2017. Dkt. 38 at 4. They assert that Singh drove continuously from 10:00 p.m. on  
12 August 29 until around 2:30 a.m. on August 30, when the accident occurred. *Id.* Plaintiff  
13 moves for sanctions due to the asserted spoliation of evidence and asks the Court to  
14 impose adverse jury instructions and a presumption that the destroyed evidence was  
15 harmful to Defendants. Dkt. 31 at 12.

16 Spoliation of evidence is the “destruction or significant alteration of evidence, or  
17 the failure to preserve property for another’s use as evidence, in pending or future  
18 litigation.” *Kearney v. Foley & Lardner, LLP*, 590 F.3d 638, 649 (9th Cir. 2009)  
19 (quotation omitted). “A district court’s adverse inference sanction should be carefully  
20 fashioned to deny the wrongdoer the fruits of its misconduct yet not interfere with that  
21 party’s right to produce other relevant evidence.” *In re Oracle Corp. Securities Litig.*,  
22 627 F.3d 376, 386–87 (9th Cir. 2010).

1 First, in regard to Plaintiff's spoliation arguments about Singh's August 28 and  
2 August 29 logbooks, the Court disagrees that an adverse instruction is necessary here.  
3 Defendants may have been wrongful in destroying the logbooks six months after the  
4 accident, and the logs should have likely been retained because of the foreseeability of  
5 litigation. However, the records sought have been produced through a reliable third  
6 party—WSP. Plaintiff has not been prejudiced by Defendants' actions.

7 Second, the Court disagrees that Defendants engaged in spoliation through Singh's  
8 failure to start a log on August 30. Spoliation is the destruction or alteration of evidence  
9 or the failure to preserve evidence—Defendants could not have destroyed, altered, or  
10 failed to preserve evidence that never existed. Singh's failure to create or finalize his logs  
11 for the complained of dates may be in violation of federal regulations as Plaintiff argues,  
12 but his actions (or lack thereof) do not amount to spoliation of evidence.

13 Plaintiff argues that a log for August 30, 2017 must have existed because Singh  
14 began driving again following the accident. He asserts that "it is therefore reasonable to  
15 conclude that his record of duty status logs were produced to Defendants given that  
16 [Singh] was required by WSP to produce a completed record of duty status logs for the  
17 week of the collision in order to be reinstated." Dkt. 42 at 6. This argument is speculative,  
18 and Defendants have averred that no record for August 30 ever existed.

19 Plaintiff has the logbooks for the complained of dates which exist. Plaintiff's  
20 motion for sanctions, Dkt. 31, is therefore DENIED.

1 **B. Motion to Exclude**

2 Plaintiff additionally moves to exclude any evidence pertaining to Ms.  
3 Shackelford's toxicology report and any evidence related to her alleged intoxication  
4 pursuant to Federal Rule of Evidence 403. Dkt. 33.

5 Plaintiff argues that that Ms. Shackelford's toxicology report is unreliable for two  
6 reasons. First, he argues that the toxicology report is unreliable because the WSP forensic  
7 scientist, David Nguyen, who conducted the toxicology report had a history of  
8 performance errors. *Id.* at 3–8. Second, Plaintiff argues that the methods by which WSP  
9 tested Ms. Shackelford's samples are unreliable. *Id.* at 9–10. He asserts that the evidence  
10 he wishes to exclude is inflammatory, that the evidence's prejudice outweighs its  
11 probative value, and that any evidence related to Ms. Shackelford's intoxication should  
12 be excluded under Rule 403. *Id.* at 10–11.

13 Plaintiff's chemist and forensics expert, Suzanne C. Perry, states that the results of  
14 Ms. Shackelford's samples are unreliable on scientific grounds. *See* Dkt. 34, Ex. 6. Ms.  
15 Perry asserts that the degradation of the blood due to the separation in time between  
16 collection and testing and the poor handling of the sample renders the toxicology report  
17 unreliable. *See, e.g., id.* at 55. In response, Defendants argue that the blood sampling and  
18 WSP's toxicology test report is reliable. Dkt. 35 at 2–7. Dr. Frank Vincenzi, Ph.D., rebuts  
19 Ms. Perry's findings and opines that the methods performed by Nguyen and WSP are  
20 reliable. *See* Dkt. 37.

21 While Plaintiff moves to exclude the toxicology evidence pursuant to Rule 403,  
22 the question of methodology reliability is best viewed through Federal Rule of Evidence

1 702. The ultimate question that Plaintiff poses is whether the methods by which WSP  
2 tested Ms. Shackelford’s blood are reliable, and testimony by an expert witness, i.e., Ms.  
3 Perry and Dr. Vincenzi, is admissible under 702 if the testimony is the product of reliable  
4 principles and methods. Fed. R. Evid. 702(c).

5 Rule 702 “assign[s] to the trial judge the task of ensuring that an expert’s  
6 testimony both rests on a reliable foundation and is relevant to the task at hand.” *Daubert*  
7 *v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993). To perform this “gatekeeping  
8 role,” the district court engages in a two-step inquiry: first, the court must determine  
9 whether the proffered evidence is reliable, i.e., whether the expert’s testimony reflects  
10 “scientific knowledge,” the findings are “derived by the scientific method,” and the work  
11 product amounts to “good science.” *Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311,  
12 1315 (9th Cir. 1995) (quoting *Daubert*, 509 U.S. at 590, 593). Second, the court must  
13 determine whether the testimony is relevant, i.e., “that it logically advances a material  
14 aspect of the proposing party’s case.” *Id.* The proponent of expert testimony bears the  
15 burden of establishing admissibility by a preponderance of the evidence. *Daubert*, 509  
16 U.S. at 592 n.10 (citing *Bourjaily v. United States*, 483 U.S. 171, 175–76 (1987)).

17 Therefore, before the Court can rule on the admissibility or exclusion of the  
18 toxicology report, it must first determine whether the methods by which WSP tested the  
19 samples are reliable through conducting a *Daubert* hearing. The Court reserves ruling on  
20 Plaintiff’s motion to exclude, Dkt. 33, pending the hearing.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

**III. ORDER**

Therefore, it is hereby **ORDERED** that Plaintiff's motion for sanctions, Dkt. 31, is **DENIED**.

It is hereby further **ORDERED** that the Court **RESERVES RULING** Plaintiff's motion to exclude, Dkt. 33, pending the *Daubert* hearing. The hearing shall be set on **September 21, 2021 at 11:00 a.m.** via Zoom. The parties shall have an hour and a half to conduct direct examination, cross examination, and rebuttal of each expert. The Clerk shall renote Plaintiff's motion to exclude, Dkt. 33, on the Court's September 21, 2021 calendar.

Dated this 31st day of August, 2021.

  
BENJAMIN H. SETTLE  
United States District Judge