

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
VIRGINIA, ROANOKE DIVISION

Tommy James Graham, Jr. v. J. Artrip, Warden, et al.

Graham · No. 7:24-cv-00096 · Decided January 13, 2026

SUMMARY

The court denied Tommy James Graham, Jr.’s motion for sanctions alleging spoliation of evidence by defendants in his 42 U.S.C. § 1983 action. The court held that Graham failed to show that defendants willfully altered or destroyed evidence, and that sanctions could not be imposed for failing to produce an incident report that the evidence indicated did not exist.

CASE DETAILS

COURT	United States District Court for the Western District of Virginia, Roanoke Division
WRITING FOR THE COURT	Pamela Meade Sargent
JURISDICTION	United States District Court for the Western District of Virginia, Roanoke Division
DECIDED	January 13, 2026
DOCKET	7:24-cv-00096
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff in a 42 U.S.C. § 1983 prisoner civil-rights action moved for sanctions based on alleged spoliation of evidence. The district court denied the motion.
STANDARD OF REVIEW	The court applied the Rule 37 spoliation-sanctions standard, requiring a showing of fault and, for the alleged destruction or alteration, knowledge of the evidence's relevance and willful conduct resulting in its loss or destruction.
PRECEDENTIAL VALUE	unpublished district court memorandum order
PARTIES	Tommy James Graham, Jr. v. J. Artrip, Warden, et al.

TOPICS

- sanctions
- discovery dispute
- evidence
- civil procedure

PRACTICE AREAS

civil rights

civil procedure

discovery

QUESTIONS PRESENTED

1. Whether defendants should be sanctioned under Federal Rule of Civil Procedure 37 for allegedly altering an incident report by omitting an officer's name.
2. Whether defendants should be sanctioned for failing to produce an incident report allegedly prepared by the officer.

HOLDINGS

1. Spoliation sanctions are not warranted where the movant fails to show that the alleged alteration resulted from willful conduct undertaken with knowledge that the evidence was relevant to anticipated litigation; a possible clerical omission and conclusory allegations are insufficient.
2. A court cannot compel production or impose discovery sanctions for failure to produce evidence that does not exist, and speculation that the evidence once existed is insufficient to support spoliation sanctions.

KEY QUOTATIONS

“Motions for sanctions regarding discovery issues are governed by Rule 37 of the Federal Rules of Civil Procedure and require courts to “find some degree of fault.”” (at 1)

“To prevail on a spoliation claim, the moving party must demonstrate that “the alleged destroyer must have known that the evidence was relevant to some issue in the anticipated case, and thereafter willfully engaged in conduct resulting in the evidence’s loss or destruction.”” (at 1)

“Because a spoliation claim must involve more than the “negligent loss or destruction of evidence,” Graham has not shown that the defendants acted with the requisite knowledge to prevail on this issue.” (at 2)

“Therefore, based on the foregoing, it is hereby ORDERED that Graham’s Motion For Spoliation Sanctions, (Docket Item No. 94), is DENIED.” (at 3)

FACTUAL BACKGROUND

Graham alleged that defendants altered an incident report concerning an October 5, 2023 incident by omitting Officer Schlobohm's name in an effort to conceal an adverse statement. He also alleged that defendants failed to produce an incident report prepared by Schlobohm. Defendants supplied Schlobohm's affidavit stating that she did not prepare an incident report regarding the incident, and Graham offered no evidence that the report ever existed or that defendants willfully altered or destroyed evidence.

PROCEDURAL HISTORY

Graham filed a motion for spoliation sanctions under Federal Rule of Civil Procedure 37, arguing that defendants altered an incident report by omitting an officer's name and failed to produce an incident report allegedly prepared by that officer. Defendants responded with the officer's affidavit stating that she had not

prepared an incident report concerning the incident. The court denied the motion because Graham did not establish intentional alteration, a duty-related spoliation basis, or that the allegedly missing report ever existed.

DISPOSITION

other

CASES CITED

- Silvestri v. General Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001)
- Snell v. Reid, Nos. 22-1869, 22-2258, 2024 WL 2815061, at *2 (4th Cir. June 3, 2024)
- Turner v. United States, 736 F.3d 274, 282 (4th Cir. 2013)
- Vodusek v. Bayliner Marine Corp., 71 F.3d 148, 156 (4th Cir. 1995)
- Johns v. Gwinn, 503 F. Supp. 3d 452, 474 (W.D. Va. 2020)
- In re Ethicon, Inc. Pelvic Repair Systems Product Liability Litigation, 299 F.R.D. 502, 523 (S.D. W. Va. 2014)

OPINION

Graham

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT TEN AT HARRISONBURG. □

FOR THE WESTERN DISTRICT OF VIRGINIA □□□□

ROANOKE DIVISION Tanuary 15, 2026

LAURA A. AUSTIN, CL

TOMMY JAMES GRAHAM, JR., BY: 8/0. Vasque: Plaintiff, DEPUTY CLERK Case No. 7:24-cv-00096 J. ARTRIP, Warden, et al., Defendants.

MEMORANDUM ORDER

Tommy James Graham, Jr., (“Graham”), the pro se prisoner plaintiff in this civil rights case filed under 42 U.S.C. § 1983, has filed a motion for sanctions based on alleged spoliation of evidence by the defendants. (Docket Item No. 94.) Motions for sanctions regarding discovery issues are governed by Rule 37 of the Federal Rules of Civil Procedure and require courts to “find some degree of fault.” Silvestri v. Gen. Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001). “Spoliation refers to the destruction or material alteration of evidence or to the failure to preserve property for another’s use as evidence in pending or reasonably foreseeable litigation.” Si/vestri, 271 F.3d at 590. The party seeking sanctions under a spoliation theory ““must establish, inter alia, that the alleged spoliator had a duty to preserve material evidence.”” Snell v. Reid, No. 22-1869, No. 22-2258, 2024 WL 2815061, at *2 (4th Cir. June 3, 2024) (quoting Turner v. United States, 736 F.3d 274, 282 (4th Cir. 2013)). To prevail on a spoliation claim, the moving party must demonstrate that “the alleged destroyer must have known that the evidence was relevant to some issue in the anticipated case, and thereafter willfully engaged in conduct resulting in the evidence’s loss or

destruction.” Turner, 736 F.3d at 282 (citing *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 156 (4th Cir. 1995)). Graham first complains that the incident report the defendants produced was altered in bad faith. Specifically, he claims that Officer Schlobohm’s name was omitted from the report despite her involvement in the October 5, 2023, incident, offering the conclusory allegation that “[t]his was done in an attempt to hide in bad faith an adverse statement from one of the officers involved.” (Docket Item No. 94 at 1-2.) However, Graham fails to demonstrate that the defendants willfully engaged in conduct that altered the report to exclude Schlobohm’s name, particularly where such omission could have been a mere clerical error. Because a spoliation claim must involve more than the “negligent loss or destruction of evidence,” Turner, 736 F.3d at 282, Graham has not shown that the defendants acted with the requisite knowledge to prevail on this issue. See *Johns v. Gwinn*, 503 F. Supp. 3d 452, 474 (W.D. Va. 2020) (requiring that to impose sanctions for spoliation of evidence, courts must find that “the spoliator acted with an intent to deprive the moving party of the evidence for use in litigation”). Graham further argues that the defendants did not produce an incident report prepared by Schlobohm. However, in response, the defendants provided an Affidavit of Schlobohm, in which she indicates that she did not prepare an incident report regarding the October 5, 2023, incident. (Docket Item No. 98-1) (Affidavit of M. Schlobohm). Inherent in the discovery rules under the Federal Rules of Civil Procedure, a party can only produce evidence within its “possession, custody, or control.” FED. R. CIV. P. 34(a)(1). Therefore, the court cannot compel production or impose sanctions for failure to produce evidence which does not exist. To the extent that Graham argues that the incident report did once exist but was later destroyed, he offers no evidence to support his theory, and mere speculation is insufficient to warrant sanctions. See e.g., *In re Ethicon, Inc. Pelvic Repair Sys. Prod. Liab. Litig.*, 299 F.R.D. 502, 523 (S.D. W. Va. Feb. 4, 2014) (determining that “speculative or generalized assertions . . . are insufficient” for the party seeking sanctions to prevail on a spoliation claim). Therefore, based on the foregoing, it is hereby ORDERED that Graham’s Motion For Spoliation Sanctions, (Docket Item No. 94), is DENIED. Copies of this Order will be provided to all counsel of record and unrepresented parties. ENTERED: January 12, 2026. /s/ Pamela Meade Sargent
UNITED STATES MAGISTRATE JUDGE