

# **Exhibit 16**

## CAUSE NO. CC-20-01579-E

WILLIAM GOFF as Personal Representative of BETTY JO MCCLAIN	§	IN THE COUNTY COURT
THOMAS, deceased; CHRISTOPHER THOMAS, as Guardian of CHARLES THOMAS; CINDY RINGNESS; CHERYL GOFF; and CHARLOTTE GLOVER,	§	CC - 20 - 01579 - E ORDER ORDER - 2572085
Plaintiffs,	§	
v.	§	AT LAW NO. 5
ROY JAMES HOLDEN, JR.; and CHARTER COMMUNICATIONS, LLC,	§	
Defendants.	§	DALLAS COUNTY, TEXAS

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**ORDER GRANTING PLAINTIFFS' MOTION FOR SPOLIATION JURY INSTRUCTION AND SANCTIONS**

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On the 6th day of June, 2022, Plaintiffs' Motion for Spoliation Jury Instruction and Sanctions against Charter Communications, LLC ("Charter").

After considering Motion, Response, Reply, arguments of counsel, and evidence presented, the Court finds the following:

1. Charter had a duty to preserve its video surveillance footage of the Spectrum parking lot for the 24-hour period of December 12, 2019. Its duty arose on December 13, 2019, the date that the Irving Police Department contacted Charter regarding Roy Holden's suspected involvement in the murder of Betty Thomas. On December 13, 2019, Charter's local investigator

advised its Senior Vice President of Corporate Security that he would pull the December 12, 2019 video and preserve anything of value.

2. On December 18, 2019, the Irving Police Department served and emailed Charter a search warrant for its surveillance and tracking information pertaining to Roy Holden, including any video surveillance footage on December 12, 2019.

3. On December 23, 2019, Plaintiffs' counsel sent Charter a preservation letter putting Charter on notice of potential litigation and its obligation to preserve documents and information, including any videos relating to the incident. Charter received the letter no later than December 26, 2019.

4. Also on December 26, 2019, a member of Charter's Legal Response Operations Center requested that the local investigator provide any surveillance footage of Roy Holden on December 12, 2019 for the search warrant.

5. Charter has a retention policy that purges and deletes video surveillance from its system 30-31 days after the footage is recorded. The evidence shows that Charter employees and officers were aware of this policy and knew that it should be suspended in the event of a legal demand or litigation hold.

6. Charter knew that the video surveillance footage was relevant to the law enforcement investigation and potential litigation and knew that it would be deleted no later than January 12, 2020 if not saved.

7. Charter allowed all but eight minutes of the footage to be purged from Charter's video surveillance system on or about January 12, 2020.

8. On January 30, 2020, Charter provided the eight minutes of video surveillance footage to the Irving Police Department and an incomplete badge swipe history report that did not indicate to police that Roy Holden entered and exited the Spectrum lot on several occasions the day of Ms. Thomas's murder. It did not tell the Irving Police Department that the remaining video surveillance footage was purged after it received the search warrant. Charter's investigator and its attorney represented to the Irving Police Department that they confirmed no one was with Roy Holden on the day of the murder.

9. Charter's investigator testified in his deposition that he took no steps to preserve the video surveillance footage and that he only reviewed about three hours of the footage before allowing it to be deleted. He also admitted that he did not know if anyone was with Roy Holden because he did not review all of the footage.

10. Charter breached its duty to preserve the video surveillance footage, which constitutes spoliation of evidence.

11. Charter's spoliation of the video surveillance footage was intentional under *Brookshire Bros., Ltd. v. Aldridge*, 438 S.W.3d 9, 24 and n.17 (Tex. 2014) based on its willful blindness. Charter had exclusive control of the video surveillance footage and the system where it was located; Charter knew the footage had been expressly requested by evidentiary search warrant and preservation letter; Charter knew the footage would be deleted if not saved; but it nonetheless allowed for its destruction. *See id.*

12. Under *Aldridge*, Plaintiffs are not required to prove that they are prejudiced by Charter's intentional spoliation. 438 S.W.3d at 22 (quoting *Trevino v. Ortega*, 969 S.W.2d 950, 958 (Tex. 1998) (Baker, J., concurring)). However, the Court finds that the video surveillance footage was relevant to Plaintiffs' negligent supervision and monitoring claims and to Charter's defense of new and intervening cause. The evidence is not cumulative. Charter's intentional deletion of the evidence prejudices Plaintiffs' ability to carry their burden on these issues, warranting sanctions under Texas Rule of Civil Procedure 215.2.

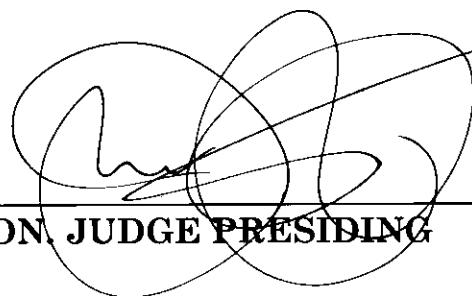
13. On May 6, 2022, this Court entered an order finding Charter in contempt for its refusal to comply with the May 7, 2021 compel order, including failure to produce video footage and badge swipe logs. Charter violated several discovery orders in this case and failed to timely and fully produce relevant

and discoverable evidence. Its conduct constitutes discovery abuse, warranting sanctions under Texas Rule of Civil Procedure 215.2. It is therefore,

**ORDERED**, that Plaintiffs' Motion for Spoliation Jury Instruction and Sanctions is GRANTED. It is further,

**ORDERED**, that the Court shall submit a spoliation presumption instruction to the jury with the language set forth in Exhibits A and B, attached to this Order.

SIGNED ON THIS, THE 7 DAY OF JUNE, 2022.

  
**HON. JUDGE PRESIDING**

## **EXHIBIT A**

**CAUSE NO. CC-20-01579-E**

WILLIAM GOFF as Personal Representative of BETTY JO MCCLAIN THOMAS, deceased; CHRISTOPHER THOMAS, as Guardian of CHARLES THOMAS; CINDY RINGNESS; CHERYL GOFF; and CHARLOTTE GLOVER, §  
Plaintiffs, §  
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ROY JAMES HOLDEN, JR.; and §  
CHARTER COMMUNICATIONS, LLC, §  
Defendants. §

IN THE COUNTY COURT  
AT LAW NO. 5  
DALLAS COUNTY, TEXAS

## **SPOLIATION JURY INSTRUCTION PHASE 1**

Charter Communications, LLC failed to preserve video surveillance footage of the parking lot where Roy Holden accessed a company van several times before and after the murder of Betty Jo Thomas on December 12, 2019. You must consider that this evidence would have been unfavorable to Charter Communications, LLC on the following issues:

- a) whether the negligence of Charter Communications, LLC proximately caused the death of Betty Jo Thomas; and
  - b) whether the death of Betty Jo Thomas resulted from gross negligence by Charter Communications, LLC<sup>1</sup>

<sup>1</sup> Texas Pattern Jury Charge 1.13.

## **EXHIBIT B**

**CAUSE NO. CC-20-01579-E**

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THOMAS, deceased; CHRISTOPHER THOMAS, as Guardian of CHARLES THOMAS; CINDY RINGNESS; CHERYL GOFF; and CHARLOTTE GLOVER,	§	
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Defendants.	§	DALLAS COUNTY, TEXAS

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**SPOLIATION JURY INSTRUCTION  
PHASE 2**

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Charter Communications, LLC failed to preserve video surveillance footage of the parking lot where Roy Holden accessed a company van several times before and after the murder of Betty Jo Thomas on December 12, 2019. You must consider that this evidence would have been unfavorable to Charter Communications, LLC on the following issues:

1. The nature of the wrong;
2. The character of the conduct involved;
3. The degree of culpability of the wrongdoer;
4. The situation and sensibilities of the parties concerned; and

5. The extent to which such conduct offends a public sense of justice and propriety.<sup>1</sup>

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<sup>1</sup> Texas Pattern Jury Charge 1.13.