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IN THIS ISSUE

This article provides an overview of recent case decisions regarding cell phone data evidence.

Scrolling, Streaming, and Liability: The Hidden Evidence Inside Smartphones

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Civil litigators have long understood the value of cell phone evidence. A call log, text message, or location ping can make or break a disputed timeline. But the next wave of phone data disputes is more complicated. The question is no longer simply whether someone was talking or texting. It is whether the phone can show application usage, streaming activity, navigation interaction, social media access, encrypted messaging, background data, or other digital behavior that may bear on liability, credibility, or damages.

This shift matters because modern phone use is not always obvious from traditional records. A wireless carrier may show calls, texts, and some data activity, but it may not reveal whether a driver was actively manipulating Waze, skipping a song on Spotify, watching a YouTube video, checking an email, scrolling on social media, or merely listening to an app running passively through the speakers in their car. As a result, courts are increasingly being asked to decide how far civil discovery may go into a smartphone—and, if the data is obtained, what foundation is needed before it reaches a jury.

The emerging trend is court recognition that application and phone-use data may be highly relevant, especially in accident litigation, but simultaneous wariness of turning every civil case into a forensic excavation of a party's private digital life.

A good starting point is *Jennings v. Smiley*,[1] decided by the Indiana Supreme Court in 2025. This case arose from a pedestrian-vehicle accident. The plaintiff sought forensic inspection of the defendant driver's iPhone to determine whether she was using the device around the time of the crash. Importantly, the plaintiff had already subpoenaed the defendant driver's Verizon records, which showed no phone use at the time of the accident, and the subsequent request for forensic inspection of the phone was not limited to calls or texts. The dissent emphasized that the driver had admitted to using a navigation application and that Verizon records did not capture other phone activity, such as Waze, email, or social media use. The majority, however, affirmed denial of the motion to compel, concluding that the plaintiff failed to show that the benefit of producing the iPhone outweighed the driver's privacy interest. Because the plaintiff could not produce some evidence of the phone use at the time of the accident, there was no sufficient justification for such a broad and intrusive request.

Jennings illustrates the core problem with app-use evidence. On one hand, app data may be exactly what the case needs. A driver may not have texted or called anyone but still may have been distracted by entering directions, identifying road hazards, adjusting navigation settings, checking social media, or manipulating a streaming app. On the other hand, a request for "data reflecting utilization" of a phone can sweep broadly unless it is tied to a specific time, application,

or theory of distraction. The dissent captures the plaintiff's argument well: Waze data could show whether the driver was merely receiving directions or actively engaging with the app by inputting directions, identifying hazards, adjusting volume, or otherwise interacting with it.

That distinction is likely to drive future admissibility fights. Evidence that Spotify, Apple Music, or a podcast app was open may not prove distraction. It may show passive playback. But evidence that a driver unlocked the phone, searched for a video, changed a playlist, opened TikTok, or typed into a navigation app seconds before impact is different. The evidence has a stronger relevance argument because it connects the phone activity to manual, visual, or cognitive distraction. But at what point does that relevance outweigh the privacy interests a person has in such intimate phone data?

Recent trucking and auto-accident cases show the same narrowing trend at the discovery stage. In *In re Roth Products of Texas, Inc. and Gregory Vaught*,[2] a 2026 Texas Court of Appeals decision, the plaintiffs alleged that an 18-wheeler driver's inattention and cellphone use contributed to a collision with a sheriff's patrol car. The plaintiffs subpoenaed Verizon for the driver's records. The trial court narrowed the subpoena to a 25-hour period—24 hours before the accident and one hour after the accident—and created a protocol for redacting confidential or irrelevant information. The appellate court denied mandamus relief, emphasizing both the limited target—transactional information for one phone—and the presence of procedural safeguards.

Roth Products is useful because it suggests that courts may tolerate a broader time window when the request is limited to phone records and paired with privacy protections. But it does not mean everyone on the phone is fair game. The court's analysis still turned on tailoring, safeguards, and whether the requested data was proportionate to the distracted-driving theory.

By contrast, *Henderson v. State Farm Mutual Automobile Insurance Co.*,[3] a 2025 Michigan Court of Appeals decision, shows the limits of speculation. There, a pedestrian was struck by a truck, and the plaintiffs sought the driver's emails, text messages, social media activity, and cell phone records. The employer agreed to provide Verizon phone records, but the trial court denied the broader request for emails, texts, and social media as overbroad and a fishing expedition. The appellate court affirmed, noting that the record did not support the notion that the driver used his phone while driving, made calls at the time, or sent work-related correspondence until after the accident.

Together, *Jennings*, *Roth Products*, and *Henderson* suggest a practical rule for civil litigators: phone-use discovery is strongest when the request identifies a specific evidentiary target. "The driver may have been distracted, so produce everything" is a weak argument. "Produce phone records, app-use logs, screen-activity data for a defined window around the collision

because other evidence suggests phone interaction" is much stronger.

Spoliation is the other major trend. Phone data is easy to lose, especially when parties use encrypted messaging, disappearing messages, auto-delete settings, or replace the device. In *Pable v. Chicago Transit Authority*,[4] the Seventh Circuit affirmed dismissal and monetary sanctions after discovery misconduct involving Signal messages and forensic imaging of a phone. The plaintiff used Signal, an encrypted messaging application, to communicate with a supervisor, gave inconsistent explanations for deleted messages, later enabled disappearing messages, and produced an incomplete phone image that omitted third-party messages and other key data. The court affirmed dismissal under Rule 37(e), treating the deletion and discovery conduct as serious enough to end the case.

Safelite Group, Inc. v. Lockridge,[5] decided by an Ohio District Court in 2024, shows that even less culpable conduct can matter. There, a party failed to preserve text messages because his phone was set to auto-delete text messages after 30 days. The court found negligence, not intent, but still imposed Rule 37(e)(1) sanctions, allowed evidence and argument about the failure to preserve, and awarded fees and costs. The lesson is straightforward: once litigation is reasonably foreseeable, parties and counsel must think specifically about mobile data, not just documents and emails.

For civil litigators, the practical takeaway is that specific phone data is becoming both more valuable and more contested. App usage, streaming activity, navigation data, encrypted messages, and metadata may all be discoverable, but courts are demanding precision. The requesting party should identify the data sought, the relevant time window, the reason the data matters, and safeguards for privacy. The producing party should preserve mobile data early, disable auto-delete functions, and avoid vague assurances about incomplete forensic collections.

The phone may be a powerful witness. But in civil litigation, courts are making clear that lawyers still have to ask the right questions, preserve the right data, and explain exactly what the digital evidence proves.

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[1] *Jennings v. Smiley*, 249 N.E.3d 1071 (Ind. 2025).

[2] *In re Roth Prods. of Tex., Inc. and Gregory Vaught*, No. 07-25-00391-CV, 2026 Tex. App. LEXIS 1207, 2026 WL 362626 (Tex. Ct. App. Feb. 9, 2026).

[3] *Henderson v. State Farm Mut. Auto. Ins. Co.*, No. 374578, 2025 Mich. App. LEXIS 10022, 2025 WL 3625626 (Mich. Ct. App. Dec. 12, 2025).

[4] *Pable v. Chi. Transit Auth.*, 145 F.4th 712 (7th Cir. 2025).

[5] *Safelite Grp., Inc. v. Lockridge*, No. 2:21-cv-4558, 2024 U.S. Dist. LEXIS 177313, 2024 WL 4343038 (S.D. Ohio Sept. 30, 2024).

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