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Web networking photos come back to bite defendants



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Sat Jul 19, 8:22 AM ET

Two weeks after Joshua Lipton was charged in a drunken driving crash that seriously injured a woman, the 20-year-old college junior attended a Halloween party dressed as a prisoner. Pictures from the party showed him in a black-and-white striped shirt and an orange jumpsuit labeled "Jail Bird."

In the age of the Internet, it might not be hard to guess what happened to those pictures: Someone posted them on the social networking site Facebook. And that offered remarkable evidence for Jay Sullivan, the prosecutor handling Lipton's drunken-driving case.

Sullivan used the pictures to paint Lipton as an unrepentant partier who lived it up while his victim recovered in the hospital. A judge agreed, calling the pictures depraved when sentencing Lipton to two years in prison.

Online hangouts like Facebook and MySpace have offered crime-solving help to detectives and become a resource for employers vetting job applicants. Now the sites are proving fruitful for prosecutors, who have used damaging Internet photos of defendants to cast doubt on their character during sentencing hearings and argue for harsher punishment.

"Social networking sites are just another way that people say things or do things that come back and haunt them," said Phil Malone, director of the cyberlaw clinic at Harvard Law School's Berkman Center for Internet & Society. "The things that people say online or leave online are pretty permanent."

The pictures, when shown at sentencing, not only embarrass defendants but also can make it harder for them to convince a judge that they're remorseful or that their drunken behavior was an aberration. (Of course, the sites are also valuable for defense lawyers looking to dig up dirt to undercut the credibility of a star prosecution witness.)

Prosecutors do not appear to be scouring networking sites while preparing for every sentencing, even though telling photos of criminal defendants are sometimes available in plain sight and accessible under a person's real name. But in cases where they've had reason to suspect incriminating pictures online, or have been tipped off to a particular person's MySpace or Facebook page, the sites have yielded critical character evidence.

"It's not possible to do it in every case," said Darryl Perlin, a senior prosecutor in Santa Barbara County, Calif. "But certain

cases, it does become relevant."

Perlin said he was willing to recommend probation for Lara Buys for a 2006 drunken driving crash that killed her passenger — until he thought to check her MySpace page while preparing for sentencing.

The page featured photos of Buys — taken after the crash but before sentencing — holding a glass of wine as well as joking comments about drinking. Perlin used the photos to argue for a jail sentence instead of probation, and Buys, then 22, got two years in prison.

"Pending sentencing, you should be going to (Alcoholics Anonymous), you should be in therapy, you should be in a program to learn to deal with drinking and driving," Perlin said. "She was doing nothing other than having a good old time."

Santa Barbara defense lawyer Steve Balash said the day he met his client Jessica Binkerd, a recent college graduate charged with a fatal drunken driving crash, he asked if she had a MySpace page. When she said yes, he told her to take it down because he figured it might have pictures that cast her in a bad light.

But she didn't remove the page. And right before Binkerd was sentenced in January 2007, the attorney said he was "blindsided" by a presentencing report from prosecutors that featured photos posted on MySpace after the crash.

One showed Binkerd holding a beer bottle. Others had her wearing a shirt advertising tequila and a belt bearing plastic shot glasses.

Binkerd wasn't doing anything illegal, but Balash said the photos hurt her anyway. She was given more than five years in prison, though the sentence was later shortened for unrelated reasons.

"When you take those pictures like that, it's a hell of an impact," he said.

Rhode Island prosecutors say Lipton was drunk and speeding near his school, Bryant University in Smithfield, in October 2006 when he triggered a three-car collision that left 20-year-old Jade Combies hospitalized for weeks.

Sullivan, the prosecutor, said another victim of the crash gave him copies of photographs from Lipton's Facebook page that were posted after the collision. Sullivan assembled the pictures — which were posted by someone else but accessible on Lipton's page — into a PowerPoint presentation at sentencing.

One image shows a smiling Lipton at the Halloween party, clutching cans of the energy drink Red Bull with his arm draped around a young woman in a sorority T-shirt. Above it, Sullivan rhetorically wrote, "Remorseful?"

Superior Court Judge Daniel Procaccini said the prosecutor's slide show influenced his decision to sentence Lipton.

"I did feel that gave me some indication of how that young man was feeling a short time after a near-fatal accident, that he thought it was appropriate to joke and mock about the possibility of going to prison," the judge said in an interview.

Kevin Bristow, Lipton's attorney, said the photos didn't accurately reflect his client's character or level of remorse, and made it more likely he'd get prison over probation.

"The pictures showed a kid who didn't know what to do two weeks after this accident," Bristow said, adding that Lipton wrote apologetic letters to the victim and her family and was so upset that he left college. "He didn't know how to react."

Still, he uses the incident as an example to his own teenage children to watch what they post online.

"If it shows up under your name you own it," he said, "and you better understand that people look for that stuff."

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