

North Carolina Criminal Law

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Authentication of Digital Communications Chart

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A common evidence question that arises is how to properly authenticate digital communications. We have written on the topic in several blogs: **How Can a Party Show Authorship of a Social Media Post or Other Electronic Communication?**, **Authenticating Photographs Obtained from Social Media Platforms, Business Records: Posts, Chats, and Texts, New Guidance on Authenticating Social Media, Admissibility of Electronic Writings: Emails, Text Messages, and Social Networking Posts**, and more.

Last year, I created a **chart** to highlight the ingredients of authentication our appellate courts found to be adequate or inadequate as a foundation for surveillance video (*also see* the accompanying blog, **Surveillance Video- When It Comes In and When It Doesn't**). I've received positive feedback on the chart and practitioners have asked for more evidence content in this format. For a second installment, I chose digital communications.

The **chart** focuses almost exclusively on North Carolina appellate law and emphasizes the key details, often circumstantial in nature, that the courts relied on in deciding whether the foundation was adequate or inadequate. Attentive readers may note that in virtually all the published cases, North Carolina courts held that the foundation was adequate. The exceptions where the courts deemed the foundation inadequate occurred where the proponent of the digital evidence made little to no attempt to lay a foundation. One might justifiably conclude that our courts are becoming more lax in admitting digital evidence as social media and cell phone communications become more and more ubiquitous.

However, questions remain as to the precise quantum of evidence necessary to successfully lay the foundation for a digital communication. I introduce a mnemonic device in the chart, "SANDVAT," as a shorthand for the various categories of circumstantial evidence commonly relied upon by the proponent of a given piece of digital evidence. This refers to Substance, Account, Name, Device,

Visuals, Address, and Timing (explained further in the chart). In published cases where the foundation was deemed adequate, the proponent generally relied on multiple categories of circumstantial evidence which together made a persuasive case for authenticity. Had the moving party attempted a foundation, but laid one that was shakier, would the digital evidence have properly been admitted?

There is no precise formula nor number of ingredients for a proper foundation. The inquiry is fact-determinative and hinges on whether the proponent has made a sufficient showing such that a reasonable finder of fact could conclude that the matter is what the proponent claims it to be. *See* Rule 901(a); *State v. Wiggins*, 334 N.C. 18 (1993). Our Courts have explained that this “burden to authenticate... is not high—only a prima facie showing is required.” *See State v. Ford*, 245 N.C. App. 510 (2016). Hopefully, this chart with concrete examples will be of use in determining how high the burden is in practice.

The chart can be found [**here**](#).