

Admitting Evidence in District Court



Daniel Spiegel, UNC School of Government
Spring Public Defender Conference, May 2026

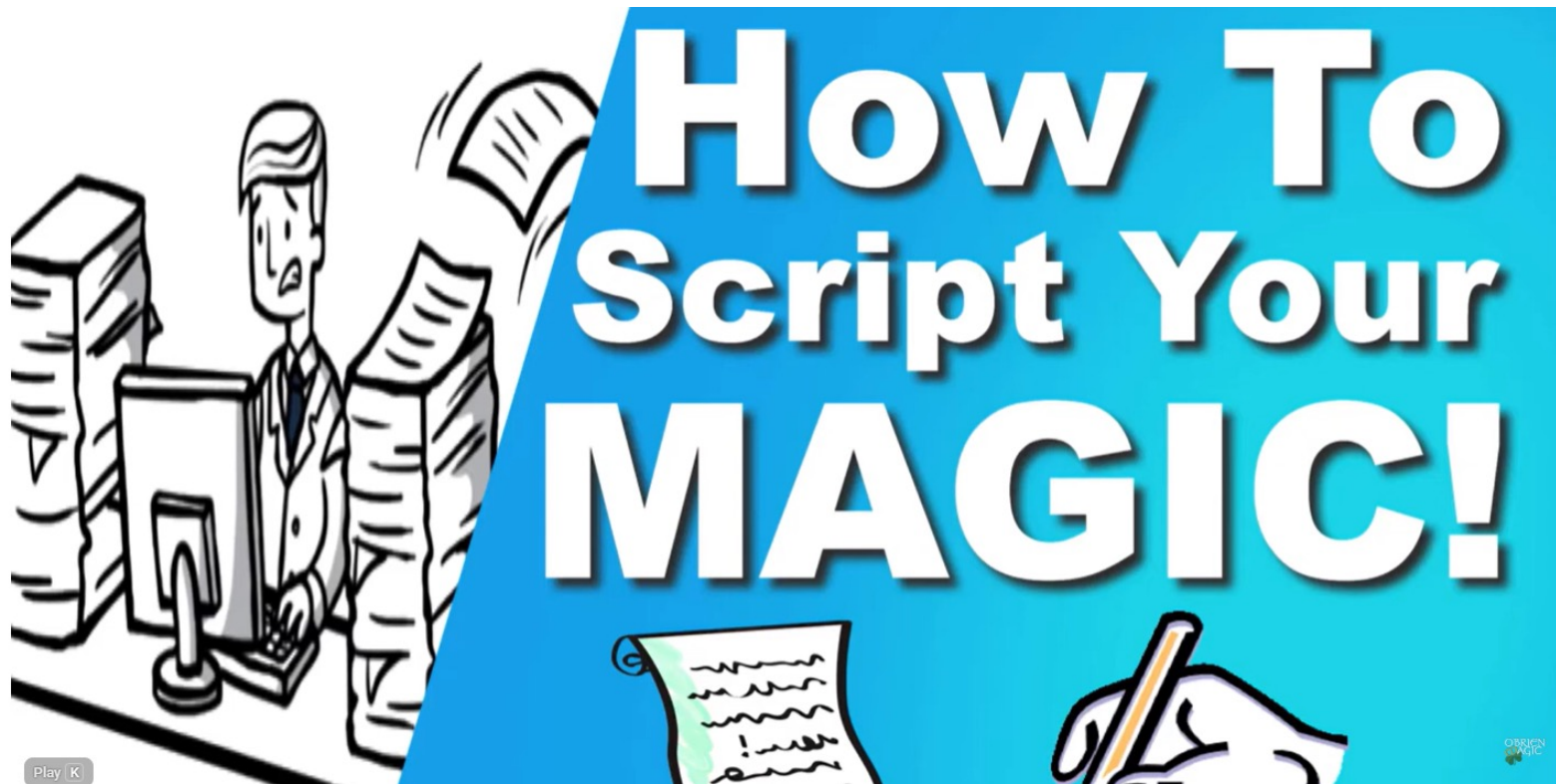
Evidence Resources

Good Resources as you begin your career:

- Thomas Mauet- **Trial Techniques**
- Shea Denning- **Magic Questions** (Evidence Foundations) – in your materials
- Jeff Welty- Orange Brochure – “**Evidence Foundations for Prosecutors**”
- Go deeper: Various treatises



Magic Questions



Getting Your Evidence In

1. **Mark** exhibit for ID
2. **Show** exhibit to **Opposing Counsel**
3. **“May I Approach the Witness?”**
4. **Lay Foundation** through questions
5. **“Your honor, I move to admit Defense Exhibit #1 into evidence.”**

“Mark SAFE” (Mark, Show, Approach, Foundation, Enter)

Practice in front of friends and colleagues! Visualize in your head!



Magic Questions

- No need to memorize!
- Use a book or script- manual, evidence book
- (Most?) judges don't mind!
- Any different for jury?
- Magic Questions- simple script of questions for:
 - **Business records**
 - **Video evidence**
 - **Photos**
 - **Diagrams**
 - **Fungible and Non-fungible Physical Evidence**
 - (What does "fungible" mean?)



Magic Questions: Example

Documentary Evidence

1. Are you familiar with Exhibit "A" (business records) for identification?
2. Can you identify these documents?
3. Were these documents prepared in the ordinary scope or course of the business of your company?
4. Who prepares these documents or how are they prepared?
5. Are these documents made at or near the time the events occurred?
6. Is it a regular part of your business to keep and maintain records of this type?
7. Are these documents of the type that would be kept under your custody or control?



Impeachment with Prior Conviction- Rule 609

- Magic Questions- which are correct?
- “What if any crimes punishable by 60 days or more have you been convicted of in the past 10 years?”
- “Other than Class 3 misdemeanors, what if any crimes have you been convicted of in the past 10 years?”
- “Weren’t you convicted of felony larceny in 2019?”
- Can also ask about sentence received, time and place of conviction



How to Begin

- How to begin with most exhibits:
- Do you recognize this?
- What is it?
- How do you recognize it?
- What if witness doesn't recognize the item?
- Example:
 - Video disc
 - Preparation



Authentication Basics

- Authentication is identification
 - The proponent must show that “the [evidence] in question is what its proponent claims.” N.C. R. Evid. 901
- Authentication is “a special aspect of relevancy”
 - Adv. Comm. Note, N.C. R. Evid. 901(a)
- Authentication is a low hurdle
 - State v. Ford, 245 N.C. App. 510 (2016) (stating that the “burden to authenticate . . . is not high – only a prima facie showing is required”)
- Authentication often comes from:
 - Testimony of a “[w]itness with [k]nowledge,” Rule 901(b)(1)
 - The “distinctive characteristics” of the evidence or other “circumstances,” Rule 901(b)(4).



Two Step Authentication

- (1) Does the exhibit (screen capture, photo, video) accurately reflect the communication?
 - (2) Is there reason to believe that the purported author actually wrote the communication?
- “To authenticate [social media] evidence . . . there must be circumstantial or direct evidence sufficient to conclude a screenshot accurately represents the content on the website it is claimed to come from and to conclude the written statement was made by who is claimed to have written it.”
 - State v. Clemons, 274 N.C. App. 401 (2020).



Digital Communications Chart

North Carolina Criminal Law

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Authentication of Digital Communications Chart

April 24, 2025 [Daniel Spiegel](#)

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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?](#),

Authentication of Digital Communications Chart

ADEQUATE

Foundation for Digital Communication

***State v. Davenport*, No. COA24-330, __ N.C. App. __ (2025)**

In murder case, **Facebook messages (social media)** were properly authenticated where:

- A witness identified phone (**device**) found at the crime scene as decedent's
- Messages were found on the phone in a message thread under defendant's **name**
- A witness testified that the defendant did not have a phone and communicated with the witness and the decedent through Facebook Messenger app
- **Substance** of messages contained distinctive personal details such as name of decedent's son

INADEQUATE

Foundation for Digital Communication

***State v. Thompson*, 254 N.C. App. 220 (2017)**

In robbery case, Facebook messages allegedly sent between the defendant and victim referencing drug activity were properly excluded where:

- Defense attempted to use screenshot of messages as extrinsic evidence to impeach victim, but the subject of impeachment may have been collateral rather than material to the pending matter, and defense did not argue that it was material. See *State v. Hunt*, 324 N.C. 343 (1989) (extrinsic evidence of prior inconsistent statements may not be used to impeach a witness where the questions concern a collateral, rather than a material, matter)
- Defense did not attempt to lay a foundation for the text messages

Memory Tool: “SANDVAT”

- **“S” is for “Substance”** – how does the **substantive content of the digital evidence itself** tend to authenticate it?
 - Remember, this is appropriate under Rule 104(a)- for preliminary questions such as authenticity, the court is not bound by rules of evidence (except for privileges)
 - *Example:* the sender uses the name of a common child and refers to an unusual incident
- **“A” is for “Account”** – information about the account (login, properties, pieces of identifying information associated with profile)
- **“N” is for “Name”** – is there a name or “handle” associated with the social media account?
- **“D” is for “Device”** – who possessed the phone or computer? What can we learn from the hardware itself?

Memory Tool: “SANDVAT”

- **“V” is for “Visuals”** - what do the photos/videos show on the account?
- **“A” is for “Address”** – what can we learn from the IP address or physical address associated with the evidence?
- **“T” is for “Timing”**
 - When was the post made?
 - What is the overall chronology and how does that line up with events **IRL**?
(Example: D was released from prison in *Clemons* at a particular time and the messages started just after)
- **“SANDVAT”** – remember, this is just a memory tool (not a legal test), but it can be a helpful way to think about the paths to authenticate digital evidence- both for getting things in and keeping things out.

State v. Clemons, 274 N.C. App. 401 (2020)

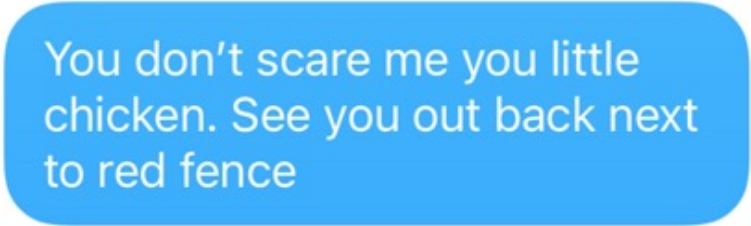
- V has a DVPO against D
- D is released from prison and their adult daughter picks him up
- Shortly thereafter:
 - V begins receiving multiple calls daily from an unknown number; the caller sometimes leaves messages referencing events from D and V's past
 - Comments appear on some of V's Facebook posts; they are made from V's daughter's account, but V testifies that her daughter never comments on her posts and wouldn't make comments of that kind
- V takes screenshots of the Facebook comments and gives them to the police, who charge D with violating the DVPO by contacting V

State v. Clemons, 274 N.C. App. 401 (2020)

- (1) “the screenshots must have accurately reflected [V’s] Facebook page. . . . Therefore, the screenshots must have been authenticated as photographs.”
- (2) “the screenshots of the Facebook comments are also statements—the State wanted the jury to use the screenshots to conclude [D] communicated with [V] in violation of the DVPO through the Facebook comments. . . . In light of this purpose, the Facebook comments also needed to be authenticated by evidence sufficient to support finding they were communications actually made by Defendant.”

Getting Digital Evidence In - Example

- Communicating Threats trial. Your client is accused of threatening to kill his neighbor.
- Your client brings in a piece of paper the morning of court and says it is a screenshot of a text the alleged victim sent him right after the incident. This is all that is on the paper:



You don't scare me you little chicken. See you out back next to red fence

3:32 PM

- Is the piece of paper admissible? If so, how might you get it in?

Getting Digital Evidence In - Example

- Stalking trial:
 - your client is on the stand testifying to his history with the complaining witness and explaining why he sent a series of text messages to the complaining witness
 - He adds, “**and she DMs me on Insta all the time!**” Your client holds up his phone to show the judge. This is the first you have heard of these messages.
- What would you do in this scenario?



Mechanics of Receiving Digital Evidence in District Court

- What happens when moving party tries to get in evidence directly off the physical phone?
- From General Rules of Practice for the Superior and District Courts:

Rule 14. Custody and Disposition of Evidence at Trial

Once any item of evidence has been introduced, the clerk (not the court reporter) is the official custodian thereof and is responsible for its safekeeping and availability for use as needed at all adjourned sessions of the court and for appeal.

After being marked for identification, all exhibits offered or admitted in evidence in any cause shall be placed in the custody of the clerk, unless otherwise ordered by the court.

- Should video evidence be burned onto a new disc? (Initials and date on copy)
- Using Printouts as exhibits

Surveillance Video



Authenticating Surveillance Video

- **Fair and Accurate** method (Illustrative)
 - Witness was present during the recorded events and can testify that the footage is a “fair and accurate” depiction of what occurred
 - Ex. Loss Prevention Officer was actually there and saw D steal items at the store
- **Silent Witness** method (Substantive)
 - No live witness
 - Footage has been retrieved and there is either a chain of custody for the footage or some other combination of factors that go to authenticity/reliability



State v. Jones

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Surveillance Video- When It Comes In and When It Doesn't

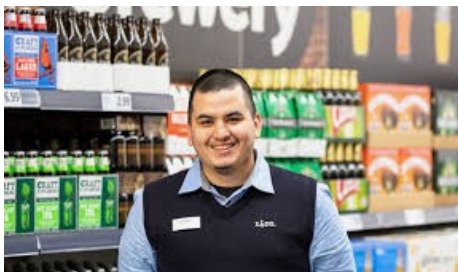
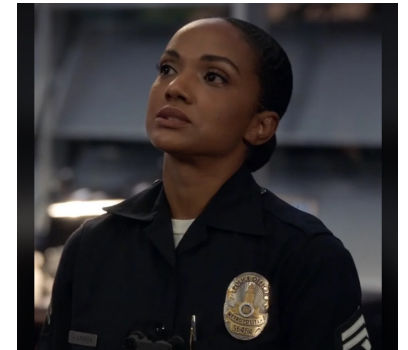
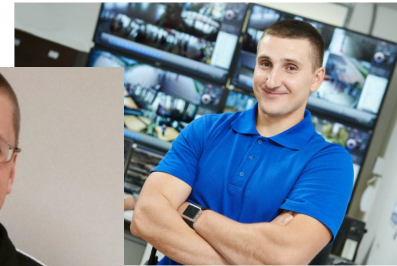
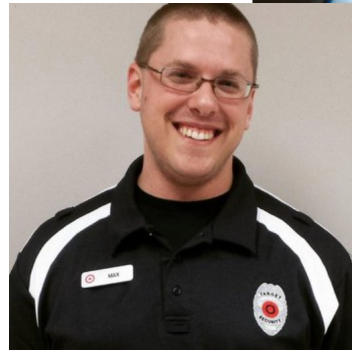
March 25, 2024 [Daniel Spiegel](#)

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Video evidence authentication has received a [fair amount of treatment](#) on this blog. The topic remains an area of practical significance given the prevalence of video evidence in criminal trials and how common it is for the prosecution's case to hinge on the admission of video. We are increasingly a [video-focused](#) society. Between home security cam, doorbell cam, body-worn cam, in-car cam, pole cam, and even [parking lot cam](#), juries increasingly expect to see video, whether the incident in question occurred outside a home, near a business, or on the roadside.

Surveillance Video- Common Authenticating Witnesses

- Loss Prevention Officer
- Store Clerk
- Store Manager
- Homeowner
- Law Enforcement Officer who extracted the video from the system (may or may not be specialist/expert)
- Investigating Officer (think *State v. Jones*)



State v. Jones

ADEQUATE

Foundation for Surveillance Video*

State v. Jones, 288 N.C. App. 175 (2023)

Officer testified that:

1. Video was same as footage she saw on night of incident;
2. Homeowner's description of events matched the video;
3. Surveillance system was working correctly "to [her] knowledge."

State v. Snead, 368 N.C. 811 (2016)

Loss prevention manager testified that:

1. He was familiar with recording equipment and it was in working order;
2. He viewed the footage on the recording equipment and video was same as the footage he viewed.

State v. Fleming, 247 N.C. App. 812 (2016)

Corporate investigator testified that:

1. He was familiar with the recording system, it was functioning properly, and he made a copy of footage;
2. Video was the same as footage he copied, unedited, and same as that created by system.

State v. Ross, 249 N.C. App. 672 (2016)

Store manager testified that:

1. Cameras were working properly because time and date stamps were accurate;

INADEQUATE

Foundation for Surveillance Video*

State v. Moore, 254 N.C. App. 544 (2017)

Officer testified that:

1. The day after the incident, since store manager was unable to make a copy of the footage, officer recorded footage on the store's equipment with his cell phone;
2. The video, which was a copy of the cell phone recording, accurately showed footage he had reviewed at the store.

Store clerk testified that the defendant was seen on video, but did not testify as to whether the video accurately depicted events he observed on day in question.

No testimony pertaining to type of recording equipment and whether it was in good working order/reliable.

State v. Mason, 144 N.C. App. 20 (2001)

Two store employees testified that surveillance system was in working order but were unfamiliar with maintenance, testing, or operation.

State v. Jones

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State v. Moore (continued)

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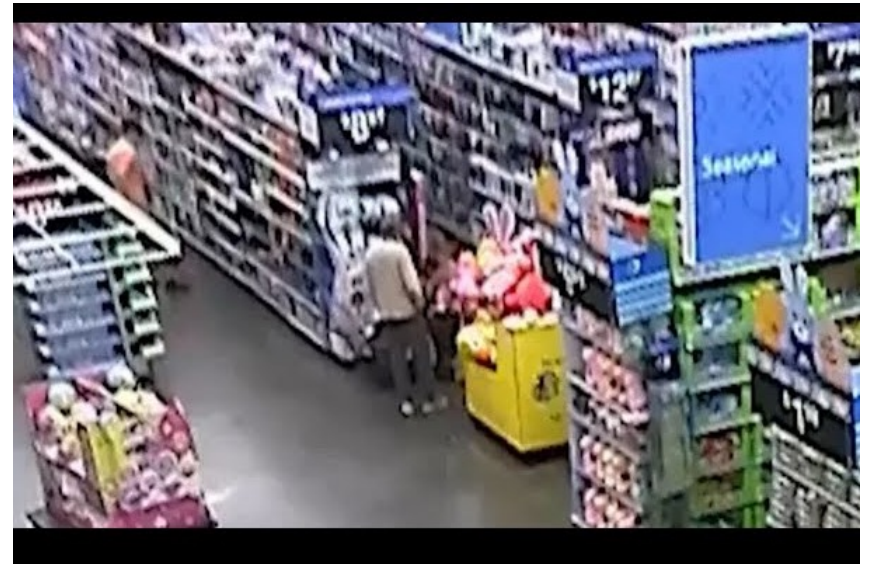
On the horizon- is video just a business record?

- **Surveillance Video** was introduced as a business record in *State v. Windseth*, __ N.C. App. __, No. COA24-718 (2025)
 - Affidavit submitted by Wells Fargo under 803(6)
- But video in *Windseth* was not objected to, and issue on appeal was more about stillshots taken from video
- *Windseth* relies on *State v. Jackson*, 229 N.C. App. 644 (2013) which addressed GPS records admitted as a business record.



Surveillance Video- Example

- Misdemeanor Larceny trial
- Loss Prevention Officer (LPO) from Walmart is present in court
 - The LPO retrieved the disc from where it was stored at the store
 - The LPO was not present during the incident
 - A previous LPO (who quit) was the one who burned the disc from the system
- Will you be able to keep this video out?



Bodycam

Defense wants to introduce
bodycam footage

Officer who was equipped
with camera left the police
department



Pretrial Motion to Determine Admissibility



Introducing Evidence on Cross



- Can this be done?
- Yes, but what are the implications?
- Will mean losing last argument (if plan was to present no evidence). See Rule 10 of General Rules of Practice for the Superior and District Courts.
- “[W]e believe the proper test as to whether an object has been put in evidence is whether a party has offered it as substantive evidence or so that the jury may examine it and determine whether it illustrates, corroborates, or impeaches the testimony of the witness.” *State v. Hall*, 57 N.C. App. 561 (1982).
- Cases:
 - *State v. Skipper*, 337 N.C. 1 (1994) (D impeached witness with photo, had to introduce it, lost last argument);
 - *State v. Macon*, 346 N.C. 109 (1997) (D caused witness to read interview notes to jury- lost last argument)

MALFUNCTION! What to do when things go wrong?

- Can you get a brief recess?
- Consult with colleague
- Phone a friend
- Pull book out
- Perhaps even a continuance?
 - Especially if things go wrong pretrial





Questions

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