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Authenticating digital communications

Proponent must show evidence is what proponent says it is.

Testimony of a knowledgeable

- witness, or...
- Circumstantial factors (e.g., distinctive characteristics) that show the purported author wrote the statement.

Authentication of	
Digital Communications	SANDVAT
(social media content and text messages)	5 is for "Substance"
To authenticate digital evidence, the proponent must share that "the livelencing in question is what has proponent claims." N.C. R. Evid. 901. If the proposed is the proposed of the proposed claims and the white proposed is the proposed of the proposed claims and the services as what is claimed to be claimed to the party may may one circumstantial factors such as the "distinctive characteristics" of the evidence. See Police 1998(4). The budden to sudherticate, is not high-wenty a prima facile showing is required." State v. Ford. 3-50 v. Cup 5:50 (2019).	How does the substantive content of the digital invidence start from the substantive content of the digital invidence start from the content can be considered as particular event, nichosence, or priving togets, therefore the other start days to them with the particular event, nichosence, or substantial togets, the content of the conte
Surhentication of digital communications involves two questions:	N is for "Name"
 Does the exhibit (screen capture, photo, videe) accurately reflect the communication? 	is there a name or "handle" associated with the social media account that indicates authorship?
 Is there reason to believe that the purported author wrote the communication? 	D is for "Device" Who possessed the phone, computer, or device used to make
See Stote v. Clemons, 274 N.C. App. 401 (2020) ("To authenticate flocial medial evidencethere must be circumstantial or direct	the communication? What is distinctive about the hardware and is there information as to-ownership or possession?
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? [emphasis added].	V is for "Visuals" Does the webpage or account display photographs or videos that indicate ownership or authorship?
The following memory tool may be helpful in thinking about the serious types of corumntar-fold evidence frequently used to authenticate digital communications.	A is for "Address" What can be learned from the IP address, physical address, o email address associated with the communication?
	T is for "Timing"
	When was the communication made? How does this relate to

Rule 901

First Amendment Issues

- Miller v. California, 413 U.S. 15 (1973)
- New York v. Ferber, 458 U.S. 747 (1982)
- Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002)
- Highest courts of six states have upheld nonconsensual pornography laws against First Amendment challenges



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Scenario #2

Your client, Jonny, allegedly left an anonymous voicemail for the school principal where he said, "Revenge is going to be sweet. See you at the football game."

Through discovery, you receive a copy of the voicemail, which does sound like Jonny. Jonny denies it is him and believes someone created a deepfake of his voice.



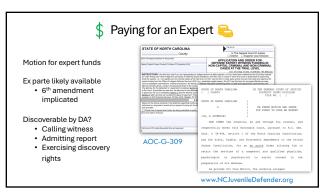
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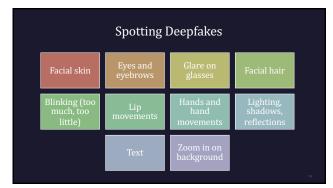
Forecasting Potential Changes to the Federal Rules of Evidence Many possible outcomes Proposed Rule 707 (reflects R. 702) Gatekeeper function Sufficient data Reliable methods reliably applied Helps trier of fact Considering R. 901 (authentication) May 2, 2025 May be model for N.C. changes

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Scenario #3 Jonny is accused of defacing school property with graffiti. He says it was not him, but he took a picture of the kid who did do it. You see the picture and suspect it has been created or altered using Al. What do you do when you suspect your client is relying on a deepfake? What are your ethical considerations?







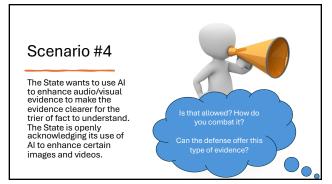
Before hearing

- Talk to your client (R. 1.4, Communication)
- Be prepared (R. 1.1, Competence)
- Don't wait, even when difficult (R. 1.3, Diligence)

At court

- Shall not offer evidence lawyer knows is false (R. 3.3(a)(3), Candor to Tribunal)
- May refuse to offer such evidence, other than criminal defendant's testimony lawyer reasonably believes is false (vd.)

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