

Common Evidence Issues in District Court



Daniel Spiegel

UNC School of Government

Misdemeanor Defender Training, November 2025

Common Evidence Issues

This session is not a primer, nor a march through the Rules of Evidence.

We will cover:

- Evidence Resources
- Getting Your Evidence In
- Objections (Hearsay)
- DV Cases
- Impeachment with Priors
- Google Maps
- Photos
- Videos
- Digital Communications



Evidence Resources

Good Resources as you begin your career:

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



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.”**

Practice in front of friends and colleagues!

Visualize in your head!



Making Objections

(hearsay, confrontation for example)

- “Attuning” your ear
- Documents often contain hearsay.
Possible objections:
 - Rule of Evidence 802 (G.S. 8C-1)
 - 6th Amendment- Confrontation
 - 14th Amendment- Due Process
- Good to make a habit of constitutionalizing your objections early in your career!
- Why?



Domestic Violence cases

- Common Issue: Complaining Witness not present at trial
- Confrontation
 - Are statements testimonial?
 - Statement about a past event or fact that the declarant would reasonably expect to be used later in a criminal prosecution when made.
 - Key: **Primary purpose?**
Ongoing emergency when statement made?



Think: 911 call / CW's statement as officers arrive on scene / CW's statement after being separated from D and time has passed

Domestic Violence cases

- What about hearsay protections?
- Remember that Confrontation and Hearsay are separate but related bases for objection
- Common hearsay exceptions State may rely on:
 - Present Sense Impression (803(1))
 - Excited Utterance (803(2))
 - Then Existing Mental, Emotional or Physical Condition (803(3))
 - Statements for Purposes of Medical Diagnosis or Treatment (803(4))



Impeachment with Prior Conviction- Rule 609

- “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



Google Maps

- Rule 201- judicially noticed fact must be one not subject to reasonable dispute
- State courts have overwhelmingly found Google Map images appropriate for judicial notice
- You don't need to call Google CEOs
- (but it's a different question for driving times, other app functions)



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).



Authenticating Photographs

- **Illustrative**
 - Don't need person who took the photo- photo just illustrates testimony of witness
- **Substantive**
 - Generally have foundational witness who either took the photo or is familiar with how photo was taken



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



Authentication Chart

North Carolina Criminal Law

A UNC School of Government Blog

[Home](#)

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

March 25, 2024 [Daniel Spiegel](#)

[Print](#)

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.

Authentication Chart

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.

Surveillance Video- Example

- Misdemeanor Larceny trial
- Loss Prevention Officer (LPO) from Walmart is present
 - 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
- Does the surveillance video come in? Why or why not?

Digital Evidence Chart

Authentication of Digital Communications Chart



April 24, 2025 [Daniel Spiegel](#)

Print

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.

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.

Authentication 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

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

In domestic violence protective order violation case, **Facebook comments made on victim's posts** were properly authenticated where:

- Although the comments originated from the victim's daughter's **account**, not defendant's, the daughter rarely commented on victim's Facebook page and the **style of communication** did not match that of the daughter
- The **timing** indicated that the defendant made the comments in that the daughter picked up the defendant from his place from prison and the

- Social media webpage contained distinctive **substantive content** such as **photos** of the defendant, **videos** of defendant's dog on a chain being called, and a song with lyrics denying that the victim's death was caused by defendant's dog
- A detective testified that he recognized the voice on the song as defendant's, and a neighbor testified that he heard the song coming from defendant's house

Ford cites to *United States v. Hassan*, 742 F.3d 104 (4th Cir. 2014) (**Facebook messages** properly authenticated where Facebook pages and Facebook **accounts** were tracked to defendant's mailing and email **addresses** using **IP (internet protocol) addresses**).

State v. Gray, 234 N.C. App. 197 (2014)

In robbery case, **text messages** between co-conspirators were properly authenticated where:

- **Substance** of text messages referred to location of trailer where victim was located, how many people were in the trailer, and the trailer door being open
- Officer testified that the text messages were found on defendant's cell phone (**device**) and that officer took a screenshot of them
- A **co-conspirator testified** that the screenshot accurately depicted the text messages she exchanged with the defendant

State v. Taylor, 178 N.C. App. 395 (2006)

In kidnapping and murder case, text messages sent to

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

Rankin v. Food Lion, 210 N.C. App. 213 (2011)

In hearing on motion for summary judgment in civil trial, printouts from internet webpages offered to show



Example of Social
Media Evidence Issue



Questions?

Common Evidence Issues



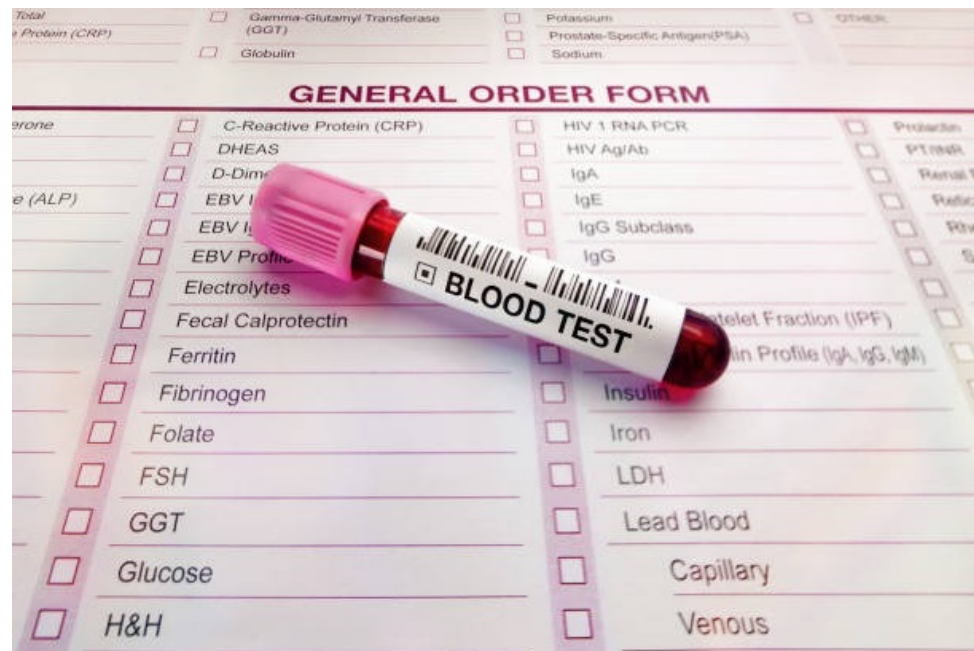
Daniel Spiegel

UNC School of Government

Misdemeanor Defender Training, November 2024

Medical Records- DWI cases

- Testimonial?
- Business Record?
- Expertise in analysis?



Mechanics of Receiving Digital Evidence in District Court

- What happens when moving party tries to get in evidence directly off the 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