

Scenario 1

A victim testifies that the defendant, an acquaintance, sexually assaulted her, then sent her a Facebook direct message asking her to “complete” their sexual activity. The victim says that she knows the message was from the defendant because (1) the defendant’s profile picture is a wolf and a picture of a wolf accompanied the message, and (2) she communicated with the defendant through the originating account before, including earlier that day. Is that enough to authenticate the post?

A. Yes

B. No

Scenario 2

A juvenile is alleged to have participated in criminal street gang activity. Her name is Allison Abrams, but her “street name” is Alley for Real. An officer searches Facebook for “Alley for Real” and finds an account with that name which contains pictures of the defendant wearing gang colors and making gang signs. The account information states that the account holder has a date and month of birth that matches the defendant’s. Is that sufficient to authenticate the photographs?

A. Yes

B. No

Scenario 3

A defendant is charged with assaulting his girlfriend. A week before the trial is scheduled to begin, she receives threatening text messages referencing her “snitching” and saying things like “I’ll kill u myself bitch.” She has screenshots of the messages, is prepared to testify that the messages came from the defendant’s phone number, and will say that the defendant “called in between the [text message] conversations talking mess.” Sufficient to authenticate the text messages?

- A. Yes
- B. No

Scenario 4

Mother, Temika, seeks to modify an order granting custody to father on the grounds that she is no longer involved in a relationship with an abusive boyfriend. Mother testifies that boyfriend has moved to another state. Father offers into evidence comments made by “Meka Rochelle” (Temika’s Facebook name) on boyfriend’s Facebook page within the past three months, stating, “Lol he ain’t nothing but a flight away!!! Y’all gone look up and say what she doing here. That’s my hunnie bun.” Mother testifies that she does not remember making this comment and that boyfriend has her password and may have made the comment himself. Several photos of Temika appear on the boyfriend’s Facebook page. Mother admits to writing, “Boo, when are you coming home?” on the boyfriend’s page a few weeks before the later comment, but says she has since blocked boyfriend from her Facebook account and has stopped using Facebook.

A. Yes

B. No

Methods of Authenticating Posts/Communications

- Testimony of a witness with knowledge [901(b)(1)]
 - 👍 Author testifies and admits writing the communication
 - 👍 Witness testifies to seeing the author write the communication
- Distinctive characteristics [901(b)(4)]
 - 👎 Name or “signature” alone normally is not enough to authenticate
 - ❓ Ownership of originating account is significant support for authentication
 - 👍 Combining account/phone number ownership with circumstantial evidence drawn