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ELECTRONIC EVIDENCE

What kinds of evidence?

- Facebook
- Social Media
- Texts
- Voicemail
- Digital Photos
- Videos
- Recorded Calls
- Websites
- Emails
- Chats / IMs

Why?

Amit [redacted]'s Photos - Profile Pictures

Photo 48 of 66 | [Back to Album](#) | [Amit's Photos](#) | [Amit's Profile](#)



Added 09 July 2007



Narlapp [redacted] haw, y u teachin her bad habbits amit lol
10 July 2007 at 20:57



Kiran [redacted] shud i laff or not?
17 September 2007 at 16:31



Sammatha

08.22.12

Share - Monday via PicsArt Photo Studio



Melissa lose the cig

Monday at 8:49pm · 7



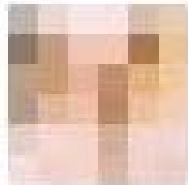
Sarah oh my gosh is that a baby bumb i see...

Monday at 8:51pm



Sammatha I've cut down ALOT. I'm slowly quitting. that's a promise to my baby. ♥

Monday at 8:52pm · 3



Shannel [redacted]

you are my babies daddy.....

Like - Comment - Yesterday at 1:36am - 👤



Logan [redacted] are you fucking kidding me ? out of all places to tell me this, you say it on facebook. k sweet.

Yesterday at 1:24pm - Like - 👍 1



Shannel [redacted] sorry I couldn't get ahold of you :(

Yesterday at 1:54pm - Like



Logan [redacted] could have messaged me instead of making it so public when we don't even know if it's mine yet.

Yesterday at 2:02pm - Like



Shannel [redacted] it's definitely yours. you asshole man up and take some responsibility.

Yesterday at 2:26pm - Like



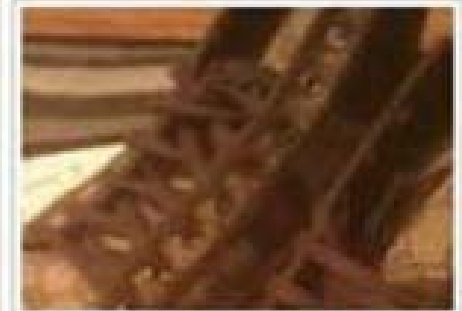
Nebula's Photos

 Like - Comment - 6 hours ago - 



Dinah just like mommy
6 hours ago · Like

 **Daniel** added 5 new photos to the album haters.



 Like ·  Comment ·  Share · 16 hours ago via mobile · 

 **Stevie** Where's my child support?
August 2, 2011 at 4:10pm · Like

 **Michael** Wow lol.
August 7, 2011 at 12:40am · Like



In this photo: Ellie [redacted] (photos)

FUCKKKK DADDYYYY



In this photo: Meggy [redacted] (photos)

Added February 24



Kenny [redacted] Yes. We really did have Meggy's birthday party at Hooters. The wings are still the best and it's a fun environment.

February 24 at 6:55am · Report



Lulu

Hmmm what to eat?

[Like](#) · [Comment](#) · [Unfollow Post](#) · [Share](#) · [Edit](#) · Wednesday via mobile



Laurel Probably nothing... There aint shit in there!
Maybe if I received child support, I could afford to put food in
my fridge!!!

14 minutes ago · [Like](#)



Ariciro I ain't payin shit bitch succ my
dicc!!!

8 minutes ago · [Like](#)

BOTTOM LINE

- Use existing rules
- Electronic evidence is not inherently unreliable
- Same uncertainties exist with traditional written documents
- Threshold preliminary authentication, subject to cross examination

Tienda v. State

Tex. Crim. App.

Feb. 8, 2012

Authentication - Rule 901

“In performing its...gate-keeping function, the trial court itself need not be persuaded that the proffered evidence is authentic. The preliminary question for the trial court to decide is simply whether the proponent of the evidence has supplied facts that are sufficient to support a reasonable jury determination that the evidence he has proffered is authentic.” *Tienda*

Circumstantial Evidence

- ⦿ Numerous photos of defendant, showing unique tattoos
- ⦿ References to victim's death and funeral
- ⦿ References to defendant's gang
- ⦿ References to defendant's ankle monitor

- ⦿ Support a finding that the MySpace pages belonged to defendant and that he created and maintained them

Forgery?

- Possibility that defendant is a victim of “elaborate and ongoing conspiracy”
- Jury assesses likelihood and weight of this alternate scenario
- State produces a prima facie showing that it was the defendant, not a fraudster, who created the page

Authentication Methods

Email

- ⦿ E-mail address
- ⦿ Unique information contained in email - references to nicknames or other facts
- ⦿ Similarity of email content to other communications
- ⦿ Reply letter doctrine
- ⦿ Business record / trade inscriptions

Texts

- ⦿ Same factors as emails
- ⦿ 3rd parties permitted to testify about content of texts on others' phones
- ⦿ Objection: “just because text messages were found on a phone in his possession did not mean he sent or received them” ... ***OVERRULED***

:) . What are your plans for today then?x

Nothing beyond seeing you dead xx

DEAR!!!

 DAMN YOU AUTOCORRECT.COM 



How did things go with the French girl ?

Went really bad she wasn't interested I ended up killing her sister in the barn next to her house ha

OH MY GOD, what happened???

Kissing ha ha auto correct

Spastic !!!!



Messages Momma D  Edit

Call Contact Info

iMessage
2012-04-27 2:22 PM

Hey mom, I'm just going to maddies to do some meth

Uhh... I hope that is a joke syd..

Omg!!! I meant meth!!!!

Meth!

***METH

OMG MATH!! MATH!

Delivered

Oh thank god!

Websites

- ◎ 2 separate issues:
 - Authentication as true and correct printouts of a website
 - Evidence showing that what appears on the website was put there by the party

- ◎ Foundation:
 1. What was actually on the website?
 2. Does the exhibit accurately reflect it?
 3. Is it attributable to the party?

Social Media

- Tienda factors – circumstantial evidence, distinctive characteristics
- Personal facts
- Other friends
- History of sending/receiving messages



Emily Miskel

Attorney at KoonsFuller, P.C. Studied at Harvard University Lives in Plano, Texas From Dallas, Texas Born on April 5 Add languages you know Edit Profile



Work and Education Edit

Employers



KoonsFuller, P.C.

Attorney · Sep 2009 to present · Plano, Texas
Emily Miskel is a divorce and family law attorney at Koons Fuller, the largest firm in the southwest practicing exclusively Family law.

Emily handles complex divorce matters including property valuation and division, child issues, and pre- and post-marital agreements.

In addition to litigation experience, Emily is trained in alternative dispute resolution, including mediation, arbitration, and collaborative law.

Graduate School



Harvard University

Class of 2008 · JD · Cambridge, Massachusetts

College



Stanford University

Class of 2002 · Mechanical Engineering · Stanford, California

High School



Texas Academy Of Math And Science

Class of 1999 · Denton, Texas

Arts and Entertainment Edit

Share Your Interests

Chat (6)

- Wall
- Info**
- Photos (1)
- Notes
- Friends
- Subscriptions
- Subscribers (4)

Friends (213)

- Nick Orenstein**
Harvard
- Zareen Khan**
Stanford
- Michael D. Wyso...**
Texas Tech
- Jaclynn Gardner...**
Harvard

People You

-
-
-
-

Chat / Instant Message

- ⦿ No ISP / forensic testimony required
- ⦿ Circumstantial evidence:
 - Party used the screen name
 - When a meeting was arranged with screen name, party showed up
 - Identifying characteristics in chat content
 - Party possessed information given to screen name
 - Computer evidence from party's computer showed use of screen name

Digital Photographs

- ① Same as normal photograph – fairly and accurately represents scene depicted
- ② Digitally enhanced or edited photos – digital enhancement process produces reliable and accurate results (expert)

Voicemail and Audio Recordings

- ① Opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker
- ① Witness does not have to identify every voice in the recording
- ① Witness should recognize voice and connect the recording with circumstances

Stored vs. Processed Data

- Records merely stored in a computer raise no computer-specific authentication issues
- Computer processed data may require more technical authentication

Hearsay

Unreflective Statements

- ⦿ Present sense impression
- ⦿ Excited Utterance
- ⦿ Then-existing condition

Reliable Documents

- ⦿ Recorded recollection
- ⦿ Records of regularly-conducted activity
- ⦿ Market reports, commercial publications

Non-Hearsay

- ⦿ Computer-generated “statements”
- ⦿ Metadata
- ⦿ Admissions by party-opponent

Illegal Evidence

Wiretapping

- Federal – 18 U.S.C. 2510-2522
- Texas – Tex. Penal Code 16.02, Tex. Civ. Prac. & Rem. Code Ch. 123

Electronic Data

- Federal – 18 U.S.C. 2701-2712
- Texas – Tex. Penal Code 16.04, Tex. Penal Code 33.02