ELECTRONIC EVIDENCE
What kinds of evidence?

- Facebook
- Social Media
- Texts
- Voicemail
- Digital Photos
- Videos
- Recorded Calls
- Websites
- Emails
- Chats / IMs
Why?
Samatha 08.22.12
Share · Monday via PicsArt Photo Studio

Melissa: I see the cig
Monday at 8:49pm · 7

Sarah: Oh my gosh is that a baby bump I see...
Monday at 8:51pm

Samatha: I've cut down ALOT. I'm slowly quitting. That's a promise to my baby. ❤
Monday at 8:52pm · 3
Shannel
you are my babies daddy.....

Like · Comment · Yesterday at 1:36am · 🙄

Logan
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
sorry I couldn't get ahold of you :( 
Yesterday at 1:54pm · Like

Logan
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
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.

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: Meggy (photos)

Added February 24

Kenny 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
Feb. 8, 2012
“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!!!
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 !!!!
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!

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 Koons Fuller, P.C.
- Studied at Harvard University
- Lives in Plano, Texas
- From Dallas, Texas
- Born on April 5
- Add languages you know

Work and Education

Employers

- Koons Fuller, 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 2009 - 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

Share Your Interests

Chat (6)
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

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

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

Electronic Data
- Federal – 18 U.S.C. 2701-2712