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NM Supreme Court clarifies legal framework for using social media evidence at trial

SANTA FE – The state Supreme Court today clarified the requirements for allowing social media communications as evidence in New Mexico court proceedings.

In a unanimous opinion, the state’s highest court for the first time addressed a legal question about guidelines governing the admissibility of social media evidence. The justices concluded “the authentication of social media evidence is governed by the traditional authentication standard” in court procedural rules – [Rule 11-901](#) of the Rules of Evidence.

The current New Mexico rule requires a party in a case to offer “evidence sufficient to support a finding that the item is what the proponent claims it is.”

“We reiterate that, in meeting this threshold, the proponent need not demonstrate authorship of the evidence conclusively; arguments contesting authorship go to the weight of the evidence, not its admissibility,” the Court wrote in an opinion by Justice Briana H. Zamora.

In a trial, a judge initially decides whether evidence can be presented to the jury. The judge must determine if a party meets their burden of proof showing that the evidence is authentic. It is the responsibility of jurors to weigh the credibility of the evidence in reaching a verdict.

Appellate courts across the country, the Court noted, have confronted questions of whether a heightened legal standard is needed for validating social media evidence because the relative anonymity of statements through social media platforms may increase the potential for fraud and falsehood.

But the justices determined that the “authentication challenges arising from the use of social media evidence in litigation are not so different in kind or severity from the challenges courts routinely face in authenticating conventional writings.”

“We are not convinced that the authentication of messages passed between Facebook users poses unique obstacles when compared to the authentication of evidence from other electronic sources, such as text messages sent between mobile devices,” the Court stated.

A more exacting standard for social media communications, such as requiring evidence from the social media company or the user’s computer, “would too often keep from the fact-finder reliable evidence based on an artificially narrow subset of authentication factors,” according to the Court.

In today’s opinion, the Court reversed a decision by the state Court of Appeals and reinstated a delinquency adjudication against a then 17-year-old girl for unlawful taking of a motor vehicle and reckless driving in 2020. After a jury trial in Portales, a district court judge ordered the girl – Jesenya O. – to be placed in the custody of the Children, Youth and Families Department for up to a year. New Mexico appellate courts, in their written opinions, do not fully identify the name of a minor adjudicated as a delinquent offender.

The justices agreed with the Court of Appeals that the traditional authentication standard should be used for social media evidence but concluded that it misapplied the rule in the case. The Court of Appeals determined that the State failed to establish the authenticity of instant messages introduced as evidence in the delinquency proceeding.

“We hold that the State’s authentication showing was sufficient under Rule 11-901 to support a finding that, more likely than not, the Facebook Messenger account used to send the messages belonged to Child and that Child was the author of the messages,” the Court concluded. Facebook has changed its name and now does business as Meta.

The messages between the girl and then 19-year-old Jeremiah Erickson discuss her being intoxicated, taking his car and crashing it the previous night when they were together in February 2020.

The Court explained that “the presence of what appear to be Child’s name and photo on the February 25 messages was, standing alone, insufficient to establish that the messages were issued by Child or from her account.”

However, the Court concluded the State sufficiently authenticated the messages through a combination of factors — Erickson’s testimony about his history of communication on Facebook with the Child; the messages’ content about an incident very few people would know about so shortly after it occurred; and the appearances of the messages matching the Child’s username and Facebook profile picture.

“To the extent that Child suggested in her testimony that someone else may have had access to her phone and authored the messages at issue, this was an assertion to be weighed by the jury in its consideration of the evidence and not a bar to its admissibility,” the Court wrote.

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To read the decision in *State v. Jesenya O.*, No. S-1-SC-38769, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/521174/index.do>