

By Richard Ernsberger

In Mangel, the Superior Court of Pennsylvania Provided Guidance on Authentication of Social Media.

Complaints on social media of fake news or cyber bullying leads us to a key question who is responsible for the authorship of the posts or messages? The answer is not as simple as identifying the account holder's name, IP address, telephone number, or even the home address. The problem exists in the ease that a new social media account can be created, and in some instances even hacked or manipulated by someone other than the owner. Both the Federal Government and Commonwealth of Pennsylvania have enacted legislation to have certified subscriber records produced under limited circumstances. See 18 U.S.C. § 2307 and 18 Pa.C.S.A § 5743. The certified subscriber records can establish that a post was made or a message sent, but without more, it can be difficult to identify the author of the post.

In a case of first impression, the Superior Court of Pennsylvania recently provided guidance on the steps necessary under Pennsylvania Rule of Evidence 901 to identify the author of the social media messages or post. In *Commonwealth of Pennsylvania v. Mangel*, the court stated that social media records and communications can be properly authenticated within the existing framework of Pa. R.E. 901 and are similar to the manner in which text messages and instant messages can be authenticated. Under Rule 901, the proponent of the evidence must introduce sufficient evidence that the matter is what it purports to be. Testimony of a witness with personal knowledge that a matter is what it is claimed to be can be sufficient. Evidence that cannot be authenticated by a knowledgeable person may be authenticated by circumstantial evidence.

In *Mangel*, the defendants were charged with aggravated assault, simple assault, and harassment following an altercation at a graduation party. The victim did not know either of the defendants prior to the assault. The victim was able to identify defendant Mangel after being shown photographs of Mangel that the victim's family found on Facebook. In the course of its investigation, the Commonwealth obtained undated Facebook screen shots and mobile device chats that were allegedly made by defendant Mangel about the assault. The Facebook account identified Mangel, and the high school he attended. The Commonwealth also received verified subscriber information from Facebook and Verizon. Contained within the Facebook information were email addresses and a cellphone number attributed to the Mangel account.

Prior to trial, the Commonwealth filed a motion to have the Facebook messages and post admitted into evidence. At a pretrial hearing on the motion, the expert on behalf of the Commonwealth testified that she searched Facebook and found an account registered to a "Tyler Mangel." The Facebook account contained the same images as the screen shots, and the account holder was listed as living in Meadville. The verified subscriber information identified the Verizon telephone number that was register to a "Stacy Mangel," with the same home address as

the defendant. The expert testified that the screenshots of the Facebook chats “most likely” came from Mangel.

Despite the verified Facebook data and similar images, the trial court denied the motion to admit the evidence. The expert witness was unable to testify to a reasonable degree of certainty that Mangel had made the Facebook posts and mobile device chats. Specifically, the expert was unable to state that no one else intervened or that someone else used the account and made the posts. In addition, the trial court stated that the Facebook documents failed to have a date and time connection between the assault and the post. Finally, the Commonwealth failed to produce any evidence as to the distinct characteristics of the posts and messages which could indicated that Mangel was the author.

On appeal, the Commonwealth argued that the trial court committed legal error when it applied a reasonable degree of scientific certainty to determine whether the Commonwealth provided adequate extrinsic evidence. The Superior Court affirmed the decision of the trial court. The Superior Court analyzed the treatment of other electronic records in the context of Rule 901. Specifically, the court looked to *In the interest of F.P., Commonwealth v. Koch*, and *US v. Browne*. In the instant case, the Superior Court stated that authentication of social media is to be evaluated on a case by case basis. Additionally, the proponent of social media evidence must present direct or circumstantial evidence that tends to corroborate the identity of the author of the communication in question such as testimony from the person who sent or received the communication, or contextual clues in the communication tending to reveal the identity of the sender.

Undoubtedly, the identification of the authors of social media posts and messages will continue to prove difficult as parties search for direct or circumstantial evidence connecting the messages to its sender.

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