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New York Court of Appeals Adopts Commonsense Approach to Authenticating Screenshots of Text Messages

Text messaging, social media posting and messaging on other services such as Slack are increasingly becoming part of how people communicate with one another, in both their personal and work lives. As a result, these methods of communication are also increasingly significant as evidence in criminal and civil trials. Many of these methods of communication are also ephemeral. Text messages may be deleted to save phone space. Many social media applications allow for posts that automatically delete after 24 hours (e.g., Instagram stories and Snapchat). That means that the only practical way to preserve these communications for use in a legal proceeding is to take a screenshot. Using such screenshots in court, however, is not always a straightforward matter.

Before any piece of evidence can be admitted in court, it must be authenticated. The party seeking to admit the evidence must supply testimony sufficient to show the evidence is what it purports to be. Although there are other hurdles that must be cleared before the evidence is actually admitted, authentication is the first. It is not meant to be a particularly high hurdle, and in the case of "traditional" evidence this generally holds true. But when it comes to screenshot evidence, some courts have imposed onerous requirements. A Maryland appeals court suggested that absent testimony from the author of a social media post, the only means of authenticating a screenshot of that post may be to commission a forensic examination of the poster's computer or subpoena the platform itself for records. A Massachusetts appeals court suggested, under similar circumstances, that expert testimony might be necessary.

The New York Court of Appeals recently adopted a more straightforward and commonsense approach to authenticating screenshots of text messages (and, presumably, other modern forms of communication as well) that better reflects the ubiquity of these forms of communications, as well as the use of screenshots to preserve them. In *People v. Rodriguez*, 38 N.Y.3d 151 (2022), the Court of Appeals considered whether inappropriate text messages sent by a high school coach to one of his players (a minor) were admissible in a criminal case against the coach. The victim's boyfriend had discovered the text messages and took screenshots of them with his phone. He later sent them to the victim's mother, and both the boyfriend and the mother supplied the screenshots to the police. The victim subsequently deleted the messages and reset her phone. Police printed the screenshot images for use in the trial against the defendant.

Prior to trial, the defendant moved to preclude the admission of the screenshots, primarily arguing that they were not properly authenticated. The prosecution had offered, for authentication purposes, testimony from the victim, who had not taken the screenshots herself but was a participant in the underlying text message conversation. The trial court denied the motion and admitted the screenshots, and the defendant was convicted on all charges. On appeal, however, the Second Department reversed the defendant's convictions, holding that there was insufficient evidence to establish that the defendant was the author of the text messages in question (i.e., they had not been authenticated).

On further appeal, the New York Court of Appeals held that the screenshots were sufficiently authenticated by the testimony from the victim. Analogizing the issue to the authentication of photographs generally, the court held that, in addition to the person who actually took the screenshots (the "photographer"), any person with personal knowledge of the screenshot's contents (here, the victim) could authenticate them. Thus, the court found the text messages properly authenticated by the testimony of the victim, who testified the screenshots were accurate representations of her conversations with the defendant. Although the court noted that other authentication evidence had been offered, it found this testimony sufficient.

Importantly, and as noted above, authentication is the first, but not the only step, in getting screenshot evidence admitted. The evidence must also be offered for a proper, non-hearsay purpose. The *Rodriguez* decision, however, makes clear that authentication should not be a significant obstacle to the admission of this evidence.

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