

FROM INSTAGRAM TO THE JURY

Lessons in Digital Evidence Authentication

By Brad E. Haas



In an era when nearly every potential litigant carries a digital record of their daily life, social media evidence has become a staple in both criminal and civil proceedings. Text messages, direct messages, posts, and even audio files shared over social media platforms can provide critical insights into liability, damages, and credibility. Yet, as the Pennsylvania Superior Court's decision in *Commonwealth v. Floyd*, 2025 WL 1905168 (Pa. Super. 2025) demonstrates, such evidence cannot be taken at face value. Its admission requires proper authentication, and failure to meet these standards can result in exclusion—even when the evidence seems obviously relevant.

In Pennsylvania, the authentication of evidence is governed by Pa.R.E. 901, which generally requires the proponent to “produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Regarding social media specifically, the Superior Court has emphasized that “[t]he 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.” *Commonwealth v. Mangel*, 181 A.3d 1154, 1162 (Pa. Super. 2018).

In *Floyd*, the defendant sought to admit Instagram messages and an audio message allegedly sent by the complainant shortly before a physical confrontation. The defense argued these communications demonstrated that the complainant initiated contact, which could have mitigated the defendant's culpability. The trial court excluded the evidence, and the Superior Court affirmed.

The court's decision focused on the principle that digital communications must be linked to the purported sender or poster. Specifically, the social media evidence failed to establish the date, time, and source of the messages. The evidence did not reflect the account holder's actual name, a recognizable photograph, email address or IP address, phone number, or any clear link to the alleged sender. Additionally, the screenshots omitted the month, day, or year of the communications and failed to identify the source of the information.

Based on these deficiencies, the court ruled the social media evidence inadmissible. This decision reinforces the principle that relevance alone cannot overcome foundational shortcomings.

Attorneys can take steps during discovery to avoid these authentication issues under Rule 901. The Rule's comments clarify that “the proponent of digital evidence is not required to prove that no one else could be the author. Rather, the proponent must produce sufficient evidence to support a finding that a particular person or entity was the author.” Circumstantial evidence may include self-identification or other distinctive characteristics, including knowledge only the author would possess. When combined with other corroborating evidence, such circumstantial evidence can satisfy Rule 901.

To ensure admissibility, practitioners should take several proactive steps. First, during depositions, attorneys can present the social media account and have the account holder confirm it is theirs. Exhibits should include the account URL. Follow-up questions can be used to establish that the deponent is the sole account holder and that no one else has ever posted to the account, preemptively countering potential challenges to authorship.

Second, attorneys should capture any information on the social media account linking it to the purported author. This may include email addresses, phone numbers, hometowns, education or employment history, dates of birth, relationships, and family members. Any other social media accounts referenced should also be documented. This may also include any postings unrelated to the case itself, but containing details that only the purported author could reasonably know.

Third, all postings intended for use as evidence should clearly display the date and time, when applicable, along with the specific post's URL. Capturing metadata—either manually or using browser extensions—further strengthens the evidentiary foundation by preserving details about when and where the content was posted.

Following these guidelines helps satisfy the threshold requirement of Rule 901: that the item is what the proponent claims it is.

Floyd serves as a cautionary tale: the evidentiary value of social media is only as strong as the foundation that supports it. Attorneys who fail to build that foundation risk having key evidence excluded, even when it appears central to the case.



Brad E. Haas is a shareholder in the Pittsburgh office of Marshall Dennehey, where he defends companies and individuals in a wide array of civil litigation matters involving personal injury litigation. He has successfully litigated cases involving automobile and trucking liability, premises liability, breach of warranty, insurance coverage/bad faith litigation, and general liability matters. He may be reached at BEHaas@mdwgc.com.