



IN THE SUPREME COURT OF THE STATE OF DELAWARE

TIFFANY PARKER,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	No. 38, 2013
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

APPELLANT'S REPLY BRIEF

**ON APPEAL FROM THE SUPERIOR COURT
IN AND OF NEW CASTLE COUNTY**

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DATE: June 16, 2013

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I. THE TRIAL COURT ERRED IN ADMITTING WITHOUT PROPER AUTHENTICATION AND FOUNDATION WHAT THE STATE CLAIMED WERE STATEMENTS FROM PARKER'S FACEBOOK PROFILE.

Failing to align supportive legal authority in its answering brief, the State relies on the dissent in *Griffin v. State* to suggest that that the present lexicon and body of rules for authenticating the authorship of traditional documents is adequate with respect to electronic messages.¹ Ans. Br. at 10-11. The State is forced to rely on the argument presented by the dissent because the Griffin Court's majority opinion does not support that position which is reflected in the State's argument.

Like the Superior Court, the State fails to recognize that authenticating electronic evidence presents a myriad of concerns because technology rapidly evolves and is often new to the criminal justice system.² More importantly, the "complexity" or "novelty" of electronically stored information, with its potential for manipulation, requires greater scrutiny of "the foundational requirements" than letters or other paper records, to bolster reliability.³

The State's contention in its answering brief that the standard of authentication adopted by the Federal courts and our sister jurisdictions with respect to electronic evidence "runs contrary to the evidentiary standards of D.R.E.

¹ *Griffin v. State*, 19 A.3d 415 (Md. 2011).

² *Lorraine v. Markel American, Insurance Co.*, 241 F.R.D. 534, 544 (D.Md.2007).

³ *Id.* at 543-44, quoting Jack B. Weinstein & Margaret A. Berger, *Weinstein's Federal Evidence* § 900.06[3] (Joseph M. McLaughlin ed., Matthew Bender 2d ed.1997).

901 and the Delaware cases interpreting the rule” hardly makes logical sense. Ans. Br. at 10. To insure trustworthiness, D.R.E. 901, just like its Federal counterpart, requires authentication or identification as a condition precedent to admissibility and is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.⁴ The emergence of social media such as e-mail, text messaging and networking sites does not require the creation of a whole new set of rules.

However, it cannot be ignored that this emerging category of evidence is a different animal. The authentication standards are unique to each medium and must be handled appropriately. As society’s use of social media continues to grow, so too will evidentiary issues with respect to authentication. *See United States v. Jackson*, 208 F.3d 633, 638 (7th Cir.2000) (excluding evidence of website postings because proponent failed to show that sponsoring organization actually posted the statements, as opposed to a third party); *St. Luke's Cataract and Laser Institute PA v. Sanderson*, 2006 WL 1320242 (M.D. Fla. May 12, 2006)(plaintiff failed to authenticate exhibits of defendant's website postings because affidavits used to authenticate the exhibits were factually inaccurate and the author lacked personal knowledge of the website).

⁴ *Demby v. State*, 695 A.2d 1127, 1133 (Del.1977).

Finally, the State's contention that even if the trial court abused its discretion, admission of the Facebook postings was harmless is not supported by the record. An additional compelling reason for excluding the social media evidence is that they easily could have been viewed as consciousness of guilt. There was no basis for the jury to conclude that the statements taken from the postings were generated, ratified or adopted by Parker. Since the error permitting the jury's consideration of the improperly admitted messages created a substantial likelihood of a miscarriage of justice, reversal is required.

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Tiffany Parker's conviction should be reversed.

\s\ Santino Ceccotti
Santino Ceccotti, Esquire

DATE: June 16, 2013