

Evidence Hypotheticals for First Circuit Conference

Quagliarello v. Dewees, 2011 U.S. Dist. LEXIS 86914 (E.D. Pa. Aug. 4, 2011)

Social Media

Facts

Plaintiff was driving in defendant city of Chester, Pennsylvania when she was arrested for a traffic violation by defendant police officer. Following the incident, Plaintiff sued Defendants for civil rights violations and alleged that she had suffered past and future physical and mental pain, anguish, severe emotional trauma, embarrassment, and humiliation resulting from her arrest. Plaintiff filed a motion in limine to preclude Defendants from introducing Facebook and Myspace photos of Plaintiff enjoying herself after the date of the incident but before filing suit.

Questions Presented

Would such photos be admissible under Federal Rules of Evidence 401, 402, 403, and 404?

Holding

The photos have some relevance. Accordingly, if Plaintiff testifies on direct examination regarding her emotional distress, then Defendants can show Plaintiff up to three photos on cross-examination. If they do so, Plaintiff can rebut this evidence on re-direct by introducing up to three photos of her choosing from the same time period. No text from any social media sites could be introduced.

Video Presentation

Facts

Plaintiff filed a second motion in limine to prevent Defendants from introducing a video purporting to demonstrate the incident from the point of view of a car in Plaintiff's situation. Specifically, the video would show the view out of the front windshield, rear windshield, and passenger-side window of a car being pursued by a police car down the same route that Plaintiff and the officer followed the day of the incident, with the word "reenactment" stamped at the bottom. The video was meant to support the officer's expected testimony that he pursued Plaintiff for eight blocks before she pulled over, while Plaintiff was expected to testify she had nowhere to pull over for those eight blocks.

Questions Presented

Should the video be deemed an illustration, or a reenactment (which has a higher standard for admissibility)? Is the video relevant and not unfairly prejudicial?

Holding

The video is an illustration, and the word "reenactment" must be removed from it. The portion of the video demonstrating the view from Plaintiff's front and side windows is relevant. The portion of the video demonstrating the view from the rear window, with the police car following, is confusing and unduly prejudicial.

EEOC v. Simply Storage Mgmt., LLC, 270 F.R.D. 430 (S.D. Ind. 2010)

Facts

The EEOC filed sexual discrimination claims on behalf of multiple claimants who alleged that the defendant business was liable for sexual harassment by a supervisor. Two claimants in particular alleged ongoing emotional distress that went beyond that typically experienced by victims of sexual harassment. Defendant's discovery requests sought all Facebook content from the claimants, including content that was "locked" or marked "private." Defendant argued that all Facebook content from the claimants was relevant, while the EEOC asserted discovery should be limited to content that directly addresses or comments on matters alleged in the complaint.

Questions Presented

What is the proper scope of discovery with respect to the claimants' Facebook profiles? Are there any limits on discoverability of "locked" or "private" content due to privacy concerns?

Holding

All content that reveals, refers, or relates to any emotion, feeling, or mental state is relevant (note that this ruling falls between the positions of the EEOC and Defendant). Standard privacy concerns about whether requested discovery is burdensome or oppressive apply, but content is not automatically shielded from discovery just because it is "locked" or marked "private."

Telewizja Polska USA, Inc. v. EchoStar Satellite Corp., 2004 WL 2367740 (N.D. Ill. Oct. 15, 2004)

Facts

Plaintiff corporation filed a breach of contract suit against defendant corporation. Defendant sought to include an exhibit, consisting of screenshots from the Internet Archive (a/k/a the Wayback Machine), purporting to show what Plaintiff's website looked like on a certain date three years earlier. This exhibit would be potentially damaging to Plaintiff's claim. The exhibit was accompanied by an affidavit from an Internet Archive employee verifying that the screenshots came from their archives. Plaintiff filed a motion in limine to exclude the exhibit, arguing that it was not properly authenticated.

Question Presented

Is the Internet Archive a valid method of authenticating the website?

Holding

Yes. Even though the Internet Archive does not fit neatly into the non-exhaustive examples listed in Federal Rule of Evidence 901, and even though it is a relatively new source, Plaintiff presented no evidence that the Internet Archive is unreliable or that it was not a true representation in this case. Plaintiff remained free to raise concerns about reliability with the jury.

Versata Software, Inc. v. Internet Brands, Inc., 2012 WL 2595275 (E.D. Tex. July 5, 2012)

Facts

Plaintiff corporation sued defendant corporation for tortious interference in a prospective business relationship with Chrysler. At issue was an email that Plaintiff sought to introduce into evidence. Mr. Biwer (an employee of Plaintiff) sent an email to colleagues at 6 pm. The email stated that he had a conversation with Mr. Jacops (also an employee of Plaintiff) earlier that afternoon. According to the email, during this conversation, Mr. Jacops recounted a lunch meeting earlier that day with Mr. Sullivan (an employee of Chrysler) at which Mr. Sullivan apparently relayed information that could help Plaintiff's claims against Defendant.

Question Presented

Given the multiple levels of hearsay, does this email fall under any of the hearsay exceptions (i.e., business records, present sense impression, or state of mind)?

Holding

No. The email does not satisfy the requirements of the business records exception because it was not sent as part of a routine business practice. The delay between the lunch meeting and Mr. Jacops's report to Mr. Biwer in the afternoon was too long for the present sense impression exception to apply, as was the delay between Mr. Jacops's report in the afternoon and Mr. Biwer sending the email at 6 pm. The state of mind exception does not apply because Mr. Sullivan's statement was not relevant to his state of mind, and his state of mind was not relevant to the case.

Notable Commentary

One commentator has suggested that the considerations regarding the present sense impression and state of mind exceptions applied to the email in this case would apply equally in cases involving newer forms of communication (e.g., Facebook posts, tweets). See <http://apps.americanbar.org/litigation/committees/trialevidence/articles/summer2013-0813-social-media-federal-rules-evidence.html>.