



Ohio Chapter AAML
34th Annual Harold R. Kemp
Family Law Symposium

OK Computer: Cutting Edge Evidence

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***Special Thanks to
Jessica Janicek
&
Paul Leopold***



DOWNLOAD THE POWERPOINT PDF

Email or Pass Code will be inserted here for live presentation.

heather@koonfuller.com

**PRESENTATION
NOTES**

- **Federal & State Rules of Evidence**
- **Federal & State Case Law**
- **Predicate / Foundation**
- **Location & Authentication Challenges Presented by the Internet and Electronic Communication**
- **Presentation Tips**
- **Several Jurisdictions**

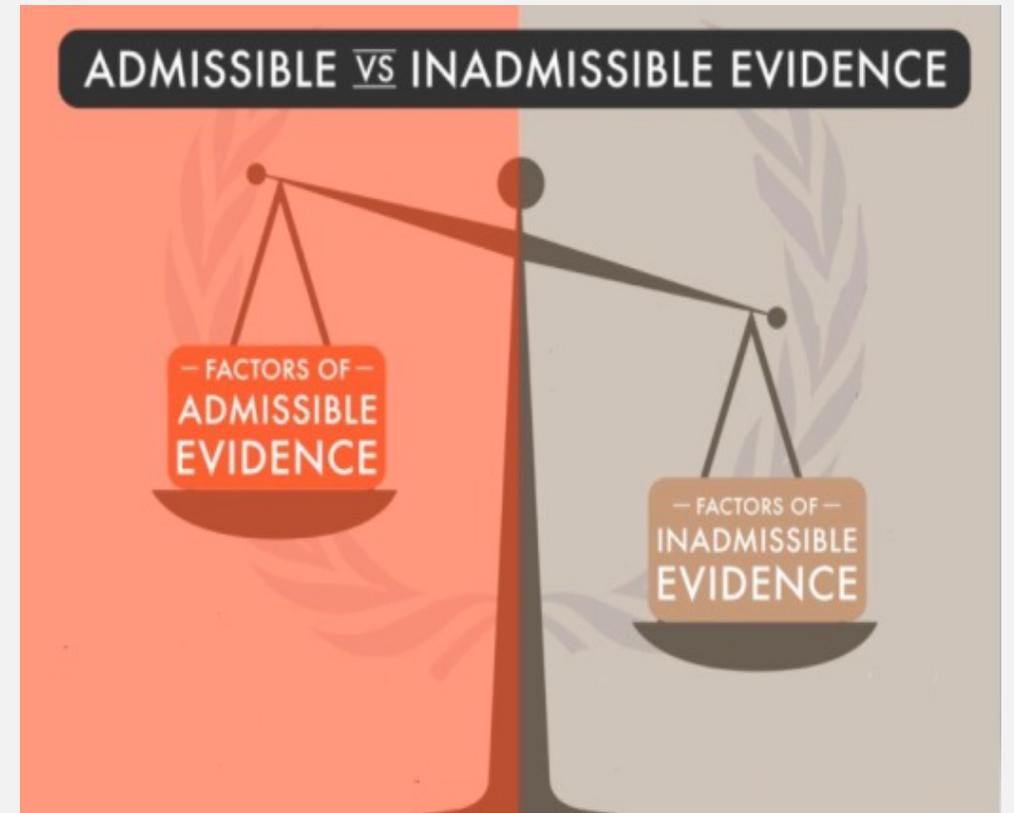
Cutting Edge Evidence

- **Communications**
Without Words
- **Emoticons**
- **Emojis**
- **GIF's**
 - [Graphic Interchange Format]
- **JPEG**
 - [Joint Photographic Experts Groups]
- **Memes**
- **Pictures**



PREREQUISITES TO ADMISSIBILITY

- Relevant **FRE/ORE 401-402**
- Probative Value vs Unfair Prejudice **FRE/ORE 403**
- Not Hearsay **FRE/ORE 801-805**
- Authentic **FRE/ORE 901-902**
- Original/Duplicate **FRE/ORE 1001**



FAKE SOCIAL NETWORKING

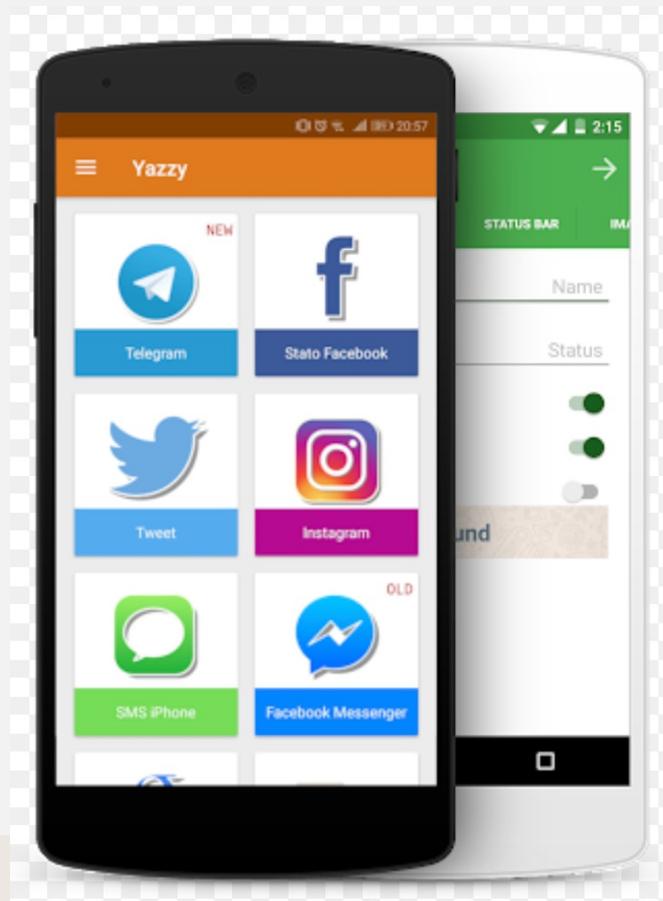




SOCIAL DUMMY

- **App that creates and shares fake social posts and statuses.**
- **“A simple alternative for either fooling your friends or to have access to your own fake social media accounts.”**

YAZZY



- Make fake conversations to “make fun of your friends.”

Follow thewallmachine

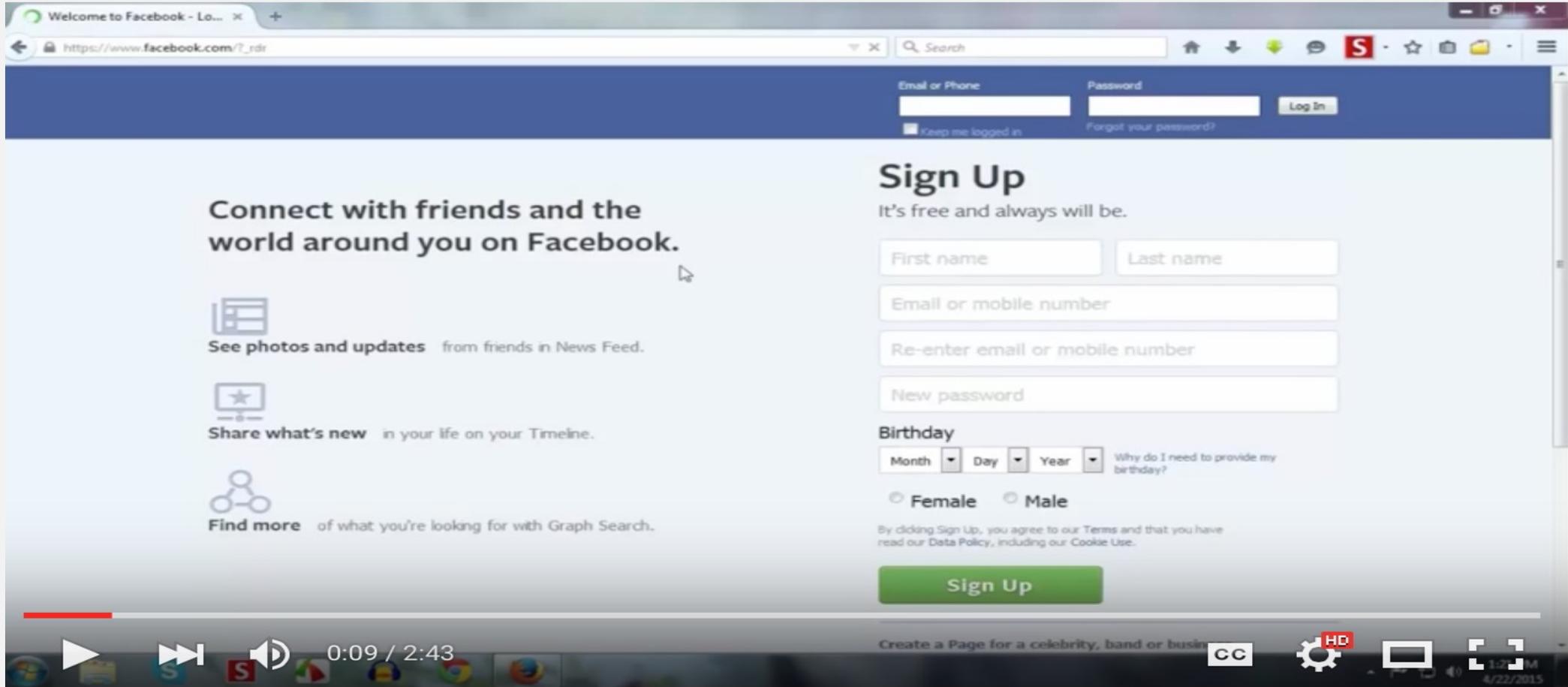
ABOUT ME



The Wall Machine is a WYSIWYG Fake Facebook Wall Creator.

<http://thewallmachine.com>

**THE WALL MACHINE
CREATES “FUNNY
FAKE FACEBOOK
WALLS”**



how to create unlimited fake facebook accounts without genuine email address

Prank Me Not

Facebook Status Generator

Prank your friends or imitate celebrities. You can make fake facebook status updates in any creative way you like. Upload profile picture, write status, select likes, add comments and many more cool features. Start using our **Facebook Status generator** now.

Create Facebook Status

Facebook Chat Generator

Create **fake facebook chat** and prank your friends. You can even imitate celebrities to chat with you to fool your friends. Upload profile picture for you and the other person, write as many chat messages as you like. Start using our Facebook Chat generator for Free!

Create Facebook Chat

Tweet Generator

Create Hilarious tweets and Fool your friends. You can make **fake tweets** in any creative way you like. Upload profile picture, select username, write message, change date and many more cool settings. Start using our **Tweet Generator** for Free!

Create Tweet

Twitter Message Generator

Create fake twitter messages and prank your friends. You can even imitate celebrities to chat with you to fool your friends. Upload profile picture for you and the other person, write as many chat messages as you like. Build your own fake twitter messages now.

Create Twitter Message

SpooferCard



Protect Your Privacy

Call and text from a secondary number to protect your personal information and privacy. It's easy to use and works on any phone. Try it for FREE when you sign up on our mobile apps!

Trusted by over 5 Million people who value their privacy.

Settings Progress bar

Conversation ?

Sender Sender Receiver

Message input area

Add message to conversation

Name ?

John Doe Blur name

Operator ? Clock ?

AT&T 9:41 AM

"Messages" ? "Edit" ?

Messages Edit

Connection ?

3G Wi-Fi EDGE None

Battery status ?

97% 44% 13% Hide

Spouse

Enter His Email Address.
See Social Profiles,
Pictures & Videos Now!

Update! Fake iOS7 Text Message now available

High quality & **NO** watermark on final image!

AT&T 3G 9:41 AM 97%

Messages

John Doe

Edit

Is this really a fake iPhone conversation build on-the-go?

Yeah, and you can build your own & download image with no watermark! Use the editor to the left to get started, it will automatically remove these messages.

Amazing!

Contact Name: Mom

Carrier: T-Mo... Time: 12 01 AM

Line 1: Honey, Your grandma has just died... Received

Line 2: Mom, Do you know what LOL mea... Blue

Line 3: Yes I do, It means 'Lots of Love' Received

Line 4: ... That is not what LOL means Blue

Add another line Submit

FAKE DOCUMENTS



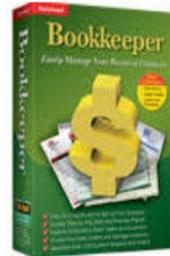




Payroll Mate® Payroll Software

\$99.00 from Real Business Solutions

"Comprehensive payroll **software** that fits the needs of accountants, CPAs, small to medium size businesses (SMBs), agricultural employers ...



Avanquest Bookkeeper 2014 - Bookkeeping and Payroll Software - Bo...

\$27.97 from Avanquest Software ★★★★★ 311 seller reviews

Bookkeeping and Payroll **Software** for Small Businesses. Easy Start-Up Wizard to Set Up & Manage Your Business. Create Checks & Pay Bills. Over 125 ...



Quicken Starter Edition 2016 - Box Pack

\$29.99 from 25+ stores

★★★★★ 14 product reviews

NET not installed Display: 1024x768 or higher, 1280x1024 for large fonts Internet: 56Kbps modem (Broadband Recommended for Online Services) Sound ...



W2 Mate® W2 / 1099 Software

\$39.00 from Real Business Solutions

"W2 Mate® is W2 1099 **Software** to print, and file IRS Forms 1099-MISC, W2, 1096 and W3. EFile (electronic filing) and 1099-INT, 1099-DIV, 1099-R ...

Replace Your Docs

Replacement documents for **proof of income** and **proof of address** for novelty use

- **Replaceyourdoc.com**
- **Edit any existing document with details you provide.**
- **Add your own transactions, names, dates and addresses to bank statements, utility bills and paystubs.**
- **Option to print it from home the very same same.**
- **Unlimited changes and modifications until you are satisfied.**
- **“Novelty” proof of income documents.**

UTILITY BILLS

(click image to enlarge)

Npower



Southern Electric



BT



British Gas



Talk Talk



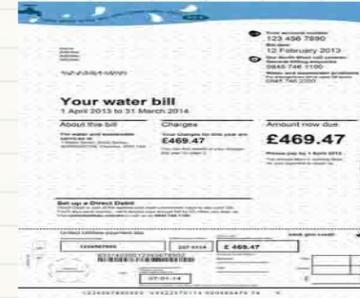
EDF



E-ON



United Utilities



Virgin



DWR



Three



Thames



BANK STATEMENTS

(click image to enlarge)
Yorkshire Bank

Yorkshire Bank statement showing account details and a table of transactions. The table includes columns for Date, Description, Class, Credit, Debit, and Balance.

HSBC

HSBC statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

Barclays

Barclays statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

Santander

Santander statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

RBS

RBS statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

Lloyds

Lloyds statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

Lloyds Business

Lloyds Business statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

CO-OP

CO-OP statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

Natwest

Natwest statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

Nationwide Version 1

Nationwide Version 1 statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

Nationwide Version 2

Nationwide Version 2 statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

TSB

TSB statement showing account details and a table of transactions. The table includes columns for Date, Description, Amount, and Balance.

Create and Edit Documents

Select a Document to Get Started



Create Documents

Select a template from our library of 500+ documents. Then fill out a step-by-step questionnaire and export your completed document in Word or PDF.

Create a Document



Edit PDFs

Upload and edit PDFs with our dynamic PDF editor. You can add text, images, checkmarks, and save and update your PDF at any time.

Upload a PDF

Fake USA Utility Bills

Step 1/2. Please select your Utility Bills choice below:
Please see our [samples page](#) for a larger image.

Providing incorrect or inaccurate information for the purpose of misleading others is committing fraud. You must be the original owner of the original documents to place an order. We are not affiliated or connected with any of the companies below. You should contact your original provider for the official documents.

USA - Florida Utility Bill



USA - Texas Utility Bill



USA - California Utility Bill



USA - Virginia Utility Bill



USA - Georgia Utility Bill



USA - Comcast Utility Bill



USA - Frontier Communications Bill



USA - Spectrum Bill



USA - Time Warner Cable Bill



GOOGLE “BEST FAKE RECEIPT MAKERS”

- Invoice home
- Invoice maker
- Billdu
- Invoice 2go
- Quick receipt
- Tiny invoice
- Easy Receipts Generator





ACCURATE AND DEPENDABLE DOCUMENTS RIGHT TO YOUR EMAIL QUICKLY AND EASILY!

Feedback 

**MAKE YOUR
PAYSTUB
NOW!**

EXAMPLE

**MAKE YOUR
UTILITY
BILL NOW!**

EXAMPLE

**MAKE YOUR
W-2 NOW!**

EXAMPLE

**MAKE YOUR
1099 NOW!**

EXAMPLE



[Home](#) / [Buy Docs](#) / [Utility Bills](#)

SUBMIT ORDER FORM

- ✓ Our team of professionals will always make your required modifications to your documents using a fake utility bill generator for better suiting to your particular needs.
- ✓ We make use of high quality 100 gm paper for printing the hard copy of your novelty utility bill.
- ✓ The printed copy of your replica document will reach you within 3 working days. The soft copy will be emailed to you the next business day after you place your utility bill order.
- ✓ Your novelty utility bill document will have a front as well as a back page to make it look more authentic.
- ✓ Our documents do not feature words like “sample” or “specimen”.
- ✓ The novelty utility bills generated by our dedicated team appear original and authentic.



Fake-Documents.com

Fabulously Fake documents just for Fun!

Welcome

There are many reasons why you might want to make a joke document, and as long as you're just doing it for **FUN** you've come to the right place.

For just a couple of bucks you can get realistic looking joke document that you can print on your printer. **Note that this is not just a blank document that you have to fill in by hand. All your information is printed in a fancy font on the document.**

You might like to spice up your family tree by adopting some new (and very famous) parents.

Who would not be impressed to discover that you are actually the love child of <.... Insert your favorite Stars here>. One of our Joke [Birth Certificates](#) left casually on your desk will do the trick.

The possibilities are limited only by your imagination. And of course if your creative side is a currently a little blocked, we have plenty of suggestions.

Alternatively what better way to prove your ability to Time Travel than a copy of your own [Death Certificate](#)?

Your street cred cannot fail to be influenced by a certificate stating that you were once (briefly) married to one of the Kardashian ... and you'll have the [Wedding Certificate](#) and [Divorce Decree](#) to prove it!

N.B. Our docs are NOT of any use for Fraud or Criminal deception.

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[DEGREE](#)
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how to make fake documents with photoshop



Avuthkar Ram

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13 4

OOPS...!

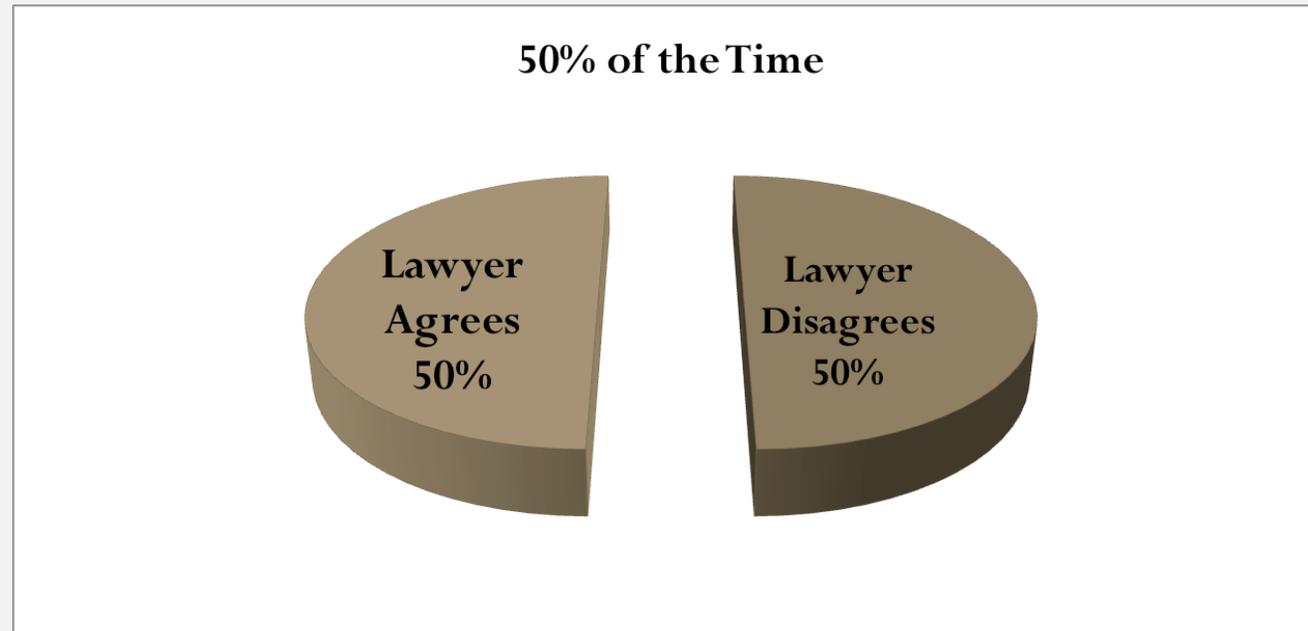
FACTOR

EVIDENTIARY DISCRETION “THE OOPS FACTOR”

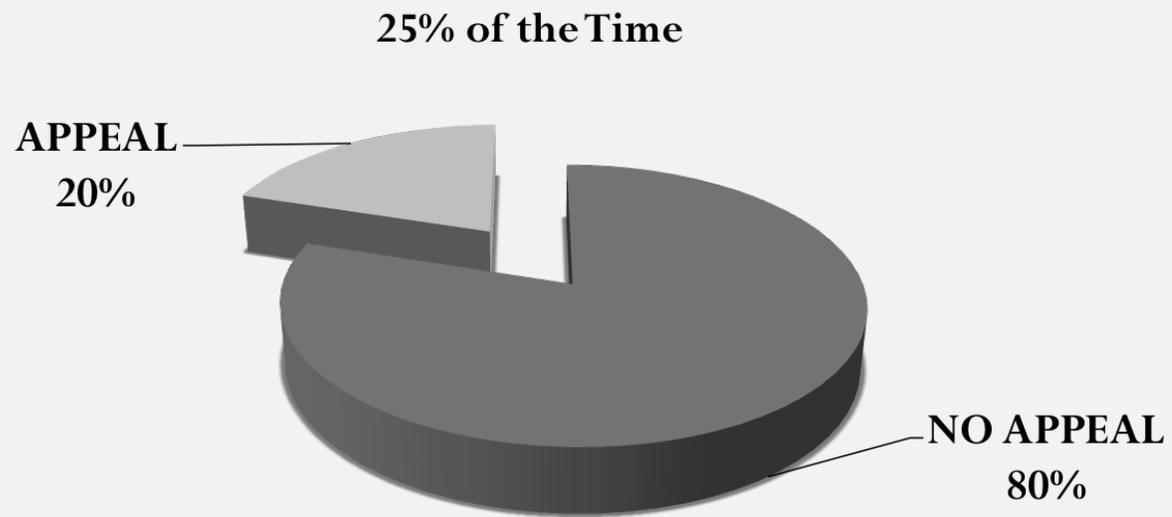
100% of the Time



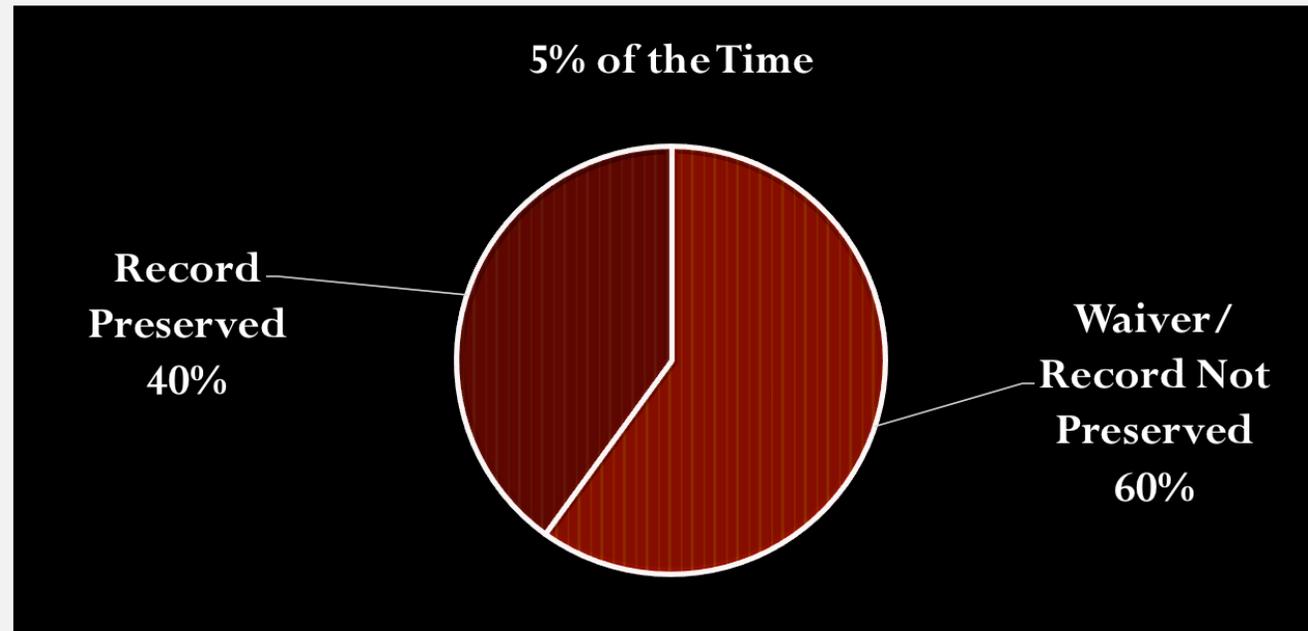
EVIDENTIARY DISCRETION “THE OOPS FACTOR”



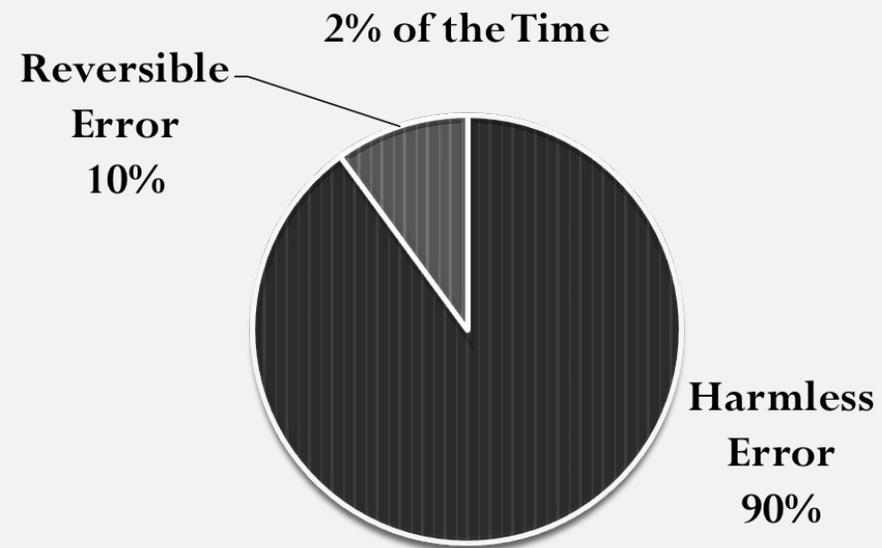
EVIDENTIARY DISCRETION “THE OOPS FACTOR”



EVIDENTIARY DISCRETION “THE OOPS FACTOR”



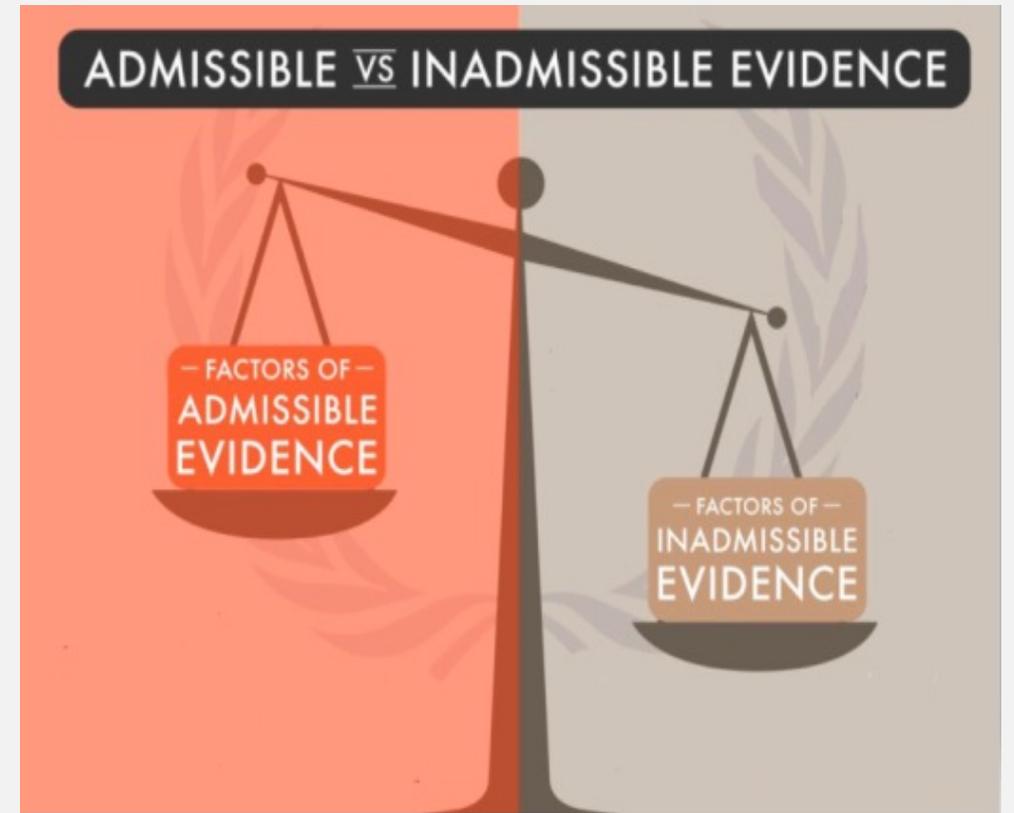
EVIDENTIARY DISCRETION “THE OOPS FACTOR”



.20%

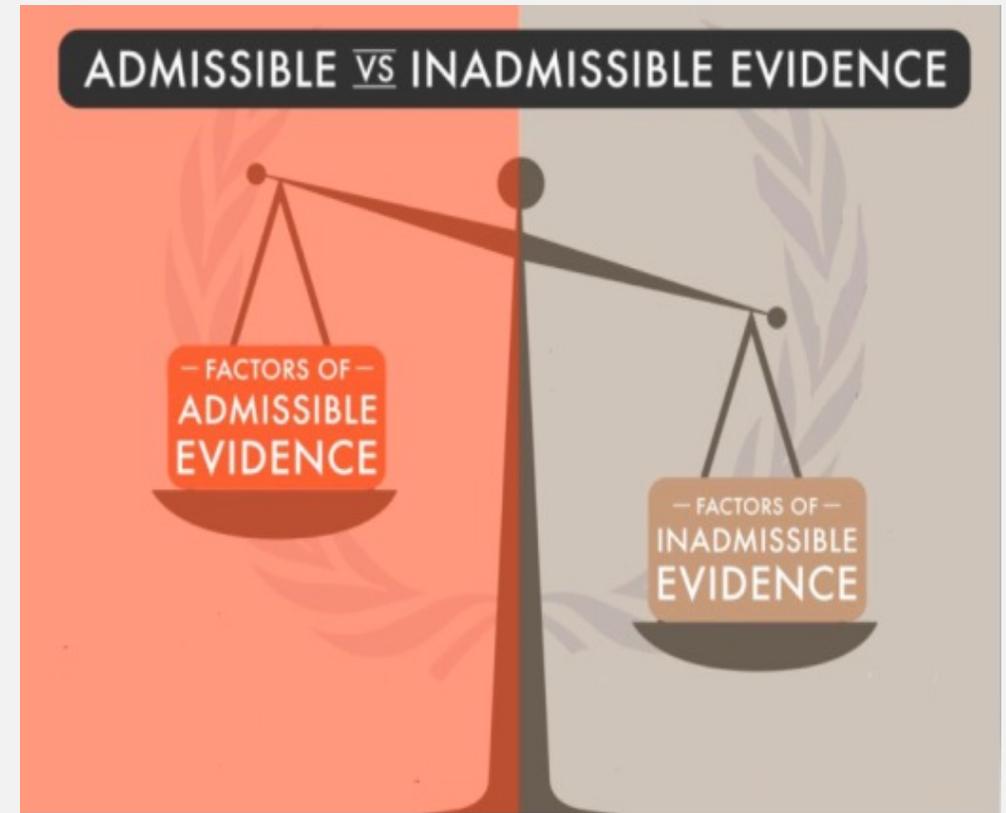
PREREQUISITES TO ADMISSIBILITY

- Relevant **FRE/ORE 401-402**
- Probative Value vs Unfair Prejudice **FRE/ORE 403**
- Not Hearsay **FRE/ORE 801-805**
- Authentic **FRE/ORE 901-902**
- Original/Duplicate **FRE/ORE 1001**



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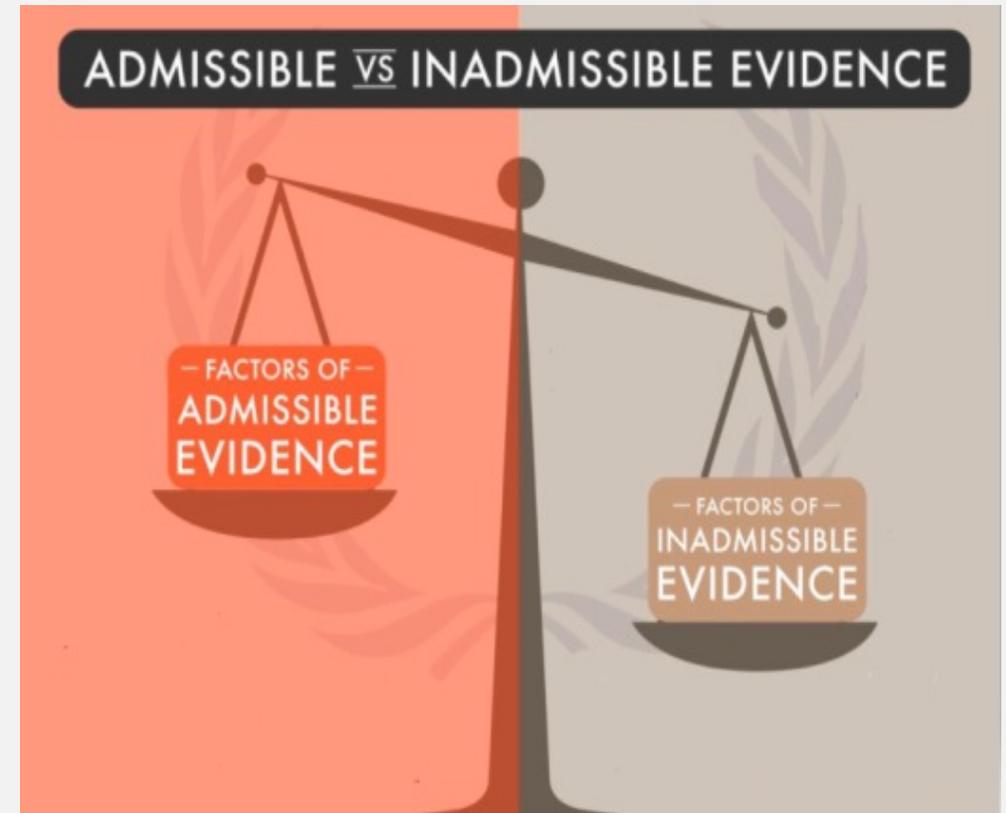
Authenticity is a Subspecies of Relevance

- If it cannot be connected to the case, it carries no probative force.
- Evidence must be authentic to be relevant



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AUTHENTIC FRE/ORE 901

- Evidence is authentic if the evidence is sufficient to support a finding that the matter in question is what its proponent claims it to be.
 - **It is what I say it is.**

LETTER
FOUNDATION /
PREDICATE

- Witness is familiar with the document
- Document has not been modified in any way
- **It is what I say it is**



Photograph/Video Foundation/Predicate



- Witness is familiar with the scene depicted.
- Photo/Video is an accurate representation of the scene.
- Photo/Video is not modified
- **It is what I say it is**



**DIGITALLY ENHANCED
PHOTOGRAPH/VIDEO
FOUNDATION /
PREDICATE**

Has this photograph been changed in any way?

Yes, it has an Instagram filter I added.

Is this photo posted on social media anywhere?

Yes, Instagram.

**DIGITALLY
ENHANCED**
PHOTO/VIDEO
FOUNDATION/
PREDICATE

- Whether modification of the photo is allowed by the social media location.
- Methods of modifying photograph
 - (through filtering)
- Methods of filtering
 - (filtering options available)

2016

Honey I found
a pic of your
Grandmother



2090

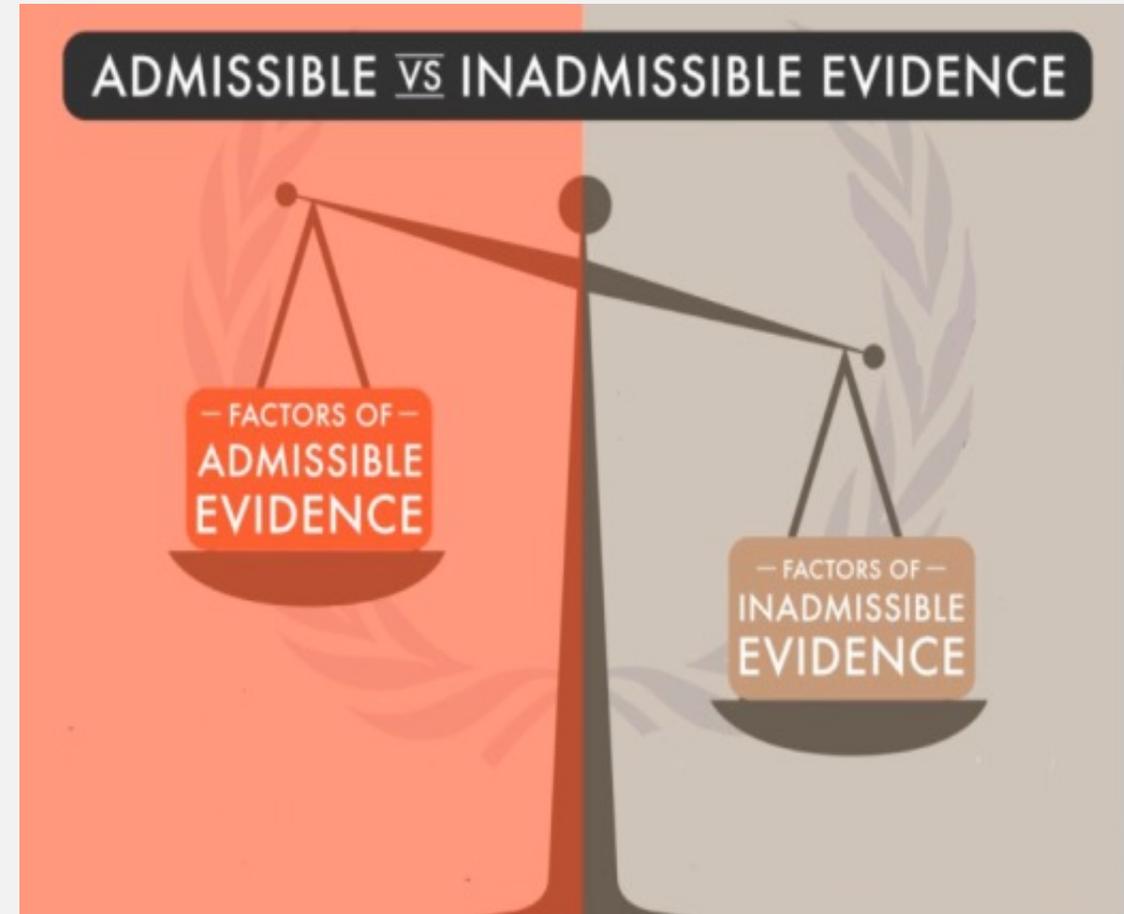
Honey I found
a pic of your
Grandmother



ifunny.co

PREREQUISITES TO ADMISSIBILITY

- Relevant **FRE 401-402**
- Probative Value vs Unfair Prejudice **FRE 403**
- Not Hearsay **FRE 801-805**
- **Authentic FRE 901-902**
- Original/Duplicate **FRE 1001**



Authentic



Admissible



FRE/ORE 901 (B)(4)

Distinctive Characteristics

- From the list of examples of methods of authentication:
- **Distinctive characteristics** and the like.
- Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances.

FRE/ORE 901 (B)(4)

Distinctive Characteristics

- From the list of examples of methods of authentication:
- **Distinctive characteristics** and the like.
- **Appearance**, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances.

FRE/ORE 901 (B)(4)

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FRE/ORE 901 (B)(4)

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FRE/ORE 901 (B)(4)

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FRE/ORE 901 (B)(4)

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FRE/ORE 901 (B)(4)

Distinctive Characteristics

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- **Distinctive characteristics** and the like.
- **Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances.**

CITING TO **TIENDA**, 358 S.W.3D 633, TEX. CRIM. APP. 2012

Distinctive Characteristics (MYSPACE)

TRE 901(b)(4) [equivalent of FRE/ORE 901(b)(4)]

- Photos of tattoos, unique sunglasses, earring.
- Reference to victim's death and funeral music.
- Reference to his gang.
- Instant messages referring to the shooting.
- Comments about snitching.
- Reference to ankle monitoring (with photo).
- Profile contained his email addresses and nickname.

citing ***United States v. Davis***,
918 F3d 397, 402 (4th Cir.
2019).

The trial court itself need not be persuaded that the evidence is actually authentic, but rather the court must simply decide whether the proponent of the evidence has supplied sufficient facts to support a finding that the evidence proffered is authentic.



It's true that the Defendant could have been the victim of a year long conspiracy, but that conspiracy as an alternate scenario is something the finder of fact or jury could have considered and weighed in making its decision.



STATE V. GREEN
427 S.C. 223 (2019) 830 S.E.2D 711

- See *United States v. Farrad*, [895 F.3d 859](#), 879-80 (6th Cir. 2018)
- **treating social media evidence like any other documentary evidence for purposes of authentication "fits with common sense:** it is not at all clear ... why our rules of evidence would treat electronic photos that police stumble across on Facebook one way and physical photos that police stumble across ... on a sidewalk a different way"

STATE V. GREEN
427 S.C. 223 (2019) 830 S.E.2D 711

State v. Green, 830 S.E.2d 711, 716 (S.C.App. 2019).

- “We do not downplay the fraud risk surrounding social media. . . . We are persuaded the risk is one Rule 901, SCRE, contemplates and can contain.

Lawyers can always argue case-specific facts bearing on this risk and attempt to convince the jury the writing is not genuine.”

STATE V. GREEN
427 S.C. 223 (2019) 830 S.E.2D 711

“...the argument that social media should bear a heavier authentication burden because such a ‘modern’ medium is particularly vulnerable to fraudsters may be seen for what it is

old wine in a new bottle.”

THE ZONE* OF REASONABLE DISAGREEMENT

TIENDA V. STATE

358 S.W.3D 633, TEX. CRIM. APP. 2012



If the trial court's ruling that a jury (factfinder) could reasonably find proffered evidence authentic is at least “within the zone of reasonable disagreement,” a reviewing court should not interfere.

*HALL V. STATE, 36 N.E.3D 459, 466
(IND. 2015), REH’G DENIED.*

A trial court’s ruling on the admission of evidence is generally accorded a great deal of deference on appeal.

Things are getting more complicated,
but also easier





Video Recordings



- **Defendant convicted of theft of an ATV**
- **In his investigation, the testifying police officer said that he found the ATV and a receipt from a Family Dollar was nearby with a timestamp on it**
- **The officer went to the Family Dollar and watched the store's surveillance tape from that same date and time as on the receipt**
- **State offered the video at trial, which the trial court admitted**

NOTICE



**ALL ACTIVITIES
MONITORED
BY VIDEO
CAMERA**

Video Recordings



- Defendant objected on authentication grounds because no witness testified that the video system was working properly, that the timestamp was properly set, or that the original portrayed the events accurately
- COA reversed



- *Fowler v. State*, 544 S.W.3d 844 (Tex. Crim. App. 2018)
- **IN**
- The Texas Court of Criminal Appeals held that “yes, it is possible” for the proponent of a video to sufficiently prove its authenticity without testimony of someone who either witnessed what the video depicts or is familiar with the functioning of the recording device
- The court used **the distinctive characteristics test** to determine that the trial court was within the **zone of reasonable disagreement** when admitting the video

Fowler v. State, 544 S.W.3d 844 (Tex. Crim. App. 2018)

Distinctive Characteristics Analysis

- **There is a date and time stamp on the videotape;**
- **The date and time on the videotape correspond to the date and time on the receipt that was found within three feet of the ATV;**
- **The videotape pulled by the manager reveals Fowler at the store on that date at that time purchasing the items listed on the receipt that was found near the stolen ATV.**

EMAILS

- Email may be authenticated by direct or circumstantial evidence.
- Email may be authenticated entirely by circumstantial evidence, including its distinctive characteristics.
- Email may be authenticated by comparison of exemplars with other e-mails that already have been authenticated.
- Email that qualifies as business/domestic record may be self-authenticating.





EMAILS

- Consistency with the email address on another email sent by the defendant
- the author's awareness through the email of the details of defendant's conduct
- the email's inclusion of similar requests that the defendant had made by phone during the time period; and
- the email's reference to the author by the defendant's nickname.



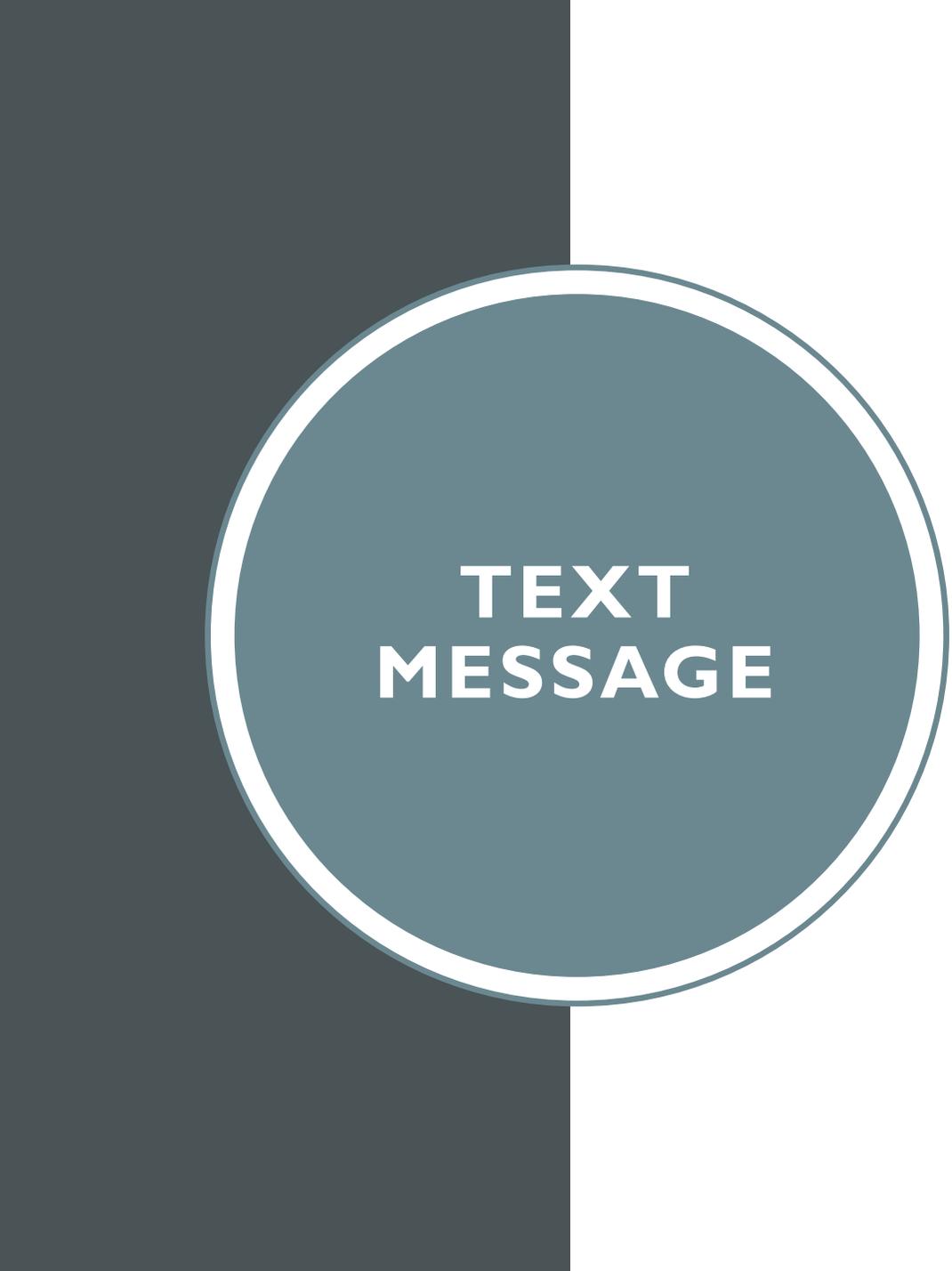
EMAILS

- *Why do you believe the email is from your spouse?*
 - *[OEC 901(2)(d) distinctive characteristics]*
 - *Nickname; facts only known to a limited number of people, referenced a specific event, specific accent, etc..*



TEXT MESSAGES

- **FRE/ORE 901(b)(4)** Distinctive Characteristics
- Provide sufficient direct or **circumstantial corroborating evidence of authorship** in order to authenticate the text message, unless the the messages can actually be identified as being sent to the phone.



**TEXT
MESSAGE**

- Why do you believe this particular message is from someone other than your husband?
- *[FRE 901(b)(4) distinctive characteristics test; cell phone numbers; contact name; nicknames, etc..]*

TEXT MESSAGES



D was convicted of aggravated kidnapping

A week before his trial began, he texted with victim and called her during the text message exchange

D had replied back and forth with victim

Victim's testimony was impeached as untruthful

BUTLER V. STATE
459 S.W.3D 595
(TEX. CRIM. APP. 2015)

The **content and context** of the text messages themselves constituted circumstantial evidence of the authenticity of the messages

The fact that **D actually called victim during the text message exchange** adds additional circumstantial evidence

Rational inferences existed, from the context of the messages, that D authored them



REPLY LETTER DOCTRINE

- A letter received in the due course of mail purportedly in answer to another letter is *prima facie* genuine and admissible without further proof of authenticity.
- A reply letter needs no further authentication because it is unlikely that anyone other than the purported writer would know and respond to the contents of the earlier letter addressed to him.



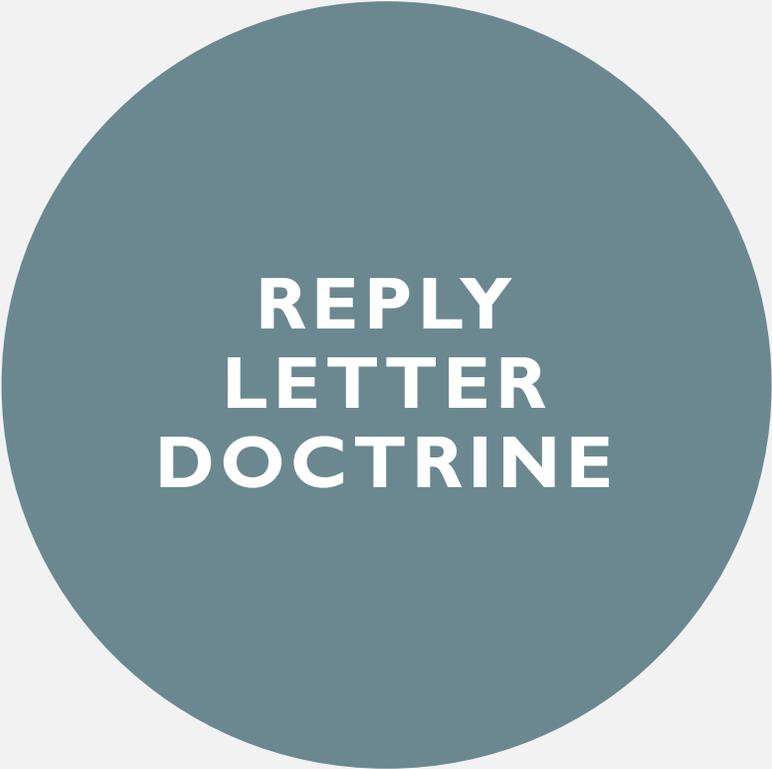
BUTLER V. STATE
459 S.W.3D 595 (TEX. CRIM. APP. 2015)
REPLY LETTER DOCTRINE APPLIED TO
ELECTRONIC MESSAGES

- An **electronic communication** received in the due course of mail purportedly in answer to another **electronic communication** is *prima facie* genuine and admissible without further proof of authenticity.
- A reply **electronic communication** needs no further authentication because it is unlikely that anyone other than the purported writer would know and respond to the contents of the earlier **electronic communication** addressed to him.



REPLY
LETTER
DOCTRINE

- *[FRE/ORE 901 (b)(4) distinctive characteristics test]*
 - *Used a special nickname;*
 - *Accent shown in words;*
 - *Knowledge of specific information.*
- When the *[email/text/instant message]* came in, did you reply to it?
 - *I did.*



**REPLY
LETTER
DOCTRINE**

- Did your husband reply back to that [*email/text/instant message*]?
 - Yes.
- Did you respond back?
 - Yes.
- Did this reply and response between you and your husband continue?
 - Yes.

**ADOPTIVE
ADMISSION**
ORE 801(D)(2)(B)

- a statement is offered against a party and is...
- **(B)** A statement of which the party has manifested the party's adoption or belief in its truth;
- [reply letter doctrine?]



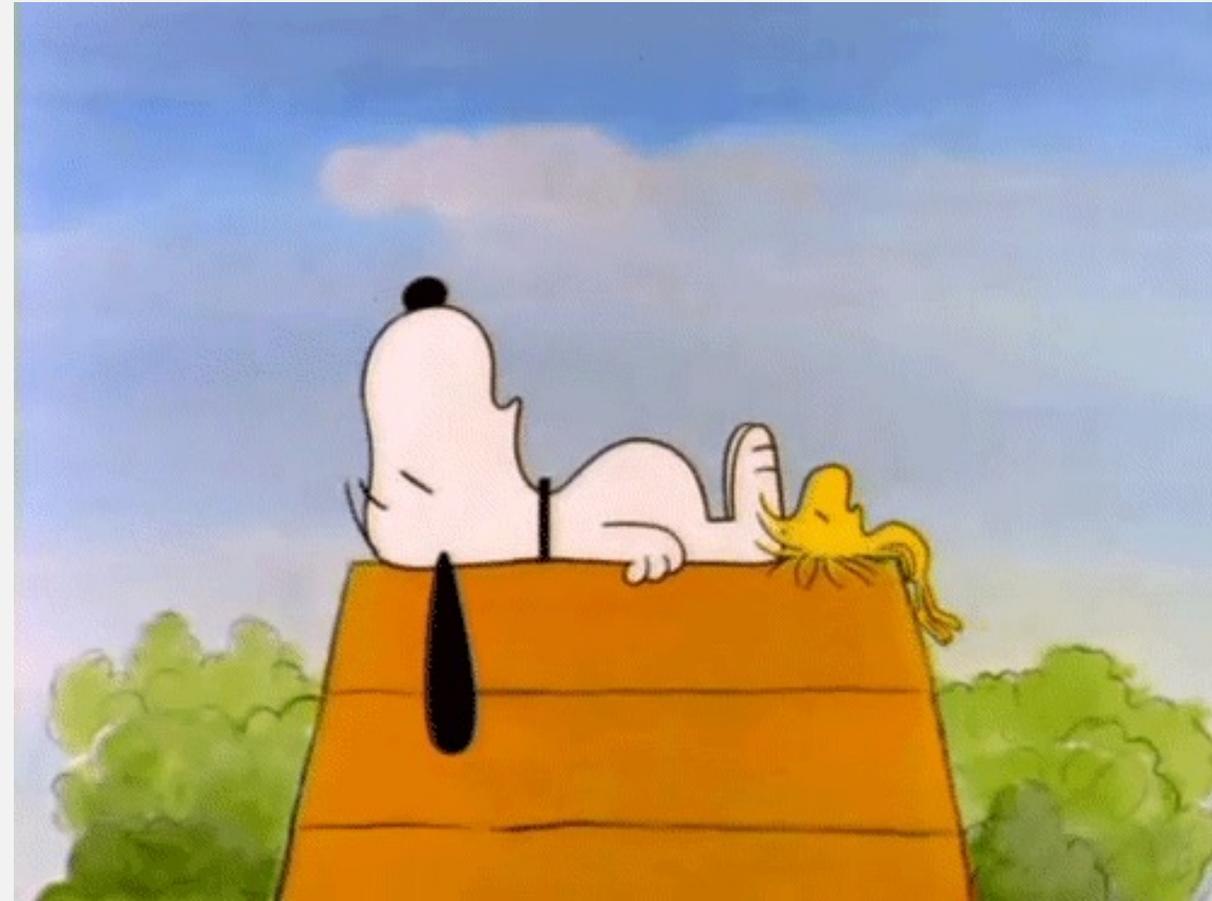
TIMING OF TEXTS

Witness to crime.

Sleeps 2 hours.

Wakes up, sends text about the crime
(2 hours after witnessing)

Hearsay?



FUNCHES V. STATE

381 P.3D 897 (NEV. 2012)

- **Hearsay.**
- Is there an exception?
 - NOT a present sense impression.
 - Excited utterance?
 - Yes. The witness's testimony indicated that she was under the extreme stress of seeing gory activities related to the alleged crime (even though she slept before the text).
 - *[consider repressed memories]*



**PUTTING IT ALL
OUT THERE
ON SOCIAL
NETWORKING**

The Ability To Communicate [all the stuff you put out there] *-Instantly-*



- All communications are connected
- Facebook messenger
- Twitter messaging
- Gaming messaging
- Electronic communications

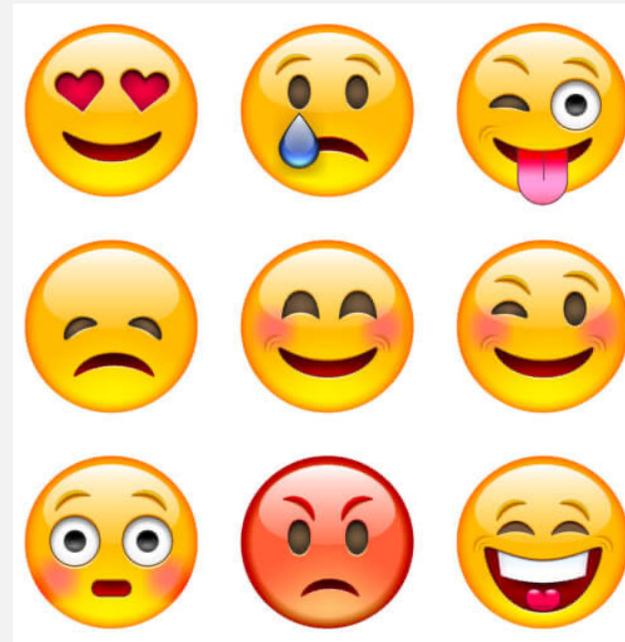
			
			
BLUE ZONE	GREEN ZONE	YELLOW ZONE	RED ZONE
Sad	Happy	Frustrated	Mad
Sick	Calm	Worried	Terrified
Tired	Feeling Good	Silly	Yelling
Bored	Focused	Excited	Hitting
Running Slow	Ready to Learn	Losing control	Out of Control

	Running late
	Good luck
	Be quiet
	You go girl
	See you soon
	Party time
	Call me
	Not my cup of tea

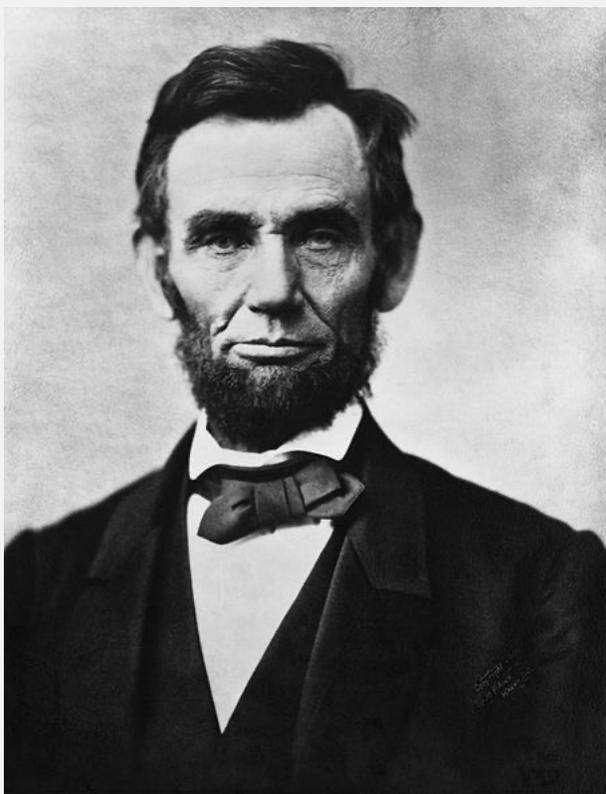
ELECTRONIC COMMUNICATION WITHOUT WORDS

EMOTICONS (keyboard) & EMOJIS (cartoon)

:-) :) :(
^_^ ;) :D
:-/ :O O.O



1862 New York Times

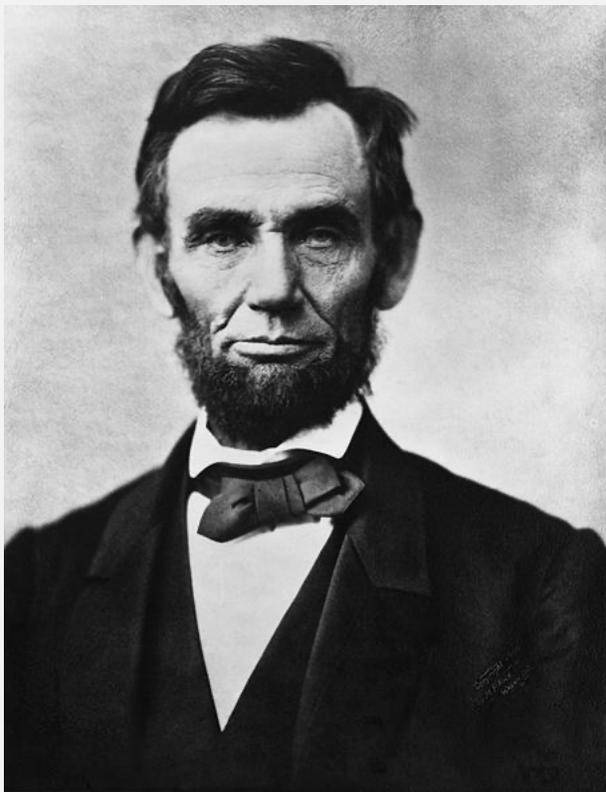


the front of the platform and spoke as follows :

THE PRESIDENT'S SPEECH.

FELLOW-CITIZENS: I believe there is no precedent for my appearing before you on this occasion, [applause] but it is also true that there is no precedent for your being here yourselves, (applause and laughter ;) and I offer, in justification of myself and of you, that, upon examination, I have found nothing in the Constitution against. [Renewed applause.] I, however, have an impression that there are younger gentlemen

1862 New York Times



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(applause and laughter ;)



TYPOGRAPHICAL ART.

We wish it to be distinctly understood that the letterpress department of this paper is not going to be trampled on by any tyrannical crowd of artists in existence. We mean to let the public see that we can lay out, in our own typographical line, all the cartoonists that ever walked. For fear of startling the public we will give only a small specimen of the artistic achievements within our grasp, by way of a first instalment. The following are from Studies in Passions and Emotions. No copyright.



Joy.



Melancholy.



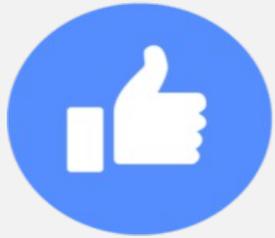
Indifference.



Astonishment.

FACEBOOK EMOJIS

Released



Like



Love



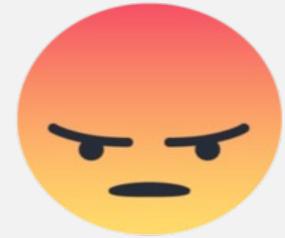
Haha



Wow



Sad

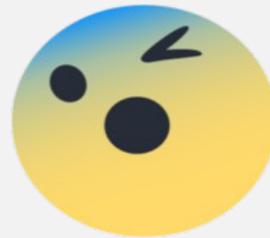


Angry

Not Released



Yay



Ouch



Confused

**FACEBOOK
"I CARE"**



**CELL
PHONE
EMOJIS**



Animated Emojis

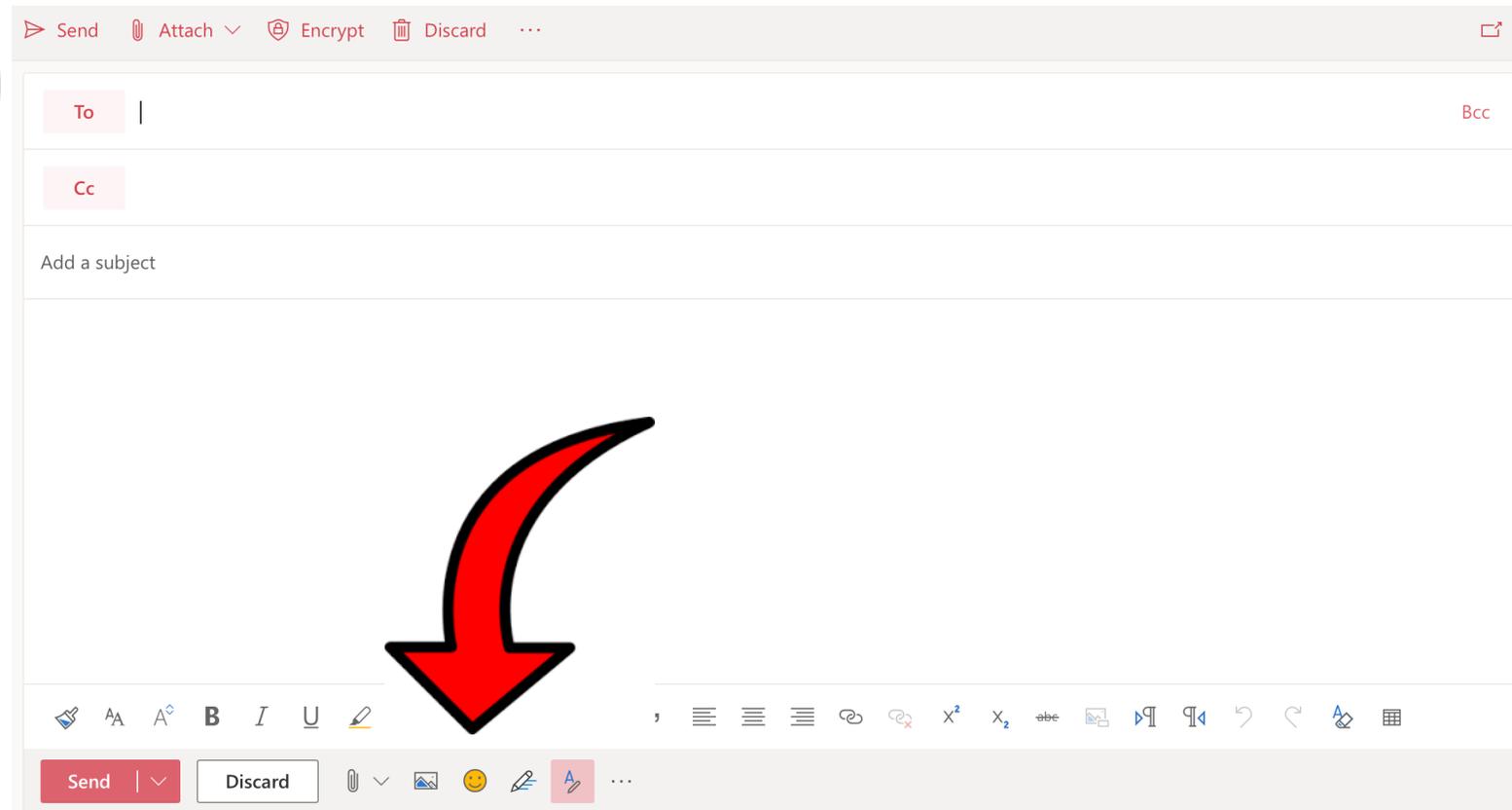




SPECIALIZED EMOJIS

[KevMoji]

Email Emojis





To

Bcc

Cc

Add a subject

Exp

Search with Bing

All Emojis GIFs

Popular emojis

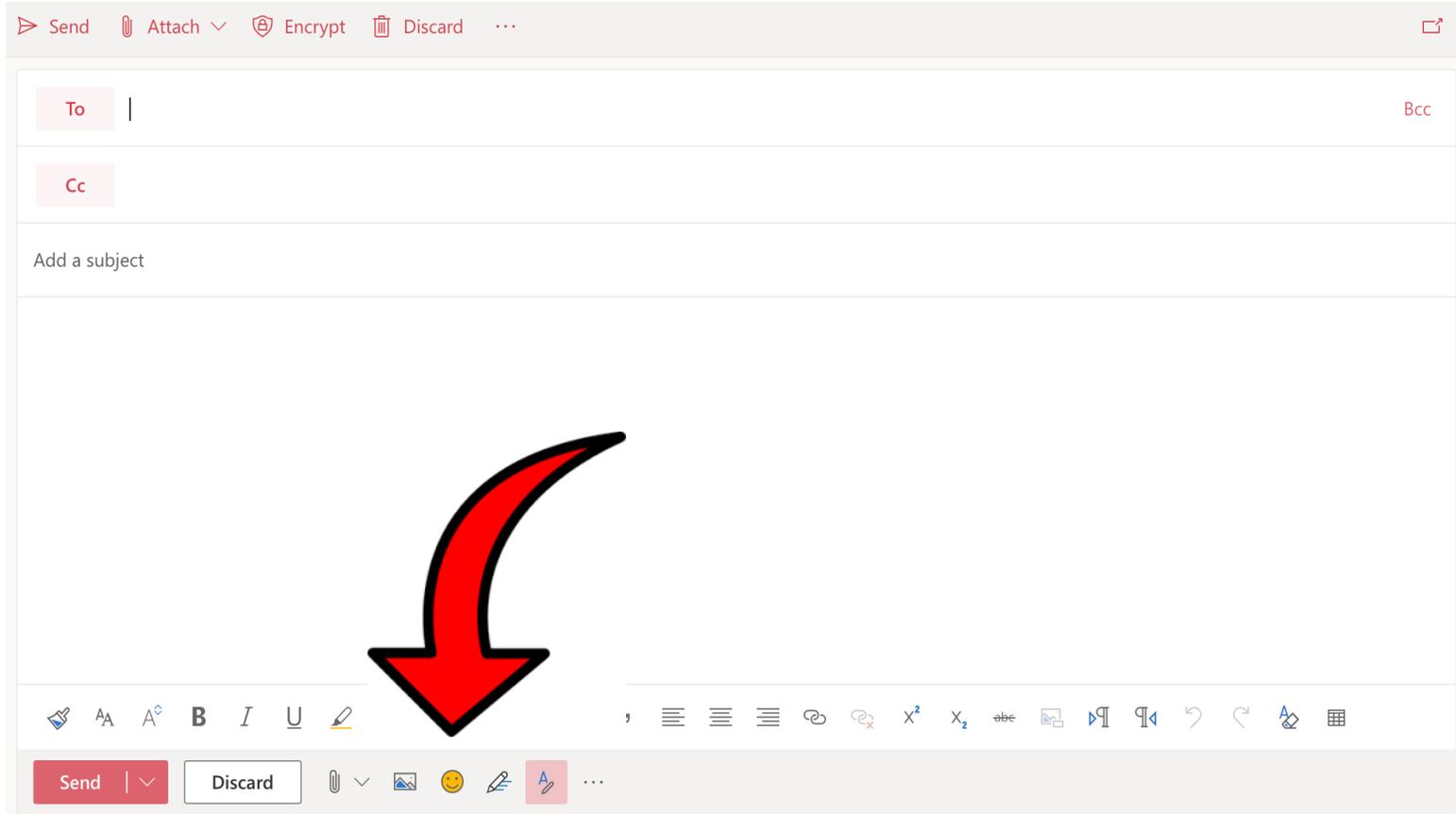


View all

Gif's Graphic Interchange Format



EMAIL GIFS



Send Attach Encrypt Discard ...

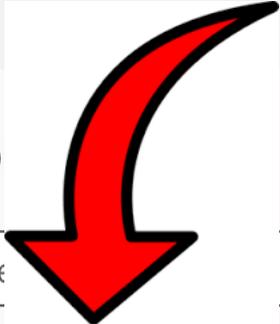


To Bcc

Cc

Add a subject

Expressio



All Emojis GIFs

Popular emojis



View all

To

Bcc

Cc

Add a subject

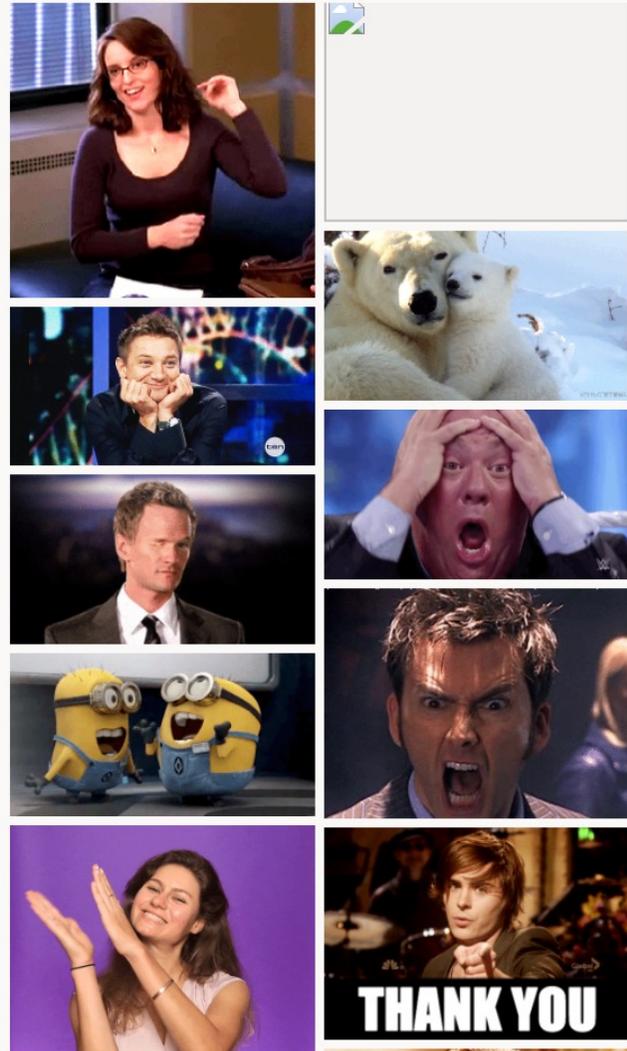
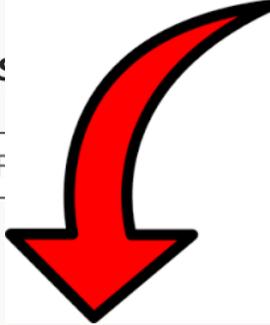
Rich text editor toolbar with icons for bold, italic, underline, link, unlink, list, indent, quote, and more.

Send Discard Attach Image Smile Face Pencil A ...

Expressions

Search GIF

All Emojis



**COMMUNICATING
WITH
EMOJI
PICTURES**





Hahaha I think I actually get what's going on there! It's about a camp hookup that results in a baby who robs a bank and almost gets caught But escapes to china?

CASES

ELONIS V. US
EMOTICON/EMOJI 1ST AMENDMENT FREE SPEECH?

- Facebook postings of Anthony Douglas Elonis, written under the pseudonym “Tone Dougie”
- He posted self-styled rap lyrics containing violent language and imagery concerning his wife and co-workers, claiming that his messages were fictitious and protected by the First Amendment.
- He argued that his use of the tongue-out emoticon “:-P” suggested that he was making statements in jest and not as serious threats.
- The Supreme Court reversed the case based on an erroneous jury instruction but unfortunately declined to rule on the First Amendment issue or the emoticon itself

Winkie Face Emoji is not consent (TX)

- A Texas man prosecuted for violently sexually assaulting an acquaintance in 2011.
- The defendant argued that his victim had preemptively consented to sex through several text messages they had exchanged prior to the incident, which he had interpreted as sexually suggestive.
- This text exchange had culminated in the victim texting the man “a ‘winkie face’ emoji.”
- At trial, the defendant argued that there were at least two consents for sex—three, if one counts the ‘winkie face.’
- 10 years in prison



Winking Emoticon showed amuse by opportunity to harass (DE)



- A Delaware judge interpreted a winking emoticon as a menacing signal.
- When a man secretly bought a plane ticket next to a colleague who clearly did not wish to see him again, “surprised” her on her flight to Paris, then boasted to friends in a text—“Was next to [the woman] on the plane to Paris and she switched seats;)”—
- The man claimed that the wink showed he had just been joking around.
- The judge disagreed, interpreting the wink as a sign that the man “was amused by yet another opportunity to harass” his target.

GHANAM V. DOES

303 MICH. APP. 522, 845 N.W.2D 128 (2014)
Sticking Tongue Out Emoticon Meant Sarcasm

- Defamation case involving missing road salt and new garbage trucks for the city
- Someone responded to an online forum thread that a public official was responsible for stealing the road salt and purchasing new garbage trucks to make more money from a side business selling tires
- Michigan Court of Appeals interpreted the “:P” (sticking tongue out emoticon) included in the posts to mean sarcasm, so the statements connected with that emoji “cannot be taken seriously as asserting a fact,” so they were not defamatory

:P



A COURT IN FRANCE SENTENCED A 22-YEAR-OLD MAN TO THREE MONTHS IN PRISON FOR TEXTING HIS EX-GIRLFRIEND A **PISTOL EMOJI**, WHICH THE COURT DETERMINED WAS A **“REAL THREAT”**



PROSECUTORS IN
A MASSACHUSETTS
MURDER
CASE SUCCESSFULLY
ARGUED THAT THE
DEFENDANT'S USE OF AN
EMOJI WITH X'S FOR EYES
COUPLED WITH THE
NICKNAME OF THE VICTIM
SUGGESTED A
PREMEDITATED HOMICIDE
AND *NOT* ACCIDENTAL
DEATH AS THE DEFENDANT
ARGUED.

Emoji analysis combined with
distinctive characteristics



IN CALIFORNIA, A MIDDLE-AGED MAN REPORTEDLY SENT SEXUALLY SUGGESTIVE TEXTS TO A FEMALE POTENTIAL EMPLOYEE. THE WOMAN ALLEGEDLY RESPONDED TO ONE OF THE TEXTS WITH A **RED-LIPSTICK KISS MARK**, RAISING THE ISSUE OF WHETHER THE KISS IMPLIED THAT SHE WELCOMED HIS ADVANCES,



CA PROSECUTORS WERE TRYING TO PROVE THAT A MAN ARRESTED DURING A PROSTITUTION STING WAS GUILTY OF PIMPING CHARGES, AND AMONG THE EVIDENCE WAS A SERIES OF INSTAGRAM DMS HE'D ALLEGEDLY SENT TO A WOMAN. ONE READ:

“TEAMWORK MAKE THE DREAM WORK” WITH HIGH HEELS AND MONEY BAG EMOJI PLACED AT THE END. PROSECUTORS SAID THE MESSAGE IMPLIED A WORKING RELATIONSHIP BETWEEN THE TWO OF THEM. THE DEFENDANT SAID IT COULD MEAN HE WAS TRYING TO STRIKE UP A ROMANTIC RELATIONSHIP.



SEX TRAFFICKING EXPERT: HIGH HEELS AND BAGS OF MONEY SUPPORTED THE INTERPRETATION THAT THE DEFENDANT WAS ACCUSED OF SEX TRAFFICKING, ESSENTIALLY TRANSLATING TO “WEAR YOUR HIGH HEELS TO COME MAKE SOME MONEY.”

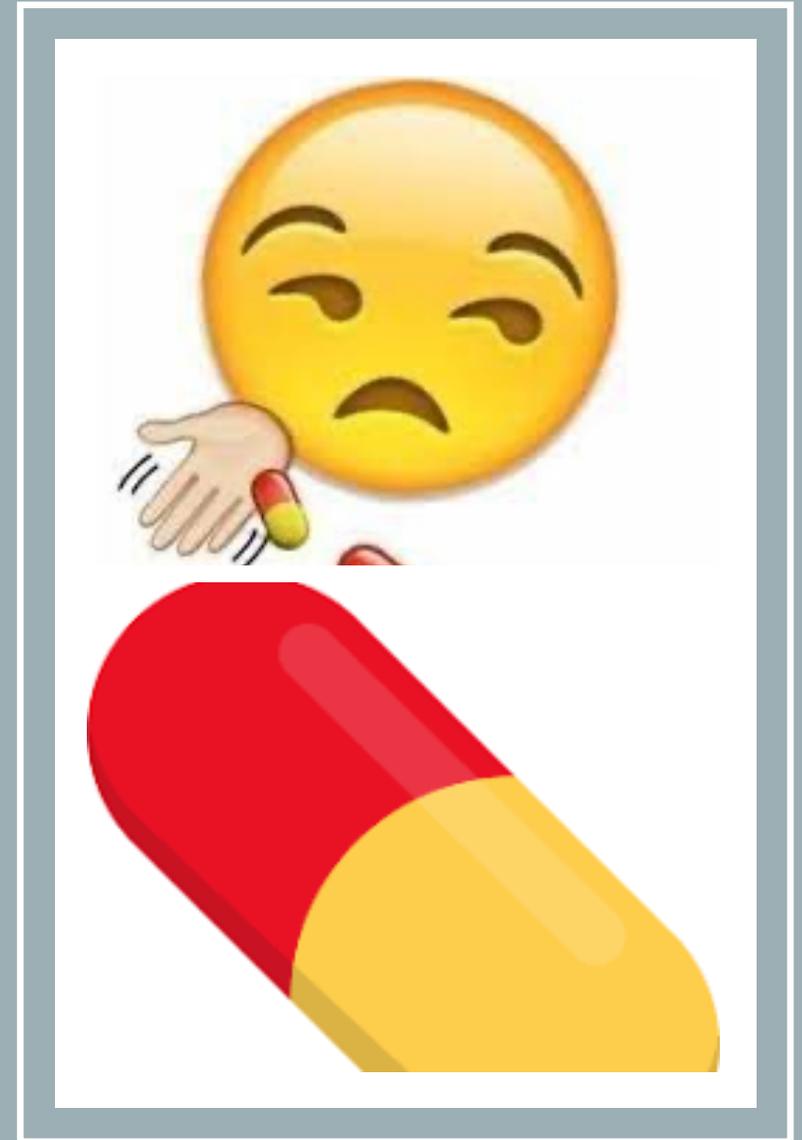


CROWN EMOJI SIGNIFIES “PIMP IS KING”



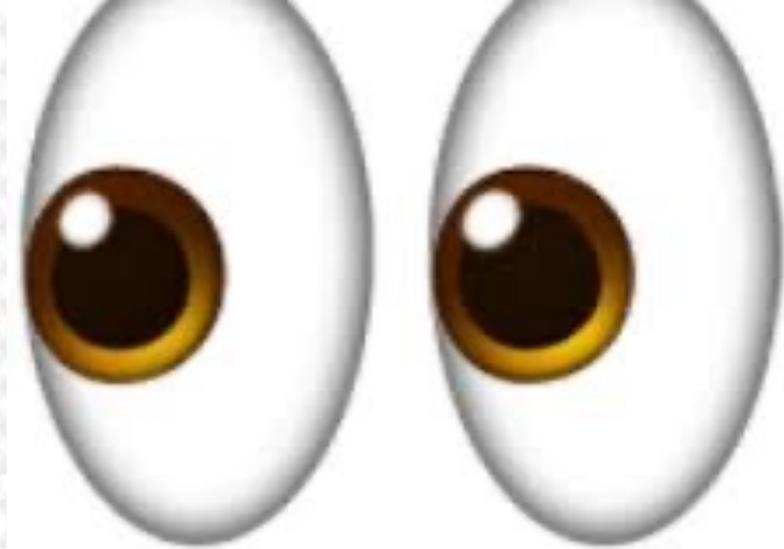
COMMONWEALTH V. FOSTER, 2019 WL 3926375 (PA. 2019).

- Following his Pennsylvania drug conviction, Foster raised the attention of his probation officer by posting photographs depicted guns, drugs, large amounts of money, along with pill emojis.



PEOPLE V. SMITH,
2019 WL 1122768
(CAL. 2019).

Smith was convicted
of witness
intimidation in
California for sending
a text to a witness
that included emojis
of guns, rats and
eyeballs.





STATE V. URICH, 2019 WL 3544019
(2019).

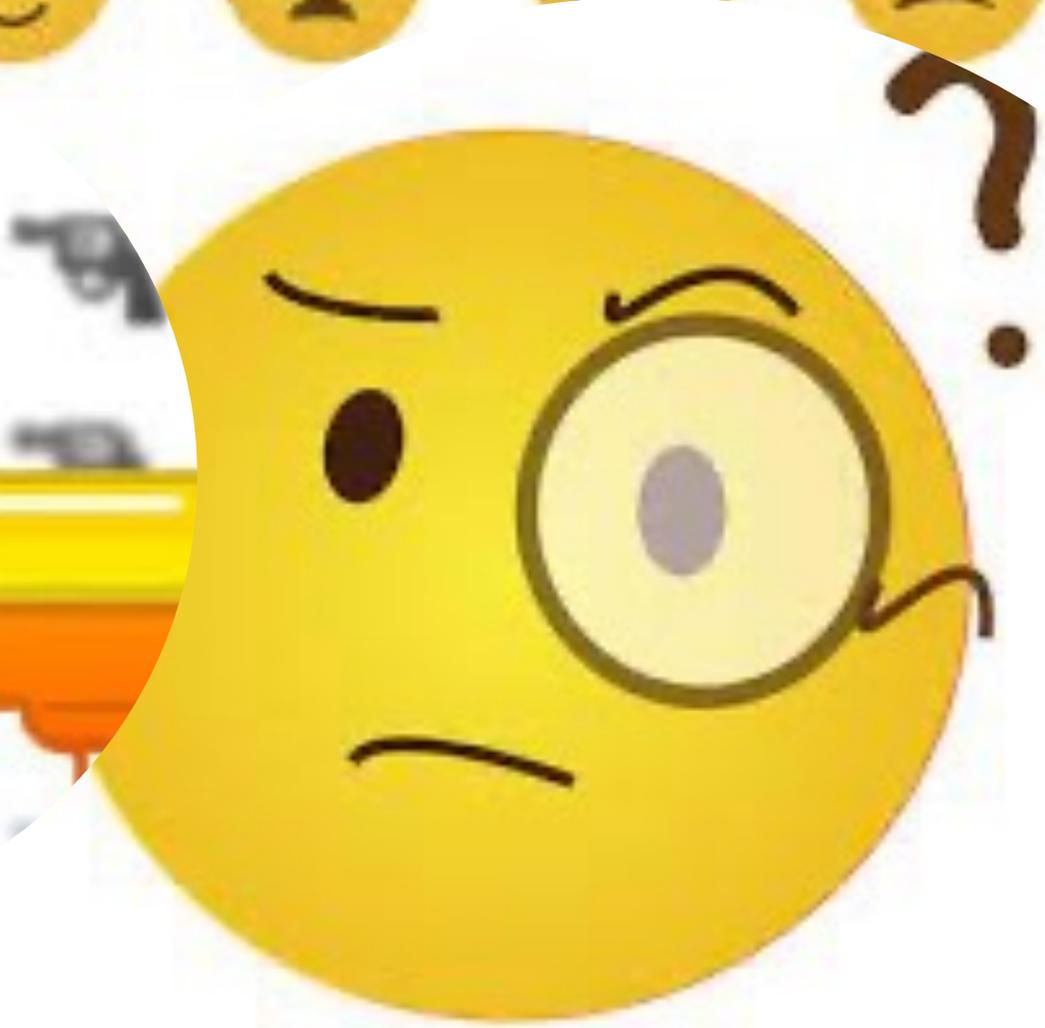
In Ohio, Urich was convicted of violating a protective order for, among other things, sending an emoji of a waiving hand to the victim.

FRE/ORE 901 (B)(4)

Distinctive Characteristics

- From the list of examples of methods of authentication:
- **Distinctive characteristics** and the like.
- **Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with the circumstances.**

Intent



MATTER OF B.C., 2019 WL
4303033 (OHIO 2019).



An Ohio high school student was adjudicated as delinquent of inducing panic after posting a photo to Snapchat depicting a revolver laying on its side next to an open box of ammunition with the caption, “homecoming warm up” with two laughing emojis.

IN INTEREST OF W. B., 801
S.E.2D 595 (GA. 2017).

Three Georgia teens were adjudged as delinquents for committing a burglary. Prosecutors introduced into evidence printouts from the Facebook pages which displayed emojis that included guns, bombs, and dollar signs.





M.J., 2018 WL 904421 (MD. 2016)

A Maryland youth was adjudged a delinquent for electronic harassment after posting explicit photographs of a young woman with the following text:

“Nasty [REDACTED] can’t believe I dated her.” Following that text were three surgical mask emoji faces.



IN RE L.F., 2015 WL
3500616 (CAL. 2015).

A California juvenile was adjudged to have made a criminal threat over a three-hour Tweet stream which included laughing and clapping emojis interspersed with her threats to shoot up her high school.

S. V. GRAND ISLAND
PUBLIC SCHOOLS, 899
N.W.2D 893 (NEB. 2017).

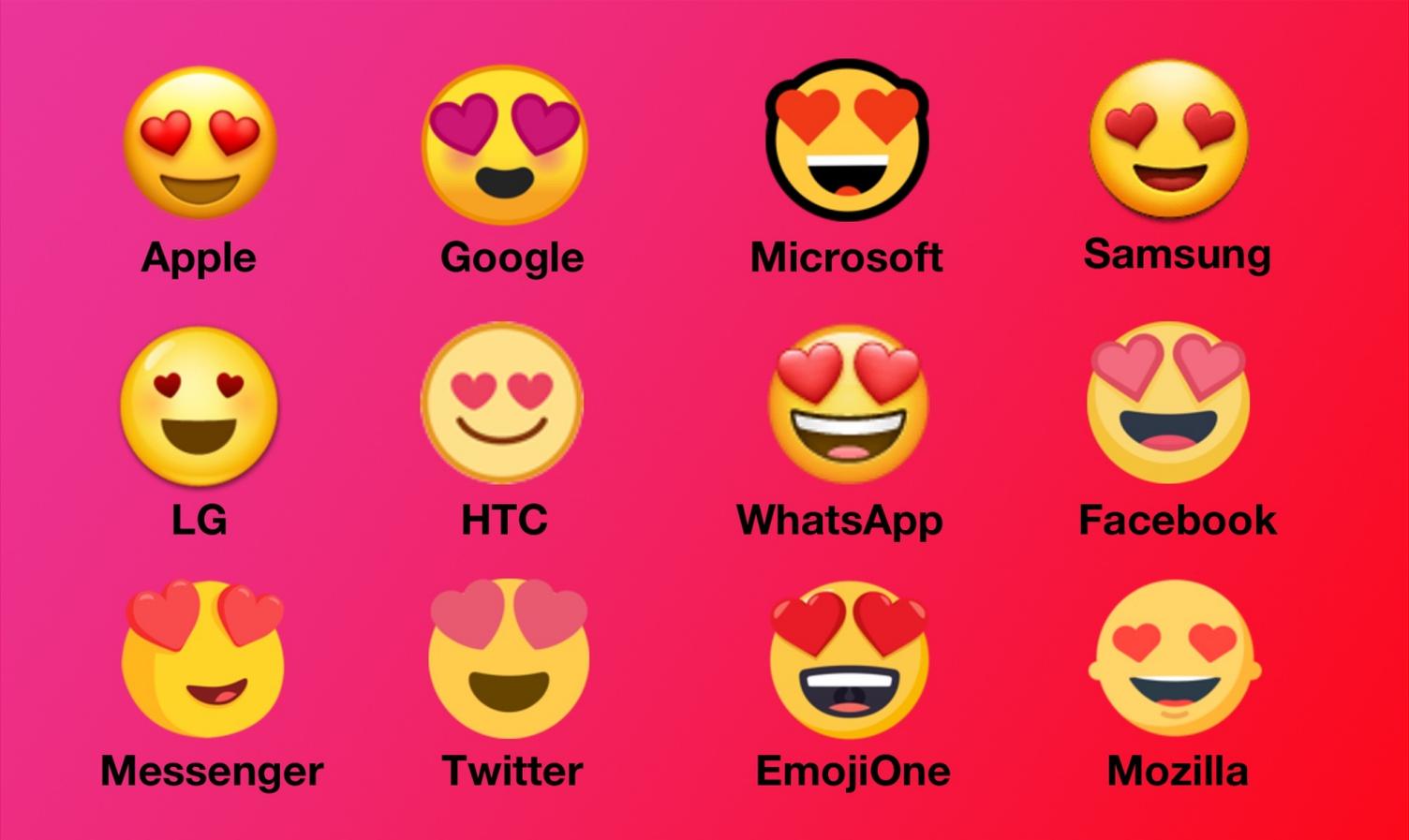
Nebraska school officials had to deal with the threat of a student “fire” emoji that seemed to suggest a violent attack would occur at the school the next day.



HOW A PLATFORM
DISPLAYS AN
EMOJI MAY AFFECT
HOW SOMEONE
DEFINES THE
EMOJI



HOW A PLATFORM DISPLAYS AN EMOJI MAY AFFECT HOW SOMEONE DEFINES THE EMOJI



HOW A
PLATFORM
DISPLAYS AN
EMOJI MAY
AFFECT HOW
SOMEONE
DEFINES THE
EMOJI



Apple



Google



Microsoft



Samsung



LG



HTC



WhatsApp



Facebook



Messenger



Twitter



EmojiOne



Mozilla

	Apple	Google	Microsoft	Samsung
2013*				
2014				
2015				
2016				
2017				
2018				

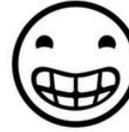
Apple

Google

Microsoft

Samsung

2013*



2014



2015



2016



2017



2018



Communicating with Petitioner in person, by telephone, cell phone, electronic communication (including but not limited to email, text instant message, and video) or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner with the intent to annoy or alarm the other party.



Communicating with Petitioner in person, by telephone, cell phone, electronic communication (including but not limited to email, text instant message, and video) or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner with the intent to annoy or alarm the other party.



Communicating with Petitioner in person, by telephone, cell phone, electronic communication (including but not limited to email, text instant message, and video) or in writing in vulgar, profane, obscene, or indecent language or in a coarse or offensive manner **with the intent to annoy or alarm the other party.**

HOW AN EMOJI IS DISPLAYED BY A PLATFORM CAN CHANGE THE ENTIRE MEANING OF THE MESSAGE.



**THIS MESSAGE SENT BY
TWO MEN TAKEN INTO
CUSTODY
FOR STALKING
CHARGES IN SOUTH
CAROLINA.)**

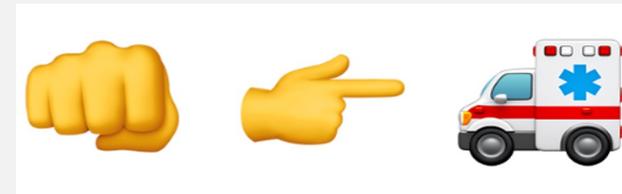


-CROSS PLATFORM DISCREPENCY-
PLATFORMS LIKE APPLE, GOOGLE, AND MICROSOFT ARE PERMITTED TO DISPLAY DIFFERENT EMOJIS IDIOSYNCRATICALLY. FURTHERMORE, UNICODE CANNOT FORCE THE PLATFORMS TO DISPLAY EMOJIS IN THE SAME WAY. SO, **THE SENDER AND THE RECIPIENT MAY SEE DIFFERENT MESSAGES WITHOUT REALIZING THE DISCREPANCY.**

AMBULANCE IS COMING!



YOU'RE GOING TO NEED AN AMBULANCE!



Words interpreted as an Emoji London Defamation Case

- Sex abuse case
- BBC reported that a “leading conservative politician” was involved, but didn’t use the name.
- But everyone posted (on FB and Twitter) that it was Lord McAlpine, causing his name to **trend**.
- A popular politician (Sally Bercow) tweeted:
- **“Why is Lord McAlpine trending? *innocent face*”**

THE WORDS “*INNOCENT FACE*” WERE NOT A TRUE PICTOGRAPHIC EMOJI. BUT THE COURT NONETHELESS FOUND THAT USERS OF TWITTER WERE LIKELY TO INTERPRET THE WORDS “LIKE A STAGE DIRECTION, OR AN EMOTICON”—IN OTHER WORDS, LIKE AN EMOJI



innocent face



ULTIMATELY, THE COURT RULED THAT “*INNOCENT FACE*” WAS “INSINCERE AND IRONICAL” AND CONTRIBUTED TO THE LIBEL. THE COURT RULED AGAINST BERCOW, LEADING TO HER ADMISSION OF FAULT AND COSTING HER MORE THAN \$20,000.

Israel: Real Estate Contract Case

- Good morning 
- Interested in house     
- Just need to discuss the details. When is a good time for you?

Israel: Real Estate Contract Case

Good morning 🥰 [smiling face with smiling eyes] Interested in the house 🎊
[woman dancing] 🧚‍♀️ [people with bunny ears] 🌠 [comet] 🐿️ 🍾 [bottle with
popping cork] ... just need to discuss the details... When's a good time for you?

Israel: Real Estate Contract Case

- Based on this message, the landlord took the apartment off the market.
- The potential tenants stopped responding to the landlord's message
- The Israeli court did not hold that a binding contract had been created by the text message.
- But Israel has a statutory requirement that contracting parties act in good faith, and the court awarded the landlord \$2,200 on the basis that the potential tenants were acting in bad faith.
- Specifically, the judge said **that “the sent symbols ... convey great optimism”** and that the message naturally led the landlord to rely on the defendant's desire to rent his apartment.



ADDING AN EMOJI SUCH AS THE “THUMBS UP” SIGN, “SHAKING HANDS,” OR THE CIRCLED FINGERS SIGNIFYING “OK” MAY CREATE A REASONABLE EXPECTATION THAT THE SENDER HAS AGREED TO A CONTRACT.



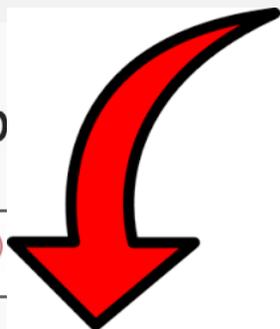
To

Bcc

Cc

Add a subject

Exp



Search with Bing

All Emojis GIFs

Popular emojis



View all



To

Bcc

Cc

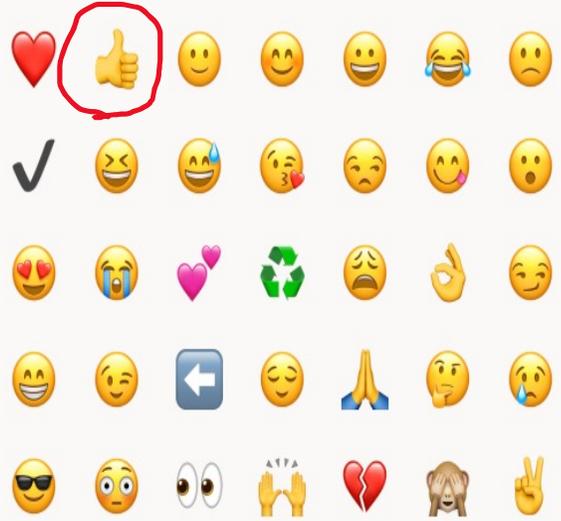
Add a subject

Exp

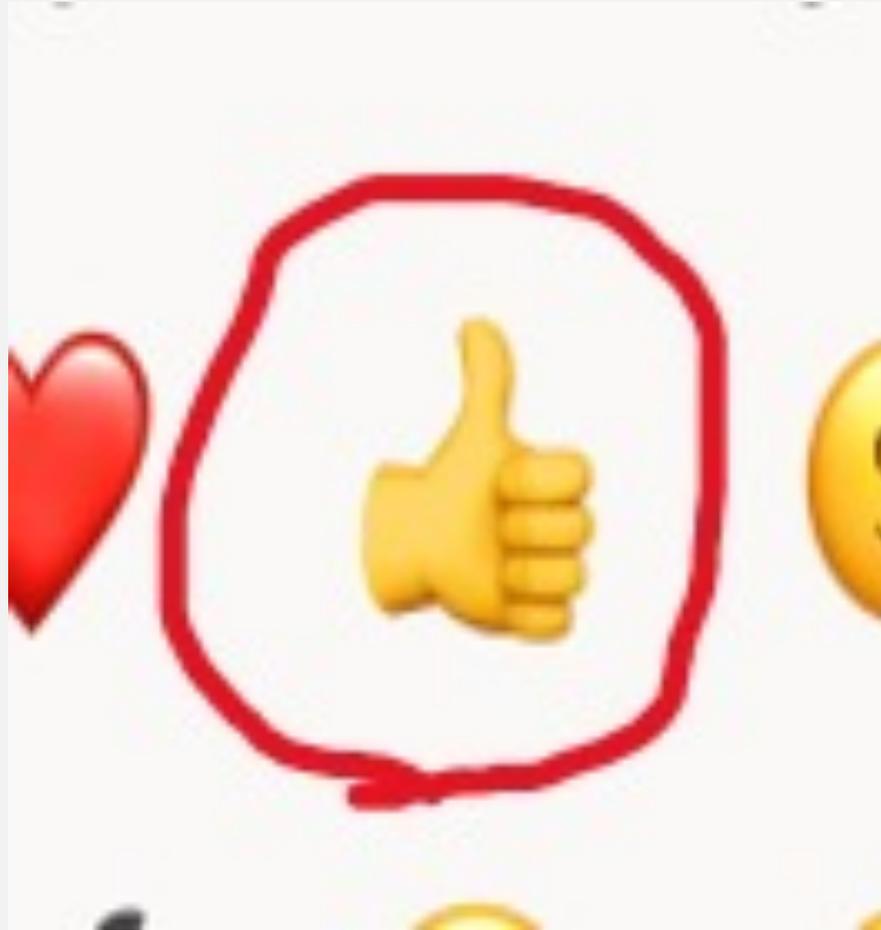
Search with Bing

All Emojis GIFs

Popular emojis



View all



**SOCIAL MEDIA POSTS/
ADOPTIVE
ADMISSIONS**



- **FRE 801(d)(2)(B)/[OEC 801(4)(b)(B)] - a statement that the party manifested an adoption or belief in its truth is not hearsay**
- **Bland v. Roberts, 730 F.3d 368 (4th Cir. 2013)**
- **“[L]iking a political candidate’s campaign page ... is the Internet’s equivalent of displaying a political sign in one’s front yard, which the Supreme Court has held is substantive speech.”**

EMOJIS/EMOTICONS/GIFS FOUNDATION/PREDICATE

- *[direct foundation (email/text/IM)]*
- Is there anything in the message aside from letters, numbers and punctuation?
 - **Yes.**
- What else is there?
 - **here is an emoji/emoticon/GIF**
- What emojis/emoticons/GIFs appear?
 - **There's a winky face emoji**

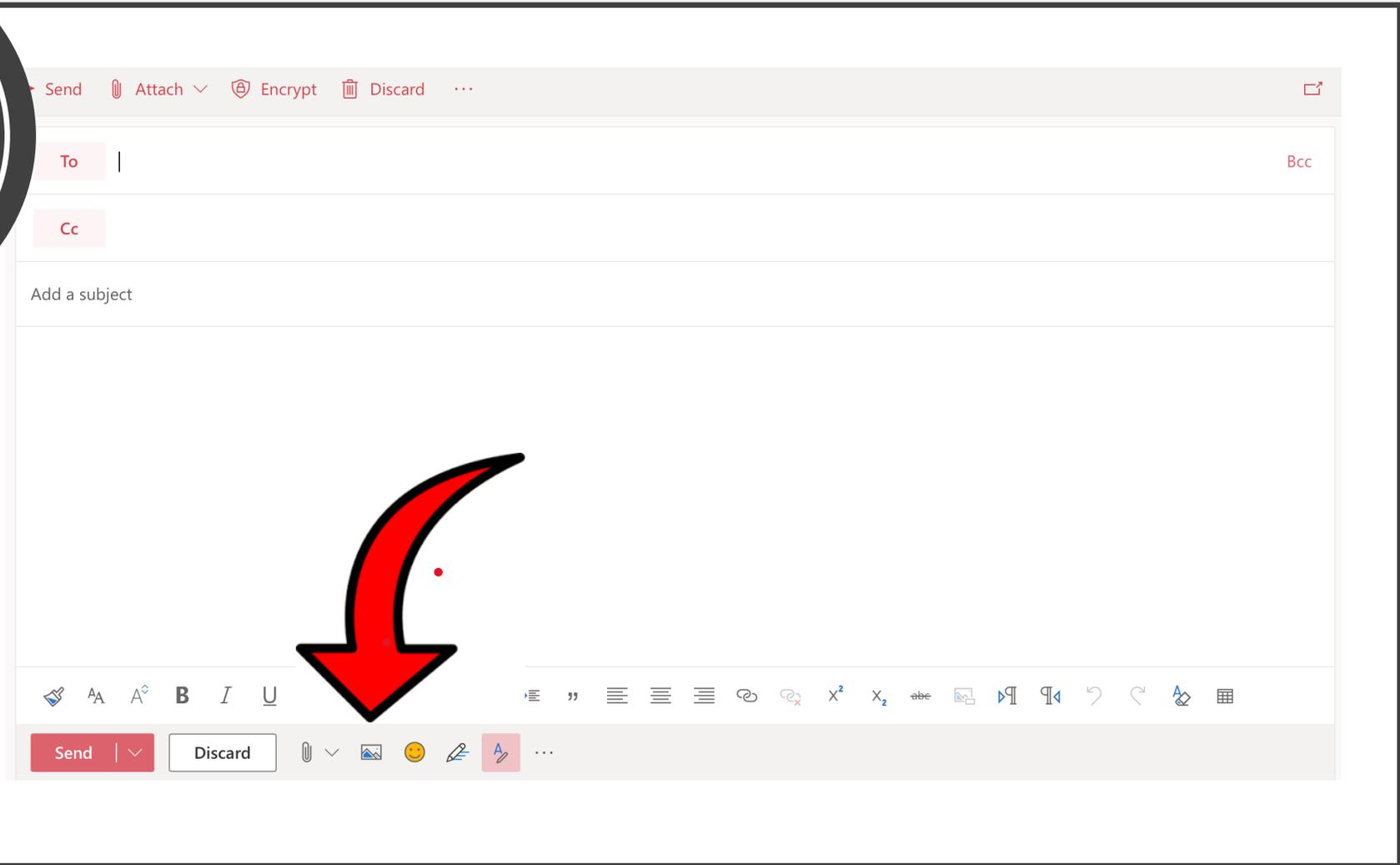
EMOJIS/EMOTICONS/GIFS FOUNDATION/PREDICATE

- Did your spouse use those emojis/emoticons/GIFs before?
 - Yes.
- In what context would your spouse use them?
 - When he was joking around.
- What do those emojis/emoticons/GIFs mean to you when your spouse uses them?
 - I think he's joking when he uses it.

Communicating with Photographs



EMAIL Pictures



Favorites
 Recents
 Applica...
 Downlo...
 iCloud
 iCloud...
 Desktop
 Docum...
 Tags
 Media
 Photos

< > ≡ ▾ ☰ ▾ ⌚ Recents 🔍 Search

Today	Date Modified	Size
4xCA.gif	Today at 9:49 AM	1.8 ME
9Qoz.gif	Today at 2:10 PM	11.2 MB
79gl.gif	Today at 12:02 PM	521 KB
Azy8.gif	Today at 11:53 AM	48 KB
fxWj.gif	Today at 9:50 AM	13 MB
nv copy	Today at 2:30 PM	833 KB
nv.gif	Today at 2:30 PM	875 KB
Screen Shot 2021-04-14 at 1.41.51 PM	Today at 1:41 PM	190 KB
Screen Shot 2021-04-14 at 2.24.42 PM	Today at 2:24 PM	16 KE
Screen Shot 2021-04-14 at 2.36.04 PM	Today at 2:36 PM	16 KE
Screen Shot 2021-04-14 at 2.42.48 PM	Today at 2:42 PM	236 KB
VJU.gif	Today at 2:06 PM	560 KB
XIO9.gif	Today at 10:54 AM	521 KB

heatherking > Downloads > Azy8.gif

Options Cancel Open

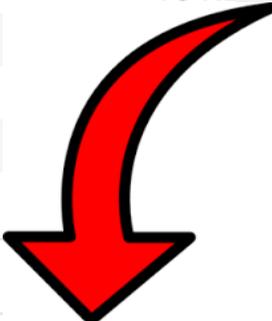
Favorites
 Recents
 Applica...
 Downlo...
 iCloud
 iCloud...
 Desktop
 Docum...
 Tags
 Media
 Photos

< > [List Icon] [Grid Icon] Recents [Share Icon] Search

Today	Date Modified	Size
4xCA.gif	Today at 9:49 AM	1.8 ME
9Qoz.gif	Today at 2:10 PM	11.2 ME
79gl.gif	Today at 12:02 PM	521 KB
Azy8.gif	Today at 11:53 AM	48 KB
fxWj.gif	Today at 9:50 AM	13 ME
nv copy	Today at 2:30 PM	833 KB
nv.gif	Today at 2:30 PM	875 KB
Screen Shot 2021-04-14 at 1.41.51 PM	Today at 1:41 PM	190 KB
Screen Shot 2021-04-14 at 2.24.42 PM	Today at 2:24 PM	16 KE
Screen Shot 2021-04-14 at 2.36.04 PM	Today at 2:36 PM	
Screen Shot 2021-04-14 at 2.42.48 PM	Today at 2:42 PM	
VJU.gif	Today at 2:06 PM	
XIO9.gif	Today at 10:54 AM	

heatherking > Downloads > Azy8.gif

Options Cancel Open



Communicating with Memes

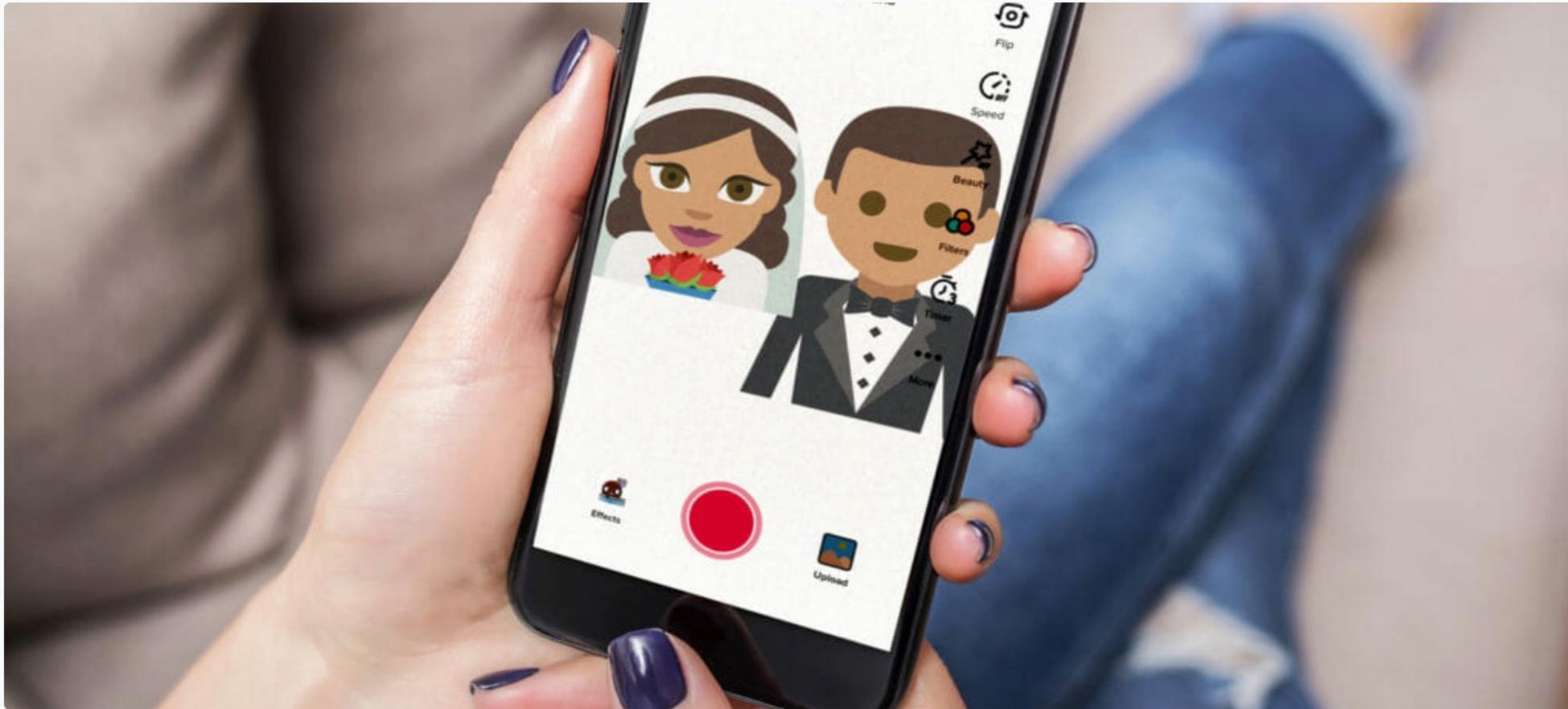


I wish I could take off work early.

WHEN YOU'RE ABOUT TO SNEAK OUT OF WORK



AND YOUR BOSS WALKS IN



Denis Rozhnovsky/Shutterstock (Licensed) Remix by Jason Reed

The curious world of divorce TikTok

'Til death do us part' means something different on TikTok.



901(B)(4)

Distinctive Characteristics

- From the list of examples of methods of authentication:
- Distinctive characteristics and the like.
- **Appearance, contents, substance, internal patterns, or other distinctive characteristics,** taken in conjunction with the circumstances.

**FACEBOOK
TWITTER
MYSpace
SOCIAL MEDIA**

STATE V. GREEN
427 S.C. 223 (2019)/830 S.E.2D 711
[SCRE 901(B)(4)] [equivalent ORE 901(b)(4)]
DISTINCTIVE CHARACTERISTICS

- **FB MESSAGES COME IN** - Numerous facts link the Facebook messages to Defendant
- The content was **distinctive** enough to show that Defendant authored the messages
- **Screen name** used was linked to Defendant (through gf)
- Use of Defendant's **sister's name**
- Use of Defendant's **actual name**
- **Invitation** to house with **specific address**
- **Timing** (victim disappeared shortly after he came to that address)

STATE V. GREEN
427 S.C. 223 (2019) 830 S.E.2D 711

- *United States v. Barnes*, 803 F.3d 209, 217-18 (5th Cir. 2015)
- Facebook messages authenticated by witness who saw defendant using Facebook, and recognized his account and writing style.

FACEBOOK 901(b)(4) Analysis
PARKER V. STATE
COURT OF APPEALS OF INDIANA
| OPINION 20A-CR-315 | JULY 30,
2020

[equivalent OEC 901(d)(2)]

- The trial court relied in part upon other unique characteristics
- Address
- Facebook Messenger messages
- FB profile photo

FACEBOOK POSTS

- **D was convicted of felony injury to a child**
- **After years of different tests, diets, surgeries, and medications, medical professionals suspected medical child abuse**
- **State introduced D's Facebook posts and comments to those posts to show that D was using her child's condition to get attention**
- **Trial court admitted D's posts but not D's friends' posts**
- **The friends' posts had been redacted when the trial court sustained D's objections to them**



RIPSTRA V. STATE, 514
S.W.3D 305 (TEX.
APP.—HOUSTON [14TH
DIST.] 2016, PET. REF'D)

**-NON-HEARSAY-
ADMISSION
BY A PARTY
OPPONENT**

FACEBOOK
POSTS

- Trial court admitted D's posts but not D's friends' posts
- The friends' posts had been redacted when the trial court sustained D's objections to them
- The court of appeals held that the trial court did not err by admitting D's Facebook posts against her as **admissions by a party opponent**
- **OEC 801(d)**

ADMISSION BY PARTY OPPONENT NON-HEARSAY

ORE 801(D)(2)(a)-(e)

- e) Exception for Admissions by a Party-Opponent. - A statement is admissible as an exception to the hearsay rule if it is offered against a party and it is
 - (A) his own statement, in either his individual or a representative capacity, or
 - (B) a statement of which he has manifested his adoption or belief in its truth, or
 - (C) a statement by a person authorized by him to make a statement concerning the subject, or
 - (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship or
 - (E) a statement by a coconspirator of such party during the course and in furtherance of the conspiracy.

ADOPTIVE ADMISSION NON-HEARSAY

ORE 801(D)(2)(a)-(e)

- e) Exception for Admissions by a Party-Opponent. - A statement is admissible as an exception to the hearsay rule if it is offered against a party and it is
 - (A) his own statement, in either his individual or a representative capacity, or
 - (B) a statement of which he has manifested his adoption or belief in its truth, or
 - (C) a statement by a person authorized by him to make a statement concerning the subject, or
 - (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship or
 - (E) a statement by a coconspirator of such party during the course and in furtherance of the conspiracy.

[“ADMISSION”] STATEMENT AGAINST INTEREST HEARSAY EXCEPTION

- ORE 804(B)(3)
- A statement that:
- **(A)** a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary or pecuniary interest or had so great a tendency to invalidate the declarant’s claim against someone else or to expose the declarant to civil or criminal liability; and
- **(B)** is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

STATEMENT AGAINST INTEREST
[BLAME SHARING VS. BLAME SHIFTING]

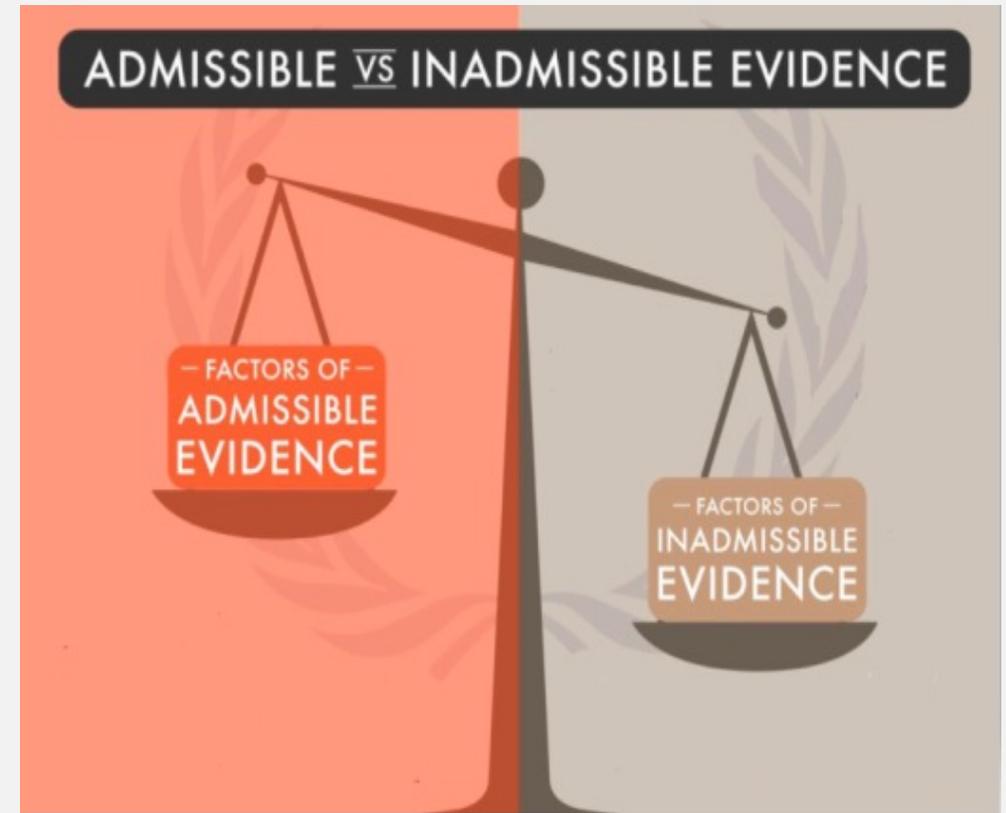
- ***Ruiz v. State, 631 S.W.3d 841, 859 (Tex.App.—Eastland 2021, pet. ref'd)***
- Statements against a declarant's penal interest fall into three general categories:
 - (1) self-inculcating statements,
 - (2) statements that equally inculcate the declarant and a third party ***(blame sharing)***
 - (3) statements that inculcate both the declarant and a third party but shift blame to another by minimizing the speaker's culpability ***(blame shifting)***

STATEMENT AGAINST INTEREST
[BLAME SHARING VS. BLAME SHIFTING]

- ***Ruiz v. State*, 631 S.W.3d 841, 859 (Tex.App.—Eastland 2021, pet. ref'd)**
- Self-inculpatory statements and “blame-sharing” or neutral collateral statements are admissible (exception to hearsay), but
- Self-exculpatory statements that shift blame to another (“blame shifting”) must be excluded as hearsay.

PREREQUISITES TO ADMISSIBILITY

- Relevant **FRE/ORE 401-402**
- Probative Value vs Unfair Prejudice **FRE/ORE 403**
- Not Hearsay **FRE/ORE 801-805**
- Authentic **FRE/ORE 901-902**
- Original/Duplicate **FRE/ORE 1001**



NON-HEARSAY EMAILS

[WORK RELATED EMAILS]

U.S. V. SAFAVIAN, 435 F. SUPP. 2D 36 (D.D.C. 2006)



NON-HEARSAY
EMAILS/

WORK

U.S. V. SAFAVIAN
435 F. SUPP. 2D
36 (D.D.C. 2006)

Certain emails can constitute the “work” Abramoff did, without regard to the truth of their contents. It is the fact of the discussions, rather than the content (or the truth or accuracy thereof) that is being offered.

NON-
HEARSAY
EMAILS/
INQUIRIES
U.S. V. SAFAVIAN
435 F. SUPP. 2D
36 (D.D.C. 2006)

An **inquiry** contained in an email is not an assertion of the truth and cannot be a hearsay statement.

- “Do you know if that is doable, and how?”

NON-HEARSAY
EMAILS/
**IMPERATIVE
STATEMENT**
U.S. V. SAFAVIAN
435 F. SUPP. 2D
36 (D.D.C. 2006)

Emails containing an imperative statement giving instructions, how to do something, are not offered to prove the truth of the matter asserted.

- “Let’s do a meal so we can start getting business ideas moving.”

NON-HEARSAY
EMAILS/
REQUEST FOR
ASSISTANCE
U.S. V. SAFAVIAN
435 F. SUPP. 2D
36 (D.D.C. 2006)

Emails containing explicit or implicit **requests for assistance**.

- **Can you help with this project?**

NON-HEARSAY
EMAILS/
**SOLICITING
OPINION**

U.S. V. SAFAVIAN
435 F. SUPP. 2D
36 (D.D.C. 2006)

Emails **soliciting an opinion** are not hearsay.

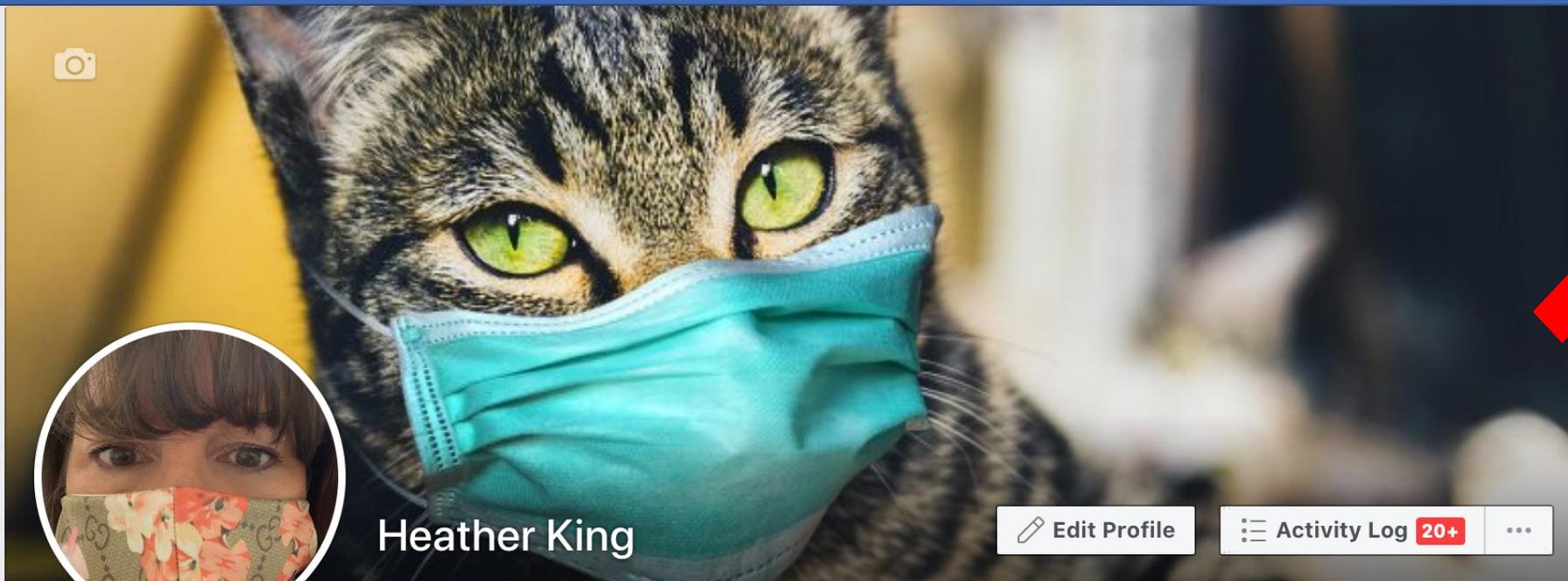
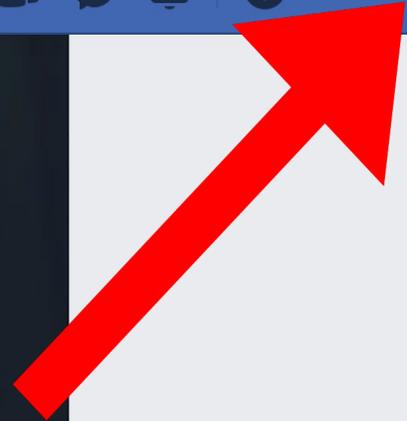
- **What do you think of this?**

NOT HEARSAY
**ADOPTIVE
ADMISSION**
U.S. V. SAFAVIAN,
435 F. SUPP. 2D
36 (D.D.C. 2006)

- Where it is demonstrated that the contents of the emails indicate that sender (party) manifested an adoption or belief in the truth of the statements of other people as he **forwarded their emails** – these emails are **adoptive admissions**.
- FRE 801(d)(2)(B).



**FINDING
SOCIAL MEDIA
EVIDENCE CAN
BE AS EASY AS
PRESSING A
BUTTON**



Heather King

Edit Profile Activity Log 20+ ...

Timeline About Friends 960 Photos Archive More

203 items for you to review

Create Post Photo/Video Live Video Life Event

What's on your mind?

Photo/Video Tag Friends GIF GIF ...

Intro Add a short bio to tell people more about yourself. Add Bio



Heather King

Edit Profile

Activity Log 20+

- [Your Groups](#)
- [Advertising on Facebook](#)
- [Activity Log 20+](#)
- [News Feed Preferences](#)
- [Settings](#)
- [Send Money](#)
- [Payment History](#)
- [Switch to New Facebook](#)
- [Log Out](#)

Timeline About Friends 960 Photos Archive More

203 items for you to review

Create Post | Photo/Video | Live Video | Life Event

Intro

What's on your mind?



Filters

Activity Log

- Timeline Review 10+
- Tag Review 1
- Photo Review

- Posts
- Posts And Comments You're Tagged In
- Others' Posts to Your Timeline
- Hidden From Timeline

- Photos and Videos
- Likes and Reactions
- Comments
- MORE

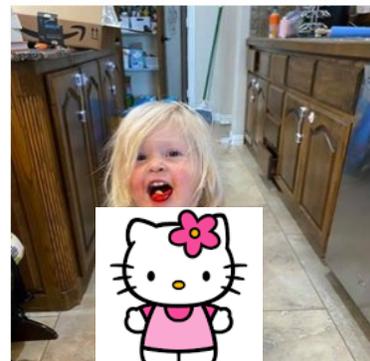
Activity Log

Heather King updated her cover photo.



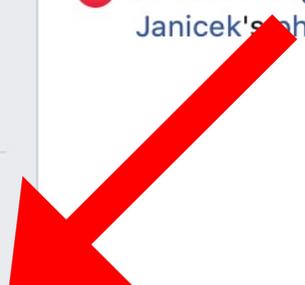
YESTERDAY

Heather King reacted to Jessica Hall Janicek's photo.



Here is my daughter. She ripped the head off an Ariel doll. Now she's pretending to eat it.

- 2020
- 2019
- 2018
- 2017
- 2016
- 2015
- 2014
- 2013
- 2012
- 2011
- 2010
- 2009
- 2008
- 2007





Filters

Activity Log

- Timeline Review 10+
- Tag Review 1
- Photo Review

- Posts
- Posts And Comments You're Tagged In
- Others' Posts to Your Timeline
- Hidden From Timeline

- Photos and Videos
- Likes and Reactions
- Comments
- MORE

Activity Log



Heather King updated her cover photo.



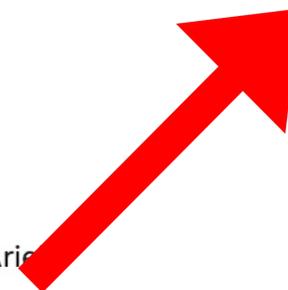
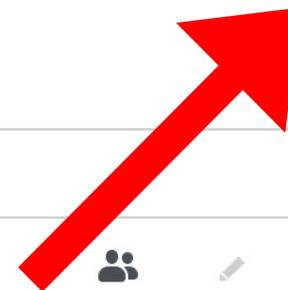
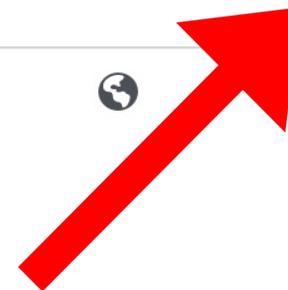
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Heather King



Heather

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Heather King

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About

Friends 960

Photos

Archive

More

203 items for you to review

Create Post | Photo/Video | Live Video | Life Event

Intro

Add a short bio to tell people more about yourself.

Add Bio



What's on your mind?

Photo/Video

Tag Friends

GIF





Heather King

Edit Profile

Activity Log 20+

- Your Groups
- Advertising on Facebook
- Activity Log 20+
- News Feed Preferences
- Settings
- Send Money
- Payment History
- Switch to New Facebook
- Log Out



Timeline ▾ About Friends 960 Photos Archive More ▾

203 items for you to review

Create Post | Photo/Video | Live Video | Life Event

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What's on your mind?



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Security and Login

Your Facebook Information

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Timeline and Tagging

Stories

Location

Blocking

Language and Region

Face Recognition

Notifications

Mobile

Public Posts

General Account Settings

Name  [Edit](#)

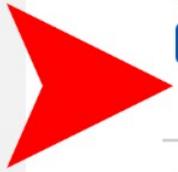
Username  [Edit](#)

Contact  [Edit](#)

Ad account contact  [Edit](#)

Memorialization Settings  [Edit](#)

Identity Confirmation  [View](#)





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Mobile

Public Posts

Apps and Websites

Instant Games

Business Integrations

Ads

Your Facebook Information

You can view or delete your information and delete your account at any time.

Access Your Information	View your information by category.	View
Transfer a Copy of Your Photos or Videos	Transfer your photos or videos to another service.	View
Download Your Information	Download a copy of your information to keep, or to transfer to another service.	View
Activity Log	View and manage your information and some settings.	View
Off-Facebook Activity	View or clear activity from businesses and organizations you visit off of Facebook.	View
Managing Your Information	Learn more about how you can manage your information.	View
Deactivation and Deletion	Temporarily deactivate or permanently delete your account.	View

Your Information i

Expand All



Posts

Posts you've shared on Facebook and posts you've been tagged in



Photos and Videos

Photos and videos you've shared or been tagged in



Comments

Comments you've posted on your own posts, on other people's posts or in groups you...



Likes and Reactions

Posts, comments and Pages you've liked or reacted to



Friends

The people you are connected to on Facebook



Following and Followers

People, organizations or business you choose to see content from, and people wh...



Messages

Messages you've exchanged with other people on Messenger



Groups

Groups you belong to, groups you manage and your posts and comments within the...



Events

Your responses to events and a list of the events you've created



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Your contact information, information in your profile's About section, your life events,...



Pages

Pages you are the admin of, and pages you've recommended



Marketplace

Your activity on Marketplace



Payment History

A history of payments you've made through Facebook



Saved Items and Collections

Posts, photos and videos you have saved



Your Places

A list of places you've created



Apps and Websites

Apps and websites you log into using Facebook and apps you admin



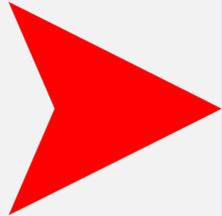
Archive

Items you have moved to archive



Other Activity

Activity associated with your account, such as Pokes given and received



Your Information i

Expand All



Posts

Posts you've shared on Facebook and posts you've been tagged in



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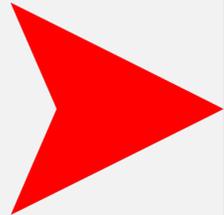
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Expand All

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Posts you've shared on Facebook and you've been tagged in

 **Photos and Videos**
Photos and videos you've shared or been tagged in

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Comments you've posted on your own posts, on other people's posts or in groups you...

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The people you are connected to on Facebook

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A history of payments you've made through Facebook

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Items you have moved to archive

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Transfer a Copy of Your Photos or Videos Transfer your photos or videos to another service. [View](#)

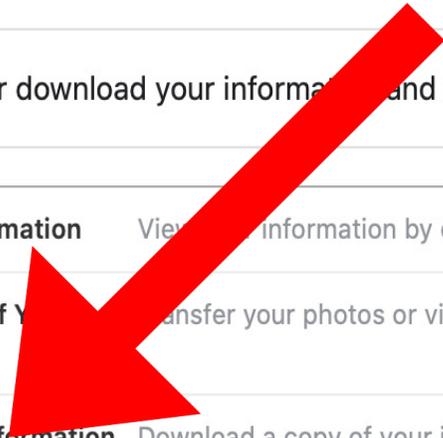
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- Photos and Videos**
Photos and videos you've uploaded and shared
- Comments**
Comments you've posted on your own posts, on other people's posts or in groups you belong to
- Likes and Reactions**
Posts, comments and Pages you've liked or reacted to
- Friends**
The people you are connected to on Facebook
- Stories**
Photos and videos you've shared to your story
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People, organizations or business you choose to see content from, and people who follow you



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Search



Heather

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Format:

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Media Quality:

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Format:

HTML ▾

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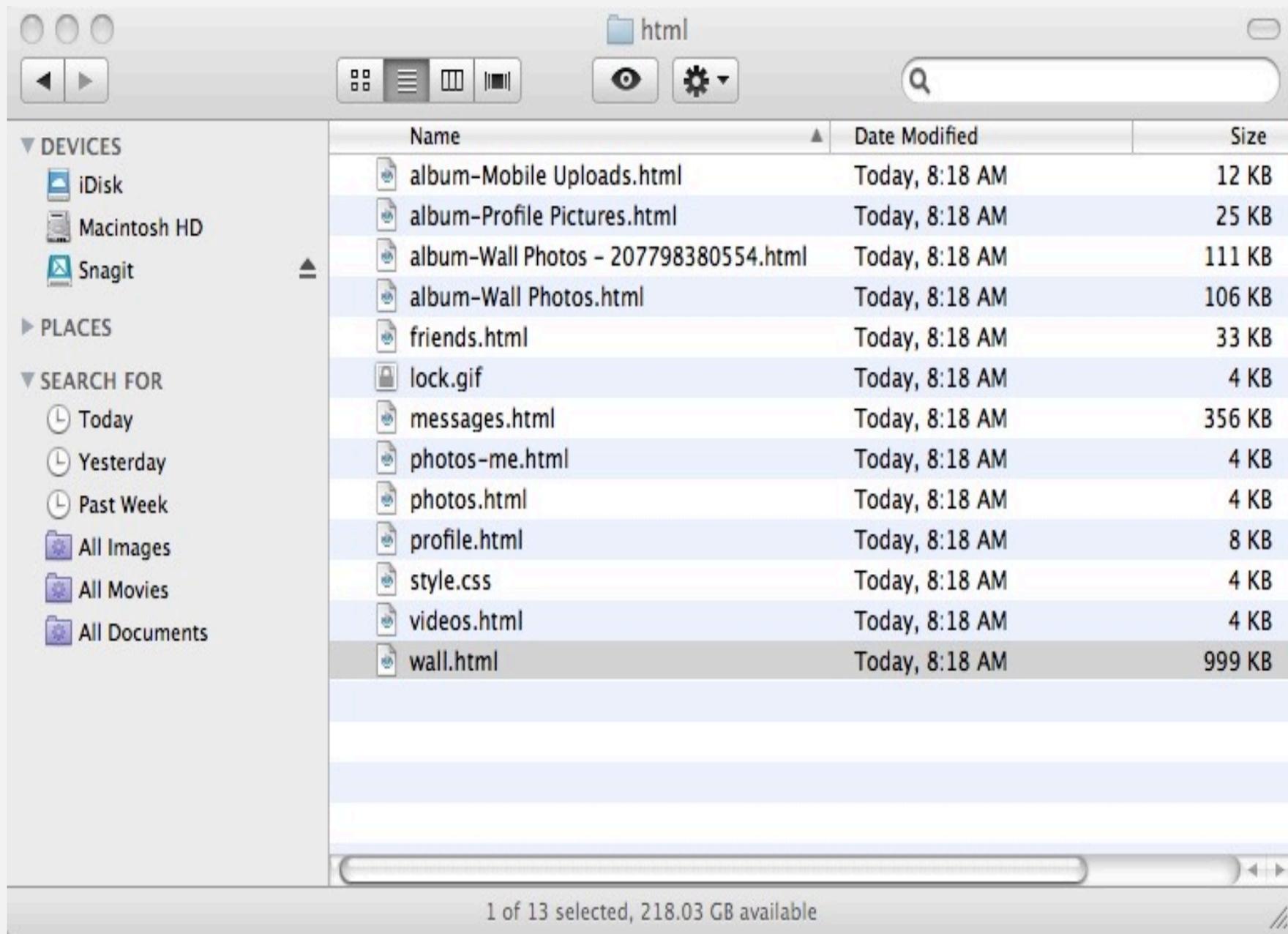
Create File

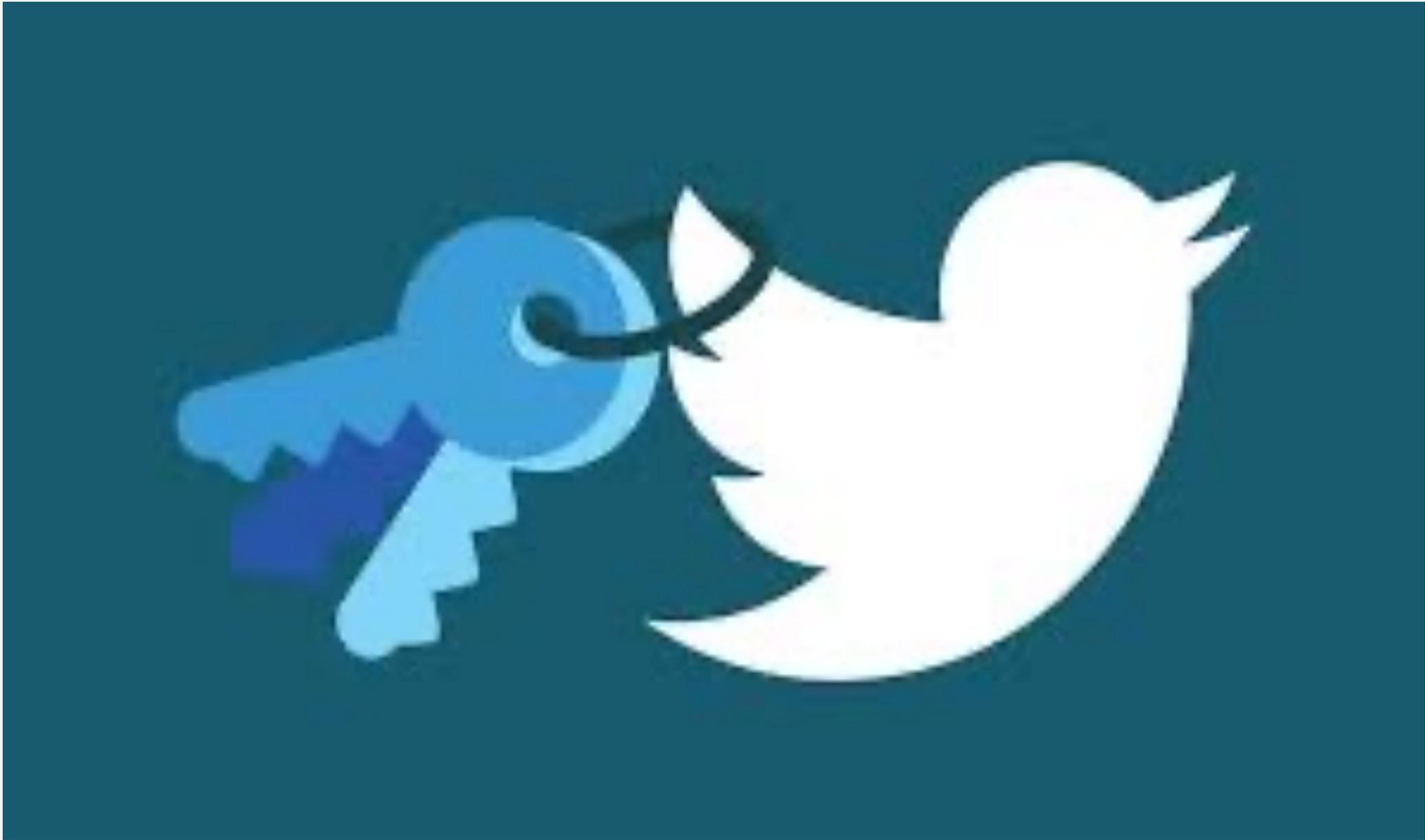


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1 20 38



Microsoft Teams @MicrosoftTeams

Microsoft Teams is helping St. Luke's University Health Network see 5,000 patients a day in a new way.



Microsoft Teams
microsoft.com

1

Promoted

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White House seeks to discredit
Fauci in new memo, The
Washington Post reports



Trending with: Dr. Fauci

#WannaGetAway

Book a low fare for your trip.

Promoted by Southwest Airlines

Politics · Trending

Ted Cruz

34.1K Tweets

NFL · 3 hours ago

Washington's NFL team will
retire its name and logo



Trending with: Redskins and
Washington

Trending in TX

Texas Supreme Court

5,181 Tweets

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Microsoft Teams  @MicrosoftTeams

Microsoft Teams is helping St. Luke's University Health Network see 5,000 patients a day in a new way.



Microsoft Teams

microsoft.com



1



 Promoted

Molly Long-East  replied

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White House seeks to discredit
Fauci in new memo, The Washington Post reports



Trending with: [Dr. Fauci](#)

#WannaGetAway

Book a low fare for your trip.

 Promoted by Southwest Airlines

Politics · Trending

Ted Cruz

34.1K Tweets

NFL · 3 hours ago

Washington's NFL team will retire its name and logo

Trending with: [Redskins](#) and [Washington](#)



Trending in TX

Texas Supreme Court

5,181 Tweets

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#LIVE: #TheWatchList with @NPetallides

twitter.com/i/events/12579...
bit.ly/2v9tH6D



LIVE 1.6K viewers
COMING UP: TESLA CHARGES TOWARDS \$1,800

TDA Network
TD Ameritrade Network

3 8

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Country
United States >

Your Twitter data >

Apps and sessions >

Deactivate your account >



← **Your Twitter data**

Account >

Account history >

Apps, devices & information >

Account activity >

Interests and ads data >

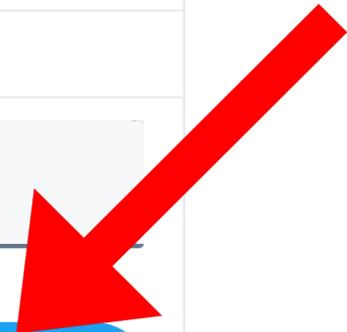
Download your Twitter data

Please enter your password in order to get this.

Password

[Forgot password?](#)

Confirm



DON'T FORGET THE MESSAGES!

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 -  Notifications
 -  Messages
 -  Bookmarks
 -  Lists
 -  Profile
 -  More
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Home

1 20 38

Microsoft Teams @MicrosoftTeams
Microsoft Teams is helping St. Luke's University Health Network see 5,000 patients a day in a new way.



Microsoft Teams
microsoft.com

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White House seeks to discredit Fauci in new memo, The Washington Post reports
Trending with: [Dr. Fauci](#)

#WannaGetAway
Book a low fare for your trip.
Promoted by Southwest Airlines

Politics · Trending
Ted Cruz
34.1K Tweets

NFL · 3 hours ago
Washington's NFL team will retire its name and logo
Trending with: [Redskins](#) and [Washington](#)

Trending in TX
Texas Supreme Court
5,181 Tweets

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Who to follow



GAME MESSAGING

The screenshot shows the Words with Friends game interface. At the top, there are icons for menu, games, and start. The player's name is Adam Y. with a score of 270, and the opponent's name is Jet V. with a score of 280. The current move is 'PLAY' for 20 points, with 80 letters left. The crossword puzzle board is filled with words: 'AWESOME' (horizontal), 'FRIENDS' (horizontal), 'PLAY' (horizontal), 'L' (vertical), 'C' (vertical), 'I' (vertical), 'M' (vertical), 'E' (vertical), 'A' (vertical), 'G' (vertical), 'R' (vertical), 'F' (vertical), 'D' (vertical), 'W' (vertical), 'T' (vertical), 'L' (vertical), 'D' (vertical), 'W' (vertical), 'P' (vertical), 'L' (vertical), 'Y' (vertical), 'Q' (vertical), 'U' (vertical), 'I' (vertical), 'X' (vertical), 'O' (vertical), 'T' (vertical), 'E' (vertical). The board also features various bonus tiles: TW (Two Words), DL (Double Letter), DW (Double Word), TL (Triple Letter), and TW (Two Words). The bottom of the screen shows a keyboard with letters Q, U, I, X, O, T, E and buttons for more, swap, pass, and recall. On the right side, there is a chat window titled 'Chat with Adam Y.' with messages: 'PLAY... 20 points - ___ -', 'Ha, yep, I thought you'd like that.', 'I'm plotting a major comeback. I hope you're ready!', and 'That's #realtalk'. A silhouette of a dog is visible in the background of the chat area.

The screenshot displays the Words with Friends game interface. At the top, the player's name is Adam Y. with a score of 270 and 80 letters left. The game board shows a crossword puzzle with the word 'PLAY' highlighted in yellow. The chat window on the right shows a conversation with Adam Y. where he says 'PLAY... 20 points - ___-'. A red arrow points to this message. The sidebar on the left shows 'Your Move' and 'Their Move' sections with player profiles and their recent moves. The bottom of the screen features a keyboard with the word 'QUIXOTE' and buttons for 'more', 'swap', 'pass', and 'recall'.

Global **Clan**

APEX CREW™

believe Member
has left the clan
4h 30m ago

believe Member
btw · reading below 📖 · gratz on crystal 😊
4h 30m ago

believe Member
Hi UnsungHero · I'll drop in another time ...
nice chat on global · take good care 🙌👊
4h 32m ago

believe Member
joined the clan
4h 33m ago

Sharkeyboii Member
i like gemming
5h 36m ago

You Elder

Builder: 4/4 Shield: 11h 36m

Max: 4 001 000 308 213

Max: 4 001 000 3 492 557

Max: 20 000 8 239

268

Clan Castle (10/20)
Level 3
19M 12s

Clan Castle (Level 3)



TAKING THE FIFTH IN A CRIMINAL CASE

[ARTICLE I, SECTION 10 TEXAS CONSTITUTION]

- (1) remain silent
- (2) not be called as a witness for the prosecution and
- (3) not have the fact that he exercised his right against self-incrimination used against him.
- Jury instructed cannot use silence against him



TAKING THE FIFTH IN A CIVIL CASE

- **Any witness can be called, regardless of whether they are facing criminal charges**
- **Witnesses in civil actions do not enjoy an unfettered right to refuse to answer questions on Fifth Amendment grounds.**
- **It is permissible for a judge or jury to infer that a witness is guilty of wrongdoing if they invoke the Fifth.**



TAKING THE FIFTH IN A CIVIL CASE WITNESS CAN STILL REFUSE TO ANSWER

- If a question calls for an answer that might cause the witness to self-incriminate, then the witness may invoke the Fifth Amendment privilege against answering that question.
- this right against self-incrimination is an important one, because if a witness fails to invoke the Fifth Amendment and thereafter provides an incriminating answer, **that answer can be used against the witness in a subsequent criminal case.**





**TAKING THE FIFTH IN A CIVIL CASE
THE ASSERTION IS SUBJECT TO
JUDICIAL INQUIRY**

- Judge may determine whether the refusal to answer is made in good faith and is justifiable under the circumstances.
- In order to uphold the privilege, it must be shown that answering the question is “likely to be hazardous” to the witness.

JUDICIAL INQUIRY

- the witness must be in potential jeopardy of prosecution under criminal law
- the judge must be clear that the witness is mistaken and that the answer cannot possibly have a tendency to incriminate, then the judge can compel the witness to answer the question
- Failure to answer at that point will subject the witness to possible contempt of court



JUDICIAL INQUIRY ISN'T AUTOMATIC IF NOT REQUESTED, IT'S WAIVED

- A court is not required to perform this inquiry sua sponte
- opposing counsel must seek the trial court's intervention through a motion to compel or other procedural tool.
- If counsel fails to raise this issue and provide the trial court with the opportunity to consider the issue, then any complaint as to improper use of the privilege is waived on appeal.





ONCE THE RIGHT TO INVOKE IS
ESTABLISHED/
NEGATIVE INFERENCE CONCEPT

- the judge or jury can infer that a witness committed the very crime that he was protected from testifying about
- But only infer
- Invoking the Fifth Amendment does not give rise to a presumption of culpable conduct nor is it, standing alone, sufficient evidence to prove wrongdoing.
- [the negative inference concept] - the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify *in response to probative evidence offered against them.*

THE NEGATIVE INFERENCE ALONE IS NOT ENOUGH

- **The failure to offer probative evidence in addition to the assertion of the Fifth Amendment privilege leaves the fact-finder with only an inference**
- **An inference is considered nothing more than a mere suspicion**
- **the inference in and of itself does not constitute more than a scintilla of evidence.**



USING PPT (& IN PERSON OR BY VIDEO)



CORRECTIONS TO PETITIONER'S RESPONSE/BRIEF

- Typos
- P8 /Section 3.4 Final paragraph, second line from bottom, "Respondent" should read "Petitioner"
- P9 /Section 3.4 "See Id" and "See Id at 227" and "See Id at 228" should read "See Miranda" and "See Miranda at 227" and "See Miranda at 228"

Referring to *Wildlife v. Miranda* 133 SW3d 217



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Referring to Wildlife v. Miranda 133 SW3d 217

THE EVIDENCE WILL SHOW:

TEX. FAM. CODE ANN.

§ 102.011(B)(1), (3)–(6)

- (1) the person is personally served with citation in this state;
- (3) the child resides in this state as a result of the acts or directives of the person;
- (4) the person resided with the child in this state;
- (5) the person resided in this state and provided prenatal expenses or support for the child;
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USING POWERPOINT
WHEN TIME IS LIMITED



RELEVANT TIME-LINE PART I

- July 2018 Parties move in together in Dallas, TX
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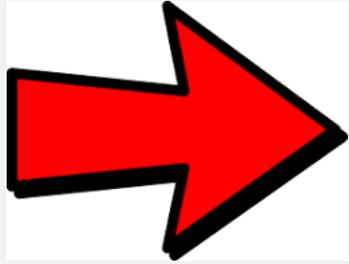


RELEVANT TIME-LINE PART 2

- Jan 21, 2020 Mother issued a new TDL (Petitioner's Exhibit 4)
- Feb 5, 2020 Mother and Child return to Texas from visiting sister (Response Ex. F)
- March/April 2020 Mother and Child remain in Texas living with Father
- April 21, 2020 Father files this suit in Dallas County, Texas
- May 2020 Mother and Child remain in Texas living with Father
- June 8, 2020 Mother is served with lawsuit
- June 9, 2020 Mother flees with Child to Tennessee
- July 6, 2020 Mother and Child are in Wisconsin (Response Ex. H)
- Present Day Mother and Child are in Wisconsin (Response Ex I&J)

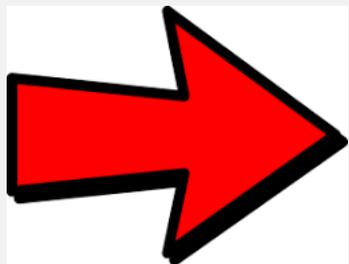
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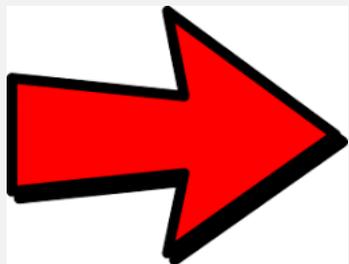
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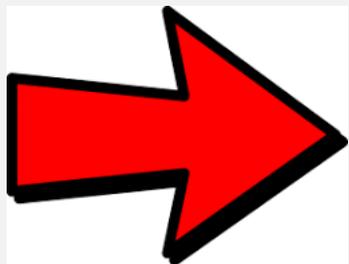
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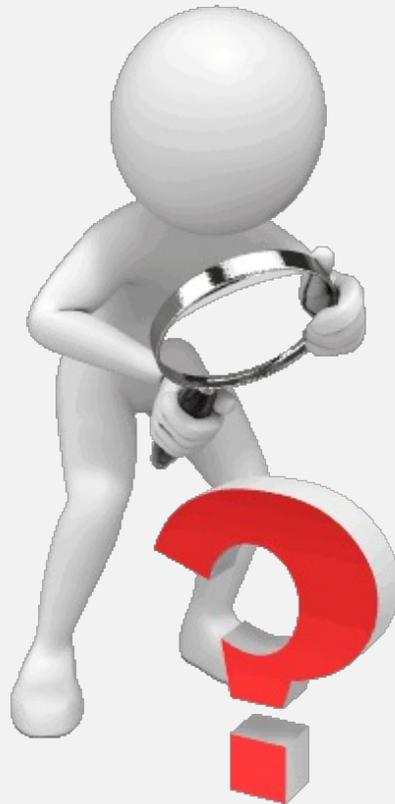


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LEGAL ANALYSIS [Apply Facts to Law]



UCCJEA/TFC [PART I]

- A Texas court has jurisdiction over a UCCJEA child-custody determination if Texas was the child's home state *within six months* before the child-custody proceeding was commenced and a parent or person acting as a parent continues to live in Texas even though the child is absent from the state. Tex. Fam. Code § 152.201(a)(1).
 - Date of filing April 21, 2020
 - Minus six months = October 21, 2019
 - Child left state November 4, 2020

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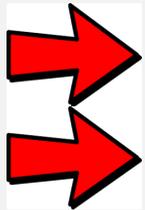
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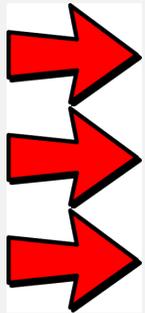
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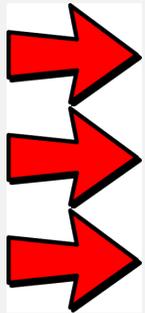
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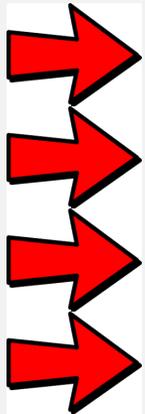
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**TEXAS IS MOST CONVENIENT FORUM
TEX. FAM. CODE ANN. § 152.207(3)**

(3) the distance between the court in this state and the court in the state that would assume jurisdiction

- Texas to Wisconsin 1,242 miles
- Texas to Tennessee 915 miles
- The distance between Texas and Tennessee or Wisconsin would require Petitioner to incur extraordinary travel expenses to see the child

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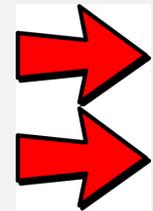
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TEX. FAM. CODE ANN. § 152.207(6)**

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child

- Medical Health records in Texas
- Mental Health records in Texas *
- Dental records in Texas
- Law enforcement records in Texas *
- Employment records in Texas
- Housing records in Texas

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Thank You for Listening!

-Heather

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