

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )  
)  
Respondent, )  
)  
v. )  
)  
Tyrone A. Eagle Speaker )  
(your name) )  
)  
Appellant. )

No. 44998-6-II  
STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION TWO  
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I, Tyrone Eagle Speaker, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1


Text messages, Admissibility of evidence

Additional Ground 2

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If there are additional grounds, a brief summary is attached to this statement.

Date: 06/05/2014

Signature: 

The trial court erred by abusing its discretion in admitting photographs of text messages.

I contend the trial court violated the Best Evidence Rule (1004) argues, even if the copies were admissible the state did not sufficiently authenticate them.

E.R. 901 - An example of authentication, A proponent may present "evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result."

Officer Lyle Manning took photographs of text messages from a cell phone shown to him by the alleged victim, who told deputies she had let the defendant borrow her husband Scott's cell phone. The sender on the cell phones name was "Scott". She told the officers that the messages were from the defendant Mr. Eagle Speaker. She also showed the deputies the phone belonging to Scott, all of the messages were deleted on the phone belonging to Scott. The cell phones are registered to the alleged victim. The state never warranted the text messages from the cell phone company.

Nothing connects the defendant to the text messages except for the alleged victims testimony, due to the credibility of the witness and the fact that she was in control of both of the phones makes the situation seem suspicious.

Over defense objection on grounds of authentication and the fact the text messages were never brought up in the pre liminary hearings the trial court admitted the photographs of the text messages.

During opening arguments the prosecutor explained to the jury that the text messages will show motivation, and in closing arguments said the text message "I feel like I violated you" and "up, up, down, down" are practically admissions to the crime alleged.

More rigorous requirements?  
Because electronic messages can easily be forged or altered, a few courts and commentators have said that more rigorous requirements should apply to the authentication of text messages, emails and other electronic evidence. Loraine vs. Markel American Ins. Co., 241 FRD 534, 73 Fed. R. Evid. Serv 446 (D. Md. 2007)

The state never investigated the text messages to validate the context which is a violation of due process, furthermore allowing the texts to come in to evidence improperly authenticated constitutes an abuse of discretion.

Telephone conversation:

Testimony that the other person on the line stated his/her name was X is, alone, insufficient to identify the person as X.

State vs. Deaver, 6 Wash App. 216, 491 P. 2d 1363 (Div. 1 1971)

If the computer software goes beyond standard office software or the output goes beyond standard office documents (The proponent should be prepared to offer more detailed foundation, testimony, supplying technical details sufficient to establish the reliability of the software and results produced. U.S. vs. Batson

In a similar case involving text messages State vs. Jamie Stewart Andrews No. 29749-III The state admitted the text messages under E.R. 1003 which stated that duplicates (pictures) were admissible to the same extent as the originals, unless a genuine question was raised to the authenticity of the original or it would be unfair to admit the duplicate in lieu of the original.

In the Adreus case Division III was persuaded by the Leading North Dakota Supreme Court case, A prosecution for Assault. The State was properly allowed to introduce text messages from the defendant, threatening harm to the victim. The victim testified the messages were sent from the defendants assigned cell phone number, and the defendant used a Nick name (signature) known only to the defendant and the victim which sufficiently authenticated pictures of received text messages. State vs. Thompson, 777 N.W. 2d 617 (N.D. 2010). The court held "The proponent of offered evidence need not rule out all possibilities inconsistent with Authenticity or conclusively prove that evidence is what it purports to be; rather, the proponent must provide proof sufficient for a reasonable juror to find is what it purports to be." Citing (Fed. R. Evidence 901(a)) U.S. vs Hyles 479 F.3d 958, 968-69 (8th Cir. 2007)

Similary an Illinois Appellate Court citing (Thompson) decided no error occurred in admitting a transcript of received text messages as read by victim. People vs. Chromik 408 Ill. App. 3d 1028, 349 Ill. Dec. 543, 946 N.E. 2d 1039, 1056 (2011)

Text messages can raise significant issues under the Best Evidence rule because under some circumstances, the message cannot be conveniently printed. If the messages can be obtained in printed form from the cell phone company, that is the procedure of choice because it most easily satisfies Best Evidence rule.

901.17 Process or system - text messages - Washington has not developed any special rules regarding the admissibility.