



SOCIAL MEDIA

ROCIO ARMENDARIZ & EMILY DE YOE

LAW OFFICE OF THE COOK COUNTY PUBLIC DEFENDERS





SOCIAL MEDIA

KNOW YOUR SOCIAL MEDIA

- Does it save? Snapchat IS FOREVER...despite what they say.
- Is there a messenger app within the social media app? Facebook messenger, Instagram DMs, Twitter DMs, etc.
- Who posted it? Did your client post it or was it posted to your client's wall?
- Is it user to user?
- How does the app link back to your client? Email, address, phone number...
- Find you a [insert here social media app] user...they can answer these questions.

INITIAL QUESTIONS TO ASK

- Can they lay the foundation?
- Is it relevant?
- Does it help or hurt you?

FOUNDATION ISSUES



- III. R. Evid. 803(6) – Records of Regularly Conducted Activity
 - “Kept in the course of a regularly conducted business activity...shown by the testimony of the custodian or other qualified witness, or by certification (see next slide) UNLESS the opposing party show that the source of information or the method or circumstances of preparation indicate lack of trustworthiness.”

FOUNDATION ISSUES



- III. R. Evid. 902 – Self-authentication
 - 902(11) – Certified Records of Regularly Conducted Activity. A witness “may” be called to testify, but it is not a requirement if the proper certification is present.

RELEVANCE



- III. R. Evid. 401 – Definition of “Relevant Evidence”
 - “[E]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

FOUNDATION ISSUES



- What to Do?
 - Motion in *limine*
 - Object

SAMPLE MOTION *IN LIMINE*

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS)

v.)

No. [REDACTED]

MOTION *IN LIMINE* – SOCIAL MEDIA

Now comes the Defendant, [REDACTED], by his attorney, Sharone Mitchell, Jr., Public Defender of Cook County, through Rocio Armendariz and Celeste Addyman, Assistant Public Defenders, and moves this Honorable Court to prevent the State and/or any of its witnesses from mentioning, suggesting, and/or testifying as to [REDACTED] other pending litigation. The Defendant requests the Court to order as follows:

1. On October 13, 2021, [REDACTED] was shot at approximately 4838 W. Crystal Ave., Chicago, Illinois and subsequently died.
2. [REDACTED] is charged with twelve counts of First Degree Murder of Mr. Jernigan and two counts of Attempt First Degree Murder.
3. [REDACTED] was arrested on December 13, 2021 at 404 N Geneva Ave, Bellwood, Illinois.
4. The State tendered extractions from six Facebook (social media) accounts. Lilfoe.Bossedup, Poppy Marquist, Mochaa Capalot, Mocha Capalot, Mocha Dondada 98, Mocha Iman 18.

5. The defense believes that none of these extractions and the contents are relevant to the issues in this case or the trial. See *People v. Dabbs*, 239 Ill.2d 277, 289 (Ill. 2010) (holding that “relevance is a threshold requirement that must be met by every item of evidence.”); see also Ill. R. Evid. 401 defining relevance evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”
6. A showing of relevance alone does not make the mention of these matters admissible. This court must weigh the probative value of mentioning these matters against their potential prejudicial impact. Ill. R. Evid. 403.
7. The social media extractions have no link to the shooting of [REDACTED]. The probative value of mentioning them is outweighed by the prejudicial impact, and therefore, should not be admitted.
8. Courts must be cautious of inflammatory and cumulative evidence that may impermissibly sway a jury. Admitting prejudicial evidence, risks that the case be decided on an improper basis.

WHEREFORE, Defendant requests that this Honorable Court to grant the following relief

- A. Order the State to not introduce or mention the social media accounts and the extractions through any testimony.
- B. To refrain from mentioning, commenting, or making any reference whatsoever, either directly or indirectly or through a witness, to the social media accounts,
- C. To further order said persons not to make any reference to the fact that this motion has been filed and its result; and
- D. Grant all other relief which is just and proper in the premises.

SAMPLE MOTION IN LIMINE SOCIAL MEDIA

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT - CRIMINAL DIVISION

8. In *Minnifield*, both facts were made more probable by the contention that defendant himself had written the song because the words could reflect the defendant's mind only if he had written them himself. *Id.* Therefore, the song's relevance depends on defendant being the writer. In the present case, [REDACTED] did not write "Toxic" song is not [REDACTED] own words; therefore, the song is not relevant.

witnesses from mentioning, suggesting, and/or testifying as to a video that was posted to Defendant's Facebook on October 13, 2021 at 5:08pm. The Defendant requests the Court to order as follows:

1. On October 13, 2021, [REDACTED] Ave., Chicago, Illinois and
2. [REDACTED] is charged with two counts of Attempt First Degree Murder.
3. On December 13, 2021, [REDACTED] Illinois.
4. The State filed a Motion in Limine to exclude evidence a video where [REDACTED]
5. Polo G is the professional name of Mr. Bartlett released the album "Polo G" which debuted at number one on the US *Billboard* 200. "Polo G Chart History (*Billboard* 200)" *Billboard*, billboard.com/artist/polo-g/chart-history/tlp/ (last visited Dec. 19, 2023). In that same year, Mr. Bartlett was in *Forbes* 30 Under 30. "Forbes Profile: Polo G"

12. The lyrics are hearsay and do not meet an exception to the hearsay rule. The lyrics are hearsay because the opposing party is not excluded from evidence and was made by a party in an individual or representative capacity. Ill. R. Evid. 801(d)(2). The lyrics were not a statement made by [REDACTED] nor a representative on his behalf. The lyrics do not meet the hearsay exception.

use of an accused person's creative expression will not be used to introduce stereotypes or activate bias against the defendant, nor as character or propensity evidence, and to recognize that the use of rap lyrics... is not a sufficient justification to overcome substantial evidence that the introduction of rap lyrics creates a substantial risk of unfair prejudice." Assemb. B. 2799 at §1(b) (*emphasis added*).

15. [REDACTED] did not write the lyrics to "Toxic". Attributing the meaning of the words in the song to [REDACTED] will cause undue prejudice that outweighs any probative value of the song.

impermissibly sway a jury and be unduly prejudiced and n

ensure that irrelevant and inflammatory content is not needlessly presented to the jury. *Id.*

10. In *Skinner*, the State erred in admitting rap lyrics written by defendant to demonstrate defendant's motive and intent because there was no assertion made that the verses were revealing of a specific factual connection tying defendant to the underlying incident. *Id.*

15. [REDACTED] did not write the lyrics to "Toxic". Attributing the meaning of the words in the song to [REDACTED] will cause undue prejudice that outweighs any probative value of the song.

16. A showing of relevance alone does not make the mention of these matters admissible. This court must weigh the probative value of mentioning these matters against their potential prejudicial impact. Ill. R. Evid. 403.

17. The video has no link to the shooting of [REDACTED]. The probative value of mentioning them is outweighed by the prejudicial impact and should not be admitted.

18. Additionally, the State would be unable to lay the foundation of not only the video but specifically when the video was made, which could predate the incident.

sed to show if a defendant has engaged in [REDACTED] has raised the affirmative defense of self-defense. [REDACTED] has raised the affirmative defense of self-defense, but not whether [REDACTED] shot a firearm, but ing so. codified limitations on the use of rap lyrics at trial, ss a law restricting the use of rap lyrics in trial. See ss. (Cal. 2022). In Sec. 1(a), the California e research that has shown there is a "significant risk of unfair prejudice when rap lyrics are introduced into evidence." *Id.* This law is codified in California's evidence code. Cal. Evid. Code § 352.2. The California legislature further reasoned that they intended "to provide a framework by which courts can ensure that the

TEXT MESSAGES

- What are they? DMs, SMS, FB Messenger, Snapchat text, etc.
- What does it say? Content matters for relevance.
- Who has access to the accounts? Shared family plan? Shared phone/device?
- How can they be used? Is it hearsay?

THE FUTURE

- A.I.
 - Was it this A.I. generated? Your client might have an idea if it was altered or not.
- Ghost Accounts/Fake Accounts
 - Sometimes they are made to mimic a real account, like all the Paul Hollywood accounts that are not Paul Hollywood. #GBBO
- At some point, a Motion to Produce metadata might be necessary
 - Metadata for social media post would include the information about the author of the post, the message type, post date and time, versions, links (un-shortened), location, likes, and comments.



THANK YOU,
BEYONCE!

ROCIO.ARMENDARIZ@COOKCOUNTYIL.GOV

EMILY.DEYOE@COOKCOUNTYIL.GOV