



State Supreme Court Reverses Court of Appeals Regarding Authentication of Surveillance Video

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The Supreme Court of North Carolina just decided [State v. Snead](#), a case about the authentication of surveillance video. The court adopted a more relaxed approach to authentication than the court of appeals had taken. Because the authentication of video is an increasingly common issue, it is worth digging into the case.

Facts. I previously wrote about *Snead* [here](#), when the case was before the court of appeals. As a reminder, the matter arose when two men stole some shirts and sweatshirts from a Belk in Concord. The incident was caught on the store's surveillance video system. The defendant was charged with larceny and with conspiracy to commit larceny. The defendant was also charged as a habitual felon.

Trial proceedings. At trial, a regional loss prevention manager testified that he was not at the store in question when the theft took place, but had viewed the video shortly afterwards. He stated that he was familiar with the video recording system, which was an "industry standard" system that "water-marked" the recordings with time and date to prevent tampering. The system was in working order on the date of the theft, and the recording he reviewed after the crime took place was the same as the one to be introduced at trial. The video was admitted and played for the jury. The defendant was convicted, received a lengthy sentence, and appealed.

Court of appeals. The court of appeals agreed with the defendant that the video was not sufficiently authenticated. Although the loss prevention manager had testified that the recording system was working properly on the date in question, the court noted that he wasn't at the store on that day and wasn't in charge of maintaining the system. Furthermore, the court observed that there was no evidence of the chain of custody of the video between the time it was burned to a CD and the time it was shown at trial.

Supreme court. The supreme court unanimously reversed, making two key points.

Authentication under Rule 902(b)(9). The court stated that surveillance video may be authenticated as the accurate result of an automated process under N.C. R. Evid. 902(b)(9). It held that "[e]vidence that the recording process is reliable and that the video introduced at trial is the same video that was produced by the recording process is sufficient to authenticate the video." The loss prevention manager's testimony that the system was in working order and that the video he reviewed after the theft was the same as the video offered at trial met this standard.

No need for chain of custody absent concern about alteration. The court stated that a chain of custody is not needed where a video is readily identifiable and there is no reason to believe that it has been altered. In this case, the defendant admitted that he was the person on the video, "made no argument that the video had been altered," and "offered no reason to doubt the reliability or accuracy of the footage." Therefore, the State was not required to introduce evidence about the chain of custody.

Comment. Two quick thoughts about this opinion. First, digital evidence is increasingly common and comes in multiple forms, from GPS tracking data to social media evidence to digital video footage. Speaking very generally, courts initially set high thresholds for the authentication of such evidence, due in part to concerns about the perceived ease of

alteration of digital media. However, as the courts have become more familiar with such evidence and have found it to be reliable and useful, they have adopted a more relaxed approach to authentication. We saw that with social media evidence last month in *State v. Ford*, discussed [here](#), and one way to think about *Snead* is that it plays a similar role for digital video.

Second, *Snead* concerns a “silent witness” situation, where a camera captured conduct that no human witness saw. It is important to remember that when a human witness observes the conduct in question, a different foundation is possible: the recording may be admitted to illustrate the witness’s testimony, usually based on the witness’s statements that (a) the recording fairly and accurately depicts what the witness observed, and (b) the recording would help to illustrate the witness’s testimony. See, e.g., *State v. Vick*, 341 N.C. 569 (1995).