Alabama Rules of Evidence

Article IX. Authentication and Identification

Rule 901.

Requirement of authentication or identification.

(a) *General provision.* The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) *Illustrations.* By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) TESTIMONY OF WITNESS WITH KNOWLEDGE. Testimony that a matter is what it is claimed to be.

(2) NONEXPERT OPINION ON HANDWRITING. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) COMPARISON BY TRIER OR EXPERT WITNESS. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) DISTINCTIVE CHARACTERISTICS AND THE LIKE. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) VOICE IDENTIFICATION. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) TELEPHONE CONVERSATIONS. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if (A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called, or (B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) PUBLIC RECORDS OR REPORTS. Evidence that a writing authorized by law to be

recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) ANCIENT DOCUMENTS OR DATA COMPILATION. Evidence that a document or data compilation, in any form, (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where it, if authentic, would likely be, and (C) has been in existence thirty years or more at the time it is offered.

(9) PROCESS OR SYSTEM. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) METHODS PROVIDED BY STATUTE OR RULE. Any method of authentication or identification provided by statute or by other rules prescribed by the Supreme Court of Alabama.

Advisory Committee's Notes

Section (a). General provision. Like the preexisting common law, Rule 901 embraces the historic requirement that the proponent of real or demonstrative evidence (all nontestimonial evidence, such as writings, objects, etc.) lay a threshold foundation, as a prerequisite to admissibility, sufficient to show that the evidence is what it is represented to be. This requirement manifests itself in the prerequisite foundation, often called a "chain of custody" requirement, which guarantees the identification of chattels. See *Washington v. State*, 269 Ala. 146, 112 So.2d 179 (1959); *Ex parte Williams*, 505 So.2d 1254 (Ala.1987). See also C. Gamble, McElroy's Alabama Evidence § 319.01 (4th ed. 1991). When a writing is offered as evidence, Rule 901 continues the necessity for laying a foundation to authenticate the document as genuine. See *Chrisman v. Brooks*, 291 Ala. 237, 279 So.2d 500 (1973); *Timmons v. State*, 487 So.2d 975 (Ala.Crim.App.1986). See also C. Gamble, McElroy's Alabama Evidence § 320.01 (4th ed. 1991); W. Schroeder, J. Hoffman, & R. Thigpen, Alabama Evidence § 9-1 (1987).

The identification and authentication requirements in this rule are an integral part of logical relevancy. See J. Michael & M. Adler, *Real Proof*, 5 Vand.L.Rev. 344, 362 (1952). Even if an item of demonstrative evidence is otherwise probative of a material issue in the case, for example, the item is admissible only if it is what the offering party claims it to be. The question of authenticity or proper identification is, in the first instance, for the trial judge as a preliminary matter. See Ala.R.Evid. 104(a). The required foundational showing must consist of evidence "sufficient to support a finding that the matter in question is what its proponent claims." The evidence of authentication or identification, as under prior Alabama practice, does not have to be conclusive or overwhelming; rather, it must be strong enough for the question to go to the jury. Any weaknesses in the foundational showing, insufficient to call for exclusion, go to the weight that the trier of fact is to give the evidence. See *Tidwell v. State,* 496 So.2d 109 (Ala.Crim.App.1986). Even if the offering party satisfies the requirement of this rule and the evidence is admitted, the ultimate question of authenticity or identification remains an issue for

the jury.

It should be emphasized that compliance with the authentication or identification requirement does not necessarily render the item of evidence admissible. It must yet satisfy other evidentiary rules, such as those dealing with the best evidence requirements, hearsay, and relevancy. See, e.g., *Atmore Farm & Power Equip. Co. v. Glover*, 440 So.2d 1042 (Ala.1983).

Section (a) is identical to its federal counterpart.

Section (b). Illustrations. Section (a) states the general principle governing authentication and identification. Section (b) lists illustrative applications of this general rule. This list is not intended to be exclusive; rather, it is meant to guide in application of the general rule and is intended to leave "room for growth and development in this area of the law." Fed.R.Evid. 901(b) advisory committee note.

The illustrative examples deal primarily, although not exclusively, with documents, voice communications, and data compilations. No specialized rules are stated for chattels; thus, their identification is to be governed by the general rule established in section (a), which largely reflects the preexisting common law.

Section (b), including its list of examples, is identical to the corresponding federal rule, except as to subsections (8) and (10).

Subsection (b)(1). Testimony of witness with knowledge. This method of authentication or identification is used with great frequency. A writing may be authenticated hereunder, for example, by testimony of a witness who saw the purported author write the document. Chattels, such as weapons or drugs, would be authenticated by testimony of successive handling sufficient to establish a chain of custody, as required under pre-rules Alabama law. See *Burdett v. Hipp*, 252 Ala. 37, 39 So.2d 389 (1949) (clothing); *McGuffin v. State*, 178 Ala. 40, 59 So. 635 (1912) (pistol); *Crawford v. State*, 112 Ala. 1, 21 So. 214 (1896) (pistol ball).

Subsection (b)(2). Nonexpert opinion on handwriting. As under traditional Alabama practice, lay witnesses may offer opinions as to whether an offered writing is in the handwriting of the purported author. Such lay opinions may be based upon a familiarity gained by seeing the person write, by exchanging correspondence, or by other means. See, e.g., *Alabama Farm Bureau Mut. Casualty Ins. Co. v. Wood*, 227 Ala. 624, 173 So.2d 787 (1965) (witness testifies that he has seen the purported author write and would recognize that person's handwriting); *Gilliland v. Dobbs,* 234 Ala. 364, 174 So. 784 (1937) (authenticating witness had corresponded with the purported author). See generally C. Gamble, McElroy's Alabama Evidence § 111.01(1) (4th ed. 1991). Such an opinion is not admissible if the familiarity upon which it is based is acquired for purposes of the litigation. Compare Ala.R.Evid. 901(b)(3) (permitting an opinion as to the genuineness of handwriting based upon familiarity gained to prepare the witness for litigation, if the witness is an expert).

Subsection (b)(3). Comparison by trier or expert witness. An expert may be called to the stand and, after making a comparison of the questioned document with a properly authenticated one, give an opinion as to whether the document in question is in the

handwriting of the purported author. Likewise, a genuine specimen and the disputed specimen may be admitted, without benefit of an expert witness, for the trier of fact to make its own comparison for the purpose of deciding the question of authenticity. This comparison method of authentication, of course, is not limited to writings but may be applied to other forms of proof.

Such authentication by visual comparison, whether by expert witness or by the trier of fact, is consistent with traditional Alabama law as expressed in both statutes and rules of court. See Ala. Code 1975, §§ 12-21-39 and 12-21-40; Ala.R.Civ.P. 44(j). See also C. Gamble, McElroy's Alabama Evidence § 111.01(2) (4th ed. 1991). Nothing in this rule abrogates the preexisting principle that a lay witness, shown to be familiar with the subject person's handwriting as required by Rule 901(b)(2), may likewise make such a comparison. See Ala.R.Civ.P. 44(j); Ala. Code 1975, § 12-21-39.

Subsection (b)(4). Distinctive characteristics and the like. A document, chattel, conversation, or other evidence may possess characteristics so distinctive that, when considered in light of the circumstances, they may support a finding that the item in question is what its proponent claims it is. A document or a telephone conversation, for example, may be authenticated as emanating from a particular person by its disclosing facts within the peculiar knowledge of the communicating person. Similarly, the content and circumstances of a letter may be sufficient to authenticate it as a reply to another authenticated letter. See Fed.R.Evid. 901(b)(4) advisory committee's note. This method of authentication or identification is consistent with historic Alabama law. See, e.g., *Chrisman v. Brooks*, 291 Ala. 237, 279 So.2d 500 (1973); *Washington v. State*, 539 So.2d 1089 (Ala.Crim.App.1988). Compare C. Gamble, McElroy's Alabama Evidence § 322.01 (4th ed. 1991) (doctrine governing reply letter or reply telegram).

Subsection (b)(5). Voice identification. Like preexisting Alabama common law, Rule 901(b)(5) recognizes voice identification by opinion of a witness who has heard the voice at any time under circumstances connecting it with the alleged speaker. *Lindsay v. State*, 41 Ala.App. 85, 125 So.2d 716, cert. stricken, 271 Ala. 549, 125 So.2d 725 (1960), cert. denied, 366 U.S. 933 (1961). See C. Gamble, McElroy's Alabama Evidence § 123.02 (4th ed. 1991). The identifying witness's opinion is admissible, whether the voice in question was heard firsthand or through mechanical or electronic transmission or recording. See *O'Daniel v. O'Daniel*, 515 So.2d 1248 (Ala.Civ.App.1986), rev'd, 515 So.2d 1250 (Ala.1987). See also C. Gamble, McElroy's Alabama Evidence § 329.01 (4th ed. 1991) (authentication of identity of person talking on telephone); J. Colquitt, Alabama Law of Evidence § 9.1(d) (1990).

Subsection (b)(6). Telephone conversations. A person's self-identification during a telephone conversation, standing alone, is generally not sufficient proof that a voice heard by telephone was that of the person whose voice it is alleged to be. Such self-identification may be sufficient, however, if the number called, at which the self-identification is made, is that assigned by the telephone company, at the time of the call, to the person purportedly giving the self-identification. Similarly, if one makes a call to a number listed for a particular business, then the ensuing conversation, if it concerns business reasonably transacted over the telephone, is properly identified as having been conducted with that business.

These rules of identification relating to calls made to telephone numbers assigned to particular individuals and businesses have been embraced by some Alabama courts. See

Midwestern Welding Co. v. Coosa Tool & Die, Inc., 54 Ala.App. 159, 306 So.2d 25 (1975); *Loftin's Rent-All, Inc. v. Universal Petroleum Servs., Inc*., 344 So.2d 781 (Ala.Civ.App.1977). See also L. Scalise, Recent Decision*, Identification of Anonymous Callers Through Circumstantial Evidence: May I Ask Who's Calling, Please?*, 36 Ala.L.Rev. 335 (1984). But see *Yancey v. Ruffin*, 281 Ala. 633, 206 So.2d 878 (1968).

Subsection (b)(7). Public records or reports. This rule provides for the authentication of a public record or report by evidence showing that the document is from the public office where such items are customarily kept. Two types of public records are included. The first type includes those authorized by law to be recorded or filed in a public office and which in fact are so recorded or filed. The second, more expansive, group includes any purported public record, report, statement, or data compilation, in whatever form, that is kept in a public office where items of the same nature are kept.

There are occasions when this rule will be activated by a proffer of the public record itself. In such a case, a foundation must be established to show that it comes from the public office where such records are customarily kept. As is more often the case, however, a copy of the public record is offered. If the copy is certified, then it may be self-authenticating by use of court rule, various authorizing statutes, or Ala.R.Evid. 902(1) through (4) (dealing with certified copy or copies under seal). Should an uncertified copy be offered, then the authenticating foundation set out in Rule 901 must be established. Courts applying Rule 901 admit uncertified records only if they are accompanied by testimony of the custodian, or some other witness qualified to testify, that the record does come from the public office where such documents are customarily kept. See, e.g., *State v. Rice*, 214 Neb. 518, 335 N.W.2d 269 (1983); *Pollution Control Coordinating Bd. v. Kerr-McGee Corp*., 619 P.2d 858 (Okla. 1980).

Satisfaction of subsection (b)(7) does not necessarily guarantee carte blanche admissibility. The document may yet be subject to objections based upon the best evidence rule, the hearsay rule, irrelevancy, etc. See, e.g., Ala.R.Evid. 1005 (public record exception to best evidence rule); Ala.R.Evid. 803(8) (public records exception to hearsay rule); Ala.R.Evid. 401 (materiality and relevancy requirements).

Subsection (b)(8). Ancient documents or data compilation. This subsection embraces the historic ancient documents exception to the authentication requirement. A document of the prerequisite age, if satisfying the other requirements concerning its condition and location, is self-authenticating. See *Stewart v. Peabody*, 280 Ala. 5, 189 So.2d 554 (1966). See also C. Gamble, McElroy's Alabama Evidence § 321.01(1) (4th ed. 1991). Like the common law, subsection (b)(8) sets the required document age at thirty years. Compare *State v. Broos*, 257 Ala. 690, 60 So.2d 843 (1952). In that regard, it is different from the corresponding federal rule, which sets the age at twenty years. This subsection extends the principle of the ancient documents exception to a "data compilation, in any form"; thus, the principle now includes data stored electronically. See Fed.R.Evid. 901(b)(8) advisory committee's note. Ancient documents likewise constitute an exception to the hearsay rule. See Ala.R.Evid. 803(16).

Even if the document or data compilation is of the prerequisite age, its condition must be such as to create no suspicion concerning its authenticity. This requirement reflects preexisting Alabama law. See *McMillan v. Aiken*, 205 Ala. 35, 88 So. 135 (1920). See also C. Gamble, McElroy's Alabama Evidence § 321.04 (4th ed. 1991).

A third requirement, beyond the prerequisites of age and condition, is that the proponent must show that the document or data compilation was taken from a place where, if authentic, it would likely be found. This requirement comports with prior Alabama law. See, e.g., *Jordan v. McClure Lumber Co*., 170 Ala. 289, 54 So. 415 (1910).

There is preexisting Alabama authority for the proposition that an ancient document of title to real property is not admissible under the ancient documents exception unless, during the applicable number of years, the party claiming under it either held possession of the land or could show some other guarantee of authenticity, such as payment of taxes or nonoccupation by others. See *Sloss-Sheffield Steel & Iron Co. v. Lollar*, 170 Ala. 239, 54 So. 272 (1910); *White v. Farris*, 124 Ala. 461, 27 So. 259 (1900). The requirement that possession of the land be shown to have been consistent with a document of title is not carried forward under these Rules of Evidence, at least not under Rule 901(b)(8). See Fed.R.Evid. 901(b)(8) advisory committee's note. Compare Ala.R.Evid. 803(15) (specialized hearsay exception for title documents, which requires that dealings with the property have been consistent with the document).

Subsection (b)(9). Process or system. The foundational requirement of subsection (b)(9) applies whenever evidence of a result depends, for its accuracy, upon the process or system that produced it. The prerequisite showing is twofold: (1) evidence describing the process or system used to produce the result, and (2) evidence showing that the process or system used is accurate in the result it produces. This requirement is consistent with preexisting Alabama law. See, e.g., *Ex parte Bush*, 474 So.2d 168 (Ala.1985) (intoxication test); *Evans v. Tanner*, 286 Ala. 651, 244 So.2d 782 (1971) (X-ray). Compare C. Gamble, McElroy's Alabama Evidence §§ 60.03(12) (drunkometer test), 123.05 (X-ray photographs); 490.01(4) (blood test to prove or disprove paternity) (4th ed. 1991). The committee intends that the rule will apply to computer results. See *Transport Indem. Co. v. Seib*, 178 Neb. 253, 132 N.W.2d 871 (1965); *State v. Veres*, 7 Ariz. App. 117, 436 P.2d 629 (1968), cert. denied, 393 U.S. 1014 (1969). Nothing in subsection (b)(9) precludes the continued application of Alabama precedent requiring that the person making the test or operating the system be qualified to do so. *Lyle v. Eddy*, 481 So.2d 395 (Ala.Civ.App.1985). Additionally, evidence establishing a chain of custody or identification would remain necessary when the process involves the testing of a sample. See *Nordan v. State*, 143 Ala. 13, 39 So. 406 (1905). Even after the adoption of this subsection, the trial court will be free to take judicial notice of the accuracy of a process or system. See Ala.R.Evid. 201.

Nothing in subsection (b)(9) is intended to preclude the trial judge from considering, as a preliminary matter under Ala.R.Evid. 104(a), the general state of knowledge in the field as to whether a process or system does indeed produce an accurate result.

Subsection (b)(10). Methods provided by statute or rule. Rule 901 does not supersede methods of authentication or identification set forth in statutes or other rules promulgated by the Supreme Court of Alabama. As the introduction to the Rule 901(b) listing states, the methods of authentication or identification listed are merely illustrative. Consequently, alternative methods available by statute or rule of court are preserved. Statutory examples are as follows: Ala. Code 1975, § 26-17-12(b) (Uniform Parentage Act, providing foundation for admissibility of blood tests conducted to prove paternity); Ala. Code 1975, § 32-5A-194 (governing foundation required when blood, urine, breath, or other bodily substances

have been tested for presence of alcohol or controlled substance). As a matter of illustration, the committee notes that alternative methods of authentication or identification are found in other rules of court. See, e.g., Ala.R.Civ.P. 10(c) (providing that a party may attach a written instrument to a pleading and thereby render it a part of the pleading); Ala.R.Civ.P. 56(e) (sworn or certified documents attached to affidavits supporting or opposing a motion for summary judgment may be considered by the court on question of whether there is a genuine issue of material fact justifying a trial); Ala.R.Civ.P. 44(a) (providing for authentication of foreign or domestic official records); Ala.R.Civ.P. 16(3) (recognizing the power of the trial court to adopt pretrial procedures that result in required authentication so as to avoid use of trial time for authentication).

The Alabama Rules of Civil Procedure likewise recognize the availability of authentication methods contained in "the rules of evidence at common law." Ala.R.Civ.P. 44(c). The reasonable interpretation of this language, based upon other references in the Alabama Rules of Civil Procedure, is that authentication methods are available when contained in whatever set of evidence rules happens to be in force at the time the evidence is offered. See Ala.R.Civ.P. 33(b) (recognizing that answers to interrogatories may be used "to the extent permitted by the rules of evidence"); Ala.R.Civ.P. 43(a) (providing that: "All evidence shall be admitted which is admissible under statute or under the rules of evidence which are now applied or shall hereafter be applied in the courts of the State of Alabama") (emphasis added).