

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2017-K-0352**
VERSUS *
AJA TURNER * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

ON APPLICATION FOR WRITS DIRECTED TO
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 531-343, SECTION "G"
Honorable Byron C. Williams, Judge
* * * * *

Chief Judge James F. McKay III
* * * * *

(Court composed of Chief Judge James F. McKay III, Judge Regina Bartholomew Woods, Judge Terrel J. Broussard, Pro Tempore)

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WRIT GRANTED; REMANDED; STAY DENIED

APRIL 21, 2017

The state seeks review of the trial court's April 18, 2017 ruling, granting the defendant's motion to set a pre-trial hearing on authentication of social media evidence. For the reasons set forth below, we grant the state's writ application, reverse the ruling of the trial court, and remand for further proceedings.

In granting the defendant's motion, the trial court ordered that the hearing to authenticate the proposed social media evidence would be conducted one day prior to trial. Because it is the state's intention to authenticate the social media evidence through the victim's testimony, the victim would be required to appear in court prior to trial. We find that this requirement would violate the victim's rights.

In *State v. Harris*, 08-2117 (La. 12/19/08), 998 So.2d 55, 56, the Supreme Court held:

Even though the Sixth Amendment of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him[.]" the United States Supreme Court has specifically rejected confrontation clause claims in pre-trial proceedings. Similarly, although La. Const, Art. I, § 13 recognizes the right of a defendant to confront his accuser, the confrontation that this article secures is confrontation at the trial, not prior thereto.

As the Louisiana Supreme Court recently explained in *State v. Bart*, 17-0038, pp. 1-2 (La. 2/2/17), 209 So.3d 698, 699-700,

La. R.S. 46:1844(C)(3) provides that: ...“Before any victim may be subpoenaed to testify on behalf of a defendant at any pretrial hearing, the defendant shall show good cause at a contradictory hearing with the district attorney why the subpoena should be issued. See also, La. Const. Art. I, § 25 (1974) which enshrined in the Louisiana Constitution certain rights of a victim of a crime, including the right to refuse to be interviewed by the accused or a representative of the accused.

In the present case, the defendant failed to establish that good cause exists to compel the victim to testify at a pre-trial hearing.

In *State v. Smith*, 15-1359 (La. App. 4 Cir. 4/20/16), 192 So.3d 836, this Court recognized that the authentication of social media evidence must take place outside the presence of the jury. However, we note that the *Smith* case does not require that the authentication be conducted in a *pre-trial* hearing. Such a requirement would violate the victim’s constitutional rights.

In its ruling from the bench in the present case, the trial judge acknowledged the victim’s constitutional rights. However, the trial court stated that because there are other acceptable ways of authenticating social media postings, which do not require the victim’s testimony to authenticate, the authentication of the evidence could be held prior to trial. We find error in that holding as it applies to this case. Here, the state is relying only on the victim’s testimony to authenticate the postings. Consequently, the authentication will require the victim’s testimony. As previously stated, requiring a victim to testify at a pre-trial hearing is a violation of the victim’s constitutional rights.

The question of whether the social media evidence can properly be authenticated based solely on the victim’s testimony, was not at issue before the

trial court in the April 18, 2017 hearing, nor is it before this Court in this writ application. As this Court recognized in *State v. Smith*, 15-1359, p. 14, 192 So.3d at 844,

Authentication renders evidence of the social media posts admissible at trial. Whether the social media posts are reliable evidence is a question for the jury. Similarly, whether the opposing party can attack the reliability of the evidence at trial is not part of the trial court's preliminary inquiry under La. C.E. arts. 901. *See also* La. C.E. art. 104.

For the forgoing reasons, the state's writ application is granted and the ruling of the trial court is reversed. We remand the matter for a hearing, to be conducted on the day of trial but outside the presence of the jury, in order for the state to present evidence to authenticate the social media posts.

WRIT GRANTED; REMANDED; STAY DENIED

PLEASE SERVE:

Office of the Judicial Administrator, c/o Sandy Meadoux, Appellate Clerk
Criminal District Court, Orleans Parish