

**SUPREME COURT OF PENNSYLVANIA  
COMMITTEE ON RULES OF EVIDENCE**

**REPORT**

**Proposed Amendment of Comment to Pa.R.E. 902**

The Committee on Rules of Evidence is considering amendment of the Comment to Rule 902 to provide notice that certain self-authenticating records also require proof of identification. Under the Rules of Evidence, certificates evidencing a prior criminal record are self-authenticating under Pa.R.E. 902(4). See also 42 Pa.C.S. § 5328, 42 Pa.C.S. § 6103, and 75 Pa.C.S. § 6501. However, self-authenticating certificates fulfill only part of the requirement for proving a prior criminal conviction.

Under case law, the proponent has the burden of proving: 1) a prior conviction is authentic (*i.e.*, with a self-authenticating certificate); and 2) the person against whom it is sought to be admitted is the same person reflected on the certificate. *Commonwealth v. Boyd*, 344 A.2d 864 (Pa. 1975). Concerning the second aspect of this burden, a criminal record cannot be authenticated solely on the basis of the similarity of names between the record and the in-court witness. *Id.* For example, in *Commonwealth v. Young*, 211 A.2d 440 (Pa. 1965), name, age, race, and gender were deemed to be insufficient to establish identity. Rather, the Court focused on the name, “Thomas Young,” as being “not uncommon” in Philadelphia. Of course, a stipulation would obviate the need for corroborative evidence of identity. See *Commonwealth v. Connolly*, 269 A.2d 390, 392 (Pa. Super. 1970).

One method of proving identity is to produce a witness from the previous trial. *Boyd*, 344 A.2d at 869. Similar nicknames and addresses have been deemed sufficient. See *Commonwealth v. Chandler*, 346 A.2d 579, 582 (Pa. Super. 1975). Likewise, the same first name, middle initial, and last name, together with an exact address, has been deemed sufficient. *Commonwealth v. Moyer*, 2014 WL 10896803 (Pa. Super. 2014) (unreported). The identity of a person convicted by court-martial has been considered duly shown by the person in question having the same social security number as that of the person named in a self-authenticating certificate. See *Commonwealth v. Smith*, 563 A.2d 905, 909 n. 5 (Pa. Super. 1989), *order affirmed*, 598 A.2d 268 (Pa. 1991). Whether sufficient evidence of identity has been proffered as a matter of law is initially to be determined by the judge outside the presence of the jury. *Commonwealth v. Brabham*, 407 A.2d 424, 430 (Pa. Super. 1979).

The Committee recognizes that evidence of a prior conviction may be used in multiple circumstances, including as an element of a crime, 18 Pa.C.S. § 6105(a)(1) (prohibition against possessing a firearm as a result of a prior felony), to determine

custody, 23 Pa.C.S. § 5329, to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, lack of accident, Pa.R.E. 404(b)(2), and for impeachment purposes, Pa.R.E. 609. However, a universal requirement for this evidence, absent a stipulation, is authentication. Therefore, the Committee favors adding a statement regarding identification to the Comment to Rule 902.

All comments, concerns, and suggestions concerning this proposal are welcome.