

EVIDENCE - 404B

When Other Evidence of Guilt is Overwhelming, Admission of Trial Testimony, Even if in Violation of 404(B), Does Not Affect Jury Decision and Create Prejudicial Error.

State v. LePage, __ N.C. App. __, __S.E.2d__ (18 May 2010).

B.E. testified that Defendant had attempted to form a sexual relationship with her when she was sixteen years old and they met at Alcoholics Anonymous. Defendant asserts that under 404(B), the trial court erred in admitting this evidence and that he was unfairly prejudiced by its effects. However, excluding B.E.'s testimony, the evidence at trial tended to show: (1) Defendant admitted to having drugged Smith and JBS; (2) Defendant admitted to having kissed JBS and having touched her breasts; (3) the videotape showed Defendant using sex toys with an apparently drugged L.E.; (4) L.E. testified that she had not consented to the actions shown on the videotape and that she did not remember engaging in those actions; (5) JBS's medical exams showed the presence of the drugs Defendant admitted to applying to the pie; (6) Smith found sex toys that she had previously not known about under Defendant's side of their bed; (7) those sex toys went missing at the same time Defendant left to go to Ohio to stay with L.E.; (8) Smith had earlier found a package addressed to Defendant which contained "Clonazepam or Pine[;]" (9) JBS's urine sample contained a metabolite of Clonazepam, indicating that she had recently ingested that drug; and (10) Smith's urine also showed the presence of one of a class of drugs that includes Clonazepam. Court of Appeals found that there was overwhelming evidence of Defendant's guilt and that evidence of Defendant's proposition to B.E. would have no probable impact on the jury's decision. In light of the overwhelming evidence, Defendant cannot show prejudice in the trial court's admission of the challenged evidence as it would have no probable impact on the jury's decision. There was no prejudicial error in admitting B.E.'s testimony.

Trial Court Erred In Exclusion of Defendant's Proposed Testimony That He Knew Of Certain Violent Acts By Victim And That Victim Spent Time In Prison Because It Is Relevant To Defendant's Claim Of Self Defense To Murder Charge And To His Contention That He Did Not Form Requisite Intent For Attempted Armed Robbery

State v. Jacobs, __ N.C. __, __ S.E.2d __ (Mar. 12, 2010).

In a murder and attempted armed robbery trial, the trial court erred when it excluded the defendant's proposed testimony that he knew of certain violent acts by the victim and that the victim had spent time in prison. This evidence was relevant to the defendant's claim of self-defense to the murder charge and to his contention that he did not form the requisite intent for attempted armed robbery because "there is a greater disincentive to rob someone who has been to prison or committed violent acts." The evidence was admissible under Rule 404(b) because it related to the defendant's state of mind. The court also held that certified copies of the victim's convictions were admissible under Rule 404(b) because they served the proper purpose of corroborating the defendant's testimony that the victim was a violent person who had been incarcerated. *State v.*

Wilkerson, 148 N.C. App. 310, *rev'd per curiam*, 356 N.C. 418 (2002) (bare fact of the defendant's conviction, even if offered for a proper Rule 404(b) purpose, must be excluded under Rule 403), did not require exclusion of the certified copies of the victim's convictions. Unlike evidence of the defendant's conviction, evidence of certified copies of the victim's convictions does not encourage the jury to acquit or convict on an improper basis.

(1) Trial Court Erred in Admitting Testimony of State's Forensic Expert Who Offered Evidence from Autopsy Report of Forensic Analyses Performed by Non-Testifying Forensic Pathologist and Forensic Dentist

(2) Trial Court Did Not Err Under Rule 404(b) or Rule 403 in Admitting Evidence of Another Murder Committed by Defendant That Occurred Thirty-Two Months Before Murder Being Tried

State v. Locklear, 363 N.C. 438, 681 S.E.2d 293 (28 August 2009).

The defendant was convicted of first-degree murder and sentenced to death. (1) Dr. John Butts, a forensic pathologist, testified for the state concerning a state's exhibit, a copy of an autopsy report of the murder victim prepared by another forensic pathologist (Dr. Karen Chancellor) who did not testify at trial. Dr. Butts testified that according to the autopsy report, the cause of death was blunt force injuries to the chest and head. Dr. Butts also testified to the results of a forensic dental analysis performed by Dr. Jeffrey Burkes that was included in the autopsy report in which Dr. Burkes, who did not testify at trial, positively identified the autopsied body through dental records as that of the murder victim. The court ruled that the trial court erred in admitting the testimony of Dr. Butts in violation of *Crawford v. Washington*, 541 U.S. 36 (2004), and *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009). The state did not show that the non-testifying experts were unavailable to testify and the defendant had been given a prior opportunity to cross-examine them. (2) The court ruled that the trial court did not err under Rule 404(b) or Rule 403 in admitting evidence of another murder committed by the defendant that occurred thirty-two months before the murder being tried. The evidence was admitted to show the defendant's knowledge, plan, opportunity, intent, modus operandi, and motive to kill the victim in the case being tried. The court detailed the similarities between both murders. The court rejected the argument that the evidence could not be admitted under Rule 404(b) because the trial court had previously determined that the two murders would be tried separately. The decision to join two or more offenses for trial is discretionary and does not necessarily indicate a lack of a transactional connection between the two offenses.

(1) Trial Court Erred in Allowing State's Expert to Identify Prescription Pills as Controlled Substances Solely By Visual Examination Without Chemical Analysis of Any of the Pills

(2) Trial Court Erred in Admitting Conduct Under Rule 404(b) Involving Prior Offenses When Offenses Were Subject to Prior Trial and Case Was Dismissed for Insufficient Evidence

State v. Ward, ___ N.C. App. ___, 681 S.E.2d 354 (18 August 2009). (Author's note: The North Carolina Supreme Court has granted the state's petition to review the ruling in (1) below.)

The defendant was convicted of multiple drug offenses. (1) The court ruled, relying on

State v. Llamas-Hernandez, 363 N.C. 8 (2009), *reversing for reasons stated in dissenting opinion*, 189 N.C. App. 640 (2008), and distinguishing *State v. Fletcher*, 92 N.C. App. 50 (1988) (officers properly allowed to identify substance as marijuana), that the trial court erred in allowing the state's expert, an SBI lab analyst, to identify prescription pills as controlled substances solely by visual examination without chemical analysis of any of the pills. The agent identified the pills by a visual examination of the appearance of and pharmaceutical markings on the pills and a comparison of the information derived from that process to information contained in Micromedics Literature, a publication used by doctors in hospitals and pharmacies to identify prescription medicines. The court concluded, based on the record in this case, the visual identification procedure did not provide "indices of reliability" sufficient to support the admission of the agent's testimony. [Author's note: This ruling does not affect cases, such as *State v. Myers*, 61 N.C. App. 554 (1983), that random sampling and testing of tablets is sufficient to establish that all similar-appearing tablets contain methaqualone.] (2) The court ruled, relying on *State v. Scott*, 331 N.C. 39 (1992), and *State v. Allen*, 144 N.C. App. 386 (2001), that the trial court erred under Rule 404(b) in admitting conduct involving prior offenses when those offenses were subject to a prior trial and the cases were dismissed for insufficient evidence, and the probative value of the evidence depended on his having committed those offenses. [Author's note: This evidence was not similar to the facts in *State v. Solomon*, 117 N.C. App. 701 (1995), and *State v. Agee*, 326 N.C. 542 (1990), to be admissible under those rulings.]

Evidence of Driving While License Revoked After Arrest For Driving While License Revoked Is Admissible To Show Knowingly Driving While License Revoked

State v. Hargrave, ___ N.C. App. ___, ___ S.E.2d __ (Aug. 4, 2009).

Evidence of that the defendant drove with a revoked license *after* his arrest for several crimes, including driving while license revoked, which lead to the prosecution at issue, was admissible under Rule 404(b) to show that he knowingly drove with a revoked license.

Trial Judge at Retrial After Mistrial Was Not Bound By Evidentiary Ruling in First Trial Concerning Admissibility of Rule 404(b) Evidence

State v. Harris, ___ N.C. App. ___, 679 S.E.2d 464 (21 July 2009).

In the defendant's first trial for possessing cocaine with the intent to sell or deliver, the trial judge barred the state from introducing proffered Rule 404(b) evidence of a prior cocaine offense to show the defendant's intent to possess cocaine, knowledge of cocaine, and absence of mistake. A mistrial was declared when the jury was unable to agree on a unanimous verdict. At the retrial, a different trial judge allowed the state to introduce the same Rule 404(b) evidence to show intent, knowledge, and lack of mistake. The court stated that there are no prior binding evidentiary rulings when a defendant is tried again following a mistrial. Neither the doctrine of collateral estoppel nor the rule that bars one judge from overruling another applies. The court ruled that the trial judge at the retrial did not err by failing to follow the first trial judge's discretionary ruling on the admissibility of the Rule 404(b) evidence.

Evidence of Assault Committed by Defendant That Occurred Two Days Before Murder Being Tried Was Admissible Under Rule 404(b) to Show Identity When Same Weapon Was Used in Both Murder and Assault

State v. Dean, ___ N.C. App. ___, 674 S.E.2d 453 (7 April 2009).

The defendant was convicted of first-degree murder. The court ruled that evidence of an assault committed by the defendant that occurred two days before the murder being tried was admissible under Rule 404(b) to show identity when the state's ballistics evidence showed that the same weapon was used in both the murder and the assault.

Evidence Court Rejects Bright Line Rule That Admission Under Rule 404(b) of Traffic-Related Convictions That Occurred More Than Sixteen Years Before Date of Second-Degree Vehicular Murder Being Tried Is Plain Error Per Se—Ruling of Court of Appeals Is Reversed

State v. Maready, 362 N.C. 614, 669 S.E.2d 564 (12 December 2008), reversing, ___ N.C. App. ___, 654 S.E.2d 769 (15 January 2008).

The defendant was convicted of second-degree murder and other charges involving a vehicle crash in which the defendant was driving impaired. The issue before the court was whether the trial judge's admission under Rule 404(b) of prior traffic-related convictions of the defendant that were more than sixteen years old was plain error (the defendant had failed to object at trial to the admission of his prior traffic record). The court rejected the implication that its per curiam ruling in *State v. Goodman*, 357 N.C. 43 (2003), reversing for reasons stated in dissenting opinion, 149 N.C. App. 57 (2002), had adopted a bright line rule that the admission under Rule 404(b) of traffic-related convictions that occurred more than sixteen years before the date of a second-degree vehicular murder being tried is plain error per se. The relevance of a temporally remote traffic-related conviction to the malice issue does not depend solely on the length of time that

has passed since the conviction occurred. Instead, the extent of its probative value depends largely on intervening circumstances. In this case, in which the defendant was convicted of DWI four times in the sixteen years before the events on trial, his older convictions did not only show that the defendant has the propensity to commit the offense being tried. Instead, those convictions constituted a part of a clear and consistent pattern of criminality that is highly probative of his mental state for the offense being tried. The probative value and thus admissibility of Rule 404(b) evidence must be determined on a case-by-case basis rather than through applying a fixed temporal maximum. The court ruled that the trial judge did not commit plain error in the admission of the defendant's entire driving record.

Trial Judge in Trial of Drug Sale to Undercover Officer Did Not Err Under Rules 404(b) and 403 in Admitting Evidence of Two Prior Drug Sales to Undercover Officers to Show Identity, Intent, and Common Plan or Scheme

State v. Welch, ___ N.C. App. ___, 666 S.E.2d 826 (7 October 2008).

The defendant was convicted of possessing cocaine with the intent to sell and deliver and sale and delivery of cocaine. The convictions were based on the defendant's sale of crack cocaine to an undercover officer on February 22, 2006. The court ruled, relying on *State v. Stevenson*, 169 N.C. App. 797 (2005), and distinguishing *State v. Carpenter*, 361 N.C. 382 (2007), that the trial judge did not err under Rules 404(b) and 403 in admitting evidence of two prior cocaine sales to undercover officers on February 16, 2006, and April 15, 2005, to show identity, intent, and common plan an scheme. The court in its opinion noted several similarities between these offenses and the offenses being tried.

(1) Admission of Evidence of Prior Conviction in Trial of Possession of Firearm by Felon Did Not Violate Rules 403 and 404(b), Although Defendant Offered to Stipulate to

Conviction

State v. Little, ___ N.C. App. ___, 664 S.E.2d 432 (5 August 2008).

The defendant was on trial for attempted first-degree murder, a felonious assault, possession of firearm by felon, and discharging a firearm into occupied property.

(1) The state was allowed to introduce evidence of the defendant's prior conviction of involuntary manslaughter to prove an element of possession of firearm by felon. The defendant had offered to stipulate to the prior conviction and objected to the admission of the conviction evidence under Rules 403 (exclusion of relevant evidence on grounds of prejudice, etc.) and 404(b) (other crimes, wrongs, or acts). The court ruled that the admission of the conviction evidence did not violate these rules.

Trial Judge Did Not Err Under Rule 404(b), Rule 401, and Rule 403 in Admitting Various Prior Criminal Acts in Trial of Attempted First-Degree Burglary

State v. Martin, ___ N.C. App. ___, 665 S.E.2d 471 (5 August 2008).

The defendant was convicted of attempted first-degree burglary that was committed on March 29, 2007. A person taking a bath in a house heard a loud noise, looked out the bathroom window, and saw the defendant walk around the corner of her house. She then heard scratching at her bedroom window. She pulled back the window shade and saw the defendant on the other side of the window, pulling on the window and a cord attached to the window. The defendant had put his fingers around the window screen and had pushed the window off its track. The defendant then left the area. The court ruled that the trial judge did not err under Rule 404(b), Rule 401, and Rule 403 in admitting the following prior criminal acts: (i) breaking and entering a motor vehicle and misdemeanor larceny committed on April 28, 2005, and breaking and entering a residence and misdemeanor larceny committed on April 24, 2005, to show the defendant's motive and intent to commit a larceny; (ii) possession of marijuana on March 26,

2007, to show defendant's motive to commit the attempted burglary because he needed money and as evidence of the crime scenario (the marijuana possession having occurred three days before the attempted burglary); and (iii) breaking and entering a residence through a window on October 4, 2006, in the same neighborhood as the attempted burglary, to show identity and intent.

(1) Evidence of Prior Sexual Activity With Another Person Committed Eight Years Before Offenses Being Tried Was Properly Admitted Under Rule 404(b) and Rule 403

(2) Error to Admit Certified Copies of Defendant's Sexual Battery Convictions Under Rule 404(b)

State v. Bowman, 188 N.C. App. 635, 656 S.E.2d 638 (19 February 2008).

The defendant was convicted of three counts of aiding and abetting statutory rape, three counts of indecent liberties, and two counts of second-degree kidnapping. The offenses occurred in 2005. (1) The court ruled that evidence of prior sexual activity with another person (not a victim in this trial) committed eight years before offenses being tried was properly admitted under Rule 404(b) and Rule 403. The evidence was admitted to show absence of mistake of age, specific intent in the kidnapping, and an intent for sexual gratification. Concerning temporal proximity, the defendant had been incarcerated for three years and had relocated to another state during the eight-year time period. (2) The court ruled that the trial judge erred in admitting certified copies of the defendant's sexual battery convictions under Rule 404(b). The court stated that although North Carolina appellate courts are liberal in their inclusion of prior sexual offenses for Rule 404(b) purposes, it found in this case there was little probative value in the defendant's prior convictions for any Rule 404(b) purpose because there was significant testimony concerning the facts underlying the defendant's convictions.

Trial Judge Did Not Err Under Rule 404(b) in Admitting Evidence of Drug Transaction Occurring Seven Weeks After Drug Transaction Being Tried Based on Their Substantial Similarities

State v. Mack, 188 N.C. App. 365, 656 S.E.2d 1 (5 February 2008).

The defendant was convicted of several drug offenses. The court ruled that the trial judge did not err under Rule 404(b) in admitting evidence of a drug transaction involving the defendant that occurred after the drug transaction being tried (approximately seven weeks later) based on their substantial similarities. (See the court's discussion of the substantial similarities.)

Trial Judge Did Not Abuse Discretion in Admitting Under Rule 404(b) Evidence of Death of Another That Occurred 16 Years Before Death of Victim For Whom Defendant Was Being Tried for Murder

State v. Peterson, 361 N.C. 587, 652 S.E.2d 216 (9 November 2007), affirming, 179 N.C. 437, 634 S.E.2d 594 (2006).

The defendant was convicted of first-degree murder of A. The court ruled, relying on *State v. Stager*, 329 N.C. 278 (1990), that the trial judge did not abuse his discretion in admitting under Rule 404(b) evidence of the death of B that occurred 16 years before the death of A. The court noted that the state was not required to present direct evidence of the defendant's involvement in the death of B, but could present circumstantial evidence that tends to support a reasonable inference that the same person committed both homicides. The trial judge's findings of fact indicated not only significant similarities between the deaths of A and B, but also sufficient circumstantial evidence that the defendant was involved in B's death.

Evidence of Prior DWI Was Admissible to Show Malice Under Rule 404(b) in Second-Degree Vehicular Murder Trial

State v. Lloyd, 187 N.C. App. 174, 652 S.E.2d 299 (6 November 2007).

The defendant was convicted of two counts of second-degree murder, felony fleeing to elude officers, and other offenses, based on a high-speed chase by officers in which the defendant crashed his vehicle into another vehicle, killing its two passengers. The state was allowed to introduce evidence of a DWI committed by the defendant about five months earlier and his conviction of the DWI. The trial judge limited the evidence under Rule 404(b) to show the defendant's knowledge that his license was suspended when he committed the second-degree murders and to show malice. The court ruled that the evidence was properly admitted.

Trial Judge Erred Under Rule 404(b) in Allowing State in Assault Trial to Cross-Examine Defendant About Two Prior Assaults of Other People

State v. Goodwin, 186 N.C. App. 638, 652 S.E.2d 36 (6 November 2007).

The defendant was convicted of a felonious assault. The court ruled, relying on *State v. Morgan*, 315 N.C. 626 (1986), that the trial judge erred under Rule 404(b) in allowing the state to cross-examine the defendant about two prior assaults of other people (the state had voluntarily dismissed these assault charges). After examining the evidence in this case, the court concluded that the state's sole purpose for its cross-examination was to show the defendant's propensity for violence, which is not allowed under Rule 404(b).

(1) Trial Judge Did Not Err in Admitting Under Rule 404(b) to Prove Identity Evidence of

Prior Armed Robberies in Which Gun Defendant Used to Commit Those Offenses Was Same Weapon Defendant Used in Murder Being Tried, and Also Admitting Defendant's Guilty Pleas to the Armed Robberies

State v. Brockett, ___ N.C. App. ___, 647 S.E.2d 628 (7 August 2007).

The defendant was convicted of first-degree murder and felonious assault involving gang-related offenses. (1) The court ruled that the trial judge did not err in admitting under Rule 404(b) to prove identity evidence of prior armed robberies in which the gun that the defendant used to commit those offenses was same weapon the defendant used in the murder being tried. The court stated that the evidence demonstrated that the defendant had used or had access to the same firearm within two months of the shootings and was relevant to prove identity and supported a reasonable inference that the same person committed both the armed robberies and the murder and felonious assault. The court also ruled, distinguishing *State v. Wilkerson*, 356 N.C. 418 (2002) (adopting dissenting opinion in Court of Appeals, 148 N.C. App. 310) and *State v. McCoy*, 174 N.C. App. 105 (2005), that the trial judge did not err in admitting not only the testimony of an accomplice and investigators of the armed robberies, but also the transcript of the defendant's plea of guilty to the armed robberies. The court stated that the transcript of plea was more than bare evidence of the defendant's prior armed robbery convictions. Rather, it was an admission by the defendant that he had committed the armed robberies.

Trial Judge Erred in Trial of Possession with Intent to Sell or Deliver Cocaine in Admitting Evidence Under Rule 404(b) of Defendant's Prior Sale of Cocaine and Resulting Conviction That Occurred Eight Years Earlier Because Evidence Lacked Sufficient Similarity With Offense Being Tried

State v. Carpenter, 361 N.C. 382, 646 S.E.2d 123 (28 June 2007), reversing, 179 N.C. App. 79, 632 S.E.2d 538 (2006).

The court ruled that the trial judge erred in a trial of possession with intent to sell or deliver cocaine in admitting evidence under Rule 404(b) of the defendant's prior sale of cocaine and the resulting conviction that occurred eight years earlier, because the evidence lacked sufficient similarity with the offense being tried. The offense being tried involved an officer's discovery of cocaine on the person of the defendant who was a passenger in a vehicle stopped by the officer. The Rule 404(b) offense involved an officer's use of an informant to make a controlled buy from the defendant. (See the court's discussion of other differences between the two offenses and its detailed analysis.)

Evidence of Recent Armed Robberies and Convictions of Those Armed Robberies Was Admissible Under Rule 404(b) in Armed Robbery Trial [But See Author's Note]

State v. Morgan, 183 N.C. App. 160, 645 S.E.2d 93 (15 May 2007).

The defendants were convicted of two counts of armed robbery and other offenses. The court ruled that evidence of recent armed robberies as well as the convictions of those armed robberies was admissible under Rule 404(b) to show the defendants' identity, motive, intent, common plan, knowledge, and opportunity. [Author's note: The ruling relating to the admissibility of the convictions appears to be in conflict with *State v. Badgett*, 361 N.C. 234, 644 S.E.2d 206 (4 May 2007) (evidence of the prior conviction was inadmissible under Rule 404(b) when the state had introduced evidence of the underlying facts and circumstances of the conviction and, in this case, the defendant did not testify so the conviction was not admissible under Rule 609).]

(1) Evidence of Killing Committed Ten Years Before Murder Being Tried Was Not Too Dissimilar or Remote to Be Admitted Under Rule 404(b)

(2) Trial Judge Erred in Allowing Conviction to Be Admitted Under Rule 404(b)

State v. Badgett, 361 N.C. 234, 644 S.E.2d 206 (4 May 2007).

The defendant was convicted of a first-degree murder committed in 2002. The trial judge admitted under Rule 404(b) evidence of the facts involving the defendant's killing of another person in 1992 as well as the defendant's conviction of voluntary manslaughter for that killing. (1) The court ruled that evidence of the killing was not too dissimilar or remote to be admitted. The court reviewed the evidence and concluded that there were remarkable similarities between the two killings, including fatal stab wounds to an unarmed victim's neck with a folding pocketknife that occurred during an argument with the victim in the victim's home. Concerning the temporal requirement, the defendant was in prison for five of the ten years between the two killings (such time is excluded by case law), leaving only five years between them. (2) The court ruled that the trial judge erred in allowing the state to introduce evidence of the defendant's conviction of voluntary manslaughter for the 1992 killing. The court relied on its ruling in *State v. Wilkerson, 356 N.C. 418, 571 S.E.2d 583*, reversing per curiam, 148 N.C. App. 310, 559 S.E.2d 5 (2002) (for reasons stated in dissenting opinion of the Court of Appeals). Evidence of the prior conviction was inadmissible when the state had introduced evidence of the underlying facts and circumstances of the conviction and, in this case, the defendant did not testify so the conviction was not admissible under Rule 609.

Testimony About Defendant's Violent Past Was Admissible to Explain Chain of Events Leading to Ensuing Fight and Was Not Prohibited Character Evidence Under Rule 404

State v. Beal, 181 N.C. App. 100, 638 S.E.2d 541 (2 January 2007).

The defendant was convicted of a felonious assault. The defendant and the alleged victim lived in the same mobile home, which was owned by the alleged victim. The defendant paid rent to live there. The assault occurred in the mobile home and its curtilage. The alleged victim testified that he and the defendant began to argue and he asked the defendant to leave. In response to a question why he had asked him to leave, the alleged victim testified that when the defendant drinks, he gets violent. Relying on *State v. Agee*, 326 N.C. 542, 391 S.E.2d 171 (1990), the court ruled the evidence was admissible to explain the chain of events that led to the fight and was not improper character evidence under Rule 404.

Evidence of Defendant's Prior Assaults and Robbery of Victim B Committed Within a Few Months Before Commission of Murder of Victim A Was Admissible in Murder Trial under Rule 404(b) to Show Defendant's Intent to Shoot Friends of Victim B and Victim B

State v. Christian, 180 N.C. App. 621, 638 S.E.2d 470 (19 December 2006).

The defendant was convicted of first-degree murder of victim A when he shot into a car and killed an occupant. The court ruled that evidence of the defendant's assaults and robbery of victim B committed within a few months before the murder of victim A was admissible under Rule 404(b) to show the defendant's intent to shoot friends of victim B who were in the car with the murder victim and victim B himself, who the defendant may have believed was in the car.

3. Evidence-Prior bad acts-Admission not prejudicial

State v Christian, 180 NCA 621 (2006)

The trial court did not err in a murder prosecution by admitting evidence of a murder defendant's prior bad acts where he had assaulted, shot at, and threatened a man named Massey, his family, and whoever was with him, and the victim was riding in a car with friends of Massey. The evidence was relevant to show

defendant's intent, the two month interval between the earliest incident and the shooting did not make the incidents too remote in time, and the probative value of the evidence was not substantially outweighed by the prejudice.

1. Evidence--Prior crimes or bad acts--Purpose other than bad character

State v Faulkner, 180 NCA 499 (2006)

The trial court did not abuse its discretion in a prosecution of defendant for the second-degree murder of his girlfriend's infant son by denying defendant's motion to suppress testimony from his girlfriend's mother regarding a June 2001 incident in which the girlfriend took an overdose of sleeping pills, defendant refused to call 911, defendant initially refused to give the girlfriend's mother the street address when she called 911, and defendant told his girlfriend's mother that he did not know what she took nor did he care whether she died, because: (1) the defense was attempting to suggest that defendant's girlfriend may have been the perpetrator or that the girlfriend's son died from an accidental fall; and (2) evidence concerning the relationship between defendant and his girlfriend was probative for a purpose other than defendant's bad character. N.C.G.S. § 8C-1, Rule 404(b).

3. Evidence--Prior crimes or bad acts--Prior imprisonment--Motive, Intent, knowledge, or absence of mistake

State v Locklear, 180 NCA 115 (2006)

The trial court did not abuse its discretion in a felony breaking and entering, felony larceny, multiple drug charges, reckless driving, speeding, failure to heed a light or siren, failing to stop for a steady red light, driving the wrong way on a one-way street or road, and assault on a law enforcement animal case by permitting the trial to continue after the jury heard evidence from a coparticipant that defendant previously had been imprisoned and did not want to go back, because: (1) defendant's desire to avoid returning to prison constitutes evidence of his motive for the traffic violations he committed while fleeing the police and could be reasonably viewed as an acknowledgment of guilt as to the breaking and entering; (2) the testimony was admissible under N.C.G.S. § 8C-1, Rule 404(b) as proof of motive, intent, knowledge, or absence of mistake; and (3) the trial court in weighing the probative value of the testimony against its potential prejudicial effect excluded testimony concerning defendant's release from prison and issued a limiting instruction to further mitigate against any possible prejudice that such

testimony might entail.

3. Evidence--prior crimes or bad acts--Violence toward victim--Intent--Absence of accident--remoteness

State v Parmaei, 180 NCA 179 (2006)

The trial court did not err in a first-degree murder case by allowing testimony of defendant's prior acts of violence toward the victim, because: (1) the testimony was admissible to prove either defendant's intent to harm the victim or an absence of accident; and (2) defendant opened the door to the testimony of events that occurred fourteen years prior to the murder, and remoteness in time goes to the weight and not admissibility.

4. Evidence--Prior crimes or bad acts--Testimony about prior abuse-Modus operandi--Plan-Absence of mistake--Absence of accident

State v Bradley, 179 NCA 551 (2006)

The trial court did not err in a double indecent liberties with a child and statutory sex offense case by admitting the testimony of three victims regarding prior acts of abuse by defendant, because: (1) our Supreme Court has been liberal in allowing evidence of similar offenses in trials on sexual crime charges; (2) all three of the witnesses were young female relatives who were in the care of defendant at the time of the alleged abuse and each testified to similar acts by defendant in similar locations followed by defendant's instruction to keep the encounters a secret; and (3) the trial court instructed the jury that the

testimony was received solely for the purpose of showing that there existed in the mind of defendant a plan, scheme or system, or design involving the crimes charged in the case, or absence of mistake and absence of accident.

3. Evidence_other crimes or bad acts_possession of assault rifle

State v Grant, 178 NCA 565 (2006)

Testimony about defendant's possession of a modified assault rifle was relevant in a prosecution for a murder committed with a shotgun. The evidence explained why defendant was in the field where the shooting occurred, why defendant used a shotgun instead of the rifle, and defendant's motive for the shooting. Disposal of the assault rifle showed a consciousness of guilt, and testimony about

modifications to the rifle corroborated other testimony.

4. Evidence_other crimes or bad acts_possession of pistol

State v Grant, 178 NCA 565 (2006)

A pistol that was not connected in any way to a shooting with a shotgun was not relevant in the subsequent first-degree murder prosecution and should not have been admitted. However, there was no prejudice because there was overwhelming evidence of defendant's guilt.

5. Evidence_other crimes or bad acts_drug dealing and robbing drug dealers_relevancy to premeditation and deliberation

State v Grant, 178 NCA 565 (2006)

Evidence that defendant robbed drug dealers and hit a drug dealer during a robbery was relevant in a first-degree murder prosecution to refute defendant's contention that the shooting was without premeditation and deliberation. Evidence that defendant bought and used drugs was relevant to explain his robberies of drug dealers.

2. Evidence--prior crimes or bad acts--prior drug sale--intent

State v Carpenter, 179 NCA 79 (2006)

The trial court did not err in a possession with intent to sell and deliver cocaine case by permitting evidence of defendant's prior drug sale under N.C.G.S. § 8C-1, Rules 403 and 404(b), because: (1) in 1996 defendant sold .82 grams of cocaine in a rock-like form to an undercover agent, the average dosage unit of crack cocaine was from .05 grams to .12 grams per rock of cocaine, and in this case defendant had 12 rocks of crack cocaine weighing 1.6 grams; (2) in both the 1996 and 2004 cases, the rocks of crack cocaine were not individually packaged; (3) the trial court reasonably concluded that the circumstances of defendant's prior conviction were substantially similar to the current charges and that the evidence was admissible under Rule 404(b) for the limited purpose of showing defendant's intent and not to prove defendant's character or that he acted in conformity therewith on the date of the alleged offense; and (4) evidence of other drug violations may be admitted to show a specific intent or mental state.

4. Evidence--Prior crimes or bad acts--failure to intervene ex mero motu--remoteness in

time-- Common scheme or plan

State v Bullock, 178 NCA 460 (2006)

The trial court did not err in a multiple first-degree rape of a child under thirteen case by admitting evidence of other bad acts under N.C.G.S. § 8C-1, Rule 404(b) including sexual acts with defendant's older daughter (the victim's half sister) and by failing to intervene ex mero motu when the State argued this evidence, because: (1) when the facts surrounding a prior act are sufficiently similar to those in a case at bar, it may be proper to admit the prior act evidence even if over ten years have passed (although the elapsed time in this case was actually around nine years); and (2) in light of the similarity of the incidents and in light of the unnatural character of a father raping his own preteen daughters, the evidence was properly admitted to show a common scheme or plan.

5. Evidence--DNA evidence--Common plan scheme or plan to sexually abuse victim

State v Bullock, 178 NCA 460 (2006)

The trial court did not err in a multiple first-degree rape of a child under thirteen case by admitting DNA evidence establishing a 99.99 percent probability that defendant was in fact the father of the victim's child even though the victim conceived the child after she left Wake County and thus after each of the incidents for which defendant was convicted in the instant case, because: (1) evidence that defendant engaged in other sexual acts with the victim is admissible to show that he had a common scheme or plan to sexually abuse the victim; and (2) contrary to defendant's assertion, statements made in the closing argument cannot alter the propriety of admitting the evidence under N.C.G.S. § 8C-1, Rule 404(b) at trial.

1. Evidence-Cross-examination--Prior crimes or bad acts--Prior convictions--status as drug dealer

State v Mewborn, 178 NCA 281 (2006)

The trial court did not err in a trafficking in cocaine by possession, transportation, and sale case by allowing the State to cross-examine defendant about his prior convictions and his status as a drug dealer, because: (1) by defendant's own admission, N.C.G.S. § 8C-1, Rule 608 is inapplicable to the contested questioning about defendant's status as a drug dealer since it was neither a reference to a specific act nor probative of defendant's truthfulness; (2) evidence which would

otherwise be inadmissible may be permissible on cross-examination to correct inaccuracies or misleading omissions in defendant's testimony or to dispel favorable inferences arising from them, and defendant's testimony on cross-examination that his 1995 conviction for possession of cocaine should have been for possession of paraphernalia tended to mislead the jury as to defendant's prior record; (3) defendant's unsolicited testimony about the search of his home seemed to imply that he was framed by the officers who recovered evidence leading to his probation revocation and second conviction, and the State did not exceed the scope of cross-examination under N.C.G.S. § 8C-1, Rule 609(a) by suggesting the reason police officers searched defendant's home was based on the fact that they knew defendant had been convicted of selling drugs; (4) assuming arguendo the cross-examination was improper under N.C.G.S. § 8C-1, Rule 404(a), defendant failed to show he was unduly prejudiced by the State's characterization of him as a drug dealer in light of the uncontested evidence of defendant's prior drug convictions; and (5) although defendant contends *State v. Wilkerson*, 356 N.C. 418 (2002), establishes that the State's cross-examination violated Rule 404(b), the present case is distinguishable since defendant in this case testified on his own behalf.

2. Evidence-Other bad acts-Admissible to show preparation and planning

State v. Brown, 178 NCA 189 (2006).

The trial court did not err in a trial for statutory sexual offense with a person thirteen years old by admitting nude photographs which defendant had shown to the victim. The photographs demonstrated defendant's preparation and planning, a permissible purpose other than showing defendant's character.

2. Evidence-Other crimes or bad acts-Common plan or scheme-Absence of mistake

State v. King, 178 NCA 122 (2006).

The trial court did not abuse its discretion in a multiple obtaining property by false pretenses, multiple forgery, and multiple uttering case by admitting evidence found in a vehicle purchased by defendant which included a power of attorney defendant obtained naming her as attorney in fact and a third person as the principal and personal papers and identification cards belonging to two other persons, and evidence of defendant's purchase of a vehicle with the power of attorney naming the victim as the principal, because: (1) the State offered the evidence to show common plan or scheme and absence of mistake; (2) the

evidence was particularly relevant since the victim had died prior to trial and was unavailable to testify; (3) the evidence tended to rebut defendant's contention that the victim initialed the power of attorney used to withdraw funds from the victim's bank account, and showed defendant engaged in a plan or scheme to obtain and use illegitimate powers of attorney to illegally withdraw funds from individuals' bank accounts including that of the victim; (4) and the incidents were sufficiently similar and not so remote in time as to be more probative than prejudicial under the balancing test of N.C.G.S. § 8C-1, Rule 403.

2. Evidence-Prior crimes or bad acts-Common plan or scheme

State v. Summers, 177 NCA 691 (2006).

The trial court did not abuse its discretion in a first-degree rape, attempted first-degree rape, triple firstdegree sexual offense, attempted robbery with a dangerous weapon and first- degree kidnapping case by admitting the testimony of a State's witness that she had also been attacked by defendant even though defendant contends the evidence was not sufficiently similar and was introduced for allegedly improper reasons, because: (1) the two attacks were sufficiently similar and not too remote in time as to logically establish a common plan or scheme to commit the offense charged; and (2) the testimony did not violate N.C.G.S. § 8C-1, Rule 403 since it did not have an undue tendency to suggest a decision on an improper basis when offered for the limited purpose of showing a common plan or scheme.

9. Evidence--prior crimes or bad acts- federal probation_not impermissible details_motive

State v Brown, 177 NCA 177 (2006)

The trial court did not err by allowing the State to ask defendant on cross-examination whether he denied involvement in the crimes for which he was on trial because he knew his commission of those crimes would violate his federal probation for a prior felony because the State's question did not concern impermissible details about defendant's prior felony conviction in violation of N.C.G.S. § 8C-1, Rule 609, and the question was permissible under N.C.G.S. § 8C-1, Rule 404(b) to show motive.

2. Evidence--prior crimes or bad acts--cunnilingus

State v Anderson, 177 NCA 54 (2006)

The trial court did not err in a multiple indecent liberties and multiple first-degree sexual offense with a child under the age of thirteen years case by denying defendant's motion to exclude evidence admitted under N.C.G.S. § 8C-1, Rule 404(b) that he performed a prior act of cunnilingus on the victim based on the fact that the incident did not occur within Cabarrus County, because: (1) the similarity of the 404(b) evidence to the offense and the temporal proximity to the other incidents to the offense may reveal defendant's opportunity, plan, and intent to take advantage of the minor victim; (2) following the first incident, defendant engaged in numerous other sexual acts with the victim in the seclusion of his bedroom while her mother was outside or away from the home; and (3) assuming arguendo that the evidence was improperly admitted, defendant failed to show a different result would have been reached absent this evidence in light of defendant's admissions and other evidence of defendant's guilt.

1. Evidence--Prior crimes or bad acts-stale convictions more than ten years old-- Actual notice –Admissible

State v. Shelly, 176 NCA 575 (2006).

The trial court did not abuse its discretion in a double first-degree murder and double conspiracy to commit first-degree murder case by allowing the State to impeach defendant on cross-examination with evidence of prior convictions that were more than ten years old, because: (1) although the State failed to give defendant written notice of its intent to introduce evidence of defendant's old convictions as required by N.C.G.S. § 8C-1, Rule 609, there was ample evidence that defendant had actual notice of the State's intent to use his prior convictions since the defense submitted a motion a month before trial to the judge to prohibit the impeachment of defendant by stale convictions; (2) the State provided a copy of defendant's record to the defense as a part of open file discovery with the implication that it would be used at trial; (3) an error must be more than merely technical to warrant a new trial, and it must be material and prejudicial; (4) under the circumstances presented by this case, the spirit and stated purpose of Rule 609(b) regarding notice have been met; and (5) the trial court's findings are at least marginally sufficient under Rule 609(b) to support the admission of the prior convictions, and even if the findings are found to be inadequate, defendant failed to show the outcome of the trial likely would have been different given the overwhelming evidence of defendant's guilt.

2. Evidence - Prior crime Common plan or scheme

State v. Corum, 176 NCA 150 (2006).

The trial did not err in an armed robbery prosecution by admitting evidence of a prior robbery where the two robberies occurred in neighboring counties at night within a two-day period, both robberies occurred at convenience stores, and the perpetrator of both wore gloves and a blue hood or mask of similar description.

1. Evidence--prior crimes or bad acts--driving while impaired--malice--remoteness

State v Westbrook, 175 NCA 128 (2005)

The trial court did not err in a prosecution for second-degree murder, driving while impaired and other offenses by admitting evidence of defendant's prior conviction for driving while impaired on 24 April 1995, because: (1) our case law reveals that prior driving convictions of a defendant are admissible to show malice, and the showing of malice in a second-degree murder case is a proper purpose within the meaning of N.C.G.S. § 8C-1, Rule 404(b); and (2) although defendant contends the nine-year-old conviction was too remote to be relevant, the Court of Appeals has found older convictions to be admissible.

1. Evidence--prior crimes or bad acts- _drugs--intent--knowledge

State v Renfro, 174 NCA 402 (2005)

The trial court did not err in a possession with intent to manufacture, sell, or deliver cocaine case by allowing officers to testify as to the facts and circumstances underlying defendant's two prior convictions for the same offense pursuant to N.C.G.S. § 8C-1, Rule 404(b) for the limited purpose of showing defendant's intent and knowledge. While the testimony of a deputy clerk regarding defendant's guilty pleas in the two prior cases was inadmissible under Rule 404(b), the error was rendered harmless when defendant testified and was properly cross- examined about the convictions under N.C.G.S. § 8C-1, Rule 609(a).

2. Evidence--prior crimes or bad acts--sexual harassment of other inmates

State v Locklear, 174 NCA 547 (2005)

The trial court did not commit plain error in a second-degree sexual offense case by admitting testimony that defendant had sexually harassed other inmates in the Brunswick County jail, because: (1) defendant failed to show that the jury

probably would have reached a different result had the evidence of prior bad acts not been admitted; and (2) the jury's failure to find an additional element of first degree sexual offense does not in itself show that the jury doubted that defendant engaged in a sexual act with the victim by force and against the victim's will.

1. Evidence--prior crimes or bad acts--assault inflicting serious injury

State v McKoy, 174 NCA 105 (2005)

The trial court erred in an assault case by admitting and publishing to the jury evidence of a prior conviction for assault inflicting serious injury, and the case is remanded for a new trial, because: (1) the bare fact of a defendant's prior conviction would rarely, if ever, be probative of any legitimate Rule 404(b) purpose and the facts, and it is the circumstances underlying such a conviction that hold probative value; and (2) the bare fact of the nontestifying defendant's prior conviction was admitted and published to the jury in the instant case after testimony had been elicited to establish the factual basis underlying the conviction.

3. Evidence--prior crimes or bad acts_impersonation of law officers--instruction on limited purpose

State v Jacobs, 174 NCA 1 (2005)

The trial court did not abuse its discretion in an impersonation of a law enforcement officer, armed robbery, burglary, and kidnapping case by admitting evidence of defendant's prior bad acts including defendant dressing up as a law enforcement officer and robbing another individual at his home two days after the robbery of the victims in this case, because: (1) both incidents involved the assailants' entry into the victim's residence under the auspices of legitimate law enforcement activity, the assailants in both incidents were dressed as law enforcement officers and displayed a search warrant as well as firearms in an effort to gain entry into the respective residences, and the assailants in both incidents bound their victims by using plastic handcuffs once they were inside the home and searched the residence for "illegal" items; and (2) the trial court repeatedly instructed the jury regarding the limited purposes for which the evidence of the unrelated incident could be used.

2. Evidence--prior crimes or bad acts--sexual assaults--modus operandi--common plan or scheme--intent--knowledge

State v Moore, 173 NCA 494 (2005)

The trial court in a prosecution for second-degree rape, kidnapping and other offenses properly admitted evidence of two alleged prior sexual assaults by defendant under N.C.G.S. § 8C-1, Rules 403 and 404 for the purpose of showing defendant's modus operandi, common plan or scheme, intent and knowledge because: (1) in regard to the similarity of this case to one of the prior victims, in both cases defendant initiated contact with a woman whom he had known for several years; both women had substance abuse problems and defendant told both of them that he had drugs they could use; in both cases defendant struggled with the women once they arrived at their destinations, he removed their clothes, he placed at least one of his hands on their neck, and he engaged in sexual intercourse; both women indicated they did not believe defendant would harm them prior to their attacks since they had known defendant for several years, they were friends, and he had treated them nicely; and a time disparity of seventeen months is not too remote for Rule 404(b) purposes; and (2) in regard to the similarity of this case with another prior victim, although a rape had not occurred at the time the police arrived, the evidence parallels what happened to the victim in this case earlier in the same evening.

1. Evidence_character_drug use and drug dealing_no prejudice

State v McBride, 173 NCA 101 (2005)

There was no prejudice in a prosecution for cocaine related charges from the erroneous admission of evidence that two people found at the motel room where defendant was arrested had a reputation for dealing or using illegal drugs. One person was found with a crack pipe in her hand and there was ample evidence to convict defendant without the reputation of the other. N.C.G.S. § 8C-1, Rule 404(a).

2. Evidence--prior crimes or bad acts-_child sex abuse

State v Delsanto, 172 NCA 42 (2005)

The trial court erred in a first-degree sexual offense case by overruling defendant's objection and permitting a witness to testify that defendant had sexually abused her twenty-three years earlier, because: (1) evidence that a defendant engaged in previous sexual abuse is inadmissible when a significant lapse of time exists between the instances of alleged sexual abuse; (2) the lapse of

time between the alleged instances of abuse merits against finding that defendant was engaged in an ongoing plan or scheme of sexual abuse; (3) unlike in *State v. Jacob*, 113 N.C. App. 605 (1994), the State offered no evidence that defendant did not have access to his preferred victim during the twenty-three year time span between the alleged instances of abuse, or that his plan was interrupted and then resumed twenty-three years later; and (4) although the State for the first time on appeal relies on Rule 404(b) to show identity and intent, this argument is not properly before the Court of Appeals.

3. Evidence--prior crimes or bad acts--possession of pornographic magazines and women's underwear--impermissible character evidence

State v Delsanto, 172 NCA 42 (2005)

Although the trial court did not commit plain error in a first-degree sexual offense case by allowing the State to elicit a witness's testimony that defendant possessed pornographic magazines and women's underwear, the admission of the testimony should not be presented at defendant's new trial (granted on other grounds) for the purpose of showing defendant's propensity to commit the crime, because: (1) the State presented no evidence that defendant's possession of pornographic magazines and women's underwear played any part in the alleged offenses; and (2) the evidence was not relevant to prove the charges against him and was merely impermissible character evidence.

10. Evidence--prior crimes or bad acts_preparation of photographic lineup

State v Bellamy, 172 NCA 649 (2005)

The trial court did not err by permitting a detective to testify concerning the method he used to put together a photographic line-up containing a photograph of defendant even if this testimony may have allowed the jury to infer that defendant had a prior arrest.

4. & 5. Evidence-Rule 404 –

State v. Curmon, 171 NC App 697 (2005)

Rule 404B is a rule of inclusion not exclusion. Accordingly, such evidence will be admissible so long as it is relevant to any fact or issue other than the character of the accused, and the other crimes or wrongs are connected by both temporal

proximity and circumstance. The determination of similarity and remoteness is made on a case-by-case basis, and the required degree of similarity is that which results in the jury's reasonable inference that the defendant committed both the prior and present acts. Remoteness in time is less significant when the prior conduct is used to show intent, identity, motive, common plan or scheme, or absence of mistake.

1. Evidence--prior crimes or bad acts--violent behavior--opening the door to character evidence

State v. Duke, 360 NC 110 (2005)

The trial court did not err in a double first-degree murder case by overruling defendant's objection to the admission of specific acts of bad conduct during redirect examination of his half-sister concerning defendant's violent behavior, because: (1) whenever a defendant opens the door to character evidence by introducing evidence of his own pertinent character trait, the prosecution may rebut that evidence with contrary character evidence; and (2) the prosecution's rebuttal of defendant's evidence of good character through the use of specific instances of conduct was proper.

4. Sentencing--capital--prior crimes or bad acts--threat made by defendant

State v. Duke, 360 NC 110 (2005)

The trial court did not err in a double first-degree murder case by admitting testimony during the penalty phase concerning a threat made by defendant to a witness, because: (1) it was proper for the prosecution to attack the credibility of the witness and also to discredit the witness's contention defendant was peaceful by showing he threatened the lives of the witness, her child, and her husband after an argument concerning a funeral; (2) the prosecution simply impeached the witness with her prior inconsistent statements to a detective concerning the threats which clearly contradicted her direct testimony; (3) when a witness gives his opinion as to the character of another, the cross-examiner may test that opinion with questioning on specific acts of conduct; (4) the evidence concerning the threat, while also impeaching the witness and challenging her opinion, went directly to the heart of defendant's violent nature; and (5) the prosecution was entitled to submit evidence contrary to the assertion of defendant's proposed mitigating circumstance that defendant had a deep emotional bond with this witness.

3. Evidence--prior crimes or bad acts--relevant to conspiracy charge

State v. Harrington, 171 NCA 17 (2005)

The trial court did not abuse its discretion in a drug case by admitting evidence of defendant's other crimes or wrongs under N.C.G.S. § 8C-1, Rule 403, because: (1) the evidence was relevant to an issue other than defendant's propensity to commit the crime; (2) the State offered the prior acts as being relevant to the issue of conspiracy since testimony offered included facts that were sufficiently similar to facts involved in the present charges including that he lived at the pertinent house address and had scales similar to those found in the apartment; and (3) defendant does not show that a different result would have been reached by the jury if this evidence had been excluded or that he was prejudiced in any way.

2. Evidence--incidents of prior misconduct--no prejudice

State v. Augustine, 359 NC 709 (2005)

There was no plain error in a first-degree murder prosecution where the court allowed the prosecutor to cross-examine defendant about twenty-two alleged incidents of prior misconduct, consisting of nineteen alleged incidents involving law enforcement and corrections officers and three alleged assaults against civilians. It cannot be said that the cross-examination amounted to a miscarriage of justice or denied defendant a fundamental right.

Evidence--prior crimes or bad acts--intent, knowledge, or common plan--remoteness

State v. Stevenson 169 NCA 797 (2005)

The trial court did not abuse its discretion in a possession with intent to sell cocaine case by allowing evidence of defendant's prior criminal activities under N.C.G.S. § 8C-1, Rule 404(b), because: (1) evidence of other drug violations is often admissible under Rule 404(b); (2) notable similarities and temporal proximity exist between the offense being appealed and the prior incidents when the incidents all occurred on the same premises, the incidents all involved crack cocaine, in each instance an officer approached defendant, and in each instance defendant attempted to flee when approached by police; (3) it is proper to exclude time defendant spent in prison when determining whether prior acts are too remote; (4) the trial court guarded against the possibility of prejudice by instructing the jury to consider the officer's testimony only for the limited

purposes of knowledge, intent, and common plan; and (5) although defendant contends the 1996 incident was committed prior to his eighteenth birthday and was thus not admissible under Rule 404(b), defendant failed to raise this issue before the trial court and cannot show that absent admission of the 1996 incident, he would not have been convicted.

7. Evidence--prior crimes or bad acts--warrant for arrest from another state for probation violation

State v. Brewington, 170 NCA 264 (2005)

The trial court did not err in an assault on a governmental officer with a deadly weapon and reckless driving case by admitting evidence of a warrant for defendant's arrest from the State of Virginia for a probation violation, because: (1) the outstanding warrant was admissible under N.C.G.S. § 8C-1, Rule 404(b) since it provided a possible explanation or motive for defendant's actions on 10 September 2001; and (2) although defendant contends the trial court did not instruct the jury that the evidence was admitted for a limited purpose only, defendant did not request a limiting instruction.

8. Evidence--prior crimes or bad acts--traffic stop for possession of drug paraphernalia

State v. Brewington, 170 NCA 264 (2005)

The trial court did not err in an assault on a governmental officer with a deadly weapon and reckless driving case by allowing an Ohio police officer to testify regarding a traffic stop that occurred about one month after the incident in this case, during which defendant was arrested for the possession of drug paraphernalia, because: (1) the officer's testimony that a substance found during the stop was similar to cocaine was properly allowed even though the officer was not qualified as an expert because the officer did not testify that the substance was definitely cocaine, and the officer clarified that he was expressing an opinion satisfactory to himself based upon his training and experience in law enforcement; (2) evidence of the circumstances surrounding the stop was admissible under N.C.G.S. § 8C-1, Rule 404(b) since it was evidence of defendant's modus operandi, i.e., he fled a crime scene in another person's car since he was involved in a drug offense, defendant's actions were substantially similar in both cases, and the evidence showed defendant's motive or intentions in this case to flee the scene in order to avoid arrest on outstanding warrants or to prevent the discovery of drugs or drug paraphernalia in the car or on his person; (3) even assuming the

admission of the circumstances regarding defendant's arrest in Ohio was erroneous, the evidence that defendant was arrested on the outstanding warrant in Ohio and extradited to North Carolina was relevant and admissible; and (4) the admission of defendant's actions during the Ohio traffic stop was nonprejudicial error as the State presented evidence that defendant assaulted a New Hanover deputy by dragging the officer with his car.

1. Evidence--prior crimes or bad acts--driving convictions--malice

State v. Edwards, 170 NCA 381 (2005)

The trial court did not err in a second-degree murder case by admitting into evidence defendant's prior driving convictions for driving while impaired (DWI) and driving while license revoked (DWLR) as evidence of malice to support the second-degree murder charge, because: (1) prior driving convictions of a defendant are admissible to show malice and the showing of malice in a second-degree murder case is a proper purpose within the meaning of N.C.G.S. § 8C-1, Rule 404(b); (2) although our Supreme Court agreed in *State v. Wilkerson*, 356 N.C. 418 (2002), that evidence of prior convictions could only be considered as probative of knowledge and intent, our appellate courts have consistently treated driving convictions offered to prove the requisite state of mind for a second-degree murder conviction separately when interpreting Rule 404(b); and (3) although defendant contends the DWLR convictions were insufficiently similar to be relevant under Rule 404(b), prior convictions for traffic offenses other than DWI are admissible to establish malice in a prosecution of a defendant for DWI resulting in the death of another person.

5. Evidence--prior crimes or bad acts--indecent liberties--no prejudicial error

State v. Thaggard, 168 NCA 263 (2005)

Although the trial court erred in a statutory rape, statutory sexual offense, and taking indecent liberties case by allowing the State to ask a defense witness, defendant's former girlfriend, whether she knew that defendant had previously been convicted of taking indecent liberties with a child, this error was not prejudicial to defendant even though defendant contends it made him change trial tactics and forced him to testify because: (1) the State presented a wealth of testimony and physical evidence implicating defendant as the perpetrator of the

crimes against the two victims; (2) the trial court gave a lengthy limiting instruction prior to two witnesses testifying about defendant's prior sexual abuse of them that the evidence could not be used to show defendant acted in conformity with it to commit the crimes; and (3) the court's jury instructions prior to deliberation ensured that any evidence pertaining to defendant's prior convictions of taking indecent liberties with children was to be considered solely for the N.C.G.S. § 8C-1, Rule 404(b) factors of identity, motive, intent, or common scheme.

1. Evidence--prior crimes or bad acts--involvement in gang--robberies--drug dealing--motive and intent--modus operandi

State v. Hightower, 168 NCA 661 (2005)

The trial court did not commit plain error in a first-degree felony murder case by admitting evidence of defendant's prior illegal activity including involvement in the Jericho gang, prior robberies, and drug dealing, because: (1) the testimony about the gang provided evidence of defendant's motive as well as the reason for a coparticipant's involvement in the crime; (2) the testimony about defendant's pattern of robbing others of illegal drugs and selling them provided evidence of defendant's motive and intent to commit the crimes at bar as well as his modus operandi; (3) considering the other overwhelming evidence of defendant's guilt presented through numerous eyewitnesses, the admission of this evidence was not plain error; and (4) although defendant contends he received ineffective assistance of counsel based on his attorney's failure to object to the evidence of defendant's prior bad acts, the admission of the Rule 404(b) evidence was not error.

2. Evidence--prior crimes or bad acts--opportunity to stipulate--use despite stipulation

State v. Hudgins, 167 NCA 705 (2005)

In an action reversed on other grounds, the trial court erred by introducing an exhibit listing defendant's prior convictions before arraigning him on an habitual DWI charge and giving him an opportunity to stipulate to the prior convictions. Introducing the prior convictions on the charge of driving with a revoked license was also error; the State offered no justification for admission of the prior convictions in addition to license suspensions (to which defendant had stipulated).

3. Evidence--prior crimes or bad acts--assault

State v. Petro, 167 NCA 749 (2005)

The trial court did not abuse its discretion in a second-degree kidnapping and assault on a female case by admitting testimony under N.C.G.S. § 8C-1, Rule 404(b) by defendant's ex-girlfriend concerning an alleged assault on her by defendant in the summer of 1999, because: (1) in each instance, the evidence tended to show defendant isolated and abused the victims, alternated between anger, repentance, and fear of going to jail, and caused an imminent fear of death; (2) in each instance, defendant offered to procure medical aid for the victims; (3) after the assaults, defendant continued to contact the victims and convinced them to accompany him to a hotel where he again held them against their will; (4) the similarities indicate a common plan or design on the part of defendant, and the witness's testimony served a purpose other than to show mere propensity to commit the crime charged; and (5) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

1. Evidence--prior crimes or bad acts--driving while impaired--not admissible

State v. Scott, 167 NCA 783 (2005)

The trial court erred in a prosecution for driving with a revoked license by admitting multiple letters of suspension with no redaction of the specific offenses, including multiple counts of driving while impaired.

7. Evidence--prior crimes or bad acts--assault--identity--intent

State v. Morgan, 359 NC 131 (2004)

The trial court did not abuse its discretion in a capital first-degree murder case by denying defendant's motion to exclude evidence of two prior assaults he committed in 1992, because: (1) although defendant admitted that he was responsible for the victim's death and witnesses put him at the scene, the evidence was admissible to show the assailant's identity since defendant pled not guilty, defendant did not make any pretrial statement and did not admit his involvement until he testified in his own defense at trial after the State had presented its case-in-chief, and defendant's cross-examination on several occasions insinuated that his nephew was at least involved in the murder; and (2) even if the evidence was inadmissible to establish identity, defendant has failed to demonstrate prejudice when the evidence was admissible to show intent since defendant's attacks demonstrated that defendant was aware that the act of striking another individual

with a beer bottle was a reckless and dangerous act that could cause serious injury.

2. Evidence—prior bad act—introduced by State to attack credibility

State v. Cook, 165 NCA 630 (2004)

The trial court erred in an embezzlement prosecution by allowing the State to introduce evidence of a prior incident of embezzlement for which a charge was dismissed under a deferred prosecution agreement where the sole purpose was to attack defendant's credibility. The distinctions between N.C.G.S. § 8C-1, Rule 404(b) and Rule 609 may not be blurred.

1. Evidence—prior crimes or bad acts--death of former husband--absence of accident--doctrine of chances--remoteness--motive

State v. Lanier, 165 NCA 337 (2004)

The trial court did not abuse its discretion in a first-degree murder case by denying defendant's motion in limine to prevent the State from offering evidence concerning the death of defendant's former husband by drowning six years prior to the death of her second husband by arsenic poisoning, because: (1) although defendant contends that both men died as the result of an accident, both men suddenly and inexplicably became seriously ill while sharing a home with defendant after experiencing no major medical problems; (2) both men experienced a change in personality, described by their respective friends and family members as being in a stupor or acting like a zombie; (3) when both men became ill, defendant diagnosed their medical problems and treated the men herself; (4) defendant attempted to isolate both men and generally refused to get them professional medical assistance on a regular basis; (5) defendant reaped a substantial financial benefit from the untimely deaths of both her husbands; (6) although the two men died from different causes, the circumstances surrounding the first husband's death are relevant to the argument that the death of the second husband was not accidental according to the doctrine of chances; (7) remoteness in time does not affect the probative value of the death of the first husband regarding absence of accident, and the similarities between the two deaths are not less probative due to the passage of time; (8) evidence of defendant's financial gain following the deaths of both of her husbands provided a motive for her involvement in their deaths; and (9) the evidence pertaining to the husbands' financial status, coupled with the mysterious illnesses of both men and the

similarities between the two deaths, rendered the evidence of the first husband relevant to prove something other than defendant's propensity to commit murder.

4. Evidence--prior crimes or bad acts--conspiracy to sell and deliver cocaine-- authentication

State v. Gaither, 161 NCA 96 (2003)

The trial court did not err in an armed robbery and possession of a firearm by a convicted felon case by admitting evidence of defendant's previous conviction for conspiracy to sell and deliver cocaine allegedly without proper authentication of the document, because: (1) N.C.G.S. § 8C-1, Rule 1005 states that the contents of an official record if otherwise admissible may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original; and (2) a witness testified that the document was an exact copy of the original commitment order, that he observed the original document as it was pulled from county records, and witnessed the copy produced and certified by the clerk of court.

2. Evidence--prior crimes or acts--defendant engaged in and enjoyed consensual anal sex with adult

State v. Dunston, 161 NCA 468 (2003)

The trial court erred in a first-degree sex offense with a child and taking indecent liberties with a child case by improperly admitting evidence under N.C.G.S. §8C-1, Rule 404(b) that defendant engaged in and enjoyed consensual anal sex with an adult, and defendant is entitled to a new trial because: (1) the fact that defendant engaged in and liked consensual anal sex with an adult, whom he married, is not by itself sufficiently similar to engaging in anal sex with an underage victim; (2) the evidence was not relevant for any purpose other than to prove defendant's propensity to engage in anal sex; and (3) it is highly probable this testimony was prejudicial to defendant especially in light of the inconsistent and unclear nature of the remaining evidence.

8. Evidence--prior crimes or bad acts--cross-examination No disclosure required

State v. Walters, 357 NC 68 (2003)

The trial court did not err in a case involving two first-degree murders and nine

other felonies by denying defendant's motion for disclosure of N.C.G.S. § 8C-1, Rule 404(b) evidence to be introduced by the State and by allowing cross-examination of defendant about certain prior bad acts, because: (1) there is no requirement that the State must provide a defendant with Rule 404(b) evidence that it intends to use at trial; (2) the State cross-examined defendant about the acts and did not directly introduce or use evidence of prior crimes or bad acts committed by defendant; (3) the trial court specifically asked defense counsel whether he wanted to object, and defense counsel stated that he had no problem with the questioning at that point in time; and (4) there was no plain error since defendant has not established any alleged prejudicial error on the part of the trial court that was so fundamental that the jury would have reached a different result absent the foregoing testimony.

1. Evidence - prior assaults - domestic partner - relevant

State v. Latham, 157 N.C. App. 480 (2003)

Evidence of prior assaults by the accused against a murder victim are both relevant and admissible when the victim is a domestic partner. Moreover, the defendant in this case did not object at trial, and any possible prejudice was outweighed by the probative value in determining whether the shooting was an accident.

6. Evidence--attack on correctional officers--admissible for willingness to attack officers

State v. Mays, 158 NCA 563 (2003)

The admission of defendant's attack on correction officers was not improper in a prosecution for the first-degree murder of a police officer. The State was entitled to rebut defendant's assertions that he would not knowingly harm an officer and that he shot the police officer because he was mistaken about his identity.

5. Evidence--prior acts--treatment of another patient

State v. Perry, 159 NCA 30 (2003)

The trial court did not err in an involuntary manslaughter and practicing medicine without a license case by admitting evidence regarding defendant naturopath's treatment of another patient, because: (1) N.C.G.S. § 8C-1, Rule 404(b) allows for the admission of evidence of prior acts to show defendant's plan, motive, intent,

knowledge, and absence of mistake; (2) defendant's treatment of the other patient was similar to the evidence the State presented of defendant's treatment and actions with regard to the child victim in this case; and (3) defendant failed to show that there was a reasonable possibility that a different result would have been reached absent the alleged error.

Evidence—prior offenses—no underlying facts

State v. Hairston, 156 NCA 202 (2003)

There was prejudicial error in a cocaine possession and habitual felon prosecution where the court admitted testimony about defendant's prior cocaine convictions without underlying facts showing similarities between those convictions and the present offense and instructed the jury that it could consider the convictions under N.C.G.S. § 8C-1, Rule 404(b). The evidence was conflicting and not so overwhelming as to make the error nonprejudicial.

Evidence—prior drug offense—no similarity—prejudicial

State v. Williams, 156 NCA 661 (2003)

Testimony about an alleged prior drug sale should not have been admitted in a prosecution for cocaine possession where there was no similarity between the two offenses and the only relevance of the testimony was to illustrate defendant's predisposition to drug violations. The testimony was prejudicial because the evidence of possession was not conclusive.

1. Evidence--prior crimes or bad acts--domestic violence protective orders

State v. Morgan, 156 NCA 523 (2003)

The trial court did not err in an assault with a deadly weapon with intent to kill inflicting serious injury case by admitting evidence of prior and expired 50-B domestic violence protective orders and prior acts by defendant which led to issuance of the restraining orders, because: (1) it is proper to admit other crimes, wrongs, or acts under N.C.G.S. § 8C-1, Rule 404(b) to show intent; and (2) the evidence was competent to prove that defendant had the intent to kill, and the trial court properly limited the purposes in its instruction by requiring the jury to consider the evidence only to show intent and only as against defendant's estranged wife.

2. Evidence—prior sexual offenses—common plan or scheme

State v. Curry, 153 NCA 260 (2002)

The trial court did not err in a prosecution for indecent liberties with a student, statutory rape, and statutory sexual offenses by allowing witnesses to testify about prior sexual activities with defendant where the ages of the victims, the manner in which defendant pursued them and gained their trust, and the sexual conduct were all sufficiently similar to be probative of defendant's common plan or scheme. N.C.G.S. § 8C-1, Rule 404(b).

4. Evidence—drug use—chain of circumstances

State v. Sexton, 153 NCA 641 (2002)

The trial court did not err in a prosecution arising from the burning of an occupied mobile home by admitting evidence of defendant's drug use on the morning of the crime where the evidence served the purpose of establishing a chain of circumstances leading to the fire. Moreover, its probative value was not outweighed by the danger of unfair prejudice.

3. Evidence—prior crimes or bad acts—history of abuse of victim

State v. Strickland, 153 NCA 581 (2002)

The trial court did not err in a second-degree rape and misdemeanor breaking and entering case by admitting evidence of past crimes under N.C.G.S. § 8C-1, Rule 404(b) including defendant's history of abuse of his victim ex-wife during their marriage, because: (1) defendant's physical abuse towards the victim is not too remote in time to be relevant; (2) the incidents are sufficiently similar, whether sexual in nature or not, since defendant had a history of attacking the victim and asserting his physical power over her; (3) the evidence was relevant to prove defendant's pattern of physical intimidation of the victim; and (4) the evidence has bearing on defendant's state of mind at the time of the attack in June 1998.

5. Evidence—prior crimes or bad acts—impeachment—opening door to details

State v. Strickland, 153 NCA 581 (2002)

The trial court did not abuse its discretion in a second-degree rape and misdemeanor breaking and entering case by denying defendant's motion for a

mistrial even though the State cross-examined defendant about the details of his prior convictions that were being used for impeachment purposes, because defendant opened the door to the details of his previous convictions by: (1) his detailed explanations of the actions which gave rise to these charges; and (2) on cross-examination, requesting from the prosecutor more specific information about his prior misconduct on several occasions.

5. Evidence--prior crimes or acts--prior murder--admissible

State v. Berry, 356 NC 490 (2002)

The trial court did not err in a first-degree murder prosecution by admitting evidence of a prior murder where the court carefully studied the substance of the evidence, reviewed the applicable law, considered the arguments of counsel, determined that the probative value was not substantially exceeded by unfair prejudice, determined that the evidence was tendered to establish the permissible factors that defendant killed this witness to silence her, and gave limiting instructions.

2. Evidence--prior crimes or bad acts--impaired driving--malice--remoteness-harmless error

State v. Vasse, 154 NCA 384 (2002)

The trial court did not err in a second-degree murder, driving while impaired and with a revoked license, and felonious hit and run/failure to stop for personal injury case by admitting defendant's conviction in 1978 for impaired driving for the purpose of proving malice, because: (1) even if the conviction was erroneously admitted, such admission did not prejudice defendant when the State presented evidence of three later convictions for driving while impaired; (2) the State also demonstrated that defendant had been convicted four times of driving while license revoked; and (3) given the overwhelming evidence of defendant's faulty driving record, the exclusion of one additional conviction out of the seven that were before the jury could not have resulted in a different verdict.

2. Evidence--other crimes or acts--integral part of offense

State v. Smith, 152 NCA 29 (2002)

The trial court did not err in a prosecution for first-degree murder, armed robbery,

and first-degree burglary by allowing defendant's wife to testify about his actions the day before, the day of, and the day after the murder, burglary, and robbery. The events of that weekend form an integral and natural part of the account of the crime and are necessary to complete the story of the crime for the jury. Moreover, the State sought to establish as a motive stealing to support a crack habit.

1. Evidence--prior crimes or bad acts--sexual abuse of young female family members--common plan or scheme

State v. Starner, 152 NCA 150 (2002)

The trial court did not err in a first-degree statutory sexual offense and taking indecent liberties case involving defendant's stepdaughter by allowing under N.C.G.S. § 8C-1, Rule 404(b) the testimony of defendant's natural daughter concerning his sexual abuse of her, because: (1) the testimony of defendant's sexual assaults against his natural daughter showed a common plan or scheme by defendant of abusing young female family members; and (2) the evidence reveals past wrongs by defendant that are strikingly similar and not too remote in time to the alleged crimes in this case involving defendant's stepdaughter.

4. Evidence--indecent liberties--sexual offenses--child victim--prior sexual misconduct with babysitter

State v. Smith, 152 NCA 514 (2002)

Evidence that defendant had previously engaged in sexual misconduct with a 15-year-old babysitter was admissible under Rule 404(b) in a prosecution for taking indecent liberties and sexual offense with his 12-year-old stepdaughter to show the absence of mistake and defendant's plan, scheme or design. N.C.G.S. § 8C-1, Rule 404(b).

1. Evidence--sexual abuse on female minor victim's mother nearly twenty years before--proof of identity, common scheme, plan, modus operandi, and intent--remoteness

State v. Love, 152 NCA 608 (2002)

The trial court did not err in a first-degree sexual offense and first-degree kidnapping of a female minor case by admitting evidence of alleged sexual abuse by defendant on the female minor victim's mother nearly twenty years before the present charge, when the mother was nine years old, because: (1) the evidence

was admissible under N.C.G.S. § 8C-1, Rule 404(b) to show proof of identity, a common scheme or plan or modus operandi, and intent; (2) defendant has waived any objection he may have previously raised as to its admissibility when this evidence was later admitted by an officer without objection; (3) even assuming arguendo that defendant did not waive his objection, the evidence presented at trial was substantial, and the female minor's testimony was corroborated in part by her mother, siblings, and cousins; (4) North Carolina courts have permitted testimony of prior acts of sexual misconduct which occurred greater than seven to twelve years even though defendant contends the acts against the female minor's mother were too remote; and (5) the probative value of the testimony about defendant's earlier sexual misconduct was admissible and the record fails to show evidence reflecting that the trial court abused its discretion in determining that the probative value outweighed the prejudicial effect.

3.Evidence–1971 conviction–admissible

State v. Castor, 150 NCA 17 (2002)

The trial court did not err in a first-degree murder prosecution by admitting evidence of defendant's 1971 second-degree murder conviction where the judge found 10 similarities between the 1971 murder and the current murder; the 27 year old murder was not too remote when the 18 years defendant spent in prison are excluded; and the probative value of the evidence far outweighs the possibility of unfair prejudice.

31.Evidence--prior crimes or acts--testimony of prior victims

State v. Williams, 355 NC 501 (2002)

The trial court did not err in a first-degree murder, first-degree rape, first-degree sexual offense, assault with a deadly weapon, assault with a deadly weapon with intent to kill inflicting serious injury, attempted first-degree rape, and assault with a deadly weapon with intent to kill case involving seven different victims over a fifteen-month span by failing to exclude in one of the murder cases the testimony of two witnesses pertaining to certain prior offenses committed against them by defendant in Georgia, because: (1) the evidence of motive, plan, opportunity, intent, and modus operandi of these alleged offenses was so similar to the offenses for which defendant was charged that the testimony was admissible under N.C.G.S. § 8C-1, Rule 404(b); (2) the trial court ruled the evidence was admissible in all the cases except in relation to that one murder victim; and (3)

defendant did not request that a limiting instruction be given to the jury.

Evidence--prior crimes or bad acts--dissimilar robberies--questionable pretrial identification procedure

State v. Al-Bayyinah, 356 NC 150 (2002)

The trial court erred in an attempted robbery with a dangerous weapon and felony murder case by allowing under N.C.G.S. § 8C-1, Rule 404(b) testimony of two prior robberies allegedly committed by defendant, and defendant is entitled to a new trial because: (1) the testimony described robberies that were factually dissimilar to the robbery and murder charged in the instant case, and the State failed to show sufficient similarities existed beyond those characteristics inherent to most armed robberies; and (2) the testimony rested upon a pretrial identification procedure of questionable validity including a single-photo identification procedure where police told the witness that the man pictured was in custody and made statements intimating that the authorities believed the man had committed not only the crime for which he was detained, but also the prior robberies.

1. Evidence--prior crimes or bad acts--assault with a deadly weapon

State v. Rhue, 150 NCA 280 (2002)

The trial court did not abuse its discretion in a second-degree murder case by permitting the State to cross-examine defendant's character witnesses under N.C.G.S. § 8C-1, Rule 405(a) regarding defendant's 1980 conviction for assault with a deadly weapon, because: (1) the State in rebuttal can introduce evidence of defendant's bad character after defendant introduces evidence of his good character; (2) Rule 405(a) does not contain any time limit or rule regarding remoteness, and our Supreme Court has explicitly refused to impose one; and (3) the witnesses' testimony that they knew defendant in 1980 as a peaceful person made that time-frame relevant.

2. Evidence--other offenses--identity, pattern, common plan

State v. Brothers, 151 NCA 71 (2002)

The trial court did not err in a prosecution for first-degree statutory rape and other sexual offenses against a six-year-old girl by admitting testimony from her sister

as to other sexual acts committed by defendant. The prior acts showed identity, pattern, and a common plan or scheme.

Evidence—bare fact of prior convictions—absence of testimony by defendant—prejudicial error

State v. Wilkerson, 356 NC 418 (2002)

The decision of the Court of Appeals affirming defendant's convictions for possession with intent to sell or deliver cocaine and trafficking in cocaine is reversed for the reason stated in the dissenting opinion that the trial court committed prejudicial error in permitting the State to introduce, through the testimony of a deputy clerk of court, the bare fact of defendant's prior convictions for cocaine offenses to show knowledge and intent when defendant did not testify.

5.Evidence—prior crimes or acts--driving record--driving convictions

State v. Goodman, 149 NCA 57 (2002)

Although the trial court erred in a second-degree murder case arising out of defendant's driving while intoxicated by admitting defendant's entire driving record which detailed his prior driving convictions under N.C.G.S. § 8C-1, Rule 404(b) when some of his convictions were too remote in time to be probative, the trial court did not commit plain error because: (1) prior driving convictions are a proper means of establishing the malice element of second-degree murder; (2) defendant had numerous convictions, including four convictions for driving while intoxicated or impaired which occurred within the appropriate time frame of within sixteen years of the date of the offense at issue; (3) the remoteness of defendant's three convictions for driving while intoxicated, occurring only one and two years outside the permissible period of sixteen years, goes to the weight of the evidence rather than its admissibility; (4) defendant's non-alcohol related convictions including failing to yield the right of way, illegal passing, reckless driving, and speeding are not too dissimilar to be probative of a pattern of recklessness and inherently dangerous conduct which substantiate defendant's malice in the present case; and (5) defendant cannot establish that a different result would have occurred absent any error. Overruled by 357 NC 43 citing the dissenting opinion in this case. Greater than 16 years too much!!!

1.Evidence—prior crime or bad acts—drug activity—motive—context and circumstances of crime

State v. Holadia, 149 NCA 248 (2002)

The trial court did not err in an armed robbery with a dangerous weapon and assault with a deadly weapon inflicting serious injury case by allowing one of the victims to testify under N.C.G.S. § 8C-1, Rule 404(b) regarding defendant's prior drug activity, because: (1) the evidence was relevant to show defendant's possible motive in the robbery; (2) the evidence establishes the immediate context and circumstances of the crime; and (3) the fact that the drug transaction occurred four years before this crime did not preclude the admissibility of the evidence, but rather affected the weight to be given that evidence.

2.Evidence--prior crimes or acts--ball bat incident--assault

State v. Harris, 149 NCA 398 (2002)

The trial court did not abuse its discretion in a first-degree murder prosecution by admitting evidence under N.C.G.S. § 8C-1, Rule 404(b) concerning a "ball bat incident" between defendant and the victim, including testimony that defendant pushed and shoved the victim while she begged defendant to leave her alone, because: (1) this evidence of defendant's prior assault on the victim tends to establish malice, premeditation, deliberation, intent, and ill-will on the part of defendant; (2) the evidence is relevant to an issue other than defendant's character; and (3) the incident was not too remote in time as to run afoul of the balancing test since the incident occurred only a few months prior to the victim's death and tended to show a common plan or scheme, absence of accident, and tended to negate self-defense.

4. Evidence--prior crimes or bad acts--sexual activity--common scheme or plan

State v. Patterson, 149 NCA 354 (2002)

The trial court did not err in a contributing to the delinquency of a juvenile, taking indecent liberties with a child, second-degree kidnapping, and third-degree sexual exploitation case by allowing evidence under N.C.G.S. § 8C-1, Rule 404(b) of defendant's prior bad acts and criminal convictions in Delaware including his convictions involving meeting young teenage girls at a skating rink, inviting them to his home for parties, providing drugs and alcohol to these teens at these parties, and photographing them in various stages of undress, because: (1) the current acts are sufficiently similar to the previous acts in Delaware to show a common scheme or plan; and (2) these prior incidents occurring between ten and fifteen

years before defendant's trial were not so remote in time as to no longer be more probative than prejudicial.

5.Evidence--seventeen-year-old videotape--defendant having sex with a minor

State v. Patterson, 149 NCA 354 (2002)

The trial court did not abuse its discretion in a contributing to the delinquency of a juvenile, taking indecent liberties with a child, second-degree kidnapping, and third-degree sexual exploitation case by allowing the jury under N.C.G.S. § 8C-1, Rule 403 to view portions of a seventeen-year-old videotape of defendant having sex with a minor, because: (1) the trial court excluded most of the videotape; and (2) even if there was error, the error was harmless in light of the overwhelming evidence of defendant's guilt.

1.Evidence--prior crimes or acts--drug activity and convictions

State v. Wilkerson, 148 NCA 310 (2002)

The trial court did not abuse its discretion in a possession with intent to sell or deliver cocaine and trafficking in cocaine case by admitting testimony regarding defendant's prior drug activity and prior drug convictions even though defendant did not testify at trial, because: (1) the evidence was not unfairly prejudicial under N.C.G.S. § 8C-1, Rule 403 and the trial court gave a proper limiting instruction; (2) the other crimes were sufficiently similar since all occurred at the same location, defendant was present, all involved cocaine, and the prior convictions occurred within a year of the present offenses; and (3) the testimony of the underlying facts and circumstances leading to defendant's prior convictions was relevant and admissible under N.C.G.S. § 8C-1, Rule 404(b) to show intent to sell and knowing possession of cocaine. Overturned by 356 NC 418. Citing the dissenting opinion. See below.

3.Evidence--other crimes or acts--victim's testimony of sexual acts committed by defendant--common plan or scheme

State v. Johnson, 145 NCA 51 (2001)

The trial court did not err in a first-degree rape and indecent liberties case by admitting the testimony of a prior victim as to sexual acts committed against her by defendant teacher, because N.C.G.S. § 8C-1, Rule 404(b) allows this evidence

to show an ongoing plan or scheme by defendant to commit sexual offenses against female students and other young women.

1.Evidence--prior acts or crimes--sexual acts--remoteness--intent and absence of accident

State v. Beckham, 145 NCA 119 (2001)

The trial court did not abuse its discretion in a first-degree statutory rape and taking indecent liberties case by admitting the testimony of two of the State's witnesses concerning defendant's prior sexual acts with minor females some twelve and fourteen years prior to these incidents, because: (1) the evidence was admissible under N.C.G.S. § 8C-1, Rule 404(b) to show defendant's intent and the absence of any alleged accident; (2) the lapse of time in this case since the prior sexual acts does not sufficiently diminish the striking similarities between the acts and goes to the weight of the evidence rather than to its admissibility; and (3) the trial court concluded defendant's prior sexual acts were not so remote in time as to be more prejudicial than probative under N.C.G.S. § 8C-1, Rule 403.

4. Evidence - prior crimes and acts - admissible as motive and modus operandi - temporally related

State v. Parker, 354 N.C. 268 (2001)

The trial court did not err in the prosecution of defendant for kidnapping and killing an elderly woman by admitting evidence of defendant's prior unruly conduct at a bank which refused to cash her check or by admitting her prior felony convictions for forging the checks of an elderly woman for whom she provided

care, a crime for which she had been put on probation and ordered to make restitution. The bank incident reveals defendant's frustration and need to find money, and her prior crimes are relevant as proof of motive as well as a similar modus operandi. Although the crimes were committed three years before the events in this case, defendant's restitution payments and probation were ongoing and the incident in the bank occurred four days before the kidnapping and murder. N.C.G.S. § 8C-1, Rule 404(b).

2. Discovery--evidence admissible under Rules 803, 804 and 404

State v. Anthony, 354 NC 372 (2001)

The trial court did not abuse its discretion in a capital prosecution for first-degree murder by denying defendant's motion to compel disclosure of evidence the State intended to offer pursuant to N.C.G.S. ' 8C-1, Rules 803(24), 804(b)(5), and 404(b). Rules 803(24) and 804(b)(5) contain notice requirements and an order compelling disclosure would be redundant; moreover, the State here provided the particulars of the hearsay statements to defendant and defendant did not move to continue or assert surprise. Rule (404)(b) is not a discovery statute and there is no support for the assertion that disclosure of Rule (404)(b) evidence is required.

2.Evidence--other offense--similarities--not too remote in time

State v. Barkley, 144 NC App 514 (2001)

The trial court did not err in a prosecution for first-degree kidnapping and first-degree rape by admitting the testimony of another woman that defendant raped her and evidence that defendant was convicted of that rape. The similarities support a reasonable inference that the crimes were committed by the same person and, although the rapes were six years apart, defendant was paroled only three and a half months prior to this crime.

1. Evidence--subsequent crime or act--defendant's use of handgun

State v. Ferguson, 145 NC App 302 (2001)

The trial court did not err in a prosecution for first-degree murder, attempted murder, and robbery with a dangerous weapon which occurred in June 1995 by admitting evidence under N.C.G.S. § 8C-1, Rule 404(b) from a witness about an incident in Asheville in July 1995 where defendant had a handgun and threatened to kill someone if she did not tell him where he could locate his marijuana, because: (1) the evidence tended to show that defendant was present in North Carolina in July 1995, possessed and was involved in the sale of marijuana in July 1995, possessed a handgun in July 1995, and had motive to commit the crimes in this case; (2) there was temporal proximity between the Asheville incident and the crimes in this case, as well as similarity between the incidents when both involved the use of a handgun; and (3) defendant cannot show how he was prejudiced by the admission of this evidence when plenary evidence of defendant's guilt was offered at trial.

1. Evidence--prior crimes or acts--assault with a deadly weapon with intent to kill inflicting serious injury

State v. Lloyd, 354 NC 76, (2001)

The trial court did not abuse its discretion in a capital first-degree murder prosecution by admitting evidence of the circumstances leading to defendant's 1991 conviction for assault with a deadly weapon with intent to kill inflicting serious injury under N.C.G.S. § 8C-1, Rule 404(b), because: (1) the evidence was admissible to show lack of accident, motive, common plan or scheme and intent; (2) the probative value of the evidence outweighed any unfair prejudice; (3) the prior incident was not too remote in time when defendant spent part of the time between 1991 and 1998 in jail; and (4) the trial court followed the pattern instruction which was in substantial conformity with defendant's requested instruction as to the "other crimes" evidence.

2. Evidence--victim's prior violent acts--threats--statements she killed another man

State v. Lloyd, 354 NC 76, (2001)

The trial court did not err in a capital first-degree murder prosecution by excluding evidence relating to the victim's threats and statements to defendant that the victim had killed another man and gotten away with it, because: (1) evidence of the victim's prior violent act is not relevant to the killing of the victim in the absence of evidence that defendant shot the victim in self-defense; (2) the evidence was irrelevant and inadmissible under N.C.G.S. § 8C-1, Rule 404(b) when defendant claimed he never intentionally shot the victim and that the shooting was accidental; (3) the State's cross-examination of defendant did not open the door to this evidence; and (4) the rule of completeness under N.C.G.S. § 8C-1, Rule 106 did not entitle defendant to introduce the portion of his statement to the police indicating that the victim had told him she killed another man and got away with it when defendant did not seek to introduce the excluded parts of his police statement contemporaneously as required by statute, but instead sought to introduce them on rebuttal.

2. Evidence--prior crime or act--DWI convictions

State v. Woodard, 146 N.C. App. 75 (2001)

The trial court did not err in a first-degree murder case, arising out of a fatal vehicle collision occurring after defendant drove his vehicle at an excessive rate of speed through an intersection in an effort to elude pursuing law enforcement officers, by admitting evidence of and instructing the jury on defendant's prior

DWI charges and convictions because: (1) evidence of other crimes or wrongful acts by a defendant may be used under N.C.G.S. § 8C-1, Rule 404(b) to demonstrate malice; and (2) defendant's prior DWI convictions tended to demonstrate that defendant was aware that his conduct leading up to the collision in this case was reckless and inherently dangerous to human life.

2. Evidence--prior crimes or acts--lewd and lascivious behavior--common plan or scheme--remoteness

State v. Williamson, 146 N.C. App. 325 (2001)

The trial court did not abuse its discretion in an indecent liberties, crimes against nature, and statutory sex offenses case by allowing into evidence testimony regarding defendant's prior Florida conviction for lewd and lascivious behavior, that occurred about ten years earlier, under N.C.G.S. § 8C-1, Rule 404(b) because the similarities between the incidents establish defendant's common plan or scheme when both acts involved: (1) defendant befriending adolescent girls; (2) the girls spending significant amounts of time unsupervised with defendant on a daily basis; (3) the girls periodically spending the night with defendant and sometimes in the company of another adolescent girl; (4) the girls helping with chores around defendant's house but defendant did not pay them for their work; (5) defendant buying the girls gifts including toys; (6) defendant allowing the girls to drive his car and providing them with marijuana, alcohol and cigarettes while in his company; (7) defendant showing affection to both girls in the form of hugging and kissing them; (8) the sexual abuse occurring in defendant's home; (9) defendant showing pornographic videos to both girls; and (10) defendant instructing the victims to take showers before sexual activity, and defendant performing the same sexual acts on the victims.

1. Evidence--prior crimes or acts--rape of another victim--identity--common plan or scheme

State v. Bidgood, 144 N.C. App. 267 (2001)

The trial court did not commit plain error in a first-degree rape case by admitting testimony under N.C.G.S. § 8C-1, Rule 404(b) regarding defendant's alleged rape of a prior victim less than ten months before the victim in this case, because: (1) both rapes occurred around the time the victims were smoking or preparing to smoke crack cocaine; (2) defendant instructed both victims to remove their own clothing; (3) defendant threatened to stab or kill both victims if they did not

cooperate; and (4) the trial court limited the jury's consideration of the testimony to the purpose of showing identity and a common plan or scheme.

1. Evidence--prior crimes or acts--rape of another victim--identity--common plan or scheme

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3. Evidence--prior assaults on victim--admissible to show malice, premeditation, deliberation, intent or ill-will--lack of mistake

State v. Washington, 141 N.C. App. 354 (2000)

The trial court did not abuse its discretion in a prosecution for first-degree murder, two counts of attempted first-degree murder, and felonious assault by allowing the State to introduce evidence through a witness that defendant had choked the murdered victim on an earlier occasion, because: (1) a defendant's prior assaults on the victim, for whose murder defendant is presently being tried, are admissible for the purpose of showing malice, premeditation, deliberation, intent or ill-will; (2) the evidence was relevant to an issue other than defendant's character based on the fact that defendant contended he shot this victim by mistake; and (3) the evidence was not unfairly prejudicial under N.C.G.S. § 8C-1, Rule 403 when the trial court's procedure of conducting a voir dire examination of the witness to determine the substance of her testimony demonstrated the trial court conducted the balancing test under Rule 403.

3. Evidence--defendant's drug use and prior crime--admissible as to motive

State v. Barnett, 141 N.C. App. 378 (2000)

There was no plain error in a felony murder prosecution arising from the robbery

of a store where the State was allowed to cross-examine defendant about a prior forgery conviction and about his drug and alcohol use. The State exceeded the permissible scope of inquiry into defendant's prior criminal conviction under N.C.G.S. § 8C-1, Rule 609(a) by eliciting details other than the name, time, and place of the crime and the punishment, but the evidence was admissible under Rule 404(b) to explain the chain of events leading to and the motive behind the crime (support of a drug habit). The fact that the forgery occurred several years before this crime goes to the weight of the evidence rather than its admissibility.

4.Evidence--prior crime or act--prior assault--common plan, scheme, system, or design

State v. Chavis, 141 N.C. App. 553 (2000)

The trial court did not err in a prosecution for statutory sexual offense and attempted statutory rape by allowing evidence of defendant's 1990 assault of another victim under N.C.G.S. § 8C-1, Rule 404(b), because: (1) the evidence was properly admitted for the purpose of proving a plan, scheme, system, or design since the evidence on both instances were similar in nature in that the victims were of similar age, both visited various residences or places in which they were unfamiliar along with defendant, both victims were taken by automobile to isolated areas at night, and in both instances defendant told the victims something was wrong with the automobile, asked the victims to get out of the automobile, and then proceeded to sexually assault them; (2) the two charges are not too remote in time; (3) even though the evidence was improperly admitted for statutory sexual offense, the improper admission did not prejudice defendant when it was properly admitted to show a common scheme; and (4) the probative value of the prior bad act evidence was not substantially outweighed by its prejudicial impact.

3.Evidence--prior assault--admissible

State v. Lytch, 142 N.C. App. 576 (2001)

The trial court did not err in a first-degree murder prosecution by admitting evidence of an assault and attempted robbery that occurred two days before the murders where the closeness in both geography and time, the similar nature of the assault, and the connection between the bullets found at both scenes presented sufficient similarities for the evidence's admissibility.

Evidence - General intent crimes - prior assault - admissibility to show intent

State v. Elliott, 352 N.C. 663 (2000)

The decision of the Court of Appeals in this case is reversed for the reason stated in the dissenting opinion in the Court of Appeals that evidence of a prior incident in which defendant hit the female victim's face was admissible in this prosecution for the general intent crimes of assault inflicting serious injury and assault on a female to show defendant's intent with respect to the present assault on the female victim.

4. Evidence - statement to co-worker - bad character - motive and plan

State v. Smith, 351 N.C. 251 (2000)

Evidence that defendant told a co-worker that DSS was taking over half his paycheck for child support and he was tired of paying was admissible under Rule 404 (b) to show motive and plan in a prosecution for the first-degree murder by poisoning of defendant's six-year-old daughter and the attempted murders by poisoning of his ex-girlfriend and his other two children. N.C.G.S. § 8C-1, Rule 404 (b).

2. Evidence - death of child - DSS substantiation of prior neglect - admissibility to show intent

State v. Fritsch, 351 N.C. 373 (2000)

In a prosecution of defendant for involuntary manslaughter and abuse of a child who suffered from cerebral palsy and mental retardation, evidence that DSS had substantiated two cases of neglect of the victim by defendant did not invade the province of the judge and jury but was properly admitted to show defendant's intent where the trial court instructed the jury that this evidence could be considered only for the limited purpose of showing defendant's knowledge of the level of care she was required to provide to the victim.

6. Evidence - other crimes - prior speeding convictions - malice

State v. Rich, 351 N.C. 386 (2000)

Evidence of defendant's prior convictions for speeding was admissible under Rule 404(b) to show malice in this prosecution for second-degree murders arising from an automobile accident in which the State's evidence tended to show that

defendant drove his vehicle on the wrong side of the road at a high rate of speed while impaired. This evidence was not offered to show that defendant was speeding at the time of the collision but to show that defendant knew and acted with a total disregard of the consequences, which is relevant to show malice.

18.Evidence--prior crimes or acts--motive

State v. Golphin, 352 N.C. 364 (2000)

The trial court did not violate one defendant's rights by admitting his grandfather's testimony, offered by his codefendant, concerning the seizure of defendant's luggage by the police at a bus station a week prior to the murders because: (1) defendant did not preserve any constitutional argument since he did not raise it at the trial court; (2) the testimony was admissible under N.C.G.S. § 8C-1, Rule 404(b) to prove defendant's motive for not wanting to return by bus, and for his future actions; and (3) the jury could infer that defendant did not wish to take the bus because it would stop in the city where his luggage had been seized by police.

1. Evidence--rape--defendant's past rape convictions--common plan or scheme--lack of consent

State v. Harris, 140 NC App 208 (2000)

There was no prejudicial error in a prosecution for offenses including rape, kidnapping, and sexual offense in the admission of evidence of two prior rape convictions where the court admitted the evidence to show lack of consent and common plan, but the evidence was properly admissible only for common plan or scheme. Although earlier cases suggested that evidence of prior rapes was admissible to show lack of consent, more recent cases have established that this is not a proper purpose; however, the error was not prejudicial because the same evidence was also admitted for a proper purpose.

4.Evidence--prior bad acts--relevancy (Def in Jail app. 1\2 time)

State v. Brooks, 138 N.C. App. 185 (2000)

The trial court did not err in a prosecution for assault with a deadly weapon inflicting serious injury on his second wife by allowing the State to present

evidence of defendant's prior bad acts through the testimony of defendant's first wife that defendant snuck into her residence during a time of marital separation, hid in her attic for seventeen hours, and then stabbed her numerous times while she slept, because: (1) the time between defendant's assault of his first wife and second wife was not so remote as to make his first wife's testimony inadmissible; (2) evidence was offered that defendant attacked both women during a period of marital discord, stating at different times that he would not allow them to leave him or to end their marriage to him; (3) defendant never denied stabbing his first wife or shooting his second wife for those reasons; and (4) the evidence was not so remote in time as to be irrelevant, and was more probative than prejudicial to show defendant's motive, intent, preparation, plan, absence of mistake, and modus operandi. N.C.G.S. § 8C- 1, Rules 403 and 404(b).

7. Evidence - Prior bad acts - child abuse - intent

State v. Clark, 138 N.C. App. 392 (2000)

The trial court did not err in a first-degree murder case by admitting testimony of defendant's prior bad acts regarding her treatment of the minor victim. Here, since the defendant was charged with felony child abuse, her treatment of Budde was at issue and thus relevant; evidence of the way defendant had treated the child in the past was relevant where defendant. The defendant has failed to establish that the trial court's decision to admit this evidence was manifestly unsupported by reason

1.Evidence--subsequent crime or act--intent and motive

State v. Hutchinson, 139 N.C. App. 132 (2000)

The trial court did not abuse its discretion in a first-degree burglary case by admitting evidence of defendant's subsequent offenses of shoplifting, breaking and entering and larceny, and car theft, and evidence that defendant used the proceeds from these offenses to purchase drugs, because: (1) the admission of subsequent bad acts was proper under N.C.G.S. § 8C-1, Rule 404(b) for a determination of whether defendant possessed the intent and motive for this first-degree burglary charge; (2) the fact that defendant sold a portion of stolen goods from the subsequent larcenies and used the funds to buy drugs shows defendant's intent and motive during the alleged burglary; (3) the time span of one to two months between the burglary and the subsequent larcenies does not render the larcenies too remote in time to show intent and motive; and (4) the probative value was not substantially outweighed by the danger of unfair prejudice to

defendant in light of the trial court's limiting instruction, N.C.G.S. § 8C-1, Rule 403.

.Evidence--prior crime or act--similar act--detainment in department store for shoplifting--no prejudicial error

State v. Fluker, 139 N.C. App. 768 (2000)

Although the trial court erred in a misdemeanor larceny case by allowing the State to cross-examine defendant about her prior detainment in a department store for alleged shoplifting to show the absence of mistake by the State under N.C.G.S. § 8C-1, Rule 404(b), it was not prejudicial error because: (1) defendant did not request a limiting instruction to the jury either at the time the evidence was admitted nor during the jury charge; (2) defendant was caught leaving a department store with store items that had not been purchased and multiple eyewitnesses watched defendant take the store items; (3) defendant gave highly improbable explanations for her actions; and (4) the only evidence of the prior incident was defendant's testimony describing how she was physically and emotionally mistreated, which did not detract from her defense.

7. Evidence--prior bad acts--child abuse--intent

State v. Clark, 138 NC App 392 (2000)

The trial court did not err in a first-degree murder case by admitting testimony of defendant's prior bad acts regarding her treatment of the minor victim because: (1) past instances of mistreatment are admissible to show intent in a child abuse case; (2) defendant's treatment of the minor victim was relevant to the charge of felony child abuse; and (3) defendant has failed to establish that the admission of this evidence was manifestly unsupported by reason.

3. Evidence--prior convictions--traffic violations

State v. Fuller, 138 NC App 481 (2000)

The trial court did not commit plain error in a second-degree murder case by admitting defendant's prior traffic convictions for the previous eight years because: (1) evidence of prior convictions is admissible under N.C.G.S. § 8C-1, Rule 404(b) to establish the malice necessary to support a seconddegree murder conviction; (2) defendant's driving violations are sufficiently proximate in time to

the offenses charged in this case; and (3) defendant's driving record need not establish solely alcohol-related driving offenses to be admissible in this context under Rule 404(b).

2. Evidence - Prior bad acts - State witness - juvenile adjudication - fair determination of guilt or innocence

State v. Deese, 136 N.C. App. 413 (2000)

The trial court did not abuse its discretion in a second-degree murder case by excluding evidence of a State witness's prior bad acts concerning her juvenile adjudication of guilt of involuntary manslaughter in South Carolina, even though defendant sought to use it to impeach the witness because the trial court concluded that defendant had not satisfied the court that the admission of this evidence was necessary to a fair determination of defendant's guilt or innocence under N.C.G.S. § 8C-1, Rule 609.

3. Evidence - Prior bad acts - State witness - cutting victim after alcohol and drug use - sufficiently similar

State v. Deese, 136 N.C. App. 413 (2000)

The trial court did not abuse its discretion in a second-degree murder case by excluding evidence of a State witness's prior bad acts concerning an incident in which the witness and her brother had cut a third person with a broken bottle, even though defendant sought to use it under N.C.G.S. 8C-1, Rule 404(b) to show a common plan or scheme in order to point to the witness as the perpetrator rather than defendant.

Evidence - subsequent crime or act - impermissible character evidence

State v. Willis, 136 N.C. App. 820 (2000)

Defendant is granted a new trial under N.C.G.S. 15A-1443(a) because the trial court erred in a common law robbery case by admitting, over defendant's objection, evidence that defendant had been convicted of common law robbery in Guilford County for an incident occurring eight days after the events in this case because the only relevance of the evidence was to impermissibly show the character of defendant to commit common law robbery. N.C.G.S. 8C-1, Rule 404(b).

5. Evidence and Witnesses 335, 339 (NCI4th) - misconduct toward victim - admissibility to show lack of accident, intent, premeditation and deliberation

State v. Syriani, 333 N.C. 350 (1993)

In a prosecution of defendant for the first degree murder of his wife, testimony by defendant's children about defendant's frequent arguments with, violent acts toward, separations from, reconciliations with, and threats to his wife. were admissible under Rule of Evidence 404(b) to prove lack of accident not

withstanding that some of the incidents dated back to the beginning of the marriage.

4. Evidence and Witnesses 294 (NCI4th) - other crimes, wrongs or acts - driving while impaired -refusal of breathalyzer -admissibility on voluntariness of confession

State v. Rannels, 333 N.C. 644 (1993)

In a prosecution for first degree murder and armed robbery, testimony by Virginia police officers involved in defendant's apprehension that defendant was charged with driving while impaired and that defendant refused a breathalyzer test tended ultimately to show the circumstances under which defendant's confession was made and was thus relevant and admissible under Evidence Rule 404(b) on the issues of the voluntariness and credibility of the confession. N.C.G.S. 8C-1, Rule 404(b).

5. Evidence and Witnesses 294, 368 (NCI4th) - other crimes, wrongs or acts - theft of vehicle and gun - striking of girlfriend - admissibility to show guilt

State v. Rannels, 333 N.C. 644 (1993)

11. Evidence and Witnesses 315 (NCI4th) - defendant's rape of second victim - admissibility to show identity, motive and intent - probative value

State v. Yelverton, 334 N.C. 532 (1993)

8. Evidence and Witnesses 334, 3015 (NCI4th) - prior conviction - cross-examination about details -admissibility to show intent

State v. Sexton, 336 N.C. 321 (1994)

In a first-degree murder prosecution in which defendant admitted that he had previously been convicted of assaulting his girlfriend, the prosecutor's cross-examination of defendant as to whether he had choked his girlfriend was admissible under Rule 404(b) to show intent and was not precluded under Rule 609 where the murder was committed by choking the victim; the prior assault by choking had occurred less than a year before the murder and was thus not remote in time;

7. Evidence and Witnesses 305 (NCI4th) - another murder - admissibility to show identity and method of operation

State v. Cummings, 332 N.C. 487 (1992)

7. Evidence and Witnesses 351 (NCI4th) first-degree murder- warrant for assault on a female -admissible

State v. Fisher, 336 N.C. 684 (1994)

The trial court did not err in the first-degree murder prosecution of defendant for killing his girlfriend by allowing two of the State's witnesses to testify concerning the issuance of a warrant for assault on a female against defendant in the early morning hours of the day the killing occurred. This testimony establishes intent and the motive of returning to continue the assault and tends to prove premeditation, deliberation, and malice. N.C.G.S. 18C-1, Rule 404(b).

2. Evidence and Witnesses 318 (NCI4th) murder trial - evidence of prior murder by defendant -admissibility to show identity

State v. Moseley, 336 N.C. 710 (1994)

Evidence and Witnesses 305 (NCI4th) - another murder - admissibility to show identity and method of operation

State v. Cummings, 332 N.C. 487 (1992)

In this prosecution for first degree murder, evidence concerning the murder of the victim's sister was admissible under Rule of Evidence 404(b) to show defendant's identity and method of operation

4. Evidence and Witnesses 351 (NCI4th) - murder - defendant's prior bad acts - admissible

State v. Mahaley, 332 N.C. 583 (1992)

The trial court did not err in the prosecution of defendant for murdering her husband by admitting evidence regarding defendant's admission to two drug treatment facilities, her theft of credit cards and money, and her affair with a co-conspirator. Evidence of defendant's relationship with the co-conspirator was highly probative of her motive for wanting her husband murdered, and evidence of defendant's theft of money and credit cards and evidence of her drug problems tended to show that she needed money which she would gain from insurance proceeds upon her husband's death.

7. Evidence and Witnesses 365 (NCI4th) - first-degree murder - poisoning - other occurrences -admissible

State v. Moore, 335 N.C. 567 (1994)

3. Evidence and Witnesses 339 (NCI4th) - prior threats, assaults, damage to property - admissibility to show malice and intent

State v. Mixion, 110 N.C. App. 138 (1993)

2. Evidence and Witnesses 346 (NCI4th) - evidence showing other offenses - no character evidence -admissibility to show intent, plan, or knowledge

State v. Morgan, 111 N.C. App. 662 (1993)

1. Evidence and Witnesses 368 (NCI4th) - robbery - evidence of subsequent offense - admissible -common scheme or plan

State v. Everette, 111 N.C. App. 775 (1993)

2. Evidence and Witnesses 351 (NCI4th) - prior incident involving defendant - admissibility to prove motive and identity

State v. Parker, 113 N.C. App. 216 (1994)

In a second-degree murder prosecution where defendant contended that the State's circumstantial evidence was insufficient to connect him to the scene of the crime charged and therefore insufficient to identify him as the assailant who killed the victim, the trial court did not err in admitting evidence of an incident involving defendant five years earlier which was substantially similar to the events

occurring in this case, since such evidence was admissible as proof of motive and identity.

- 1. Evidence and Witnesses 3045 (NCI4th) second-degree murder - cross-examination - prior assaultive conduct - not admissible under Rule 608(b)

State v. Brooks, 113 N.C. App. 451 (1994)

1. Evidence and Witnesses 372 (NCI4th) - rape of daughter - earlier rape of another daughter -admissibility to show plan or scheme

State v. Jacob, 113 N.C. App. 605 (1994)

1. Evidence and Witnesses 293 (NCI4th) -attempted statutory rape and sexual offense - prior offense -acquittal - admissible

State v. Robertson, 115 N.C. App. 249 (1994)

The trial court did not err in a prosecution for attempted first-degree statutory rape and attempted firstdegree sexual offense in allowing the victim to testify that defendant threatened her by saying that if she told anyone what he was going to do, he was going to hurt her like he hurt Koda. Defendant was under indictment and on pretrial release for the murder of Koda Smith at the time of these offenses and was acquitted before this trial.

2. Evidence and Witnesses 339 (NCI4th) noncapital first-degree murder - other acts of violence and threats - admissible

State v. Bryant, 337 N.C. 298 (1994)

The trial court did not err in a noncapital first-degree murder prosecution by allowing a prosecution witness to testify concerning other alleged acts of violence and threats of violence by defendant where the testimony was corroborative of other testimony, was corroborated by other testimony, and tended to show malice, an essential element of first-degree murder. The evidence was thus relevant to an issue other than defendant's character.

1. Evidence and Witnesses 293 (NCI4th) first-degree murder - testimony of prior breaking or entering charge - no probable cause finding - admissible

State v. Lynch, 337 N.C. 415 (1994)

The trial court did not err in a first-degree murder prosecution by admitting testimony by the victim's twelve year old son that he had awakened at 5:00 a.m. on a morning prior to the day of the murder when he heard an intruder in the house, he had recognized defendant as the intruder, had climbed out a window and gone to the home of a neighbor, who called the police, and defendant had been charged with felonious B&E, but a district court judge found no probable cause.

3. Evidence and Witnesses 285 (NCI4th) - murder victim's criminal history and prison infractions- no knowledge by defendant - inadmissible to show self-defense

State v. Smith, 337 N.C. 658 (1994)

The trial court in a murder prosecution did not err by denying defendant's motion to permit defendant to introduce, pursuant to Rule 404(b), prior convictions of the victim for assault with a deadly weapon and burglary, forensic evaluation records from Dorothea Dix Hospital pertaining to the assault conviction, and prison records of the victim's disciplinary infractions where there was no evidence that defendant was aware of the victim's criminal past at the time of the killing, and defendant's stated purpose for offering the evidence was to show that the victim had a propensity for violence and was the aggressor in the affray which led to the fatal shooting, since Rule 404(b) expressly prohibits admission of evidence for this purpose. N.C.G.S. 1 8C-1, Rule 404(b). charged with felonious breaking or entering, but a district court judge found no probable cause. Defendant has not been acquitted of the crime for which he was previously charged, the State may proceed against him on that charge, and he is not entitled to the protection provided by State v. Scott, 331 N.C. 39.

18. Evidence and Witnesses 353 (NCI4th) murder and rape- evidence of another offense - admissible as to motive

State v. Moseley, 338 N.C. 1 (1994)

The trial court did not err in a prosecution in which defendant was convicted of first-degree murder, first-degree rape, and first-degree sexual offense by admitting testimony of defendant's prior sexual assault on another victim where the trial court found from the uncontradicted evidence that the attacks bore several similarities; there were sufficient similarities to support a reasonable inference that the same persons committed both acts;

4. Evidence and Witnesses 305 (NCI4th) first-degree murder- prior assault - admissible

State v. Carter, 338 N.C. 569 (1994)

The trial court did not err in a prosecution for a first-degree murder committed in 1989 by admitting evidence of an assault committed by defendant in 1981, when he was thirteen, where there were unusual facts and strikingly similar acts in both crimes so as to permit admission of the 1981 assault for purposes of proving identity.

7. Evidence and Witnesses 315, 345 (NCI4th) attempted rape and first-degree murder - other offense -admissible on identity and intent

State v. Carter, 338 N.C. 569 (1994)

The trial court did not err in a prosecution for attempted rape and first-degree murder by admitting evidence of another rape to which defendant pled guilty, where the similarity between the two crimes, closely connected temporally, clearly supports the admission of the other rape to prove identity and intent. N.C.G.S. 1 8C-1, Rule 404(b).

3. Evidence and Witnesses 354, 364 (NCI4th) escape from prison - thefts -admissibility to show intent and motive for murders

State v. Rose, 339 N.C. 172 (1994)

Chain-of-events evidence about defendant's escape from an Alabama prison and thefts he committed after his escape and before he committed the two murders at issue was properly admitted to establish defendant's intent and motive for the murders,

3. Evidence and Witnesses 342 (NCI4th) attempted armed robbery evidence of prior robbery admissibility to show intent

State v. Davis, 340 N.C. 1 (1995)

7. Evidence and Witnesses 364 (NCI4th) - noncapital first-degree murder - other offense - chain of circumstances

State v. White, 340 N.C. 264 (1995)

The trial court did not err in a noncapital first-degree murder prosecution by admitting evidence of defendant's alleged involvement in another murder where defendant was charged with the 1973 murder of her four year old stepson following a 1991 conspiracy to kill her husband and her motion in limine to exclude the evidence of her alleged involvement in her husband's death from the trial for the murder of her stepson was denied.

11. Evidence and Witnesses 212 (NCI4th) -noncapital first-degree murder - victim's prior injuries -admissible

State v. White, 340 N.C. 264 (1995)

12. Evidence and Witnesses 84 (NCI4th) noncapital first-degree murder -victim's life insurance -defendant as beneficiary

State v. White, 340 N.C. 264 (1995)

9. Evidence and Witnesses 357 (NCI4th) murder of officer purchase of marijuana from defendant admissibility to show motive balancing test satisfied

State v. Lyons, 340 N.C. 646 (1995)

In a prosecution of defendant for first-degree murder of a law officer who was executing a search warrant for defendant's apartment, testimony by a witness that he had purchased marijuana from defendant the day before the shooting was properly admitted for the limited purpose of showing that defendant had a motive for the shooting where the State's theory of the case was that defendant, as a known drug dealer, had a motive to kill a law officer;

5. Evidence and Witnesses 351 (NCI4th) murder during robbery cocaine use and assistance checks admissibility to show motive

State v. Powell, 340 N.C. 674 (1995)

In a prosecution for first-degree murder committed during the robbery of a convenience store, testimony by defendant's girlfriend about defendant's cocaine use and his receipt of AFDC and Social Security checks for the benefit of his son was properly admitted for the limited purpose of showing motive for the robbery-murder where the girlfriend testified that defendant had supported himself and her and their cocaine habit when his only source of income was the AFDC and Social Security checks, and that defendant stopped receiving both checks when his

former wife took physical custody of the son two months before the robbery-murder.

6. Evidence and Witnesses 179 (NCI4th) defendant's receipt of government checks admissibility to show motive

State v. Powell, 340 N.C. 674 (1995)

Testimony by a social worker that defendant had received checks from government agencies for his son until two months before a murder committed during the robbery of a convenience store was not improper character evidence and was relevant under Rules 401 and 404(b) to show motive. N.C.G.S. 8C-1, Rules 401 and 404(b).

4. Evidence and Witnesses 294 (NCI4th) defendant's contemplation of another crime defendant not prejudiced by evidence

State v. Thibodeaux, 341 N.C. 53 (1995)

Testimony by a witness that defendant had mentioned robbing a bank to get rent money did not tend to show that defendant had actually robbed a bank or had committed any other crime or wrong, but even if it did, such testimony would have been admissible to show defendant's motive and intent to commit the crimes of robbery and murder of his landlord. N.C.G.S. 1 8C-1, Rule 404(b).

5. Jury 150 (NCI4th) first-degree murder capital trial excusal for cause no rehabilitation

State v. Alston, 341 N.C. 198 (1995)

There was no error in a first-degree murder trial in which capital punishment was sought in the trial court's refusal to afford defendant the opportunity to rehabilitate 15 prospective jurors excused for cause pursuant to *Witherspoon v. Illinois*, 391 U.S. 510.

6. Evidence and Witnesses 304 (NCI4th) murder of child misconduct toward child's mother similarity of circumstances admissibility to show identity

State v. Burr, 341 N.C. 263 (1995)

In a prosecution of defendant for the first-degree murder of a four-month-old child, testimony by the child's mother and by others concerning defendant's

misconduct toward the mother by choking her, bruising various parts of her body with his hands and fingers, and bending her hands behind her back to make her say and do whatever he wanted was admissible under Rule 404(b) to show defendant's identity as the perpetrator of the crime charged where the evidence showed that, at the time of her death, the child victim was covered with bruises similar to those inflicted by defendant upon the mother,

1. Evidence and Witnesses 113 (NCI4th) felony murder witness gunman in another armed robbery excluded no error

State v. Grace, 341 N.C. 640 (1995)

The trial court did not err in a first-degree murder prosecution arising from an armed robbery by excluding testimony that an accomplice who testified against defendant had held a gun on the victim in a prior robbery. Although defendant argued that this evidence was relevant to prove that the accomplice had used the gun in the robbery in this case, it was inadmissible under N.C.G.S. 1 8C-1, Rule 404(b) and *State v. McNeil, 326 N.C. 712*. It was not error to exclude evidence that tended to prove a person other than the defendant had committed a crime when the evidence did not show the same person had committed both crimes.

2. Evidence and Witnesses 364 (NCI4th) prior bad act committed by defendant - evidence admissible

State v. Poe, 119 N.C. App. 266 (1995)

In a prosecution of defendant for assault which occurred when defendants allegedly threw a brick from their car into the victims' car, the trial court did not err in admitting the testimony of one of defendant's passengers that defendant had allegedly committed a prior bad act by throwing a bottle into another vehicle earlier in the evening, since the incident was similar in means and execution and occurred the same evening as the brick throwing incident.

2. Evidence and Witnesses 308 (NCI4th) gun fired earlier by defendant admissibility of evidence to show identity of defendant as perpetrator

State v. Burton, 119 N.C. App. 625 (1995)

Evidence that defendant was firing the gun in question shortly before the events giving rise to this homicide prosecution was admissible to prove defendant's

identity as the person who fired the stray 9 mm bullet which killed the victim.
N.C.G.S. 1 8C-1, Rule 404(b).

5. Evidence and Witnesses 2983 (NCI4th) prior bad acts of witnesses admission of evidence no error

State v. Holmes, 120 N.C. App. 54 (1995)

There was no merit to defendants' contention that the trial court erred by allowing into evidence testimony of the prior bad acts of witnesses in violation of N.C.R. Evidence 404, since that rule is applicable only to parties and not to witnesses. N.C.G.S. 8C-1, rule 404. Am Jur 2d, Witnesses 969. Admissibility of evidence of commission of similar crime by one other than accused. 22 ALR5th 1.

1. Evidence and Witnesses 373 (NCI4th) common plan or scheme to abuse adolescent female family members admissibility of evidence

State v. Frazier, 121 N.C. App. 1 (1995)

In a prosecution of defendant for taking indecent liberties with a child and rape, the trial court did not err in admitting testimony which tended to demonstrate a common plan or scheme by defendant to sexually abuse adolescent female family members, and there was no merit to defendant's contentions that the testimony was not sufficiently similar to the conduct for which he stood trial and that the testimony was too remote in time to be admissible, since all the females in this case testified that defendant looked after them when they were young and began his misconduct by touching them and fondling them; defendant began to touch more invasively as they grew older; defendant had sexual intercourse with all but one of them; defendant convinced each of them to remain quiet about the abuse by threatening to send them away or by threatening to stop taking care of their financial needs; all of the witnesses thus testified to similar forms of abuse which demonstrated a distinct pattern over a protracted period; defendant's prior acts of sexual abuse occurred over a period of approximately twenty-six years; and an eight-year lapse in defendant's abusive conduct did not render the witnesses' testimony too remote to be admissible. N.C.G.S. 8C-1, Rule 404(b).

4. Evidence and Witnesses 173 (NCI4th) first-degree murder witness's fear of defendant

State v. DeCastro, 342 N.C. 667 (1996)

The trial court did not err in a capital first-degree murder prosecution by admitting testimony that the witness was afraid of defendant. This testimony did not constitute inadmissible character evidence under N.C.G.S. 8C-1, Rule 404(a), because it was essentially *res gestae* in that it explained why the witness was found walking away from the crime scene and provided evidence confirming the state of mind, method of operation, and course of conduct of defendant and his cohorts.

4. Evidence and Witnesses § 357 (NCI4th) murder trial details of drug dealings admissibility to show motive

State v. King, 343 N.C. 29 (1996)

Where evidence was presented in a murder trial that the victim had robbed one of defendant's drug "lieutenants" and that defendant had stated that "nobody was going to take nothing" from him, testimony concerning the details of defendant's drug dealings, including the quantities and street prices of drugs sold, was not improper character evidence but was admissible under N.C.G.S. § 8C-1, Rule 404(b) to show defendant's motive for shooting the victim by showing how much money defendant or his drug organization may have lost from the robbery.

3. Evidence and Witnesses §§ 339, 2750.1 (NCI4th) noncapital first-degree murder abusive relationship admissible

State v. Scott, 343 N.C. 313 (1996)

The trial court did not err in a first-degree murder prosecution by admitting evidence of the victim's physical injuries and appearance at various times between 1978 and 1993. Testimony about defendant's frequent arguments with, violent acts toward, separations from, reconciliations with, and threats to the victim was admissible under N.C.G.S. § 8C-1, Rule 404(b) to prove issues he disputed, such as lack of intent, malice, premeditation, and deliberation, notwithstanding that some of the incidents dated back some years. Further, defendant opened the door by stating that he and the victim had a loving relationship.

6. Evidence and Witnesses § 345 (NCI4th) murder and burglary trial prior sexual assaults similarity to present crimes admission for limited purposes

State v. White, 343 N.C. 378 (1996)

5. Evidence and Witnesses § 376 (NCI4th) kidnapping, rape, murder testimony of similar acts with prior girlfriend

State v. Penland, 343 N.C. 634 (1996)

The trial court did not err in a prosecution arising from an abduction, rape and murder by admitting testimony from an ex-girlfriend concerning prior bad acts defendant allegedly committed. Even if defendant had preserved this argument for appeal, the incidents with the ex-girlfriend and the victim involved assaults on a female in remote wooded areas in which defendant used a knife to threaten or intimidate the female, tied her to a tree, slapped or beat her, used handcuffs and verbally abused his victim. Given the commonality of the distinct and bizarre behaviors, the ten-year gap between the incidents did not negate the plausibility of the existence of an ongoing and continuous plan to engage in such activities. In light of the limiting instruction, the probative value of the evidence was not substantially outweighed by its prejudicial impact.

3. Evidence and Witnesses § 163 (NCI4th) capital murder threat by defendant to victim time between threat and murder goes to weight

State v. Cox, 344 N.C. 184 (1996)

The trial court did not err in a capital prosecution for a first-degree murder committed on 27 January 1994 by admitting testimony that on 30 November 1993 defendant told the victim that he would kill her if she did not come out of her room. Evidence of previous threats is admissible in trials for first-degree murder to prove premeditation and deliberation; remoteness in time goes to the weight of the evidence and does not make it inadmissible.

Evidence and Witnesses § 373 (NCI4th) indecent liberties and rape adolescent family members sexual abuse of other family members remoteness admissibility to show common plan

State v. Frazier, 344 N.C. 611 (1996)

In a prosecution of defendant for taking indecent liberties with and first degree rape of his two adolescent stepgranddaughters, testimony by three other female members of defendant's family recounting how defendant had sexually abused them when they were young did not pertain to acts too remote in time to be admissible under Rule 404(b) to show defendant's common plan or scheme to

sexually abuse female family members where the testimony tended to prove that defendant's prior acts of sexual abuse occurred continuously over a period of approximately twenty-six years and in a strikingly similar pattern in that all the victims were adolescents at the time defendant began his sexual assaults; in each instance, defendant slowly began touching the victim and gradually reached more serious abuse culminating in intercourse; defendant bought the victims gifts and gave them money during the period of abuse; defendant threatened each of them that if she revealed to anyone what he was doing, she would be sent away or suffer some other severe sanction; all of the victims were related to defendant either through his own marriage or the marriage of his children; and all the victims lived with or near defendant during the course of the abuse. N.C.G.S. § 8C-1 Rule 404(b).

2. Evidence and Witnesses § 369 (NCI4th) murder and robbery prior robbery admissible to show common plan

State v. Wilson, 345 N.C. 119 (1996)

There was no error in a prosecution arising from the robbery of a convenience store and the killing of two employees in the admission of evidence of the robbery of a Hardee's restaurant two days before the robbery of the convenience store. The trial court conducted a voir dire of the evidence and found that defendant and an accomplice, Wilson, had been driven to both crime scenes by the same person, Adams, who parked away from both crime scenes while defendant and Wilson approached on foot; both crimes were committed after dark; defendant and Wilson fled both scenes on foot and returned to the car; Adams then drove away from both scenes; defendant used his nine-millimeter weapon in both robberies; and both robberies lasted a short period of time. The court then concluded that the evidence was admissible to show a common plan or design and gave the jury a limiting instruction. The probative value of the evidence of the Hardee's robbery was not substantially outweighed by any danger

2. Evidence and Witnesses § 264 (NCI4th) - murder trial - victim's homosexuality - not pertinent character trait

State v. Laws, 345 N.C. 585 (1997)

In a prosecution for first-degree murder in which defendant contended that he killed the victim in self defense in response to a threatened homosexual assault, evidence offered by defendant that the victim had a reputation for being a

homosexual was not evidence of a pertinent character trait within the meaning of Rule of Evidence 404(a)(2) and was properly excluded by the trial court, since an individual's sexual orientation bears no relationship to the likelihood that such individual would threaten a sexual assault. N.C.G.S. § 8C-1, Rule 404(a)(2).

2. Criminal Law § 1342 (NCI4th Rev.) - capital resentencing - four prior unadjudicated sexual assaults - admissible

State v. Holden, 346 N.C. 404 (1997)

The trial court did not abuse its discretion during a capital resentencing proceeding by admitting testimony relating to four prior unadjudicated sexual assaults where the evidence was relevant to establishing the aggravating circumstance that the murder was committed while defendant was engaged in an attempt to commit rape. The circumstances of the four prior unadjudicated assaults were virtually identical to the circumstances surrounding the attempted rape of the victim here.

4. Evidence and Witnesses § 284 (NCI4th) - prior assault by victim - irrelevancy to show fear by defendant

State v. Strickland, 346 N.C. 443 (1997)

Testimony that a murder victim had assaulted his wife a few months prior to the murder and that defendant knew of this assault was not admissible under Rule 404(b) to show that defendant was fearful of the victim at the time of the killing where there was no allegation or evidence that defendant shot the victim in self-defense, defendant's theory of the case was that defendant pointed a gun at the victim to persuade him to leave defendant's home and that the gun accidentally fired, and evidence of the victim's prior assault against his wife was thus not relevant to the killing of the victim. N.C.G.S. § 8C-1, Rule 404(b).

8. Evidence and Witnesses §§ 351, 337 (NCI4th) - child abuse and murder - mistreatment of another child - relevant

State v. Pierce, 346 N.C. 471 (1997)

The trial court did not err in a prosecution for murder by torture, felonious child abuse, and felony murder by admitting testimony concerning defendant's alleged mistreatment of one his girlfriend's children. The testimony was relevant under

N.C.G.S. § 8C-1, Rule 404(b) to establish defendant's motive and intent and to show the absence of mistake in that his conduct was sufficiently similar to contradict his suggestion that the injuries to this victim were inflicted while attempting to revive her. Even assuming the testimony was not admissible under N.C.G.S. § 8C-1, Rule 404(b), there was no prejudice from its admission because the State presented overwhelming evidence that defendant and his girlfriend abused this victim over a three or four week period and that defendant and his girlfriend inflicted numerous injuries on the victim during this period of time. There is no reasonable possibility that a different result would have been reached had the evidence been excluded. The fact that the trial court conducted a voir dire suggests that it carefully weighed the probative value of the evidence against the danger of unfair prejudice to defendant and the court gave an appropriate limiting instruction.

5. Evidence and Witnesses § 292 (NCI4th) - first-degree murder - evidence of defendant beating girlfriend - admissible

State v. Robinson, 346 N.C. 586 (1997)

There was no error, much less plain error, in a first-degree murder prosecution where four witnesses were allowed to testify that defendant beat his girlfriend before killing victim because he thought she was running around with another man. The evidence of the beating was circumstantial evidence of defendant's guilt because it was relevant to defendant's motive, intent, and plan to kill the victim, and was additionally relevant because it described the chain of circumstances leading up to the murder.

7. Evidence and Witnesses § 339 (NCI4th) - first-degree murder of spouse - prior assault - admissible

State v. Allen, 346 N.C. 731 (1997)

The trial court did not err in a first-degree murder prosecution by admitting evidence of a prior assault on the murder victim by defendant (her husband). Under N.C.G.S. § 8C-1, Rule 404(b), evidence of other wrongs, crimes, or acts is admissible as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, entrapment, or accident, and, where a husband is accused of killing his wife, the State may introduce evidence that encompasses his married life in order to prove malice, intent, and ill will toward the victim. The prior assault on the victim is relevant to show defendant's intent to kill his wife.

4. Evidence and Witnesses § 364 (NCI4th Rev.) - murder trial - evidence of another murder - chain of circumstances - admissibility

State v. Sidden, 347 N.C. 218 (1997)

In a prosecution for the murder of two boys, evidence of the murder of their father was so intertwined with evidence of the murder of the boys that it was admissible to show the circumstances of the charged crimes where the evidence showed that defendant and his stepson kidnapped the two boys, left them in the trunk of an automobile while they murdered the boys' father, and then murdered the boys.

2. Evidence and Witnesses § 344 (NCI4th) - aggravated assault - details of other assaults - crossexamination proper

State v. Dammons, 128 N.C. App. 16 (1997)

In a prosecution for assault with a deadly weapon with intent to kill inflicting serious injury, the State's cross-examination of defendant about the names of other women he had been convicted of shooting, his relationship with those other women, and the type of weapons he had used was proper under Rule 404(b) to show that defendant had a history of shooting women with whom he had previously had relationships. N.C.G.S. § 8C-1, Rule 404(b).

3. Evidence and Witnesses § 374 (NCI4th) - indecent liberties - other acts - admissible - common plan or scheme

State v. Creech, 128 N.C. App. 592 (1998)

The trial court did not err in a prosecution for indecent liberties by admitting testimony of incidents following the same pattern with the two boys who were the victims in this case. The testimony was sufficiently similar to show a common plan or scheme.

1. Evidence - circumstances of second wife's death - trial for murder of first wife - absence of accident

State v. Boczkowski, 130 N.C. App. 702 (1998)

Evidence of the circumstances surrounding the death of defendant's second wife was properly admitted in this prosecution of defendant for murder of his first wife to show that the first wife's death was not an accident where the trial court found

the following similarities between the deaths of both of defendant's wives: both victims were married to defendant at the times of their deaths; both wives died at the home they shared with defendant and defendant was present at the time each wife died; defendant was performing CPR on each wife when emergency personnel arrived; the first wife died in or around a bathtub and the second wife died in or around a hottub; defendant claimed that both wives accidentally drowned and that drinking problems had contributed to their deaths; both wives were similar physically and were approximately the same age; both women died on a Sunday; and insurance money was involved in both incidents.

4. Evidence and Witnesses § 318 (NCI4th) - first-degree murder - subsequent assault - admissible - identity

State v. Lemons, 348 N.C. 335 (1998)

The trial court did not abuse its discretion in a capital first-degree murder prosecution by admitting testimony concerning an assault ten days after the murders and related photographs where the murder victims were taken by surprise, confined in the trunk of a car, forced to strip and then were robbed and shot in the head, and the assault victim was also taken by surprise, assaulted, robbed, and shot in the back of the head using the same gun that killed one of the murder victims. The evidence was relevant to identity and the trial court gave a limiting instruction.

8. Evidence and Witnesses §§ 327, 337 (NCI4th) - first-degree murder - prior murder - admissible to show knowledge and intent

State v. Hipps, 348 N.C. 377 (1998)

The trial court did not err in a capital first-degree murder prosecution by admitting evidence of defendant's 1978 conviction for second-degree murder where the evidence of the prior crime is highly probative of defendant's knowledge that his actions would likely kill this victim and that he intended to kill this victim. The time lapse between the crimes goes to the weight of the evidence, not to its admissibility, and the trial court was aware of the danger of unfair prejudice and gave a proper limiting instruction.

6. Evidence and Witnesses § 310 (NCI4th) - robbery-murder - other robberies by defendant - identity of perpetrator

State v. Hoffman, 349 N.C. 167 (1998)

Testimony by a witness that defendant had participated in two bank robberies with him during the two months preceding a robbery-murder at a jewelry store was admissible to show defendant's identity as the perpetrator of the jewelry store crimes where defendant drove his white Nissan in the bank robberies, while a white Nissan was seen outside the jewelry store on the day of the murder; defendant's sawed-off shotgun and ski mask were used in the bank robberies, and the perpetrator of the jewelry store crimes wore a ski mask and carried a sawed-off shotgun; the banks and the jewelry store were all located in small towns surrounding Charlotte; and all of the establishments were robbed during the daytime when they were open for business.

5. Evidence and Witnesses §§ 318, 351 (NCI4th) - first-degree murder - prior violence toward girlfriend - admissibility to show motive

State v. White, 349 N.C. 535 (1998)

There was no error in a capital prosecution for first-degree murder in the admission of evidence of defendant's acts and threats of violence toward his girlfriend. The State presented evidence that defendant was determined to control his girlfriend to the point of assaulting her, kidnapping her at gunpoint, tying her to his bed, and threatening to kill her or her family if she tried to leave him. This evidence supported the State's theory that defendant killed the victims, his girlfriend's grandparents, in retaliation against the girlfriend for resisting his control, for seeking the protection of her mother, and for telling defendant in her mother's presence that she did not want to be with him. This evidence was admissible under 8C-1, Rule 404(b) to show defendant's motive and to identify defendant as the person who committed the murders.

6. Evidence and Witnesses §§ 351, 318 (NCI4th) - first-degree murder - prior acts of violence -admissible

State v. White, 349 N.C. 535 (1998)

The trial court did not abuse its discretion in a prosecution for first-degree murder by allowing evidence that eleven months prior to the murders, defendant took his girlfriend by force away from a cookout and fired a shotgun when members of her family came to check on her safety. The evidence was admissible to show identity and motive, namely retaliation for the girlfriend's resistance to defendant's

forceful control.

15. Evidence and Witnesses § 335 (NCI4th) - first-degree murder - abused spouse - killing of prior spouse - admissible

State v. Murillo, 349 N.C. 573 (1998)

The trial court did not err in a capital prosecution for the first-degree murder of an abused spouse by admitting evidence of defendant's first wife's death at his hands in 1970. The evidence was properly admitted to show lack of accident and to support a finding that defendant intended to kill this victim. The court told the jury that it could consider evidence of the prior shooting when deciding issues of intent, plan, premeditation, and absence of accident, but expressly warned jurors not to consider the death as proof of defendant's propensity to commit the crime.

2. Evidence - prior offense - modus operandi - admissible

State v. Allred, 131 N.C. App. 11 (1998)

The trial court did not err in a prosecution for robbery and kidnapping by admitting testimony regarding defendant's alleged participation in an earlier robbery. Many aspects of the two robberies are strikingly similar and the evidence was properly admitted under N.C.G.S. § 8C-1, Rule 404(b) to establish defendant's modus operandi. Furthermore, defendant failed to show that the evidence was more prejudicial than probative.

3. Evidence - prior crime or act - prior similar conviction - admissible

State v. Hamilton, 132 N.C. App. 316 (1999)

The trial court did not err in a prosecution for breaking or entering, felonious larceny, and felonious possession of stolen goods by admitting evidence of a prior conviction for a similar rooftop breaking or entering. The crimes were similar in that they both involved cutting a hole in the roof of a department store in eastern North Carolina and removing large amounts of jewelry from display counters. The elapsed time of two years and nine months affects only the weight of the evidence, not its admissibility.

3. Evidence - prior crime or act - excluded - witness's testimony cumulative and minimal

State v. Reaves, 132 N.C. App. 615 (1999)

There was no prejudicial error in a prosecution resulting in a conviction for conspiracy to murder in the exclusion of evidence of criminal charges pending against a State's witness. In light of *State v. Hoffman*, 349 N.C. 167, the relative status of a prosecution witness is no longer significant; however, this witness's testimony was merely cumulative and of minimal importance.

1. Evidence - prior crime or act - similar modus operandi - remoteness

State v. Blackwell, 133 N.C. App. 31 (1999)

In a prosecution for first-degree statutory rape and first-degree statutory sexual offense against an eleven year- old female, evidence concerning defendant's sexual assaults on two young females ten and seven years earlier was admissible to establish that defendant was the present victim's assailant by showing a similar modus operandi where there was evidence that, on all three occasions, defendant licked his lips, called the victims expletive terms, and attempted to perform cunnilingus upon them. The prior bad acts were not too remote in time to render them inadmissible.

5. Evidence and Witnesses—noncapital 1st murder—prior assault on victim--- admissible to show intent and identity

State v Gary, 348 NC 510 (1998)

No abuse of discretion by admitting testimony concerning defendant's prior convictions for assault on a female and communicating threats. Defendant's prior assault on the victim tends to establish malice, intent, premeditation, and deliberation, and remoteness in time goes to the weight of the evidence rather than its admissibility.

Evidence - prior bad act - first-degree rape - sexual assault - not sufficiently similar - only shows propensity

State v. White, 135 N.C. App. 349 (1999)

The trial court erred in a first-degree rape and non-felonious breaking or entering case by allowing evidence under Rule 404(b) of an alleged prior sexual assault because the facts of the two incidents are not sufficiently similar and the evidence only shows the propensity of defendant to commit sexual acts against young female children.

6. Evidence - murder of a child - prior abuse of children - admissible

State v. Anderson, 350 N.C. 152 (1999)

The trial court did not err in a capital first-degree murder prosecution for the death of a child by admitting evidence that defendant had previously punished her children through use of a belt and biting. The evidence tended to establish the identity of the person who committed the crime, a plan, and the absence of accident, which are permissible purposes under N.C.G.S. § 8C-1, Rule 404(b) and which are relevant in determining whether defendant committed felonious child abuse and first-degree murder by herself or acting together with someone else. Moreover, evidence which is probative in the State's case will have a prejudicial effect on the defendant; the question is one of degree and, here, the probative value was not substantially outweighed by any danger of unfair prejudice.

9. Evidence - murder of wife - quarrels and ill-treatment - relevancy

State v. Nobles, 131 N.C. 483 (1999)

When a husband is charged with the murder of his wife, the State is permitted to present evidence of frequent quarrels and ill-treatment as bearing on intent, malice, motive, premeditation and deliberation.

4. Evidence - other crimes - similar modus operandi - admissibility to show identity

State v. Moses, 350 N.C. 741 (1999)

Evidence of defendant's murder of Griffin was properly admitted under Rule 404(b) to show defendant's identity as the perpetrator of the Dunkley murder, and vice versa, where the modus operandi of the two murders was similar enough to make it likely that the same person committed the two murders in that the two victims were associates of defendant in the drug trade and were shot multiple times with the same gun; witnesses testified that the gun belonged to defendant; the victims were killed in the same manner and in the same city within a period of two months; both victims argued with and paged defendant prior to their deaths; Griffin was seen with defendant prior to his death and Dunkley was to meet with defendant when last seen alive; and both men were murdered on their premises. Furthermore, the trial court did not abuse its discretion in refusing to exclude this evidence under Rule 403 as being more prejudicial than probative. N.C.G.S. §

8C-1, Rules 403, 404(b).

5. Evidence - subsequent crime or act - motive, intent, plan and modus operandi

State v. Cheek, 351 N.C. 48 (1999)

In a prosecution of defendant for the first-degree murder and armed robbery of a taxicab driver, evidence concerning defendant's robbery five days later of a Shoney's restaurant and a second cab driver who took defendant and his accomplice to the restaurant was relevant and admissible to show defendant's motive, intent, plan and modus operandi in the robbery of the cab driver in this case where the victims in both cases were taxicab drivers who initially picked up defendant and his accomplice as customers; both drivers were forced out of their cabs at gunpoint and their cabs were stolen; and the gun used by defendant and his accomplice in the robbery and murder of the first driver was the same gun used to rob the restaurant and the second driver.

4. Evidence - prior crime or act - other robberies - corroboration - intent, motive, and plan

State v. Hall, 134 N.C. App. 417 (1999)

The trial court did not err in admitting evidence of other robberies involving defendant because it was relevant and admissible under Rule 404 (b) either to corroborate the accounts of other witnesses or to show defendant's intent, motive, and plan to commit armed robbery at the time of the victim's murder.

1. Evidence - other crimes - common scheme - homicide

State v. Underwood, 134 N.C. App. 533 (1999)

In a prosecution for the kidnapping and first-degree murder of a rival for a girlfriend, there was no abuse of discretion in the admission of evidence of the murder of the girlfriend's mother where the State used the evidence to show that defendant had a common scheme to hurt the girlfriend, there was substantial evidence from which a jury could conclude that defendant killed the mother, and the evidence clearly shows several significant similarities.

4. Evidence - drug dealing activities - not bad character - motive

State v. Lundy, 135 N.C. App. 13 (1999)

The trial court did not err in a second-degree murder case by admitting evidence regarding defendant Evans' drug dealing activities because it was relevant to show his motive for murdering the victim instead of merely to show his bad character.

2. Evidence - other offenses - uncharged instances of sexual abuse - common plan or scheme

State v. Owens, 135 N.C. App. 456 (1999)

The trial court did not err in admitting the testimony of a fourth sister in a case involving defendant's numerous sex offenses against his girlfriend's three minor daughters because the evidence of uncharged instances of sexual abuse by defendant involving the fourth sister when she was a minor was relevant under Rule 404(b) to show a common plan or scheme.