

EXPERT

Trial Court Abused Discretion by Allowing State's Expert to Identify Pills as Controlled Substances Solely by Visual Examination Without Chemical Analysis of Any of the Pills—Ruling of Court of Appeals Is Affirmed

State v. Ward, ___ N.C. ___, ___ S.E.2d ___ (17 June 2010), affirming, ___ N.C. App. ___, 681 S.E. 2d 354 (18 August 2009).

The defendant was convicted of several controlled substance offenses involving different substances. The state's drug expert testified that he conducted chemical analyses of some of the substances—for example, cocaine and pills determined to be amphetamines. However, other pills allegedly containing other substances were identified solely by a visual examination of their appearance and pharmaceutical markings and a comparison of the information derived from that process to information contained in Micromedex literature used by doctors in hospitals and pharmacies to identify prescription medicines. The court ruled that the trial court abused its discretion in allowing the state's expert to identify these pills as controlled substances solely by visual examination without a chemical analysis of any of the pills. The expert's visual identification of the purported controlled substances was not sufficiently reliable under Rule 702.

The court made the following statements about its ruling. Unless the state establishes that another method of identification is sufficient to establish the identity of a controlled substance beyond a reasonable doubt, some form of scientifically valid chemical analysis is required. The ruling in this case is limited to Rule 702 and does not affect visual identification techniques used by law enforcement for other purposes, such as conducting criminal investigations. Moreover, common sense limits the scope of chemical analysis that must be performed. In this case, the state submitted sixteen batches of items consisting of over four hundred tablets to the SBI laboratory. A chemical analysis of each individual tablet is not necessary. The SBI maintains standard operating procedures for chemically analyzing batches of evidence, and the propriety of those procedures were not at issue. A chemical analysis is required, but its scope may be dictated by whatever sample is sufficient to make a reliable determination of the chemical composition of the batch of evidence under consideration.

(2) Expert Was Properly Permitted to Testify That Victim and Other Children Were Subjected to Ritualistic Child Abuse, Sadistic Child Abuse, and Torture

State v. Paddock, ___ N.C. App. ___, ___ S.E.2d ___ (1 June 2010).

The defendant was convicted of first-degree murder (based on torture) and felonious child abuse inflicting serious bodily injury involving the death of one of her children. (1) The defendant's other children were allowed to testify how the defendant physically abused them in an effort to control their behavior in a similar manner to the defendant's abuse of her son, the murder victim. The court ruled, relying on *State v. Anderson*, 350 N.C. 152 (1999), that the trial court did not err under Rule 404(b) and Rule 403 in admitting this testimony to show the defendant's intent, plan, scheme, system or design to inflict cruel suffering, as well as malice and lack of accident. (2) The court ruled that the trial court did not err in permitting the state's witness, an expert in developmental and forensic pediatrics, to testify that the victim and other children were subjected to ritualistic child abuse, sadistic child abuse, and torture. The court rejected the defendant's argument that the testimony improperly opined on the testifying children's credibility,

and the expert's use of the word "torture" was potentially misleading because it differed from the legal definition. The expert testified that she used the term "torture" based on her medical expertise, not its legal meaning.

(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.]

Defendant’s Cross-Examination of State’s Medical Expert Opened Door to Permit Expert’s Answer Even Though It Would Otherwise Have Been Inadmissible on Direct Examination

State v. Crocker, ___ N.C. App. ___, 676 S.E.2d 658 (2 June 2009).

The defendant was convicted of three counts of first-degree sexual offense and other offenses. On cross-examination of a state’s medical expert, a pediatrician, the defendant asked whether the pediatrician had ever asked the victim if she was telling the truth. The pediatrician responded, “I did not specifically ask her. I felt like what she was telling me was the truth.” The court ruled the defendant’s cross examination opened the door to permit the expert’s answer even though it would otherwise have been inadmissible on direct examination.

Evidence -- Expert Opinion Testimony -- Failure to Make Special Request for Witness to be Qualified as Expert

State v. Applewhite, (07-1399) (6 May 2008)

The trial court did not err in a murder and discharging a firearm into occupied property case by admitting expert opinion testimony even though the witness was never qualified as an expert because: (1) a party's objection to a witness's qualifications as an expert is waived if it is not made in apt time upon this special ground, and a mere general objection to the content of the witness's testimony will not ordinarily suffice to preserve the matter for subsequent review; (2) although the trial court made no finding of the witness's qualifications as an expert, in the absence of a special request by the defense, such a finding is deemed implicit in the trial court's admission of the challenged testimony, and (3) this issue was not preserved for review since defendant failed to make a special request to have the agent qualified as an expert.

(1) Trial Judge Erred in Allowing State's Witness to Testify Because State Had Failed to Notify Defendant Under G.S. 15A-903(a)(2) That Expert Testimony Would Be Offered Concerning Identity of Substance Found in Defendant's Shoe

State v. Moncree, 188 N.C. App. 221, 655 S.E.2d 464 (15 January 2008).

The defendant was convicted of two misdemeanor counts of possession of marijuana and one count of possession of a controlled substance (marijuana) on the premises of a local confinement facility. After a vehicle stop in which an officer discovered a marijuana joint and a chunk of marijuana in the front passenger seat, the defendant was arrested and transported to the sheriff's department where the jail was also located. He was required to take off his shoes and socks, and marijuana was found in his left shoe. The marijuana found in the defendant's shoe was not sent to the SBI for testing. Instead, an SBI agent with education and experience in forensic analysis was allowed to offer his opinion that the substance was marijuana. (1) The court determined that the SBI agent was an expert witness based on his education, training, and experience; he was not simply a lay person offering expert testimony. The court ruled that the trial judge erred in allowing the expert to testify because the state had failed to notify the defendant under G.S. 15A-903(a)(2) that expert testimony would be offered concerning the identity of substance found in the defendant's shoe.

No Crawford v. Washington, 541 U.S. 36 (2004), Violation When SBI DNA Expert Testified in Place of Another SBI DNA Expert Who Had Analyzed Sample in Rape Kit

State v. Little, 188 N.C. App. 152, 654 S.E.2d 760 (15 January 2008).

The court ruled, distinguishing *State v. Cao, 175 N.C. App. 434 (2006)*, that there was no *Crawford v. Washington, 541 U.S. 36 (2004)*, violation when an SBI DNA expert testified in place of another SBI DNA expert who had analyzed the sample in a rape kit. The testifying expert confirmed that she could review the

other expert's work, check the technical aspects of it, and verify his findings without conducting a new analysis of the sample.

(1) Trial Judge Did Not Abuse Discretion in Not Allowing Defense Eyewitness

Identification Expert to Testify

State v. McLean, 183 N.C. App. 429, 645 S.E.2d 162 (5 June 2007).

The defendant was convicted of first-degree murder, three counts of armed robbery, and other offenses. (1) The court ruled, relying on *State v. 147 N.C. App. 637, 556 S.E.2d 666 (2001)*, and *State v. Lee, 154 N.C. App. 410, 572 S.E.2d 170 (2002)*, that the trial judge did not abuse his discretion in not allowing the defense eyewitness identification expert to testify. The expert did not interview the eyewitnesses, did not observe their trial testimony, and did not visit the crime scene.

Trial Judge Did Not Err in Allowing Opinion Testimony by State's Accident Reconstruction Expert

State v. Brown, 182 N.C. App. 115, 646 S.E.2d 775 (6 March 2007).

The defendant was convicted of second-degree murder and other offenses (willful speed competition, reckless driving, and driving left of center) as a result of a collision of his vehicle (vehicle A) with another vehicle (vehicle B) as they sped together on a highway, and vehicle B crashed into the decedent's vehicle (vehicle C), which was traveling in the opposite direction from vehicles A and B. The court ruled that the trial judge did not err in allowing the state's accident reconstruction expert to offer his opinion that the driver of vehicle B was trying to get out of the way of oncoming traffic, based on statements made by the driver of vehicle B and the physical evidence. The court stated that the expert employed methods found to be reliable, such as a review of both the physical

evidence and witness statements.

Trial Judge Did Not Err in Imposing Sanction of Prohibiting Testimony by Defense Expert on Reliability of Confidential Informants When Defendant Failed to Give Proper Notice to State Under G.S. 15A-905(c)(2)

State v. Leyva, 181 N.C. App. 491, 640 S.E.2d 394 (6 February 2007).

The defendant was convicted of cocaine trafficking offenses. The court ruled that the trial judge did not err in imposing the sanction of prohibiting testimony by a defense expert on the reliability of confidential informants when the defendant failed to give proper notice to the state under G.S. 15A-905(c)(2) (give notice to state of expert witnesses defendant reasonably expects to call as witness at trial). The defendant did not give notice to the state until it had presented the testimony of several officers about confidential informants. The trial judge ruled that the defendant could have anticipated the issue concerning confidential informants because the defendant was aware of the state's use of a confidential informant, and the defendant's proposed expert testimony was not required by the interests of justice.

Trial Judge in Child Abuse Homicide Trial Did Not Err in Allowing State's Expert To Testify on Rebuttal Concerning Normal Caretaking Reaction and Profile of Caretaking Behavior After Injury to Child

State v. Faulkner, 180 N.C. App. 499, 638 S.E.2d 18 (19 December 2006).

The defendant was convicted of second-degree murder involving the child abuse homicide of a child who was twenty-two months old, and whose mother lived with the defendant. The defendant was alone with the child while the mother went shopping for about twenty to thirty minutes. When she arrived home and picked up the child, his eyes rolled into the back of his head, and his arms and legs were stiff. She called 911. An emergency responder testified that the defendant, when

asked what had happened, appeared nervous, with color drained from his face, and did not respond. Cause of death was brain swelling caused by blunt force trauma to the head. A defense expert testified and suggested that there was an over diagnosis and perhaps rush to judgment of child abuse because of a belief that child abuse is underreported and everyone is “discombabobulated” by the death of a child. The state on rebuttal called a medical expert, a developmental and forensic pediatrician, who outlined three parameters to determine whether a child’s injuries were accidentally or intentionally inflicted: (1) the consistency of history given by the caretaker; (2) the extent to which the caretaker’s explanation is consistent with the extent of injuries; and (3) the caretaker’s behavior. When a child has been accidentally injured, a caretaker who witnesses the accident seeks help right away. When a child is injured intentionally, it is very common that the assailant will leave and not seek care. Often the caretaker is not concerned about what has happened with the child, but with how it impacts on the caretaker. The court ruled, assuming without deciding such testimony would not be admissible on the state’s direct case, that the defendant’s evidence opened the door to its admissibility on rebuttal. Thus, the trial judge did not abuse his discretion in admitting the testimony.

(1) Medical Expert’s Opinion Testimony That Child Had Been Sexually Abused Was Admissible When It Was Based on Physical Evidence

(2) Medical Expert’s Opinion Testimony That, Based on Child’s Statements to Her, She Would Believe Child and Diagnose Sexual Abuse Even in Absence of Physical Evidence Was Inadmissible, But Error Was Not Plain Error Requiring New Trial—Ruling of Court of Appeals Is Reversed

State v. Hammett, 361 N.C. 92, 637 S.E.2d 518 (15 December 2006), reversing, 175 N.C. App. 597, 625 S.E.2d 168 (7 February 2006).

The defendant was convicted of multiple charges concerning sexual abuse of his daughter. (1) The court ruled that the medical expert’s opinion testimony that the child had been sexually abused was admissible when it was based on physical evidence and the child’s statements. The physical findings by the expert included a notch in the six o’clock position of the victim’s hymenal ring. (2) The court

ruled that the medical expert's opinion testimony that based on the child statements to her, she would believe the child and diagnose sexual abuse even in absence of physical evidence was inadmissible. This testimony improperly vouched for the child's credibility. The court, however, also ruled that this error was not plain error requiring a new trial.

Criminal Law-Diminished capacity defense-Information required to be provided

State v. Gillespie, 180 NCA 514 (2006) On appeal

The trial erred in entering a sanction totally excluding evidence of defendant's mental health experts in a first-degree murder prosecution, and this error was prejudicial. A defendant must provide notice of intent to offer a defense of insanity or diminished capacity, and must provide specific information about the nature and extent of the insanity defense, but is not required to provide specific information about diminished capacity.

Criminal Law-Discovery-Mental health defense--Cooperation of defense experts with State experts

State v. Gillespie, 180 NCA 514 (2006) On appeal

The trial court acted under a misapprehension of the law regarding the role of and the requirements of defense expert witnesses when it found that defense experts in a murder case intentionally and inexcusably refused to cooperate with Dorothea Dix staff and excluded his mental health defense. The only responsibility imposed by N.C.G.S. § 15A-905(c)(2) is to prepare a report, which must be supplied to the State; nothing requires that defendant's experts supply other information or records directly to the State, much to less a state agency.

Evidence--Breath alcohol level--Retrograde extrapolation model

State v. Teate, 180 NCA 601 (2006)

The trial court did not abuse its discretion in a driving while impaired case by admitting the testimony of a research scientist and training specialist in forensic testing for the Alcohol Branch of the Department of Health and Human Services that using a retrograde extrapolation model indicated defendant's breath alcohol level was likely .10 at the time she was stopped by police, because: (1) the Court of Appeals has previously allowed the admission of retrograde extrapolation evidence in DWI cases even where the testimony concerned an average alcohol elimination rate rather than defendant's actual elimination rate; (2) the average alcohol elimination rate offered by the witness could aid a finder of fact in determining whether it was more or less likely defendant's breath alcohol level exceeded the statutory limit for DWI purposes; and (3) the evidence was sufficiently reliable and relevant, the expert was qualified, and defendant registered a .08 blood alcohol level when actually tested.

Evidence-Expert testimony--Normal caretaker reaction--Rebuttal evidence--Opening the door to evidence

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 case by overruling defendant's objection to the testimony of a State expert as to normal caretaker reaction and a profile of caretaker behavior after an injury to a child, because: (1) earlier testimony by defense experts had outlined some criteria used in determining child abuse and suggested there was an overdiagnosis and rush to judgment of child abuse; (2) in light of the defense testimony, the State expert's statements as to the parameters used to determine child abuse, and specifically the profile of normal caretaker behavior, had significant probative value as proper rebuttal evidence; and (3) even assuming *arguendo* that the expert's testimony would not have been permissible if offered during the State's direct case, the defense opened the door to the criteria used to determine if child abuse had occurred including what is considered normal caretaker behavior in such situations. N.C.G.S. § 8C-1, Rule 702

Evidence-Psychologist's testimony-Child's behavior-Consistent with abuse victims

State v. Wallace, 179 NCA 710 (2006)

There was no plain error in the admission of a psychologist's testimony that a child sexual abuse victim's behavior, sense of trust, and emotional problems were consistent with sexually abused children. The witness did not state that the offenses occurred, and did not proffer an opinion on credibility. Defendant did not show that a different outcome would have occurred without this testimony in light of the other evidence presented.

Evidence-Pathologist's opinion-Time required for death

State v. Taylor, 178 NCA 395 (2006)

An expert forensic pathologist's testimony about the time a victim's death from his wounds would have required had he not drowned was within the witness's area of expertise and was relevant and appropriate to show the number and severity of the wounds. The trial court did not abuse its discretion by admitting it.

Evidence-Expert testimony--Sexual abuse--Credibility--Posttraumatic stress disorder-- Plain error analysis

State v. Brigman, 178 NCA 78 (2006)

Although the trial court erred in a multiple first-degree sex offense and multiple taking indecent liberties with a minor case by admitting certain statements made by two expert witnesses including that the children suffered sexual abuse by defendant, concerning Child 3's credibility, and regarding the children's symptoms of posttraumatic stress disorder, it did not amount to plain error because it cannot be concluded that there was a reasonable possibility that a different result would have been reached by the jury when the evidence against defendant was overwhelming.

Constitutional Law-Right of confrontation DNA report testimony from agent who did not perform tests

State v. Hocutt, 177 NCA 341 (2006)

The trial court did not err by permitting an SBI agent to testify about the results of DNA tests performed by another agent who did not testify. It has been held that such testimony is non-testimonial under *Crawford v. Washington, 541 U.S. 36*, and thus does not violate the Confrontation Clause.

Witnesses--expert-Officer--Lividity of body and approximate time of death ***

State v. Steelmon, 177 NCA 127 (2006)

The trial court did not abuse its discretion in a first-degree murder case by admitting expert testimony from an officer as to the lividity of the body and approximate time of death even though he was not a medical expert, because: (1) the evidence shows that the officer has a degree in criminal justice and training in the areas of crime scene investigation and homicide, along with his many years of experience as an officer; (2) the trial court determined that the officer's expertise in death scene investigations puts him in a better position to give an opinion on the subjects of lividity and approximate time of death than the trier of fact; and (3) the standard for admission of expert testimony does not require an expert to be licensed or a specialist in the field in which he testifies.

Constitutional Law--right of confrontation--gunshot residue _expert testimony_ tests and report by nontestifying expert_harmless error

State v. Shelly, 176 NCA 575 (2006)

The admission of an SBI forensic chemist's expert testimony as to the opinions he formed from his review of gunshot residue tests performed on the friend of two murder victims by a nontestifying SBI forensic chemist, including his review of the report prepared by the other chemist, did not violate defendant's Sixth

Amendment right of confrontation pursuant to *Crawford v. Washington*, 541 U.S. 36 (2004). Moreover, any error under Crawford in the admission of the nontestifying chemist's report and testimony by the SBI chemist stating the opinion of the nontestifying chemist as contained in that report was harmless beyond a reasonable doubt where the gunshot residue testing was performed only because defendant asserted that the victims' friend may have taken a gun belonging to and used by one victim from the scene of the shootings, the opinions of both the testifying and nontestifying chemists were equivocal as to whether the victim's friend could have handled a gun at or about the time of the shootings, and the totality of the evidence in the case overwhelmingly established defendant's guilt of the murders.

Evidence--denial of motion to prevent expert witness from testifying--probable blood alcohol content prior to breathalyzer

State v. Fuller, 176 NCA 104 (2006)

The trial court did not abuse its discretion in a driving while impaired case by denying defendant's motion to prevent the State from calling its expert witness to testify regarding defendant's probable blood alcohol content at times prior to a breathalyzer test, because: (1) defendant was on notice that such evidence might be offered as extrapolation evidence has been accepted in this state since 1985; and (2) in light of defendant's clear understanding of the importance of this evidence to the State's case against her and its longstanding acceptance in the courts of this state, it cannot be concluded that the trial court's decision to deny defendant's motion was manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision.

Evidence--expert opinion--blood alcohol concentration at relevant time

State v. Fuller, 176 NCA 104 (2006)

The trial court did not err in a driving while impaired case by allowing over defendant's objection the State's expert to offer his opinion as to defendant's blood alcohol concentration at the time she was first contacted by the officers, because:

(1) for purposes of N.C.G.S. § 20- 4.01(33a), the term relevant time after the driving refers to any time after the driving in which the driver still has in his body alcohol consumed before or during the driving; and (2) there was no evidence that defendant consumed any alcoholic beverages between the time of the accident and the arrival of the officers, and consequently, the officers' arrival time meets the statutory definition of a relevant time after the driving.

Evidence--publication of expert calculation document-_relevant time

State v. Fuller, 176 NCA 104 (2006)

The trial court did not err in a driving while impaired case by allowing the State to publish its expert's calculation document to the jury regarding defendant's blood alcohol concentration at the time she was first contacted by the officers, over defendant's objection, based on the same reasoning the Court of Appeals has already used in this case regarding the definition of relevant time.

Constitutional Law- Right to Confrontation -Expert testimony based on report

State v. Durham, 176 NCA 239 (2006)

The introduction of an autopsy report by a non-testifying pathologist did not violate defendant's confrontation rights under Crawford v. Washington, 541 U.S. 36, and was not plain error. The pathologist who testified was accepted as an expert, had observed the autopsy, and relied on the report of the pathologist who performed the autopsy (who has since taken employment outside North Carolina). The report was tendered as evidence of the basis of the expert witness's opinion, and defendant was given the opportunity to cross-examine the expert.

Evidence--expert testimony--victim sexually abused--plain error

State v. Hammett, 175 NCA 597 (2006)

The trial court committed plain error in a multiple statutory sexual offense and multiple taking indecent liberties case by admitting expert testimony that based on the victim's statements alone the expert would have diagnosed the victim as having been sexually abused, and defendant is entitled to a new trial, because: (1) the Court of Appeals has repeatedly held that the admission of expert testimony that a child victim has suffered sexual abuse absent physical findings is error; (2) the injuries could have been caused by someone other than defendant; (3) in this evidentiary context where the physical findings revealed a tenuous connection to defendant, and defendant and the victim gave conflicting accounts of factual matters central to the criminal charges, the credibility of the witnesses was particularly important; (4) although a victim's testimony standing alone is generally sufficient to survive a motion for directed verdict, in the instant case where plain error analysis is concerned, the concern is whether there was overwhelming evidence of defendant's guilt independent of the improper testimony instead of whether there was substantial evidence in the record to allow the offenses to be submitted to the jury in the absence of the improper opinion testimony; (5) there is a likelihood that the outcome of the verdicts would have been different in the absence of the expert's impermissible expert opinion since the case rested largely on the credibility of witnesses; and (6) the expert's inadmissible testimony, considered in context and in full, could also have been associated by the jury with the conduct underlying the indecent liberties charges.

Constitutional Law; Evidence_laboratory report_admission without lab tech--right to confront witnesses

State v. Cao, 175 NCA 434 (2006)

Laboratory reports or notes of a laboratory technician prepared for use in a criminal prosecution are nontestimonial business records (and thus admissible without the technician) only when the testing is mechanical, as with the Breathalyzer test, and the information contained in the documents is objective and does not involve opinions or conclusions drawn by the analyst. The record in this case did not contain enough information about the procedures involved in identifying cocaine to allow a determination of whether that portion of the test meets the criteria. However, there was no prejudice because defendant did not challenge the identity of the substance at trial, but portrayed himself instead as a homeless person making a delivery.

Evidence--failure to allow expert testimony--psychologist

State v. Edwards, 174 NCA 490 (2005)

The trial court did not err in a prosecution for first-degree murder, first-degree rape, and other crimes by excluding testimony of defendant's psychologist concerning certain conversations he had with defendant, because the State did not choose to explore the basis for the defense expert's opinion at trial, and thus, the trial court was not obligated to allow the expert to testify regarding the statements made by defendant.

Constitutional Law--right to confrontation--nontestimonial evidence

State v. Bunn, 173 NCA 729 (2005)

The trial court did not commit plain error in a possession with intent to sell and deliver marijuana, sale and delivery of marijuana, and possession of cocaine with intent to sell case by allegedly violating defendant's right to confrontation arising from the use of expert testimony based on chemical analyses conducted by a nontestifying chemist, because: (1) defendant had an opportunity to cross-examine the expert; (2) the analyses on which the expert testimony was based were not hearsay since it was not offered for the truth of the matter asserted, but rather to demonstrate the basis of the expert's testimony; and (3) it is well-established that an expert may base an opinion on tests performed by others in the field.

Evidence--expert testimony--radio scanner used for illegal activity

State v. Alderson, 173 NCA 344 (2005)

The trial court did not abuse its discretion in a drug case by admitting expert testimony that a radio scanner would be used for illegal activity, because: (1) an

SBI agent's testimony, concerning a police frequency book and radio scanner allowing those acting illegally to have a jumpstart if they know which police frequencies to monitor, was within her expertise and was likely to assist the jury in inferring why such evidence was important and why it was seized during a search warrant of defendant's residence for a methamphetamine laboratory; and (2) even though defendant contends allowing the agent's testimony was prejudicial error since she was qualified as an expert and her testimony would be given more weight, defendant failed to acknowledge that another investigator testified without objection regarding defendant's police frequency and call number book as well as the radio scanner.

Constitutional Law_right of confrontation--reports forming basis of expert opinion_no violation

State v. Bethea, 173 NCA 43 (2005)

The Confrontation Clause does not act as a bar to testimonial statements admitted for purposes other than the truth of the matter asserted. The trial court here did not err when it allowed an SBI agent to use another agent's report as the basis of his expert opinion that shell casings were discharged from the weapon in question. It is clear in this case that the testimony was offered as the basis of an expert's opinion rather than for the truth of the matter asserted.

Evidence_-DNA expert testimony--population statistics

State v. Watts, 172 NCA 58 (2005)

The trial court did not commit plain error in a statutory rape case by denying defendant's objection to a witness's testimony concerning his opinion about population statistics when he had been tendered as an expert in forensic DNA analysis, because: (1) given that the Court of Appeals has found that a population-statistical analysis is the third step in DNA analysis, our case law evidences the admissibility of testimony on population statistics by forensic DNA analysis experts; and (2) defendant cites no authority in support of his argument.

Evidence--expert opinion--child sex abuse--credibility

State v. Delsanto, 172 NCA 42 (2005)

The trial court committed plain error in a first-degree sexual offense case by admitting the testimony of a doctor that she had diagnosed the minor victim as having been sexually abused by defendant, and defendant is entitled to a new trial, because: (1) the only evidence that defendant sexually abused the victim is the victim's own statements to the testifying witnesses; (2) there was no physical evidence, yet the doctor testified that this lack of physical evidence was absolutely consistent with the victim's account; (3) the doctor conclusively stated that defendant sexually assaulted the minor child when the doctor testified that she diagnosed the minor child as having been sexually abused by defendant; (4) the doctor's inadmissible opinion likely had an impact on the jury's finding of guilt; (5) admission of expert testimony on a victim's credibility prejudices defendant in the eyes of the jury when the minor child's credibility is the central issue in the case; (6) there was no other permissible expert testimony, there was no evidence that the victim exhibited behaviors that were consistent with having suffered from sexual assault, and the State did not present other overwhelming evidence of defendant's guilt; and (7) the only physical manifestation of injury suffered by the minor child in this case was pain, which is subjective and not independently verifiable.

Evidence--lab report--performing chemist unavailable--basis of expert opinion - right of confrontation

State v. Lyles, 172 NCA 323 (2005)

Lab reports performed by an unavailable chemist were properly admitted as the basis of the expert opinion of a Charlotte-Mecklenburg supervising chemist that substances taken from defendant were cocaine. Furthermore, there was no confrontation clause violation where the expert witness was available for cross-examination. "Crawford"

Evidence--expert opinion testimony--injuries not an accident

State v. Murphy, 172 NCA 734 (2005)

The trial court did not err in a first-degree murder case by denying defendant's motion to exclude testimony from medical experts that the minor child's head injuries could not have been the result of an accident, because: (1) a medical expert may testify that the wounds presented are inconsistent with accidental origin; and (2) both experts based their opinions upon their years of experience as pathologists during which they performed and consulted on numerous autopsies.

Sentencing--capital--prosecutor's argument--expert witness the \$15,000 man

State v. Duke, 360 NC 110 (2005)

The trial court did not abuse its discretion in a double first-degree murder case by failing to intervene ex mero motu during the prosecution's penalty proceeding closing argument that referred to defendant's expert witness as the \$15,000 man, because the statement was not grossly improper when it merely emphasized that the expert's fee in the case was \$15,000 and that the jury should take that fact into account when determining the credibility of the expert and the weight it should place on his testimony.

Evidence--expert testimony--analyses conducted by others--right to confrontation--analyses not hearsay

State v. Delaney, 171 NCA 141 (2005)

The trial court did not violate defendant's right to confrontation in a drug case by admitting expert testimony based on chemical analyses conducted by someone other than the testifying expert, because: (1) defendant had an opportunity to cross-examine the expert as provided under Crawford v. Washington, 541 U.S. 36 (2004); (2) an expert may base an opinion on tests performed by others in the field; and (3) the analyses on which the expert testimony was based were not

hearsay.

Evidence--lay testimony--field sobriety tests

State v. Streckfuss, 171 NCA 81 (2005)

The trial court did not err in a driving while impaired case by allowing a deputy to testify regarding the field sobriety tests over defendant's objection even though the State failed to establish both that the deputy was qualified to properly administer or interpret the tests and that the tests had been properly administered, because the testimony was relevant to the deputy's lay testimony that defendant was impaired.

Evidence--lay opinion--difference in shell casings fired from an automatic weapon versus a revolver

State v. Fisher, 171 NCA 201 (2005)

The trial court did not commit plain error in a prosecution for assault with a deadly weapon with intent to kill inflicting serious injury and multiple assaults with a deadly weapon with intent to kill by failing to instruct the jury to disregard a detective's testimony following a sustained objection about the difference in shell casings fired from an automatic weapon versus a revolver, because: (1) the detective's testimony regarding the location of shell casings when a bullet is fired from two different weapons was not based upon any specialized expertise or training, but merely upon his own personal experience and observations in firing different kinds of weapons; and (2) having failed to qualify the detective as an expert in shell casing ballistics, the State was not prevented from eliciting lay opinion testimony from him.

Evidence--expert testimony--location of blood spatter--intent

State v. Campbell, 359 NC 644 (2005)

The trial court did not err in a capital first-degree murder case by overruling defendant's objections to portions of the testimony of the State's expert witness about the two locations of blood spatter in the victim's home used to show intent, because: (1) the expert had studied panic disorders, was accepted by the trial court as an expert in forensic psychiatry, and as such was competent to evaluate the evidence to give an opinion as to what defendant's mental state might have been at the time of the crime; and (2) defendant's objection was based on the two locations of assault not being in evidence whereas the expert relied on the SBI report which was admitted into evidence as part of another witness's testimony.

Evidence--expert opinion--specialized knowledge--defendant's state of mind

State v. Campbell, 359 NC 644 (2005)

The trial court did not err in a capital first-degree murder case by allowing the State's expert witness to give his opinion as to defendant's state of mind based on the fact that the victim was lying prone on the floor when at least one blow was dealt because: (1) the expert was trained to recognize links between behavior and a person's state of mind; and (2) the expert had specialized knowledge to assist the trier of fact to understand the evidence or to determine a fact in issue.
N.C.G.S. § 8C-1, Rule 702.

Evidence--basis for expert's report--initial evidence gathering by another

State v. Walker, 170 NCA 632 (2005)

Testimony from an expert SBI firearms examiner was properly admitted where it was based in part on initial evidence taken by another agent who did not testify. The evidence was corroborative and helped form the basis of the expert's opinion; the expert testified that he independently analyzed the entirety of the evidence, including the other agent's report; defendant was afforded a full opportunity to cross-examine the expert as to the basis of his expert opinion; and defendant did not request a limiting instruction.

Evidence--expert medical testimony--sexual abuse in absence of physical evidence--plain error

State v. Ewell, 168 NCA 98 (2005)

The trial court committed plain error in a first-degree sex offense, attempted statutory sex offense, statutory rape, and indecent liberties with a child case by admitting the opinion testimony of a doctor indicating it was probable that the minor child was a victim of sexual abuse in the absence of any physical evidence, because: (1) the improperly admitted opinion by a medical expert on the child's credibility prejudiced defendant in the eyes of the jury; and (2) the State presented no other evidence beyond what the child told other witnesses, and as such, the child's credibility was the strength of the State's case. ***Can ask if evidence consistent with sexual abuse ***

*******Evidence--expert--exclusion of basis of testimony *******

State v. Smith, 359 NC 199 (2005)

The basis of an expert's opinion is not automatically admissible. Here, the exclusion of the basis for a psychiatrist's opinion that a first-degree murder suspect was cocaine dependent with impaired thinking ability was excluded because it was based in part on self-serving statements defendant made to her and to his family about his drug use on the day of the murder. The trial court properly applied N.C.G.S. § 8C-1, Rule 403 to find that the probative value of the statements was outweighed by the danger of unfair prejudice.

Witnesses--expert--sexual assault nurse examiner

State v. Fuller, 166 NCA 548 (2004)

The trial court did not abuse its discretion in a prosecution for statutory rape and

other offenses by allowing a nurse to testify as an expert sexual assault nurse examiner where she had been employed by the hospital for nineteen years; had served as a nurse manager in the emergency department for two years; had a bachelor of science in nursing and had received special sexual assault nurse examiner training in 1999; that training involved forty hours in the classroom and fifty-six hours of clinical practice; the witness was specifically trained to examine the victim's demeanor and body language as well as to look for physical evidence and signs of trauma; and the witness had been a certified sexual assault nurse examiner for three years at the time of trial.

Evidence–sexual offenses–medical testimony–injuries consistent with assault

State v. Fuller, 166 NCA 548 (2004)

The trial court did not err in a prosecution for statutory rape and other offenses by permitting a doctor and a nurse who were qualified as experts to testify about whether their examinations and findings were consistent with a child who had suffered kissing on the breast and vaginal penetration.

Evidence–glass comparison–expert testimony–admissible

State v. McVay, 167 NCA 588 (2004)

The trial court did not abuse its discretion in a breaking and entering prosecution by admitting expert testimony comparing glass fragments from the scene with fragments found in the sole of defendant's boot. The trial court did not have precedent to determine the reliability of the testing procedure, but there was extensive voir dire testimony supporting reliability, the witness had an extensive background in trace evidence and experience in glass analysis, and defendant made no argument about the relevancy of the evidence.

Indigent Defendants–funds for expert witnesses–insufficient particularized showing

State v. Speight, 166 NCA 106 (2004)

The denial of funds for medical and accident reconstruction experts for a DWI and second-degree murder defendant was not error where defendant's unsupported assertions showed only a mere hope or suspicion of favorable evidence. Moreover, any alleged error in denying funds for the accident reconstruction expert was not prejudicial because defendant wanted the expert to undermine malice and the jury ultimately acquitted defendant of second-degree murder.

Witnesses—expert—blood testing and accident reconstruction

State v. Speight, 166 NCA 106 (2004)

There was no error in the admission of expert testimony from the State's accident reconstruction expert and the State's expert on blood testing analysis in a trial for DWI and second-degree murder. Both accident reconstruction and blood testing have been recognized as sufficiently reliable methods of scientific testing, and both witnesses were better qualified than the jury to form an opinion on their respective subjects.

Evidence--expert testimony--victim sexually abused by defendant--plain error

State v. Bush, 164 NCA 254 (2004)

The trial court committed plain error in a first-degree sexual assault case by admitting the testimony of a pediatric gynecology expert that the victim was sexually abused by defendant even though the expert found no physical evidence of sexual abuse, because: (1) in a sexual offense prosecution involving a child victim, the trial court should not admit expert opinion that sexual abuse has in fact occurred since, absent physical evidence supporting a diagnosis of sexual abuse, such testimony is an impermissible opinion regarding the victim's credibility; (2) the victim was the only person to attest to the alleged sexual abuse by defendant and her credibility was questionable based on the facts that she delayed the report of the abuse for some time, the abuse was first alleged while in an argument with

her mother, the mother was seeing defendant after a recent divorce with the victim's father, there was testimony from the mother that the victim wanted to break up the mother and defendant, and no other incidents had been alleged against defendant; and (3) the expert's testimony added tremendous credibility to the victim's alleged abuse by defendant, and the conclusive nature of the testimony as to the sexual abuse as well as naming defendant as the perpetrator was highly prejudicial.

Evidence - expert scientific testimony - Daubert approach rejected*****

Howerton v. Arai Helmet, Ltd., 358 N.C. 440 (2004)

The Court of Appeals erred in a products liability case by affirming the trial court's grant of summary judgment in favor of defendant on the issue of causation based on its conclusion that plaintiff's expert scientific testimony was excluded by the federal Daubert standard, because: (1) North Carolina law governing the admissibility of expert testimony under N.C.G.S. § 8C-1, Rule 702 is distinct from that adopted by the federal courts when application of the North Carolina approach is less mechanistic and rigorous than the exacting standards of reliability demanded by the federal approach;(2) our Supreme Court is unwilling to impose upon our trial courts an obligation to expend the human resources required to delve into complex scientific and technical issues at the level of understanding necessary to generate with any meaningfulness the conclusions required under Daubert; and (3) our Supreme Court is concerned that trial courts asserting sweeping pretrial gatekeeping authority under Daubert may unnecessarily encroach upon the constitutionally-mandated function of the jury to decide issues of fact and to assess the weight of the evidence.

Evidence—medical opinion of sexual abuse—physical evidence not sufficient

State v. Couser, 163 NCA 727 (2004)

The admission of a doctor's testimony that the victim in an attempted rape and indecent liberties prosecution had probably been abused was plain error. The physical evidence did not sufficiently support the doctor's opinion, and it had a

probable impact on the outcome because it amounted to an improper opinion on the victim's credibility, the central issue in the case. Moreover, the acquittal on rape did not render the error harmless because the doctor's opinion could be construed to include attempted rape.

Indigent Defendants - motion for state-funded expert assistance - substance induced mood disorder

State v. Brown, 357 N.C. 382 (2003)

The trial court did not abuse its discretion in a double first-degree murder case by denying the indigent defendant's ex parte motion for an additional expert on substance induced mood disorder, because: (1) defendant failed to meet his burden of showing particularized need when the trial court had already appointed a psychologist for defendant and nothing prevented that psychologist from consulting with other experts; (2) the original psychologist who diagnosed defendant's disorder testified concerning substance induced mood disorder during the sentencing phase of defendant's trial and that psychologist is an expert in drug abuse; (3) defendant failed to show how he was deprived of a fair trial without the additional expert assistance given the availability of two psychologists to assist him in the preparation of his case; and (4) defendant has not demonstrated a reasonable likelihood that the additional expert could have materially assisted him in the preparation of his case.

Evidence—officer's opinion—admissible

State v. Jones, 358 NC 330 (2004)

There was no error in a first-degree murder prosecution in the admission of a police officer's opinion about which victim was shot first. The court implicitly recognized the officer to be an expert in crime scene investigation, and his experience, the nature of his job, and his personal investigation of the crime scene qualified him to offer expert testimony to demonstrate how the crime scene was found.

Evidence—defendant’s mental status—basis of expert’s opinion

State v. Jones, 358 NC 330 (2004)

There was no error in a capital first-degree murder prosecution in allowing an expert in forensic psychiatry to testify about an on-call physician’s observations of defendant’s mental state on the night of the murders, or about his own observations of defendant’s mental state when he was admitted to Dorothea Dix Hospital. An expert may testify about the information he relied upon in forming his opinion so long as that information is of a type reasonably relied upon by experts in the field.

Evidence—psychiatrist’s opinion—defendant’s mental state at time of murder—interview one year later

State v. Jones, 358 NC 330 (2004)

An expert in forensic psychiatry was properly allowed to render an opinion about a first-degree murder defendant’s mental state at the time of the murders based upon his interviews, personal observations, and review of reports, although he did not meet defendant until more than a year after the murder.

Evidence—expert testimony--hypothetical questions

State v. McCall, 162 NCA 64 (2004)

The trial court did not err in an indecent liberties with a minor and attempted first-degree rape case by allowing a child psychologist to testify about hypothetical evidence, because: (1) the expert’s testimony could help the jury understand the behavior patterns of sexually abused children and assist in assessing the credibility of the victim; (2) the fact that the expert’s testimony took the form of hypothetical questions and was based on information related to her by a third

party does not affect the admissibility of her opinion, but instead goes to the weight of the evidence; (3) although the expert testified at least twice that her opinion was not based upon personal observation of the child, the source of her information about the child did not lessen her qualifications as a psychologist or her expertise in treating the victims of sexual abuse; and (4) the DSS report, the child's statement to police, and interviews with other medical or psychological evaluators provided sufficient information to form the basis for the witness's expert opinion. Rule 701 See Farb p.26

Evidence; Witnesses--expert opinion--Daubert analysis--scientific reliability--causation

Howerton v. Arai Helmet, Ltd. 158 NCA 316 (2003) See *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440 (2004)

The trial court did not abuse its discretion in a negligence and products liability case concerning the alleged defective design of a motorcycle helmet by excluding the causation testimony of four of plaintiff's experts under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), because: (1) North Carolina has adopted the Daubert analysis concerning scientific reliability; (2) where the methodology and techniques of the proffered experts are either challenged or novel, the case law does not support the proposition that trial courts are prohibited from testing reliability; and (3) the record is replete with competent evidence supporting the challenged findings of the trial court.

Evidence--expert testimony--dwelling fire not caused by grease

State v. Lassiter, 160 NCA 443 (2003)

The admission of testimony that a fire at defendant's mobile home could not have been caused by grease as defendant contended was admissible in a prosecution for first-degree murder and setting fire to a dwelling house. The witness was a qualified expert, and his testimony was not limited to enlightening the jury about everyday grease fires, but concerned the reasons this was not an everyday grease fire.

Constitutional Law--effective assistance of counsel--expert opinion on defendant's mental state

State v. McClary, 157 NCA 70 (2003)

The trial court did not commit plain error in a first-degree murder case by allowing the chief of forensic psychiatry at Dorothea Dix Hospital (chief) to give his opinion as to defendant's mental state at the time of the shooting and defendant's sixth amendment right to effective assistance of counsel was not violated, because: (1) defendant placed his mental condition at issue first by moving to continue the trial due to his psychiatric illness, and then by asserting the defense of diminished capacity and his inability to formulate the intent to kill; and (2) although the chief evaluated defendant by court order for the purpose of determining his capacity to proceed, his personal observations taken together with the other materials considered provided an adequate basis for his opinion that defendant was capable of forming the requisite intent to kill at the time of the shooting.

Criminal Law - continuance to obtain expert - denial - constitutional violation

State v. Barlowe, 157 N.C. App. 249 (2003)

The denial of a continuance violated a first-degree murder defendant's constitutional rights to confront her accusers, to effective assistance of counsel, and to due process of law where defendant sought more time in which to obtain a blood splatter expert. There was no sound reason in the record for the denial of the continuance given the penalty faced by defendant and the materiality of the issue on which defendant sought advice and testimony, and the State did not carry its burden of showing that the ruling was harmless beyond a reasonable doubt. U.S. Const. amends. V, VI, XIV; N.C. Const. art. I, §§ 19, 23.

Evidence--expert testimony--sexual abuse

In re Butts, 157 NCA 609 (2003)

The trial court did not commit plain error in a case adjudicating respondent juvenile a delinquent for commission of first-degree sexual offense by allowing a pediatrician to testify under N.C.G.S. § 8C-1, Rule 702 that her physical examination of the victim was consistent with the interview in which the victim told the pediatrician about the incident involving respondent even though the exam failed to show any physical injury because the pediatrician did not testify that the allegations in the juvenile petition were accurate, but only that her examination of the alleged victim was consistent with her interview of him.

Evidence—police officer’s opinion—drug dealers’ use of motels

State v. Diaz, 155 NCA 307 (2002)

The trial court in a cocaine prosecution correctly allowed an officer to testify about a special focus on hotels in Greensboro for drug interdiction because the officer’s job and his experience made him better qualified than the jury to form the opinion that drugs had come into the city from individuals who were using hotels and motels within city limits.

Evidence—expert testimony—reliance on tests performed by another

State v. Carmon, 156 NCA 235 (2003)

There was no error in a cocaine trafficking prosecution in the allowance of testimony from an SBI agent concerning tests performed by another agent. The first agent (Wagoner) was accepted as an expert, and experts may base their opinions on tests performed by others if those tests are the type reasonably relied upon by experts in the field.

Evidence--exclusion of expert testimony--eyewitness confidence, eyewitness memory, and showups

State v. Lee, 154 NCA 410 (2002)

The trial court did not err in a robbery with a dangerous weapon case by excluding expert testimony about eyewitness confidence, eyewitness memory, and showups, because: (1) the overwhelming evidence of defendant's guilt was sufficient to permit a jury to draw inferences without the aid of expert testimony; and (2) the probative value of the expert's testimony was outweighed by its likely danger to mislead the jury and confuse the issues.

Evidence—expert—significance of pillow on victim's face

State v. White, 154 NCA 598 (2002)

Testimony from a police lieutenant about the significance of a pillow found on a murder and robbery victim's face was properly admitted where the officer testified in the form of an opinion based on his expertise and the testimony was likely to assist the jury in making an inference from the circumstances of the crime.

Witnesses--expert--qualifications—extensive knowledge and training

State v. Moore, 152 NCA 156 (2002)

The trial court did not err in a trafficking in cocaine and knowingly maintaining a place to keep or sell a controlled substance case by qualifying a witness as an expert in the sale, manufacture, and possession of cocaine, and allowing him to testify about a hypothetical drug operation, because: (1) the length of the witness's employment as a narcotics officer, as well as his knowledge of cocaine manufacturing, the division and packaging of the drug, and his extensive knowledge of illegal drug operations, all provided him with the requisite expertise to testify to a hypothetical question based on the facts of the case; and (2) his answer to the hypothetical was helpful to the trier of fact and did not invade the province of the jury.

Evidence–sexual assault–emergency room physician’s testimony–credibility of victim

State v. O’Hanlan, 153 NCA 546 (2002)

An emergency room physician’s opinion testimony that the victim’s emotional state was consistent with someone who had been sexually assaulted and that a sexual assault had occurred did not improperly bolster the credibility of the victim so as to constitute plain error in a rape and sexual offense prosecution. The treating physician is permitted to give the background reasons for his diagnosis and he was never asked whether he believed the victim was sincere.

Evidence–deputy fire marshal’s opinion–not qualified as expert

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 allowing a deputy fire marshal who had investigated the fire but who had not been qualified as an expert to give his opinion as to the cause of the fire. Defendant did not object at trial to the qualifications of the witness as an expert and the witness was better qualified than the jury to form an opinion on the cause of the fire.

Evidence–psychologist–testimony that abuse occurred

State v. Dixon, 150 NCA 46 (2002)

The trial court erred in a prosecution for first-degree statutory sexual offense by permitting a clinical psychologist to testify to his opinion that the victim had been sexually abused. Although the witness’s testimony about the various psychological tests, interviews, and reports upon which he relied may have been a sufficient foundation to support an opinion that the victim did or did not exhibit symptoms or characteristics of victims of child sexual abuse, it was not a

sufficient foundation for the admission of his opinion that she had in fact been sexually abused. There is a reasonable possibility that a different result would have been reached without the testimony because there was no evidence of sexual abuse other than the victim's testimony and her credibility was critical.

Evidence--minor child's prior injuries--opinion testimony about battered child syndrome

State v. Stokes, 150 NCA 211 (2002)

The trial court did not err in a first-degree felony murder and felonious child abuse case by permitting the State to offer evidence of the minor child's prior injuries to his ear and head, as well as the opinion testimony of a doctor that the minor child suffered from battered child syndrome, because: (1) evidence of the prior injuries was relevant to the doctor's diagnosis of battered child syndrome; and (2) the basis of the doctor's expert opinion was his experience and education, as well as his review of the minor child's medical records and the autopsy report.

Evidence--expert testimony--Highway Patrol trooper--accident investigation

State v. Holland, 150 NCA 457 (2002)

The trial court did not abuse its discretion in an involuntary manslaughter prosecution by allowing a Highway Patrol trooper to testify as an expert in accident reconstruction where the witness had been a trooper for 16 years and had both formal training and experience in accident investigation and reconstruction. N.C.G.S. § 8C-1, Rule 702.

Evidence--expert testimony--accident reconstruction--sufficiently reliable

State v. Holland, 150 NCA 457 (2002)

A Highway Patrol trooper's testimony in reconstructing an accident in an

involuntary manslaughter prosecution established a sufficient level of reliability to support the trial court's discretionary admission of his expert testimony.

Evidence--expert opinion testimony--credibility of sexual abuse victim

State v. O'Connor, 150 NCA 710 (2002)

The trial court committed plain error in a first-degree statutory sexual offense case by distributing an exhibit to the jury which had an expert's opinion that a sexual abuse victim's disclosure to her that defendant "sodomized and performed oral sex on him was credible," because: (1) the admission constitutes impermissible expert testimony on the credibility of the minor victim's testimony; and (2) there was no physical evidence of abuse and the State's case was almost entirely dependent on the minor victim's credibility with the jury.

Evidence--medical testimony--basis

State v. Brothers, 151 NCA 71 (2002)

The trial court did not err by admitting medical testimony to establish that a six-year-old victim had been sexually abused where defendant alleged that the testimony was based solely on the victim's history, but the doctor explicitly stated that her conclusion was based in part on the physical evidence of sexual abuse.

*****See Farb P.24*****

Evidence - handwriting - expert testimony *****

Taylor v. Abernethy, 149 N.C. App. 263 (2002)

The trial court erred in an action on a contract to make a will by refusing to allow a handwriting expert to give his opinion on the validity of the decedent's purported signature on the contract where the court did not consider the

methodology of handwriting analysis to be sufficiently scientific. North Carolina requires only that the expert be better qualified than the jury as to the subject at hand with the testimony being helpful to the jury, and there is no requirement that the party offering the testimony produce evidence that the it is based in science or has been proven through scientific study. The pertinent question is whether the testimony is sufficiently reliable; here, the testimony met the four indicia of reliability set forth in *State v. Goode*, 341 N.C. 513. The exclusion was prejudicial because the testimony went to the ultimate fact in issue.

Evidence - sexual offense against child - expert testimony

State v. Stancil, 355 N.C. 266 (2002)

In a sexual offense prosecution involving a child victim, the trial court should not admit expert opinion that sexual abuse has in fact occurred because, absent physical evidence supporting a diagnosis of sexual abuse, such testimony is an impermissible opinion regarding the victim's credibility. However, an expert witness may testify, upon a proper foundation, as to the profiles of sexually abused children and whether a particular complainant has symptoms or characteristics consistent therewith.

Constitutional Law - right to confrontation - expert testimony about murder weapon - failure to allow opportunity to examine expert's testing procedure and data

State v. Canady, 355 N.C. 242 (2002)

The trial court erred in a double first-degree murder case by allowing an expert to testify about his testing of what appeared to be the murder weapon without allowing defendant an opportunity to examine the expert's testing procedure and data, because: (1) a defendant has a constitutional right to confront his accusers and witnesses against him, including the right to prepare and present a defense; and (2) defendant was not provided with the right to present a full defense.

Sentencing - capital - prosecutor's argument - expert's untruthful testimony in exchange

for pay

State v. Rogers, 355 N.C. 420 (2002)

The trial court did not err by failing to intervene during the prosecutor's closing argument in the capital sentencing phase stating that defendant's expert should not be believed based on the fact that he would give untruthful or inaccurate testimony in exchange for pay. While an argument imputing perjury to a witness on the basis of evidence no more substantial than the mere fact the witness was compensated is improper, it was not so grossly improper as to require the trial court to intervene ex mero motu.

Sentencing - capital - psychiatric expert -prosecutor's cross examination and argument – cumulative effect

State v. Rogers, 355 N.C. 420 (2002)

Defendant is entitled to a new capital sentencing proceeding because of the cumulative effect of improprieties in the prosecutor's cross-examination of defendant's psychiatric expert and the prosecutor's closing argument pertaining to the expert where the prosecutor went beyond ascribing the basest of motives to defendant's expert that the expert would perjure himself for pay, but he also indulged in ad hominem attacks, disparaged the witness's area of expertise, and distorted the expert's testimony.

Sentencing - capital - prosecutor's argument - remuneration of defendant's expert witnesses

State v. Nicholson, 355 N.C. 1 (2002)

The trial court did not err in a double capital first-degree murder sentencing proceeding by allowing the State's closing arguments concerning remuneration of defendant's expert witnesses including the statement that the experts would not get paid unless they said what defendant wanted to hear, because: (1) the

argument simply illustrated discrepancies between the diagnoses made by two of defendant's expert witnesses; and (2) the experts' conflicting testimony prompted the State to question their credibility and impartiality.

Evidence--expert opinion testimony--child abuse--delayed and incomplete disclosures--continued association with abuser

State v. Carpenter, 147 NC App 386 (2001)

The trial court did not abuse its discretion in an indecent liberties and first-degree sexual offense case by admitting expert opinion testimony stating that delayed and incomplete disclosures are not unusual in cases of child abuse and that children sometimes continue to associate with the alleged abuser, because: (1) the expert was adequately qualified in the area of child abuse evaluations and interviews based on her extensive experience, training, and education; (2) the expert's testimony was instructive and helpful to the jury in understanding the evidence; and (3) a proper foundation was established for the expert's opinion testimony.

Witnesses--expert--qualifications

State v. Isenberg, 147 NCA 29 (2001)

The trial court did not err in a first-degree statutory sexual offense and taking indecent liberties with a minor case by finding a licensed professional counselor witness was an expert in the area of counseling behavior of sexually abused children under N.C.G.S. § 8C-1, Rule 702, because: (1) the witness did not testify as to whether, in his expert opinion, the minor victim had been sexually abused, but instead testified that the victim's behavior was consistent with a child who had been sexually abused; and (2) the witness was in a better position than the jury, based on his training and experience, to determine what behavior was consistent or inconsistent with children who had been sexually abused.

Evidence--expert testimony--credibility of victim

State v. Isenberg, 147 NCA 29 (2001)

The trial court did not err in a first-degree statutory sexual offense and taking indecent liberties with a minor case by permitting a licensed professional counselor and a doctor to testify as to the credibility of the minor victim, because: (1) defendant made general objections to the statements during the trial, but at no time requested a limiting instruction; (2) an instruction limiting admissibility of testimony to corroboration is not required unless counsel specifically requests such instruction; and (3) the witnesses did not testify that the minor victim suffered from a post-traumatic stress disorder, but instead testified as to the general characteristics of children who suffer from sexual abuse.

Witnesses--expert--qualifications

State v. Taylor, 354 N.C. 28 (2001)

The trial court did not abuse its discretion in a capital first-degree murder and robbery with a dangerous weapon trial by ruling that a witness was not qualified to testify as an expert under N.C.G.S. § 8C-1, Rule 702(a) regarding the position of the victim's body when he was shot, because: (1) it did not appear the witness had the experience necessary to testify regarding this particular matter, and the trial court did not believe this testimony would be helpful; and (2) the testimony had previously been elicited from the State's pathologist on cross-examination, and the trial court was within its discretion under N.C.G.S. § 8C-1, Rule 403 to exclude this testimony as cumulative.

Evidence--expert testimony--basis--hearsay

State v. Fair, 354 NC 131 (2001)

The trial court did not err in a capital prosecution for first-degree murder by allowing an SBI DNA expert to base her testimony in part on bloodstained cloth samples taken by another agent who was unable to testify where the expert examined the pants from which the samples were taken to determine whether the

cuttings were from the areas indicated by the other agent's notes. The cuttings and the pants were admitted into evidence, so that defendant was able to cross-examine the expert fully concerning the original location of the blood samples and was free to conduct his own tests, and the jury was free to make its own determination.

Evidence--expert testimony--victim's four wounds--pain

State v. Lloyd, 354 NC 76 (2001)

The trial court did not err in a capital first-degree murder prosecution by allowing a pathologist to testify that each of the victim's four wounds would have been painful, because: (1) expert testimony concerning the pain and suffering of the victim in a first-degree murder case is relevant and admissible to assist the jury in ascertaining whether defendant was acting with premeditation and deliberation and to rebut defendant's claim of accident; (2) the State properly used the testimony as a basis for its argument that if the victim had her hand on the gun as defendant contended, it was unlikely that she would have kept it there during four separate shots that caused her pain; and (3) the statements concerning the victim's pain were not unfairly prejudicial in light of other testimony about the victim's pain.

Evidence--expert testimony--sexual assault--credibility

State v. Stancil, 146 N.C. App. 234 (2001)

The trial court did not commit plain error in a first-degree sexual offense case by allowing the State's expert witnesses to state opinions about whether the seven-year-old child victim had been sexually assaulted and about the child's credibility, because: (1) a physical exam was given within hours after the incident and interview, and the nature of the sex act was not likely to leave forensic evidence particularly after the child used the bathroom; (2) the child was consistent in relating facts during each interview and exhibited physical symptoms of trauma; (3) the expert testimony was based on the overall examination of the child during the course of treatment rather than solely on the child's statements; and (4) each

opinion was given by an expert in the field of child abuse or child investigation and interviews who had observed the child, noted her symptoms and manifestations, conducted at least one interview with her, and was aware of her account of the incidents to others.

Evidence--expert testimony--opinion--sexual abuse *****

State v. Ramer, 146 NCA 611 (2001)

The trial court did not err in a first-degree statutory sexual offense case under N.C.G.S. § 14-27.4(a)(1) by allowing a licensed clinical social worker accepted as an expert at trial to testify the child was sexually abused, because: (1) an expert may testify to his opinion that a child has been sexually abused as long as this conclusion relates to a diagnosis based on the expert's examination of the child during the course of treatment; and (2) even though the expert testified he based his opinion in part on statements the child made to him during treatment, the expert was qualified to provide his opinion when he provided therapy to the child over a period of several months prior to his testimony.

**Motor Vehicles--blood alcohol concentration--extrapolation--Daubert--scientific foundation

State v. Davis, 142 N.C. App. 81 (2001)

The trial court did not abuse its discretion in a driving while impaired case by finding that the foundation for an expert's extrapolation testimony regarding defendant's blood alcohol concentration at the time of an accident was sufficient to meet the Daubert standard, because: (1) North Carolina courts have accepted extrapolation evidence since 1985; (2) other states have recognized the reliability of extrapolation evidence; (3) the expert stated his basis of understanding came from a large number of studies; and (4) defendant did not object to the expert's qualifications

Evidence--expert testimony-- child sexual abuse

State v. Grover, 142 N.C. App. 411 (2001)

The trial court erred in a prosecution for statutory rape and related offenses by admitting testimony from a clinical social worker and a pediatric nurse practitioner concluding that the victims had been sexually abused based solely on the children's statements to them or to someone else. It is permissible for an expert to testify that a child exhibits characteristics consistent with abused children, but impermissible for an expert to testify that a child has been sexually abused in the absence of physical evidence.

Evidence--expert testimony--barefoot analysis--reliability of scientific procedure--admission harmless error

State v. Berry, 143 N.C. App. 187 (2001)

The trial court committed harmless error in a prosecution for first-degree murder and first-degree rape by admitting expert testimony regarding barefoot analysis to determine if the shoes found near the victim's body were regularly worn by defendant even though the expert's own testimony reveals the evidence was not sufficiently reliable at the time of trial based on the fact his research was not yet complete, because: (1) the expert's testimony corroborates the testimony of defendant's wife and defendant's former girlfriend who both stated the shoes looked similar to and were the same size as defendant's shoes; (2) the shoes were not the only physical evidence linking defendant to the crime scene; and (3) DNA evidence recovered from the victim's body linked defendant to the scene.

Evidence--expert testimony--victim suffered from post-traumatic stress disorder--corroboration—no prejudicial error although improper to allege defendant's assault was triggering event

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 a clinical psychologist to testify that the

victim suffered from post-traumatic stress disorder (PTSD) as a result of the 26 July 1997 incident, because: (1) the evidence was admissible for corroborative purposes to assist the jury in understanding the behavioral patterns of sexual assault victims; and (2) even though the psychologist was improperly permitted to testify that the 26 July 1997 assault by defendant was the "triggering event" of the PTSD, there was no prejudicial error since there was not a reasonable possibility that a different result would have been reached in the trial without this testimony.

Evidence--opinion testimony--victim died from gunshot wounds to back of head

State v. Cherry, 141 N.C. App. 642 (2000)

The trial court did not err in a first-degree murder case by allowing a deputy sheriff to testify that in his opinion the victim died from the gunshot wounds to the back of his head, because: (1) the deputy described the position of the victim's body and testified that he had seen bullet wounds to human bodies numerous times; (2) the deputy illustrated the nature and extent of the wounds with a photograph of the victim's body; and (3) the victim's wounds were lethal in nature to a sufficient degree to render expert medical testimony as to the cause of death unnecessary.

Evidence--expert testimony--minor victim suffered from major depressive disorder partly caused by defendant's sexual abuse--proper for diagnosis and treatment *good case*****

State v. Youngs, 141 N.C. App. 220 (2000)

The trial court did not err in a prosecution for first-degree rape, first-degree sexual offense, incest, and indecent liberties by admitting an expert's opinion, based on the minor victim's statements, that the victim suffered from major depressive disorder partly as a result of her sexual abuse, because: (1) the expert's testimony was not admitted to prove that defendant was the perpetrator, but only to establish the victim's condition accompanied by the expert's resulting opinion under N.C.G.S. § 8C-1, Rule 702 that the child was the victim of sexual abuse; (2) the victim's statement identifying defendant father as the perpetrator is important for diagnosis and treatment, and the expert's statement was properly admitted to

corroborate the victim's statements to the expert; and (3) defendant's contention that the expert's opinion was scientifically unreliable has no merit in light of the expert's experience and extensive work with the victim in this case, coupled with the results of the victim's physical examination made available to the expert.

Evidence--expert testimony--procedure used by SBI to conduct DNA tests--testing performed by another individual--information inherently reliable

State v. Mccord, 140 N.C. App. 634 (2000)

The trial court did not err in a prosecution for first-degree murder, first-degree rape, first-degree kidnapping, robbery with a firearm, and first-degree burglary by allowing an expert in DNA testing to testify regarding a report he did not prepare showing the procedure used by the SBI to conduct DNA tests even though the testing was performed by another individual, because the information contained in the file was inherently reliable based on the fact that the expert worked with the individual at the SBI and reviewed the file in this case by specifically doing a technical review of the individual's work on the file.

Evidence--expert--opinion--extent of injuries--inconsistency with medical history

State v. Moss, 139 N.C. App. 106 (2000)

The trial court did not err in a second-degree murder case by allowing an expert witness to testify that he felt the severity and the extent of the minor child's injuries were not consistent with the history obtained from the medic and from defendant-father, because: (1) the expert was in a better position to form an opinion about the child's injuries than the jury; (2) the expert did not testify as to what in fact caused the injuries, nor did he express an opinion about the culpability of defendant; and (3) the expert did not improperly discuss defendant's character.

Evidence--expert--extent of injuries--time and causation

State v. Moss, 139 N.C. App. 106 (2000)

The trial court did not err in a second-degree murder case by allowing an expert witness to testify that from a single fall of 18 inches it is virtually impossible to produce the extent of injuries the minor victim had, because: (1) the statements were not used as character evidence to impeach defendant's credibility; and (2) the testimony was used to explain how external bruising may reveal both the time and cause of injury, which was probative of the ultimate issue in the case.

Evidence - Expert testimony - relevance - usefulness to jury

State v. Mackey, 352 N.C. 650 (2000)

The trial court did not err in a cocaine prosecution by excluding the testimony of a defense expert on drug investigative procedures as irrelevant. The roles of the undercover officer and the Sheriff in this case require no expert explanation; the jury was perfectly capable of interpreting the State's evidence.

Witnesses - Expert testimony - capacity to form intent

State v. Lawrence, 352 N.C. 1 (2000)

The trial court did not err in a capital sentencing proceeding by excluding the testimony of an expert witness that defendant did not act with deliberation since he was reacting to a potential fear that he was about to be harmed when he killed the victim.

Evidence - Expert testimony - court-appointed - cross-examination - expert fees

State v. Lawrence, 352 N.C. 1 (2000)

The trial court did not err in a capital sentencing proceeding by allowing the State to cross-examine defendant's expert witness concerning fees charged by the witness.

Witnesses - Expert testimony - defendant's state of mind

State v. Braxton, 352 N.C. 158 (2000)

The trial court did not err in a capital trial by not allowing defendant's expert to give his opinion as to defendant's state of mind at the time of the homicide, to negate the elements of premeditation and deliberation based on the effect of the long-term imprisonment of defendant, because the expert was in no better position than the jury to determine the reasonableness of defendant's apprehension.

Discovery - Expert testimony - exclusion - failure to comply with discovery order

State v. Braxton, 352 N.C. 158 (2000)

The trial court did not err in a capital sentencing proceeding by excluding the testimony of an expert witness at the sentencing hearing concerning defendant's mental condition at the time of the offense, because defendant violated a discovery order.

Witnesses - Expert - SBI agent - burning of home

State v. Blakeney, 352 N.C. 287 (2000)

The trial court did not err in a first-degree murder prosecution by admitting the testimony of an SBI arson investigator that the burning of the victim's home was of incendiary origin. The agent had sufficient knowledge to form an opinion, his testimony concerned matters which are not within the knowledge of the average person, and his testimony was helpful to the jury.

Evidence--expert witnesses--cross-examination--another expert's report

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

The trial court did not violate one defendant's rights during a capital sentencing proceeding by allowing the State to cross-examine his codefendant's expert witness with a report prepared by another expert witness because: (1) N.C.G.S. § 8C-1, Rule 705 provides that an expert witness may be cross-examined with regard to the underlying facts and data used by the expert in reaching his expert opinion, including other experts' reports; and (2) any error that may have resulted was harmless beyond a reasonable doubt in light of the overwhelming evidence of his guilt.

Evidence--cross-examination--statements underlying psychological diagnosis

State v. Smith, 352 N.C. 531 (2000)

There was no error in a capital sentencing proceeding where the prosecutor asked defendant's psychological expert a number of questions about a prior robbery that occurred a year before the murder to which defendant pled guilty where the questioning was apparently directed at discrediting the diagnosis by showing that statements from defendant which formed a partial basis for the diagnosis were untruthful and unreliable. In addition to the contention being baseless, the trial court has considerable leeway and discretion in governing a sentencing proceeding, and defendant did not assert constitutional error at the sentencing proceeding or raise constitutional error on appeal.

Evidence - expert - exclusion of testimony - no prejudicial error

State v. Johnson, 136 N.C. App. 683 (2000)

The trial court did not commit prejudicial error in a first-degree murder and

robbery with a dangerous weapon case by refusing to allow the testimony of a certified school psychologist and a child psychologist, concerning whether someone with attention deficit disorder would be able to sit in a room at a table for over an hour with full attention and at what reading level a certain statement was written, because: (1) defendant did not place in the record the testimony which was propounded; and (2) defendant has failed to show that a different result would probably have occurred at trial if the answers to the two questions had been permitted.

Evidence and Witnesses 2264 (NCI4th) - first degree murder - torture - opinion of pathologist

State v. Jennings, 333 N.C. 579 (1993) 430 S.E.2d 188

The trial court did not err in a first degree murder prosecution by admitting the opinion of the forensic pathologist who performed the autopsy that the victim had been tortured. The witness did not testify that defendant tortured the victim.

Evidence and Witnesses 2264 (NCI4th) - first degree murder - sexual assault upon victim - opinion of pathologist

State v. Jennings, 333 N.C. 579 (1993) 430 S.E.2d 188

The trial court did not err in a murder prosecution by allowing the forensic pathologist who performed the autopsy to testify that there had been a sexual assault upon the victim.

Evidence and Witnesses 2302 (NCI4th) - murder and assault - expert testimony - alcoholism - ability to plan - admissible

State v. Daniel, 333 N.C. 756 (1993) 429 S.E.2d 724

There was prejudicial error in a prosecution for murder and assault with a deadly weapon with intent to kill inflicting serious injury in the exclusion of testimony from defendant's expert in psychiatry and addiction that defendant suffered from both chronic and acute alcohol dependence; that defendant suffered from severe nervous system impairment, including significant brain atrophy; that defendant's ability to plan, think, or reflect was impaired; and that he was unable to form the specific intent to kill at the time of the shootings. Such testimony was relevant to whether defendant had premeditated and deliberated and to whether he intended to kill when he shot and wounded the assault victim and is not rendered inadmissible on the basis that it embraces ultimate issues to be decided by the jury. The term "specific intent to kill" is not a precise legal term with a definition which is not readily apparent and it has been held that a medical expert may properly be allowed to testify to his or her opinion that a defendant could not form the specific intent to kill.

Evidence and Witnesses 2265 (NCI4th) - expert testimony - unlikely wounds self-inflicted

State v. Shoemaker, 334 N.C. 252 (1993) 432 S.E.2d 314

The trial court in a first-degree murder case did not err by admitting a forensic pathologist's opinion that it was highly unlikely that the victim's wound was self-inflicted where the opinion was based on findings from his autopsy of the victim concerning the location of the wound, the distance from which the shot was fired, and the awkward angle that the victim would have had to hold the gun to inflict such a wound.

Evidence and Witnesses 2284 (NCI4th) murder - pathologist's testimony - pain and suffering of victim

State v. Morston, 336 N.C. 381 (1994) ___ S.E.2d ___

The trial court did not err during the guilt phase of a first-degree murder prosecution by overruling defendant's objections to testimony from the medical examiner about the pain the victim would have experienced.

Evidence and Witnesses 2152 (NCI4th) - murder - testimony by psychiatric expert - ability to conspire - excluded

State v. Brown, 335 N.C. 477 (1994) 439 S.E.2d 589

Homicide 552 (NCI4th) first-degree murder - expert testimony - inability to distinguish right and wrong submission of second-degree murder not required

State v. Ingle, 336 N.C. 617 (1994) ___ S.E.2d ___

Testimony by defendant's expert witness in a first-degree murder prosecution that defendant was in a psychotic state and was unable to distinguish between right and wrong at the time of the murder was insufficient to require the trial court to submit the lesser charge of second-degree murder where the witness never indicated that at the time of the murder defendant was unable to distinguish between right and wrong and the ability to premeditate and deliberate are entirely different considerations.

Evidence and Witnesses 2299 (NCI4th) - first-degree murder- whether defendant would have killed without alcohol and cocaine - psychologist's opinion - not admissible

State v. Fisher, 336 N.C. 684 (1994) ___ S.E.2d ___

Evidence and Witnesses 2210 (NCI4th) expert testimony - "indications" of blood

State v. Moseley, 336 N.C. 710 (1994) ___ S.E.2d ___

An SBI agent was properly permitted to testify that phenolphthalein testing revealed "indications" of the presence of blood on defendant's boots and clothing

but that the quantities were insufficient to determine definitively whether in fact blood was present, and to testify about the transfer of "indications" to clothing through secondary transfer or spattering

Evidence and Witnesses 2171, 290 (NCI4th) - first-degree murder - sentencing hearing - psychiatric expert - cross-examination - other offenses - basis for opinion

State v. Reeves, 337 N.C. 700 (1994) ___ S.E.2d ___

The trial court did not abuse its discretion in a sentencing hearing for first-degree murder by allowing the State to ask a psychiatrist questions on cross-examination which revealed rapes and assaults by defendant in Virginia and Tennessee.

Evidence and Witnesses 2899 (NCI4th) first-degree murder - sentencing hearing - psychiatrist - defendant's adjustment in prison - cross-examination -escape attempt

State v. Reeves, 337 N.C. 700 (1994) ___ S.E.2d ___

Evidence and Witnesses 2332 (NCI4th) child sexual abuse - expert testimony - coaching of child redirect examination - no error

State v. Baymon, 336 N.C. 748 (1994) ___ S.E.2d ___

The trial court did not err in a prosecution for rape and sexual offenses against a nine-year-old child by allowing Dr. Everett, an expert in pediatric medicine and child sexual abuse, to testify on redirect examination that she had not picked up on anything to suggest that someone had told the victim what to say or that the victim had been coached. Although an expert witness may not testify that the prosecuting childwitness in a sexual abuse trial is believable or that the child is not lying about the alleged sexual assault, defense counsel on cross-examination attempted to leave the impression that the victim had been coached by her relatives or social workers involved in the case and opened the door for the State

on redirect to proffer Dr. Everett's testimony that she did not perceive that the victim had been told what to say or had been coached.

Evidence and Witnesses 2180 (NCI4th) - cross-examination of medical witness - use of prior medical records not allowed - no error

State v. Black, 111 N.C. App. 284 (1993) 432 S.E.2d 710

In a prosecution of defendant for sexually assaulting his stepdaughters, the trial court did not err in refusing to allow defendant to utilize one victim's prior medical records in cross-examination of the State's expert medical witness, since defendant sought to question the witness with regard to the contents of data which the expert had never before contemplated or used in any way to formulate her opinion and which also was not contained in any recognized learned treatise; an expert cannot be examined concerning information contained in documents not used in formulating the expert's opinion; and, if defendant wanted information concerning the contents of the prior records and implications thereof to any current diagnosis of sexual abuse, defendant could have called his own expert witness.

Evidence and Witnesses 2333 (NCI4th) - rape and incest case - doctor qualified as expert in detection of child abuse and trauma - no error

State v. Parker, 111 N.C. App. 359 (1993) 432 S.E.2d 705

The trial court did not err in qualifying a doctor as an expert "in the field of pediatrics and in the area of the detection of child abuse and trauma," where the witness was a board certified pediatrician who had served as a child medical examiner for the State for a dozen years, had examined over 400 abused and neglected children, and had testified in the North Carolina courts on the subject of child abuse and neglect on numerous occasions.

Evidence and Witnesses 2331 (NCI4th) - expert medical witness - opinion that victim had been sexually abused - admission error

State v. Parker, 111 N.C. App. 359 (1993) 432 S.E.2d 705

Evidence and Witnesses 2335 (NCI4th) - taking indecent liberties with minor - expert pediatrician - testimony as to molestation - admission not error

State v. Richardson, 112 N.C. App. 58 (1993) 434 S.E.2d 657

Evidence and Witnesses 2332 (NCI4th) - characteristics of sexually abused children - victim exhibiting characteristics - no expression of opinion on child's truthfulness - expert opinion admissible

State v. Hammond, 112 N.C. App. 454 (1993) 435 S.E.2d 798

The trial court did not err in allowing an expert witness to discuss the symptoms and characteristics of sexually abused children and to express, in her expert opinion, whether the minor child exhibited such characteristics, and this testimony was not an improper opinion as to the child's truthfulness.

Evidence and Witnesses 2172 (NCI4th) - second-degree murder - blood-grouping tests – statistical information - not hearsay

State v. Demery, 113 N.C. App. 58 (1993) 437 S.E.2d 704

An SBI agent's testimony about blood-grouping tests did not violate the hearsay rule in a murder prosecution where the agent relied on statistical information concerning the frequency of blood group factors or characteristics in the North Carolina population which had been compiled by the SBI with blood provided by the Red Cross and blood obtained in criminal cases.

Evidence and Witnesses 2332 (NCI4th) expert testimony - characteristics of sexually abused children - victim's similar characteristics

State v. Hughes, 114 N.C. App. 742 (1994) ___ S.E.2d ___

A pediatrician was properly permitted to testify about the characteristics of sexually abused children and to state that her findings with regard to the alleged victim "were strongly suggestive of possible sexual abuse."

Evidence and Witnesses 961 (NCI4th) - victim's statement to pediatrician - hearsay - medical diagnosis and treatment exception

State v. Hughes, 114 N.C. App. 742 (1994) ___ S.E.2d ___

Evidence and Witnesses 2337 (NCI4th) - attempted statutory rape and first-degree sexual offense – expert testimony - suggestibility of child witnesses - not admissible

State v. Robertson, 115 N.C. App. 249 (1994) ___ S.E.2d ___

Evidence and Witnesses 2334 (NCI4th) - first-degree sex offense - opinion that children abused admissible - opinion that defendant was abuser inadmissible - admission harmless error

State v. Figured, 116 N.C. App. 1 (1994) ___ S.E.2d ___

Evidence and Witnesses 2338 (NCI4th) - expert witness - opinion that witness was telling the truth plain error

State v. Hannon, 118 N.C. App. 448 (1995)

Evidence and Witnesses 2954 (NCI4th); Criminal Law 441 (NCI4th) -first-degree murder – defense psychiatrist - cross-examination - compensation

State v. Bacon, 337 N.C. 66 (1994)

The trial court did not err during a resentencing hearing in a first-degree murder case by allowing the district attorney to cross-examine a defense psychiatrist concerning his compensation or by permitting the district attorney to argue that the jury should view the expert's testimony with caution because of the financial arrangement.

Evidence and Witnesses 2227 (NCI4th)- noncapital first-degree murder - bullet lead composition - qualification of expert

State v. Jones, 337 N.C. 198 (1994)

Evidence and Witnesses 2296 (NCI4th) first-degree murder - psychiatric expert - defendant not personally interviewed

State v. Daniels, 337 N.C. 243 (1994) ___ S.E.2d ___

The trial court did not err in a first-degree murder prosecution by overruling defendant's objection to testimony by the State's psychiatric expert where the expert had not personally interviewed defendant. While diagnoses based on live interviews may be more reliable, there is no evidence that opinions based upon extensive research of psychiatric files of a defendant, written evaluations of defendant by other doctors, and interviews with defendant's friends and family are inherently unreliable.

Indigent Persons 21 (NCI4th) murder and rape- appointment of pathologist denied - insufficient showing of particularized need

State v. Moseley, 338 N.C. 1 (1994) ___ S.E.2d ___

Evidence and Witnesses 2264 (NCI4th) murder -opinion of pathologist - torture and overkill

State v. Moseley, 338 N.C. 1 (1994) ___ S.E.2d ___

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 allowing the pathologist who performed the autopsy of the victim in another trial in which defendant was also convicted to testify that that victim's wounds were torture wounds and characteristic of overkill. The pathologist did not testify that the victim had been tortured, merely that her wounds were consistent with torture.

Evidence and Witnesses 2170 (NCI4th) first-degree murder - gunshot residue analysis - basis for expert opinion

State v. Watson, 338 N.C. 168 (1994) ___ S.E.2d ___

Evidence and Witnesses 963 (NCI4th) hearsay - defendant's statements to psychiatrist - trial preparation - medical diagnosis exception inapplicable

State v. Harris, 338 N.C. 211 (1994) ___ S.E.2d ___

Defendant's statements to a psychiatrist were made in preparation for his murder trial and were thus not admissible under the medical diagnosis or treatment exception to the hearsay rule set forth in N.C.G.S. 1 8C-1, Rule 803(4) where the

psychiatrist saw defendant less than two months before trial and nine months after the killing; defense counsel arranged defendant's interview by the psychiatrist; there was no evidence that the psychiatrist planned or proposed any course of treatment.

Evidence and Witnesses 1025 (NCI4th) defendant's statements to psychiatrist - inadmissibility as statements against penal interest

State v. Harris, 338 N.C. 211 (1994) ___ S.E.2d ___

Evidence and Witnesses 2302 (NCI4th) ability to premeditate and deliberate - expert opinion properly excluded

State v. Harris, 338 N.C. 211 (1994) ___ S.E.2d ___

Opinion testimony by a psychiatrist that defendant could not premeditate and deliberate was properly excluded because it relates to a legal standard.

Evidence and Witnesses 1939 (NCI4th) - expert witness- improper impeachment with article – harmless error

State v. Lovin, 339 N.C. 695 (1995) ___ S.E.2d ___

The trial court erred by allowing the State to impeach defendant's expert witness (a clinical psychologist) by reading to her a statement from an article that denigrated clinical psychologists when the witness had not read the article and there was no showing of its validity.

Evidence and Witnesses 2172 (NCI4th) - mental health expert - episode during interview with another - basis for diagnosis - exclusive as harmless error

State v. Davis, 340 N.C. 1 (1995) ___ S.E.2d ___

Evidence and Witnesses 2302 (NCI4th) expert testimony - capacity to plan and form specific intent

State v. Jackson, 340 N.C. 301 (1995) ___ S.E.2d ___

An opinion by an expert in psychology that defendant's capacity to calmly function and plan was severely impaired because he was intoxicated, was under stress from a previous altercation with the victim, and had a low IQ, if clearly and cogently presented, would be relevant in a first-degree murder trial to show that defendant acted without premeditation and deliberation and could not form the specific intent to kill.

Indigent Persons 19 (NCI4th) first-degree murder appointment of state psychiatrist as defense witness

State v. Campbell, 340 N.C. 612 (1995) ___ S.E.2d ___

There was no error in a first-degree murder trial where the trial court appointed a forensic psychiatrist who worked for a state facility and who had handled the competency determination to assist defendant at trial.

Criminal Law 109 (NCI4th) personality test defendant's inability to complete expert's use in formulating opinion discovery and cross-examination

State v. Mccarver, 341 N.C. 364 (1995) ___ S.E.2d ___

Although defendant's expert did not score a personality test administered to defendant or interpret the entire test because defendant wasn't able to perform at a

level that was scorable, the State was entitled to pretrial discovery of the test and to cross-examine defendant's expert about the test where the expert considered the answers defendant gave on the test and his inability to complete the test in formulating her opinion on defendant's psychological makeup. N.C.G.S. 15A-905(b).

Evidence and Witnesses 2176 (NCI4th) expert testimony specialized knowledge valid methodology

State v. Goode, 341 N.C. 513 (1995) ___ S.E.2d ___

When a trial court is faced with a proffer of expert testimony, it must determine whether the expert is proposing to testify to scientific, technical, or other specialized knowledge that will assist the trier of fact to determine a fact in issue. This requires a preliminary assessment of whether the reasoning or methodology underlying the testimony is sufficiently valid and whether that reasoning or methodology can be properly applied to the facts in issue.

Evidence and Witnesses 2210 (NCI4th) bloodstain pattern interpretation appropriate area for expert testimony

State v. Goode, 341 N.C. 513 (1995) ___ S.E.2d ___

Evidence and Witnesses 2210 (NCI4th) expert testimony lack of bloodstains on defendant no exclusion of participation in stabbings

State v. Goode, 341 N.C. 513 (1995) ___ S.E.2d ___

The trial court did not err by permitting an expert in bloodstain pattern interpretation to state his opinion that the lack of bloodstains on defendant would not exclude defendant as a participant in the stabbing deaths of the victims based upon the expert's study of autopsy photographs in this case as well as in other

cases, his examination of the clothing of the victims and the codefendants in this case as well as in other cases, and his participation in the examination of crime scenes where bloodstains did not occur.

Evidence and Witnesses 2284 (NCI4th) first-degree murder pathologist's qualifications suffering of victim

State v. Vick, 341 N.C. 569 (1995) ___ S.E.2d ___

The trial court did not err in a first-degree murder prosecution by allowing the State's pathologist to testify during the guilt phase of the trial as to the pain and suffering caused by the wounds to the victims. An expert witness qualified in the field of forensic pathology is qualified to testify about the pain caused by a traumatic injury.

Evidence and Witnesses 1763 (NCI4th) plethysmograph test lack of reliability psychologist's opinion based on test properly excluded

State v. Spencer, 119 N.C. App. 662 (1995) ___ S.E.2d ___

Evidence and Witnesses 2327 (NCI4th) alleged sexual abuse expert's testimony as to cause of posttraumatic stress syndrome admissibility as substantive evidence prejudicial error

State v. Hensley, 120 N.C. App. 313 (1995) ___ S.E.2d ___

Evidence and Witnesses 2266 (NCI4th) murder of four month old expert medical evidence that injuries intentionally inflicted evidence properly admitted

State v. McAbee, 120 N.C. App. 674 (1995) ___ S.E.2d ___

In a prosecution of defendant for murder of his girlfriend's four-month-old daughter, the trial court did not err in allowing the State to introduce testimony from two medical experts that the child's injuries were intentionally inflicted, since the testimony was within each physician's area of expertise, was helpful to the factfinder, and did not embrace a legal term of art or conclusion of law.

Evidence and Witnesses 2292, 2152 (NCI4th) confession mental capacity to waive rights expert psychiatric testimony excluded no error

State v. Flowers, 121 N.C. App. 299 (1-2-1996) ___ S.E.2d ___

The trial court did not err in a murder prosecution by refusing to allow defendant's expert psychiatric witness to testify on the substantive issue of defendant's capacity to waive her constitutional rights under Miranda based on claims of PTSD and drug impairment where the court allowed the testimony only to the extent necessary to corroborate defendant's testimony. Under *State v. Daniels*, 337 N.C. 263, a witness may not testify as to whether the defendant had the capacity to waive Miranda rights.

Evidence and Witnesses 2101 (NCI4th) first-degree murder defendant's mental state following confession officer's testimony excluded no error

State v. Daniels, 337 N.C. 243 (1994) 446 S.E.2d 298

The trial court did not err in a first-degree murder prosecution by excluding portions of the testimony of a law enforcement officer regarding defendant's mental state following his confession where defendant's first questions were improper because they pertained only to whether defendant "could have waived" his rights and his last question, as to whether defendant understood the Miranda form, was also improper as calling for a legal conclusion. Witnesses may testify as to whether defendants had the capacity to understand certain words on the Miranda form, such as "right" or "attorney," but may not testify as to whether defendants had the capacity to waive their rights.

Evidence and Witnesses 2124 (NCI4th) noncapital first-degree-murder- officer's opinion markings on victim's clothing gunshot stippling

State v. Jones, 342 N.C. 523 (1996) ___ S.E.2d ___

There was no error in a first-degree murder prosecution where an officer was allowed to identify markings on the victim's clothing as gunshot stippling based on fifteen years of experience in examining crime scenes. The testimony corroborated testimony about stippling on the victim's shoulder and contradicted defendant's testimony about how far he was standing from the victim when he fired the gun.

Evidence and Witnesses § 2296 (NCI4th) psychiatric testimony reliance on psychologist's report cross-examination about psychologist's conclusions

State v. White, 343 N.C. 378 (1996) 471 S.E.2d 593

Where a defense psychiatrist relied on the report of a clinical psychologist in formulating his diagnosis, Rule of Evidence 705 permitted the prosecutor to cross-examine the psychiatrist about the psychologist's conclusions, including those with which the psychiatrist disagreed. N.C.G.S. § 8C-1, Rule .705

Evidence and Witnesses § 2182 (NCI4th) capital murder defense expert range of possible blood alcohol level excluded

State v. Cole, 343 N.C. 399 (1996) 471 S.E.2d 362

The trial court did not err in a first-degree murder retrial by prohibiting a defense expert from testifying about the range of defendant's possible blood-alcohol level at the time of the alleged offense where the expert testified that he based his estimate on information received from defendant and standard considerations such as defendant's weight, but defendant testified that he did not know the quantity of liquor he consumed or the percentage of alcohol in the liquor, there was uncertainty concerning defendant's actual weight at the time of the

homicides, and the expert used the average rate of metabolism in his calculations rather than defendant's actual rate, but admitted during voir dire that the rate of metabolism might vary considerably among individuals. There was an inadequate basis for the opinion.

Evidence and Witnesses § 2273 (NCI4th) first-degree murder opinion of pathologist formal training as forensic pathologist not complete distance from which gun fired

State v. Johnson, 343 N.C. 489 (1996) 471 S.E.2d 409

The trial court did not err in a first-degree murder prosecution by allowing a doctor to testify to the cause of death and the distance from which the shot was fired where the doctor was a Fellow in the Office of the Chief Medical Examiner in Chapel Hill, was not yet certified, and had not completed his formal training as a forensic pathologist.

Evidence and Witnesses § 2302 (NCI4th) absence of cool state of mind expert testimony properly excluded

State v. Boyd, 343 N.C. 699 (1996) 473 S.E.2d 327

The trial court did not err by preventing an expert in forensic psychology from using the phrase "cool state of mind" to convey to the jury that defendant lacked the specific intent necessary to commit premeditated and deliberate murder at the time he shot the two victims where the trial court on voir dire explained to the psychologist the legal import of acting in a cool state of mind; the witness conceded that the legal and medical definitions of the phrase differed but stated that he meant to convey to the jury that defendant was not acting with a cool state of mind in the medical sense; and the trial court emphasized that the psychologist could use other terminology to convey his opinion to the jury and ruled that other questions regarding defendant's state of mind that defendant sought to pose to the expert witness would be allowed.

Evidence and Witnesses § 2266 (NCI4th) capital murder and felony child abuse expert

testimony battered child syndrome

State v. Elliott, 344 N.C. 242 (1996) 475 S.E.2d 202

The trial court did not abuse its discretion in a prosecution for capital first-degree murder and felony child abuse by permitting the State to present to the jury testimony from an expert in pediatrics and child abuse with respect to battered child syndrome. The testimony was relevant to show that the child was killed by intentional means and to show premeditation and deliberation. N.C.G.S. § 8C-1, Rule 403.

Evidence and Witnesses § 2363 (NCI4th) fire intentionally set expert testimony

State v. Hales, 344 N.C. 419 (1996) 474 S.E.2d 328

A witness accepted as an expert in the field of incendiary fires was qualified to render an opinion that a fire was intentionally set. Furthermore, the jury was not as able as the witness to form the opinion that the fire was purposely set, and the opinion of the witness was helpful to the jury in reaching its decision. N.C.G.S. § 8C-1, Rule 702.

Evidence and Witnesses § 2172 (NCI4th) opinion by expert - testimony not admissible to show basis

State v. Workman, 344 N.C. 482 (1996) 476 S.E.2d 301

In a prosecution for the first-degree murders of two grocery store workers wherein defendant presented expert opinion testimony that defendant panicked and did not act voluntarily when he heard two screams inside the grocery store, and that those screams triggered a "robbery/murder script" that did not originate in defendant's mind, testimony that defendant identified the codefendant as the person who implanted the "robbery/murder script" in his mind was not admissible under Rule 705 to show the basis for the expert's opinion and was properly excluded where (1) neither the State nor counsel for the codefendant requested that the witness

disclose the basis of his opinion; (2) defendant's self-serving hearsay statements that the "robbery/murder script" was originated by the codefendant were not inherently reliable, particularly since defendant was unavailable for cross-examination by either the State or the codefendant; (3) the substance of defendant's defense that the "robbery/murder script" originated somewhere other than in defendant's own mind was related to the jury; and (4) defendant acknowledged during the trial that the identity of the person who implanted the "script" into defendant's mind was not necessary to explain the expert witness's testimony. Therefore, the joinder of the trials of defendant and the codefendant did not deprive defendant of a fair trial by causing the exclusion of evidence critical to his theory of defense. N.C.G.S. § 8C-1, Rule 705.

Evidence and Witnesses § 2148 (NCI4th) capital murder police procedure expert testimony excluded no abuse of discretion

State v. Harden, 344 N.C. 542 (1996) 476 S.E.2d 658

The trial court did not abuse its discretion in a capital first-degree murder prosecution by excluding expert defense testimony about whether the victims, police officers, were following proper police procedures at the time they were murdered. The evidence tended to show that defendant started backing up when first approached by officers, then ran because he thought he had crack cocaine in his possession; clearly, defendant was not responding reasonably to arrest procedures and the witness's opinion about what the proper arrest procedures might have been was irrelevant to the circumstances of the case.

Evidence and Witnesses § 2965 (NCI4th) defense psychologist cross-examination proper to show bias allegation of misconduct cross-examination not prejudicial error

State v. Perkins, 345 N.C. 254 (1997) ___ S.E.2d ___

The State's cross-examination of a forensic psychologist who testified for defendant as to whether he had been fired, removed, or transferred from the forensic unit at Dorothea Dix Hospital for misconduct was relevant to show that the witness may have been biased against the State.

Evidence and Witnesses § 2954 (NCI4th) capital sentencing cross-examination of defense mental health expert about fees

State v. Woods, 345 N.C. 294 (1997) ___ S.E.2d ___

There was no abuse of discretion in a capital sentencing proceeding where the prosecutor cross-examined the defense mental health expert about his fees.

Evidence and Witnesses § 2302 (NCI4th) first-degree murders expert testimony that defendant "snapped" exclusion as harmless error

State v. Burgess, 345 N.C. 372 (1997) ___ S.E.2d ___

The trial court erred in excluding testimony by a forensic psychologist that defendant had "snapped" at the time of two murders because this testimony tended to show that defendant was not in a cool state of blood when he shot the victims and was thus relevant to show that defendant did not premeditate and deliberate the killings.

Evidence and Witnesses § 1767 (NCI4th) - evidence admitted - experiment - dissimilarities - actual circumstances - limited conclusions

State v. Clifton, 125 N.C. App. 471 (1997)

The trial court in a second-degree murder prosecution properly admitted the results of experiments that demonstrated that it was probable that defendant was in close proximity to the defendant's husband at the time that he was shot because of the back splatter blood stains. The state's expert witness acknowledged the dissimilarity of the experiment and the actual circumstances and clearly indicated his limited conclusions that the blood splatter on the right shoulder of the defendant's blouse was the result of the person wearing the blouse being in close proximity to a source of blood at the time it was being acted upon by a force.

Evidence and Witnesses § 1757 (NCI4th) - second-degree murder - blood splatter tests - relevant – not prejudicial

State v. Clifton, 125 N.C. App. 471 (1997)

Evidence and Witnesses § 2330 (NCI4th) - medical expert - opinion testimony - sexual mistreatment of child

State v. Dick, 126 N.C. App. 312 (1997)

A medical expert was properly permitted to state her opinion that it was very likely that a child had been sexually mistreated where the expert's testimony about abnormalities in the child's hymen showed that she based her opinion on her examination of the child and her expert knowledge concerning the abuse of children in general and not on her personal belief that the child was telling the truth. N.C.G.S. § 8C-1, Rule 702.

Evidence and Witnesses § 2332 (NCI4th) - social worker - expert testimony - reason for delay in reporting sexual abuse - opening door

State v. Dick, 126 N.C. App. 312 (1997)

An expert clinical social worker's opinion that a child waited two years to make accusations of sexual abuse by her stepfather because she waited until she was in a safe place in Ohio with her biological father was not inadmissible expert testimony on the credibility of the victim but was properly admitted as specialized knowledge helpful to the jury. Furthermore, defendant opened the door to this testimony by cross-examining the victim regarding the delay in reporting the sexual abuse.

Evidence and Witnesses § 2047 (NCI4th) - second-degree murder - testimony of crime scene technician - impressions in dirt at victim's house - similar to items tied to body - admissible

State v. Rick, 126 N.C. App. 612 (1997)

There was no error in a prosecution which resulted in a second-degree murder conviction in the admission of the testimony of a crime scene technician that impressions in the dirt around the victim's house were similar in size and shape to the cinder block and rock tied to the victim's body when it was recovered from a river. The testimony was rationally based on the witness's personal perception and was helpful to the jury for a clear understanding of the facts in issue. N.C.G.S. § 8C-1, Rule 701.

Evidence and Witnesses § 2261 (NCI4th) - S.B.I. agent - expert testimony - victim standing and door closed

State v. East, 345 N.C. 535 (1997)

The trial court did not abuse its discretion in permitting an S.B.I. agent to give expert opinion testimony in a prosecution for two murders that the male victim was standing when first hit with a blunt-force instrument and that the door to the house was closed at the time he was accosted, although the S.B.I. agent was not an expert in bloodspatter evidence, where the witness had extensive training and experience in forensic crime-scene collection and processing; she had a bachelor's degree in criminology and a master's degree in criminal justice; she had testified as a crime-scene specialist in over seventy-five cases; and her opinions were not based solely on blood-spatter evidence but were deduced from a combination of blood spatters, the location of the victim's glasses, the relationship between the body and the door, and the location of wounds on the victim's head. N.C.G.S. § 8C-1, Rule 702. Admissibility, in criminal Prosecution, of expert opinion evidence as to "blood splatter" interpretation. 9 ALR5th 369.

Evidence and Witnesses §§ 2172, 2293 (NCI4th) - expert testimony - rage reaction - exclusion of personal experience

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, the trial court did not err by refusing to permit defendant's expert witness to testify about a "rage reaction" experienced by the witness in his personal life since (1) the witness properly gave his expert opinion that a rage reaction could possibly have caused defendant to kill the victim and explained his opinion by relating the general characteristics exhibited by those who experience rage reaction and by enumerating the facts upon which his opinion was based; (2) the excluded testimony was not admissible as a basis for the witness's expert opinion under Rule of Evidence 703 where the witness testified that the basis for his opinion was his interview with defendant and defendant's testimony in court; and (3) the excluded testimony was irrelevant as defendant did not show how a rage reaction experienced by someone other than defendant makes it more or less probable that defendant experienced a rage reaction. N.C.G.S. § 8C-1, Rule 703.

Evidence and Witnesses § 191 (NCI4th) - murder - victim's suffering - testimony of surgeon – not prejudicial

State v. Gaines, 345 N.C. 647 (1997)

There was no prejudicial error in a capital murder prosecution (which resulted in a life sentence) in the admission of testimony from the surgeon who treated the victim that the pain from his wounds "must have been excessive." The State's evidence showed that the victim was shot in the chest with a shotgun and the surgeon testified without objection that the victim had an extensive wound on the upper abdomen and was bleeding profusely from that wound, that there were major injuries in the lower portion of the right lung, and that there were extensive injuries in the upper abdomen.

Evidence and Witnesses § 2273 (NCI4th) - capital murder - pathologist's testimony - position of wound

State v. Cummings, 346 N.C. 291 (1997)

There was no error in a capital prosecution for first-degree murder where the trial court admitted testimony from a pathologist that the victim's wound was consistent with leaning over, lying in a chair when shot. Although the pathologist had not viewed the crime scene, he did have an opinion concerning the direction from which the bullets were fired and the possible position of the victim. The pathologist who performed the autopsy was in the best position to assist the jury in understanding the angles of the wounds and determining whether those were consistent with circumstances at the crime scene.

Indigent Persons § 19 (NCI4th) - capital murder - provision of forensic psychiatrist - denied – no particularized need

State v. Page, 346 N.C. 689 (1997)

The trial court did not abuse its discretion in a capital first-degree murder prosecution by providing the State access to a forensic psychiatrist while denying defendant's request for the same type of expert. Defendant had available at trial both a psychiatric and a psychological expert who had treated him for an extended period prior to the shooting and the diagnosis of the State's expert was in accord with theirs except that she did not believe defendant suffered from post-traumatic stress disorder. Mere suspicion that the classification of the State's witness as a forensic psychiatrist made her better equipped than the defendant's psychologist to testify about defendant's mental status was insufficient to require that defendant be given a court-appointed forensic expert. Defendant did not demonstrate a particularized need for a forensic psychiatrist or a reasonable likelihood that such an expert would materially assist him in the preparation and presentation of his case.

Evidence and Witnesses § 2890.5 (NCI4th) - capital murder - defendant's psychologist - license revocation - not suppressed

State v. Page, 346 N.C. 689 (1997)

A first-degree murder defendant was not denied his due-process guarantee of a competent mental-health expert by the denial of his motion in limine to suppress evidence of his psychologist's license revocation. The State was entitled to call into question the psychologist's credentials, as with any witness; defendant had another competent mental-health expert witness; and the State's forensic psychiatrist testified largely in accord with the testimony of defendant's experts. The denial of defendant's motion did not have a prejudicial effect on his right to present his psychiatric defense.

Evidence and Witnesses § 90 (NCI4th) - second-degree murder - intoxicated operation of motor vehicle - statements to psychologists - not admissible

State v. Ballard, 127 N.C. App. 316 (1997)

In a second-degree murder prosecution which resulted from defendant's operation of a motor vehicle while he was intoxicated, the trial court did not abuse its discretion by excluding defendant's statements to a psychologist where the court allowed the psychologist to give his opinion of defendant's state of mind at the time of the accident, but reasoned that the helpfulness of the hearsay testimony was outweighed by the prejudice to the State in not being able to cross-examine defendant.

Evidence and Witnesses § 2176 (NCI4th) - HGN test - scientific test - qualified expert

State v. Helms, 127 N.C. App. 375 (1997)

A horizontal gaze nystagmus (HGN) test represents specialized knowledge that must be presented to the jury by a qualified expert.

Evidence and Witnesses § 2176 (NCI4th) - tests for saliva - reliability - admissibility in sexual offense case

State v. Dennis, 129 N.C. App. 686 (1998)

Testimony by an SBI forensic serologist that a test employing the "Phadebas methodology" indicated the presence of saliva on a vaginal swab taken from the victim's vagina was properly admitted in a prosecution of defendant for first-degree sexual offense where both defendant and the State agreed that the witness was an expert in the field of forensic serology; the serologist's uncontradicted testimony that the test is commonly used to detect the presence of saliva and her testimony as to how the test is performed established the reliability of the test; and the serologist only testified that the test results indicated the presence of saliva and not that saliva was actually present on the vaginal swab or that the saliva came from a particular person.

Evidence and Witnesses § 2273 (NCI4th) - first-degree murder - testimony of pathologist - shotgun wound pattern

State v. Locklear, 349 N.C. 118 (1998)

The trial court did not err in a capital first-degree murder prosecution by admitting the testimony of an expert forensic pathologist that a shot pattern that corresponded with test firing a shotgun from the three-foot range most closely matched the wound in the victim's back as well as his expert opinion of the effect on a body of such a shot. The witness performed the autopsy on the victim, examined and measured the wounds, and reviewed and measured the shotgun-pellet test patterns. He was undoubtedly in a position to assist the jury in determining the distance from which the fatal shots were fired and his testimony illustrating the effect such a shot would have had was likewise appropriate to assist the jury in understanding the evidence.

Evidence and Witnesses § 2309 (NCI4th) - first-degree murder - victim's blood alcohol level - pathologist's opinion of alcohol intake - admissible

State v. Locklear, 349 N.C. 118 (1998)

The trial court did not err in a capital first-degree murder prosecution by

admitting the testimony of an expert forensic pathologist that the victim's blood alcohol level would have been the result of the ingestion of approximately one-half of a beer. The witness personally drew the blood sample from the victim during the autopsy and incorporated the results into the autopsy report, the witness measured the victim's height and weight and noted an amount of partially digested food in the victim's stomach, and, based on his training, knowledge, and experience, gave his opinion to a reasonable medical certainty of the amount of alcohol that was absorbed into the victim's blood stream.

Criminal Law § 447 (NCI4th Rev.) - first-degree murder - prosecutor's argument - paid expert witness

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

The prosecutor's arguments in the guilt phase of a capital first-degree murder prosecution concerning payment of defendant's forensic expert were not so grossly improper as to require the trial court to intervene ex mero motu. Prior cases involving arguments from sentencing proceedings are instructive but not controlling and, when defense counsel apparently did not believe the argument was prejudicial at trial, the Court could not conclude that the trial court should have intervened. Even assuming that the argument was improper, it was not prejudicial in light of the substantial evidence of defendant's guilt. [SBI Agent] Tom Trochum said no one identifies stippling from a photograph. It is improper, it is unscientific, and it leads to erroneous results, which is exactly whatopec testified to you. An erroneous result. It is a sadstate of our legal system, that when you need someone to say something, you can find them. You can pay them enough and they'll say it.

Evidence - credibility of child - admissible as to formation of professional opinion

State v. Bright, 131 N.C. App. 57 (1998)

The trial court did not err in a prosecution for burglary, kidnapping, sexual offense, and rape involving a ten-year old child by admitting testimony from the Child Medical Evaluation Physician that the child was a reliable informant. The

statement was not a comment on her credibility as a testifying witness, but the doctor's professional observation that at the time of the interview he believed he could rely on the information she gave him in forming an opinion as to the source of her injuries.

Evidence - sexual offenses - expert testimony - defendant not a high risk sexual offender - excluded

State v. Wagoner, 131 N.C. App. 285 (1998)

The trial court did not err in a prosecution for taking indecent liberties with a child and first-degree sexual offense by excluding expert testimony that defendant has no mental illness, no substance abuse problems, and is not a high risk sexual offender. N.C.G.S. § 8C-1, Rule 404(a) prohibits character evidence offered to prove conduct in conformity therewith, with an exception for a pertinent character trait. While evidence of a sexual pathology would have been relevant to motive, the lack of mental problems does not qualify as a pertinent character trait. Even expert testimony on the lack of sexual attraction to children would have been inadmissible because any relevancy would be substantially outweighed by the prejudicial effect.

Evidence - expert testimony - victim's credibility

State v. Marine, 135 N.C. App. 279 (1999)

The trial court did not err in a prosecution for first-degree statutory rape by allowing an expert witness to testify that the victim had been "guarded but straight forward" and "honest." The witness's opinion was that the victim suffered from post traumatic stress syndrome disorder and her testimony went to the reliability of her diagnosis, not to the victim's credibility. N.C.G.S. § 8C-1, Rule 702.

Constitutional Law - right to counsel - presence at court-ordered psychiatric examination

State v. Morganherring, 350 N.C. 701 (1999)

The trial court did not err in a first-degree murder prosecution by denying defendant's request to have counsel present at a court-ordered psychiatric examination. Two psychiatrists and one psychologist examined defendant at his insistence; while the State raised the possibility of an examination by a State-selected psychiatrist, no court ordered psychiatric examination occurred because defendant abandoned the insanity defense.

Evidence - expert - cross-examination - defendant's memory

State v. Morganherring, 350 N.C. 701 (1999)

The trial court did not err in a capital prosecution for first-degree murder in its cross-examination of defendant's expert where defendant contended that the prosecutor improperly stated her opinion that defendant's confession indicated that defendant had a good memory and a cognitive thought pattern. The prosecutor's questions were well within the bounds of a proper cross-examination; defendant's expert had stated that defendant's mental state was so afflicted that he could not coherently remember what occurred during the murders and it was proper for the State to attack this conclusion.

Indigent Defendants - expert psychiatric assistance - no showing of specific need

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

The trial court did not abuse its discretion in a capital first-degree murder prosecution by denying defendant's motion for expert psychiatric assistance where defense counsel conceded that defendant was not going to raise an insanity defense and the request for assistance was based on mere speculation of the trial tactic the State would employ rather than the requisite showing of specific need.

Evidence capital sentencing-psychiatrist - opinion as to defendant's responsibility

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

There was no error in a capital sentencing proceeding in admitting the testimony of a forensic psychiatrist that defendant "does not have a disorder that would relieve her of her responsibility for her actions." The term "responsibility" is not a precise legal term with a definition that is not readily apparent; in this context, it is a medical term used appropriately by an expert in the field of psychiatry to describe the effect of defendant's mental conditions on her actions.

Evidence - capital sentencing - expert witness - bias - fees in this and other cases

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

The prosecutor was properly permitted to cross-examine defendant's sentencing expert in this capital sentencing proceeding about his fee in the instant case and previous cases and the number of times he had testified for defendants in the last two years for the purpose of showing bias.

Witnesses - expert - mtDNA analyst

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

The trial court in a murder and kidnapping prosecution did not err by accepting as an expert in the field of mtDNA analysis the chief of an FBI DNA analysis unit. Although defendant argued that the testimony was of no assistance to the jury, the mtDNA evidence was relevant to show that it was more probable that a hair found in defendant's automobile trunk was the victim's.

Evidence - scientific testing - standard for admissibility

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

The following factors should be considered in determining whether scientific evidence is reliable: whether the theory or technique can be or has been tested, whether the theory has been subjected to peer review and publication, whether the theory has been submitted to the scrutiny of the scientific community, the known or potential rate of error, and the general acceptance in a Page 534 relevant scientific community. North Carolina emphasizes the reliability of the scientific method and not its popularity within a scientific community.

Evidence - mtDNA testing - admissible

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

Testing of mtDNA is sufficiently reliable to warrant admission into evidence.

Evidence - work product - privilege waived

State v. Holston, 134 N.C. App. 599 (1999)

The trial court did not err in requiring defendant's attorney to produce to the State his notes summarizing defendant's previous medical records, after conducting a voir dire, because even if those notes constitute work product, the privilege was waived when defendant's attorney provided those same notes to an expert who relied on them for his testimony.

Evidence - not an expert - testimony about experience - belated recollections

State v. Stanfield, 134 N.C. App. 685 (1999)

The trial court did not err in a robbery case by allowing the testimony of a detective, who was not testifying as an expert, regarding the belated recollection

process of trauma victims because he was relating his own experience instead of stating an opinion. Further, the detective did not suggest any reasons why belated recollections occurred, he did not vouch for the accuracy of such recollections, and he gave no opinion as to the credibility of the victim witnesses.

Witnesses - expert testimony - intent to cause death

State v. Teague, 134 N.C. App. 702 (1999)

The trial court did not err in admitting the forensic expert's testimony that one of the victim's gunshot wounds to the head was consistent with an intent to cause death because "intent to cause death" is not a precise legal term with a definition that is not readily apparent. Even if it was error to admit the testimony, it was harmless in light of the other substantive evidence supporting the conclusion that both victims' deaths were consistent with a specific intent to cause their death.

Criminal Law - insanity - expert testimony - credibility for the jury - no directed verdict

State v. Dorsey, 135 N.C. App. 116 (1999)

In a case involving assault with a deadly weapon with intent to kill inflicting serious injury, the trial court did not err by failing to direct a verdict of not guilty based on defendant's expert testimony stating defendant was insane because even if the evidence of insanity is uncontroverted, the credibility of that testimony is for the jury and thus precludes the entry of a directed verdict.

Indigent Defendants - funds for expert witness - eyewitness identification

State v. Garner, 136 N.C. App. 1 (1999)

The trial court did not abuse its discretion by denying defendant's motion for funds to employ an eyewitness identification expert where defendant failed to

make the required threshold showing that he would be deprived of a fair trial without the expert assistance or that there was a reasonable likelihood that the expert assistance would materially assist him in the preparation of his case.

Indigent Defendants - funds for expert witness - ex parte hearing on motion

State v. Garner, 136 N.C. App. 1 (1999)

The trial court did not abuse its discretion by refusing defendant's request for an ex parte hearing on his motion for funds to employ an eyewitness identification expert. While access to the basic tools of an adequate defense is a core requirement of a fundamentally fair trial, the need for an ex parte hearing on a motion for expert assistance is not. And, while it has been held that the trial court is constitutionally required to grant indigent defendants an ex parte hearing to establish the need for a psychiatric expert, a request for an eyewitness identification expert does not require the constitutional protections afforded the request for a psychiatric expert.