

HEARSAY

Statements of Others Used in Questioning By Detectives of Defendant Were Not Hearsay Because They Were Not Offered to Prove Truth of Matter Asserted

State v. Miller, ___ N.C. App. ___, ___ S.E.2d ___ (19 May 2009).

The state introduced into evidence the defendant's statement to detectives. Some of the detectives' questions contained statements incriminating the defendant that were made by others who did not testify at trial. The court ruled, relying on *State v. Chapman*, 339 N.C. 328 (2005), that the statements were not hearsay because they were not offered to prove the truth of the matter asserted, but rather to show their effect on the defendant and his response. And because they were not offered for the truth, their admission into evidence did not violate the defendant's Confrontation Clause rights under *Crawford v. Washington*, 541 U.S. 36 (2004).

(3) Defendant-Driver Lacked Standing to Contest Passenger's Consent Search and, Alternatively, Evidence of Passenger's Statement Giving Consent Was Not Inadmissible Hearsay

State v. Hodges, ___ N.C. App. ___, 672 S.E.2d 724 (17 February 2009).

Vice detectives were conducting drug surveillance at a residence and also had information from confidential informants about specific drug sellers and drug sales there. They believed that a vehicle leaving the residence contained a buyer of drugs and followed it to Interstate 40. They saw the vehicle apparently speeding and asked an officer on routine patrol on the interstate to make his own observations about the vehicle's speed or another traffic violation and make a vehicle stop if a violation occurred. The officer followed the vehicle, saw it speeding, and turned on his lights to stop the vehicle. One of the detectives in their vehicle noticed the passenger look back at the officer's vehicle and appeared to conceal something underneath the passenger's seat. He radioed the officer that he believed the passenger was hiding either drugs or a weapon under the seat and

warned him to be careful. After stopping the vehicle, the officer spoke with the driver (the defendant) and the passenger. The defendant stated that the passenger was his neighbor and identified his first name, which was inconsistent with the passenger's driver's license. The officer issued a verbal warning to the defendant for speeding. The officer further detained both the defendant and passenger and eventually the passenger consented to a search of the vehicle. (3) When the officer asked the defendant-driver for consent to search the vehicle, the defendant gave the officer a rental contract in the passenger's name and told the officer that he would have to ask the passenger for consent to search, who then gave a statement that he consented to a search. The defendant argued on appeal that the passenger's statement was inadmissible hearsay. The court first ruled that the defendant waived any standing he may have had to challenge the passenger's consent to search the vehicle. The court noted that the defendant-driver did not assert any ownership interest in the vehicle nor in the items inside. Alternatively, the court ruled that the passenger's statement was not hearsay because it was not offered to prove the truth of the matter asserted. Instead, the statement explained why the officer believed he could conduct the search and his subsequent conduct.

[Author's note: Hearsay is admissible in a suppression hearing. See Robert L Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003) at pages 21, 26, and 83. And most courts who have considered the issue have ruled that *Crawford v. Washington*, 541 U.S. 36 (2004), does not apply to suppression or preliminary hearings. See, e.g., *People v. Felder*, 129 P.3d 1072 (Colo. App. 2005); *Gresham v. Edwards*, 644 S.E.2d 122 (Ga. 2007); *Sheriff v. Witzenburg*, 145 P.3d 1002 (Nev. 2006); *State v. Watkins*, 190 P.3d 266 (Kan. App. 2007); *Vanmeter v. State*, 165 S.W. 3d 68 (Tex. App. 2005).]

(2) Trial Judge Did Not Err in Prohibiting as Defendant's Evidence Admission of Statement of Unavailable Witness to SBI Agent

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

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

(2) An SBI agent investigated a shooting and took a statement from a witness several hours later while seated in the agent's vehicle outside a local police

department. The defendant sought to admit the statement of the witness, who was unavailable at trial, under several hearsay exceptions. The court ruled that the statement was not admissible under present sense impression [803(1)], excited utterance [803(2)], reports of regularly conducted activity [803(6)], or public records and reports [803(8)]. (See the court's analysis in its opinion.)

(1) Murder Victim's Statements to Law Enforcement Officers Were Admissible as Dying Declarations Under Rule 804(b)(2)

(2) Dying Declaration Is Exception to Defendant's Right to Confrontation Under Sixth Amendment

State v. Bodden, ___ N.C. App. ___, 661 S.E.2d 23 (20 May 2008).

The defendant was convicted of second-degree murder. (1) The court ruled that the murder victim's statements to law enforcement officers near the scene of the murder and at a hospital were admissible as dying declarations under Rule 804(b)(2). There was sufficient evidence that the victim believed his death was imminent. Three and a half minutes after the victim called 911, he told his mother that he was going to die. The victim had been shot five times and was bleeding. He was taken to the hospital, received medical treatment in the emergency room, and later died the same day. (2) The court ruled, relying on the ruling in *State v. Calhoun*, 189 N.C. App. 166 (4 March 2008), that a dying declaration is an exception to a defendant's right to confrontation under the Sixth Amendment.

(1) Statements by Dying Shooting Victim to Private Citizen Were Not Testimonial Under Crawford v. Washington, 541 U.S. 36 (2004)

(2) Dying Declaration Is Exception to Defendant's Right to Confrontation Under Sixth Amendment

State v. Calhoun, 189 N.C. App. 166, 657 S.E.2d 424 (4 March 2008).

The defendant was convicted of first-degree murder. The victim was shot in witness A's home when she was not there. Witness A and a law enforcement officer responded to the shooting and arrived at the home at the same time. The victim lay motionless on the living room floor. Witness A asked the victim who had shot him, and the victim told her it was "Chico" and "Worm." Witness A asked the victim to squeeze her hand to confirm that information, and the victim did so. The officer witnessed the identification. (1) The court ruled that the statements by the dying shooting victim to witness A, a private citizen, were not testimonial under *Crawford v. Washington, 541 U.S. 36 (2004)*. (2) The court alternatively ruled, relying on cases from other jurisdictions, that a dying declaration is an exception to a defendant's right to confrontation under the Sixth Amendment.

Defendant's Statement to His Spouse Was Not Within Marital Communications Privilege Because It Was Made Within Known Hearing of Third Person

State v. Kirby, 187 N.C. App. 367, 653 S.E.2d 174 (4 December 2007).

The court ruled that a defendant's statement to his spouse was not within the marital communications privilege because it was made within the known hearing of a third person. The defendant yelled to his spouse in a voice loud enough so anyone in the house could have heard him, and he knew that a third person was in the house. The court also rejected the defendant's argument, based on 1918 and 1929 rulings that predated *State v. Freeman, 302 N.C. 591 (1981)*, that only the third person could testify concerning the defendant's statement. The court ruled that the spouse could testify as well.

Statement Made by Another Person That Was Included in Defendant's Statement to Officer Was Not Hearsay Because It Was Not Offered to Prove Truth of Matter Asserted

State v. Hazelwood, 187 N.C. App. 94, 652 S.E.2d 63 (6 November 2007).

The defendant was convicted of second-degree vehicular murder in which he crashed his vehicle into a tree while attempting to elude chasing officers, killing his two passengers. The defendant gave a statement to an officer in which he said that before the crash, one of the passengers told the defendant to stop, but the defendant told her he was not going to jail tonight. The court ruled that the statement by the passenger was not hearsay within hearsay because the passenger's statement was not offered to prove the truth of the matter asserted (that the passenger wanted the defendant to stop the car). Instead, it was offered to prove that the defendant acted with malice (the defendant's continued high-speed flight despite the passenger's request to stop).

Evidence Victim's Statements to Law Enforcement Officer Responding to Crime Scene and Victim's Later Identification of Defendant at Photo Lineup Were Testimonial Statements Under *Davis v. Washington*, 126 S. Ct. 2266 (2006)

State v. Lewis, 361 N.C. 541, 648 S.E.2d 824 (24 August 2007).

(Author's note: The North Carolina Supreme Court's initial decision in this case was reported at 360 N.C. 1 (2005). The defendant sought review with the United States Supreme Court, which remanded the case to the North Carolina Supreme Court for further consideration in light of *Davis v. Washington*, 126 S. Ct. 2266 (2006).] The defendant was convicted of felonious assault, armed robbery, and feloniously breaking and entering. The victim died before trial and thus did not testify and be subject to cross-examination (the cause of death was not related to these crimes). The state was allowed at trial to offer her statements made to a law enforcement officer who had responded to the crime scene shortly after it was reported by neighbors, although apparently several hours after the crimes had been committed. The victim told the officer what had occurred. Several hours later, a detective showed a photographic lineup to the victim in which she identified the defendant's photo as the person who committed the crimes against her. The court ruled that the victim's statements and the photo identification were testimonial statements under *Davis v. Washington*, 126 S. Ct. 2266 (2006), and their admission violated the defendant's confrontation rights because the

defendant had not been afforded an opportunity to cross-examine the victim. The court's analysis of the victim's statements to the law enforcement officer at the crime scene included: (1) the victim did not face an immediate threat to her safety (there was no ongoing emergency); (2) the officer sought to determine "what happened" rather than "what is happening"; (3) the investigation was formal and conducted outside the defendant's presence; (4) the victim's statements in response to questioning recounted how the crimes had begun and progressed; and (5) the questioning occurred some time after the crimes had been committed. The court ruled that it was also clear that the victim's later photo identification of the defendant was testimonial. The court ordered a new trial because it determined that the constitutional error in admitting the victim's statements was not harmless beyond a reasonable doubt. The court noted that the issue of the defendant's forfeiture of confrontation rights remained an issue that may be developed by the parties during the defendant's new trial.

(2) Statements Made by Victim to Friend Were Admissible as Present Sense Impressions, Rule 803(1)

State v. Williams, ___ N.C. App. ___, 648 S.E.2d 896 (21 August 2007).

The defendant was convicted of first-degree murder. (2) The court ruled that the statements made by the victim to a friend were admissible as present sense impressions, Rule 803(1). The victim spoke by telephone to the friend immediately before the defendant and accomplice arrived at the victim's house to commit the murder, which was only two hours after the accomplice had initially spoken to the victim.

(2) Report Detailing Timeline of 911 Call and Responses Made by Law Enforcement Was Nontestimonial Under *Crawford v. Washington*, 541 U.S. 36 (2004), and Admissible as Business Record Under Hearsay Rule 803(6)

(3) Information Form Used by Neighborhood Security Guards Was Nontestimonial Under Crawford v. Washington, 541 U.S. 36 (2004), and Admissible as Business Record Under Hearsay Rule 803(6)

State v. Hewson, 182 N.C. App. 196, 642 S.E.2d 459 (20 March 2007).

The defendant was convicted of the first-degree murder of his wife whom he shot while she was inside her home. (2) The court ruled, relying on *State v. Forte*, 360 N.C. 427, 629 S.E.2d 137 (2006), the an event report detailing the timeline of the 911 call and the responses made by law enforcement was nontestimonial under *Crawford v. Washington*, 541 U.S. 36 (2004), and was admissible as a business record under Rule 803(6). (3) The court ruled that a pass-on information form used by neighborhood security guards was nontestimonial under *Crawford v. Washington*, 541 U.S. 36 (2004), and was admissible as a business record under Rule 803(6). An entry by a security guard on the form included information that the victim's husband had been threatening her and to make sure that he does not use the pass system to get into the neighborhood.

(2) Videotaped Interviews Between Child Sexual Abuse Victims and Pediatric Nurses Were Admissible Under Rule 803(4) (Statement Made for Medical Diagnosis or Treatment) and State v. Hinnant

(3) Child Sexual Assault Victim's Statement to Mother Within 24 Hours of Assault Was Admissible Under Rule 803(2) (Excited Utterance)

State v. Burgess, 181 N.C. App. 27, 639 S.E.2d 68 (2 January 2007).

The defendant was convicted of six counts of first-degree sexual offense involving three children under thirteen years old. (2) The court ruled, relying on *State v. Lewis*, 172 N.C. App. 97, 616 S.E.2d 1 (2005), and *State v. Isenberg*, 148 N.C. App. 29, 557 S.E.2d 568 (2001), that videotaped interviews between child sexual abuse victims and pediatric nurses were admissible under Rule 803(4) (statement made for medical diagnosis or treatment) because they satisfied the

standard set out in *State v. Hinnant*, 351 N.C. 277, 523 S.E.2d 663 (2000). The children made the statements with the understanding that they would lead to medical diagnosis or treatment. The pediatric nurses at the children's medical center had interviewed the children before they were examined by a doctor, and the children were told they were there for a check up with a doctor. (3) The court ruled, relying on *State v. Smith*, 315 N.C. 76, 337 S.E.2d 833 (1985), and *State v. Thomas*, 119 N.C. App. 708, 460 S.E.2d 349 (1995), that a child sexual assault victim's statement to her mother within 24 hours of assault was admissible under Rule 803(2) (excited utterance).

(5) Judge Did Not Err in Prohibiting Proposed Testimony of Defense Investigator Under Residual Hearsay Exception

State v. Ryals, 179 N.C. App. 733, 635 S.E.2d 470 (17 October 2006).

The defendant was convicted of second-degree murder. State's witness Lee testified that she saw the defendant beat the victim with his fists and kick and stomp him. State's witness Winstead also testified about the defendant's beating of the victim. A police department crime technician recovered a black knit cap and other items from the crime scene. Negroid hair was found on the cap, but a state's witness testified it was not suitable for further analysis. A defense expert witness compared a DNA sample from the hair on the cap with the defendant's DNA sample and concluded that it could not have originated from the defendant. Before trial, a judge denied the defendant's motion for a nontestimonial identification order to collect a DNA sample from Winstead to compare it with DNA from the hair on the cap; the defendant contended that Winstead had a motive to commit the murder, was present at the scene, and could have committed the murder. (5) The defendant proffered testimony under the residual hearsay exception, Rule 804(b)(5), by the defense investigator of a statement made by an unavailable witness that the defendant was at a party at the time of the murder. The court ruled that the trial judge did not err in prohibiting this proposed testimony because the statement (i) the statement lacked circumstantial guarantees of trustworthiness (a large amount of alcohol was consumed at the party and defendant chose not call other people present at the party), and (ii) the statement was not more probative than any other evidence that the defendant could secure through reasonable efforts (others had attended the party and were available as

witnesses).

Evidence--Hearsay--Residual hearsay exception-Lack of trustworthiness

State v. Ryals, 179 NCA 733 (2006)

The trial court did not err in a second-degree murder case by preventing defendant's investigator from testifying to a witness's statement under the residual hearsay exception of N.C.G.S. § 8C-1, Rule 804(b)(5), because: (1) the trial court's finding that the statement lacked circumstantial guarantees of trustworthiness was supported by competent evidence including the large amount of alcohol consumed at the witness's house as well as defendant's choice not to call the other people present at the witness's house to testify; and (2) the statement was not more probative than any other evidence that defendant could secure through reasonable efforts on the point of defendant's alibi.

Evidence-Hearsay--Prison records of defendant's father-Public records exception-Relevancy

State v. Watson, 179 NCA 228 (2006)

The trial court did not err in a first-degree rape and felonious larceny case by admitting the prison records of defendant's father through the testimony of an investigator, because: (1) a witness testified that the DNA evidence could rule out over ninety-nine percent of the population, but could not rule out paternal relatives of defendant as donors of the DNA; (2) the evidence was relevant to eliminate other potential perpetrators of the rape including paternal relatives of defendant; (3) defendant failed to show that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice; and (4) the prison records are admissible under the public records exception under N.C.G.S. § 8C-1, Rule 803(8) since the sources of the information or other circumstances in this case do not indicate lack of trustworthiness.

Evidence-Prior crimes or bad acts-Motive, opportunity, intent, and knowledge

State v. Calvino, 179 NCA 219 (2006)

The trial court did not abuse its discretion in a double possession with intent to sell and deliver cocaine, selling and delivering cocaine, trafficking in cocaine by possession, and keeping or maintaining a motor vehicle for the purpose of keeping or selling a controlled substance case by admitting evidence of other crimes including defendant attending a yearly party in the mountains for drug users and sellers, because: (1) after defense counsel objected, the trial court held a voir dire in the absence of the jury and determined that it would allow the evidence for the limited purpose of showing defendant's motive, opportunity, intent, and knowledge; (2) the trial court instructed the jury on the limited purpose for which the evidence was being received; and (3) presuming error, such error would not have prejudiced defendant given the other evidence presented in this case.

Evidence-Hearsay exception-Plan for future act-Murder victim's statement

State v. Taylor, 178 NCA 395 (2006)

A murder victim's statement of his plans for the night on which he was killed was admissible pursuant to the hearsay exception in N.C.G.S. § 8C-1, Rule 803(3), as a then-existing plan to engage in a future act.

Evidence-Hearsay-Statement against interest

State v. Laney, 178 NCA 337 (2006)

A hearsay statement from an indecent liberties defendant to the mother of the child that he would “be guilty” in court was admissible under N.C.G.S. § 8C-1, Rule 801(d)(A) as a statement against interest.

Evidence-Hearsay--Sex Offender Registration documents-Records of regularly conducted

activity

State v. Wise, 178 NCA 154 (2006)

A Sex Offender Registration Worksheet and Notice of Pending Registration were records of regularly conducted activity under N.C.G.S. § 8C-1, Rule 803(6) and were properly admitted into a prosecution for failing to register as a sex offender. Although police reports are specifically excluded under Rule 803(8), the inadmissibility of evidence under one hearsay exception does not necessarily preclude admission under another exception.

Evidence--Hearsay--Nontestimonial--Residual hearsay exception *****

State v. Brigman, 178 NCA 78 (2006)

The trial court did not abuse its discretion in a multiple first-degree sex offense and multiple taking indecent liberties with a minor case by admitting the children's hearsay statements to their foster parents and to medical personnel, because: (1) defendant concedes that the statements made to the children's foster parents were not testimonial, and therefore, did not violate the Confrontation Clause; (2) the children's statements to their foster parents were admissible under the residual hearsay exception when the children testified they had told the foster parents about things defendant had done but did not remember what they told the foster parents, the statements were more probative on the points for which they were offered than any other evidence the State could produce through reasonable efforts at the time, the State gave proper notice of its intent to offer the statements, the children's statements possess equivalent circumstantial guarantees of trustworthiness, and it cannot be said the trial court's findings and conclusions were manifestly unsupported by reason or were so arbitrary that they could not have been the result of a reasoned decision; and (3) Child 3's statements to a doctor (that defendant put his hand in the child's bottom, that it hurt, and that defendant touched the two other children in the same way) were not testimonial and defendant's right to confrontation was not violated when it cannot be concluded that a reasonable child under three years of age would know or should know that his statements might later be used at trial.

Evidence-Hearsay-Testimony that officer yelled to stop-Not testimonial

State v. Ferebee, 177 NCA 785 (2006)

The admission of hearsay testimony that a campus police officer yelled for defendant to stop was not a violation of the Confrontation Clause because the statement was not testimonial, and was not prejudicial because there was substantial other evidence to the same effect.

Evidence_hearsay_excited utterance_seizure of defendant's girlfriend

State v. Boyd, 177 NCA 165 (2006)

A hearsay statement by a cocaine defendant's girlfriend that “we gots to be more careful” was properly admitted under the excited utterance exception. The statement occurred when she arrived home, was seized by police in her front yard, and led handcuffed into her own residence. She was upset and shaking before the statement and burst into tears immediately afterwards.

Evidence--hearsay--coconspirator's statement made before conspiracy established—harmless error

State v. Stephens, 175 NCA 328 (2006)

Although the trial court erred in an armed robbery and second-degree kidnapping case by admitting into evidence a hearsay statement made by defendant's coconspirator that was made before the conspiracy had been established, the error was harmless because there was overwhelming evidence that defendant participated in the armed robbery of a convenience store even excluding the statement made by his coconspirator.

Evidence-_hearsay--not truth of matter asserted

State v. Byers, 175 NCA 280 (2006)

The trial court did not err in a first-degree burglary and first-degree murder case by allowing into evidence a witness's testimony even though defendant contends it was in violation of *Crawford v. Washington, 541 U.S. 36 (2004)*, because: (1) if the statement is offered for reasons other than the truth of the matter asserted, the statement is not hearsay and is not covered by *Crawford*; and (2) the statements were not admitted for the truth of the matter asserted, but for purposes of explaining why the witness chose to run (in fear for his life), why he sought law enforcement assistance before returning to the apartment, and why he chose not to confront defendant single-handedly.

Evidence--hearsay--identification of defendant based on statement of another witness—harmless error beyond a reasonable doubt

State v. Lawson, 173 NCA 270 (2005)

The trial court committed harmless error beyond a reasonable doubt in an assault with a deadly weapon inflicting serious injury case by admitting the victim's inadmissible hearsay statement identifying defendant as the perpetrator based on the statement of another witness, because: (1) a witness who was present during the incident identified defendant as the person who injured the victim and described the events that took place during the incident; (2) defendant contacted an officer and admitted to injuring the victim; and (3) another officer who responded to the emergency 911 call made that night explained the declarant witness's unavailable status.

Evidence--hearsay--medical diagnosis or treatment exception --videotape interviews of minor children

State v. Lewis, 172 NCA 97 (2005)

The trial court did not err in a double taking indecent liberties with a minor case by denying defendant father's motion to suppress and by overruling his objections

to the introduction of the interviews of the minor children as substantive evidence on the basis that they were statements made for the purpose of medical diagnosis or treatment pursuant to N.C.G.S. § 8C-1, Rule 803, because: (1) both children testified at trial and were subject to cross-examination, and thus, there was no violation of defendant's right to confrontation; (2) both children were old enough to understand the interviews had a medical purpose and they indicated as such; (3) the circumstances surrounding the interviews created an atmosphere of medical significance; (4) the interviews took place at a medical center with a registered nurse immediately prior to a physical examination; (5) although the examinations took place in a child-friendly room instead of a medical examination room, our Supreme Court has stated that the trial court should consider all objective circumstances of record surrounding declarant's statements in determining whether he or she possessed the requisite intent under Rule 803(4); (6) the evidence taken in its entirety indicates the statements were made at the children's first visit to a doctor after discovery of these particular allegations of sexual abuse; and (7) both children identified their father as the abuser in their interviews, and such identification was not made simply for trial preparation but also to diagnose psychological problems and prepare a course of treatment.

Evidence--hearsay--lab reports--exceptions--public records and business records—law enforcement exclusion

State v. Lewis, 172 NCA 97 (2005)

The law enforcement exclusion in the public records hearsay exception does not limit the business records exception. N.C.G.S. § 8C-1, Rules 803(8) and 803(6).

Evidence; Constitutional Law – hearsay – residual hearsay exception – Right of confrontation – harmless error

State v. Champion, 171 NC App 716 (2005)

The trial court erred in a first-degree murder case by allowing a detective to testify as to what a witness told her on the date of the attack under the residual hearsay exception of N.C.G.S. 8C-1, Rule 804(b)(5) because the court improperly

considered the corroborative nature of the statements in determining their trustworthiness. Defendant's Sixth Amendment right of confrontation under *Crawford v. Washington*, 541 US 36 (2004) was also violated by the admission of those statements because, although the witness had died and was thus unavailable, there was no indication that defendant was given the opportunity to cross-examine the witness regarding the statements. However, the erroneous admission of the statements was harmless beyond a reasonable doubt when: (1) the jury heard similar evidence from other sources and was free to determine defendant's guilt based upon evidence irrespective of the witness's statements; and (2) there was overwhelming evidence establishing defendant's guilt.

Constitutional Law--right of confrontation--nontestimonial hearsay--sexual abuse--statements of children conveyed through foster and adoptive parents--catchall exception--unavailable witness

State v. Brigman, 171NCA 305 (2005)

The trial court did not err in a multiple first-degree sex offense and multiple counts of indecent liberties case involving defendant mother's three sons by admitting the statements by the sons as conveyed through their foster and adoptive parents, because: (1) defendant waived her right to confront two of the boys whose statements were admitted under the catchall exception based on circumstantial guarantees of trustworthiness when defendant failed to call these two boys to testify; (2) none of the challenged statements constituted formal statements to police or other government officers; (3) although defendant implies the foster parents played a quasi-governmental role since they recorded the boys' statements and conveyed the statements to both DSS and the police, the statements are not the type of formal testimonial statements envisioned by the U.S. Supreme Court in *Crawford v. Washington*, 541 U.S. 36 (2004); and (4) the boy whose statements were admitted based on the fact that he was an unavailable witness made statements spontaneously to his foster mother, who was one of the people closest to him, without the reasonable belief that the statements would be used at a subsequent trial, and statements made to family, friends, and acquaintances without an intention for use at trial have consistently been held not to be testimonial.

Evidence--hearsay--neighborhood had reputation for drug use and drug sales

State v. English, 171 NCA 277 (2005)

The trial court did not err in a sale, delivery, and possession with intent to sell or deliver a controlled substance case by allowing an officer to testify that the neighborhood in which defendant was arrested had a reputation as a heavy, heavy area for drug use and drug sales, because: (1) the testimony was prompted by a question by the State as to why the officer was in the neighborhood; (2) the statement was offered to explain why the officer subsequently solicited drugs from a pedestrian in that neighborhood, and not as an assertion that the neighborhood was, in fact, known for its heavy drug traffic; and (3) even if the evidence was considered to be inadmissible hearsay, its admission did not require a new trial due to the overwhelming evidence of defendant's guilt including an officer's testimony about defendant's role in the drug sale, the laboratory analysis proving the substance was crack cocaine, and defendant's possession of a twenty dollar bill.

Evidence--hearsay--declaration against interest--excluded

State v. Dewberry, 166 NCA 177 (2004)

The exclusion of hearsay in a prosecution for first-degree murder and assault was not an abuse of discretion where defendant, who was claiming self-defense, wanted to introduce testimony that a gun had been removed from the victim's car after the shooting. Defendant contended that the statements should have been admitted as a declaration against interest under N.C.G.S. § 8C-1, Rule 804 (b)(3), but the court determined that the statement was not sufficiently against the declarant's interest and that there were insufficient independent, nonhearsay indications of trustworthiness.

Evidence--hearsay--medical treatment or diagnosis exception--excited utterance

State v. Gattis, 166 NCA 1 (2004)

The trial court did not err in a first-degree murder, first-degree burglary, and assault with a deadly weapon case by excluding certain statements defendant made at the hospital and to his child's mother, because: (1) although defendant contends the State opened the door to an overheard statement by asking a police officer whether he ever heard defendant say anything about the victim, defendant failed to make this argument to the trial court; (2) the statement in a note that an emergency room nurse wrote at the time defendant was being examined by a physician regarding the gun going off accidentally during a fight is only relevant to fault and therefore does not fall within the scope of N.C.G.S. § 8C-1, Rule 803(4) relating to medical diagnosis or treatment; (3) by simply introducing into evidence a statement made by a defendant, the State does not open the door for the introduction of another statement made by defendant at some other time during that day; and (4) the statements defendant made to his child's mother were not excited utterances and established only the undisputed facts that defendant and the victim had an argument, that both were shot, and that defendant was bleeding.

Evidence--hearsay--not offered for truth of matter asserted--corroboration

State v. Young, 166 NCA 401 (2004)

The trial court did not err in a possession with intent to sell and deliver marijuana case by allowing three officers to testify regarding statements made to them by another officer describing the activities of defendant and others witnessed by that officer during a surveillance operation, because: (1) the challenged testimony was offered not to prove the truth of the matters asserted therein, but rather to explain the officers' conduct after they arrived at the scene; (2) the trial court specifically instructed the jury that each officer's testimony was not offered for the truth of the matter asserted; and (3) while an officer's trial testimony did not specifically denominate any of the behavior as illegal drug activity, it cannot be said that the testimony of the other three officers was not corroborative of the officer's testimony.

Evidence--hearsay--unavailable witness--present sense impression--right of confrontation

State v. Morgan, 359 NC 131 (2004)

The trial court did not err in a capital first-degree murder case by admitting three of a witness's out-of-court statements even though the witness died prior to trial, because: (1) the witness's statement that he needed help because defendant was "tripping" was made to explain or describe a condition immediately after the declarant perceived the condition, which is a typical example of a present sense impression under N.C.G.S. § 8C-1, Rule 803(1), and the lapse in time between defendant's behavior and the witness's description to defendant's brother who was located just half a mile away meant the likelihood that this time afforded the witness an opportunity deliberately to misrepresent defendant's condition was remote; (2) the statements the witness made to a detective were elicited only when asked by defense counsel during cross-examination, and thus, defendant cannot object to its admission; and (3) although the witness's statement to a sergeant was admitted in violation of defendant's Sixth Amendment right to confront his accuser, the erroneous admission was harmless in light of other overwhelming evidence that was properly admitted to establish defendant's guilt of first-degree murder, including blood spatter evidence, the broken bottle on the street beside the victim's body, the forty-eight wounds inflicted on the victim, a witness's testimony that defendant chased his nephew while yelling, "I'll kill you, too," and the testimony of two inmates that defendant composed and sang a rap song in which he said that the victim paid with her life for smoking defendant's crack and denying him sex.

Evidence--hearsay--reputation of neighborhood for narcotics

State v. Williams, 164 NCA 638 (2004)

The trial court erroneously allowed testimony about the reputation of a neighborhood for drug dealing; evidence of the general reputation of a defendant's home or neighborhood in drug cases constitutes inadmissible hearsay in North Carolina. Moreover, there exists the reasonable possibility of a different result without the improper reputation evidence.

Court Rules That "Testimonial" Statement Obtained Before Trial Is Admissible Under the Confrontation Clause Only If the Declarant Is Available for Cross-Examination at Trial or If the Declarant Is Unavailable at Trial, There Was a Prior Opportunity for Cross-

Examination of Declarant

Crawford v. Washington, March 8, 2004

Based on the Court's statements in footnote 9, this ruling (1) does not prohibit the state's introduction of a testifying witness's out-of-court "testimonial" statement, under either an exception to the hearsay rule or as a prior consistent statement (that is, for corroborative purposes), because the witness is available for cross-examination; and (2) does not prohibit the state's use of "testimonial" statements for purposes other than establishing the truth of the matter asserted, such as for impeachment of a witness.

Evidence--hearsay--nontestimonial statements--right of confrontation

State v. Blackstock, 165 NCA 50 (2004)

Hearsay statements made by a murder victim to his wife and daughter concerning the shooting of the victim during a robbery were nontestimonial and not rendered inadmissible by *Crawford v. Washington, 541 U.S. ___ (2004)* where they were made during personal conversations that took place over a period of several days after the shooting at a time when the victim's physical condition was improving and he could have expected to personally testify at the trial. See p. 66 footnote; *Ohio v. Roberts* still ok as to non – testimonial

Evidence--hearsay--state of mind exception--residual hearsay exception

State v. Blackstock, 165 NCA 50 (2004)

The trial court erred in a first-degree murder and robbery with a dangerous weapon case by admitting hearsay statements made by the victim to his wife and daughter concerning the robbery and shooting, because: (1) the statements were made several days after the robbery and therefore were not admissible under N.C.G.S. § 8C-1, Rule 803(3) to show the victim's then-existing state of mind during the robbery; (2) the statements made by the victim to his wife and daughter

did not bear particular guarantees of trustworthiness required for admissibility under the residual hearsay exception for testimony by unavailable witnesses set forth in N.C.G.S. 8C-1, Rule 804(b)(5) since, although the victim may have had no motivation to speak untruthfully to either the police captain or his wife and daughter, his statement to the officer that he was shot during a struggle for the gun versus the statement to his relatives that he was shot while on his knees with his hands in the air pleading for his life cannot be reconciled without the benefit of cross-examination, which defendant was denied; and (3) the improperly admitted hearsay statements contained the only evidence of premeditation and deliberation, and thus, the jury's verdict of first-degree murder cannot stand on that basis but can still rest on the felony murder theory with vacation of the armed robbery conviction which serves as the basis for the felony murder.

Evidence—hearsay—admissions by party-opponent—government agents

State v. Villeda, 165 NCA 431 (2004)

The exception to the hearsay rule for admissions by an agent of a party-opponent applies to statements by government agents for the purpose of a criminal proceeding. Here, statements by a Highway Patrol trooper to attorneys and to an internal affairs officer about why he stopped Hispanics were admissible in a DWI trial because the trooper was an agent of the government and the statements concerned matters within the scope of his agency. N.C.G.S. § 8C-1, Rule 801(d)(D).

Evidence--hearsay--state of mind--other evidence admitted

State v. Dawkins, 162 NCA 231 (2004)

There was no error in the court admitting hearsay testimony in a first-degree murder prosecution where other testimony was admitted to the same effect or the evidence concerned the victim's state of mind. These statements explained the victim's conditions as shown in photographs and tended to disprove the nonabusive relationship defendant described. An express declaration of fear is not required. See Farb p.26

Evidence--hearsay--not offered for truth of matter asserted--explanation of actions

State v. Moore, 162 NCA 268 (2004)

The trial court did not err in a possession of drug paraphernalia, possession with intent to sell and deliver cocaine, and maintaining a place to keep controlled substances case by permitting deputies to testify that they went to a residence to talk with defendant after arresting a person with crack cocaine in her hand who had just left the residence even though defendant contends the testimony was inadmissible hearsay, because: (1) the deputies' testimony placed defendant in close proximity to the drugs; and (2) the challenged testimony was neither offered for the truth of the matter asserted nor offered as corroboration, but instead to explain the deputies' actions.

Evidence--hearsay--excited utterance exception

State v. Allen, 162 NCA 587 (2004)

Testimony relating statements made to an officer by two witnesses to a robbery and shooting were admissible as excited utterance exceptions to the hearsay rule. The statements were made twenty minutes after the shooting, both witnesses were upset, and the arrival of the Spanish-speaking officer gave the witnesses their first opportunity to tell what they had seen. N.C.G.S. § 8C-1, Rule 803(2).

Evidence--hearsay--information from website

State v. Blackwell, 163 NCA 12 (2004)

Testimony from a firearms expert that a sawed-off shotgun was manufactured after 1905, based on information from a website, was not inadmissible hearsay. Moreover, its admission was not plain error because the antique status of a sawed-off shotgun is an affirmative defense, and the initial burden of presenting

evidence on the antiquity of the shotgun was on defendant. The only evidence presented by defendant was merely that the shotgun was old. 14-288.8c See Farb p22 Before 1898

Evidence--hearsay--residual exception-unavailability of witness

State v. Finney, 358 NC 79 (2004) Rev'd Ct Appeals

The trial court erred in a first-degree rape case by admitting the hearsay testimony of a detective as to statements allegedly made to him by the victim under the residual exception of N.C.G.S. § 8C-1, Rule 804(b)(5) based on the erroneous conclusion that the victim was unavailable to testify, because the trial court failed to provide sufficient encouragement to the victim and failed to adequately explain to her that her testimony was essential to the constitutionality of the proceedings. See Farb p.9

Evidence--hearsay--unavailable witness--testimony given under oath

State v. Finney, 358 NC 79 (2004) Rev'd Ct Appeals

The trial court erred in a first-degree rape case by refusing to allow defendant to introduce the victim's voir dire testimony in which the victim blamed her fragile emotional state on the harassment leveled at her by the district attorney rather than her alleged rape by defendant because: (1) the State relied on the victim's mental injury to support a conviction of first-degree rape; (2) the victim was deemed an unavailable witness; and (3) the testimony was admissible under Rule 804(b)(1) when the victim gave the testimony under oath during voir dire and the State was permitted an opportunity to examine the victim concerning this testimony.

Evidence--hearsay--codefendant's out-of-court statements--bribery of public officer—verbal acts--adoptive admissions

State v. Weaver, 160 NCA 61 (2003)

The trial court did not err in a bribery of a public officer case by admitting testimony of the out-of-court statements of a codefendant offering the alleged bribe even though defendant contends the statements were hearsay, because: (1) to prove that a person has offered a bribe, the State must necessarily offer evidence that words amounting to a bribe were spoken; (2) the State offered the codefendant's statements to prove that he spoke words that amounted to an offer of a bribe rather than for the truth of the matter asserted in those statements; (3) the codefendant's statements fall into the category of operative facts or verbal acts;

and (4) as an alternative basis, the evidence was admissible as adoptive admissions since the State offered evidence that defendant participated in the conversation and affirmatively endorsed his codefendant's statements. N.C.G.S. § 8C-1, Rule 801.

Evidence—hearsay—synopsis of defendant's statement—recorded recollection

State v. Alston, 161 NCA 367 (2003)

A detective's synopsis of defendant's statement was correctly excluded from an assault prosecution where there was no showing that defendant had the required insufficient recollection, that the statement was necessary to refresh the officer's memory, or that the statement was inconsistent with testimony. N.C.G.S. § 8C-1, Rule 803(5).

Evidence--hearsay--state of mind exception--unavailable declarant exception—residual exception

State v. Valentine, 357 NC 512 (2003)

The trial court did not err in a first-degree murder and discharging a firearm into occupied property case by allowing the victim's hearsay statements into evidence under N.C.G.S. § 8C-1, Rules 803(3), 803(24), and 804(b)(5), because: (1) the statements which were made orally to witnesses explained the victim's upset and

concerned state of mind; (2) the victim's account of the events established the basis for the victim's fear or concern, and his belief that defendant's actions were so life-threatening that the victim needed to retrieve his gun to protect himself from defendant and defendant's brother; (3) although the trial court failed to make the required findings of fact and conclusions of law regarding the trustworthiness of the hearsay statements, the Supreme Court reviewed the record and concluded that the evidence established that the statements possessed equivalent guarantees of trustworthiness; (4) the victim's statements to two witnesses were more probative in establishing the victim's state of mind shortly after the altercation with defendant than any other evidence the State could have procured by reasonable means; and (5) contrary to defendant's assertion, the statements did not violate his constitutional right to confrontation when the statements fell within a firmly rooted hearsay exception.

Evidence--hearsay--coconspirator exception

State v. Valentine, 357 NC 512 (2003)

The trial court did not err in a first-degree murder and discharging a firearm into occupied property case by admitting into evidence hearsay statements made by defendant's brother to a witness under the coconspirator exception of N.C.G.S. § 8C-1, Rule 801(d)(E), because: (1) the evidence viewed in a light most favorable to the State was sufficient to meet the State's burden of establishing that a conspiracy between defendant and his brother existed; (2) the actions of both defendant and his brother established that they both intended to harm the victim and that they were acting in unison; (3) the statements were made in furtherance of the conspiracy and were not merely narratives; and (4) even if the statements were not admissible under the coconspirator exception, the statements were not hearsay and thus it was not necessary for the statements to fall within a hearsay exception.

Evidence--hearsay--victim's handwritten statements--present sense impressions--harmless error

State v. Wiggins, 159 NCA 252 (2003)

A shooting victim's handwritten statements about events leading up to and during the shooting made seven hours after the shooting and after the victim had undergone general anesthesia and surgery were not admissible under the present sense impression hearsay exception; however, the admission of these written statements was harmless error beyond a reasonable doubt where the same information contained in the statements was properly introduced into evidence through the victim's 911 call and the testimony of other witnesses.

Evidence--hearsay--defendant's drug deal/revenge theory of case

State v. Wiggins, 159 NCA 252 (2003)

The trial court did not err in a conspiracy to commit murder, firing a gun into occupied property, and using an instrument with intent to destroy an unborn child case by excluding evidence of and failing to instruct on defendant's theory of the case that his two alleged coconspirators were seeking revenge on defendant based on the fact that they were angry with defendant for refusing to finance a drug deal, because: (1) the statements were self-serving, were sought to be admitted for the truth of the matter asserted, and were not evidence of defendant's state of mind; and (2) defendant's drug deal/revenge theory was not supported by any evidence admitted for substantive purposes at trial. See Farb p. 25 & his interpretation of this.

Evidence--hearsay--door opened on cross-examination

State v. Mason, 159 NCA 691 (2003)

The trial court did not err by admitting hearsay from detectives in a trial for murder, burglary, and robbery where defendant opened the door through questions on cross-examination. See Farb p. 28

Evidence--present sense impressions and excited utterances--statements directing officer to robbery

State v. Clark, 159 NCA 520 (2003)

Statements to an officer from unidentified witnesses to an armed robbery who flagged down an officer and later directed him to defendant's car were admissible as present sense impressions and excited utterances. N.C.G.S. § 8C-1, Rules 803(1) and (2).

Evidence--hearsay--state of mind exception

State v. Smith, 357 NC 604 (2003)

The trial court did not err in a capital first-degree murder prosecution by admitting a hearsay statement of the victim at trial regarding a blue van under the N.C.G.S. § 8C-1, Rule 803(3) state of mind exception, because: (1) the testimony regarding the blue van made four days prior to the victim's death served to support the victim's assertion that it was spooky at home alone during the day and tended to show her state of mind at the time of the conversation with her mother; (2) the statement about the blue van, along with an earlier statement that defendant gave the victim the creeps, supported the victim's intention to tell defendant to stay away and was relevant to show a potential confrontation; and (3) even assuming the testimony was inadmissible based on the fact that defendant drove a black and burgundy colored van and the only link ever made between defendant and the blue van was made by defendant's counsel, defendant has not shown that the error was prejudicial.

Evidence - hearsay - statements to nontestifying officer - related by another officer

State v. Lynn, 157 N.C. App. 217 (2003)

Inconsistent statements from an attempted murder victim were properly excluded where they were made to an officer who did not testify and elicited at trial during the cross-examination of an SBI agent. Inconsistent statements must be proven by direct evidence. Moreover, defendant did not move at trial to admit the officer's notes under the public records and reports exception to the hearsay rule, and there

was no reasonable possibility of a different result if the statement had been admitted.

Evidence - hearsay - unavailable witness - admissibility under Rule 804(b)(5)

State v. Finney, 157 N.C. App. 267 (2003)

The trial court did not err in a first-degree rape case by allowing a detective to read the victim wife's statement to the jury under N.C.G.S. § 8C-1, Rule 804(b)(5), because: (1) although the victim appeared at trial pursuant to a subpoena, she refused to answer any questions before the jury; (2) sufficient written notice was given to the defense by the State as to the victim's unavailability in light of the fact that the State did not learn that the victim would not testify until the first day of trial; (3) the statement possessed equivalent circumstantial guarantees of trustworthiness; (4) the statement was offered as evidence of a material fact including a description of the assailant as well as the details of the offense; (5) the hearsay was more probative than any other evidence produced by the State when the victim refused to testify at trial; (6) the general purposes of the Rules of Evidence and the interests of justice were best served by allowing the statement into evidence; (7) there was no violation of defendant's right to confrontation when the testimony was admitted as an exception to the hearsay rule; and (8) the unavailability of the victim was not the result of the conduct of the State.

Evidence--hearsay--medical diagnosis or treatment exception See Farb p28

State v. Thornton, 158 NCA 645 (2003)

The trial court did not commit plain error in a first-degree rape and taking indecent liberties with a minor case by failing to instruct the jury that statements made by the victim during interviews with a licensed clinical social worker were not substantive evidence, because the statements were admissible under N.C.G.S. § 8C-1, Rule 803(4) when the victim made the statements to the social worker with the understanding that they would lead to medical diagnosis or treatment and that the statements were reasonably pertinent to diagnosis or treatment.

Evidence--hearsay--medical history--not offered for truth of matter asserted

State v. Shepherd, 156 NCA 69 (2003)

The trial court did not err in a first-degree sexual offense and taking indecent liberties with a child case by allowing a doctor's testimony as to what the minor child had told her during the medical examination even though defendant contends it was inadmissible hearsay, because: (1) the minor child's statements were made during the gathering of information to obtain her medical history; and (2) the statements were not offered for the truth of the matter asserted but to illustrate the type of information the doctor collected in order to diagnose the minor child.

Evidence--hearsay--recorded recollection

State v. Love, 156 NCA 309 (2003)

The trial court did not abuse its discretion in a communicating threats case under N.C.G.S. § 14-277.1, involving a domestic disturbance between defendant and his wife, by permitting an officer to read the statement of defendant's wife into evidence even though defendant contends the State failed to lay a proper foundation under N.C.G.S. § 8C-1, Rule 803(5) for a recorded recollection based on the fact that defendant's wife did not sign the statement, because: (1) defendant's wife testified that she remembered making a statement describing the events of that night to an officer, she made the statement when the events of the night were fresh in her mind, she no longer had sufficient recollection as to the matter, and the statement was read back to her; and (2) an officer testified that defendant's wife was given an opportunity to edit the statement, but she declined to do so and thereby adopted it.

Evidence--hearsay--residual exception--unavailable witness

State v. Carter, 156 NCA 446 (2003)

An out-of-court statement to officers by a witness who later married defendant and asserted marital privilege was properly admitted under the N.C.G.S. § 8C-1, Rule 804(b)(5) hearsay exception. The court conducted a two-day voir dire, determined that the witness was unavailable, found that the statement had been made voluntarily after the witness was told about the marital privilege and that she wasn't going to be arrested, and each of the six factors for determining whether hearsay should be admitted under the residual hearsay exception was systematically analyzed.

Evidence—hearsay—statement against penal interest

State v. Carter, 156 NCA 446 (2003)

The trial court did not err by finding that letters from an accomplice were an attempt to persuade a witness to lie and that the two-prong test for admissibility under N.C.G.S. § 8C-1, Rule 804(b)(3) for admission against penal interest was satisfied.

Evidence - hearsay - state of mind exception - victim afraid of defendant

State v. Earwood, 155 N.C. App. 698 (2003)

The trial court did not err in a first-degree murder case by allowing under the state of mind exception of N.C.G.S. § 8C-1, Rule 803(3) the testimony of two witnesses that the victim was afraid that her son would kill her based upon their conversations with the victim, because the witnesses adequately described the emotional state of the victim.

Evidence--hearsay--excited utterance--corroboration--state of mind--effect on listener

State v. Wade, 155 NCA 1 (2002)

The trial court did not commit plain error in an indecent liberties with a child, felonious child abuse by a sexual act, incest, statutory rape, and first-degree rape case by failing to strike ex mero motu the testimony of defendant's ex-wife concerning her child's report of defendant's sexual abuse of the child, because: (1) a young child's report of sexual abuse made between two and three days of the event is admissible under the excited utterance exception of N.C.G.S. § 8C-1, Rule 803(2); (2) the testimony was admissible as corroboration since the child testified to the events herself; and (3) the remaining portions of the challenged testimony were not offered for the truth of the matter asserted, but for the nonhearsay purposes of showing state of mind and effect on the listener.

Evidence–hearsay–murder victim's statements to friend–state of mind

State v. Carroll, 356 NC 526 (2002)

A murder victim's statements to a friend a few days before the murder about difficulties in her relationship with defendant were admissible to show the victim's state of mind rather than as a recitation of facts. Also, the limiting instruction was sufficient to prevent the jury from viewing the evidence as proof of defendant's bad character. 803(3)

Evidence–hearsay–excited utterance–time to fabricate statement

State v. Riley, 154 NCA 692 (2002)

Defendant's statement to an officer that he had been coerced was not admissible as an excited utterance in a prosecution for speeding to elude arrest because enough time passed between the wreck and the statement for defendant to fabricate the statement, even though the time wasn't indicated by the record.

Sentencing–prior record level–method of proof

State v. Lowe, 154 NCA 607 (2002)

There was no authority for defendant's contention that the State must produce a certified copy of the record of a prior conviction if defendant objects to the evidence used to establish the record. By statute, prior convictions may be proven by any method found to be reliable; moreover, defendant had sufficient points for the record level even without this conviction.

Evidence--hearsay--medical treatment exception

State v. Carter, 153 NCA 756 (2002)

The trial court did not err in a felony child abuse and assault with a deadly weapon inflicting serious injury case by admitting the minor child victim's statements under the N.C.G.S. § 8C-1, Rule 803(4) medical treatment exception to the hearsay rule without affording defendant an opportunity to have the child examined by a defense psychologist and/or to voir dire the child as to his intent when he made the statements in question, because: (1) neither a psychological examination nor a voir dire examination is necessary for the determination of whether the declarant had the requisite intent to qualify his statements under the medical treatment exception; (2) defendant did not request the trial court to conduct a voir dire examination of the child; and (3) while defendant excepted to a doctor's testimony regarding the child's statement to him, defendant waived this objection by permitting three nurses to testify without objection to the child's identical statement.

Evidence--hearsay--business records exception--company deposit slips--validation reports--bank account statements

State v. Frierson, 153 NCA 242 (2002)

The trial court did not err in an embezzlement case by admitting certain records into evidence including company deposit slips, validation reports, and bank account statements under the N.C.G.S. § 8C-1, Rule 803(6) business records

exception to the hearsay rule even though defendant contends the State failed to lay a proper foundation, because: (1) the alleged counterfeit deposit slips were offered for the non-hearsay purpose of showing that they existed so that the jury could consider them as circumstantial evidence in determining whether defendant embezzled from his employer and concealed it by falsifying deposit records; (2) in regard to the valid deposit slips, evidence was presented that the slips were filled out at the end of each work place, the slips were kept in the ordinary course of business, and the records were dated so that it was unnecessary for a witness to testify from personal knowledge that they were made at or near the time of the transaction in question; (3) in regard to the validation reports, evidence was presented that the reports were made and kept in the ordinary course of business, were authenticated by a witness who was familiar with them and the system in which they were made, and the records were created at or near the time of the transactions involved; and (4) in regard to the bank account statements, evidence was presented by a witness familiar with the record keeping system at the bank that the statements were kept in the ordinary course of business and that the statements being offered into evidence were made on the pertinent dates.

Evidence—hearsay--statement to detective—explanation of subsequent conduct

State v. Reed, 153 NCA 462 (2002)

The trial court did not err in a prosecution for possessing alcoholic beverages for sale without a permit by admitting an unidentified witness's statement to a detective where the statement was offered only to explain the detective's subsequent conduct. Furthermore, defendant did not renew his objection when additional testimony about the witness' statement was offered.

Evidence—residual hearsay exceptions—trustworthiness—unavailability

State v. Castor, 150 NCA 17 (2002)

The trial court in a first-degree murder case did not err by admitting statements made by a defendant's nephew to the police under the residual exceptions to the hearsay rule set forth in N.C.G.S. § 8C-1, Rules 803(24) and 804(b)(5) where

defendant questioned only the trustworthiness of the statement and the unavailability of the nephew; the trial court found the statement to be trustworthy because the nephew knew the officers were investigating a murder in which he was not implicated and that his statement would incriminate his uncle, and the nephew never recanted his statement; and the court found the nephew was unavailable because the State had made a diligent, unsuccessful effort to locate him but the nephew was secreting himself in order to avoid testifying at the trial.

Evidence--hearsay--unavailable witness

State v. McCail, 150 NCA 643 (2002)

The trial court did not err in an armed robbery and murder case by sustaining the State's objection to a witness's testimony which tended to indicate that a man other than defendant allegedly told the witness that he committed the murder, because: (1) defendant could not prove the alleged confessor's unavailability by reason of his death under N.C.G.S. § 8C-1, Rule 804(a)(4); and (2) even if the confessor was alive but unavailable, his alleged statements would still be inadmissible since a statement tending to expose the unavailable declarant to criminal liability is not admissible in a criminal case unless corroborating circumstances clearly indicate the trustworthiness of the statement, N.C.G.S. § 8C-1, Rule 804(b)(3), and the evidence as a whole does not provide the corroborating circumstances clearly indicative of the trustworthiness of the alleged confession.

Evidence--hearsay--911 call identifying defendant as shooter of victim--personal knowledge--excited utterance exception

State v. Wright, 151 NCA 493 (2002)

The trial court did not err in a second-degree murder case by admitting evidence of the exchange between defendant's son and the 911 operator including statements that defendant shot the victim, because: (1) the personal knowledge of defendant's son was such that he could rationally infer that defendant had shot the victim, including the fact that defendant's son was in a bedroom immediately

adjacent to the room where the victim had been shot; and (2) the statements of defendant's son fell within the excited utterance exception to the hearsay rule, and the statements were probative as to whether defendant had shot the victim.

Evidence - hearsay - state of mind exception

State v. Marecek, 152 N.C. App. 479 (2002)

The trial court did not err in a second-degree murder case by failing to exclude certain testimony of three witnesses, concerning statements made by the victim about her suspicions that her husband was having an affair, on the grounds of alleged inadmissible hearsay statements, because: (1) the statements testified to by two of the witnesses are admissible under the state of mind exception of N.C.G.S. § 8C-1, Rule 803 since the statements include both fact and emotion; and (2) the other witness's testimony was not hearsay since the witness was testifying about her own statements that she made to the victim. 801(c)

Evidence—hearsay—statements by murder victim—present sense impression

State v. Smith, 152 NCA 29 (2002)

The trial court did not err in a prosecution for first-degree murder, armed robbery, and first-degree burglary by admitting the testimony of a pawn shop employee about statements made by the victim during a confrontation with defendant in the pawn shop. The statements were made as the victim witnessed the events and were therefore admissible as a present sense impression. N.C.G.S. § 8C-1, Rule 803(1).

Evidence—murder victim's statements—observation of victim's mental state--not present sense impression

State v. Smith, 152 NCA 29 (2002)

The trial court did not err in a prosecution for first-degree murder, armed robbery, and first-degree burglary by admitting the testimony of the victim's daughter and niece regarding statements the victim made after a pawn shop confrontation over stolen goods where the statements were not sufficiently immediate to be a present sense impression, but were admissible as nonhearsay testimony relating the witnesses' observation of the mental state of the victim. N.C.G.S. § 8C-1, Rule 701.

Evidence - hearsay - testimony of detective - information received from prison inmate told by another inmate

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

The trial court erred in a double first-degree murder case by allowing hearsay testimony from a detective concerning information he received from a prison inmate that the inmate was told by another prison inmate about the murders, including the fact that defendant and another young man killed the victims, because: (1) the detective's testimony provided more than a mere explanation of his subsequent actions when the detective provided details contained in the prison inmate's statement such as how defendant broke into the victim's house through a window, that defendant went into the bathroom with a rifle and shot one of the victims, and that defendant fled with a money bag; (2) the State's closing argument reveals that the State relied on the detective's testimony as substantive evidence of the details of the murder and to imply defendant had given a detailed confession of his alleged crimes; and (3) despite the trial court's limiting instruction, the detective's testimony went so far beyond the confines of this instruction that the jury could not reasonably have restricted its attention to any nonhearsay elements in the detective's testimony.

Evidence - hearsay - excited utterance - homicide victim's last statements

State v. Anthony, 354 N.C. 372 (2001)

Statements by a first-degree murder victim begging for her life and expressing concern for her children were spontaneous and fell within the excited utterance

exception to the hearsay rule.

Evidence - hearsay - statement admitted for another purpose

State v. Anthony, 354 N.C. 372 (2001)

A statement in a first-degree murder prosecution from the victim's mother that the victim had not wanted her estranged husband (defendant) to see their children before they left for school because it was upsetting to them was not hearsay where it was admitted because it was offered to explain the grandfather's action in keeping defendant from the children on the morning of the killing rather than to establish that the children became agitated. Moreover, the grandfather's actions contributed to defendant's motive for the shooting later that day.

Evidence--hearsay--residual exception--unavailable witness

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 allowing a licensed professional counselor expert witness's testimony to be introduced as substantive evidence based on the residual exception to the hearsay rule under N.C.G.S. § 8C-1, Rule 804(b)(5), because: (1) the trial court found that the victim was unavailable; (2) the trial court found that the State presented sufficient guarantees of trustworthiness since the minor victim was personally present and had personal knowledge of the incidents at issue, the expert did not indicate that the victim had any motivation to make a false statement, the victim was not angry with defendant, neither the expert nor the victim's parents prompted the statement of the minor, and the victim did not recant her statements during the counseling sessions with the expert; and (3) the trial court attempted on two different occasions to speak with the minor victim to have her answer questions, and the victim did not respond in any meaningful manner.

Evidence--hearsay--medical diagnosis exception

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 hearsay statements made by the minor victim to a pediatric nurse and to a doctor to be introduced as substantive evidence based on the medical diagnosis exception under N.C.G.S. § 8C-1, Rule 803(4), because: (1) the interviews of the victim met the trustworthiness requirement; and (2) the minor victim's statements stating how and by whom she was inappropriately touched were reasonably pertinent to diagnosis since the identification of defendant as the perpetrator was pertinent to continued treatment of the possible psychological and emotional problems resulting from the sexual offense.

Evidence—prior crimes or bad acts—violence

State v. Carrilo, 149 NCA 543 (2002)

The trial court did not abuse its discretion in a first-degree murder case by admitting evidence under N.C.G.S. § 8C-1, Rule 404(b) of prior instances of violence by defendant towards the minor child victim's mother, because the evidence was offered: (1) to show why the mother did not take any action against defendant when he first began assaulting her son; (2) to identify defendant, rather than the victim's mother, as the perpetrator of the crime; and (3) to dispel defendant's contention that the injuries were accidentally inflicted.

Evidence--hearsay--state-of-mind exception--relevancy

State v. Patterson, 146 N.C. App. 113 (2001)

The trial court did not err in a first-degree murder case by admitting hearsay evidence of the victim's statements tending to show that defendant did not like the fact that the victim would not allow defendant to move in with him, because: (1) the evidence was admitted under N.C.G.S. § 8C-1, Rule 803(3) to demonstrate the victim's state of mind as to his relationship with defendant; (2) the statements

were relevant under N.C.G.S. § 8C-1, Rule 402 to shed light on the victim's relationship with defendant; and (3) the statements rebutted defendant's claim in his confession that he and the victim were not having any type of disagreement or argument prior to the night of the victim's death.

Evidence--hearsay--medical diagnosis or treatment exception

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

The trial court did not err in a first-degree sexual offense case by allegedly allowing hearsay statements of the seven-year-old child victim because the interviews occurred in the hospital almost immediately after the incident, showing that the victim made the statements for purposes of medical diagnosis and treatment.

Evidence--hearsay--prior statements--impeachment

State v. Featherson, 145 NCA 134 (2001)

The trial court did not err in a prosecution for the robbery of a Bojangles by admitting alleged hearsay statements from codefendants where the codefendants' pre-trial statements implicated defendant, their testimony at trial exonerated defendant, and the court instructed the jury that the statements were to be considered as impeaching rather than as substantive evidence. Furthermore, other evidence to the same effect was elicited on cross-examination by defendant or was admitted without an objection, a motion to strike, or a request for limiting instructions and there was no prejudice.

Evidence--excited utterance--25 minutes after assault--clear motive for fabrication

State v. Safrit, 145 NCA 541 (2001)

The trial court did not err in an assault prosecution in which defendant argued self-defense by excluding statements defendant made to his sister 25 minutes after the altercation where defendant contended that the statements fell within the excited utterance exception to the hearsay rule, but the circumstances, coupled with defendant's clear motive for fabrication, indicate a lapse of time sufficient to allow manufacture of a statement and show that defendant's statements to his sister lacked sufficient spontaneity.

Evidence--hearsay--out-of-court statements of witness refusing to testify--witness unavailable—order to testify required *****

State v. Linton, 145 NCA 639 (2001)

There was no plain error in a prosecution for the first-degree sexual offense of a child and the attempted first-degree rape of a child where the victim refused to testify, the court ruled that she was unavailable, and a number of witnesses were allowed to testify regarding her out-of-court statements. While the court exerted some pressure on the victim, she was never ordered to testify; an order from the trial court is an essential component in a declaration of unavailability under N.C.G.S. § 8C-1, Rule 804(a)(2). However, the statements in question are very similar to others admitted in evidence and it cannot be said that the jury would probably have reached a different result without these statements.

Evidence--hearsay--unavailable declarant--statement against interest—trustworthiness

State v. Wardrett, 145 NC App 409 (2001)

The trial court did not abuse its discretion in an armed robbery case by excluding the testimony of three witnesses regarding statements allegedly made to them by an unavailable deceased witness regarding the identify of the perpetrator of an attempted armed robbery and murder on the basis that the statements were hearsay that did not fall within the statement against interest exception provided by N.C.G.S. § 8C-1, Rule 804(b)(3), because: (1) it is unclear whether the hearsay statements allegedly made by the unavailable declarant were in fact against his penal interests when the alleged statements indicated that defendant did not kill

the victim, but never stated that the unavailable declarant rather than defendant killed the victim; and (2) there were insufficient circumstances to indicate the trustworthiness of the alleged statements.

Evidence--hearsay--unavailable declarant

State v. Fowler, 353 N.C. 599 (2001)

The trial court did not err in a capital trial by admitting an unavailable victim's hearsay statements to two officers under N.C.G.S. § 8C-1, Rule 804(b)(5), because: (1) the State could not procure the declarant's presence by process or other reasonable means since the victim moved to India and indicated he would not return to the United States based on his injuries and the fact that he feared for his life in America; (2) the State provided timely written notice of its intent to offer the statements at trial; (3) the State's failure to supply an address for the victim was acceptable under the circumstances; (4) the trial court concluded the victim's statements had sufficient guarantees of trustworthiness; (5) the proffered statement was offered as evidence of a material fact; (6) the trial court concluded the statements were more probative on the point for which they were offered than any other available evidence; and (7) the trial court concluded the admission of the statements would serve the interests of justice.

Evidence--hearsay--deceased victim--catchall exception

State v. Stephenson, 144 N.C. App. 465 (2001)

The trial court did not err in a prosecution for robbery and first-degree murder by admitting hearsay testimony regarding statements made by the victim before her death that defendant had stolen \$ 200 from her under the catchall exception of N.C.G.S. § 8C-1, Rule 804(b)(5) where the court made numerous findings to the effect that the victim and the witness were extremely close and that the witness was the only person in the community who looked after the victim, whom the victim trusted, and in whom she confided.

Evidence--hearsay--unavailable witness--untrustworthy

State v. Hardison, 143 N.C. App. 114 (2001)

The trial court did not err in a prosecution for first-degree burglary and second-degree kidnapping by excluding hearsay statements allegedly made by defendant's now deceased counsel to show that defendant's guilty pleas were involuntary and uninformed even though the trial court failed to make complete findings of fact and conclusions of law, because the alleged hearsay statements lacked the requisite guarantees of trustworthiness under the N.C.G.S. § 8C-1, Rule 804(b)(5) inquiry.

Evidence--hearsay--statements against interest--accomplice's self-inculpatory statements--statements implicating defendant already admitted *****

State v. Kimble, 140 NC App 153 (2000)

The trial court did not err in a first-degree murder case by allowing into evidence under N.C.G.S. § 8C-1, Rule 804(b)(3) a nontestifying accomplice's statements against the accomplice's penal interest, and statements both against the accomplice's penal interest and inculpatory defendant, because: (1) testimony of only self-inculpatory statements by the accomplice are classic statements against interest that fall within a firmly-rooted hearsay exception; (2) even assuming the testimony of both the accomplice's self-inculpatory statements and statements that implicated defendant was error, such error was not prejudicial when the State presented overwhelming evidence that defendant committed the murder and that the evidence was properly admitted through other witnesses; and (3) collateral remarks inculpatory defendant are not required to be redacted from an out-of-court statement that also contains self-inculpatory remarks in order to admit the statement under N.C.G.S. § 8C-1, Rule 804(b)(3).

Evidence--hearsay--victim's conversation with defendant--deceased witness's statement

State v. Parker, 140 NC App 169 (2000)

The trial court did not err in a first-degree murder prosecution (and any error was harmless) in the admission of an officer's testimony relating the statement of an unavailable witness concerning a conversation between the victim and defendant before the murder. The victim's initial statement was admissible under N.C.G.S. § 8C-1, Rule 803(3) as showing the victim's state of mind and the statement to the officer was admissible under N.C.G.S. § 8C-1, Rule 804(b)(5), the residual exception, because the witness was dead and the trial court properly considered each of the trustworthiness elements. There was no prejudice even if the witness's statement was inadmissible because it was nearly identical to prior testimony.

Evidence--victim's written statement--admitted as corroboration--read by officer

State v. Guice, 141 N.C. App. 177 (2000)

The trial court did not err in a kidnapping prosecution by allowing into evidence a written statement from the victim where the statement was admitted for the limited purpose of corroborating the victim's testimony rather than as substantive evidence. Furthermore, it was not improper for the officer who took the statement to read a redacted version aloud; the declarant is not the only party entitled to read aloud a prior consistent statement that corroborates her in-court testimony.

Evidence--witness refusing to testify--prior testimony--admission under hearsay exception

State v. Mcneill, 140 N.C. App. 450 (2000)

The trial court did not err in a prosecution for two counts of first-degree murder, one count of armed robbery, and one count of conspiracy to commit armed robbery by admitting the prior testimony of defendant's brother under N.C.G.S. § 8C-1, Rule 804(b)(5) where the brother had testified at his own trial that he had not committed these crimes but refused to testify at defendant's trial. The trial court's findings of fact and conclusions of law were supported by evidence that the brother had personal knowledge of the underlying events, that his prior

testimony was material and (in light of his refusal to testify at defendant's trial) more probative than any evidence the State could procure through reasonable efforts, and that the brother's testimony possessed equivalent circumstantial guarantees of trustworthiness.

Evidence--hearsay--medical diagnosis or treatment exception--no intent to obtain treatment

State v. Bates, 140 N.C. App. 743 (2000)

Out-of-court statements made by an alleged child victim of sexual abuse to a psychologist were not made with the intent to obtain medical treatment and thus were not admissible under the medical diagnosis or treatment exception to the hearsay rule, because: (1) the record does not disclose that the psychologist explained to the child the medical purpose of the interview or the importance of truthful answers; (2) the interview was not conducted in an environment emphasizing the need for honesty since it was conducted in a child-friendly room with child-sized furniture and lots of toys; and (3) the child's statements lack inherent reliability based on the nature of the psychologist's leading questions.

Evidence--hearsay--not medical diagnosis or treatment exception--corroboration--excited utterance exception

State v. McGraw, 137 N.C. App. 726 (2000)

Although the trial court erred in an indecent liberties with a minor case by allowing the minor child's mother to testify to statements made to her by the minor child after the incident with defendant based on the medical diagnosis or treatment exception of Rule 803(4), this testimony was still admissible because: (1) a witness's prior consistent statements are admissible to corroborate the witness's sworn trial testimony, and the minor child's trial testimony was nearly identical to her mother's testimony; (2) there is no requirement that a trial judge disclose the grounds on which he excludes or admits evidence since it is presumed that the trial court had a valid reason; (3) if the offering party does not designate the purpose for which properly admitted evidence is offered, the

evidence is admissible as either corroborative or substantive evidence; and (4) the testimony could have been admitted as substantive evidence under the excited utterance exception of Rule 803(2).

Evidence--hearsay--handwritten portions of victim's diary--state of mind exception

State v. King, 353 N.C. 457 (2001)

The trial court did not err in a capital first-degree murder prosecution by allowing the State to introduce handwritten portions of the victim's diary into evidence under the state of mind exception of N.C.G.S. § 8C-1, Rule 803(3), because: (1) the victim's challenged statements about her frustration with defendant and her intent to end their marriage were statements indicating the victim's mental condition at the time the statements were made and were not merely a recitation of facts; (2) the victim's journal entries bear directly on the victim's relationship with defendant at the time the victim was killed; and (3) the challenged evidence relates directly to circumstances giving rise to a potential confrontation with the defendant.

Evidence--hearsay--out-of-court statements of witnesses--residual hearsay exception—adequate notice--trustworthy and reliable

State v. King, 353 N.C. 457 (2001)

The trial court did not err in a capital first-degree murder prosecution by allowing the State to introduce out-of-court statements of several witnesses to police officers under the residual hearsay exception of N.C.G.S. § 8C-1, Rule 804(b)(5), because: (1) all four of the declarants were unavailable at the time of trial since they had all died during the almost nine-year period that defendant remained a fugitive from the law; (2) two of the declarants made their statements on the day of the murder, the third declarant made his statement the day after the murder, and the fourth declarant made his statement two days after the murder; (3) the prosecutor gave defendant sufficient notice to provide a fair opportunity to meet the evidence; and (4) the trial court addressed each of the challenged statements separately and found them to be trustworthy and reliable.

Evidence - Hearsay - homicide victim's statements about defendant

State v. Jones, 137 N.C. App. 221 (2000)

There was no plain error in the first-degree murder prosecution of a husband for shooting his wife as she slept in the admission of her statements about his jealousy and threats to kill her. Her statements were arguably no more than recitations of fact; however, the facts she recited were admissible under N.C.G.S. § 8C-1, Rule 803(3) as tending to show her state of mind as to her marriage, were relevant under Rule 402 to show her relationship with defendant, and rebutted testimony by defendant that they had a good marriage.

Evidence - Hearsay - not truth of matter asserted

State v. Lesane, 137 N.C. App. 234 (2000)

The trial court did not err in a first-degree murder case by admitting the testimony of the victim's mother concerning what her daughter told her about her problems with defendant, the daughter's exboyfriend, and about her request to have someone pick her up at the bus stop, because these statements are not hearsay.

*******2. Evidence - hearsay - medical diagnosis or treatment exception - declarant's intent*****BAD CASE For STATE**

State v. Hinnant, 351 N.C. 277 (2000)

To insure the inherent reliability of evidence admitted under the Rule 803 (4) medical diagnosis or treatment exception to the hearsay rule, the proponent of such testimony must affirmatively establish that the declarant had the requisite intent by demonstrating that the declarant made the statements understanding that they would lead to medical diagnosis or treatment. This holding applies only to trials commencing on or after the certification date of this opinion or to cases on

direct appeal. To the extent that cases such as *State v. Jones*, 89 N.C. App. 584, 367 S.E.2d 139 (1988), are inconsistent with this holding, they are overruled.

Evidence - hearsay - medical diagnosis or treatment exception - declarant's intent – objective circumstances of record

State v. Hinnant, 351 N.C. 277 (2000)

The trial court should consider all objective circumstances of record surrounding a declarant's statements in determining whether he or she possessed the requisite intent to receive medical treatment for purposes of the medical treatment or diagnosis exception to the hearsay rule.

Evidence - hearsay - medical diagnosis or treatment exception - two-part inquiry

State v. Hinnant, 351 N.C. 277 (2000)

Hearsay evidence is admissible under the medical diagnosis or treatment exception to the hearsay rule only when two inquiries are satisfied: (1) the trial court must determine that the declarant intended to make the statements at issue in order to obtain medical diagnosis or treatment and may consider all objective circumstances of record in determining whether the declarant possessed the requisite intent; and (2) the trial court must determine that the declarant's statements were reasonably pertinent to medical diagnosis or treatment.

Evidence - hearsay - medical diagnosis or treatment exception - no intent to obtain treatment

State v. Hinnant, 351 N.C. 277 (2000)

Out-of-court statements made by an alleged child victim of sexual abuse to a clinical psychologist were not made with the intent to obtain medical treatment

and thus were not admissible under the medical diagnosis or treatment exception to the hearsay rule where the record does not disclose that the psychologist or anyone else explained to the child the medical purpose of the interview or the importance of truthful answers; the interview was not conducted in a medical environment; and the entire interview consisted of a series of leading questions whereby the psychologist systematically pointed to the anatomically correct dolls and asked whether anyone had or had not performed various acts with the child.

Evidence - hearsay - medical diagnosis or treatment exception - child sexual abuse victim - statements inadmissible - admission not plain error

State v. Waddell, 351 N.C. 413 (2000)

Statements made by an alleged child victim of sexual offenses, indecent liberties, and felonious child abuse to a licensed psychological associate were not admissible under the medical diagnosis or treatment exception to the hearsay rule where the interview took place after the initial medical examination, in a child-friendly room, in a non medical environment, and with a series of leading questions; and the record lacks any evidence that there was a medical treatment motivation on the part of the child declarant or that the psychological associate or anyone else explained to the child the medical purpose of the interview or the importance of truthful answers. However, defendant failed to object to the admission of these statements at trial, and the admission of the statements did not constitute plain error where defendant's convictions of one count of first-degree sexual offense, taking indecent liberties with a minor, felony child abuse and lewd and lascivious acts were supported by (1) the testimony of the child's mother, a pediatrician, a social services worker, a psychological associate, and a detective, and (2) defendant's pretrial admissions to the detective and his admissions at trial.

Evidence - Hearsay - state of mind exception

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

The trial court did not commit prejudicial error in a capital trial by allowing a statement from one inmate to another inmate that he was going to approach

defendant about straightening out the victim's debt, because the statement was not hearsay since it was admissible under N.C.G.S. § 8C-1, Rule 803(3) as evidence of that inmate's then-existing intent to engage in a future act.

Evidence--hearsay--police report--not truth of matter asserted--subsequent actions

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

The trial court did not err in a capital trial by admitting evidence of a police robbery report regarding seizure of one defendant's luggage by the police a week prior to the murders because: (1) the report was relevant since the statements made to the officer were vital to the identification of defendants as the suspects in the armed robbery; (2) the report does not indicate the Fayetteville police actually discovered drugs in the luggage; and (3) the report was admissible for nonhearsay purposes to help explain the subsequent actions taken by the officer in traveling to the home of defendants' grandparents, which in turn furthered the investigation of the case.

Evidence--murdered wife's testimony of prior assault by husband--hearsay--admissible

State v. Thibodeaux, 352 N.C. 570 (2000)

The trial court did not err in a capital first-degree murder prosecution by admitting the victim's testimony from a domestic violence protective order hearing regarding an assault upon her by defendant. Defendant was precluded from raising on appeal an objection based upon N.C.G.S. § 8C-1, Rule 804(b)(1) because it was not raised at trial; the hearsay statements in the testimony were admissible as statements of the declarant's then existing mental, emotional, or physical condition; when a husband is charged with murdering his wife, evidence spanning the entire marriage is allowed to show malice, intent, and ill will; and the court's ruling that the probative value was not outweighed by the prejudice was not manifestly unsupported by reason. N.C.G.S. § 8C-1, Rules 804(b)(5), 803(3), 404(b), and 403.

Evidence and Witnesses 860 (NCI4th) - hearsay - declarant's conflicting statements - admissible -issue of credibility

State v. Jolly, 332 N.C. 351 (1992) 420 S.E.2d 661

The trial court did not err in a noncapital homicide prosecution by admitting conflicting hearsay statements and allowing the jury to determine which was the most convincing where three witnesses testified that the victim had told them that defendant had shot at her during a highway chase, but the victim had testified at the probable cause hearing for that incident that she had not actually seen or heard shots during the chase. Prior testimony is itself hearsay evidence which is excepted from the hearsay rule by N.C.G.S. 8C-1, Rule 804(b)(1). Where the hearsay statements of a declarant are conflicting, the conflict raises a question of credibility rather than reliability, and, when a declarant's conflicting hearsay statements have been determined to be excepted from the general prohibition against hearsay, the trial court need not subject the statements to any additional test for reliability before admitting them into evidence.

Evidence and Witnesses 960 (NCI4th) - hearsay - exception for statements of intent

State v. Taylor, 332 N.C. 372 (1992) 420 S.E.2d 414

A murder victim's statement to his supervisor that he wanted time off from work the next day because he planned to meet the defendant and then buy a boat was admissible under the Rule 803(3) exception for statements of then existing intent and plan to engage in a future act.

Evidence and Witnesses 1907 (NCI4th) - armed robbery - Identikit composite drawings - not hearsay

State v. Patterson, 332 N.C. 409 (1992) 420 S.E.2d 98

Evidence and Witnesses 870, 942 (NCI4th) - statement before shooting not hearsay – excited utterance

State v. Reid, 335 N.C. 647 (1994) 440 S.E.2d 776

Testimony by an assault victim that defendants' companion yelled "shoot the mother f___er" just before defendants drew their guns and began shooting was not inadmissible hearsay since the testimony was admitted to establish why defendants began shooting and to show the context in which the shooting began.

Evidence and Witnesses 959 (NCI4th) - first-degree murder - statements of victim - hearsay - state of mind exception

State v. Mchone, 334 N.C. 627 (1993) 435 S.E.2d 296

The trial court did not err in a first-degree murder prosecution by admitting statements by one of the victims regarding threats made by defendant to kill her where the conversations between the victim and the three witnesses related directly to the victim's fear of defendant and were admissible to show the victim's then existing state of mind at the time she made the statements. N.C.G.S. 8C-1, Rule 803(3) does not refer to the victim's state of mind at the time of death, but to the victim's state of mind at the time the statements were made. Although defendant contended the statements' prejudicial effect far outweighed any probative value since several of the statements were made long before the date of the murders and the most recent discussion about defendant's threats occurred six months before the murders, the evidence tended to show a stormy relationship over a period of years leading up to the murders, and the fact that the last incident testified to occurred six months prior to the murders does not deprive the evidence of its probative value. Finally, considering the eyewitness testimony, it does not appear that the statements in question had any undue tendency to suggest a decision on an improper basis.

Evidence and Witnesses 876 (NCI4th) - victim's statement of intent - state of mind exception to hearsay rule

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

Testimony that a murder victim told a friend approximately a week before she was killed that she intended to end her relationship with defendant when he returned from a trip was admissible under N.C.G.S. 8C-1, Rule 803(3) as evidence of the victim's mental or emotional condition at the time she made the statement. A period of approximately a week between the time of the statement and the victim's death is not so great as to render the statement irrelevant.

Evidence and Witnesses 876 (NCI4th) - hearsay statement by victim - state of mind exception

State v. Palmer, 334 N.C. 104 (1993) 431 S.E.2d 172

A hearsay statement by decedent, defendant's mother, that she would not give defendant money to bail him out of an embezzlement charge was admissible under the state of mind exception to the hearsay rule set forth in N.C.G.S. 8C-1, Rule 803(3) and was relevant to show a motive by defendant to kill his mother.

Evidence and Witnesses 876 (NCI4th) - threats and harassment - hearsay statements of murder victim - state of mind exception

State v. Mixon, 110 N.C. App. 138 (1993) 429 S.E.2d 363

Evidence and Witnesses 962 (NCI4th) - sexual abuse victim - picture drawn by child - counselor's testimony - admission under medical diagnosis and treatment exception to hearsay rule

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

Evidence and Witnesses 876 (NCI4th) - noncapital first-degree murder - statements by victim - hearsay - state of mind exception

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

The trial court did not err in a noncapital first-degree murder prosecution by admitting testimony that the victim had said before her death that defendant was "very, very jealous," that "she was thinking about breaking up with him," and that she was "tired of his junk." The statements were evidence of the victim's state of mind and her state of mind regarding her relationship with defendant was relevant to show that the victim and defendant were having problems in their relationship.

Evidence and Witnesses 1009 (NCI4th) unavailable witness - statements to officer -- guarantees of trustworthiness - admissibility under residual hearsay exception

State v. Peterson, 337 N.C. 384 (1994) ___ S.E.2d ___

The trial court did not err by finding that hearsay statements made to an officer by an unavailable witness who refused to testify possessed sufficient guarantees of trustworthiness to be constitutionally admissible in a murder trial under Rule 804(b)(5) where the evidence tended to show that the witness described events about which only she could have known; the witness had no motivation other than to speak the truth; the only information supplied by the officer to the witness was the number of the trailer where the events occurred; the witness made statements against her penal interest wherein she referred to her use of illegal drugs and participation in prostitution; the witness was incarcerated for much of the time between the interview and the trial and never attempted to recant her statement during a two-year period; and the statement to the officer was recorded.

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. 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 1009 (NCI4th hearsay statements by murder victim – circumstantial guarantees of trustworthiness - sufficient findings

State v. Baker, 338 N.C. 526 (1994) ___ S.E.2d ___

The trial court's conclusion that a murder victim's statements to six witnesses concerning defendant's threats and her fear of defendant possessed circumstantial guarantees of trustworthiness

Evidence and Witnesses 963 (NCI4th) hearsay - medical diagnosis exception -preparation for trial

State v. Jones, 339 N.C. 114 (1994) ___ S.E.2d ___

Statements made by defendant to a medical expert who stated an opinion that at the time of a killing defendant was so intoxicated that he was incapable of premeditation and deliberation were not admissible as substantive evidence under

the medical diagnosis and treatment exception to the hearsay rule set forth in N.C.G.S. 8C-1, Rule 803(4) where the statements were made by defendant ten months after the killing for the purpose of preparing and presenting a defense to the crimes for which he stood accused rather than for the purpose of seeking treatment of a medical condition or a diagnosis of his condition to obtain treatment.

Evidence and Witnesses 876 (NCI4th) noncapital first-degree murder - victim's diary - recitation of facts - not admissible under state of mind exception

State v. Hardy, 339 N.C. 207 (1994) ___ S.E.2d ___

Evidence and Witnesses 982 (NCI4th) first-degree murder - retrial - prior testimony of witness now taking Fifth - admissible

State v. Hunt, 339 N.C. 622 (1994) ___ S.E.2d ___

Evidence and Witnesses 876 (NCI4th) noncapital first-degree murder -hearsay statements of victim - state of mind - admissible

State v. Corbett, 339 N.C. 313 (1994) ___ S.E.2d ___

Evidence and Witnesses 927, 1009 (NCI4th) statements by victim's wife -unavailable witness - guarantees of trustworthiness - admissibility under residual hearsay exception - right of confrontation

State v. Brown, 339 N.C. 426 (1994) ___ S.E.2d ___

Evidence and Witnesses 1009 (NCI4th) - inmate's letter - admission under residual hearsay exception - prejudicial error

State v. Swindler, 339 N.C. 469 (1994) ___ S.E.2d ___

Evidence and Witnesses 850 (NCI4th) arson - statement explaining smell of petroleum - hearsay

State v. Beamer, 339 N.C. 477 (1994) ___ S.E.2d ___

The trial court did not err in a prosecution for multiple offenses including arson where defendant's teacher had testified for the State that she smelled petroleum on defendant's bookbag and clothes two days after the fire and the court would not let defendant question the teacher on cross-examination as to the explanation defendant gave when she questioned him. The testimony of the teacher as to what the defendant had told her was hearsay and does not come within any exception to the hearsay rule.

Evidence and Witnesses 1113 (NCI4th) conspiracy and accessory to murder - statement that coconspirator brought up killing victims - hearsay -admissible as party admission

State v. Johnson, 340 N.C. 32 (1995) ___ S.E.2d ___

Evidence and Witnesses 1113, 3090 (NCI4th) conspiracy and first-degree murder –prior inconsistent statement within hearsay -admissible

State v. Larrimore, 340 N.C. 119 (1995) ___ S.E.2d ___

The trial court did not err in a prosecution for conspiracy and first-degree murder by admitting a detective's testimony that another person, McPherson, had related

defendant's statements concerning a truck used in the crime which may or may not have had a broken window. The testimony elicited from the detective as to what McPherson told him was admissible as a prior inconsistent statement to impeach McPherson, who had testified that a window in the truck had not been broken and the testimony as to what the defendant said in regard to the truck was admissible as an exception to the hearsay rule as an admission of a party. The fact that this hearsay statement by the defendant was contained within a hearsay statement by McPherson does not affect its admissibility because both statements were admissible. N.C.G.S. 8C-1, Rule 801(d) (1992).

Evidence and Witnesses 920 (NCI4th) first-degree murder - absent witness - testimony by officer as to witness's mother's statement - not hearsay

State v. Bowie, 340 N.C. 199 (1995) ___ S.E.2d ___

There was no error in a first-degree murder prosecution in the admission of testimony by an officer that the mother of an absent witness had said that the witness had moved and that she did not know where the witness was. The testimony was admissible to prove the difficulty of finding the witness and was not hearsay when used for that purpose.

Evidence and Witnesses 981 (NCI4th) first-degree murder - statement of unavailable witness - admissible

State v. Bowie, 340 N.C. 199 (1995) ___ S.E.2d ___

There was no error in a first-degree murder prosecution where the court admitted the statement of an absent witness to officers. The evidence showed that the witness made a statement to officers and moved to Philadelphia; the prosecutor filed a petition and the court entered a motion several weeks before the trial that the witness be taken into custody and delivered to a North Carolina officer to assure her attendance at trial; an officer went to Philadelphia a few days before the trial and went to the address he had been given with an officer of the Philadelphia police department; the witness's mother told them that the witness had moved and that she did not know the new address or telephone number; and

the officers searched the house but could not find the witness. The court could conclude from this evidence that the witness was absent from trial and that the State was unable to secure her presence by process or other reasonable means. N.C.G.S. 8C-1, Rule 804(a)(5).

Evidence and Witnesses 1009, 1010 (NCI4th) abuse of defendant - statements made by murder victim - residual exception to hearsay rule

State v. Daughtry, 340 N.C. 488 (1995) ___ S.E.2d ___

Statements made by a murder victim to a witness and in a letter to defendant concerning abuse she suffered from defendant were properly admitted in defendant's murder trial under the residual exception to the hearsay rule set forth in N.C.G.S. 8C-1, Rule 804(b)(5).

Evidence and Witnesses 944 (NCI4th) excited utterances admissibility of hearsay evidence

State v. Littlejohn, 340 N.C. 750 (1995) ___ S.E.2d ___

Statements made by a homicide victim and a rescue squad member were admissible under the excited utterances exception to the hearsay rule. N.C.G.S. 8C-1, Rule 803(2)

Evidence and Witnesses 959 (NCI4th) first-degree murder statements by victim afraid of defendant state of mind exception to hearsay rule

State v. Alston, 341 N.C. 198 (1995) ___ S.E.2d ___

The trial court did not err in a first-degree murder prosecution in admitting hearsay statements by the victim that she was afraid of the defendant.

Evidence and Witnesses 929 (NCI4th) child sexual abuse victim's statements to friends

friends' statements to mothers admissibility of mothers' testimony

State v. Thomas, 119 N.C. App. 708 (1995) ___ S.E.2d ___

The trial court erred in a prosecution for first degree sexual offense and taking indecent liberties with a child by admitting under the excited utterance exception to the hearsay rule the testimony of the mothers of two of the victim's kindergarten classmates as to what the daughters said that the victim had said to them about what her father had done. The testimony was offered to prove that defendant committed the crimes with which he was charged and was double hearsay because there were two out-of-court statements involved.

Evidence and Witnesses 1007 (NCI4th) residual exception to hearsay rule unavailability of witness sufficiency of trial court's determination

State v. Dammons, 121 N.C. App. 61 (1995) ___ S.E.2d ___

The trial court's determination that a witness was unavailable for purposes of the residual exception to the hearsay rule was sufficient where the State had subpoenaed the witness numerous times to appear in court but she could not be located, and defendant was made aware that the State was going to use the witness's statement at trial. N.C.G.S. 8C-1, Rule 804(b)(5).

Evidence and Witnesses §§ 928, 931 (NCI4th) exclamation that defendant had a gun excited utterance present sense impression

State v. Gainey, 343 N.C. 79 (1996) 468 S.E.2d 227

The trial court did not err in a prosecution for first-degree murder and discharging a firearm into an occupied vehicle by overruling defendant Huntley's objection to allowing a witness to state that another person exclaimed "he had a gun."

Evidence and Witnesses § 1005 (NCI4th) hearsay family history exception inapplicability to events during marriage

State v. Hester, 343 N.C. 266 (1996) 470 S.E.2d 25

The family history exception to the hearsay rule set forth in N.C.G.S. § 8C-1, Rule 804(b)(4) merely allows testimony about the existence of a marriage or other personal relationships and does not permit hearsay testimony about events, activities, or emotional states occurring within the marital relationship between a murder victim and her husband which suggest that the husband, rather than defendant, may have murdered the victim.

Evidence and Witnesses § 1946 (NCI4th) noncapital first-degree murder records of home for abused women business records exception

State v. Scott, 343 N.C. 313 (1996) 471 S.E.2d 605

Evidence and Witnesses § 959 (NCI4th) noncapital first-degree murder statements by victim fear of defendant state of mind exception

State v. Scott, 343 N.C. 313 (1996) 471 S.E.2d 605

The trial court did not err in a first-degree murder prosecution by admitting hearsay statements by the victim that defendant had caused her injuries in the past, that she often hid from defendant, and that she was afraid of defendant. The conversations between the victim and the nine witnesses related directly to the victim's fear of defendant and were properly admitted pursuant to the state of mind exception to the hearsay rule to show the nature of the victim's relationship with defendant.

Evidence and Witnesses § 920 (NCI4th) noncapital first-degree murder what someone told deputy no hearsay exception to show knowledge as a result of investigation

State v. Taylor, 344 N.C. 31 (1996) 473 S.E.2d 596

The trial court did not err in a noncapital first-degree murder prosecution in granting a motion in limine precluding defendants from asking a deputy sheriff on cross-examination what someone told him. Defendants contend that the evidence should have been admitted because it would show the officer's knowledge as a result of the investigation, but there is no such exception to the hearsay rule. Additionally, the record does not show what the deputy sheriff's answer would have been.

Evidence and Witnesses § 876 (NCI4th) hearsay statements by murder victim state of mind exception

State v. Crawford, 344 N.C. 65 (1996) 472 S.E.2d 920

Testimony by four witnesses that a murder victim had told them that defendant had threatened to kill her, that he had physically abused her, that she sometimes separated from defendant, that defendant had followed or "stalked" her, and that she was becoming more afraid of defendant was admissible under the state of mind exception to the hearsay rule to show the nature of the victim's relationship with defendant and the impact of defendant's behavior on the victim's state of mind prior to her murder.

Evidence and Witnesses § 929 (NCI4th) first-degree murder statement by accomplice spontaneous declaration

State v. Braxton, 344 N.C. 702 (1996) 477 S.E.2d 172

The trial court did not err in a prosecution for first-degree murder and other crimes by allowing one of defendant's accomplices to testify that another accomplice had said, after defendant and that accomplice returned to the car from the convenience store where the first shooting occurred, "I didn't believe you would shoot him" The hearsay declarant had just been involved in a double robbery and had just witnessed the shotgun shooting of an innocent being He and

defendant ran out of the store, jumped in the getaway car, hollered at the driver to go, and at that point the accomplice made the statement to defendant; clearly, the declarant was still experiencing the witnessing of an extremely startling event and there was no time to reflect on his thoughts or fabricate a story, thus making the declaration spontaneous N.C.G.S. § 8C-1, Rule 803 (2) (1992).

Evidence and Witnesses § 1143 (NCI4th) first-degree murder hearsay statement of coconspirator

State v. Williams, 345 N.C. 137 (1996) 478 S.E.2d 782

The trial court did not err in a prosecution for first-degree murder and other offenses by allowing a witness to testify that she had heard defendant's coconspirator, Robinson, tell defendant that "he wanted to get into something, rob a Quick Stop or do a white boy." A hearsay statement of a coconspirator is admissible as an exception to the hearsay rule if the statement was made during the course of and in the furtherance of the conspiracy, and a coconspirator's statement may be admitted even before the State establishes a prima facie case of conspiracy conditioned upon the establishment of the elements of conspiracy before the close of the State's evidence.

Evidence and Witnesses § 1130 (NCI4th) hearsay codefendants' statements admissible

State v. Barnes, 345 N.C. 184 (1997) ___ S.E.2d ___

The trial court did not err in a capital prosecution for first-degree murder, burglary, and robbery, by admitting hearsay statements by two codefendants against defendant Barnes. Blakney's conversation with Valerie Mason tended to subject him to criminal liability, and he no doubt knew the consequences of acknowledging his involvement in an attack on a law enforcement officer. His statements therefore fit within the hearsay exception in N.C.G.S. § 8C-1, Rule 804 (b)(3). Moreover, without ruling on any issues concerning the scope of North Carolina's Rule 804 (b)(3) hearsay exception, Blakney's comments do not have the taint of "special suspicion" reserved for those statements aimed at implicating another defendant while exonerating the declarant and therefore do not violate the

rule of *Williamson v. United States*, 512 U.S. 594.

Evidence and Witnesses § 1123 (NCI4th) hearsay statements by coconspirator admissible

State v. Barnes, 345 N.C. 184 (1997) ___ S.E.2d ___

The hearsay statements of defendant Blakney, admitted in the capital trial of three defendants for first-degree murder, burglary, and robbery, fit within the exception for statements of a coconspirator found in N.C.G.S. § 8C-1, Rule 801 (d)(E). It is not necessary for the prosecution to establish the existence of the conspiracy before the admission of a hearsay statement falling within this exception as long as the existence of the conspiracy is eventually established. The jury could find from the evidence that defendants' conduct up to and including the robbery was part of a conspiracy, that the subsequent actions of defendants were in the course of and in furtherance of the conspiracy, as Blakney's remarks and the actions of defendants were designed to conceal their involvement in the crimes.

Evidence and Witnesses § 1134 (NCI4th) hearsay statements of coconspirator Bruton distinguished

State v. Barnes, 345 N.C. 184 (1997) ___ S.E.2d ___

The trial court did not err as to defendant Barnes in a capital prosecution for first-degree murder, burglary, and robbery by admitting the statement of codefendant Chambers that "I shouldn't have gone with them." The statement was not powerfully incriminating in the context of the evidence against defendant Barnes; the reference to "them" was not made in the context of any specific statements about the killings and the trial court cautioned the jury with respect to the statement. The situation in this case is distinguishable from *Bruton v. United States*, 391 U.S. 123. Chambers' statements did not clearly identify Barnes or create a substantial risk that the jury would ignore the trial court's instructions in its determination of defendant Barnes' guilt.

Evidence and Witnesses § 929 (NCI4th) statements by victim's brother admissible as

excited utterances

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

In a prosecution for the murder and rape of a seven-year-old girl, statements made by the victim's three-year-old brother to a juvenile investigator that defendant had bitten him while he was on the bed with the victim, that defendant made him watch a "nasty tape," that "mommy woke up and [the victim] was dead," and that defendant "made her dead" were properly admitted under the excited utterance exception to the hearsay rule where the statements were made ten hours after the murder and one hour after the body was discovered; the brother had been through the startling experience of witnessing the victim's death; and his statements were spontaneous a

Evidence and Witnesses § 162 (NCI4th) noncapital first-degree murder unrelated threats by defendant admissible

State v. Coffey, 345 N.C. 389 (1997) ___ S.E.2d ___

The trial court did not err in a noncapital first-degree murder prosecution by admitting as corroborative evidence a witness's statement to an investigating officer that she had initially been too afraid to give information to an investigating officer because of a prior threat of violence from defendant arising from an eviction. Although defendant contends that the testimony concerning the statement was not necessary to prove any material fact and was unfairly prejudicial, it would have been reasonable for the jury to have raised questions about the failure of the witness to give information about the case to the SBI agent and the statement corroborates her in-court testimony that she did not want to get involved because she was scared.

Evidence and Witnesses § 3126 (NCI4th) noncapital first-degree murder witness afraid of defendant hearsay statement admitted as corroboration

State v. Coffey, 345 N.C. 389 (1997) ___ S.E.2d ___

The statement of a witness to an officer was not inadmissible hearsay in a capital murder prosecution where the statement was not offered to prove the truth of the matter asserted, but merely to strengthen the credibility of the witness's testimony that she had not talked with an SBI agent because she was afraid of defendant due to an unrelated incident. N.C.G.S. § 8C-1, Rule 801 (c).

Evidence and Witnesses § 871 (NCI4th) - victim's motivation - testimony not hearsay *****

State v. Smith, 125 N.C. App. 562 (1997)

Testimony by a shooting victim's brother that the victim wanted to talk with defendant prior to the shooting "to find out what reason [defendant] wanted to shoot him" was not inadmissible hearsay because it was offered to explain the victim's motivation for going across the street to talk to defendant and not to prove that defendant threatened to kill him.

Evidence and Witnesses § 1009 (NCI4th) - murder and other drug related crimes – recorded statement deceased witness to planning of crime - statement admissible

State v. Hurst, 127 N.C. App. 54 (1997)

There was no prejudicial error in a noncapital prosecution for first-degree murder, breaking or entering, and other crimes in admitting a recorded oral statement from the deceased girlfriend of a participant, where the girlfriend gave the recorded statement to police after being booked on unrelated drug charges; she indicated that defendant and others, including her boyfriend, had conceived a plan to break into the victim's house, steal cocaine, and kill the victim and her boyfriend; her body was found in New York City several months after giving this statement; and defendant contended that the statement lacked the inherent trustworthiness for admission under N.C.G.S. § 8C-1, Rule 804 (b)(5). The girlfriend's unavailability was firmly established, the trial court found that the recorded oral statement was trustworthy, and the court's findings are supported by the evidence. She had personal knowledge of the plan; it was reasonable for the court to infer that she was motivated to speak the truth by her predicament; she never recanted or altered the statement; and she admitted participating in illegal drug trafficking. Although

the court erred in detailing corroborating evidence in its findings of fact, it did not err in concluding that her statement was inherently trustworthy. Furthermore, defendant's participation in the robbery and murder was established by other evidence, including his own statement.

Evidence and Witnesses § 1009 (NCI4th) - unavailable declarant - residual hearsay exception -trustworthiness - corroborating evidence - Confrontation Clause violation - prejudicial error

State v. Downey, 127 N.C. App. 167 (1997)

In a prosecution for murder, defendant's rights under the Confrontation Clause were violated by the admission of the testimony of an unavailable declarant identifying defendant as one of the murderers pursuant to the residual hearsay exception of Rule 804 (b)(5) where the trial court relied solely on corroborating evidence in determining the trustworthiness of the hearsay evidence. In this case, the testimony was sharply conflicting as to defendant's guilt, and while the evidence of defendant's guilt was strong, it was not overwhelming; therefore, the trial court's error was not harmless beyond a reasonable doubt.

Evidence and Witnesses § 1113, 966 (NCI4th) - notes of defendant's inculpatory statements -admissions of party opponent - past recorded recollection

State v. Moody, 345 N.C. 563 (1997)

An S.B.I. agent could properly read from a narrative report prepared from his notes of inculpatory statements made by defendant even though the notes were not acknowledged or adopted by defendant since defendant's statements were admissible as admissions of a party opponent. Moreover, the S.B.I. agent's reading from the narrative report prepared from his notes was admissible under the doctrine of past recorded recollection set forth in Rule of Evidence 803(5) where the agent testified that the report refreshed his recollection of the interview with defendant. N.C.G.S. § 8C-1, Rule 803(5).

Evidence and Witnesses § 929 (NCI4th) - murder of police officer - statements of officer – excited utterances

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

The trial court did not err in a prosecution for the murder of a police officer by allowing three witnesses to testify that the victim said, immediately after the shooting, that he believed he was going to die, that he was having trouble breathing, and that he wanted them to tell his wife that he loved her. These statements were excited utterances and thus are not excluded by the hearsay rule. The statements are relevant in that they were admitted within the context of the testimony of responding officers and paramedics and each served to describe the circumstances and events surrounding and immediately following the shooting. They are not so inflammatory as to be unfairly prejudicial. N.C.G.S. § 8C-1, Rule 803(2); N.C.G.S. § 8C-1, Rule 403.

Evidence and Witnesses § 1009 (NCI4th) - capital murder - victim's statements - guarantees of trustworthiness

State v. Tyler, 346 N.C. 187 (1997)

The trial court did not err in a capital prosecution for first-degree murder by admitting testimony from a nurse under N.C.G.S. § 8C-1, Rule 804(b)(5) regarding the victim's statements that defendant had poured gasoline on her and set her on fire. Although defendant contended that the court erred in concluding that the victim's statements possessed the requisite circumstantial guarantees of trustworthiness, the victim had personal knowledge of the circumstances in which she was burned; there was no indication that she had any reason to tell anything other than the truth after she learned that defendant was in jail and could no longer hurt her or her children, there is no indication that the victim ever recanted this statement, and she was unavailable.

Evidence and Witnesses § 1009 (NCI4th) - capital murder - victim's statements - residual hearsay exception - Confrontation Clause violation - not prejudicial

State v. Tyler, 346 N.C. 187 (1997)

There was no prejudicial error in a capital prosecution for first-degree murder in the admission of testimony from a nurse regarding the victim's statements that defendant had poured gasoline on her and set her on fire where defendant contended that the Confrontation Clause of the Sixth Amendment was implicated. Although the trial court relied upon corroborating evidence in concluding that the victim's out-of-court hearsay statements possessed the requisite degree of trustworthiness and hearsay evidence used to convict a defendant must possess indicia of reliability by virtue of its inherent trustworthiness and not by reference to other evidence at trial to be admissible under the Confrontation Clause, the trial court did not err in concluding that the victim's statements were inherently trustworthy. The error was in relying in part upon the corroborating evidence and the conclusion is correct.

Evidence and Witnesses § 876 (NCI4th) - statements by murder victim - state of mind exception to hearsay rule

State v. Bishop, 346 N.C. 365 (1997)

Statements by a murder victim to a banker and to her brother expressing her concern about defendant's handling of her real estate transactions and her intent to document defendant's debt to her, to seek repayment, and to confront defendant about her concern that defendant had stolen from her were properly admitted into evidence pursuant to the state of mind exception to the hearsay rule because those statements bore directly on the relationship between the victim and defendant at the time of the killing and were relevant to show a motive for the killing. N.C.G.S. § 8C-1, Rule 803(3).

Evidence and Witnesses § 881 (NCI4th) - promissory note - not hearsay - relevancy to show motive

State v. Bishop, 346 N.C. 365 (1997)

A \$40,750 promissory note signed by defendant and made payable to a murder victim was not admitted solely to show the truth of the matter asserted but was admitted to show that the victim sought repayment for money defendant owed her and was thus relevant to establish a motive for the killing.

Evidence and Witnesses § 1026 (NCI4th) - first-degree murder - statement of codefendant exonerating defendant - not a statement against penal interest

State v. Pickens, 346 N.C. 628 (1997)

The trial court did not err in a noncapital first-degree murder retrial where a codefendant whom defendant wished to call as a witness was allowed to assert his Fifth Amendment privilege against selfincrimination and defendant was not allowed to introduce a statement in a letter by the codefendant which tended to exonerate defendant. Although defendant contends that the statement falls within the statement against penal interest hearsay exception of N.C.G.S. § 8C-1, Rule 804(b)(3), the statement is not against penal interest because the codefendant had already entered a guilty plea and was serving a sentence for the murder when the letter was written, there were no corroborating circumstances to indicate that the letter was trustworthy, and there were circumstances to indicate otherwise.

Evidence and Witnesses §§ 929, 928 (NCI4th) - first-degree murder - bystanders – testimony admissible through officers - excited utterance - present sense impressions

State v. Pickens, 346 N.C. 628 (1997)

The trial court did not err in a noncapital first-degree murder retrial by admitting the statements of several unidentified individuals through the testimony of two police officers where the testimony of one officer fit squarely within the excited utterance exception to the hearsay rule in that the scene was still chaotic when the officer arrived, an individual screamed that defendant had shot the victim, and the victim was still "sort of" falling when the officer entered the apartment, and the statements that several individuals made to the other officer identifying defendant as the person who shot the victim were made contemporaneously with the declarants' viewing of the events and were properly admitted as present sense

impressions. Evidence which falls within a firmly rooted hearsay exception does not violate a defendant's right to confront and cross-examine witnesses.

Evidence and Witnesses § 876 (NCI4th) - capital murder - statements of victim - state of mind – admissible

State v. Gray, 347 N.C. 143 (1997)

The trial court did not err in a capital murder prosecution by admitting as a state of mind exception to the hearsay rule testimony from several witnesses as to what the victim told them. Each of the witnesses testified that the victim was in fear for her life, the factual circumstances surrounding her statements of emotion serve only to demonstrate the basis for the emotions, each of the witnesses testified that the victim had stated with specific reason and generally that she was scared of defendant, a searching voir dire of each witness took place where appropriate, and the jury was properly instructed that it was to consider the testimony only for the purpose of showing the victim's state of mind. N.C.G.S. § 8C-1, Rule 803(3).

Evidence and Witnesses § 1006 (NCI4th) - capital murder - prior acts of violence toward victim - statements of victim - residual hearsay exception

State v. Gray, 347 N.C. 143 (1997)

The trial court did not err in a capital prosecution for first-degree murder by admitting under the residual hearsay exception testimony that the victim had displayed a bruise on her hip and had told the witness that defendant, her estranged husband, had forced his way into her apartment, pushed her against a wall, and attempted to force her head into a toilet. The statements had guarantees of trustworthiness in that the alleged action of defendant was consistent with other evidence; the proffered statements were evidence of defendant's intent, a material fact; this testimony as to defendant pushing the victim against the wall was more probative than other evidence on this point; the testimony involved principally factual matters and would not have been admitted under the state of mind exception; the testimony was relevant to matters involved in the case; and the interests of justice were served by its admission. N.C.G.S. § 8C-1, Rule 804(b).

Residual hearsay exception where declarant unavailable: uniform evidence Rule 804(b)(5). 75 ALR4th 199. Admissibility of evidence of prior physical acts of spousal abuse committed by defendant accused of murdering spouse or former spouse. 24 ALR5th 465.

Evidence and Witnesses § 945 (NCI4th) - statement by defendant - excited utterance

State v. Riley, 128 N.C. App. 265 (1998)

A murder defendant's statement, made while he was wrestling with the victim after the victim had hit defendant's brother over the head with a chair, that he wasn't going to let the victim go because the victim had a gun, if hearsay, was admissible under the excited utterance exception to the hearsay rule. N.C.G.S. § 8C-1, Rule 803(2).

Evidence and Witnesses § 930 (NCI4th) - hearsay - present sense impression exception - closeness in time

State v. Clark, 128 N.C. App. 722 (1998)

The trial court did not err in a prosecution for first-degree murder by allowing defendant's sister-in-law to testify about statements made about defendant by his now deceased mother, including defendant's statement that he would kill the victim. Defendant's mother made the statements after observing defendant's behavior and walking to her daughter-in-law's house next door; the statements were close enough in time to her perception of defendant's statements to be considered immediately thereafter and the present sense impression exception to the hearsay rule applies. N.C.G.S. § 8C-1, Rule 803 (1).

Evidence - hearsay - state of mind exception - murder victim's statements

State v. Hayes, 130 N.C. App. 154 (1998)

Testimony by three witnesses about conversations they had with a murder victim in which she told them of defendant's threats to kill her, instances where he told her that she would be the next "Nicole Simpson," and that defendant urinated on the kitchen floor and wiped her hair in the urine were admissible under the state of mind exception to the hearsay rule; in each instance the victims statements shed light on her state of mind, her emotions and her physical condition. N.C.G.S. § 8C-1, Rule 803(3).

Evidence - hearsay - residual exception - unavailable declarant - Confrontation Clause - circumstantial guarantees of trustworthiness

State v. Hayes, 130 N.C. App. 154 (1998)

The residual hearsay exception of Rule 804(b)(5) for statements by an unavailable declarant does not qualify as a firmly rooted hearsay exception and thus will violate the Confrontation Clause unless it is supported by a showing of particularized guarantees of trustworthiness.

Evidence - hearsay - residual exception - circumstantial guarantees of trustworthiness - corroborating evidence

State v. Hayes, 130 N.C. App. 154 (1998)

Corroborating evidence cannot be relied upon to find the circumstantial guarantees of trustworthiness required to protect defendant's rights under the Confrontation Clause.

Evidence - hearsay - statement to police - inconsistencies - admissibility for corroboration

State v. Davis, 130 N.C. App. 675 (1998)

The victim's handwritten statement to a police officer indicating that she had seen

defendant shoot into her apartment was not inadmissible hearsay but was admissible to corroborate her trial testimony, although she attempted to recant her statement at trial and testified that she had relied upon information given to her by her boyfriend, where the victim also testified that the statement she made to the officer was true and that she attempted to recant her statement because she was afraid of defendant. Any inconsistencies in the victim's testimony goes to her credibility, not to its admissibility.

Evidence - hearsay - excited utterance exception

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

Statements made by defendant's nine-year-old daughter to a family friend within hours after the death of her mother that she had heard her parents arguing and her mother telling defendant, "No, Tim, no; stop, " were admissible in this first-degree murder prosecution under the excited utterance exception to the hearsay rule, even if they were made in response to questions by the family friend.

Evidence - hearsay - medical evaluation - statements of abused child - unavailable to testify

State v. Waddell, 130 N.C. App. 488 (1998)

The trial court did not err in a prosecution for first-degree sexual offense, taking indecent liberties with a minor, lewd and lascivious acts, and felony child abuse by admitting the testimony of a licensed Psychological Associate relating the child's statements during their interview. It is undisputed that the challenged testimony constituted hearsay; however, applying the factors in *State v. Jones*, 89 N.C. App. 584, the statements were for the purpose of medical diagnosis or treatment within the meaning of the statutory hearsay exception set out in N.C.G.S. § 8C-1, Rule 803(4). The testimony was necessitated by the child's unavailability due to his lack of competency as a witness and statements relevant to medical diagnosis or treatment are considered "necessarily trustworthy" in North Carolina. Furthermore, the substance of the testimony was also contained in a detective's hearsay recitation of statements made by the child to which defendant neither objected at trial nor assigned error on appeal.

Evidence - hearsay - reliability - incompetent child

State v. Waddell, 130 N.C. App. 488 (1998)

A defendant in a prosecution arising from the sexual abuse of a child failed to cite authority supporting his contention that the child's incompetence as a witness should have deprived hearsay recitations of his statements of enough reliability to be admitted as substantive evidence of guilt; however, the statements were admissible under the statutory exception of statements for the purpose of medical diagnosis or treatment and are considered necessarily trustworthy. Moreover, defendant's assertion was specifically rejected in *State v. Rogers, 109 N.C. App. 491.*

Evidence and Witnesses § 876 (NCI4th) - murder victim - statements that she feared defendant -admissible

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

There was no prejudicial error in a capital first-degree murder prosecution in the admission of statements from the victim to three witnesses that she was afraid of defendant and that he might kill her. Evidence tending to show the state of mind of a victim is admissible as long as the declarant's state of mind is a relevant issue and the potential for unfair prejudice in admitting the evidence does not substantially outweigh its value. It has consistently been held that murder victim's statements that she fears the defendant and fears that the defendant might kill her are statements of the victim's then-existing state of mind and are highly relevant to show the status of the victim's relationship to the defendant. Whether the probative value of the victim's statements is substantially outweighed by the danger of unfair prejudice to defendant is a matter left solely in the discretion of the trial judge, and this defendant was not able to show that the trial court abused its discretion. N.C.G.S. § 8C-1, Rule 803 (3).

Evidence and Witnesses § 1145 (NCI4th) - statements made by codefendant - sufficient

evidence of conspiracy-hearsay exception

State v. Bonnett, 348 N.C. 417 (1998)

The evidence in a first-degree murder and robbery trial was sufficient to meet the State's burden of showing that a conspiracy existed so as to render admissible hearsay statements of a coconspirator during the course and in furtherance of the conspiracy where it tended to show that defendant and his three codefendants went to the victim's store three times to buy beer; the next time they went there, one codefendant stayed in the car while defendant and the other two went inside, shot the victim, took his gun, and stole the money box; and they then drove to a motel, divided up the money, and attempted to take refuge in someone else's house when pursued by the police. Further, the statements of a defendant in which the codefendants agreed to "hit this store," "stick together whatever happen[s]," and to "smoke the old m___f___," along with statements made during the robbery and murder, fall within the hearsay exception for statements made during the course and in furtherance of a conspiracy. N.C.G.S. § 8C-1, Rule 801 (d)(E). STATE v. LEE, 348 N.C. 474 (1998)

Evidence and Witnesses § 3164 (NCI4th) - prior consistent statements - corroboration – exception to hearsay rule

State v. Bonnett, 348 N.C. 417 (1998)

In a prosecution for first-degree murder of a child, the trial court properly admitted under the prior consistent statement exception to the hearsay rule statements made by the victim's mother to a detective that her husband was afraid defendant would beat up her minor child, that she believed defendant may have done something to the child, that defendant got mad because he believed the child's autopsy report was wrong, that she knew defendant injured the child, and that she and defendant tried to get their stories straight, since all of the statements corroborate and add weight to the mother's trial testimony. Although the mother's statement to the detective that defendant said he was abused as a child did not corroborate any trial testimony, the erroneous admission of this statement did not constitute plain error.

Evidence and Witnesses § 927 (NCI4th) - hearsay - Confrontation Clause - necessity and trustworthiness - inferences in prior decisions disapproved

State v. Jackson, 348 N.C. 644 (1998)

Any possible inferences in prior decisions that the Confrontation Clause of the North Carolina Constitution requires that no hearsay evidence be admitted unless the prosecution has complied with a two-prong test by establishing (1) necessity and (2) reliability or trustworthiness were mere dicta and are disapproved.

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Evidence and Witnesses §§ 876, 881 (NCI4th) - first-degree murder - statements of victim – abused spouse - state of mind hearsay exception

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

The trial court did not err in a capital prosecution for the first-degree murder of an abused spouse by admitting testimony that the victim had said she was going home to Massachusetts for the summer, leaving the inference that the victim and defendant were separating. Competent evidence had been introduced that defendant had threatened to kill the victim if she left him and her statement was relevant to show motive and to show her state of mind.

Evidence and Witnesses § 929 (NCI4th) - first-degree murder - abused spouse - statement of victim - excited utterance

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

The trial court did not err in a capital prosecution for the first-degree murder of an abused spouse by admitting testimony about a phone conversation in which the victim related that defendant had held a gun to her head. The testimony indicated that the victim had called her brother-in-law immediately after the incident while she was still upset and had not time to reflect; the testimony was properly admitted as an excited utterance. N.C.G.S. § 8C-1, Rule 803(2).

Evidence and Witnesses § 876 (NCI4th) - first-degree murder - abused spouse - statements by victim in workplace

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

The trial court did not err in a capital prosecution for the first-degree murder of an abused spouse by permitting the assistant principal at the victim's workplace to testify about beatings the victim described after the alleged abuse occurred. The transcript reveals that the victim recounted the past beatings only when confronted with her injuries and that she broke down and explained what was happening in her life to make her afraid, upset, and bruised. The victim's explanatory comments about the beatings were made contemporaneously with and in explanation of her statements and crying, thus showing her state of mind.

Evidence and Witnesses §§ 876, 929 (NCI4th) - first-degree murder - abused spouse - statements to sisters and friends

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

The trial court did not err in a capital prosecution for the first-degree murder of an abused spouse by allowing the victim's sisters and friends to testify as to various beatings that the victim described. The victim either called the witnesses

immediately after the beating or described the beatings as the basis for her fear, placing the statements within the excited-utterance exception or the state of mind or emotion exception.

Constitutional Law, Federal - Confrontation Clause - admission of hearsay testimony

State v. Washington, 131 N.C. App. 156 (1998)

Although a criminal defendant has the constitutional right to confront and cross-examine witnesses against him, the right to cross-examine is not absolute. The admission of hearsay within a firmly rooted exception generally does not violate the right of confrontation but hearsay which does not fall within a firmly rooted exception violates the Confrontation Clause unless the State establishes the reliability of the hearsay and its necessity.

Evidence - hearsay - excited utterances

State v. Washington, 131 N.C. App. 156 (1998)

The trial court did not err in a prosecution for second-degree rape and second-degree sexual offense against a mentally retarded victim by holding that the victim's statements to her sister and mother on the evening of the rape were excited utterances where the victim's statements explained that she had been raped by the mother's boyfriend less than thirty minutes before and both witnesses testified that the victim was visibly shaken when she made the statements.

Constitutional Law, Federal; Constitutional Law, North Carolina - right to confrontation - hearsay - child victim of sexual assault

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

The state and federal constitutional rights to confrontation of a defendant charged

with taking indecent liberties with a child and first-degree sexual offense were not violated where the trial court admitted out-of-court statements made by the child under the catch-all hearsay exception after finding that she was incompetent to testify. No evidence suggests that she was incapable of telling the truth or of distinguishing reality from imagination at the time of the assault; therefore, her incompetence to testify at trial does not disqualify her out-of-court statements, which were sufficiently trustworthy to be admissible under the catch-all hearsay exception.

Evidence - hearsay - excited utterance exception

State v. Coria, 131 N.C. App. 449 (1998)

Statements made by an assault victim to a stranger and an officer concerning an attack upon her by defendant, her father, were admissible under the excited utterance exception to the hearsay rule, although the amount of time between the attack and statements was not shown, where the victim ran through dark woods alone and bleeding and approached the stranger for help; the victim was excited and upset, had obviously been hit about the face, and at times lapsed into her native Spanish language while speaking to the stranger and the officer; and the officer testified that when he spoke with the victim, she was very excited, upset, and almost to the point of hysteria. N.C.G.S. § 8C-1, Rule 803 (2).

Evidence and Witnesses ----Non capital 1st murder----threats by defendant to victim---hearsay—admissible—state of mind

State v. Gray, 348 NC 510 (1998)

No error to allow hearsay testimony by victim's mother about threats made by defendant to the victim. Rule 803(3) allows admission of hearsay testimony if it tends to demonstrate the victim's then-existing state of mind; this testimony was admissible to show the victim's fear at the time of the conversation with her mother and to demonstrate the basis for her fear, namely, the threat to her life. STATE v. EARHART, 134 N.C. App. 130 (1999) 3. Evidence - hearsay - conversation between officers - explanation of subsequent conduct The trial court

did not err in a cocaine trafficking prosecution by allowing testimony of a conversation between two officers which led to one officer checking the license plate number of defendant's vehicle. The substance of the conversation was not inadmissible hearsay because it was admitted for the purpose of explaining subsequent conduct.

Evidence - hearsay - state of mind exception - victim's statements - marital problems - relevancy

State v. Brown, 350 N.C. 193 (1999)

In a prosecution of defendant for the first-degree murder of her husband, statements made by the husband to five colleagues about his financial problems within the marriage, the couple's disagreements, deterioration and incompatibility within the marriage, and the husband's concern for his safety due to the ill will within the marriage were admissible under the existing state of mind exception to the hearsay rule and were relevant to contradict defendant's contention that she and her husband had a loving and compassionate relationship.

Evidence - expert - underlying basis of opinion - voir dire not required - no prejudice from delay

State v. Pretty, 134 N.C. App. 379 (1999)

The trial court did not err in failing to allow defense counsel to voir dire the State's expert witnesses before they testified at trial to determine the underlying basis of their opinion since the disclosure of these facts occurred during direct and cross-examination testimony, and defendant failed to show any prejudice from this delay.

Evidence - hearsay - medical diagnosis or treatment

State v. Crumbley, 135 N.C. App. 59 (1999)

Hearsay statements may be admissible under N.C.G.S. § 8C-1, Rule 803(4) if those statements are made for the purpose of medical diagnosis or treatment. Factors properly considered to determine whether statements have been made for the purpose of medical diagnosis or treatment include whether the examination was requested by persons involved in the prosecution of the case, the proximity of the examination to the victim's initial diagnosis, whether the victim received a diagnosis or treatment as a result of the examination, and the proximity of the examination to the trial date. The key factor is whether the statements resulted in the child receiving medical treatment and/or diagnosis.

Evidence - hearsay - medical treatment exception - child sexual abuse victim - statements to social worker

State v. Crumbley, 135 N.C. App. 59 (1999)

The statements of a child sexual abuse victim to a social worker (Womble) were admissible as hearsay statements made for the purpose of medical diagnosis or treatment where Womble did not interview the child at the request of persons involved in the prosecution of defendant but as part of her duties as an emergency investigator for Social Services; the interview took place approximately twenty months prior to trial and in close proximity to the child's initial diagnosis and treatment; and, although Womble's investigation ended one day before another social worker made medical appointments for the child, Womble's role as the initial investigator played a crucial role in the process that Social Services used to determine whether to pursue medical treatment and the statements resulted in the child receiving treatment.

Evidence - hearsay - directive statement

State v. Mitchell, 135 N.C. App. 617 (1999)

The trial court did not err in a prosecution for providing drugs to an inmate by admitting testimony that defendant's boyfriend, an inmate, said "hurry" or "leave"

to her as she was departing. Directives are not hearsay when they are simply offered to prove that the directive was made, not to prove the truth of any matter asserted.