

PRIOR STATEMENTS

1) Evidence--Police-taped telephone conversation-Admission of party opponent-Consistency with trial testimony

State v Williams 175 N.C. App. 640 (2006)

The trial court did not err in a first-degree murder and discharging a weapon into occupied property case by allowing a witness to testify regarding a police-taped telephone conversation with defendant following the shooting, because: 1) the witness's recollection of her telephone conversation with defendant was admissible under N.C.G.S. § 8C-1, Rule 801 as an admission by a party opponent; 2) the jury also listened to the audiotape of the conversation between defendant and the witness; 3) any inaccuracies or discrepancies between the audiotape and the witness's testimony go to issues of credibility and the weight to be given to the evidence which are matters solely within the province of the jury; and 4) while the witness's testimony was not verbatim identical to the language of the taped conversation, the import of the witness's testimony was consistent with the transcript of the audiotape.

2) Evidence--Impeaching witness-Prior inconsistent statement

State v Reid 175 N.C. App. 613 (2006)

There was no plain error in a prosecution for robbery and other offenses in the State's introduction of extrinsic evidence to impeach a defense witness who denied making a prior inconsistent statement. Whether the prior statement was made is a collateral matter and the testimony should not have been allowed; however, defendant did not meet his burden of showing that the jury would probably have reached a different result if the testimony had been excluded.

3) Evidence--Prior inconsistent statements--Impeachment--Refreshing memory with prior custodial statements

State v Jacobs, 174 N.C. App. 1 (2005)

The trial court did not err in an impersonation of a law enforcement officer, armed robbery, burglary, and kidnapping case by admitting evidence of two coparticipants' prior inconsistent statements when the State impeached the coparticipants with their prior custodial statements after allowing them to refresh their memory by looking through their statements, because: 1) the record demonstrates the co participants were testifying contrary to the expectations of the State and there is no indication that the State called the witnesses or used their impeachment as a mere subterfuge to get

evidence before the jury which was otherwise inadmissible; and 2) the trial court instructed the jury that when evidence has been received tending to show that at an earlier time a witness made a statement which may be consistent or may conflict with his testimony, the jury must not consider such earlier statement as evidence of the truth of what was said at the earlier time.

Criminal Law--Failure to give limiting instruction--Prior statement offered for corroborative purposes

State v Borkar, 173 N.C. App. 162 (2005)

The trial court erred in a solicitation of murder, stalking, and carrying a concealed weapon case by denying a limiting instruction as to a prior statement offered for corroborative purposes and the case is remanded for a new trial, because defendant was entitled, upon request, to have the evidence limited to the purpose for which it was competent.

5) Evidence--Prior Consistent Statements--Corroboration

State v. Chapman 359 NC 328 (2005)

The trial court did not err in a capital first-degree murder, attempted first-degree murder, and discharging a firearm into occupied property case by admitting a detective's testimony that he overheard defendant's coparticipant tell his mother that he was tired of lying and he was going to tell the police the truth during a phone call that the coparticipant made from the police interview room, because: (1) the testimony was admissible to corroborate the coparticipant's earlier testimony as a State's witness; and (2) the testimony was admissible as a prior consistent statement which tended to strengthen the coparticipant's credibility regarding his testimony that although he initially lied to law enforcement, he decided to tell the truth after speaking to his mother.

6) Evidence--Officer's testimony--Prior consistent statements--Corroboration

State v. Thaggard 168 N.C. App. 263 (2005)

The trial court did not err in a statutory rape, statutory sexual offense, and taking indecent liberties case by permitting an investigator to testify that the two minor victims' in-court testimony was consistent with their previous statements to the investigator, because: 1) a review of the investigator's testimony with the victims' in-court testimony shows his testimony to be corroborative; 2) the differences that defendant cites in the statements are not appreciable variances and instead appeared to be either where the investigator did not receive all the details during the initial meetings or the order of details in the victims' stories varied between their initial statements and their testimony at trial;

and 3) any disparities affect the weight, not the admissibility, of the statements and the witnesses' credibility.

7) Evidence–Witnesses' denial of prior statements--Impeachment--Extrinsic evidence

State v. Mitchell 169 N.C. App. 417 (2005)

The trial court erred in a first-degree statutory sex offense, indecent liberties, sexual activity by a substitute parent, felony child abuse, and first-degree statutory rape case by permitting the State to impeach three witnesses who denied making prior allegations about defendant's prior sexual abuse of his own children when they were younger with extrinsic evidence, because: 1) once a witness denies having made a prior inconsistent statement, the State may not introduce the prior statement in an attempt to discredit the witness since the prior statement concerns only the collateral matter of whether the statement was ever made; 2) their denials were conclusive for impeachment purposes, and the testimony elicited from a detective and a DSS case manager during the State's rebuttal case was collateral and therefore could not be used to impeach those witnesses; 3) the pertinent statements regarding defendant's prior sexual misconduct were inadmissible to show defendant's intent, motive or plan to commit the crimes since they were hearsay statements; and 4) the evidence that defendant sexually assaulted his own daughters when they were young was highly prejudicial and there was a reasonable probability that without this evidence, the outcome of the trial may have been different. See Farb p13

8) Evidence–Prior inconsistent statement–Inadmissible

State v. McCree 160 N.C. App. 200 (2003)

A prior statement by an assault victim that he had been beaten with a gun should have been excluded because he testified at trial that he did not remember defendant striking him with a gun. A witness's prior statements may be admitted to corroborate trial testimony but may not be used as substantive evidence.

Evidence–Rape victim's statement–Corroborative

State v. Bell 159 N.C. App. 151 (2003)

A detective's testimony about a statutory rape victim's statement was properly admitted as corroborative evidence. The trial court is in the best position to determine whether the testimony of the detective corroborated that of the witness.

Evidence–Pretrial statement–Slight variations–Admissible as corroboration Prior Statements

State v. Alexander 152 N.C. App. 701 (2002)

The trial court did not err in a first-degree murder prosecution by admitting a statement given by a State's witness which defendant contended did not corroborate the witness's testimony. Slight variations represented minor inconsistencies at most and the statement was admissible as corroborative evidence.

Evidence--Prior inconsistent statement--Impeachment

State v. Riccard, 142 N.C. App. 298 (2001)

The trial court did not err in an assault and robbery prosecution by allowing the State to impeach two of its witnesses with prior statements to an officer where both witnesses admitted making the prior statements, one of them testified that certain parts of his statement were inaccurate and that he did not remember making parts of his statement, and the facts indicate good faith and an absence of subterfuge. (See Farb's P23)

1) Evidence--Hearsay--Prior consistent statement--Corroboration

State v. Lloyd 354 NC 76, 2001

The trial court did not err in a capital first-degree murder prosecution by allowing a police officer to testify as to what the victim's six-year-old grandson told the officer shortly after the victim's murder, because: 1) prior consistent statements are admissible even though they contain new or additional information so long as the narration of events is substantially similar to the witness's in-court testimony; 2) the testimony of the officer was admitted for the limited purpose of corroborating the child's testimony; and 3) even if any of the statements did not corroborate the child's trial testimony, their admission was not prejudicial when numerous witnesses gave similar testimony.

2) Evidence--Testimony--Sexual assault--Child's allegations did not vary--Prior consistent statements--Corroboration

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

The trial court did not err in a first-degree sexual offense case by allowing the State's witnesses to testify that the seven-year-old child victim's allegations did not vary, because: (1) the witnesses first related to the jury what the victim had told them and then testified that she had not changed her story; and (2) the child's prior consistent statements are admissible to corroborate the testimony of the witnesses.

3) Evidence - Corroboration - Prior statements - Slight variations

State v. Gell, 351 N.C. 192 (2000)

The trial court did not err by allowing an SBI agent to read two statements given to him by a State's witness for the purpose of corroborating the trial testimony of the witness, although the statements contained slight variations and some additional information, where the statements were substantially similar to and tended to strengthen and confirm the trial testimony of the witness, and they contained nothing directly contradicting the trial testimony.

4) 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.

5) Evidence--Prior statement--Corroboration of trial testimony

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

The trial court did not err in a prosecution for first-degree murder, first-degree rape, first-degree kidnapping, robbery with a firearm, and first-degree burglary by admitting into evidence an accomplice's prior statement to an officer to corroborate her trial testimony, because; 1) the variations in the accomplice's testimony at trial do not directly contradict her statement given to the officer; and 2) the information in the statement was substantially similar to and tended to strengthen and confirm her testimony at trial regarding the events leading up to the victim's shooting.

Evidence and Witnesses 3106 (NCI4th) - Witness's corroborative statement - "New information" - Statement admissible

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

The trial court did not err by allowing a detective to read a statement given by the assault victims' brother for the purpose of corroborating the brother's earlier testimony, even though the statement may have included "new" information, since the "new" material simply gave a further description of one victim's appearance at

the time of two incidents involving defendant, and it tended to add credibility to, and in no way contradicted, the brother's trial testimony.

Evidence and Witnesses 2847, 3081 (NCI4th) - Murder - Statements of witnesses to police - Written versions unexamined by witnesses - Recollection refreshed - Impeachment

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

The trial court did not err in a murder prosecution by allowing the State to use typewritten versions of oral statements given by two witnesses to officers where the witnesses had not reviewed the statements before trial. The statements were not used as substantive evidence, but to refresh the witnesses' recollections or to impeach portions of courtroom testimony inconsistent with the statements. A statement used to refresh a witness's recollection need not be signed by him or even be his own prior statement and the witness who was impeached acknowledged the prior statement at trial.

Evidence and Witnesses 3106 (NCI4th) - Victims' statements - Additional facts included - statements admissible for corroboration

State v. Ballew, 113 N.C. App. 674 (1944) ___ S.E.2d ___

Evidence and Witnesses 293 (NCI4th) - Attempted statutory rape and sexual offense - Prior offense - Acquittal - Admissible

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

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

1) Evidence and Witnesses 3169 (NCI4th) first-degree murder - Prior statement of witness admissible - Corroborative

State v. Baity, 340 N.C. 65 (1995) ___ S.E.2d ___

2) Evidence and Witnesses 3164 (NCI4th) prior inconsistent statement extrinsic evidence properly

allowed instructions proper

State v. Williams, 341 N.C. 1 (1995) ___ S.E.2d ___

The trial court did not err in allowing the State to introduce extrinsic evidence of a witness's prior inconsistent statement where the witness testified on direct examination that she had made the prior inconsistent statement, since the extrinsic evidence of this statement was thus admissible to corroborate this portion of the witness's testimony.

1) Evidence and Witnesses § 3168 (NCI4th) testimony admitted for corroboration significant discrepancies harmless error

State v. Francis, 343 N.C. 436 (1996) 471 S.E.2d 348

An SBI agent's testimony in a prosecution for two murders about a pretrial statement by a State's witness contained significant discrepancies from the witness's testimony at trial and should not have been admitted as corroborative evidence where the agent testified that the witness stated in the pretrial statement that he saw defendant shoot one victim and that two to three minutes passed between two shots and the witness testified at trial that he did not see who shot either victim and that the shots were not "long apart." However, the admission of the SBI agent's testimony was harmless error in light of the plenary competent evidence of defendant's guilt of the two murders, including testimony by defendant's accomplice that defendant shot both victims, the SBI agent's unchallenged corroborative testimony regarding the accomplice's statement to the agent, and defendant's own trial testimony admitting that he and the accomplice, with weapons, followed the victims into an alley where both victims were shot.

2) Evidence and Witnesses § 3199 (NCI4th) noncapital first-degree murder interview notes of officer with witnesses admissible to corroborate witnesses

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

There was no error in a noncapital first-degree murder prosecution in allowing the State to introduce the notes an officer made of interviews with several of the witnesses where the notes were consistent with the witnesses' testimony and were introduced to corroborate the testimony of the witnesses. North Carolina has been liberal in allowing prior consistent statements in corroboration of witnesses and there is no reason under this liberal policy why notes taken of conversations should not be allowed to corroborate the testimony of witnesses.

Evidence and Witnesses § 3107 (NCI4th) - Prior inconsistent statement - Inadmissibility for

corroboration - Prejudice to defendant

State v. Frogge, 345 N.C. 614 (1997)

In a prosecution of defendant for the first-degree murders of his father and stepmother, a witness's prior inconsistent statement to the police as to what defendant told him about the murders was inadmissible hearsay and improperly admitted under the guise of corroboration. Furthermore, defendant was prejudiced by the erroneous admission of this statement where the witness's trial testimony tended to show that defendant's father had provoked him by hitting him with a metal bar before defendant stabbed him, but his prior statement suggested that defendant started stabbing his father before he was hit with a metal bar, thus weakening defendant's case for a lesser verdict;

Evidence and Witnesses § 2851 (NCI4th) - murder and kidnapping - officer allowed to read from notes - Recollection refreshed - No error

State v. York, 347 N.C. 79 (1997)

The trial court did not err in a prosecution for first-degree murder by torture and first-degree kidnapping by allowing a captain in the sheriff's department to read during his testimony from notes he took of his interview with defendant where the use of the notes was for the purpose of refreshing recollection to facilitate accurate testimony and did not violate the present recollection refreshed rule.

1) Evidence and Witnesses § 3170 (NCI4th) - Corroborative testimony - More details

State v. Swindler, 129 N.C. App. 1 (1998)

A detective's testimony as to what defendant's cellmate had told him was admissible to corroborate the cellmate's testimony even though it was more detailed than the cellmate's testimony.

2) Evidence and Witnesses § 3164 (NCI4th) - Prior consistent statements - Corroboration - Exception to hearsay rule

State v. Lee, 348 N.C. 474 (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.

3) Evidence and Witnesses § 3164 (NCI4th) - First-degree murder - Witness's prior statement to police - Admissible

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

The trial court did not err during a capital first-degree murder prosecution by admitting the prior statement of a witness to officers on the night of the shooting where the prior statement was consistent with the witness's trial testimony, contained no significant additional facts, and the court gave proper instructions limiting the evidence to corroboration.

Evidence - refreshing recollection - review of interview summary

State v. Moore, 131 N.C. App. 65 (1998)

The trial court did not err in a prosecution for attempted murder, conspiracy, solicitation to commit murder, and assault by allowing a witness to use an interview summary prepared by police officers to refresh his recollection. Although defendant contended that the summary was inadmissible hearsay because the witness did not write or sign the document and the officers who prepared it did not testify, a statement used to refresh a witness's recollection is not required to be signed by the witness or even be the witness's own prior statement. Here, the State asked several questions to which the witness could not recall the answer, the court allowed him to review the document, the witness answered that it refreshed his memory, and he was thereby enabled to testify more accurately.

1) Evidence - Corroborative - Contradictory

State v. Petty, 132 N.C. App. 453 (1999)

The trial court did not err in a prosecution for indecent liberties and sexual offenses by admitting evidence which defendant argued contradicted rather than corroborated statements made by the victim but the victim's testimony indicated a course of continuing sexual abuse and any new or additional instances of abuse tended to strengthen her trial testimony.

2) Evidence - Hearsay - Corroboration of victim

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

The trial court in a first-degree statutory rape prosecution properly admitted a detective's testimony that another child had told him of defendant touching children in the park. The testimony was specifically offered to corroborate the testimony of the child, the jury was instructed to that effect, and the substance of the detective's testimony was generally consistent with the testimony of the child.