

VICTIM IMPACT

(3) Error to Admit Victim Impact Evidence During Guilt-Innocence Stage of Trial

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

The defendant was convicted of three counts of aiding and abetting statutory rape, three counts of indecent liberties, and two counts of second-degree kidnapping. The offenses occurred in 2005. (3) The court ruled that the trial judge erred in admitting victim impact evidence during the guilt-innocence stage of the trial because it was irrelevant to any issue in the trial.

Trial Judge Erred in Admitting State's Victim Impact Evidence During Guilt-Innocence Stage of Trial

State v. Graham, ___ N.C. App. ___, 650 S.E.2d 639 (2 October 2007).

The defendant was convicted of first-degree burglary and a felonious assault. The defendant broke and entered victim A's home and stabbed victim B. The court ruled that the trial judge erred in admitting during the state's presentation of evidence at trial the testimony of victim A concerning how her mental health was affected by witnessing the stabbing of her son, victim B. The court stated that victim impact testimony is generally inadmissible during the guilt-innocence stage of a trial because it often does not tend to prove whether a particular defendant committed a particular crime against a particular victim. However, there is an exception to the general rule if the victim impact evidence tends to show the context or circumstances of the crime itself, even if it also shows the impact of the crime on the victim and family. The court examined the state's evidence in this case and determined that it did not fit the exception.

Sentencing--Capital--Victim impact statements

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

The trial court did not abuse its discretion in a double capital first-degree murder sentencing proceeding by allowing the State to present a victim impact statement under N.C.G.S. §15A-833(a)(1), because: 1) the statements of the victim wife's mother concerning the impact of her daughter's death on her family properly related the extent of the psychological and emotional injury caused by defendant without being unduly prejudicial; 2) there was no evidence in the record showing the jury was swayed to base its decision solely on the mother's statements; and 3) none of the aggravating circumstances submitted to the jury derived

from the victim impact evidence, and the State did not ask the jury to base its decision on this evidence.

Sentencing--Capital--Defendant's death--Family impact evidence

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

The trial court did not abuse its discretion in a double capital first-degree murder sentencing proceeding by denying defendant's request to present family impact evidence, because: 1) the voir dire testimony of defendant's sister-in-law as to the stress and sickness in her family since the time of the killing did not go to any aspect of defendant's character, record, or circumstance of the offense; and 2) the statements did not reduce defendant's moral culpability.

Sentencing--capital--victim impact statement

State v. Hooks, 353 N.C. 629, 2001

The trial court did not err in a capital sentencing proceeding by allowing the victim's older brother to state in a victim impact statement that the victim was easygoing; gave everything 110 percent; wanted to make something of himself; was loving, kind, and respectful; had accepted Jesus Christ after a neighbor had died of a heart attack; and left a favorable impression on everyone he met. The testimony as a whole showed that the victim was a living human being with aspirations, fears, a family, and friends; the fleeting comment regarding acceptance of Jesus Christ briefly addressed the religious facet of the victim's life and did not inflame the jury.

Evidence--Victim impact statement--Motion in limine

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

The trial court did not abuse its discretion in a capital sentencing proceeding by denying defendant's motion in limine to prohibit victim impact statements. Deciding the motion pretrial was well within the court's discretion and the only statement introduced did no more than describe the emotional or psychological effect of the victim's death on her brother, which was well within the parameters of N.C.G.S. § 15A-833.

Criminal Law--Prosecutor's argument--Capital sentencing --Sympathy for victims

State v. McNeil, 350 N.C. 657 (1999)

The prosecutor's argument in a capital sentencing proceeding was not so grossly improper as to require the trial court to intervene ex mero motu where defendant contended that the prosecutor placed undue emphasis upon the personal qualities and future prospects of the victims and sought to improperly invoke sympathy for the victims. The prosecutor's argument about the promising nature of the victim's lives served to inform the jury about the specific harm caused by defendant's crime.

Criminal Law § 1077 (NCI4th Rev.)--Capital sentencing--Victim impact evidence--Victims' mothers' feelings toward death sentences--Questioning not allowed

State v. Bowman, 349 N.C. 459 (1998)

The trial court did not err in a capital sentencing proceeding by precluding defendant from questioning the victims' mothers about their feelings toward the death sentences in this case after they gave victim impact evidence. This evidence has no bearing as to defendant's character, prior record, or the circumstances of his offense.

Criminal Law § 1338 (NCI4th Rev.)--Capital sentencing--Prior murder--Victim survived by small children--Admissible

State v. Richmond, 347 N.C. 412 (1998)

The trial court did not err in a capital sentencing proceeding by admitting testimony from the father of a prior murder victim that his daughter was survived by two small children. As in *State v. Reeves, 337 N.C. 700*, the evidence is relevant for the jury's deliberations.

Criminal Law § 453 (NCI4th Rev.) capital sentencing prosecutor's argument victim's family

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

The prosecutor's closing argument in a capital sentencing proceeding was not so grossly improper as to require intervention ex mero motu where defendant contended that the argument improperly suggested that the jury would be accountable to the victim's family. The argument was a plea for the jury to give serious consideration to the victim's death and the unique loss to her family; these types of arguments have been held not improper.

1) Criminal Law § 453 (NCI4th Rev.) capital sentencing closing argument victim impact statement

State v. Bond, 345 N.C. 1 (1996) 478 S.E.2d 163

The prosecutor's closing argument in a capital sentencing proceeding asking if the jurors could imagine themselves in the position of the murder and kidnapping victims' parents was permissible as a type of victim impact statement; in any event, the argument was not so grossly improper as to require the trial court to intervene ex mero motu.

2) Criminal Law § 454 (NCI4th Rev.) closing argument victim's fear and emotions

State v. Bond, 345 N.C. 1 (1996) 478 S.E.2d 163

The prosecutor's closing argument asking the jury in a capital sentencing proceeding to try to imagine the fear and emotions of a kidnapping victim while she and her brother, the murder victim, were held hostage for eight hours in a small Volkswagen and her brother was forced by defendant to commit armed robberies was not so grossly improper as to require the trial court to intervene in the absence of an objection by defendant.

Criminal Law 447 (NCI4th) capital sentencing--Closing argument--Victim impact statements

State v. Gregory, 340 N.C. 365 (1995) ___ S.E.2d ___

The prosecutor's use of victim impact statements during his closing argument in a capital sentencing proceeding did not render defendant's trial fundamentally unfair where the statements were made as a part of the prosecutor's argument that the deaths of the victims represented a unique loss to their families;

Criminal Law § 1067 (NCI4th)--First-degree murder--Sentencing hearing--Evidence of character of victim and impact on victim--No error

State v. Reeves, 337 N.C. 700 (1994)

There was no error in a first-degree murder sentencing hearing where a witness testified that the victim was a good wife and mother, a good person who always went to church and would do anything for anyone, and who died not knowing what happened to her two-and-a-half-year-old child. The testimony was not barred by the United States Constitution because it was not so prejudicial that it made the trial fundamentally unfair, it was not excludable under N.C.G.S. § 8C-1, Rule 402 because it was relevant to give the jury information as to all the circumstances of the crime, and N.C.G.S. § 8C-1, Rule 404 had no application because the evidence was not offered to show that the witness acted in conformity with

the crime. While evidence of a victim's character may not by the strictest interpretation be relevant to any given issue, the State should be given some latitude in fleshing out the humanity of the victim so long as it does not go too far.

Evidence and Witnesses § 740 (NCI4th)--First-degree murder--Sentencing hearing--Victim's family members and friends--Identified to jury--No error

State v. Reeves, 337 N.C. 700 (1994)

There was no plain error in a first-degree murder sentencing hearing where the district attorney identified to the jury several family members and friends of the victim.