

## AUDIO/VIDEO TAPE

### **Police Department's Interception of One of Its Own Officer's Oral Communications in His Vehicle to Check If Officer Was Tipping-Off Drug Dealers About Confidential Police Department Information Did Not Violate North Carolina's Electronic Surveillance Act Because Interception Was Not Done "Willfully"**

*Wright v. Town of Zebulon*, \_\_\_ N.C. App. \_\_\_, 688 S.E.2d 786 (16 February 2010).

The plaintiff, a police officer, sued his department, the city, and various officers and others for allegedly violating the North Carolina Electronic Surveillance Act (G.S. 15A-286 to -298) by intercepting his oral communications in his vehicle. The police chief and others intercepted these communications to check, based on information from an informant and others, if the officer was tipping-off drug dealers about confidential police department information. The trial court granted summary judgment for the various defendants (the police chief and others), and the plaintiff appealed to the North Carolina Court of Appeals. The court ruled that the defendants did not violate the act because they did not act "willfully" [see G.S. 15A-287(a)(1)] as that term has been interpreted by federal case law involving the federal electronic surveillance law, on which the North Carolina law was modeled. Based on the police chief's purpose in conducting the interception as an integrity check to ensure public safety (to determine if officers, informants, and the general public were in danger of harm), the defendants did not act with a bad purpose or without a justifiable excuse.

### **Trial Court Abused Discretion by Allowing Law Enforcement Officer to Testify That Defendant Was Person Depicted in Surveillance Video Tape**

*State v. Belk*, \_\_\_ N.C. App. \_\_\_, 689 S.E.2d 439 (8 December 2009).

The court ruled that the trial court abused its discretion by allowing a law enforcement officer to testify that the defendant was the person depicted in a surveillance video tape, based on its analysis of the facts in this case and the factors set out in *United States v. Dixon*, 413 F.3d 540 (6th Cir. 2005).

### **Defense-Proffered Audio Recording of Statement of Defense Witness to Law Enforcement Officer Was Not Admissible Under Rule 803(5) (Recorded Recollection) or Rule 608(b) (Cross-Examination of Witness About Prior Conduct If Probative of Untruthfulness)**

*State v. Wilson*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (19 May 2009).

The defendant was convicted of first-degree murder. A person (Daughtridge) spoke to a witness (Morgan) to the murder and later gave a

tape recorded statement about that conversation to a law enforcement officer. The defendant called the Daughtridge as a witness. She testified that she had no recollection of seeing Morgan, the conversation with Morgan, or giving a statement to the officer. As the result of an illness, she could hardly remember anything. She also said that she was capable of saying anything and was a mental health patient. (1) The court ruled that an audio recording of a statement is covered within Rule 803(5) (recorded recollection), but the statement in this audio recording was inadmissible under the rule. Daughtridge did not recall giving the statement to the officer and her mental status raised questions about the statement's reliability. (2) The court ruled, relying on *State v. Hunt*, 324 N.C. 343 (1989), and *State v. Najewicz*, 112 N.C. App. 280 (1993), that Daughtridge's statement was not admissible to impeach Morgan's testimony under Rule 608(b) (cross-examination of witness about prior conduct if probative of untruthfulness). The defendant had cross-examined Morgan during the state's case concerning statements Morgan purportedly made to Daughtridge, and Morgan denied telling Daughtridge matters that were inconsistent with his trial testimony. Under these circumstances, the defendant was limited to Morgan's answers on cross-examination. Daughtridge's statement was extrinsic evidence, barred by Rule 608(b) and the *Hunt* and *Najewicz* rulings. Once a witness denies having made a prior inconsistent statement, a party may not introduce the prior statement in an attempt to discredit the witness; the prior statement only concerns a collateral matter, i.e., whether the statement was ever made.

### **(3) Trial Judge Did Not Abuse Discretion in Allowing State to Present to Jury Twelve Brief Video Clips of Children Engaged in Sexual Activity to Support the Twelve Charges of Third-Degree Sexual Exploitation of Minor**

*State v. Riffe*, \_\_\_ N.C. App. \_\_\_, 661 S.E.2d 899 (17 June 2008).

The defendant was convicted of twelve counts of third-degree sexual exploitation of a minor under G.S. 14-190.17A. (3) The court ruled that the trial judge did not abuse his discretion in allowing the state to present to the jury twelve brief video clips of children engaged in sexual activity to support the twelve charges. The court noted that the clips were not duplicative and were not improperly displayed in the courtroom.

### **Evidence--Videotapes not authenticated--Activity admitted by defendant--Admission not prejudicial**

*State v. Brooks*, 178 N. C. APP. 211 (2006)

There was no prejudicial error in the admission of videotapes that may not

have been properly authenticated where defendant admitted the activity shown on the tapes.

**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.

**1) Constitutional Law--Right to confrontation--Testimony about lost surveillance videotape--Opportunity for cross-examination**

*State v Thorne, 173 N. C. APP. 393 (2005)*

The trial court did not violate defendant's Sixth Amendment right to confront the witnesses against him in a robbery with a firearm case by denying defendant's motion in limine requesting an order prohibiting witnesses from testifying about the contents of a lost surveillance videotape of the bank robbery, because: 1) defendant's cross-examination was neither restricted by the law nor did the trial court limit the scope of such examination; 2) defendant's only limitation in cross-examining the officer was his inability to play the lost videotape to the jury, but defendant had ample opportunity to cross-examine the officer regarding the quality of the videotape, his viewing of the videotape, and his personal knowledge of defendant's gait; and 3) North Carolina's Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish. U.S. Const. amend. VI; N.C. Const. art. I, § 23.

**2) Evidence--Testimony about contents of lost videotape--Identity--Failure to show prejudicial error**

*State v Thorne, 173 N. C. APP. 393 (2005)*

The trial court did not abuse its discretion in a robbery with a firearm case by allowing an officer to testify at trial regarding the contents of a lost videotape allegedly in violation of N.C.G.S. § 8C-1, Rules 403 and 701, because: 1) the testimony of the officer that he observed defendant's gait in the past, observed the robber's gait on the videotape several times, and perceived the two gaits to be similar bore on the jury's determination of the identity of the perpetrator; 2) the jurors' inability to view the lost videotape does not, per se, result in a violation of Rule 403 since defendant does not assert the State destroyed or lost the videotape in bad faith, and thus secondary evidence such as the officer's testimony is expressly permitted under N.C.G.S. § 8C-1, Rule 1004 if otherwise admissible under the Rules of Evidence; and 3) although prejudicial, defendant has made no showing that the prejudice was unfair or had the undue tendency to suggest a decision on an improper basis.

### **3) Evidence--Surveillance video--Probative value—Authentication--Relevancy**

*State v Bellamy, 172 N. C. APP. 649 (2005)*

The trial court did not err in a robbery with a dangerous weapon and first-degree sexual offense case by admitting into evidence a surveillance video from another store that faced in the direction of the pertinent store, because: 1) any argument that the video should have been excluded under N.C.G.S. § 8C-1, Rule 403 is not properly before the Court of Appeals when defendants did not object to the admission of the video at trial on the ground that its probative value was outweighed by its prejudicial effect and defendants did not argue on appeal that the prejudicial effect of the video amounted to plain error; 2) the State presented proper authentication under N.C.G.S. § 8C-1, Rule 901(a) including testimony establishing that the video recorder was in working order, that it was recording the night in question, that it was viewed the following day, that it had not been altered prior to trial, and that the chain of custody had not been broken; and 3) the video was relevant evidence potentially corroborating a witness's testimony and it was the province of the jury to determine what weight, if any, to give to the evidence.

### **4) Evidence--Narrative of video shot--Opinion testimony**

*State v. Bellamy, 172 N. C. APP. 649 (2005)*

The trial court did not err or commit plain error in a robbery with a dangerous weapon and first-degree sexual offense case by allowing a detective to narrate the video shot inside the store at the time of the crime

and by allowing him to express his opinion regarding the significance of the events depicted, because: 1) assuming arguendo that it was error to allow the detective to narrate the video footage and that each instance of testimony defendants complain of constitutes improper opinion testimony, there was no prejudicial error in light of the substantial evidence of guilt; 2) nothing in the record indicates the Court of Appeals was required to consider the contested evidence cumulatively; 3) the Court of Appeals declined to treat defendants' sparse and sometimes unrelated objections in the instant case as a continuing objection to all the contested evidence; and 4) even assuming arguendo that each piece of testimony individually was improper, defendants have failed to show it was plain error.

### **5) Evidence--Alleged false testimony--Observations of videotape**

*State v Bellamy, 172 N. C. APP. 649 (2005)*

The trial court did not err in a robbery with a dangerous weapon and first-degree sexual offense case by failing to overturn defendant's convictions based on the State allegedly allowing a detective to give testimony involving his observations of the videotape evidence that it knew to be false without correcting the testimony, because: 1) where the judge, jury, and defendants all had the opportunity to view the video themselves, the possibility of misleading the jury is slight; 2) it is exceedingly unlikely that the State would intentionally proffer false evidence in a situation where the falsity of the evidence could be easily discovered; and 3) even assuming arguendo the testimony was false, defendant failed to show the evidence was material and knowingly and intentionally used by the State to obtain his conviction.

### **Evidence--Hearsay--Medical diagnosis or treatment exception--Videotape interviews of minor children**

*State v. Lewis, 172 N. C. APP. 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--Videotape recordings--Authentication**

*State v. Buff, 170 N. C. APP. 374 (2005)*

The trial court did not err in a second-degree rape and attempted second-degree sex offense case by permitting the showing of video images, because: 1) the video was properly authenticated by a witness who testified that he was present for all of the video, that it accurately depicted the events he personally witnessed, and that the camera appeared to be in good working order, and an officer testified that he confiscated the videotape pursuant to a search warrant and that the tape had not been changed or altered since it was seized; and 2) as the portions of the tape defendant contends were inflammatory were not shown at trial, defendant's contentions regarding a violation of N.C.G.S. § 8C-1, Rule 403 are without merit.

### **Evidence--Videotape--Still photographs from videotape--Authentication**

*State v. Prentice, 170 N. C. APP. 593 (2005)*

The trial court did not err in a first-degree rape, double first-degree sexual offense, and taking indecent liberties with a minor case by admitting a videotape and still photographs taken from the videotape as substantive evidence of the alleged crimes, because: 1) an agent's testimony established an unbroken chain of custody from the time the tape was found in defendant's residence; 2) there was ample testimony to establish the identities of defendant, the minor child, and defendant's residence depicted on the videotape; 3) there was testimony that defendant's camcorder was in working condition; and 4) there was sufficient evidence from the testimony regarding chain of custody to establish the videotape had not been edited or altered, and that the videotape seized from defendant's residence was the same videotape reviewed by the jury.

### **1) Evidence--Convenience store videotape--Proper foundation**

*State v. Ayscue, 169 N. C. APP. 548 (2005)*

The trial court did not err by admitting a convenience store videotape for illustrative purposes in an armed robbery prosecution. A person working at the store during the robbery testified that the tape was taken out of the camera on the night of the robbery, that the tape accurately represented the incident, explained a discrepancy in the date and time, and deputies testified about the chain of custody. A proper foundation was laid. N.C.G.S. § 8-97.

**2) Evidence--Convenience store videotape--Substantive evidence--No plain error**

*State v. Ayscue, 169 N. C. APP. 548 (2005)*

There was no plain error in an armed robbery prosecution in the introduction as substantive evidence of a convenience store videotape.. The tape depicted the events of the robbery, corroborated the testimony of workers in the store, and there is no indication that the videotape was suggestive, confusing, or misleading, or that it provided an improper basis for the jury's verdict. The record does not reflect that the probative value of the videotape was outweighed by undue prejudice

**3) Constitutional Law--Right of confrontation--Videotaped deposition--Unavailable witness--Harmless error**

*State v. Ash, 169 N. C. APP. 715 (2005)*

Although the trial court violated defendant's constitutional right of confrontation in a first-degree murder and conspiracy to commit robbery with a dangerous weapon case by admitting a doctor's videotaped deposition into evidence without hearing evidence regarding the doctor's unavailability, the error was harmless because excluding the deposition testimony, the State presented other overwhelming evidence from which the jury could find that the victim died from injuries caused by a shotgun wound to the chest and that defendant fired the shotgun inflicting the wound.

**Evidence--Pornographic videotapes--Sexual assault--Relevancy**

*State v. Bush, 164 N. C. APP. 254 (2004)*

The trial court erred in a first-degree sexual assault case by allowing the State to introduce evidence over defendant's objection that defendant bought and owned pornographic videotapes, because: 1) there was no

evidence that defendant provided pornographic videotapes to the victim or employed the tapes to seduce the victim; 2) the tapes impermissibly injected defendant's character into the case to raise the question of whether defendant acted in conformity therewith at the time in question; 3) the mere possession of pornographic materials does not meet the test of relevant evidence under N.C.G.S. § 8C-1, Rule 401; 4) evidence that one tape was brought into the home after the incident in question substantially weakens the potential use of the box of that tape under N.C.G.S. § 8C-1, Rule 404 for the theories of intent or absence of mistake at the time of the incident; and 5) assuming arguendo that the video box could be admitted under Rule 404(b), the video box had a clear prejudicial effect upon the divided jury in this case.

### **Evidence—Audiotape--Properly authenticated**

*State v. Jones, 358 NC 330 (2004)*

An audiotape of a first-degree murder defendant arguing with his victims was properly authenticated where the tape was found in a victim's desk ten months after the murder and passed through several hands before coming into the custody of the district attorney's office. Testimony at a voir dire hearing was sufficient to establish the accuracy of the tape, demonstrate that it was legally obtained, and support a finding that the tape contained competent evidence of defendant's malice, intent, and ill will toward the victim.

### **Evidence--Photographs--Victim's body**

*State v. Haselden 357 NC 1 (2003)*

The trial court did not abuse its discretion in a capital first-degree murder case by admitting three photographs of the victim's body even though defendant stipulated that he caused the victim's death with the infliction of multiple gunshot wounds, because: 1) the photographs not only depicted the condition of the victim's body when found, but also corroborated defendant's confession to another man that defendant had killed the victim; 2) each photograph was taken at a different angle which offered a unique perspective on the nature and location of the victim's wounds; and 3) by showing the number and location of the victim's wounds, the photographs helped to circumstantially prove premeditation and deliberation.

### **Evidence--Videotape--Convenience store robbery--Foundation--No plain error**

*State v. Lawson, 159 N. C. APP. 534 (2003)*

The admission of a videotape at an armed robbery prosecution was not plain error where the clerk present at the convenience store during the robbery testified that the store was equipped with cameras, that the manager had properly loaded the recorder, and that the tape accurately depicted the robbery. Moreover, defendant could not show that the tape had a probable impact on the verdict given the overwhelming evidence of guilt; in fact, defendant used the tape at trial and it may have helped his case.

### **Search and Seizure--Video tapes seized during drug raid--Identity of people controlling premises**

*State v. Adams, 159 N. C. APP. 676 (2003)*

Defendant's motion to suppress videotapes seized during a narcotics search of his home was properly denied (sic). The tapes portrayed defendant having sex in the bedroom where marijuana and drug paraphernalia were found and the warrant under which the mobile home was searched included articles of personal property tending to establish the identity of those in control of the premises. N.C.G.S. § 15A- 242(4).

### **Evidence--Videotapes--Photographs--Crime scenes and injuries**

*State v. Williams, 355 NC 501 (2002)*

The trial court did not err in a first-degree murder, first-degree rape, first-degree sexual offense, assault with a deadly weapon, assault with a deadly weapon with intent to kill inflicting serious injury, attempted first-degree rape, and assault with a deadly weapon with intent to kill case involving seven different victims over a fifteen-month span by admitting into evidence videotapes and photographs that showed crime scenes and injuries with respect to five of the victims, because: 1) defendant lost the benefit of an objection to the introduction of exhibits including photographs of one of the victims during a detective's testimony since defendant failed to object to the introduction of these exhibits when they were previously used to illustrate that victim's testimony, and even if defendant had objected, these exhibits were not so cumulative in nature as to constitute undue prejudice; 2) defendant's general objection to exhibits depicting the crime scene relating to another victim was not adequate to preserve the issue for appellate review; 3) defendant failed to object to the admission of crime scene photographs relating to one of the victims; 4) the videotape and photographs relating to one of the victims were no repetitive and defendant failed to carry his burden of showing a different result would have been reached absent the introduction of this evidence; 5) the photographs of another victim were not too gruesome or repetitive and

cumulative as to violate N.C.G.S. § 8C-1, Rule 403; and 6) the photographs and videotape submitted for another victim were not so gruesome and repetitive as to require their inadmissibility.

### **Eavesdropping--Electronic Surveillance Act--Illegal recording of in-home conversations and actions**

*Kroh v. Kroh, 152 N.C. App. 347 (2002)*

The trial court erred in an action arising out of defendant wife's illegal recording of plaintiff husband's in-home conversations and actions by granting plaintiff husband partial summary judgment on his Electronic Surveillance Act claim, because: 1) defendant's videotaping of her husband would not violate the Electronic Surveillance Act unless such videotaping also included an audio recording, and the record fails to show any evidence or allegation of plaintiff establishing that the subject videotape included sound recordings, N.C.G.S. § 15A-286(14); and 2) although defendant placed voice-activated recorders throughout the family residence, the Court of Appeals adopts the vicarious consent doctrine permitting a custodial parent to vicariously consent to the recording of a minor child's conversations, and defendant presented some evidence showing that she undertook the taping of her husband to protect her children.

### **Evidence--Intercepted telephone conversation--Protection of minor**

*State v. McGriff, 151 N. C. APP. 631 (2002)*

The trial court did not err in a prosecution for statutory rape and indecent liberties by admitting evidence of an intercepted telephone conversation where a neighbor stepped outside while talking on a cordless telephone; she heard a conversation between defendant and the victim, recognized the voices, and was alarmed at the conversation; she continued to listen because she intended to inform the victim's mother; and she had another party listen to confirm the identity of the voices and the substance of the conversation. The continued listening was not done with bad purpose or without justifiable excuse but with concern for the welfare of a minor.

### **Evidence--Videotape of murder victim--Admissible**

*State v. Smith, 152 N. C. APP. 29 (2002)*

The trial court did not err in a prosecution for first-degree murder, armed robbery, and first-degree burglary by admitting a videotape of the corpse and the area where it was found. After a voir dire, the court limited the playing of the tape before the jury, and a witness testified at trial that the

videotape was an accurate description of the body as he found it and answered eight questions about the crime scene. The tape was not admitted solely to arouse the passions of the jury.

**Evidence--Tape recording of 911 call--Sufficiently audible--Substantive evidence**

*State v. Rourke, 143 N.C. App. 672, 2001*

The trial court did not abuse its discretion or commit plain error in a second-degree murder case by concluding a tape recording of the call made to the 911 emergency dispatch center including the final seconds of the argument between the victim and defendant, gunshot noises, and then a dialogue between a witness and the 911 dispatcher about the homicide was sufficiently audible to be played at trial, because: 1) the tapes were properly authenticated under N.C.G.S. § 8C-1, Rule 901(a); 2) the "click" noises between gunshots two and three did not render the tape inadmissible and the statements heard on the tape provided an objective way to reconcile the varying accounts given at trial; 3) N.C.G.S. § 8C-1, Rule 2001 did not require the State to obtain a more reliable presentation of the tape since defendant did not request the original tape at trial nor does he present any support for the suggestion that the "clicks" were not an accurate copy of noises from the original digital recording; and 4) the tape was admissible as substantive evidence since defendant never asked for a limiting instruction that would have restricted the jury's use of the tape to corroborative evidence.

**1) Evidence--Videotape--Insufficient foundation--Not prejudicial**

*State v. Mason, 144 NC App. 20, 2001*

The admission of a store security videotape in an armed robbery prosecution was harmless error where the State did not establish a proper foundation for its admissibility in that the evidence was insufficient to establish that the system was properly functioning on the date of the robbery, the testimony was insufficient to establish that the tape accurately represented the events it purported to show, and the chain of custody was not adequately established, but there was other evidence providing a substantial basis for the jury's verdict.

**2) Evidence--Cross-examination--Audiotape not allowed--Not prejudicial**

*State v. Mason, 144 NC App. 20, 2001*

The trial court neither abused its discretion nor coerced defendant into presenting evidence in a prosecution for the armed robbery of a store by

refusing to allow defendant to cross-examine an employee with a tape recording of her 911 call. The judge merely ruled against the use of an audiotape and did not prevent defendant from exploring this avenue of inquiry; furthermore, defendant was permitted to introduce the tape during his case in chief.

### **Evidence--Videotape--Undercover cocaine buys**

*State v. Redd, 143 NC App 248 (2001)*

The trial court did not err in a prosecution for trafficking in cocaine, possession of cocaine with intent to sell and deliver, and selling cocaine by admitting into evidence the State's videotape which recorded undercover buys of cocaine, because: 1) a proper foundation was laid to authenticate the videotape; and 2) even if the trial court erred in failing to conduct a voir dire, such error was not prejudicial when the evidence portrayed on the videotape was merely cumulative and served to corroborate the testimony of three officers as well as the physical evidence gathered from each undercover buy.

#### **1) Evidence--Videotape--Not properly authenticated**

*State v. Sibley, 140 N.C. App. 584, 2000*

The trial court erred in a prosecution for cocaine possession and possession of a firearm by a felon by admitting videotapes found in a search of the house in which defendant was arrested in which defendant was shown holding money, talking on a cell phone, holding a beer and handling weapons similar to those seized in the house. The only testimony purporting to authenticate the tape was evidence that the chain of custody had not been broken; the State did not call any witnesses to testify that the camera was operating properly or that the information depicted on the videotape was an accurate representation of the events at the time of filming.

#### **2) Evidence--Videotape--Date--Inadmissible hearsay**

*State v. Sibley, 140 N.C. App. 584, 2000*

The trial court erred in a prosecution for possession of a firearm by a convicted felon (reversed on other grounds) in admitting a videotape with a date in a corner to prove possession of a weapon after the date of a prior felony conviction.

#### **3) Evidence--Statements on videotape--Not adopted admissions**

*State v. Sibley, 140 N.C. App. 584, 2000*

The trial court erred in a prosecution for possession of a firearm by a felon (reversed on other grounds) by admitting a videotape on which statements were made concerning defendant's guns. The circumstances under which the statements were made were not such that a denial by defendant would naturally be expected, and the statements were not adopted by defendant. N.C.G.S. § 8C-1, Rule 801(d).

**Criminal Law § 514 (NCI4th Rev.)--Tape recording of prosecution testimony by defendant--Denial of request**

*State v. Call, 349 N.C. 382 (1998)*

The trial court did not err by denying defendant's request to tape record the testimony of prosecution witnesses in order to assist defense counsel in preparing for cross-examination where the court chose to rely upon the court reporter's recordation of the proceedings and the court provided a complete and accurate record of defendant's trial. Superior and District Court Rule 15(b)(1).

**1) Evidence--Videotape--Store security camera--Tape in same condition as day of robbery--Admissible**

*State v. Mewborn, 131 N.C. App. 495 (1998)*

The trial court did not err in an armed robbery prosecution by allowing the jury to view a security camera videotape of one of the robberies where the State offered testimony that the camera, VCR, and monitor were operating properly on the day of the robbery, an officer testified that he watched the tape shortly after his arrival at the crime scene and then showed it to a lieutenant when she arrived, the lieutenant followed standard procedure to safeguard the tape as evidence, and the lieutenant testified on voir dire that the images on the tape had not been altered and were in the same condition as the day of the robbery.

**2) Evidence and Witnesses § 1723 (NCI4th) first-degree murder pawn shop robbery surveillance video slow motion admissible**

*State v. Brewington, 343 N.C. 448 (1996) 471 S.E.2d 398*

There was no error in a first-degree murder prosecution arising from the attempted robbery of a pawn shop in which defendant claimed imperfect self-defense in the admission of a surveillance videotape which defendant contended was not a fair depiction of the scene because it showed only defendant's actions and because it was shown in slow motion. The videotape was relevant to a critical issue in the case, the sequence of events which took place at the time of the shooting, and, in

light of its probative value, the court did not abuse its discretion in permitting the jury to view the videotape in real time or in slow motion.

**Evidence and Witnesses § 1618 (NCI4th) tape recording portions inaudible audible portions relevant admissibility**

*State v. Womble, 343 N.C. 667 (1996) 473 S.E.2d 291*

Although portions of a tape recording of a conversation between defendant and an accomplice were inaudible and unintelligible, the trial court did not err by admitting the tape recording into evidence where other parts of the recording were clearly audible, and the audible portions were relevant under Rule 401 to rebut testimony by defendant's expert in psychology.

**Evidence and Witnesses 1731 (NCI4th) capital murder and rape videotape of body**

*State v. Kandies, 342 N.C. 419 (1996) \_\_\_ S.E.2d \_\_\_*

The trial court did not abuse its discretion in a prosecution for the first-degree rape and murder of a four-year-old girl by admitting a twenty-minute videotape which portrayed the discovery of the body, including ninety seconds that focused on the bloodied head and body.

**1) Evidence and Witnesses 1731 (NCI4th) first-degree murder videotape of crime scene victims moved to show wounds admissible**

*State v. French, 342 N.C. 863 (3-8-1996) \_\_\_ S.E.2d \_\_\_*

**2) Evidence and Witnesses 1730 (NCI4th) videotape--Admission for illustrative purposes**

*State v. House, 340 N.C. 187 (1995) \_\_\_ S.E.2d \_\_\_*

The trial court did not err by admitting a videotape illustrating testimony describing the route along which a homicide victim had been dragged behind defendant's logging truck and the location of blood along the route two days after the murder.

**3) Evidence and Witnesses 1623 (NCI4th) Murder--Audio tape recording - Authentication**

*State v. Williams, 334 N.C. 440 (1993) 434 S.E.2d 588*

The trial court did not err in a prosecution for first-degree murder, burglary with explosives and attempted safe-cracking by admitting a tape

recording allegedly containing admissions by defendant where the tape was partially inaudible. The seven-prong test of *State v. Lynch*, 279 N.C. 1, has been superseded by the authentication requirements of N.C.G.S. 8C-1, Rule 901, under which authentication is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. The State provided such evidence here in the form of testimony by Angelo Farmer that the tape was a true recording of his conversation with defendant and the trial court did not err in failing to make findings of fact in accordance with the Lynch test.

**4) Evidence and Witnesses 1623 (NCI4th)--Tape recorded conversation - Authentication**

*State v. Baker*, 112 N.C. App. 410 (1993) 435 S.E.2d 812

A tape of defendant's conversation with his coconspirators was properly authenticated where the coconspirators both identified the tape and listened to it, testifying that the tape was a fair and accurate recordation of their conversation with defendant.

**Evidence and Witnesses 1629 (NCI4th)--Tape recorded telephone conversation--No constitutional violation--No ethical violation**

*State v. Thompson*, 332 N.C. 204 (1992) 420 S.E.2d 395