

Evidence Essentials

Contested Hearings for Clerks of Superior Court

Timothy Heintz
UNC School of Government

1

Common types of evidence

- Documentary
- Physical
- Digital
- Demonstrative
- Testimonial

2

Your role with evidence

Determine admissibility

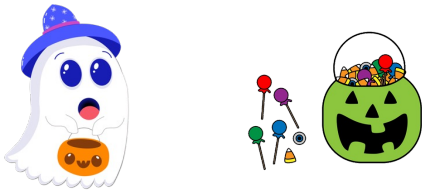
Determine credibility

Assign weight

Find facts and draw conclusions

3

The Rules of Evidence



4

Rule 1101. Applicability of rules.

(a) Proceedings generally. — Except as otherwise provided in subdivision (b) or by statute, these rules apply to all actions and proceedings in the courts of this State.

(b) Rules inapplicable. — The rules other than those with respect to privileges do not apply in the following situations:


- (1) Preliminary Questions of Fact. — The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).
- (2) Grand Jury. — Proceedings before grand juries.
- (3) Miscellaneous Proceedings. — Proceedings for extradition or rendition; first appearance before district court judge or probable cause hearing in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise.
- (4) Contempt Proceedings. — Contempt proceedings in which the court is authorized by law to act summarily. (1983, c. 701, s. 1; 1983 (Reg. Sess., 1984), c. 1037, s. 14; 1985, c. 509, s. 2.)

5

Rule 102. Purpose and construction.

(a) In general. — These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

6



Our evidentiary values

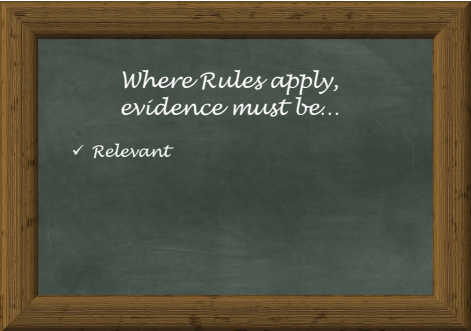
1
Avoid unreliable evidence

2
Minimize prejudicial distractions

3
Ensure fairness


4
Promote social policies

7




8

Relevance



Evidence is relevant if it tends to make an important fact more or less likely to be true.
R. 401.



Relevant evidence is generally admissible.
Irrelevant evidence is not. R. 402.

9

Relevance

Petitioner: I have proof that there is a deed of trust.

Debtor: I have proof you are a jerk.

Petitioner: And proof I made payments on time.

10

“She’s a nasty drunk.”

On one hand...

In a [foreclosure hearing](#)?

On the other hand...


In a hearing to [appoint a guardian](#)?

11

*Where Rules apply,
evidence must be...*

- ✓ Relevant
- ✓ If testimonial, sworn to and based on personal knowledge (R. 602)


12



Aunt Sue hit her nurse. I was not there, and I did not see it.

Personal Knowledge?


13



Aunt Sue does not understand the bills she gets in the mail. She never knows where she is. She forgets her medication.

Personal Knowledge?

14



Aunt Sue throws away bills because "it's all junk mail." When we were at her house, she asked me why we were at the mall. On Sunday, I counted twenty pills in her cabinet when there should have only been three.

Personal Knowledge?

15

What if it's unclear a witness has personal knowledge?

Direct the attorney

"Counselor, please ask the witness some questions that will help me understand how he knows his mother has not paid her insurance premiums."

Question the witness

"You said that your mother does not pick up her prescriptions. Your mother said that is not true. How do you know that your mother does not pick up her prescriptions?"

16

*Where Rules apply,
evidence must be...*


- ✓ Relevant
- ✓ If testimonial, sworn to and based on personal knowledge (R. 602)
- ✓ If non-testimonial, authenticated (R. 901)

17

This is a photograph of the respondent's home. I took the picture myself. It was on October 1st. The picture is an accurate representation of how her house looked that day.



18




Who can say what?

- Lay vs. expert witnesses
- Fact vs. opinion

R. of Evid., Art. 7.

19




Opinion

“A person's thought, belief, or inference, especially a witness's view about [] facts in dispute, as opposed to personal knowledge of the facts themselves.”

Black's Law Dictionary (11th ed. 2019)

20


Facts



Lay witness opinion is generally inadmissible, except where “rationally based on the perception of the witness.”


N.C. Rule of Evid., R. 701

Opinions



21


...Rationally based on the perception of the witness?



Social Worker

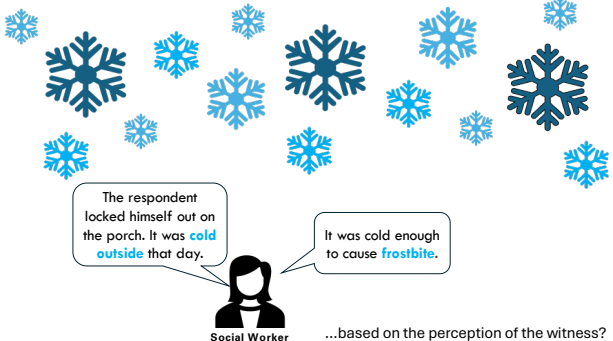
22

...Rationally based on the perception of the witness?



Social Worker

23



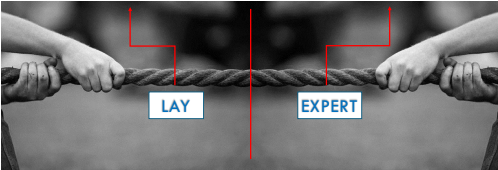
Social Worker

...based on the perception of the witness?

24

"Instantaneous conclusions of the mind [] derived from observation of a variety of facts presented to the senses at [] the same time."

Requires scientific, technical, or other special knowledge.



Guardian showed up to respondent's appointment "drunk."
See, e.g., State v. Dills, 204 N.C. 33 (1933)

"Alcohol causes processing delays, rendering someone unable to respond quickly."

25

"Billy seemed nervous."

"Victims of abuse commonly lack trust, view the world as scary, and are highly anxious."

Where a witness "moves beyond reporting what he saw or experienced through his senses, and turns to interpretation or assessment 'to assist' the [court] based on his 'specialized knowledge,' he is rendering an expert opinion."

State v. Davis, 368 N.C. 794, 798 (2016)

26

May a lay witness testify...?



27

May a lay witness testify...?

"My cousin has a bad memory. He is often confused about where he is. He misplaces his keys, and he loses important documents. He probably has dementia."

28

May a lay witness testify...?

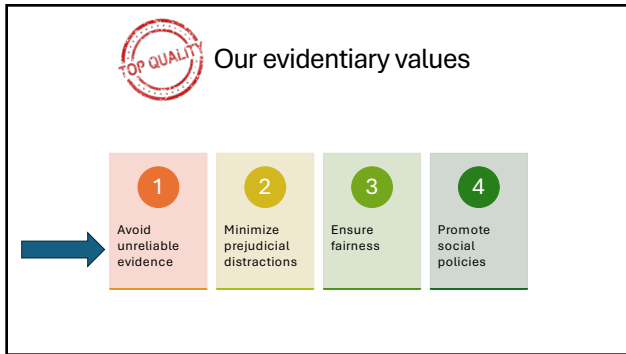
"The court needs to partition the property my brother and I own jointly. I paid a lot more towards maintaining the property than he has. These receipts show I have spent close to 10x as much as he has. But if you divide the property in half, the waterway will be in my brother's half which will make his parcel 3.5x more valuable than my parcel."

29

HEARSAY



30



31

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted.

32



33

According to the respondent's neighbor, the respondent has been claiming, "I am the new Pope."

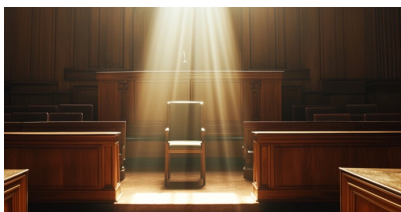


Social worker

34

🔑 For hearsay to be admissible, the declarant needs to testify, or a hearsay exception must apply.

35



HEARSAY EXCEPTIONS, CATEGORY 1:
IT IS FAIR TO ADMIT THE STATEMENT, AND WE CAN
TEST ITS RELIABILITY

Rule 801(d)

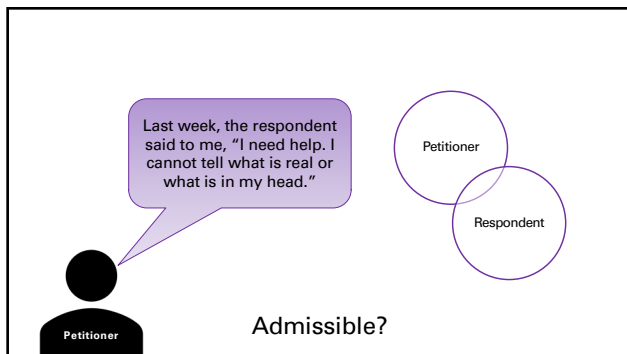
36

Admission of "Party-Opponent"

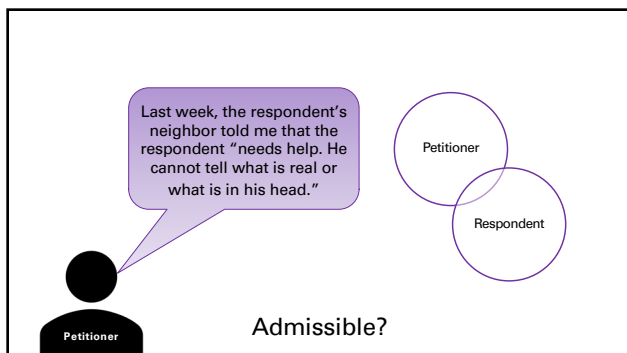
- Statement must be:
 - Declared or endorsed
 - By a party-opponent
 - Offered against that party
- Declarant availability irrelevant

N.C. R. Evid. 801(d)

37



38



39

The petitioner once told me that the respondent "owes me money from old loans. I will do anything necessary to get access to her bank account."

Petitioner

Respondent

Mutual Friend

Admissible?

40

The petitioner once told me that he would "never do anything to hurt the respondent."

Petitioner

Respondent

Mutual Friend

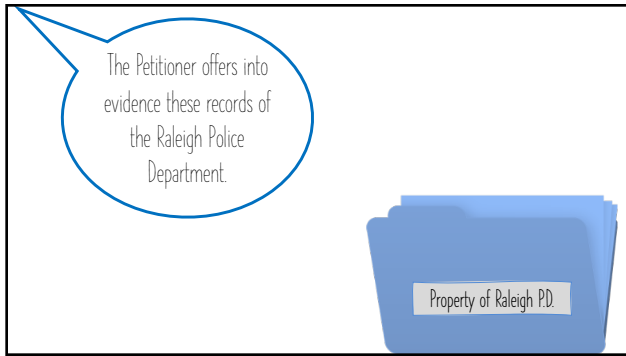
Admissible?

41

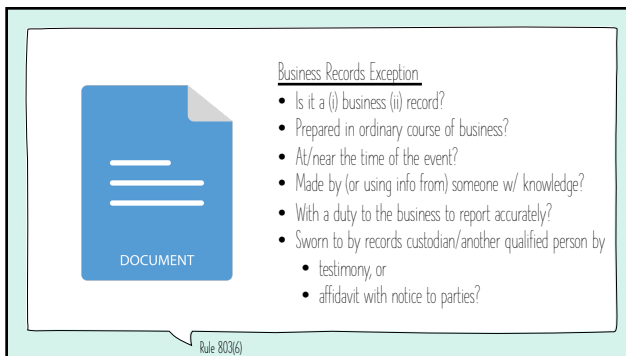
HEARSAY EXCEPTIONS, CATEGORY 2:
INFERENCE OF RELIABILITY AND SINCERITY

Rule 803

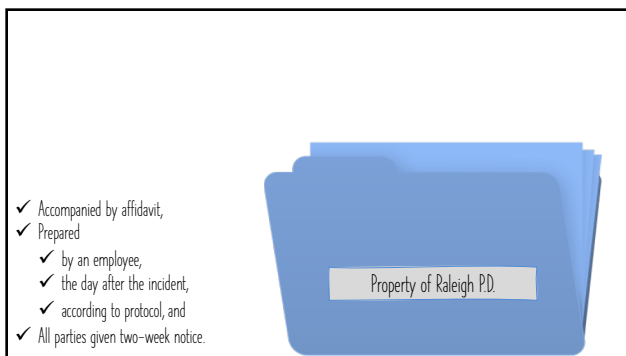
42



43



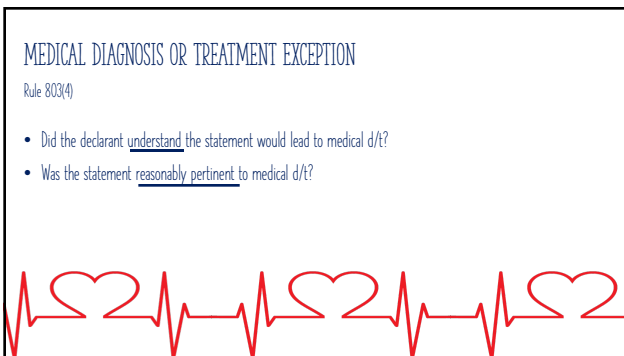
44



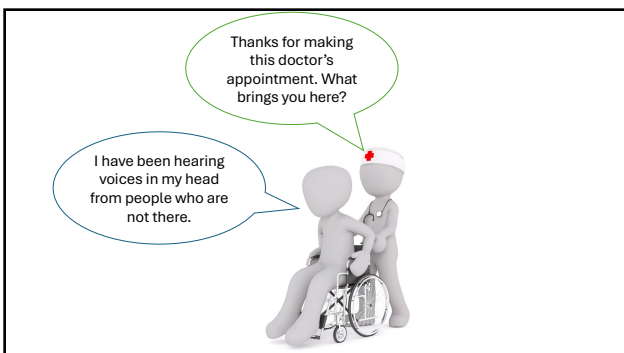
45



46

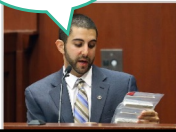


47



48

Admissible?



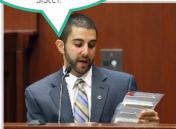
Dr. Williams, what did the Respondent say that night at the emergency room?

He said, "My arm hurts."

And later, "I keep falling down."

49

Admissible?



Dr. Williams, what did the Respondent say that night at the emergency room?

He said, "My arm hurts."

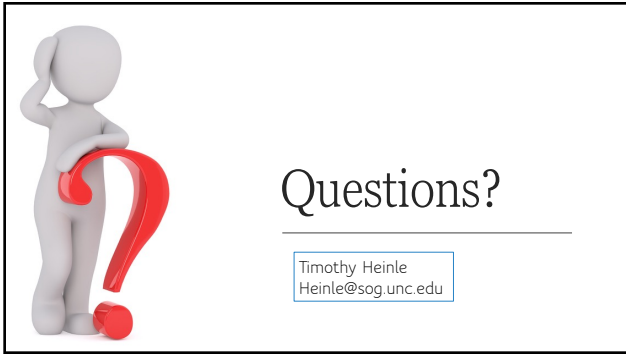
And later, "I have never trusted my sister."

50



- Ask questions
- Request arguments
- Request briefs
- Pause or continue hearing
- Hold open rulings
- Call or email us!

51



52
