

Collected Materials on Character Evidence:
The Interplay Between Rules of Evidence 404(a), 405,
607, 608, 609, and 611

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The Rules of Evidence

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) Character evidence generally. – Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

- (1) Character of accused. – Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;
- (2) Character of victim. – Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
- (3) Character of witness. – Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts. – Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident. Admissible evidence may include evidence of an offense committed by a juvenile if it would have been a Class A, B1, B2, C, D, or E felony if committed by an adult.

Rule 405. Methods of proving character.

(a) Reputation or opinion. – In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct. Expert testimony on character or a trait of character is not admissible as circumstantial evidence of behavior.

(b) Specific instances of conduct. – In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct. (1983, c. 701, s. 1.)

Rule 607. Who may impeach.

The credibility of a witness may be attacked by any party, including the party calling him.

Rule 608. Evidence of character and conduct of witness.

(a) Opinion and reputation evidence of character. – The credibility of a witness may be attacked or supported by evidence in the form of reputation or opinion as provided in Rule 405(a), but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct. – Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his privilege against self-incrimination when examined with respect to matters which relate only to credibility.

Rule 609. Impeachment by evidence of conviction of crime.

(a) General rule. – For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a felony, or of a Class A1, Class 1, or Class 2 misdemeanor, shall be admitted if elicited from the witness or established by public record during cross-examination or thereafter.

(b) Time limit. – Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon. – Evidence of a conviction is not admissible under this rule if the conviction has been pardoned.

(d) Juvenile adjudications. – Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of appeal. – The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 611(a): Mode and Order of Interrogation and Presentation

(a) The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective of the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

Character Evidence Cheat Sheet

KINDS OF CHARACTER EVIDENCE

REPUTATION & OPINION:

- Rule 404(a): When admissible substantively
- Rule 405(a): Method of proving
- Rule 608(a): When admissible as to a witness
- Rule 701: Form of a lay opinion

ACTIONS (“Specific Instances”):

- Rule 404(a): When admissible substantively
- Rule 405(b): When character is an essential element
- Rule 608(b): When admissible as to a witness
- Rule 609: Criminal convictions of a witness

PEOPLE ABOUT WHOM CHARACTER EVIDENCE IS OFFERED

- Criminal Defendant: Rule 404(a)(1)
- Criminal Victim: Rule 404(a)(2) & 412
- Witness: Rule 404(c), Rules 608 & 609
- Civil Litigant: Rule 404(a) & 405(b)
 - And 608/609 if a witness

Selected Cases: Rule 404(a)

State v. Fowler, ___ N.C.App. ___, 583 S.E.2d 637 (8/5/03)

Trial court correctly refused to give instruction on the character trait of having a “good reputation in the community.” Under **Rule 404(a)**, an accused may not offer evidence of undifferentiated, overall “good character,” but may only introduce evidence of “pertinent” traits of his character. Nor did the trial court err in refusing to give an instruction on the character trait of being law-abiding, where the only evidence was a detective’s testimony that defendant had no prior criminal convictions. Evidence of the lack of prior convictions is not evidence of a trait of character but is merely evidence of a fact. It does not address a trait of defendant's character.

State v. Yancey, 155 N.C.App. 609, 573 S.E.2d 243 (2002), *review denied*., 356 N.C. 694 (2003)

In prosecution for trafficking in cocaine and conspiracy, witness’s characterization of “defendant as an asset to [witness’s] cocaine trade” was inadmissible as “improper character evidence.” **Rule 404(a)**.

State v. Jones, 137 N.C.App. 221, 527 S.E.2d 700 (2000)

Error to allow State to ask witnesses about victim’s general reputation in the community where defense had not raised issue of victim’s character. **Rule 404(a)(2)**

State v. Wagoner, 131 N.C.App. 285, 506 S.E.2d 738 (1998), *disc. rev. den.*, 350 N.C. 105 (1999)

In child sex abuse case, trial court did not err in excluding defense expert testimony that defendant had no mental illness, had no substance abuse problems, and was not a high-risk sex offender. This is general character evidence not relevant to a pertinent character trait and is therefore not admissible under **Rule 404(a)**.

State v. Laws, 345 N.C. 585, 488 S.E.2d 641 (1997)

In a homicide case, the trial court correctly barred Defendant from presenting evidence that the victim had a reputation as a homosexual in support of his claim of self-defense from a homosexual assault. An individual’s sexual orientation bears no relationship to the likelihood of threatening a sexual assault and thus is not pertinent under **Rule 404(a)**.

State v. Watson, 338 N.C. 168, 449 S.E.2d 694 (1994), *cert. denied*, 514 U.S. 1071, 131 L. Ed. 2d 569 (1995), *overruled on other grounds*, State v. Richardson, 341 N.C. 585 (1995)

In murder case where defendant asserts self-defense, defendant may offer evidence of the victim’s character to show defendant’s fear or apprehension of the victim was reasonable or to show the victim was the aggressor. For the former, the defendant must have knowledge of the victim’s character but for the latter he need not. **Rule 404(a)(2); Rule 405(b)**

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

In a homicide case, the State on rebuttal, after the defendant had offered evidence of the victim’s gang activity, was allowed to ask a witness whether the victim was a "good nephew" and "worked

hard." This was not error, because the evidence was relevant to rebut evidence that the victim was a gang member. No rule cited, but see **Rules 404(a) and 405**.

State v. Johnston, 344 N.C. 596, 476 S.E.2d 289 (1996)

In murder case, defendant cross-examined victim's girlfriend about whether she and victim were "looking for a fight" on the night victim died. State properly allowed to ask girlfriend on redirect whether she and the victim had ever been in a fight with anybody else or if the victim had ever been in a fight in her presence. "Defendant having thereby opened the door, the State was entitled to introduce rebuttal evidence" pursuant to **Rule 404(a)(2)**.

State v. Taylor, 117 N.C. App. 644, 453 S.E.2d 225 (1995)

In a drug case, before the Defendant offered evidence, the State was allowed to present an opinion by an officer that the defendant "had a reputation as a drug dealer." This was error under **Rule 404(a)**. This was impermissible character evidence as "no door had been opened" nor was there anything to rebut or impeach.

State v. Powell, 340 N.C. 674, 459 S.E.2d 219 (1995), *cert. denied*, 516 U.S. 1060 (1996)

In a homicide case, the State presented evidence that Defendant's brother asked him to swear on his mother's grave "that he did not commit a robbery-murder" but Defendant would not. Defendant then offered testimony of his wife that he loved his mother and in her opinion "would never swear or profane her name." Error to exclude this, because it was relevant character evidence to rebut the implication in State's evidence that the failure to so swear was evidence of guilt. **Rule 404(a)**.

State v. Goodson, 341 N.C. 619, 461 S.E.2d 740 (1995)

In a homicide case where the defense was accident, the trial court correctly prevented the defendant from presenting testimony of the victim's reputation for violence. This type of evidence is not a pertinent character trait under **Rule 404(a)(2)** when the defense is accident.

State v. Sexton, 336 N.C. 321, 444 S.E.2d 879, *cert. denied*, 513 U.S. 1006 (1994)

Where defendant in murder/rape case testified that victim consented to sex and "wanted to be unfaithful to her husband," trial court did not err in allowing state's rebuttal evidence concerning victim's reputation for fidelity to her husband. **Rule 404(a)(2)**. Also discusses **Rule 412**.

State v. Lynch, 334 N.C. 402, 432 S.E.2d 349 (1994)

Trial correct incorrectly allowed defendant to be cross-examined about details of crimes underlying prior convictions. Rule 609 allows questions only about name of the crime, the time and place of the conviction, and the punishment imposed, and details of the crimes are not admissible. By testifying briefly about his criminal record, the defendant did not put on evidence about his character under **Rule 404(a)** and the State could not cross-examine about the details of the crimes.

State v. Jennings, 333 N.C. 579, 430 S.E.2d 188, *cert. denied*, 510 U.S. 1028 (1993)

In a homicide case, the trial court correctly allowed the State to offer evidence on rebuttal that the victim was a gentleman, humble, and not violent, after the Defendant offered evidence that the

victim suffered from dementia. This character evidence was rebuttal for the defense evidence that he was demented and dangerous. It was pertinent and admissible under **Rule 404(a)(2)**.

State v. Quick, 329 NC 1, 405 S.E.2d 179 (1991)

Error to allow State to ask witnesses about victim's general reputation in the community where defense had not raised issue of victim's character. **Rule 404(a)(2)**.

State v. Woodard, 102 N.C. App. 687, 404 S.E.2d 6 (1991)

In B&E and sexual offense case, the State cross-examined the Defendant with letters concerning an adulterous affair with a woman. This was error. Adultery does not bear on truthfulness and so is not admissible under **Rule 608(b)**, nor was it admissible under **Rule 404(a)(1)** because the defendant had not put his character at issue.

State v. Cronan, 100 N.C.App. 641, 397 S.E.2d 762 (1990)

In second-degree rape case, trial court did not err in excluding proffered evidence that victim had a reputation for drunkenness. "The proffered testimony as to the victim's alcohol consumption with other people in party settings has no tendency to prove that the victim consented to sexual activity with the defendant on the day in question," and thus was not pertinent under **Rule 404(a)(2)**.

State v. Moreno, 98 N.C. App. 642, 391 S.E.2d 860 (1990)

In a drug trafficking case, the judge failed to give a specific instruction on the specific character traits of honesty, loyalty, generosity, not dealing in drugs, law abidingness, and not using drugs as attributed to the Defendant. No error as to loyalty, generosity, not dealing in drugs, but error as to law abiding and not using drugs. The first three are specific character traits not relevant to a drug prosecution. The "not dealing in drugs" evidence is of a "fact" relevant to the case and, therefore, inadmissible. The latter two traits are relevant to a drug prosecution. This case lays out the four-part test which must be met to justify a substantive character trait instruction. **Rule 404 and 405**.

State v. Squire, 321 N.C. 541, 364 S.E.2d 354 (1988)

In a homicide case, the judge excluded evidence of character traits of the Defendant other than peacefulness and truthfulness. This was error. While evidence of general good character is not admissible under **Rule 404(a)**, defendant is entitled to offer evidence of any "pertinent" character trait. The Court defined "pertinent character traits" to mean "relevant character traits," and what is relevant depends on the circumstances of a particular case. Being law-abiding is a character trait which is nearly always relevant and admissible in a criminal case.

State v. Bogle, 324 N.C. 190, 376 S.E.2d 745 (1988)

In a drug case, court refused to give a jury instruction requested by Defense that character evidence of the Defendant being law-abiding and truthful received pursuant to **Rule 404(a)(1)** should be considered as substantive evidence of innocence. This was correct as to truthfulness and incorrect as to law-abidingness. Evidence of the trait of truthfulness is not pertinent in a drug case (unless the defendant testifies – see Rule 608), but the character trait of law-abidingness is pertinent in virtually all criminal cases.

Hinnant v. Holland, 92 N.C. App. 142, 374 S.E.2d 152 (1988)

In a motor vehicle wrongful death case, the Defendant was allowed to testify on direct that he had no convictions, or even traffic charges. This was error. This evidence was offered to show either that the Defendant had no convictions in the past and thus was driving without negligence on the instance at issue – improper under **Rule 404(a)** - or was acquitted in criminal court – which is irrelevant to his civil liability - or to bolster his credibility on direct examination – which is improper under **Rule 608(b)**.

Selected Cases: Rule 405

State v. Hargett, ___ N.C.App. ___, 577 S.E.2d 703 (N.C. App. 2003)

In prosecution for breaking and entering of a motor vehicle, misdemeanor larceny of property, and misdemeanor possession of stolen property, defendant's character witness was asked, on cross-examination, if he "knew of defendant's prior convictions [for similar crimes] which were entered nearly thirty years ago." This evidence was admissible because, under **Rule 405(a)**, the State may introduce "evidence of defendant's bad character" to rebut defendant's evidence of his good character.

State v. Watson, 338 N.C. 168, 449 S.E.2d 694 (1994), *cert. denied*, 514 U.S. 1071, 131 L. Ed. 2d 569 (1995), *overruled on other grounds*, State v. Richardson, 341 N.C. 585 (1995)

In murder case where defendant asserts self-defense, defendant may offer evidence of the victim's character to show defendant's fear or apprehension of the victim was reasonable or to show the victim was the aggressor. For the former, the defendant must have knowledge of the victim's character but for the latter he need not. **Rule 404(a)(2); Rule 405(b)**

State v. Rhue, 150 N.C.App. 280, 563 S.E.2d 72 (2002)

In murder case, defendant offered character evidence for peacefulness. Trial court did not err in allowing State to cross-examine character witnesses about defendant's twenty-year old assault conviction, as **Rule 405(a)** does not contain a time limit.

State v. Hunt, 339 N.C. 622, 457 S.E.2d 276 (1995)

In a homicide case, on direct examination the Defendant asked for an opinion as to a prosecution witness's reputation for truthfulness or untruthfulness and received a response that the witness did not believe the other person. The trial court sustained an objection to the question "What is the basis for your opinion?" The Supreme Court affirmed based on the offer of proof, because the witness's answers ("He would do whatever it takes to come out ahead.") were neither specific instances of misconduct or untruthfulness, as allowed on cross-examination by **Rule 405(a)**, nor statements of opinion, as allowed by **Rule 608(a)**.

State v. Jones, 339 N.C. 114, 451 S.E.2d 826 (1994), *cert. denied*, 515 U.S. 1169 (1995)

It was error to prevent the defense from eliciting on redirect the opinion of his expert witness as to whether the Defendant was "lying" during his evaluation of the defendant. While an opinion regarding the credibility of a witness is not admissible under **Rules 405(a)** and **Rule 608**, an expert may opine as to the "reliability" of the information upon which he based his opinion.

State v. Mixion, 110 N.C. App. 138, 429 S.E.2d 363, *cert. denied*, 334 N.C. 437 (1993)

In a homicide case in which the defendant asserted self-defense, the trial court erroneously admitted a psychiatrist's opinion formed during an interview several months before the murder that the victim was not homicidal. An expert may not address an opinion regarding the guilt or innocence of a defendant, and under **Rule 405(a)**, expert testimony on character or a trait of character is not admissible as circumstantial evidence of behavior. The only purpose of this

evidence was to show that the victim was not homicidal on the night of her death and that therefore the defendant was not acting in self-defense.

State v. Baymon, 336 N.C. 748, 446 S.E.2d 1 (1994)

In child sex offense case, trial court erred in allowing state's witness (victim's teacher) to testify about specific instances of the victim's truthfulness on direct. Victim's credibility is not "an essential element of the charge" under **Rule 405(b)** and so specific instances of conduct are inadmissible under that Rule. "Ms. Everett's testimony during direct examination by the State was improperly offered to show the victim's truthfulness in the past in order to suggest that she was being truthful concerning the subject matter of the charges against defendant."

State v. Cummings, 332 N.C. 487, 422 S.E.2d 692 (1992)

In 1987 murder trial, trial court did not err in allowing state to cross-examine defense character witnesses about an assault the defendant committed in 1963. **Rule 405(a)** has no time limit as to how long ago relevant specific acts about which witness can be cross-examined occurred, though trial court must still exercise discretion under Rule 403.

State v. Moreno, 98 N.C. App. 642, 391 S.E.2d 860 (1990)

In a drug trafficking case, the judge failed to give a specific instruction on the character traits of honesty, loyalty, generosity, not dealing in drugs, law abidingness, and not using drugs as attributed to the Defendant. No error as to loyalty, generosity, not dealing in drugs, but error as to law abiding and not using drugs. The first three are specific character traits not relevant to a drug prosecution. The "not dealing in drugs" evidence is of a "fact" relevant to the case and, therefore, inadmissible. The latter two traits are relevant to a drug prosecution. This case lays out the four-part test which must be met to justify a substantive character trait instruction. **Rule 404 and 405.**

State v. Martin, 322 N.C. 229, 367 S.E.2d 618 (1988)

In sexual offense case, the trial court correctly allowed the State to cross Defendant's character witnesses concerning whether they knew that the Defendant had been selling drugs in jail, but incorrectly allowed those witnesses to be asked whether they knew defendant had been charged with selling drugs. Under **Rule 405(a)**, a character witness may be cross-examined about specific instances of misconduct if the defense puts a trait in evidence, but the State may not inquire as to "charges" against the defendant.

State v. Aguillo, 318 N.C. 590, 350 S.E.2d 76 (1986)

In child sexual abuse case, trial court incorrectly allowed State's expert witness to testify that in the expert's opinion the child victim was "believable." Rule 405(a) explicitly states that "[e]xpert testimony on character . . . is not admissible as circumstantial evidence of behavior," and nothing in **Rule 608(a)** overrides **Rule 405(a)**.

Selected Cases: Rule 608(a)

State v. Marecek, 152 N.C.App. 479, 568 S.E.2d 237 (2002)

In murder trial, court erred in excluding opinion testimony of witness regarding defendant's character for truthfulness and veracity. Even though the defendant did not testify, his character for truthfulness was impugned by the State's introduction of both defendant's exculpatory written statement to the police and evidence contrary to that statement. **Rule 608(a)(2)**.

Holt v. Williamson, 125 N. C. App. 305, 481 S.E.2d 307 (1997)

In a civil suit for breach of fiduciary duty and conversion brought by the plaintiff against his former girlfriend, the trial court correctly allowed three former girlfriends of the plaintiff testify that the plaintiff (a) was "extremely dishonest"; (b) "cannot distinguish between truth and a lie; and (c) "is a pathological liar." This evidence was admissible opinion testimony about the veracity of a witness, the plaintiff. **Rule 608(a)**.

State v. Jones, 342 N.C. 457, 466 S.E.2d 696, *cert. denied*, 518 U.S. 1010 (1996)

In a homicide case, the key witness against the defendant was his former girlfriend. The girlfriend's credibility was challenged on cross-examination. Thereafter, a police officer was correctly allowed to give his opinion regarding the character of the girlfriend for truthfulness. **Rule 608(a)**. (Note: federal cases make it clear that one witness cannot "vouch" for another's testimony and that one witness's opinion that another witness gave truthful testimony is not relevant.)

State v. Penland, 343 N.C. 634, 472 S.E.2d 734, *cert. denied*, 519 U.S. 1098 (1996)

In a homicide case, the State was allowed on rebuttal to ask the sixth-grade teacher of the Defendant's testifying accomplices about their reputation for truthfulness when in his class six years earlier. The defendant had earlier offered character evidence that the co-defendants had bad reputations for truthfulness and veracity. The Court held that the evidence was not too remote. No rule cited, but **Rule 608(a)** appears applicable.

State v. Jones, 339 N.C. 114, 451 S.E.2d 826 (1994), *cert. denied*, 515 U.S. 1169 (1995)

It was error to prevent the defense from eliciting on redirect the opinion of his expert witness as to whether the Defendant was "lying" during his evaluation of the defendant. While an opinion regarding the credibility of a witness is not admissible under **Rules 405(a)** and **Rule 608**, an expert may opine as to the "reliability" of the information upon which he based his opinion.

State v. Hunt, 339 N.C. 622, 457 S.E.2d 276, *cert. denied*, 531 U.S. 945 (1995)

In a homicide case, on direct examination the Defendant asked for an opinion as to a prosecution witness's reputation for truthfulness or untruthfulness and received a response that the witness did not believe the other person. The trial court sustained an objection to the question "What is the basis for your opinion?" The Supreme Court affirmed based on the offer of proof, because the

witness's answers ("He would do whatever it takes to come out ahead.") were neither specific instances of misconduct or untruthfulness, as allowed on cross-examination by **Rule 405(a)**, nor statements of opinion, as allowed by **Rule 608(a)**.

Williams v. Randolph, 94 N.C. App. 413, 380 S.E.2d 553 (1989)

In breach of fiduciary duty suit seeking a return of attorney's fees, character witnesses for the defendant attorney were correctly allowed to testify to the attorney's reputation for truthfulness. The Defendant's reputation for truthfulness was placed in issue when it was claimed that he breached his fiduciary duty and thus character evidence was admissible under **Rule 608(a)**.

State v. Aguillo, 318 N.C. 590, 350 S.E.2d 76 (1986)

In child sexual abuse case, trial court incorrectly allowed State's expert witness to testify that in the expert's opinion the child victim was "believable." Rule 405(a) explicitly states that "[e]xpert testimony on character . . . is not admissible as circumstantial evidence of behavior," and nothing in **Rule 608(a)** overrides **Rule 405(a)**.

Selected Cases: Rule 608(b)

State v. Stokes, 357 N.C. 220, 581 S.E.2d 51 (N.C. 2003)

In prosecution for felony murder and child abuse, defendant was cross-examined about statement to deputy shortly after arrest in which deputy said “Why’d you do it?” and defendant said “ I f-‘ed up, I lost it.” Defendant denied saying “I lost it,” but admitted saying “I f’ed up.” The deputy was called as a rebuttal witness and recounted the incriminating statements made by defendant. The statements made by defendant to the deputy were “material to the central issue” of the trial, not collateral, so the deputy’s “testimony rebutting defendant’s cross-examination responses to the prosecutor was properly admitted.” In other words, extrinsic evidence can be admitted if the matters at issue are relevant to the issues at hand and not limited to credibility. Court cites **Rule 607** but **Rule 608(b)** appears to be what the court meant.

In Re Oliver, __ N.C.App. ___, 584 S.E.2d 86 (Aug. 5, 2003)

In juvenile prosecution for sexual assault, court did not err in excluding eyewitness’s school disciplinary record. The bare fact that the witness had a disciplinary record does not reflect on credibility. **Rule 608(b)**. Also, confidentiality concerns are at issue when considering the release of a child's official student records. See N.C.G.S. § 115C-402. Thus, it was in the court's discretion to preclude this questioning. The trial court also correctly refused to allow the defendant to cross-examine the school principal about the eyewitness’s disciplinary record. The principal did not offer an opinion about the eyewitness’s character for truthfulness, so **Rule 608(b)** prevents defendant from cross-examining the principal about specific instances of the witness's conduct.

State v. Taylor, 154 N.C.App. 366, 572 S.E.2d 237 (2002)

Cross-examination of “defendant concerning his alleged sale of marijuana to his neighbor” was not relevant “to his veracity as a witness and should have been excluded” because it was “not probative of defendant’s truthfulness in this case.” **Rule 608(b)**.

State v. Call, 349 N.C. 382, 508 S.E.2d 496, *cert. denied*, 534 U.S. 1046 (1999)

Trial court correctly sustained objections to questions to LEO whether a witness had been the subject of domestic violence complaints. This evidence has no bearing on truthfulness or untruthfulness and is not proper impeachment evidence under **Rule 608(b)**.

State v. Dickens, 346 N.C. 26, 484 S.E.2d 553 (1997)

Trial court correctly sustained objections to defense testimony about previous violent acts of testifying co-defendant, because extrinsic instances of assaultive behavior, standing alone, are not in any way probative of a witness’ character for truthfulness or untruthfulness. **Rule 608(b)**.

State v. Baldwin, 125 N.C. App. 530, 482 S.E.2d 1 (1997)

In a homicide case, the State offered defendant’s confession to Officer X through Officer X’s testimony. The trial court then erred in preventing the defense from cross-examining Officer X

concerning his use of deceit in another case two years before to gain a confession. This evidence was admissible under **Rule 608(b)** because it was probative of the detective's character for untruthfulness.

Ferebee v. Hardison, 126 N.C.App. 230, 484 S.E.2d 857, *rev'd on other grounds*, 347 N.C. 346 (1997)

Defendant cross-claimed against plaintiff for intentional infliction of emotional distress. Trial court did not err in prohibiting cross-examination of defendant about defendant's dishonest acts that occurred when defendant was a juvenile. This was within the court's discretion. **Rule 608(b)**.

Pelzer v. United Parcel Service, 126 N.C.App. 305, 484 S.E.2d 849, *review denied*, 346 N.C. 549 (1997)

In motor vehicle negligence case in which plaintiff contended her major depression was caused by the accident, no error to allow cross-examination of plaintiff about her child's drug problem, the fact that one of her children had stolen a gun, and other acts of her children. **Rule 608(b)** only speaks to witnesses and plaintiff's children were not witnesses, so the evidence was not prohibited by that rule. Evidence about other factors in her life had a bearing on her mental state and thus was relevant; it was not offered to prove the plaintiff or her children acted consistently with their character.

State v. Goode, 341 N.C. 513, 461 S.E.2d 631 (1995)

During cross-examination of defendant during capital murder trial, trial court properly allowed State to ask defendant about false statements made a year earlier during military investigation of unrelated incident. The purpose of this cross-examination was to impeach defendant's credibility. The defendant's earlier false statements were relevant to the issue of credibility and thus were admissible pursuant to **Rule 608(b)**.

State v. Walls, 342 N.C. 1, 463 S.E.2d 738, *cert. denied*, 517 U.S. 1197 (1995)

In a homicide case, the trial court correctly sustained objections to defense questions on cross-examination of a police witness concerning his knowledge of "complaints" about another witness's police work to attack the other witness's truthfulness. **Rule 608(b)** limits evidence from one witness about specific instances of another witness's conduct related to truthfulness to cross-examination if the testifying witness offered an opinion about the other witness's reputation for truthfulness. Here, the testifying witness offered no opinion on direct about the credibility of the other witness, so defense could not go into specific instances of the other witness's conduct, even if they were related to credibility.

State v. Parker, 119 N.C.App. 328, 459 S.E.2d 9 (1995)

In prosecution for child sex offenses, trial court correctly excluded medical testimony that a child of the codefendant who had allegedly been present when victim was abused was not herself abused. Defendant testified and denied the abuse. Child of codefendant did not testify. The medical testimony would have been extrinsic evidence offered to support the defendant's credibility which is not allowed under **Rule 608(b)**.

State v. Wilson, 118 N.C.App. 616 456 S.E.2d 870 (1995)

In prosecution for child sex abuse, trial court erred in allowing state to cross-examine defendant about prior drug use unrelated to charges. Drug use is not related to credibility and thus is not admissible under **Rule 608(b)**. Nor was evidence admissible under **Rule 611**, since the defendant was not a crucial witness for the prosecution. Discussion of impropriety of State's closing argument that witness's collateral improper acts occurred where witness denied the collateral acts.

State v. Frazier, 121 N.C.App. 1, 464 S.E.2d 490 (1995), *aff'd on other grounds*, 344 N.C. 611 (1996)

In indecent liberties case, trial court erred in allowing cross-examination of defendant and cross-examination of another defense witness about previous uncharged acts of sexual misconduct because those acts are not probative of truthfulness or untruthfulness. **Rule 608(b)**.

Johnson v. Amethyst Corp., 120 N.C.App. 529, 463 S.E.2d 397 (1995) *disc. rev. allowed*, 342 N.C. 655, *disc. rev. withdrawn*, 343 N.C. 122 (1996)

In medical malpractice action, trial court erred in allowing cross-examination of plaintiff about prior illegal drug use, as this was irrelevant to credibility under **Rule 608(b)**.

Weston v. Daniels, 114 N.C. App. 418, 442 S.E.2d 69 (1994)

In a personal injury case, the Defendant was allowed to question the plaintiff about disciplinary action taken against him in a B.A.S.S. tournament twelve years earlier. While possibly admissible under **Rule 608(b)**, **Rule 403** and **Rule 611** prevent excessive questioning about marginally relevant matters, especially when the questions are harassing and take a lot of time.

State v. Syriani, 333 N.C. 350, 428 S.E.2d 118, *cert. denied*, 510 U.S. 1066 (1993)

Defendant charged with murdering his wife. He asks his daughter on cross-examination if he ever beat her (the child). The child said yes. Defendant objects and moves to strike. Denied. No error. "Defendant cannot invalidate trial by inviting error, eliciting evidence on cross-examination which he might have rightfully excluded if the same evidence has been offered by the State." Also no error to cross-examine Defendant's character witnesses to the trait of peacefulness about their knowledge of specific acts of violence by defendant toward his children. **Rule 608(b)**.

State v. Williams, 330 N.C. 711, 412 S.E.2d 359 (1992)

In murder case, State's key witness had long history of mental illness and chronic drug abuse. Trial court incorrectly precluded defense from cross-examining witness about mental illness and chronic drug abuse, as those were relevant to witness's ability to perceive, observe, and recollect. Court agrees that under **Rule 608(b)**, evidence of drug use is not admissible, but holds that where the witness is "crucial to the prosecution and evidence about witness' "troubled past was considerable," cross-examination should be allowed under **Rule 611**.

State v. Stevenson, 328 N.C. 542, 402 S.E.2d 396 (1991)

In a homicide case, it was error to allow the State to cross-examine the Defendant concerning use of marijuana and assaultive conduct, matters not resulting in conviction. The State cannot cross-

examine concerning specific acts of misconduct to impeach the truthfulness of a witness unless the incidents relate to veracity under **Rule 608(b)**.

State v. Woodard, 102 N.C. App. 687, 404 S.E.2d 6 (1991)

In a breaking and entering and sexual offense case, the State cross-examined the Defendant about letters unrelated to the charges which concerned an adulterous affair with another woman. This was error, because adultery is not the type of misconduct that is pertinent to truthfulness or untruthfulness under **Rule 608(b)**, nor was it admissible under **Rule 404(a)(1)** because the defendant had not put his character at issue.

Hinnant v. Holland, 92 N.C. App. 142, 374 S.E.2d 152 (1988)

In a motor vehicle wrongful death case, the Defendant was allowed to testify on direct that he had no convictions, or even traffic tickets. This was error. This evidence was offered to show either that the Defendant had no convictions in the past and thus was driving without negligence on the instance at issue – improper under **Rule 404(a)** - or was acquitted in criminal court – which is irrelevant to his civil liability - or to bolster his credibility on direct examination – which is improper under **Rule 608(b)**.

State v. Morgan, 315 N.C. 626, 340 S.E.2d 84 (1986)

In a homicide case the State examined the Defendant concerning two previous assaults. Because this was extrinsic evidence of specific instances of misconduct improperly used to attack the credibility of a witness, it was improperly used to establish the character of the Defendant. The evidence was inadmissible under **Rule 608(b)**, which allows evidence of other misconduct only if relevant on credibility, and assaultive behavior is not generally relevant to credibility. Establishes four prerequisites to admission of evidence under Rule 608(b).

Thompson v. James, 80 N.C. App. 535, 342 S.E.2d 577 (1986)

In a motor vehicle negligence case where the “circumstances suggest exaggeration,” the trial court correctly allowed the Defense to cross-examine the Plaintiff about the fact that the Plaintiff contacted his attorney before his doctor and sued two others in the five years before the case was tried, claiming injuries to his foot from an assault and another car injury. This evidence was relevant to show the severity of his injuries and also was admissible under **Rule 608(b)** to show plaintiff's unduly litigious nature and bias as a witness.

Selected Cases: Rule 609

State v. Brown, ___ N.C. ___, 584 S.E.2d 278 (August 2003)

In capital case, trial court did not err in denying defendant's motion in limine to prevent cross-examination of defendant about a 1986 conviction in Virginia for malicious wounding. Defendant was in prison for that crime until 1991 or 1992, and his murder trial was in 1998, so the 10 year bar of Rule 609 did not apply. When a conviction is less than ten years old, **Rule 609** is mandatory and requires the trial court to allow cross-examination of the conviction.

State v. Hairston, 156 N.C.App. 202, 576 S.E.2d 121 (2003)

In prosecution for possession of cocaine, the trial court erroneously admitted testimony regarding the facts of defendant's prior drug convictions for substantive purposes under **Rule 404(b)**, without evidence of underlying facts to show similarities between the prior convictions and the present offense charged. **Rule 609** governs cross-examination of witnesses, including criminal defendants who testify, and allows for admission of the "bare fact" of conviction for cross-examination purposes, but does not make it relevant to a defendant who does not testify.

State v. Wilkerson, 356 N.C. 418, 571 S.E.2d 583 (2002), *reversing the Court of Appeals for the reasons stated in the dissent*, 148 N.C.App. 310, 559 S.E.2d 5 (2002)

In prosecution for possession with intent to sell or deliver cocaine and trafficking in cocaine, State may not offer the bare fact of defendant's prior convictions for cocaine offenses to show knowledge and intent when defendant did not testify. Rule 609 governs admissibility of the bare fact of a defendant's prior convictions, and it is not trumped by Rule 404(b), which governs conduct, not convictions. **Rule 609**.

State v. Perkins, 154 N.C.App. 148, 571 S.E.2d 645 (2002)

In murder case, State cross-examined defendant about drug-dealing and other bad acts committed by the defendant when he was a juvenile. The Court of Appeals rejected the defendant's argument that the limitations imposed by **Rule 609(d)** on juvenile adjudications should also be read into **Rule 608**, finding no authority suggesting the General Assembly intended such a result.

State cross-examined defendant about several juvenile adjudications with only one objection. Defendant argues the admission of prior juvenile convictions was plain error and that the General Assembly labeled such admissions as plain error by enacting **Rule 609(d)**. While admission of defendant's juvenile conviction for stealing and questions concerning an assault conviction were inappropriate, the Court refused to find plain error.

State v. Gregory, 154 N.C.App. 718, 572 S.E.2d 838 (2002)

In trial for habitual DWI, trial court correctly allowed State to cross-examine defendant about a previous conviction for Driving While Impaired. NCGS §14-3 provides that a DWI conviction is a class 1 misdemeanor and, thus, is admissible for impeachment purposes under Rule 609(a).

State v. McAllister, 132 N.C.App. 300, 511 S.E.2d 660 (1999) *aff'd per curiam*, 351 N.C. 44 (1999)

In rape case, trial court did not abuse its discretion in refusing to allow defendant to cross-examine victim about juvenile delinquency adjudications which related to conduct occurring after the alleged rape. **Rule 609(d)** makes it clear that juvenile adjudications are not admitted pursuant to the same standards as convictions of crime and the rule itself includes a **Rule 403**-like balancing test which is within the discretion of the trial court.

State v. Lynch, 334 N.C. 402, 432 S.E.2d 349 (1993)

In a homicide case, the State cross-examined the Defendant about the type of weapon he used in numerous assaults for which he had previously been convicted. This was error. Under **Rule 609(a)**, the State may only cross-examine concerning the "time, place, and punishment". Anything beyond that is error, unless the defendant has misstated his criminal record or the facts of the crimes or when he has used his criminal record to create an inference favorable to himself.

State v. Garner, 330 N.C. 273, 410 S.E.2d 861 (1991)

The State was allowed to ask the Defendant about the details of three prior convictions, two of which involved the victim, and required him to read the arrest warrants after he testified that the victim was the aggressor and offered evidence of his good character and generally peaceful and level-headed disposition. Reading the warrants is not proper, but the detailed examination is permitted once the Defendant has testified to facts showing the victim as the aggressor to rebut the inference of peacefulness presented by the Defendant. While **Rule 609(a)** limits the State to time, place, and sentence cross-examination, when a defendant puts his character in issue, the DA may cross examine concerning the specific instances of misconduct under **Rule 405**.
