

NORTH CAROLINA CONFERENCE OF SUPERIOR COURT JUDGES

Fall Conference
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Gregory A. Weeks
Resident Superior Court Judge
Judicial District 12-B

EVIDENCE NUGGETS: ACCIDENT REPORTS

I. Admissibility

A. N.C. Rules of Evidence, Rule 801

Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

B. N. C. Rules of Evidence, Rule 802

“hearsay is not admissible except provided by statute or by these rules.”

C. N.C. Rules of Evidence, Rule 803, (6)

“A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method or circumstances of preparation indicate lack of trustworthiness. The term ‘business’ as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.”

D. Rule 803 (8)

“Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth ...matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases, matters observed by police officers and other law enforcement personnel, or ...in civil actions and proceedings and against the State in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.”

D. Case Law

1. Wentz v. Unifi, Inc. 89 N.C. App. 33 (1988)

Plaintiff, who found contributorily negligent, appealed trial court’s admission of investigating patrolmen’s accident reports on grounds they contained

inadmissible hearsay and speculative opinions regarding positioning of vehicles at time of accident. Plaintiff also contended that the reports were inherently untrustworthy because trooper did not witness the accident.

a. The court held that the patrolman's accident reports were admissible as business records exception [803 (6)] and, that such reports may be admissible as official reports [803 (8)], where fully authenticated and proper foundation laid.

- (1.) Patrolman had personally observed scene of accident and spoken to both drivers at scene.
- (2) Patrolman prepared first report as "part of standard protocol required of patrol officers."
- (3) The above factors comply with business record exception. This exception "expressly provides for the use of information from those having first hand knowledge of the incident in question." *Id.* At 40.
- (4) The Court found that patrolman was entitled to report his understanding of the accident as told by both the plaintiff and defendant.
- (5) The Court further found that, from a review of the testimony and the reports, the patrolman "did not express an opinion about how accident occurred, but merely reported the versions given to him" by the drivers during the course of his investigation.

b. *NOTE:* Plaintiff in Wentz did not object when patrolman was allowed to testify as to the contents of first report, and contents of second report, to which plaintiff did object contained plaintiff's version of accident.

2. Keith v. Polier, 109 N.C. App. 94 (1993)

Plaintiff appealed from a jury finding of no negligence on part of deceased defendant driver. Plaintiff contended that trial court erred in admitting, over her objection, hearsay statements of deceased defendant driver (as contained in accident report). Investigating officer testified that he had no independent recollection of the accident "other than what he refreshed by refreshing his memory by reviewing the accident report (sic)." Officer also testified that he could not remember who told him what, but that "he shared his views and opinions regarding how the accident occurred with both parties at the accident scene and neither party objected to his conclusions at that time."

a. The Court, citing Wentz, held that the officer's investigative report was admissible under 803 (6) as a business record.

- (1) Officer authenticated report, i.e., he testified that he completed the DMV-349 on the day of the accident, based upon information received from the two drivers and his own investigation of the accident.

- (2) Officer testified that report was prepared during course and scope of his employment as a regularly conducted business activity.
- (3) Officer further testified that he reviewed the accident report with the parties and that neither objected to his conclusions. (trustworthiness)
- b. The Court also held that the report was admissible under 803 (8) as a public record and report.
 - (1) Officer filed the report with his immediate supervisor who, in turn, filed it with the records division in the Raleigh Police Department.
 - (2) Above factors indicate that report set forth
 - (a) activities of an office or agency,
 - (b) matters observed pursuant to duty imposed by law,
 - (c) offered in a civil action or proceeding,
 - (d) involving factual findings resulting from an investigation made pursuant to authority granted by law,
 - (e) under circumstances indicating trustworthiness.
 - (3) This testimony provided proper authentication and tended to show that report was “sufficiently trustworthy,” and, the report was admissible under both exceptions.

3. Cooke v. Grigg, 124 N.C. App. 770 (1996)

Plaintiff appealed jury finding of no negligence on part of defendant driver contending that trial court erred in admitting, and publishing to jury, patrolman’s accident report without redacting portion entitled “circumstances contributing to the collision” which noted “unable to determine” as to defendant driver.

- a. The Court held that the plaintiff here did not preserve any hearsay objection, but rather relied on an inadmissible opinion objection.
- b. Noting that Wentz also involved the issue of the admissibility of an investigating officer’s opinion, the Court concluded that the officer did not improperly express an opinion in this case.
- c. The complained of notation on the accident report “unable to determine,” is at most, an indication that the officer lacked an opinion as to defendant’s role in the collision.

II. Anticipate an objection when a party attempts to introduce accident reports, but, if the proponent properly authenticates the evidence, and a proper foundation is laid, the evidence, if otherwise relevant, is generally admissible.

- A. Redaction of inadmissible matters may be necessary
- B. The trial court retains discretion not to admit under Rule 403, especially where trustworthiness is an issue.

