IMPEACHMENT, CORROBORATION, REHABILITATION, and OPENING THE DOOR

Selected Cases
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IMPEACHMENT

DEFINING IMPEACHMENT AND GENERAL RULES

Cases

State v. Robinson
355 N.C. 320 (2002)
It is not impeachment to ask a witness the following kinds of questions: "If the detective testified that you told him that, he would be telling the truth, then?" or "If Jesse Hill testified that he saw you at 6pm on Monday he would be mistaken then?" This is not impeachment, but rather is calling for the witness to vouch for the veracity of another witness or to offer an opinion about the credibility of another witness, which is not proper.

State v. Ward
338 N.C. 64 (1994)
quoting with approval State v. Looney, 294 N.C. 1 (1978): "The primary purpose of impeachment is to reduce or discount the credibility of a witness for the purpose of inducing the jury to give less weight to his testimony in arriving at the ultimate facts of the case. Any circumstance tending to show a defect in the witness's perception, memory, narration or veracity is relevant to this purpose."

State v. White
331 N.C. 604 (1992)
Evidence relevant to impeach may still be excluded in the trial court's discretion if, under Rule 403 of the North Carolina Rules of Evidence, the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. Court reversed in case where trial court allowed triple hearsay that tended to impeach a witness and also implicated defendant in an unrelated crime.

State v. McConico
153 N.C.App. 723 (2002), *cert. denied,* 357 N.C. 168 (2003)
When a statement by a third person/declarant is admitted substantively, the declarant's credibility can be impeached just as if the declarant had testified. N.C.REvid. 806.

State v. Anderson
88 N.C.App. 545 (1988)
"'Impeachment' is an attach upon the credibility of a witness, see McCormick on Evidence §33 et seq. (3rd Ed. 1984), and is accomplished by such methods as showing the existence of bias; a prior inconsistent statement; untruthful or dishonest character; or defective ability to observe, remember or recount the matter about which the witness testifies."

North Carolina Rules of Evidence

Rule 611(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 for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment."

Rule 611(b)
"A witness may be cross-examined on any matter relevant to any issue in the case, including credibility."

Rule 607
"The credibility of a witness may be attacked by any party, including the party calling him."

Rule 610
"Evidence of the beliefs or opinions of a witness n matters of religion is not admissible for the purpose of showing that by reason of their nature his credibility is impaired or enhanced; provided however such evidence may be admitted for the purpose of showing interest or bias."

Rule 106
"When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it."

Rule 105
"When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly."

BIAS

"Bias" means "any species of partiality from which a willingness to sacrifice the truth might be inferred. Interest and corruption, are, then, simply two methods by which bias may be produced." Brandis & Broun, North Carolina Evidence §157 n. 351.

Many of the cases about bias are old and consistent with just what you would think the law is. See Brandis & Broun §157 for a collection of cases holding that the following are admissible to show bias: family relationship; intimate friendship; a financial interest in the outcome of the action; is an accomplice or co-defendant; or has been given immunity or some other inducement to testify.

State v. McNeil
350 N.C. 657 (1999)
While generally speaking a defendant should be allowed to cross-examine a co-defendant about any pending charges, it was not error to preclude such cross-examination where the court allowed full cross-examination about numerous prior convictions, including convictions more than ten years old, about the co-defendant's plea agreement; and about prior inconsistent statements, and where the court instructed the jury to examine her testimony with great care and caution because she was an accomplice. Because further cross-examination to show bias would have been repetitive and cumulative, no abuse of discretion to disallow the questions.

State v. Hoffman
349 N.C. 167 (1998)
Defendant has a right to question state's witness about any pending charges against the witness because it establishes an inference of undue pressure and is relevant to bias. *Accord* State v. Prevatte, 346 N.C. 162 (1997); State v Reaves 132 N.C.App. 615 (1999)

State v. Perkins
345 N.C. 254 (1997)
Cross-examination of a defense psychologist in which the prosecutor asked if he had left Dorothea Dix Hospital because he had made improper advances toward a patient was proper; the questions were relevant because they may have shown that the witness was biased against the State due to the circumstances under which he left the hospital.

State v. Wilson
335 N.C. 220 (1993)
Because the witness had sold drugs for the defendant in the past, the prosecutor had a good faith basis to ask the witness on cross examination whether the defendant had paid the witness for her testimony. The issue was relevant as it went to credibility, so no error in overruling defense objection.

State v. Bullock
154 N.C.App. 234 (2002)
State properly permitted to cross-examine alibi witness with regard to altercation with victim.

State v. Clark
128 N.C.App. 722 (1998
It was error to exclude testimony of defense witness that she heard two state's witnesses say they wanted to keep defendant in jail.

State v. Frazier
121 N.C.App. 1 (1995) *aff'd,* 344 N.C. 611 (1996)
In child sex offense case, prosecutor was properly allowed to cross-examine defendant's wife about her attempts to get victims to change their stories and to ask defendant's step daughter in law on cross-examination if she would "do anything to get a verdict of not guilty."

Holt v. Williamson
125 N.C.App. 305 (1997)
Plaintiff sued defendant doctor for breach of contract, alleging that they had a contract for plaintiff to manage defendant's medical practice. Defendant filed counterclaims for misappropriation. P and D also had a personal relationship, living together and holding themselves out as husband and wife, which defendant also terminated upon learning of the plaintiff's thefts. Court found no error in allowing cross-examination of plaintiff concerning plaintiff's pre-trial efforts to intimidate witnesses:

> "It is well-established that '[a] party to an action or proceeding, either civil or criminal, may elicit from an opposing witness on cross-examination particular facts having a logical tendency to show that the witness is biased against him or his cause . . .'" State ex.rel. Everett v. Hardy, 65 N.C.App.. 350, 352 (1983)(citation omitted). Particularly in light of other testimony indicating [plaintiff's] bitterness against defendant for terminating their relationship, the challenged evidence was properly admitted as reflecting that [plaintiff's] motivation in instituting suit against defendant derived in significant part from his bias against her and that therefore his credibility on the witness stand was in question. His apparent attempt to intimidate potential witnesses was also admissible to impeach his credibility."

Carrier v. Starnes
120 N.C.App. 513 (1995)
In personal injury case, defendant offered testimony of private investigator hired by insurance company who observed plaintiff mowing the lawn and undertaking other physical activity and who also took videotape of plaintiff. Trial court allowed cross-examination concerning the fact that the investigator was hired by the insurance company, the amount he was paid, and whether he had other business dealings with the insurance company. Court of Appeals affirmed, holding that this was relevant to bias and that while Rule 411 excludes evidence of insurance to prove negligence, it does not exclude it if it is relevant to some other issue such as bias. The Court also noted with approval that the Court had given a limiting instruction.

Thompson v. James
80 N.C.App. 535 (1986)
In a civil case wherein plaintiff alleges negligence and personal injury and there is a serious question as to whether plaintiff was injured as all, defense is entitled to ask plaintiff when she first saw a lawyer and whether she saw a lawyer before a doctor, as that is relevant to bias and to

whether her injuries were as severe as alleged. See Williams v. McCoy, 145 N.C.App. 111 (2001) infra. In a case based on circumstances that suggest exaggeration, it is also relevant to suggest plaintiff "has an unduly litigious nature, a proper ground for impeachment."

PRIOR INCONSISTENT STATEMENTS

Laying the foundation for impeachment per Brandis & Broun, §161: "In determining admissibility, for impeachment only, of proof of prior inconsistent statements or conduct of a witness, three classes of evidence must be distinguished. (1) When the statement or conduct relates to material facts in the testimony of the witness, it may be proved by others, without first calling it to the attention of the witness on cross-examination. . . . (2) When the statement or conduct is 'collateral,' but tends to show bias, it must first be called to the witness's attention, thus giving him an opportunity to admit, explain, or deny it, but if denied may be proved by others. . . .(3)As to all other 'collateral' matters, the cross-examiner is bound by the answer of the witness in the sense that she may not contradict it by the testimony of others.

State v. Carter
357 N.C. 345 (2003)
In capital sentencing proceeding, no error to exclude police report reflecting witness's testimony that there were 3 intruders, contrary to her testimony that there were two. Defense was allowed to cross-examine her on this point, and as the intrusion related to an aggravating factor, the number of intruders was a collateral matter and thus within the trial court's discretion to exclude the police report.

State v. Westbrooks
345 N.C. 43 (1996)
Pre-arrest and post-arrest silent can be impeaching. Ordinarily, the defendant's silence cannot be used to impeach his testimony given at trial. However, when defendant made statements to a Law Enforcement Officer before and after arrest and never mentioned certain matters she testified about at trial that "it would be natural to mention," such silence is considered to be inconsistent and thus the state may cross-examine the defendant about such silence. Citing Jenkins v. Anderson, 447 US 231 (1980); State v. Buckner, 342 N.C. 198; State v. Washington, 141 N.C.App. 354 (2000)

State v. Walker
343 N.C. 216 (1996)
Witness testified for the state in murder trial. On cross-examination, court would not allow defense to have the witness read parts of letters he had written to the defendant saying that the witness had lied to the police about defendant's involvement in the murders unless the defendant offered the letters themselves into evidence. No error. Court noted that the defendant did not ask the witness if she remembered if she wrote the letters, if she remembers what was said in the letters or if reviewing the letters refreshed her recollection; implication is that the defendant could have been asked if she wrote a letter to the defendant stating X without introducing the letter.

State v. Williams
341 N.C. 1 (1995)
Because the testimony of the State's witness, defendant's girlfriend, was that defendant told her someone else committed the murder rather than that defendant confessed he committed the murder, the State was permitted to impeach her with her prior statements to law enforcement; prior to testifying the witness did not inform the prosecutor that she intended to testify differently so the impeachment was allowed. Also, since the witness admitted making the prior inconsistent statements, the State could offer extrinsic evidence of the content of those statements because it is corroborative of the witness' testimony that she made the statements, even though it is inconsistent with her trial testimony about whether defendant confessed.

State v. Ward
338 N.C. 64 (1994)
The making of an inconsistent statement "must be proved by direct evidence and not by hearsay and a witness may not be impeached by the inconsistent statement of someone else." Quoting with approval Brandis & Broun §159.

State v. Hunt
324 N.C. 343 (1989)
While the State may impeach its own witness with prior inconsistent statements, this may not be done as a mere subterfuge to get evidence before the jury that is otherwise inadmissible. Moreover, if a witness denies making a statement, then the statement itself cannot be admitted into evidence, because it is collateral to the only disputed issue of whether the witness made the statement. "Although unsworn prior statements are not hearsay when not offered for their truth, the difficulty with which a jury distinguishes between impeachment and substantive evidence has been widely recognized."

State v. Williams
322 N.C. 452, 455 (1988)
"A witness may be cross-examined by confronting him with prior statements inconsistent with any part of his testimony, but where such questions concern matters collateral to the issues, the witness's answers on cross-examination are conclusive, and the party who draws out such answers will not be permitted to contradict them by other testimony. . . ." Error for trial court to allow testimony from witness's probation officer that witness told probation officer defendant confessed to rape, where witness testified he never made such a statement. When witness denies making a statement, the person testifying he did make such a statement is testifying about a collateral matter.

State v. Mack
282 N.C. 334 (1972)
Prior statements of a witness which are inconsistent with his present testimony are not admissible as substantive evidence because of their hearsay nature. Quoted with approval in State v. Frogge, 351 N.C. 76 (2000)

State v. Riccard
142 N.C.App. 298 (2001)
This is the place to start if you have a situation where the state's witness is going to testify favorably to the defendant and the state wants to impeach the witness with his prior statement to law enforcement that inculpates the defendant. The case thoroughly discusses when to allow the State to impeach its own witness by offering the witness's earlier inconsistent statement to police.

In robbery and assault case, witness B testifies that he and defendant were riding around with 2 other guys, they stopped at car wash (where robbery occurred), he and defendant went to a pay phone, they heard shots, and they ran back to the car. State sought to impeach witness with prior statement to law enforcement in which witness said admitted talking to law enforcement but denied saying that defendant shot the victim. Witness R testified that he, defendant, and 2 others were at the car wash, 2 others went to pay phone, then defendant got out for awhile. R admitted talking to law enforcement but denied telling law enforcement that defendant had shot the victim. The trial court allowed the state to call the law enforcement witnesses to whom B and R had made the earlier statements to testify about the content of those statements. The Court found no error:

> "[I]t is clear a prior inconsistent statement may not be used to impeach a witness if the questions concern matters which are only collateral to the central issues." . . . Generally speaking, "material facts involve those matters which are pertinent and material to the pending inquiry". . . . "Once a witness denies having made a prior statement, the State may not impeach that denial by introducing evidence of the prior statement." [citations omitted] The rational behind these holdings is that "Once the witness denies having made the prior inconsistent statement, the prior statement concerns only a collateral matter, ie., whether the statement was ever made." . . . Where the witness admits having made the prior statement, impeachment by that statement has been held to be permissible. . . . Likewise, where there is testimony that a witness fails to remember having made certain parts of a prior statement, denies having made certain parts of a prior statement, or contends that certain parts of the prior statement are false, our courts have allowed the witness to be impeached with the prior inconsistent statement. . . . .

The Court ruled that since both B and R admitted making statements to law enforcement in which they discussed the robbery and assault, and since each contended that certain partys of those statements were inaccurate or that he did not remember saying some of the things reported, then the prior inconsistent statements were admissible to impeach. The Court further noted that:

> [w]hile. . . . a party [may] impeach its own witness on a material matter with a prior inconsistent statement, impeachment is impermissible where it is used as a mere subterfuge to get evidence before the jury which is otherwise inadmissible. [citations omitted] "Circumstances indicating good faith and the absence of subterfuge . . .have included the facts that the witness's testimony was extensive and vital to the government's case. . .; that the party calling the witness was genuinely surprised by the reversal. . .; or that the court followed the introduction of the statement with an effective limiting instruction."

State v. Spinks
136 N.C.App. 153 (1999)
In a case in which the only evidence of an important fact was a statement signed by a witness for the prosecution who denied reading the statement before signing it, denied the accuracy of the statement with respect to the important fact and denied stating that alleged fact to the person preparing the writing, the statement was not admissible for the limited purpose of impeachment of that witness by a prior inconsistent statement because impeachment may not be used as a mere subterfuge to get evidence before the jury which is otherwise inadmissible.

State v Rankins
133 N.C.App. 607 (1999)
In armed robbery trial, co-defendant testified and on cross-examination denied he had a deal with the State for a lesser sentence. Trial court precluded defense from calling a witness who would have testified that the co-defendant told the witness that he did have a deal with the state for a lesser sentence. This was reversible error, as the co-defendant was the only witness tying the defendant directly to the crime.

State v. Cozart
131 N.C.App. 199 (1998)
Witness testified she was not present at time killing occurred. Trial court erred in not allowing full cross-examination of witness by defense concerning affidavit witness signed in which she stated she was present at the killing; defendant was entitled to cross-examine witness about prior inconsistent statements. However, error harmless under specific circumstances. Trial court did not err in refusing to admit the affidavit as substantive evidence, as it was hearsay.

State v. Price
118 N.C.App. 212, *cert. denied,* 341 N.C. 423 (1995)
State called witness and asked if defendant had knifed the witness several years earlier. When witness said he didn't remember that, state asked witness if he told the SBI that the defendant knifed him several years earlier. The witness said he didn't remember saying that. No error, as it was a tangential point and state did not call any witnesses to testify that witness did say defendant had knifed him (which would have been error).

State v. Najewicz
112 N.C.App. 280 (1993)
In rape case, court properly allowed state to cross-examine defendant about inconsistencies between his version of the encounter between defendant and victim as given at trial and as previously given by defendant under oath at a hearing on Rule 412 issues. It appears though it is not clear that the prosecution was allowed to introduce into evidence the transcript of the defendant's prior testimony. The Court held this was not "collateral" since it had to do with the very circumstances surrounding the sexual encounter defendant and victim had.

State v. Jerrells
98 N.C.App. 318, *cert. denied,* 326 N.C. 802 (1990)
Where a State's witness denied making a prior inconsistent statement damaging to the defendant, the trial court erred in permitting the state to present testimony by a detective recounting the

inconsistent statement, since a party may not introduce evidence to impeach its witness's testimony on a collateral matter. It would have been acceptable for the detective to testify that the witness did make a statement, but he could not impart the substance of that statement.

State v. Ayudkya
96 N.C.App. 606 (1989)
Witness testified on direct that he, defendant and Powers attempted to rob victim. On cross, he testified that defendant was not with him when the robbery was attempted. On redirect, it was permissible for the state to ask witness about a previous statement he made to law enforcement that defendant was present. "Though not offered as substantive evidence, the prior statement was admitted for a limited purpose, impeachment or corroboration, whichever the jury found."

State v. Bell
87 N.C.App. 626 (1987)
"In our view, it is not the intent of Rule 607 to provide a subterfuge for getting otherwise impermissible hearsay before the jury in the guise of impeachment, and we expressly disapprove this tactic." This language is quoted often, though facts of the case showed no error.

State v Platt
85 N.C.App.220, *cert. denied,* 320 N.C. 516 (1987)
State cannot call a witness to the stand and ask the witness to read to the jury the witness's earlier statement to law enforcement. Until the witness tells what he or she knows, there is nothing for the earlier statement to impeach or corroborate, and it is thus not admissible.

UNTRUTHFUL OR DISHONEST CHARACTER

PRIOR CONVICTIONS: This issue was discussed at a recent conference and will not be covered here. See State v. Bell, 338 N.C. 363 (1994) for a good discussion of this issue.

RULE 608: Opinion and Reputation Evidence of Character and Specific Acts of Conduct was discussed at a recent conference and will not be covered extensively here.

MISCELLANEOUS CASE:
State v. McGill
141 N.C.App. 98 (2000)
Defendant in child sex abuse case has constitutional right to court review of the records of agency which investigated the abuse. If the records contain any exculpatory evidence, they must be turned over to the defendant. Trial court asked to review DSS records of victims in sex abuse case. Trial court said nothing exculpatory, but Court of Appeals disagreed, saying that evidence of previous false accusations in DSS file would be exculpatory because it would impeach the victims and thus should have been disclosed to the defendant. Accord, State v. Anthony, 89 N.C.App. 93, 96 (1988)

DEFECTIVE ABILITY TO OBSERVE, REMEMBER OR RECOUNT

State v. Williams
330 N.C. 711 (1992)
When a witness is a key witness for the prosecution, the witness may be cross-examined about mental defects or chronic substance abuse which affect the witness' ability to observe and remember, even if the mental problems or addiction was in the past.

State v. Lynn
157 N.C.App. 217 (2003)
Defendant files a motion to require the state to identify any mental health professionals who treated the testifying co-defendant. The Court held, relying on State v. Chavis, 141 N.C.App. 553 (2000) and State v. Smith, 337 N.C. 658, 664 (1994), that while impeaching information about a witness's mental health history might be exculpatory and if it is the state can be required to turn it over to the defense if it is in possession of such evidence, the State is not required to conduct an independent investigation to determine possible deficiencies in the State's evidence or to identify impeaching information. Before the defense is entitled to a witness's medical records, the trial court should review the records *in camera* to weigh the witness's privacy rights against the existence of exculpatory evidence.

State v. Alkano
119 N.C.App. 256 (1995)
Generally speaking, a witness cannot be impeached by evidence of drug addiction, but can be asked about drug or alcohol use near the time of the events about which he testifies, so long as there is a good faith basis for the question.

State v. Adams
103 N.C.App. 158 (1991)
"Although a witness may be impeached by a showing of mental deficiency as it bears upon the witness' credibility, State v. Witherspoon, 210 N.C. 647 (1936), medical records for treatment purposes are privileged and the contents of such records may be disclosed only if, in the opinion of the trial court, disclosure is necessary to a proper administration of justice. N.C.GS 8-53." After examining the medical records, the trial court should determine if they bear on credibility, "the only possible basis for their relevance."

RELIGIOUS BELIEFS

State v. Kimbrell
320 N.C. 762 (1987)
Inappropriate to allow prosecutor to cross-examine defendant about whether he was a devil-worshipper; not relevant to any issue and specifically not allowed to impeach on credibility by Rule 610.

State v Westall
116 N.C.App. 534 (1994)
On direct examination, witness testified he lied to the police when he implicated defendant. On cross-examination, in order to explain why he lied to the police, the witness testified that swearing on the Bible meant a great deal to him and he could not lie if he swore on the Bible. On redirect, it did not violate Rule 610 to allow the prosecutor to question the witness about the sincerity of his religious beliefs and whether he went to church, as the defendant opened the door to that inquiry by his cross-examination.

SPECIFIC CASES INVOLVING EXPERT WITNESS

State v. Rogers
355 N.C. 420 (2002)
While it is proper for a party to point out potential bias resulting from payment that a witness received for his or her services, arguments that impute perjury to a witness on the basis of evidence no more substantial than the mere fact the witness was compensated are improper. The Court "admonish[es] counsel to refrain from arguing that a witness is lying solely on the basis that the witness has been or will be compensated for his or her services. We also instruct trial judges to be prepared to intervene *ex mero motu* if such arguments continue to be made."

State v. Lawrence
352 N.C. 1 (2000)
Appropriate to allow State to ask defense expert witness about compensation to show potential bias, even if expert was court-appointed and paid with state funds.

State v. Atkins
349 N.C. 62, 83 (1998)
Appropriate to allow State to attempt to illustrate a potential source of witness bias by asking questions about an expert witness's compensation on cross-examination.

State v. Page
346 N.C. 689 (1997)
Fact that defendant's expert witness psychologist had had his license suspended was relevant to impeach the testimony of the expert.

State v. Gregory
340 N.C. 365 (1995)
Defendant's expert witness, a psychiatrist, testified in a capital sentencing proceeding that in performing a psychiatric evaluation, "you rely on as many records as you can get," but later testified that while he read statements by the defendant and co-defendants about the murder, he did not rely on them as a basis for his opinion. The trial court did not err in allowing the prosecutor to explore the expert's reasons for not relying on those statements, including asking him if he knew that the co-defendants' versions of the events were different from defendant's

version. The Court also appeared to approve of the fact that the trial court did not let the prosecutor, in the presence of the jury, read to the witness the statements of the co-defendants.

State v. Lovin
339 N.C. 695 (1995)
It was error to allow the State to cross-examine plaintiff's expert psychologist by reading portions of an article to the expert, when the expert had not seen the article before and the article was not established as a learned treatise.

State v. Sanderson
336 N.C. 1 (1994)
An attorney is not allowed to insult or degrade an expert witness under the guise of impeachment, nor can counsel attempt to distort her testimony under the guise of impeachment. The Court has a duty to prevent such abuse when it occurs.

Whisenhunt v. Zammit
86 N.C.App. 425 (1987)
No error to allow cross-examination of expert in medical malpractice case regarding expert's suspension of licensing privileges in two hospitals.

INCONSISTENT FACTS

State v. Morganherring
350 N.C. 701 (1999)
Defense expert psychiatrist testified that defendant's mental state was so afflicted that he could not coherently remember what occurred during the murders. It was proper for the State to ask the witness on cross examination about the defendant's demeanor and voice during a taped confession taken shortly after the murders (and played to the jury earlier).

State v. Bell
338 N.C. 363 (1994)
In murder case, proper to allow cross-examination of defendant's son and defendant's wife about son's long-time drug use and parents' knowledge thereof as it rebutted defendant's contention that he went to the crime scene to protest victim's attempts to lure the son into drug trade.

State v. Leroux
326 N.C. 368, 383, *cert. denied*, 498 U.S. 871 (1990)
Where defendant testified that he did not remember shooting anyone and had blacked out, it was proper to admit testimony from a police officer that in the ambulance after the shooting before anyone told defendant a police officer had been shot, the defendant asked "Did I shoot anybody?" as this was inconsistent with his testimony that he didn't remember anything.

State v. Freeman
319 N.C. 609 (1987)
Acceptable to cross-examine defendant about how hairs and fibers came to be in particular places. "This kind of cross-examination properly went to the credibility of defendant's denial and his testimony tending to support this denial."

State v. Holland
150 N.C.App. 457 (2002)
Even though the trial court precluded the State from offering hospital records showing the defendant's blood alcohol level, the State could still cross-examine the defendant about his blood alcohol level since this was highly relevant to credibility.

Sterling v. Gil Soucy Trucking
146 N.C.App. 173 (2001)
Minor child injured in MVA. Where mother testified about extent of child's school problems, child's inconsistent school records were admissible to impeach the mother's testimony even if they weren't admissible substantively.

Pelzer v. United Parcel Service
126 N.C.App. 305, *cert. denied*, 346 N.C. 549 (1997)
In motor vehicle negligence case where plaintiff testified all her depression was caused by the accident, it was proper to allow the defendant to cross-examine plaintiff about her child's drug problem and other negative events in her children's lives, since that had a bearing on her mental state and since the trial court "properly limited the jury's consideration of the inquiry to the issue of whether these other factors may have caused or contributed to plaintiff's alleged depression."

White v. Lowery
84 N.C.App. 433 (1987)
In case concerning motor vehicle accident, plaintiff testified that he had not planned to retire before the accident but as a result of the problems caused by the accident he had retired early. Trial court correctly allowed defense to cross-examine plaintiff about early retirement incentives offered by plaintiff's employment to impeach plaintiff's testimony about the reasons for his retirement, and also correctly prohibited defense from asking plaintiff about the amount of his retirement benefits because of the collateral source rule.

CORROBORATION

Corroboration is " the process of persuading the trier of fact that a witness is credible." State v. Burton, 322 N.C. 447, 449 (1988)

"Corroborative" has been defined by our courts as meaning "to strengthen; to add weight or credibility to a thing by additional or confirming facts or evidence." State v. Riddle, 316 N.C. 152 (1986)

State v. Williams
355 N.C. 501 (2002)
Determining whether evidence is admissible as corroboration is a question for the court, but determining whether the evidence has a corroborative effect and what weight it should be given is a jury determination. "In order to be admissible as corroborative evidence, a witness's prior consistent statements merely must tend to add weight or credibility to the witness's testimony. Further, it is well established that such corroborative evidence may contain new or additional facts when it tends to strengthen and add credibility to the testimony which it corroborates."

State v. Lloyd
354 N.C. 76 (2001)
Where child testified at trial that he did not see bullets on the porch where his mother was laying dead, having just been shot, it was not error to admit his prior statement to law enforcement that he did see bullets, as the rest of the child's statement to the law enforcement officer was consistent with his testimony and as numerous other witnesses testified to finding bullets on the porch. The testimony and the prior statement do not have to be mirror images in order for the prior statement to be corroborative.

State v. Gell
351 N.C. 192 (2000)
Prior statement with "slight variations" from witness's trial testimony is admissible to corroborate. "It is well established that a witness' prior consistent statements may be admitted to corroborate the witness' sworn trial testimony but prior statements admitted for corroborative purposes may not be used as substantive evidence. [citations omitted] However, '[I]n order to be corroborative and therefore properly admissible, the prior statement of the witness need not merely relate to specific facts brought out in the witness's testimony at trial, so long as the prior statement in fact tends to add weight or credibility to such testimony.' [citations omitted] However, the State may not introduce as corroboration prior statements that actually, directly contradict trial testimony."

State v. Mickey
347 N.C. 508, 519 (1998)
Witness testified that defendant, on trial for hiring someone else to kill his wife, tried to hire the witness to kill his wife. Court admitted witness' prior statement to law enforcement for corroboration, after redacting certain parts that were either additional to or inconsistent with witness's trial testimony. Defendant appeals, arguing that the redaction inhibited his ability to

argue that the witness was not credible. Court noted no error in redacting the parts that were additional to the witness's trial testimony, especially since those parts were more prejudicial to the defendant than the witness's testimony had been. As to one part which was inconsistent with the witness's in-court testimony, that should not have been redacted upon defendant's objection, but error not prejudicial.

State v. Frogge
345 N.C. 614 (1997)
Prior statement of witness erroneously admitted as corroboration where it contained inconsistencies going to "the heart of the prosecution's case for felony murder" and "manifestly contradictory" to witness's testimony at trial.

State v. Coffey
345 NC 389 (1997)
Even if evidence is admissible as corroborative, the court must determine under Rule 403 whether to admit the evidence.

State v. Ball
344 N.C. 290 (1996)
Court properly refused to admit defendant's post-arrest statement as corroborative when he had not yet testified.

State v. Sidberry
337 N.C. 779 (1994)
A prior consistent statement is admissible to corroborate only if it is in fact consistent with the witness's trial testimony. If the prior statement has "significant discrepancies" from the witness's trial testimony it should not be admitted.

State v. Williamson
333 N.C. 128 (1992)
Prior consistent statements are admissible even if they contain new or additional information so long as the narration of events is substantially similar to the witness' in-court testimony. If a defendant contends a specific portion is completely inconsistent with the witness's in-court testimony, then the defendant must specifically object to the incompetent portions. No error for law enforcement officer to read from the statement the witness gave before trial when the statement was generally consistent; the court refused to consider whether the court erred in admitting portions of the statement to which the defendant did not specifically object.

State v. Harrison
328 N.C. 678, 682 (1991)
"In a noncapital case, where portions of a statement corroborate and other portions are incompetent because they do not corroborate, the defendant must specifically object to the incompetent portions." If objection is made, the Court must exclude statements which go "far beyond the witness's in-court testimony."

State v. Levan
326 N.C. 155, 167 (1990)
North Carolina does not require that a witness be impeached before his testimony can be corroborated by a prior consistent statement. The trial court has wide latitude in determining if evidence is corroborative and should be admitted. The reasoning supporting admission of prior consistent statements for corroborative purposes "'rests upon the obvious principle that, as conflicting statements impair, so uniform and consistent statements sustain and strengthen [the witness'] credit before the jury.'" So long as the statement is "sufficiently consistent with and supportive of the witness' trial testimony," it is admissible, even if there are slight variations. Even new or additional information in the prior statement is admissible if that information "tends to strengthen or add credibility to the testimony which it corroborates."

State v. Ramey
318 N.C. 457 (1986)
A witness's opinion that over the course of several conversations the victim never told the witness anything inconsistent with the victim's first account of the crime is not helpful to the jury and was improperly admitted. No error, however, in allowing witness to go over the specifics of the prior consistent statements:
"In order to be corroborative and therefore properly admissible, the prior statement of the witness need not merely related to specific facts brought out in the witness's testimony at trial, so long as the prior statement in fact tends to add weight or credibility to such testimony. [citations omitted] Our prior statements are disapproved to the extent that they indicate that additional or 'new' information, contained in the witness's prior statement but not referred to in his trial testimony, may never be admitted as corroborative evidence. [citations omitted] However, the witness's prior statements as to facts not referred to in his trial testimony and not tending to add weight or credibility to it are not admissible as corroborative evidence. Additionally, the witness's prior contradictory statements may not be admitted under the guise of corroborating his testimony.[3]" Footnote 3 states: "But contradictory evidence contained in any statement by the witness may be introduced by any party, including the party calling the witness, for purposes of attacking his credibility."

State v. Riddle
316 N.C. 152 (1986)
"Prior consistent statement of a witness are admissible as corroborative evidence even when the witness has not been impeached. [citations omitted] However, the prior statement must in fact corroborate the witness' testimony. [citations omitted]"

State v. Yearwood
147 N.C.App. 662 (2001)
In child sex offense case, no error in admitting tape rccording of child victim's therapy session where tape was admitted to corroborate the victim's in-court testimony.

State v. McCord
140 N.C.App. 634 (2000), *disc. rev. denied,* 353 N.C. 392 (2001)
Where state's witness on cross-examination stated that when she gave a statement to Officer Benton, he "verbally abused" her and "put words in [my] mouth." It was within the trial court's

discretion to allow the state on redirect to go through the prior statement line by line and ask the witness if what she said to Officer Benton was correct.

Leak v. Leak
129 N.C.App. 142 (1998)
In child support case, mother testified she had diabetes and could not work; doctor's letter to the same effect was admitted to corroborate her testimony. No error, since the doctor's letter was not admitted for substantive purposes.

State v. Stallings
107 N.C.App. 241 (1992)
In child sex abuse case, witness testified as to what child told witness about the events at issue, and then was asked "Did she ever tell you anything different from what she told on the witness stand?" No error in allowing witness to answer, since witness had already testified as to the specifics of what the child told her. Distinguishes State v. Norman, 76 N.C.App. 623, disc. rev.denied 315 N.C. 188 (1985) in which the court held it was error to let the witness answer the question, "did Patillo tell you essentially what he testified to?" since the witness never related to the jury what Patillo told the witness.

REHABILITATION AND OPENING THE DOOR

State v. McNeill
349 N.C. 634 (1998)
In murder case, defendant's brother testified for the state. On cross-examination, counsel asked the brother if he intended to write a book about the murders and if he was having an affair with the wife of another brother who was also involved in the murders. On redirect, it was appropriate to ask the witness why he was testifying and to allow the witness to answer "The truth needs to come out and there needs to be some justice. . . After watching this circus for the law two days . . . the victims of this heinous crime deserve more than what they've been getting."

State v. Lovin
339 N.C. 695 (1995)
Where state asked defendant's girlfriend about what defendant said in telephone conversation after the murder, that did not open the door to what defendant told girlfriend in a later telephone call on totally different matters.

State v. Baymon
336 N.C. 748 (1994)
In child sex offense case, on cross-examination of the state's expert, defense counsel tried to imply that the victim had been coached by relatives about what to say to the expert. No error to allow the state on redirect to ask the expert if she saw anything to indicate that the victim had been coached. While not admissible on direct, the cross-examination by the defendant made it relevant and admissible. Quoting State v. Glenn, 95 N.C. 677 (1996): "A party cannot be allowed to impeach a witness on the cross-examination by calling out evidence culpatory of himself and there stop, leaving the opposing party without opportunity to have the witness explain his conduct, and thus place it in an unobjectionable light if he can. In such case the opposing party has the right to such explanation, even though it may affect adversely the part who cross-examined. Upon the examination in chief, the evidence may not be competent, but the cross-examination may make it so."

State v. Brown
335 N.C. 477 (1994)
No error to allow the State to cross-examine defense expert concerning the witness' fee, even though the witness had been provided to the defendant by order of the court and was being paid for with state funds. The court emphasized that the witness could explain these circumstances to the jury on redirect.

State v Greene
324 N.C. 1 (1989) vacated on other grounds, 494 U.S. 1022 (1990) and 329 NC. 771(1991)(McKoy error)
In murder case, defendant's girlfriend initially provided an alibi for defendant to law enforcement, but a few days later implicated him in the murder. At trial, the girlfriend testified for the state, and the state was allowed to ask her to explain why she initially gave false information to police. She was properly allowed to tell the jury that she was afraid defendant

would kill her if she didn't lie for him, as the witness is entitled to explain why the inconsistent statement was made.

State v. Patterson
284 N.C. 190, 195-86 (1973)
quoted with approval in State v. Moore, 103 N.C.App. 87
In murder case, defendant's stepdaughter/ victim's daughter testified for the state. On cross-examination, defense counsel elicited statements that the witness did not like the defendant and harbored a feeling of ill will toward him because of all the arguments the defendant had with her mother and "other things he had done to me." On redirect, no error for state to elicit testimony that defendant had raped the witness. "Where evidence of bias is elicited on cross-examination the witness is entitled to explain, if he can, on redirect examination, the circumstances giving rise to bias so that the witness may stand in a fair and just light before the jury."

State v. Mason
159 N.C.App. 691 (2003)
When defendant cross-examined police officer about his failure to investigate other suspects, it was appropriate to allow state on redirect to ask about the evidence the officer had at the time implicating the defendant. The defendant opened the door to this testimony, which was appropriate in order for the state to rehabilitate the witness and minimize or do away with any implication that the police had not conducted a thorough investigation.

Williams v. McCoy
145 N.C.App. 111 (2001)
In civil case wherein plaintiff alleges negligence and personal injury and is asked on cross-examination if he saw a lawyer within a few days after the accident, on redirect the plaintiff must be allowed to explain fully why he saw a lawyer so soon, even if the answer ("because I had a negative contact with the defendant's insurance adjuster") contains information otherwise inadmissible.

Warren v. Jackson
125 N.C.App. 96 (1997)
Trial court did not abuse discretion in prohibiting cross-examination of expert witnesses in medical malpractice case about the fact that they were insured by the same mutual insurance company as defendant; connection too attenuated.

State v Westall
116 N.C.App. 534 (1994)
In armed robbery case, co-defendant testified for the state that he was not with the defendant when the robbery took place, despite earlier statement to police that he had been. On cross-examination, the defense asked the witness questions about whether the witness had been under oath when he talked to the police (No) and whether swearing on the bible had significance for him (Yes). On redirect, the Court allowed the prosecutor to question the witness about whether he went to church. No error. While ordinarily a witness's religious beliefs are irrelevant, see N.C.R.Evid 610, in this case the defense opened the door to these questions by asking questions

about the solemnity with which the witness took the oath; the prosecutor was allowed to follow up with questions of his own on this topic.

State v. Black
111 N.C.App. 284 (1993)
In child sex offense case, defense was allowed to cross-examine doctor about whether doctor had reviewed certain earlier physical exam reports (No), whether the doctor had relied on the reports to form an opinion (No), and whether such reports would be helpful to the doctor in forming and opinion and were of a kind that he normally relied upon (Yes). However, trial court correctly did not allow defense counsel to question the doctor about the contents of these never-before-seen records. The Court cited several Fifth Circuit cases in support of its holding, and noted that if the defendant want these records into evidence he could call an appropriate witness himself. Think about all the car wreck cases where the defense offers no real evidence but just shows the plaintiff's old medical records to the doctor on the witness stand. Cited with approval, State v Lovin, 339 N.C. 695 (1995)

State v. Moore
103 N.C.App. 87 (1991)
Defendant charged with rape and sex offense against his five year old daughter. While cross-examining a state's witness, defense counsel asked "how did you conclude that the defendant abused the victim since there in information in the DSS file that the child's mother abused one of her other children?" The witness said "I would have to expand my answer on that with the other information that I know about." Defense counsel asked no more questions. The trial court correctly allowed the State on redirect to ask the witness explain her answer, which explanation included that the witness had heard the defendant confess to sexually abusing another child. The Court cited numerous authorities for the proposition that "The law wisely permits evidence not otherwise admissible to be offered to explain or rebut evidence elicited by the defendant himself."

State v. Burge
100 N.C.App. 671 (1990)
During state's case, defense asked police officer if defendant had acted as an informant for the police in the past to show that defendant had credibility with the police department. No error in excluding this testimony, since the defendant had not yet testified and he cannot bolster his credibility in advance of testifying.