

**Hinnant & Hearsay:
Getting a Child's Out of Court
Statements into Evidence**

Jessica Smith
School of Government, UNC-Chapel Hill



- (1) Identify common hearsay issues that arise in cases involving child witnesses
- (2) Gather the evidence relevant to those issues
- (3) Effectively argue those issues



**Key Hearsay Issues
in Child Victim Cases**

- (1) Excited utterance exception
- (2) Purposes of medical diagnosis & treatment exception
- (3) Residual exceptions
- (4) Is it really hearsay?

Excited Utterances by Children –
803(2)



Excited Utterances by Children –
803(2)

A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition

Excited Utterances by Children –
803(2)

- Statement to Grandmother
- Statement to Pediatrician I
- Statement to Social Worker
- Statement to Pediatrician II
- Statement to Psychologist

Excited Utterances by Children –
803(2)

- More flexibility regarding length of time between event & statement than with adult cases
- Statements made 4-5 days after event held to be excited

7

Excited Utterances by Children –
803(2)

- Laying a foundation



8

Excited Utterances by Children –
803(2)

- Distinguished from:
Present Sense Impression [803(1)]:

9

Excited Utterances by Children – 803(2)

Present Sense Impression [803(1)]:

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter

10

Excited Utterances by Children – 803(2)

- Distinguished from:
Then Existing Mental, Emotional, or Physical Condition [803(3)]

11

Excited Utterances by Children – 803(2)

Then Existing Condition Exception:

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, & bodily health), but not including a statement of memory or belief to prove the fact remembered or believed . . .

12

For Purposes of Medical Diagnosis & Treatment – 803(4)

[s]tatements made for purposes of medical diagnosis or treatment & describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment

13

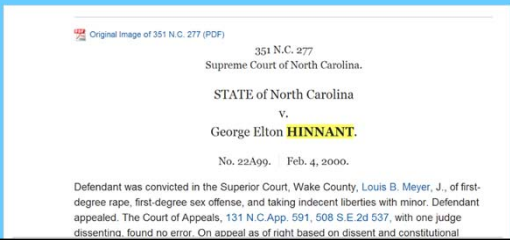
For Purposes of Medical Diagnosis & Treatment – 803(4)



14

For Purposes of Medical Diagnosis & Treatment – 803(4)

Hinnant test



15

Prong (1): Declarant intended to make the statement to get medical diagnosis & treatment.

16

Prong (1): Declarant intended to make statement to get medical diagnosis & treatment.

Factors:

17

Prong (1): Declarant intended to make statement to get medical diagnosis & treatment.

Factors:
(1) Whether adult explained need for treatment/importance of truthfulness

18

Prong (1): Declarant intended to make statement to get medical diagnosis & treatment.

Factors:
(1) Whether adult explained need for treatment/importance of truthfulness
(2) With whom/what circumstances made

19

Prong (1): Declarant intended to make statement to get medical diagnosis & treatment.

Factors:
(1) Whether adult explained need for treatment/importance of truthfulness
(2) With whom/what circumstances made
(3) Setting

20

Prong (1): Declarant intended to make statement to get medical diagnosis & treatment.

Factors:
(1) Whether adult explained need for treatment/importance of truthfulness
(2) With whom/what circumstances made
(3) Setting
(4) Nature of questions

21

<p>Prong (1): Declarant intended to make statement to get medical diagnosis & treatment.</p>	<p>Prong (2): Statement reasonably pertinent to medical diagnosis & treatment.</p>
<p>Factors: (1) Whether adult explained need for treatment/importance of truthfulness (2) With whom/what circumstances made (3) Setting (4) Nature of questions</p>	

<p>Prong (1): Declarant intended to make statement to get medical diagnosis & treatment.</p>	<p>Prong (2): Statement reasonably pertinent to medical diagnosis & treatment.</p>
<p>Factors: (1) Whether adult explained need for treatment/importance of truthfulness (2) With whom/what circumstances made (3) Setting (4) Nature of questions</p>	<p>Does a child victim's identification of the perpetrator satisfy this prong?</p> <p style="text-align: center;">Yes No</p>

<p>Prong (1): Declarant intended to make statement to get medical diagnosis & treatment.</p>	<p>Prong (2): Statement reasonably pertinent to medical diagnosis & treatment.</p>
<p>Factors: (1) Whether adult explained need for treatment/importance of truthfulness (2) With whom/what circumstances made (3) Setting (4) Nature of questions</p>	<p>Does a child victim's identification of the perpetrator satisfy this prong?</p> <p style="text-align: center;"> <input checked="" type="radio"/> Yes No </p>

Does Child's statement to Pediatrician I fall within this exception?

1. Yes
2. No
3. Need more information

25

Do Child's statements to Social Worker fall within this exception?

1. Yes
2. No
3. Not sure

26

Do Child's statements to Pediatrician II fall within this exception?

1. Yes
2. No
3. Not sure

27

Do Child's statements to Grandmother
fall within this exception?

1. Yes
2. No
3. Not sure

28

Residual Exceptions

29


Residual Exceptions

- 803(24)
- 804(b)(5) (declarant unavailable)

30

- (1) proper written notice given
 - (2) not covered by another exception
 - (3) circumstantial guarantees of trustworthiness
 - (4) evidence of a material fact
 - (5) more probative than other evidence
 - (6) serves general purposes of the rules & interests of justice
- 31

- (1) proper written notice given
 - (2) not covered by another exception
 - (3) circumstantial guarantees of trustworthiness
 - (4) evidence of a material fact
 - (5) more probative than other evidence
 - (6) serves general purposes of the rules & interests of justice
- 32

- (1) proper written notice given
 - (2) not covered by another exception
 - (3) circumstantial guarantees of trustworthiness 
 - (4) evidence of a material fact
 - (5) more probative than other evidence
 - (6) serves general purposes of the rules & interests of justice
- 33

- (1) declarant's personal knowledge
- (2) declarant's motivation to speak the truth
- (3) whether declarant recanted
- (4) practical availability of declarant at trial for cross examination

34

Child found to be incompetent because she cannot distinguish truth from fiction.



35

Child found to be incompetent because she is too frightened to testify.



36

- (1) proper written notice given
- (2) not covered by another exception
- (3) circumstantial guarantees of trustworthiness
- (4) evidence of a material fact
- (5) more probative than other evidence
- (6) serves general purposes of the rules & interests of justice

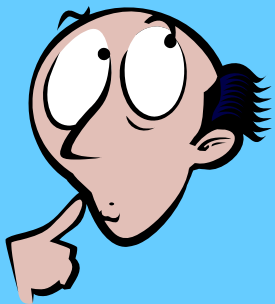
37

Child's Statements to Social Worker



38

Do I really have a hearsay problem?



39

Do I really have a hearsay problem?

If you don't need it as substantive evidence, look for a purpose other than for the truth of the matter asserted!

40
