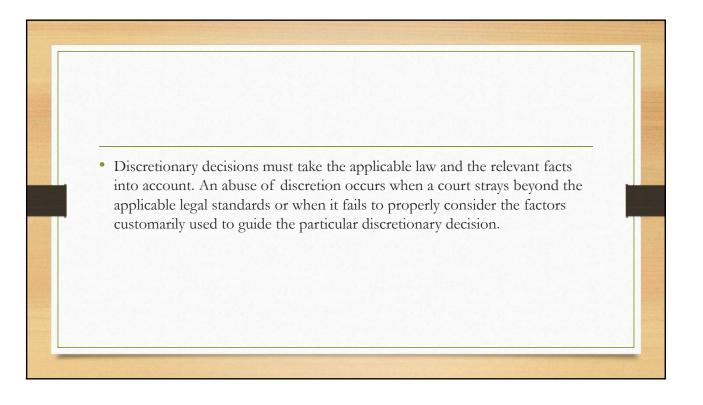
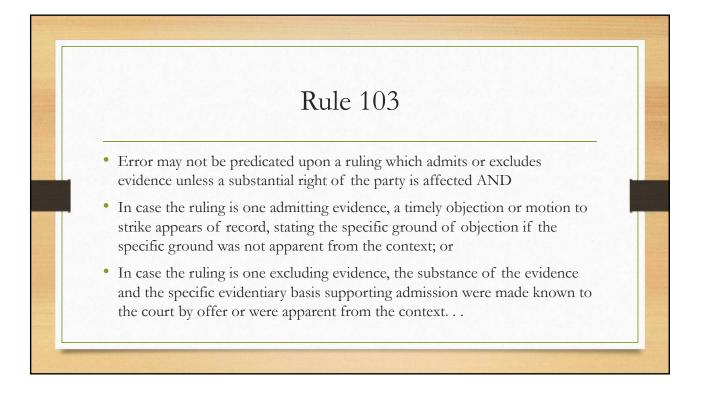


Lee Med., Inc. v. Beecher, 312 S.W.3d 515, 524 (Tenn. 2010)

• The abuse of discretion standard of review envisions a less rigorous review of the lower court's decision and a decreased likelihood that the decision will be reversed on appeal. It reflects an awareness that the decision being reviewed involved a choice among several acceptable alternatives. Thus, it does not permit reviewing courts to second-guess the [trial court] . . . or to substitute their discretion for the [trial] court's. The abuse of discretion standard of review does not, however, immunize a lower court's decision from any meaningful appellate scrutiny. dispositions.

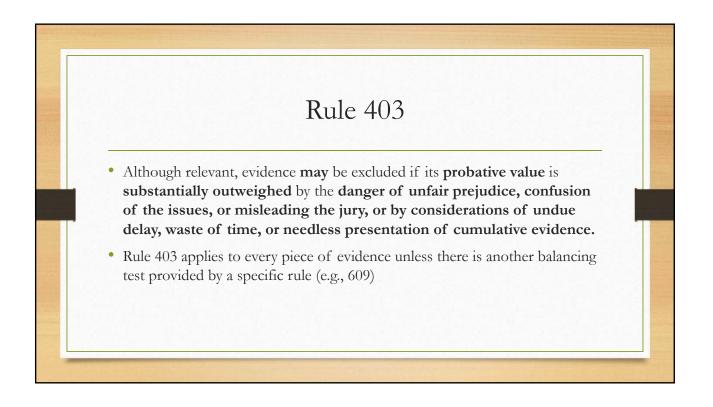


• A court abuses its discretion when it causes an injustice to the party challenging the decision by (1) applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence. To avoid result-oriented decisions or seemingly irreconcilable precedents, reviewing courts should review a [trial] court's discretionary decision to determine (1) whether the factual basis for the decision is properly supported by evidence in the record, (2) whether the [trial] court properly identified and applied the most appropriate legal principles applicable to the decision, and (3) whether the [trial] court's decision was within the range of acceptable alternative



Rule 104

- (a) Questions of admissibility generally.
- Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.
- (b) Relevancy conditioned on fact.
- When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.



STATE OF TENNESSEE V. QUINTIS MCCALEB, 582 S.W.3d 179 (Tenn. 2019)

• "In our view, the proper construction of Rule 403 permits the trial court to exclude evidence if its probative value "is substantially outweighed by the danger of unfair prejudice" that will arise or is likely to arise in conjunction with the admission of the evidence. No evidence is admitted in a vacuum, and the admission of all evidence is subject to the possibility of attack on cross-examination. A trial court's contemplation of "unfair prejudice," therefore, may extend beyond merely the impact of a prosecution witness' testimony on direct examination (or the impact of an exhibit admitted through that witness). Accordingly, as the trial court did in this case, the trial court may consider not only the impact of the evidence itself but the impact of the potential cross-examination resulting from the admission of the evidence."

Hearsay : 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"

Clearly hearsay

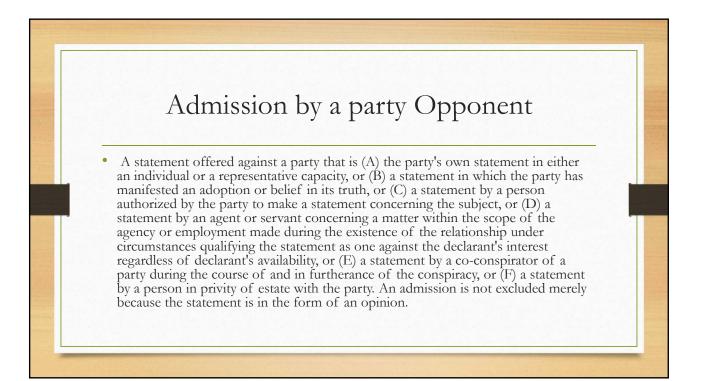
- Statement is explicitly introduced to prove the truth of the matter
- ABUSE OF DISCRETION TO FIND THIS TO BE NON-HEARSAY

Clearly Not Hearsay

- The truth of the matter is not at all related to the purpose for which the statement is introduced
- ABUSE OF DISCRETION TO FIND THIS TO BE HEARSAY

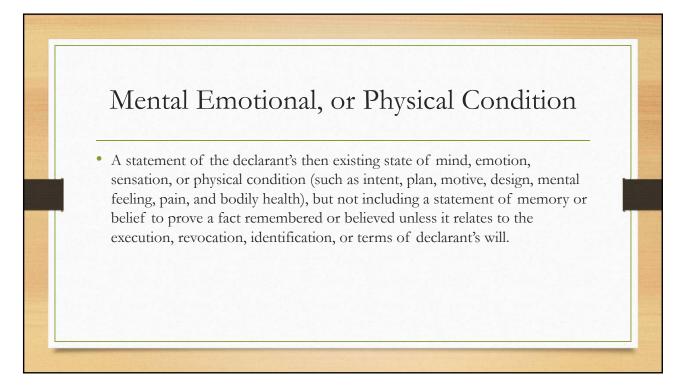
Admissible Hearsay

- Rule 803: exceptions to the hearsay rule that do not depend on the unavailability of the declarant (some require that the declarant be present and available for cross-examination.
- Rule 804: exceptions to the hearsay rule that only apply when the declarant is unavailable



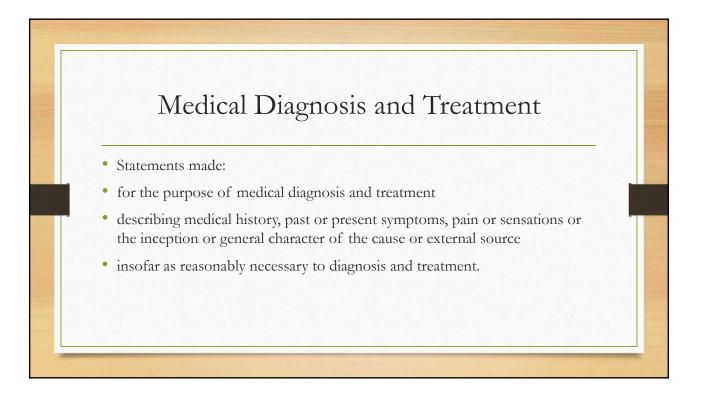
Excited Utterance

- Excited Utterance:
- Tennessee Rules do not include an exception for present sense impression (as do the Federal Rules)
- Declarant must still be under stress of the exciting event (no specific time limit)
 - More stressful the situation, the longer the stress may last



Mutual Life Insurance Co. of New York v. Hillmon, 145 U.S. 285 (1892)

- What was said: "I am going to leave Wichita with Hillmon."
- State of Mind exception allows statement of intention to be introduced to show intention, so statement is admissible to show Walters intended to leave Wichita with Hillmon.
- Admissibility of statement to show he actually went out of Wichita is question of relevance. Does his intention (to leave Wichita) have any tendency to make the existence of any fact of consequence to the lawsuit (whether he actually left Wichita) more or less probable.
- Unfortunately courts have collapsed the two analysis and consider this to be only a hearsay issue.
- Although Walters was going to leave Wichita with Hillmon, that fact was not necessary to be proven by Walters' words, as there was other proof that Hillmon was at Crooked Creek.



Past Recollection Recorded and Present Recollection Refreshed

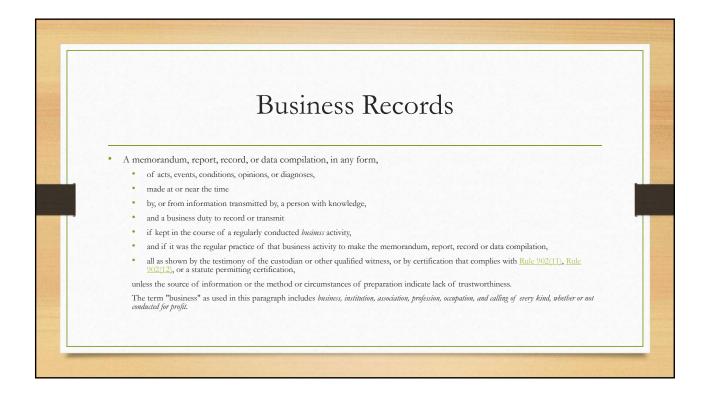
Present Recollection Refreshed - is

not hearsay

- Witness must be on the witness stand
- Actual testimony is that given by the witness once the witness's recollection has been refreshed
- Hearsay is not involved since the testimony comes from the witness on the stand
- Adverse party has right to inspect the document, and to cross examine the witness about the document
- Document or thing which refreshed recollection is not admitted into evidence unless done so by adverse party

Past Recollection Recorded – is hearsay

- Witness [declarant] must be on the witness stand
- Actual testimony is the past recollection recorded
- Past recollection recorded is admitted as an exception to the hearsay rule
- Adverse party has opportunity to cross-examine the witness about the past recollection recorded
- Recorded testimony is admitted into evidence, but is not given to the jury unless requested by the adverse party



Government Records

- Records, reports, statements, or data compilations,
 - in any form,
 - of public offices or agencies, setting forth
 - (A) the activities of the office or agency, or
 - (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, matters observed by police officers and other law enforcement personnel, or
 - (C) in civil actions and proceedings and against the Government 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.

In re Joseph G., 2013 Tenn. App. LEXIS 500 (July 31, 2013)

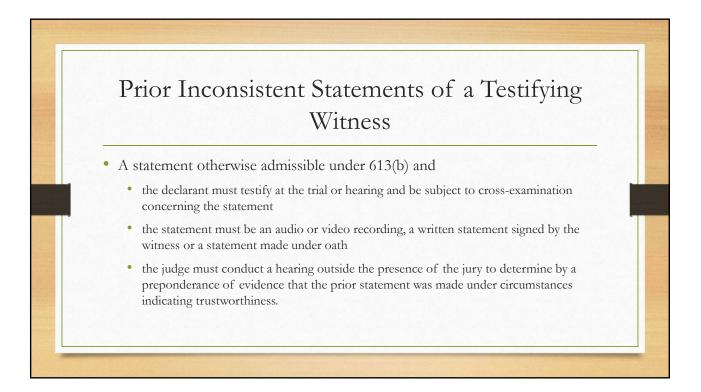
• email contained in DCS file was hearsay and did not satisfy business records exception; email identified neither the sender nor her position and could not be considered a "record;" email was sender's interpretation of information she gained from other unidentified people.

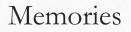
Children's Statements

- Statements about abuse or neglect
- offered in a civil action . .
- made by a child alleged to be the victim of physical, sexual or psychological abuse or neglect

Provided that the circumstances indicate trustworthiness.

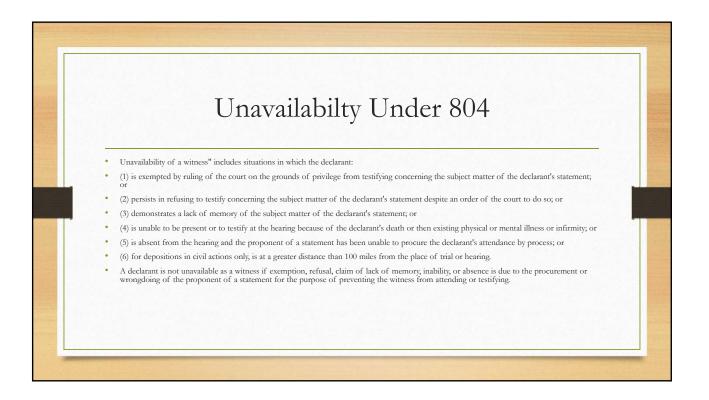
Declarants of age thirteen or older at the time of the hearing must testify unless unavailable . . . otherwise this exception is inapplicable to their extrajudicial statements.





· Standard for having sufficient memory

- · Crawford: must be subject to cross examination
- 801(d)(1) [prior statement by a witness]: must be subject to cross examination concerning the statement
- *803(5)[recorded recollection]:* once had knowledge about a matter but now has insufficient recollection to testify fully and accurately; but generally must now be able to say that the statement was accurate when made
- 804(a)[unavailability for purposes of introduction of 804 hearsay]: testifies to a lack of memory of the subject matter of the statement



Former Testimony

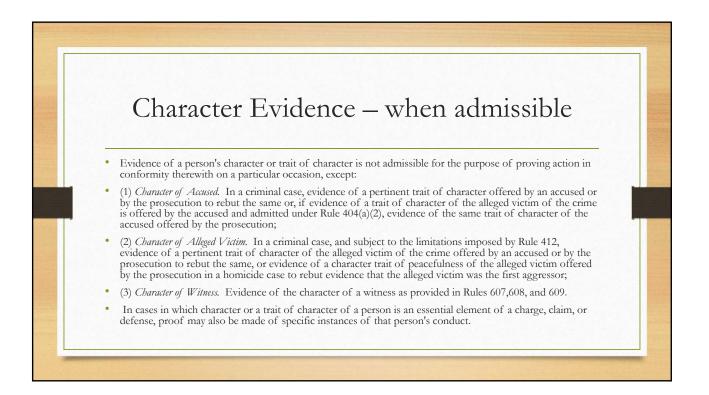
• Testimony given as a witness at another hearing of the same or a different proceeding or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered had both an opportunity and a similar motive to develop the testimony by direct, cross, or redirect examination.

Statement Against Interest

• A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true.

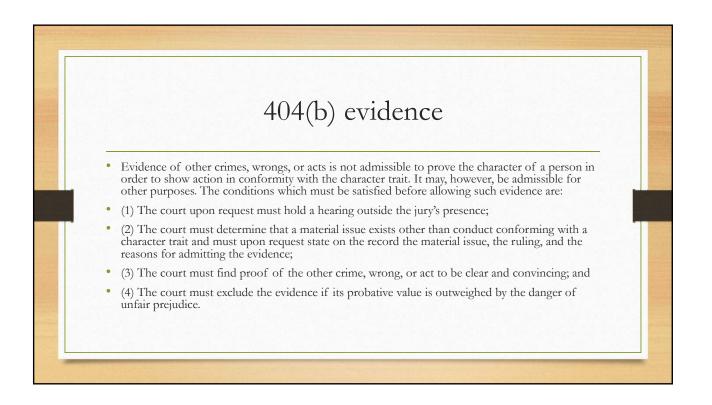
Forfeiture by Wrongdoing

• A statement offered against a party that has engaged in wrongdoing that was intended to and did procure the unavailability of the declarant as a witness.



How Admitted?

- 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. After application to the court, inquiry on cross-examination is allowable into relevant specific instances of conduct. The conditions which must be satisfied before allowing inquiry on cross-examination about specific instances of conduct are:
- (1) The court upon request must hold a hearing outside the jury's presence,
- (2) The court must determine that a reasonable factual basis exists for the inquiry, and
- (3) The court must determine that the probative value of a specific instance of conduct on the character witness's credibility outweighs its prejudicial effect on substantive issues.



Expert Testimony

• If scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.

Bases of Expert Testimony

• The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect. The court shall disallow testimony in the form of an opinion or inference if the underlying facts or data indicate lack of trustworthiness.

