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Child Hearsay Under the North Carolina Code of Evidence

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Three recent decisions of the North Carolina Supreme Court and the State Court of Appeals interpret hearsay exceptions under North Carolina's Code of Evidence in ways that have special significance for child abuse cases. The decisions are *State v. Smith*, 315 N.C. 76, 337 S.E.2d 833 (1985); *State v. Fearing*, 315 N.C. 167, 337 S.E.2d 551 (1985); and *State v. Gregory*, ____ N.C. App. ____, 338 S.E.2d 110 (1985). This memorandum will summarize these three cases, including the procedural steps they require for the admission of hearsay testimony in particular circumstances. The pertinent rules of evidence appear as an appendix at the end of the memorandum.

Smith v. State

The defendant in *Smith* was charged with rape, sexual offense, and indecent liberties for allegedly engaging in sexual relations with a four-year-old girl and a five-year-old girl during a single incident. Both girls testified about the incident at trial. In addition, the prosecution introduced testimony by the girls' grandmother that two or three days after the assault, one of the girls described the incident to her and identified the defendant as the assailant. The grandmother then contacted the girls' mothers, which led to medical examination of the children. The prosecution also introduced hearsay testimony by two rape task force volunteers (one of them a registered nurse) concerning the girls' statements to them about the incident.

The Supreme Court upheld the admissibility of the grandmother's hearsay testimony but not the hearsay testimony of the rape task force volunteers. The grandmother's testimony was admissible under two hearsay exceptions: the exception for statements made for the purpose of medical diagnosis or treatment [Rule 803(4) of the N.C. Code of Evidence] and the exception for excited utterances [Rule 803(2)]. The Court ruled that the grandmother's testimony qualified under Rule 803(4), even though she was not a medical worker, because the child's statement to her (including descriptions of bleeding and pain) led to medical diagnosis and treatment for the girls. Furthermore, the Court ruled that testimony admitted under Rule 803(4) could include the declarant's identification of an assailant where, as in this case, the motivation for the identification was to obtain medical help rather than to accuse the assailant of wrongdoing.

With respect to the applicability of Rule 803(2), the Court focused on the following factors as the two key criteria for determining the admissibility of a statement as an excited utterance: whether the experience that prompted the statement was startling in nature and whether the declarant made the statement spontaneously. Although the Court acknowledged that the timeliness of the statement also is relevant, it stressed that this factor is not so important as the other two. In this case, the sexual assaults plainly were startling and the report by one of the victims was spontaneous. Consequently, the Court ruled that the grandmother's hearsay testimony about the child's report to her was admissible because it concerned an excited utterance,

despite the delay of two to three days between the incident and the child's report.

The Court held that the testimony of the rape task force volunteers was not admissible under either of the exceptions at issue: Rule 803(4) and the residual exception of Rule 803(24). Regarding Rule 803(4), the Court explained that the girls first spoke to the volunteers *after* they received medical treatment. Furthermore, the Court stated, the girls made the statements to the volunteers in order to obtain help in dealing with the emotional effects of the assaults rather than to obtain medical treatment (even though one of the volunteers was a registered nurse, she worked with one of the children in her capacity as a rape task force volunteer, not as a nurse).

The Court's rationale for ruling that Rule 803(4) did not apply to the volunteers' testimony leaves unclear the scope of admissibility under Rule 803(4) of statements made for psychological diagnosis and treatment. The official commentary to Rule 803(4) notes that previous North Carolina law made statements about a declarant's past condition to a psychiatrist admissible to show the basis of the psychiatrist's expert opinion. As Brandis points out, Rule 803(4) makes such statements admissible as substantive evidence. *See* H. BRANDIS, NORTH CAROLINA EVIDENCE 175 (1983 Supp.). However, the Court did not set forth criteria for determining when a statement made for the purpose of obtaining psychological diagnosis and treatment qualifies under Rule 803(4).

In holding that the volunteers' testimony also did not qualify for the residual hearsay exception of Rule 803(24), the Court set forth the following six-part test for determining the admissibility of hearsay under Rule 803(24) and its companion exception of Rule 804(5):

(1) The proponent of the testimony must give the adverse party adequate advance written notice of the contents of the testimony and of the declarant's name and address. The trial judge must state his conclusion on the record about whether this part of the test has been satisfied, though he need not make detailed findings of fact about this issue.

(2) The testimony cannot qualify for another, specific hearsay exception (since then the residual exception is unnecessary). Again, the trial judge must state his conclusion about this question on the record, but he need not make detailed findings of fact.

(3) The trial judge must state findings of fact and conclusions of law on the record to show that the proffered testimony has " 'circumstantial guarantees of trustworthiness' equivalent to those required for admission under the enumerated exceptions." The Court listed four factors as examples of factors judges should use to evaluate trustworthiness: the quality of the declarant's personal knowledge of the underlying event, the declarant's motivation to speak the truth, whether the declarant ever recanted the testimony, and the availability of the declarant for meaningful cross-examination at trial.

(4) The statement must be evidence of a material fact. The trial judge must enter his conclusion about this criterion on the record, but he need not make detailed findings of fact.

(5) The trial judge must make findings of fact and conclusions of law on the record to show that the testimony is "necessary." By "necessary," the Court meant that the testimony must be more probative on the issue than any other evidence that the proponent can procure through reasonable efforts. The Court made it clear that hearsay testimony will not ordinarily be considered necessary if the declarant's live testimony is available at trial.

(6) The judge must conclude that the interests of justice will best be served by admitting the testimony. On this issue, the trial judge must state his analysis and conclusion on the record, though he need not make detailed findings of fact.

Since the record in *Smith* did not contain the requisite findings, conclusions, analysis, and statements to satisfy this six-part test, the Court ruled that the volunteers' testimony was not admissible under Rule 803(24).

State v. Fearing

The defendant in this case was charged with first-degree rape, incest, and the taking of indecent liberties in connection with alleged sexual relations with his three-year-old daughter. The child recounted the incident to a physician, a practical nurse, a social worker, and two detectives. In those accounts she described the cause of her injuries and identified the defendant as her assailant. Before trial the parties stipulated that the child was not competent to testify under Rules 601(b)(2) and 603 because she could not understand the obligation to testify under oath. The trial judge adopted the stipulation and then ruled that the five hearsay witnesses could testify about the girl's reports of the incidents. He declared that the testimony of the physician and nurse was admissible under Rule 803(4) and that the testimony of the social worker and detectives was admissible under the residual exceptions of Rules 803(24) and 804(5).

On appeal, the Supreme Court did not address the admissibility of the hearsay testimony by the physician or nurse. Instead, the Court addressed only the hearsay testimony of the social worker and the detectives and held that the trial judge erred by admitting their testimony. The key issue for the court was the availability of the child's testimony. Of the two residual exceptions, only Rule 804(5) expressly makes unavailability a condition of admissibility. However, developing a point it discussed in *Smith*, the Court explained that under Rule 803(24) (which requires that a proffered hearsay statement be more probative on the factual issue in question than other evidence the proponent reasonably can obtain), necessity is a condition of admissibility of hearsay evidence. Furthermore, as the Court also stated in *Smith*, necessity ordinarily will require that the declarant's live testimony be unavailable at trial. Consequently, the court interpreted Rule 803(24) implicitly to make unavailability

a vital factor in assessing the admissibility of testimony under Rule 803(24). As the Court stated, "the availability of a witness to testify at trial is a crucial consideration" under both Rule 803(24) and Rule 804(5).

In this case, the question of whether the child's live testimony was unavailable hinged on the question of whether she was competent to testify: if she was incompetent, then she was unavailable. The trial judge accepted the parties' stipulation that the child was incompetent, and he therefore ruled that her live testimony at trial was unavailable. Then, in light of his finding of unavailability, he admitted the testimony of the social worker and the detectives under Rules 803(24) and 804(5). The Supreme Court ruled that the trial judge erred by resting his finding of incompetence solely on the parties' stipulation. It ruled that a witness's competence may not be determined by a stipulation of the parties. Rather, the trial judge must make his own determination of competence on the basis of his personal observation of the witness during a voir dire hearing on that issue.

State v. Gregory

In the final case of our trilogy, the defendant was charged with first-degree rape, first-degree sexual offense, incest, the taking of indecent liberties, and commission of a lewd and lascivious act in regard to his daughter, aged 3½. The child described the incident to her grandmother, leading to a medical examination during which the child also described the incident to a physician. Both times the girl identified her father as the assailant.

After a competency hearing, the trial judge found that the girl was not competent to testify. At trial, the prosecution introduced the hearsay testimony of the grandmother and the physician. On appeal, the Court of Appeals, relying on the Supreme Court's decision in *Smith*, held that the hearsay evidence properly was admitted under Rule 803(4). The court explained that the girl's statement to her grandmother qualified under Rule 803(4) because it led to medical treatment. The child's identification of her father as the assailant was admissible because it enabled the doctor to plan for psychological treatment and to comply with state statutes governing child abuse reporting and treatment (G.S. 7A-543 and -549).

The Court of Appeals also considered an important issue not squarely addressed by the Supreme Court in either *Smith* or *Fearing:* the constitutionality of admitting the testimony under the confrontation clauses of the Sixth Amendment of the U.S. Constitution and Article I, Section 23 of the North Carolina Constitution. In *Smith* and *Fearing* the Supreme Court discussed necessity solely as a statutory criterion of admissibility under Rules 803(24) and 804(5), without reaching the question of necessity as a constitutional criterion for admitting any hearsay testimony as substantive evidence in any criminal case when the declarant does not testify. The Court of Appeals followed the two-step inquiry into trustworthiness and necessity set forth by the U.S. Supreme Court in *Ohio v. Roberts*, 448 U.S. 56 (1980). Since the trial judge found that the child was incompetent to testify, her testimony was unavailable, and the hearsay testimony by her grandmother and the physician therefore was necessary. The Court of Appeals further found that three factors supported the trustworthiness of the evidence: the strong natural motivation of most people to make truthful statements for the purpose of medical diagnosis and treatment, the corroborating physiological evidence found by the doctor in this case, and the girl's ability (demonstrated during the competency voir dire hearing) to identify her father. In specific regard to the trustworthiness of child hearsay statements, attorneys and judges also should consider a factor not mentioned by the court: the child's capacity to relate facts accurately at the time he or she made the statement in question.

Discussion

Smith, Fearing, and *Gregory* together carve out broad exceptions for child hearsay evidence, exceptions that will make a significant impact on child abuse cases. The courts in these cases upheld the admission of child hearsay testimony as substantive evidence under the specific exceptions of Rules 803(2) and 803(4) and spelled out procedural requirements for the admission of such testimony as substantive evidence under the twin residual exceptions of Rules 803(24) and 804(5). Although the courts did not expressly rule that child hearsay could be admissible under the residual exceptions even if the procedural requirements were satisfied, the Supreme Court's analysis of the residual exceptions in *Smith* and *Fearing* should, at a minimum, be interpreted as permitting the admission of such evidence under the residual exceptions if those requirements are satisfied. As a matter of prudent practice, if there is a question whether particular evidence qualifies for a specific hearsay exception, a trial judge should rule on admissibility of the evidence under both the specific exception in question and the residual exceptions.

Necessity is an important issue in all three opinions. It is important to understand, though, that the issue of necessity can arise in two different contexts: as a *statutory* condition of admissibility under the residual exceptions of Rules 803(24) and 804(5) and as a *constitutional* condition under the confrontation clauses of the state and federal constitutions. Read together, the three cases provide that necessity is a condition for the admissibility of child hearsay in the following circumstances: (1) as a statutory condition of admissibility of any hearsay evidence in either a civil or criminal case under the residual exceptions of Rules 803(24) and 804(5); and (2) as a constitutional condition of admissibility of any child hearsay in a criminal case in which the child declarant does not testify (if the child does testify, no constitutional issue of confrontation arises).

As explained above, necessity ordinarily will require that the declarant's live testimony be unavailable at trial. A child's testimony might be unavailable for several reasons.

As *Fearing* and *Gregory* indicate, the child's live testimony might be unavailable because a voir dire examination demonstrates that the child is incompetent under Rule 601. *See also Haggins v. Fort Pillow State Farm,* 715 F.2d 1050, 1055 (6th Cir. 1983), *cert. denied,* ____ U.S. ____, 79 L.Ed.2d 217 (1984) (incompetent child's testimony is unavailable for purposes of confrontation clause analysis). Even if a trial judge declares after a voir dire hearing that the child is competent, the child's testimony about a particular issue might later become unavailable if he or she encounters problems in testifying, such as nervousness, loss of memory, or poor narrative ability. *See United States v. Iron Shell,* 633 F.2d 77, 87 (8th Cir. 1980), *cert. denied,* 450 U.S. 1001 (1981) (child's testimony may become unavailable when child has difficulty testifying). Rule 804(a)(2)-(4) set forth other possible grounds for unavailability of a child's testimony.

On the basis of these three decisions, child hearsay evidence about a particular factual issue is likely to be admissible under the following conditions when the child does not testify about the incident at trial:

(1) The child's testimony about the issue is unavailable because the judge determines (after the required voir dire examination) that the child is incompetent or for other reasons;

(2) The trial judge determines that the evidence is trustworthy; and

(3) (a) The evidence satisfies the criteria for a specific exception, such as the exceptions of Rules 803(2) or 803(4);[1] or

(b) The trial judge finds that the evidence satisfies the six-part test for admission of hearsay under the residual exceptions of Rules 803(24) or 804(5).

If, on the other hand, the child does testify about the issue at trial (and is, therefore, subject to cross-examination about both the issue and his out-of-court statement about the issue), then no confrontation clause problem arises. *California v. Green,* 399 U.S. 149 (1970). Accordingly, hearsay testimony about the issue under specific Rule 803 exceptions, such as the exceptions under Rule 803(2) or 803(4), should be admissible as substantive evidence without any showing of necessity, as in *Smith.* However, since necessity is a statutory condition of admissibility under Rules 803(24) and 804(5), the proponent of the hearsay evidence under these residual exceptions would have to establish the need to introduce such evidence. Consider, though, that since the child's testimony about the issue is available in these circumstances, it is difficult to imagine how the proponent of the hearsay evidence could demonstrate that it is necessary to introduce the hearsay in addition to the child's live testimony. Thus, as a practical matter, if the child testifies about an issue at trial, the residual exceptions probably cannot be used to introduce the child's hearsay statement about it as substantive evidence, though the statement might be admissible to corroborate the child's testimony

1. The only specific exceptions at issue in *Smith* and *Gregory* were those under Rules 803(2) and (4). It is likely, though, that the courts would admit child hearsay under other specific exceptions as well, such as Rules 803(1) (present sense impression) and 803(3) (then existing mental, emotional, or physical condition.)

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APPENDIX

Rule 601. General rule of competency; disqualification of witness.

(a) *General rule.* — Every person is competent to be a witness except as otherwise provided in these rules.

(b) *Disqualification of witness in general.* — A person is disqualified to testify as a witness when the court determines that he is (1) incapable of expressing himself concerning the matter as to be understood, either directly or through interpretation by one who can understand him, or (2) incapable of understanding the duty of a witness to tell the truth.

(c) *Disqualification of interested persons.* — Upon the trial of an action, or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be examined as a witness in his own behalf or interest, or in behalf of the party succeeding to his title or interest, against the executor, administrator or survivor of a deceased person, or the committee of a lunatic, or a person deriving his title or interest from, through or under a deceased person or lunatic, by assignment or otherwise, concerning any oral communication between the witness and the deceased person or lunatic. However, this subdivision shall not apply when:

(1) The executor, administrator, survivor, committee or person so deriving title or interest is examined in his own behalf regarding the subject matter of the oral communication.

(2) The testimony of the lunatic or deceased person is given in evidence concerning the same transaction or communication.

(3) Evidence of the subject matter of the oral communication is offered by the executor, administrator, survivor, committee or person so deriving title or interest.

Nothing in this subdivision shall preclude testimony as to the identity of the operator of a motor vehicle in any case. (1983, c. 701, s. 1.)

Rule 803. Hearsay exceptions; availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present Sense Impression. — A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance. — 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.

(3) Then Existing Mental, Emotional, or Physical Condition. — 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, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis or Treatment. — Statements made for purposes of medical diagnosis or treatment and 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.

(5) Recorded Recollection. — A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of Regularly Conducted Activity. — 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 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.

(7) Absence of Entry in Records Kept in Accordance with the Provisions of Paragraph (6). — Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public Records and Reports. — 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, in criminal cases matters observed by police officers and other law-enforcement personnel, or (C) 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.

(9) Records of Vital Statistics. — Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of Public Record or Entry. — To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of Religious Organizations. — Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, Baptismal, and Similar Certificates. — Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family Records. — Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on

rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of Documents Affecting an Interest in Property. — The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in Documents Affecting an Interest in Property. — A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in Ancient Documents. — Statements in a document in existence 20 years or more the authenticity of which is established.

(17) Market Reports, Commercial Publications. — Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned Treatises. — To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation Concerning Personal or Family History. — Reputation among members of his family by blood, adoption, or marriage, or among his associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his personal or family history.

(20) Reputation Concerning Boundaries or General History. — Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located.

(21) Reputation as to Character. — Reputation of a person's character among his associates or in the community.

(22) (Reserved).

(23) Judgment as to Personal, Family or General History, or Boundaries. — Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(24) Other Exceptions. — A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it gives written notice stating his intention to offer the statement and the particulars of it, including the name and address of the declarant, to the adverse party sufficiently in advance of offering the statement to provide the adverse party with a fair opportunity to prepare to meet the statement. (1983, c. 701, s. 1.)

Rule 804. Hearsay exceptions; declarant unavailable.

(a) *Definition of unavailability.* — "Unavailability as a witness" includes situations in which the declarant:

(1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

(2) Persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) Testifies to a lack of memory of the subject matter of his statement; or

(4) Is unable to be present or to testify at the hearing because of death of then existing physical or mental illness or infirmity; or

(5) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), his attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(b) *Hearsay exceptions.* — The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) 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, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. — A statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death.

(3) 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 him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability is not admissible in a criminal case unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Personal or Family History. — (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other Exceptions. — A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it gives written notice stating his intention to offer the statement and the particulars of it, including the name and address of the declarant, to the adverse party sufficiently in advance of offering the statement to provide the adverse party with a fair opportunity to prepare to meet the statement. (1983, c. 701, s. 1.)