West's **Tennessee** Code Annotated
State and Local Rules Selected from West's **Tennessee** Rules of Court
Tennessee Rules of Evidence
Article VIII. Hearsay

Rules of Evid., Rule **803**

Rule **803**. Hearsay Exceptions

Currentness

The following are not excluded by the hearsay rule:

(1) [Reserved.]

ADVISORY COMMISSION COMMENT
The proposed rules contain no present sense impression exception.

(1.1) Prior Statement of Identification by Witness. A statement of identification of a person made after perceiving the person if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement.

ADVISORY COMMISSION COMMENT
Tennessee recognizes declarations of eye-witness identification as an exception to hearsay exclusion, and the rule generally follows **Tennessee** precedent. Note that the declarant must also be a witness, affording at least delayed cross-examination as to the extrajudicial statement. Note also, however, that witnesses other than the declarant may testify about the identifying declaration. Perhaps the rule changes **Tennessee** law in this respect. See *Blankenship v. State*, 432 S.W.2d 679, 684 (Tenn.Crim.App.1967).

(1.2) Admission by Party-Opponent. A statement offered against a party that is (A) the party's own statement in either an individual or a representative capacity, or (B) a statement in which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by an agent or servant concerning a matter within the scope of the agency or employment made during the existence of the relationship under circumstances qualifying the statement as one against the declarant's interest regardless of declarant's availability, or (E) a statement by a co-conspirator of a party during the course of and in furtherance of the conspiracy, or (F) a statement by a person in privity of estate with the party. An admission is not excluded merely because the statement is in the form of an opinion. Statements admissible under this exception are not conclusive.

ADVISORY COMMISSION COMMENT
Most of the rule embodies **Tennessee** common law. In part (D), though, present law is extended to clearly allow an agent's post-accident declarations to come in against the principal if the subject matter of the declarations is “within the scope of the agency.” A driver who tells bystanders about driving mistakes may face those declarations in court, and likewise the driver's employer may have to deal with these vicarious admissions at trial. In the absence of a rule such as that proposed, **Tennessee** has excluded such declarations. *Citizens' Street R.R. Co. v. Howard*, 102 **Tenn**. 474, 52 S.W. 864 (1899).

Other requirements for vicarious admissions are (1) that the agency relationship exist at the time of a declaration and (2) that the declarant's statement be against his or her own interest. The latter proviso is to prevent agents and employees from gratuitously harming superiors for their own benefit.

The rule at part (F) retains common law admissibility of declarations by predecessors in title.

The final sentence is intended to abolish the distinction between evidentiary (unsworn) and judicial (sworn) admissions. Unless made conclusive by statute or another court rule, such as **Tenn**. R. Civ. P. 36.02 on requests for admission, party admissions are subject to being explained away by contradictory proof. But the final sentence is not intended to affect the doctrine of judicial estoppel. That doctrine involves two separate lawsuits and bars contradiction by a party in the second suit of that party's sworn statement in the first suit. See *Marcus v. Marcus*, 993 S.W.2d 596 (**Tenn**. 1999). In contrast the last sentence of this evidence rule contemplates a single lawsuit in which a party's admissions, sworn or not, can be contradicted.

This rule changes the law as stated in **Tennessee** decisions excluding party admissions phrased in terms of fault. See, e.g., *King v. Leeman*, 30 Tenn.App. 206, 204 S.W.2d 384 (1946), excluding the plaintiff's admission that a driver other than the defendant was "to blame." Such an admission, even though in opinion form, is competent evidence under Rule **803**(1.2).

[Comment amended effective July 1, 2004.]

(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.

ADVISORY COMMISSION COMMENT
The rule restates **Tennessee** law.

(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.

ADVISORY COMMISSION COMMENT
This is the state of mind hearsay exception, long recognized by **Tennessee** courts. Combining the hearsay exception with relevancy principles, declarations of mental state will be admissible to prove mental state at issue or subsequent conduct consistent with that mental state.

Normally such declarations are inadmissible to prove past conduct. Most jurisdictions, however, admit express mental state to prove the prior making or revocation of a will. **Tennessee** is in the minority by excluding the evidence in wills cases. *Hickey v. Beeler*, 180 **Tenn**. 31, 171 S.W.2d 277 (1943). The proposal would change the *Hickey* result and make declarations of mental state competent to prove past conduct in lawsuits concerning wills.

The Commission contemplates that only the declarant's conduct, not some third party's conduct, is provable by this hearsay exception. It views decisions such as *Ford v. State*, 184 **Tenn**. 443, 201 S.W.2d 539 (1945), as based on faulty analysis.

In addition to declarations of mental state, this proposal also governs declarations of present ("then existing") physical condition. The declaration need not be made to a doctor; any witness who overheard the hearsay statement could repeat it in court under this exception.

(4) Statements for Purposes of Medical Diagnosis and Treatment. Statements made for purposes of medical diagnosis and treatment describing medical history; 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 and treatment.

ADVISORY COMMISSION COMMENT

The proposal continues the **Tennessee** position of limiting declarations of past physical condition to those made to treating doctors. See *Gulf Refining Co. v. Frazier*, 15 Tenn.App. 662, 688-95 (1932). The declaration must be for both diagnosis and treatment. Declarations of present bodily condition fall within Rule **803**(3).

It is important to distinguish declarations of bodily condition, admissible as substantive evidence, from similar declarations used by a physician to support an expert opinion. The latter are not evidence, but rather give weight to the opinion--which is the evidence. T.C.A. § 24-7-114; *State v. Holt*, 222 **Tenn**. 721, 440 S.W.2d 591 (1969); see Rule 703.

(5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's 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.

ADVISORY COMMISSION COMMENT

The proposed rule recognizes the traditional **Tennessee** hearsay exception for past recollection recorded, but it expands common law in two respects. It allows the admissibility of the contents of a document reflecting past recollection recorded even though the witness has some recollection of the recorded facts but not enough to testify "fully and accurately." Second, it permits the witness to adopt a record made by another not acting under the witness's supervision. The safeguard is the requirement of adoption at the time when the witness could vouch for the document's correctness.

The proposal restricts the common law by confining presentation of the document to reading the contents rather than exhibiting the paper to the jury. **Tennessee** law presently permits the writing to be handed to the jurors and, in civil cases, to be taken to the jury room. T.C.A. § 20-9-510. This change is designed to prevent the jury from giving more weight to this hearsay evidence than would have been given to the declarant's live testimony had the declarant been able to testify from present memory.

But note T.C.A. § 55-10-114(b) and *McBee v. Williams*, 56 Tenn.App. 232, 405 S.W.2d 668 (1966), concerning accident reports. See the Comment to Rule **803**(8).

(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 and a business duty to record or transmit 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 or by certification that complies with Rule 902(11) or a statute permitting certification, 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, profession, occupation, and calling of every kind, whether or not conducted for profit.

ADVISORY COMMISSION COMMENT

This rule essentially is the same as the Uniform Business Records as Evidence Act, T.C.A. § 24-7-111. To avoid interpretive mistakes such as that in *Wheeler v. Cain*, 62 Tenn.App. 126, 459 S.W.2d 618 (1970), the proposal specifically requires that the declarant have "a business duty to record or transmit" information. Without that duty, a business record would lack the trustworthiness necessary to carve out a hearsay exception.

1994 ADVISORY COMMISSION COMMENT

Police reports of traffic accidents are inadmissible under T.C.A. § 55-10-114(b) and T.R.Evid. **803**(8).

ADVISORY COMMISSION COMMENT TO 2001 AMENDMENT

Amended Rule **803**(6) in conjunction with new Rule 902(11) eliminates the need to call the custodian of records as a trial witness. Such a procedure has been in effect by statute for medical business records. See T.C.A. §§ 24-9-101(8) & 68-11-401 et seq.

(7) [Reserved.]

ADVISORY COMMISSION COMMENT

It is doubtful that the absence of a business entry poses a hearsay problem. Consequently, although F.R.Evid. **803**(7) contains a purported exception, the Commission found no need for an exception.

(8) Public Records and Reports. Unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness, records, reports, statements, or data compilations in any form of public offices or agencies setting forth the activities of the office or agency or matters observed pursuant to a 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.

ADVISORY COMMISSION COMMENT

The rule admits records of public officials acting under an official duty to report accurately. This is the traditional official records hearsay exception. T.R.C.P. 44; T.C.A. §§ 24-6-105--107.

Police reports are expressly excluded, just as they are under current law in some instances. See *McBee v. Williams*, 56 Tenn.App. 232, 405 S.W.2d 668 (1966), construing T.C.A. § 55-10-114(b) to exclude accident reports. See also T.C.A. § 55-12-108(b), excluding Department of Safety determinations of fault in automobile accidents.

The Commission borrowed language from subsections (A) and (B) of F.R.Evid. **803**(8), but it expressly rejected federal subsection (C) on factual findings from investigations. The term "activities" in proposed subsection (A) is limited to the internal operations of a public office, making this category of official records much like business records of a private organization. The introductory language cautions that sources of information must be trustworthy.

[Comment amended effective July 1, 1993.]

ADVISORY COMMISSION COMMENT TO 1991 AMENDMENT

This is a technical correction.

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

ADVISORY COMMISSION COMMENT

Vital statistics, a particular variety of official records, come in under this exception. **Tennessee** law is unchanged. T.C.A. §§ 68-3-101 et seq.

ADVISORY COMMISSION COMMENT TO 1991 AMENDMENT

The amendment adds divorce records to the list of vital statistics.

(10) [Reserved.]

ADVISORY COMMISSION COMMENT

Although T.C.A. § 24-6-107 permits a filing officer to certify complete absence of an alleged record in the files, there is no **Tennessee** authority for making this absence a hearsay exception. Moreover, since the Commission believes that the absence of an entry in a public record is not a hearsay statement, no hearsay exception is needed. F.R.Evid. **803**(10) purports to state a hearsay exception.

(11) [Reserved.]

ADVISORY COMMISSION COMMENT

The Commission did not believe records of religious organizations were uniformly reliable enough to satisfy hearsay exception requirements.

(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 member of the clergy, a public official, or another 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.

ADVISORY COMMISSION COMMENT

This exception is similar to those in Rules **803**(8) and (9). Marriage and baptism necessarily involve religious or official participation, and the religious or public record is evidence of the fact of baptism or marriage.

(13) Family Records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, engravings on rings, inscriptions on family portraits, engravings on burial urns, crypts, tombstones, or the like.

ADVISORY COMMISSION COMMENT

While not always trustworthy, family records of the kinds described here may be the only evidence available. In any event, once admitted through this hearsay exception, the facts can be rebutted.

ADVISORY COMMISSION COMMENT TO 1991 AMENDMENT

This is a technical amendment.

(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 contents 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.

ADVISORY COMMISSION COMMENT

This exception is a narrow one. It admits only three facts about a recorded deed, financing statement, or other property instrument: (1) the contents of a certified copy are identical to the filed original, (2) the original was executed, and (3) the original was delivered (if that step is necessary).

(15) [Reserved.]

ADVISORY COMMISSION COMMENT

Statements of "fact" in a warranty deed, trust deed, or security agreement are not trustworthy enough to justify admissibility as truth. Consequently, the Commission rejected the contrary view in F.R.Evid. **803**(15).

(16) Statements in Ancient Documents Affecting an Interest in Property. Statements in a document in existence thirty years or more purporting to establish or affect an interest in property, the authenticity of which is established.

ADVISORY COMMISSION COMMENT

If a document--be it a deed, security agreement, or other instrument--affects a property interest, and if it is thirty years old and authentic, the trier of fact may take as true statements within the document. Proposed Rule 901(b) makes thirty years of age one of the requisites for authentication, but the offering lawyer must also establish normal custody and lack of suspicion.

Tennessee decisions treat admissibility of ancient deeds, but the proposed exception updates the law to cover other property instruments. Otherwise, the rule is consistent with present **Tennessee** law. It departs markedly from F.R.Evid. **803**(16) which provides a hearsay exception for any (not just property) documents at least twenty years old.

(17) Market Reports and 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.

ADVISORY COMMISSION COMMENT

Tennessee's Uniform Commercial Code admits commodity market quotations in T.C.A. § 47-2-724. The proposed exception extends the exception to other publications generally relied upon by the public.

(18) [Reserved.]

ADVISORY COMMISSION COMMENT

Learned treatises can be used to impeach an expert but are not themselves admissible to prove the truth of their contents. No good reason exists to permit hearsay to be taken as true just because it is written in books. F.R.Evid. **803**(18) is contra.

(19) Reputation Concerning Personal or Family History. Reputation among members of a person's family by blood, adoption, or marriage or among 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 personal or family history.

ADVISORY COMMISSION COMMENT:
The rule admits reputation to prove pedigree, and that is the common law and **Tennessee** position. To introduce an individual's declaration to prove pedigree, see Rule 804(b)(4).

The proposal contains no requirement that the reputation have existed before the controversy developed.

(20) Reputation Concerning Ancient Boundaries. Reputation in a community, arising before the controversy and existing thirty years, as to the boundaries of or customs affecting lands in the community.

ADVISORY COMMISSION COMMENT
The rule mirrors current **Tennessee** law.

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

ADVISORY COMMISSION COMMENT
Character evidence primarily involves relevancy issues, but it requires a hearsay exception as well to gain admittance. This hearsay exception is standard.

The exception satisfies the hearsay exclusionary rule, but other evidence principles must be satisfied as well. See Proposed Rules 404, 405, and 408.

(22) Judgment of Previous Conviction. Evidence of a final judgment adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal case for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

ADVISORY COMMISSION COMMENT
The rule adopts the federal approach admitting felony conviction records to prove underlying facts necessary to the judgment. **Tennessee** has followed the common law view excluding such evidence. *Smith v. Phillips*, 43 Tenn.App. 364, 309 S.W.2d 382 (1956).

Civil judgments are routinely admitted to bar relitigation on res judicata principles. In limited circumstances, federal constitutional law collaterally estops subsequent prosecutions.

The Commission believed that a jury's finding beyond a reasonable doubt that a serious crime was committed should be admitted in a later civil or criminal trial to prove the underlying facts necessary to the judgment of conviction. Because facts proving minor crimes may not have been developed at trial, the rule would exclude judgments for lesser infractions from this hearsay exception.

(23) Judgment as to Personal or Family History or Boundaries. Judgments as proof of matters of personal or family history or boundaries, which matters were essential to the judgment.

ADVISORY COMMISSION COMMENT

The rule makes civil and criminal judgments admissible to prove boundaries and personal or family history. Reliability is relatively high, and need is great.

(24) [Reserved.]

ADVISORY COMMISSION COMMENT

The proposed rules contain no residual exception such as that in Fed.R.Evid. **803**(24).

(25) Children's Statements. Provided that the circumstances indicate trustworthiness, statements about abuse or neglect made by a child alleged to be the victim of physical, sexual, or psychological abuse or neglect, offered in a civil action concerning issues of dependency and neglect pursuant to **Tenn**. Code Ann. § 37-1-102(b)(12), issues concerning severe child abuse pursuant to **Tenn**. Code Ann. § 37-1-102(b)(21), or issues concerning termination of parental rights pursuant to **Tenn**. Code Ann. § 37-1-147 and **Tenn**. Code Ann. § 36-1-113, and statements about abuse or neglect made by a child alleged to be the victim of physical, sexual, or psychological abuse offered in a civil trial relating to custody, shared parenting, or visitation. Declarants of age thirteen or older at the time of the hearing must testify unless unavailable as defined by Rule 804(a); otherwise this exception is inapplicable to their extrajudicial statements.

ADVISORY COMMISSION COMMENT

Rule **803**(25) is a narrow exception. It applies only if the specified issues are material. Even then it is inapplicable if the minor declarant has reached age thirteen by the time of hearing and is available as a witness but does not testify.

Declarations under this hearsay exception are inadmissible if “circumstances indicate lack of trustworthiness.” Courts should carefully consider the motivation of particular minor declarants and also the motivation of some adults to influence children. Also worthy of consideration is the presence or absence of evidence corroborating the hearsay statement. As with all hearsay offered at trial, balancing under Rule 403 is appropriate.

The exception is not limited to juvenile court hearings, although it replaces a portion of T.R.Juv.P. 28(c). This new exception applies, for example, in a circuit court trial concerning the itemized issues. The exception is limited by its terms to civil actions as opposed to criminal prosecutions.

The bench and bar should keep in mind that other exceptions in Rules **803** and 804 may serve to admit children's hearsay declarations. Examples include excited utterances, declarations of mental state, declarations of physical condition, or former testimony. Also, some extrajudicial statements are relevant on a nonhearsay basis.

Certain juvenile proceedings other than adjudicatory hearings admit “reliable hearsay.” See T.R.Juv.P. 15(b), 16(a), and 32(f).

ADVISORY COMMISSION COMMENT TO 2003 AMENDMENT

Rule **803**(25) is amended to extend the children's statements exception to some issues in a divorce action tried in circuit or chancery courts. Note that a condition precedent to admissibility in any court, including juvenile, is that “the circumstances indicate trustworthiness” of the hearsay.

Another change incorporates revisions in statutory citations.

(26) Prior Inconsistent Statements of a Testifying Witness. A statement otherwise admissible under Rule 613(b) if all of the following conditions are satisfied:

(A) The declarant must testify at the trial or hearing and be subject to cross-examination concerning the statement.

(B) The statement must be an audio or video recorded statement, a written statement signed by the witness, or a statement given under oath.

(C) The judge must conduct a hearing outside the presence of the jury to determine by a preponderance of the evidence that the prior statement was made under circumstances indicating trustworthiness.

2009 ADVISORY COMMISSION COMMENT

Subsection (26) alters **Tennessee** law by permitting some prior inconsistent statements to be treated as substantive evidence. Many other jurisdictions have adopted this approach to address circumstances where witnesses suddenly claim a lack of memory in light of external threats of violence which cannot be directly attributed to a party, for example. This rule incorporates several safeguards to assure that the prior inconsistent statements are both reliable and authentic.

To be considered as substantive evidence the statement must first meet the traditional conditions of admissibility which include the procedural aspects of inconsistent statements as addressed in Rule 613. This reference also makes clear that only prior inconsistent statements, and not consistent statements, are within the ambit of this rule.

Assuming the inconsistent statement is otherwise admissible to impeach the testifying witness, the party may then seek to have the statement treated as substantive evidence by complying with the rule's other requirements. Other rules address authenticity of documents and recordings which clearly apply here. *See e.g.* Rule 1001. However, this rule contains additional express requirements regarding the form of the prior statement so that the jury is assured that the statement contains the actual “words” of the witness on a prior occasion. For example the prior statement must be an audio or video recorded statement. A “police report” or insurance investigator's “transcription” of the recorded statement would not qualify since it is not literally the witness's own words contained on audio or video media.

If not recorded, the prior statement can be in written form (created by the witness or by another) but then must be signed by the witness. The commission intends that the “signed” requirement must be equated with an actual signature as opposed to some email document which happens to have the witness's name on the address. Finally, the rule permits a prior statement to be treated as substantive evidence if given under oath.

The rule requires that the party seeking to have the statement treated as substantive evidence request a hearing out of the presence of the jury to satisfy the judge “by a preponderance of the evidence that the prior statement was made under circumstances indicating trustworthiness.” This is to prevent fraud such as where a parent tape records a child after training the child to say “bad things” about the other parent in anticipation of a custody dispute. Rules 703 (Bases of Opinion Testimony by Experts) and **803**(6) (Records of Regularly Conducted Activity) contain similar judicial gate-keeping requirements.

Credits

[Adopted effective January 1, 1990; subsections (8), (9) and (13) amended effective July 1, 1991; subsection (25) adopted effective July 1, 1993; subsection (6) amended effective July 1, 2001; subsection (25) amended effective July 1, 2003; subsection (26) adopted effective July 1, 2009.]

NOTES OF DECISIONS

In general

To determine whether hearsay falls within one of the exceptions, a court must conclude by a preponderance of the evidence that the preliminary or predicate facts justifying the exception exist. Rules of Evid., Rules **803**, 804. State v. Gilley, 2008, 297 S.W.3d 739, appeal denied, denial of post-conviction relief affirmed 2012 WL 5378083. Criminal Law 419(1.10)

When called upon to resolve factual issues as predicates to the application of a hearsay rule exception, the trial court may necessarily make credibility determinations and utilize factual inferences, and in such a situation, the appellate court should defer to the trial court's finding of such facts. Rules of Evid., Rules **803**, 804. State v. Gilley, 2008, 297 S.W.3d 739, appeal denied, denial of post-conviction relief affirmed 2012 WL 5378083. Criminal Law 419(1.10); Criminal Law 1153.10

If a trial court makes a factual determination that warrants the application of an exception to the hearsay rule, the court is prohibited from using the hearsay rule to exclude the evidence, though the court is not necessarily obligated to admit the statement, as other rules of evidence may come into play; however, the trial court had no discretion to exclude hearsay exception evidence otherwise admissible under the rules of evidence. Rules of Evid., Rules **803**, 804. State v. Gilley, 2008, 297 S.W.3d 739, appeal denied, denial of post-conviction relief affirmed 2012 WL 5378083. Criminal Law 419(1.10)

Specific prohibition contained in rule providing that depositions of experts may not be used at trial except to impeach is given precedence over the general exceptions to the hearsay rule. Rules Civ.Proc., Rule 32.01(3); Rules of Evid., Rules **803**, 804. Drennon v. General Elec. Co., 1994, 897 S.W.2d 243. Pretrial Procedure 204

Present sense impression exception to hearsay rule does not exist in **Tennessee**. State v. Carpenter, 1989, 773 S.W.2d 1, denial of post-conviction relief affirmed 2002 WL 31718017, appeal granted, affirmed 126 S.W.3d 879. Criminal Law 419(2.15)

Discretion of court

The determination of whether a hearsay statement is admissible through an exception to the hearsay rule is left to the sound discretion of the trial court. Rules of Evid., Rule **803**. Arias v. Duro Standard Products Co., 2010, 303 S.W.3d 256. Evidence 314(1)

Prior statement of identification

At guilt phase of capital felony murder trial, accomplice's out-of-court statement that defendant killed victim and accomplice's other statements on details of the offense were admissible under prior identification exception to hearsay rule, where accomplice testified at trial that he was at the scene and personally saw defendant shoot victim and accomplice was subject to cross-examination regarding his statements. T.C.A. § 39-13-202(a)(2); Rules of Evid., Rule **803**(1.1). State v. Stout, 2001, 46 S.W.3d 689, certiorari denied 122 S.Ct. 471, 534 U.S. 998, 151 L.Ed.2d 386. Criminal Law 421(6)

Application of prior identification exception to hearsay rule is not limited to prior identifications from photographs, lineups, or other similar procedures. Rules of Evid., Rule **803**(1.1). State v. Stout, 2001, 46 S.W.3d 689, certiorari denied 122 S.Ct. 471, 534 U.S. 998, 151 L.Ed.2d 386. Criminal Law 421(6)

Admission by party-opponent--In general

Statement by defendant during police questioning was admissible at felony-murder trial under exception to hearsay rule for admissions by a party opponent, even though defendant argued that her statement did not qualify as against her interests. Rules of Evid., Rule **803**(1.2). State v. Lewis, 2007, 235 S.W.3d 136. Criminal Law 410.13

A statement need not be against interest as a condition for admissibility under the rule providing for an exception to the hearsay rule for admissions by a party opponent. Rules of Evid., Rule **803**(1.2). State v. Lewis, 2007, 235 S.W.3d 136. Criminal Law 405.4

Victim in a criminal case did not meet the definition of a "party" for purposes of hearsay exception for admissions by a party opponent, and thus, minor victim's out-of-court statement to her father, stating that defendant had made victim touch his penis, was not admissible as an admission by a party opponent in prosecution of defendant for rape of a child. Rules of Evid., Rule **803**(1.2). State v. Flood, 2007, 219 S.W.3d 307. Criminal Law 419(1.10)

Mother's statements to investigator from Department of Child Services (DCS) and detective, that she exposed her child to pornographic material, inappropriate sexual situations and engaged the child in sexual activities between herself and the father, were admissions by a party opponent, for purposes of determining whether they were admissible in hearings before the Juvenile Court and the Circuit Court on petitions by DCS seeking temporary custody of child and to terminate parental rights. Rules of Evid., Rule **803**(1.2)(A). State Dept. of Children's Services v. M.P., 2005, 173 S.W.3d 794, appeal denied. Infants 2146(2)

Defendant's statement that she intended to cremate victim and place his ashes beside her bed as reminder not to remarry was admissible in murder trial as qualified admission of party-opponent; jury might have reasonably inferred that defendant might have intended cremation as method to destroy evidence of her crime. Rules of Evid., Rule **803**(1.2). State v. Wilson, 2003, 164 S.W.3d 355, appeal denied, denial of post-conviction relief affirmed 2006 WL 2739335. Criminal Law 410.13

Statement by attorney for life tenant that life tenant would insure property for benefit of remaindermen was not statement against declarant's interest, and thus was not admissible under that exception to hearsay rule, where there was no evidence that statement was against attorney's interest. Rules of Evid., Rule **803**(1.2)(D). Worrell v. Worrell, 2000, 59 S.W.3d 106, appeal denied. Evidence 272

Defendant's inculpatory statement that "the charge of theft is not correct, it should have been unauthorized use of a vehicle since it was my parents' vehicle," offered by prosecution to prove by implication defendant's identity as the perpetrator of charged offenses, was admissible in prosecution for driving with revoked license and evading arrest under exception to hearsay rule for statements made by a party, since declarant was the defendant, who could testify, explain, amplify or deny the statement. Rules of Evid., Rule **803**(1.2)(A). State v. Land, 2000, 34 S.W.3d 516, appeal denied, denial of post-conviction relief affirmed 2004 WL 508484. Criminal Law 419(4)

Juvenile's statements that were allegedly made to police following aggravated robbery of pharmacy were not admissible as admissions of a party opponent, absent showing that State ever adopted statements as its own. Rules of Evid., Rule **803**(1.2). State v. Harris, 1999, 30 S.W.3d 345, appeal denied. Criminal Law 410.13; Infants 2625(1)

Hearsay exception for children's statements about abuse or neglect was applicable, such that hearsay statements were admissible in proceeding to terminate mother's parental rights; children were under age 13, circumstances did not militate against trustworthiness of statements about which mother complained, and there was evidence corroborating statements made by children. Rules of Evid., Rule **803**(25). State, Dept. of Human Services v. Purcell, 1997, 955 S.W.2d 607, appeal denied. Infants 2146(8); Infants 2146(11)

Testimony of girlfriend of defendant charged with attempt to commit aggravated rape and aggravated sexual battery concerning defendant's statements made in telephone conversation immediately after assault was admissible under exception to hearsay

rule for admissions by party opponents. Rules, of Evid., Rule **803**(1.2). State v. Binion, 1996, 947 S.W.2d 867, appeal denied. Criminal Law 410.13

Allowing insurance applicant to testify about insurance agent's statements was permissible under party opponent exception to hearsay rule in suit between insurer and insured. Rules of Evid., Rule **803**(1.2)(D). Bland v. Allstate Ins. Co., 1996, 944 S.W.2d 372, appeal denied. Evidence 222(1)

Out-of-court statement of party is not per se admissible. Rules of Evid., Rules 613, 801(c), 802, **803**(1.2). Wilder v. **Tennessee** Farmers Mut. Ins. Co., 1995, 912 S.W.2d 722, appeal denied. Evidence 222(1)

Exclusion of insured's pretrial sworn statement as inadmissible hearsay was not error, nor was insurer prejudiced by exclusion, in insured's action for payment under homeowners' policy following house fire, notwithstanding that statement contained admissions by insured. Rules of Evid., Rules 613, 801(c), 802, **803**(1.2). Wilder v. **Tennessee** Farmers Mut. Ins. Co., 1995, 912 S.W.2d 722, appeal denied. Evidence 222(1)

Expunction of memorandum of understanding entered as part of pretrial diversion program renders inadmissible both memorandum of understanding itself and any admissions against interest contained in it. Rules of Evid., Rule **803**(1.2). Pizzillo v. Pizzillo, 1994, 884 S.W.2d 749. Criminal Law 1226(3.1); Evidence 209

Factual statements contained in pleadings filed in other cases are admissions of party opponent, and thus they may be received into evidence under hearsay exception when they are inconsistent with pleader's contentions in present case. Rules of Evid., Rule **803**(1.2)(A). Pizzillo v. Pizzillo, 1994, 884 S.W.2d 749. Evidence 208(2)

Factual statements contained in pleadings filed in other cases need not be verified to be admissible as admissions of party opponent, and they continue to be admissible even after case in which they were filed has been withdrawn or dismissed. Rules of Evid., Rule **803**(1.2)(A). Pizzillo v. Pizzillo, 1994, 884 S.W.2d 749. Evidence 208(4); Evidence 208(6); Evidence 208(8)

Admission against interest is generally admissible under hearsay exception as admission of party opponent. Rules of Evid., Rule **803**(1.2). Pizzillo v. Pizzillo, 1994, 884 S.W.2d 749. Evidence 272

Manufacturer's answer given under oath to interrogatory in another lawsuit was admissible in products liability action under exclusion to hearsay rule for admission by party opponent. Rules of Evid., Rule **803**(1.2)(A). Benson v. **Tennessee** Valley Elec. Co-op., 1993, 868 S.W.2d 630, appeal denied. Evidence 210

Coconspirator's testimony that defendant told another coconspirator that he wanted someone killed and that he would pay $100,000 as soon as estate was settled qualified as admissions. Rules of Evid., Rule **803**(1.2). State v. Gaylor, 1992, 862 S.W.2d 546, appeal denied, denial of post-conviction relief affirmed 1999 WL 817462. Criminal Law 410.2

Drug conspiracy defendant's expense records, showing expenses far in excess of his reported income, were admissible under adoptive admission exception to hearsay rule; it was reasonable to believe that defendant would not have saved records unless they were accurate. Rules of Evid., Rule **803**(1.2)(B). State v. Little, 1992, 854 S.W.2d 643, appeal denied, dismissal of habeas corpus vacated 70 F.3d 1272, dismissal of post-conviction relief affirmed 1998 WL 918608, vacated and reinstated 2000 WL 343183. Criminal Law 410.31

Appendix in appellate brief which included opinion of Supreme Court in previous appeal of case was not competent evidence to Court of Appeals of any fact to be considered in favor of appellee, but did constitute admission of fact to be considered against appellee. Rules of Evid., Rule **803**(1.2). Inman v. Inman, 1992, 840 S.W.2d 927, appeal denied. Appeal And Error 757(1)

---- Statement by authorized person, admission by party-opponent

Manager's summary judgment affidavit that discussed letter the manager received from former employee's doctor was hearsay and was not admissible in employee's handicap discrimination action against employer under the business records exception or as an admission by a party-opponent; the doctor's letter was not included with the affidavit, the affidavit was not written or compiled by the doctor, and employee did not instruct the doctor to make the statement on his behalf. Rules of Evid., Rule **803**(1.2, 6). Perlberg v. Brencor Asset Management, Inc., 2001, 63 S.W.3d 390, appeal denied. Judgment 185.1(3)

Remaindermen failed to meet burden in declaratory judgment action of showing that attorney for life tenant had authority to make statement during settlement negotiations that life tenant would insure property for benefit of remaindermen, and thus hearsay statement was not admissible under exception for statements by person authorized by party to make statement. Rules of Evid., Rule **803**(1.2)(C). Worrell v. Worrell, 2000, 59 S.W.3d 106, appeal denied. Evidence 246

---- Statement against interest, admission by party-opponent

Police officer's statement that stop sign was down and that it had been lying in ditch for several days, and that city knew that it was, was not admission against interest of party opponent in motorist's action against city pursuant to Tort Claims Act, based on allegation that city was negligent in allowing dangerous condition at intersection, such that statement, when offered by witness as prior inconsistent statement, was only admissible to impeach officer, or to test officer's credibility, since officer testified that he did not remember making statement, and statement was not against officer's personal interest when made. West's Tenn.Code, § 29-20-203; Rules of Evid., Rule **803**(1.2)(D). Dailey v. Bateman, 1996, 937 S.W.2d 927, appeal denied. Evidence 245; Witnesses 379(2)

Any error in excluding testimony as to father's silence, offered to prove son-in-law's adverse possession of land, was harmless, given daughter's admission that use of the property was with father's permission and consent and fact that son-in-law never established father's intent during incident in question. Rules App.Proc., Rule 36(b); Rules of Evid., Rule **803**(3). Hulsey v. Bush, 1992, 839 S.W.2d 411, appeal denied. Appeal And Error 1056.1(4.1)

---- Coconspirators, admission by party-opponent

Hearsay statements by unlicensed general contractor regarding relationship with licensed general contractor were admissible under the co-conspirator hearsay exception in subcontractor's action against licensed contractor for money owed under contract with unlicensed contractor; civil conspiracy existed between the contractors to allow unlicensed contractor to work in state, unlicensed contractor's statements that contractors were the same entity were made during the pending of that conspiracy, and statements were made in order to convince subcontractor that unlicensed contractor was licensed in state, so as to further the purpose of the conspiracy. Rules of Evid., Rule **803**(1.2)(E) (2004). Danny L. Davis Contractors, Inc. v. Hobbs, 2004, 157 S.W.3d 414, appeal denied. Evidence 253(2)

Requirement of co-conspirator exception to hearsay rule that the statement be made “during the course of” a conspiracy means that the conspiracy must have been occurring or ongoing at the time the statement was made. Rules of Evid., Rule **803**(1.2)(E). State v. Carruthers, 2000, 35 S.W.3d 516, certiorari denied 121 S.Ct. 2600, 533 U.S. 953, 150 L.Ed.2d 757, denial of post-conviction relief affirmed 2007 WL 4355481, appeal denied, dismissal of habeas corpus affirmed 2008 WL 2242534. Criminal Law 423(1)

Co-conspirator exception to the hearsay rule requires that the statement be “in furtherance of” the conspiracy, which means that the statement must be one that will advance or aid the conspiracy in some way. Rules of Evid., Rule **803**(1.2)(E). State v. Carruthers, 2000, 35 S.W.3d 516, certiorari denied 121 S.Ct. 2600, 533 U.S. 953, 150 L.Ed.2d 757, denial of post-conviction relief affirmed 2007 WL 4355481, appeal denied, dismissal of habeas corpus affirmed 2008 WL 2242534. Criminal Law 423(1)

Casual conversation between or among co-conspirators is not considered to be in furtherance of the conspiracy and is therefore inadmissible under the co-conspirator exception to the hearsay rule. Rules of Evid., Rule **803**(1.2)(E). State v. Carruthers, 2000, 35 S.W.3d 516, certiorari denied 121 S.Ct. 2600, 533 U.S. 953, 150 L.Ed.2d 757, denial of post-conviction relief affirmed 2007 WL 4355481, appeal denied, dismissal of habeas corpus affirmed 2008 WL 2242534. Criminal Law 423(6)

If the conspiracy had not begun or had already concluded when the statement was made, the statement will not be admissible under the co-conspirator exception to the hearsay rule. Rules of Evid., Rule **803**(1.2)(E). State v. Carruthers, 2000, 35 S.W.3d 516, certiorari denied 121 S.Ct. 2600, 533 U.S. 953, 150 L.Ed.2d 757, denial of post-conviction relief affirmed 2007 WL 4355481, appeal denied, dismissal of habeas corpus affirmed 2008 WL 2242534. Criminal Law 423(8); Criminal Law 424(1)

Codefendant's statements that he made when borrowing witness's car, that he stole $200,000 from victims and that someone had to kill them, were admissible in guilt phase of capital murder trial under co-conspirator exception to the hearsay rule; statements were made in furtherance of the conspiracy, as codefendant contacted witness to arrange transportation to where the victims were located, and the conspiracy had not ended when the statements were made, as other evidence established that two of the victims were alive after the statements were made. T.C.A. § 39-13-202(a)(1); Rules of Evid., Rule **803**(1.2)(E). State v. Carruthers, 2000, 35 S.W.3d 516, certiorari denied 121 S.Ct. 2600, 533 U.S. 953, 150 L.Ed.2d 757, denial of post-conviction relief affirmed 2007 WL 4355481, appeal denied, dismissal of habeas corpus affirmed 2008 WL 2242534. Criminal Law 423(9)

Hearsay statements are admissible under the co-conspirator exception even if the conspirators are separately tried, and where a conspiracy exists, a co-conspirator is deemed to have adopted the previous acts and declarations of his fellow conspirators. Rules of Evid., Rule **803**(1.2)(E). State v. Carruthers, 2000, 35 S.W.3d 516, certiorari denied 121 S.Ct. 2600, 533 U.S. 953, 150 L.Ed.2d 757, denial of post-conviction relief affirmed 2007 WL 4355481, appeal denied, dismissal of habeas corpus affirmed 2008 WL 2242534. Criminal Law 422(1)

Capital murder defendant was properly precluded at guilt phase from questioning police detective about content of codefendant's statements to the police, as they were not admissible under the co-conspirator hearsay exception. T.C.A. § 39-13-202(a)(1); Rules of Evid., Rule **803**(1.2)(E). State v. Carruthers, 2000, 35 S.W.3d 516, certiorari denied 121 S.Ct. 2600, 533 U.S. 953, 150 L.Ed.2d 757, denial of post-conviction relief affirmed 2007 WL 4355481, appeal denied, dismissal of habeas corpus affirmed 2008 WL 2242534. Criminal Law 422(1)

Where a conspirator is apprehended and tells all to the police, it is unlikely the confession is admissible against other conspirators under the co-conspirator exception to the hearsay rule; under those circumstances, the statement becomes only a narrative statement of past conduct between conspirators. Rules of Evid., Rule **803**(1.2)(E). State v. Carruthers, 2000, 35 S.W.3d 516, certiorari denied 121 S.Ct. 2600, 533 U.S. 953, 150 L.Ed.2d 757, denial of post-conviction relief affirmed 2007 WL 4355481, appeal denied, dismissal of habeas corpus affirmed 2008 WL 2242534. Criminal Law 422(5)

Codefendant's statement the morning after a triple murder, that “they had to kill some people,” was inadmissible in guilt phase of capital murder trial under co-conspirator exception to the hearsay rule; statement was not made in furtherance of the conspiracy and the conspiracy had ended at the time the statement was made. T.C.A. § 39-13-202(a)(1); Rules of Evid., Rule **803**(1.2)(E). State v. Carruthers, 2000, 35 S.W.3d 516, certiorari denied 121 S.Ct. 2600, 533 U.S. 953, 150 L.Ed.2d 757, denial of post-conviction relief affirmed 2007 WL 4355481, appeal denied, dismissal of habeas corpus affirmed 2008 WL 2242534. Criminal Law 424(1)

Error was harmless in guilt phase of capital murder trial in admitting, under the co-conspirator exception to the hearsay rule, codefendant's statement the morning after a triple murder that “they had to kill some people,” as statement was consistent with and merely cumulative of other statements of codefendant that were properly admitted under the co-conspirator exception. T.C.A. § 39-13-202(a)(1); Rules of Evid., Rule **803**(1.2)(E). State v. Carruthers, 2000, 35 S.W.3d 516, certiorari denied 121 S.Ct.

2600, 533 U.S. 953, 150 L.Ed.2d 757, denial of post-conviction relief affirmed 2007 WL 4355481, appeal denied, dismissal of habeas corpus affirmed 2008 WL 2242534. Criminal Law 1169.7

Rationale for exception to general exclusion of hearsay, which allows admission of statements by a co-conspirator of a party during the course of and in furtherance of the conspiracy, is the principle of agency, under which each conspirator is bound to the actions and statements made by other conspirators during the course of and in furtherance of a common purpose. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 423(1)

For a statement of the co-conspirator to be admissible under the exception to the general exclusion of hearsay, it must have been made "during the course of the conspiracy," which means that the conspiracy must have been ongoing at the time the statement was made, and if the conspiracy had not yet begun or had ended when the statement was made, the declaration is not admissible under the exception, although it may still be admissible under some other exception. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 423(1); Criminal Law 423(8); Criminal Law 424(1)

Statutory definition of criminal conspiracy does not control the evidentiary issue of whether a statement was made during the course of a conspiracy for purposes of admission under the exception to the general exclusion of hearsay for co-conspirator statements. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 423(1)

No bright-line test or precise definition for determining whether a statement has been made "during the course of a conspiracy" exists, for purposes of determining whether the statement is admissible under the exception to the general hearsay exclusion for statements of a co-conspirator, and the commission of the offense that was the goal of the conspiracy does not necessarily include or exclude subsequent statements as part of the conspiracy. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 423(1)

Generally, a conspiracy to conceal the commission of the charged crime may not be automatically implied to permit the use of hearsay statements made by co-conspirators after the offense, and thus, the court should analyze the facts of the case to determine if in fact there was an agreement to conceal, to determine the closeness in time of the concealment to the commission of the principal crime, and to determine the reliability of these statements. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 423(9)

Conspiracy may extend to statements concerning the concealment of the offenses, for purposes of exception to exclusion of hearsay for statements of a co-conspirator, but the distinction between an original conspiracy and a second conspiracy to conceal is artificial and not helpful, since even if separate conspiracy existed, statements in separate conspiracy would not be available to prove charged offenses constituting first conspiracy. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 423(9)

For a statement to be admissible under the exception to the general exclusion for hearsay allowing admission of statements of a co-conspirator, the prosecution must establish: (1) that there is evidence of the existence of a conspiracy and the connection of the declarant and the defendant to that conspiracy, (2) that the declaration was made during the pendency of the conspiracy, and (3) that the declaration was made in furtherance of the conspiracy. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 422(1)

Exception to the general hearsay exclusion providing for the admission of statements of a co-conspirator requires that a court examine all of the factors and circumstances of the case to determine whether the exception is applicable. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 422(1)

Commission of the offense of criminal conspiracy does not imply an agreement to conceal the offense, given the risk that after the commission of the crimes, each co-conspirator may act in his or her self-interest, and in such circumstances, where there is no longer a common purpose, the statements may lack the reliability that serves as the basis for the exception to the general

hearsay exclusion for statements of a co-conspirator. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 424(1)

Videotaped conversation between defendant and co-defendant following murder, attempted murder, kidnapping, robbery, and burglary, was not admissible as statement of co-conspirator, even though defendants discussed offenses and ways to minimize culpability, where conversation occurred approximately seven hours after arrests and nine hours after offenses, defendant gave confession to officers, in which he admitted involvement in shooting, in robbery of van, in flight from scene, and in disposal of weapon, and defendant led police officers to recover weapon. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 424(2)

For purposes of determining admissibility of statement under hearsay exception for statements by co-conspirator, standard of proof required to show existence of prerequisite conspiracy is proof by preponderance of evidence. Rules of Evid., Rule **803**(1.2)(E). State v. Alley, 1997, 968 S.W.2d 314, appeal denied. Criminal Law 427(5)

For purposes of proving conspiracy to allow admission of statement of co-conspirator under hearsay exception, state only has to show implied understanding between parties, not formal words or a written agreement, and unlawful confederation may be established by circumstantial evidence and conduct of parties in execution of criminal enterprises. Rules of Evid., Rule **803**(1.2)(E). State v. Alley, 1997, 968 S.W.2d 314, appeal denied. Criminal Law 427(5)

Evidence of existence of conspiracy was sufficient to allow admission of undercover buyer's testimony on co-conspirator's statements under exception to hearsay rule; defendant arrived in same automobile as co-conspirator, was present during cocaine transaction, provided drugs for transaction, and exchanged money with undercover buyer and co-conspirator. Rules of Evid., Rule **803**(1.2)(E). State v. Alley, 1997, 968 S.W.2d 314, appeal denied. Criminal Law 427(5)

Tape recording of conversation between coconspirator and defendant's sister, which was made while coconspirator was in prison and almost two years after homicide, was inadmissible under coconspirator exception to hearsay rule; for statement of coconspirator to be admissible, it must have been made during the course of the conspiracy, which means conspiracy must have been ongoing at time statement was made. Rules of Evid., Rule **803**(1.2)(E). State v. Walker, 1995, 910 S.W.2d 381, rehearing denied, certiorari denied 117 S.Ct. 88, 519 U.S. 826, 136 L.Ed.2d 45, denial of post-conviction relief affirmed 2003 WL 21748679, appeal denied. Criminal Law 424(1)

Statement made by coconspirator to defendant's sister three or four days after the robbery and homicide, which related circumstances of robbery and facts surrounding shooting of victim, was inadmissible under coconspirator exception to hearsay rule where defendant was charged with conspiracy to commit robbery, but homicide was incidental to robbery and conspiracy ended with consummation of robbery. Rules of Evid., Rule **803**(1.2)(E). State v. Walker, 1995, 910 S.W.2d 381, rehearing denied, certiorari denied 117 S.Ct. 88, 519 U.S. 826, 136 L.Ed.2d 45, denial of post-conviction relief affirmed 2003 WL 21748679, appeal denied. Criminal Law 424(1)

Codefendant's statement to undercover agent about having nephew or cousin who would take delivery and transport cocaine was admissible under coconspirator exception to hearsay rule. Rules of Evid., Rule **803**(1.2). State v. Shropshire, 1993, 874 S.W.2d 634, rehearing denied, appeal denied, denial of post-conviction relief affirmed 1996 WL 189931, denial of post-conviction relief affirmed 957 S.W.2d 839, denial of habeas corpus affirmed 2004 WL 1434484. Criminal Law 422(1)

Coconspirator's statements were admissible upon proof of conspiracy by preponderance of evidence; coconspirator told officer that she did not have cocaine with her and directed him to parking lot where two officers saw defendant get into coconspirator's car, hand her package and get out, after which coconspirator sold officer cocaine. Rules of Evid., Rule **803**(1.2)(E). State v. Stamper, 1993, 863 S.W.2d 404, on remand 1993 WL 484215. Criminal Law 427(5)

Declarations of coconspirators which would otherwise be inadmissible as hearsay may be offered as proof when: declaration was made in furtherance of conspiracy; declaration was made during pendency of conspiracy; and there is independent proof of existence of conspiracy and connection with declarant and defendant to it. Rules of Evid., Rule **803**(1.2)(E). State v. Gaylor, 1992, 862 S.W.2d 546, appeal denied, denial of post-conviction relief affirmed 1999 WL 817462. Criminal Law 422(1); Criminal Law 423(1); Criminal Law 427(1)

Conspiracy must have been in process at time that statement was made for statement to come within coconspirator exception to hearsay rule; if conspiracy either had not yet begun or had ended by time that statement was made, declaration is not admissible under exception. Rules of Evid., Rule **803**(1.2)(E). State v. Gaylor, 1992, 862 S.W.2d 546, appeal denied, denial of post-conviction relief affirmed 1999 WL 817462. Criminal Law 422(3); Criminal Law 424(1)

Excited utterance--In general

Witness's testimony that, when she and victim were at a flag corps practice and defendant drove his car slowly up and down the street next to where witness and victim were practicing, victim stated that defendant kept on doing “this,” that the defendant was following her and that victim wanted nothing to do with defendant, and that victim shouted profanities at the car, was admissible under the excited utterance exception to the hearsay rule, in trial of defendant for premeditated first degree murder, as the victim's statements were directly related to the startling event as it was directed toward the defendant's current actions, and the statements were made during the event while the victim was under the stress of defendant's actions. Rules of Evid., Rule **803**(2). State v. Gilley, 2008, 297 S.W.3d 739, appeal denied, denial of post-conviction relief affirmed 2012 WL 5378083. Criminal Law 366(2); Criminal Law 366(6)

To clear the way for admission of a hearsay statement as an excited utterance: (1) a startling event or condition must be the catalyst for the excitement; (2) there must be a nexus between the statement and the startling event; and (3) the utterance must be forthcoming while the declarant is under the stress of excitement from the event or condition. Rules of Evid., Rule **803**(2). State v. Gilley, 2008, 297 S.W.3d 739, appeal denied, denial of post-conviction relief affirmed 2012 WL 5378083. Criminal Law 363

Statements of victim of attempted first-degree murder, to police officer, regarding the crimes, were made while victim was under the stress or excitement caused by the startling event or condition, as element for admissibility under excited utterance exception to hearsay rule, though statements were made in response to officer's questions and were made approximately six hours after the shooting; victim had been shot and left for dead while having a close associate shot and killed in victim's home, victim was in shock and he required urgent medical attention, and victim was answering questions from an officer who was the first responder to the scene of the crimes. Rules of Evid., Rule **803**(2). State v. Banks, 2008, 271 S.W.3d 90, certiorari denied 129 S.Ct. 1677, 173 L.Ed.2d 1043. Criminal Law 366(6)

Factors for assessing whether declarant remained under stress or excitement when declarant made the declarations, as element for admissibility of declarations under excited utterance exception to hearsay rule, include the nature and seriousness of the event or condition, the appearance, behavior, outlook, and circumstances of declarant, including such characteristics as age and physical or mental condition, and the contents of the declaration itself. Rules of Evid., Rule **803**(2). State v. Banks, 2008, 271 S.W.3d 90, certiorari denied 129 S.Ct. 1677, 173 L.Ed.2d 1043. Criminal Law 363

Statements made in response to questions may be admissible under the excited utterance exception to the hearsay rule, if the declarant was under the excitement or stress of the startling event; the fact that a question prompted the excited answer is a circumstance relevant to excitement or stress, but it does not automatically bar the statement's admission as an excited utterance. Rules of Evid., Rule **803**(2). State v. Banks, 2008, 271 S.W.3d 90, certiorari denied 129 S.Ct. 1677, 173 L.Ed.2d 1043. Criminal Law 363

To qualify as an excited utterance, as exception to the hearsay rule, three criteria must be met: (1) there must be a startling event or condition that causes the stress or excitement; (2) the statement must relate to the startling event or condition; and (3) the

statement must be made while the declarant was under the stress or excitement caused by the startling event or condition. Rules of Evid., Rule **803**(2). State v. Banks, 2008, 271 S.W.3d 90, certiorari denied 129 S.Ct. 1677, 173 L.Ed.2d 1043. Criminal Law 363

Statement made by 14-year-old mentally retarded victim to testifying witness in aggravated rape and aggravated kidnapping prosecution that defendant raped her was excited utterance under exception to the hearsay rule; defendant's actions of coming into victim's room, pulling her pants down, and raping her was a startling event, victim's statement unquestionably related to that startling event, and victim made statement while crying and screaming within 10 or 15 minutes after event, and thus was still under emotional and physical stress from the rape. Rules of Evid., Rule **803**(2). State v. Samuel, 2007, 243 S.W.3d 592, appeal denied, dismissal of post-conviction relief affirmed 2009 WL 3832695. Criminal Law 366(6)

For a statement to fall within the excited utterance exception to hearsay rule, three criteria must be met: (1) there must be a startling event or condition that causes the stress of excitement; (2) the statement must relate to the startling event or condition; and (3) the statement must be made while the declarant was under the stress of excitement. Rules of Evid., Rule **803**(2). State v. Samuel, 2007, 243 S.W.3d 592, appeal denied, dismissal of post-conviction relief affirmed 2009 WL 3832695. Criminal Law 363

Victim's statement, before her death, that defendant would kill her if he found out about victim showing deputy where defendant was growing marijuana was not admissible under excited utterance exception to hearsay rule, in absence of evidence that would support contention that statement was an excited utterance. Rules of Evid., Rule **803**(2). State v. Long, 2000, 45 S.W.3d 611, appeal denied. Criminal Law 366(2)

For a statement to qualify as an excited utterance, the following criteria must be established:(1) there must be a startling event or condition that causes the stress of excitement; (2) the statement must relate to the startling event or condition; and (3) the statement must be made while the declarant was under the stress of excitement. Rules of Evid., Rule **803**(2). State v. Land, 2000, 34 S.W.3d 516, appeal denied, denial of post-conviction relief affirmed 2004 WL 508484. Criminal Law 363

Witness' hearsay testimony regarding child abuse victim's negative reaction when witness mentioned defendant's name was admissible under the excited utterance hearsay exception if the startling event was deemed to be witness speaking the defendant's name, not defendant's burning of the victim, but the evidence was more prejudicial than probative because the state made no showing that the victim's negative reaction stemmed from the burning, rather than from some other unrelated event, and thus, evidence should have been excluded. Rules of Evid., Rules 403, **803**(2). State v. Burns, 1999, 29 S.W.3d 40, appeal denied. Criminal Law 338(7); Criminal Law 366(1)

Severe pain that three-year-old victim experienced while urinating independently qualified as startling event, separate from prior sexual assault, under excited utterance exception to hearsay rule. Rules of Evid., Rule **803**(2) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 366(3)

Statements of three-year-old victim identifying defendant as person who made her hurt were made while she was under stress or excitement from startling event, as required to qualify for excited utterance exception to hearsay rule, where statements were made just a few minutes after victim experienced severe pain while urinating, while she was still in obvious discomfort. Rules of Evid., Rule **803**(2) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 366(4); Criminal Law 366(6)

For statement to come within excited utterance exception to hearsay rule, first, there must be startling event or condition, second, statement must relate to startling event or condition, and third, statement must be made while declarant is under stress or excitement from event or condition. Rules of Evid., Rule **803**(2) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 363

Event relied upon to establish excited utterance exception to hearsay rule must be sufficiently startling to suspend normal, reflective thought processes of declarant. Rules of Evid., Rule **803**(2) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 363

Statements made in response to questions may still be admissible under excited utterance exception to hearsay rule if declarant is under excitement or stress of event. Rules of Evid., Rule **803**(2) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 363

Although startling event relied upon for excited utterance exception to hearsay rule is usually act or transaction upon which legal controversy is based, exception is not limited to statements arising directly from such events; rather, subsequent startling event or condition which is related to prior event can produce excited utterance. Rules of Evid., Rule **803**(2) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 363

To "relate to" startling event or condition, under excited utterance exception to hearsay rule, statement may describe all or part of event or condition, or deal with effect or impact of that event or condition. Rules of Evid., Rule **803**(2) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 363

Testimony of airport police public safety officer about statement by defendant's daughter regarding shooting was admissible under excited utterance exception in murder prosecution; child's mother had just been killed within a few feet of where she was sitting, and stress of this particular "excitement" could properly be expected to continue for a significant time. Rules of Evid., Rule **803**(2). State v. Kendricks, 1996, 947 S.W.2d 875, appeal denied, dismissal of post-conviction relief reversed in part 13 S.W.3d 401. Criminal Law 368(3)

Testimony of friend of rape victim and of victim's mother concerning victim's conduct immediately after assault was admissible as substantive evidence under excited utterance exception to hearsay rule, where attempted rape described by victim qualified as startling event, evidence illustrated victim's continuing excitement and strain resulting from incident, and 30 to 45-minute time lapse greatly diminished any likelihood of deliberation and fabrication in absence of any proof supporting either. Rules of Evid., Rule **803**(2). State v. Binion, 1996, 947 S.W.2d 867, appeal denied. Criminal Law 366(6)

Statement is admitted as substantive evidence, as exception to hearsay rule, if it relates to startling event or condition and was made while declarant was under stress of excitement caused by such event or condition. Rules of Evid., Rule **803**(2). State v. Binion, 1996, 947 S.W.2d 867, appeal denied. Criminal Law 363

Ultimate test for determining admissibility as substantive evidence of statement relating to startling event or condition is spontaneity and logical relation to main event, and whether act or declaration springs out of transaction while parties are still laboring under excitement and strain of circumstances and at time so near it as to preclude idea of deliberation and fabrication. Rules of Evid., Rule **803**(2). State v. Binion, 1996, 947 S.W.2d 867, appeal denied. Criminal Law 363

Fresh complaint testimony is inadmissible in child sexual abuse cases; however, evidence in nature of fresh complaint may be admissible as substantive evidence if it satisfies some hearsay exception, such as excited utterance or statement of existing mental, emotional or physical condition. Rules of Evid., Rule **803**(2). State v. Binion, 1996, 947 S.W.2d 867, appeal denied. Rape 48(1)

Victim's statements about who shot him were admissible under excited utterance exception to hearsay rule, even though victim did not immediately tell police who fired the shot; victim had just been shot, and shooting clearly qualified as startling event. Rules of Evid., Rules 802, **803**(2). State v. Summerall, 1995, 926 S.W.2d 272. Criminal Law 366(4); Criminal Law 366(6)

Victim's statements to her sister, describing defendant's assaults against her shortly after they occurred, were admissible as excited utterances. Rules of Evid., Rule **803**(2). State v. Smith, 1993, 868 S.W.2d 561, rehearing denied 1994 WL 3381,

certiorari denied 115 S.Ct. 417, 513 U.S. 960, 130 L.Ed.2d 333, denial of post-conviction relief affirmed 1998 WL 345353, appeal denied, certiorari denied 119 S.Ct. 2375, 527 U.S. 1026, 144 L.Ed.2d 779, habeas corpus denied 2005 WL 2416504, certificate of appealability denied 2006 WL 1881358, affirmed 2010 WL 2545521. Criminal Law 366(6)

New Rules of Evidence have no requirement that testifying witness have seen declarant make excited utterance for the statement to be admissible. Rules of Evid., Rule **803**(2). State v. Smith, 1993, 868 S.W.2d 561, rehearing denied 1994 WL 3381, certiorari denied 115 S.Ct. 417, 513 U.S. 960, 130 L.Ed.2d 333, denial of post-conviction relief affirmed 1998 WL 345353, appeal denied, certiorari denied 119 S.Ct. 2375, 527 U.S. 1026, 144 L.Ed.2d 779, habeas corpus denied 2005 WL 2416504, certificate of appealability denied 2006 WL 1881358, affirmed 2010 WL 2545521. Criminal Law 363

For purposes of determining whether hearsay statements are admissible under excited utterance exception, statement must relate to startling event or condition made while declarant was under stress of excitement caused by event or condition; ultimate test is spontaneity and logical relation to main event. Rules of Evid., Rule **803**(2). State v. Smith, 1993, 857 S.W.2d 1, certiorari denied 114 S.Ct. 561, 510 U.S. 996, 126 L.Ed.2d 461, certiorari denied 114 S.Ct. 682, 510 U.S. 1040, 126 L.Ed.2d 650, post-conviction relief granted 2010 WL 3638033. Criminal Law 363

Statement made by sexual assault victim to mother, consisting of response of “yes” to question from mother as to whether father had “messed” with her, which was communicated to emergency room nurse by mother in statement which was otherwise admissible over hearsay objection, satisfied requirements for “excited utterance” exception to hearsay rule; statement had been made shortly after alleged attack, which was obviously stressful event. Rules of Evid., Rule **803**(2). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 366(6)

---- Personal knowledge, excited utterance

Hearsay statements made by teenagers who flagged down police officer who was tracking down audible burglar alarm, in response to officer's question of “what's going on?,” telling officer that a large black man with a bald head had kicked in door of building they were pointing at and was still inside, were admissible as excited utterances in trial of defendant for burglary of a building other than a habitation; personally observing the inception of a burglary in progress was a startling event, teenagers' statements related to their observations of the origin of the burglar alarm, and teenagers were still under the stress and excitement of the startling event at the time they made their statements. Rules of Evid., Rule **803**(2). State v. Maclin, 2006, 183 S.W.3d 335, certiorari denied 127 S.Ct. 47, 549 U.S. 828, 166 L.Ed.2d 49. Criminal Law 368(1)

Statement of defendant's mother to police that defendant “stole her car” was inadmissible under excited utterance exception to hearsay rule in prosecution for driving with revoked license and evading arrest, where there was no evidence that mother had personal knowledge that defendant took vehicle and was driving vehicle on night of offense. Rules of Evid., Rules 602, **803**(2). State v. Land, 2000, 34 S.W.3d 516, appeal denied, denial of post-conviction relief affirmed 2004 WL 508484. Criminal Law 366(4)

The only competency requirement for an excited utterance is that the declarant must have had an opportunity to observe the facts contained in the extrajudicial statement. Rules of Evid., Rule **803**(2). State v. Land, 2000, 34 S.W.3d 516, appeal denied, denial of post-conviction relief affirmed 2004 WL 508484. Criminal Law 363

An excited utterance is inadmissible if the declarant lacked personal knowledge. Rules of Evid., Rule **803**(2). State v. Land, 2000, 34 S.W.3d 516, appeal denied, denial of post-conviction relief affirmed 2004 WL 508484. Criminal Law 363

Declarant does not have to be participant in startling event or condition for his statement to come within excited utterance exception to hearsay rule. Rules of Evid., Rule **803**(2) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 363

Even if witness who testified to comments made by murder victim's husband shortly after victim was shot was not first person to talk to husband, statements made by husband to witness were admissible under excited utterance exception to hearsay rules.

Rules of Evid., Rule **803**(2). State v. Smith, 1993, 857 S.W.2d 1, certiorari denied 114 S.Ct. 561, 510 U.S. 996, 126 L.Ed.2d 461, certiorari denied 114 S.Ct. 682, 510 U.S. 1040, 126 L.Ed.2d 650, post-conviction relief granted 2010 WL 3638033. Criminal Law 368(3)

---- Time lapse, excited utterance

The length of time between a startling event and the statement does not automatically preclude the statement's being admissible as an excited utterance, as an exception to the hearsay rule; the time interval is material only as a circumstance bearing on the issue of continuing stress when the statement was made. Rules of Evid., Rule **803**(2). State v. Banks, 2008, 271 S.W.3d 90, certiorari denied 129 S.Ct. 1677, 173 L.Ed.2d 1043. Criminal Law 363

At guilt phase of capital felony murder trial, accomplice's out-of-court statement that defendant killed victim and accomplice's other statements on the details of the offense were admissible under excited utterance exception to hearsay rule, even though over 12 hours elapsed from the murder until accomplice's statements; accomplice was under stress from the traumatic events, as evidenced by fact that he was crying and upset when he made statements. T.C.A. § 39-13-202(a)(2); Rules of Evid., Rule **803**(2). State v. Stout, 2001, 46 S.W.3d 689, certiorari denied 122 S.Ct. 471, 534 U.S. 998, 151 L.Ed.2d 386. Criminal Law 368(3)

Time interval is but one consideration in determining whether statement was made under stress or excitement, for purposes of excited utterance exception to hearsay rule; other relevant circumstances include nature and seriousness of event or condition, appearance, behavior, outlook, and circumstances of declarant, including such characteristics as age and physical or mental condition, and contents of statement itself, which may indicate presence or absence of stress. Rules of Evid., Rule **803**(2) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 363

Mental, emotional, or physical condition

Royalty statements were not admissible, over hearsay objection, as evidence of state of mind of declarants where the declarants were the royalty statements themselves and the court was uninterested in their state of mind. Fed.Rules Evid. Rule **803**(3), 28 U.S.C.A. Calhoun v. Baylor, 1981, 646 F.2d 1158. Evidence 268

In the absence of showing whether defendant saw all of the royalty statements offered at trial, the statements were not admissible under the state of mind exception to the hearsay rule. Fed.Rules Evid. Rule **803**(3), 28 U.S.C.A. Calhoun v. Baylor, 1981, 646 F.2d 1158. Evidence 268

Murder victim's statements to witness, that he had received a telephone call, that the voice on the other end of the line was male, and that he had made arrangements to meet that male at an apartment building for a rendezvous with a girl, all related to the victim's state of mind and were therefore admissible under the “state of mind” exception to the hearsay prohibition. Rules of Evid., Rule **803**(3). State v. Robinson, 2006, 239 S.W.3d 211, appeal after new trial 2009 WL 1741401, appeal denied. Criminal Law 419(2.20)

Victim's statements that he intended to be buried in cemetery rather than cremated were admissible in murder trial under state-of-mind exception to hearsay rule. Rules of Evid., Rule **803**(3). State v. Wilson, 2003, 164 S.W.3d 355, appeal denied, denial of post-conviction relief affirmed 2006 WL 2739335. Criminal Law 419(2.20)

Defendant's statement to witness that “she didn't do it” was not admissible in murder trial under state-of-mind exception to hearsay rule; statement regarded past conduct. Rules of Evid., Rule **803**(3). State v. Wilson, 2003, 164 S.W.3d 355, appeal denied, denial of post-conviction relief affirmed 2006 WL 2739335. Criminal Law 419(2.20)

Victim's statement, before her death, that defendant would kill her if he found out about victim showing deputy where defendant was growing marijuana was not admissible under hearsay exception for statements regarding then existing mental, emotional,

or physical condition; although statement showed victim's fear, statement was entered to prove defendant's conduct, not victim's conduct. Rules of Evid., Rule **803**(3). State v. Long, 2000, 45 S.W.3d 611, appeal denied. Criminal Law 419(2.20)

Witness' hearsay testimony regarding child abuse victim's negative reaction when witness mentioned defendant's name could be admissible under hearsay exception to show the victim's state of mind when he heard the defendant's name, i.e., that the victim was fearful of the defendant or associated some other negative emotion with the defendant, but if admitted for this purpose, the evidence would not then be relevant because the victim's state of mind was not directly probative of whether the defendant burned the victim. Rules of Evid., Rule **803**(3). State v. Burns, 1999, 29 S.W.3d 40, appeal denied. Criminal Law 419(2.20)

Admission of hearsay statement of murder victim that he wanted to bring his guns over to witness' house because he was afraid of defendant and did not know what she would do was erroneous, even if statement was evidence of victim's state of mind, where there was not evidence presented or claim made about victim's conduct that would have made his state of mind as reflected by his statement relevant to an issue on trial. Rules of Evid., Rule **803**(3). State v. Leming, 1998, 3 S.W.3d 7, appeal after new trial 2001 WL 637708, appeal denied. Criminal Law 419(2.20)

Murder victim's state of mind was not relevant, in prosecution for first-degree murder, and therefore, victim's statements that he intended to steal marijuana with the defendant and that plan to steal marijuana was the defendant's were inadmissible hearsay, where identity of victim and his whereabouts before his death were not an issue in trial, and defendant raised no defense, such as accident, suicide of victim, or self-defense relevant to the issue of whether defendant murdered the victim. Rules of Evid., Rules 401, **803**, subd. 3. State v. Farmer, 1996, 927 S.W.2d 582, appeal denied. Criminal Law 419(1.5)

While testimony of victim's wife that victim had expressed fear of defendant was admissible to show state of mind, such state of mind was not directly probative of issue whether defendant murdered victim and testimony was therefore inadmissible. Rules of Evid., Rules 401, 403, 802, **803**(3). State v. Bragan, 1995, 920 S.W.2d 227, rehearing denied 1995 WL 506035, appeal denied, denial of habeas corpus affirmed 249 F.3d 476, rehearing en banc denied, certiorari denied 122 S.Ct. 411, 534 U.S. 980, 151 L.Ed.2d 313. Criminal Law 419(2.20); Homicide 960

Testimony of witness regarding two prior statements of victim in which victim had said that he “should have killed that little son of a bitch” during earlier fight was admissible under exception to hearsay rule for statements of mental, emotional, or physical condition in prosecution of defendant for second-degree murder, even though witness did not specifically hear victim state that he was referring to defendant; inference that that victim was referring to defendant was reasonable, two prior statements took place within one year of crime, and whether statements qualified as threats should have been left to fact-finder. Rules of Evid., Rule **803**(3). State v. Ruane, 1995, 912 S.W.2d 766. Criminal Law 419(2.20)

Coconspirator's testimony that murder victim commented to coconspirator on previous fishing trip that he thought codefendant had pushed him into water was not admissible under state of mind hearsay exception as against defendant in prosecution for conspiracy to murder victim to collect proceeds of life insurance policy; however, admission of that evidence was harmless, in light of overwhelming evidence of defendant's involvement in conspiracy and fact that hearsay in question described only codefendant's behavior. Rules of Evid., Rule **803**(3). State v. Hutchison, 1994, 898 S.W.2d 161, rehearing denied, certiorari denied 116 S.Ct. 137, 516 U.S. 846, 133 L.Ed.2d 84, denial of post-conviction relief affirmed 1997 WL 607502, appeal denied, certiorari denied 119 S.Ct. 239, 525 U.S. 904, 142 L.Ed.2d 196, denial of habeas corpus affirmed 303 F.3d 720, rehearing and suggestion for rehearing en banc denied, certiorari denied 123 S.Ct. 2608, 539 U.S. 944, 156 L.Ed.2d 631, rehearing denied 124 S.Ct. 37, 539 U.S. 983, 156 L.Ed.2d 696, habeas corpus denied 2010 WL 1330296. Criminal Law 419(2.20); Criminal Law 1169.1(9)

Murder victim's nephew's testimony that victim received phone call from codefendant on day of murder and that immediately after call victim said that he was going fishing “with the boys,” was admissible under “state of mind” hearsay exception in murder prosecution alleging that defendant and codefendant murdered victim to collect proceeds of recently-purchased life insurance policy that named defendant as sole beneficiary; nephew's recognition of codefendant's voice on phone and victim's

subsequent comment tied codefendant to planned fishing trip and supported coconspirator's testimony. Rules of Evid., Rule 803(3). State v. Hutchison, 1994, 898 S.W.2d 161, rehearing denied, certiorari denied 116 S.Ct. 137, 516 U.S. 846, 133 L.Ed.2d 84, denial of post-conviction relief affirmed 1997 WL 607502, appeal denied, certiorari denied 119 S.Ct. 239, 525 U.S. 904, 142 L.Ed.2d 196, denial of habeas corpus affirmed 303 F.3d 720, rehearing and suggestion for rehearing en banc denied, certiorari denied 123 S.Ct. 2608, 539 U.S. 944, 156 L.Ed.2d 631, rehearing denied 124 S.Ct. 37, 539 U.S. 983, 156 L.Ed.2d 696, habeas corpus denied 2010 WL 1330296. Criminal Law 419(2.20)

In murder prosecution, defendant's threat on night of crime was relevant to show defendant's intent, and thus admissible under exception to hearsay rule, even though threat was not specifically directed at victim, but went to group of individuals gathered together for drinking and gambling. Rules of Evid., Rule 803(3). State v. Ray, 1993, 880 S.W.2d 700, appeal denied, dismissal of habeas corpus affirmed 2007 WL 1498467. Criminal Law 419(2.40); Homicide 989(2)

Testimony of victim's boyfriend, that victim had told him not to come by her house on Sunday because she was afraid his being there “might cause a conflict,” was admissible to show victim's plans for Sunday, the day she was killed, and to explain why boyfriend did not see her that day, and to extent evidence might have been used improperly to establish defendant's conduct on Sunday, the record was full of other testimony that defendant and victim were together that day and that he went to her house. Rules of Evid., Rule 803(3). State v. Smith, 1993, 868 S.W.2d 561, rehearing denied 1994 WL 3381, certiorari denied 115 S.Ct. 417, 513 U.S. 960, 130 L.Ed.2d 333, denial of post-conviction relief affirmed 1998 WL 345353, appeal denied, certiorari denied 119 S.Ct. 2375, 527 U.S. 1026, 144 L.Ed.2d 779, habeas corpus denied 2005 WL 2416504, certificate of appealability denied 2006 WL 1881358, affirmed 2010 WL 2545521. Homicide 960

In murder prosecution involving black victim, defendant's statement, made on morning of murder, that he disliked blacks came within state of mind exception to hearsay rule. Rules of Evid., Rule 803(3); Const. Art. 1, §§ 8, 16. State v. Middlebrooks, 1992, 840 S.W.2d 317, certiorari granted 113 S.Ct. 1840, 507 U.S. 1028, 123 L.Ed.2d 466, motion to dismiss denied 114 S.Ct. 48, 510 U.S. 805, 126 L.Ed.2d 19, certiorari dismissed as improvidently granted 114 S.Ct. 651, 510 U.S. 124, 126 L.Ed.2d 555, appeal after new sentencing hearing 1998 WL 13819, affirmed 995 S.W.2d 550, denial of habeas corpus affirmed 2010 WL 3419445, denial of post-conviction relief affirmed 2003 WL 61244, appeal denied. Criminal Law 419(2.20)

Father's silence, coupled with turning and walking away, in response to son-in-law's statement that he intended to build a garage on father's property after which property would belong to son-in-law, was not a statement of father's then existing state of mind. Rules of Evid., Rule 803(3). Hulsey v. Bush, 1992, 839 S.W.2d 411, appeal denied. Evidence 268

Statement for medical diagnosis--In general

To be admissible under hearsay exception for statements made for medical diagnosis and treatment, statement regarding general character, cause, or source of problem must be reasonably pertinent to diagnosis and treatment. Rules of Evid., Rule 803(4). State v. Stinnett, 1997, 958 S.W.2d 329. Criminal Law 367

To be admissible under medical diagnosis and treatment exception to hearsay rule, statement must have been made for purpose of medical diagnosis and treatment, describing medical history such as past or present symptoms, pain, or sensation, and if statement addresses inception or general character of cause or external source of problem, it must be reasonably pertinent to diagnosis and treatment. Rules of Evid., Rule 803(4) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 367

To fall within medical diagnosis and treatment hearsay exception, statements must have been made for purpose of diagnosis and treatment, have been reasonably pertinent to diagnosis and treatment, and include information about things such as cause of injury, place of injury, or frequency of injury. Rules of Evid., Rule 803(4). State v. Hunter, 1995, 926 S.W.2d 744, appeal denied. Criminal Law 367

Statements made for purpose of medical diagnosis and treatment are admissible as exception to hearsay rule. Rules of Evid., Rule 803(4). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 367

---- Purpose, statement for medical diagnosis

Rationale for exception to hearsay rule for statements made for purposes of medical diagnosis and treatment is that persons who are seeking medical diagnosis and treatment will make reliable statements to assure proper medical care; statements are admissible, however, only if they are reasonably pertinent to both diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. Lynn, 1996, 924 S.W.2d 892. Criminal Law 367

Rationale for medical diagnosis and treatment hearsay exception is that such declarations are deemed reliable as declarant is motivated to tell the truth; that is, declarant makes statements for ultimate purpose of receiving proper diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. Livingston, 1995, 907 S.W.2d 392. Criminal Law 367

Statements for purposes of medical diagnosis and treatment are generally considered reliable because they are made by patient with genuine desire to seek adequate medical treatment, with motive to recover physically generally outweighing other considerations. Rules of Evid., Rule **803**(4). State v. Edwards, 1993, 868 S.W.2d 682, appeal denied, dismissal of post-conviction relief affirmed 2003 WL 23014683, dismissal of habeas corpus affirmed 2005 WL 544714, dismissal of habeas corpus affirmed 2007 WL 152233, certiorari denied 128 S.Ct. 188, 552 U.S. 876, 169 L.Ed.2d 127, dismissal of habeas corpus affirmed 2010 WL 2134156. Criminal Law 367

---- Diagnosis, statement for medical diagnosis

In context of rule governing hearsay exception for statements for medical diagnosis and treatment, “diagnosis” refers to diagnosis made for purpose of determining what course of treatment should be prescribed for patient. Rules of Evid., Rule **803**(4). State v. McLeod, 1996, 937 S.W.2d 867. Criminal Law 367

For purposes of hearsay exception for statements for medical diagnosis and treatment, distinction exists between statements made for diagnosis and treatment and those made for evaluation; statements made for purposes of evaluation are less likely to be viewed as reliable in sense that they may have been affected by prospect of litigation. Rules of Evid., Rule **803**(4). State v. McLeod, 1996, 937 S.W.2d 867. Criminal Law 367

---- Medical personnel, statement for medical diagnosis

Although rule governing hearsay exception for statements for medical diagnosis and treatment ordinarily involves statements made to physicians, scope of rule applies to any person to whom statement is made for purposes of or pertinent to medical diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. McLeod, 1996, 937 S.W.2d 867. Criminal Law 367

Although exception to hearsay rule for statements made for purpose of medical diagnosis and treatment generally includes statements made to physicians, exception also encompasses statements made to someone other than physician, provided that such statements are for purpose of diagnosis and treatment of medical or physical problem, as opposed to psychological or mental problem. Rules of Evid., Rule **803**(4). State v. Williams, 1995, 920 S.W.2d 247, appeal denied. Criminal Law 367

Statements made by three-year-old alleged rape victim, during interviews with psychologist, were not admissible under hearsay exception governing statements made in connection with medical care. Rules of Evid., Rule **803**(4). State v. Barone, 1993, 852 S.W.2d 216, 38 A.L.R.5th 897. Criminal Law 367

Medical history relevant to diagnosis and treatment of patient can be communicated to medical personnel, under exception to hearsay rule, whether history is given by person seeking treatment or third person, particularly if third person is parent or grandparent. Rules of Evid., Rule **803**(4). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 367

Trial court abused discretion by permitting nurse practitioner employed by a sexual assault resources center to relate hearsay statements made to her by mother of sexual assault victim, as statements were not made in connection with diagnosis or treatment of victim as required to qualify for hearsay exception; although nurse practitioner interviewed and examined victim, she did so approximately two hours after victim and mother first appeared in hospital, and nurse practitioner was not involved in treatment of child. Rules of Evid., Rule **803**(2). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 367

Trial court abused discretion by permitting medical records librarian to read into record comments made to social worker by mother of sexual abuse victim, at hospital after alleged incident, implicating father as perpetrator; statements were not made in furtherance of diagnosis or treatment, as required in order for hearsay exception to apply, as social worker was present simply to take family social history. Rules of Evid., Rule **803**(4). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 367

Trial court abused discretion by permitting medical records librarian to read into record, comments made to social worker by mother of sexual abuse victim, at hospital after alleged incident, implicating father as perpetrator; statements were not made in furtherance of diagnosis or treatment, as required in order for hearsay exception to apply, as child had already received medical treatment at time of interview. Rules of Evid., Rule **803**(4). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 367

---- Presumptions and burden of proof, statement for medical diagnosis

Under exception to hearsay rule for statements made for purposes of medical diagnosis and treatment, state must show that statement was made for purposes of medical diagnosis and treatment, that it describes medical history of declarant, that is past or present symptoms, pain, sensations, and general character of cause of symptoms, and is reasonably pertinent to diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. Edwards, 1993, 868 S.W.2d 682, appeal denied, dismissal of post-conviction relief affirmed 2003 WL 23014683, dismissal of habeas corpus affirmed 2005 WL 544714, dismissal of habeas corpus affirmed 2007 WL 152233, certiorari denied 128 S.Ct. 188, 552 U.S. 876, 169 L.Ed.2d 127, dismissal of habeas corpus affirmed 2010 WL 2134156. Criminal Law 367

---- Admissibility, statement for medical diagnosis

Test for admission under hearsay exception for statements made for medical diagnosis and treatment is the same whether declarant is adult or child; however, necessity of considering all the circumstances of child's statement is especially important, because child's ability to articulate reason for statement may be affected by age or developmental maturity. Rules of Evid., Rule **803**(4). State v. Stinnett, 1997, 958 S.W.2d 329. Criminal Law 367

Doctor's statement that purpose of declarant's statement was for medical diagnosis and treatment is not a magical one, but should be weighed and considered in light of all the circumstances giving rise to statement in order to determine admissibility under hearsay exception. Rules of Evid., Rule **803**(4). State v. Stinnett, 1997, 958 S.W.2d 329. Criminal Law 367

Courts should not presume that statement made by child to medical service provider is inadmissible under hearsay exception for statements made for medical diagnosis and treatment merely because there is little or no testimony by child concerning motivation for making statement; rather, in determining whether child's statement falls under exception, courts should consider totality of the circumstances. Rules of Evid., Rule **803**(4). State v. Stinnett, 1997, 958 S.W.2d 329. Criminal Law 367

Statement made by child to medical service provider deserves especially careful scrutiny, when determining whether it falls under hearsay exception for statements made for medical diagnosis and treatment, if it was improperly influenced by another, made in response to suggestive or leading questions, or inspired by a custody battle or family feud. Rules of Evid., Rule **803**(4). State v. Stinnett, 1997, 958 S.W.2d 329. Criminal Law 367

Under medical diagnosis and treatment exception to hearsay rule, courts should not presume that statements by child to medical services provider are untrustworthy merely because there is disputable evidence of child's motivation to be truthful; rather,

admissibility decision should be based upon thorough examination of all circumstances surrounding the statement. Rules of Evid., Rule **803**(4) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 367

Considerations relevant to determining motivation for child's statements to medical services provider, under medical diagnosis and treatment exception to hearsay rule, include timing and content of statement, presence or absence of any improper influences placed on child, whether child's statement was made in response to leading or suggestive questioning, and any other factor that may affect trustworthiness of statement. Rules of Evid., Rule **803**(4) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 367

In determining admissibility of statements made by child-declarants under rule governing hearsay exception for statements for medical diagnosis and treatment, trial courts must consider criteria such as circumstances surrounding making of statement, which would include timing of statement and its contents; if trial court finds that statement was inappropriately influenced by another, court should exclude it as not having been made for purpose of diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. McLeod, 1996, 937 S.W.2d 867. Criminal Law 367

For purposes of determining admissibility of statement made by child-declarant under rule governing hearsay exception for statements for medical diagnosis and treatment, trial court's inquiry, considering criteria such as circumstances surrounding making of statement, will vary depending on facts of each case. Rules of Evid., Rule **803**(4). State v. McLeod, 1996, 937 S.W.2d 867. Criminal Law 367

For purposes of determining admissibility of statement made by child-declarant under rule governing hearsay exception for statements for medical diagnosis and treatment, courts should not presume that statements by child to medical services provider are untrustworthy merely because there is disputable evidence of child's motivation to be truthful; rather, admissibility decision should be based upon thorough examination of all circumstances surrounding statement. Rules of Evid., Rule **803**(4). State v. McLeod, 1996, 937 S.W.2d 867. Criminal Law 367

To determine admissibility of statement made by child-declarant under rule governing hearsay exception for statements for medical diagnosis and treatment, trial court shall conduct evidentiary hearing outside jury's presence; after considering all relevant evidence offered pertaining to making of statement, trial judge shall admit statement into evidence upon affirmative finding that conditions described in rule have been satisfied. Rules of Evid., Rule **803**(4). State v. McLeod, 1996, 937 S.W.2d 867. Criminal Law 367; Criminal Law 695.5

Some statements that declarant intends to be used for diagnosis and treatment, such as statements about cause of symptoms, are not always admissible under exception to hearsay rule for statements made for purpose of medical diagnosis and treatment; rather, admissibility of statements hinges on whether they are reasonably pertinent to diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. Williams, 1995, 920 S.W.2d 247, appeal denied. Criminal Law 367

Just because statements are recorded as part of medical history does not mean that entire history is admissible under exception to hearsay rule for statements made for purpose of medical diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. Williams, 1995, 920 S.W.2d 247, appeal denied. Criminal Law 367

Rape victim's statements to nurse practitioner regarding events before rape and description of assailant should have been redacted prior to admission of victim's medical history under exception to hearsay rule for statements made for purpose of medical diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. Williams, 1995, 920 S.W.2d 247, appeal denied. Criminal Law 367

Sufficient indicia of sexual abuse victim's proper motivation in disclosing identity of abuser to physician exists, for purposes of determining admissibility under medical diagnosis and treatment exception to hearsay rule, where physician makes it clear to

victim that inquiry into identity of abuser is important to diagnosis and treatment, and victim manifests such an understanding. Rules of Evid., Rule **803**(4). State v. Livingston, 1995, 907 S.W.2d 392. Criminal Law 367

---- Examples, statement for medical diagnosis

Rape victim's medical records containing her out-of-court statements to emergency room medical personnel that she had been raped were nontestimonial, for confrontation clause purposes, and were properly admitted under medical diagnosis exception to hearsay rule. U.S.C.A. Const.Amend. 6; Rules of Evid., Rule **803**(4). State v. Cannon, 2008, 254 S.W.3d 287, appeal after new trial 2012 WL 6049639. Criminal Law 367; Criminal Law 662.40

Victim's statements, to doctor working for sexual assault resource center, indicating that victim was struck on head with beer bottle and was then raped vaginally, rather than orally or anally, were reasonably pertinent to diagnosis and treatment, as was required for admissibility of statements under hearsay exception for statements made for purpose of medical diagnosis and treatment. T.C.A. § 39-13-502(a)(1); Rules of Evid., Rule **803**(4). State v. Spratt, 2000, 31 S.W.3d 587. Criminal Law 367

Victim's statements, to doctor working for sexual assault resource center, indicating that victim was attacked at work by black man who requested information were not reasonably pertinent to diagnosis and treatment, as was required for admissibility of statements under hearsay exception for statements made for purpose of medical diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. Spratt, 2000, 31 S.W.3d 587. Criminal Law 367

Six-year-old child's statements to examining physicians identifying stepfather as perpetrator of sexual abuse were admissible under hearsay exception for statements made for medical diagnosis and treatment; child was old enough to understand the physicians were examining her to determine whether there was injury and to treat her for such, child used child-like terms to describe abuse, and statements made to physicians and her testimony at trial were internally and comparatively consistent. Rules of Evid., Rule **803**(4). State v. Stinnett, 1997, 958 S.W.2d 329. Criminal Law 367

Fact that perpetrator of sexual abuse was child's stepfather, who resided in same household, was pertinent to the diagnosis and treatment of emotional or psychological injury suffered as result of abuse, and, thus, admissible under hearsay exception for statements made for medical diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. Stinnett, 1997, 958 S.W.2d 329. Criminal Law 367

Statements of three-year-old victim to psychologist who took her patient history at clinic came within medical diagnosis and treatment exception to hearsay rule, where victim complained of pain while urinating and her mother observed evidence of vaginal injury, victim was taken to hospital almost immediately but refused treatment because of pain, victim was taken to clinic and examined the next morning, and there was no evidence of improper influence on victim, of motive inconsistent with seeking medical treatment, or of any other factor affecting victim's trustworthiness. Rules of Evid., Rule **803**(4) State v. Gordon, 1997, 952 S.W.2d 817. Criminal Law 367

Trial judge in aggravated rape prosecution did not abuse his discretion in admitting child-victim's statements when she was nine years old to examining physician, as to medical history, under hearsay exception for statements for medical diagnosis and treatment, where physician testified that his examination was performed within a few days of initial complaint, that history and physical examination were necessary to aid him in diagnosis and treatment, that victim told him about her medical history and circumstances of alleged offense that had occurred when she was six years old, and that physical findings of medical examination were consistent with history of sexual abuse given by victim. Rules of Evid., Rule **803**(4). State v. McLeod, 1996, 937 S.W.2d 867. Criminal Law 367

Child-victim's statements to examining pediatrician as to defendant's alleged sexual abuse were inadmissible under hearsay exception for statements for medical diagnosis and treatment, as statements were not made for purpose of medical diagnosis and treatment but, rather, for evaluative purposes, where fondling nature of alleged abuse made it unlikely that physical examination would uncover trauma or other evidence of sexual abuse, and pediatrician observed no trauma in genital area when she examined

victim. West's Tenn.Code, §§ 39-13-502(a)(4), 39-13-504(a); Rules of Evid., Rule **803**(4). State v. McLeod, 1996, 937 S.W.2d 867. Criminal Law 367

Statements identifying sex abuser may be pertinent to diagnosis and treatment when abuser is member of victim's household for purposes of the medical diagnosis and treatment hearsay exception. Rules of Evid., Rule **803**(4). State v. Hunter, 1995, 926 S.W.2d 744, appeal denied. Criminal Law 367

Statements made by rape victim to nurse practitioner that were reasonably pertinent for medical diagnosis and treatment were admissible under exception to hearsay rule for statements made for purpose of medical diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. Williams, 1995, 920 S.W.2d 247, appeal denied. Criminal Law 367

Testimony of physician who examined minor sexual abuse victim regarding statements victim made to her concerning feelings about abuse by the defendant, her father, and statements identifying her father as the abuser were not reasonably related to medical diagnosis and treatment and, thus, were inadmissible under medical diagnosis and treatment exception to hearsay rule; although statement identifying father as abuser may have been pertinent to proper diagnosis and treatment of victim, identity was not a primary issue, given victim's trial testimony identifying her father as abuser. Rules of Evid., Rule **803**(4). State v. Livingston, 1995, 907 S.W.2d 392. Criminal Law 367

Name or identity of perpetrator in child sex abuse prosecutions is reasonably pertinent to diagnosis and treatment of victim and, thus, admissible under medical diagnosis and treatment exception to hearsay rule when perpetrator is a member of victim's immediate household. Rules of Evid., Rule **803**(4). State v. Livingston, 1995, 907 S.W.2d 392. Criminal Law 367

Statements made to a physician identifying perpetrator who has sexually abused minor victim, and who is a member of victim's household, may be reasonably pertinent to proper diagnosis and treatment of emotional and psychological injury and may be admissible under medical diagnosis and treatment exception to hearsay rule. Rules of Evid., Rule **803**(4). State v. Livingston, 1995, 907 S.W.2d 392. Criminal Law 367

Hospital records of sexual assault victim were admissible under exception to hearsay rule for statements made for purposes of medical diagnosis and treatment; records showed victim was treated at hospital for multiple bruises sustained in an “assault and attempted rape,” report indicated that victim reported digital vaginal penetration, it was proper for physician to determine whether there was intrusion during assault of any orifice to determine necessary treatment, and responses by victim related to diagnosis and treatment. Rules of Evid., Rule **803**(4). State v. Edwards, 1993, 868 S.W.2d 682, appeal denied, dismissal of post-conviction relief affirmed 2003 WL 23014683, dismissal of habeas corpus affirmed 2005 WL 544714, dismissal of habeas corpus affirmed 2007 WL 152233, certiorari denied 128 S.Ct. 188, 552 U.S. 876, 169 L.Ed.2d 127, dismissal of habeas corpus affirmed 2010 WL 2134156. Criminal Law 367

Statement by mother of sexual assault victim, to emergency room nurse, that on hearing noise she had entered living room and seen husband jump up from where victim was lying, while he pulled up his pants, she had noticed blood on husband's pants and on child's pants had asked child if husband had “messed” with her and child had said yes, satisfied timeliness requirement for hearsay exception covering statements made to medical personnel in connection with diagnosis and treatment; statement was made at time when medical personnel were performing first physical examination of victim and treating her injuries. Rules of Evid., Rule **803**(4). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 367

Statements made by child abuse victim to physician, during examination, that abuser is member of victim's immediate household, are reasonably pertinent to treatment and thus admissible as exception to hearsay rule. Rules of Evid., Rule **803**(4). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 367

Mother's statement to emergency room nurse treating her daughter, who was sexual assault victim, that mother was awakened by noise, went to living room and saw husband jump up from where child was lying while pulling up his pants, child ran to

bathroom, mother noticed blood spots on back of child's pants and child said “yes” after mother asked her if husband had “messed” with her, satisfied requirements for hearsay exception covering statements reasonably pertinent to diagnosis and treatment; from statement medical care providers learned that victim had been sexually abused, an adult was likely perpetrator, and that one or more of victim's orifices had been penetrated. Rules of Evid., Rule **803**(4). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 367

Statements made by mother to emergency room nurse, that she had noticed blood on pants of husband when she found husband jumping up from where daughter was lying, and that mother had confronted husband before checking on condition of child, did not qualify for hearsay exception covering statements reasonably pertinent to diagnosis and treatment of a child for sexual abuse. Rules of Evid., Rule **803**(4). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 367

Recorded recollection

Trial court's act of allowing prior written statement of first witness for State, which contained defendant's statement to witness that defendant “might kill victim” if he caught her with another man, and defendant's statement to witness that defendant and victim had “some bad arguments,” to be read to jury and marked as an exhibit in murder trial, was improper; State failed to utilize procedures of either of present recollection revived or past recollection recorded, and State did not offer at trial an evidentiary theory for having witness read even portion of statement. Rules of Evid., Rules 612, 613, **803**(5). State v. Robertson, 2003, 130 S.W.3d 842, appeal denied, denial of post-conviction relief affirmed 2009 WL 277073. Criminal Law 435

Recorded recollections admitted in under exception to hearsay rule for recorded recollections of witness who in no longer able to recall substance of testimony are themselves substantive evidence. Rules of Evid., Rule **803**(5). Mitchell v. Archibald, 1998, 971 S.W.2d 25, appeal denied. Evidence 355(6)

To utilize recorded recollection exception to hearsay rule, a party must (1) provide a memorandum or record , (2) about a matter that the witness once had knowledge of, (3) establish that the witness now has insufficient recollection to testify fully and accurately, (4) that the statement was made or adopted by the witness, (5) while fresh in the witness's memory, and, (6) that the record accurately reflects the witness's knowledge. Rules of Evid., Rule **803**(5). Mitchell v. Archibald, 1998, 971 S.W.2d 25, appeal denied. Evidence 355(6)

Audio recording of witness's statement to city's attorney was admissible under recorded recollection exception to hearsay rule in bicyclist's personal injury action arising out of collision with city dump truck, where record was in the form of an audio recording and a written transcript of the recording, witness saw accident happen, he was unable to testify fully and accurately because aneurysm and subsequent brain surgery had impaired his memory, he remembered giving interview several days after accident while it was still fresh in his mind, and testified that when he gave interview, his memory was fine and that his statements accurately reflected his knowledge at the time. Rules of Evid., Rule **803**(5). Mitchell v. Archibald, 1998, 971 S.W.2d 25, appeal denied. Evidence 355(6)

Witness' prior statement to authorities about defendant's role in shooting was admissible under recorded recollection exception to hearsay rule on grounds that there was written record, it concerned matter about which witness once had knowledge, witness at trial had insufficient recollection to testify fully and accurately, statement was signed by witness, it was made while matter was fresh in his memory, and it accurately reflected his knowledge. Rules of Evid., Rule **803**(5) (1995). State v. Mathis, 1997, 969 S.W.2d 418, appeal denied. Criminal Law 435

Business records--In general

So long as the data included in a compilation otherwise satisfies the business records exception, the fact that a compilation of admissible business records was created during litigation does not disqualify it as a business record under the exception. Rules of Evid., Rules **803**(6), 1006. Fusner v. Coop Const. Co., LLC, 2007, 211 S.W.3d 686. Evidence 351

Trial court's admission of county humane society's records under business records exception to hearsay rule was not an abuse of discretion in prosecution for cruelty to animals; advisory board member of humane society who had been contacted to assist at defendants' premises testified that shelter manager and humane society employee had business duty to prepare records, and stated that preparation of records was standard practice on every animal within facility or any animal that comes in facility for any reason, and witnesses testified that it was normal practice to create intake records for each animal. Rules of Evid., Rule **803**(6); West's T.C.A. § 39-14-202. State v. Webb, 2003, 130 S.W.3d 799, appeal denied, rehearing of denial of appeal denied. Criminal Law 444.9

Business records exception to hearsay rule rests on premise that records regularly kept in normal course of business are inherently trustworthy and reliable, and exception's purpose is to facilitate use of business records by eliminating expense and inconvenience of calling numerous witnesses involved in preparation and maintenance of records. Rules of Evid., Rule **803**(6). Alexander v. Inman, 1995, 903 S.W.2d 686, appeal denied. Evidence 351

Not every report or other writing is admissible simply because it was made or rendered in conduct of some business or profession; compliance with all qualifications of Business Records as Evidence Act is prerequisite to admissibility. T.C.A. § 24-714. Neas v. Snapp, 1968, 426 S.W.2d 498, 25 McCanless 325, 221 **Tenn**. 325. Evidence 351

---- Purpose, business records

The purpose of the hearsay exception for records regularly kept in the ordinary course of business is to permit the use of inherently trustworthy business records at trial by eliminating the expense and inconvenience that would result from requiring the testimony of everyone involved in the preparation and maintenance of such records. Rules of Evid., Rule **803**(6). Arias v. Duro Standard Products Co., 2010, 303 S.W.3d 256. Evidence 351

---- Foundation, business records

On appeal from his conviction for violating the Sexual Offender Registration and Monitoring Act, defendant failed to present sufficient appellate record to support his contention that law enforcement information coordinator was not qualified to testify as records custodian for the **Tennessee** Bureau of Investigation (TBI), and thus the Court of Criminal Appeals would presume that trial court ruled correctly, where record did not include testimony from which trial court made its finding that witness was a records custodian for TBI. West's T.C.A. § 40-39-101; Rules of Evid., Rule **803**(6). State v. Flatt, 2006, 227 S.W.3d 615, appeal denied. Criminal Law 1120(9); Criminal Law 1144.12

Law enforcement information coordinator for the **Tennessee** Bureau of Investigation (TBI) was qualified to testify as records custodian for TBI in trial for violation of the Sexual Offender Registration and Monitoring Act, where coordinator's testimony clearly established both that she was one of the TBI employees in charge of maintaining the sex offender records and that she had knowledge of the manner in which they were prepared and preserved. West's T.C.A. § 40-39-101; Rules of Evid., Rule **803**(6). State v. Flatt, 2006, 227 S.W.3d 615, appeal denied. Criminal Law 444.12

Wire transfer company's chief compliance officer was custodian of records in computer database for purposes of business records exception to hearsay rule, even though a local agent processed the transactions; the officer testified about identity of the records, mode of preparation, and process for local agent to enter in the data, and he was a person with knowledge and a business duty to record or transmit the data in question. Rules of Evid., Rule **803**(6). Fusner v. Coop Const. Co., LLC, 2007, 211 S.W.3d 686. Evidence 373(1)

Regardless of title, to qualify as a custodian under business record exception to hearsay rule, the witness must be able to testify as to the identity of the record, the mode of preparation, and making of the record in the regular course of business at or near the time of the recorded event. Rules of Evid., Rule **803**(6). Fusner v. Coop Const. Co., LLC, 2007, 211 S.W.3d 686. Evidence 373(1)

Foundation for admitting business record under hearsay rule is sufficient if the person laying the foundation for the record testifies that the regular business procedure is for a person with personal knowledge of the recorded event to provide information or make the entry. Rules of Evid., Rule **803**(6). Fusner v. Coop Const. Co., LLC, 2007, 211 S.W.3d 686. Evidence 373(1)

Forensic nurse examiner was a "custodian or other qualified witness," for purposes of admitting report from sexual assault resource center as business record in trial for aggravated rape, where examiner's duties and training involved knowledge as to how reports of rape victim's tissue samples and of blood drawn from defendant were prepared and maintained. Rules of Evid., Rule **803**(6). State v. Dean, 2001, 76 S.W.3d 352, appeal denied, denial of post-conviction relief affirmed 2006 WL 3613598, denial of habeas corpus vacated 2007 WL 4404112, dismissal of habeas corpus affirmed 2009 WL 1530183. Criminal Law 436(2)

Term "qualified witness" should be given broad interpretation in business records exception to hearsay rule; to be considered qualified, witness must be personally familiar with business' record-keeping systems and must be able to explain recordkeeping procedures, but witness is not required to have personal knowledge of facts recorded, or to have been involved personally in preparation of records, or to know who actually recorded information. Rules of Evid., Rule **803**(6). Alexander v. Inman, 1995, 903 S.W.2d 686, appeal denied. Evidence 373(1)

Law firm's time records are business records under exception to hearsay rule; rule does not require attorneys with overall responsibility for representing client to have personally recorded all time sheets or to have personal knowledge of facts contained in each time slip, and attorney is "qualified witness" if he has personal knowledge of firm's billing practices and manner in which account records are prepared and maintained. Rules of Evid., Rule **803**(6). Alexander v. Inman, 1995, 903 S.W.2d 686, appeal denied. Evidence 354(8); Evidence 376(9)

Lead attorney was "qualified witness" under business records exception to hearsay rule where he directed and supervised all work on client's behalf and explained timekeeping system in general terms, and he was not required to examine each individual time slip, to identify administrative personnel responsible for collecting, recording, and maintaining time slips, to identify each firm's billing and timekeeping software, or to explain intricacies of firms' computer systems. Rules of Evid., Rule **803**(6). Alexander v. Inman, 1995, 903 S.W.2d 686, appeal denied. Evidence 376(9)

Alabama uniform traffic ticket and complaint complied with rules for identification and authentication of documents and admission of public reports under hearsay exception where ticket did not lack trustworthiness and indicated case number, court record, court action and disposition; ticket bore signed certification of office of municipal clerk of court and other indicia of reliability. Rules of Evid., Rules **803**(8), 901. State v. Rea, 1992, 865 S.W.2d 923. Automobiles 351.1; Criminal Law 444.13

Hospital records are admissible under hearsay rule exception for records of regularly conducted activity, if party offering records can establish proper predicate for their admission. Rules of Evid., Rule **803**(6). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 436(5)

---- Medical records or tests, business records

Fact that proffered evidence is a business or hospital record does not alone dispose of question of admissibility in a specific case under **Tennessee** statutory exception to hearsay rule for records as evidence. T.C.A. § 24-714. Phillips v. Neil, 1971, 452 F.2d 337, certiorari denied 93 S.Ct. 96, 409 U.S. 884, 34 L.Ed.2d 141. Evidence 351

Records concerning blood test results from testing performed in two hospitals following defendant's motor vehicle accident were properly admitted under the business records exception to the hearsay rule in prosecution for driving under the influence (DUI), where records were medical reports compiled by medical personnel, hospitals' practice was to regularly compile such reports, defendant's blood tests were conducted in course of regularly conducted hospital activities, and each report was made near time

of testing, and was admitted through testimony of proper records custodian. Rules of Evid., Rule **803**. State v. Goldston, 1999, 29 S.W.3d 537. Criminal Law 436(5)

---- Examples, business records

Veterinarian's report, detailing conditions at defendant's dog breeding business, was admissible under business records exception to hearsay rule in prosecution for animal cruelty; veterinarian testified that she had a business duty to record the information and had kept and maintained the record in the regular course of her business, and evidence and testimony indicated that veterinarian was employed by county animal control agency. Rules of Evid., Rule **803**(6). State v. Siliski, 2007, 238 S.W.3d 338, appeal denied. Criminal Law 436(3)

Opinion letter from doctor who was unable to testify in medical malpractice action, which supported defendant doctor's position that he was not negligent in his assessment of patient's MRI scan, constituted inadmissible hearsay; the letter was not admissible under the business record exception, nor was it self-authenticating since it was dated one year after patient's original diagnosis. Rules of Evid., Rules 801(c), **803**(6), 902(11). Godbee v. Dimick, 2006, 213 S.W.3d 865, appeal denied. Evidence 318(2)

Compilation of employee's wire transfers to parents in another country was admissible even though it was made in preparation for litigation over parents' workers' compensation claim to death benefits as dependents; the summary was necessarily prepared in anticipation of litigation, and testimony by wire transfer company's chief compliance officer supported a finding that each piece of data on the compilation complied with the business records exception to the hearsay rule. Rules of Evid., Rules **803**(6), 1006. Fusner v. Coop Const. Co., LLC, 2007, 211 S.W.3d 686. Evidence 351; Evidence 356

That reports from sexual assault resource center might be used in litigation did not render report containing record of rape victim's tissue samples and defendant's blood samples outside scope of business records exception to hearsay rule in trial for aggravated rape, where such reports were made in regular course of sexual assault center's business. Rules of Evid., Rule **803**(6). State v. Dean, 2001, 76 S.W.3d 352, appeal denied, denial of post-conviction relief affirmed 2006 WL 3613598, denial of habeas corpus vacated 2007 WL 4404112, dismissal of habeas corpus affirmed 2009 WL 1530183. Criminal Law 436(2)

Regardless of whether sporting goods store employee's handwritten inventories of stolen weapons constituted the best evidence of the serial numbers, inventories did not fall within business records exception to hearsay rule and, thus, were inadmissible in prosecution of defendant for murder and robbery; state failed to establish whether it was the regular practice of store to compile the handwritten inventories following a robbery or theft, and employee apparently carried one of the inventories folded in his wallet until providing the document to the state. Rules of Evid., Rule **803**(6). State v. Carroll, 1999, 36 S.W.3d 854. Criminal Law 436(2)

In negligence action arising from destruction of shredding machine, various documents relative to contract between owner of machine and third party for shredding were admissible under exception to hearsay rule for records of regularly conducted activity; items included customer list, draft agreement, shipping records, and correspondence, which were among types of records that owner of machine would be likely to maintain in ordinary course of its business. Rules of Evid., Rule **803**(6). Tire Shredders, Inc. v. ERM-North Central, Inc., 1999, 15 S.W.3d 849, appeal denied. Evidence 351

Nurse practitioner's testimony about victim's medical history information that was taken by social worker constituted hearsay within hearsay, but was admissible since statements made to social worker in taking medical history fell under business records exception to the hearsay rule and nurse practitioner's testimony fell within medical diagnosis and treatment hearsay exception. Rules of Evid., Rules **803**(4, 6), 805. State v. Hunter, 1995, 926 S.W.2d 744, appeal denied. Criminal Law 367; Criminal Law 436(5)

Computer printouts of time records were admissible under business records exception to hearsay rule where attorney demonstrated that attorneys regularly prepared time records, where records were prepared at or near time service was provided, where attorneys preparing records had personal knowledge of facts recorded, and where firms maintained time records in usual

course of business, and fact that printouts were prepared in response to discovery request did not undermine their trustworthiness as printouts themselves and information on printouts were records of regularly conducted business activity. Rules of Evid., Rule **803**(6). Alexander v. Inman, 1995, 903 S.W.2d 686, appeal denied. Evidence 354(8); Evidence 376(9)

Statements made by mother of sexual assault victim, that she had observed father in compromising position with victim and victim had told her father was perpetrator, made to emergency room nurse and social worker and recorded in hospital records, were not admissible over hearsay objection as constituting record of regularly conducted business activity of hospital. Rules of Evid., Rule **803**(6). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 436(5)

Public or official records--In general

The public records exception to the hearsay rule does not require that the record be introduced through the testimony of a custodian or other qualified witness. Rules of Evid., Rule **803**(8). State v. Korsakov, 2000, 34 S.W.3d 534. Criminal Law 429(1)

In prosecution for driving under the influence of an intoxicant (DUI), admission of certification and maintenance records of breath test machine could be accomplished through the testimony of the officer who administered the test. Rules of Evid., Rule **803**(8). State v. Korsakov, 2000, 34 S.W.3d 534. Automobiles 424

In negligence action arising from destruction of shredding machine, various documents relative to contract between owner of machine and third party for shredding were admissible under exception to hearsay rule for public records and reports, where those documents were either compiled by or submitted to village and were directly related to village's business activities with third party. Rules of Evid., Rule **803**(8). Tire Shredders, Inc. v. ERM-North Central, Inc., 1999, 15 S.W.3d 849, appeal denied. Evidence 333(1)

In negligence action arising from destruction of shredding machine, trade journals containing advertisements for sale of shredding machines fell within exception to hearsay rule for market reports and commercial publications. Rules of Evid., Rule **803**(17). Tire Shredders, Inc. v. ERM-North Central, Inc., 1999, 15 S.W.3d 849, appeal denied. Evidence 361

Public records exception to hearsay rule allows for admission of records of public officials acting under official duty to report accurately. Rules of Evid., Rule **803**(8). State v. Wingard, 1994, 891 S.W.2d 628. Criminal Law 429(1)

Governor's letter appointing county's juvenile referee to serve as special general sessions court judge while regular judge was disabled was a public record of one of the governor's official acts and was, therefore, admissible under public records exception to hearsay rule for purposes of mandamus action brought by special judge seeking to compel county officials to compensate him for his services. Rules of Evid., Rule **803**(8) (1987). State ex rel. Witcher v. Bilbrey, 1994, 878 S.W.2d 567, appeal denied. Evidence 333(1)

Multistate Tax Commission Corporate Income Tax Audit Procedure Guidelines Manual was admissible in dispute concerning assessment of state excise and franchise tax under hearsay exception for public records and reports. Rules of Evid., Rule **803**(8). Federated Stores Realty, Inc. v. Huddleston, 1992, 852 S.W.2d 206, rehearing denied. Evidence 333(1)

Mere fact that documents are admissible as evidence does not mean that every entry contained in documents can be admitted into evidence. Rules of Evid., Rule **803**(6). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 429(1); Criminal Law 432

Statutory procedure for supplying official copy of standards and procedures used in operating and evaluating accuracy of approved breath testing machine falls within public records exception to hearsay rule when procedure is offered as part of foundation for admitting health test results. T.C.A. § 38-6-107; Rules of Evid., Rule **803**(8). State v. Sensing, 1992, 843 S.W.2d 412. Automobiles 422.1

---- Court proceedings, public or official records

If trial court determined that probative value was not substantially outweighed by danger of unfair prejudice, then evidence of defendant's conviction, at original trial, on charge of aggravated burglary would be admissible, under hearsay exception for judgments of previous conviction, at retrial on remand after appellate court had affirmed his aggravated burglary conviction but had reversed his convictions for two counts of felony murder, for which convictions aggravated burglary had been predicate felony offense. Fed.Rules Evid.Rule 403, 28 U.S.C.A; Rules of Evid., Rule **803**(22). State v. Scarbrough, 2005, 181 S.W.3d 650. Criminal Law 419(2.25)

---- Criminal records, public or official records

Trial court committed error in admitting alcohol log entry of sheriff's department in prosecution for driving under the influence (DUI) per se under the business records hearsay exception; while corporal who introduced log testified that she was the custodian of such records and produced a log that contained the entry pertaining to the defendant's breath test results, she was unsure of the person who made the entry and whether that person had a business duty to do so. Rules of Evid., Rule **803**(6). State v. Conway, 2001, 77 S.W.3d 213, appeal denied, recommended for publication. Criminal Law 429(1)

Prisoner's reclassification records from correction center were admissible in his prosecution for felony escape under public records exception to hearsay rule. Rules of Evid., Rule **803**(8). State v. Wingard, 1994, 891 S.W.2d 628. Criminal Law 429(1)

Inmates' reclassification records are open for public inspection and, therefore, are “public records” for purposes of public records exception to hearsay rule. T.C.A. § 4-6-143; Rules of Evid., Rule **803**(8). State v. Wingard, 1994, 891 S.W.2d 628. Criminal Law 429(1)

Defendant's driving record was admissible as public record. Rules of Evid., Rule **803**(8). State v. Baker, 1992, 842 S.W.2d 261. Criminal Law 429(1)

---- Medical examiner reports, public or official records

Autopsy reports were admissible, in murder prosecution, under business record and public record exceptions to hearsay rule. Rules of Evid., Rule **803**(6, 8). State v. Davis, 2004, 141 S.W.3d 600, certiorari denied 125 S.Ct. 1306, 543 U.S. 1156, 161 L.Ed.2d 123, grant of post-conviction relief affirmed 2012 WL 3679571, appeal denied. Criminal Law 429(1); Criminal Law 436(3)

Fact that state introduced autopsy report through testimony of pathologist under hearsay exception for records of regularly conducted activity did not mean that every entry in document was admissible. Rules of Evid., Rule **803**(6). State v. Robinson, 1997, 971 S.W.2d 30, appeal denied. Criminal Law 429(1)

Conclusory statement in autopsy report about victim's alleged reputation for violence was not admissible under hearsay exception for records of regularly conducted activity during cross-examination of pathologist about report, under circumstances that pathologist did not know victim, source of author's information about victim was unknown, and conclusory statement did not refer to any specific act of violence by victim. Rules of Evid., Rule **803**(6). State v. Robinson, 1997, 971 S.W.2d 30, appeal denied. Criminal Law 429(1)

The report of county medical examiner who viewed and examined body of deceased was properly admitted in evidence in voluntary manslaughter case. T.C.A. §§ 38-701 to 38-714. Douglass v. State, 1964, 378 S.W.2d 749, 17 McCanless 643, 213 **Tenn**. 643. Criminal Law 429(1)

---- Police report, public or official records

Radio logs of police department, made in regular course of business were admissible in larceny prosecution, and where red ink additions to logs had been fully explained to jury as constituting notations which were not part of original record and were not to be considered by them there was no error in admission of logs. T.C.A. §§ 24-712 to 24-715. Gamble v. State, 1964, 383 S.W.2d 48, 19 McCanless 26, 215 **Tenn**. 26. Criminal Law 429(1); Criminal Law 673(1)

Ancient documents

Survey was authentic and, thus, admissible as ancient document in quiet title action, where the survey was in county records, contained seal and signature of surveyor, had been in existence longer than thirty years, was referenced in a deed ostensibly conveying the subject property to predecessor in title, and where nothing raised reasonable suspicion about it. Rules of Evid., Rules **803**(16), 901(a), (b)(8). Dunegan v. Griffith, 2007, 253 S.W.3d 164, appeal denied. Evidence 372(11)

Character evidence

Officer's testimony concerning defendant's familial relationship with woman involved in felony murder and aggravated robbery lacked necessary foundation to apply hearsay exception concerning testimony about reputation among members of a person's family, as officer's testimony was based merely on a single statement made to him by his half-sister, a putative member of defendant's family. Rules of Evid., Rule **803**(19). State v. Taylor, 2007, 240 S.W.3d 789, denial of post-conviction relief affirmed 2011 WL 773515, appeal denied. Criminal Law 421(1)

For purpose of applying hearsay exception concerning testimony about reputation among members of a person's family, the question of pedigree and ancestry is a matter of common or general reputation and the matter, from the very nature of things, depends upon reputation or common repute; the person testifying about this reputation would have to establish that he or she had sufficient familiarity with the reputation to be able to testify about it. Rules of Evid., Rule **803**(19). State v. Taylor, 2007, 240 S.W.3d 789, denial of post-conviction relief affirmed 2011 WL 773515, appeal denied. Criminal Law 421(1)

Before a witness is allowed to testify about another person's reputation for familial relationships, pursuant to evidentiary rule governing hearsay exception concerning testimony about reputation among members of a person's family, the trial court must be satisfied that the witness is going to testify about a reputation and not merely a single interpretation of an alleged reputation. Rules of Evid., Rule **803**(19). State v. Taylor, 2007, 240 S.W.3d 789, denial of post-conviction relief affirmed 2011 WL 773515, appeal denied. Criminal Law 421(1)

Record on appeal

There is no legal requirement that a trial court place its reasoning for overruling a hearsay objection on the record. Rules of Evid., Rules 801(c), **803**. State v. Samuel, 2007, 243 S.W.3d 592, appeal denied, dismissal of post-conviction relief affirmed 2009 WL 3832695. Criminal Law 695.5

Review

The Supreme Court will not reverse the ruling of the trial court regarding the admissibility of a hearsay statement through an exception to the hearsay rule absent a showing that this discretion has been abused. Rules of Evid., Rule **803**. Arias v. Duro Standard Products Co., 2010, 303 S.W.3d 256. Appeal And Error 970(2)

Defendant failed to preserve for appeal his claims that testimony of child victim's mother was unfairly prejudicial, contained impermissible character evidence, and was hearsay not subject to excited utterance exception, where defendant either failed to object or failed to identify the grounds for the objection at trial, in prosecution for aggravated sexual battery. Rules of Evid., Rules 103(a)(1, 2), 403, 404(a), **803**(2). State v. Biggs, 2006, 218 S.W.3d 643, appeal denied. Criminal Law 1036.1(3.1); Criminal Law 1036.5

Defendant waived appellate review of issue of admissibility of police report that defendant attempted to offer as proof when officer testified in manner which might have been construed to be at odds with report, where, in his appellate brief, defendant made only a cursory allegation that report was admissible under hearsay exception for recorded recollection or hearsay exception for records of regularly conducted activity, defendant included no citation to decisional authority or substantive discussion of how report fell within those exceptions, and defendant made no acknowledgment of general inadmissibility of police reports or attempt to explain how report fell outside general rule of exclusion. Rules of Evid., Rule **803**(5, 6, 8); Court of Criminal Appeals Rule 10(b); Rules App.Proc., Rule 27(a)(7). State v. Thompson, 2000, 36 S.W.3d 102, appeal denied, appeal after new trial 2004 WL 1402558. Criminal Law 1130(5)

Co-worker's statement that worker apparently ruptured or bruised his abdomen and possibly sustained slipped disc as result of accident involving boom unit, as reported in investigative report of accident by boom unit manufacturer's employee, was excludable hearsay. Rules of Evid., Rules 801(c), **803**, 804. Benson v. **Tennessee** Valley Elec. Co-op., 1993, 868 S.W.2d 630, appeal denied. Evidence 318(4)

Officer's testimony that vehicle owner told officer that owner used vehicle to bring marijuana seeds from California to **Tennessee** was substantial and material evidence in proceeding for forfeiture of vehicle, notwithstanding inconsistencies in testimony of officers on scene. T.C.A. § 4-5-322(h)(5); Rules of Evid., Rule **803**(1.2)(A). Hill v. Lawson, 1992, 851 S.W.2d 822, appeal denied. Controlled Substances 184

Trial court committed prejudicial error by admitting into evidence hearsay statements of nurse practitioner associated with sexual abuse counseling center, and social worker, of conversations, in which mother stated she found father in compromising position with victim, and, in case of social worker, that victim had told mother that father had “hurt” her; without those statements case was closed, as mother had recanted many of claims made in those statements and daughter had testified that she had been raped by third party. Rules of Evid., Rule **803**(4). State v. Rucker, 1992, 847 S.W.2d 512. Criminal Law 1169.1(9)

Father-in-law's act, of turning and walking away in response to son-in-law's statement that he was going to build a garage on father-in-law's property after which property would be his, was inadmissible hearsay when offered to prove that son-in-law adversely possessed property on which garage was built. Rules of Evid., Rule **803**(3). Hulsey v. Bush, 1992, 839 S.W.2d 411, appeal denied. Evidence 119(1)

Harmless error

Error in admitting officer's testimony concerning defendant's familial relationship with woman involved in felony murder and aggravated robbery, under hearsay exception concerning testimony about reputation among members of a person's family, was harmless, as testimony was not necessary to a finding of defendant's guilt, as other inculpatory evidence was sufficient to support conviction. Rules of Evid., Rule **803**(19). State v. Taylor, 2007, 240 S.W.3d 789, denial of post-conviction relief affirmed 2011 WL 773515, appeal denied. Criminal Law 1169.1(9)

Trial court's error in admitting sheriff's department alcohol log entry that pertained to defendant's breath test results in prosecution for driving under the influence (DUI) per se, under business records hearsay exception, was harmless, where defendant's name and blood alcohol level were properly introduced through officer's testimony. Rules of Evid., Rule **803**(6). State v. Conway, 2001, 77 S.W.3d 213, appeal denied, recommended for publication. Criminal Law 1169.1(10)

Admitting, under excited utterance exception to hearsay rule, of defendant's mother that defendant “stole her car” when there was no evidence that she had personal knowledge that defendant took vehicle and was driving vehicle on night of offense was harmless error in prosecution for driving with revoked license and evading arrest, where other evidence existed regarding defendant's guilt and the outcome of the trial would not have been different had the statements not been presented to the jury. Rules App.Proc. Rule 36(b); Rules Crim.Proc. Rule 52(a); Rules of Evid., Rule **803**(2). State v. Land, 2000, 34 S.W.3d 516, appeal denied, denial of post-conviction relief affirmed 2004 WL 508484. Criminal Law 1169.1(9)

Error in admission of hearsay statements of co-defendant from conversation with defendant, in which defendant and co-defendant discussed how to minimize criminal liability for murder, attempted murder, kidnapping, robbery, and burglary offenses, was harmless, where substance of co-defendant's statements regarding offenses was established at trial through other means, including defendant's own confession. Rules of Evid., Rule **803**(1.2)(E). State v. Henry, 2000, 33 S.W.3d 797. Criminal Law 1169.2(6)

Trial court's error in admitting victim's statements to doctor about race of attacker and place of attack under hearsay exception for statements made for purpose of medical diagnosis and treatment was harmless error, where statements were merely cumulative of victim's testimony at trial, and doctor's testimony about statements was essentially identical to police officer's testimony that was introduced without any objection from defendant. Rules of Evid., Rule **803**(4); Rules Crim.Proc., Rule 52(a). State v. Spratt, 2000, 31 S.W.3d 587. Criminal Law 1169.2(6)

Any error in trial court's admitting under excited utterance hearsay exception witness' hearsay testimony regarding child abuse victim's negative reaction when witness mentioned defendant's name, when prejudicial effect of such evidence outweighed its probative value, was harmless in light of the defendant's admissions that he had burned the victim, albeit accidentally. Rules of Evid., Rules 403, **803**(2). State v. Burns, 1999, 29 S.W.3d 40, appeal denied. Criminal Law 1169.1(9)

Any error in admission of hearsay statement of victim describing who shot him was harmless in murder prosecution, where second witness also testified that victim identified defendant immediately after shooting, and defendant did not object to admission of that statement. Rules of Evid., Rules 802, **803**(2). State v. Summerall, 1995, 926 S.W.2d 272. Criminal Law 1169.2(6)

Admission of rape victim's statements to nurse practitioner regarding events before rape and description of assailant was harmless error, even though those statements should have been redacted before admission of victim's medical history under exception to hearsay rule for statements made for purpose of medical diagnosis and treatment, where victim made positive identification of defendant at trial, and other evidence in record described events of rape and identified defendant as perpetrator. Rules of Evid., Rule **803**(4). State v. Williams, 1995, 920 S.W.2d 247, appeal denied. Criminal Law 1169.1(9)

Error by trial court in excluding testimony of witness that he had twice heard victim say in year prior to his murder that he “should have killed that little son of a bitch” during earlier fight between victim and defendant in prosecution of defendant for second-degree murder was harmless where evidence of defendant's guilt was overwhelming, claim of self-defense was weak, alleged threats were equivocal and somewhat remote to time of murder, and jury was aware that victim had brutally beaten defendant in fight which occurred two years before shooting. Rules of Evid., Rule **803**(3). State v. Ruane, 1995, 912 S.W.2d 766. Criminal Law 1170(1)

Rules of Evid., Rule **803**, TN R REV Rule **803**
Current with amendments received through 7/15/13

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