# CRIMINAL EVIDENCE: IMPEACHMENT

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**I. Introduction.** Impeachment refers to all methods of undermining a witness's credibility so that the jury gives less weight to the witness's testimony. *See, e.g.,* State v. Ward, 338 N.C. 64, 97 (1994). Some methods of impeachment are expressly authorized by the evidence rules. *See, e.g.,* N.C. R. EVID. 609 (impeachment with evidence of a criminal conviction). Other techniques are implicitly authorized by the rules. 1 KENNETH S. BROUN ET AL., MCCORMICK ON EVIDENCE 203 (7th ed. 2013) [hereinafter MCCORMICK]. In all situations judicial discretion plays a large role. *Id.*

The range of topics that may be addressed by cross-examination for purposes of impeachment is unlimited, subject to the requirement of relevancy and the judge's discretionary power to limit cross-examination for reasons such as waste of time, presentation of cumulative evidence, etc. 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE 542 (7th ed. 2011) [hereinafter BRANDIS & BROUN]. There are, however, case law limits on the use of extrinsic evidence for purposes of impeachment. Extrinsic evidence refers to evidence introduced by means other than by cross-examination, such as a testimony from another witness.

This section discusses the most common methods of impeachment and clarifies when extrinsic evidence may be used. Figure 1 below on page 4 summarizes the extrinsic evidence rules.

**II. Who May Be Impeached; Who May Impeach.** Any witness who testifies at trial may be impeached. Additionally, a hearsay declarant may be impeached. N.C. R. EVID. 806; *see also* State v. McConico, 153 N.C. App. 723, 727 (2002).

The credibility of a witness may be attacked by any party, including the party calling the witness. N.C. R. EVID. 607; *see, e.g.,* State v. Ward, 338 N.C. 64, 97 (1994). *But see* Section IV. (discussing limitations on impeachment).

## III. Methods of Impeachment.

**A. Prior Inconsistent Statement.** The most common technique for impeaching a witness is to prove that the witness previously made statements inconsistent with his or her trial testimony. MCCORMICK at 207. Doing so casts doubt on the witness's credibility. Note that use of a prior inconsistent statement for *impeachment* purposes is different from use of the statement for *substantive* purposes; the latter invariably involves application of the hearsay rules, whereas the former does not. State v. Roper, 328 N.C. 337, 366 (1991) (statement offered for impeachment is not offered for its truth and is not hearsay). This section focuses on the use of prior inconsistent statements for impeachment purposes.

**1. Form of the Prior Statement.** No particular formality is required for the prior statement. State v. Ward, 338 N.C. 64, 97 (1994) (may be made in or out of court; may be oral or in writing); In re K.W., 192 N.C. App. 646, 650-51 (2008) (statement on MySpace page).

**2. Must Be the Witness's Statement.** The prior inconsistent statement must have been made by the witness; a witness may not be impeached with a prior inconsistent statement made by someone else. *Ward*, 338 N.C. at 97-98 (fact that the witness made the statement must be proved by direct evidence; proper to exclude testimony from a defense witness who heard of the statement second hand); State v. Lynn, 157 N.C. App. 217, 226-27 (2003) (following *Ward*).

Note, however, that when the witness testifies that material fact A occurred, a party may introduce testimony from another witness that material fact A did not occur; this is called impeachment by specific contradiction and is discussed in Section lll.F. below.

**3. Statement Must Be Inconsistent.** In order for a prior statement to be used for impeachment, it must in fact be inconsistent with the witness's present testimony. MCCORMICK at 210. As a general rule, a prior statement is inconsistent if there is any "material variance" between the trial testimony and the content of the statement. MCCORMICK at 210. See Section lll.H. below for a discussion of when silence constitutes an inconsistent statement. This issue may present a preliminary question of admissibility to be resolved by the trial judge under N.C. R. EVID. 104.

**4. Cross-Examination.** A party may cross-examine a witness about a prior inconsistent statement, even if it pertains to a collateral matter. The rationale for this rule is that by testifying the witness has put his or her credibility at issue. When examining a witness about his or her prior statement, the statement need not be shown to the witness, nor must its contents be disclosed to the witness. N.C. R. EVID. 613. However, on request the statement must be shown or disclosed to opposing counsel. *Id.*

**5. Extrinsic Evidence.** Extrinsic evidence of a prior inconsistent statement may be used to impeach when the issue is material; however, extrinsic evidence may not be used to impeach concerning collateral matters. State v. Hunt, 324 N.C. 343, 348 (1989); MCCORMICK at 216.

**a. Collateral v. Material—Generally.** It is often said that "collateral matters are those which are irrelevant to the issues in the case; they involve immaterial matters and irrelevant facts inquired about to test observation and memory." State v. Mitchell, 169 N.C. App. 417, 421 (2005) (quotation omitted). By contrast, "[m]aterial facts involve those matters which are pertinent and material to the

pending inquiry." State v. Larrimore, 340 N.C. 119, 146 (1995) (quotation omitted). These definitions, however, are difficult to apply. *See, e.g.,* State v. Najewicz, 112 N.C. App. 280, 289 (1993).

I suggest an easier rule of thumb: A matter is material if it is independently relevant to the case, apart from its impeachment value. Consider this example. In a larceny case, a victim testifies that she is 32 years old. The defendant proffers the victim's older sister who will say that the victim is 33. Since the victim's age is irrelevant to any issue in the case, the defendant may not use extrinsic evidence to impeach the victim about her age. Suppose now that the charge is statutory rape and the victim testifies that she is 12 years old. The defendant proffers the victim's older sister who will say that the victim is 15 years old. Now the defendant's impeachment with extrinsic evidence is proper because the victim's age is an element of the offense; the sister's testimony is independently relevant as it is substantive evidence that the victim is not a person under 13 years of age.

Obviously, whether a matter is material or collateral depends on the facts of the case. By way of example, courts have held the following matters to be material:

- events immediately leading to the crime, State v. Whitley, 311 N.C. 656, 663 (1984);
- the circumstances of the crime itself, State v. Najewicz, 112 N.C. App. 280, 289 (1993); *cf.* State v. Wilson, 135 N.C. App. 504, 507 (1999); State v. Avent, __ N.C. App. __, 729 S.E.2d 708, 714-15 (2012);
- the defendant's gun possession before and after a shooting, State v. Gabriel, 207 N.C. App. 440, 447-48 (2010);
- the defendant's flight after a crime, State v. Jones, 347 N.C. 193, 205 (1997); and
- testimony crucial to the defendant's theory of the case, State v. Larrimore, 340 N.C. 119, 145-46 (1995).

For cases where impeachment with extrinsic evidence was not allowed because the matter was collateral see, for example, *State v. Carter*, 357 N.C. 345, 351-54 (2003) (in a capital punishment phase, details about how many intruders were involved in a murder being used to support two aggravating circumstances were collateral), and *State v. Crockett*, 138 N.C. App. 109, 117-18 (2000) (in a statutory rape case improper for the State to use extrinsic evidence to impeach the defendant's alibi witness's denial that that the defendant had ever pulled her hair out; the hair pulling incident was collateral).

**b. Bias.** Evidence that the witness is biased always is relevant to assessing a witness's credibility. 98 C.J.S. WITNESSES § 707. Thus, when the prior inconsistent statement reveals bias, extrinsic evidence may be used. ROGER PARK & TOM LININGER, THE NEW

WIGMORE: A TREATISE ON EVIDENCE: IMPEACHMENT AND REHABILITATION § 5.9 (2012) [hereinafter THE NEW WIGMORE]; State v. Whitley, 311 N.C. 656, 663 (1984). However, the prior statement first must be called to the attention of the witness. *Whitley*, 311 N.C. at 663. For a discussion of establishing bias as a method of impeachment, see Section III.B. below.

**c. Witness's Denial of Making Statement.** When a witness denies making a prior statement, a party may not impeach that denial with extrinsic evidence of the substance of the prior inconsistent statement. State v. Hunt, 324 N.C. 343, 348-49 (1989) (error to allow witness to testify to the substance of first witness's statement which she had denied making); State v. Williams, 322 N.C. 452, 455-56 (1988) (reversible error; after defense witness denied making prior inconsistent statement, the State presented two witnesses who testified to the substance of the statement). Note that when the witness denies having made the statement but goes on to testify inconsistently with it, extrinsic evidence of the substance of the statement may be used to impeach if the matter is material, as discussed above. State v. Gabriel, 207 N.C. App. 440, 447 (2010).

**d. No Need to Bring Statement to the Attention of the Witness.** As a general rule, when a witness's prior statement relates to material matters and may be proved with extrinsic evidence, there is no requirement that the impeaching party call inconsistencies to the attention of the witness before introducing extrinsic evidence. State v. Whitley, 311 N.C. 656, 663 (1984); BRANDIS & BROUN § 161. An exception however exists with regard to prior inconsistent statements showing bias. See Section III.B. below.

**Figure 1: Extrinsic Evidence Rules**

| Impeachment Method | Extrinsic Evidence Allowed? |
|---|---|
| Prior inconsistent statement | Yes, if issue is material |
| Bias | Yes |
| Character for untruthfulness | Yes, subject to character evidence rules |
| Prior conviction of a crime | Yes, subject to Rule 609 |
| Defect in capacity to observe, remember, etc. | Yes |
| Specific contradiction | Yes, if issue is material |

**B. Bias.** A witness may be impeached with evidence that he or she is biased because of, for example, affection for or dislike of a party or self-interest in the case. MCCORMICK at 234; *see, e.g.,* State v. Perkins, 345 N.C. 254, 280-82 (1997) (proper to cross-examine a defense forensic psychologist about whether he was biased against the State); State v. Wilson, 335 N.C. 220, 226 (1993) (proper for the prosecutor to ask whether the defendant had paid the witness to testify); State v. Bullock, 154 N.C. App. 234, 240-41 (2002) (proper to cross-examine a defense witness about whether she previously had an altercation with the victim); State v. Clark, 128 N.C. App. 722, 725-26 (1998) (new trial; the trial court excluded testimony of a defense witness, Mary, who would have testified in part that a State's witness, Leowana, told her that Leowana's family was attempting to frame the defendant); State v. Frazier, 121 N.C. App. 1, 14 (1995) (prosecutor properly asked a defense witness if she would "do anything" to get a not guilty verdict). In fact, the right to cross-examine the State's witnesses as to bias implicates constitutional concerns. MCCORMICK at 235 (citing among other cases, *United States v. Abel*, 469 U.S. 45 (1984)).

**1. Extrinsic Evidence Allowed.** Extrinsic evidence may be used to impeach regarding bias. ROBERT P. MOSTELLER ET AL., NORTH CAROLINA EVIDENTIARY FOUNDATIONS 6-35 (2d ed. 2006) [hereinafter EVIDENTIARY FOUNDATIONS]; *see, e.g.,* State v. Whitley, 311 N.C. 656, 663 (1984) (dicta); State v. Lytch, 142 N.C. App. 576, 586 (2001) (proper to use extrinsic evidence to show defense witness's bias), *aff'd*, 355 N.C. 270 (2002) (per curiam); State v. Rankins, 133 N.C. App. 607, 610 (1999) (reversible error to preclude the defendant's witness who would testify that the defendant's accomplice, a prosecution witness, said he had made a deal with the State).

Before offering extrinsic evidence of bias, a party must, on cross-examination, bring the impeaching evidence to the attention of the witness. EVIDENTIARY FOUNDATIONS at 6-35; *Whitley*, 311 N.C. at 663. If the witness admits the relevant facts, the judge may exercise his or her discretion under Rule 403 to exclude or limit the use of extrinsic evidence. EVIDENTIARY FOUNDATIONS at 6-35; see Section IV.C. below. However, if the witness denies the impeaching facts, the opponent may impeach with extrinsic evidence. EVIDENTIARY FOUNDATIONS at 6-35.

**2. Witness's Deal with the State.** When a witness testifies for the State and has pending charges, the defendant may wish to impeach with evidence that the witness has discussed, has been offered, or has accepted a deal with the State for a reduction of charges, reduced punishment, etc. in exchange for his or her testimony. This is a proper basis for impeachment and the defendant should not be limited in exploring it. State v. Rankins, 133 N.C. App. 607, 610-11 (1999) (reversible error to so limit the defendant). This rule applies to any State's witness, and denial of the right to impeach on these grounds implicates constitutional confrontation rights. State v. Prevatte, 346 N.C. 162, 163 (1997) (following *Davis v. Alaska*, 415 U.S. 308 (1974), and ordering a new trial where the State's principal witness was under indictment and the court refused to allow the defense to cross-examine the witness about the charges and whether he had been promised or expected anything in exchange for his testimony); State v. Hoffman, 349 N.C. 167, 179-81 (1998) (following *Davis* and holding that the defendant should have been allowed to cross-examine the State's witness about his pending criminal

charges; noting the constitutional dimension of this error but concluding that it was harmless beyond a reasonable doubt).

3. **Experts.** On cross-examination a party may ask an expert witness about compensation for testifying, State v. Lawrence, 352 N.C. 1, 22 (2000); State v. Atkins, 349 N.C. 62, 83 (1998), even if the expert is court appointed and paid with state funds. *Lawrence*, 352 N.C. at 22-23. However, a party may not abuse, insult, or degrade an expert or attempt to distort the expert's testimony under the guise of impeachment. State v. Sanderson, 336 N.C. 1, 11-15 (1994) (such conduct constituted prejudicial error).

   It is proper to impeach an expert with the fact that his or her license has been revoked, State v. Page, 346 N.C. 689, 697-98 (1997), and by probing the basis of the expert's opinion. State v. Morganherring, 350 N.C. 701, 729 (1999) (prosecutor properly cross-examined the defendant's expert about his familiarity with the sources upon which he based his opinion); State v. Gregory, 340 N.C. 365, 409-10 (1995) (prosecutor properly questioned a defense expert about his reasons discounting accomplices' statements that were inconsistent with the defendant's statement where expert had previously stated that when performing a psychiatric evaluation "you rely on as many records as you can get"). Such impeachment however is not without limitation. *See, e.g.,* State v. Lovin, 339 N.C. 695, 713-714 (1995) (error to allow the State to cross-examine defendant's mental health expert by reading portions of an article that denigrated clinical psychologists; the witness had not read the article and there was no showing of its validity).

4. **Jury Instructions.** Several criminal pattern jury instructions address bias by a witness, including:

   - N.C.P.I. Crim—104.20 (testimony of interested witness);
   - N.C.P.I Crim—104.21 (testimony of witness with immunity or quasi-immunity); and
   - N.C.P.I Crim—104.30 (informer or undercover agent).

   Upon request and in appropriate circumstances the trial judge should give these instructions. State v. McQueen, 181 N.C. App. 417, 419-20 (2007) (trial court did not err by denying the defendant's request for N.C.P.I. Crim—104.20; "the officers were in uniform in the performance of their routine duties[;] . . . it is improper to single them out as a class of witnesses that may be less credible due to their potential interest in the outcome of the case").

**C. Character for Untruthfulness.** In a criminal case either side may offer reputation and opinion evidence to impeach a witness with evidence of the witness's character for untruthfulness. For a complete discussion of this topic, including a discussion of the use of extrinsic evidence, see Criminal Evidence: Character Evidence under Evidence in this Guide.

**D. Prior Conviction of a Crime.** Under Rule 609, a witness may be impeached with evidence of prior conviction of a crime and extrinsic evidence may be used for this purpose. For a complete discussion of this topic, see Rule 609: Impeachment with Conviction of a Crime under Evidence in this Guide.

**E. Defect in Capacity to Observe, Remember, etc.** A witness may be impeached with evidence that he or she has or had some defect with regard to his or her capacity to observe, remember, or recount. MCCORMICK at 286. Thus, a witness may be examined about physical conditions that might affect his or her ability to hear and see. Also, a witness may be questioned about mental defects or substance abuse that may affect the witness's ability to observe and remember. State v. Whaley, 362 N.C. 156, 161 (2008) (new trial; the trial court precluded the defendant's cross-examination of a witness about whether "she had difficulty recalling whether certain events actually occurred"); State v. Williams, 330 N.C. 711, 719-721 (1992) (evidence of witness's drug use, suicide attempts, and psychiatric history was proper and admissible for impeachment). Evidence that a witness suffers from mental illness or addiction is relevant even if it does not establish that the illness or addiction actually affected the witness's mental capacity at the time of the crime or trial. *Id*. at 721-23 (trial court erred by precluding the defendant from cross-examining the State's witness about suicide attempts, psychiatric treatment, and chronic drug abuse that occurred prior to the crime at issue). However, because of a concern about witness harassment and prejudice to the parties, courts limit impeachment evidence that a witness has suffered or suffers from mental illness or addiction to witnesses that are crucial to the other side *Id.* at 723-24 (new trial; trial court precluded the defendant's cross-examination of a key witness for the State). The fact that a witness may be impeached with evidence of mental health issues may, in connection with discovery issues, require the trial judge to examine the witness's medical records in camera.

**1. Extrinsic Evidence Allowed.** No rule prohibits the use of extrinsic evidence to show bad perception, bad memory, or mental illness. THE NEW WIGMORE § 5.9; EVIDENTIARY FOUNDATIONS at § 6-12(A); *see also* State v. Williams, 330 N.C. 711, 719 (1992) (extrinsic evidence may be used for this purpose). But of course Rule 403 can operate as a limit on this type of evidence.

**F. Specific Contradiction.** A witness who has testified to a material fact may be impeached with contrary evidence, including testimony from other witnesses. MCCORMICK at 322. Suppose for example that the State's witness testifies to the following material fact in a murder case: "I saw the defendant Tom Jones pull the trigger." The defendant may impeach with a defense witness who testifies: "I saw Sam Smith pull the trigger." This is referred to as impeachment by specific contradiction. *See, e.g.,* State v. Lambert, 341 N.C. 36, 49 (1995) (in a case in which the defendant was charged with murdering her husband, the husband's hearsay statements about marital problems were properly admitted as specific contradiction of the defendant's testimony that the marriage was "fine" and "excellent"). When, as in the example provided, the challenged fact is material, the contradicting evidence "is just as much substantive evidence as the testimony under attack." *Id*. at 49 (1995) (quoting 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE § 160 (4TH ed. 1993)); State v. Bishop, 346 N.C. 365, 393 (1997) (same). Of course, if the evidence is offered as substantive evidence (as opposed to impeachment evidence), all of the rules regarding admissibility apply, including the hearsay rules.

**1. Extrinsic Evidence.** Sometimes the opponent may use cross-examination to get the witness to admit that he or she testified incorrectly.

State v. Bell, 338 N.C. 363, 384-85 (1994) (State's cross-examination, designed to get witnesses to contradict their testimony given on direct, examination was proper). Additionally, extrinsic evidence may be used to impeach by specific contradiction if the matter is material. *See generally* Section III.A.5.a. above (discussing the collateral versus material distinction).

**G. Religious Beliefs**. Evidence Rule 610 provides that evidence of a witness's beliefs or opinions "on matters of religion" is not admissible to show "that by reason of their nature his credibility is impaired or enhanced." *See* State v. Kimbrell, 320 N.C. 762, 763-95 (1987) (reversible error where the trial court allowed the prosecutor to cross-examine the defendant about his knowledge or and participation in "devil worshipping"). The rule continues, providing that "such evidence may be admitted for the purpose of showing interest or bias." N.C. R. EVID. 610.

**H. Defendant's Silence.** In certain circumstances a criminal defendant's exercise of the right to remain silent cannot be used to impeach the defendant at trial. Specifically, the prosecution may not use a defendant's post-arrest, post-*Miranda* silence for impeachment. Doyle v. Ohio, 426 U.S. 610, 619-20 (1976) (reversing convictions; use violated due process); State v. Hoyle, 325 N.C. 232, 235-37 (1989) (new trial); State v. Shores, 155 N.C. App. 342, 349-52 (2002) (new trial). However, a defendant's pre-arrest silence may be used for impeachment. Jenkins v. Anderson, 447 U.S. 231, 240 (1980) ("no governmental action induced petitioner to remain silent before arrest"); State v. Westbrooks, 345 N.C. 43, 63 (1996) (following *Jenkins* and holding that the State's use of the defendant's pre-arrest silence for impeachment was proper); State v. Bishop, 346 N.C. 365, 386 (1997) (same). Also, the defendant's silence after arrest, but before *Miranda* warnings have been given may be used to impeach. Fletcher v. Weir, 455 U.S. 603, 606-07 (1982) (per curiam). Figure 2 below illustrates these rules.

Note that when a defendant is given *Miranda* warnings but voluntarily speaks with the police, the defendant may be impeached with inconsistencies between that statement and his or her trial testimony. State v. Westbrooks, 345 N.C. 43, 63 (1996) (no violation where the defendant voluntarily spoke to the police after being arrested and being given *Miranda* warning and then was impeached at trial with references to omissions or inconsistencies in those statements); State v. Mitchell, 317 N.C. 661, 666-67 (1986) (same).

**1. Foundational Requirements.** Before the State may use silence to impeach a defendant, it must show that the prior silence amounts to a prior inconsistent statement. Our courts have explained: "if the former statement fails to mention a material circumstance presently testified to, which it would have been natural to mention in the prior statement, the prior statement is sufficiently inconsistent." State v. Westbrooks, 345 N.C. 43, 64-65 (1996) (quotations omitted). *Compare id.* 345 N.C. at 64-65 (because it would have been natural for the defendant to mention a conversation with another when she spoke with the police, her silence about it was evidence of an inconsistent statement), *with* State v. Lane, 301 N.C. 382, 386-87 (1980) (the defendant's silence after being arrested was not inconsistent with his trial testimony that he had an alibi; after being arrested for a drug offense but before being read *Miranda* warnings, the defendant stated only that he sold heroin before but that he

"didn't sell heroin to this person"; the court held that the alibi defense was not inconsistent with his statement about not selling heroin and that his failure to state his alibi defense when he gave his statement or at any time before trial was not a prior inconsistent statement).

**Figure 2. Use of Defendant's Silence to Impeach at Trial**

| | |
|---|---|
| **Post-Arrest, Post-*Miranda*** | May *not* be used for impeachment |
| **Post-Arrest, No *Miranda* Warnings** | May be used for impeachment |
| **Pre-Arrest** | May be used for impeachment |

## IV. Limitations on Impeachment.

**A. Good Faith Basis.** Counsel must have a good faith basis for cross-examining a witness. *See, e.g.,* State v. Wilson, 335 N.C. 220, 226 (1993).

**B. Impeachment as Subterfuge.** Impeachment of a party's own witness may not be employed as a mere subterfuge to put before the jury otherwise inadmissible evidence. State v. Hunt 324 N.C. 343, 349 (1989); State v. Avent, __ N.C. App. __, 729 S.E.2d 708, 715 (2012); State v. Riccard, 142 N.C. App. 298, 304 (2001). Circumstances indicating good faith and the absence of subterfuge include that:

- the witness's testimony was extensive and vital to the party's case;
- the party calling the witness was genuinely surprised by the witness's reversal; and
- the trial court followed the introduction of the statement with an effective limiting instruction.

*Hunt*, 324 N.C. at 350-51; *Avent,* __ N.C. App. at __, 729 S.E.2d at 715. *Compare Hunt,* 324 N.C. at 350-51 (facts suggested subterfuge by the State), *with Avent*, 729 S.E.2d at 715-16 (facts indicated good faith and an absence of subterfuge), State v. Gabriel, 207 N.C. App. 440, 449-50 (2010) (same), *and* State v. Riccard, 142 N.C. App. 298, 304 (2001) (same).

**C. Rule 403.** As a general rule, Rule 403 allows the trial court, in its discretion, to limit the scope of impeachment. State v. Hunt, 324 N.C. 343, 353 (1989). *See generally*, Criminal Evidence: Rule 403 in this Guide under Evidence. Of course, whether a trial court's decision is an abuse of discretion depends on the

circumstances of the case. *Compare* State v. Whaley, 362 N.C. 156, 159 (2008) (new trial; trial court precluded the defendant's impeachment of the victim and effectively deprived the defendant of a major defense), *with* State v. McNeil, 350 N.C. 657, 678 (1999) (trial court did not abuse its discretion by precluding cross-examination of an accomplice about unserved warrants; trial court allowed full cross-examination about other matters and further cross-examination to show bias would have been repetitive and cumulative). However, certain impeachment evidence, such as evidence of conviction of a crime, must be admitted and is not subject to Rule 403 balancing. N.C. R. EVID. 609 (evidence of a crime less than 10 years old "shall" be admitted); *see generally* Rule 609: Impeachment by Evidence of Conviction of a Crime in this Guide under Evidence.

**D.** **Rule 611(a).** Rule 611(a) provides that "[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." This rule provides the trial court with an additional source of authority to regulate impeachment. *See, e.g.,* State v. Wise, 326 N.C. 421, 428-29 (1990) (trial court did not abuse its discretion under Rule 611 by limiting the defendant's impeachment of the victim).

**E.** **Limitations on Impeachment And Defendant's Rights.**

**1.** **Depriving the Defendant of a Defense.** Cross-examination may not be limited in a way that effectively deprives the defendant of a major defense. State v. Whaley, 362 N.C. 156, 161 (2008) (new trial; trial court precluded the defendant's cross-examination of the State's witness about mental health issues, depriving her of a major defense).

**2.** **Limiting Use of Extrinsic Evidence.** The United States Supreme Court has never ruled on whether a confrontation violation occurs when the legislature or a court limits a defendant's use of extrinsic evidence to impeach. Nevada v. Jackson, 569 U.S. __, 133 S.Ct. 1990, 1994 (June 3, 2013) ("this Court has never held that the Confrontation Clause entitles a criminal defendant to introduce *extrinsic evidenc*e for impeachment purposes").