

VOIR DIRE ON DYING DECLARATION

Source: NORTH CAROLINA TRIAL JUDGES' BENCH BOOK, SUPERIOR COURT, VOL. 1 (Criminal), Chap. 65 (3rd ed.) (Institute of Government 1999)

I. Findings of Fact. Findings of fact must be supported by a preponderance of the evidence. Include all relevant facts, and be sure those facts support the conclusions of law.

1. Where crime occurred.
2. When and where declaration was made – e.g., at crime scene, in ambulance, at hospital.
3. Voluntariness of the declaration.
4. Condition of deceased -- nature and extent of wound or injury, bleeding, difficulty breathing.
5. Any statement of the declarant regarding his wound or injury -- expressions of pain, description of wound or injury, pleas for help.
6. Testimony of any statement by doctor or another to declarant regarding the hopelessness of declarant's condition.
7. Any acknowledgement by declarant of his or her impending death.
8. When and where declarant died.
9. Competence of declarant, if he or she had lived, to testify.
10. Statement of declarant regarding the cause or circumstances of his or her death.

II. Conclusions of Law

Upon the foregoing findings of fact, the court concludes as a matter of law that at the time the declarant made this declaration [he] [she] believed that [his] [her] death was imminent.

NOTE: If evidence is to be excluded, above must be amended accordingly.

III. Order

It is now therefore ordered that the objection of _____ to the admission of evidence of the declaration of _____ regarding the cause or circumstances of [his] [her] death is [overruled] [allowed] and that the evidence [is] [is not] competent in the trial of this case.