



statement of memory or belief to prove a fact remembered or believed. Rule 803(3).

2. In discovery materials furnished by the prosecution, the state lists some eight paragraphs of statements of the deceased which it indicates it will seek to admit. They are attached to this motion. The bulk of these statements have nothing to do with a then-existing mental or emotional or physical condition and are not admissible.

4. While counsel will concede there is case law to support the admission of statements which do indeed describe a then existing emotional state of the declarant, such as "I am afraid for my life," the rule clearly excludes statements of a factual nature which are based on belief. See *State v. Artis*, 325 N.C. 278 (1989) (holding inadmissible the victim's statement that she was going to get killed if the people ever caught up with her because the statement was basically one of belief). *State v. Hardy* needed for prior

<sup>holdings</sup>  
3. Representative of such statements here is number two from the state's list: "She went on to state that her husband, Theodore Mead Kimble, had changed a lot and that she thought he might kill her over the insurance money." Such a statement is not a statement of then existing mental or emotional condition, but is a statement of her belief and opinion that "she thought he might kill her over the

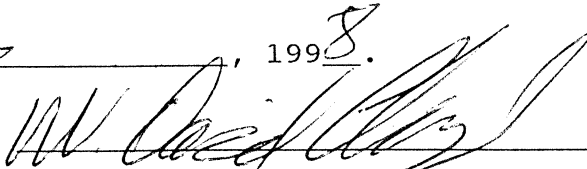
insurance money," and is simply inadmissible belief and opinion.

4. The bulk of these statements fall into this category and are simply statements of belief in facts and are not statements of then existing mental or emotional condition as required by the rule.

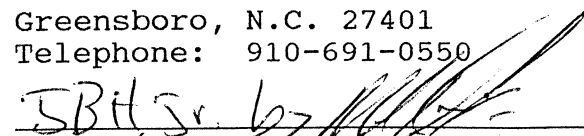
5. Rule 804 does allow a statement under belief of impending death; the so-called dying declaration. Rule 804(b)(2). However it does not apply in this case because of the requirement that the deceased must believe that death is "imminent" and that is easily disproved because had Patricia Kimble believed her death was imminent at the hands of her husband she would have left.

WHEREFORE, the defendant prays the court not allow any statements of the deceased into evidence at the trial of this matter.

This the 29 day of July, 1998.

  
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**STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD**

**IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION**

97CRS39580;81

STATE OF NORTH CAROLINA )  
 )  
 v. )  
 )  
 THEODORE MEAD KIMBLE, )  
 RONNIE LEE KIMBLE, )  
 Defendants )

**STATEMENTS OF  
THE DECEASED**

NOW COMES THE State of North Carolina and gives NOTICE to the defendants that the State of North Carolina will seek to introduce into evidence relevant statements of the deceased, Patricia Blakley Kimble under the relevant exceptions to the hearsay rule, N.C. Gen.Stat. 8C-803 and 804.

1. That shortly before her death, about 3 weeks before, Patricia Blakley Kimble called her father Richard Earl Blakley, and told him that her husband, Theodore Mead Kimble, had taken out a large insurance policy, without her knowledge and that she was afraid for her life. She stated that Ted had taken out the life insurance on her when she did not need it and had recently taken to purchasing an carrying guns. Mr. Blakley remembers her stating the amount of life insurance was approximatel \$200,000.00. Patricia also told her father that Ted had really changed and that he was no longe interested in her. She told him it got so bad that one night she took off her clothes and danced fo him but he told her to just go on and leave him alone.
2. That shortly before her death, Patricia Blakley Kimble called Gary Lyles and reported to him tha Theodore Mead Kimble had taken out a large insurance policy and that the insurance had been take out without her knowledge. She went on to state that her husband, Theodore Mead Kimble, ha changed a lot and that she thought that he might kill her over the insurance money. She said that he husband wanted to buy a motorcycle and ride up and down High Point Road like a single person Mr. Lyles reported this information on October 11, 1995, to a friend who was a police officer.
3. That shortly before her death, Patricia Blakley Kimble told Ruben Blakley that they had argue lately over money. That she had told her brother Ruben that she was putting extra money into he mortgage rather than her savings account so that Ted could not get it out and spend it.
4. That shortly before her death, Patricia Blakley Kimble called Cara Dudley and told her that Patrici had called her and told her Ted had taken out a large insurance policy on her and that she wante someone to know in case something happened to her. Patricia said that Ted must have paid cash fo the insurance because there was not cancelled check. She was very upset about Ted buyin insurance on her permission or without consulting her. She said that Ted must have forged he signature. She said she did not need more insurance, there was enough to pay for everything an have \$30,000 left over if something happened to her. She also said that Ted wanted to go out wit Patric Pardee and his two females without Patricia being there. She also said that they had disagreement because Ted wanted a fancy motorcycle and she did not want to spend the money fo it.
5. That shortly before her death, Patricia Blakley Kimble expressed concern about her marriage t Linda Thompson Hughes. She was concerned about Ted not spending as much time with her and no

showing her the affection that he had shown previous to this time. Patricia didn't like the fact that Ted had taken a part time job and stated that when she talked to Ted about the job that he became irritable and reacted with a different attitude. During this same conversation Patricia told me that she had asked Ted why he had married her and Ted told her that he had married her for the purpose of sharing a bed together. Patricia was very upset about Ted responding that way and she expressed her feelings to me about the answer she had gotten from Ted. She also said that Ted had been having mood swings recently or over the past few weeks before her death. Patricia told me that Ted was always buying things and spending money and she didn't go along with him spending money the way he did. She said that the part time job that Ted had taken was for money for him to spend. She said they didn't need the extra money that came from Ted's extra job. Patricia also told me that the jewelry they bought was not necessary or the boat but Ted wanted them.

6. That shortly before her death, Patricia Blakley Kimble told Nancy Young that she had went and had lunch with Ted on October 9, 1995. She said that she had called Ted during the day and that Ted had called her just before she left at 3:30. She told Nancy that she was leaving work early at 3:30 to go home and mow the grass and did in fact leave at 3:30. Nancy said that everything seemed to be fine and Patricia didn't seem upset or disturbed about anything. She also told Nancy that she was going to a meeting at her church at 7:30 that evening. Nancy heard Patricia have a conversation with an insurance agent a few days before her death and heard Patricia say she was surprised and asked why she needed a physical and was told that her husband had taken a \$200,000.00 life insurance policy on her and that she needed to have a physical for the policy. Patricia was very upset with this and that day she called Ted and had lunch with him. After lunch she came back and said everything was okay that she and Ted had worked things out. On one occasion about two weeks before Patricia died she expressed concern about her marriage. She was concerned about Ted not spending as much time with her and not showing her the affection that he had shown previous to this time.
7. That on the day she was killed, Patricia Blakley Kimble told Stephanie Young that they (meaning Patricia and Ted Kimble) were about to lose the lumber yard. That the lease was up and that they had to come up with \$26,000 and that they might have to auction off or sell the business.
8. That shortly before her death, Patricia Blakley Kimble spoke to Rose Lyles, Rose asked her how Patricia was doing and she started crying. After a crying spell Patricia said Ted isn't the man she married. Patricia further said that she had found an insurance policy that had been forged. Patricia said that she doesn't know whether she'll go to bed one night and not wake up the next morning or not. Patricia said that she was afraid due to the life insurance policy. Rose says that during the telephone conversation with Patricia that she has never heard such fear in a person's voice.