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Farewell to the “Serious Bodily Injury” Standard in Felonious Assault Cases: After State v. Everhardt a Defendant Can be Convicted if the Victim Sustains Serious Mental Injury

“The mind is no less a part of the person than the body, and the sufferings of the former are sometimes more acute and lasting than those of the latter” maintained the North Carolina Supreme Court in 1890 in Young v. Western Union Telegraph Co.\(^1\) This decision marked the first time a North Carolina court held mental injury to be actionable in tort.\(^2\)

In recent years the North Carolina Supreme Court has breathed new life into the *Young* holding. In 1979 the court recognized as a tort the intentional infliction of emotional distress.\(^3\) Three years later, in a rape case, the court equated mental anguish with the injury element of a criminal statute.\(^4\) In assault cases, however, the court consistently had interpreted the serious injury element of the aggravated assault statute to include only serious bodily injury.\(^5\) Thus, the decision in *State v. Everhardt*,\(^6\) holding that the serious injury element of an assault statute includes serious mental injury, represents a dramatic break from tradition.

This Note reviews the different levels of “injury” used by the North Carolina General Assembly and by the North Carolina courts in criminal cases and illustrates how North Carolina courts have expanded the definition of “injury” in criminal cases to include mental injury. It also examines the recognition of mental injury as a tort. This Note then considers the legitimacy of incorporating mental injury into assault cases and discusses the consequences of the court’s reasoning in *Everhardt*. It concludes that the court’s holding was logical in light of the precedent and statutory language; however, it faults the court for failing to provide any guidelines for future courts to follow in determining what constitutes serious mental injury. To solve the problem, the Note suggests alternative sources upon which to rely.

The Everhardts had been married for ten years before Mrs. Everhardt left her husband in July 1984.\(^7\) Although she had been the victim of spousal abuse for the previous two years, the six days of violence preceding her departure were unprecedented.\(^8\) Among other things, the defendant had oral and vaginal sex with the victim against her will, inserted the leg of a footstool into her vagina

1. 107 N.C. 370, 385, 11 S.E. 1044, 1048 (1890).
2. Id.
7. Id. at 778, 392 S.E.2d at 392.
8. Id. at 778, 392 S.E.2d at 391-92.
while he pointed a gun to her head, thrust a cola bottle into her vagina, and forced her to eat a plate of spaghetti upon which he had ejaculated.\(^9\) This series of incidents led Mrs. Everhardt to file charges of assault against her husband.

Six months after the assault, Mrs. Everhardt entered a program for victims of spousal abuse.\(^10\) In September 1985 she sought treatment for depression and suicidal tendencies.\(^11\) She suffered from insomnia, poor appetite, and anxiety.\(^12\) The following year she received medical attention for these conditions as well as for anorexia nervosa.\(^13\) She again sought treatment for anorexia nervosa in December 1986. At trial, one of her doctors testified that "she was trying to make herself unattractive sexually by starving herself because of the sexual abuse she had suffered in the past."\(^14\)

The state charged Everhardt with assault with a deadly weapon inflicting serious injury. Everhardt moved to dismiss the charge on the grounds of insufficient evidence but the trial court refused.\(^15\) The defendant appealed this ruling and argued that there was insufficient evidence to support finding infliction of serious injury.\(^16\) The North Carolina Court of Appeals affirmed the trial court's decision.\(^17\) Although it refused to equate mental injury with serious injury, the court of appeals stated that "serious physical injury may be proven even when it is not evidenced immediately upon the impact of the assault. Case law and medical science recognize that physical injury may later manifest itself as the result of psychological trauma."\(^18\)

The North Carolina Supreme Court accepted the defendant's appeal but restricted its discretionary review to the "questions of whether mental injury will support the element of serious injury under [North Carolina General Statutes section 14-32], and if not, whether the evidence was sufficient to support a finding of physical injury."\(^19\) The court stated that it historically had defined "physical or bodily injury" as serious physical injury.\(^20\) Unlike the harm suffered by the victim in this case, the injuries sustained in previous cases were of a physical nature. No North Carolina court had ever decided whether mental injury alone equals "physical or bodily injury."\(^21\) Because the trauma endured by Mrs. Everhardt did not fit readily into its traditional but "facile" definition of serious injury,\(^22\) the court set out to address this issue.

\(^9\) Id. at 778, 392 S.E.2d at 391.
\(^10\) Id. at 779, 392 S.E.2d at 392.
\(^11\) Id.
\(^12\) Id.
\(^13\) Id.
\(^14\) Id. at trial, one of her doctors testified that he believed that this theory explained Mrs. Everhardt's problems with anorexia nervosa. Id.
\(^15\) Id.
\(^17\) Everhardt, 96 N.C. App. at 14, 384 S.E.2d at 570.
\(^18\) Id.
\(^19\) Everhardt, 326 N.C. at 780, 392 S.E.2d at 392-93.
\(^20\) Id. at 780, 392 S.E.2d at 393; see supra note 5 and accompanying text.
\(^21\) Everhardt, 326 N.C. at 780, 392 S.E.2d at 393.
\(^22\) Id.
To differentiate this assault from those which were considered in previous cases, the court discussed the degrading, dehumanizing aspects of Everhardt's crime and recapped some of the "highlights" of the six-day period of abuse.\textsuperscript{23} Pointing to the repeated insults made by the defendant during the assaults as illustrative of the demeanor of this assault, the court characterized the defendant's implementation of such devices as "calculated to degrade and dehumanize the victim."\textsuperscript{24} The court then held that serious mental injury alone can satisfy the serious injury element of felonious assault.\textsuperscript{25} It acknowledged that it could have achieved the same result by examining the physical symptoms suffered by Mrs. Everhardt in conjunction with her mental illness as the court of appeals did.\textsuperscript{26} The supreme court, however, for undisclosed reasons, chose not to take the court of appeals' circuitous route.\textsuperscript{27} While the court held that serious mental harm satisfied the statutory injury element in the case of Mrs. Everhardt, it provided no justification for why the evidence was sufficient in her case. In addition, it elected not to adopt a "bright-line" rule; instead the court choose to take the case-by-case approach advocated by previous North Carolina courts.\textsuperscript{28} Although there are five elements of felonious assault under North Carolina General Statutes Section 14-32,\textsuperscript{29} the key to the court's decision in Everhardt lies in its interpretation of the injury element. The felonious assault statute requires that the injury inflicted by the defendant be "serious injury."\textsuperscript{30} The court, however, traditionally has construed "serious injury" to mean "serious bodily injury," a more exclusive definition than that required by the statute.\textsuperscript{31}

\begin{itemize}
  \item \textsuperscript{23} Id.
  \item \textsuperscript{24} Id.
  \item \textsuperscript{25} Id.
  \item \textsuperscript{26} Id.
  \item \textsuperscript{27} Id.
  \item \textsuperscript{28} Id. at 781, 392 S.E.2d at 393.
  \item \textsuperscript{29} N.C. GEN. STAT. § 14-32(a) (1986). The five elements of felonious assault are: (1) assault, (2) use of a deadly weapon, (3) intent to kill, (4) infliction of serious injury, and (5) injury short of causing death. \textit{Id}. This Note addresses only the injury element.
  \item \textsuperscript{30} Id.
  \item \textsuperscript{31} In State v. Jones, 258 N.C. 89, 128 S.E.2d 1 (1962), the court established the framework for determining whether a victim's injury constituted "serious bodily injury" under § 14-32. Jones, charged and convicted of felonious assault for the shooting of the victim, appealed the trial judge's jury instruction on serious injury. The instruction stated:

  I instruct you in this case if you find beyond a reasonable doubt the assault was made with a gun under such circumstance as calculated to create a breach of the peace that would outrage the sensibilities of the community, it would be an assault with a deadly weapon inflicting serious injury.

  \textit{Id}. at 90, 128 S.E.2d at 2. The supreme court concluded that such a definition did not effectuate legislative intent because it did not "properly define the serious injury contemplated by the statute under which the indictment was drawn." \textit{Id}. at 92, 128 S.E.2d at 3. While many incidents "may be calculated to create a breach of the peace that would outrage the sensibilities of the community," the injuries do not always rise to the level of felonious assault. \textit{Id}. The court held that the term "inflicts serious injury" means physical or bodily injury resulting from an assault with a deadly weapon intent to kill. The injury must be serious but it must fall short of causing death. Further definition seems neither wise nor desirable. Whether such serious injury has been inflicted must be determined according to the particular facts of each case.

  \textit{Id}. at 91, 128 S.E.2d at 3. The court apparently only wanted to provide the trial court some assistance in ascertaining whether serious injury exists and, therefore, decided not to lay down a bright-
In addressing Everhardt, the court could not rely upon the precedent that defines "serious injury" as "serious bodily injury." If the court was going to expand the definition to include serious mental injury, it would have to use the plain language of the statute: "serious injury." Nevertheless, the court could not simply expand serious injury; it needed to rationalize its decision. Accordingly, it turned to the North Carolina Supreme Court's construction of the state's rape and sexual offense statute in which the legislature requires "serious personal injury," the language of which is less restrictive than "serious bodily injury" but more exclusive than "serious injury."

The first case in which the court defined "serious personal injury" to include "serious mental injury" was State v. Boone. Boone, the defendant and uncle of the victim's husband, came to the victim's home to use the phone. The victim permitted him to come into her home. After using the phone and visiting with the victim, the defendant began smoking angel dust. He suddenly started to act strangely and attacked the victim. He hit the victim on the head and forcibly committed sexual acts on her. The victim sustained bruises and swelling on her head but refused to seek medical attention. She, however, was hysterical and crying following the incident.

The State proffered evidence of the victim's injuries at trial. The trial judge charged the jury that if it found that the defendant had "inflicted extreme terror, fear, agitation and produced a state of hysteria to the extent that this was a serious personal injury" in addition to the other elements of first-degree sexual offense, it should find the defendant guilty. In his charge to the jury on attempted first-degree rape, the judge directed the jury to rely upon the same definition of serious personal injury given in the sexual offense instruction.

In State v. Owens, 65 N.C. App. 107, 111, 308 S.E.2d 494, 498 (1983), the court, guided by the Jones framework, provided four additional factors for lower courts to examine in analyzing "serious injuries." The Owens factors "include pain, loss of blood, hospitalization and time lost from work." Id.; see also State v. Stephenson, 43 N.C. App. 323, 327, 258 S.E.2d 806, 808 (1979) (court relied on similar factors in its serious injury analysis). Although both the Owens and Jones courts relied on the victim's hospitalization in making their decisions, this factor is not conclusive. State v. Joyner, 295 N.C. 55, 65, 243 S.E.2d 367, 374 (1978) (court held "evidence that the victim was hospitalized is not necessary for the proof of serious injury"); accord State v. Ferguson, 261 N.C. 558, 135 S.E.2d 626 (1964); State v. Musselwhite, 59 N.C. App. 477, 297 S.E.2d 181 (1982); State v. Rotenberry, 54 N.C. App. 504, 284 S.E.2d 197 (1981); see also State v. James, 321 N.C. 676, 365 S.E.2d 579 (1988) (the court's most recent application of the Jones framework).

32. N.C. GEN. STAT. § 14-32(a) (1986).
33. Id. §§ 14-27.2(a)(2)b, .4(a)(2)b (1986).
34. 307 N.C. 198, 204-05, 297 S.E.2d 585, 589-90 (1982).
35. Id. at 200, 297 S.E.2d at 587.
36. Id.
37. Id.
38. Id.
39. Id.
40. Id.
41. Id. at 202, 297 S.E.2d at 588.
42. Id. at 202-03, 297 S.E.2d at 588.
defendant was convicted of first-degree sexual offense and attempted first-degree rape.

On appeal, the defense argued that the State did not prove that he had inflicted "serious personal injury," one of the elements of both first-degree sexual offense and first-degree rape. The supreme court concluded that the trial judge, through his instructions, had "limited the jury's consideration of the element of 'serious personal injury' to mental or emotional injury." This finding prompted the court to consider whether mental injury actually can constitute "serious personal injury" in North Carolina.

Because the court never had considered the scope of "serious bodily injury," it examined prior treatment of the phrase. This review, however, proved futile because cases involving the construction of "serious bodily injury" only involved "tangible bodily injury and continuing suffering and pain." Searching for some type of guidance, the Boone court analyzed civil cases involving damages for mental injury in negligence cases and discovered that a plaintiff may recover when he sustains mental stress as long as a physical injury also results from the wrongful act. In addition, the court had acknowledged that a plaintiff may recover "when the physical injury consists of a wrecked nervous system instead of wounded or lacerated limbs, as those of the former class are frequently much more painful and enduring than those of the latter." Based on these principles, the court held that "serious mental injury" is "serious personal injury."

The court then had to determine the standard required to satisfy "serious mental injury." The court declined to "enunciate a 'bright line' rule as to when the acts of an accused cause mental upset that could support a finding of 'serious personal injury.'" Rather, it adopted the case-by-case approach, but also provided future courts with guidelines for making this determination. The court recognized that it would be rare to find a rape or sexual offense in which the victim did not sustain some degree of mental injury. Because the legislature created first and second degree attempted rape and sexual offenses, of which only the former required "serious personal injury," the court concluded that "serious mental injury" must be something more than the trauma suffered in every rape and sexual offense. The court held that the State must demonstrate that any mental or nervous illness resulting from a rape or a sexual offense "was not only caused by the defendant but that the injury extended for some apprecia-

43. Id. at 201-02, 297 S.E.2d at 588.
44. Id. at 203, 297 S.E.2d at 588.
45. Id. at 203-04, 297 S.E.2d at 588-89 (the court discussed the definitions set forth in State v. Jones and its progeny).
46. Id. at 204, 297 S.E.2d at 589 (citations omitted).
47. Id.
48. Id. (citations omitted).
49. Id.
50. Id. at 205, 297 S.E.2d at 589.
51. Id. at 205, 297 S.E.2d at 589-90.
52. Id.
53. Id.
ble time beyond the incidents surrounding the crime itself.”

In the Boone case, however, the court concluded that the evidence was not sufficient to support a finding of serious personal injury because the State did not prove “residual injury.” The evidence proffered by the State showed only that the victim was hysterical and crying the morning of the incident. The court found that these were the “results one could reasonably expect to be present during and immediately after any forcible rape or sexual offense has been committed upon the female’s person” and not injuries that extended for an “appreciable period of time.”

In State v. Mayse the North Carolina Court of Appeals had the first opportunity of a state appellate court to review a case to which the Boone holding had been applied. Unlike the situation in Boone, the prosecution in Mayse introduced evidence sufficient to surmount the “residual injury” hurdle and to be labelled “serious personal injury.” In Mayse, the defendant abducted the victim at a convenience store and forced her to drive her car to three different locations and raped the victim three times before she ultimately escaped.

Unlike the case in Boone, the injuries sustained by the victim in Mayse lasted an extended period of time. After the incident, the victim suffered from a fragile mental state. At trial, she testified that she had to quit school because she could not concentrate and that she felt she had to move and leave her job because her coworkers treated her as if she had a disease. She also stated that she had sought professional help from a mental health center and a shelter for abused women. Furthermore, the victim stated that she never had such problems before the incident and that she still suffered mental trauma at the time of the trial, seven months after the incident.

The defendant was convicted of first-degree kidnapping and first-degree rape. On appeal, he maintained that the evidence did not support a finding of serious mental injury. The court of appeals disagreed. It held that the State “clearly” had proven that “such injury was not only caused by the defendant but

54. Id. at 205, 297 S.E.2d at 590.
55. Id.
56. Id.
57. Id.
59. Mayse, 97 N.C. App. at 560, 389 S.E.2d at 586.
60. Id. at 560-61, 389 S.E.2d at 586.
61. Id. at 563, 389 S.E.2d at 587.
62. Id. The victim stated:
I felt so degraded; I felt so ashamed, like everybody was looking at me and whispering. I was scared; I was afraid. I mean, some people knew what had happened. . . . [People] walked around like they were on eggshells. You know, it was like they'd whisper when I'd come into a room or something.
63. Id.
64. Id.
65. Id.
that the injury extended for some appreciable time beyond the incidents sur-
rounding the crime itself as required by State v. Boone." 66 The court of appeals
affirmed the conviction, holding that the victim had suffered serious mental
injury. 67

To gain a better understanding of what is a sufficient mental injury, it is
helpful to examine the evolution of mental injury as an actionable wrong in
North Carolina civil cases. The North Carolina Supreme Court first recognized
intentional infliction of emotional distress as an actionable tort in Stanback v.
Stanback. 68 The case involved a suit brought by Mrs. Stanback against her for-
er husband for breach of contract. 69 She sought to recover actual, conseque-
tial, and punitive damages. 70 In the portions of her complaint in which she
requested consequential and punitive damages, she alleged that the defendant
had inflicted mental anguish. 71 The trial court granted the defendant's motion
to dismiss the suit except the plaintiff's request for actual damages for the breach
of contract. 72 The plaintiff appealed. 73 The court of appeals affirmed the dis-
missal, and the supreme court granted the plaintiff's petition for discretionary
review. 74

With respect to the allegations of mental injury, the court affirmed the trial
court's dismissal of the portion of the complaint seeking consequential damages
for mental anguish. 75 The court did not reach the same result in terms of the
allegations made in the portion of the complaint asking for punitive damages.
Instead, it found that the plaintiff sufficiently stated a claim for intentional inflic-
tion of emotional distress. 76

In this case of first impression, the Stanback court determined the parame-
ters of this tort. Relying on prior cases in the state involving mental injury, the
court stated that "the plaintiff must show some physical injury resulting from
the emotional disturbance caused by defendant's alleged conduct" to establish
intentional infliction of emotional distress. 77 Although such physical injury was
present in this case, the court found Stanback's allegations of great mental
anguish sufficient to go to the jury to determine whether this anguish caused
physical injury. 78 Hence, the court took an expansive view of what constitutes
physical injury, 79 a stand supported by precedent. The court stated:

"The nerves are as much a part of the physical system as the limbs,

66. Id. at 563-64, 389 S.E.2d at 587.
67. Id. at 564, 389 S.E.2d at 587-88.
69. Id. at 183, 254 S.E.2d at 614.
70. Id.
71. Id. at 194-96, 254 S.E.2d at 620-21.
72. Id. at 184, 254 S.E.2d at 615.
73. Id.
74. Id. at 184-85, 254 S.E.2d at 615.
75. Id. at 195, 254 S.E.2d at 620-21.
76. Id. at 196, 254 S.E.2d at 621-22.
77. Id. at 198-99, 254 S.E.2d at 623.
78. Id.
79. Id. at 198, 254 S.E.2d at 623.
and in some persons are very delicately adjusted and when 'out of tune' cause excruciating agony. We think the general principles of the law of torts support a right of action for physical injuries resulting from negligence, whether willful or otherwise, none the less strongly because the physical injury consists of a wrecked nervous system instead of lacerated limbs."

This language suggesting a requirement of physical manifestation of mental injury concerned later courts that addressed the mental injury question. In Dickens v. Puryear,\(^8\) for example, the court disapproved of the Stanback physical manifestation requirement.\(^8\) It concluded that the language stemmed from the Stanback court's effort to reconcile its decision with earlier cases involving mental injury.\(^3\) The Dickens court reasoned that these earlier cases

were concerned with a broader concept of liability than the relatively narrow one now known as intentional infliction of emotional distress. They were concerned with permitting recovery for injury, physical and mental, intentionally or negligently inflicted. . . . To the extent . . . that these earlier cases required some 'physical injury' apart from mere . . . mental distress and, in addition, talked in terms of foreseeability, they did so in the context of negligently inflicted injuries and not in the context of the tort . . . intentional infliction of emotional distress.\(^8\) Accordingly, the Dickens court held that "[r]ecovery may be had for the emotional distress so caused and for any other bodily harm which proximately results from the distress itself."\(^8\)

Recently, in Johnson v. Ruark Obstetrics & Gynecology Associates,\(^8\) the court faced the issues of mental injury and negligent infliction of emotional distress. It clarified its position in Dickens and offered a "bright line" rule:

Where a defendant's negligent act has caused a plaintiff to suffer mere fright or temporary anxiety not amounting to severe emotional distress, the plaintiff may not recover damages for his fright and anxiety on a claim for infliction of emotional distress. Where, however, such a plaintiff has established that he or she has suffered severe emotional distress as a proximate result of the defendant's negligence, the plaintiff need not allege or prove any physical impact, physical injury, or physical manifestation of emotional distress in order to recover on a claim

\(^8\) Id. at 199 n.1, 254 S.E.2d at 623 n.1 (quoting Kimberly v. Howland, 143 N.C. 398, 403-04, 55 S.E. 778, 780 (1906)).
\(^8\) 302 N.C. 437, 276 S.E.2d 325 (1981).
\(^8\) Id. at 447-48, 276 S.E.2d at 332-33.
\(^3\) Id. For examples of these earlier cases see Williamson v. Bennet, 251 N.C. 498, 507, 112 S.E.2d 48, 54 (1960) (recovery denied for emotional distress unaccompanied by physical injury because the connection between defendant's conduct and plaintiff's injury was too remote); Kirby v. Jules Chain Stores Corp., 210 N.C. 808, 810-13, 188 S.E. 625, 626-28 (1936) (court held that fright alone was not actionable but plaintiff may recover for physical manifestation of fright or for some mental impairment stemming from fright).
\(^8\) Dickens, 302 N.C. at 451-52, 276 S.E.2d at 334.
\(^8\) Id. at 452-53, 276 S.E.2d at 335.
for negligent infliction of emotional distress.\textsuperscript{87}

The standards for mental injury established in civil cases were important to the court in \textit{State v. Boone}\textsuperscript{88} since it was the first case in North Carolina to address the mental injury issue in a criminal context. In its search for support for expanding the definition of “serious personal injury” to include mental injury for first-degree rape and first-degree sexual offense cases, the \textit{Boone} court turned to civil cases for authority, as the criminal cases defining serious injury only “involved tangible bodily injury and continuing suffering and pain.”\textsuperscript{89} Thus, when the \textit{Everhardt} court wanted to take the same step with respect to assault cases, it, in turn, looked to \textit{Boone} for guidance.\textsuperscript{90}

On the surface, this reliance is disconcerting because rapes and assaults are quite dissimilar by nature. In addition, although placed in the same statutory act, their legislative definitions bear little resemblance. On the one hand, to gain a conviction for a rape, the State must proffer evidence of “serious personal injury;” on the other hand, to establish an aggravated assault, the State need only show “serious injury.”\textsuperscript{91} These two phrases seemingly demand different levels of evidence; however, this language provides the common denominator that explains \textit{Boone}'s role in the \textit{Everhardt} court’s analysis.

Determining the scope of “serious injury” comprised the main thrust of the \textit{Everhardt} court’s reasoning. Although the court previously limited the reach of this phrase to “serious bodily injury,” the court recognized that it was not bound by this judicially created constraint. Searching for guidance, the court turned to the only other criminal case in which an injury had been held to include mental injury—\textit{Boone}. In this situation, the same act of the defendant constituted both crimes, and “where possible, statutes dealing with the same subject matter must be harmonized to give effect to each.”\textsuperscript{92} The court therefore had an obligation to make certain that “serious injury” and “serious personal injury” were given a uniform construction. Looking to \textit{Boone} and its interpretation of “serious personal injury,” the \textit{Everhardt} court made a reasonable deduction: “‘Serious injury’ may be construed to be as broad or broader than ‘serious personal injury,’ as the former contains no adjective qualifying the nature of the injury, other than the requirement that it be a serious one.”\textsuperscript{93}

The similarities between the felonious assault in \textit{Everhardt} and rape, in all

\textsuperscript{87} \textit{Id.} at 303-04, 395 S.E.2d at 97.
\textsuperscript{88} 307 N.C. 198, 204, 297 S.E.2d 585, 589 (1982).
\textsuperscript{89} \textit{Id.}
\textsuperscript{90} \textit{Everhardt}, 326 N.C. at 780, 392 S.E.2d at 392-93.
\textsuperscript{91} \textit{See N.C. GEN. STAT. § 14-27.2(a)(2)(b) (1986) (rape); id. § 14-32(a) (1986) (felonious assault).}
\textsuperscript{92} State v. Jones, 97 N.C. App. 189, 196, 388 S.E.2d 213, 217 (1990); \textit{see also In re Brownlee}, 301 N.C. 532, 549, 272 S.E.2d 861, 871 (1981) (“In seeking to ascertain and give effect to the legislative intent, an act must be considered as a whole. Statutes which deal with the same subject matter must be construed in pari materia, and harmonized, if possible, to give effect to each.”) (citations omitted); State v. Harvey, 281 N.C. 1, 19-20, 187 S.E.2d 706, 718 (1972) (“In seeking to discover and give effect to the legislative intent, an act must be considered as a whole, and none of its provisions shall be deemed useless or redundant if they can reasonably be considered as adding something to the act which is in harmony with its purpose.”) (citations omitted).
\textsuperscript{93} \textit{Everhardt}, 326 N.C. at 781, 392 S.E.2d at 393.
likelihood, made the court's decision to turn to Boone for direction easier. By nature, rape and sexual offenses are degrading and dehumanizing crimes. As the court in Boone asserted: "It would defy reason and common sense to say that there could be forcible rape or forcible sexual offense which did not humiliate, terrorize, and inflict some degree of mental injury upon the victim." These traits are common in all rape cases. The assault inflicted upon Mrs. Everhardt shared these distinctive features. Indeed, the Everhardt court stated that:

The assaults perpetrated on the victim were in the main psychologically torturous in nature, calculated to inflict mental or emotional injury rather than bodily injury. The devices employed by defendant to assault the victim, while potentially deadly as found by the jury, were utilized in a manner calculated to degrade and dehumanize the victim. This is illustrated by defendant's threats and insults repeated to the victim during the perpetration of the assaults, as when he reminded her that she was ugly, that no other man would ever want her, and that she was stuck with him for the rest of her life.

The facts of Everhardt are unique in their severity in comparison to other assault cases reviewed by the supreme court; the assault in Everhardt is more akin to a rape or sexual offense charge than to other assault cases. For example, the Everhardt assault differed from the shootings in State v. Jones and in State v. Owens. The evidence in those cases did not show that the weapons "were utilized in a manner calculated to degrade and dehumanize the victim." None of these victims testified: "I felt like I was the lowest person on the face of the earth. I had no self-esteem, no confidence in myself." Rather, these harms were brought about by an intent to inflict physical anguish. The defendants simply wanted to cause physical pain, plain and simple. These injuries required medical treatment, not repeated trips to mental health centers for treatment by psychologists and therapists.

Arguably, it is unlikely that Everhardt will have a tremendous impact on the typical assault case. After all, Everhardt was a case of first impression; in prior assault cases reviewed by the court, the injuries inflicted were physical and tangible in nature, leading one to infer that it is indeed rare for an assault victim to sustain mental trauma. Such an inference is incorrect, however. Simply because the supreme court has not addressed the issue does not mean that victims of shootings and stabbings do not sustain mental injury as Mrs. Everhardt did. Perhaps the legal profession was not aware of the emotional consequences of assault, and hence, no one bothered to make that argument.

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95. Everhardt, 326 N.C. at 780, 392 S.E.2d at 393.
96. 258 N.C. 89, 128 S.E.2d 1 (1962). For a discussion of this case, see supra note 31.
98. Everhardt, 326 N.C. at 780, 392 S.E.2d at 393.
99. Id. at 779, 392 S.E.2d at 392.
tims of typical assaults also experience depression, repetitive nightmares, social withdrawal, extreme phobias, and nausea. These victims obviously have sustained "serious mental injury."

The supreme court, however, could elect to limit *Everhardt* to the case where "the devices employed by the defendant to assault the victim... were utilized in a manner calculated to degrade and dehumanize the victim." Although the court states that "serious injury, within the meaning and intent of that term as used in N.C.G.S. § 14-32, includes serious mental injury caused by an assault with a deadly weapon," leading one to believe that *Everhardt* applies to all felonious assault cases, the court's extensive characterization of the assault as degrading and dehumanizing could create another inference. By focusing on this aspect of the assault, one might conclude that the court intends to restrict *Everhardt* to cases in which "[t]he assaults... were in the main psychologically torturous in nature, calculated to inflict mental or emotional injury rather than bodily injury." Such a demarcation would be unwise. As previously discussed, it is easy to imagine a situation in which a victim of the typical assault suffered from severe mental trauma. Consider this example: Tom, a young doctor, accompanied his girlfriend to her office building. As the two entered the elevator, a man approached them and pulled out a gun. He placed the gun to Tom's head. Tom managed to knock the gun out of the attacker's hands but a second man, also carrying a pistol, entered the picture. The second assailant shot Tom, shattering his shoulder. Since this incident, Tom has had nightmares of the incident and changed his residency from surgery to internal medicine because victims of physical injury so greatly disturbed him. He finds it hard to concentrate at work and has turned to drinking to relieve his anxiety. Tom suffers from what doctors describe as post-traumatic stress syndrome, "a disturbance that originates in response to an overwhelming encounter with the possibility of violent death." It is clear that Tom has sustained serious mental injury as a result of his encounter; in all likelihood, if a state offered evidence of these facts, a jury as well as an appellate court would, find it sufficient to satisfy

impact of crime on its victims has increased in recent years, *id.* at 453; therefore, it is entirely possible that lawyers and judges gave little attention to mental trauma in the past.

102. Modlin, *supra* note 100, at 139-43.
103. *Everhardt*, 326 N.C. at 780, 392 S.E.2d at 393.
104. *Id.*
105. *Id.*
107. *Id.*
108. *Id.*
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.* Although this disorder has been discussed primarily in terms of war and combat veterans, doctors estimate that one-third to one-half of the civilians who have been exposed to a life-threatening situation have showed symptoms of this disorder. *Id.*
the "serious injury element" of aggravated assault. Because Tom also sustained "serious bodily injury," the fact-finder or reviewing court could elect to pursue the physical injury analysis. Had the bullet simply grazed Tom's shoulder, the only way the State could establish "serious injury" would be to prove mental anguish. Unlike the Everhardt assault, however, Tom's attack was not one in which the means utilized to assault the victim were implemented "in a manner calculated to degrade and dehumanize the victim"; it was not "in the main psychologically torturous in nature." If the court elected to limit Everhardt's application to such degrading and dehumanizing attacks, the State would be unable to establish infliction of "serious injury" for victims such as Tom.

Finally, such a delineation is unworkable. Trial judges and juries, in all probability, will struggle trying to ascertain what kind of assaults are "in the main psychologically torturous in nature." Indeed, this language is amorphous and represents a more difficult adaptation than a bright-line rule encompassing all aggravated assaults. A bright-line rule is easily understood and applied. Its "purpose and effect [would be] to remove all doubt about the proper scope" of Everhardt. A rigid rule allows courts to avoid hair-splitting decision-making. Thus, establishing an inflexible rule including all aggravated assaults is the best solution for this situation.

Nevertheless, use of bright-line, rigid rules is not always desirable. As the Everhardt court noted, its predecessors understandably did not want to curse the phrase "serious bodily injury" with an inflexible definition. Because victims manifest their injuries in a variety of ways, the task of encompassing all possible reactions would be impracticable if not impossible. No bright-line rule exists "separating the significant from the insignificant." Therefore, "the seriousness of the injury inflicted 'must be determined according to the particular facts of each case.'" The Boone court followed the same principle in terms of describing "serious mental injury." Logically, "the same rule must apply in cases where the serious injury caused by the assault is mental in nature."

While taking a stand against shackling future courts with an unyielding standard, prior courts have offered lower courts a skeletal framework with which to work. Even in State v. Jones, the case in which the court first enunciated case-by-case approach, the court listed important issues for the lower

114. Everhardt, 326 N.C. at 780, 392 S.E.2d at 393.
115. Id.
116. Id.
120. Everhardt, 326 N.C. at 781, 392 S.E.2d at 393.
121. See Lurigio, supra note 101, at 453 (giving an in-depth analysis and empirical study of how victims cope with crime in different ways).
123. Everhardt, 326 N.C. at 781, 392 S.E.2d at 393 (citations omitted).
124. Id.
court to consider on remand in determining whether a shooting victim had sustained "serious bodily injury." 127 The court advised the trial court to find out how the doctors removed the bullets, how deep the bullets penetrated and how long the victim was hospitalized. 128 In State v. Owens, 129 the court reiterated that it would not provide an exact definition of serious injury, but it listed some factors to use in determining whether there is sufficient evidence of serious injury. 130 The Boone court stated that it was "impossible to enunciate a 'bright line' rule as to when the acts of an accused cause mental upset that could support a finding of 'serious personal injury,'" 131 but it did provide a guideline: The injury has to extend "for some appreciable time beyond the incidents surrounding the crime itself." 132

Although the Everhardt court diligently adhered to the case-by-case standard by not creating a bright-line rule, it broke with precedent by failing to provide any specific reason why the evidence sufficiently established "serious mental injury" in Mrs. Everhardt's case. The absence of some sort of framework to guide future courts is the most troubling and inconsistent aspect of Everhardt. The court simply states that the evidence is "compelling" 133 without giving any reason for this characterization.

The Everhardt court could have provided some guidelines without proffering a bright-line rule and thus, without ignoring precedent. The fact that Everhardt marks the first time mental injury has been considered as serious injury in assault cases amplifies the need for direction. The court could have given something more than a simple statement that the evidence was "compelling." 134 The court should have emphasized the factors that it thought rendered the injury a "serious mental injury." Mrs. Everhardt's injury had extended for an extended period of time. 135 In addition, she received professional treatment on four different occasions. 136 The court gave no indication if one of these factors was conclusive or if both factors are required to establish serious mental injury.

To rectify the situation, the supreme court should grant discretionary review to a case involving an assault inflicting serious mental injury. Even if the court truly desires to clarify the standard on appeal, it may be too late to provide significant assistance to the trial courts. For example, consider how long it took for a case such as Everhardt to reach the court. The only consolation rests in

126. 258 N.C. 89, 128 S.E.2d 1 (1962).
127. Id. at 91-92, 128 S.E.2d at 3. For a discussion of Jones, see supra note 31.
128. Id. at 92, 128 S.E.2d at 3.
130. Id. at 111, 308 S.E.2d at 498. For a discussion of Owens, see supra note 31.
132. Id. at 205, 297 S.E.2d at 590.
133. Everhardt, 326 N.C. at 781, 392 S.E.2d at 393.
134. Id.
135. Mrs. Everhardt was still undergoing treatment in 1987, almost three years after the assault occurred. Id. at 779, 392 S.E.2d at 392; see Boone, 307 N.C. at 205, 297 S.E.2d at 590 (court considered an injury extending for "an appreciable amount of time" an important factor).
136. Everhardt, 326 N.C. at 779, 392 S.E.2d at 392.
somewhat of a patchwork checklist, established by piecing together evidence sufficient to satisfy the "serious injury" element in prior decisions. The best sources for such evidence are cases applying Boone's "appreciable length of time" test. As the Boone court suggested, mental anguish incidental to the crime will not suffice. Although not to the same degree as victims of rape, most assault victims feel some sort of mental trauma and nervousness after the crime. A study has shown that victims of personal crimes, such as assault, are more likely to experience fear of future victimization and vulnerability to future attacks on themselves, family, and neighbors. But in proving "serious mental injury," the State must look beyond the immediate impact on the victim and common problems encountered by the majority of victims for proof of continuing pain and suffering. 

Key factors in ascertaining whether an injury has met the "appreciable period of time" standard include: hospitalization, seeking professional treatment, and inability to cope in the every-day world. Courts also may wish to consider "difficulties in resuming normal activities, depression, anxiety, a loss of emotional control, guilt, sleep disturbances, and obsessive thoughts about the crime incident." A problem courts may encounter is determining how long is an "appreciable period of time." Boone indicates that the anguish has to extend beyond the time immediately following the attack while Mayse and Davis show that it is sufficient for the trauma to be present at least until the trial date, which was seven months after the rape in Mayse. These parameters, however, produce unanswered questions. First, courts must decide whether mental injury has to last as long as the harm did in Mayse and Davis. Second, they also should determine whether the trial date serves as a benchmark. Using the trial date as the touchstone.
could prove problematic in light of the fact that not all trials take place "x" months after a crime has been committed. A four to seven month standard may be the best solution. In one study, symptoms of serious mental anxiety were found to subside around six months after the incident.\textsuperscript{149} This standard should not be inflexible because, as previously stated, crime does not affect all victims in the same manner.\textsuperscript{150}

The decision in \textit{Everhardt} should not come as a great surprise considering the growing concern about the impact of crime on assault victims' emotional well-being\textsuperscript{151} and, more importantly, the recent attention given to emotional injury by the North Carolina courts.\textsuperscript{152} Despite the \textit{Everhardt} court's failure to provide lower courts minimal guidance in ascertaining "serious mental injury," the supreme court has taken an important step in the evolution of the recognition of the infliction of mental anguish, whether in the civil or criminal realm, as a wrong to be remedied. \textit{Everhardt} represents the adherence by the modern supreme court to the principle established one hundred years earlier: "The mind is no less a part of the person than the body."\textsuperscript{153}

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\textsuperscript{149} Modlin, \textit{supra} note 100, at 139-44.
\textsuperscript{150} Lurigio, \textit{supra} note 101, at 453.
\textsuperscript{151} See, e.g., Modlin, \textit{supra} note 100; Lurigio, \textit{supra} note 101.
\textsuperscript{153} Young v. Western Union Tel. Co., 107 N.C. 370, 385, 11 S.E. 1044, 1048 (1890).