



OPENING STATEMENT

BY: REBECCA CHAPPELL

SENIOR ASSISTANT PUBLIC DEFENDER

CLEVELAND COUNTY



WHEN TO MAKE AN OPENING STATEMENT

- NCGS 15A-1221-OUTLINES THE ORDER OF A JURY TRIAL
- AFTER THE JURY IS SWORN, SELECETED AND IMPANELED
- PURSUANT TO NCGS 15A-1221(a)(4), EACH PARTY MUST BE GIVEN THE OPPORTUNITY TO MAKE A BRIEF OPENING STATEMENT, BUT THE DEFENDANT MAY RESERVE HIS OPENING STATEMENT.



RESERVING

- NCGS 15A-1221(a)(6) –THE DEFENDANT MAY OFFER EVIDENCE AND, IF HE HAS RESERVED HIS OPENING STATEMENT, MAY PRECEDE HIS EVIDENCE WITH THAT STATEMENT.
- IN OTHER WORDS, IF THE DEFENSE WILL BE PRESENTING EVIDENCE IN THE CASE, THE DEFENSE MAY RESERVE THE MAKING OF AN OPENING STATEMENT UNTIL AFTER THE STATE HAS RESTED ITS CASE-IN-CHIEF AND BEFORE THE DEFENSE'S CASE.



FAILURE TO REQUEST

- **THE FAILURE TO REQUEST AN OPPORTUNITY TO MAKE AN OPENING STATEMENT MAY RESULT IN WAIVER OF THIS PROCEDURAL RIGHT.** State v. McDowell, 301 N.C. 279 (1980)
- EITHER PARTY MAY ELECT TO WAIVE OPENING STATEMENTS. N.C. GEN. R. PRAC. SUPER.& DIST. CT. 9.
- WAIVER CAN BE EXPRESS OR IMPLIED

WAIVER

- ▶ ELECT NOT TO GIVE AN OPENING STATEMENT





SO YOU MAY ASK YOURSELF:

TO GIVE OR NOT TO GIVE AN OPENING
STATEMENT?



PURPOSE OF AN OPENING STATEMENT

THE PURPOSE OF AN OPENING STATEMENT IS TO PERMIT THE PARTIES TO PRESENT TO THE JUDGE AND JURY THE ISSUES INVOLVED IN THE CASE AND TO ALLOW THEM TO GIVE A GENERAL (NOT SPECIFIC) FORECAST OF WHAT THE EVIDENCE WILL BE. Seed State V. Gladden, 315 N.C. 398, 417 (1986)





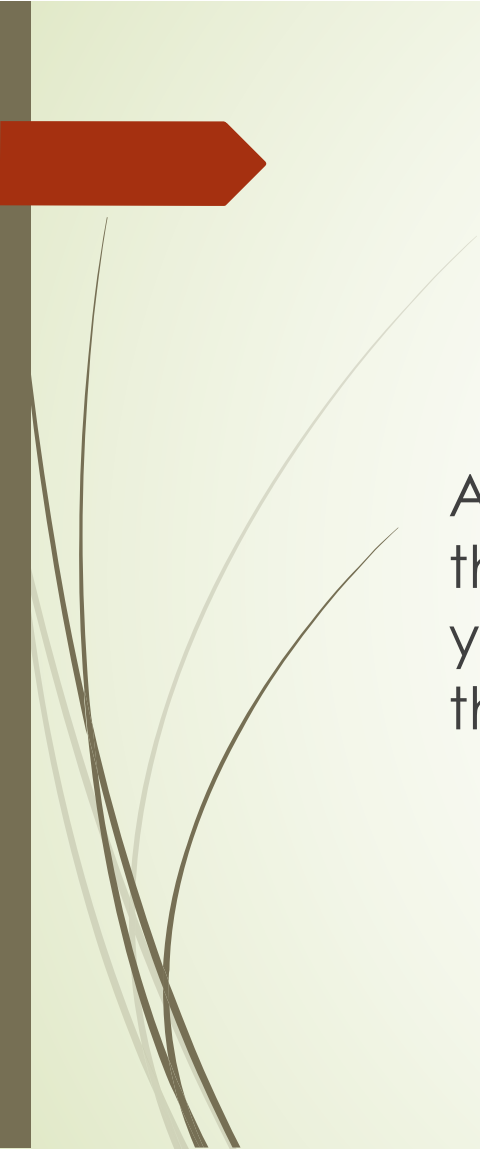
WHAT IS AN OPENING STATEMENT

- PREVIEW OF THE EVIDENCE YOU INTEND TO PRESENT
- SET FORTH THE THEORY OF YOUR DEFENSE
- STORY OF INNOCENCE OR REDUCED CULPABILITY



DO NOT ARGUE THE EVIDENCE






Ask yourself this question: Are you describing to the jury what a witness or document states, or are you drawing a conclusion from the testimony or the document?

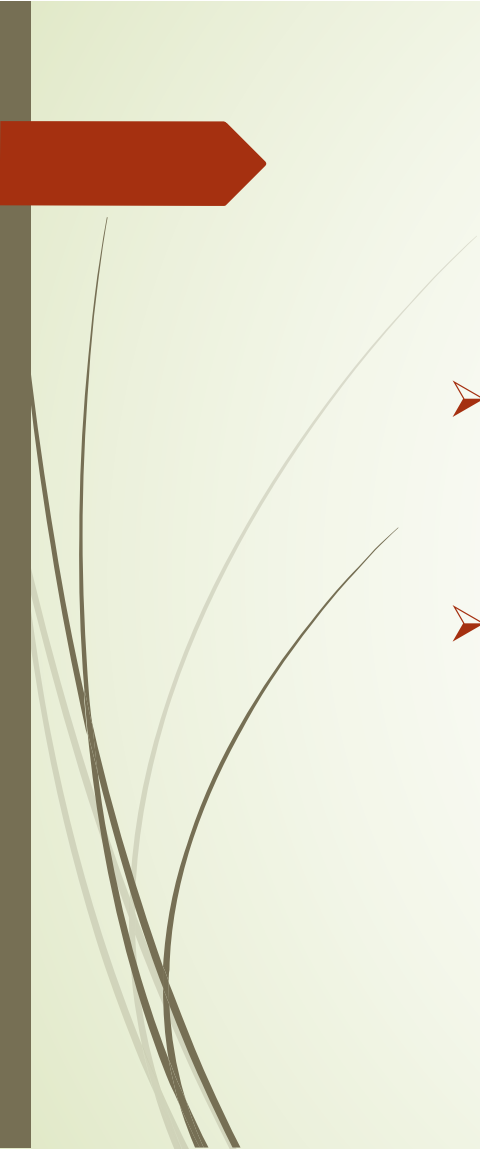



DO NOT INSTRUCT THE JURY OF THE
LAW



NO LAW

- 
- ▶ DO NOT REFER TO INADMISSIBLE EVIDENCE
 - ▶ DO NOT EXAGGERATE OR OVERSTATE THE EVIDENCE
 - ▶ THE PURPOSE OF AN OPENING STATEMENT IS NOT, HOWEVER, TO ARGUE THE CASE, INSTRUCT ON THE LAW, OR CONTRADICT THE OTHER PARTY'S WITNESSES. *State v. Mash*, 328 N.C. 61 (1991).

- 
- HARBISON – Defendant's consent is required before admission of guilt is made.
 - EXHIBITS – Use exhibits in opening – Judge has authority to allow it. Consider giving notice to the prosecutor and the judge. This will allow the court to resolve any objections in advance and avoid interruptions.

- 
- Keeping promises – Counsel should not promise to present witnesses or evidence unless he or she is able to follow through. Failure to keep promises may be ineffective assistance of counsel.
 - Time limits – The length of opening statements is a matter within the sound discretion of the trial judge. See State v. Call, 349 N.C. 382 (1998).



DRAFTING YOUR OPENING STATEMENT

- THE HOOK
- THE STORY
- THE CONCLUSION



WHAT IS A HOOK

- ▶ A 30 TO 60 SECOND STATEMENT THAT INCLUDES YOUR THEORY, THEME OR DEFENSE
- ▶ ESTABLISHES THE EMOTIONAL THEME THAT WILL MAKE THE JURY FEEL IT IS RIGHT TO ACCEPT YOUR THEORY



THEORY

- THE CRIMINAL INCIDENT NEVER HAPPENED.
- THE CRIMINAL INCIDENT HAPPENED, BUT I DIDN'T DO IT.
- THE INCIDENT HAPPENED, I DID IT, BUT IT WASN'T A CRIME
- THE CRIMINAL INCIDENT HAPPENED, I DID IT, IT WAS A CRIME, BUT NOT THE CRIME CHARGED.
- THE CRIMINAL INCIDENT HAPPENED, I DID IT, IT WAS THE CRIME CHARGED, BUT I'M NOT RESPONSIBLE.
- THE CRIMINAL INCIDENT HAPPENED, I DID IT, IT WAS THE CRIME CHARGED. I'M RESPONSIBLE, BUT WHO CARES?



THE STORY

- THE MAIN PART OF YOUR OPENING
- STORY OF YOUR CLIENT'S INNOCENCE
- HITTING THE HIGH POINTS – NOT THE ENTIRE STORY





WHO ARE THE 3 MAIN CHARACTERS

- Patrol Officer White
- Officer Pete Mills, Special Undercover Narcotics Squad
- Helen Cruz, Officer Mills' girlfriend
- Ed Adkins, drug dealer
- Bob Hale – Manager at Chili's
- Reggie



WHAT ARE THE SETTINGS AND SCENES

- Chili's
- Vehicle (unmarked SUV)
- Magnolia Terrance
- 600 block of Walker Street

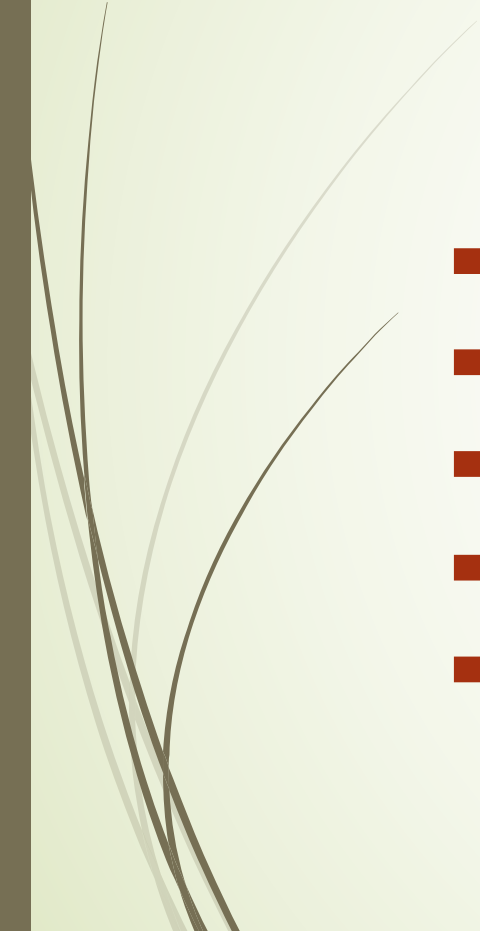


WHEN AND WHERE DOES THE STORY OF INNOCENCE START

- ❖ The sequence of events.
 - Front-load the strong stuff
 - Start on a high note and end on a high-note



WHAT EMOTIONS DO YOU WANT

- 
- Anger
 - Fear
 - Surprise
 - Awe
 - Disgust



WHOSE POINT OF VIEW

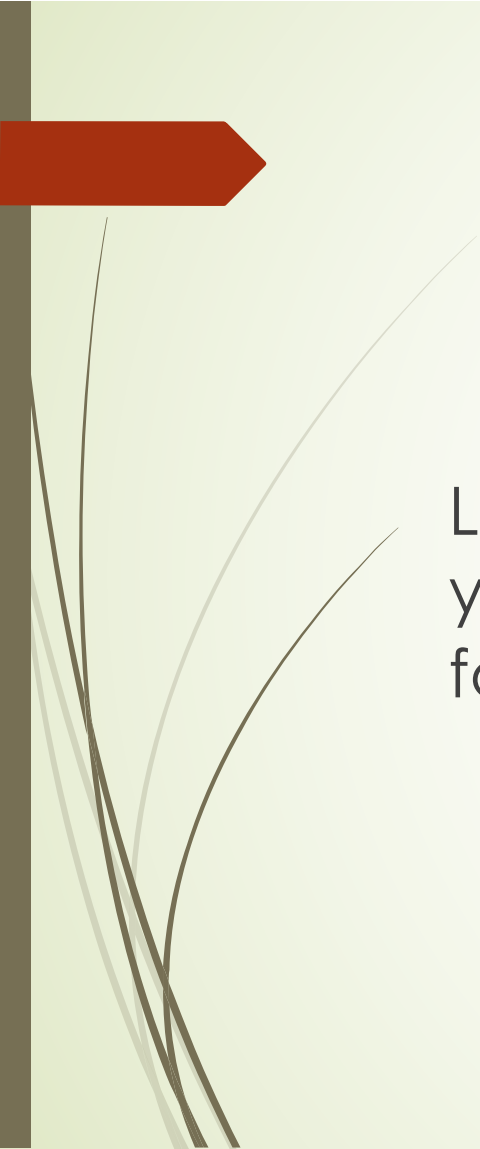
- ▀ ARE YOU TELLING THE STORY

THE CONCLUSION





TELL THE JURY WHAT
YOU WANT THEM TO
DO



Leave the jury with a clear understanding of your client's position in the case and a basis for believing your side.

STILL ASKING YOURSELF – TO GIVE OR NOT TO GIVE AN
OPENING STATEMENT



CONSIDER THIS.....







TIPS

- THE FIRST IMPRESSION SHOULD BE MORE COMPELLING
- BEGIN YOUR OPENING AS SOON AS THE MOMENT ARRIVES
- START SPEAKING WITH CONFIDENCE – KNOW THE FACTS OF THE CASE
- MOVE ABOUT THE COURTROOM WITH PURPOSE – TO BE MORE FORCEFUL AND EFFECTIVE
- DO NOT READ YOUR OPENING