

### **DEFENDANT'S PRESENCE**

- No. Defendant's right to be present at all stages of a capital trial is not waivable, even if defendant consents not to be present. State must prove error harmless beyond a reasonable doubt.
- Right attaches, at the latest, when case is called for trial and jury selection begins.
- State v. Huff, 325 N.C. 1 (1989).

### **DEFENDANT'S PRESENCE**

- Unrecorded bench conferences with attorneys during trial? Depends
- Defendant has no right to be present at the bench for discussion of legal issues.
- However, if presence reasonably required or could reasonably assist defendant in his defense, it's a violation.
- State v. Buchanan, 330 N.C. 202 (1991). State v. White, 349 N.C. 535 (1998).

### **DEFENDANT'S PRESENCE**

Generally, right does not attach before trial.

- Rule 24 pretrial conference? No
  - State v. Chapman, 342 N.C. 330 (1995)
- Court's pretrial excusal of potential jury venire members? No
  - State v. Rannels, 333 N.C. 644 (1993)

### **DEFENDANT'S PRESENCE**

- Removal of disruptive defendant during trial? Proceed with great caution! State v. Cunningham, 344 N.C. 341 (1996)
- Bailiff's advising jury (at direction of judge) to take an additional 15-minute recess? No

### **DEFENDANT'S PRESENCE**

- Hearing on pretrial motion for change of venue? Maybe. State v. Zuniga, 320 N.C. 233 (1987)
- Assuming defendant had right to be present, Court found error harmless beyond reasonable doubt

### **STANDBY COUNSEL**

- Fact that court appoints standby counsel does not require court to permit *pro se* defendant, during trial, to withdraw waiver and seek reappointment of counsel to represent him for remainder of trial.
- State v. Blankenship, 337 N.C. 543 (1994); State v. Smith, 27 N.C.App. 379 (1975).



## CORPUS DELICTI

- ANSWER: C
- The general rule: *Corpus delicti* requires the state to establish:
  - The fact of death
  - The criminal agency of anotherState v. Perdue, 320 N.C. 51 (1987)

## PHOTOGRAPHS

- ANSWER: B
- The test for admissibility of photos of a murder victim is relevancy, not necessity.
- Gruesome photos are admissible if relevant, so long as their excessive & repetitious use is not aimed solely at arousing the passions of the jury.
- State v. Hennis, 323 N.C. 279 (1988).

## PHOTOGRAPHS

- ANSWER: B
- Even if a defendant stipulates to the cause of death or identity, photographs may be admitted to illustrate testimony regarding the manner of killing so as to prove circumstantially the elements of murder in the first degree, including malice, premeditation and deliberation. State v. Haselden, 357 N.C. 1 (2003); State v. Elkerson, 304 N.C. 658 (1982).

## JURY INSTRUCTIONS: LESSERS

- ANSWER: B
- If the State's evidence is clear & positive as to each element of 1<sup>st</sup> degree murder, & there is no evidence to negate these elements other than defendant's denial that he was the perpetrator, the trial judge should not instruct the jury on 2<sup>nd</sup> degree murder. State v. Brewer, 325 N.C. 550 (1990)

## TACTICAL DECISIONS

- General Rule: Tactical decisions regarding defense preparation and conduct of trial are made by counsel.
- However, where defendant and counsel reach an "absolute impasse", the wishes of defendant control. State v. Ali, 329 N.C. 394 (1991); State v. McCarver, 341 N.C. 364 (1995).

## JURY ISSUES: VERDICT

- ANSWER: C and D
- The N. C. Sup. Ct. has encouraged the use of a verdict form which allows the jury to indicate whether its finding is based upon theory of premeditation & deliberation, or felony murder (or both)
- State v. Stokes, 308 N.C. 634 (1983)

