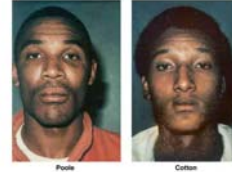


Post-Conviction DNA Testing: Selected Issues

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Background

- 362 DNA exonerations to date
- All 50 states have post-conviction DNA laws
- North Carolina enacted G.S. 15A-269 in 2001



Summary of Statute

- A court shall order testing if:
 - Evidence is “material,” meaning that with testing there is “a reasonable probability that the verdict would have been more favorable to the defendant”
 - Evidence was not DNA tested previously, or significantly better tests are now available
 - Defendant has signed a sworn affidavit of innocence
- An indigent defendant is entitled to the appointment of counsel upon a showing of materiality
- A custodial agency must inventory evidence once a motion is filed

What Do You Want to Talk About?

- Materiality?
- Appointment of counsel?
- Inventory?
- Something else?

Materiality

- The definition of “material” comes from Brady
- How does Brady apply when the test results are not known?
 - Defendant must show a reasonable probability that they’d change the outcome if they’re favorable?
 - Defendant must show reasonable probability that they’ll be favorable and that they’d change the outcome if they’re favorable?

Materiality in Application

- More than a mere assertion of materiality is required
- Examples:
 - Rape case, defense is consent, test semen in victim’s underwear?
 - Rape case, in a public restroom, defense is mistaken identity, test hair found on floor?
 - Murder case, in a homeless encampment, defense is SODDI, test hair grasped in victim’s hands?

Materiality and Guilty Pleas

- Other states are split
- North Carolina has no explicit statutory bar
- Interpretations
 - Savre: Evidence can't be "material to the defendant's defense" when there is no defense
 - Randall and Millhouse: Guilty plea → higher burden to show materiality
- How much higher is the standard?
- 10% of exonerations have been guilty plea cases

Appointment of Counsel

- Requires a showing of materiality
- More than a mere assertion of materiality is required
- Is the materiality standard the same as for ordering testing?
 - Appoint counsel "upon a showing that the DNA testing may be material to the petitioner's claim of wrongful conviction"
 - G.S. 15A-269(c)
 - Order testing upon a showing that it "is material to the defendant's defense"
 - G.S. 15A-269(a)
- Gardner

The Inventory Requirement

- Who notifies the agency?
- What should the agency inventory?
- Relationship to G.S. 15A-268

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