

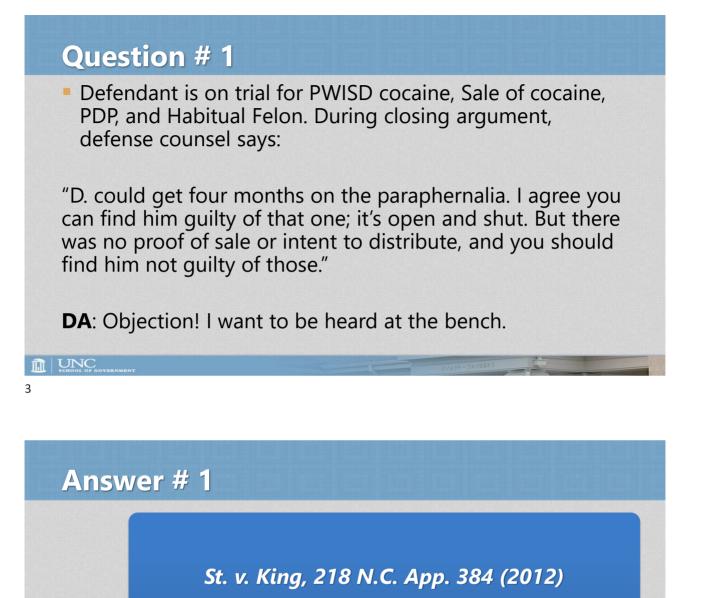
Ineffective Assistance Claims

Strickland attorney error claims

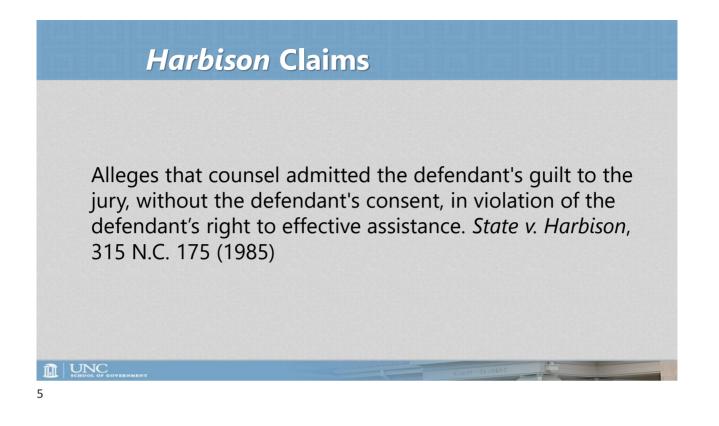
Harbison Claims

Denial of counsel claims

Conflict of interest claims

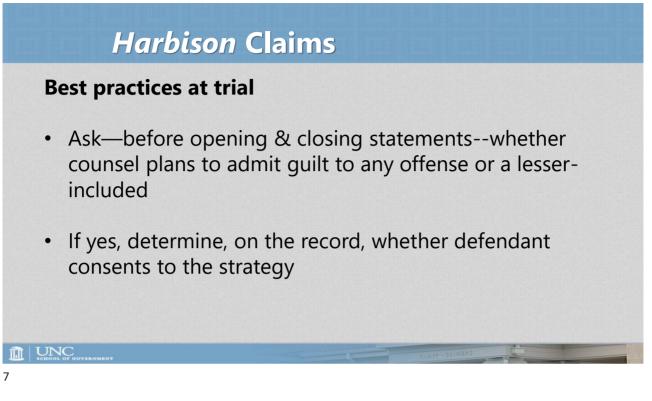


 Though clearly a strategic decision, such a statement concedes defendant's guilt to the charge of possession of drug paraphernalia



Harbison Claims

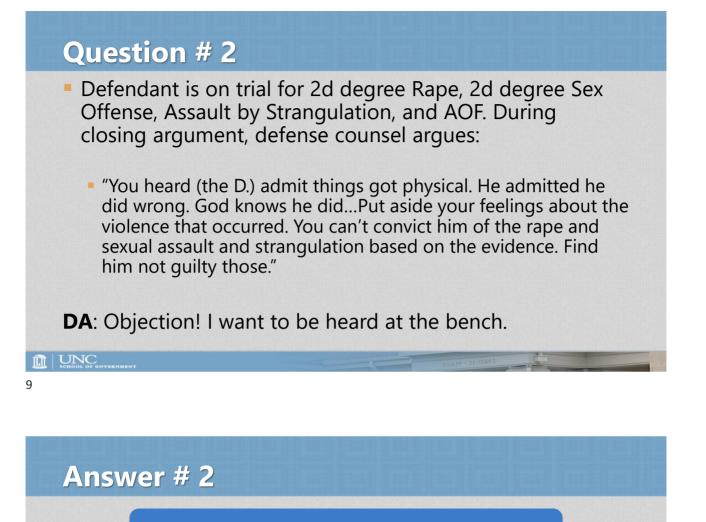
- NC courts have held that when counsel admits defendant's guilt to the jury without defendant's consent, it is **per se IAC**. *State v. Harbison*, 315 N.C. 175 (1985)
- The only inquiries are whether there was an unauthorized admission of guilt or whether defense counsel exceeded the scope of the defendant's consent



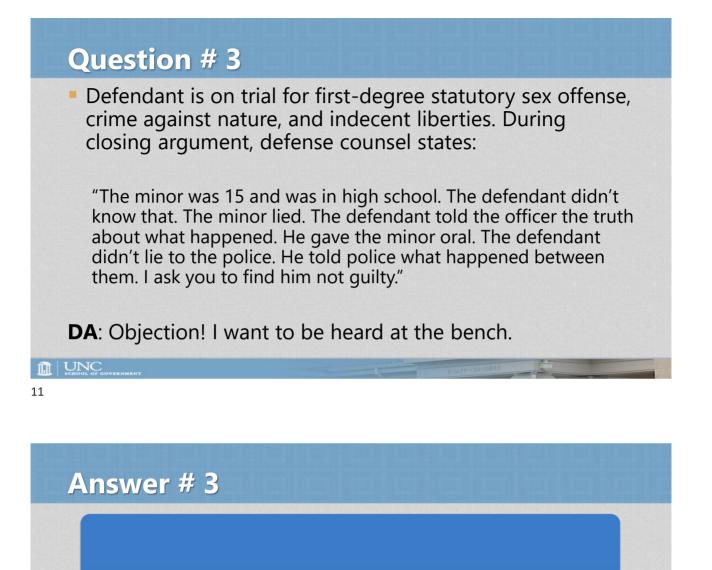
Harbison Claims

Best practices at trial

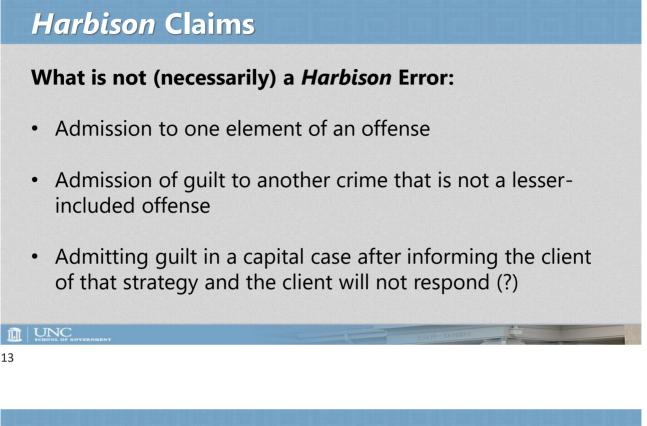
- Defense counsel can't proceed unless defendant gives explicit consent on the record
- If counsel unexpectedly admits guilt, excuse jury & determine whether defendant consents to the admission; if not may → mistrial

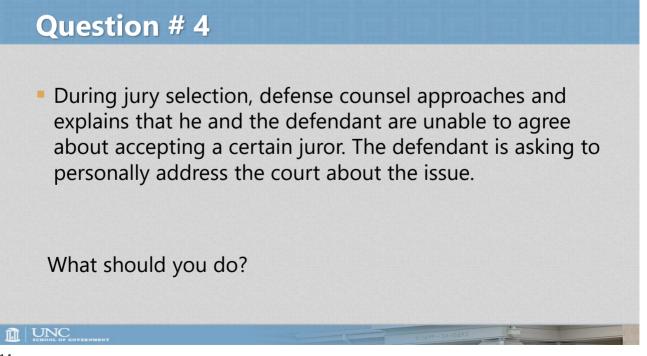


St. v. McAllister, 375 N.C. 455 (2020) Implied Admission of Guilt **=** *Harbison* Error



St. v. Cholon, 284 N.C. App. 152 (2022) Implied admission of guilt **Harbison** error

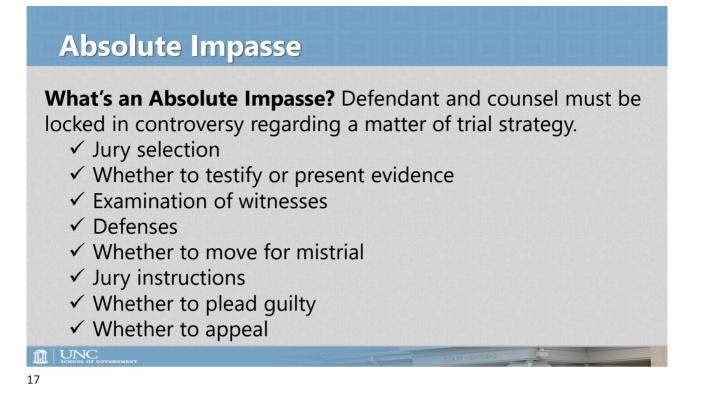






Answer # 4

 When defense counsel & a fully informed criminal defendant reach an **absolute impasse** as to tactical decisions, the client's wishes must control. *State v. Ali*, 329 N.C. 394, 404 (1991) (noting principal-agent nature of the attorney-client relationship)



Absolute Impasse

Your Duties. If brought to your attention that such an impasse exists, you must require defense counsel to abide by defendant's wishes

Defense Counsel's Duties. Make a record of the circumstances, advice to the defendant, the reasons for the advice, the defendant's decision, and the conclusion reached. The better practice is to do this on the record in open court

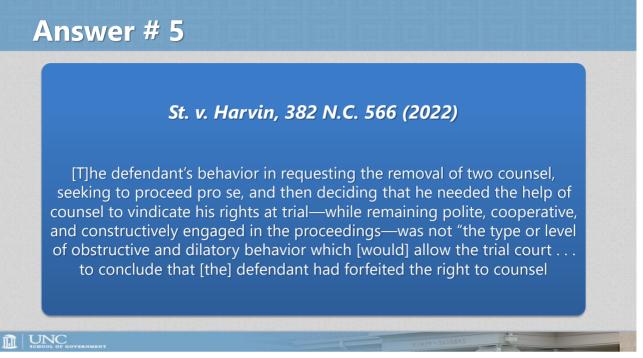


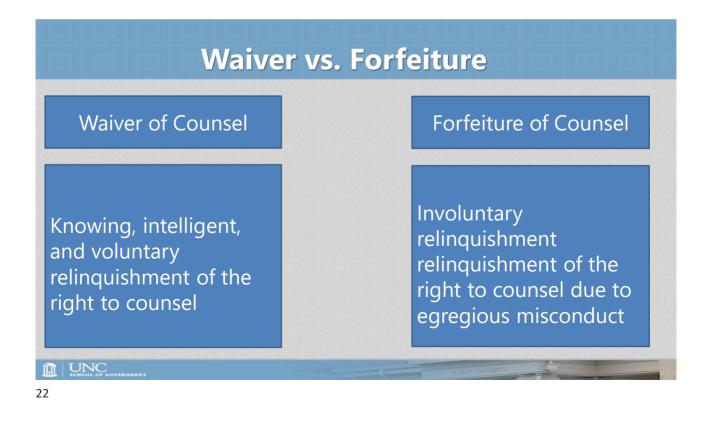
19

Question # 5

Two of the defendant's prior attorneys were allowed to withdraw due to breakdown of the relationship. The defendant then waives all counsel and is appt'd. standby counsel. After expressing problems researching the law and investigating his case from jail several times, D. states on the day of trial his desire to have full representation. Standby counsel needs a continuance to do.

What should you do?





<section-header><section-header><section-header><section-header><section-header><text><text>

Forfeiture of Counsel

- Use advance warnings when possible
- Document the reasons for withdrawal of prior counsel or D.'s inability to retain counsel
- Tread cautiously!

Forfeiture of Counsel

- Must be a clear record of D.'s misconduct
- Make findings of fact and legal conclusions
- Age of case and # of attys. is NOT dispositive



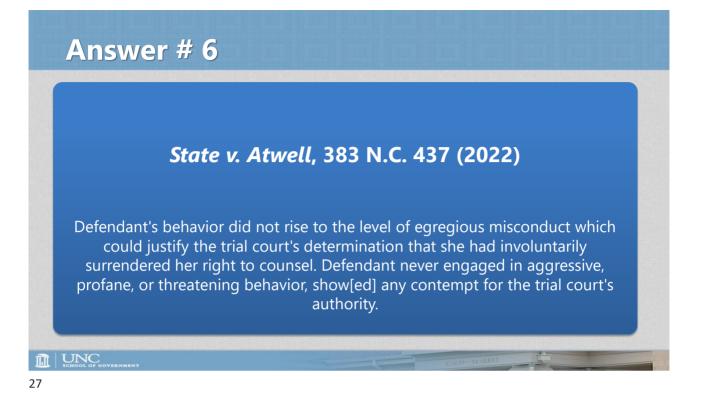
Question #6

UNC

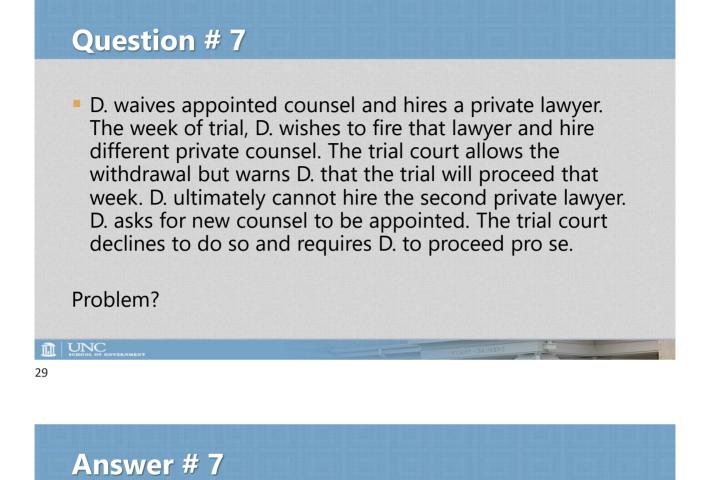
25

D.'s motion to remove his first atty. was allowed. Her second atty. withdrew. The third atty. withdrew shortly after that. A fourth atty. was appointed and withdrew 1.5 months later. Six months later, the fifth attorney withdrew. There were multiple waivers of counsel signed and D. also attempted to hire her own atty., without success. She asks for a sixth appt.'d. atty.

What should you do?



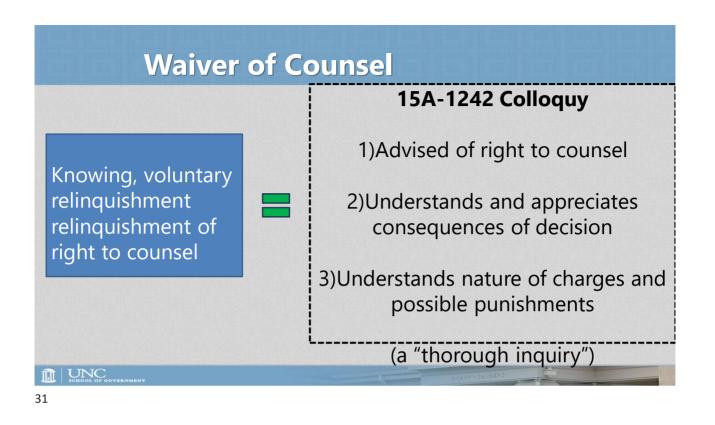












Waiver of Counsel Colloquy – G.S. 15A-1242

Are you able to hear and understand me?

Are you under the influence of any substances?

Age, education, literacy?

Any handicaps or disabilities?

Do you understand you have the right to a lawyer, including at the State's expense?

Understand the court will not give you advice on defenses, jury instructions, objections, or other legal issues?

Understand the court will treat you as if you were a lawyer?

Understand the nature of charges and the possible punishments?

Do you have any questions?

Do you now waive the right to the assistance of a lawyer and voluntarily and intelligently decide to represent yourself?

"Gray-area" Defendants

Indiana v. Edwards, 554 U.S. 164 (2008)

TC may limit a D's right to self representation by insisting on representation by counsel when D is competent to stand trial but lacks the mental capacity to conduct the defense unless represented

UNC

"Gray-area" Defendants

St. v. Cureton (NCA 2012):

The constitution does not prohibit selfrepresentation by a "gray-area" defendant

Capable to proceed is judged by the same standard as capable of proceeding pro se

Question #8 Local police charge the D. and he is on trial. Officers from that department testify against D. At the charge conference, D. explains he is concerned that his lawyer isn't acting in his best interests, because his lawyer also represents the police in his capacity as a part-time city attorney. D. admits he's known about this for a year and doesn't wish to question his lawyer about it. What should you do? UNC 35 **Question #8** St. v. Lynch, 271 N.C. App. 532 (2020) If defense counsel advises the police, that is an unwaivable conflict

The trial court erred in failing to further investigate the issue

Conflict of Interest

Standard. The standard for evaluating a conflict of interest claim depends on when the claim was raised

Conflict raised before or during trial. Trial court either must appoint separate counsel or take adequate steps to ascertain that the risk of conflict is too remote to warrant separate counsel

Defendant night be able to waive the conflict

Conflict of Interest

Standard. The standard for evaluating a conflict of interest claim depends on when the claim was raised

Conflict raised later. Defendant must show that an actual conflict of interest adversely affected counsel's performance

UNC