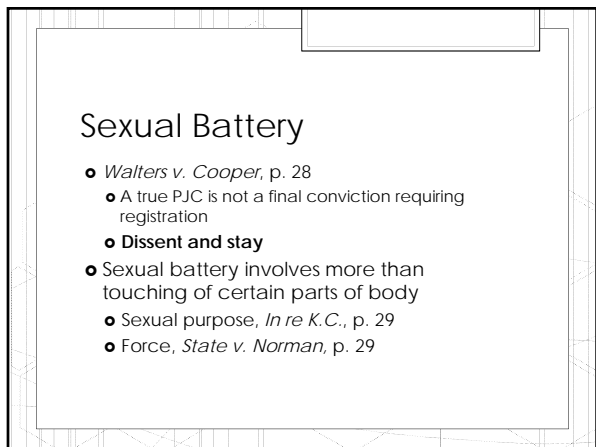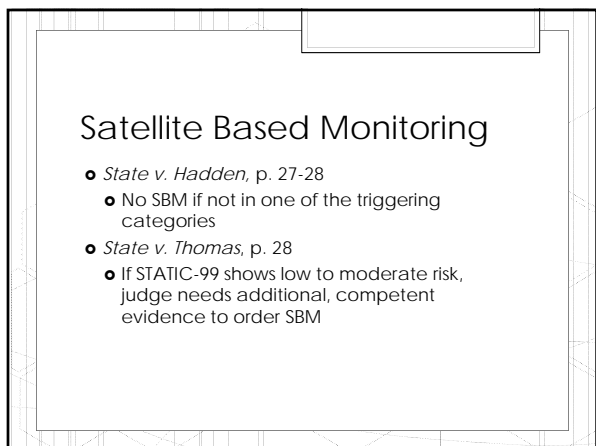## Criminal Law Update (Part 2)

John Rubin
UNC School of Government
June 18, 2013

Sexual Battery

- *Walters v. Cooper*, p. 28
  - A true PJC is not a final conviction requiring registration
  - **Dissent and stay**
- Sexual battery involves more than touching of certain parts of body
  - Sexual purpose, *In re K.C.*, p. 29
  - Force, *State v. Norman*, p. 29

Satellite Based Monitoring

- *State v. Hadden*, p. 27-28
  - No SBM if not in one of the triggering categories
- *State v. Thomas*, p. 28
  - If STATIC-99 shows low to moderate risk, judge needs additional, competent evidence to order SBM

Sex Offender Registration & Satellite-Based Monitoring (SBM)   Jamie Markham, UNC School of Government   April 2013

SEXUALLY VIOLENT OFFENSES (14-208.6(5))   Reportable Convictions

First-degree rape (14-27.2)
Rape of a child by an adult offender (14-27.2A)
Second-degree rape (14-27.3)
First-degree sexual offense (14-27.4)
Sexual offense with a child by an adult offender (14-27.4A)
Second-degree sexual offense (14-27.5)
Sexual battery (14-27.5A)
Former attempted rape/sexual offense (14-27.6)
Intercourse/sexual offense w/ certain victims (14-27.7)
Statutory rape (13-15 y.o. & D 6+ yrs. older) (14-27.7A(a))
Human trafficking (if victim <18 or for sex serv.) (14-43.11)
Sexual Servitude (14-43.13)
Incest between near relatives (14-178)
Employ minor in offense/public morality (14-190.6)
Felony indecent exposure (14-190.9(a1))
First-degree sexual exploitation of minor (14-190.16)
Second-degree sexual exploitation of minor (14-190.17)
Third-degree sexual exploitation of minor (14-190.17A)
Promoting prostitution of minor (14-190.18)
Participating in prostitution of minor (14-190.19)
Taking indecent liberties with children (14-202.1)
Solicitation of child by computer (14-202.3)
Taking indecent liberties with a student (14-202.4(a))
Parent/caretaker prostitution (14-318.4(a1))
Parent/guardian commit/allow sexual act (14-318.4(a2))

ATTEMPTS, CONSPIRACIES, SOLICITATIONS, & AID/ABETTING
Attempt: Final convictions for attempts to commit an "offense against a minor" or a "sexually violent offense" are reportable. 14-208.6(4)a. (unless target offense has later effective date)
Conspiracy/Solicitation: Conspiracy and solicitation to commit an "offense against a minor" or a "sexually violent offense" are reportable. 14-208.6(1m); -208.6(5).
Aiding & Abetting: Aiding and abetting an "offense against a minor" or "sexually violent offense" is reportable **only** if the court finds that registration furthers the purposes of the registry (set out in 14-208.5). 14-208.6(4)a.

FEDERAL CONVICTIONS (14-208.6(4)c.)
Offenses *substantially similar* to a North Carolina "offense against a minor" or "sexually violent offense" (includes conspiracy, solicitation, and aiding/abetting; excludes attempts)
Court martial: offenses committed on/after Oct. 1, 2001. S.L. 2001-373

CONVICTIONS FROM ANOTHER STATE (14-208.6(4)b.)
1. Offenses substantially similar to NC offense against a minor or sexually violent offense (includes conspiracy, solicitation, and aid/abetting; excludes attempts) (use effective date of similar NC offense); or

www.sog.unc.edu/node/2157

Let's Be Careful Out There

- Holding
  - PJC is not final judgment and so can't be basis for collateral estoppel
- Analysis
  - Generally, unless principles of res judicata or collateral estoppel apply, a judgment from another case is not admissible in a later case

  - *Little v. Little*, p. 19

Collateral Estoppel Terms

- Non-mutual collateral estoppel
  - Parties need not be same in both cases
- Defensive use of collateral estoppel
  - Use of prior finding to defend against claim
- Offensive use of collateral estoppel
  - Use of prior finding to support claim

  - *Little v. Little*, p. 19
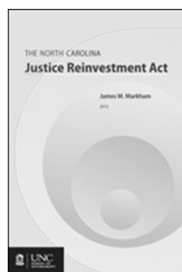
Let's Be Careful Out There

- Finality of judgment
  - Prior judgment must be final
- Advice?
  - It's easier when the defendant pleads guilty
  - Rule in the alternative
  - Read the judicial notice section in
    - Chapter 11 of Janet Mason, Kella Hatcher, and John Rubin, ABUSE, NEGLECT, DEPENDENCY, AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS IN NORTH CAROLINA (2011) http://shopping.netsuite.com/s.nl/c.433425/it.A/id.4228/.f
  - *Little v. Little*, p. 19

Ask Cheryl

State. v. Tindall (p. 33)

THE NORTH CAROLINA
Justice Reinvestment Act

James M. Markham

See also State v. Jones, p. 34

Pleadings and probation

- Defective indictment can't be raised as defense to probation violation because it's a collateral attack
- Compare to right to counsel violations
  - *Custis v. United States*, 511 U.S. 485 (1994)
  - *State v. Blocker*, ___ N.C. App. ___, 727 S.E.2d 290 (2012)

State v. Hunnicutt, p. 33

Ineffective Assistance

- *State v. Gray*, p. 16-17
  - NC State Bar is not last word on conflicts

Ethics Rule 1.9	Sixth Amendment
Focus on confidentiality of **former** client	Focus on representation of **current** client

See also Ethics Rule 1.3 (duty of zealous representation)

Remote Testimony

- Remote testimony about results of testing
- Remote testimony by child about physical abuse

State v. Seelig, p. 18
State v. Lanford, p. 19

Questioning of Youths

- Validity of waiver by 18-year-old
  - In custody (in jail on other charges)
  - Asserted right (I want an attorney, twice)
  - Officer reinitiated (attorney can't help you)
  - *In any event, waiver was not knowing and intelligent in light of defendant's youth, inexperience, and lack of recording*

State v. Quick, p. 16

Felon in Possession

- *Baysden*, p. 30
- *Johnston*, p. 31

Opinion Testimony

- For expert testimony that child is victim of sexual abuse . . .
  - There must be physical evidence of abuse
- For expert testimony that child's symptoms were consistent with sexually abused child . . .
  - Physical exam not required
  - But, there still must be "proper" foundation

State v. Ragland
___ N.C. App. ___, 739 S.E.2d 616 (April 16, 2013)

State v. Rollins (p. 18)

Testimonial hearsay by witnesses who are not subject to cross at trial may <u>not</u> be admitted...

UNLESS:

1) Witness unavailable, and

2) Prior opportunity for cross.

Capacity and Commitment

- Effective for offenses on or after 12/1/2013
- Only local evaluation for misdemeanors
- Deadlines for reports after exams (but not for exams themselves)

S.L. 2013-18
(p. 1-2 of legislative summaries)

More C & C

- Exam of capacity before release from commitment (but not necessarily finding of capacity)
- Deadline for hearing on capacity after release and at "earliest practicable time" for trial if capable
- Dismissal mandatory if unlikely to gain capacity
- Dismissal with leave repealed

S.L. 2013-18, p. 1-2