UNC SCHOOL OF GOVERNMENT

# Summer 2020 Criminal Law Webinar

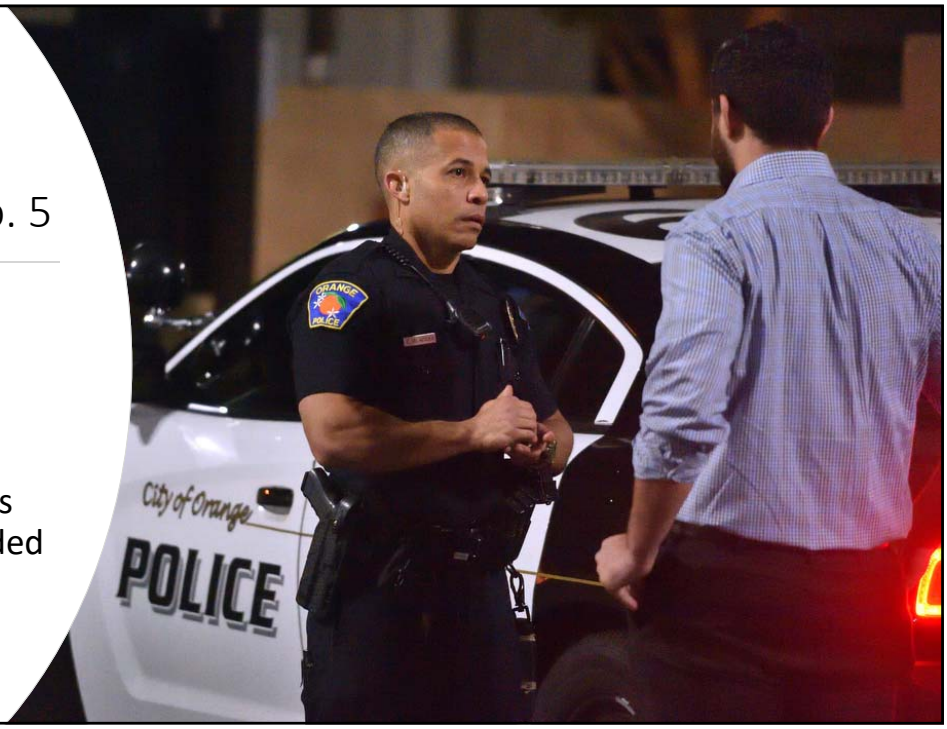
- Phil Dixon
- Jonathan Holbrook
- John Rubin

1


2

## State v. Reed, p. 5

- Traffic stop was reasonable at inception…
- But detention was unlawfully extended




3

## State v. Ellis, p. 4

- Middle finger ≠ Reasonable Suspicion of Disorderly Conduct
- Decided on 4th Amend. grounds, without deciding 1st Amend. issue

4

## State v. Lynch, p. 16

- *Mirandized* defendant confessed his involvement
- Confession induced by hope/promise was not voluntary

5


6

# State v. Hodge, p. 21

- Habitual felon indictment marked "No True Bill" discovered before habitual phase
- No error in allowing the State a continuance after trial of underlying felony to obtain new habitual felon indictment


7

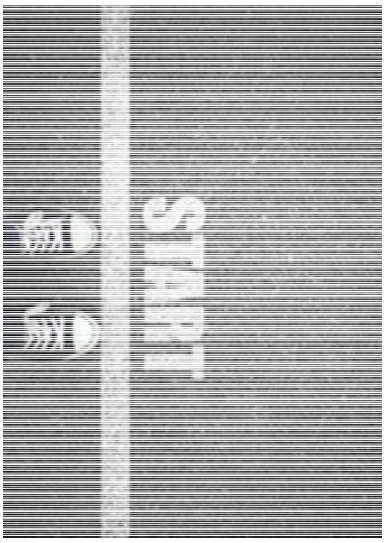
# Hodge, p. 21

**Dissent**:
"If I buy a car and get a car with no engine, that is a defective car. If I ask for a car and get a covered wagon, that is *not* a defective car. . .What we have here is the covered wagon of indictments."

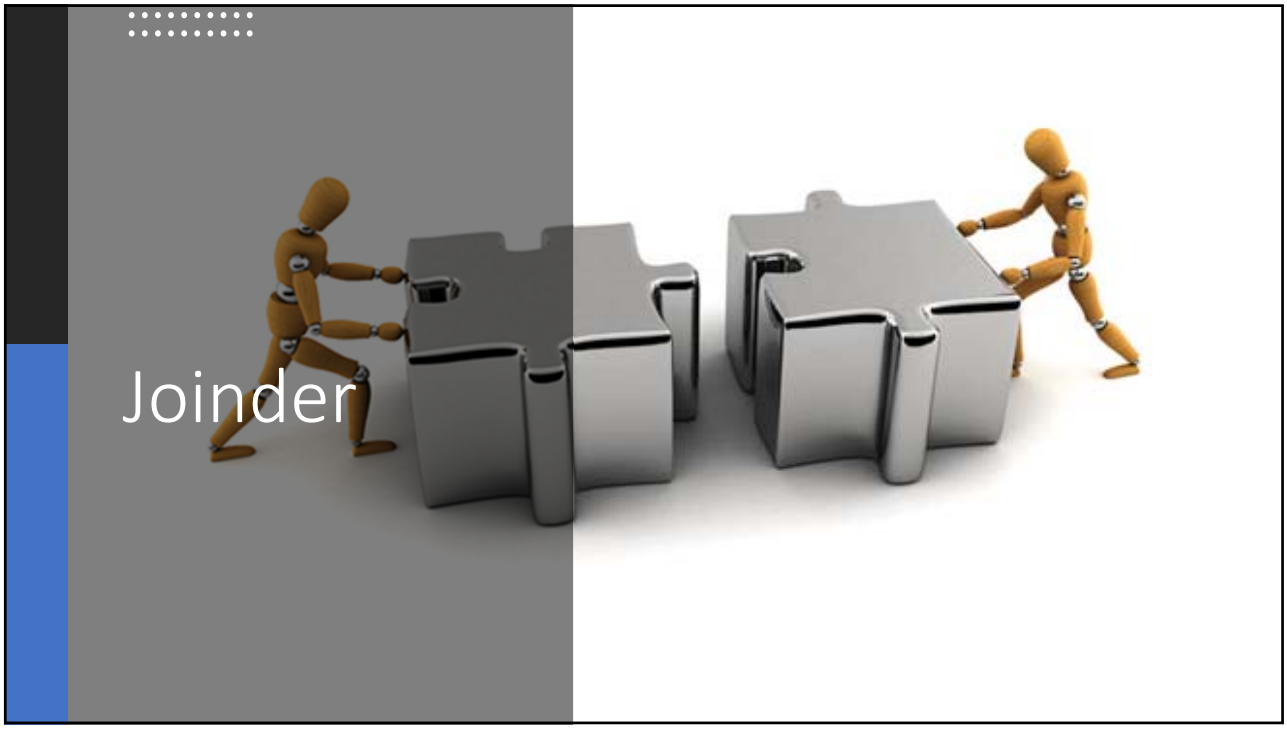
8

## State v. Stallings, p. 22

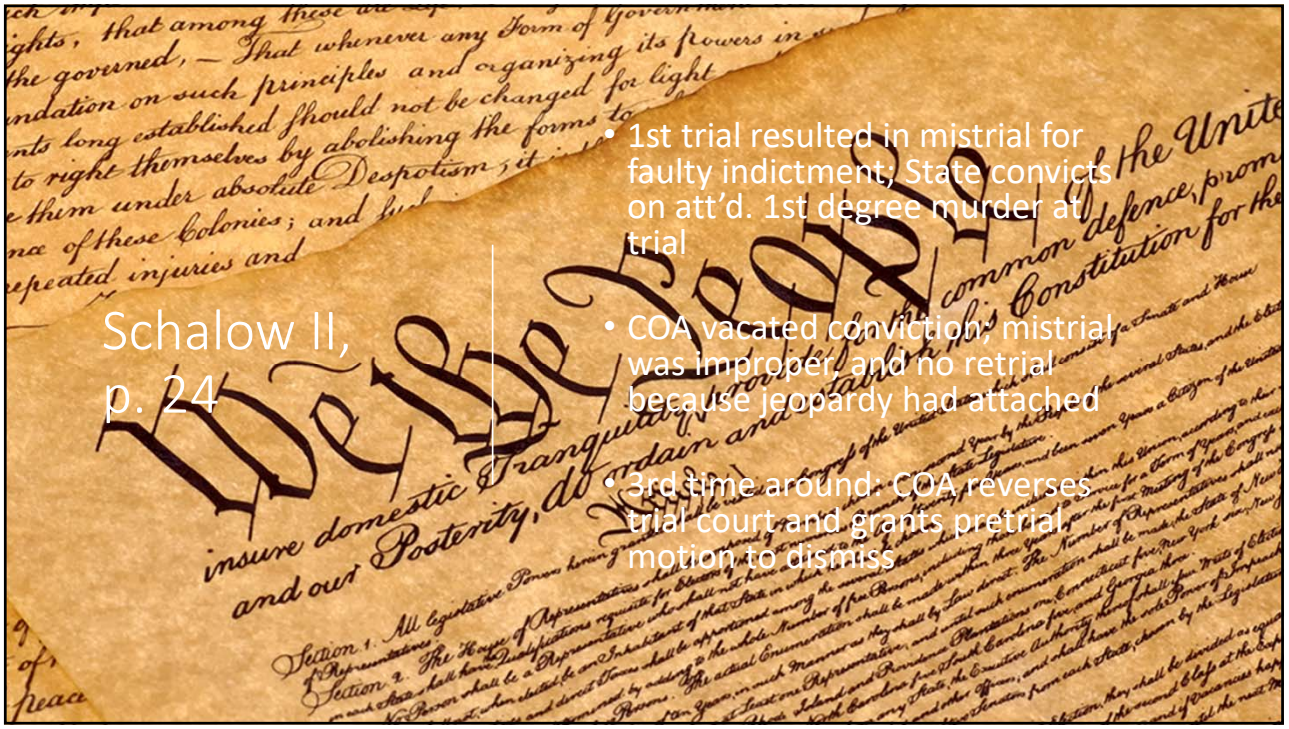
- G.S. 15A-646: criminal information may be filed at any time before "commencement of a trial" on the charge…
- When is that, exactly, and does it matter?



9




10



## Schalow II, p. 24

- 1st trial resulted in mistrial for faulty indictment; State convicts on att'd. 1st degree murder at trial
- COA vacated conviction; mistrial was improper, and no retrial because jeopardy had attached
- 3rd time around: COA reverses trial court and grants pretrial motion to dismiss

11

## State v. Schalow II, p. 24

- Third prosecution of D. for same conduct was vindictive and violated due process

12

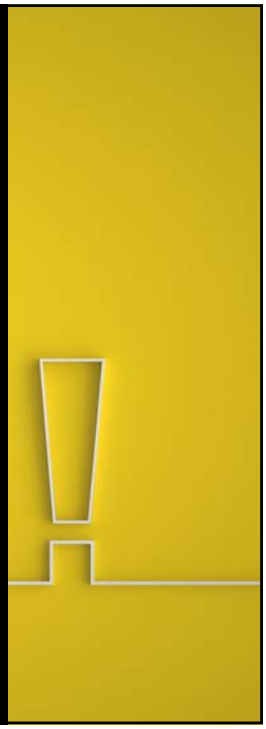
## Dismissal for Failure to Join Offenses

- G.S. 15A-926(c) – right of dismissal for failure to join related offenses
- *Warren "*exception" where D. can show that the State purposefully avoided joining offenses (never before successfully invoked)
- Here, the State had the evidence of joinable charges earlier, and the evidence at both trials would be the same

13

## Preserving Joinder & Severance Issues

- *State v. Yarborough*, p. 24
- D. must make a specific motion to sever joined offenses or the issue is waived for appeal
- Objection to joinder is not enough



14


15

## *State v. Taylor*, p. 19

- Dash cam video deleted, but not a *Brady* violation
- "Potentially useful" not the same as exculpatory


16

# Crimes

17

## (the other)
## State v. Taylor, p. 38

"True Threats"

1) Intended as one
2) Understood as one
3) Subjective/objective
4) Whole case review


18

# Conspiracy and State v. Chavez, p. 34

- D. indicted for conspiracy to commit murder with one named co-D.
- Evidence showed three men were involved (the third man was not identified)

19

# Chavez, p. 34

- Where evidence matches indictment, jury may be instructed that D. conspired "with at least one other person"
- Where one conspirator named and evidence shows multiple conspirators, reversible error to instruct jury that D. could have conspired with other un-alleged conspirators

20

# Evidence

21

## State v. Angram, p. 33

- Testifying co-defendant claims no memory of robbery
- Impeached with prior statement
- Not substantive evidence

22

## ate v lon 3


- Witness prep by legal assistant was impermissibly suggestive
- Amounted to "witness coaching," but not prejudicial error

23

# Appeals

24

North Carolina Criminal

A UNC School of Government Blog

**Preserving Motions to Dismiss for Insufficient Evidence**

Posted on Apr. 21, 2020, 7:29 am by Phil Dixon • 2 comments

Earlier this month, the North Carolina Supreme Court decided *State v. Golder*, ___ N.C. ___, ___ S.E.2d ___, 2020 WL 1650899 (April 3, 2020). Before that decision, there were somewhat tricky rules about how to preserve appellate review of all issues in a motion to dismiss for insufficiency of

# *State v. Golder*, p. 23

25

# The "Golder" Age

- Properly timed motion to dismiss for insufficient evidence preserves all sufficiency issues
- Make the motion as to each offense and renew motion after all evidence
- Motions to dismiss for variance should still be made separately

26

## More District Court Appeals (and writs!)

- *State v. Summers*, p. 52
  - No direct appeal to superior court for revocation of deferred prosecution by district court, but D. may seek discretionary review with a PWC per Rule 19 of the General Rules of Practice
- *State v. Doss*, p. 49
  - No appeal on refusal to enter judgment on PJC

27

## Romano, p. 11

- Interlocutory appeal of blood suppression is denied
- Defendant tried and convicted anyway, without the blood evidence
- But on appeal, the state swore that the evidence was "essential" to its case?

28

# State v. Dudley, p. 51

- G.S. 15A-1431 governs appeals from magistrates and district courts
- Notice of appeal must be given within 10 days of judgment, in person or in writing
- D. received time-served judgment and appealed in writing 9 days later

29

(d) A defendant convicted by a magistrate or district court judge is not barred from appeal because of compliance with the judgment, but notice of appeal after compliance must be given by the defendant in person to the magistrate or judge who heard the case or, if he is not available, notice must be given:

(1) Before a magistrate in the county, in the case of appeals from the magistrate; or

(2) During an open session of district court in the district court district as defined in G.S. 7A-133, in the case of appeals from district court.

The magistrate or district court judge must review the case and fix conditions of pretrial release as appropriate. If a defendant has paid a fine or costs and then appeals, the amount paid must be remitted to the defendant, but the judge, clerk or magistrate to whom notice of appeal is given may order the remission delayed pending the determination of the appeal.

# G.S. 15A-1431

30

## Dudley, p. 51

State argued D. complied with the judgment, so his written notice of appeal was defective; appeal dismissed

**Unanimous COA**: Being in pretrial detention is not voluntary compliance

31

## Update on SBM Cases

- State v. Gordon, p. 49 - lifetime SBM for D. convicted of aggravated sexual offenses was unreasonable under *Grady III*
- State v. Griffin, p. 50 - same SBM, although SBM during term of post-

32


33


34

# State v. Conley, p. 43

- G.S. 14-269.2(b): prohibits "any" gun on educational property
- How many are "any" guns?
- Ambiguity = lenity

35

# Batson Cases

- ***State v. Hobbs*, p. 28**
  - **remand for full hearing, including weighing comparative juror analysis and historical evidence of local discrimination**
- ***State v. Bennett***
  - **issues of how record of race is established and what constitutes a prima facie case**

36

# U.S. v. Alston, p. 9

- Traffic stop by Durham officer
- Pressed about a gun, D. asks if he's going to jail
- Officer promises not to take him to jail today if D. gives up gun
- D. admits gun is under the seat
- Task force learns of stop; shows up and arrests D.

37

# Alston, p. 9

TC suppressed statements of D. after officer's promise, but not gun

Miranda prohibits involuntary statements, and those remarks were

But gun would have inevitably been discovered

Police *could have* legally found it, and *would have* done so

If any constitutional violation, task force was sufficient attenuation

38