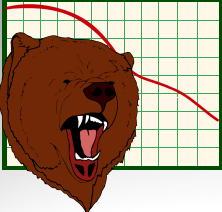


Summer 2010
District Court Judges Conference

Criminal Law Update

John Rubin
School of Government



Berghuis v. Thompkins, p. 1
Maryland v. Shatzer, p. 3
Montejo v. Louisiana (last term)

Silence is golden for the defendant

- But only if he remains silent

Silence is golden for the defendant

- Only if he remains silent
 - Helgert asked Thompkins, "Do you believe in God?" Thompkins made eye contact with Helgert and said "Yes," as his eyes welled up with tears. Helgert asked, "Do you pray to God?" Thompkins said "Yes." Helgert asked, "Do you pray to God to forgive you for shooting that boy down?" Thompkins answered "Yes" and looked away.

Lessons from *Thompkins*

- Ask for a softer chair, don't refuse the peppermint
- Silence is golden only if you remain silent
 - Silence is not necessarily an assertion of the right to remain silent, and
 - Answering questions can be a waiver of the right to remain silent without an express waiver

Silence is golden for the defendant

- Only if he continues to remain silent

Lessons from *Shatzer*

- Law before
 - If client asserted **right to silence**, officers could reinitiate in-custody questioning later
 - But, if client asserted **right to counsel**, officers could not reinitiate in-custody questioning later
- Law after
 - If client asserts **right to counsel**, officers may reinitiate in-custody questioning after 14-day break in “custody”

Lessons from *Montejo*
129 S. Ct. 2079 (2009)

Fifth Amendment

- If defendant asserts right to counsel during custodial interrogation
 - Officers must cease questioning
 - But, per *Shatzer*, officers may reinitiate in-custody questioning after 14 day break in custody

Lessons from *Montejo*
129 S. Ct. 2079 (2009)


<p>Fifth Amendment</p> <ul style="list-style-type: none"> • If defendant asserts right to counsel during custodial interrogation <ul style="list-style-type: none"> • Officers must cease questioning • But, per <i>Shatzer</i>, may reinitiate in-custody questioning after 14 day break in custody 	<p>Sixth Amendment</p> <ul style="list-style-type: none"> • If defendant asserts right to counsel at or after initial appearance <ul style="list-style-type: none"> • Previously, officers could not initiate questioning, in or out of custody • But, after <i>Montejo</i>, officers may reinitiate questioning, after obtaining <i>Miranda</i>-style waiver
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Resources

- Papers on *Thompkins, Shatzer, and Montejo*: www.sog.unc.edu/programs/crimlaw/faculty.htm
- Instant poll: Which will have the biggest impact?
 - *Thompkins*, which allows in-custody questioning without affirmative waiver?
 - *Shatzer*, which allows reinitiation of in-custody questioning after 14-day break?
 - *Montejo*, which allows questioning after attachment of right to counsel?

More *Miranda* cases

State v. Clodfelter, p. 5




Agent of law enforcement?

- Government employee?
- Encouraged or recruited by LEO to get incriminating statement?
 - Or just to tell D to tell the truth?

**Warrantless Stops
and Searches**

Five Easy Steps
or
Your Money Back!

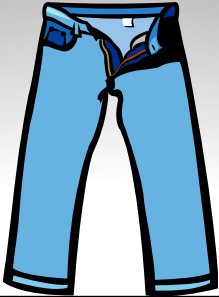


**State v. Williams,
p. 5**

Gant: Searches Incident to Arrest

- *S v. Johnson*, p. 8
 - DWLR
 - See also *S v. Carter*, 682 S.E.2d 416 (2009)
 - Traffic offenses of expired tag and failure to notify DMV of address change
- *S v. Toledo*, p. 10
 - Dicta about possession of marijuana and odor of marijuana

State v. Battle, p. 8



Roadside Strip Search

PC
+
Exigent Circumstances

Other Search and Seizure Issues

- ### More exigent circumstances
- *Michigan v. Fisher*, p. 10
 - Report of a disturbance; man "going crazy"
 - Smashed pickup; damaged fence posts
 - Broken windows; glass on the ground
 - Blood on pickup, clothes, & house door
 - D screaming & throwing things inside home
 - Back door locked; couch blocked front door




State v. Barron, p. 12

Exclusionary rule

When evidence is obtained as the result of illegal police conduct, not only should that evidence be suppressed, but all evidence that is the 'fruit' of that unlawful conduct should be suppressed.

Right to Counsel

Padilla v. Kentucky




Defense counsel is constitutionally obligated to provide affirmative, competent advice about deportation consequences to noncitizen defendants

Immigration Resources

- Immigration Consequences Manual, including summary checklists
 - www.ncids.org under Manuals
- Contact Sejal Zota:
 - 919.843.8404, szota@sog.unc.edu

Right to Counsel

- Pro se representation
- Decision making




Standard for Proceeding Pro Se

- *Indiana v. Edwards*, 554 U.S. 164 (2008)
 - A state may refuse to permit a person to represent himself or herself at trial if the person, although capable of standing trial, suffers from severe mental infirmity to the point where the person cannot conduct trial proceedings without counsel
- *S v. Lane*, 362 N.C. 667 (2008)
 - NC appears to adopt approach
- *S v. Reid*, p. 12


Timing of Election

- *S v. Wheeler*, p. 13



Decision Making Authority

- *S v. Freeman*, p. 13



Confrontation Clause




Recite conclusions reached by someone else?
Violation.

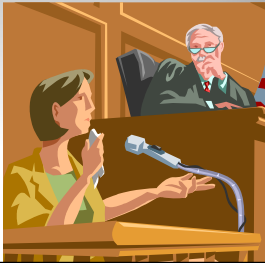
Form independent opinion based on raw data collected by another?
No violation.

State v. Hough, p. 15 (3/2/10)



Analyst 1 (testing)

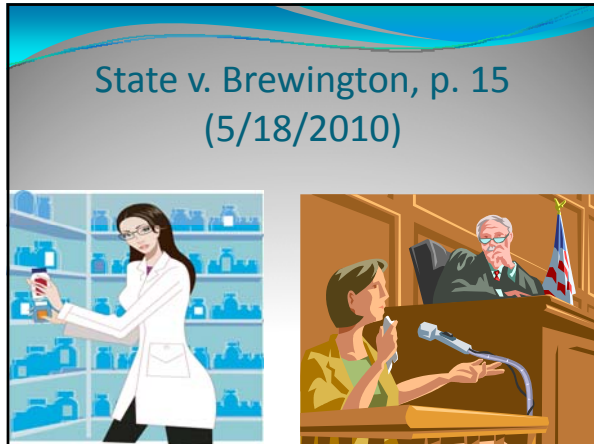


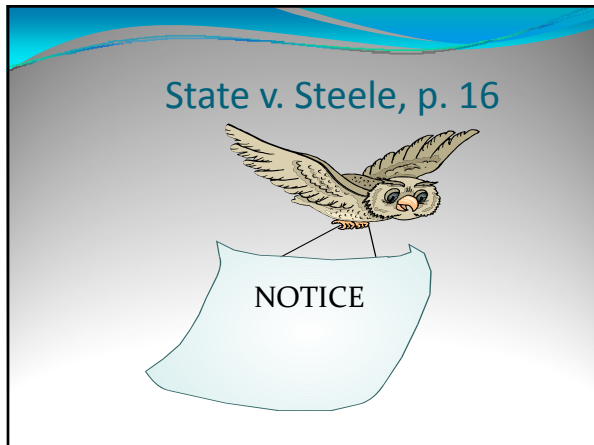
Analyst 2 (testifying)

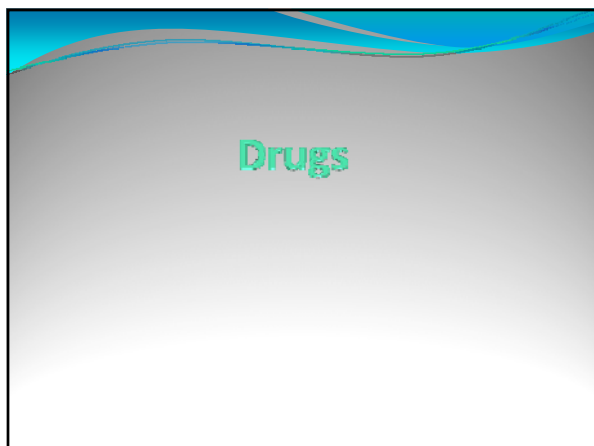


State v. Brennan, p. 15 (5/4/2010)

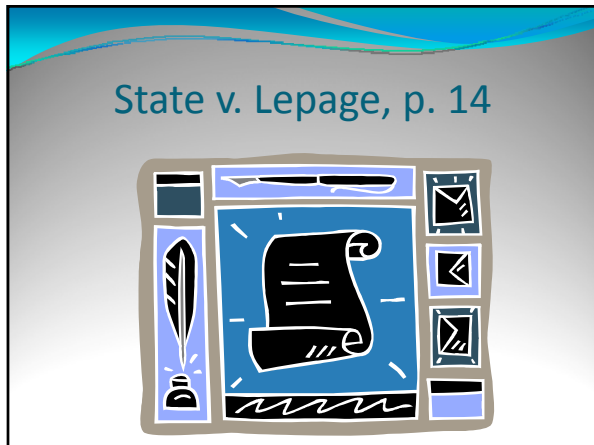


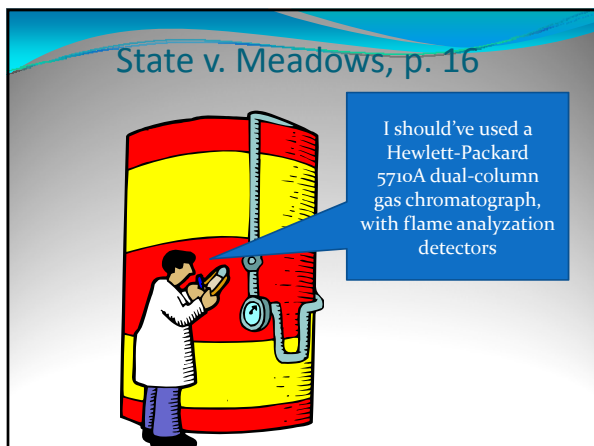












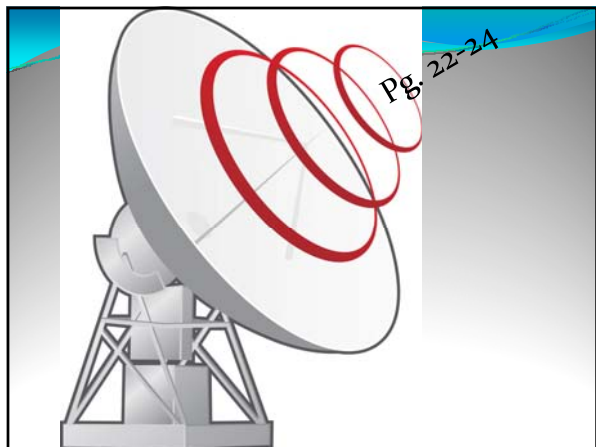






Opinion testimony: Visual ID of CS

	Powder Cocaine NO. Llamas-Hernandez (lay, sort of)
	Crack Cocaine. YES. Freeman (lay, sort of) NO. Meadows (lay, sort of)
	Pills NO. Ward (expert) NO. Brunson (expert)
	Marijuana YES. Fletcher (expert) YES. Ferguson (expert, though not designated as)



Satellite Monitoring

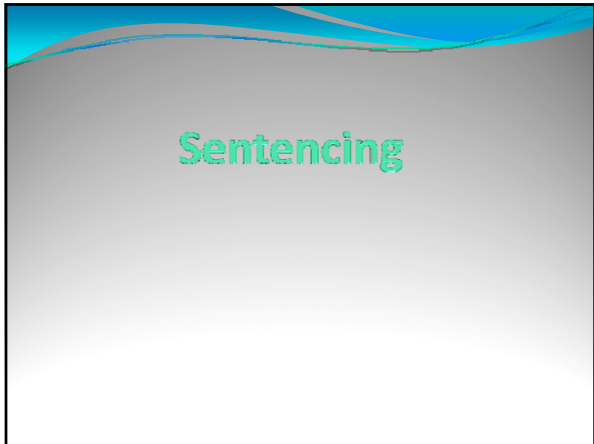
- Lifetime
 - Reportable conviction, and
 - Aggravated, recidivist, or violent sexual predator
- For period of years
 - Reportable conviction, and
 - Sexual abuse of a minor

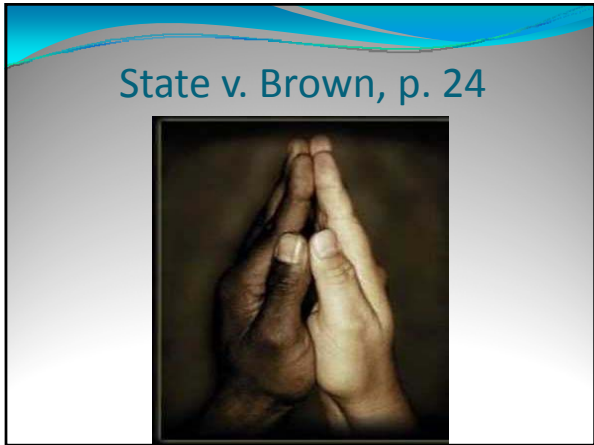
Just the Elements, Ma'm

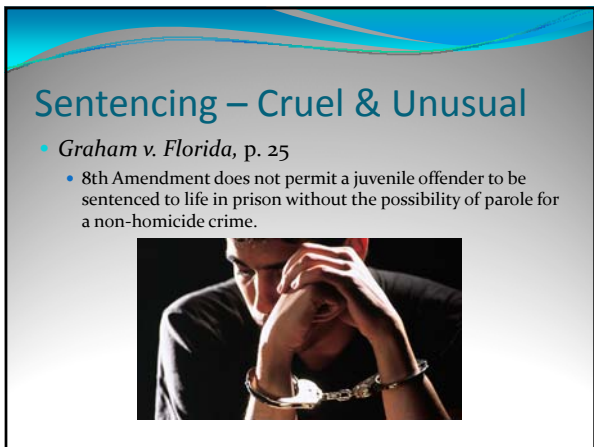
- An "aggravated offense" is an offense involving
 - a sexual act involving vaginal, anal, or oral penetration; and
 - either (1) a victim less than twelve years old or (2) use of force or threat of serious force against a victim of any age

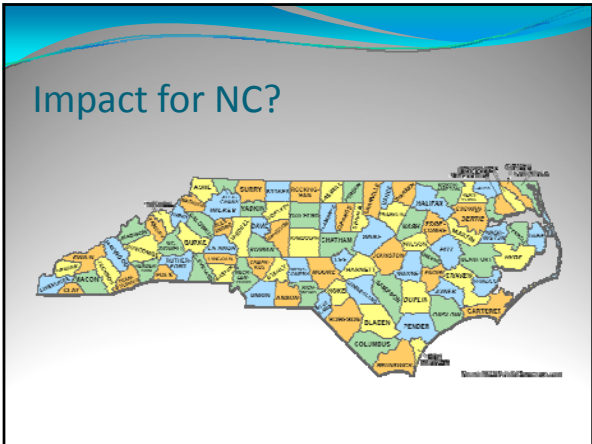
Just the Elements, Ma'm

- An "aggravated offense" is an offense involving
 - a sexual act involving vaginal, anal, or oral penetration; and
 - either (1) a victim less than twelve years old or (2) use of force or threat of serious force against a victim of any age
- Attempted sex offense
- Indecent liberties
- Felony child abuse by sexual act
- Statutory rape
- Forcible rape (first or second degree)
- Sex offenses
- Sexual battery









State v. Pettigrew

- D who was 16 when offenses occurred was sentenced to 32 to 40 years imprisonment
- Sentence did not violate the 8th amend.

Judicial Notice

- In a TPR, DSS asks that you take judicial notice of prior proceedings involving the children, including
 1. An order at a permanency planning hearing changing the permanent plan from reunification to adoption
 2. A determination of abuse and subsidiary findings from an abuse adjudication
 3. Findings from review hearings detailing the parents' lack of progress
 4. Stipulations of fact from review hearings detailing the parents' lack of progress
 5. Court reports from review hearings
 6. Testimony from adjudication and review hearings

Judicial Notice

- Orders and record entries—yes
- Findings—only if collateral estoppel principles apply
- Stipulations—maybe
- Documentary evidence—only if admissible
- Testimony—almost never

Final Notes

- Self-defense, p. 26

