

Criminal Law Update (Part 2)  
John Rubin  
UNC School of Government  
June 18, 2013

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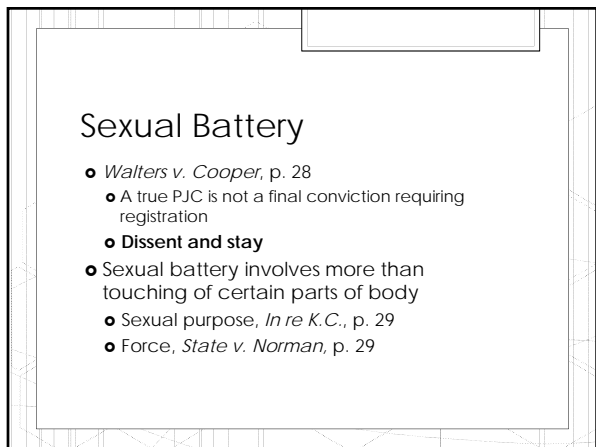
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### Sexual Battery

- *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

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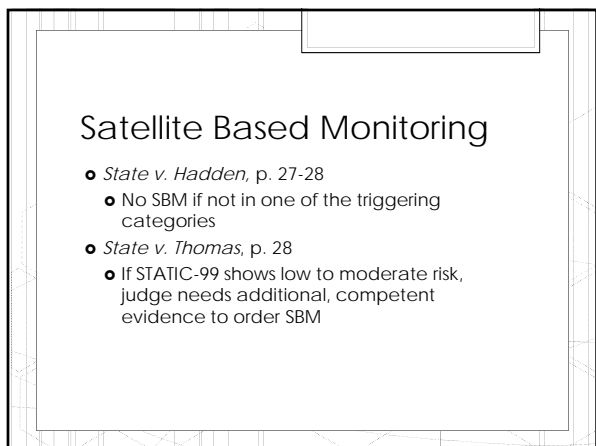
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### Satellite Based Monitoring

- *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

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

**Reportable Convictions**

**SEXUALLY VIOLENT OFFENSES (14-208.6(5))**

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 v.o. & D for yrs. older) (14-27.7Aa1) ●  
 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) ● (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(4a) ●

**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 marital 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](http://www.sog.unc.edu/node/2157)

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### 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

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### 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

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## 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

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## Ask Cheryl



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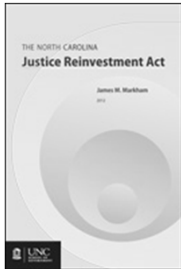
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## State. v. Tindall (p. 33)



See also *State v. Jones*, p. 34

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### 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

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### 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 <i>former client</i>	Focus on representation of <i>current client</i>

See also Ethics Rule 1.3 (duty of zealous representation)

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### 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

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### 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*

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### Felon in Possession

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



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### 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)

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*State v. Rollins* (p. 18)

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

**UNLESS:**

- 1) Witness unavailable, and
- 2) Prior opportunity for cross. ←

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### 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)

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### 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

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