

## ASPECTS OF DEFENDING SEXUAL OFFENDERS

- I. Sexual Battery (NCGS 14-27.5A)
  - A. Elements:
    1. For the purpose of sexual arousal, sexual gratification, or sexual abuse,
    2. Engages in sexual contact with another person:
      - a. by force and against the will of the other person; or
      - b. who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.
  - B. A “reportable” conviction under NCGS 14-208.6
  - C. Thus, try to plead down to simple assault (might include sex eval)
  - D. If no plea, try to argue no proof of intent to sexually gratify: To prove that defendant had ‘the purpose of arousing or gratifying a sexual desire’, there must be some showing of intent, maturity, experience or purpose in acting. The act alone does not infer the gratification of sexual desires when the offense is between children." In re: D.W., 171 N.C. App. 496 501-502, 615 S.E.2d 90,93-94 (2005).
- II. Evidence Issues Associated with Sexual Offenses
  - A. Sometimes you gotta tell your client’s story (thru your client)
    1. However, “drawing the sting” precludes limiting instruction (State v. Jackson, 161 N.C. App. 118 (2003)).
    2. Tip: force State to bring it out first & then object. Then ask for PJI 105.40: impeachment via prior unrelated conviction.
  - B. Rule 412, Rape Shield Statute
    1. Can’t delve into victim’s sexual history
    2. Oft used exception: when it pertains to victim’s truthfulness
  - C. Experts
    1. Can’t testify that a child victim is being truthful but can say that physical evidence supports child’s statements
    2. Can testify that a child id’d the perp if the statement is admissible (e.g., medical treatment exception)
    3. Can’t testify that child was “abused” absent physical evidence (State v. Stancil, 355 N.C. 266 (2002)).
- III. Cyber Forensics
  - A. Scenario: client charged w/downloading kiddie porn
  - B. Can an examination of the computer verify client’s story?
  - C. Hire an expert/PI if necessary
- IV. Satellite Based Monitoring (SBM)
  - A. Two types
    1. Immediately after conviction (NCGS 14-208.40A)
    2. “Bring Back” Case (NCGS 14-208.40B)
  - B. Not a criminal offense (State v. Bare, 677 S.E.2d 518 (2009))
  - C. Defendant wears a fanny pack-like device everywhere
  - D. Advise your client in the plea bargaining stage
  - E. Based on the “conviction” offense (State v. Singleton, 689 S.E.2d 562 (2010))
  - F. State cannot withhold evidence (NCGS 14-208.40A(a))