



# FELONY CASE PREP: What's Different in Superior

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# Big Picture Differences from District Court

- Discovery- Open File
- Motions- in writing, more formal
- Organization / Complexity
- Jury Trial Skills
- Preservation – Court of Record

# Read the Statutes (OK, not all of them)

- G.S. 15A-601 through 606 – First Appearance for Felonies / Demand or Waiver of Probable Cause Hearing
- 15A-611 through 614 – Probable Cause Hearing Procedure
- 15A-641 through 646 – Indictments
- \*\*15A-901 through 910 – Discovery in Superior Court
- 15A-971 through 980 – Motions to Suppress
- 15A-1021 through 1027 – Guilty Plea Procedure



# Open File Discovery

- G.S. 15A-903. Disclosure of evidence by the State - Information subject to disclosure.

(a) Upon motion of the defendant, the court must order:

(1) The State to make available to the defendant the **complete files** of all **law enforcement agencies, investigatory agencies,** and **prosecutors' offices** involved in the investigation of the crimes committed or the prosecution of the defendant.

a. The term **"file" includes** the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, **or any other matter or evidence obtained during the investigation of the offenses** alleged to have been committed by the defendant.

# Open File Discovery- Exceptions

- G.S. 15A-904. Disclosure by the State - Certain information not subject to disclosure.
  - Work product/Legal Research/Correspondence/Memos
  - Confidential Informant ID.... Unless.... (see 7 blogs I wrote on this)
  - Identifying info of witnesses beyond basics (enough to identify and locate)
  - Victim Impact Statements.... Unless??

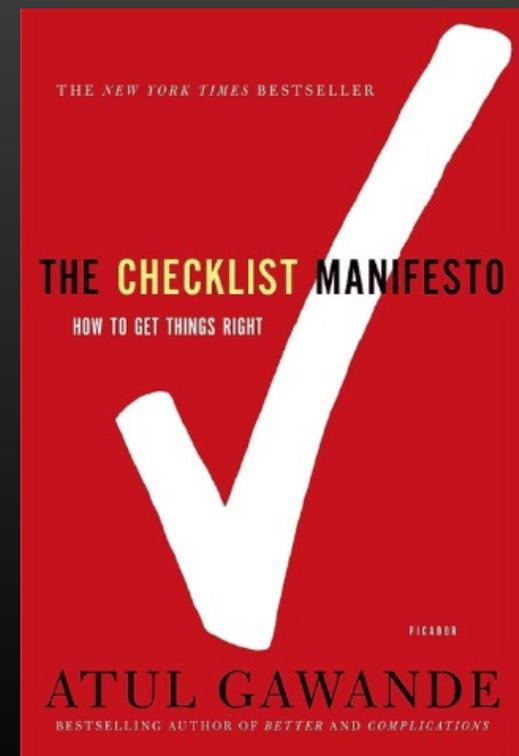
## Motions to Suppress

- G.S. 15A-977. Motion to suppress evidence in superior court; procedure.

(a) A motion to suppress evidence in superior court made before trial **must be in writing** and a copy of the motion must be served upon the State. The motion must state the grounds upon which it is made. The **motion must be accompanied by an affidavit** containing facts supporting the motion.

# Discovery- Use Checklists

- Open file discovery in Superior Court since 2004
- You get basically... everything!
- Brainstorm all the items that are part of the investigative file and ask for them



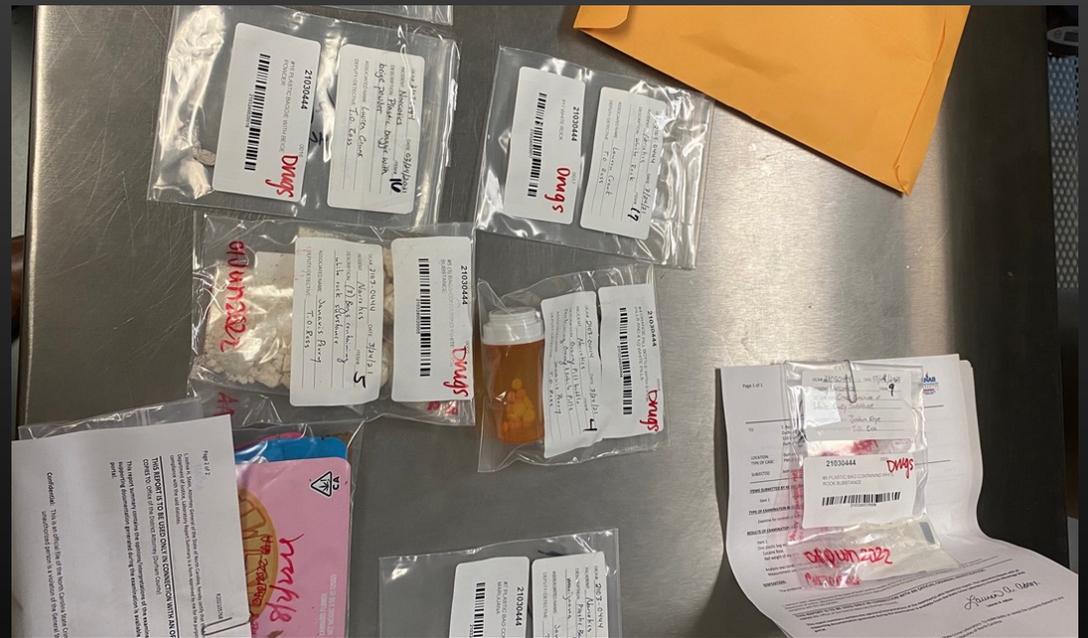
# Checklists – Different for Different Case Types

- Develop your own, refine them
- Think about what you commonly get and don't get in discovery
- Iterate and compare with colleagues
- Not too simple, not too complex

TESTING	MISCELLANEOUS
<ul style="list-style-type: none"><li><input type="radio"/> Chain of Custody Forms (NYS Police Crime Laboratory System)</li><li><input type="radio"/> Simulator Solution Certification</li><li><input type="radio"/> <b>Crime Laboratory Toxicology Submission</b> (NYS Police)</li><li><input type="radio"/> Toxicology Case Discovery Directory (NYS Police Forensic Investigation Center)</li><li><input type="radio"/> Toxicology Worksheet (NYS Police Forensic Investigation Center)</li><li><input type="radio"/> Toxicology Report (NYS Police Forensic Investigation Center)</li><li><input type="radio"/> Supplemental Toxicology Report (NYS Police Forensic Investigation Center)</li><li><input type="radio"/> Crime Laboratory Case Receipt Record (NYS Police)</li><li><input type="radio"/> Curriculum Vitae for Forensic Scientist and/or Expert Witnesses</li><li><input type="radio"/> Laboratory Certificate/License</li><li><input type="radio"/> Maintenance Records for Laboratory Kits</li><li><input type="radio"/> Expert Records/Statements of Expertise</li></ul>	<ul style="list-style-type: none"><li><input type="radio"/> DWI Bill of Particulars (<b>DCJS 3204</b>)</li><li><input type="radio"/> DWI Notes/Standardized Field Sobriety Testing (SFST) Notes</li><li><input type="radio"/> Report of Refusal to Submit to Chemical Test (NYS DMV)</li><li><input type="radio"/> <b>Drug Recognition Expert (DRE)</b> Report/Notes/Forms</li><li><input type="radio"/> <b>Rolling Logs</b></li><li><input type="radio"/> DMV Records (<b>NYS DMV - COMPASS</b> system)</li><li><input type="radio"/> Simplified Information/Certificate Concerning Violation of Law Relating to Vehicles (NYS DMV)</li><li><input type="radio"/> Police Accident Report (<b>NYS DMV</b>)</li><li><input type="radio"/> Law Enforcement Notes (Both Scratch and Typed)</li><li><input type="radio"/> Accident Reconstruction Report</li><li><input type="radio"/> Accident Measurements/Reports Created by Total Station Devices</li><li><input type="radio"/> If Speeding is Alleged, Calibration and Radar Measurements by Speedometer</li><li><input type="radio"/> Tickets or UTTs (Uniform Traffic Tickets) Issued</li><li><input type="radio"/> Aided Card (if injuries)</li><li><input type="radio"/> Medical Records</li><li><input type="radio"/> 911 Calls</li><li><input type="radio"/> Radio Runs</li><li><input type="radio"/> Sprint Records</li><li><input type="radio"/> Officer's Notes/Forms</li></ul>
<b>BREATH TEST IN PARTICULAR</b>	
<ul style="list-style-type: none"><li><input type="radio"/> Portable Breath Test (PBT) Certifications/Permits</li></ul>	

# Go Look at the Evidence- Right to Inspection!

- You have a right to inspect any physical evidence under G.S. 15A-903(a)(1)(d)
- Go look at the drugs, at the purse, at the backpack, at the gun, at the ....
- This will help you understand weaknesses in State's case and refine your defense theory



Go look at the Court File! (or the e-file)

STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division  
Durham County  
STATE VERSUS

File No. 21CRS 54281  
**INDICTMENT**  
1. Possession of Firearm by Felon

**RETURN OF SERVICE**  
Date Served 8/24/21 Time Served 5:04 PM  
Arresting the defendant and bringing the defendant to the arresting judicial official

Warrant WAS NOT served for the following reason:  
Name Of Officer Making Return R. J. Livengood  
Name Of Officer (type or print) R. J. Livengood  
Signature [Signature]  
Department Or Agency Of Officer PD

**REDELIVERY/REISSUANCE**  
Signature [Signature]  
 Dep. CS  
 Assat.  
 CSC

**RETURN FOLLOWING REDELIVERY/REISSUANCE**  
Date Served [ ] Time Served [ ] AM [ ] PM  
Arresting the defendant and bringing the defendant to the arresting judicial official

Warrant WAS NOT served for the following reason:  
Name Of Officer Making Return [ ]  
Name Of Officer (type or print) [ ]  
Department Or Agency Of Officer [ ]

**APPEAL ENTRIES**  
Arresting the defendant, in open court, gives notice of the defendant's right to a pretrial release order is modified in the District Superior Court.  
Signature Of District Court Judge [ ]

**WAIVER OF PROBABLE CAUSE**  
Arresting the defendant, with the consent of the defendant, waives the right to a probable cause hearing.  
Signature Of Defendant [ ]  
Signature Of Attorney [ ]

CR-100, Side Two, Rev. 12/17  
Administrative Office of the Court

**CRIMINAL**

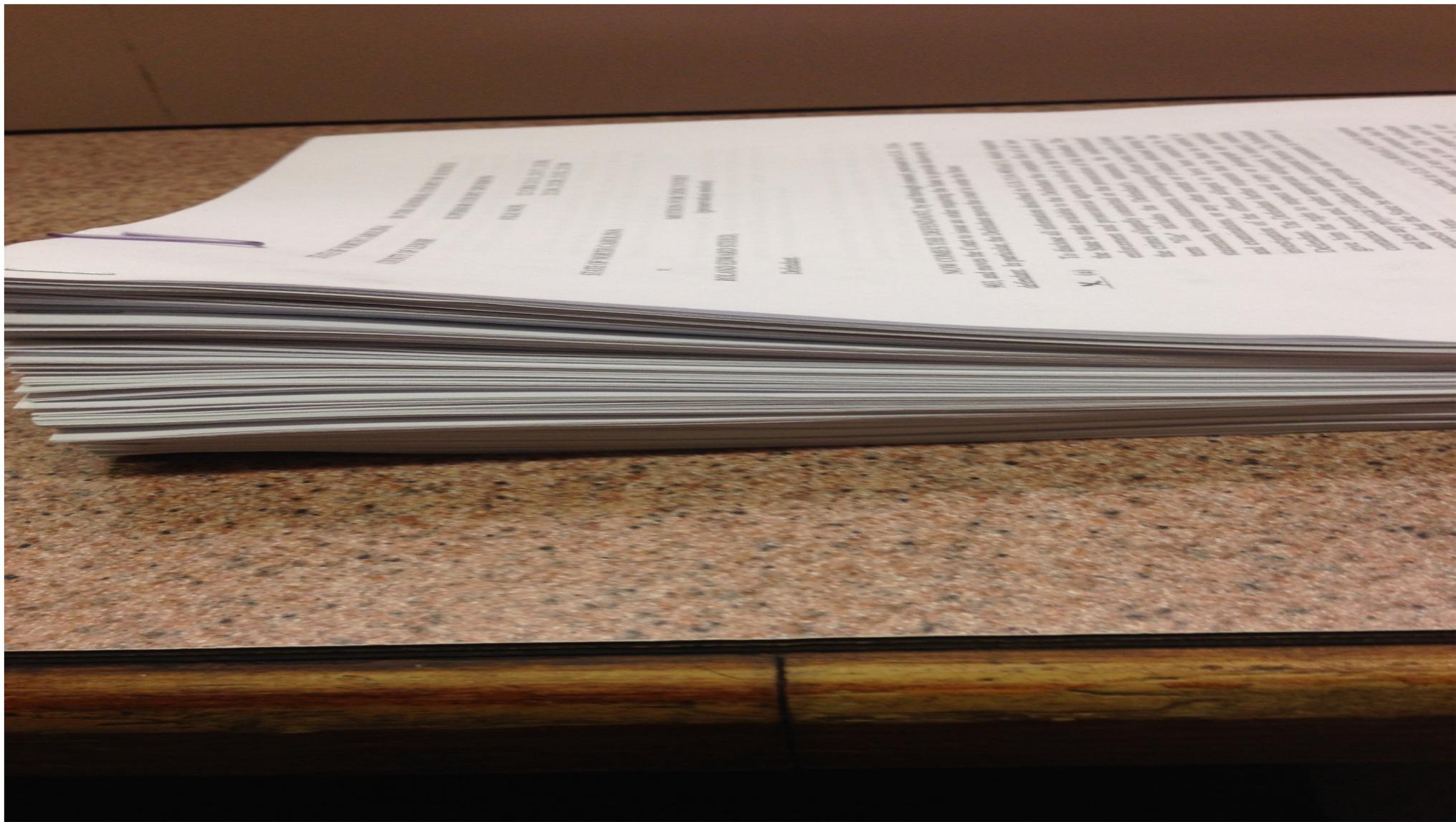
# Develop Good Habits . . .

- Regular system for organizing file
- Regular system for tracking deadlines
  - Spreadsheet, Filing system, Habits, Administrative Procedures
  - Ask experienced attorneys in your office how they manage their caseload

4									
5	Key, Sab		12/5/2011					Pled to Larceny- NOA on 10/26-	
6	Moore,		12/5/2011						
7	Hutton,		12/5/2011	NOA				Trial- G on AOGO (1) and RO, Trespass Dismissed by Court	
8	Binder,		12/5/2011						
9	Wright,		12/5/2011						
0	Floyd, L		12/5/2011						

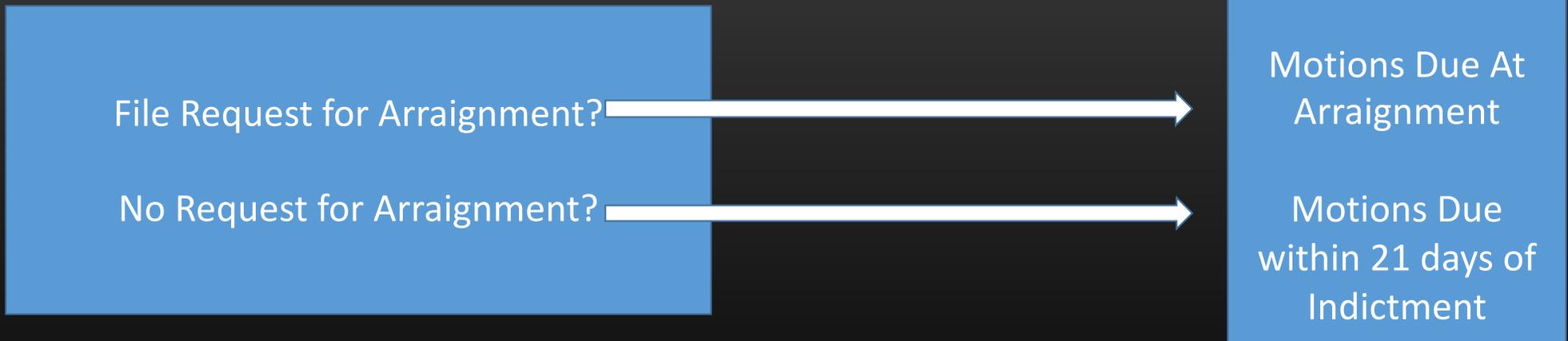
# Motions

- IDS Motions Bank:
  - <https://www.ncids.org/get-help/motions-bank/>
- In Superior Court, generally will be in writing
- [Defendermanuals.sog.unc.edu](http://Defendermanuals.sog.unc.edu)
- Signed, served, filed, affidavits where necessary, cert. of service
- Cite authority, specific grounds for relief, what relief you want.



# Motions Deadlines

- Pre-Arrestion Motions:



- Change venue, improper venue, special venire, joinder of offenses, bill of particulars. *See* G.S. 15A-952

# Motions Deadlines

## Suppression Motions:

- Generally pre-trial. G.S. 15A-975
- With certain evidence,  
within 10 business days of receipt of State's notice of intent to use.  
*See G.S. 15A-976*

Notice of Defenses: 20 days after case set for trial G.S. 15A-905(c)(1)

Notice of Expert Testimony: Reasonable time before trial.

Notice of Appeal: 14 days; 30 days for civil cases like SBM and must be written. N.C. R. App. P. 4(a)



# Trial Motions

- Recordation G.S. 15A-1241 – if request made for complete recordation, it must be granted
- Sequestration
- Jury instruction requests
- Motions in limine (“on the threshold” or “at the start” – generally motion before trial, or during trial outside of presence of jury, to exclude or include certain evidence)
  - See Jonathan and Phil’s presentations this week
- Good to have checklist! Can use prior cases as template.

## ORGANIZATION- Trial

- Lots more to worry about and to organize
- Find a system that works— Tabs, Folders, Subfolders, Stickies/Flags, etc.
- Be able to find what you need in trial, and keep track of what's happening at trial

# ORGANIZATION = Trial Notebook

TO DO/DEADLINES	ACCUSED	VICTIM STATEMENTS	ARREST/ SEARCH WARRANT	PRELIMINARY HEARING STATEMENT	ARRAIGNMENT/ BAIL
CRIME SCENE/ POLICE REPORTS	INDICTMENT/ COMPLAINT	INVESTIGATION	CORRESPONDENCE	DISCOVERY	PLEA NEGOTIATIONS
PRE-TRIAL HEARINGS	EXPERT WITNESSES	EVIDENCE/OBJECTIONS	SUBPOENAS	PROSECUTION WITNESSES	DEFENSE WITNESSES
RESEARCH/LAW	MOTIONS	JURY SELECTION	TAPES/TRANSCRIPTS	LAB REPORTS	PSYCHIATRIC REPORT
POLICE REPORTS	PHOTOGRAPHS	EXHIBIT LIST	OPENING STATEMENT	TRIAL NOTES	CLOSING ARGUMENT
JURY INSTRUCTIONS	SENTENCING	TRIAL ERRORS	APPEAL		

# Sample Trial Notebook – File Folders in Redwell

- Can be organized alphabetically, chronologically, or in trial order
- Allows for easy retrieval and return to file
- Can pull multiple pieces together at the same time, e.g. indictment and case law
- Lets you focus on one area and easily add/subtract
- More suited to improvisational style compared to trial binder



# Sample Trial Notebooks – Trial Binder

- Can be organized alphabetically, chronologically, or in trial order
- Holds together- harder to lose documents
- Can use tabs and flags for organization
- More suited for case with less improvisation, anticipated course



# What you'll need . . .

- Indictments
- Witness statements, report
- Your motions, their motions, and the caselaw
- Direct and Cross Examinations, with any supporting evidence
- Exhibits also –keep track of what's in and not-
  - Can use AOC form or not
- Jury Instructions

SE8	Document (Phone call transcript)	11-16	11-16
SE9	Document (Phone call transcript)	11-16	11-16
SE10	Poster	11-16	11-16
SE11	Poster	11-16	11-16
SE12	CD	11-16	11-16
SE13A-K	Photos	11-16	11-16
SE14	<del>CD</del> Photo	11-17	11-17
SE15	<del>CD</del> Photo	11-17	11-17
SE16	CD	11-17	11-17
SE17	CD	11-17	11-17
SE18	Document	11-17	11-17
SE19	Document	11-17	11-17
SE20	CD	11-17	11-17

# YOU NOW MUST WORRY ABOUT . . .

- Selecting a Jury
- Opening Statements
- Motion to Dismiss at Close of State's Evidence
- Charge Conference and Jury Instructions
- Preservation- Court of Record
- Notice of Appeal if you lose

# Preservation





\* WHIMPERING \*

DON'T WORRY . . .



**Dude, sucking at something is the first step towards being sort of good at something**

HOW DO YOU GET BETTER  
AT JURY TRIALS??

## BY TRYING CASES!!!

- They know who tries cases, and how well you try them.
- You cannot learn jury selection or trial procedure without trying cases.

# Final Thoughts

- Think creatively and exhaustively about discovery requests. You are entitled to everything.
- Cultivate good organization of your files and trial notebooks.
- Cultivate a motions practice and think about motions in the case and when they must be filed.
- Watch jury trials, and take cases to trial.

# QUESTIONS?

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# Probable-Cause Hearing Scheduling

- G.S. 15A-606. Demand or waiver of probable-cause hearing.
  - (a) If a defendant is charged with a criminal offense within the original jurisdiction of the superior court, the **judge must schedule a probable-cause hearing....**
  - (d) If the defendant does not waive a probable-cause hearing, the district court judge must schedule a hearing **not later than 15 working days following the initial appearance** before the district court judge....
  - (f) Upon a **showing of good cause**, a scheduled probable-cause hearing may be continued by the district court upon **timely motion** of the defendant or the State. **Except for extraordinary cause**, a motion is **not timely unless made at least 48 hours prior** to the time set for the probable-cause hearing.

## Probable-Cause Hearing Procedure

- G.S. 15A-611. Probable-cause hearing procedure.  
...(b) The State must by **nonhearsay evidence, or by evidence that satisfies an exception to the hearsay rule, show that there is probable cause** to believe that the offense charged has been committed

(Some exceptions for ownership of property, lack of consent, scientific tests, etc)