

# **Tools of the Trade**

## **The Judges' Benchbook & Other Online Resources**

Jessica Smith, UNC School of Government





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## NC Superior Court Judges

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# Jessie's Judges' Benchbook

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## NC SUPERIOR COURT JUDGES' BENCHBOOK

School of Government, The University of North Carolina at Chapel Hill, Jessica Smith (Ed.)



### Welcome to the online judges' benchbook!

There are two main ways to find what you need in the benchbook:

**Drop down menus.** Navigation bars for the benchbook's four sections (General, Criminal, Civil, Evidence) appear at the top of the page. To explore a section, move your mouse to the navigation bar and a drop down menu will appear. Get to a subsection by clicking within the drop down menu.

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search to section titles, keywords, and abstracts.

Most sections are posted as PDFs. However, if the section contains items such as sample orders, a Word version also is posted so that you can download and use the form order.

The benchbook is designed primarily for online use. However, you can print out sections & keep them in a trial notebook. Either way, sign up [here](#) to receive emails about new or updated sections.

Have a suggestion for the benchbook? Send it to Jessica Smith ([smithj@sog.unc.edu](mailto:smithj@sog.unc.edu)).

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## Four main drop down menus



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# Jessie's Criminal Case Compendium

## Covering cases decided 2008 – Present

### Dynamic & searchable



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## Smith's Criminal Case Compendium

### About

This compendium includes significant criminal cases by the U.S. Supreme Court & N.C. appellate courts, Nov. 2008 – Present. Selected 4th Circuit cases also are included.

### Instructions

Navigate using the table of contents to the left or by using the search box below. Use quotations for an exact phrase search. A search for multiple terms without quotations functions as an "or" search. Not sure where to start? The 5 minute video tutorial offers a guided tour of main features – Launch Tutorial (opens in new tab).

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## Criminal Procedure > Appellate Issues > Failure to Raise Issue/Object at Trial & Related Issues

### State v. Campbell, \_\_\_ N.C. \_\_\_, 799 S.E.2d 600 (June 9, 2017)

The Court of Appeals failed to recognize its discretion under Rule 2 of Rules of Appellate Procedure to refrain from undertaking a review of the defendants' fatal variance claim, apparently acting under the erroneous belief that it was required to reach the merits of the claim. The defendant was found guilty of felony larceny. On appeal, he asserted in part that the trial court erred by failing to dismiss the larceny charge due to a fatal variance with respect to ownership of the property. Because counsel failed to raise the issue at trial, the defendant sought review under Rule 2. Noting that a previous panel of the court had invoked that Rule to review a fatal variance issue, the Court of Appeals, without further discussion or analysis, addressed the merits of the defendant's argument, finding a fatal variance and vacating the larceny convictions. The State petitioned the Supreme Court for discretionary review on the issue of whether the Court of Appeals erred by invoking Rule 2 under the circumstances of the case. The Supreme Court noted that Rule 2 relates to the residual power of the appellate courts to consider "in exceptional circumstances" significant issues. Whether a case warrants application of Rule 2 must be determined based on a case-by-case basis and "precedent cannot create an automatic right to review via Rule 2." Here, the Court of Appeals erroneously believed that a fatal variance issue automatically entitled the defendant to appellate review under Rule 2. In so doing, it failed to recognize its discretion to refrain from undertaking such a review. The court reversed and remanded to the Court of Appeals "so that it may independently and expressly determine whether, on the facts and under the circumstances of this specific case, to exercise its discretion to employ Rule 2" to reach the merits of the defendant's claim.

### State v. Collins, \_\_\_ N.C. \_\_\_, 791 S.E.2d 458 (Sept. 23, 2016)

In a drug case in which the court of appeals had held that a strip search of the defendant did not violate the fourth amendment, *State v. Collins*, \_\_\_ N.C. App. \_\_\_, 782 S.E.2d 350 (2016), the Supreme Court affirmed solely on the ground that because the defendant failed to raise in the trial court the timing of the officer's observation of powder on the floor, he failed to preserve that issue on appeal. The defendant had argued in the court of appeals that because the officer did not see the powder until after the search, the trial court was barred from considering the officer's observation in ruling on the defendant's



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@ProfJessieSmith



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@ProfJessieSmith

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