

## **Criminal Procedure**

### **Discovery**

[State v. Foushee](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (May 20, 2014). (1) Although the State had a right to appeal the trial court's order dismissing charges because of a discovery violation, it had no right to appeal the trial court's order precluding testimony from two witnesses as a sanction for a discovery violation. (2) The trial court erred by dismissing charges after finding that the State violated the discovery statutes by failing to obtain and preserve a pawn shop surveillance video of the alleged transaction at issue. On 7 August 2012, defense counsel notified that State that there was reason to believe another person had been at the pawn shop on the date of the alleged offense and inquired if the State had obtained a surveillance video from the pawn shop. On 18 February 2013, trial counsel made another inquiry about the video. The prosecutor then spoke with an investigator who went to the pawn shop and learned that the video had been destroyed six months ago. Before the trial court, the defendant successfully argued that the State was "aware of evidence that could be exculpatory and acted with negligence to allow it to be destroyed." On appeal, the court rejected this argument, noting that there was no evidence that the video was ever in the State's possession and under the discovery statutes, the State need only disclose matters in its possession; it need not conduct an independent investigation to locate evidence favorable to a defendant.

### **Counsel Issues**

[State v. Rouse](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (May 20, 2014). The defendant was denied his constitutional right to counsel when the trial court held a resentencing hearing on the defendant's pro se MAR while the defendant was unrepresented. The court vacated the judgment and remanded for a new sentencing hearing.

## **Arrest Search and Investigation**

### **Stops**

[State v. Jackson](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (May 20, 2014). Over a dissent, the court held that an officer had no reasonable suspicion for the stop. The stop occurred at approximately 9:00 pm in an area known for illegal drug sales and where numerous drug-related arrests occurred; the defendant and a companion were standing together; when they saw the officer's car, they began walking in opposite directions, with the defendant entering a store, Kim's Mart; when the officer turned his car around and returned, the two men were again standing together in front of Kim's Mart; and when the officer pulled into the parking lot, the defendant and his companion again walked away from each other, with the defendant walking toward the officer. The court concluded that "the totality of the relevant circumstances . . . consists of nothing more than . . . being in an area known for drug sales and . . . walking away from a companion in the presence of an officer twice." The court noted that no evidence suggested that the defendant took any "evasive" action or engaged in behavior that could be construed as flight.