

## **Criminal Procedure**

### **Appeal Issues**

[State v. Patterson](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Oct. 4, 2016). By failing to properly object at trial, the defendant did not properly preserve for appeal the issue of whether the trial court abused its discretion by admitting lay opinion testimony identifying the defendant in surveillance footage and in a photograph.

[State v. Pless](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Oct. 4, 2016). A drug trafficking defendant who pled guilty and was sentenced pursuant to a plea agreement had no right to appeal the sentence, which was greater than that allowed by the applicable statute at the time. G.S. 15A-1444 allows for appeal after a guilty plea for terms that are unauthorized under provisions of Chapter 15A; the drug trafficking defendant here was sentenced under Chapter 90. However, the court went on to find that the defendant's plea was invalid.

### **Indictment Issues**

[State v. Ross](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Oct. 4, 2016). The trial court committed plain error in this safecracking case by instructing the jury that it could convict the defendant if it determined that he obtained the safe combination "by surreptitious means" when the indictment charged that he committed the offense by means of "a fraudulently acquired combination." One essential element of the crime is the means by which the defendant attempts to open a safe. Here, there was no evidence that the defendant attempted to open the safe by the means alleged in the indictment.

### **Pleas**

[State v. Pless](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Oct. 4, 2016). A drug trafficking defendant who pled guilty and was sentenced pursuant to a plea agreement allowing for a sentence greater than that provided for in the applicable drug trafficking statute was entitled to have the plea agreement set aside on this basis.

## **Arrest, Search & Investigation**

### **Search Warrants**

[State v. Jackson](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Oct. 4, 2016). Over a dissent, the court held that the search warrant was supported by sufficient probable cause in this drug use. At issue was the reliability of information provided by a confidential informant. Applying the totality of the circumstances test, and although the informant did not have a "track record" of providing reliable information, the court found that the informant was sufficiently reliable. The court noted that the information provided by the informant was against her penal interest (she admitted purchasing and possessing marijuana); the informant had a face-to-face communication with the officer, during which he could assess her demeanor; the face-to-face conversation significantly increase the likelihood that the informant would

be held accountable for a tip that later proved to be false; the informant had first-hand knowledge of the information she conveyed; the police independently corroborated certain information she provided; and the information was not stale (the informant reported information obtained two days prior).

## **Evidence**

### **Authentication**

[State v. Ross](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (Oct. 4, 2016). The trial court did not commit plain error by admitting store surveillance video in a safecracking case. Citing *State v. Snead*, \_\_\_ N.C. \_\_\_, 783 S.E.2d 733 (2016), the court held that the surveillance video was properly authenticated. The store manager testified that the surveillance system included 16 night vision cameras; he knew the cameras were working properly on the date in question because the time and date stamps were accurate; and a security company managed the system and routinely checked the network to make sure the cameras remained online. The store manager also testified that the video being offered into evidence at trial was the same video he viewed immediately following the incident and that it had not been edited or altered in any way.