

No.

DISTRICT FIVE

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA )

)

v.

)

From New Hanover

)

JAQUALYN ROBINSON )

\*\*\*\*\*

CONDITIONAL PETITION FOR WRIT OF CERTIORARI

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No.

DISTRICT FIVE

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA	)	
	)	
v.	)	<u>From New Hanover</u>
	)	COA21-144
JAQUALYN ROBINSON	)	

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CONDITIONAL PETITION FOR WRIT OF CERTIORARI

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Jaqualyn Robinson, by and through counsel, hereby appeals to the Supreme Court of North Carolina, pursuant to N.C. R. App. P. 21(a) from the order of the Court of Appeals in *State v. Robinson*, COA21-144, (attached) allowing the State's Motion to Dismiss Mr. Robinson's appeal, and from the order of the New Hanover County Superior Court denying Mr. Robinson's motion to suppress.

Mr. Robinson's Notice of Appeal Based on Dissent, filed concurrently with this Petition, is sufficient to give this Court jurisdiction over this matter. N.C.G.S. § 7A-30(2) provides that there is

an appeal of right to this Court from any case “[i]n which there is a dissent when the Court of Appeals is sitting in a panel of three judges.” The order dismissing Mr. Robinson’s appeal was issued by a panel of three judges, Judge Murphy and Judge Griffin in the majority and Judge Jackson writing separately in dissent. Consequently, Mr. Robinson has an appeal of right to this Court. This Petition is being filed out of an abundance of caution, to give this Court the opportunity to take jurisdiction should it feel that jurisdiction has not been automatically conferred. N.C. R. App. P. 21; N.C.G.S. § 7A-32(b); N.C.G.S. § 15A-1444(e).

### **STATEMENT OF RELEVANT FACTS**

#### **Procedural History**

This matter was heard at the 26 October 2020 Session of Criminal Superior Court in New Hanover County on indictments charging Mr. Robinson with a window tint violation, driving while license revoked, carrying a concealed gun, possession of a Schedule I controlled substance, possession of a Schedule II controlled substance, possession of marijuana, possession with intent to sell, manufacture, or deliver a Schedule II controlled substance, possession with intent to

manufacture, sell, or deliver a controlled substance within 1000 feet of a park, and possession with the intent to manufacture, sell, or deliver a controlled substance within 1000 feet of a school. (App. 1-3)

On 29 October 2020, the trial court held a hearing on Mr. Robinson's motion to suppress. (App 4-17) After hearing evidence and arguments, the trial court allowed the motion to suppress with regard to Mr. Robinson's statements but denied the motion with regard to evidence collected as the result of searches of his person and his vehicle. Mr. Robinson's attorney objected to this ruling but did not enter notice of appeal. (App. 23-24; T p 71)

The trial court then recessed for roughly two and a half hours. Mr. Robinson returned to the courtroom and entered a plea of guilty to felony possession of cocaine and carrying a concealed weapon. The remaining charges were dismissed. (App 25-28) Mr. Robinson was sentenced to 4-14 months imprisonment, suspended for 12 months supervised probation. (App. 29-32; T pp 73-74)

The next day, Mr. Robinson returned to court. His counsel gave oral notice of appeal and asked that an appellate defender be appointed. The trial court inquired, "You're going to appeal the guilty plea?"

Counsel responded, “Judge, it’s my understanding that I have to appeal the entire judgment.” The same day, trial counsel filed a written notice of appeal from the judgment in Mr. Robinson’s case. (App. 33-35) The trial court then signed the Appellate Entries. (App. 36-37; T pp 83-85)

#### Evidence at the Suppression Hearing

On the afternoon of 5 February 2020, Wilmington Police Department Officer Ben Galluppi pulled over the Chrysler Mr. Robinson was driving because its windows were too darkly tinted. (T pp 7-8) When asked, Mr. Robinson provided the vehicle’s registration but said he did not have his license with him. (T p 11) When Officer Galluppi ran the registration, he learned that Mr. Robinson’s license had been suspended. (T pp 39-40) Based on the window tint violation and driving while license revoked, Officer Galluppi would have written Mr. Robinson a ticket and released him. (T pp 42-45)

However, while speaking with Mr. Robinson, Officer Galluppi detected “a very faint odor of marijuana...coming from the vehicle.” (T p 12) In his training as a law enforcement officer, Galluppi learned about “the odor of marijuana and how it was probable cause for searching a vehicle.” (T p 13) Based only on the “very faint odor of marijuana,”



Officer Galluppi directed Mr. Robinson to step out of his vehicle and sit in the back of Galluppi's police cruiser. (T pp 14-15) Another officer stood with Mr. Robinson while Officer Galluppi searched the Chrysler. (T pp 15-16) A revolver and a pill believed to be MDMA<sup>1</sup> were found in the car. (T pp 16-17) A second similar pill was found during a pat-down of Mr. Robinson. (T p 50) During a strip search at the police station, police recovered a plastic bag which appeared to contain marijuana and crack cocaine. (T pp 18-19)

At the suppression hearing, the trial court took judicial notice of the statutes legalizing hemp and a bulletin of the State Bureau of Investigation. (R pp 28-32; T pp 54-55, 57) The SBI memo observes that the plant which produces legal hemp "is the same species as marijuana." (R p 28) One variety of legal hemp "looks just like marijuana, including the leaves and buds, and it smells the same as marijuana. In fact, there is no way for an individual to tell the difference by looking at the plant; one would need a chemical analysis

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<sup>1</sup> This pill field-tested positive for MDMA. (T p 17) Although no field test for marijuana was available to Officer Galluppi at the time of Mr. Robinson's arrest, that technology is now in use in New Hanover County. (T pp 30-31)

to tell the difference.” (*Id.*) Hemp products are available across North Carolina from hundreds of retailers. (*Id.*)

The SBI memo describes several “issues for law enforcement” arising from the legalization of hemp. (R p 29) According to the SBI, “Hemp and marijuana look the same and have the same odor, both burned and unburned. This makes it impossible for law enforcement to use the appearance of marijuana or the odor of marijuana to develop probable cause for arrest, seizure of the item, or probable cause for a search warrant.” (*Id.*) Because hemp possession is legal, an officer will not have probable cause to believe that an item is evidence of a crime if it could be either hemp or marijuana. (*Id.*) The memo noted that at least one district attorney’s office stopped prosecuting marijuana cases because officers were unable to distinguish between marijuana and hemp. (*Id.*) To solve these problems, the SBI memo urged various amendments to existing law, including a ban on smokable hemp. (R pp 30-31)

Defense counsel acknowledged existing caselaw holding that the odor of marijuana provides probable cause for a search of a suspect’s vehicle and person. However, she argued, given the subsequent

legalization of hemp and the fact that hemp and marijuana cannot be distinguished on smell, the odor of suspected marijuana alone is no longer sufficient to create probable cause. (T pp 60-61) Because the odor of suspected marijuana was the only reason Mr. Robinson was searched, she argued that all the fruits of that search should be suppressed. (T pp 63-64)

The trial court denied the motion to suppress, stating:

The fact that hemp is legal in North Carolina does not create a de facto legalization of marijuana. So the odor of marijuana, *until our appellate courts state otherwise*, is a sufficient basis, because marijuana is still an illegal substance. The fact that its illegal nature is not readily apparent is the case with a lot of controlled substances. You don't really know what you've got until you get a lab test back to confirm what it is. So the odor of marijuana is a sufficient basis to conduct a warrantless search under that [sic] automobile exception.

(T pp 69-70, emphasis added) Trial counsel objected to this ruling in open court. (T p 71)

In the trial court's subsequent written order, it found as fact that, "Marijuana and hemp share very similar physical characteristics and it is difficult to tell one from the other either by appearance or by smell." (App. 24, Finding of Fact 11) Nonetheless, the trial court made the following conclusions of law:

2. That the odor of marijuana emanating from the vehicle provided sufficient probable cause for a warrantless search of the vehicle under the automobile exception to the Fourth Amendment warrant requirement.

3. The fact that marijuana and hemp share similar characteristics and have a similar odor does not negate the ability of law enforcement to use the odor of a potentially controlled substance as a sufficient basis to establish probable cause for the warrantless search of a vehicle. Marijuana is still an illegal substance in this state.

*(Id.)*

After the motion to suppress was denied, trial counsel objected but failed to give explicit notice of appeal from the denial of the suppression motion. (T pp 71, 83-85) Mr. Robinson changed his plea to guilty and notice of appeal from the judgment was given orally and in writing. (T pp 46-49, 84; App. 33-35)

#### Court of Appeals

On 5 November 2020, undersigned counsel was appointed to represent Mr. Robinson on his direct appeal. (App. 38) On 2 March 2021, the record on appeal was filed in the Court of Appeals. The appeal was docketed as No. COA21-144.

In his brief to the Court of Appeals, Mr. Robinson argued that the trial court erred in denying the motion to suppress where the sole basis

for the search was the very faint odor of something the officer could not distinguish from a legal substance. (COA Brief at 7-23) Mr. Robinson also filed a Petition for Writ of Certiorari, arguing that despite trial counsel's failure to enter notice of appeal prior to the entry of the plea, certiorari was appropriate under *State v. Ledbetter*, 371 N.C. 192 (2018) *et. al.*, and that certiorari should be allowed because Mr. Robinson presented a meritorious claim. (COA PWC at 4-17) The State filed its brief and Motion to Dismiss on 6 July 2021.

On 28 December 2021, the Court of Appeals issued an order dismissing Mr. Robinson's appeal without explanation<sup>2</sup>. (App. 39-47) The majority further ordered that Mr. Robinson, who has been at all times indigent and represented by appointed counsel, to pay the costs of the appeal. (App. 39)

In dissent, Judge Jackson argued first that Mr. Robinson's Petition for Writ of Certiorari should have been allowed to enable the Court of Appeals to reach the meritorious issue presented. Judge

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<sup>2</sup> The State asked the Court of Appeals to dismiss Mr. Robinson's appeal because, "It was not until the day after the trial court accepted Defendant's plea and sentenced Defendant that Defendant informed the State and the trial court of his intent to appeal. Accordingly, Defendant has waived his right to appeal the trial court's order, and his appeal should be dismissed." (State's Motion to Dismiss Appeal at 2-3)

Jackson noted that Mr. Robinson contemporaneously objected to the denial of the motion to suppress and that the State did not object when Mr. Robinson gave notice of appeal in open court the next day. (App. 40)

As to the substantive issue, Judge Jackson found that Mr. Robinson's motion to suppress should have been allowed. Judge Jackson found one of the trial court's findings of fact to be unsupported by competent evidence and two of its conclusions of law to be incorrect. In sum, Judge Jackson found that the odor of suspected marijuana, standing alone, creates only a mere suspicion of criminal activity, as illegal marijuana is indistinguishable from legal hemp on this basis, and therefore the officer in this case lacked probable cause to search Mr. Robinson's car. (App 40-46)

Because the majority offered no explanation for the dismissal, it is unclear whether the Court of Appeals felt it could not issue certiorari or whether it felt the underlying issue lacked merit.

## REASONS WHY WRIT SHOULD ISSUE

### A. The Appellate Courts Can Issue a Writ of Certiorari Under These Circumstances

When a defendant pleads guilty after the trial court denies his motion to suppress, the suppression issue is preserved for appellate review only if the defendant gives the State notice of his intent to appeal the denial before the plea is entered. *State v. Reynolds*, 298 N.C. 380, 397 (1979). This is best accomplished by including the right to appeal the suppression issue in the plea transcript. *State v. Pimental*, 153 N.C. App. 69, 76 (2002). However, there are other means sufficient to convey the intent to appeal the denial of a motion to suppress. *See, e.g., State v. Brown*, 217 N.C. App. 566, 570-71 (2011) (defendant objected to the denial of his motion, stated his intent to appeal from “motions,” and then changed his plea to guilty).

Here, Mr. Robinson objected to the denial of the motion to suppress. (T p 71) The parties then agreed to hold open the State’s existing plea offer, which Mr. Robinson accepted less than three hours later. (T pp 72-74) However, the plea transcript does not refer to the motion to suppress. (App. 25-28) The next day, Mr. Robinson entered notice of appeal. (App. 33; T p 84) The State did not object that such

notice was untimely. (*Id.*) As Judge Jackson observed in his dissent, “Had the State objected at that time to Defendant’s notice of appeal, Defendant could have moved to withdraw his plea in order to give proper notice.” (App. 40) At no time has the State alleged it has been prejudiced by the one-day delay in giving notice of appeal.

**1. Certiorari Is Appropriate Under the Rules of Appellate Procedure**

Under Appellate Rule 21(a)(1), an appellate court may issue its writ of certiorari to permit review “when the right to prosecute an appeal has been lost by the failure to take timely action[.]” In this case, Mr. Robinson’s attorney objected to the denial of the motion to suppress prior to the entry of the guilty plea but did not simultaneously give formal notice of appeal from the suppression order. (T pp 71, 73-80, 84) Had proper notice been given prior to the plea, the issue would be preserved. Thus, trial counsel’s failure to give timely notice has denied Mr. Robinson the opportunity to appeal. Mr. Robinson acknowledges that Courts have decided this issue to the contrary, *see, e.g., State v. Harris*, 243 N.C. App. 137, 138 (2015), but submits that the issue was wrongly decided.



N.C. R. App. P. 2 further permits the courts to suspend the rules to expedite a decision in the public interest or to prevent manifest injustice to a party. Briefly, the public would benefit from clarification of whether the legalization of hemp should alter the lower courts' application of the Fourth Amendment to cases like this one. In addition, Mr. Robinson should not be denied all ability to challenge the suppression order because his attorney objected rather than giving formal notice of appeal.

## **2. Certiorari Is Appropriate Under the Statute**

In the past, the Court of Appeals has found that it “is without authority” to grant certiorari to defendants seeking review of a suppression order who failed to give notice prior to entering a guilty plea. *Pimental*, 153 N.C. App. at 77. However, this Court is currently considering *State v. Killette*, No. 379PA18-2, which asks whether such an approach is irreconcilable with this Court's decisions in *State v. Stubbs*, 368 N.C. 40 (2015) and *State v. Ledbetter*, 371 N.C. 192 (2018).

Under N.C. R. App. P. 21(a)(1), appellate courts may issue a writ of certiorari if (a) the right to appeal has been lost by the failure to take timely action, (b) no right to appeal from an interlocutory order exists,

or (c) a party seeks review from an order on a motion for appropriate relief. “[W]hile Rule 21 might appear at first glance to limit the jurisdiction of the Court of Appeals [to these circumstances], the Rules cannot take away jurisdiction given to that court by the General Assembly.” *Stubbs*, 368 N.C. at 44.

N.C.G.S. § 7A-32(c) affords a much broader scope, providing that the Court of Appeals “has jurisdiction . . . to issue the prerogative writs, including mandamus, prohibition, certiorari, and supersedeas, in aid of its own jurisdiction, or to supervise and control the proceedings of any of the trial courts of the General Court of Justice.” *See also* N.C.G.S. § 7A-32(b) (conveying similar powers to this Court). “This statute empowers the Court of Appeals to review trial court rulings . . . by writ of certiorari unless some other statute restricts the jurisdiction that § 7A-32(c) grants.” *State v. Thomsen*, 369 N.C. 22, 25 (2016). In other words, the General Assembly has created a default rule that the appellate courts have jurisdiction to review lower court rulings through certiorari, unless another statute specifically restricts jurisdiction in the type of case at issue.

In *Ledbetter*, this Court applied its analysis in *Stubbs* and *Thomsen* to a defendant who, like Mr. Robinson, entered a plea of guilty. 371 N.C. at 195. N.C.G.S. § 15A-1444(e) provides that when a defendant has entered a plea of guilty and is otherwise not entitled to appellate review as a matter of right, he or she may petition for writ of certiorari. Under *Ledbetter*, appellate courts have both the jurisdiction and the discretionary authority to issue a writ of certiorari in cases involving guilty pleas. 371 N.C. at 197. *Killette* will take the next step, applying these cases to Mr. Robinson's specific situation: the availability of certiorari to a defendant whose right to appeal the denial of a motion to suppress was lost through the failure to give notice of appeal prior to entering a guilty plea.

Pursuant to *Stubbs*, *Thomsen*, and *Ledbetter*, where a statute gives the Court of Appeals jurisdiction to issue a writ of certiorari, Rule 21 cannot be used to take that right away. The proper analysis begins with whether there is an authorizing statute and whether that statute contains any limitations to jurisdiction. N.C.G.S. § 15A-979(b) provides that "An order finally denying a motion to suppress evidence may be reviewed upon appeal from a judgment of conviction, including a

judgment entered upon a plea of guilty.” N.C.G.S. § 15A-1444(e) provides that if a defendant who has pled guilty is not otherwise entitled to an appeal as a matter of right, he nonetheless retains the ability to petition for writ of certiorari. Neither statute contemplates or authorizes any limitations on this Court’s ability to consider and allow such petitions. While Mr. Robinson’s failure to give timely notice of appeal from the denial of the motion to suppress may impact whether he has an appeal of right, it had no effect on the Court of Appeals’ ability to allow Mr. Robinson’s Petition, as authorized by § 15A-1444(e).

Whether through Appellate Rule 21(a)(1) or N.C.G.S. § 7A-32(b) and § 15A-1444(e), the Court of Appeals had the authority to issue its writ of certiorari to reach the meritorious issue presented in Mr. Robinson’s brief.

### **3. This Court Should Issue Its Writ of Certiorari**

If this Court should conclude that Mr. Robinson does not have an appeal of right from the superior court’s order denying his motion to suppress or Court of Appeals’ order dismissing his appeal, this Court should issue a writ of certiorari pursuant to its supervisory powers under N.C.G.S. 7A-32(b) to reach the central issue presented by Mr.

Robinson's case: whether the odor of suspected marijuana alone can provide an officer with probable cause to search a suspect's car in light of the legalization of hemp, which has an identical odor.

### **B. Mr. Robinson's Claim Has Merit**

As Judge Jackson observed in his dissent, "Because the odor of legal hemp and the odor of illegal marijuana are indistinguishable, the odor of marijuana no longer conclusively indicates the presence of an illegal drug and therefore is insufficient to support the probable cause needed to conduct a warrantless search under the Fourth Amendment." (App. 44)

#### **1. Review of Facts**

On the afternoon of 5 February 2020, Wilmington Police Department Officer Ben Galluppi pulled over the Chrysler Mr. Robinson was driving because its windows were too darkly tinted. (T pp 7-8) When asked, Mr. Robinson provided the vehicle's registration but said he did not have his license with him. (T pp 11-12) When Officer Galluppi ran the registration, he learned that Mr. Robinson's license had been suspended. (T pp 39-44) Based on the window tint violation

and driving while license revoked, Officer Galluppi would have written Mr. Robinson a ticket and released him. (*Id.*)

However, while speaking with Mr. Robinson, Officer Galluppi detected “a very faint odor of marijuana...coming from the vehicle.” (T pp 12-13) In his training as a law enforcement officer, Galluppi learned about “the odor of marijuana and how it was probable cause for searching a vehicle.” (T pp 13-14) Based only on the “very faint odor of marijuana,” Officer Galluppi directed Mr. Robinson to step out of his vehicle and sit in the back of Galluppi’s police cruiser. (T pp 14-15) Another officer stood with Mr. Robinson while Officer Galluppi searched the Chrysler. (T pp 15-16) A revolver and a pill believed to be MDMA were found in the car. (T pp 16-17) A second similar pill was found during a pat-down of Mr. Robinson. (T pp 49-51) During a strip search of Mr. Robinson at the police station, officers recovered a plastic bag which appeared to contain marijuana and crack cocaine. (T pp 18-19)

At the suppression hearing, the trial court took judicial notice of the statutes legalizing hemp and a bulletin of the State Bureau of Investigation. (App. 18-22; T pp 54-55, 57) Defense counsel acknowledged existing caselaw holding that the odor of marijuana

provides probable cause for a search of a suspect's vehicle and person. However, she argued, given the subsequent legalization of hemp and the fact that hemp and marijuana cannot be distinguished on smell alone, the odor of suspected marijuana is no longer sufficient on its own to create probable cause. (T pp 60-61) Because the odor of suspected marijuana was the only reason Mr. Robinson and his vehicle were searched, all the fruits of that search must be suppressed. (T pp 63-64)

The trial court denied the motion to suppress, saying:

The fact that hemp is legal in North Carolina does not create a de facto legalization of marijuana. So the odor of marijuana, *until our appellate courts state otherwise*, is a sufficient basis, because marijuana is still an illegal substance. The fact that its illegal nature is not readily apparent is the case with a lot of controlled substances. You don't really know what you've got until you get a lab test back to confirm what it is. So the odor of marijuana is a sufficient basis to conduct a warrantless search under that [sic] automobile exception.

(T pp 69-70, emphasis added) Trial counsel objected to this ruling in open court. (T p 71)

In the trial court's subsequent written order, it found as fact that, when Officer Galluppi approached Mr. Robinson's vehicle, he "detected what he believed to be an odor of marijuana." The trial court further found that "[m]arijuana and hemp share very similar physical

characteristics and it is difficult to tell one from the other either by appearance or by smell.” (App. 23-24) Nonetheless, the trial court made the following conclusions of law:

2. That the odor of marijuana emanating from the vehicle provided sufficient probable cause for a warrantless search of the vehicle under the automobile exception to the Fourth Amendment warrant requirement.

3. The fact that marijuana and hemp share similar characteristics and have a similar odor does not negate the ability of law enforcement to use the odor of a potentially controlled substance as a sufficient basis to establish probable cause for the warrantless search of a vehicle. Marijuana is still an illegal substance in this state.

(App. 24)

### **B. Standard of Review and Core Principles**

“The scope of appellate review upon a motion to suppress is strictly limited to determining whether the trial judge’s underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge’s ultimate conclusions of law.” *State v. Cooke*, 306 N.C. 132, 134 (1982).

A warrantless search of a motor vehicle on a public roadway is not in violation of the Fourth Amendment if it is supported by probable



cause. *State v. Isleib*, 319 N.C. 634, 638 (1987). “Probable cause exists where the facts and circumstances within an officer’s knowledge, and of which he had reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed, and that evidence bearing on that offense will be found in the place to be searched.” *Safford Unified School Dist. #1 v. Redding*, 557 U.S. 364, 370 (2009) (cleaned up).

### **C. Analysis**

Officer Galluppi detected the “very faint odor” of something that may or may not have been a controlled substance. (T p 12) In the absence of any other evidence to suggest that source of this odor was illegal in nature, Officer Galluppi had only a bare suspicion that it was marijuana, not probable cause. Therefore, the trial court erred in denying the motion to suppress all evidence resulting from the search of Mr. Robinson’s vehicle and his person.

#### **1. Findings of Fact**

The trial court made only one finding of fact regarding the State’s evidence to support a probable cause: “Officer Galluppi detected what he believed to be an odor of marijuana emanating from the vehicle.”

(App. 23) The trial court did not make any findings of fact regarding various factors that could make such a belief reasonable. (*See* Order at 7-8)

Regarding the defense's evidence, the trial court found as fact that, "Marijuana and hemp share very similar physical characteristics and it is difficult to tell one from the other either by appearance or by smell." (App. 24) This finding of fact is not supported by competent evidence. Marijuana and hemp are not merely similar in terms of smell and appearance, they are identical. (App. 19; *see also* App. 45) In addition, the trial court improperly disregarded the SBI memo's statement that it is impossible for an officer in the field to distinguish between marijuana and hemp. (App. 19) Although the SBI memo's position on how this would affect probable cause was not binding on the trial court, it should have been given some weight considering the SBI's undisputed expertise with drug investigations and prosecutions.

## **2. Conclusions of Law**

The trial court's finding of fact that it is "difficult" to tell whether a substance is marijuana based on smell alone does not support its subsequent conclusion that such an odor, standing alone, forms the

basis for probable cause. (App. 24) Similarly, the trial court's finding of fact that Officer Galluppi "believed" what he smelled was marijuana does not, in the absence of any finding that such belief was reasonable or based on sufficient training and experience, give rise to probable cause. (App. 23; *see also* App. 45-46)

Existing caselaw finding the odor of suspected marijuana sufficient to create probable cause, *see, e.g., State v. Greenwood*, 301 N.C. 705, 708 (1982), has been effectively overruled by subsequent legislation legalizing industrial hemp, which is indistinguishable from marijuana by scent alone<sup>3</sup>. *See* N.C.G.S. § 106-568.50 *et. seq.* As the State Bureau of Investigation observed, legal hemp "and marijuana look the same and have the same odor, both unburned and burned. This makes it impossible for law enforcement to use the appearance of marijuana or the odor of marijuana to develop probable cause for arrest, seizure of the item, or probable cause for a search warrant." (App. 19) Officer Galluppi was incapable of distinguishing between the odor of marijuana – an illegal substance – and the odor of hemp – a legal substance, as making this distinction requires chemical analysis

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<sup>3</sup> Terpenes, the chemical compounds giving the cannabis sativa plant its distinct aroma, are present in both marijuana and hemp. (App. 43-44)

performed in a laboratory. (*Id.*; *see also* T p 30, Galuppi testifies that if shown marijuana and hemp today he could not tell the difference)

The very faint odor of something that may or may not be illegal amounts to nothing more than “bare suspicion” that criminal activity has occurred. *State v. Zuniga*, 312 N.C. 251, 261 (1984); *see also* Phil Dixon, Hemp or Marijuana?, *available at*: <https://nccriminallaw.sog.unc.edu/hemp-or-marijuana/> (“without a field test or some other way to verify whether something is hemp or marijuana, officers do not have probable cause to seize it or to arrest someone for possession of it without some other reason to believe the substance is contraband.”) This is especially true where the trial court’s findings of fact do not establish that the officer had the training and experience necessary to identify or differentiate between legal and illegal substances.

Given that the smell of marijuana is indistinguishable from the smell of hemp, and that there was no other evidence suggesting that Mr. Robinson was involved with controlled substances, it was not probable that the “very faint” odor detected by Officer Galluppi was marijuana, it was merely possible. The Fourth Amendment requires more.

But for trial counsel's failure to give appropriate notice, Mr. Robinson would be able to present this meritorious issue to the Court and obtain relief from his wrongfully procured convictions. Certiorari should be allowed when "the ends of justice will be thereby promoted." *King v. Taylor*, 188 N.C. 450, 451 (1924) (citation omitted); *State v. Hammonds*, 218 N.C. App. 158, 163 (2012) (issuing writ to avoid manifest injustice). This Court should allow certiorari to reach the issue wrongly decided by the superior court and

**PRAYER FOR RELIEF**

For all the foregoing reasons and authorities, Jaqualyn Robinson, the Petitioner herein, respectfully requests that this Court issue its writ of certiorari to permit him to fully brief and argue the above issue in this Court.

Respectfully submitted, this the 10<sup>th</sup> day of January 2022.

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ATTORNEY FOR PETITIONER

VERIFICATION

The undersigned, Sarah Holladay, being duly sworn, deposes and says that she is the attorney for petitioner, that she has read the foregoing petition and the same is true to her knowledge except upon matters and things therein alleged upon information and belief, and as to those matters and things, she believes them to be true.


This the 10<sup>th</sup> day of January 2022.

  
\_\_\_\_\_  
Sarah Holladay

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

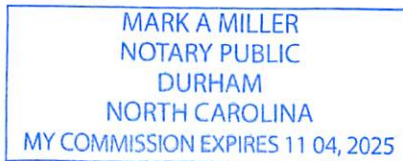
Sworn to and subscribed before me,

This the 10<sup>th</sup> day of January 2022.

  
\_\_\_\_\_  
Notary Public

My commission expires:

11/04/2025



**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that the original Petition for Writ of Certiorari has been filed, pursuant to Rule 26 of the North Carolina Rules of Appellate Procedure, by electronic means with the Clerk of the Supreme Court of North Carolina.

I further certify that a copy of the above and foregoing Petition for Writ of Certiorari has been duly served upon Nicholas Sanders, Assistant Attorney General, North Carolina Department of Justice, by electronic means by emailing it to nsanderst@ncdoj.gov. A copy has also been sent to Assistant District Attorney William Van Trigt by electronic means, by e-mailing it to william.b.vantrigt@nccourts.org.

This the 10<sup>th</sup> day of January 2022.

By Electronic Submission:

Sarah Holladay

North Carolina State Bar Number 33987

No.

DISTRICT FIVE

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

STATE OF NORTH CAROLINA )

v.

From New Hanover

JAQUALYN ROBINSON

\*\*\*\*\*

**APPENDIX TO PETITION FOR WRIT OF CERTIORARI**

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In addition to these attachments, Mr. Robinson incorporates by reference the Record on Appeal, transcript, and pleadings filed below in the Court of Appeals.



STATE of NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division  
Case No. 20CRS051122  
New Hanover County

# Indictment

State Versus

**JAQUALYN ROBINSON**

Offense(s)	Date of Offense	G.S. No.	Class
I. WINDOW TINT VIOLATION	02/05/2020	20-127(D)	3
II. CARRYING CONCEALED GUN (M)	02/05/2020	14-269	2
III. POSSESS SCH I CS	02/05/2020	90-95(A)(3)	1

- I. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully and willfully did operate a motor vehicle on a highway with a total light transmission of the tinted window of less than 35%.
- II. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully and willfully did intentionally carry concealed about the defendant's person while off the defendant's own premises a gun, a Charter Arms Bulldog, .44 Special Revolver 5 Shot, Serial Number: 231541.
- III. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did possess a controlled substance, 3,4-Methylenedioxymethamphetamine, which is included in Schedule I of the North Carolina Controlled Substances Act.

Signature of Prosecutor 

## Witnesses

☐ B. Galluppi / WPD

☒ R. Knopf / WPD

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury, and after hearing testimony, this bill was found to be:

☒ **A TRUE BILL** by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

☐ **NOT A TRUE BILL**

Date: 5/28/20

Signature of Grand Jury Foreman: 

STATE of NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

Case No. 20CRS051123

New Hanover County

# Indictment

State Versus

**JAQUALYN ROBINSON**

Offense(s)	Date of Offense	G.S. No.	Class
I. DWLR NOT IMPAIRED REV	02/05/2020	20-28(A)	3
II. POSSESS SCH II CS (F)	02/05/2020	90-95(A)(3)	1
III. POSSESS MARIJUANA UP TO ½ OZ	02/05/2020	90-95(A)(3)	3

- I. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully and willfully did operate a motor vehicle on a street or highway while the defendant's license was revoked.
- II. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did possess Cocaine, a controlled substance that is included in Schedule II of the North Carolina Controlled Substances Act.
- III. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully and willfully did possess Marijuana, a controlled substance that is included in Schedule VI of the North Carolina Controlled Substances Act.

Signature of Prosecutor

**Witnesses**

☐ B. Galluppi / WPD

☒ R. Knopf / WPD

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury, and after hearing testimony, this bill was found to be:

☒ **A TRUE BILL** by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

☐ **NOT A TRUE BILL**

Date:

5/28/20

Signature of Grand Jury Foreman:

STATE of NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division

Case No. 20CRS051124

New Hanover County

# Indictment

State Versus

**JAQUALYN ROBINSON**

Offense(s)	Date of Offense	G.S. No.	Class
I. PWIMSD SCH II CS	02/05/2020	90-95(A)(1)	H
II. M/S/D/P CS W/N 1000FT OF PARK	02/05/2020	90-95(E)(10)	E
III. M/S/D/P CS W/N 1000FT OF SCHOOL	02/05/2020	90-95(E)(8)	E

- I. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did possess with intent to manufacture, sell, and deliver a controlled substance, namely Cocaine, which is included in Schedule II of the North Carolina Controlled Substances Act.
- II. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did commit and offense under G.S. 90-95(a)(1) by possessing with intent to manufacture, sell, and deliver Cocaine, a controlled substance included in Schedule II of the North Carolina Controlled Substances Act within 1000 feet of the boundary of real property that is a public park, Tower Park, Wilmington, North Carolina. The defendant was 21 years of age or older, namely 24, at the time of this offense.
- III. The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully, and feloniously did commit and offense under G.S. 90-95(a)(1) by possessing with intent to manufacture, sell, and deliver Cocaine, a controlled substance included in Schedule II of the North Carolina Controlled Substances Act within 1000 feet of the boundary of real property used for an elementary school, Mary W. Howe Pre-K School. The defendant was 21 years of age or older, namely 24, at the time of this offense.

Signature of Prosecutor 

## Witnesses

☐ B. Galluppi / WPD

☒ R. Knopf / WPD

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury, and after hearing testimony, this bill was found to be:

☒ **A TRUE BILL** by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

☐ **NOT A TRUE BILL**

Date: 5/28/20

Signature of Grand Jury Foreman: 

STATE OF NORTH CAROLINA      IN THE GENERAL COURT OF JUSTICE  
COUNTY OF NEW HANOVER      SUPERIOR COURT DIVISION  
FILE NUMBERS 20 CRS 51122 – 51124

STATE OF NORTH CAROLINA,

vs.

JAQUALYN ROBINSON,

Defendant.

MOTION TO SUPPRESS

NOW COMES the Defendant, by and through the undersigned counsel, pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Article I, Sections 19, 20, 23, and 24 of the Constitution of North Carolina, and *Mapp v. Ohio*, 367 U.S. 643, (1961), and moves this Honorable Court to exclude alleged evidence found by Wilmington Police Department Officer B. J. Galluppi and assisting law enforcement officer during the initial stop as unlawfully collected. Since the enactment of N.C. Gen. Stat. § 106-568.50 et seq., the sight or odor of Cannabis sativa does not indicate with any certainty that the Defendant was engaged in, or about to engage in any illegal activity, removing any justification of probable cause for the stop, search or seizure of evidence. In support of this Motion, the Defendant respectfully shows as follows:

1. That the Defendant is charged with the alleged offenses of Window Tinting Violation, Carrying Concealed Gun, Felony Possession Schedule I Controlled Substance, Driving While License Revoked Not Impaired Revocation, Felony Possession Schedule II Controlled Substance, Possess Marijuana up to One-Half Ounce, PWIMSD Schedule II Controlled Substance, M/S/D/P Controlled Substance within One Thousand Feet of Park, and M/S/D/P Controlled Substance

withi One Thousand Feet of School in the above captioned matters.

2. That on or about February 5, 2020, Officer B. J. Galluppi with the Wilmington Police Department conducted a traffic stop of the vehicle of which Defendant was operating due to alleged window tint violation that Officer B. J. Galluppi noticed when the vehicle the Defendant was operating passed by Officer B. J. Galluppi.
3. That Officer B. J. Galluppi began questioning the Defendant.
4. That Officer B. J. Galluppi reported that he “also could smell a faint odor of marijuana coming from inside Robinson’s vehicle” per the discovery.
5. That Officer B. J. Galluppi questioned the Defendant about the alleged odor of marijuana and subsequently informed the Defendant “I would search his vehicle based on the odor of marijuana smell”.
6. That Officer B. J. Galluppi allegedly “located a loaded .44 Charter Arms Revovler in the arm rest” of the driver side of the vehicle which was subsequently seized by law enforcement.
7. That Officer G. Galluppi searched the Defendant’s person and allegedly located “a MDMA pill in Robinson’s pocket”.
8. That Officer G. Galluppi assisted in the search of the vehicle the Defendant was allegedly operating and allegedly found “another MDMA pill in the back seat behind the drivers seat”.
9. That the Defendant was subsequently placed under arrest and transported to the Wilmington Police Department for processing.
10. That Officer B. J. Galluppi and Corproal Norris conducted a strip search of the Defendant at Wilmington Police Department and alleged that “a clear plastic bag,

fell from inside his pant leg onto the floor” when the Defendant was handing his pants over to Officer B. J. Galluppi.

11. That Officer B. J. Galluppi reported that the contents of the clear plastic bag were “.88 grams of cocaine, separated into two baggies. One bag had 4 rocks, and the other bag had a single rock. Additionally there were two separate half bags of marijuana, both combined were 3.52 grams”.
12. That the arrest of the Defendant and subsequent detention was not supported by reasonable suspicion, probable cause, or other legal justification.
13. That the conduct of Officer B. J. Galluppi and assisting law enforcement officers constituted a violation of the Defendant’s rights under the Fourth Amendment to the United States Constitution and was in violation of the Defendant’s rights under the North Carolina Constitution and the North Carolina General Statutes.
14. That the Defendant was seized, and evidence was obtained in violation of the Defendant’s constitutional rights as guaranteed by the 4th and 14th Amendments to the U. S. Constitution and by Article I, Section 5, 19, and 20 of the Constitution of North Carolina.
15. That the exclusion of said evidence is required by N.C.G.S. §15A-974 in that said evidence was obtained as a result of a substantial violation of Chapter 15A of the General Statutes.

#### **BACKGROUND KNOWLEDGE OF HEMP LEGALIZATION**

N.C.G.S. 106-568.50 et seq. legalized the production of industrial hemp. Under the direction of the North Carolina Industrial Hemp Commission, industrial hemp, a strain of the species *Cannabis sativa* defined by N.C.G.S. § 106-568.51(7), can now be legally grown and

sold by licensed parties. N.C.G.S § 90-87(16) excludes industrial hemp from the definition of marijuana, which remains a controlled substance. Hemp, as defined in Chapter 106 of the General Statutes, is not a controlled substance and may be lawfully possessed by any citizen of the state.

The species *Cannabis sativa* includes both hemp and marijuana. As such, both contain the chemicals THC (delta-9 tetrahydrocannabinol, the primary psychoactive compound in marijuana) and CBD (cannabidiol, a non-psychoactive substance which has been linked to health benefits. See generally State Bureau of Investigations, Industrial Hemp/CBD Issues at 2, [https://www.sog.unc.edu/sites/www.sog.unc.edu/files/doc\\_warehouse/NC%20SBI%20-%20Issues%20with%20Hemp%20and%20CBD%20Full.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/doc_warehouse/NC%20SBI%20-%20Issues%20with%20Hemp%20and%20CBD%20Full.pdf) (hereinafter known as Industrial Hemp/CBD Issues). The difference between hemp, which can be legally possessed and purchased, and marijuana, which remains a controlled substance under North Carolina law, is the differing amounts of CBD and THC in the plant. See N.C.G.S § 106-568.51(7). While marijuana typically has typically lower amounts of CBD and higher amounts of the psychoactive THC, hemp has low amounts of THC and typically higher amounts of CBD. See Ernest Small et al., Hemp: A New Crop with New Uses for North America, in Trends in New Crops and New Uses 284, (J. Janick & A. Whipkey eds., 2002), <https://www.hort.purdue.edu/newcrop/ncnu02/v5-284.html> (noting the common inverse relationship between amounts of THC and CBD in Cannabis). The NC Department of Agriculture routinely inspects licensed industrial hemp to ensure that the THC amount is within acceptable limitations (less than 0.3% of the sample's dry weight, compared to 3-15% for traditional marijuana). See North Carolina Department of Agricultural & Consumer Services, Industrial Hemp Pilot Program in North Carolina: Frequently Asked Questions, at <https://www.ncagr.gov/hemp/FAQs.htm> (hereinafter known as Industrial

Hemp Pilot Program in North Carolina: Frequently Asked Questions).

The only way to determine if a substance is hemp or marijuana is by testing the chemical composition to measure the THC level. See Industrial Hemp Pilot Program in North Carolina: Frequently Asked Questions (noting that “short of chemical analysis of the THC content, there was no way to distinguish between marijuana and hemp varieties”). There is currently no field test in North Carolina which can differentiate between hemp and marijuana. See Industrial Hemp/CBD Issues at 2. As acknowledged in Industrial Hemp/CBD Issues, this situation creates problems for law enforcement officials attempting to enforce current restrictions on the possession, sale, and distribution of marijuana.

#### ARGUMENT

The Fourth Amendment to the United States Constitution protects American citizens from unlawful and arbitrary seizure of property by the state. Improperly seized evidence, even if indicative of criminal activity, is inadmissible in court as a violation of this Constitutional protection of our rights. See *Mapp* 367 U.S. at 659. While a lawful search generally requires a warrant, there are exceptions recognized by North Carolina case law. See *State v. Greenwood*, 301 N.C.705, 708 (1981) (“...the smell of marijuana gave the officer probable cause to search the automobile for the contraband drug”). Since the adoption of N.C.G.S. § 106-568.50 et seq. and the subsequent legalization of industrial hemp, an officer cannot rely on sight and smell of what he believes to be marijuana to form the basis of probable cause to search or seize.

In order to be admissible, evidence must be lawfully obtained by the police. See *Mapp* 367 U.S. at 655 (“...all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court”). Because marijuana and legal hemp are indistinguishable by sight or smell, See generally Industrial Hemp/CBD Issues,



there is no way for an officer to establish probable cause for a search based on sight or smell alone. To establish probable cause, the officer must show “at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.” See *Beck v. Ohio*, 379 U.S. 89, 91 (1964). While *State v. Fletcher*, 92 N.C. App. 50, 57 (1988), held that police officers could identify marijuana without a chemical analysis, the legalization of industrial hemp means that previously accepted means of identification are no longer useful. See Industrial Hemp/CBD Issues at 2 (“Hemp and marijuana look the same and have the same odor, both unburned and burned. This makes it impossible for law enforcement to use the appearance of marijuana or the odor of marijuana to develop probable cause for arrest, seizure of the item, or probable cause for a search warrant”). As noted by Peg Dorer, director of the North Carolina Conference of District Attorneys in her testimony before the Senate Agriculture, Environment, and Natural Resources committee on May 30, 2019, “Law enforcement cannot discern the difference between smokable hemp and marijuana, and our State Crime Lab cannot discern the difference because they can’t discern the level of the THC that it contains.” See Laurie Leslie, Law enforcement fears NC’s effort to boost hemp industry could essentially legalize marijuana, WRAL, May 31, 2019, <https://www.wral.com/law-enforcement-fears-nc-s-effort-to-boost-hemp-industry-could-essentially-legalize-marijuana/18421082/>.

Because an officer cannot determine if a suspect possesses marijuana or hemp, there is no way that an officer can prudently “believ[e] that the [defendant] had committed or was committing an offense” based on sight and smell alone. Lacking probable cause to begin a search, all evidence collected based upon the odor/sight of a substance indistinguishable from

legally purchased hemp is inadmissible under the Fourth Amendment and comparable provisions of the State constitution.

Even if the defendant possesses marijuana, an unlawful seizure would be needed to make that factual determination. Other than unscientific guesses about the nature of the substance, an officer in the field cannot say with certainty if a substance is hemp or marijuana. See Industrial Hemp/CBD Issues at 1 (“...one would need a chemical analysis to tell the difference”). Because the 4th Amendment also protects against seizure of property absent a warrant or probable cause, there is no effective way for the State to identify if the substance is legal or not. For the specific variety of hemp which grows leaves and buds that resemble marijuana, “...one would need a chemical analysis to tell the difference.” See Industrial Hemp/CBD Issues at 1. There are currently no tests which can be used by an officer in the field that differentiate hemp and marijuana. See *id.* Even the NC State Crime Lab lacks the capability to do more than identify the presence of THC which is found in both hemp and marijuana. See *id.* Without a way to distinguish between the two strains of *Cannabis sativa*, there can be no probable cause for the seizure required to test the illegality of the substance. The State cannot seize property absent probable cause, see *Mapp v. Ohio*, 367 U.S. at 655-56, and the seizure of *Cannabis sativa* to test for illegality is a violation of the right to avoid arbitrary state intrusion. Without additional indicia of a crime, based on something more than sight or smell of cannabis, the lack of probable cause makes the seizure unconstitutional and without the seizure there can be no factual determination the substance is not legally owned industrial hemp.

Because there is no way for an officer to determine if the substance is hemp or marijuana, and because the Fourth and Fourteenth Amendment of the United States Constitution; and Article I, Sections 19, 20, 23, and 24 of the Constitution of North Carolina, protects against

arbitrary search and seizure of goods by the police, any evidence collected on the basis of the sight/smell of a substance that resembles marijuana lacks probable cause and is inadmissible in court.

### CONCLUSION

1. The Fourth Amendment to the Constitution and comparable state constitutional provisions demand that probable cause exist for a search or seizure to be deemed lawful. As there is no factual way for the state to differentiate between legal hemp and marijuana, an officer cannot have information "sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense...", see *Beck v. Ohio*, 379 U.S. at 91, based on sight or smell of the plant *Cannabis sativa* alone.
2. In the above captioned case, Officer B. J. Galluppi alleged that he "could smell a faint odor of marijuana coming from inside Robinson's vehicle" while speaking to the defendant and that he "would search his vehicle based on the odor of marijuana smell" per the discovery.
3. The officer had no probable cause to conduct a search of the defendant's person nor the vehicle he was a passenger in based solely on sight/smell of what he believed to be *Cannabis sativa* as the purchase of legal hemp products (identical in odor and appearance to marijuana) is allowed by N.C.G.S. § 106-568.50 et seq.

It is the command of both the State and Federal constitution that the accused receive a fair trial and the due process of law. To allow admittance of evidence collected through a search conducted without probable cause would unduly prejudice the Defendant and would violate his rights under the 4th, 5th, 6th and 14th Amendments of the United States Constitution and

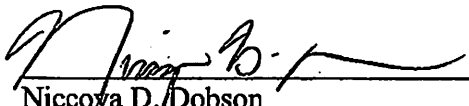
Articles 19, 20, 23, and 24 of the North Carolina Constitution.

**RELIEF SOUGHT**

WHEREFORE, the Defendant moves this Honorable Court to:

1. Summarily grant this Motion and enter an Order suppressing any and all evidence obtained as a result of the illegal search and seizure of the Defendant and or his property, including any evidence subsequently obtained as a result of the unconstitutional actions of the Officer;
2. Alternatively, that this Honorable Court conduct a pretrial evidentiary hearing in order to receive evidence and make findings as to the legality of the Officer's action.

This the 11 day of ~~July~~<sup>August</sup> 2020.

  
\_\_\_\_\_  
Niccoya D. Dobson  
Assistant Public Defender  
320 Chestnut Street, Suite 201  
Post Office Box 2560  
Wilmington, NC 28402  
Phone: (910) 343-5428

Attorney for the Defendant

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FILE NUMBERS 20 CRS 51122 – 51124

STATE OF NORTH CAROLINA, :

vs. :

JAQUALYN ROBINSON, :  
Defendant. :

**AFFIDAVIT**

Affiant, first being duly sworn, states the following:

1. I am the attorney of record in the above captioned matter.
2. I have read the Motion to Suppress which is being filed contemporaneously with this Motion.
3. The Motion to Suppress was prepared after an investigation and review of the discovery which was provided to my office by the State of North Carolina.
4. The facts as set forth in the Defendant's Motion to Suppress based on information provided in discovery are true and accurate to the best of my knowledge as set out below from the discovery in the above referenced matters:

"On 02/05/2020 16:09 hrs, I, Officer Benjamin GALLUPPI, was sitting in the parking lot of 1102 Dawson St., facing Northbound perpendicular to Dawson St. I was looking Westbound on Dawson St. and saw a dark colored CHrysler 300, traveling Eastbound on Dawson St. with extremely dark windows.

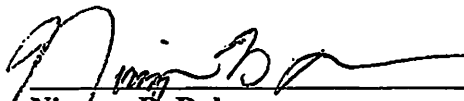
As the Chrysler passed by, I was unable to see inside the vehicle due to the window tint, and it was daytime outside. I pulled out behind the Chrysler 300, noting the license plate was NC - HCS6595. I was unable to see in the rear

window to see any occupants. I also did not see the green DMV sticker used for those for who had window tint exceptions. I initiated my emergency lights and siren to signal to the driver, I was pulling him over. The Chrysler turned onto Southbound S. 17th St. and continued driving. The driver then turned right onto Wright St. where he pulled over and stopped. I walked up to the drivers side window, which had originally been 1/2 way down during my approach. The driver was identified as JAQUALYN ROBINSON. When asked, ROBINSON stated he left his drivers license at the house. He stated the the vehicle belonged to him. He was also on his cell phone, however I did not hear him talking to anyone. He provided registration that indicated that the vehicle was registered to him. I informed ROBINSON the reason I stopped him was his window tint. I then went back to my patrol vehicle to run and see if ROBINSON was who he claimed to be. I also could smell a faint odor of marijuana coming from inside ROBINSON'S vehicle. He was also the only occupant inside same. I found that ROBINSON'S license was showing suspended in CJLEADS. I walked back up to ROBINSON, who was still seated in the vehicle and had him step out. He informed me he was having his cousin come to pick him up. I had ROBINSON come back to my passenger seat, where he still remained on the phone. I asked ROBINSON multiple times if he would end his conversation which he finally did. I asked ROBINSON about his drivers license being suspended, which he stated it was for a failure to appear ticket. I asked if his license was still suspended, and he said "it probably is now" While talking to ROBINSON, I inquired if he had anyone inside his vehicle recently, which he said no. I inquired about the marijuana smell which

he stated there was no marijuana in the car. He stated it might have been from the guy he dropped off, but no one smokes in his vehicle. I explained to ROBINSON that I would search his vehicle based on the marijuana smell and had him stand by with another officer. I asked ROBINSON if there were any weapons inside his vehicle, and he shook his head no, and said softly "no" I started a search of the Chrysler 300 at the front passenger side, where It had a strong odor of marijuana. I located a loaded .44 Charter Arms Revolver in the arm rest. I then walked back and placed ROBINSON in handcuffs and had him put in my vehicle.

Ofer G. GALLUPPI conducted a search of ROBINSON, and located a MDMA pill in ROBINSON'S pocket. Ofcr. G. GALLUPPI assisted me in further search of the vehicle, and he located another MDMA pill in the back seat behind the drivers seat which was the same style as the one located on ROBINSON. A further search, yielded nothing inside the vehicle. I tested ROBINSON' S windows utilizing Laser Labs Inspector II, which is an approved window tint device, and his rear driver side window registered at 0%. The vehicle was released to ROBINSON' S cousin who responded to the scene per his request. ROBINSON was arrested and transported to WPD. Upon arrival, Cpl. NORRIS assisted me in conducted a strip search of ROBINSON. We escorted him to the bathroom inside the holding area. I could smell the odor of marijuana on ROBINSON as I walked behind him. I asked ROBINSON to remove his shirt, upon which ROBINSON claimed he was feeling sick and needed to throwup. ROBINSON further claimed that he needed to sit down. I had him remove his shoes, and then his pants, which he had black shorts on under his pants. As ROBINSON removed his pants and

handed them to me, a clear plastic bag, fell from inside his pant leg onto the floor. I looked over at ROBINSON, which his gaze looked at the bag, then immediately looked to the floor. Nothing else was located on ROBINSON'S person. Inside the bag that fell to the floor was .88 grams of crack cocaine, separated into two baggies. One bag had 4 rocks, and the other bag had a single rock. Additionally there were two separate half bags of marijuana, both combined were 3.52 grams. I made a check of nearby schools and parks from the route that I saw ROBINSON drive. I found that ROBINSON had passed within 1000 feet of both Mark W. Howe Pre-K Center, and Tower Park A check of ROBINSON' S record indicated that he had a pending CCW charge. He was charged with: Window tint, suspended license, CCW - gun, Possession of MDMA, possession crack (cocaine), Possess Marijuana, PWIMSD cocaine, possess w/i 1000' park, posses w/i 1000' school."

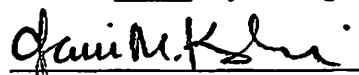
  
**Niccoya D. Dobson**  
 Assistant Public Defender

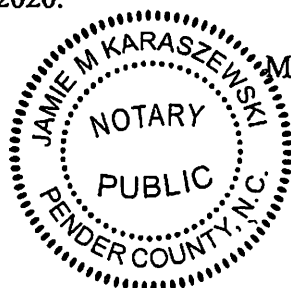
8/12/2020  
 DATE

**STATE OF NORTH CAROLINA :**  
**COUNTY OF NEW HANOVER :**

I, Jamie M. Karaszewski, a notary public of Pender County, North Carolina, certify that Niccoya D. Dobson personally appeared before me this day, and being duly sworn, signed the foregoing instrument.

This the 12 day of August 2020.

  
**Jamie M. Karaszewski**  
 Notary Public



My commission expires: 12/12/2023

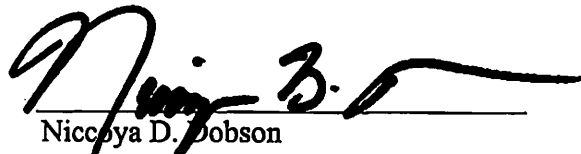


**CERTIFICATE OF SERVICE**

The undersigned attorney does hereby certify that she caused to be served a copy of the foregoing document to the last known address of the Defendant and to District Attorney's Office via hand delivery addressed to the following:

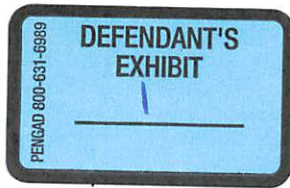
William B. Van Trigt  
Assistant District Attorney  
316 Princess Street, Suite 543  
Wilmington, NC 28401

This the 13 day of August 2020.

A handwritten signature in black ink, appearing to read "Niccoya D. Dobson", written over a horizontal line.

Niccoya D. Dobson  
Assistant Public Defender  
320 Chestnut Street, Suite 201  
Post Office Box 2560  
Wilmington, NC 28402  
Phone: (910) 343-5428

Attorney for the Defendant



ROY COOPER  
GOVERNOR

NORTH CAROLINA  
STATE BUREAU OF INVESTIGATION

3320 Garner Road  
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ROBERT SCHURMEIER  
DIRECTOR

### Industrial Hemp/CBD Issues

#### Background

Session Law 2015-299 established the North Carolina Industrial Hemp Commission and initiated a pilot program to study the feasibility of industrial hemp as a crop in NC. Industrial hemp is the plant species *Cannabis Sativa*, which is the same species as marijuana. Industrial hemp contains low levels of tetrahydrocannabinol (THC), which is the psychoactive ingredient in marijuana, a Schedule VI controlled substance in NC. Industrial hemp is engineered to contain high levels of cannabidiol (CBD), which is not psychoactive and has many alleged health benefits including treatment for some forms of epilepsy. It should be noted that the FDA recently approved a pharmaceutical CBD drug called Epidiolex, which can be prescribed by a physician for epilepsy. This is the only FDA approved use of CBD for a medical condition.

There are several types of industrial hemp:

1. One variety is grown for seed oils. Oil is extracted from the seeds and used in various food products such as bread, shampoos, and granola products;
2. One variety looks like long stalks of bamboo and is grown for fiber for textiles and rope; and
3. One variety looks like marijuana and grows "buds" just like marijuana. CBD is extracted from the buds. This type looks just like marijuana, including the leaves and buds, and it smells the same as marijuana. In fact, there is no way for an individual to tell the difference by looking at the plant; one would need a chemical analysis to tell the difference.

The NC Department of Agriculture (NC DAG) oversees the growers of industrial hemp in NC by providing licenses to growers who qualify. NC DAG performs inspections of fields and indoor grown space and takes plant samples which are tested to determine the percentage of THC. If the percentage of THC is determined to be greater than 0.3%, NC DAG burns the plants. NC DAG's lab has the capability to determine the percentage of THC; however, they outsource the testing to a private lab in Durham due to the high number of samples that are submitted.

*Due to the popularity of CBD, the overwhelming majority of NC licensees are growing the CBD producing variety of hemp, rather than the variety for clothing and rope. As of July 2018, there were 348 licensed growers on 4548 licensed acres and in 1,630,485 square feet of indoor greenhouse space. As of January 2019, there were well over 500 licensed growers in NC. There are a number of large processing facilities that have recently opened in NC. Hemp grown in NC, as well as many other states, are processed into various CBD containing products in these facilities. These products include balms, lotions, salve, oils, capsules, cigarettes, cigars, and "buds." There are CBD dispensaries that have opened in NC in order to sell these products; in addition, the products are sold in hundreds of tobacco shops, convenience stores, and pharmacies. CBD liquids are sold for vaping. Food products labeled to contain CBD are sold in stores across NC in the form of gummies, trail mix, lollipops, and many other food products. These products are expensive; with a small 4-ounce bottle of CBD oil sold for \$80.00 or a small bag of CBD trail mix for \$40.00. These products are being sold in large quantities, with little oversight by a regulatory body. Recently the FDA banned CBD from food products, dietary supplements, and products claiming medicinal benefits. Currently, the NC DAG is sending letters to notify store owners that they cannot sell food products containing CBD.*

### Issues for Law Enforcement

There is no easy way for law enforcement to distinguish between industrial hemp and marijuana. There is currently no field test which distinguishes the difference.

Hemp and marijuana look the same and have the same odor, both unburned and burned. This makes it impossible for law enforcement to use the appearance of marijuana or the odor of marijuana to develop probable cause for arrest, seizure of the item, or probable cause for a search warrant. In order for a law enforcement officer to seize an item to have it analyzed, the officer must have probable cause that the item being seized is evidence of a crime. The proposed legislation makes possession of hemp in any form legal. Therefore, in the future when a law enforcement officer encounters plant material that looks and smells like marijuana, he/she will no longer have probable cause to seize and analyze the item because the probable cause to believe it is evidence of a crime will no longer exist since the item could be legal hemp. Police narcotics K9's cannot tell the difference between hemp and marijuana because the K9's are trained to detect THC which is present in both plants. Law enforcement officers cannot distinguish between paraphernalia used to smoke marijuana and paraphernalia used to smoke hemp for the same reasons. The inability for law enforcement to distinguish the difference between hemp and marijuana is problematic in all marijuana prosecutions, from small amounts to trafficking amounts of plant material. There is at least one District Attorney's Office in NC which is currently not prosecuting marijuana cases due to the inability of law enforcement to distinguish the difference between hemp and marijuana.

While NC DAG oversees the hemp growers in NC to ensure that the THC levels are within legal limits, there is currently no regulation of hemp and CBD products. This is particularly concerning because processors in NC are making hemp and CBD products using hemp grown all over the US. We do not verify that hemp grown in another state contains less than the percentage THC required by law, which means that products made in NC may contain a higher percentage of THC than what is allowed by law. Retail products currently sold in NC include hemp "buds" or plant material, hand rolled hemp cigarettes and hemp cigars, CBD/Hemp oils, and edible candies, gummies, and food products. Law enforcement has encountered employees in some businesses who encourage the purchase of hemp products as a legal marijuana alternative. Consumers can currently purchase hemp buds and rolling papers in the same store and then roll a hemp "joint" and smoke it. (Note: On the last page of this document is a series of photographs of "hemp" products sold in stores in NC).

The North Carolina State Crime Laboratory does not conduct testing to differentiate between hemp and marijuana. The State Crime Lab, as well as most municipal crime labs in NC, perform a qualitative analysis on plant material to determine whether THC is present. All hemp and CBD products contain some level of THC; therefore, the crime labs will report these products as containing marijuana or THC, which are both Schedule VI controlled substances. While it has been suggested that additional funds be allocated to the Crime Lab in order to add additional chemists and equipment to conduct the quantitative analysis described above, this will not resolve the issue. As previously mentioned, law enforcement cannot seize an item without probable cause that the item is evidence of a crime. Not being able to distinguish between hemp and marijuana defeats the previous basis for probable cause to seize items believed to be marijuana.

Many products for sale in commercial businesses are intentionally mislabeled to contain CBD, but they contain harmful Schedule I controlled substances, synthetic cannabinoids, "bath salts," and other adulterants such as rat poison. Law enforcement cannot rely on the product labels to accurately identify the ingredients or percentages. For example, if a package of hemp "buds" has a label that states it contains less than 0.3% THC, law enforcement cannot rely on the label to be accurate. The product could contain marijuana or another controlled substance. But law enforcement does not currently have the legal right to seize the product and the crime labs do not have the ability to confirm the percentages. The crime labs can only identify THC or other controlled substances.

According to the FDA, CBD cannot be contained in food products such as gummies, lollipops, etc. This is particularly concerning for several reasons: first, children could purchase these products as there is no purchasing age limit;

secondly, these products may be mislabeled and contain other psychoactive substances such as THC or Schedule I synthetic cannabinoids.

The FDA approved a product called Epidiolex, which contains CBD, for use in cases of epilepsy and this product can be prescribed by a physician. There are many hemp and CBD products on the market, and individuals are self-prescribing these products for things such as pain management, anxiety, sleep disorders, and autism, even though CBD has not been scientifically proven or approved for use with these conditions. Users of these products will test positive for THC during employer random narcotics screening and their employment may be terminated for unlawful drug use. A narcotics screening only tests for the presence of THC, not the percentage of THC.

#### **Possible Solutions**

The North Carolina Farm Act of 2019 (Senate Bill 315), which was filed on March 20, 2019, formalizes NC's Industrial Hemp program and the Industrial Hemp Commission moving forward. This bill adds Chapter 106-568.67, which requires no license to possess, handle, transport, or sell hemp products or extracts. This bill modifies the definition of marijuana in Chapter 90-87 to exclude hemp, hemp products, or hemp extracts.

*The unintended consequence upon passage of this bill is that marijuana will be legalized in NC because law enforcement cannot distinguish between hemp and marijuana and prosecutors could not prove the difference in court. Every quantity of hemp and/or marijuana is important for police investigations, from the cigarette to the "dime" bag to a bale.*

There are several possible solutions which allow farmers in NC to grow industrial hemp, but also allow the criminal justice system to continue to seize marijuana, and charge and prosecute marijuana offenses. Below is a listing of possible solutions:

- 1) Limit the varieties of hemp that can be grown in NC to those which are used in rope, clothing, and paper. Do not allow the variety of hemp that produces "buds" similar to marijuana.
- 2) Modify the definition of marijuana in 90-87(16) as follows:

(16) "Marijuana" means all parts of the plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. The term does not include industrial hemp as defined in G.S. 106-568.51, when the industrial hemp is produced in compliance with rules issued by the North Carolina Industrial Hemp Commission and provided to a processor. The possession or sale of hemp in any other circumstance, unless in lawful possession pursuant to the North Carolina Epilepsy Act, is unlawful.

In addition to 1) and 2), the following conditions are warranted:

- An individual must be 18 or older to purchase or possess hemp, hemp extract, and CBD products.
- Provide immunity for law enforcement officers who seize hemp and hemp products during the course of an investigation, even if the products fall within the legal limits of THC and CBD.
- Clarify that all paraphernalia used to smoke plant-based materials (whether hemp or marijuana) is illegal.

Alternative solutions may include:

- Plant based materials and plant based commercial products cannot be made in hemp processing facilities in NC. Only oils, balms, lotions, salves, etc. can be made in these facilities.
- Hemp in plant form cannot leave processing facilities.

- Hemp in plant form cannot be sold by processors or commercial businesses. It can only be sold by NC farmers with a license from the NC Department of Agriculture.
- Mandate that only growers and processors with a license from the NC Industrial Hemp Commission can possess hemp or hemp plants. Any other person who possesses hemp or hemp plants will be charged with possession of a Schedule VI controlled substance.
- Hemp and CBD containing edibles such as candies, gummies, lollipops, brownies, etc. cannot be sold or possessed in NC. No edible hemp and CBD food products. (this follows FDA regulations)
- Place a ban on smoking hemp, hemp products, hemp extracts, and CBD products.
- Regulate CBD oils to ensure they oils sold in NC are produced by NC farmers, tested by the Department of Ag to fall within legal limits of THC and CBD. The oil products could have a label and tax stamp. Any CBD products without this tax stamp would be illegal to manufacture, sell, or possess.
- Place a tax stamp on all hemp grown in NC and CBD products manufactured in NC. This stamp could go on all products by NC licensed growers and processors. This tax stamp would allow for the product to be followed from the field to the processor to the store. It would ensure that hemp grown by NC farmers is being sold to NC processors, and then sold in NC retail stores. It also ensures that the products fall within the legal THC limits. Any hemp and CBD products without the tax stamp would be illegal to manufacture, sell, or possess.
- License hemp/CBD retail stores in NC. A store must be on the approved list to sell hemp and CBD products.
- Add Epidiolex to Schedule V so it can be prescribed by physicians in NC. This is an FDA approved pharmaceutical form of CBD which is already a Federal Schedule V controlled substance.

#### Photos of Commercially Sold Products



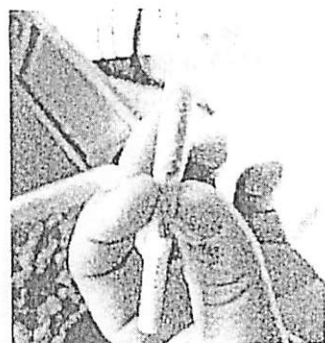
CBD gummies



CBD cookies



CBD lollipop



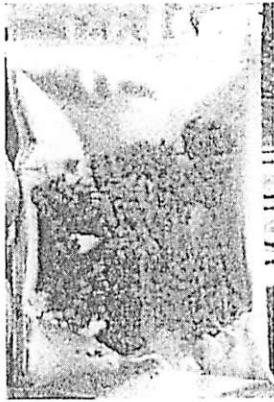
Hemp cigarette



Hemp cigar



Hemp "buds"



Hemp "buds"



Hemp "buds"

Filed Sup Ct 23  
10-29-2020  
2:40 pm / gm

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE #: 20-CRS-51122, 51123, & 51124

STATE OF NORTH CAROLINA

v.

JAQUALYN ROBINSON,  
Defendant.

ORDER ON DEFENDANT'S MOTION  
TO SUPPRESS

THIS MATTER came before the undersigned Superior Court Judge in and for the County of New Hanover on defendant's motion to suppress on the 29<sup>th</sup> day of October, 2020. The Court having reviewed the motion, having heard the evidence presented and the arguments of counsel finds:

1. That on or about February 5, 2020 Officer Ben Galluppi was on routine patrol in the area of Dawson Street and 11<sup>th</sup> in the City of Wilmington.
2. Officer Galluppi was stationary when he saw a blue Chrysler 300 drive by on Dawson Street that had extremely dark tint on the windows which he believed were in violation of the statute.
3. Officer Galluppi pursued the vehicle and activated his blue lights. The vehicle pulled over near 15th.
4. Upon approaching the vehicle, Officer Galluppi detected what he believed to be an odor of marijuana emanating from the vehicle.
5. The defendant was the driver of the vehicle. He had no license but provided his vehicle registration.
6. Officer Galluppi requested back up to assist in a potential search of the vehicle.
7. Officer Galluppi returned to the defendant's vehicle when back up arrived and removed the defendant from the vehicle. The defendant was taken to the patrol car and placed in the front seat.
8. Officer Galluppi then questioned the defendant about his license status and defendant answered those questions. The defendant was not advised of his Miranda rights.




9. Officer Galluppi then conducted a search of the vehicle with the assistance of another officer. The search revealed a handgun in the console and a non-descript pill under the back seat.
10. The defendant was then placed under arrest and transported to the Wilmington Police Department for processing. While at the police department, the defendant was strip searched. While removing his clothing, a plastic pouch fell from defendant's pants which contained two separate baggies; one containing a green leafy substance and the other containing a white rock like substance.
11. The Court took judicial notice of a State Bureau of Investigations bulletin regarding the similarities of marijuana and hemp. The court took judicial notice of the bulletin only to the extent that physical properties and characteristics of the two plants were discussed. Legal conclusions and opinions contained in that bulletin were disregarded as the State Bureau of Investigation does not have legal authority to issue binding opinions on the sufficiency of evidence to establish probable cause. Marijuana and hemp share very similar physical characteristics and it is difficult to tell one from the other either by appearance or by smell.

Based on the forgoing findings of fact, the Court concludes as a matter of law:

1. That Officer Galluppi had reasonable suspicion for the stop of the vehicle based on the possible window tint violation.
2. That the odor of marijuana emanating from the vehicle provided sufficient probable cause for a warrantless search of the vehicle under the automobile exception to the Fourth Amendment warrant requirement.
3. The fact that marijuana and hemp share similar characteristics and have a similar odor does not negate the ability of law enforcement to use the odor of a potentially controlled substance as a sufficient basis to establish probable cause for the warrantless search of a vehicle. Marijuana is still an illegal substance in this state.
4. Officer Galluppi's questioning of the defendant after the defendant was placed in the patrol car constituted a custodial interrogation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant's motion to suppress is denied as to the evidence seized. The motion is granted as to the statements made by the defendant after he was placed in Officer Galluppi's patrol vehicle.

This the 28<sup>th</sup> day of October, 2020.



R. Kent Harrell  
Superior Court Judge Presiding



## STATE OF NORTH CAROLINA

File No.

20 CRS 51122 - 51124

NEW HANOVER

County

In The General Court Of Justice

☐ District☒ Superior Court Division

## STATE VERSUS

Name Of Defendant

JAQUALYN ROBINSON

DOB

08/29/1996

Age

23

Highest Level Of Education Completed

12<sup>th</sup> grade

## TRANSCRIPT OF PLEA

G.S. 15A-1022, 15A-1022.1

NOTE: Use this section ONLY when the Court is rejecting the plea arrangement.

☐ The plea arrangement set forth within this transcript is hereby rejected and the clerk shall place this form in the case file. (Applies to plea arrangements disclosed on or after December 1, 2009.)

Date

Name Of Presiding Judge (type or print)

Signature Of Presiding Judge

The undersigned judge, having addressed the defendant personally in open court, finds that the defendant (1) was duly sworn or affirmed, (2) entered a plea of ☒ guilty ☐ guilty pursuant to *Alford* decision ☐ no contest, and (3) offered the following answers to the questions set out below:

## Answers

- |  |                                  |
|--|----------------------------------|
| 1. Are you able to hear and understand me?   | (1) <u>Yes</u>                   |
| 2. Do you understand that you have the right to remain silent and that any statement you make may be used against you?   | (2) <u>Yes</u>                   |
| 3. At what grade level can you read and write?   | (3) <u>12<sup>th</sup> grade</u> |
| 4. (a) Are you now using or consuming alcohol, drugs, narcotics, medicines, pills, or any other substances?  | (4a) <u>No</u>                   |
| (b) When was the last time you used or consumed any such substance?  | (4b) <u>8 months</u>             |
| (c) How long have you been using or consuming this medication or substance?  | (4c) <u>3 years</u>              |
| (d) Do you believe your mind is clear, and do you understand what you are doing in this hearing?   | (4d) <u>Yes</u>                  |
| 5. Have the charges been explained to you by your lawyer, and do you understand the nature of the charges, and do you understand every element of each charge?   | (5) <u>Yes</u>                   |
| 6. (a) Have you and your lawyer discussed the possible defenses, if any, to the charges?   | (6a) <u>Yes</u>                  |
| (b) Are you satisfied with your lawyer's legal services?   | (6b) <u>Yes</u>                  |
| 7. (a) Do you understand that you have the right to plead not guilty and be tried by a jury?   | (7a) <u>Yes</u>                  |
| (b) Do you understand that at such trial you have the right to confront and to cross examine witnesses against you?  | (7b) <u>Yes</u>                  |
| (c) Do you understand that by your plea(s) you give up these and other important constitutional rights to a jury trial?  | (7c) <u>Yes</u>                  |
| 8. Do you understand that, if you are not a citizen of the United States of America, your plea(s) of guilty or no contest may result in your deportation from this country, your exclusion from admission to this country, or the denial of your naturalization under federal law? | (8) <u>Yes</u>                   |
| <input checked="" type="checkbox"/> 9. Do you understand that upon conviction of a felony you may forfeit any State licensing privileges you have in the event that your probation is revoked?   | (9) <u>Yes</u>                   |
| 10. Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal?   | (10) <u>Yes</u>                  |
| 11. Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved?   | (11) <u>Yes</u>                  |

(Over)

12. Do you understand that you are pleading ☒ guilty ☐ guilty pursuant to *Alford* ☐ no contest to the charges shown below? (Describe charges, total maximum punishments, and applicable mandatory minimums for those charges.) (12) Yes

				PLEAS							
✓	Plea*	File Number	Count No.(s)	Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	F/M	CL	Pun. CL.	Maximum Punishment	
	G	20 CR 51123	II	FELONY POSSESSION OF COCAINE	02/05/2020	90-95(d)(2)	F	I		24 MOS.	
	G	20CR51122	II	Carrying Concealed Gun (m)	2/5/2020	14-269	m	Z		60 days	

☐ See attached AOC-CR-300A, for additional charges.

\*G = Guilty GA = *Alford* plea  
NC = No Contest

TOTAL MAXIMUM PUNISHMENT

24 MONTHS + 60 days

MANDATORY MINIMUM FINES & SENTENCES (if any)

(ND)

✓ NOTE TO CLERK: If this column is checked this is an added offense or reduced charge.

± NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).

13. Do you now personally plead ☒ guilty ☐ guilty pursuant to *Alford* ☐ no contest to the charges I just described? (13) Yes

14. ☒ (a) Are you in fact guilty? (14a) Yes

☐ (b) (no contest plea) Do you understand that, upon your plea of no contest, you will be treated as being guilty whether or not you admit that you are in fact guilty? (14b) N/A

☐ (c) (*Alford* guilty plea)

(1) Do you now consider it to be in your best interest to plead guilty to the charges I just described? (14c1) N/A

(2) Do you understand that, upon your "*Alford* guilty plea," you will be treated as being guilty whether or not you admit that you are in fact guilty? (14c2) N/A

☐ 15. (Use if aggravating factors are listed below) Have you admitted the existence of the following aggravating factors: (15) N/A

have you agreed that there is evidence to support these factors beyond a reasonable doubt, have you agreed that the Court may accept your admission to these factors, and do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these aggravating factors ☐ agree that the State has provided you with appropriate notice about these aggravating factors?

☐ 16. (Use if sentencing points are selected below) Have you admitted the existence of the following sentencing points not related to prior convictions: ☐ offense committed while on supervised or unsupervised probation, parole, or post-release supervision ☐ offense committed while serving a sentence of imprisonment ☐ offense committed while on escape from a correctional institution, have you agreed that there is evidence to support these points beyond a reasonable doubt, have you agreed that the Court may accept your admission to these points, and do you ☐ understand that you are waiving any notice requirement that the State may have with regard to these sentencing points ☐ agree that the State has provided you with the appropriate notice about these sentencing points? (16) \_\_\_\_\_

☐ 17. (Use if No. 15 or 16 selected above) Do you understand that at a jury trial you have the right to have a jury determine the existence of any aggravating factors and any additional sentencing points not related to prior convictions that may apply to your case beyond a reasonable doubt, and that by your plea(s) you give up this constitutional right to a jury determination? (17) \_\_\_\_\_

18. Do you understand that you also have the right during a sentencing hearing to prove to the Court the existence of any mitigating factors that may apply to your case? (18) Yes

19. Do you understand that the courts have approved the practice of plea arrangements and you can discuss your plea arrangement with me without fearing my disapproval? (19) Yes

STATE VERSUS		File No. 20 CR 51122 - 51124
Name Of Defendant <b>JAQUALYN ROBINSON</b>		
20. Have you agreed to plead <input checked="" type="checkbox"/> guilty <input type="checkbox"/> guilty pursuant to Alford <input type="checkbox"/> no contest as part of a plea arrangement? (if so, review the terms of the plea arrangement as listed in No. 21 below with the defendant.)		(20) <u>Yes</u>
21. The prosecutor, your lawyer and you have informed the Court that these are all the terms and conditions of your plea:		
PLEA ARRANGEMENT		
The Defendant shall plead guilty to the offense as listed and will receive a suspended sentence of 4-14 months. The Defendant will be placed on supervised probation for a term of 12 months, enroll in and successfully complete the TASC program and follow all recommendations, complete 24 hours of community service, be subject to frequent drug screens and warrant-less searches conducted by the Division of Community Corrections, and forfeit the firearm seized in these cases. The State will dismiss the remaining related charges.		
<input checked="" type="checkbox"/> The State dismisses the charge(s) set out on Page Two, Side Two, of this transcript. <input type="checkbox"/> The defendant stipulates to restitution to the party(ies) in the amounts set out on "Restitution Worksheet, Notice And Order (Initial Sentencing)" (AOC-CR-611).		
22. Is the plea arrangement as set forth within this transcript and as I have just described it to you correct as being your full plea arrangement?		(22) <u>Yes</u>
23. Do you now personally accept this arrangement?		(23) <u>Yes</u>
24. (Other than the plea arrangement between you and the prosecutor) has anyone promised you anything or threatened you in any way to cause you to enter this plea against your wishes?		(24) <u>No</u>
25. Do you enter this plea of your own free will, and do you fully understand what you are doing?		(25) <u>Yes</u>
26. Do you agree that there are facts to support your plea <input type="checkbox"/> and admission to aggravating factors <input type="checkbox"/> and sentencing points not related to prior convictions, and do you consent to the Court hearing a summary of the evidence?		(26) <u>Yes</u>
27. Do you have any questions about what has just been said to you or about anything else connected to your case?		(27) <u>No</u>
ACKNOWLEDGEMENT BY DEFENDANT		
I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. No one has told me to give false answers in order to have the Court accept my plea in this case. The terms and conditions of the plea as stated within this transcript, if any, are accurate.		
SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Date <b>10.29.2020</b>
Date <b>10-29-2020</b>	Signature <i>James Nickels</i>	Signature Of Defendant <i>Jaqualyn Robinson</i>
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Name Of Defendant (type or print) <b>JAQUALYN ROBINSON</b>
CERTIFICATION BY LAWYER FOR DEFENDANT		
I hereby certify that the terms and conditions stated within this transcript, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charges to which the defendant is pleading, and the aggravating and mitigating factors and prior record points for sentencing, if any.		
Date	Name Of Lawyer For Defendant (type or print) <b>NICCOYA D DOBSON</b>	Signature Of Lawyer For Defendant <i>Niccoya D. Dobson</i>
CERTIFICATION BY PROSECUTOR		
As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated within this transcript, if any, are the terms and conditions agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charges in this case.		
Date <b>10/29/20</b>	Name Of Prosecutor (type or print) <b>ALEXANDRIA J. PALOMBO</b>	Signature Of Prosecutor <i>Alexandria J. Palombo</i>
AOC-CR-600, Page Two, Rev. 5/18 © 2018 Administrative Office of the Courts		


(Over)

	PLEA ADJUDICATION	
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Upon consideration of the record proper, evidence or factual presentation offered, answers of the defendant, statements of the lawyer for the defendant, and statements of the prosecutor, the undersigned finds that:

1. There is a factual basis for the entry of the plea (*and for the admission as to aggravating factors and/or sentencing points*);
2. The defendant is satisfied with his/her lawyer's legal services;
3. The defendant is competent to stand trial;
4. ☐ The State has provided the defendant with appropriate notice as to the aggravating factors and/or points; ☐ The defendant has waived notice as to the aggravating factors and/or points; and
5. The plea (*and admission*) is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea (*and admission*) is hereby accepted by the Court and is ordered recorded.

Date 10/29/00	Name Of Presiding Judge (type or print) R. Kent Harrell	Signature Of Presiding Judge 
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*[Signature]*

**SUPERIOR COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT**


File No.	Count No.(s)	Offense(s)
	Superior (WMT 10/29/20)	

**DISTRICT COURT DISMISSALS PURSUANT TO PLEA ARRANGEMENT**

File No.	Count No.(s)	Offense(s)
20 CR 51122	I	WINDOW TINTING VIOLATION
<del>20 CR 51122</del>	<del>II</del>	<del>CARRYING CONCEALED GUN (M)</del> (MAD)
20 CR 51122	III	POSSESSION MDMA
20 CR 51123	I	DWLR NOT IMPAIRED REVOCATION
20 CR 51123	III	POSSESS MARIJUANA UP TO 1/2 OUNCE
20 CR 51124	I	PWISD COCAINE
20 CR 51124	II	M/S/D/P CS WITHIN 1,000 FEET OF PARK
20 CR 51124	III	M/S/D/P CS WITHIN 1,000 FEET SCHOOL

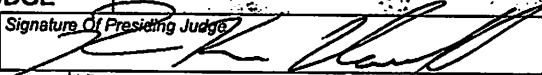
**CERTIFICATION BY PROSECUTOR**

The undersigned prosecutor enters a dismissal to the above charges pursuant to a plea arrangement shown on this Transcript Of Plea.

Date 10/29/00	Name Of Prosecutor (type or print) ALEXANDRIA J. PALOMBO Van Trif	Signature Of Prosecutor 
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Signature Of Prosecutor

<b>STATE OF NORTH CAROLINA</b>				File No. <b>20CRS051123</b> <b>52</b>				
NEW HANOVER County		WILMINGTON		Seat of Court				
NOTE: [Use AOC-CR-310 for DWI offense(s).]								
<b>STATE VERSUS</b>			<b>JUDGMENT SUSPENDING SENTENCE - FELONY</b>					
Name Of Defendant <b>ROBINSON, JAQUALYN</b>			<b>PUNISHMENT: <input checked="" type="checkbox"/> COMMUNITY <input type="checkbox"/> INTERMEDIATE</b>					
Race <b>B</b> Sex <b>M</b> Date Of Birth <b>08/29/1996</b>			<b>(STRUCTURED SENTENCING)</b>					
Attorney For State <b>WILLIAM B VAN TRIGT</b>			Attorney For Defendant <b>NICCOYA D DOBSON</b>					
<input type="checkbox"/> Def. Found Not Indigent <input type="checkbox"/> Def. Waived Attorney			<input checked="" type="checkbox"/> Appointed <input type="checkbox"/> Retained					
The defendant was found guilty/responsible, pursuant to <input checked="" type="checkbox"/> plea <input type="checkbox"/> pursuant to Alford <input type="checkbox"/> of no contest <input type="checkbox"/> trial by judge <input type="checkbox"/> trial by jury, of			G.S. 15A-1341, -1342, -1343, -1343.2, -1346					
File No.(s)	Off.	Offense Description	Offense Date	G.S. No.	F/M CL. *Pun. CL.			
20CRS051123	52	FELONY POSSESSION OF COCAINE	02/05/2020	90-95(D)(2)	F I			
20CRS051122	52	CARRYING CONCEALED GUN(M)	02/05/2020	14-269(A1)	M 2			
<p>*NOTE: Enter punishment class if different from underlying offense class (punishment class represents a status or enhancement).          The Court <input checked="" type="checkbox"/> 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be <b>02</b>.          Any prior record level point under G.S. 15A-1340.14(b)(7) is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission to this issue.  <input type="checkbox"/> 2. makes no prior record level finding because none is required.</p>								
				PRIOR RECORD LEVEL: <input type="checkbox"/> I <input type="checkbox"/> III <input type="checkbox"/> V <input checked="" type="checkbox"/> II <input type="checkbox"/> IV <input type="checkbox"/> VI				
The Court (NOTE: Block 1 or 2 MUST be checked.): <input checked="" type="checkbox"/> 1. makes no written findings because the prison term imposed is within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). <input type="checkbox"/> 2. makes the Determination of aggravating and mitigating factors on the attached AOC-CR-605. <input type="checkbox"/> 3. makes the Findings of Extraordinary Mitigation set forth on the attached AOC-CR-606. <input type="checkbox"/> 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). <input type="checkbox"/> 5. adjudges the defendant to be (check only one) <input type="checkbox"/> a habitual felon to be sentenced four classes higher than the principal felony (no higher than Class C). <input type="checkbox"/> a habitual breaking and entering status offender, to be sentenced as a Class E felon. <input type="checkbox"/> 6. finds enhancement pursuant to: <input type="checkbox"/> G.S. 90-95(e)(3) (drugs). <input type="checkbox"/> G.S. 14-3(c) (hate crime). <input type="checkbox"/> G.S. 50B-4.1 (domestic violence). <input type="checkbox"/> G.S. 14-50.22 (gang misdemeanor). <input type="checkbox"/> Other: _____ This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or the defendant's admission. <input type="checkbox"/> 7. finds the above-designated offense(s) is a reportable conviction under G.S. 14-208.6 and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603D, Page Two, Side Two, and makes the additional findings and orders on the attached AOC-CR-615, Side Two. <input type="checkbox"/> 8. finds the above-captioned offense(s) involve the (check all that apply) <input type="checkbox"/> physical or mental <input type="checkbox"/> sexual abuse of a minor. <input type="checkbox"/> (If No. 7 not found) and therefore imposes the special conditions of probation set forth on the attached AOC-CR-603D, Page Two, Side Two. <input type="checkbox"/> 9. finds that a <input type="checkbox"/> motor vehicle <input type="checkbox"/> commercial motor vehicle was used in the commission of the offense and that it shall be reported to DMV. <input type="checkbox"/> 10. finds this is an offense involving assault, communicating a threat, or an act defined in G.S. 50B-1(a), and the defendant had a personal relationship as defined by G.S. 50B-1(b) with the victim. <input type="checkbox"/> 11. (offenses committed on or after Dec. 1, 2017, only) finds that the offense was committed as part of criminal gang activity as defined in G.S. 14-50.16A(2) and that the defendant was a criminal gang leader or organizer as defined in G.S. 14-50.16A(3). This finding is based on the determination of this issue by the trier of fact beyond a reasonable doubt or on the defendant's admission. <input type="checkbox"/> 12. finds the above-designated offense(s) involved (check one) <input type="checkbox"/> (offenses committed Dec. 1, 2016 - Nov. 30, 2017) criminal street gang activity <input type="checkbox"/> (offenses committed on or after Dec. 1, 2017) criminal gang activity. G.S. 14-50.25. <input type="checkbox"/> 13. did not grant a conditional discharge under G.S. 90-98(a) because (check all that apply) <input type="checkbox"/> the defendant refused to consent. <input type="checkbox"/> the Court finds, with the agreement of the District Attorney, that the offender is inappropriate for a conditional discharge for factors related to the offense. <input type="checkbox"/> 14. finds that the defendant used or displayed a firearm while committing the felony. G.S. 15A-1382.2. <input type="checkbox"/> 15. finds that this was an offense involving child abuse or an offense involving assault or any of the acts as defined in G.S. 50B-1(a) committed against a minor. G.S. 15A-1382.1(a1).								
The Court, having considered evidence, arguments of counsel and statement of defendant, Orders that the above offenses, if more than one, be consolidated for judgment and the defendant be imprisoned								
for a minimum term of <b>4</b> months		for a maximum term of <b>14</b> months in the custody of the N.C. DACJJ.						
<input type="checkbox"/> This sentence shall run at the expiration of sentence imposed in file number _____								
The defendant shall be given credit for <b>16</b> days spent in confinement prior to the date of this Judgment as a result of this charge(s) to be applied toward the <input checked="" type="checkbox"/> sentence imposed above. <input type="checkbox"/> imprisonment required for special probation set forth on AOC-CR-603D, Page Two.								
<b>SUSPENSION OF SENTENCE</b>								
Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on <input checked="" type="checkbox"/> supervised <input type="checkbox"/> unsupervised probation for <b>12</b> months.								
<input type="checkbox"/> 1. The Court finds that a <input type="checkbox"/> longer <input type="checkbox"/> shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d). <input type="checkbox"/> 2. The Court finds that it is NOT appropriate to delegate to the Section of Community Corrections the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment. <input type="checkbox"/> 3. This period of probation shall begin <input type="checkbox"/> when the defendant is released from incarceration <input type="checkbox"/> at the expiration of the sentence in the case below.								
File No.	Offense	County	Court	Date				
<input type="checkbox"/> 4. The defendant shall comply with the conditions set forth in file number _____ <input checked="" type="checkbox"/> 5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)								
<b>MONETARY CONDITIONS</b>								
The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below, plus the probation supervision fee if placed on supervised probation above, pursuant to a schedule <input type="checkbox"/> determined by the probation officer. <input type="checkbox"/> set out by the court as follows: _____								
Costs	Fine	Restitution*	Attorney's Fees	Comm Serv Fee	EHA Fee	SBM Fee	Appt Fee/Misc	Total Amount Due
\$ 532.50	\$	\$ 0.00	\$ 270.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 60.00	\$ 862.50
*See attached "Restitution Worksheet, Notice And Order (Initial Sentencing)" AOC-CR-611, which is incorporated by reference. <input type="checkbox"/> The Court finds just cause to waive costs, as ordered on the attached <input type="checkbox"/> AOC-CR-618. <input type="checkbox"/> Other: _____ <input type="checkbox"/> Upon payment of the "Total Amount Due," the probation officer may transfer the defendant to unsupervised probation. Material opposite unmarked squares is to be disregarded as surplusage.								
AOC-CR-603D, Rev. 12/17, © 2017 Administrative Office of the Courts (Over)								

<b>REGULAR CONDITIONS OF PROBATION - G.S. 15A-1343(b)</b>			
<p><b>NOTE:</b> Any probationary judgment may be extended pursuant to G.S. 15A-1342. The defendant shall: (1) Commit no criminal offense in any jurisdiction. (2) Possess no firearm, explosive device, or other deadly weapon listed in G.S. 14-269. (3) Remain gainfully and suitably employed or faithfully pursue a course of study or vocational training, that will equip the defendant for suitable employment, and abide by all rules of the institution. (4) Satisfy child support and family obligations, as required by the Court. (5) Submit to the taking of digitized photographs, including photographs of the defendant's face, scars, marks, and tattoos, to be included in the defendant's records.</p> <p>If the defendant is on supervised probation, the defendant shall also: (6) Not abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer. (7) Remain within the jurisdiction of the Court unless granted written permission to leave by the Court or the probation officer. (8) Report as directed by the Court or the probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment. (9) Notify the probation officer if the defendant fails to obtain or retain satisfactory employment. (10) Submit at reasonable times to warrantless searches by a probation officer of the defendant's person and of the defendant's vehicle and premises while the defendant is present, for purposes directly related to the probation supervision, but the defendant may not be required to submit to any other search that would otherwise be unlawful. (11) Submit to warrantless searches by a law enforcement officer of the defendant's person and of the defendant's vehicle, upon a reasonable suspicion that the defendant is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court. (12) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the defendant by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used. (13) Supply a breath, urine, or blood specimen for analysis of the possible presence of prohibited drugs or alcohol when instructed by the defendant's probation officer for purposes directly related to the probation supervision. If the results of the analysis are positive, the probationer may be required to reimburse the Division of Adult Correction and Juvenile Justice for the actual costs of drug or alcohol screening and testing. (14) Waive all rights relating to extradition proceedings if taken into custody outside of this State for failing to comply with the conditions imposed by the court.</p>			
<input type="checkbox"/> 15. The Court finds that the defendant is responsible for acts of domestic violence and therefore makes the additional findings and orders on the attached AOC-CR-603D, Page Two, Side Two.			
<b>SPECIAL CONDITIONS OF PROBATION - G.S. 15A-1343(b1)</b>			
<p>The defendant shall also comply with the following special conditions which the Court finds are reasonably related to the defendant's rehabilitation:</p>			
<input type="checkbox"/> 16. Surrender the defendant's drivers license to the Clerk of Superior Court for transmittal/notification to the Division of Motor Vehicles and not operate a motor vehicle for a period of _____ or until relicensed by the Division of Motor Vehicles, whichever is later.			
<input type="checkbox"/> 17. Successfully pass the General Education Development Test (G.E.D.) during the first _____ months of the period of probation.			
<input type="checkbox"/> 18. Complete _____ hours of community service during the first _____ days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-708 is <input type="checkbox"/> not due because it is assessed in a case adjudicated during the same term of court. <input type="checkbox"/> to be paid <input type="checkbox"/> pursuant to the schedule set out under Monetary Conditions on the reverse. <input type="checkbox"/> within _____ days of this Judgment and before beginning service.			
<input checked="" type="checkbox"/> 19. Report for initial evaluation by TASC participate in all further evaluation, counseling, treatment, or education programs recommended as a result of that evaluation, and comply with all other therapeutic requirements of those programs until discharged.			
<input type="checkbox"/> 20. Not assault, threaten, harass, be found in or on the premises or workplace of, or have any contact with _____ "Contact" includes any defendant-initiated contact, direct or indirect, by any means, including, but not limited to, telephone, personal contact, e-mail, pager, gift-giving, telefacsimile machine or through any other person, except _____.			
<input type="checkbox"/> 21. Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of _____ days, _____ months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.			
<input checked="" type="checkbox"/> 22. Other: <b>COURT ORDERS THE FIREARM THAT WAS SEIZED TO BE SURRENDERED TO WPD FOR USE, SALE, OR TRADE--SEIZED CONTRABAND TO BE DESTROYED--COURT FURTHER WAIVES COMMUNITY SERVICE FEE-- May transfer to UNION County for supervision.</b>			
<input type="checkbox"/> 23. Comply with the Special Conditions Of Probation which are set forth on AOC-CR-603D, Page Two.			
<b>ORDER OF COMMITMENT/APEAL ENTRIES</b>			
<input type="checkbox"/> 1. It is ORDERED that the Clerk deliver <u>two</u> certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.			
<input checked="" type="checkbox"/> 2. The defendant gives notice of appeal from the judgment of the trial court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.			
<b>SIGNATURE OF JUDGE</b>			
Date 10/29/2020	Name Of Presiding Judge (type or print) THE HONORABLE RICHARD KENT HARRELL	Signature Of Presiding Judge 	
<b>CERTIFICATION</b>			
I certify that this Judgment and the attachment(s) marked below is a true and complete copy of the original which is on file in this case.			
<input type="checkbox"/> 1. Appellate Entries (AOC-CR-350) <input type="checkbox"/> 2. Judgment Suspending Sentence (AOC-CR-603D, Page Two) (additional conditions of probation) <input type="checkbox"/> 3. Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605) <input type="checkbox"/> 4. Extraordinary Mitigation Findings (AOC-CR-606) <input type="checkbox"/> 5. Restitution Worksheet, Notice And Order (Initial Sentencing) (AOC-CR-611)		<input type="checkbox"/> 6. Judicial Findings As To Required DNA Sample (AOC-CR-319) <input type="checkbox"/> 7. Judicial Findings And Order For Sex Offenders - Suspended Sentence (AOC-CR-615, Side Two) <input type="checkbox"/> 8. Convicted Sex Offender Permanent No Contact Order (AOC-CR-620) <input type="checkbox"/> 9. Additional File No.(s) And Offense(s) (AOC-CR-626) <input type="checkbox"/> 10. Other: _____	
Date	Date Certified Copies Delivered To Sheriff	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Asst. CSC <input type="checkbox"/> Clerk Of Superior Court
<b>SEAL</b>			

Material opposite unmarked squares is to be disregarded as surplusage.

<b>STATE VERSUS</b>	File No.	20CRS051123	52																																																												
Name Of Defendant ROBINSON, JAQUALYN																																																															
<b>NOTE:</b> Use this page with AOC-CR-603D, "Judgment Suspending Sentence - Felony"; AOC-CR-604D, "Judgment Suspending Sentence - Misdemeanor"; AOC-CR-619D, "Conditional Discharge Under G.S. 90-96(a)"; AOC-CR-621D, "Conditional Discharge Under G.S. 14-50.29"; AOC-CR-627D, "Conditional Discharge Under G.S. 90-96(a1)"; AOC-CR-628D, "Conditional Discharge Under G.S. 14-204(b)"; AOC-CR-632D, "Conditional Discharge Under G.S. 15A-1341(a4)"; or AOC-CR-633D, "Conditional Discharge Under G.S. 15A-1341(a5)"; for offenses committed on or after Dec. 1, 2016.																																																															
<b>COMMUNITY AND INTERMEDIATE PROBATION CONDITIONS - G.S. 15A-1343(a1)</b>																																																															
In addition to complying with the regular and any special conditions of probation set forth in the "Judgment Suspending Sentence" entered in the above case(s), the defendant shall also comply with the following conditions of probation, which may be imposed for any community or intermediate punishment.																																																															
<input type="checkbox"/> 1. Submit to house arrest with electronic monitoring, remain at the defendant's residence for a period of _____ days, _____ months, abide by all rules, regulations, and directions of the probation officer regarding such monitoring, and pay the fees prescribed in G.S. 15A-1343(c) as provided under Monetary Conditions. The defendant may leave the residence for the following purpose(s) and as otherwise permitted by the probation officer: <input type="checkbox"/> employment <input type="checkbox"/> counseling <input type="checkbox"/> a course of study <input type="checkbox"/> vocational training. Other:																																																															
<input checked="" type="checkbox"/> 2. Complete <u>24</u> hours of community service during the first <u>150</u> days of the period of probation, as directed by the judicial services coordinator. The fee prescribed by G.S. 143B-708 is <input checked="" type="checkbox"/> not due because it is assessed in a case adjudicated during the same term of court. <input type="checkbox"/> to be paid <input type="checkbox"/> pursuant to the schedule set out under Monetary Conditions in the "Judgment Suspending Sentence." <input type="checkbox"/> within _____ days of this judgment and before beginning service. Other:																																																															
<input type="checkbox"/> 3. Submit to the following period(s) of confinement in the custody of the <input type="checkbox"/> Sheriff of this County. <input type="checkbox"/> _____ (other local confinement facility). <input type="checkbox"/> and pay jail fees. The defendant shall report in a sober condition to serve the term(s) indicated below. <b>NOTE:</b> Periods of confinement imposed here must be for two-day or three-day consecutive periods, only, for no more than six days in a single month, and in no more than three separate months during the period of probation. To impose special probation under G.S. 15A-1351, see INTERMEDIATE PUNISHMENTS, below.																																																															
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> </table>	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> </table>	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> </table>	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> <tr> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>for</td> <td><input type="checkbox"/> 2 days <input type="checkbox"/> 3 days</td> </tr> </table>	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	for	<input type="checkbox"/> 2 days <input type="checkbox"/> 3 days
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<input type="checkbox"/> 4. Obtain a substance abuse assessment, monitoring, or treatment as follows:																																																															
<input type="checkbox"/> 5. Abstain from alcohol consumption and submit to continuous alcohol monitoring for a period of _____ days, _____ months, the Court having found that a substance abuse assessment has identified defendant's alcohol dependency or chronic abuse.																																																															
<input type="checkbox"/> 6. Participate in an educational or vocational skills development program as follows:																																																															
<input type="checkbox"/> 7. Submit to satellite-based monitoring, if required on the attached AOC-CR-615, Side Two.																																																															
<b>INTERMEDIATE PUNISHMENTS</b>																																																															
In addition to complying with the regular and any special, community, or intermediate conditions of probation set forth in the "Judgment Suspending Sentence" or herein for the above case(s), the defendant shall also comply with the following intermediate punishment(s) under G.S. 15A-1340.11(6).																																																															
<input type="checkbox"/> 1. <b>Special Probation - G.S. 15A-1351</b> For the defendant's active sentence as a condition of special probation, the defendant shall comply with these additional regular conditions of probation: (1) Obey the rules and regulations of the Division of Adult Correction and Juvenile Justice governing the conduct of inmates while imprisoned. (2) Report to a probation officer in the State of North Carolina within seventy-two (72) hours of the defendant's discharge from the active term of imprisonment.																																																															
<input type="checkbox"/> A. Serve an active term of _____ days _____ months _____ hours in the custody of the <input type="checkbox"/> N.C. DACJJ. <input type="checkbox"/> Sheriff of this County. <input type="checkbox"/> Other: _____ (NOTE: Noncontinuous periods of special probation may not be served in DACJJ. Also, special probation imposed in misdemeanor sentences on or after Oct. 1, 2014, may not be served in DACJJ.)																																																															
<input type="checkbox"/> B. The defendant shall report in a sober condition to begin serving his/her term on: <table style="width: 100%;"> <tr> <td>Day</td> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> <td>and shall remain in custody until:</td> <td>Day</td> <td>Date</td> <td>Hour</td> <td><input type="checkbox"/> AM <input type="checkbox"/> PM</td> </tr> </table>				Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM	and shall remain in custody until:	Day	Date	Hour	<input type="checkbox"/> AM <input type="checkbox"/> PM																																																			
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<input type="checkbox"/> C. The defendant shall again report in a sober condition to continue serving this term on the same day of the week for the next _____ consecutive weeks, and shall remain in custody during the same hours each week until completion of the active term ordered.																																																															
<input type="checkbox"/> D. This term shall be served at the direction of the probation officer within _____ days _____ months of this judgment.																																																															
<input type="checkbox"/> E. Pay jail fees. <input type="checkbox"/> F. Work release is recommended. <input type="checkbox"/> G. Substance abuse treatment is recommended.																																																															
<input type="checkbox"/> H. Other:																																																															
<input type="checkbox"/> 2. <b>Drug Treatment Court - G.S. 15A-1340.11(3a); 15A-1340.11(6)</b> Comply with the rules adopted for the program as provided for in Article 62 of Chapter 7A of the General Statutes and report on a regular basis for a specified time to participate in court supervision, drug screening or testing, and drug or alcohol treatment programs. Other:																																																															
<b>INTERMEDIATE CONDITIONS OF PROBATIONS - G.S. 15A-1343(b4)</b>																																																															
If subject to intermediate punishment, the defendant shall, in addition to the terms and conditions imposed above, comply with the following intermediate conditions of probation. (1) If required by the defendant's probation officer, perform community service under the supervision of the Section of Community Corrections, and pay the fee required by G.S. 143B-708, but no fee shall be due if the Court imposed community service as a special condition of probation and assessed the fee in this judgment or any judgment for an offense adjudicated in the same term of court. (2) Not use, possess, or control alcohol. (3) Remain within the defendant's county of residence unless granted written permission to leave by the court or the defendant's probation officer. (4) Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments by abiding by the rules, regulations, and direction of each program.																																																															

Material opposite unmarked squares is to be disregarded as surplusage.  
(Over)

**MANDATORY SPECIAL CONDITIONS FOR SEX OFFENDERS AND PERSONS CONVICTED OF  
OFFENSES INVOLVING PHYSICAL, MENTAL, OR SEXUAL ABUSE OF A MINOR - G.S. 15A-1343(b2)**

**NOTE:** The following are not defined as intermediate punishments under G.S. 15A-1340.11(6).

**NOTE:** Select only one of the three sets of conditions below.

☐ **1. Special Conditions For Reportable Convictions - G.S. 15A-1343(b2)**

**NOTE:** Impose only for a reportable conviction under G.S. 14-208.6.

The defendant has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4) and must

- a. Register as a sex offender and enroll in satellite-based monitoring if required on the attached AOC-CR-615, Side Two.
- b. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- c. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- ☐ d. (if the Court finds physical, mental, or sexual abuse of a minor) Not reside in a household with
  - ☐ (1) (for sexual abuse) any minor child.
  - ☐ (2) (for physical or mental abuse) any minor child ☐ other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. (Name minor child(ren) with whom the probationer may reside in the same household): \_\_\_\_\_
- e. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: ☐ child pornography
- ☐ f. Other: \_\_\_\_\_

☐ **2. Special Conditions For Offenses Involving The Sexual Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** Impose if offense involved sexual abuse of a minor but is not a reportable conviction.

The defendant has been convicted of an offense involving the sexual abuse of a minor and must

- a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- c. Not reside in a household with any minor child. (G.S. 15A-1343(b2)(4))
- d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: ☐ child pornography
- ☐ e. Other: \_\_\_\_\_

☐ **3. Special Conditions For Offenses Involving The Physical Or Mental Abuse Of A Minor - G.S. 15A-1343(b2)**

**NOTE:** Impose if offense involved physical or mental abuse of a minor but is not a reportable conviction and did not involve sexual abuse.

The defendant has been convicted of an offense involving the physical or mental abuse of a minor and must

- a. Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.
- b. Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.
- c. Not reside in a household with
  - ☐ (1) any minor child.
  - ☐ (2) any minor child other than the child(ren) named below, for whom the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the best interest of the child(ren) named below to reside in the same household with the probationer. (Name minor child(ren) with whom the probationer may reside in the same household): \_\_\_\_\_
- d. Submit at reasonable times to warrantless searches by a probation officer of the defendant's person, of the defendant's vehicle and premises, and of the defendant's computer or other electronic mechanism which may contain electronic data, while the defendant is present, for the following purposes which are reasonably related to the defendant's probation supervision: ☐ child pornography
- ☐ e. Other: \_\_\_\_\_

**ADDITIONAL CONDITIONS FOR DOMESTIC VIOLENCE**

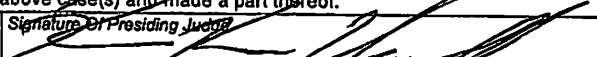
☐ **1. Pursuant to its finding that the defendant is responsible for acts of domestic violence, the Court further finds that:**

- ☐ a. there is an abuser treatment program, approved by the Domestic Violence Commission, reasonably available to the defendant, who shall:
  - ☐ (1) (for supervised probation) attend and complete (check one) ☐ (program name) \_\_\_\_\_  
a program to be identified by the probation officer, and abide by the program's rules. The probation officer shall send a copy of this judgment to the program, which shall notify the officer if the defendant fails to participate or is discharged for violating any of its rules.
  - ☐ (2) (for unsupervised probation) attend and complete (check one) ☐ (program name) \_\_\_\_\_  
a program chosen by the defendant, who shall notify the program and the district attorney of that choice within ten (10) days of the entry of this judgment, and abide by the program's rules. The district attorney shall send a copy of this judgment to the program, which shall notify the district attorney if the defendant fails to participate or is discharged for failure to comply with the program or its rules.
- ☐ b. there is no approved abuser treatment program reasonably available. ☐ c. It would not be in the best interests of justice to order the defendant to complete an abuser treatment program because \_\_\_\_\_

☐ **2. As additional Special Conditions of Probation, the defendant shall:**

- ☐ a. not come within \_\_\_\_\_ feet of \_\_\_\_\_ at any time.
- ☐ b. comply fully with any G.S. Chapter 50B Domestic Violence Protective Order in effect.

The above conditions are incorporated in the "Judgment Suspending Sentence" in the above case(s) and made a part thereof.

Date 10/29/2020	Name Of Presiding Judge (type or print) THE HONORABLE RICHARD KENT HARRELL	Signature Of Presiding Judge 
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Material opposite unmarked squares is to be disregarded as surplusage.



1                   2020, and resumed at 10:47 a.m., Friday,  
2                   October 30, 2020.)

3                   MS. DOBSON: Judge, if I -- if we may address a  
4                   matter from yesterday's calendar?

5                   THE COURT: Yes, ma'am.

6                   MS. DOBSON: In the matter of Jaqualyn Robinson --  
7                   and, for the record, it's going to be file  
8                   Nos. 20-CRS-51122, 51123, 51124.

9                   Judge, at this time, I would like to enter a  
10                  notice of appeal and would ask the Court to consider  
11                  appointing Mr. Robinson an appellate defender.

12                  THE COURT: All right. You're going to appeal the  
13                  guilty plea?

14                  MS. DOBSON: Judge, it's my understanding that I  
15                  have to appeal the entire judgment.

16                  THE COURT: Okay.

17                  (Pause.)

18                  THE COURT: All right. Have you got your notice  
19                  of appeal?

20                  MS. DOBSON: Judge, I actually do have a motion,  
21                  and I can go grab that and bring that over, yes, sir.

22                  THE COURT: Okay. All right. If you want to file  
23                  that notice of appeal, I'll sign a notice of appellate entry  
24                  to have the court reporter prepare a transcript, and I'll  
25                  appoint the Appellate Defender's Office to represent the

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE  
COUNTY OF NEW HANOVER SUPERIOR COURT DIVISION  
2020 NOV -2 A 8:02 FILE NUMBERS 20 CRS 51122 - 51124

STATE OF NORTH CAROLINA  
NEW HANOVER CO., C.S.C.

v.

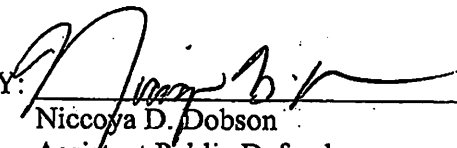
JAQUALYN ROBINSON,  
Defendant.

BY : N NOTICE OF APPEAL FROM  
JUDGMENT AND MOTION FOR  
APPOINTMENT OF APPELLATE  
PUBLIC DEFENDER

NOW COMES the Defendant by and through counsel, Niccoya D. Dobson, Assistant Public Defender, and hereby gives notice of appeal to the North Carolina Court of Appeals from a Superior Court judgment on October 29, 2020 where the Defendant was convicted of Possession of Cocaine and Carrying Concealed Gun and was given a suspended sentence of four to fourteen months and placed on supervised probation for a term of twelve months with the following terms and conditions of supervised probation: enroll in and successfully complete the TASC program and complete twenty-four hours of community service. Counsel moves the Court for an Order appointing Appellate Defender to assume responsibility on this case. Defendant is indigent, qualified for appointed counsel in Superior Court, and his financial circumstances have not changed.

This the 30 day of October 2020.

BY:

  
Niccoya D. Dobson  
Assistant Public Defender  
320 Chestnut Street, Suite 201  
Post Office Box 2560  
Wilmington, NC 28402  
Phone: (910) 343-5428

Attorney for the Defendant

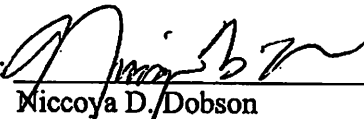
**CERTIFICATE OF SERVICE**

The undersigned attorney does hereby certify that she caused to be served a copy of the foregoing document to the last known address of the Defendant and to District Attorney's Office via hand delivery addressed to the following:

William B. Van Trigt  
Assistant District Attorney  
316 Princess Street, Suite 543  
Wilmington, NC 28401

This the 30 day of October 2020.

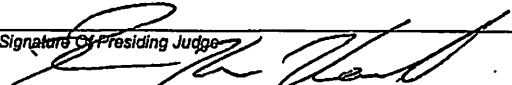

BY:



Niccoya D. Dobson  
Assistant Public Defender  
320 Chestnut Street, Suite 201  
Post Office Box 2560  
Wilmington, NC 28402  
Phone: (910) 343-5428

Attorney for the Defendant

<b>STATE OF NORTH CAROLINA</b>		File No. <b>20crs-51122</b>	
NEW HANOVER County		Additional File No.(s) <b>20crs-51123 20crs-51124</b>	
		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division	
<b>STATE VERSUS</b>		<b>APPELLATE ENTRIES</b>	
Name Of Defendant <b>JAQUALYN ROBINSON</b>		Rules 7, 9, 11, and 27 of the N.C. Rules of Appellate Procedure	
Date(s) Of Trial <b>JUDGMENT ENTERED 10/29/2020</b>		Name And Address Of Defendant's Trial Counsel <b>NICCOYA DOBSON, PUBLIC DEFENDER 320 CHESTNUT STREET, STE 201 WILMINGTON, NC 28402</b>	
Codefendant(s) If Tried Jointly		Telephone No.      Email Address <b>910-343-5400</b>	
Name And Address Of Trial Prosecutor <b>WILLIAM VAN TRIGT, ADA 316 PRINCESS STREET, STE 543 WILMINGTON, NC 28401</b>		Name And Address Of Defendant's Trial Counsel	
Telephone No.      Email Address <b>910-772-6610</b>		Telephone No.      Email Address	
Name And Address Of Trial Transcriptionist <b>RANAE MCDERMOTT PO BOX 1114 WRIGHTSVILLE BEACH, NC 28480</b>		Name And Address Of Defendant's Appellate Counsel <input checked="" type="checkbox"/> <b>The Appellate Defender (919) 354-7210 123 W. Main Street, Suite 500, Durham, NC 27701</b> <b>NOTE: All indigent appeals are assigned to the Appellate Defender.</b> <input type="checkbox"/> Retained Appellate Counsel	
Telephone No.      Email Address <b>919-602-2110      D.RANAE.MCDERMOTT@NCCOURTS.ORG</b>		Telephone No.      Email Address	
Name And Address Of Trial Transcriptionist		Name And Address Of Defendant's Appellate Counsel	
Telephone No.      Email Address		Telephone No.      Email Address	
Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s)		Name And Address Of Transcriptionist Of Other Proceedings On The Following Date(s)	
Date(s)	Telephone No.	Date(s)	Telephone No.
Email Address		Email Address	
(Attach additional sheet(s) if necessary)			
<b>JUDGE'S INITIAL APPEAL ENTRIES</b>			
1. <input checked="" type="checkbox"/> a. The defendant has given Notice of Appeal to the N.C. Court of Appeals, or <input type="checkbox"/> b. This is a capital case appealable as of right to the N.C. Supreme Court.			
2. Release of the defendant pursuant to G.S. 15A-536 is <input type="checkbox"/> denied. <input type="checkbox"/> allowed upon execution of a secured bond in the amount of \$ _____ and compliance with the following additional conditions: <u>Defendant will remain under the bond originally set</u>			
3. Unless indigent, the defendant shall arrange for the transcription of the proceedings as provided in the Rules of Appellate Procedure.			
<input checked="" type="checkbox"/> 4. (NOTE: Check in all cases where defendant is indigent.) The defendant is indigent and has requested a transcript and the appointment of counsel. It is ORDERED that the defendant is allowed to appeal as an indigent and:			
a. The Office of Indigent Defense Services shall pay the costs of producing a transcript, and of reproducing the record and the defendant's brief.			
b. The Appellate Defender is appointed to perfect the defendant's appeal or assign other appellate counsel pursuant to rules issued by the Office of Indigent Defense Services.			
c. Upon request, the Clerk shall furnish to the Appellate Defender, or to alternate counsel designated by the Appellate Defender, a copy of the complete trial division file in the case and, upon request, any documentary exhibits.			
d. Unless the parties stipulate that parts of the proceedings shall not be transcribed, the Clerk shall order from the transcriptionist(s) a transcript of all parts of the proceedings except:			
Original-File   Copy-Transcriptionist(s)   Copy-Defendant's Trial Counsel   Copy-Defendant's Appellate Counsel (or Defendant if unrepresented)   Copy-District Attorney Material opposite unmarked squares is to be disregarded as surplusage. (Over)			

JUDGE'S INITIAL APPEAL ENTRIES (continued)		
<p>5. If a transcript has been ordered, the defendant in a non-capitally tried case shall serve a proposed record on appeal on the State within 35 days after the reporter's or transcriptionist's certification of delivery of the transcript. If a transcript has been ordered, the defendant in a capitally tried case shall serve a proposed record on appeal on the State within 70 days after the reporter's or transcriptionist's certification of delivery of the transcript. If no transcript has been ordered, the defendant shall serve a proposed record on appeal on the State within 35 days after filing notice of appeal.</p> <p>6. The State shall serve its amendments, objections or proposed alternative record on appeal on the defendant within 30 days if this is a non-capital case or 35 days if this is a capital case, after service upon it of the defendant's proposed record on appeal.</p> <p>7. The indigent defendant does not read or speak the English language, but reads and/or speaks his or her native language of _____. The Court therefore authorizes the services of a language translator or interpreter during the pendency of the appeal for the purposes of (1) written translation of attorney-client correspondence, assignments of error in the settled record on appeal, appellate briefs filed by the defendant and the State, and appellate opinion(s), and/or (2) verbal interpretation of attorney-client communication at each critical stage of the appellate proceedings.</p> <p>The Court further Orders that a language translator or interpreter with the necessary knowledge, skill, experience, training and education to perform the above services shall be selected and paid by the Administrative Office of the Courts.</p> <p>8. The Clerk shall deliver a copy of these Appellate Entries to the Appellate Defender, counsel for all parties, or the defendant, if not represented by counsel.</p>		
Date 10/30/2020	Name Of Presiding Judge (type or print) R. KENT HARRELL	Signature Of Presiding Judge 
CLERK'S TRANSCRIPT ORDER AND CERTIFICATE		
<p>(NOTE: To be completed <u>ONLY</u> when defendant is indigent.)</p> <p><b>To The Transcriptionist(s) Named On The Reverse:</b> Prepare and deliver to the parties a transcript of all portions of the proceedings in the above-captioned case <u>except</u>: (Specify any portions of the proceedings which need not be transcribed pursuant to a stipulation filed by the parties under Rule 7(a)(2), or pursuant to No. 4.d. on reverse side.)</p> <p>I certify that I delivered a copy of this Transcript Order to the transcriptionist(s) on the date shown below:</p> <p><input checked="" type="checkbox"/> personally.  <input type="checkbox"/> by mailing it to the transcriptionist(s) at the address(es) shown on the reverse.</p>		
Date Clerk's Transcript Order Entered And Filed 10/30/2020	Date Order Delivered To Transcriptionist(s), If Different	
Name Of Clerk (type or print) JANE MICKELSON	Signature Of Clerk 	<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
EXTENSION OF TIME TO PREPARE TRANSCRIPT OR SERVE RECORD		
<p><input type="checkbox"/> 1. Extension of time to file transcript: Pursuant to Rule 7, N.C. Rules of Appellate Procedure, upon motion of the appellant and for good cause shown, the Court finds that this is a criminal case that did not result in a sentence of death and it is ORDERED that the time for preparation of the transcript is extended for 30 days.</p> <p><input type="checkbox"/> 2. Extension of time to serve proposed record on appeal: Pursuant to Rules 11 and 27, N.C. Rules of Appellate Procedure, upon motion of the appellant and for good cause shown, it is ORDERED that the time for service of the proposed record on appeal is extended for 30 days.</p> <p><b>NOTE:</b> The trial court may grant only one extension of time to serve the proposed record on appeal. Any additional motion for an extension of time to serve the proposed record on appeal must be made to the appellate court where the appeal is to be heard. In a case in which a sentence of death was <u>not</u> entered, the trial court may grant one motion for an extension of time to prepare the transcript. Any subsequent motions for an extension of time to prepare the transcript must be made to the appellate court where the appeal is to be heard. In capitally tried cases that resulted in the imposition of the death penalty, motions for an extension of time to prepare the transcript must be made directly to the Supreme Court. Rules 7 and 27, N.C. Rules of Appellate Procedure.</p>		
Date	Name Of Judge (type or print)	Signature Of Judge
CERTIFICATION		
I certify this Appellate Entries form is a true and complete copy of the original on file in this case.		
Date	Signature And Seal	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

Material opposite unmarked squares is to be disregarded as surplusage.

**APPOINTMENT OF APPELLATE COUNSEL  
BY THE APPELLATE DEFENDER**

2020 NOV 12 P 2:36

STATE OF NORTH CAROLINA

v.

JAQUALYN ROBINSON  
20 CRS 51122-51124  
New Hanover County

NEW HANOVER CO., C.S.C.

BY

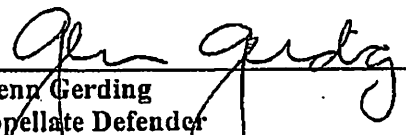
TN

Defendant having been convicted of a criminal offense in this action and having given notice of appeal to the North Carolina Court of Appeals, and the Trial Court having appointed the Appellate Defender as appellate counsel for the defendant, the Appellate Defender appoints the attorney named below as appellate counsel to perfect defendant's appeal, pursuant to IDS Rules, Part 3. A copy of the Court's Appellate Entries is attached to the copy of this Appointment Notice that has been transmitted to the appointed appellate counsel. The original of this Appointment Notice has been mailed to the Clerk of Superior Court for filing.


**Appointed Appellate Counsel:**

**Sarah B. Holladay**  
Post Office Box 52427  
Durham, North Carolina 27717  
Telephone (919) 695-3127  
Email sarah@holladaylawoffice.com

This the 5th day of November, 2020.

  
Glenn Gerding  
Appellate Defender

In addition to the appointed appellate counsel named above, the Office of the Appellate Defender has provided a copy of this Appointment Notice to all parties as listed on the Appellate Entries, including the defendant and the court reporters.

 **ATTENTION CLERK OF COURT: File this Appointment Notice in your office. Please mail a photocopy of the complete court file(s), including any documentary exhibits, to Ms. Holladay.**



# North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

Court of Appeals Building  
One West Morgan Street  
Raleigh, NC 27601  
(919) 831-3600

From New Hanover  
( 20CRS51122 20CRS51123 20CRS51124 )

Fax: (919) 831-3615  
Web: <https://www.nccourts.gov>

Mailing Address:  
P. O. Box 2779  
Raleigh, NC 27602

No. 21-144

STATE OF NORTH CAROLINA

v.

JAQUALYN ROBINSON

## ORDER

The following order was entered:

The motion filed in the cause by the State on 6 July 2021 and designated 'Motion to Dismiss Appeal' is allowed. Defendant's appeal is dismissed. Defendant's 24 March 2021 'Petition for Writ of Certiorari' is denied. Appellant to pay costs.

And it is considered and adjudged further, that the Appellant, Defendant Jaqualyn Robinson, do pay the costs of the appeal in this Court incurred, to wit, the sum Sixty Three and 25/100 Dollars (\$63.25), and execution issue therefor.

Panel consisting of Judge MURPHY, Judge GRIFFIN, and Judge JACKSON.

JACKSON, Judge, dissenting.

Jaqualyn Robinson ('Defendant') appeals from an order denying his motion to suppress evidence entered by the Honorable R. Kent Harrell on 29 October 2020 in New Hanover County Superior Court. The majority denies Defendant's Petition for Writ of Certiorari and grants the State's Motion to Dismiss Appeal because they do not find merit in Defendant's argument on appeal. I believe Defendant's argument has merit and would grant his Petition for Writ of Certiorari and reach the meritorious issue. Therefore, I respectfully dissent.

### I. Factual and Procedural Background

On 5 February 2020, Wilmington Police Department Officer B. Galluppi ('Officer Galluppi') conducted a traffic stop on a Chrysler 300 being driven by Defendant because the car's window tint was too dark. While speaking with Defendant through the driver's side window, Officer Galluppi 'detect[ed] a very faint odor of marijuana . . . coming from inside the vehicle.' After running Defendant's registration, Officer Galluppi had Defendant step out of the Chrysler and sit in Officer Galluppi's patrol car 'due to [his] experience with people who have partaken with [sic] marijuana[.]' Officer Galluppi did not want Defendant to tamper with any evidence inside the car. Officer Galluppi next ran Defendant's license and learned it was suspended.

While discussing the circumstances of his license suspension with Defendant, Officer Galluppi 'could still smell the odor of marijuana coming from his person at that point.' Officer Galluppi asked Defendant if there was a reason his vehicle smelled like marijuana. Defendant told Officer Galluppi 'that he didn't smoke or do anything or have anybody inside his vehicle for that.' (The trial court granted Defendant's motion to suppress these statements as the trial court found that placing Defendant in the patrol car constituted a custodial interrogation and Defendant should have been Mirandized.) After this exchange, Officer Galluppi

then searched the vehicle while another officer remained with Defendant and Defendant was subsequently arrested.

On 29 October 2020, the trial court held a hearing on Defendant's motion to suppress evidence and statements. At the hearing, the trial court took judicial notice of a North Carolina State Bureau of Investigation memo addressing 'Industrial Hemp/CBD Issues' (hereinafter the 'SBI Memo'). The trial court ultimately denied the motion to suppress evidence. Defendant's counsel objected to the denial but did not give explicit notice of appeal from the denial of the suppression motion. The trial court then recessed for approximately two and a half hours after which Defendant entered a plea of guilty to felony possession of cocaine and carrying a concealed weapon and was sentenced to four to 14 months imprisonment, suspended for 12 months of supervised probation. As part of the plea agreement, the State dismissed five other charges and two traffic offenses.

The next day, 30 October 2020, Defendant's counsel gave oral notice of appeal, stating, 'it's my understanding that I have to appeal the entire judgment[]' when the trial court asked whether counsel was appealing the guilty plea. The State did not object to Defendant's notice of appeal and neither did the trial court. The trial court then promptly signed the appellate entries and appointed counsel for Defendant's appeal. The first objection to Defendant's appeal by the State came more than five months later in the State's response to Defendant's Petition for Writ of Certiorari.

#### I. Petition for Writ of Certiorari

'An order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty.' N.C. Gen. Stat. sec. 15A-979(b) (2019). Although not included in the statute by the legislature, our Supreme Court later added a notice requirement to N.C. Gen. Stat. sec. 15A-979(b). See *State v. Reynolds*, 298 N.C. 380, 397, 259 S.E.2d 843, 853 (1979). Under this requirement, a defendant will waive his right to appeal the denial of a motion to suppress unless he 'give[s] notice of his intention to the prosecutor and to the court before plea negotiations are finalized[.]' *State v. Tew*, 326 N.C. 732, 735, 392 S.E.2d 603, 605 (1990).

Here, while Defendant objected to the denial of his motion to suppress, there is nothing in the record that reflects he gave formal notice of his intention to appeal the denial until the day after the trial court accepted his guilty plea and sentenced him. Because Defendant did not notice his intent to appeal before plea negotiations were finalized, the State argues that Defendant waived his statutory right to appeal under N.C. Gen. Stat. sec. 15A-979(b).

Despite potentially failing to preserve his appeal as of right, Defendant has petitioned this Court to issue its Writ of Certiorari pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure, N.C. Gen. Stat. sec. 7A-32(c), and N.C. Gen. Stat. sec. 15A-1444(e), and to review the order denying his motion to suppress evidence. 'Certiorari is a discretionary writ, to be issued only for good and sufficient cause shown.' *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959). To warrant consideration, Defendant's 'petition for the writ must show merit or that error was probably committed below.' *Id.* Defendant's petition outlines a meritorious position, as discussed *infra*, and demonstrates that the trial court likely erred in denying his motion to suppress evidence. Further, it is important to note that Defendant argued his motion to suppress evidence and after the trial court denied the motion, Defendant objected to the ruling. The next day, Defendant noticed his intention to appeal the denial with no objection by the State or the trial court. Had the State objected at that time to Defendant's notice of appeal, Defendant could have moved to withdraw his plea in order to give proper notice.

For these reasons, I would grant Defendant's Petition for Writ of Certiorari.

#### II. Motion to Suppress

Defendant contends his motion to suppress should have been granted by the trial court because Officer Galluppi did not have probable cause to search his vehicle. Specifically, Defendant argues that the sole basis for the search was Officer Galluppi detecting a 'very faint odor of marijuana' coming from his vehicle and because the odor of illegal marijuana cannot be distinguished from the odor of legal hemp, Officer Galluppi did not have probable cause to search his vehicle. Defendant contends that Officer Galluppi only had a bare suspicion that a crime was being committed, which is insufficient to sustain a warrantless search. Defendant therefore argues that the trial court erred in denying his motion to suppress evidence. I agree.



## A. The Impact of Legalizing Hemp on Probable Cause

The Fourth Amendment of the United States Constitution, incorporated to the states through the Fourteenth Amendment, protects 'against unreasonable searches and seizures' and requires government officials to obtain a warrant on a showing of probable cause to search private property. U.S. Const. amend. IV, XIV. The North Carolina Constitution provides similar protection against searches and seizures. N.C. Const. art. I, sec. 20. There are several exceptions to the warrant requirement, however, including the automobile exception established by the United States Supreme Court in *Carroll v. United States*, 267 U.S. 132 (1925). The rationale for this exception is rooted in the inherent mobility of vehicles and a reduced expectation of privacy in motor vehicles. *State v. Isleib*, 319 N.C. 634, 637, 356 S.E.2d 573, 576 (1987).

A law enforcement officer must have more than bare or mere suspicion to justify a warrantless search of an automobile on a public highway. *Brinegar v. United States*, 338 U.S. 160, 175, 177 (1949). In North Carolina, '[a] search of a motor vehicle which is on a public roadway or in a public vehicular area is not in violation of the fourth amendment if it is based on probable cause, even though a warrant has not been obtained.' *Isleib*, 319 N.C. at 638, 356 S.E.2d at 576. Generally, '[p]robable cause exists where the facts and circumstances within an officer's knowledge, and of which he had reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed, and that evidence bearing on that offense will be found in the place to be searched.' *Stafford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364, 370 (2009) (internal marks and citation omitted). 'Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.' *State v. Riggs*, 328 N.C. 213, 219, 400 S.E.2d 429, 433 (1991) (quoting *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983)) (internal marks omitted).

For forty years, our appellate courts have held that detecting the odor of marijuana from in and around a vehicle gives officers probable cause to search the car. *State v. Greenwood*, 301 N.C. 705, 708, 273 S.E.2d 438, 441 (1981). Similarly, this Court has held that a strong odor of marijuana emanating from an individual is sufficient to justify an immediate warrantless search of that person. *State v. Yates*, 162 N.C. App. 118, 123, 589 S.E.2d 902, 905 (2004). This Court has also held that 'seeing marijuana constitutes probable cause,' *State v. Mitchell*, 224 N.C. App. 171, 175, 735 S.E.2d 438, 442 (2012), and that the visual identification of a substance as marijuana by a police officer can sustain a marijuana offense conviction, *State v. Fletcher*, 92 N.C. App. 50, 56-57, 373 S.E.2d 681, 685-86 (1988). Further, this Court recently held that the odor of marijuana in combination with other evidence--there, the suspect's admission that he had smoked marijuana earlier and his production of a partially smoked marijuana cigarette--was sufficient to sustain probable cause. *State v. Parker*, 2021-NCCOA-217 par. 32.

These past holdings were based in part on an understanding that 'marijuana is distinguishable from other controlled substances that require more technical analyses for positive identification.' *Mitchell*, 224 N.C. App. at 179, 735 S.E.2d at 444. Such uniqueness has allowed officers, until now, to identify with certainty that plant material was in fact marijuana based on smell or sight alone because there was not a similar, readily available legal product that could be mistaken for marijuana. See *id.* at 178-79, 735 S.E.2d at 444. However, marijuana is no longer exceptional among controlled substances for not requiring technical analysis for identification.

In 2015, the North Carolina General Assembly passed the Industrial Hemp Act which established the Industrial Hemp Commission to oversee the legal growing and sale of industrial hemp within the state. See S.L. 2015-299; N.C. Gen. Stat. sec. 106-568.50 (2019), et seq. Industrial hemp and marijuana are both members of the *Cannabis sativa* L. plant species. The two differ legally based on chemical composition, namely the amount of tetrahydrocannabinol ('THC') present in the plant. Legal industrial hemp contains very low levels of THC, 'not more than three-tenths of one percent (0.3%) on a dry weight basis.' N.C. Gen. Stat. sec. 106-568.51(7). According to the SBI Memo (that the trial court took judicial notice of), there are several varieties of industrial hemp including, '[o]ne variety [that] looks like marijuana and grows 'buds' just like marijuana. [Cannabidiol or 'CBD'] is extracted from the buds. This type looks just like marijuana, including the leaves and buds, and it smells the same as marijuana. In fact, there is no way for an individual to tell the difference by looking at the plant; one would need a chemical analysis to tell the difference.' This particular variety of hemp can be smoked in the way marijuana is smoked (e.g., hemp cigarettes, hemp cigars, and hemp buds that are purchased and later rolled into joints) and, as the SBI Memo points out, most licensed hemp farmers in North Carolina grow this variety due to the popularity of CBD products, which are not psychoactive and are touted for their health benefits.

The legalization of smokable industrial hemp means that any time officers encounter plant material that looks and smells like marijuana, they could be encountering a legal commodity that individuals in North Carolina are free to use whenever and wherever. Contravening the previous justification that marijuana does not require technical analysis for identification, the existence of industrial hemp necessitates the use of advanced chemical analysis that not only detects the presence of THC but also the precise concentration of THC in the plant material being tested. This reality presents a conundrum for law enforcement officers. As the SBI Memo explained:

Hemp and marijuana look the same and have the same odor, both unburned and burned. This makes it impossible for law enforcement to use the appearance of marijuana or the odor of marijuana to develop probable cause for arrest, seizure of the item, or probable cause for a search warrant.

Therefore, in the future when a law enforcement officer encounters plant material that looks and smells like marijuana, he/she will no longer have probable cause to seize and analyze the item because the probable cause to believe it is evidence of a crime will no longer exist since the item could be legal hemp. Police narcotics K9's cannot tell the difference between hemp and marijuana because the K9's are trained to detect THC which is present in both plants. Law enforcement officers cannot distinguish between paraphernalia used to smoke marijuana and paraphernalia used to smoke hemp for the same reasons. The inability for law enforcement to distinguish the difference between hemp and marijuana is problematic in all marijuana prosecutions, from small amounts to trafficking amounts of plant material. There is at least one District Attorney's Office in NC which is currently not prosecuting marijuana cases due to the inability of law enforcement to distinguish the difference between hemp and marijuana.

The North Carolina State Crime Laboratory does not conduct testing to differentiate between hemp and marijuana. The State Crime Lab, as well as most municipal crime labs in NC, perform a qualitative analysis on plant material to determine whether THC is present. All hemp and CBD products contain some level of THC; therefore, the crime labs will report these products as containing marijuana or THC, which are both Schedule VI controlled substances. While it has been suggested that additional funds be allocated to the Crime Lab in order to add additional chemists and equipment to conduct the quantitative analysis described above, this will not resolve the issue. As previously mentioned, law enforcement cannot seize an item without probable cause that the item is evidence of a crime. Not being able to distinguish between hemp and marijuana defeats the previous basis for probable cause to seize items believed to be marijuana.

Today, plant material that looks and smells like marijuana or hemp presents the probability or substantial chance of criminal activity or legal activity. Although the odor of hemp could be the odor of marijuana and vice versa, the crucial point here is that any odor in question has a probable or substantial chance of being the odor of a legal activity. While legal--albeit suspicious--activity can be used as the basis of an investigatory stop by law enforcement officers, see *United States v. Perkins*, 363 F.3d 317, 326 (4th Cir. 2004), cert. denied, 543 U.S. 1056 (2005), a search is a greater invasion of privacy than an investigatory stop and thus requires a heightened justification. Without the certainty that officers are encountering evidence of what is probably or substantially likely to be criminal activity, law enforcement officers are left with nothing more than mere suspicion of criminal activity. Mere suspicion of criminal activity is insufficient to sustain the probable cause needed to conduct a warrantless search. *State v. Braxton*, 90 N.C App. 204, 207, 368 S.E.2d 56, 58 (1988); see also *Wong Sun v. United States*, 371 U.S. 471, 479 (1963).

The totality-of-the-circumstances approach to probable cause also emphasizes that the odor of marijuana standing alone is insufficient to support probable cause given the possibility of an alternate lawful explanation. Commenting on a magistrate's decision to issue a search warrant, the United States Supreme Court articulated the totality-of-the-circumstances analysis as: 'The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.' *Illinois v. Gates*, 462 U.S. 213, 238 (1983). In *State v. Benters*, 367 N.C. 660, 766 S.E.2d 593 (2014), our Supreme Court reviewed the sufficiency of an affidavit used by a magistrate to issue a search warrant for a suspected marijuana growing operation. *Id.* at 660-63, 766 S.E.2d at 595-97. In reviewing all the circumstances presented in the affidavit, the Court indicated that when a particular circumstance could equally be an observation of a legal activity or evidence of criminal activity, then that circumstance weighs against finding probable cause. See *id.* at 672, 766 S.E.2d at 602.

Specifically, the Court concluded that law enforcement officers' observations of multiple gardening

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items on a defendant's property were insufficient to support a search warrant application for a suspected marijuana growing operation. Id. The Court explained that the presence of the gardening supplies did not indicate 'a fair probability that contraband or evidence of a crime [would] be found' and that a detective's assertions that the supplies were evidence of a growing operation were 'wholly conclusory allegations.' Id. The gardening supplies could have been used for an innocent activity. 'Thus, amid a field of speculative possibilities,' the magistrate was 'impermissibly require[d] to make what otherwise might be reasonable inferences based on conclusory allegations rather than sufficient underlying circumstances[.]' as the detective gave no information about the state and appearance of the gardening supplies. Id. The Court ultimately held that the affidavit in question was insufficient to establish probable cause. Id. at 673, 766 S. E.2d at 603.

The analysis in *Benters* suggests that a law enforcement officer asserting that a particular odor is in fact evidence of marijuana is a conclusory allegation weighing against a finding of probable cause because that odor could indicate criminal activity or legal activity given the existence of smokable industrial hemp. Other circumstances, apart from the odor, could be used to find probable cause, but those circumstances must be sufficiently strong to counterbalance the substantial chance that the odor is nothing more than an indication of legal activity. Such circumstances could include the lawfully obtained admission of defendants that they have recently smoked marijuana or an identification by defendants of the plant material as marijuana. If there are no circumstances beyond detecting an odor, then odor standing alone certainly will not support a showing of probable cause.

Ultimately, the case at bar presents the question of whether the faint odor of plant material, which may be hemp, standing alone is sufficient to grant an officer probable cause to search a vehicle without a warrant. The key issue, therefore, is whether law enforcement officers in the field can distinguish between legal hemp and illegal marijuana by sight or smell. If an officer cannot distinguish between hemp and marijuana by sight or smell, then the officer cannot form a reasonable belief that a criminal offense has been or is being committed. In fact, legal hemp and illegal marijuana are indistinguishable by sight or smell.

Again, according to the SBI Memo, '[h]emp and marijuana look the same and have the same odor, both unburned and burned.' In the Summer of 2019, when a ban on smokable hemp was being debated in the General Assembly, the director of the N.C. Conference of District Attorneys told the Senate Agriculture, Environment, and Natural Resources Committee, 'Law enforcement cannot discern the difference between smokable hemp and marijuana, and our State Crime Lab cannot discern the difference because they can't discern the level of the THC that it contains.' Laura Leslie, Law enforcement fears NC's effort to boost hemp industry could essentially legalize marijuana, WRAL (May 31, 2019, 11:46 AM), <https://www.wral.com/law-enforcement-fears-nc-s-effort-to-boost-hemp-industry-could-essentially-legalize-marijuana/18421082/>. Later in January 2020, as the legislature continued to consider passage of a ban on smokable hemp in the annual farm bill, the North Carolina Sheriff's Association, N.C. Association of Chiefs of Police, N.C. Conference of District Attorneys, and the State Bureau of Investigation stated in a joint position paper that 'smokable hemp and marijuana are indistinguishable by appearance and odor[.]' Wilson Times, Guest Editorial: Banning hemp to fight pot is reefer madness, The Richmond Observer (Jan. 10, 2020, 4:37 PM), <https://www.richmondobserver.com/opinion/item/7116-guest-editorial-banning-hemp-to-fight-pot-is-reefer-madness.html>.

A survey of other jurisdictions that have confronted issues related to the legalization of industrial hemp establishes that legal hemp and illegal marijuana are indistinguishable by sight and smell as well. See e.g., *People v. Cox*, 2018 CO 88, par. 21, 429 P.3d 75, 82 (Gabriel, J., concurring) ('[T]he record in this case indicates that marijuana and hemp appear and smell identical[.]'); *Lundy v. Commonwealth*, 511 S.W.3d 398, 404 (Ky. Ct. App. 2017) ('Hemp and marijuana are visually indistinguishable[.]').

Additionally, a brief look at the chemical makeup of the cannabis plant particularly highlights that legal hemp and illegal marijuana are indistinguishable by smell.

Legal hemp and illegal marijuana are both derived from the *Cannabis sativa* L. plant species. One of the chemical compounds present in *Cannabis sativa* L. is called a cannabinoid. THC and CBD are the two main cannabinoids amongst dozens found in the cannabis plant. Cannabis (Marijuana) and Cannabinoids: What You Need To Know, NIH: Nat'l Ctr. for Complementary and Integrative Health, <https://www.nccih.nih.gov/health/cannabis-marijuana-and-cannabinoids-what-you-need-to-know> (last updated Nov. 2019). While cannabinoids like THC and CBD give cannabis its psychoactive or medicinal effects respectively, a different group of chemical compounds called terpenes give the cannabis plant its distinct aroma. Jordan J. Zager et al., Gene Networks Underlying Cannabinoid and Terpenoid Accumulation in Cannabis, 180 Plant Physiology 1877, 1879 (2019), <https://doi.org/10.1104/pp.18.01506>. See also Cynthia A. Sherwood et al., Even Dogs

Can't Smell the Difference: the Death of 'Plain-Smell' as Hemp is Legalized, Tenn. Bar J., Dec. 2019, at 14, 17 (explaining that the terpenes which give cannabis its odor are legal compounds found in many different species of plants).

THC, on the other hand, is an odorless chemical compound. T. Flemming et al., Chemistry and Biological Activity of Tetrahydrocannabinol and its Derivatives, in *Bioactive Heterocycles IV* 1, 25 (2007), [http://dx.doi.org/10.1007/7081\\_2007\\_084](http://dx.doi.org/10.1007/7081_2007_084). Because THC is odorless, the amount of THC present in any given cannabis plant cannot be measured by smell but rather requires advanced chemical analysis to determine the exact percentage that is present. *Id.* at 25-27.

Here, I will note that in *State v. Parker*, 2021-NCCOA-217, this Court suggested in dicta that the police officer's 'own subjective belief that the substance he smelled was marijuana was additional evidence supporting probable cause--even if his belief might ultimately have been mistaken.' *Id.* at par.33. The indistinguishability by smell, however, suggests that it would never be a reasonable mistake for an officer to believe he smelled marijuana because the amount of THC, which distinguishes hemp and marijuana, cannot be detected by smell but requires chemical analysis to measure. If it is impossible for an officer to detect the amount of THC present by smell, then an officer of reasonable caution would not assume, without more, that he smells marijuana because he knows that he is not able to detect the amount of THC by smell.

Such is the significance of the 'odor plus' standard that was our central holding in *Parker*. Given that the odor of hemp and marijuana are indistinguishable, and the amount of THC cannot be detected without chemical analysis, the odor plus standard provides officers with 'fair leeway' and allows them to be reasonable in a scenario in which officers could never obtain perfection. *Heien v. North Carolina*, 574 U.S. 54, 60-61 (2014). Maryland adopted the odor plus standard after possession of less than ten grams of marijuana became a civil offense. *Lewis v. State*, 470 Md. 1, 27, 233 A.3d 86, 101-02 (2020). The high court in Maryland reasoned that because probable cause for a warrantless arrest and search incident to arrest of a person requires belief that a person possesses a criminal amount of marijuana and '[t]he odor of marijuana alone does not indicate the quantity, if any, of marijuana in someone's possession[,] the odor of marijuana alone emanating from a person does not support probable cause.' *Id.* The odor plus standard thus ensures that an officer has more than mere suspicion of criminal activity to support probable cause.

Because the odor of legal hemp and the odor of illegal marijuana are indistinguishable, the odor of marijuana no longer conclusively indicates the presence of an illegal drug and therefore is insufficient to support the probable cause needed to conduct a warrantless search under the Fourth Amendment.

## B. Trial Court's Findings of Fact and Conclusions of Law

The scope of review of an order denying a motion to suppress 'is strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law.' *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). 'Conclusions of law, however, are fully reviewable on appeal and must be legally correct, reflecting a correct application of applicable legal principles to the facts found.' *State v. Johnson*, 371 N.C. 870, 873, 821 S.E.2d 822, 825 (2018) (internal marks and citation omitted).

### 1. Findings of Fact

Defendant challenges the trial court's fourth and eleventh findings of fact:

(4) Upon approaching the vehicle, Officer Galluppi detected what he believed to be an odor of marijuana emanating from the vehicle.

(11) The Court took judicial notice of a State Bureau of Investigations bulletin regarding the similarities of marijuana and hemp. The court took judicial notice of the bulletin only to the extent that physical properties and characteristics of the two plants were discussed. Legal conclusions and opinions contained in that bulletin were disregarded as the State Bureau of Investigation does not have legal authority to issue binding opinions on the sufficiency of evidence to establish probable cause. Marijuana and hemp share very similar physical characteristics and it is difficult to tell one from the other either by appearance or by smell.

Defendant contends Finding of Fact (4) is incomplete as Officer Galluppi only detected a 'very faint

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odor' of what he believed to be marijuana. Defendant argues Finding of Fact (11) is not fully supported by competent evidence as the SBI Memo states industrial hemp and marijuana are the same species and look and smell the same, rather than merely sharing similar physical characteristics. Defendant also highlights that the trial court did not make any findings of fact that Officer Galluppi had the necessary training and experience to distinguish between hemp and marijuana or to identify the odor coming from Defendant's vehicle as marijuana.

Regarding the findings of fact, I would hold Finding of Fact (11) to be unsupported by competent evidence. The SBI Memo states that legal hemp and illegal marijuana smell and look the same and that chemical analysis is required to distinguish between the two plants. Hemp and marijuana cannot be distinguished from one another based on odor or visual identification. Therefore, it is not merely the case that hemp and marijuana are physically 'very similar' and 'it is difficult to tell' the two apart by smell or appearance, rather, a chemical test must be used to determine the amount of THC present in a given sample of plant material.

Notably, Finding of Fact (4) is the only finding by the trial court that pertains to the establishment of probable cause. There is no evidence in this record that Defendant was involved in the use of controlled substances other than the odor detected by Officer Galluppi. Applying the totality-of-the-circumstances approach, there was only one circumstance, odor, to be considered in showing Officer Galluppi had probable cause and that circumstance does not rise above the level of mere suspicion given the substantial chance Officer Galluppi could have been smelling the odor of industrial hemp. Accordingly, the totality-of-the-circumstances approach indicates Officer Galluppi did not have probable cause to search Defendant's vehicle.

Additionally, given that hemp and marijuana are indistinguishable based on smell and sight alone, see supra, Officer Galluppi could not have testified to any training and experience that would have allowed him to distinguish between hemp and marijuana when conducting Defendant's traffic stop. On cross-examination, Officer Galluppi testified that he learned in a 'street drugs for narcotic officers' training in 2017 or 2018 that 'looking at [hemp and marijuana buds] side by side, you can actually see a physical difference' and that '[he's] been shown the differences, so [he] can see the differences when [he's] looking at them.' However, Officer Galluppi ultimately testified to the following:

[DEFENSE COUNSEL]: So it sounds like you have a trained eye; would you - would you agree with that?

[OFFICER GALLUPPI]: I've been shown the difference, so I - I can see the differences when I'm looking at them.

[DEFENSE COUNSEL]: So that means you're able to - you're able to say that, you know, if you were to see hemp and marijuana, you're able to distinguish the difference; is that what you're saying?

[OFFICER GALLUPPI]: I - I would imagine that I could probably do that.

[DEFENSE COUNSEL]: Okay.

[OFFICER GALLUPPI]: I've not actually compared the two myself. I've only - like I said, I've only been through the class. I've not actually had to deal with hemp at this point.

[DEFENSE COUNSEL]: At this point.

[OFFICER GALLUPPI]: Yes.

[DEFENSE COUNSEL]: Were you shown hemp at the class?

[OFFICER GALLUPPI]: Yes.

[DEFENSE COUNSEL]: Okay. If you were to see hemp today, would you be able to distinguish whether or not it was marijuana or hemp?

[OFFICER GALLUPPI]: Just by pure looking at it?

[DEFENSE COUNSEL]: Yes.

[OFFICER GALLUPPI]: Probably not.

Officer Galluppi also testified that he learned in the same training that there is 'a very, very, very slight difference between [the smell] of hemp and marijuana' and he had the opportunity to 'take a whiff' of a fresh hemp bud and a fresh marijuana bud through a mason jar with holes punched in the top. Officer Galluppi ultimately testified, however, that he has never smelled burned hemp or had the opportunity to distinguish between the odor of burned hemp and burned marijuana because the trainer did not have a sample of burned marijuana and burned hemp available.

Based on this testimony, there was not competent evidence available to the trial court for it to find that Officer Galluppi had the necessary training and experience to distinguish between hemp and marijuana,

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which is presumably why it did not make such a finding. Despite testifying that there is a physical difference between hemp and marijuana, Officer Galluppi admitted that he could not visually distinguish between hemp and marijuana if he were shown hemp that day. Additionally, although Officer Galluppi testified that he had the opportunity to take a whiff of fresh hemp and fresh marijuana in a training, that training occurred approximately two or three years prior to Defendant's arrest on 5 February 2020. While Officer Galluppi testified that he smelled 'fresh marijuana' coming from Defendant's driver side and that he had previously been trained in the difference between the odor of burned and unburned marijuana, Officer Galluppi having attended one training in which he had the opportunity to briefly smell fresh hemp and fresh marijuana would not constitute competent evidence to support a finding that Officer Galluppi had the training and experience necessary to distinguish between fresh hemp and fresh marijuana, especially considering Officer Galluppi admitted that he had 'not actually had to deal with hemp at this point.' The SBI Memo specifically states, '[h]emp and marijuana look the same and have the same odor, both unburned and burned[,] again reinforcing that hemp and marijuana are indistinguishable on smell alone and casting doubt on any officer's ability to ever gain the training and experience necessary to distinguish between the odor of hemp and marijuana whether burned or unburned.

## 2. Conclusions of Law

Defendant challenges the trial court's second and third conclusions of law:

(2) That the odor of marijuana emanating from the vehicle provided sufficient probable cause for a warrantless search of the vehicle under the automobile exception to the Fourth Amendment warrant requirement.

(3) The fact that marijuana and hemp share similar characteristics and have a similar odor does not negate the ability of law enforcement to use the odor of a potentially controlled substance as a sufficient basis to establish probable cause for the warrantless search of a vehicle. Marijuana is still an illegal substance in this state.

Defendant contends that Conclusion of Law (2) is unsupported as there are no findings that the odor Officer Galluppi detected from Defendant's vehicle was in fact marijuana, only that Officer Galluppi believed he smelled marijuana. Defendant argues that Conclusion of Law (3) is unsupported as Officer Galluppi's belief that he smelled marijuana does not give rise to probable cause.

Regarding the conclusions of law, I would hold Conclusions of Law (2) and (3) to be legally incorrect, reflecting an incorrect application of legal principles to the facts found. The odor detected by Officer Galluppi did not provide sufficient probable cause for a warrantless search of Defendant's vehicle. The odor could have been either the smell of legal industrial hemp or illegal marijuana. Although the trial court found that Officer Galluppi believed the odor to be marijuana, there are no findings of fact demonstrating what experience or training Officer Galluppi could have used to develop this belief. The absence of such findings suggests that Officer Galluppi's belief was mere suspicion or a conclusory allegation based solely on his stop of a 23-year-old black male for a window tint violation. Similarly, the fact that hemp and marijuana smell and look the same does negate law enforcement's ability to use the odor of what could potentially be a legal commodity or an illegal substance as a sufficient basis to establish probable cause.

As Finding of Fact (11) was not supported by competent evidence and Conclusions of Law (2) and (3) are legally incorrect, I would hold that the trial court erred in denying Defendant's motion to suppress evidence.


Accordingly, I respectfully dissent.

Certified to the Clerk of Superior Court New Hanover County, North Carolina.

By order of the Court this the 28th of December 2021.

WITNESS my hand and official seal this the 28th day of December 2021.

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Eugene H. Soar  
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