

No.

DISTRICT FIVE

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

STATE OF NORTH CAROLINA )

v. )

JAQUALYN ROBINSON )

From New Hanover

COA21-144

\*\*\*\*\*

NOTICE OF APPEAL BASED ON DISSENT

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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.G.S. § 7A-30(2), 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. A Conditional Petition for Writ of Certiorari is filed concurrently with this notice out of an abundance of caution.

N.C.G.S. § 7A-30(2) provides that there is an appeal of right to this Court from any decision "[i]n which there is a dissent when the Court of Appeals is sitting in a panel of three judges." A panel of three

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judges, one dissenting, decided to allow the State's Motion to Dismiss. As such, Mr. Robinson has an appeal of right.

The Court of Appeals' order consists of a majority by Judges Murphy and Griffin, and a dissent by Judge Jackson. The majority allowed the State's Motion to Dismiss without explanation<sup>1</sup>. 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. (Order at 1)

In dissent, Judge Jackson argued first that despite the waiver of Mr. Robinson's right to appeal, his Petition for Writ of Certiorari should have been allowed to enable the Court of Appeals to reach the meritorious issue presented. Judge Jackson noted that Mr. Robinson contemporaneously objected to the denial of the motion to suppress and that the State did not object when he gave notice of appeal in open court the next day. (Order at 2)

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<sup>1</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)

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. (Order at 2-8)

The Appellant will bring forward for review the issues which formed the basis of Judge Jackson's dissent.

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

By Electronic Submission:

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ATTORNEY FOR DEFENDANT-APPELLANT

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that the original Notice of Appeal Based on Dissent was filed electronically, pursuant to Rule 26, with the Clerk of the Supreme Court of North Carolina.

I further certify that a copy of the foregoing Notice of Appeal was served on Nicholas Sanders, Assistant Attorney General, North Carolina Department of Justice, by electronic means by emailing it to nsanders@ncdoj.gov.

I further hereby certify that a copy of the above and foregoing Notice of Appeal has been duly served upon the Clerk of the North Carolina Court of Appeals, P.O. Box 2779, Raleigh, North Carolina 27602, by first-class mail, postage prepaid.

This the 10th day of January 2022.

By Electronic Submission:

Sarah Holladay

**Sarah Holladay  
Attorney at Law  
P.O. Box 52427  
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Clerk of Court  
NC Court of Appeals  
P.O. Box 2779  
Raleigh, NC 27602

Re: State v. Robinson, COA21-144

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CLERK OF APPEALS  
OF NORTH CAROLINA  
January 10, 2022

To Whom It May Concern:

Please find enclosed the Notice of Appeal in the above-captioned case.

Sincerely,

Sarah Holladay

