No. 190PA24 EIGHTEENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA	)	
	)	
v.	)	From Guilford County
	)	
TYRON LAMONT DOBSON	)	

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DEFENDANT-APPELLANT'S NEW BRIEF

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DEFENDANT-APPELLANT'S NEW BRIEF

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ISSUE PRESENTED

I. Did the Court of Appeals fail to conduct the requisite "totality of the circumstances" analysis and instead evaluate the existence of probable cause by applying an unconstitutional new "double odor" rule?

STATEMENT OF THE CASE

On 1 March 2021, the State indicted the defendant-appellant, Tyron Lamont Dobson, on three counts arising from a warrantless vehicle search conducted during a 23 January 2021 traffic stop: misdemeanor carrying a concealed gun, possession of a firearm by a felon, and misdemeanor possession of marijuana (up to one-half ounce). (R pp 6–7).

On 21 February 2022, Mr. Dobson filed a motion to suppress the evidence seized during that warrantless search, *i.e.*, the firearm and the substance alleged to be marijuana. (R pp 10–31). On 8 November 2022, Mr. Dobson filed an amended version of that motion. (R pp 32–60).

A hearing on the motion was held on 8–9 November 2022. In addition to live testimony, the trial court also reviewed the body camera video footage of four different officers. (T 11/8/22 pp 49, 51–52, 54–56, 72–73, 80, 104–06, 149–50).[1] At the end of that hearing, the trial court orally announced its decision to deny the motion. (T 11/9/22 pp 152–56). The trial court entered a corresponding written order on 10 November 2022. (R pp 72–77).

On 9 November 2022, Mr. Dobson pled guilty to misdemeanor carrying a concealed gun and possession of a firearm by a felon, and the State agreed to dismiss the misdemeanor marijuana charge. (R pp 61–65). The trial court sentenced Mr. Dobson to a term of incarceration of 14–26 months, suspended for a 24-month

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[1] These videos are part of the record on appeal. (R p 1). On 3 August 2023, the undersigned mailed to the Clerk of the Court of Appeals a USB drive containing copies of the video files submitted to the trial court.

term of supervised probation. (R pp 80–81). Mr. Dobson gave notice of appeal that same day. (R p 71).

On 16 April 2024, the Court of Appeals entered a decision affirming Mr. Dobson's judgment and conviction. *State v. Dobson*, 293 N.C. App. 450, 900 S.E.2d 231 (2024). On 1 May 2024, Mr. Dobson filed a motion for en banc rehearing, which was denied on 2 July 2024. On 11 July 2024, Mr. Dobson filed a petition for discretionary review. On 19 March 2025, this Court allowed that petition as to Issue 2.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Mr. Dobson appeals under N.C.G.S. § 7A-31 (2024).

STATEMENT OF THE FACTS

The following are the facts necessary to understand the issue presented for review. N.C. R. App. P. 28(b)(5).

I. The pretextual traffic stop, conducted after Mr. Dobson and his companions had left a nightclub on a Saturday night, was based on what turned out to be a probation/parole officer's firearm.

Late on Saturday, 23 January 2021, a black 2018 Dodge Charger was parked in a social district of downtown Greensboro, near a number of restaurants, bars, and nightclubs. (T 11/8/22 pp 6–8). Members of the Greensboro Police Department received a report that a handgun had been seen inside the Charger, so officers kept it under surveillance. (T 11/8/22 pp 7–8). At approximately 10:10 p.m., four individuals were seen exiting a nightclub and entering the Charger, which then drove off. (T 11/8/22 pp 8, 65). Officers followed the Charger and performed a

pretextual traffic stop for speeding, in order to further investigate their concern about the handgun. (T 11/8/22 pp 10–14, 26).

No fewer than six officers descended on the scene. Four officers initially approached the Charger: TFO Felipe Foster[2] approached the driver's side window. Detective Latonya Guy approached the front passenger window, while Corporal Devon Allis[3] took a "cover position" behind her on the back passenger side. Officer Bailey[4] stood near the rear of the Charger. (T 11/8/22 pp 15, 68). Detective Guy spoke "across the passenger to the driver." (T 11/8/22 p 87). Mr. Dobson was sitting in the backset on the driver's side. (T 11/8/22 p 22). At some point during this initial exchange, Sergeant D.J. Sturm[5] also arrived on the scene. (T 11/8/22 p 111).

The officers' concern about the handgun was immediately addressed: The driver of the Charger explained to the officers that she was a probation/parole officer in Wake County, and that the firearm, which she had placed on the dashboard, was hers. (R p 18) (T 11/8/22 p 67). The driver then handed her documents and badge to TFO Foster. (T 11/8/22 p 68).

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2 "TFO" is presumably an acronym for Task Force Officer.

3 Although referred to as a detective in parts of the record, he introduced himself as a corporal. (T 11/8/22 p 5).

4 The undersigned has not seen Officer Bailey's first name in the record.

5 His last name is misidentified as "Stern" in some parts of the transcript.

II. It was impossible to smell the difference between legal and illegal cannabis.

At the hearing on the motion to suppress, Corporal Allis acknowledged that, at the time of the traffic stop, there "were perfectly legal substances that smell just like marijuana," which he referred to as "CBD." (T 11/8/22 p 56). He was then asked if it is "possible on the scene -- this goes without smoking it -- to know whether something is marijuana or CBD?" Corporal Allis acknowledged that there is "no test that I can use to delineate. . . . I can't delineate, specifically, just based on the substance." (T 11/8/22 p 57).

This testimony aligned with what the State Bureau of Investigation (SBI) itself has explained: "***law enforcement cannot distinguish between hemp and marijuana***[.]" (R p 58) (emphasis in original). A copy of the memorandum in which the SBI shared this information was included with Mr. Dobson's motion to suppress. (R pp 56–60).

III. The odor of cannabis in the car "was real faint. I'm assuming it's from the club."

At the hearing on the motion to suppress, TFO Foster testified that he "got the smell of -- the odor of marijuana coming out of the car." (T 11/8/22 p 68). TFO Foster stepped away from the Charger to briefly speak with Officer Bailey. (T 11/8/22 p 68). TFO Foster then returned to the Charger, asked the driver to exit, and directed her towards the rear of the Charger, where she and Officer Bailey engaged in the following roadside conversation, with TFO Foster standing beside them.

OFFICER BAILEY: Ok, so hey, uh, I'm Officer Bailey. So, these officers over here, uh, said that they smelled what they -- smelled a little bit of, like, weed in the car. Anybody smoke weed recently?

DRIVER: No. I -- [*A car drives closely past them.*]

OFFICER BAILEY: Just step this way, so it's not, like, in traffic or anything. [*They walk closer to the sidewalk.*]

DRIVER: I'm just down here visiting my friends. Like, I'm not even driving my car. I left my car back in Winston-Salem, so I --

OFFICER BAILEY: You said you were picking them up, or -- ?

DRIVER: No, like, we went to a little spot. We literally got there at, like, 9:30. I really wasn't paying attention to the curfew.[6] Like --

OFFICER BAILEY: Ok.

DRIVER: I'm an officer of the court. Trust me: I'm doing nothing wrong.

OFFICER BAILEY: Ok.

DRIVER: Y'all just scared me because I really -- the thing said 44. I definitely didn't think I was speeding.

OFFICER BAILEY: Ok. Um, so is there any marijuana in the car?

DRIVER: No. I don't --

OFFICER BAILEY: Any passengers or anything?

DRIVER: I -- I don't use any illegal drugs.

OFFICER BAILEY: Ok. Would they have any on them?

DRIVER: No, no.

OFFICER BAILEY: They wouldn't have any on them?

TFO FOSTER: That you know of?

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6 This is presumably a reference to a COVID-related curfew that would have been in place at the time.

DRIVER: No.

OFFICER BAILEY: Ok.

DRIVER: Like I was saying, we were definitely, like, you know, you know, in the car, or whatever. And then we came out, or whatever, you know --

OFFICER BAILEY: Were there people smoking weed in there? I wasn't inside there.

DRIVER: Well, I don't know, you know, like, people were out in the front smoking, so --

OFFICER BAILEY: Did it smell like it, or -- ?

DRIVER: I wasn't, I -- seriously, we got there at 9:30 --

OFFICER BAILEY: Ok.

DRIVER: We wasn't paying attention to the time. We walk right in, and the man said --

OFFICER BAILEY: I'm just asking because that, that smell might be on your clothes, or something like that.

DRIVER: -- yeah, the man said, "Y'all have ten minutes." And I'm like, "We came down here for nothing. I literally came to town -- " so, yeah. Y'all kind of scared me.

OFFICER BAILEY: It's all good. Appreciate you having your gun on the dash.

DRIVER: Oh, yeah. Look, I don't want to do anything illegal.

OFFICER BAILEY: Yeah.

DRIVER: I can't lose my -- I got ten years with the State.

OFFICER: Yeah.

DRIVER: I don't want no problems.

OFFICER BAILEY: I got ya. Alright.

(Bailey 1 video *at* 03:23:05 to 03:24:57).[7]

Officer Bailey then walked back over towards the Charger, where he reported to his colleagues that he "didn't smell anything" on the driver. Corporal Allis, still in his "cover position" beside the Charger's rear passenger door, stated that he "can't [smell anything] from here." (Bailey 1 video *at* 03:25:00). Officer Bailey then approached the Charger's open driver-side windows. (Bailey 1 video *at* 03:25:30). He then walked away and reported to his colleagues that he "got like a faint odor while up there." (Bailey 1 video *at* 03:26:00). Detective Guy responded: "I did not get it." (Guy video *at* 03:26:00).

The officers, including Corporal Allis, proceeded to collect identifying information from the three other passengers. (Allis video *at* 03:25:40). Detective Guy reiterated to her colleagues that she "still didn't smell it." (Guy video *at* 03:26:25). Corporal Allis responded: "It was real faint. I'm assuming it's from the club." (Allis video *at* 03:26:26). Corporal Allis also later testified that when he opened the rear passenger-side door to speak with the occupant sitting there, he

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[7] The body camera video files each bear their original file name, which includes the corresponding officer's name. Each video, in the upper right corner, contains a date stamp and what appears to be a time stamp. (These time stamps all indicate that this encounter began at approximately 3:20 a.m. on 24 January 2021. However, the evidence is clear that this encounter began five hours earlier, at approximately 10:20 p.m. on 23 January 2021. (R pp 39, 49, 51) (T 11/8/22 p 6).) For ease of reference, the citations to the videos in this brief refer to the videos by the name of the corresponding officer and the time stamps seen in the videos. There were two videos from Officer Bailey; only the first—"Baileyj_20210123230(1)"—is referenced here, as "Bailey 1."

smelled a strong scent of cologne, which, based on his experience, can be used as a "cover scent" to conceal the smell of narcotics. (T 11/8/22 p 17).

Back inside his patrol car, Officer Bailey and Corporal Allis discussed how they would proceed. Officer Bailey said, "I think it's worth a search with the odor. What you think?" Corporal Allis replied: "Yeah, I mean, it's faint, but it's there." (Allis video *at* 03:30:09). Corporal Allis then instructed Officer Bailey to begin asking the other occupants to exit the Charger. (Allis video *at* 03:30:40).

Officer Bailey then approached the driver, who was still standing on the sidewalk with TFO Foster. Officer Bailey explained to the driver that he "did get the faint odor of marijuana" coming from the Charger. The driver then said: "And that's why I said I don't know if it was on, like, people's clothes, coming out. I, I really don't -- " "Which is all very possible," replied Officer Bailey. (Bailey 1 video *at* 03:31:00 to 03:31:14).

Officer Bailey continued to inquire, asking the driver whether it was possible if her backseat passengers had "like, a gram in their pants," and whether she could "really vouch" for them. The driver explained that "no, they definitely have not smoked around me" and "trust me, they have not -- they know what I do; they definitely have not done anything illegal in front of me." Officer Bailey then explained that the officers were going to do "a quick probable cause search of the vehicle" to make sure there was no marijuana inside the Charger. (Bailey 1 video *at* 03:31:15 to 03:32:05).

Officer Bailey went on to explain to the driver: "So, because of that faint odor, which, I agree with you, I think the explanation more comes from, uh, the possibility of somebody being around somebody who was smoking marijuana. That odor, that odor is still on their clothes. However, sometimes I've had -- [.]" The driver then interrupted him to clarify: "I didn't see anybody smoke in the club. Like I said, when we went outside, in the little area where you leave out, you know, people were smoking. I can't say what they were smoking, but -- [.]" "Ok," replied Officer Bailey, who then explained that in his experience, even when "thirty, forty grams of weed" is actually present in a vehicle, sometimes it only give off "a faint odor." (Bailey 1 video *at* 03:32:23 to 03:32:54).

The warrantless search of the Charger then led to the discovery of the evidence that resulted in Mr. Dobson's charges. (R pp 74–75).

STANDARD OF REVIEW

This Court reviews a decision of the Court of Appeals for errors of law. N.C. R. App. P. 16(a).

ARGUMENT

Based on the law as written by the General Assembly, any adult in North Carolina can walk into a store, buy a pre-rolled cannabis joint, and then get in her car and light up—just as if she had bought a pack of Marlboros instead. That is the North Carolina in which our elected legislative representatives have decided we now live.

But according to the Court of Appeals, if you engage in that lawful activity while wearing a personal fragrance, then you necessarily surrender your Fourth

Amendment right to be free from unreasonable search and seizure. If binding constitutional precedent, undisputed scientific fact, and the separation of powers matter in North Carolina, then such a thing cannot stand. In the age of legal cannabis, probable cause determinations must be based on the totality of the circumstances, rather than "rigid rules, bright-line tests, and mechanistic inquiries[.]" *Florida. v. Harris*, 568 U.S. 237, 244, 133 S. Ct. 1050, 1055, 185 L. Ed. 2d 61 (2013).

The first fifteen of the following seventeen sections in this brief each addresses one key element of Mr. Dobson's argument. The sixteenth section explains how our new Attorney General's own public comments regarding cannabis in North Carolina squarely align with Mr. Dobson's arguments, thereby raising the question of whether this Court's precedent would allow the State to change its position in cases like this one. The final section summarizes the relief Mr. Dobson is seeking.

Mr. Dobson invites the Attorney General to identify the particular sections of this brief with which the Attorney General agrees or disagrees, in the hopes that the parties may narrow the scope of their dispute (assuming one still exists) and thereby better focus their efforts—and this Court's—on resolving it.

I. The decision speaks for itself: The *Dobson* panel did not apply the default "totality of the circumstances" rule.

The decision speaks for itself: In ruling that probable cause justified the warrantless search, the *Dobson* panel did not base its conclusion on the totality of the circumstances, or the "whole picture." *State v. Williams*, 366 N.C. 110, 116, 726

S.E.2d 161, 167 (2012) (quoting *United States v. Cortez,* 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621, 629 (1981)). Rather, the panel explicitly based its decision on only a narrow slice of that picture: the presence of two different odors, *i.e.*, the odor of cannabis plus the odor of a personal fragrance (the latter of which was described as a "cover scent"). *Dobson*, 293 N.C. App. at 456, 900 S.E.2d at 235.

In ignoring the whole picture, the panel ignored relevant additional circumstances. Most conspicuously, the panel's analysis ignored the fact that the personal fragrance was detected emanating from a car full of club-goers on a Saturday night—*i.e.*, a time and place in which one would reasonably expect to smell personal fragrances. *See, e.g., State v. Wainwright*, 240 N.C. App. 77, 86, 770 S.E.2d 99, 106 (2015) (considering "time and place" factors—specifically, proximity to nightclub at 2:30 a.m.—when reviewing whether totality of the circumstances amounted to reasonable suspicion of impaired driving).

In short, there can be no legitimate dispute: the panel's probable cause ruling was not based upon a consideration of the totality of the circumstances, but was instead the result of a formulaic, box-checking, "mechanistic inquir[y]," *Harris*, 568 U.S. at 244, 133 S. Ct. at 1055, that was ultimately concerned only with the simple question of whether two odors were detected.

The question thus becomes: In the age of legal cannabis, is the panel's "double odor" reasoning a constitutionally viable new exception to the default rule that requires consideration for the totality of the circumstances when evaluating

the existence of probable cause for warrantless searches? For the reasons explained in the following sections, it is not.

II. By rejecting an "odor alone" exception, this Court has necessarily already agreed with most of the arguments as to why, in the age of legal cannabis, there can be no "double odor" exception to the default "totality of the circumstances" rule.

In two other pending cases, this Court is also currently considering the question of whether, in the age of legal cannabis, the odor of cannabis *on its own* amounts to a constitutionally viable exception to the default "totality of the circumstances" rule: *State v. Schiene*, No. 305PA24, and *State v. Rowdy*, 300PA24. Logic dictates that if this Court is, in this case, considering the constitutionality of a "double odor" exception, then this Court has necessarily already rejected the "odor alone" exception. Because if the odor of cannabis, on its own, did automatically amount to probable cause, then that odor plus any other secondary circumstance (whether a second odor, or any other circumstance that has some unquantified chance of being incriminating) would necessarily always amount to probable cause, too—meaning there would never be any practical need to consider whether a "double odor" exception is needed.

This point is key because, to a large extent, the arguments against a "double odor" exception in the age of legal cannabis are the same as the arguments against an "odor alone" exception in the age of legal cannabis—*i.e.*, the same arguments as those presented in *Schiene* and *Rowdy*. Consequently, if this Court is now reviewing the "double odor" exception, then that necessarily means this Court has already accepted most of the following arguments.

III. Statutory definitions matter: "Marijuana" is no longer synonymous with "cannabis."

In order to competently address the issue presented here, we must first be clear about certain terms.

In North Carolina, up until 2015, "marijuana" meant "all parts of the plant of the genus Cannabis," meaning that the term "marijuana" used to be synonymous with the term "cannabis." 1985 N.C. Sess. Laws 491, sec. 1; 1971 N.C. Sess. Laws 919, sec. 1. Marijuana has long been, and continues to be, illegal in North Carolina. *Id.*; N.C.G.S. § 90-87(16). Thus, up until 2015, all cannabis was illegal in North Carolina.

That is no longer true. Now, we have both legal cannabis and illegal cannabis.

In 2015, the General Assembly chose to implement a paradigm shift by ushering in the age of legal cannabis in North Carolina. 2015 N.C. Sess. Laws 299, sec 1. At first, legal cannabis was called "industrial hemp," *id.*; in 2022, that term was shorted to just "hemp." N.C.G.S. § 90-87(13a); 2022 N.C. Sess. Laws 32, sec. 1. However, for purposes of addressing the issue presented here, the rebranding to just "hemp" is ultimately irrelevant, because both hemp and industrial hemp differ from marijuana in the same material way: they are "the plant Cannabis sativa (L.)" with a maximum "delta-9 tetrahydrocannabinol [THC] concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis." *Id.*; 2015 N.C. Sess. Laws 299, sec 1. Because of this commonality, this brief will use the term "hemp."

In short, because of the General Assembly's legislated paradigm shift, we now have both legal and illegal cannabis in North Carolina, which are known, respectively, as hemp and marijuana.

Just like marijuana may be smoked, so, too, may hemp. One hemp store, The Hemp Farmacy, is just a short walk from the Supreme Court building in downtown Raleigh, at 527 Hillsborough Street. The Hemp Farmacy currently sells, for example, a two-pack of pre-rolled Green Mirage hemp joints, made with cannabis "grown locally in Wilmington, NC," for $14.99. *See* https://hempfarmacy.us/collections/cbd-flower/products/green-mirage-legacy-farms-grade-a-cbd-flower (last visited 11 Apr 2025). That lawful commercial product, as pictured on their website, looks like this:

Alternatively, if you prefer to roll your own, you can just buy legal cannabis flower, instead. Seven grams of the Chonky Donkey strain will set you back $24.99. https://hempfarmacy.us/collections/cbd-flower/products/chonky-donkey-legacy-farms-grade-a-cbd-flower?variant=46008247877891 (last visited 11 Apr 2025). It comes packaged like this:

Beyond smokeable forms of hemp, North Carolina businesses are relying on legal cannabis in other ways, too. In Asheville, for example, legal cannabis is being incorporated into fine dining menus. The chef at Infuso has explained that cannabis is "a culinary herb that just happens to make you feel really good when you eat it or smoke it. . . . We want to keep people hovering just above baseline, allowing the

cannabinoids to act as the replacement for the social lubricant of alcohol. . . . We want it to be a fun experience, where people are not trapped inside their heads." "Southern Chefs Take Meals to New Highs," https://www.theassemblync.com/culture/food/cannabis-cooking-north-carolina-chefs-asheville/ (published & last visited 18 Apr 2025). For the legal cannabis users dining at Infuso, "[a] first course of potato-leek bisque comes infused with 2 milligrams of THC, the main component of cannabis that gives users a high, specially mixed to take effect almost as quickly as a cocktail." *Id.*

IV. Science matters: Not only are humans unable to smell or see the difference between legal and illegal cannabis, but even the State's own crime lab is currently unable to tell the difference.

Corporal Allis acknowledged under oath that he could not distinguish between legal and illegal cannabis. (T 11/8/22 pp 56–57). The SBI's memorandum confirms what Corporal Allis explained. Indeed, the SBI's memorandum notes that not even trained police K-9s can smell the difference between legal and illegal cannabis. (R p 40).

Moreover, in the recent case of *State v. Ruffin*, the State's own expert—a forensic scientist from the North Carolina State Crime Laboraotry—acknowledged under oath that even the State's own crime lab lacks the scientific expertise that is needed to distinguish hemp from marijuana: "[A]t our lab we currently do not have the ability to distinguish between marijuana and hemp because that analysis requires what's called a quantitative analysis which is where you're measuring the

percentages of what's present in the plant material," *i.e.*, the delta-9 THC content. No. COA24-276, 2025 WL 699571, at *2 (N.C. Ct. App. Mar. 5, 2025).[8]

V. Language matters: It no longer makes sense to speak of "the odor of marijuana" in this context.

Marijuana used to have a "distinct odor," *State v. Greenwood*, 47 N.C. App. 731, 741, 268 S.E.2d 835, 841 (1980), *rev'd on other grounds,* 301 N.C. 705, 273 S.E.2d 438 (1981), because back when marijuana was defined to mean all cannabis, nothing else smelled like marijuana. In other words, "the odor of cannabis" used to be synonymous with "the odor of marijuana." But that is no longer true.

Marijuana no longer has a "distinct odor," *id.*, because its odor is now indistinguishable from the odor of hemp. Indeed, not even the State's own crime lab can distinguish the two substances. Consequently, although it *used to* make sense to refer to the odor of cannabis as "the odor of marijuana," *e.g., State v. Matias*, 354 N.C. 549, 550, 556 S.E.2d 269, 270 (2001), it no longer does.

On pages 31–32 of the State's response brief to the Court of Appeals, the State referred to the odor of cannabis as the "common odor" of legal and illegal cannabis. When that common odor is detected now, in the age of legal cannabis, there is only one accurate way to describe it: "the odor of cannabis."

Bluntly put, it no longer makes sense to refer to "the odor of marijuana" in this context, because based on odor alone, no one can know if they are smelling

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[8] Even though the State's own crime lab can't distinguish the two plants, the *Ruffin* panel, relying on *pre-hemp* case law, allowed a police officer to testify that he nonetheless can. *Id.* at *2–4. The defendant in *Ruffin* has filed a petition for discretionary review, which is currently pending in No. 100P25.

marijuana or hemp. Rather, all they can know is that they are smelling cannabis. Thus, to describe that odor as "the odor of marijuana" is necessarily to make a blind guess.

Granted, inertia is a powerful force. After decades of speaking of "the odor of marijuana," it takes conscientious effort to speak accurately in this manner. But if we are to give full effect to the General Assembly's newly defined terms in the age of legal cannabis in North Carolina, then speak accurately we must. *See, e.g., State v. Fields*, 374 N.C. 629, 633, 843 S.E.2d 186, 189–90 (2020) ("If the language of a statute is unambiguous, this Court will give effect to the plain meaning of the words without resorting to judicial construction.") (quotation omitted).

VI. Constitutional precedent matters: For evaluating probable cause, the default rule requires an accurate consideration of the totality of the circumstances, or the "whole picture"—including facts that tend to dispel suspicion.

The Fourth Amendment prohibits unreasonable searches. U.S. Const. amend. IV. In order to be reasonable, warrantless vehicle searches must, absent valid consent, be based on probable cause. *E.g.*, *State v. Julius*, 385 N.C. 331, 339, 892 S.E.2d 854, 861 (2023). "[P]robable cause means a reasonable ground to believe that the proposed search will reveal the presence, upon the premises to be searched, of the objects sought and that those objects will aid in the apprehension or conviction of the offender." *State v. Riddick*, 291 N.C. 399, 406, 230 S.E.2d 506, 511 (1976). Consequently, for searches of the type at issue here, the Fourth Amendment requires more than just some generalized sense of wrongdoing; rather, there must

be probable cause to believe that the search will reveal evidence *of a marijuana-related crime*.

"Any Fourth Amendment analysis turns on the totality of the circumstances and thus must be grounded on an accurate understanding of the facts." *United States v. Curry*, 965 F.3d 313, 316 (4th Cir. 2020). *See also, e.g., State v. Phifer*, 297 N.C. 216, 225–26, 254 S.E.2d 586, 591 (1979) (reviewing totality of circumstances when evaluating constitutionality of warrantless vehicle search). For purposes of evaluating the existence of probable cause, "rigid rules, bright-line tests, and mechanistic inquiries" are supposed to be "rejected . . . in favor of a more flexible, all-things-considered approach," *i.e.*, the approach that considers the totality of the circumstances. *Harris*, 568 U.S. at 244, 133 S. Ct. at 1055. *See also Missouri v. McNeely*, 569 U.S. 141, 158, 133 S. Ct. 1552, 1564, 185 L. Ed. 2d 696 (2013) ("While the desire for a bright-line rule is understandable, the Fourth Amendment will not tolerate adoption of an overly broad categorical approach that would dilute the warrant requirement in a context where significant privacy interests are at stake.").

Consideration of the totality of the circumstances means consideration of the "whole picture," *Williams*, 366 N.C. at 116, 726 S.E.2d at 167 (2012) (quoting *Cortez,* 449 U.S. at 417, 101 S. Ct. at 695)—*i.e.*, consideration of "facts that tend to defeat or dispel probable cause," *Illinois v. Redmond*, 2024 IL 129201, ¶ 62 (2024) (citing *Cortez*, 449 U.S. at 417, 101 S. Ct. at 695, and *Terry v. Ohio*, 392 U.S. 1, 28, 88 S. Ct. 1868, 1883, 20 L. Ed. 2d 889 (1968)). *See also, e.g., State v. Fletcher*, 348 N.C. 292, 303, 500 S.E.2d 668, 675 (1998) ("The Fourth Amendment requires that

an investigatory stop be brief and that officers pursue an investigation in a diligent and reasonable manner to confirm or dispel their suspicion quickly.").

Moreover, it bears emphasizing what this Court itself has acknowledged: "Like the Fourth Circuit Court of Appeals, we harbor some concern about the inclination of the State toward using whatever facts are present, no matter how innocent, as indicia of suspicious activity." *State v. Johnson*, 378 N.C. 236, 247, 861 S.E.2d 474, 485 (2021) (quotation and brackets omitted).

In short, when applying the default rule and evaluating the whole picture, the goal is not to "cherry-pick," *Wilson v. Lawrence County*, 260 F.3d 946, 953 (8th Cir. 2001), enough facts in order to justify a particular conclusion. Rather, the goal is to objectively assess all the relevant factual details in order to determine what they collectively reveal.

VII. Reality matters: The decades-old rationale for bypassing the default rule no longer exists, because no human can possess the level of sensorial expertise that was required under that rationale.

For decades, what used to be "the distinct odor" of marijuana allowed for an exception to the default "totality of the circumstance" rule. *Greenwood*, 47 N.C. App. at 741, 268 S.E.2d at 841. If an officer was sufficiently "trained in the identification of marijuana by its odor," then the officer's testimony that she had smelled marijuana was, on its own, all that was needed to provide probable cause for a warrantless search. *Id.* When that same testimony was offered at trial to prove the presence of marijuana, the officer's testimony was treated as expert testimony, based on the officer's training. *E.g., State v. Mitchell*, 224 N.C. App. 171, 178–79, 735 S.E.2d 438, 444 (2012). (Even if the officer was not explicitly offered as an

expert, the courts would nonetheless treat the officer as an expert. *Id.* at 179 n.3, 735 S.E.2d at 444 n.3.) To this same point, when first creating the old "odor alone" exception, the Court of Appeals noted that in those states which had already adopted such an exception, "probable cause to search was grounded on *the expertise and sound judgment* of the investigating officer in assessing the probability that the odor detected is that of a contraband substance[.]" *Greenwood*, 47 N.C. App. at 741, 268 S.E.2d at 841 (emphasis added).

Because of what used to be "the distinct odor" of marijuana, *id.*, officers were not just blindly guessing about they were smelling; rather, they were able, using only their noses, to reliably identify marijuana with expert-level precision. *See also Johnson v. United States*, 333 U.S. 10, 13, 68 S. Ct. 367, 369, 92 L. Ed. 436 (1948) (approving issuance of a search warrant based on the "strong odor of burning opium which to [the officers] was *distinctive and unmistakable*," and thus "sufficiently distinctive to identify a forbidden substance") (emphasis added). Detecting the odor alone was a proverbial slam dunk. Consequently, before the age of legal cannabis, it was constitutionally acceptable to sidestep the default "totality of the circumstances" rule and conclude that probable cause existed based on one single detail, namely: what *used to* be the distinct and unmistakable odor of marijuana. In other words, the expert-level of reliability that *used to* exist in this context allowed for what would otherwise be an unacceptably "mechanistic inquir[y]." *Harris*, 568 U.S. at 244, 133 S. Ct. at 1055.

But now, in the age of legal cannabis, that distinct and unmistakable odor is no more, because now, the odor of marijuana is indistinguishable from the odor of hemp. As Corporal Allis acknowledged under oath, there are "perfectly legal substances that smell just like marijuana"—meaning he can't tell the difference between legal and illegal cannabis. (T 11/8/22 pp 56–57). The State's top law enforcement agency has acknowledged the same thing. (R p 58). So, too, has the State's own expert forensic scientist from the North Carolina State Crime Laboraotry. *Ruffin*, 2025 WL 699571, at *2. Consequently, not even the State's own crime lab has the expertise needed to distinguish hemp from marijuana. Now, no human can have the type of "expertise and sound judgment" that was required under the old exception to the default rule. *Greenwood*, 47 N.C. App. at 741, 268 S.E.2d at 841. Now, all an officer can do is blindly guess about whether she is smelling legal or illegal cannabis.

In short, the sort of trainable expertise that used to provide for an exception to the default "totality of the circumstances" rule is now a scientific impossibility. Consequently, given that the decades-old underlying rationale for it no longer exists, the old, mechanistic exception to the default "totality of the circumstances" rule must die.

The question then becomes: Is there any new, constitutionally viable rationale that could possibly support a new, hemp-era exception to the default "totality of the circumstances" rule? The *Dobson* panel believed so. Rather than consider "the whole picture," *Williams*, 366 N.C. at 116, 726 S.E.2d at 167, the

Dobson panel, looking only at a narrow slice of that picture, conducted a formulaic, box-checking, "mechanistic inquir[y]," *Harris*, 568 U.S. at 244, 133 S. Ct. at 1055, that asked only whether two odors were detected. With all due respect, though, the *Dobson* panel was wrong to do so.

In order to arrive at its "double odor" conclusion, the *Dobson* panel relied on just two principal supports: *State v. Teague*, 286 N.C. App. 160, 879 S.E.2d 881 (2022) and *State v. Springs*, 292 N.C. App. 207, 897 S.E.2d 30 (2024). *Dobson*, 293 N.C. App. at 454–55, 900 S.E.2d at 233–35. Contrary to what the *Dobson* panel believed, though, neither of those cases offers any constitutionally viable support, in the age of hemp, for any new mechanistic exception to the default "totality of the circumstances" rule. The flaws of *Teague* are addressed in the following three sections; the irrelevance of *Springs* is then addressed in Section XI.

VIII. Issue spotting matters: Contrary to what the *Dobson* panel claimed, the State's burden of proof is not at issue here.

In arriving at its "double odor" conclusion, the *Dobson* panel relied on *Teague* in two ways. The *Dobson* panel first quoted *Teague* as follows: "The legalization of industrial hemp 'has not changed the State's burden of proof to overcome a motion to suppress." *Id.* at 454, 900 S.E.2d at 234 (quoting *Teague*, 286 N.C. App. at 179 n.6, 879 S.E.2d at 896 n.6). However, this is an entirely irrelevant observation, because the State's burden of proof in this context is not—and has never been—at issue.

"Burden of proof" means "[a] party's duty to prove a disputed assertion or charge[.]" BURDEN OF PROOF, Black's Law Dictionary (11th ed. 2019). The State's

burden of proof in the context of a motion to suppress has long been well-established:

> When a defendant in a criminal prosecution makes a motion to suppress evidence obtained by means of a warrantless search, the State has the burden of showing, at the suppression hearing, "how the [warrantless search] was exempted from the general constitutional demand for a warrant."

State v. Nowell, 144 N.C. App. 636, 642–43, 550 S.E.2d 807, 812 (2001), *aff'd,* 355 N.C. 273, 559 S.E.2d 787 (2002) (quoting *State v. Cooke,* 306 N.C. 132, 135, 291 S.E.2d 618, 620 (1982)) (alteration in original). *See also, e.g., State v. Gibson*, 32 N.C. App. 584, 586, 233 S.E.2d 84, 86 (1977) (holding that statute governing adjudication of motions to suppress did not improperly shift burden of proof onto defendant, because even though it shifts "the burden of going forward with evidence" onto defendant, "[t]he State still has the burden of proving that the evidence was lawfully obtained").

It would defy reason to suggest that the legalization of hemp has somehow changed the well-defined contours of the State's burden of proof in this context. Certainly, Mr. Dobson has made no such argument. (Nor does it appear that the defendant in *Teague* included any such "burden of proof" argument in his challenge regarding the motion to suppress, either. *See Teague*, 286 N.C. App. at 167–77, 879 S.E.2d at 888–95.) Rather, the State's burden of proof in a case of this particular type has long been—and continues to be—the same: to establish that probable cause justified the warrantless search, which was conducted under the exigent

circumstances of a roadside traffic stop. *See, e.g., Chambers v. Maroney*, 399 U.S. 42, 51, 90 S. Ct. 1975, 1981, 26 L. Ed. 2d 419 (1970).

Consequently, it remains unclear why either the *Dobson* panel or the *Teague* panel may have made this "burden of proof" observation. Regardless, one thing is clear: this "burden of proof" observation provides no constitutionally viable support for a new "double odor" exception.

IX. Prejudicial bias towards law-abiding North Carolinians matters: It has no proper place in our jurisprudence.

In order to reach its "double odor" conclusion, the *Dobson* panel then relied on *Teague* a second time. In support of its claim that the odor of cannabis "continues to implicate the probable cause determination despite the legalization of hemp," the *Dobson* panel cited to section II.B. of the decision in *Teague*. *Dobson*, 293 N.C. App. at 454, 900 S.E.2d at 234 (citing *Teague*, 286 N.C. App. at 178–79, 879 S.E.2d at 895–96).

In section II.B. of its decision, the *Teague* panel, relying on two unpublished federal district court orders, said of those orders: "We find their analyses illustrative with regard to the enduring viability of our marijuana case law and the legal principles articulated by those precedents, despite the enactment of the Industrial Hemp Act." *Teague*, 286 N.C. App. at 178, 879 S.E.2d at 896. In other words, nothing has changed, according to the *Teague* panel.[9]

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[9] In another case, the Court of Appeals later explicitly reiterated its belief that "the legalization of hemp has no bearing on our Fourth Amendment jurisprudence[.]" *State v. Guerrero*, 292 N.C. App. 337, 342–43, 897 S.E.2d 534, 538 (2024).

One of those orders was from *United States v. Brooks*, No. 3:19-CR-00211-FDW-DCK, 2021 WL 1668048 (W.D.N.C. Apr. 28, 2021) (unpublished).[10] To be blunt, the fact that the Court of Appeals would view the *Brooks* order as "persuasive" is a chilling proposition, because the analysis within that order is squarely rooted in prejudicial bias towards law-abiding North Carolinians.

When reviewing a magistrate's assessment of a witness's credibility, *id.* at *2, the court in *Brooks* opined: "Therefore, if hemp does have a nearly identical smell to marijuana—and hemp was present—it would suggest to this court that [the witness] was even more reasonable to believe evidence of marijuana was present." *Id.* at *4.

Let that soak in for a moment: The presence of legal cannabis makes it *more* reasonable to believe that illegal cannabis is also present.

According to this reasoning, if you do something that is perfectly legal (*i.e.*, possess and/or use hemp), then based *entirely on that one fact alone*, it is "even more reasonable" to presume that you are also simultaneously committing a crime (*i.e.*, possessing and/or using marijuana). This is unjustified, prejudicial bias against anyone who lawfully possesses and/or uses hemp in North Carolina. The need to prevent such biases from infecting our case law is self-evident. *See, e.g., Harper v. Hall*, 382 N.C. 314, 317, 874 S.E.2d 902, 904–05 (2022) (Barringer, J., dissenting) (noting that "partisan biases . . . have no place in a judiciary dedicated to the

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[10] No copy of either of these unpublished orders is included here because neither "has precedential value to a material issue in the case[.]" N.C. R. App. P. 30(e)(3).

impartial administration of justice and the rule of law"); *In re E.B.*, 375 N.C. 310, 317 n.2., 847 S.E.2d 666, 672 n.2 (2020) (explaining that adherence to the law "help[s] mitigate the risk that parents will lose custody of their children" based on "racial, religious, gender, sexual orientation, or other biases").

Furthermore, this type of prejudicial bias, if allowed to stand, would infringe on the equal protection and substantive due process rights of those who lawfully possess and/or use hemp in North Carolina. Under the Fourteenth Amendment to the United States Constitution and Article I, Section 19 of the Constitution of North Carolina, the principle of equal protection "requires that all persons similarly situated be treated alike." *Richardson v. N. Carolina Dep't of Correction*, 345 N.C. 128, 134, 478 S.E.2d 501, 505 (1996); U.S. Const. amend. XIV; N.C. Const., art. I, § 19. The Court of Appeals' reasoning at issue here results in differential treatment between those who lawfully possess and/or use hemp and those who do not. But in light of the General Assembly's decision *not* to provide for such differential treatment, this court-made differential treatment has no "rational relationship to some legitimate state interest," *id.*, meaning it amounts to an equal protection violation.

Likewise, under the Fourteenth Amendment to the United States Constitution and Article I, Section 19 of the Constitution of North Carolina, the principle of substantive due process dictates that "the law shall not be unreasonable, arbitrary or capricious, and that the law be substantially related to the valid object sought to be obtained." *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 181,

594 S.E.2d 1, 15 (2004) (quotation omitted); U.S. Const. amend. XIV; N.C. Const., art. I, § 19. But again, there is no "rational basis" for the court-made differential treatment that results from the judicial reasoning at issue here, *id.*, meaning it results in a substantive due process violation, too.

In short, contrary to what the Court of Appeals has claimed, the unpublished trial court order from *Brooks* provides no constitutionally viable support for any new, mechanistic, hemp-era exception to the default "totality of the circumstances" rule.

X. Logic matters again: The "probability" definition of probable cause does not provide the requisite level of reliability that is needed to justify disregard for the totality of the circumstances.

The other unpublished order underlying the Court of Appeals' belief that the creation of legal cannabis is irrelevant in the Fourth Amendment context is *United States v. Harris*, No. 4:18-CR-57-FL-1, 2019 WL 6704996 (E.D.N.C. Dec. 9, 2019) (unpublished). *Teague*, 286 N.C. App. at 178, 879 S.E.2d at 896.

The court in *Harris* ruled that the motion to suppress was properly denied "due to a combination of multiple factors"—*i.e.*, a ruling based on the totality of the circumstances. *Id.* at *2. Nonetheless, the court went on to opine that "the smell of marijuana alone, particularly where corroborated here by two officers at separate times, supports a determination of probable cause, even if some use of industrial hemp products is legal under North Carolina law." *Id.* at *3. As support for that conclusion, the court quoted the United States Supreme Court for one of the various definitions of probable cause: "[o]nly the probability, and not a prima facie showing,

of criminal activity is the standard of probable cause." *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 235, 103 S. Ct. 2317, 2330, 76 L. Ed. 2d 527 (1983)).

Critically, though, this particular definition of probable cause—based, as it is, on only an unquantified "probability"—was *not* the original justification for the old cannabis-related exception to the default "totality of the circumstances" rule.[11] Rather, as explained above in Section VII, that original justification was a simple fact that no longer exists: properly trained officers used to be able to reliably identify "the distinct odor" of marijuana with expert-level precision. *Greenwood*, 47 N.C. App. at 741, 268 S.E.2d at 841; *see also, e.g., Mitchell*, 224 N.C. App. at 178–79, 735 S.E.2d at 444.

In relying on the "probability" definition of probable cause in this context, the Court of Appeals is necessarily suggesting that it serves as some sort of comparable,

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[11] Nor is it the only definition of probable cause. Indeed, "[t]he probable-cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances." *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S. Ct. 795, 800, 157 L. Ed. 2d 769 (2003). *Gates* itself proves this important point. In addition to the "probability" definition quoted above, the United States Supreme Court in *Gates* also explained that "the traditional standard for review of an issuing magistrate's probable cause determination has been that so long as the magistrate had *a substantial basis* for concluding that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more." *Gates*, 462 U.S. at 236, 103 S. Ct. at 2331 (alterations and quotation omitted) (emphasis added). In a footnote, the United States Supreme Court then reiterated: "probable cause requires only a probability *or* substantial chance of criminal activity, not an actual showing of such activity." *Id.* at 245 n.13, 103 S. Ct. at 2335 n.13 (emphasis added).

On their face, though, these two definitions from *Gates*—"a substantial chance" for finding the sought-after evidence, versus just "a probability . . . of criminal activity"—are difficult to reconcile. If the weather forecast calls for a 10% change of rain tomorrow, no one would consider that a "substantial chance" of rain; but there is, nonetheless, still "a probability" that it will rain.

acceptable substitute for the old "odor alone" rationale. But these two rationales have nothing in common. Whereas the old rationale was rooted in expert-level reliability and precision, this new rationale would be just a guess. A "mechanistic inquir[y]," *Harris*, 568 U.S. at 244, 133 S. Ct. at 1055, based on expert-level reliability and precision is, of course, nothing like a "mechanistic inquir[y]," *id.*, based on a guess. In this way, the new "probability" rationale, if accepted, would represent a radical departure from the old rationale.

Moreover, the underlying logic inherent to this sort of reasoning would also create a dangerously slippery slope. If it is based on the "probability" definition of probable cause, then the underlying logic of this new, hemp-era exception would be this:

> **If *x* (detectable fact) = unquantified probability of either *a* (marijuana-related activity) or *b* (innocent activity), then the odor of cannabis + *x* = probable cause to conduct warrantless searches for evidence of marijuana-related crimes.**

The odor of cologne (or any other odor that could be characterizes as a "cover scent") would serve as *x*. Maybe the cologne is being used to conceal the odor of marijuana; or maybe someone who went to a nightclub on a Saturday night just wanted to smell nice. Which might it actually be? Based only on these limited details, all anyone can do is blindly guess. However, the old exception to the default "totality of the circumstances" rule had nothing to do with blind guesses; rather, it was based on expert-level reliability and precision. In other words, the old exception had nothing to do with this sort of logic.

Just like the odor of cologne, any one of countless other readily detectable facts could serve as *x* in this formula. For example, if, during a routine traffic stop, an officer smells the odor of cannabis and also sees that the driver is visibly nervous, then under this novel logic, the officer would have probable cause for a warrantless search. Maybe the driver is only nervous because he just so happens to be the type of person that gets nervous during traffic stops, even though he has nothing to hide; or, maybe he's nervous because he knows he has illegal cannabis in his car. There's an unquantified probability that either possibility could be true—which is all that would be needed under this novel logic. The officer would be free, without considering any other circumstances, to blindly guess about what's really happening.

In short, the old cannabis-related exception to the default "totality of the circumstances" rule was constitutionally viable because, as explained above in Sections V and VII, officers in the field used to be able to reliably identify marijuana with expert-level precision. But that is no longer true. By substituting that old rationale with the "probability" definition of probable cause, officers would be empowered to do something they could never do before: create probable cause by making a blind guess regarding the source of the cannabis odor, based only on the unquantified probability that one—and only one—additional factual circumstance is an incriminating, rather than innocent, circumstance.

XI. Full context matters: The *Dobson* panel's truncated quotation of *State v. Springs* does nothing other than conceal the true nature of that case's holding.

As direct support for its "double odor" holding, the *Dobson* panel also partially quoted *State v. Springs*, 292 N.C. App. 207, 897 S.E.2d 30 (2024). Specifically, the *Dobson* panel said this: "The detection—by several officers—of the cover scent provides a basis '*in addition to the odor of marijuana* to support probable cause to search the vehicle[.]' " *Dobson*, 293 N.C. App. at 456, 900 S.E.2d at 235 (quoting *Springs*, 292 N.C. App. at 215, 897 S.E.2d at 37) (emphasis and alteration in original). The *Dobson* panel's truncated quotation of *Springs* gives the clear impression that *Springs* directly supports the point that the *Dobson* panel is making, namely: that the odor of cannabis plus one additional circumstance amounts to probable cause. But *Springs* says no such thing. This Court has previously warned about mischaracterizing precedent in such ways. *See State v. Meadows*, 371 N.C. 742, 746, 821 S.E.2d 402, 405 (2018) ("To derive such a categorical rule from *Canady*, however, one must ignore the opinion's rationale.").

Contrary to what the *Dobson* panel suggested, the probable cause ruling in *Springs* was not based on just the odor of cannabis plus a second circumstance. Here is the full sentence from *Springs* that the *Dobson* panel only partially quoted: "In this case, however, as in [*State v. Parker*, 277 N.C. App. 531, 860 S.E.2d 21 (2021)], the Officer had *several reasons* in addition to the odor of marijuana to support probable cause to search the vehicle and, consequently, the Crown Royal bag." *Springs*, 292 N.C. App. at 215, 897 S.E.2d at 37 (emphasis added). The *Springs* panel also described those "several reasons" as "several suspicious

circumstances," which included the fact that the defendant had acknowledged that marijuana had been smoked in the car. *Id.* at 215–17, 897 S.E.2d at 37–38.

Apart from the *Dobson* panel's mischaracterization of it, the holding of *Springs* is also concerning in and of itself. Among the "several suspicious circumstances" upon which the *Springs* panel relied in approving the warrantless vehicle search was the fact that the suspect was driving with a revoked license. *Springs*, 292 N.C. App. at 216, 897 S.E.2d at 38. But the "objects sought," *Riddick*, 291 N.C. at 406, 230 S.E.2d at 511, in *Springs* was evidence of *marijuana-related* crimes. The *Springs* panel made no attempt to explain how a revoked driver's license would contribute to any probable cause for believing that a warrantless search would yield evidence of *marijuana-related* crimes. *See id.* (For example, might there be some reason to believe that people with revoked drivers' licenses use marijuana at rates higher than people with valid drivers' licenses?) *See Johnson*, 378 N.C. at 247, 861 S.E.2d at 485 ("Like the Fourth Circuit Court of Appeals, we harbor some concern about the inclination of the State toward using whatever facts are present, no matter how innocent, as indicia of suspicious activity.") (quotation and brackets omitted).

In short, contrary to the picture painted by the *Dobson* panel's truncated quotation of it, *Springs* provides no support for the *Dobson* panel's decision to ignore the totality of the circumstances and instead apply its mechanistic new "double odor" analysis.

XII. Logic matters yet again: In the age of hemp, legal cannabis users have a compelling incentive to use "cover scents" to conceal the odor of their legal cannabis.

The Court of Appeals has previously ruled that findings about a cover scent, when coupled with other potentially incriminating findings, failed "to support a finding of reasonable suspicion of criminal activity," *State v. Cottrell*, 234 N.C. App. 736, 745, 760 S.E.2d 274, 280–81 (2014), which is "a less demanding standard than probable cause," *State v. Barnard*, 362 N.C. 244, 247, 658 S.E.2d 643, 645 (2008) (quotation omitted). Two points about this ruling warrant consideration here.

First, "cover scent" is necessarily just a synonym for whatever fragrance is detected. In *Cottrell*, it was " 'like a fragrance, cologne-ish,' but 'more like an incense than what someone would wear.' " *Cottrell*, 234 N.C. App. at 738, 760 S.E.2d at 276. But of course, any guess about whether the fragrance at issue is *actually being used as a cover scent* is just that: a guess. Here, even though the windows of the Charger had already been opened, Corporal Allis testified that he didn't smell the cologne until the rear passenger door was opened. (T 11/8/22 p 17). Just because he then characterized that smell as a "cover scent" doesn't change the fact of what it actually was: the smell of cologne, detected in a car full of clubgoers on a Saturday night.

Second, if a "cover scent" didn't help to clear the lower "reasonable suspicion" hurdle in *Cottrell*, then logic dictates that it does not help to clear the higher "probable cause" hurdle here, either. This is especially true now, in the age of legal cannabis, because now, *lawful* cannabis users have a compelling incentive to try to conceal the odor of their cannabis. Here's why:

Suppose that during a routine traffic stop, the driver tells the officer that the odor in the air is actually the odor of legal cannabis. Given the level of scientific expertise needed to measure delta-9 THC levels, no one would have the ability to confirm, in that moment, whether any cannabis in the vehicle was actually legal or illegal cannabis. And critically, no matter what the driver says or how trustworthy she may think she is, the officer would always be free to *disbelieve* the driver's claim that her cannabis was legal cannabis.[12] Indeed, even if the driver's lawful cannabis were in its original commercial packaging, and even if that packaging clearly indicated the lawful status of the cannabis, those facts wouldn't necessarily matter, either—because the officer could *still* choose to disbelieve the driver's claim that her cannabis is actually hemp.[13] Moreover, the driver might also worry that the officer—just like the officer in *State v. Booth*—is operating under the misinformed belief that he possesses the superhuman ability "to smell the THC levels of cannabis plants and see the difference between hemp and marijuana," 286 N.C. App. 71, 73, 879 S.E.2d 370, 372–73 (2022), and that he therefore believes—contrary to scientific

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[12] The State itself claimed as much on pages 29–30 of its response brief in this case.

[13] Law enforcement recently raided seventy-one tobacco and convenience stores in eastern North Carolina, seizing millions of dollar worth of hemp products, based on the suspicion that the cannabis being sold in those stores, though packaged and labelled as hemp, was in fact marijuana. "Onslow County store owners sue sheriff over hemp raids," https://www.witn.com/2024/12/06/onslow-county-store-owners-sue-sheriff-over-hemp-raids/ (originally published 6 Dec 2024) (last visited 15 Apr 2025).

fact—that he can conclusively know whether the cannabis he smells is hemp or marijuana.

And if, for whatever reason, the officer ultimately chooses to disbelieve the driver, then the situation can quickly spiral out of control. In one well-publicized incident that received national attention, police officers in Charlotte violently arrested two people who were minding their own business on a public bench in broad daylight. Why? Because they were smoking what turned out to be legal cannabis. " 'We bought it at a smoke shop': Police video of violent arrest shows confusion over legal THC," https://www.wunc.org/2023-12-12/body-camera-videos-of-violent-marijuana-arrest-show-confusion-over-legal-hemp-based-thc-products (originally published 12 Dec 2023) (last visited 15 Apr 2025). Video of that encounter (which is embedded within that news story) shows that the police arrested these people within seconds—even as they repeatedly explained that they had just bought their legal cannabis from a nearby store. The Chief of the Charlotte-Mecklenburg Police Department, after suspending one of those officers "due to excessive force," nonetheless otherwise stood by the officers' decision-making, explaining: "What you have to do as an officer is the assumption that it is marijuana. No different than when we have deals of cocaine." *Id.* But there is, of course, an obvious and fatal flaw in comparing cannabis to cocaine in this way: There is no form of "legal cocaine" that North Carolinians can lawfully buy in stores and then lawfully possess and use while sitting outside on a public bench in broad daylight. Consequently, to assume, in this way, that any cannabis user is an

unlawful cannabis user is to rely on the same sort of unjustified prejudicial bias that has, until now, started infecting our case law. *See* Section IX, *supra*.

In short: There can be no denying the fact that any law-abiding North Carolinian who possess and/or uses legal cannabis has justifiable cause to fear the police—*for no reason other than her lawful cannabis use*.

And so what's a reasonable, law-abiding North Carolinian to do during this sort of routine traffic stop? One option would be to just hope and pray that the officer believes her explanation about the lawfulness of her cannabis. However, if she follows the news or reads United States Supreme Court decisions, *see, e.g., McDonald v. United States*, 335 U.S. 451, 455–56, 69 S. Ct. 191, 193, 93 L. Ed. 153 (1948) ("Power is a heady thing; and history shows that the police acting on their own cannot be trusted."), then she might understandably question that approach. And so, in a good-faith effort to avoid the need to convince the officer of her trustworthiness, she might instead decide to just spray some perfume inside her car, in the hopes that the officer won't ever notice the smell of her legal cannabis.

This conundrum only tends to show that the historically low probative value of "cover scents"—*e.g.*, personal fragrances, air fresheners, incense, etc.—is now, in the age of legal cannabis, even lower. In short, there is no constitutionally viable basis for relying on such smells in order to create any new, mechanistic exception to the default "totality of the circumstances" rule.

XIII. The laboratories of democracy matter: The highest courts of multiple other states have uniformly acknowledged that, when legal and illegal cannabis coexist, the way to properly assess probable cause is by reviewing the totality of the circumstances.

Like North Carolina, many other states now have some form of both legal and illegal cannabis. And like North Carolina, those states have been confronted with the question of whether, given the coexistence of legal and illegal cannabis, the default "totality of the circumstances" rule may be ignored when assessing probable cause. Those other states have uniformly reached the same conclusion: Consistent with the United States Supreme Court's admonition to avoid "rigid rules, bright-line tests, and mechanistic inquiries," *Harris*, 568 U.S. at 244, 133 S. Ct. at 1055, courts must consider the totality of the circumstances in this context. *People v. Armstrong*, No. 165233, 2025 WL 994370, at *6 (Mich. Apr. 2, 2025); *Illinois v. Redmond*, 2024 IL 129201, ¶ 47 (2024); *Minnesota v. Torgerson*, 995 N.W.2d 164, 174 (Minn. 2023); *Pennsylvania v. Barr*, 266 A.2d 25, 41 (Pa. 2021); *Commonwealth v. Overmyer*, 469 Mass. 16, 23, 11 N.E.3d 1054, 1059–60 (2014).

XIV. The Fourth Amendment matters: Courts must liberally construe its protections in favor of individual liberty, as a check on discretionary police power.

This case cuts straight to the heart of one of our most sacred constitutional protections: the right to be free from unwarranted government intrusion in one's personal life. One year after the Civil War ended, when the Nation was scarcely a century old, the United States Supreme Court warned us about the fragility of that constitutional right—and the critical role that the judicial branch plays in protecting it::

> It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. *It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon*.

Schneckloth v. Bustamonte, 412 U.S. 218, 229, 93 S. Ct. 2041, 2048, 36 L. Ed. 2d 854 (1973) (quoting *Boyd v. United States*, 116 U.S. 616, 635, 6 S. Ct. 524, 535, 29 L. Ed 746 (1886)) (emphasis added).

Over a half-century ago, the United States Supreme Court explained that the Fourth Amendment's protections are even more important now, in modern times:

> In times of unrest, whether caused by crime or racial conflict or fear of internal subversion, this basic law and the values that it represents may appear unrealistic or "extravagant" to some. But the values were those of the authors of our fundamental constitutional concepts. In times not altogether unlike our own they won—by legal and constitutional means in England, and by revolution on this continent—a right of personal security against arbitrary intrusions by official power. If times have changed, reducing everyman's scope to do as he pleases in an urban and industrial world, *the changes have made the values served by the Fourth Amendment more, not less, important*.

Coolidge v. New Hampshire, 403 U.S. 443, 455, 91 S. Ct. 2022, 2032, 29 L. Ed. 2d 564 (1971) (citations omitted) (emphasis added).

"Power is a heady thing; and history shows that the police acting on their own cannot be trusted." *McDonald*, 335 U.S. at 455–56, 69 S. Ct. at 193. Given its importance in checking discretionary police power, the warrant requirement has been described as "[t]he bulwark of Fourth Amendment protection." *Franks v.*

Delaware, 438 U.S. 154, 164, 98 S. Ct. 2674, 2681, 57 L. Ed. 2d 667 (1978). That is, after all, why the Fourth Amendment exists:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

Johnson v. United States, 333 U.S. 10, 13–14, 68 S. Ct. 367, 369, 92 L. Ed. 436 (1948). Accordingly, if the courts are going to create *any* exceptions to the warrant requirement, then those exceptions must be "jealously and carefully drawn." *Jones v. United States*, 357 U.S. 493, 499, 78 S. Ct. 1253, 1257, 2 L. Ed. 2d 1514 (1958).

Beyond their poignant prose, these passages make a critical point for purposes of evaluating the issue presented here: In the context of cases such as this one, the judicial branch has no duty to make law enforcement's job easier; rather, the judicial branch's duty is to stand guard against any effort to chip away at the Fourth Amendment's protection of individual liberty. This is especially true in the context of cases like this one, because as the United States Supreme Court has acknowledged, the judicial branch

> is not empowered to suspend constitutional guarantees so that the Government may more effectively wage a "in drugs." . . . If that war is to be fought, those who fight it must respect the rights of individuals, whether or not those individuals are suspected of having committed a crime.

Florida v. Bostick, 501 U.S. 429, 439, 111 S. Ct. 2382, 2389, 115 L. Ed. 2d 389 (1991).

Moreover, the conduct of "zealous officers," *Johnson*, 333 U.S. at 13, 68 S. Ct. at 369, in the age of legal cannabis only further emphasizes the need for the judicial branch "to be watchful for the constitutional rights of the citizen," *Schneckloth*, 412 U.S. at 229, 93 S. Ct. at 2048. Consider two examples of such zealous conduct. Even though the State's own crime lab cannot tell the difference between legal and illegal cannabis, a police officer in one hemp-era case nonetheless testified under oath that he could do so, because he claimed to have the superhuman ability to "smell the THC levels of cannabis plants and see the difference between hemp and marijuana." *Booth*, 286 N.C. App. at 73, 879 S.E.2d at 372–73. (The SBI has acknowledged that not even trained police K-9s have that level of olfactory acuity. (R p 40).) Also consider the violent arrest of the two legal cannabis users minding their own business on a public bench in Charlottle who, as they were being arrested, made it perfectly clear that they had just bought their legal cannabis from a nearby store. *See* Section XII, *supra*.

In short, just as it did generations ago, recent "history [still] shows that the police acting on their own cannot be trusted." *McDonald*, 335 U.S. at 455–56, 69 S. Ct. at 193. Accordingly, in this context, there is but one way for the courts to fulfil their "duty . . . to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon," *Schneckloth*, 412 U.S. at 229, 93 S. Ct. at 2048, namely: rule that, in the age of legal cannabis, probable cause must be evaluated in light of the true totality of the circumstances, rather than via any

"rigid rule[ ], bright-line test[ ], [or] mechanistic inquir[y.]" *Harris*, 568 U.S. at 244, 133 S. Ct. at 1055.

XV. The separation of powers matters: In creating hemp, the General Assembly decided to disrupt the decades-old marijuana status quo in North Carolina. The courts must respect that decision—and *not* undermine it by imposing a court-made constitutional tax on products and conduct that the General Assembly has deemed lawful.

"The legislative, executive and supreme judicial powers of the State government shall be forever separate and distinct from each other." N.C. Const., art. I, § 6. "This principle is fundamental to our form of government and has appeared in each of our state's constitutions." *State v. Berger*, 368 N.C. 633, 645, 781 S.E.2d 248, 255 (2016);

Decisions about whether to legalize the production, sale, possession, and/or use of a particular plant are decisions for the legislative—not the judicial— branch to make. This Court's precedent makes that fact clear. *See, e.g., Rhyne v. K-Mart Corp.*, 358 N.C. 160, 169–70, 594 S.E.2d 1, 8 (2004) (explaining it is the General Assembly's sole responsibility "as the policy-making agency of our government, . . . to weigh all the factors surrounding a particular problem, balance competing interests, provide an appropriate forum for a full and open debate, and address all of the issues at one time") (quotations and alterations omitted); *State v. Warren*, 252 N.C. 690, 696, 114 S.E.2d 660, 666 (1960) ("The legislative department is the judge, within reasonable limits, of what the public welfare requires, and the wisdom of its enactments is not the concern of the courts.").

The General Assembly carefully deliberated its decision to create legal cannabis in North Carolina. Of particular relevance here, the General Assembly

considered the concern of the law enforcement community that creating hemp would, in some practical respects, "essentially legalize marijuana." "Law enforcement fears NC's effort to boost hemp industry could essentially legalize marijuana," https://www.wral.com/law-enforcement-fears-nc-s-effort-to-boosthempindustry-could-essentially-legalize-marijuana/18421082/ (originally published 30 May 2019) (last visited 12 Apr 2025). Six years ago, the director of the North Carolina Conference of District Attorneys told the General Assembly the same exact thing that the State's own expert recently confirmed in *Ruffin*: "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." *Id. see Ruffin*, 2025 WL 699571, at *2 ("at our lab we currently do not have the ability to distinguish between marijuana and hemp because that analysis requires what's called a quantitative analysis which is where you're measuring the percentages of what's present in the plant material"). To this same point, the SBI told the General Assembly:

> 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.

(R p 40).[14]

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[14] In a decision it has since withdrawn, the Court of Appeals attempted to dismiss the relevance of the SBI memo by saying: "With all due respect to the executive branch, an agency's legal interpretation is not controlling." *In re J.B.P.*, No. COA23-269, 2024 WL 3658794, at *4 (N.C. Ct. App. Aug. 6, 2024), *opinion withdrawn,* No. 23-269, 2024 WL 4021483 (N.C. Ct. App. Aug. 30, 2024). Though it

Consequently, it's clear that the General Assembly knew that the creation of hemp would disrupt the decades-old cannabis status quo in North Carolina. The General Assembly knew this decision would make it harder to keep enforcing marijuana laws in the same old ways. The General Assembly knew this decision would mark the end of the old "odor alone" exception. And knowing all this, *the General Assembly still chose to create hemp*, because despite the concerns of some, there was still much to be gained for many, namely: the enhancement of personal freedom for North Carolinians and the opportunity to make boatloads of money via a new cash crop. "NC sees hemp as next big cash crop," https://www.wral.com/nc-sees-hemp-as-next-big-cash-crop/18273125/ (originally published 20 Mar 2019) (last visited 15 Apr 2025). If the separation of powers matters in North Carolina, then "the wisdom of" that choice should not be "the concern of the courts," *Warren*, 252 N.C. at 696, 114 S.E.2d at 666.

Notably, the General Assembly did, for a brief moment, consider accommodating the law enforcement community's concerns. In 2019, the General Assembly considered outlawing the possession of "smokable hemp." By defining "marijuana" to include "smokeable hemp," such a law would have helped address the concern that if someone is smoking cannabis in public, officers cannot tell if that

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accurately acknowledges the importance of the separation of powers, this observation otherwise misses the relevant point: The reason to respect the SBI's legal conclusions is not because they were made by an executive branch agency, but because they are correct.

cannabis is legal or not.[15] But the General Assembly ultimately opted against enacting such a law, thereby leaving North Carolinians free to smoke hemp whenever and wherever smoking of any type may be allowed, including in public places.

Contrary to the fundamental separation-of-powers principles, the Court of Appeals' mechanistic new "double odor" exception swerves into the legislative lane by effectively imposing a court-made constitutional tax on products and conduct that the General Assembly has deemed lawful. Under the law written by the General Assembly, North Carolinians may lawfully possess and smoke hemp in public. However, according to the Court of Appeals, doing so while wearing a personal fragrance means that you automatically give the police the power to infringe on your Fourth Amendment rights in ways they would otherwise be prohibited from doing. In other words, engaging in this lawful activity while wearing a personal fragrance necessarily now means that you are unavoidably taking a constitutional risk.

Furthermore, this new court-made reality also necessarily adversely impacts the North Carolina businesses that produce and sell hemp products, contrary to legislative intent. According to the Court of Appeals, the products that North

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[15] That bill, Senate Bill 352 of the 2019 legislative session, is available here: https://www.ncleg.gov/Sessions/2019/Bills/Senate/PDF/S352v2.pdf (last visited 12 Apr 2025). If it had become law, that bill would have defined the new term "smokable hemp" to mean "harvested raw or dried hemp plant material, in a form intended to allow THC to be introduced into the human body by inhalation of smoke, including hemp buds or hemp flowers, hemp cigars, and hemp cigarettes."

Carolina businesses lawfully produce and sell now endanger their customers' constitutional rights, contrary to the law as written by the General Assembly—and contrary to the General Assembly's goal of making hemp a new cash crop for North Carolina. Imposing such a court-made constitutional tax cannot be good for any business' bottom line. And if they have any concern for their customers' well-being, then these businesses would now need to affix a warning to their hemp products, similar to the health warning that appears on tobacco products: "**CONSTITUTIONAL WARNING: POSSESSING/USING THIS LAWFUL PRODUCT WHILE WEARING A PERSONAL FRAGRANCE CONSTITUTES A FORFEITURE OF YOUR FOURTH AMENDMENT RIGHTS**."

If "the policy-making agency of our government," *Rhyne*, 358 N.C. at 169, 594 S.E.2d at 8, believed it wise to create that sort of risk for North Carolinians, then it could have done so itself—but it didn't. If "the policy-making agency of our government," *id.*, believed it wise to impose that sort of burden on North Carolina businesses, then it could have done so itself—but it didn't. The judicial branch should not try doing that which the legislative branch chose *not* to do. Constitutional crises are created in that way. *See State v. Massey*, 103 N.C. 356, 9 S.E. 632, 633 (1889) ("it might prove more dangerous to usurp the power of a coordinate branch of the government than to allow some acknowledged criminals to go unpunished").

XVI. Campaign promises matter: Mr. Dobson's arguments squarely align with our new Attorney General's own public call to disrupt the cannabis-related status quo and end the unacceptable disparate treatment it has spawned. This Court's precedent allows him to now abandon the arguments of his predecessor and instead support an outcome that would help the State achieve that worthy goal.

Our new Attorney General has publicly condemned the cannabis-related status quo. On his own website, the Attorney General has shared a campaign video in which he tells all North Carolinians: "It's time to end the prohibition of cannabis." "Jeff Jackson Announces Support for Ending the Federal Prohibition of Marijuana," https://www.jeffjacksonnc.com/news/jeff-jackson-announces-support-for-ending-the-federal-prohibition-of-marijuana (last visited 12 Apr 2025). (The direct link to that campaign video is: https://www.facebook.com/JeffJacksonNC/videos/321526376088988/ (last visited 12 Apr 2025).)

Relying on his own experience as a trial-level prosecutor, the Attorney General explains in that video that most marijuana-related arrests are low-level offenses for tiny amounts of marijuana. Rather than serve the public good in any meaningful way, he explains that those arrests just needlessly derail North Carolinians' careers, educations, and futures. The Attorney General also candidly acknowledges that, under the status quo, marijuana laws are enforced in ways that result in disparate treatment of some North Carolinians: "People of color are over

three times more likely to be arrested for marijuana even though white people use it just as much."[16] *Id.*

Despite acknowledging the existence of such disparities, however, it was recently reported that the Attorney General "said there is nothing he can do on his end" to combat those disparities. "North Carolina politicians push for cannabis reform and equality," https://www.wnct.com/local-news/north-carolina-politicians-push-for-cannabis-reform-and-equality/ (originally published 26 Feb 2025) (last visited 12 Apr 2025).

Cases like Mr. Dobson's now present the Attorney General with a concrete opportunity to "do [something] on his end." The Attorney General has publicly acknowledged the unjustified disparities that result from the amount of discretionary power that law enforcement has already been given. But now, in the age of legal cannabis, any mechanistic new exception to the default "totality of the circumstances" rule would only increase that power, because police in the street would have a brand new—and easier—way to infringe on North Carolinians' Fourth Amendment rights in the performance of their duties: So long as you happen to be wearing a personal fragrance, then police can conduct a warrantless search based

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[16] Disparate treatment related to cannabis in North Carolina comes in various forms. Just compare: In Asheville, for legal cannabis users dining at Infuso, "[t]he night might close with a chocolate pot de creme containing 10 milligrams of CBD, another cannabis chemical regarded as calming and grounding." "Southern Chefs Take Meals to New Highs," https://www.theassemblync.com/culture/food/cannabis-cooking-north-carolina-chefs-asheville/ (published & last visited 18 Apr 2025). *See* Section III, *supra*. Meanwhile, for legal cannabis users minding their own business on a public bench in Charlotte, the night might end in jail. *See* Section XII, *supra*.

entirely on the odor of a commercially available, legal plant that, by their own admission, they themselves cannot reliably identify. Logic and reason clearly suggest that expanding discretionary police power in this way would only allow for more—not less—disparate treatment of North Carolinians. *See McDonald*, 335 U.S. at 455–56, 69 S. Ct. at 193 ("Power is a heady thing; and history shows that the police acting on their own cannot be trusted.").

If the Attorney General stands by his public comments, then a pivot is needed—both in this case and others.[17] Because until now, the State has argued in favor of just such an exception to the default "totality of the circumstances" rule—meaning the State has argued in favor of an expansion of discretionary police power. However, under this Court's precedent, the State is free to change its position in cases like these, so long as the State is able, "if asked, to justify its actions." *State v. Hooper*, 358 N.C. 122, 127, 591 S.E.2d 514, 517 (2004).

Although that duty "to justify" applies to all parties, it "appl[ies] with particular force where the party in question is the State, which has the elevated responsibility to seek justice above all other ends." *Id.* The requisite "justif[ication]" here is easily articulated, because it corresponds directly to the Attorney General's own public comments: Giving the police this type of brand new discretionary power

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[17] This Court has already agreed to review hemp-era, cannabis-related issues in *State v. Schiene* (No. 305PA24) and *State v. Rowdy* (No. 300PA24). Cannabis-related petitions for discretionary review are also still pending in at least two other cases: *State v. Little* (No. 267P24) and *State v. Ruffin* (No. 100P25).

would only make it harder for the State to confront the unjustified disparate treatment of its citizens and, thereby, "seek justice above all other ends." *Id.*

Add to this the separation of powers concerns discussed in Section XV, *supra*, plus the fact that the judicial branch has "the duty . . . to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon," *Schneckloth*, 412 U.S. at 229, 93 S. Ct. at 2048, and by all available indications, everyone here—*i.e.*, the defendant, the Attorney General, and the courts—ought to agree: In the age of legal cannabis, there is no constitutionally viable reason to create any mechanistic new exception to the default "totality of the circumstances" rule.

XVII. Mr. Dobson's requested relief

The Court of Appeals concluded that probable cause was based on just two incriminating factual circumstances: the two odors. For the reasons explained in this brief, there is no constitutionally viable basis for concluding that the two odors amount to probable cause for a warrantless search for evidence of marijuana-related crimes. Nor is there any constitutionally viable basis for creating any such new exception to the default "totality of the circumstances" rule—*i.e.*, one that allows a court to engage in a mechanistic box-checking exercise that asks nothing more than whether two odors were detected. Consequently, this Court should reverse the Court of Appeals' decision, reverse the trial court's denial of Mr. Dobson's motion to suppress, vacate the judgment and conviction, and remand to the trial court so that the State may then decide, with the challenged evidence having now been suppressed, whether to dismiss the charges.

Furthermore, Mr. Dobson respectfully submits that this Court should announce a holding that provides clear guidance for the bench, the bar, and law enforcement alike. *See State v. Rowdy*, 907 S.E.2d 460, 470 (N.C. Ct. App. 2024) (Arrowood, J., concurring) (calling for this Court's help "in clarifying for courts and law enforcement . . . the new legal landscape after the legislation pertaining to hemp"). That holding should, at a minimum, make three points clear:

(1) The odor of cannabis must now be referred to as "the odor of cannabis"—and not "the odor of marijuana."[18]

(2) Probable cause for a warrantless search in this context does not mean a vague suspicion of unspecified wrongdoing; rather, it "means a reasonable ground to believe that the proposed search will reveal the presence" of evidence related to marijuana crimes. *Riddick*, 291 N.C. at 406, 230 S.E.2d at 511; *see also Johnson*, 378 N.C. at 247, 861 S.E.2d at 485 ("Like the Fourth Circuit Court of Appeals, we harbor some concern about the inclination of the State toward using whatever facts are present, no matter how innocent, as indicia of suspicious activity.") (quotation and brackets omitted).

(3) In the age of legal cannabis, evaluations of probable cause for warrantless searches for evidence of marijuana-related crimes must consider the

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[18] Although this case involves only the odor, and not the sight, of cannabis, the same is true for "the sight of cannabis." (R p 57).

totality of the circumstances, including circumstances that tend to dispel any initial suspicion.

CONCLUSION

Mr. Dobson respectfully submits that this Honorable Court should reverse the Court of Appeals' decision, reverse the trial court's denial of the motion to suppress evidence, vacate the judgment and conviction, and remand to the trial court so that the State may then choose whether to dismiss the charges.

Respectfully submitted this the 21st day of April 2025.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this date I electronically filed and served a copy of the foregoing brief upon the State by email, as follows:

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This the 21st day of April 2025.

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