

CANNABIS AND NC LAW

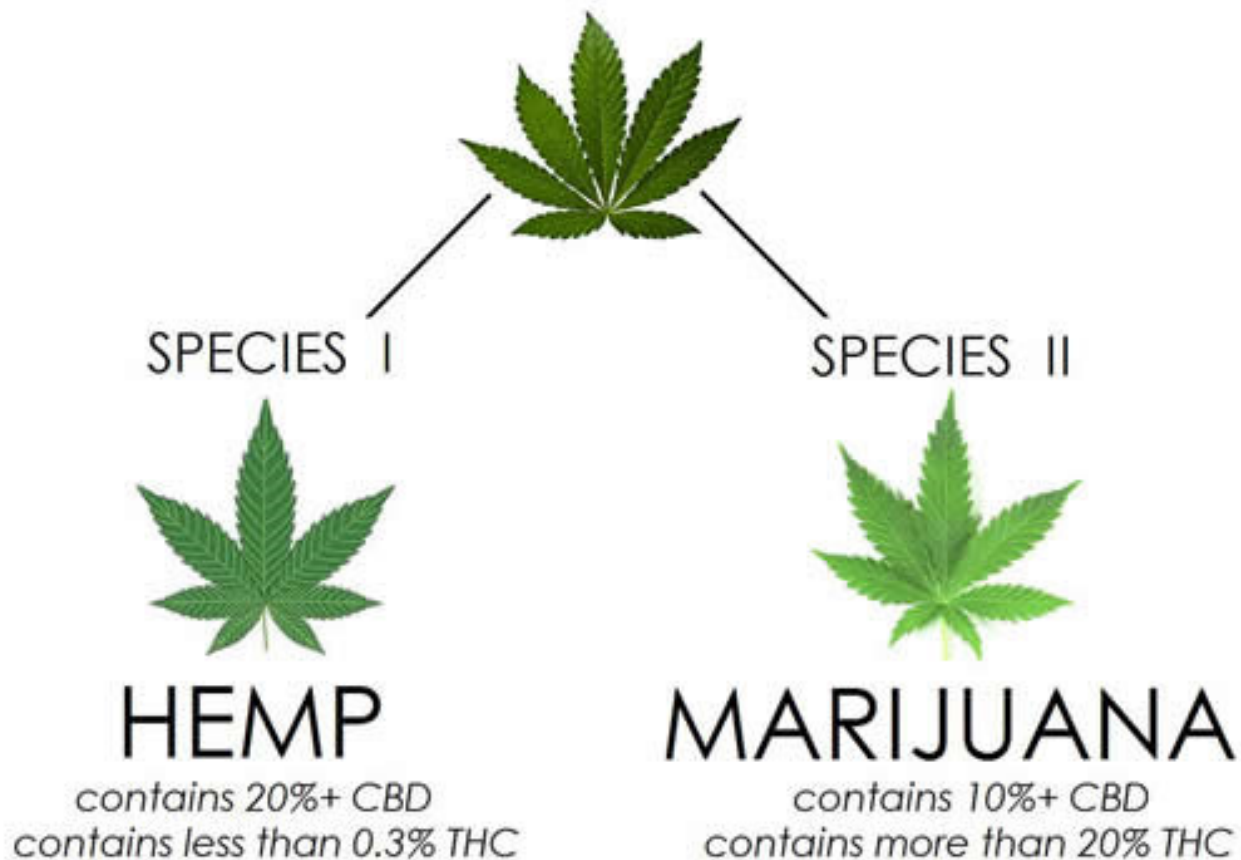
Phil Dixon

UNC School of Government

Sept. 2, 2021

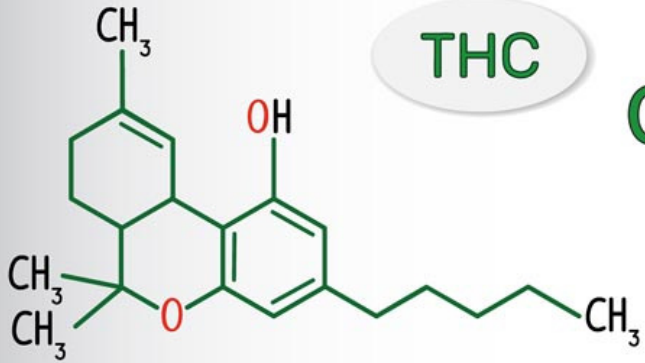
CANNABIS

HAS TWO SPECIES

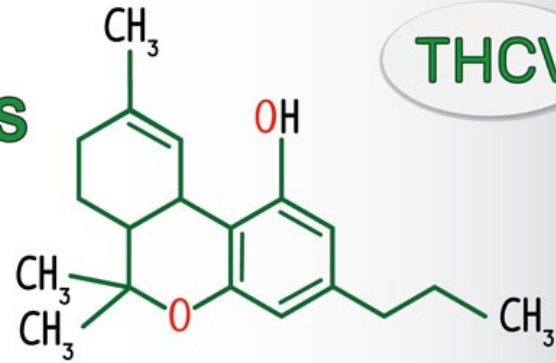


Natural Cannabinoids

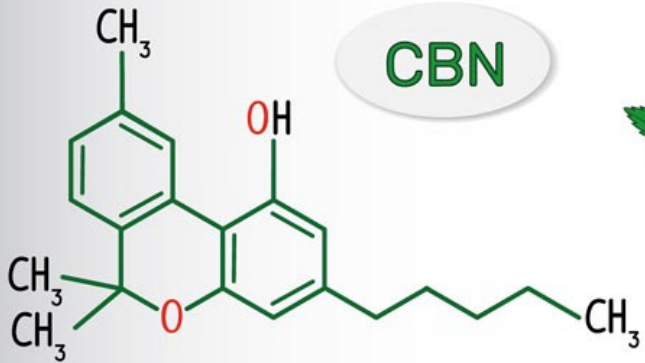
THC



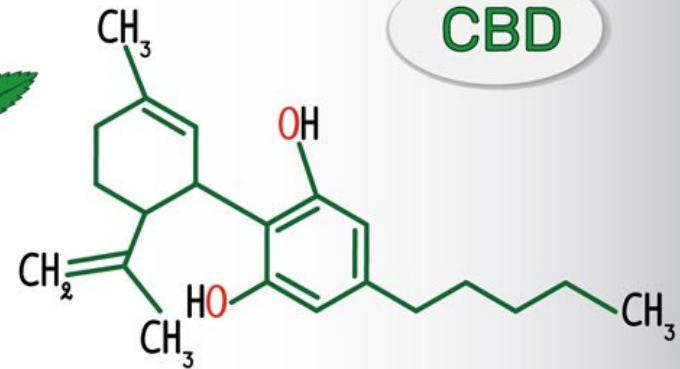
THCV



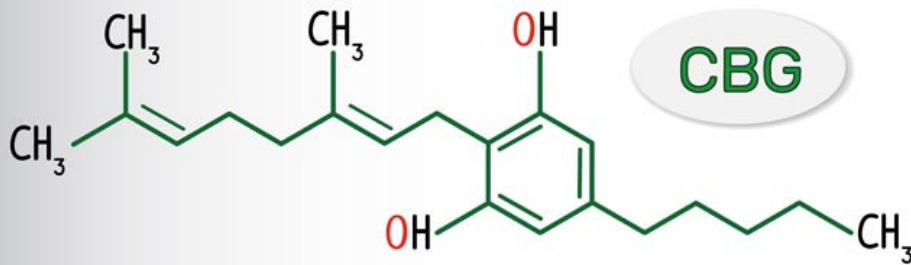
CBN



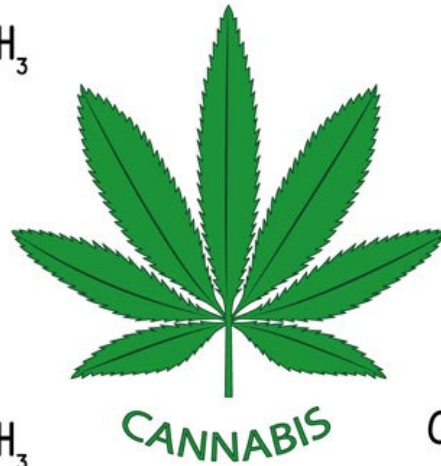
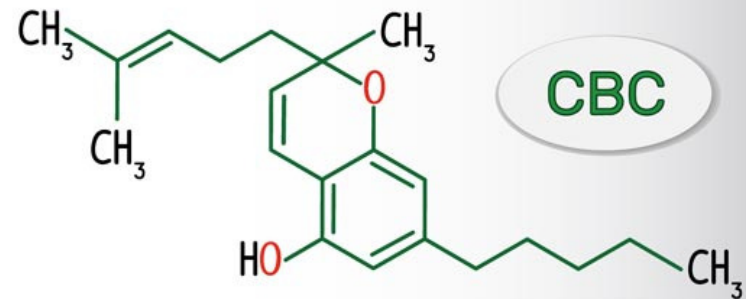
CBD



CBG



CBC



HEMP MARIJUANA

- G.S. 90-87 (16) defines marijuana under state law

“Industrial hemp, as defined in G.S. 106-568.51, when the industrial hemp is produced and in compliance with the rules issues by the North Carolina Industrial Hemp Commission” is specifically excluded from the definition.

G.S. 106-568.51(7) -

DEFINITION OF INDUSTRIAL HEMP:

- All parts of the cannabis plant grown by a licensed grower that has no more than a 0.3% THC content.
 - Grower must be licensed by NC Hemp Commission
 - THC content determined from dried plant material

SIMILAR TO THE CURRENT FEDERAL DEFINITION:

7 U.S.C. 5940 (2): ALL PARTS OF CANNABIS SATIVA WITH NO MORE THAN .3 % THC ON DRY WEIGHT BASIS

- EXCLUDED FROM DEFINITION OF “MARIHUANA” IN CSA
- EXPLICITLY INCLUDES ALL EXTRACTS, DERIVATIVES, CANNABINOIDS, ETC.


SO, I CAN GROW IT?



Not without a license from the N.C. Hemp
Commission

CAN YOU LEGALLY POSSESS IT?

Yes*, assuming it's a lawful hemp product—grown in NC by a licensed grower, and containing no more than .3 % THC on a dry weight basis. Kinda.



HOW CAN YOU TELL IT
APART FROM MARIJUANA?

Um, yes...I have a question



5 GRAMS CBD HEMP FLOWER



AFGHAN KUSH



HAWAIIAN HAZE STRAIN | CBD
HEMP FLOWER 0.5 GRAM JOINT
SMOKYS RESERVE



HAWAIIAN HAZE STRAIN | CBD
HEMP FLOWER
SMOKYS RESERVE



SPECIAL SAUCE STRAIN | CBD HEMP
FLOWER 0.5 GRAM JOINT
SMOKYS RESERVE

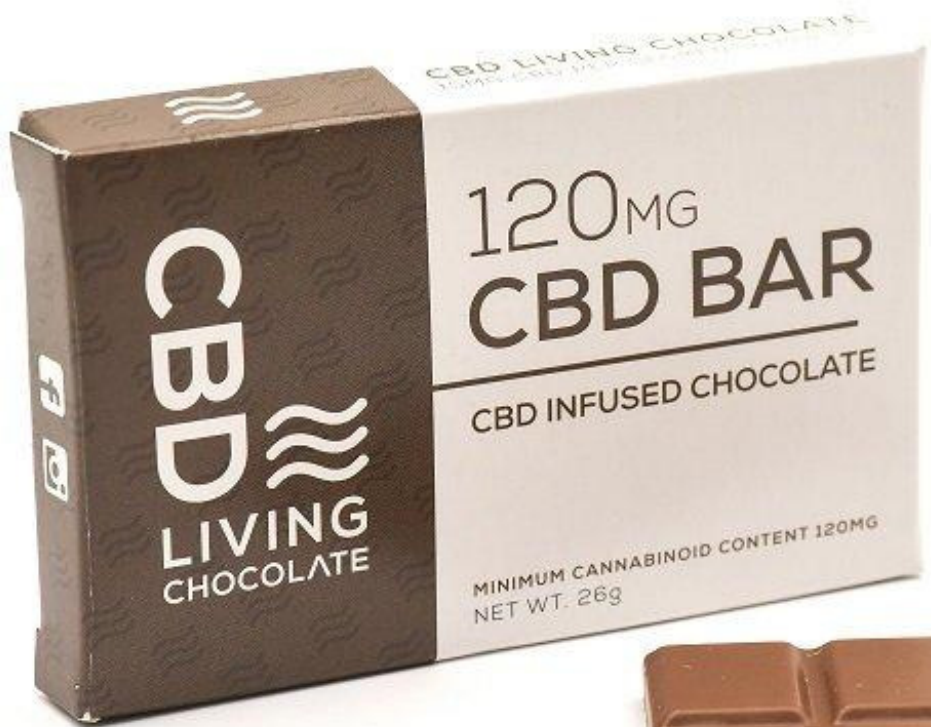


SPECIAL SAUCE STRAIN | CBD HEMP
FLOWER
SMOKYS RESERVE













Synergy™
Skin Worx
 Transdermal Patch



High CBD
Transdermal Patch
 CBD - 63 mg | THC - 3 mg

Includes - 1 transdermal patch, 2 alcohol prep pads

Net Weight - .0423oz / 1.2 grams
Serving Size - 1 patch
Activation Time - 60 min.


Patch and Process LLC 2406 N Mississippi Ave.
 Synergy Skin Worx Ste #200 Portland, OR 97227
 OLCC License #100659693F0



Synergy™
Skin Worx
 Transdermal Patch



CBD 1:1
Transdermal Patch
 CBD - 25 mg | THC - 24 mg

Includes - 1 transdermal patch, 2 alcohol prep pads

Net Weight - .0423 oz / 1.2 grams
Activation Time - 60 min.
Serving Size
 5-5mg CBD servings per patch
 5-5mg THC servings per patch



Patch and Process LLC 2406 N Mississippi Ave.
 Synergy Skin Worx Ste #200 Portland, OR 97227
 OLCC License #100659693F0



Synergy™
Skin Worx
 Transdermal Patch



THC
Transdermal Patch
 THC - 40 mg | CBD - 0.5 mg

Includes - 1 transdermal patch, 2 alcohol prep pads

Net Weight - .0423 oz / 1.2 grams
Activation Time - 60 min.
Serving Size
 8-5mg THC servings per patch
 8-0.05mg CBD servings per patch



Patch and Process LLC 2406 N Mississippi Ave.
 Synergy Skin Worx Ste #200 Portland, OR 97227
 OLCC License #100659693F0



whoopi & maya
pms & menstrual relief
savor.
MEDICAL CANNABIS
CBD RAW CACAO
NET WT 4 OZ (112 g) APPROX 80 mg CBD & 4 mg THC

whoopi & maya
pms & menstrual relief
savor.
MEDICAL CANNABIS
CBD RAW CACAO
NET WT 4 OZ (112 g) APPROX 80 mg CBD & 4 mg THC

whoopi & maya
pms & menstrual relief
relax.
MEDICAL CANNABIS
THC HERBAL TINCTURE
NET WT 1 OZ (28 g)
APPROX 100 mg THC / 1 OZ BOTTLE

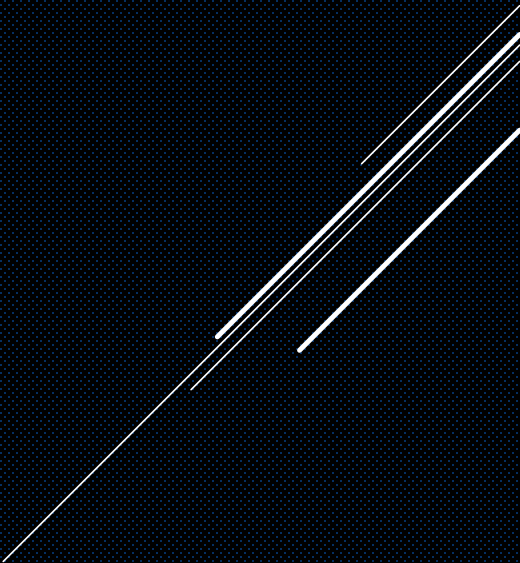
whoopi & maya
pms & menstrual relief
soak.
MEDICAL CANNABIS
UNSCENTED BATH SOAK
NET WT 16 OZ (454 g) APPROX 25 mg THC / 8 OZ JAR













**ORANGE
KUSH**

12
MIND BLOWING OUNCES

XXX

GRAPE APE

12
MIND BLOWING OUNCES

XXX

**SOUR
DIESEL**

12
MIND BLOWING OUNCES

XXX







EMERGING LEGAL ISSUES



North Carolina C

A UNC School of Governme

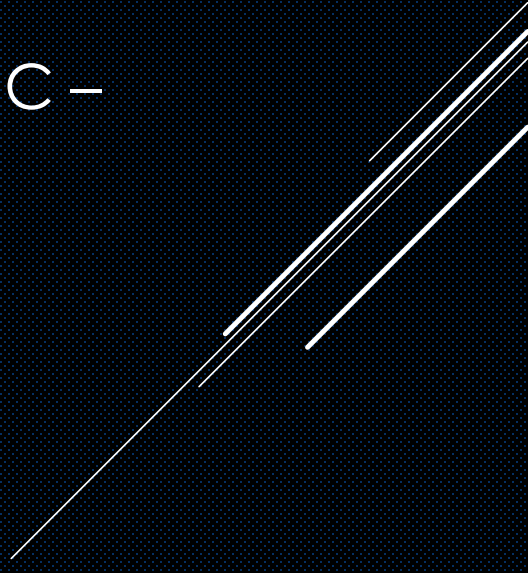
Pills, Edibles, and Drug Mixtures in North Carolina: The Medium Matters


Posted on [Sep. 24, 2020, 9:50 am](#) by [Phil Dixon](#)

CARTRIDGE/WAX/THC ISSUES

G.S. 90-95(d)(4) – “If the quantity . . . exceeds. . .1/20 oz. of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a class 1 misdemeanor. . .

Over 3/20 oz. of extracted resin, or for any quantity of synthetic tetrahydrocannabinols or THC isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

- Under 1/20 oz. (1.4 g.) – class 3 misd.
 - Over 1/20 but less than 3/20 oz. (4.25 g.) – class 1 misd.
 - Over 3/20 oz., or any “isolated” or “synthetic” THC – class I felony
 - Nothing specific to extracts as far as trafficking
- 

- What Counts as “Synthetic THC”?
 - What about “THC isolated from the resin”?
 - No one seems to know
- 
- A decorative graphic consisting of several parallel white lines of varying lengths, slanted diagonally from the bottom right towards the top right, located in the lower right quadrant of the slide.

-“SPICE” AND “K2”?



-ANY CANNABIS PRODUCTS THAT HAVE UNDERGONE PROCESSING OR ARE OTHERWISE SYNTHESIZED?

“ISOLATED THC”



IS Δ-8
“SYNTHETIC” THC?
OR “ISOLATED”
THC?



STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of
Superior Court Div

STATE VERSUS

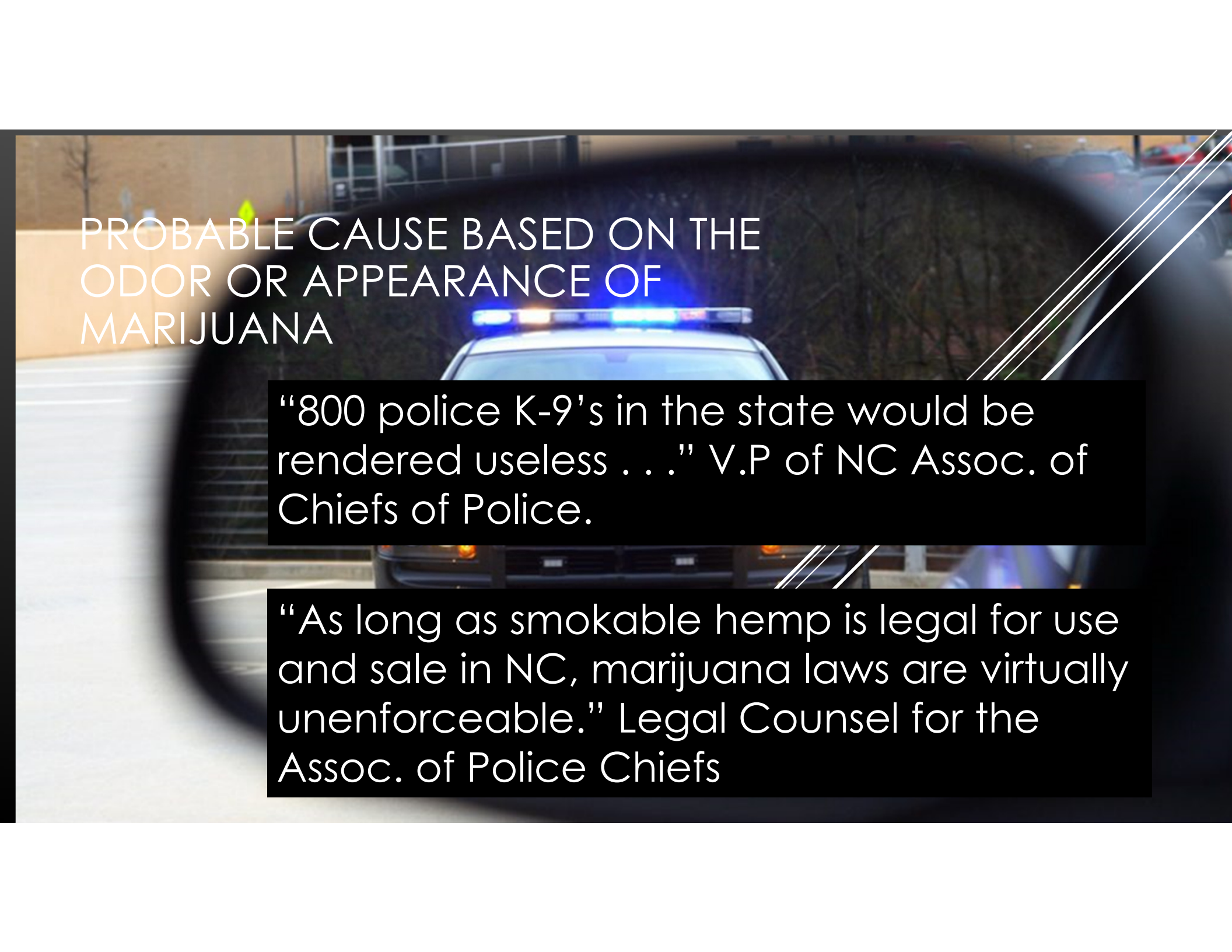
Name And Address Of Defendant

INDICTMENT

This is a superseding indictment.

<i>Race</i>	<i>Sex</i>	<i>Date Of Birth</i>
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Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.
I.		
II.		
III.		



PROBABLE CAUSE BASED ON THE
ODOR OR APPEARANCE OF
MARIJUANA

“800 police K-9’s in the state would be rendered useless . . .” V.P of NC Assoc. of Chiefs of Police.

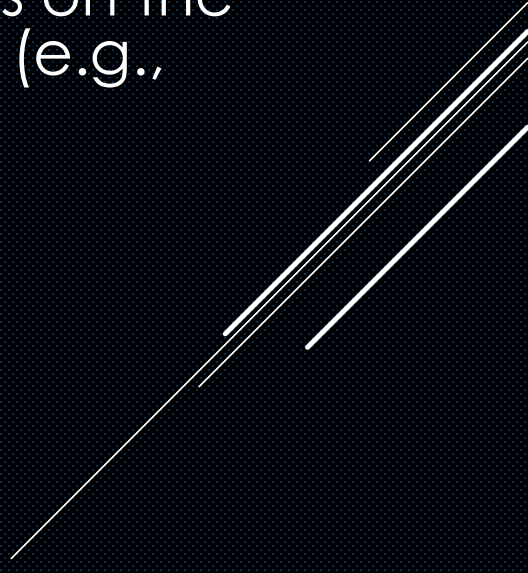
“As long as smokable hemp is legal for use and sale in NC, marijuana laws are virtually unenforceable.” Legal Counsel for the Assoc. of Police Chiefs

▶ State's PC Arguments:

- ▶ 1) PC is a low standard
- ▶ 2) Precedent controls



▶ How do we rebut?

- ▶ 1) PC is always based on the totality of circumstances
 - ▶ 2) The law cannot ignore factual developments on the ground that affecting totality of circumstances (e.g., legal hemp)
 - ▶ 3) It wasn't a very sensible rule in the first place
 - ▶ Other ideas?
- 


DRUG IDENTIFICATION

UNDER *STATE V. FLETCHER*, 92 N.C. APP. 50 (1988), NO EXPERT TESTIMONY OR CHEMICAL ANALYSIS IS NEEDED TO IDENTIFY MARIJUANA

New hemp laws and products cast serious doubt on this rule where proper Rule 702 objection/challenge

Also became a *Daubert* state since then . . .

STATE V. OSBORNE

- It isn't a matter of sufficiency of the evidence, it's a matter of admissibility of the State's identification evidence
 - Object to improper lay or expert testimony identifying something as marijuana (or other controlled substance)
 - E.g., field tests, visual ID, lay opinion, admissions
- 

North Carolina Crim

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IS THE DEFENDANT'S ADMISSION ENOUGH?

Sufficiency vs. Admissibility: Drug I.D. after State v. Osborne

Updated on [Sep. 17, 2019, 7:32 am](#) by [Phil Dixon](#)

In August, the North Carolina Supreme Court weighed in on drug identification once again in *State v. Osborne*, ___ N.C. ___ (August 16, 2019). I wrote about the earlier Court of Appeals decision in the case, [here](#). The new *Osborne* decision clarifies the application of drug identification rules as well as sufficiency of the evidence in this context.

SUBSTITUTE ANALYSTS & CONFRONTATION

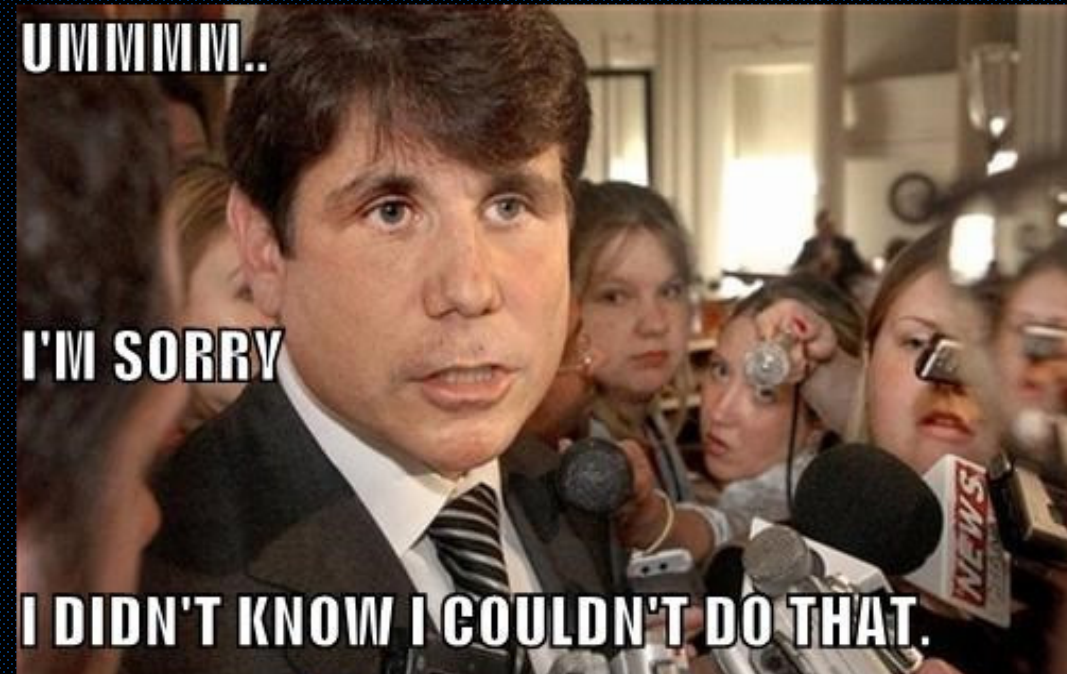
-Mere surrogate testimony?

-Independent review
and opinion?

-Plurality in *Williams v. OH*
rejected “basis of opinion” logic used by NC courts to allow practice



KNOWLEDGE DEFENSE TO MARIJUANA POSSESSION?



-Possession requires willful possession – D. knew it was a controlled substance.

-Potential defense where evidence D. thought it was hemp

DEFENSE TO FAILED DRUG SCREENS?



§ 95-28.2. Discrimination against persons for lawful use of lawful products during nonworking hours prohibited.


(a) As used in this section, "employer" means the State and all political subdivisions of the State, public and quasi-public corporations, boards, bureaus, commissions, councils, and private employers with three or more regularly employed employees.

(b) It is an unlawful employment practice for an employer to fail or refuse to hire a prospective employee, or discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the prospective employee or the employee engages in or has engaged in the lawful use of lawful products if the activity occurs off the premises of the employer during nonworking hours and does not adversely affect the employee's job performance or the person's ability to properly fulfill the responsibilities of the position in question or the safety of other employees.

(c) It is not a violation of this section for an employer to do any of the following:

(1) Restrict the lawful use of lawful products by employees during nonworking

STATUTE INCLUDES:

- Lost wages/benefits claims
 - Order of reinstatement to position
 - Reasonable costs and attorney fees
- 
- A decorative graphic consisting of several parallel white lines of varying lengths, slanted upwards from left to right, located in the bottom right corner of the slide.



DORMANT COMMERCE CLAUSE & FEDERAL PREEMPTION CONCERNS?

-Indiana lost a preliminary injunction to join its smokable hemp law on preemption grounds

-Same issues arise with D. H. for trying to enforce NC-only hemp products

EFFECTIVE DATES:

10/31/2015 – NC legalizes hemp

~SUMMER 2018 – Smokable hemp becomes a thing

12/20/2018 – U.S. (clearly) legalizes all forms of hemp, including extracts, etc.

TBD: Smokable hemp ban? Medicinal?





Pills, Edibles, and Drug Mixtures in North Carolina: The Medium Matter

Posted on [September 24, 2020](#) by [Phil Dixon](#)

Summer 2020 Hemp Update

Posted on [June 16, 2020](#) by [Phil Dixon](#)

Carts, Wax, and Oh, My: The New World of Marijuana Extracts

Posted on [November 12, 2019](#) by [Phil Dixon](#)

A background image of a lush green field of hemp plants, with some taller stalks on the right side.

LEGAL ADVOCACY FOR A BURGEONING INDUSTRY

kight on cannabis

HEMP AND CANNABIS BUSINESS LAW

→ [Visit the KIGHT ON CANNABIS Blog](#)

QUESTIONS?

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FDA HAS AUTHORITY TO REGULATE CANNABIS PRODUCTS UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT



--CANNOT CLAIM THERAPEUTIC BENEFIT WITHOUT FDA APPROVAL

--CANNOT INTRODUCE "FOOD" CONTAINING CBD OR THC INTO INTERSTATE COMMERCE

--CANNOT MARKET THE PRODUCTS AS DIETARY SUPPLEMENTS

--APPLIES EQUALLY TO HUMAN OR ANIMAL FOOD

