

CANNABIS AND NC LAW

Phil Dixon

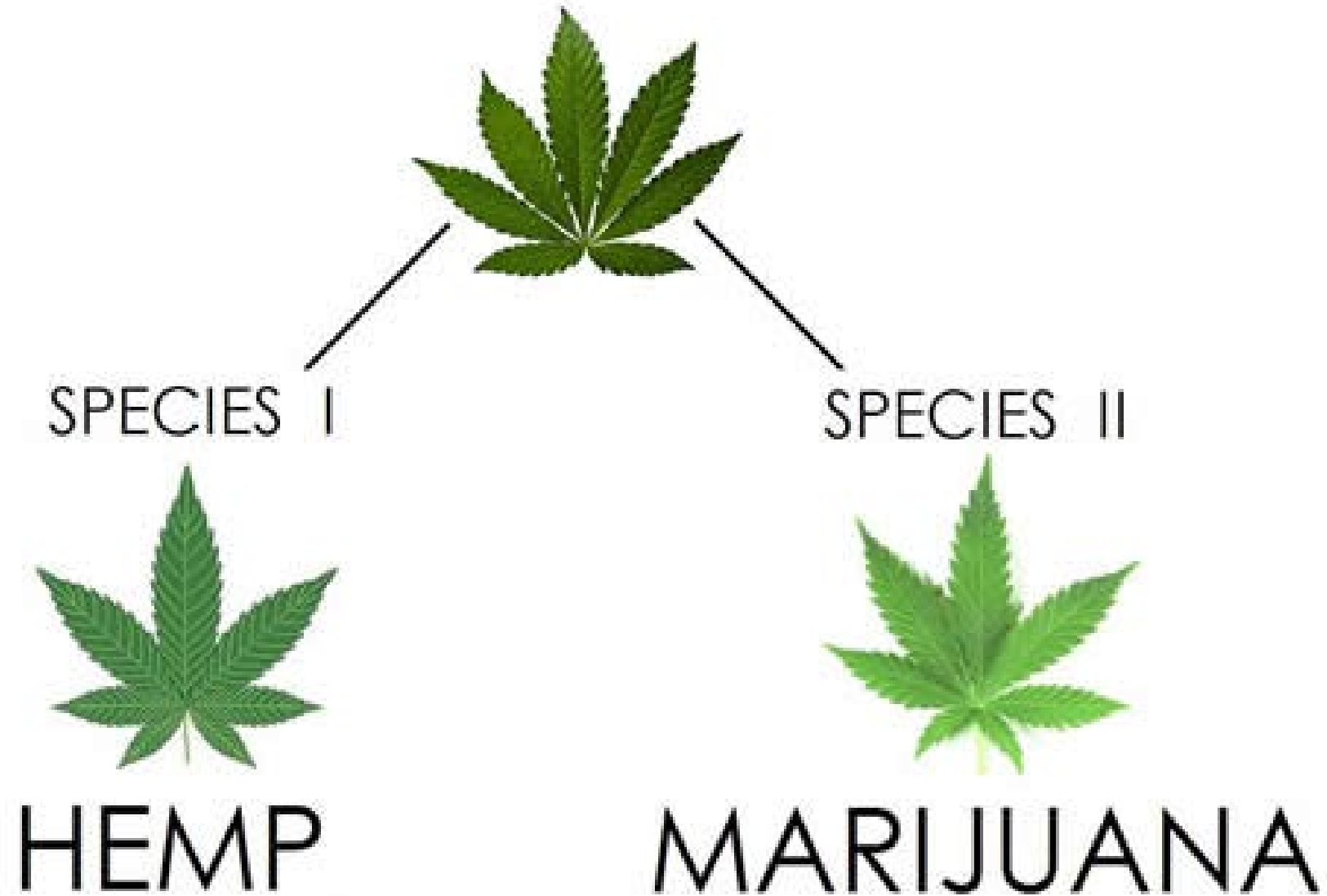
UNC School of Government

Fall 2025



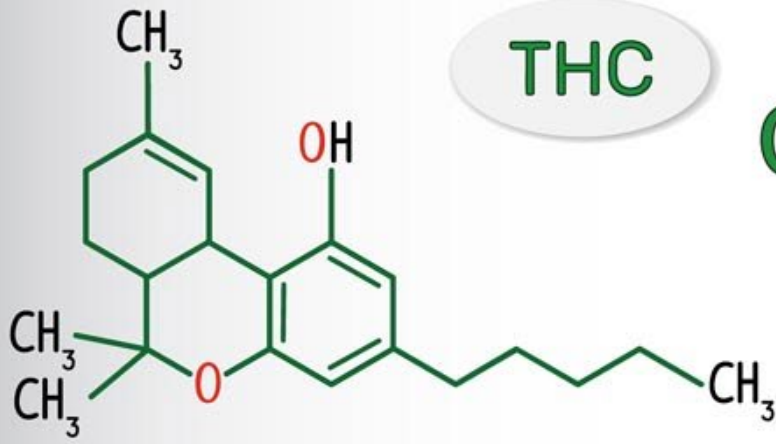
CANNABIS

HAS TWO SPECIES

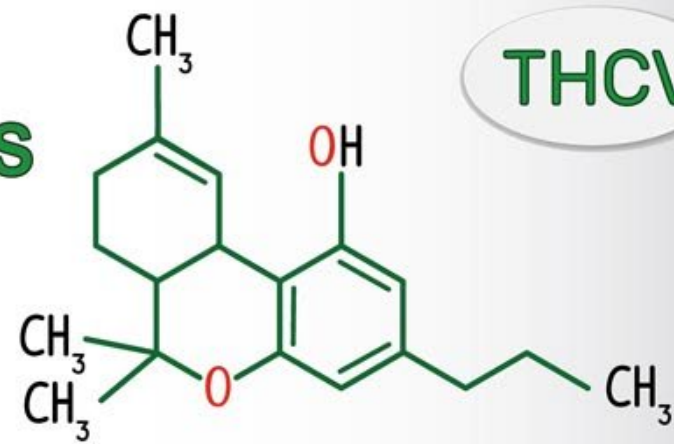


Natural Cannabinoids

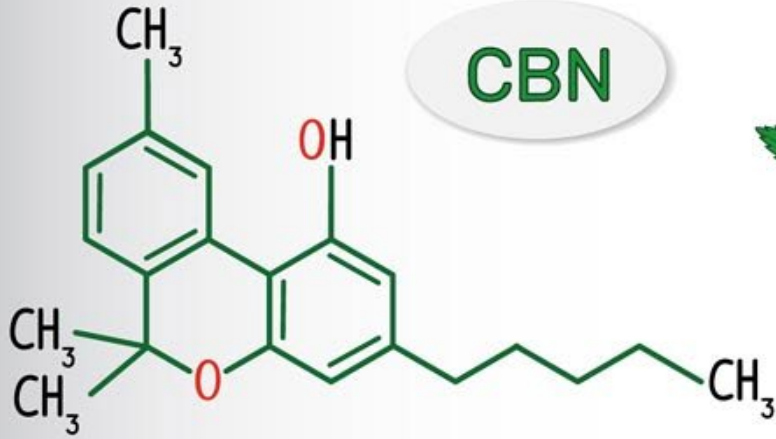
THC



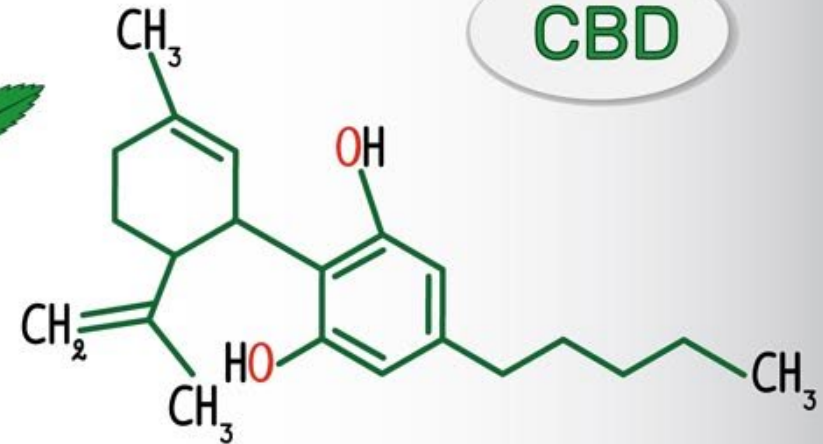
THCV



CBN

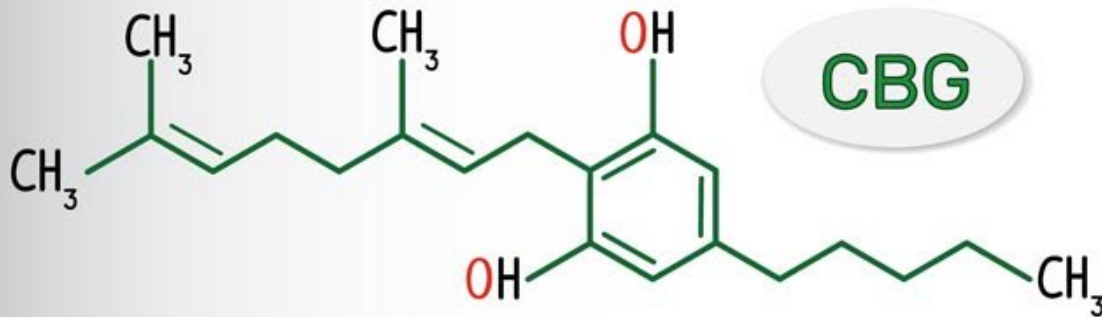


CBD

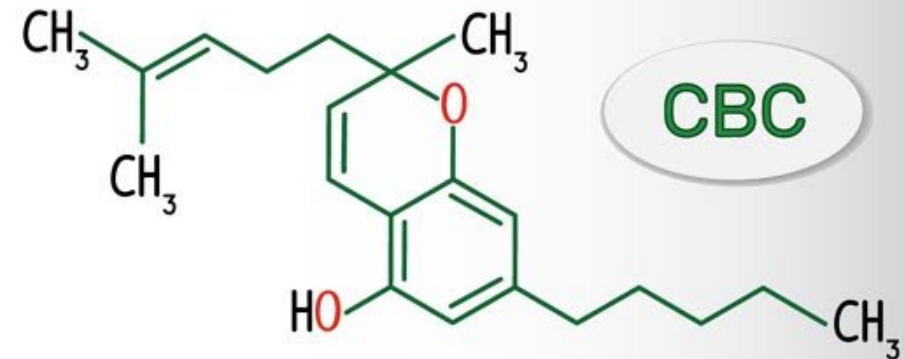


CANNABIS

CBG



CBC



Federal Definition of Hemp– 7 U.S.C. 5940 (2):

- All parts of cannabis sativa with no more than .3 % delta-9 THC on dry weight basis
 - Excluded from definition of “marihuana” in CSA
 - Includes all extracts, isomers, acids, derivatives, cannabinoids, etc.
- 
- Abstract geometric lines in the bottom right corner, consisting of several parallel and intersecting lines forming a series of triangles and polygons.

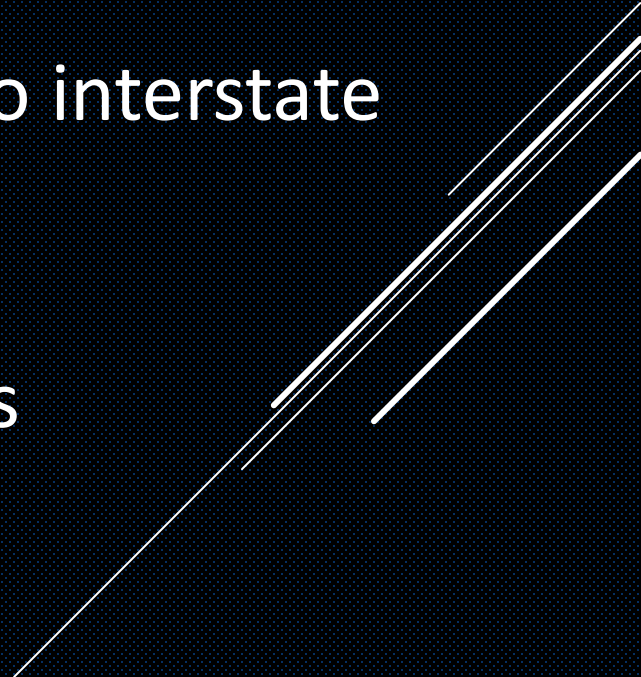


- USDA has regulatory authority pre-harvest



- FDA has regulatory authority for hemp products in the marketplace

FDA Regulations

- 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 and animal food
- 
- A series of several parallel white diagonal lines of varying lengths, located in the bottom right corner of the slide, extending from the bottom edge towards the right edge.

 Epidiolex[®]
(cannabidiol)



Former N.C. Hemp Law

- G.S. 90-87 (16) defined 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.

Former Definition of Industrial Hemp – G.S. 106-568.51(7)

- All parts of the cannabis plant grown by a licensed grower that has no more than a 0.3% delta-9 THC content
 - Grower must be licensed by NC Hemp Commission
 - THC content determined from dried plant material



Current N.C. Hemp Law

- ▶ G.S. 90-87
 - ▶ (13a) defines hemp as all parts of cannabis plant with no more than 0.3% delta-9 THC concentration on dry weight basis
 - ▶ (13b) defines hemp products as anything made from hemp
 - ▶ (16) defines marijuana to exclude hemp and hemp products



Current N.C. Hemp Law

- ▶ G.S. 90-94
 - ▶ Excludes products with a delta-9 THC concentration of less than 0.3% from the prohibition on THC in Schedule VI
 - ▶ Includes all extracts, derivatives, isomers, acids, cannabinoids, etc.
 - ▶ No other state regulation (no age limit, amount limits, concentration limits, etc.)

Effective Dates:

- 10/31/2015 – NC legalizes hemp pilot program
 - 12/20/2018 – U.S. (clearly) legalizes all forms of hemp
 - 6/30/2022 – N.C. Hemp Commission disbands; NC adopts federal definition of hemp
 - TBD: Medicinal MJ? Hemp regulation?
- 

Can You Grow It?



Yes, but only with a permit from the USDA

Can you legally possess it?

Yes*, assuming it's a lawful hemp product—sourced from hemp and containing no more than .3 % delta-9 THC on a dry weight basis



**How can you tell it
apart from marijuana?**

Only with a lab showing delta-9
THC levels



5 GRAMS CBD HEMP FLOWER



AFGHAN KUSH





GREEN HORNET™

**FRUIT PUNCH
GUMMIES**



100_{MG} THC | INDICA
Not a Food | Net Wt. 12g (0.42oz)

CERTIFIED PURE CBD BLEND

**CBD
GUMMIES**

5 MAX STRENGTH GUMMIES

Benefits May Include:

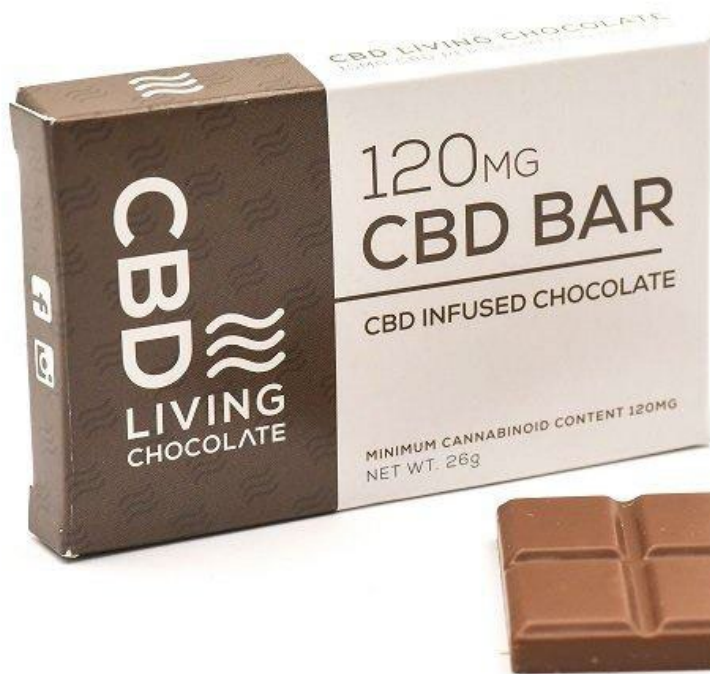
- Pain Relief
- Combats Anxiety
- Healthy Lifestyle
- Natural Sleep
- Reduce Stress
- Relaxing Calm

**Feel
Great**

**HEMP
BOMBS**

**Relax
Now**

EXTREME MOOD ENHANCER





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

36 HOUR FORMULA

CORNER PEEL

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

24 HOUR FORMULA

CORNER PEEL

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

24 HOUR FORMULA

CORNER PEEL





sugarleaf
nugkella



Hazelnut spread with
Medical Marijuana

Contains 100mg of
1 Tbsp. (15g)
Made from natural





PHARMA CBD
for your pets good health.

DOG BISCUITS

**PEACH
FLAVOR**

NET WT 6 OZ
25 TREATS • NO THC

+CBD
4mg CBD
PER BISCUIT **TREATS**



all natural
nontoxic cannabis
made from hemp plant
daily supplement for your pet

4mg CBD
PER BISCUIT

LEGAL ISSUES

- 1) PC based on Sight/Odor/Canine Alerts
 - 2) Marijuana Identification Evidence
 - 3) Lack of Knowledge Defense
 - 4) Lab Issues
 - 5) Role of the Drug Medium
 - 6) Extract/Edible Products
 - 7) Drug Testing and Employment Law Issues
- 

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

Probable Cause Cases

- ▶ *State v. Parker*, 277 N.C. App. 531 (2021) – maybe an issue, but “odor plus” here
- ▶ *State v. Teague*, 286 N.C. App. 160 (2022) – decided PC issue on standing and waiver grounds but states that hemp laws “did not change the State’s burden in criminal cases”
- ▶ *State v. George*, 292 N.C. App. 606 (2024) – odor of cannabis remains RS; canine sniffs are unchanged by hemp

Probable Cause Cases

- ▶ *State v. Little*, 295 N.C. App. 541 (2024) – odor and sight of cannabis still PC under Industrial Hemp Act, “highly regulated” industry, old NCSC precedent controls
 - ▶ *State v. Dobson*, 293 N.C. App. 450 (2024) – odor of cannabis plus cover scent was PC
 - ▶ *State v. Rowdy*, 296 N.C. App. 272 (2024) – odor still provides PC, period
- 

▶ Other Jurisdictions Vary in Approach to PC

- ▶ *Colorado* – heavy odor still adds to the circumstances and may support PC
 - ▶ *Nevada* – odor gives PC to ensure compliance with MJ laws
 - ▶ *Mass.* – odor alone is not enough
 - ▶ *Maryland* – odor alone is not enough
 - ▶ *Florida* – odor alone is not enough
- 

TAKEAWAYS

- ▶ Burden is apparently on Δ to assert substance is hemp
 - ▶ SBI Memo carries NO legal weight – defense prob. needs an expert
 - ▶ Totality of circumstances matter (?)
 - ▶ PC is not proof beyond a reasonable doubt
- 

DRUG IDENTIFICATION

Under *State v. Fletcher*, 92 N.C. App. 50 (1988), no expert testimony or chemical analysis is needed to identify marijuana

- Hemp laws and products cast serious doubt on this rule where proper evidentiary objection/challenge
- Also became a *Daubert* state since then . . .

DRUG IDENTIFICATION

- *Teague* assumed lay ID testimony identifying untested MJ and “THC” was improper but found no prejudice

DRUG IDENTIFICATION

- *State v. Ruffin*, 298 N.C. App. 104 (2025)
- Lay opinion of trained officer that he thought it was MJ was proper
- Expert opinion that substance was cannabis with an unknown amount of delta-9 THC was reliable to identify substance as MJ

Potential Marijuana Identification Evidence Objections

- 1) Lay opinion is not based on firsthand knowledge or observation, and isn't helpful to the jury
- 2) Expert opinion, without proper lab, is not based on sufficient facts or data, and is not the product of reliable principles or methods
- 3) Improper Lab (i.e., presence of delta-9 THC only) is similarly unreliable under Evid. R. 702
- 4) Proper Lab may still be subject to exclusion or challenge ("Total" THC, testing methodology)
- 5) Testing Analyst Needs to testify per *Smith v. AZ*

State v. Ward and State v. Osborne

-*Ward* isn't about sufficiency of the evidence, it's a matter of admissibility of the State's identification evidence under Evid. R. 702

-Opinions identifying something as marijuana (or other controlled substance) may be sufficient but still objectionable under 702

-E.g., field tests, visual ID, lay opinion, admissions

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Is the defendant's admission enough?

- Doesn't help with any PC argument . . .

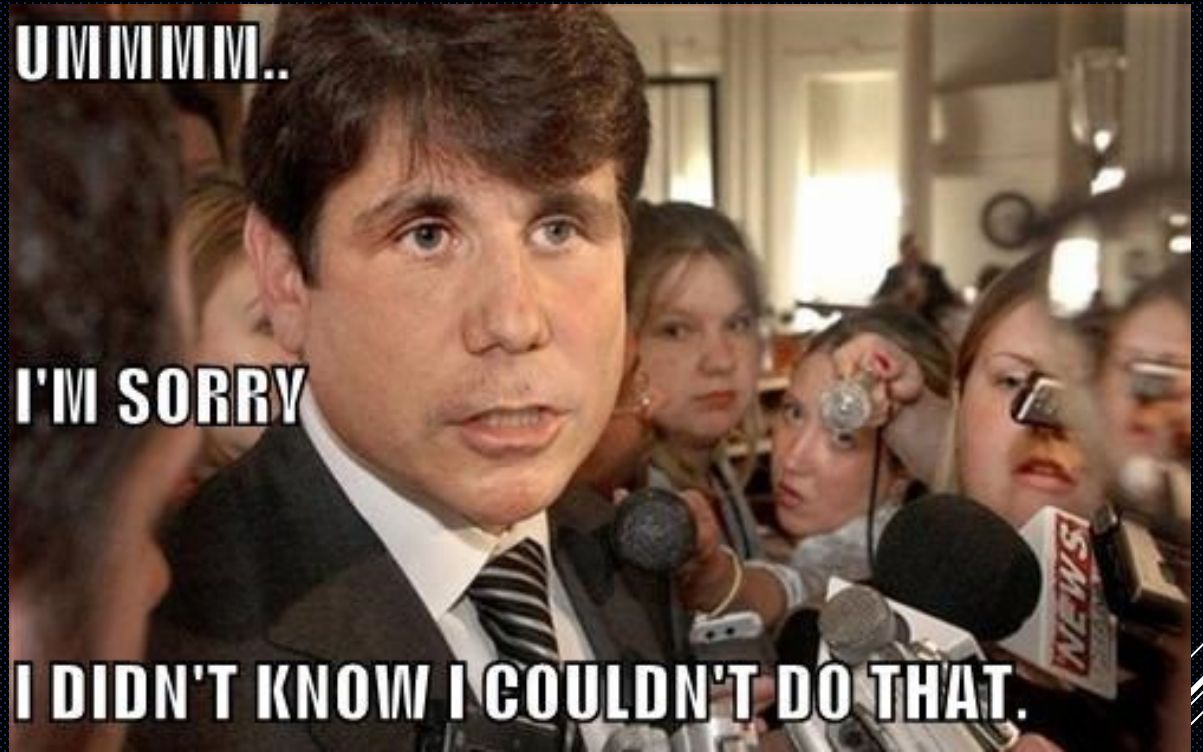
Sufficiency vs. Admissibility: Drug I.D. after State v. Osborne

Posted on Sep. 17, 2019, 7:32 am by Phil Dixon

- Open question whether it's sufficient to prove drug ID, re: *State v. Bridges*, 257 N.C. App. 732 (2018) at footnote 2

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.

Knowledge defense to drug possession



- Possession requires willful possession – D. knew she possessed the substance, and knew it was a controlled substance
- Where evidence D. didn't know, D. gets knowledge instruction per N.C.P.I.-Crim. 260.10 fn. 2

Guilty Knowledge and the Possession of Controlled Substances



April 3, 2023 [Jeff Welty](#)

Print

Substitute Analysts & Confrontation



- *Smith v. AZ* – rejects basis of opinion logic used to circumvent Confrontation Clause protections
- Implicitly overrules *Ortiz-Zape*, *Brewington*, etc. on basis of opinion logic
- Testimonial parts of a lab report require testimony from the analyst, unless Δ waives

Lab Issues

- ▶ Traditional GC/MS testing converts cannabinoids to delta-9 THC during testing process
- ▶ Passage of time and environmental factors can also alter delta-9 THC levels
- ▶ “Total” THC versus delta-9 THC only
- ▶ Defense likely needs an expert to challenge



North Carolina C

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

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

STATE OF NORTH CAROLINA

Pleading and Proving Cannabis Extracts, etc.

File No.

In The General Court Of
Superior Court Div

STATE VERSUS

Name And Address Of Defendant

INDICTMENT

- Must the pleading allege in excess of 0.3% delta-9 THC?

☐ This is a superseding indictment.

-Some DAs are just calling it MJ . . .

Race Sex Date Of Birth

Offense(s)

Date Of Offense
OR
Date Range Of Offense

G.S. No.

I. -Watch out for THC, wax, distillate, concentrate(d),
II. synthetic THC, isolated THC, etc.
III.

STATE OF NORTH CAROLINA

Pleading and Proving Cannabis Extracts, etc.

File No.

In The General Court Of
Superior Court Div

STATE VERSUS

Name And Address Of Defendant

- *Teague* rejected pleading requirement of more than 0.3% delta-9 THC under former law

INDICTMENT

Race

- According to *Teague*, D.'s burden to show exception to THC law per 90-113.1

☐ This is a superseding indictment.

Offense(s)

Date Of Offense
OR
Date Range Of Offense

G.S. No.

- Current THC law excludes THC with no more than 0.3 % delta-9 THC from prohibition on THC possession, undercutting *Teague's* reasoning here

I.

II.

III.

§ 90-113.1. Burden of proof; liabilities.

(a) It shall not be necessary for the State to negate any exemption or exception set forth in this Article in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this Article, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

-Burden shifting?

Cartridge/Wax 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

Cartridge/Wax Issue

- Under 1.41 grams of wax/resin = Class 3 misdemeanor
- More than 1.41 grams but less than 4.25 grams = Class 1 misdemeanor
- Over 4.25 grams = Class I felony

1/20 ounce = 1.41 grams

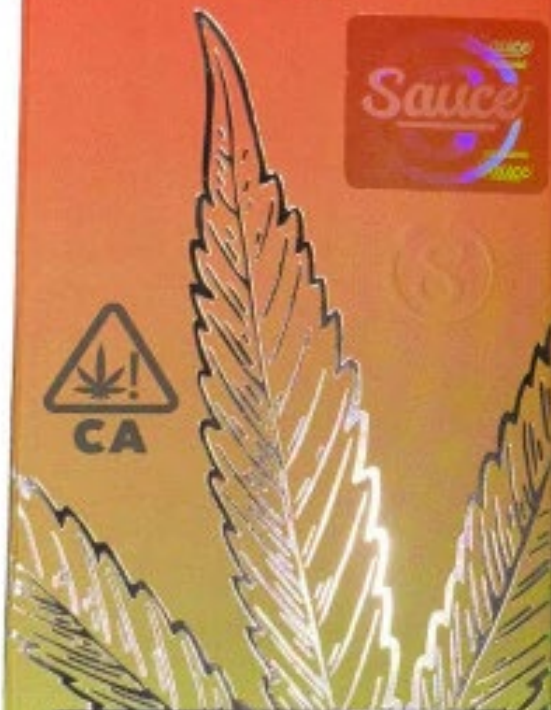
3/20 ounce = 4.25 grams

1000 milligrams = 1.0 gram, or 7/200 of an ounce (or 0.035 oz.)

Sauce™

ESSENTIALS

DISPOSABLE VAPE CARTRIDGE
READY TO USE



LEMON CHERRY GELATO
HYBRID



NET WEIGHT 1G (0.035oz)

THE SAUCE BAR

FULL GRAM DISPOSABLE



ALL-IN-ONE READY TO USE

NO BURN, GREAT FLAVOR

QUICKLY RECHARGEABLE

GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY.

PLEASE USE EXTREME CAUTION.

WARNING: CANCER AND REPRODUCTIVE HARM. WWW.P65WARNINGS.CA.GOV

METHOD OF CONSUMPTION: INHALEABLE. SUGGESTED USE: ONE 5-SECOND DRAW. ENCLOSED DEVICE CONTAINS APPROX. 800 SUGARMAIDS.

Lemon Cherry Gelato - 1G Live Resin Cart
MFG: 1003025 - Exp: 1003024
Processed By: Quality Labs LLC
Total THC: 88.03% - Total CBD: 20%
Total Terpenes: 8.1%
Total Cannabinoids: 88.387%
Pesticides/Metals: Non-Detect

Batch UID: 1A406030000A400001133



QUICK SCANS
FOLLOW VERIFY



- What Counts as “Synthetic THC”?
- What about “THC isolated from the resin”?



-“SPICE” and “K2”

-Categorically NOT cannabinoids
under federal law of the circuit, per
Anderson v. Diamondback Investment Group, LLC,
117 F.4th 165 (4th Cir. 2024)





“ISOLATED THC”

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

North Carolina Criminal Law

A UNC School of Government Blog

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The Fourth Circuit Weighs in on THC-O and “Synthetic” THC



QUESTIONS?

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