

IN THE SUPREME COURT OF APPEAL OF WEST VIRGINIA

No. 25-_____

SCA EFiled: May 28 2025
10:28AM EDT
Transaction ID 76349653

STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,
Petitioner,

v.

THE HONORABLE DEBRA McLAUGHLIN,
Circuit Court Judge of the Circuit Court of
Berkeley County, West Virginia,
and AARON CURTIS LEWIS,
defendant below,

Respondents.

PETITION FOR A WRIT OF PROHIBITION

JOHN B. MCCUSKEY
ATTORNEY GENERAL

Holly M. Mestemacher (WVSB #7996)
Assistant Attorney General
Sandra M. Walls (WV Bar # 14112)
Assistant Attorney General
State Capitol Complex
Building 6, Suite 406
Charleston, WV 25305-0220
Email: hmestemacher@wvago.gov
Telephone: (304) 558-5830
Facsimile: (304) 558-5833
Counsel for Petitioner

TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	iii
Introduction.....	1
Question Presented.....	1
Statement of the Case.....	2
Summary of the Argument.....	8
Statement Regarding Oral Argument and Decision.....	8
Argument	8
I. Standard of Review.....	8
II. The lower court clearly erred as a matter of law and exceeded its authority by suppressing evidence seized in a home pursuant to a valid search warrant	9
A. West Virginia jurisprudence establishes that the odor of marijuana alone constitutes probable cause.....	11
1. Contrary to the circuit court’s findings and conclusions, probable cause does not require an officer to know whether a suspected substance is legal or illegal, whether an offense is being committed or has been committed, or, if so, whether the offense is a misdemeanor or a felony	13
2. The totality of the circumstances standard is flexible, not rigid	14
3. Hemp legalization does not alter the probable cause standard	16
4. The items seized by law enforcement fell squarely within the scope of the warrant, and the court erred in suppressing the evidence based on a perceived overbreadth or an alleged lack of nexus between the affidavit and the warrant.....	19
B. The circuit court misunderstood and misapplied the good faith exception to the exclusionary rule and committed clear error of law in suppressing the evidence	22
1. The circuit court misapplied the good faith exception.....	22

2.	The affidavit was not “bare bones,” but detailed and substantiated	23
3.	The court misconstrued the affidavit’s breadth and ignored deference owed to the magistrate	24
4.	The court’s refusal to apply the good faith exception compounds its legal error.....	24
III.	The remaining <i>Hoover</i> factors support issuance of a writ	25
	Conclusion	26

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bain v. State</i> , ___ So. 3d ___, 2024 WL 4312585 (Ala. Crim. App. Sept. 27, 2024)	19
<i>Beck v. Ohio</i> , 379 U.S. 89 (1964).....	10
<i>Bunnell v. State</i> , 172 N.E.3d 1231 (Ind. 2021)	19
<i>Commonwealth v. Paul</i> , No. 790 EDA 2019, 2020 WL 1677685 (Pa. Super. Ct. Apr. 6, 2020)	18
<i>District of Columbia v. Wesby</i> , 583 U.S. 48 (2018).....	10
<i>Florida v. Harris</i> , 568 U.S. 237 (2013).....	10, 13
<i>Harris v. Melchor</i> , No. 24-2468, 2025 WL 972467 (7th Cir. Apr. 1, 2025).....	17
<i>Illinois v. Gates</i> , 462 U.S. 213 (1983).....	10, 19, 23
<i>Johnson v. United States</i> , 333 U.S. 10 (1948).....	15
<i>Lingo v. City of Salem</i> , 832 F.3d 953 (9th Cir. 2016)	17
<i>Messerschmidt v. Millender</i> , 565 U.S. 535 (2012).....	13
<i>Nance v. State</i> , 216 N.E.3d 464 (Ind. Ct. App. 2023).....	19
<i>Payton v. New York</i> , 445 U.S. 573 (1980).....	10
<i>People v. Armstrong</i> , No. 165233, 2025 WL 994370 (Mich. Apr. 2, 2025)	18
<i>State ex rel. Clifford v. Stucky</i> , 212 W. Va. 599, 575 S.E.2d 209 (2002).....	25

<i>State ex rel. Hoover v. Berger</i> , 199 W. Va. 12, 483 S.E.2d 12 (1996).....	9
<i>State ex rel. State v. Cohee</i> , ___ W. Va. ___, 914 S.E.2d 709 (2025).....	25
<i>State ex rel. State v. Gwaltney</i> , 249 W. Va. 706, 901 S.E.2d 70 (2024).....	8, 9
<i>State ex rel. State v. Gwaltney</i> , 250 W. Va. 695, 908 S.E.2d 192 (2024).....	8, 9
<i>State v. Adkins</i> , 182 W. Va. 443, 388 S.E.2d 316 (1989).....	25
<i>State v. Bates</i> , 181 W. Va. 36, 380 S.E.2d 203 (1989).....	20
<i>State v. Chapman</i> , No. 13-0111, 2013 WL 5676630 (W. Va. Supreme Court, Oct. 18, 2013) (memorandum decision)	11, 12
<i>State v. Craft</i> , 165 W. Va. 741, 272 S.E.2d 46 (1980).....	10
<i>State v. Knotts</i> , No. 22-0421, 2023 WL 7983840 (W. Va. Supreme Court, Nov. 17, 2023) (memorandum decision)	20
<i>State v. Lacy</i> , 196 W. Va. 104, 468 S.E.2d 719 (1996).....	10, 13, 14
<i>State v. Lilly</i> , 194 W. Va. 595, 461 S.E.2d 101 (1995).....	10, 11
<i>State v. Moore</i> , No. 18-0786, 2020 WL 533113 (W. Va. Supreme Court, Feb. 3, 2020) (memorandum decision)	12
<i>State v. Ott</i> , No. 16-0892, 2017 WL 1347723 (W. Va. Supreme Court, Apr. 10, 2017) (memorandum decision)	7, 10, 12
<i>State v. Senna</i> , 79 A.3d 45 (Vt. 2013).....	18
<i>State v. Sisco</i> , 373 P.3d 549 (2016).....	19

<i>United States v. Banks</i> , No. 23-4032, 2024 WL 2989710 (4th Cir. June 14, 2024)	16
<i>United States v. Bignon</i> , 813 F. App'x 34 (2d Cir. 2020)	18
<i>United States v. Boggess</i> , 444 F. Supp. 3d 730 (2020)	13, 16, 17
<i>United States v. Brown</i> , No. 23-5983, 2024 WL 4554674 (6th Cir. Oct. 23, 2024)	18
<i>United States v. Crayton</i> , No. 22-2118, 2024 WL 139566 (10th Cir. Jan. 12, 2024)	17
<i>United States v. Grant</i> , No. 23-12573, 2024 WL 3650210 (11th Cir. Aug. 5, 2024)	17
<i>United States v. Johnson</i> , 630 F.3d 970 (10th Cir. 2010)	18
<i>United States v. Jones</i> , 952 F.3d 153 (4th Cir. 2020)	16
<i>United States v. Laury</i> , 985 F.2d 1293 (5th Cir. 1993)	23
<i>United States v. Leon</i> , 468 U.S. 897 (1984)	1, 11, 14, 21, 22, 23, 24
<i>United States v. Lewis</i> , No. CR 22-0222-WS, 2023 WL 4982247 (S.D. Ala. Aug. 3, 2023)	17
<i>United States v. Scheetz</i> , 293 F.3d 175 (4th Cir. 2002)	11
<i>United States v. Ventresca</i> , 380 U.S. 102 (1965)	14
<i>United States v. Washington</i> , No. 22-3253, 2022 WL 17336207 (3d Cir. Nov. 30, 2022)	17
<i>United States v. Wilhelm</i> , 80 F.3d 116 (4th Cir. 1996)	23
<i>Warden v. Hayden</i> , 387 U.S. 294 (1967)	13

Constitutional Provisions

United States Constitution Fourth Amendment.....9, 10, 13, 22

West Virginia Constitution Article 3 Section 69, 10

Statute

West Virginia Code § 60A-4-40123

Rule

West Virginia Rule of Appellate Procedure 188

INTRODUCTION

Patrolman R. J. Holloway had probable cause to believe a crime was being or had been committed when he smelled the strong odor of marijuana emanating from the open door of Petitioner's home. He then obtained a search warrant for the premises for "any and all controlled substances" as defined by law, and the search uncovered distributable quantities of controlled substances and contraband.

The circuit court committed clear legal error when it suppressed that evidence in contravention of established West Virginia law. This Court has consistently recognized that the odor of marijuana alone *can* establish probable cause to search. Yet the circuit court erroneously held that the odor of marijuana emanating from a residence *cannot* constitute probable cause sufficient to support a search warrant. Compounding this error, the circuit court refused to apply the good faith exception articulated in *United States v. Leon*, 468 U.S. 897 (1984), and adopted in West Virginia jurisprudence. *Leon* permits a court to admit evidence obtained by officers who act in objectively reasonable reliance on a search warrant issued by a neutral magistrate. All the evidence here shows that Ptrl. Holloway acted in good faith. Thus, in suppressing the evidence under these circumstances, the circuit court committed a clear legal error and usurped judicial authority in a way that frustrates the fair administration of justice and hamstring the investigation and prosecution of drug-related offenses.

Accordingly, Petitioner requests that this Court issue a writ of prohibition to correct the circuit court's misapplication of the law, and to ensure compliance with controlling precedent governing probable cause and the good faith doctrine.

QUESTION PRESENTED

Did the circuit court exceed its authority and commit clear legal error by disregarding established West Virginia law holding that the odor of marijuana, by itself, is sufficient to establish

probable cause to obtain a search warrant and by creating an extrajudicial standard for probable cause sufficient for the issuance of a search warrant?

STATEMENT OF THE CASE

In 2020, Ptlm. Holloway, Ptlm. Aaron Miller, and other Martinsburg Police Department officers responded to an unnamed man's report that his suicidal wife had stabbed herself in the stomach and fled into the backyard area of their residence in Martinsburg. App. 42, 45. While searching for the woman behind the man's home, law enforcement briefly encountered Respondent Aaron Lewis, who was coming from the direction the woman was believed to have fled. App. 42, 45. Ptlm. Holloway asked Respondent Lewis if he saw the woman, but he gave no verbal response as he continued past the officer. App. 42, 45.

After failing to locate the woman in the backyard, Ptlm. Holloway spoke again to her husband, who advised there was no exit from the backyard. App. 45-46. With no way out except through an adjacent apartment, Ptlms. Holloway and Miller began canvassing the apartments, going door to door in search of her. App. 42, 46. Ptlm. Holloway proceeded to apartment 4, where Respondent Lewis lived. App. 46. Aaron Lewis Jr., the 18-year-old son of Respondent Lewis, answered the door. App. 46. Ptlm. Holloway immediately detected the "strong odor of marijuana" emanating from the home. App. 46. Aaron Jr. advised that Respondent Lewis was not home, and the only other person present was the younger Lewis's 17-year-old cousin. App. 46. Ptlm. Holloway requested permission to search the residence, but Aaron Jr. refused. App. 46. After deciding to obtain a warrant, Ptlms. Miller and Holloway entered the residence to conduct a protective sweep, during which Ptlm. Holloway observed a large bundle of United States currency in the living room and two clear bowls containing a leafy green substance on the kitchen stove.

App. 46. After exiting the residence, Ptlms. Holloway and Miller left to obtain the warrant while other officers remained on scene to secure the apartment. App. 42, 46.¹²

In his affidavit supporting his warrant request, Ptlm. Holloway recited these events and cited the strong odor of marijuana, along with his observations during the sweep, as the basis for probable cause to believe that a controlled dangerous substance was present in the home. App. 44-47. He also described his narcotics training and experience, including knowledge that drug dealers often store cash, paraphernalia, records, weapons and other items related to the sale or use of drugs in their home. App. 45. A magistrate issued a warrant authorizing the search of Respondent Lewis's home and the seizure of "[a]ny and all controlled substances as defined in section 60-A-4-401 . . . including but not limited to heroin and methamphetamine," as well as currency, firearms, ledgers, digital devices, and drug paraphernalia. App. 47. Upon executing the warrant, officers seized two tubs of marijuana, two small bags of marijuana, one large bag of suspected marijuana, one large bag of suspected heroin, one bag of crack cocaine, one firearm, eleven rounds of ammunition, and \$66 in cash. App. 99.

In October 2023, Respondent Lewis moved to suppress all evidence seized pursuant to the warrant, arguing the initial warrantless entry—the sweep performed once the officers decided to obtain a search warrant—violated the Fourth Amendment.³ App. 03-15. Without the observations made during the unlawful sweep, he contended, only the odor of marijuana remained, which he

¹ Before the warrant was secured, Respondent Lewis returned to the residence, where he was arrested after officers discovered he had an active warrant. App. 43. A search of his person conducted pursuant to the arrest revealed him to be carrying a total of \$3,760 in cash. App. 43.

² It does not appear the injured woman was ever located by law enforcement.

³ Respondent Lewis also moved to produce Ptlm. Holloway's personnel file. The court declined to direct the State to disclose the personnel file to Petitioner, stating that, if warranted, the appropriate procedure would be an in camera review. Tr. 62.

argued was insufficient to establish probable cause. App. 10-12. He further asserted that Ptlm. Holloway lacked a basis to conclude the odor was attributable to unlawful conduct rather than a “legal form of marijuana known as delta-8 THC.”⁴ App. 12. Respondent Lewis also challenged the warrant as overly broad, noting it authorized the search and seizure of “[a]ny and all evidence of a crime,” in violation of the Fourth Amendment’s particularity requirement. App. 12. In the State’s response, it conceded the initial warrantless entry was invalid because any exigency permitting warrantless entry had likely expired during the delay between the son opening the door and the officers conducting the sweep. App. 55-56. It argued, however, that the search warrant remained valid because West Virginia precedent allows findings of probable cause based on the smell of marijuana alone. App. 55-56.

At the March 2025 suppression hearing, the court articulated the issue as “[whether] the smell of marijuana coming from the door of a home [is] sufficient in and of itself to get a search warrant.” Tr. 03-04, 18, 24, 47. The court also noted a possible distinction in probable cause application depending on whether the search involves a home or vehicle, stating, “I do think that even though the legal standard is probable cause, . . . we do provide more protection to a home than we do a car.” Tr. 8-9, 18-19.

In addition to the parties’ oral arguments, the State also presented—without objection—the testimony of Ptlm. Miller. Ptlm. Miller described personally detecting a strong odor of raw marijuana emanating from Respondent Lewis’s apartment. Tr. 31. He detailed his training in marijuana detection, including K-9 and drug interdiction training, and testified he could distinguish between raw and burnt marijuana. Tr. 32-33. He acknowledged his continuation report did not note

⁴ According to the federal Food and Drug Administration, delta-8 tetrahydrocannabinol is a psychoactive substance found in the *Cannabis sativa* plant.

the odor of raw marijuana but explained that such reports are generally limited to actions rather than observations. Tr. 36-37, 45. He also confirmed prior knowledge that Respondent Lewis was suspected of drug dealing and was the subject of a traffic stop the night before. App. 41, 45.

Ptln. Miller's body camera was admitted into evidence without objection. Tr. 34-35.⁵ The video shows multiple officers on scene going door to door attempting to locate the potentially injured woman. B.C. 00:00- 3:00. Relevant to this appeal, Ptln. Holloway is seen knocking on the door of apartment 4. When the occupant, later identified as Aaron Jr., opens the door, Ptln. Holloway asks if a female entered the apartment. B.C. 03:00. At one point, Ptln. Holloway asks Aaron Jr. if he is "trying to hide something," commenting on Aaron Jr.'s heavy breathing. B.C. 03:50. He then asks Aaron Jr. to step outside, inquires whether he has any weapons, and explains Aaron Jr. is not in trouble, noting that police are simply looking for a woman who reportedly stabbed herself. B.C. 04:00.

While Ptln. Holloway continues speaking with Aaron Jr., Ptln. Miller contacts the residents of apartment 5 and explains the situation. B.C. 06:40 The male occupant advises that only he and his girlfriend are inside and consents to Ptln. Miller entering to confirm the woman is not inside. B.C. 07:30. Ptln. Miller follows him inside and into a bedroom, where he confirms the woman is not present. B.C. 07:40.

Upon Ptln. Miller's return to the yard, Ptln. Holloway is seen speaking to a female officer, advising her they have been unable to locate the woman. B.C. 08:25. He adds that there is a "strong odor of marijuana" emanating from Respondent Lewis's apartment but indicates his focus was on

⁵The body camera footage comes from Ptln. Miller's body camera, which is included as part of the Appendix and filed with the Court on a flash drive. Both the audio and video are limited based on his positioning and movements. Consequently, the footage does not provide a continuous view of Ptln. Holloway's interaction with Aaron Jr. Petitioner will cite to Ptln. Holloway's body camera footage as B.C. followed by the corresponding timestamp.

locating the woman. B.C. 08:51. Ptlm. Holloway resumes speaking with Aaron Jr., but much of that conversation is unintelligible. B.C. 09:56-12:00. Ptlm. Holloway eventually asks the other occupant of the apartment to step outside. B.C. 13:20. Ptlm. Miller is then heard telling dispatch they intend to obtain a search warrant. B.C. 13:43. Approximately ten minutes later, Ptlms. Holloway and Miller conduct a brief security sweep of the residence that takes less than a minute to complete. B.C. 22:22-23:12.

Following the hearing, the parties submitted supplemental briefing. In its brief, the State emphasized that West Virginia precedent supports finding probable cause based solely on the odor of marijuana. App. 76. The State also argued that marijuana was implicitly included in the warrant's reference to "any and all controlled substances," and the specific mention of heroin and methamphetamine was a "copy and paste error" and mere surplusage. App 81-82. In the alternative, the State invoked the good-faith exception to the exclusionary rule. App. 82.

Respondent Lewis's supplemental brief maintained that the smell of marijuana alone no longer suffices to establish probable cause in light of the legalization of hemp and medical marijuana. App. 88-89. He argued that officers could not reasonably infer from odor alone that the source was an illegal form of marijuana, citing caselaw pertaining to *warrantless* searches, *not* searches conducted with prior approval of a magistrate. App. 89. He further contended that Ptlm. Miller's testimony should be excluded from the court's analysis because his observations were not contained within the four corners of the warrant. App. 90-91. Respondent Lewis again challenged the warrant as overly broad, asserting there was no nexus between the odor of marijuana and items associated with drug trafficking, and argued the good faith exception was inapplicable because the warrant was facially deficient. App. 90-92.

In April 2025, the court granted Respondent Lewis's motion to suppress. App. 97-104. The court did not question Ptlm. Holloway's veracity but found that the smell of marijuana alone did

not establish probable cause to believe the home contained “evidence of illegal drug trafficking and/or possession of heroin, methamphetamines, and/or other illegal drugs.” App. 97-99, 103-04. While acknowledging that West Virginia jurisprudence is “replete” with precedent both expressly and impliedly validating the odor of marijuana as a basis for probable cause for a search, the court noted that most of those cases dealt with vehicle searches and the legal authority concerning homes was “not as clear.” App. 100-01. The court recognized that *State v. Ott*⁶ squarely upheld the validity of a search of a home based on the odor of marijuana emanating from the residence of a suspected drug dealer. But it nevertheless concluded that changes in the law, including the legalization of hemp—which it described as indistinguishable from marijuana by smell alone—required a higher threshold for establishing probable cause to search a residence. App. 101-02. The court reasoned that because the affidavit lacked specifics as to why the odor was in the home, when the odor was generated and by whom, and whether the odor originated from a substance with over 0.3% THC, the odor of marijuana combined with the presence of two teenagers in the home⁷ was insufficient to establish probable cause. App. 101-02. The court also deemed the nexus between the offense—“simple possession”—and the broad array of items listed in the warrant insufficient. App. 102-03. It concluded that the “minimal circumstances” supporting probable cause and the warrant’s broad scope did not justify the search. App. 102-03. Finally, the court rejected the State’s good-faith argument, concluding that the affidavit was “bare bones.” App. 102-03.

⁶ No. 16-0892, 2017 WL 1347723, at *1-4 (W. Va. Supreme Court, Apr. 10, 2017) (memorandum decision). In *Ott*, the police knocked on the defendant’s door to investigate a separate complaint and detected the strong odor of marijuana emanating from the home while on the defendant’s porch. This Court affirmed the warrantless search of Ott’s home, finding that odor of marijuana provided probable cause to believe a crime was being committed or had been committed in Ott’s home. *Id.* at *3.

⁷ The court noted this fact into its assessment of the totality of the circumstances. App. 102. The State’s position was—and is—that probable cause may be based on the odor of marijuana alone.

SUMMARY OF ARGUMENT

The circuit court's error strikes at the heart of the Fourth Amendment and presents a serious threat to law enforcement's ability to investigate drug offenses and to the State's ability to prosecute them. The court's ruling overturns decades-old established precedent by improperly distorting the standard for probable cause. The court also misinterpreted the meaning of "bare bones," leading to clear error in its application of the good faith exception. A writ should issue to reaffirm that the odor of marijuana alone can provide probable cause to search a particular location.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The State does not request oral argument. This case can be disposed of by memorandum decision under Rule 18 of the West Virginia Rules of Appellate Procedure. Oral argument is unnecessary to aid this Court in its consideration of the question presented, and a writ should issue preventing enforcement of the lower court's order.

ARGUMENT

I. Standard of Review

The State may seek a writ of prohibition in a criminal case "where the trial court has exceeded or acted outside of its jurisdiction." Syl. pt. 3, *State ex rel. State v. Gwaltney (Gwaltney II)*, 250 W. Va. 695, 908 S.E.2d 192 (2024) (citation omitted); syl. pt. 1, *State ex rel. State v. Gwaltney (Gwaltney I)*, 249 W. Va. 706, 901 S.E.2d 70 (2024) (citation omitted). "Where the State claims that the trial court abused its legitimate powers, the State must demonstrate that the court's action was so flagrant that it was deprived of its right to prosecute the case or deprived of a valid conviction." Syl. pt. 3, *Gwaltney II*, 250 W. Va. 695, 908 S.E.2d 192 (citation omitted); syl. pt. 1, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70 (citation omitted). This Court considers five "general guidelines" when determining whether a writ should issue:

(1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression.

Syl. pt. 2, *Gwaltney II*, 250 W. Va. 695, 908 S.E.2d 192 (quoting syl. pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996)); syl. pt. 2, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70 (quoting syl. pt. 4, *Hoover*, 199 W. Va. 12, 483 S.E.2d 12). “Although all five [*Hoover*] factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.” Syl. pt. 2, *Gwaltney II*, 250 W. Va. 695, 908 S.E.2d 192 (quoting syl. pt. 4, *Hoover*, 199 W. Va. 12, 483 S.E.2d 12); syl. pt. 2, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70 (quoting syl. pt. 4, *Hoover*, 199 W. Va. 12, 483 S.E.2d 12). This factor weighs heavily in Petitioner's favor, as explained below.

II. The lower court clearly erred as a matter of law and exceeded its authority by suppressing evidence seized in a home pursuant to a valid search warrant.

Instead of affording the magistrate's finding of probable cause the great deference it is due, the circuit court improperly second-guessed the magistrate's probable cause determination and ignored West Virginia law when it improperly elevated the standard for probable cause to search a home beyond what the law requires and substituted its own assessment of probable cause—an assessment grounded in clear errors of law. The search warrant was firmly rooted in legal precedent and constitutional principles that permit reasonable searches supported by probable cause under the Fourth Amendment of the United States Constitution and Section 6 of Article 3 of the West Virginia Constitution, both of which safeguard against unreasonable searches and seizures—not *all* searches.

The Fourth Amendment of the United States Constitution and Section 6 of Article 3 of the West Virginia Constitution protect citizens from unreasonable searches and seizures in their houses. “It is a ‘basic principle of Fourth Amendment Law’ that searches and seizures inside a home without a warrant are presumptively unreasonable.” *State v. Lacy*, 196 W. Va. 104, 111, 468 S.E.2d 719, 726 (1996) (quoting *Payton v. New York*, 445 U.S. 573, 586 (1980)). Conversely, “the search of a home for evidence of a crime generally is not unreasonable if it is conducted pursuant to a search warrant supported by probable cause.” *Id.* A nonconsensual search of a home by law enforcement officers, therefore, ordinarily requires a warrant founded upon probable cause to pass constitutional muster. *Ott*, 2017 WL 1347723, at *2 (quoting *State v. Craft*, 165 W. Va. 741, 755, 272 S.E.2d 46, 55 (1980) (“[A]bsent exigent circumstances, th[e] threshold may not be reasonably crossed without a warrant.”)). Here, the search of Petitioner’s home was conducted pursuant to a search warrant based upon a magistrate’s finding of probable cause. App. 60. Although the circuit court recognized that the issue “boils down to [whether] the smell of marijuana coming from the door of a home [is] sufficient in and of itself to get a search warrant,” it wholly misapplied the law. Tr. 18, 24.

Probable cause for a search warrant exists if the totality of the facts and circumstances are sufficient for a prudent person to believe a crime has been or is being committed and specific contraband from that crime may be found at a specific location. Syl. pt. 3, *State v. Lilly*, 194 W. Va. 595, 461 S.E.2d 101 (1995). Probable cause is “not a high bar,” and it must be assessed objectively based on a totality of the circumstances, including “common-sense conclusions about human behavior.” *District of Columbia v. Wesby*, 583 U.S. 48, 48, 57 (2018) (citing *Illinois v. Gates*, 462 U.S. 213, 231(1983)); *Beck v. Ohio*, 379 U.S. 89, 91 (1964) (explaining that the rule of probable cause is a practical, nontechnical conception); *see also Florida v. Harris*, 568 U.S. 237, 244 (2013) (citing *Gates*, 462 U.S. at 232 (articulating that probable cause requires only “the kind

of fair probability on which reasonable and prudent people, not legal technicians,” would rely (cleaned up))).

A reviewing court affords great deference to a magistrate’s finding of probable cause. *Lilly*, 194 W. Va. at 600 n.4, 461 S.E.2d at 106 n.4. The Supreme Court has said as much, noting that “[r]easonable minds frequently may differ on the question whether a particular affidavit establishes probable cause.” *Leon*, 468 U.S. at 914. Accordingly, the Supreme Court expresses its preference for warrants “by according ‘great deference’ to a magistrate’s determination.” *Id.* (citation omitted). Yet instead of affording the magistrate’s findings the great deference they are due, the circuit court supplanted the magistrate’s decision with its own unprecedented departure from established jurisprudence. West Virginia courts have consistently held that the odor of marijuana, detected by a trained officer, provides a clear and reliable basis to justify the issuance of a search warrant. By disregarding this well-settled precedent, the circuit court not only broke with binding authority but also introduced uncertainty into an area of law that was previously clear and predictable. This shift undermines long-standing principles that have guided and continue to guide both law enforcement practices and judicial determinations regarding probable cause.

A. West Virginia jurisprudence establishes that the odor of marijuana alone constitutes probable cause.

The central, and dispositive, question before this Court is whether the odor of marijuana can establish probable cause to believe contraband is present in a particular location, thereby justifying the issuance of a search warrant. Tr. 18. This Court’s precedent leaves no room for doubt that the answer is yes, “the odor of marijuana, without more, may provide the requisite probable cause.” *State v. Chapman*, No. 13-0111, 2013 WL 5676630, at *4 (W. Va. Supreme Court, Oct. 18, 2013) (memorandum decision) (citing *United States v. Scheetz*, 293 F.3d 175 (4th Cir. 2002)).

This Court has repeatedly reaffirmed this principle. For example, in *Chapman*, the Court upheld a warrantless vehicle search, based solely on the pervasive odor of marijuana emanating from the car, holding that the odor alone provided the requisite probable cause. *Id.* Similarly, even after the 2018 legalization of hemp, the Court reaffirmed this principle in *State v. Moore*, No. 18-0786, 2020 WL 533113 (W. Va. Supreme Court, Feb. 3, 2020) (memorandum decision), again concluding that the odor of marijuana by itself establishes probable cause to search a vehicle.

Critically, and despite the misgivings of the court below, this tenet is not limited to automobile searches. In *Ott*, this Court expressly extended it to residences, even in light of the heightened expectation of privacy afforded to one's home. *Ott*, 2017 WL 1347723, at *3. There, an officer knocked on Ott's door while investigating a report of a disturbance nearby. *Id.* at *1. The officer detected the odor of marijuana from the defendant's porch and conducted a warrantless search of the defendant's home, which turned up marijuana and a variety of contraband and tools of drug trafficking. *Id.* Ott moved to suppress the fruits of the warrantless seizure of evidence. *Id.* The circuit court denied the motion. On appeal, this Court affirmed the decision and explicitly confirmed that the officer "had probable cause [to believe] that a crime was being committed in his presence prior to entering [the] petitioner's home" because he smelled the distinct odor of marijuana while standing on the petitioner's porch. *Id.* at *3. "Based upon this observation" alone, the officer had probable cause to believe that the occupants "were in possession of a quantity of marijuana." *Id.*

That is precisely what occurred here, except law enforcement took an additional step and *obtained a warrant*. When Respondent Lewis's son opened the front door to their home, Ptlm. Holloway instantly detected a strong odor of marijuana emanating from the home, which provided a reasonable basis to infer possession of contraband. App. 62. The circuit court acknowledged that West Virginia jurisprudence is "replete with" cases confirming that searches based on marijuana

odor alone are valid. App. 100-01. Yet it disregarded that precedent and veered onto a legally indefensible path, concluding that odor of marijuana alone can no longer provide probable cause to search a home because hemp has been legalized and the home deserves the “zenith” of a “height[en]ed standard of suspicion.” App. 101 (circuit court quoting *Lacy*’s discussion of whether the presence of a firearm in a home suffices for a warrantless search). The circuit court’s reasoning is deeply flawed for four reasons.

- 1. Contrary to the circuit court’s findings and conclusions, probable cause does *not* require an officer to know whether a suspected substance is legal or illegal, whether an offense is being committed or has been committed, or, if so, whether the offense is a misdemeanor or a felony.**

The Fourth Amendment demands only a “fair probability” that contraband or evidence of a crime will be found, not definitive proof of the scope and nature of the crime. *Harris*, 568 U.S. at 244 (citation omitted). The Supreme Court has repeatedly emphasized that probable cause rests on reasonable beliefs, even if those beliefs later prove erroneous. *Messerschmidt v. Millender*, 565 U.S. 535, 552 n.7 (2012) (quoting *Warden v. Hayden*, 387 U.S. 294, 307 (1967)); *United States v. Boggess*, 444 F. Supp. 3d 730, 735 (2020) (articulating that probable cause exists if the officer “had reasonably trustworthy information” sufficient for a prudent person to believe an offense was or had been committed (citation omitted)). The same probable cause standard applies to any location.

The circuit court appears to have used *Lacy*’s balancing inquiry (which weighs an individual’s privacy interests in his home against law enforcement’s safety considerations in evaluating warrantless searches) to craft a heightened standard of probable cause for a search warrant. *See* App. 100-104 (citing *Lacy*, 196 W. Va. at 113, 468 S.E.2d at 728). But that is the wrong reading of *Lacy*. *Lacy* addressed protective sweeps and held that “law enforcement officials may interfere with an individual’s Fourth Amendment interests with less than probable cause *and*

without a warrant if the intrusion is only minimal and is justified for law enforcement purposes.” *Lacy*, 196 W. Va. at 115, 468 S.E.2d at 730 (emphasis added). That is, law enforcement’s belief that a firearm could possibly be present in a home was insufficient to excuse the warrant requirement to search for one under the guise of a protective sweep. *Lacy* in no way implicates, impugns, or elevates the probable cause standard for a search warrant.

While the circuit court in this case expressed concern about respecting the heightened expectation of privacy in one’s home, the Supreme Court has recognized that this sanctity is protected through the issuance of a search warrant by a neutral magistrate. *Leon*, 468 U.S. at 913-14. In *Leon*, the Court explicated that a search warrant “provides the detached scrutiny of a neutral magistrate,” thus “safeguard[ing]” against improper searches that could occur under the “hurried judgment of a law enforcement officer” engaged in “ferreting out crime.” *Id.* (internal quotation marks and citation omitted). Because of this distinction, the Supreme Court has “expressed a strong preference for warrants and declared that ‘in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall.’” *Id.* (quoting *United States v. Ventresca*, 380 U.S. 102, 106 (1965)). Accordingly, because law enforcement *obtained a search warrant* reviewed and authorized by a neutral magistrate, the constitutional protections at the heart of the Fourth Amendment were fully honored.

2. The totality of the circumstances standard is flexible, not rigid.

The circuit court improperly transformed the totality of the circumstances test into a checklist of specific facts, seeking information about whether “the smell” was caused by *Cannabis sativa* containing more than 0.3% THC (marijuana) or by a legalized hemp product; how “the smell” entered the home; who brought it there; and when it was created. App. 102-03. But no precedent imposes such a heightened burden. Probable cause tolerates some uncertainty; it does not demand chemical analysis at the doorstep or further investigation to increase certainty. The

Supreme Court has long recognized that odors are powerful evidence, expressing that the odor of an illicit substance “[may] be evidence of [the] most persuasive character.” *Johnson v. United States*, 333 U.S. 10, 13 (1948). Under established law, the unmistakable odor of marijuana, by itself, constitutes a sufficient circumstance to establish probable cause. The odor of marijuana, by its very nature, is neither neutral nor innocuous—it directly indicates the presence of contraband, which remains illegal under both federal and West Virginia law despite evolving hemp legislation.

The circuit court overstepped its legal authority by improperly heightening the evidentiary standard for probable cause despite Ptlm. Holloway’s undisputed testimony of the smell of marijuana emanating from Respondent Lewis’s home and without finding said testimony incredible. App. 102-03. Rather than applying the established rule that the odor of marijuana alone provides probable cause to search a residence—as reaffirmed by this Court in *State v. Ott*—the court supplanted settled precedent with its own preferences, effectively rewriting Fourth Amendment jurisprudence. This on-the-fly approach is outside the bounds of the circuit court’s powers. It erroneously concluded that the odor of marijuana (combined with the presence of two teenagers) was insufficient to establish probable cause to search for controlled substances or related contraband. App. 101-02. Yet Ptlm. Holloway’s detection of marijuana odor alone supported a reasonable inference of ongoing unlawful activity, and based on his training and experience, he reasonably believed marijuana was present in the home. The circuit court’s demand for proof that the odor originated from cannabis containing more than 0.3% THC imposed a novel and legally baseless requirement that would, in effect, eliminate probable cause in drug investigations or, alternatively, place an impossible burden on law enforcement to determine if the marijuana they detect in the moment is from a legal or illegal product. The legalization of hemp does not—and cannot—elevate the probable cause standard to require certainty or chemical confirmation. By imposing this heightened and unprecedented burden, the circuit court not only

misapplied binding precedent but also disregarded the Supreme Court’s directive that probable cause is a practical, common-sense standard—not a rigid or hypertechnical inquiry.

3. Hemp legalization does not alter the probable cause standard.

The circuit court erred in concluding that the odor of marijuana did not establish probable cause in light of hemp legalization under the 2018 Agricultural Improvement Act and the West Virginia Industrial Hemp Development Act. App. 102. This position is unsupported by this Court’s precedent, contradicts binding and persuasive authority nationwide, and it improperly substitutes the circuit court’s hindsight review for the magistrate’s determination of probable cause.

Both state and federal courts have consistently confirmed that the distinct odor of marijuana alone can establish probable cause to believe contraband or evidence of a crime is present. Notably, the Fourth Circuit has repeatedly affirmed probable cause findings based on marijuana odor, even after the federal legalization of hemp. In *United States v. Jones*, probable cause existed where an officer “could smell a strong odor coming from inside the home” and identified it as marijuana based on his “training and experience,” just like in this case. 952 F.3d 153, 158-59 (4th Cir. 2020). Most recently, in *United States v. Banks*, the Fourth Circuit reiterated that “the odor of marijuana alone can provide probable cause to believe that marijuana is present in a particular place”—in that case, a residence. No. 23-4032, 2024 WL 2989710, at *2 (4th Cir. June 14, 2024) (citing *Jones*, 952 F.3d at 158), *cert. denied*, 145 S. Ct. 345 (2024).

The United States District Court for the Southern District of West Virginia has also adopted this principle. *Bogges*, 444 F. Supp. 3d at 736-37. The district court emphasized that the Fourth Circuit has consistently held that the smell of marijuana provides probable cause to search a vehicle for contraband. *Id.* Significantly, it declined the invitation to reconsider this precedent due to the legalization of hemp, explaining that the possession of marijuana is still illegal under both West Virginia and federal law. *Id.* And, as such, the odor of marijuana still provides probable cause to

believe a particular location contains illegal contraband. *Id.* The same rationale extends to the present case: marijuana remains illegal under both West Virginia and federal law.

The circuit court's assumption that legalization of some cannabis products nullifies the value of marijuana odor is legally unsustainable. Courts nationwide continue to hold that hemp legalization does not erase officers' ability to rely on the odor of marijuana as a basis for probable cause. A sampling of the numerous federal circuits where odor alone can establish probable cause to search a home include the Third Circuit, the Ninth Circuit, and the Eleventh Circuit. The Third Circuit held that the odor of marijuana alone, if "articulable and particularized, may establish not merely reasonable suspicion, but probable cause" to search a home. *United States v. Washington*, No. 22-3253, 2022 WL 17336207, at *2 (3d Cir. Nov. 30, 2022) (citation omitted). The Ninth Circuit also reiterated that probable cause exists where trained officers detect the odor of marijuana emanating from a house. *Lingo v. City of Salem*, 832 F.3d 953, 960-961 (9th Cir. 2016). "It is decidedly not the officers' burden to rule out the possibility of innocent behavior in order to establish probable cause." *Id.* (internal quotation marks and citation omitted); *see also United States v. Lewis*, No. CR 22-0222-WS, 2023 WL 4982247, at *1 (S.D. Ala. Aug. 3, 2023) (citing *Lingo*, 832 F.3d at 961). The Eleventh Circuit recently reaffirmed that "[t]he smell of marijuana from the home, alone, was enough to establish probable cause." *United States v. Grant*, No. 23-12573, 2024 WL 3650210, at *2 (11th Cir. Aug. 5, 2024).

The Seventh, Sixth, and Second Circuits have squarely held that the odor of marijuana alone can establish probable cause, even post-legalization, to search a nonresidence. The Seventh Circuit confirmed that despite Illinois legalizing recreational marijuana, regulatory restrictions remain; thus, an officer's mistaken belief that the odor was marijuana (rather than hemp) still justified a search. *Harris v. Melchor*, No. 24-2468, 2025 WL 972467, at *4 (7th Cir. Apr. 1, 2025); *see also United States v. Crayton*, No. 22-2118, 2024 WL 139566, at *2 (10th Cir. Jan. 12, 2024)

("[T]he odor of marijuana by itself is sufficient to establish probable cause" to search a vehicle. (quoting *United States v. Johnson*, 630 F.3d 970, 974 (10th Cir. 2010))); *but see People v. Armstrong*, No. 165233, 2025 WL 994370, at *5 (Mich. Apr. 2, 2025) (explaining that the odor of marijuana, on its own, no longer supplies probable cause to search a vehicle because the use and possession of marijuana has been generally legalized). The Sixth Circuit likewise rejected the argument that the odor might have been legal hemp, reiterating that probable cause does not require certainty of a crime. *United States v. Brown*, No. 23-5983, 2024 WL 4554674, at *1 (6th Cir. Oct. 23, 2024). The Second Circuit agreed, emphasizing that probable cause is not defeated by claims of lawful conduct, as it can exist even if the suspect is innocent. *United States v. Bignon*, 813 F. App'x 34, 36 (2d Cir. 2020).

State courts similarly validate probable cause to search a home based on odor alone. In 2013—well after medical legalization in that state—the Vermont Supreme Court affirmed that the odor of marijuana can still establish probable cause to search a home. *State v. Senna*, 79 A.3d 45 (Vt. 2013). The Court held that the smell of marijuana outside the entry of a residence supported a finding of probable cause to search the home, even though the state's marijuana law at the time immunized "registered patients" from prosecution. *Id.* It explained that the mere possibility that an occupant might be a registered patient did not negate probable cause based on the detectable odor of marijuana. *Id.*

Likewise, Pennsylvania has legalized medicinal marijuana but not recreational cannabis, and affirms probable cause to search a home based on the odor of marijuana. *Commonwealth v. Paul*, No. 790 EDA 2019, 2020 WL 1677685, at *3 (Pa. Super. Ct. Apr. 6, 2020) (finding "the officers clearly had probable cause as soon as they determined that the odor of marijuana was emanating from [the] home"). Indiana, which prohibits most medicinal and all recreational cannabis, also affirms probable cause to search a residence based on the scent of marijuana where

the officer is qualified to know the odor and the odor is sufficiently distinctive to identify an illegal substance. *Bunnell v. State*, 172 N.E.3d 1231 (Ind. 2021); *see also Nance v. State*, 216 N.E.3d 464, 474 (Ind. Ct. App. 2023) (confirming probable cause for a search warrant of a residence may be based on the smell of marijuana detected by trained officers).

Following Arizona’s legalization of medical marijuana, the Arizona Supreme Court repeated that probable cause does not turn the “guilt” or “innocence” of particular conduct or require a showing of criminal activity and reaffirmed that the smell of marijuana remained “indicative of criminal activity” and, thus, constituted probable cause to search. *State v. Sisco*, 373 P.3d 549, 553-54 (2016) (citing *Gates*, 462 U.S. at 243 n.13). Although the premises in *Sisco* was a warehouse rather than a residence, the court’s comprehensive discussion made clear that probable cause based on the sight or smell of marijuana carries a high degree of suspicion and exists regardless of location. *Id.* at 552-554; *see also Bain v. State*, ___ So. 3d ___, 2024 WL 4312585 (Ala. Crim. App. Sept. 27, 2024) (rejecting the argument that because the odor of marijuana is indistinguishable from the odor of hemp, odor alone is no longer sufficient to establish probable cause for a warrantless search). In short, courts nationwide consistently continue to recognize that, although the exact source or legal status of marijuana may be uncertain in the moment, the odor itself establishes probable cause to believe that contraband is present at the particular location.

4. The items seized by law enforcement fell squarely within the scope of the warrant, and the court erred in suppressing the evidence based on a perceived overbreadth or an alleged lack of nexus between the affidavit and the warrant.

The magistrate had no difficulty identifying a clear nexus between the odor of marijuana emanating from Petitioner’s home and the search for controlled substances and related items, such as cash and firearms. App. 65-68. The affidavit, grounded in the officer’s detection of the marijuana odor and his training and experience in drug-related investigations, requested authority to search

the residence for all controlled substances as defined by statute—including marijuana. App. 66-67. Although a “copy and paste” error led to the inclusion of items commonly associated with drug trafficking in addition to drug possession, that error does not defeat probable cause. The odor of marijuana alone provided a sufficient legal basis to justify a search of Respondent Lewis’s residence for controlled substances and to seize “any and all controlled substances as defined in section 60A-4-401.” App 68, 81-82, 101. Furthermore, the items ultimately seized—including a firearm, ammunition, and cash—were within the warrant’s scope as supported by the affidavit. Their recovery neither invalidates the warrant nor justifies the wholesale suppression of all evidence obtained during the search.

This Court has repeatedly upheld the validity of search warrants that authorize the seizure of specifically identified items along with related evidence, recognizing that such language does not render a warrant impermissibly broad. In *State v. Knotts*, for example, the Court affirmed the constitutional sufficiency of a warrant listing particular stolen items alongside a broad request for “any other item[s] . . . stolen.” No. 22-0421, 2023 WL 7983840, at *1 (W. Va. Supreme Court, Nov. 17, 2023) (memorandum decision). Similarly, in *State v. Bates*, the Court rejected an overbreadth challenge to a warrant authorizing the search for “a gun; blood; and evidence or signs of a struggle,” along with “all further evidence which may therein be found.” 181 W. Va. 36, 40-41, 380 S.E.2d 203, 207-08 (1989). These cases demonstrate that warrants may permissibly include both narrowly tailored descriptions and broader authorizations for evidence logically connected to the investigation. Here, the warrant did not rely on vague or general language, nor did it authorize a sweeping search for “all further evidence.” Instead, it listed items logically connected to the possession of controlled substances, providing clear guidance to the executing officers. This level of particularity satisfies constitutional requirements and does not provide a basis to suppress the evidence.

Finally, even assuming *arguendo* that the warrant was overbroad, suppression of all evidence should be a remedy of last resort—not the court’s first response. The good-faith exception established in *Leon*, 468 U.S. at 913, instructs that evidence obtained by officers acting in reasonable reliance on a warrant issued by a neutral magistrate should not be excluded. Accordingly, suppression in this case is neither legally required nor factually justified.

Ultimately, the strong consensus among jurisdictions like West Virginia, where marijuana has not been outright legalized, is clear: the distinct odor of marijuana alone continues to establish probable cause to search a home (or vehicle), notwithstanding evolving marijuana and hemp laws. Courts across at least seven federal circuits and multiple states—including jurisdictions with medical or recreational legalization—have consistently reaffirmed that the possibility of lawful possession or alternative substances (like hemp) does not undermine a finding of probable cause where an officer detects the smell of marijuana based on training and experience. This uniform approach reflects the well-settled principle that probable cause does not require certainty or proof of criminal conduct but merely a fair probability that contraband or evidence of a crime is present. The circuit court fundamentally misapplied established law and exceeded its legitimate authority in departing from this Court’s precedent and principles adopted by jurisdictions nationwide. The circuit court’s error presents a serious impediment to law enforcement’s ability to investigate drug offenses and to the State’s capacity to prosecute them. By improperly redefining the standard for probable cause without legal support, the court undermines established precedent. A writ should issue, preventing suppression here and reaffirming that the odor of marijuana alone can provide probable cause to search a private residence.

B. The circuit court misunderstood and misapplied the good faith exception to the exclusionary rule and committed clear error of law in suppressing the evidence.

The circuit court's errors in this case extend well beyond its flawed determination on probable cause. Most critically, the court's refusal to apply the good faith exception to the exclusionary rule reveals a fundamental misunderstanding of both the purpose and scope of the exception as articulated by the U.S. Supreme Court in *United States v. Leon*.

1. The circuit court misapplied the good faith exception.

The exclusionary rule is a judicially created remedy intended to deter unlawful police conduct—not to penalize the State when a reviewing court retrospectively disagrees with a neutral magistrate's finding of probable cause. *Leon*, 468 U.S. at 906-07. The *Leon* Court recognized that reasonable minds may differ as to whether an affidavit establishes probable cause. For that reason, great deference is afforded to a magistrate's determination. Most importantly, the Court held that “[i]f . . . the exclusionary rule does not result in appreciable deterrence, then, clearly, its use in the instant situation is unwarranted.” *Id.* at 909. Thus, where suppression would not deter police misconduct—as where officers act in objectively reasonable reliance on a warrant issued by a neutral magistrate—the good faith exception prevents the extreme sanction of exclusion. *Id.* at 907-08, 926. The Supreme Court expressly modified the exclusionary rule “to permit the introduction of evidence obtained in the reasonable good-faith belief that a search or seizure was in accord with the Fourth Amendment.” *Id.* at 909.

The circuit court's refusal to apply the good faith exception in this case directly undermines *Leon*'s core rationale. Suppressing evidence under these circumstances imposes a significant social cost—the exclusion of probative evidence—without achieving any corresponding deterrent benefit. As the *Leon* Court emphasized, “[p]enalizing the officer for the magistrate's error, rather

than his own, cannot logically contribute to the deterrence of Fourth Amendment violations.” *Id.* at 921.

2. The affidavit was not “bare bones,” but detailed and substantiated.

Contrary to the circuit court’s conclusion, the affidavit in this case was not a “bare bones” submission. It identified the affiant officer, outlined his qualifications and training in narcotics investigations, and detailed his experience in identifying controlled substances by sight and smell. App. 61-62. The affidavit also recounted specific facts leading the officer to Respondent Lewis’s residence and giving rise to probable cause, including the officer’s immediate detection of a strong odor of marijuana emanating from the residence when Aaron Jr. opened the front door. App. 61-62. Because marijuana remains an illegal substance under West Virginia Code § 60A-4-401, the affidavit specified that the search sought “any and all controlled substances as defined” by the West Virginia Code. App. 63.

The circuit court erroneously relied on *Leon* and *United States v. Wilhelm*, 80 F.3d 116 (4th Cir. 1996), as authority to label this affidavit as “bare bones.” App. 103-04. But, again, the court got it wrong. A “bare bones affidavit” is one that contains nothing but “the bare conclusions of others.” *Leon*, 468 U.S. at 915 (quoting *Gates*, 462 U.S. at 239). Such an affidavit consists of “wholly conclusory statements, which lack the facts and circumstances from which a magistrate can independently determine probable cause.” *Wilhelm*, 80 F.3d at 121 (citing *United States v. Laury*, 985 F.2d 1293, 1311 n.23 (5th Cir. 1993)). *Wilhelm* is a clear example: there, the affidavit relied on vague and conclusory information from an unnamed informant, described only as “concerned citizen” and “mature person,” without any facts establishing the informant’s trustworthiness or reliability. *Id.* The affidavit was thus deemed “bare bones,” because it failed to provide the magistrate with a basis to independently evaluate probable cause. *Id.* Here, by contrast, the affidavit relied not on hearsay from an anonymous informant, but on Ptlm. Holloway’s direct

observations and training-backed expertise. It presented sufficient factual detail to allow the magistrate to make an independent determination. The circuit court’s reliance on *Wilhelm* and its characterization of the affidavit as “bare bones” is therefore legally and factually unfounded and reflects yet another misapplication of both West Virginia law and Fourth Amendment principles. App. 103-04.

3. The court misconstrued the affidavit’s breadth and ignored deference owed to the magistrate.

The circuit court further erred by declaring the affidavit “overbroad” and substituting its own judgment for that of the magistrate. This, too, is inconsistent with *Leon*, which instructs that “physical evidence seized by officers reasonably relying on a warrant issued by a detached and neutral magistrate” should not be suppressed. *Leon*, 468 U.S. at 913. Deference to the issuing magistrate is not boundless but it remains central to Fourth Amendment jurisprudence. *Id.* at 915. None of the recognized exceptions that would undermine that deference are present here; the circuit court made no findings—and the record contains no evidence—that officers misled the magistrate, acted dishonestly, or exhibited reckless disregard for the truth. *See id.*; App. 103-04.

4. The court’s refusal to apply the good faith exception compounds its legal error.

Finally, the circuit court’s refusal to apply the good faith exception—based on a mischaracterization of the affidavit and a misreading of controlling precedent—compounds its clear error and creates needless inconsistency in Fourth Amendment law. The affidavit here was detailed, factually grounded, and relied upon by officers acting in good faith. Denying the exception in such circumstances undermines the very function of *Leon* and erects an unwarranted barrier to constitutionally sound law enforcement practices. A writ should issue, preventing suppression here and correcting the court’s clear errors of law.

III. The remaining *Hoover* factors support issuance of a writ.

The other *Hoover* factors also weigh in Petitioner’s favor. First, the circuit court’s error cannot be corrected on appeal because direct appeal is unavailable. *See, e.g., State ex rel. State v. Cohee*, ___ W. Va. ___, ___, 914 S.E.2d 709, 715 (2025) (citing *State v. Adkins*, 182 W. Va. 443, 446, 388 S.E.2d 316, 319-20 (1989) (observing that the State may appeal only when an indictment is held bad or insufficient or in criminal proceedings relating to the public revenue)) (observing the State “easily meets the first criterion in *Hoover* as the State lacks the authority to appeal from” a sentencing order). A writ of prohibition, therefore, is the appropriate method for the State to challenge the circuit court’s order suppressing the evidence seized from Respondent Lewis’s home. The State also meets the second *Hoover* factor, as the circuit court’s clear legal error in suppressing lawfully obtained evidence—absent intervention by this Court through a writ of prohibition—effectively deprives the State of its right to prosecute. *State ex rel. Clifford v. Stucky*, 212 W. Va. 599, 575 S.E.2d 209 (2002) (finding that, absent a writ of prohibition, the State has no other adequate means to obtain relief from an alleged legal error of the lower court in dismissing the criminal appeal).

The fourth and fifth *Hoover* factors also weigh in the State’s favor. Although Petitioner does not assert that the specific issue at hand is an oft-repeated error, the decision below represents a court exceeding its lawful authority by applying de novo review to issuance of the search warrant and fundamentally misapplying the law establishing that the odor of marijuana alone provides probable cause for searches. The ripple effects of this error jeopardize the foundation of West Virginia’s search and seizure jurisprudence, simultaneously rewriting the probable cause standard and sowing uncertainty about when—and even whether—law enforcement may investigate marijuana use. Finally, the Court has consistently held that the odor of marijuana alone provides

probable cause to search vehicles and other places. The instant matter offers the opportunity to reinforce that this tenet also applies to residences, just as this Court held in *Ott*.

At a minimum, the court's new probable cause standard injects uncertainty into residential drug investigations. In practice, it effectively bars law enforcement from pursuing suspected drug offenses in residences—whether by warrant or otherwise—unless a confidential informant, an undercover officer, or another insider is able to provide the specific, detailed information on the source of marijuana smoke demanded by the circuit court's stringent checklist for authorizing a search of a home. This standard also undermines the operational value of trained narcotics detection dogs, whose alerts to the odor of marijuana have long been relied upon to establish probable cause. Only through the issuance of a writ will clarity for law enforcement be reestablished, the court's wrong be made right and West Virginia jurisprudence will remain aligned with nearly every other State and federal jurisdiction. Accordingly, relief in prohibition is appropriate.

CONCLUSION

The State respectfully requests the Court issue a writ of prohibition preventing the lower court from enforcing its April 22, 2025, order and permit the State to introduce the evidence seized pursuant to the lawful search warrant of Respondent Lewis's home.

Respectfully submitted,
State of West Virginia
by counsel,

JOHN B. MCCUSKEY
ATTORNEY GENERAL



Holly M. Mestemacher (WV Bar # 7996)

Assistant Attorney General

State Capitol Complex

Building 6, Suite 406

Charleston, WV 25305-0220

Email: hmestemacher@wvago.gov

Telephone: (304) 558-5830

Facsimile: (304) 558-5833

Counsel for Petitioner

VERIFICATION

State of West Virginia, Kanawha County, to-wit:

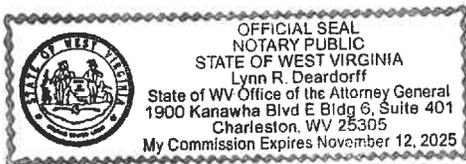
I, Holly M. Mestemacher, Assistant Attorney General and counsel for Petitioner named in the foregoing Petition for Writ of Prohibition, being duly sworn, state that the facts and allegations contained in the Petition for Writ of Prohibition are true, except insofar as they are stated to be on information, and that, insofar as they are stated to be on information, I believe them to be true.



Holly Mestemacher (WVSB # 7996)
Assistant Attorney General

Taken, sworn to, and subscribed before me this 25th day of May, 2025.

[SEAL]





Notary Public

IN THE SUPREME COURT OF APPEAL OF WEST VIRGINIA

No. 25-_____

STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,
Petitioner,

v.

THE HONORABLE DEBRA McLAUGHLIN,
Circuit Court Judge of the Circuit Court of
Berkeley County, West Virginia,
and AARON CURTIS LEWIS,
defendant below,

Respondents.

CERTIFICATE OF SERVICE

I, Holly M. Mestemacher, do hereby certify that on the 28th day of May, 2025, I served a true and accurate copy of the foregoing **Petition for Writ of Prohibition** upon the below-listed individuals via the West Virginia Supreme Court of Appeals E-filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure:

S. Andrew Arnold
Cameron LeFevre
Arnold & Bailey, PLLC
208 N. George Street
Charles Town, WV 25414

And via first-class mail, postage prepaid, addressed as follows, to the non-e filing Respondent:

Honorable Debra McLaughlin, Judge
Morgan County Courthouse
77 Fairfax Street
Berkeley Springs, WV 25411


Holly Mestemacher (WVSB # 7996)
Assistant Attorney General