

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

October 1, 2025 Session Heard at Nashville

STATE OF TENNESSEE v. TORRIAN SEANTEL BISHOP

Appeal by Permission from the Court of Criminal Appeals
Circuit Court for Obion County
No. CC-22-CR-22 Jeffrey Parham, Judge

No. W2023-00713-SC-R11-CD

In this appeal, we address the requirement that a certified question of law reserved for appeal as part of a conditional guilty plea under Rule 37(b)(2) of the Tennessee Rules of Criminal Procedure be “dispositive of the case.” Police stopped Torrian Seantel Bishop for driving on a suspended license and smelled what they believed to be marijuana. A search of his car yielded a stolen handgun. The trial court denied a motion to suppress the handgun, finding that the smell of marijuana provided probable cause to search the car. Thereafter, Mr. Bishop negotiated an agreement with the State under which he entered a conditional guilty plea but reserved for appellate review a certified question of law challenging whether there was probable cause to search his car. The basis for the challenge was the admitted inability of police to distinguish between the smell of illegal marijuana and that of legal hemp. The Court of Criminal Appeals initially affirmed the judgment of the trial court, but this Court remanded for reconsideration after we released our decision in State v. Green, 697 S.W.3d 634 (Tenn. 2024) (addressing the impact of the legalization of hemp on the probable-cause analytical framework). State v. Bishop, No. W2023-00713-CCA-R3-CD, 2024 WL 1564346, at *1 (Tenn. Crim. App. Apr. 11, 2024), perm. app. granted, (Tenn. Sep. 12, 2024) (remanding for reconsideration) (“Bishop I”). On reconsideration, the Court of Criminal Appeals determined that the certified question was not “dispositive of the case,” as required under Rule 37(b)(2)(A), and dismissed the appeal. State v. Bishop, No. W2023-00713-CCA-R3-CD, 2024 WL 4798895, at *1 (Tenn. Crim. App. Nov. 15, 2024), perm. app. granted, (Tenn. Mar. 14, 2025) (“Bishop II”). We granted review and requested that the parties also address potential revisions to the procedure and analysis for appeals involving certified questions. After careful consideration, we hold that the best practice for a certified question before the trial court includes an on-the-record colloquy to aid in determining whether the question is dispositive of the case. We also hold that if an appellate court determines that a certified question is not dispositive of the case, the court cannot consider the appeal but should vacate the judgment of the trial court to give the defendant the opportunity to withdraw the conditional guilty plea that attempted to reserve the question. As for the decision in this case, we conclude that the Court of

Criminal Appeals erred in determining that the certified question was not dispositive in light of our recent decision in Green. Accordingly, we reverse the judgment of the Court of Criminal Appeals and remand this case to that court for further proceedings consistent with this opinion.

**Tenn. R. App. P. 11 Appeal by Permission;
Judgment of the Court of Criminal Appeals Reversed;
Case Remanded to the Court of Criminal Appeals**

JEFFREY S. BIVINS, C.J., delivered the opinion of the Court, in which HOLLY KIRBY, SARAH K. CAMPBELL, DWIGHT E. TARWATER, and MARY L. WAGNER, JJ., joined.

Bill Randolph, District Public Defender; Jessica F. Butler (on appeal), Assistant Public Defender – Appellate Division; Damon Campbell (at trial), Assistant District Public Defender, for the appellant, Torrian Seantel Bishop.

Jonathan Skrmetti, Attorney General and Reporter; J. Matthew Rice, Solicitor General; Matthew D. Cloutier and Aaron L. Bernard, Assistant Solicitors General; Colin Johnson, District Attorney General; Melinda Meador and Jerald Campbell, Assistant District Attorneys General, for the appellee, State of Tennessee.

Stella Yarbrough, Nashville, Tennessee; Matthew R. Segal, Boston, Massachusetts; Julian Clark and Jackson Springer, New York, New York, for the Amici Curiae, American Civil Liberties Union Foundation of Tennessee and American Civil Liberties Union Foundation.

OPINION

I. INTRODUCTION

Unlike a conviction after a trial, the entry of a guilty plea greatly limits the available grounds for an appeal. See, e.g., State v. Rowland, 520 S.W.3d 542, 546 (Tenn. 2017) (observing that a knowing and voluntary guilty plea constitutes an admission of all the facts necessary for the conviction and waives all non-jurisdictional defects and constitutional irregularities). However, Rule 37 of the Tennessee Rules of Criminal Procedure, which addresses appeals in criminal cases generally, provides a narrow mechanism for a defendant to plead guilty and still present certain issues for review by an appellate court. See State v. Day, 263 S.W.3d 891, 898 (Tenn. 2008); see also Tenn. R. App. P. 3(b). Among the available options under Rule 37 is one that permits a defendant to enter a conditional plea of guilty or nolo contendere pursuant to a plea agreement with the State but reserve for appeal what is known as a “certified question of law.” Tenn. R. Crim. P. 37(b)(2)(A); see also Tenn. R. Crim. P. 11(a)(3) (identifying available plea options as including a “conditional plea . . . in accordance with Rule 37(b)”).

There are several prerequisites associated with this type of appeal, see Tenn. R. Crim. P. 37(b)(2)(A)(i)–(iv), derived principally from this Court’s opinion in State v. Preston, 759 S.W.2d 647 (Tenn. 1988). For many years, however, these requirements have been a source of confusion, raising questions about how effectively the certified-question procedure serves its intended purpose of promoting judicial economy and the speedy adjudication of criminal charges. See, e.g., State v. Thompson, 131 S.W.3d 923, 923–24 (Tenn. Crim. App. 2003) (characterizing certified-question appeals as “the quagmire of criminal jurisprudence in Tennessee”); State v. Bolka, No. W2018-00798-CCA-R3-CD, 2019 WL 1958110, at *3 (Tenn. Crim. App. Apr. 30, 2019) (characterizing the certified-question procedure as “a trap for the unwary” (citation modified)). Indeed, Tennessee precedent is replete with cases in which appeals were dismissed for failure to comply with the requirements, leaving defendants with a conviction pursuant to a conditional guilty plea but no appellate review of the legal question they attempted to reserve during the plea process.

Accordingly, we take the opportunity in this case to clarify certain principles pertaining to an appeal involving a certified question of law, particularly those addressing the requirement that a certified question be “dispositive of the case.” Tenn. R. Crim. P. 37(b)(2)(A), 37(b)(2)(A)(iv), 37(b)(2)(D). Similarly, in the related appeal in State v. Burrell, No. E2023-01404-SC-R11-CD, ___ S.W.3d ___ (Tenn. 2026), released simultaneously with the opinion in this case, we clarify certain principles addressing the requirement that a certified question “identif[y] clearly the scope and limits of the legal issue reserved.” Tenn. R. Crim. P. 37(b)(2)(A)(ii).

II. FACTUAL AND PROCEDURAL BACKGROUND

During the early morning hours of November 5, 2021, Officer Kyle Ross of the Union City Police Department stopped a car being driven by Torrian Seantel Bishop (“the Defendant”). Officer Ross had observed no traffic violations but knew that the Defendant’s driver’s license was suspended. Sergeant Josh Rogers was in the area and responded to the scene, arriving shortly after Officer Ross made the stop. Sergeant Rogers signaled to Officer Ross, who had lost his sense of smell due to COVID, that he smelled what he believed to be marijuana. Officer Ross told the Defendant that they were getting a “smell” or “whiff” of marijuana.

The Defendant denied smoking marijuana, having it on his person, or having it in the car. Officer Ross asked when the Defendant last had marijuana in the car. The Defendant responded, “Man, it’s been a minute. I haven’t been doing any type of smoking or anything of that nature.” Officer Ross sought consent to search the car, telling the Defendant that if the search revealed nothing, he was “going to get right back in the car and be done.” The Defendant simply continued to state that there was no marijuana present. Thereafter, despite the Defendant’s various denials, Officer Ross informed him that the smell of marijuana provided probable cause for a search.

The search did not reveal marijuana on the Defendant's person or in the car. However, Officer Ross discovered a handgun, later determined to have been stolen, under the driver's seat. Although Officer Ross was unaware at the time of the search, it also was determined later that the Defendant was a convicted felon on probation. Based on these facts, the Obion County Grand Jury indicted the Defendant for unlawful possession of a firearm by a convicted felon, theft of the handgun found under the driver's seat, and driving on a suspended license.

The Defendant filed a motion to suppress the handgun. He argued that the warrantless search of his car was not supported by probable cause because Sergeant Rogers could not distinguish between the smell of illegal marijuana and that of legal hemp. To that point, although Sergeant Rogers maintained that he believed he smelled marijuana at the scene, he admitted that he could not distinguish between marijuana and hemp. Because Sergeant Rogers admittedly could not distinguish between marijuana and hemp, the trial court initially granted the Defendant's motion to suppress.

The State filed a motion to rehear. In the motion, the State cited recent precedent from the Court of Criminal Appeals holding that the smell of what is believed to be marijuana, even though it is indistinguishable from that of hemp, alone establishes probable cause for a warrantless search of a vehicle. See State v. Hampton, No. W2021-00938-CCA-R3-CD, 2022 WL 16919950, at *6 (Tenn. Crim. App. Nov. 14, 2022) (“[U]ntil our supreme court or our legislature determines otherwise, the smell of marijuana continues to establish probable cause for the warrantless search of an automobile.”). Based on this precedent, the trial court reversed course and denied the Defendant's motion to suppress.

In light of the denial of his motion to suppress, the Defendant reached an agreement with the State to enter a conditional best interest guilty plea to unlawful possession of a weapon and theft of a firearm, for which he would receive agreed sentences.¹ See Tenn. R. Crim. P. 11(c)(1)(A), (C) (authorizing a plea agreement in which a defendant agrees to plead guilty to a charged or lesser offense and the State agrees to dismiss other charges or agrees upon a specific sentence). As part of his conditional plea, the Defendant sought to reserve for appeal a certified question of law concerning the validity of the search of his car. See Tenn. R. Crim. P. 37(b)(2)(A); see also Tenn. R. Crim. P. 11(a)(3). The transcript of the guilty plea hearing makes clear that the Defendant was entering a conditional plea “specifically reserving” a certified question of law. As evidenced by the plea agreement, the State consented to presenting the certified question for appeal.

The trial court ultimately entered an order certifying the Defendant's question for appeal. The order stated that the “question arose after the Defendant moved . . . to suppress the weapon that was found as a result of an automobile search that was conducted solely

¹ The State agreed to dismiss the charge for driving on a suspended license.

because an officer claimed to smell marijuana during a traffic stop.” The question was set forth as follows:

Whether, under the Fourth Amendment to the U.S. Constitution and Article I, section 7 of the Tennessee Constitution, law enforcement possessed probable cause to search the Defendant’s automobile without a warrant based exclusively on the allegedly plain smell of marijuana, when the officer claiming to have probable cause to search the automobile admittedly could not distinguish the smell of marijuana from the smell of hemp, the possession of hemp was legalized on April 4, 2019 by the passage of Senate Bill No. 357 as Public Chapter 87 in the 2019 Session of the 111th Tennessee General Assembly, and the traffic stop and automobile search in this case occurred on November 5, 2021.

The order also stated that the Defendant, the State, and the trial court all consented to the reservation of the certified question for appeal and agreed that the question was dispositive of the case. The trial court accepted the Defendant’s conditional guilty plea, signed the order certifying the question of law for appeal, and entered judgment accordingly. Thereafter, the Defendant timely filed a notice of appeal to bring his certified question to the Court of Criminal Appeals.

On appeal, the Court of Criminal Appeals initially pointed out that the certified question was properly before them:

We agree with the parties that the certified question is dispositive of the case because the officers searched the Defendant’s car as a result of Sergeant Rogers’s smelling the odor of marijuana, which the officers believed provided them with probable cause to search the car. The question identifies the scope and limits of the issue reserved. We, therefore, consider the question on its merits.

Bishop I, 2024 WL 1564346, at *3.

Regarding the merits, the Court of Criminal Appeals noted that precedent after the legalization of hemp continued to state that the smell of marijuana provided probable cause to conduct a warrantless search of a vehicle. Id. at *3–4. Thus, the court concluded that the smell of marijuana in this case provided probable cause to search the Defendant’s vehicle, regardless of Sergeant Rogers’ inability to distinguish between marijuana and hemp. Id. at *4. In so holding, however, the court acknowledged that a similar issue was pending before this Court in Green. Id. (citing State v. Green, No. M2022-00899-CCA-R3-CD, 2023 WL 3944057 (Tenn. Crim. App. June 12, 2023), aff’d, 697 S.W.3d 634 (Tenn. 2024)). After the Court of Criminal Appeals released its decision, and while Green still was pending, the Defendant sought permission to appeal to this Court.

Thereafter, while the Defendant’s application for permission to appeal was pending, this Court released its opinion in Green. In that case, a law enforcement officer stopped a car for a traffic violation. Green, 697 S.W.3d at 637. During the stop, the officer noticed a “strong odor of a fragrance coming from the vehicle,” which the driver attributed to three fragrance pine trees hanging from the rearview mirror. Id. The officer also noticed a backpack in the floorboard, and both the driver and the passenger—Mr. Green—denied ownership. Id. at 638. Thereafter, the officer employed a police service dog to “conduct an open air sniff of the vehicle.” Id. The dog alerted on the vehicle, after which the driver “prodded [Mr. Green] to talk.” Id. Mr. Green then “stated that he had picked up the backpack from his brother but he didn’t know what was in it.” Id. A search of a backpack revealed illegal drugs, drug paraphernalia, and a firearm. Id.

In Green, the trial court granted a motion to suppress the results of the search because the dog could not distinguish between the smell of legal hemp and that of illegal marijuana. Id. On appeal, the Court of Criminal Appeals reversed, stating that “the alert of a trained drug detection canine is alone sufficient” to establish probable cause. Green, 2023 WL 3944057, at *3. However, the court also stated that a review of the totality of the circumstances bolstered the finding of probable cause, pointing to the strong odor coming from the fragrance pine trees and the suspicious behavior surrounding the backpack in the vehicle. Id.

This Court granted permission to appeal in Green to consider how the legalization of hemp affects a probable cause determination that relies on a drug dog’s positive alert. 697 S.W.3d at 636–37. In Green, we acknowledged that there was confusion about whether our precedent “established a per se rule of probable cause based on a positive alert from a trained and reliable drug-sniffing canine.” Id. at 642 (citing State v. England, 19 S.W.3d 762 (Tenn. 2000)). However, we explained that our precedent had not established a per se rule but instead called for basing a probable-cause determination on the totality of the circumstances. Id. We observed that “the United States Supreme Court stated that ‘a well-trained dog’s alert establishes a fair probability—all that is required for probable cause—that either drugs or evidence of a drug crime . . . will be found,’” id. at 644 (quoting Florida v. Harris, 568 U.S. 237, 246 n.2 (2013)), but “the ultimate question is still ‘whether all the facts surrounding a dog’s alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime,’” id. (quoting Harris, 568 U.S. at 248).

After we released our opinion in Green, we granted the Defendant’s pending application for permission to appeal from the decision of the Court of Criminal Appeals in Bishop I, and we summarily remanded to the intermediate appellate court for reconsideration in light of our decision in Green. Order, State v. Bishop, No. W2023-00713-SC-R11-CD (Tenn. Sep. 12, 2024) (granting permission to appeal and remanding for reconsideration).

Upon remand to the Court of Criminal Appeals, the Defendant continued to argue that probable cause was lacking. The Defendant asserted that the certified question stated—and the record revealed—that the sole circumstance supporting the warrantless search in this case was the smell of marijuana. In the Defendant’s view, Green made clear that the smell of marijuana alone does not provide probable cause to search an automobile.

For its part, the State argued primarily that the Court of Criminal Appeals lacked jurisdiction to review the certified question because the question did not identify clearly the scope and limits of the legal issue reserved, and furthermore, because the question was not dispositive of the case. Alternatively, the State also argued that, looking to the totality of the circumstances as required under Green, the officers had probable cause to search the Defendant’s car based on the smell of marijuana and the Defendant’s statement suggesting that marijuana previously had been in the car.

The Court of Criminal Appeals did not address the issue of probable cause and instead determined that the certified question was not dispositive of the case. The court stated that under Green, “a totality-of-the-circumstances analysis must be used when determining whether probable cause exists for a warrantless search of a car based on the odor of marijuana.” Bishop II, 2024 WL 4798895, at *3. The court continued:

In the present case, the trial court found that the odor of marijuana, alone, provided probable cause for the officers’ search. The trial court did not apply a totality-of-the-circumstances analysis to the suppression motion, and, as a result, the certified question fails to frame the inquiry as one addressing the totality of the circumstances.

Id. Having determined that the certified question was not dispositive of the case, the court dismissed the Defendant’s appeal. Id. at *4.

The Defendant again sought permission to appeal to this Court, contending that the certified question remained dispositive after Green and that, under Green, the odor of marijuana alone was insufficient to establish probable cause. We granted permission to appeal, and we specified that “in addition to the issues raised in the application, the Court is also interested in addressing potential revisions to the procedure and analysis for certified questions as adopted by this Court in State v. Preston, 759 S.W.2d 647 (Tenn. 1988), and set forth in Tennessee Rule of Criminal Procedure 37(b)(2)(A)(i-iv).”

III. ANALYSIS

This appeal presents two issues for our consideration, one specific and one more broadly focused. The Defendant argues that the Court of Criminal Appeals erred in determining that his certified question of law is not “dispositive of the case” and, therefore,

in dismissing his appeal. In response, the State maintains that the certified question is not dispositive. Additionally, the parties have responded to this Court's request to address potential revisions to the procedure and analysis for an appeal of a certified question. These issues involve questions of law, see State v. Johnson, 342 S.W.3d 468, 471 (Tenn. 2011) ("Issues regarding the construction and interpretation of rules of court, including the Tennessee Rules of Criminal Procedure, involve questions of law."), which we review de novo with no presumption of correctness, State v. Lowe-Kelley, 380 S.W.3d 30, 33 (Tenn. 2012) (citing State v. Ferrante, 269 S.W.3d 908, 911 (Tenn. 2008)).

The issues presented obviously revolve around the principles and requirements articulated in Preston and Rule 37(b)(2). As such, we will begin with a brief history of the rule and the pivotal role that this Court's decision in Preston nearly forty years ago played in its development. We then will address potential revisions to the certified-question procedure before examining whether the Court of Criminal Appeals erred in determining that the certified question in this case is not dispositive.

A. Rule 37(b)(2) and Preston

Rule 37 addresses criminal appeals generally, including "direct appellate review available as a matter of right, appeals in the nature of writs of error, and all other direct appeals in criminal cases." Tenn. R. Crim. P. 37(a). It first became effective in 1978. Day, 263 S.W.3d at 898. In its original form, the rule authorized appeals from a conviction after a plea of not guilty as a general matter, see Tenn. R. Crim. P. 37(b)(1) (1978), and it also authorized three specific types of appeal available from a conviction after a plea of guilty or nolo contendere, see Tenn. R. Crim. P. 37(b)(2)(i)–(iii) (1978). This case concerns one of those types of appeal, the certified question of law. See Tenn. R. Crim. P. 37(b)(2)(i) (1978).

As relevant to this case, the original rule simply provided for an appeal from a conviction after a plea of guilty or nolo contendere if the "defendant entered into a plea agreement under Rule 11(e) but explicitly reserved with the consent of the State and of the court the right to appeal a certified question of law that is dispositive of the case."² Id. The Advisory Committee comment provided limited additional information, indicating that the rule

permits a plea bargain and an appeal in the context of a controlling question that needs answering, such as the constitutionality of a statute upon which a

² At that time, Rule 11(e) of the Tennessee Rules of Criminal Procedure outlined plea agreement procedure. Plea agreement procedure currently is addressed by Rule 11(c).

charge is grounded or the validity of the search upon which the State's case must be made, and [it] should avoid the necessity for many trials.

Tenn. R. Crim. P. 37 advisory comm. cmt. (1978).

The original language of the rule was minimal. In fact, the text contained no guidance for exactly how to pursue an appeal involving a certified question of law. See State v. Armstrong, 126 S.W.3d 908, 911 n.4 (Tenn. 2003). Not surprisingly, then, this Court soon noted that there was confusion about the specific requirements for pursuing such an appeal. See Preston, 759 S.W.2d at 649–50.

Accordingly, in 1988, this Court released Preston, which “was intended to establish a simple, uniform method by which certified questions may be pursued on appeal.” Armstrong, 126 S.W.3d at 911 n.4. In Preston, the Court sought to “make explicit to the bench and bar exactly what the appellate courts will hereafter require as prerequisites to the consideration of the merits of a question of law certified pursuant to [Rule] 37(b)(2)(i) or (iv).”³ 759 S.W.2d at 650.

Regardless of what has appeared in prior petitions, orders, colloquy in open court or otherwise, the final order or judgment from which the time begins to run to pursue a T.R.A.P. 3 appeal must contain a statement of the dispositive certified question of law reserved by defendant for appellate review and the question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved. For example, where questions of law involve the validity of searches and the admissibility of statements and confessions, etc., the reasons relied upon by defendant in the trial court at the suppression hearing must be identified in the statement of the certified question of law and review by the appellate courts will be limited to those passed upon by the trial judge and stated in the certified question, absent a constitutional requirement otherwise. Without an explicit statement of the certified question, neither the defendant, the State nor the trial judge can make a meaningful determination of whether the issue sought to be reviewed is dispositive of the case. Most of the reported and unreported cases seeking the limited appellate review pursuant to Tenn. R. Crim. P. 37 have been dismissed because the certified question was not dispositive. Also, the

³ At the time of Preston, subsection 37(b)(2)(i) authorized a certified-question appeal when a defendant had entered into a plea agreement with the State. Subsection 37(b)(2)(iv) similarly authorized an appeal in the absence of an agreement with the State so long as a defendant “explicitly reserved with the consent of the court the right to appeal a certified question of law that is dispositive of the case.” Subsection 37(b)(2)(iv) was not included in the original version of Rule 37 adopted in 1978. It was added six years later in 1984, four years before this Court’s decision in Preston. See Tenn. R. Crim. P. 37(b)(2)(iv) (1984). Subsections 37(b)(2)(i) and (iv), referred to in Preston, correspond to current subsections 37(b)(2)(A) and (D).

order must state that the certified question was expressly reserved as part of a plea agreement, that the State and the trial judge consented to the reservation and that the State and the trial judge are of the opinion that the question is dispositive of the case. Of course, the burden is on defendant to see that these prerequisites are in the final order and that the record brought to the appellate courts contains all of the proceedings below that bear upon whether the certified question of law is dispositive and the merits of the question certified. No issue beyond the scope of the certified question will be considered.

Id. Fourteen years later, in 2002, these requirements were incorporated into the text of Rule 37. See Tenn. R. Crim. P. 37(b)(2)(i)(A)–(D) (2002). The Preston requirements later were re-designated as what is currently Rule 37(b)(2)(A)(i)–(iv).

In pertinent part, the rule presently provides as follows:

The defendant may appeal from any judgment of conviction:

- (1) on a plea of not guilty; or
- (2) on a plea of guilty or nolo contendere, if:
 - (A) the defendant entered into a plea agreement under Rule 11(c) but explicitly reserved—with the consent of the state and of the court—the right to appeal a certified question of law that is dispositive of the case, and the following requirements are met:
 - (i) the judgment of conviction or order reserving the certified question that is filed before the notice of appeal is filed contains a statement of the certified question of law that the defendant reserved for appellate review;
 - (ii) the question of law as stated in the judgment or order reserving the certified question identifies clearly the scope and limits of the legal issue reserved;
 - (iii) the judgment or order reserving the certified question reflects that the certified question was expressly reserved with the consent of the state and the trial court; and
 - (iv) the judgment or order reserving the certified question reflects that the defendant, the state, and the trial court are of the opinion that the certified question is dispositive of the case; or

....

- (D) if there is no plea agreement pursuant to Rule 37(b)(2)(A), the defendant—with the consent of the court—explicitly reserved the right to appeal a certified question of law that is dispositive of the case, and the requirements of Rule 37(b)(2)(A)(i)-(ii) are otherwise met.

Tenn. R. Crim. P. 37(b).⁴ Thus, the text of the current rule is largely an amalgamation of the original language from 1978 and the supplemental requirements set forth a decade later in Preston.

Plea negotiations obviously involve both a defendant and the State. If negotiations result in an agreement to present a certified question of law for appeal, however, the burden is on the defendant to ensure that the judgment or relevant order complies with the requirements of Rule 37(b)(2)(A)(i)–(iv). State v. Springer, 406 S.W.3d 526, 531 (Tenn. 2013); State v. Pendergrass, 937 S.W.2d 834, 837 (Tenn. 1996); Preston, 759 S.W.2d at 650. The failure of the judgment or order to comply with those requirements results in dismissal of the appeal. See Pendergrass, 937 S.W.2d at 838.

B. The Certified Question Procedure

The requirements associated with pursuing an appeal involving a certified question of law have produced confusion in the years since Preston, perhaps none more so than the requirement that the certified question be dispositive of the case. This Court has acknowledged that numerous attempts to pursue a certified question have resulted in dismissal of the appeal because the appellate court determined that the question was not dispositive of the case. See State v. Dailey, 235 S.W.3d 131, 135 (Tenn. 2007); Preston, 759 S.W.2d at 650. For this reason, we asked the parties to address potential revisions to the procedure and analysis for certified questions in addition to addressing the issue presented for appeal in this case.

Initially, we note that the State generally urges restraint. The State cautions that any revisions should be incremental and carefully targeted because “a broad and sweeping change in the procedural landscape . . . should come by operation of the normal rule-making process, not by judicial fiat in the limited context of a single case.” Webb v. Nashville Area Habitat for Human., Inc., 346 S.W.3d 422, 436 (Tenn. 2011). Nevertheless, as the State acknowledges, this Court has the authority to interpret court rules, see State v.

⁴ We quote the current version of the rule, which also was in effect at the time of the Defendant’s plea. The language of the rule underwent various revisions not relevant to the issues presented in this appeal between the time the Preston requirements were incorporated in 2002 and the present day.

Wooden, 478 S.W.3d 585, 589 (Tenn. 2015), and the “inherent power to promulgate rules governing the practice and procedure of the courts of this state,” State v. Mallard, 40 S.W.3d 473, 481 (Tenn. 2001). In fact, our decision in Preston exemplifies the exercise of our authority to set forth governing principles for certified questions under Rule 37. We certainly are cognizant of the State’s larger point, but a prudent examination of the certified-question procedure is just as appropriate today as it was years ago in Preston.

1. The Utility of an On-the-Record Colloquy About Whether a Certified Question Is Dispositive of the Case

Each party acknowledges the confusion that the certified-question procedure has engendered. However, the parties offer different responses to the recognized challenges. For instance, the Defendant suggests the possibility of bringing Tennessee’s procedure “into lockstep” with the federal one.⁵ The advantage, according to the Defendant, is that the federal procedure employs a more relaxed approach to the most frequent pitfalls exhibited in Tennessee precedent—the requirements that a certified question be dispositive of the case and that it clearly identify the scope and limits of the legal issue reserved.

For its part, the State questions whether federal precedent is in accord with the Defendant’s assertion about the purported advantages of the federal approach. See, e.g., United States v. Bundy, 392 F.3d 641, 645–47 (4th Cir. 2004) (noting that multiple federal courts have imposed a case-dispositive requirement despite the absence of specific language in the federal rule). More importantly, however, the State correctly points out that the language of Rule 37(b)(2)(A) simply is quite different from that of the federal rule. Thus, we do not believe that a wholesale change to mirror the federal procedure is appropriate.

However, the Defendant and the State exhibit a measure of unity around one point: the utility of a fulsome discussion among the parties and the trial court on the record as to how a certified question is dispositive of the case. In this vein, the Defendant suggests that this Court “should require the trial court to hold a hearing where both parties must articulate their rationale for positing that the certified question is dispositive, and the trial court must state its findings on the record as well.” Similarly, pointing to cases that involve suppression motions in particular, the State notes the utility of an on-the-record discussion during which the State must indicate that it cannot prosecute the case without the evidence at issue.

⁵ The federal rule states that “[w]ith the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion” and, if successful, the defendant “may then withdraw the plea.” Fed. R. Crim. P. 11(a)(2).

The positions of the parties find support from our decision in Dailey. In that case, the defendant filed a motion to suppress his confession. 235 S.W.3d at 133. After the trial court denied the motion, the defendant pleaded guilty to a lesser charge but reserved for appeal a certified question concerning the admissibility of his confession. The parties and the trial court agreed that the certified question was dispositive of the case. Id. However, the Court of Criminal Appeals concluded that the record did not reveal how the admissibility of the defendant's confession was dispositive of the case, leading the court to dismiss the appeal. Id. at 134. The intermediate appellate court queried whether there was evidence besides the confession that might support the defendant's conviction and found the record uncertain in that regard. Id.

This Court reversed the decision of the Court of Criminal Appeals. Of particular importance was a colloquy at the guilty plea hearing:

During the plea hearing, the trial court asked the prosecutor if it was “the State’s position that, absent these statements from [the Defendant] to the police, that the State could not proceed?” The prosecutor responded, “Yes, Your Honor, it is dispositive. Our proof is timed [sic] with the—his statement. That—we would, however, not limit ourselves, should further evidence be developed at a later time. But, as the evidence stands at this time, Your Honor, it would be dispositive and we would not be able to proceed.”

Id. at 133 (alteration in original). We found this colloquy instructive on the issue of whether the certified question was dispositive. Based on the exchange, we distinguished the case from those in which the record contained “evidence not challenged by the certified question that could be used to prosecute the defendant,” which we noted were dismissed correctly because the certified question was not dispositive. Id. at 136. In addition, we cautioned that “[i]t is not the appellate court’s duty to question why the record does not contain other evidence or to assume oversight of the underlying criminal investigation.” Id. at 135.

To be sure, Rule 37(b)(2)(A) does not require an on-the-record colloquy like the one in Dailey. The rule is silent in this respect. Thus, conducting one is in no way inconsistent with the text of the rule.

The rule clearly does require the defendant, the State, and the trial court all to determine and agree that a certified question is dispositive of the case.⁶ See Tenn. R. Crim.

⁶ The need for the defendant, the State, and the trial court to “make a meaningful determination of whether the issue sought to be reviewed is dispositive of the case,” Preston, 759 S.W.2d at 650, highlights the importance of another requirement, an explicit statement of the certified question that clearly identifies the scope and limits of the legal issue reserved, see Tenn. R. Crim. P. 37(b)(2)(A)(ii).

P. 37(b)(2)(A), 37(b)(2)(A)(iv); see also Preston, 759 S.W.2d at 650. An on-the-record colloquy often would serve to ensure a “meaningful determination,” Preston, 759 S.W.2d at 650, by the defendant, the State, and the trial court that a certified question is dispositive. However, we acknowledge that the dispositive nature of a certified question may be more readily apparent in some cases than in others. See Tenn. R. Crim. P. 37 advisory comm’n cmt. (identifying different types of potential certified-question appeals, from those involving the constitutionality of a statute upon which a charge is grounded to those involving the validity of a search upon which the State’s case must be made).

Under these circumstances, we do not mandate an on-the-record colloquy as the Defendant urges. However, we emphasize the utility of such a discussion as a matter of best practice in many cases. Thus, we encourage the parties and the trial court: (1) to conduct an on-the-record colloquy at the guilty plea hearing, or otherwise, (2) in which the parties articulate precisely how the certified question is dispositive of the case, and (3) in which the trial court makes findings to facilitate the determination of the issue. As Dailey revealed, it can be significant for the State to indicate whether it could proceed without evidence sought to be suppressed through a certified question, and additionally, to articulate the significance of that evidence and to address whether the record contains “evidence not challenged by the certified question that could be used to prosecute the defendant.” Dailey, 235 S.W.3d at 136.

In Preston, this Court stressed that an explicit statement of the certified question in the judgment or a related order is necessary for the parties and the trial court to make “a meaningful determination of whether the issue sought to be reviewed is dispositive of the case.” 759 S.W.2d at 650. The same notion holds true with respect to an on-the-record colloquy between the parties and the trial court to support the determination that a certified question is dispositive of the case. Articulating precisely how a certified question is dispositive serves to ensure that the agreement of the parties and the trial court required by Rule 37(b)(2)(A)(iv) reflects a meaningful determination of that issue.

2. The Availability of Withdrawing a Conditional Guilty Plea

As previously noted, the certified-question procedure often has resulted in the dismissal of an appeal based on an appellate court’s determination that the question was not dispositive of the case. See Dailey, 235 S.W.3d at 135–36. That result leaves a defendant with a standing conviction based on a conditional guilty plea but not the substantive appellate review that the defendant contemplated when deciding to plead guilty. The Defendant takes issue with being in that very position here by virtue of the dismissal of his appeal by the Court of Criminal Appeals. He suggests that this Court should hold that in cases in which an appeal is dismissed based on a determination that a certified question is not dispositive, the parties should be placed back in their original positions—that is, the judgment of the trial court should be vacated, and the defendant

should be allowed to withdraw the conditional guilty plea. Upon careful consideration of the issue, we agree.⁷

Rule 37(b)(2)(A) is silent as to this issue. In Preston, this Court stated without significant discussion that if an appellate court determines that a certified question is not dispositive, the appeal should be dismissed. 759 S.W.2d at 650. Nevertheless, under “special circumstances,” this Court also has exercised our “discretion to fashion appropriate relief” by remanding to the trial court to allow a defendant the opportunity to withdraw his guilty plea after we determined that his certified question was not dispositive of the case. State v. Walton, 41 S.W.3d 75, 96 (Tenn. 2001) (citing Tenn. R. App. P. 36(a)).⁸

Although Rule 37 does not speak to this issue, Rule 11 of the Tennessee Rules of Criminal Procedure offers some guidance. The certified-question procedure under Rule 37 refers to Rule 11(c). Tenn. R. Crim. P. 37(b)(2)(A). Rule 11(c), in turn, speaks broadly about plea agreement procedures. Among the procedures are those addressing a trial court’s rejection of a plea agreement. See Tenn. R. Crim. P. 11(c)(5).

This background raises an important point. The certified question procedure under Rule 37(b)(2)(A) requires the defendant, the State, and the trial court all to agree that the question is dispositive of the case. Tenn. R. Crim. P. 37(b)(2)(A), 37(b)(2)(A)(iv). Obviously, in the process of reaching a plea agreement that calls for presenting a certified question for appeal, the defendant and the State have agreed that the question is dispositive. However, in requiring the consent of the trial court, Rule 37(b)(2)(A) necessarily calls for the trial court to make its own independent determination that a certified question is dispositive. The trial court is not bound by the agreement of the defendant and the State. Cf. Bundy, 392 F.3d at 648 (stating that rather than automatically accepting that an issue is case-dispositive, “the ultimate decision belongs to the [trial] court”). Thus, if a trial court determines that a certified question is not dispositive, the court cannot consent to presenting

⁷ Related to this suggestion, the Defendant also takes issue with the State—through the Attorney General’s Office—arguing on appeal after remand that his certified question is not dispositive, even though the State—through the District Attorney General’s Office—agreed otherwise before the trial court. The Defendant suggests that we prohibit “the practice of defendants entering into an agreement with the State only to have the State abandon that agreement and argue the opposite at the appellate level.” We need not address the Defendant’s suggestion given our holding today that a defendant may withdraw a conditional guilty plea if an appellate court concludes that a certified question is not dispositive. However, we reiterate that Rule 37 requires that a certified question be dispositive of the case, see Tenn. R. Crim. P. 37(b)(2)(A), (D), and that an appellate court may determine, regardless of the parties’ agreement in the proceedings below, that a certified question is not dispositive, see Dailey, 235 S.W.3d at 134–35.

⁸ Before Preston, the Court of Criminal Appeals also on occasion vacated a guilty plea after determining that a certified question was not dispositive. See State v. Wilkes, 684 S.W.2d 663, 667 (Tenn. Crim. App. 1984) (stating that “it would be unfair under the circumstances to dismiss the appeal and affirm the judgments entered on the guilty pleas”).

the certified question for appeal and instead must reject the plea agreement. See Tenn. R. Crim. P. 37(b)(2)(A).

In that event, Rule 11(c) provides guidance about the proper procedure. The rule addresses, in part, a trial court's rejection of a plea agreement that contains certain conditions, namely the dismissal of certain charges or the imposition of a specific sentence. See Tenn. R. Crim. P. 11(c)(1)(A), 11(c)(1)(C), 11(c)(3)(A). If a trial court rejects such a plea agreement, the court must give the defendant the opportunity to withdraw the guilty plea. See Tenn. R. Crim. P. 11(c)(5)(B).

We conclude that a similar procedure is warranted if a trial court rejects a conditional guilty plea under Rule 37(b)(2). Regardless of the agreement between a defendant and the State, a trial court is free to determine that a certified question is not dispositive and, therefore, to decide that it cannot accept a related plea agreement under Rule 37(b)(2). In that event, however, given the conditional nature of the plea, see Tenn. R. Crim. P. 11(a)(3), the court must give the defendant the opportunity to withdraw the guilty plea.⁹ This procedure is consistent with our precedent stating that principles of contract law generally apply to plea agreements. See, e.g., State v. Mellon, 118 S.W.3d 340, 346 (Tenn. 2003) (noting that Tennessee courts have applied principles of contract law to plea agreements, including determining any appropriate remedies); State v. Howington, 907 S.W.2d 403, 407 & n.8 (Tenn. 1995) (contract principles dictate that a defendant be allowed to withdraw a plea if the plea agreement suffers from an infirmity that invalidates the agreement). Consequently, if a plea agreement that incorporates a certified question of law for appeal is invalidated by virtue of a trial court's determination that the certified question is not dispositive of the case, the remedy for the defendant is withdrawal of the plea, given that it was conditioned upon presenting the certified question for appellate review. See Mellon, 118 S.W.3d at 346.

Having detailed the proper procedure in the event a trial court determines that a certified question is not dispositive, we now turn to the proper procedure in the event an appellate court determines that a certified question is not dispositive. Just as a trial court must determine whether a certified question is dispositive without regard to the agreement between a defendant and the State, so too an appellate court must make an independent determination without regard to the proceedings below. See Dailey, 235 S.W.3d at 134–35; Preston, 759 S.W.2d at 651. In that vein, we have stated that whether a certified question is dispositive of the case is a question of law that an appellate court reviews de novo. State v. Scott, 619 S.W.3d 196, 203 (Tenn. 2021). Thus, an appellate court engages in the same analysis to make its determination as the trial court. Given these circumstances, we conclude that there is no reason to treat an appellate court's determination that a

⁹ The parties are free to include, but are not required to include, in the plea agreement a provision specifically recognizing that if the certified question is determined by a court not to be dispositive of the case, the defendant may withdraw the conditional plea.

certified question is not dispositive any differently from that of a trial court. Accordingly, we hold that if an appellate court determines that a trial court erred in finding a certified question dispositive of the case, the appellate court must vacate the judgment of the trial court and remand to give the defendant the opportunity to withdraw the guilty plea.

We acknowledge that this Court stated in Preston that “[i]f the question is determined not to be dispositive, the appeal should be dismissed.” 759 S.W.2d at 650. Thereafter, “numerous attempts to appeal certified questions have been unsuccessful on the basis that the question was determined by the appellate courts not to have been dispositive.” Dailey, 235 S.W.3d at 135. To be clear, we do not depart from the core requirement reflected in Preston, its progeny, and the text of Rule 37 that an appellate court may not consider an appeal involving a certified question if the court determines that the question, in fact, is not dispositive of the case. See, e.g., Walton, 41 S.W.3d at 96 (reaffirming the “rule that appellate review will be denied when the issues certified for review are in fact not dispositive of the case”). However, we take this opportunity to refine the certified-question procedure and today hold that an appellate court which does not consider an appeal involving a certified question of law because the question is not dispositive of the case should vacate the judgment of the trial court and remand so that the defendant has the opportunity to withdraw the conditional plea that included the certified question.¹⁰

C. Whether the Defendant’s Certified Question Remains Dispositive of the Case After Green

With these parameters in hand, we now consider whether the Court of Criminal Appeals erred in determining that the Defendant’s certified question was not dispositive. Since its inception, Rule 37 has indicated that a certified question of law must be “dispositive of the case.” Tenn. R. Crim. P. 37(b)(2)(i) (1978). A question is dispositive “when the appellate court ‘must either affirm the judgment of conviction or reverse and dismiss the charges.’” Dailey, 235 S.W.3d at 134 (citation modified) (quoting Walton, 41 S.W.3d at 96).

In Preston, building upon the original rule’s baseline requirement that a certified question be dispositive of the case, we made clear that the defendant, the State, and the trial court all must agree during the guilty plea process that the question is dispositive. 759 S.W.2d at 650; see also Tenn. R. Crim. P. 37(b)(2)(A)(iv). However, we held in Preston that their agreement does not bind an appellate court when the certified question reaches it. Instead, an appellate court may determine that, regardless of the proceedings below, a certified question is not dispositive of the case. Preston, 759 S.W.2d at 651; see also

¹⁰ Although this case entails an appeal under Rule 37(b)(2)(A)—involving a plea agreement between the Defendant and the State—our holding would apply equally to an appeal under Rule 37(b)(2)(D), which requires the trial court’s determination that a certified question is dispositive but does not require the existence of a plea agreement with the State.

Dailey, 235 S.W.3d at 134–35. To that end, the question is “whether ‘*the record on appeal*’ demonstrates how [the certified] question is dispositive of the case.” Dailey, 235 S.W.3d at 135 (alteration in original) (quoting Preston, 759 S.W.2d at 651).

In this case, although the trial court determined that the Defendant’s certified question was dispositive, the Court of Criminal Appeals, upon remand after Green, concluded otherwise. Bishop II, 2024 WL 4798895, at *1. The intermediate appellate court noted that this Court’s opinion in Green “has now clarified that a totality-of-the-circumstances analysis must be used when determining whether probable cause exists for a warrantless search of a car based on the odor of marijuana.” Id. at *3. In that vein, the court found the Defendant’s certified question lacking because it “fail[ed] to frame the [probable-cause] inquiry as one addressing the totality of the circumstances.” Id.

Before this Court, the Defendant maintains that the certified question is dispositive of the case. He points out that the intermediate appellate court expressly stated in his initial appeal that it “agree[d] with the parties that the certified question is dispositive of the case.” Bishop I, 2024 WL 1564346, at *3. He also points out that Green did not alter the probable-cause analytical framework that already existed. Thus, he argues that because Green did not change the analytical framework, his certified question remains as dispositive as it was when the Court of Criminal Appeals first addressed it. As to the merits of the question, the Defendant urges this Court to conclude that the officers lacked probable cause to search his car, given that they could not distinguish between the smell of marijuana and that of hemp.

We decline to reach the merits of the certified question. However, we agree with the Defendant that Green did not change the probable-cause analytical framework applicable to this case. Thus, as we explain below, we conclude that the Court of Criminal Appeals erred in determining that the certified question was not dispositive.

For a certified question to be dispositive, it must require a reviewing court either to affirm the judgment of conviction or to reverse and dismiss the charges. See Dailey, 235 S.W.3d at 134. In this case, the parties agree that the legal standard applicable to the search question required the police officers to have probable cause before conducting the warrantless search of the Defendant’s car. The parties also agree that whether probable cause existed involves an inquiry into the totality of the circumstances. Nevertheless, the parties disagree on whether the certified question is dispositive.

The State argues that the certified question is not dispositive because “the smell-focused framing of the question is incompatible with controlling probable-cause precedent, which requires consideration of the totality of the circumstances,” and also because “the question is inconsistent with the record, which contains other facts that contribute to a probable-cause finding.” More specifically, the State contends that by framing the question to address probable cause “based exclusively on the allegedly plain smell of marijuana,”

the certified question “bakes in a flawed legal framework” that is “impossible to square with” a totality-of-the-circumstances analysis. In the State’s calculus, the record contains other facts—that law enforcement knew the Defendant had a suspended driver’s license and that the Defendant appeared to admit that there had been marijuana in the car in the past—that would contribute to probable cause, along with the smell of marijuana, in an analysis based on the totality of the circumstances.

The Defendant disagrees. He does not dispute that the probable-cause inquiry must consider the totality of the circumstances. See Green, 697 S.W.3d at 643. However, he contends that the State relied on—and the totality of the circumstances in this case includes—only one fact that goes to the question of probable cause, the alleged smell of marijuana.

Based on our review, we conclude that the certified question is dispositive. The certified question challenges the trial court’s order that denied the Defendant’s motion to suppress based on a finding that probable cause existed to support the warrantless search of the Defendant’s car. Although the parties agree that probable cause should be determined under the totality of the circumstances, they disagree as to the facts that constitute the totality of the circumstances in this case. But the record contains those facts.¹¹

As we explained in Dailey, “[a]n appellate court’s duty is to determine whether the certified question is dispositive *on the record before it*.” 235 S.W.3d at 135. Accordingly, like the “question-plus-record” approach we adopted in Burrell, we clarify here that a reviewing court’s determination of whether a certified question is dispositive of the case is not limited to the question viewed in isolation.¹² In some cases, the certified question alone will make clear that it is dispositive. In other cases, a reviewing court may need to examine the record to determine whether the certified question is dispositive. A reviewing court also must consider the certified question within the context of the governing legal framework.

While we do not determine here whether the facts in this record support a finding of probable cause under the totality of the circumstances or whether the trial court correctly

¹¹ To that point, a court’s determination of whether probable cause existed for a warrantless search is an objective inquiry that asks whether a reasonable officer would believe that probable cause existed based on “all relevant facts and circumstances demonstrated by the proof, *including those not relied upon by the officer*.” State v. Reynolds, 504 S.W.3d 283, 301 (Tenn. 2016) (emphasis added).

¹² Although a certified question presents the legal issue for the appellate court’s review, it is the record which provides the facts. Indeed, divorcing the resolution of the Defendant’s certified question from the record in this case would risk inviting an advisory opinion, which Tennessee courts are prohibited from issuing. See, e.g., State ex rel. Lewis v. State, 347 S.W.2d 47, 48 (Tenn. 1961) (“The courts of this State have no right to render an advisory opinion.”).

determined the relevant facts that make up the totality of the circumstances, we do conclude that the certified question is dispositive when the question and the record are considered together within the correct legal framework. The question, in light of the record, is dispositive because either: (1) the State is correct, and the facts in the record will show that probable cause existed under the totality of the circumstances; or (2) the Defendant is correct, and the facts in the record will not show that probable cause existed under the totality of the circumstances. Under either answer, the Court of Criminal Appeals either would affirm the judgment of conviction or reverse and dismiss the charges. Thus, the question is dispositive. See Dailey, 235 S.W.3d at 134. Accordingly, we conclude that the Defendant's certified question remains dispositive after Green and that the Court of Criminal Appeals erred in holding to the contrary.

IV. CONCLUSION

In summary, we clarify today certain procedures pertaining to an appeal involving a certified question of law under Rule 37(b)(2) of the Tennessee Rules of Criminal Procedure. We hold that the best practice for determining at the trial court level whether a certified question is dispositive of the case is through an on-the-record colloquy between the parties and the trial court, at which the parties should articulate precisely how the certified question is dispositive and the trial court should make findings in support of its determination. We also hold that in the event an appellate court concludes, contrary to the determination of the trial court, that a certified question is not dispositive, the appellate court should vacate the judgment of the trial court and remand the case to the trial court to give the defendant the opportunity to withdraw the conditional guilty plea that included the certified question.

As for the present case, we hold that because State v. Green, 697 S.W.3d 634 (Tenn. 2024), did not alter the probable-cause analytical framework, the Court of Criminal Appeals erred in determining that the certified question of law in this case is not dispositive. We reverse the decision of the Court of Criminal Appeals and remand for it to consider this case on the merits of the certified question.

Because the Defendant appears to be indigent, the costs of this appeal are taxed to the State.

JEFFREY S. BIVINS, CHIEF JUSTICE