State of New York
Court of Appeals

OPINION

This opinion is uncorrected and subject to revision before publication in the New York Reports.

No. 76
The People &c.,
Appellant,
v.
Darnell M. Martin,
Respondent.

J. Anthony Jordan, for appellant.
Adam G. Parisi, for respondent.

RIVERA, J.:

This appeal presents the question of whether Penal Law § 222.05 (3), enacted as part of the Marihuana Regulation and Taxation Act, applies after its effective date in a pending suppression proceeding addressing the legality of a pre-enactment search and

seizure. We conclude that it does, because the plain text of the statute applies to *all* criminal proceedings, which necessarily includes, as here, a pre-conviction suppression hearing held following enactment of the statute, regardless of the timing of the search and seizure. Therefore, the Appellate Division correctly held, and we now affirm, that Penal Law § 222.05 (3) prevented County Court from solely relying upon evidence of the odor of cannabis and possession of a legally permissible amount of cannabis in concluding that there was a legal predicate for the police search of the vehicle and its occupants and the seizure of contraband found in the vehicle's trunk.

I.

The Legislature enacted the Marihuana Regulation and Taxation Act (MRTA) in 2021, which legalized the sale, use, and possession of small amounts of cannabis, as well as other cannabis-related activities, in New York State for adults aged 21 and over (*see* New York State Office of Cannabis Management, *Marihuana Regulation and Taxation Act (MRTA) & the Public Comment Process*, available at https://cannabis.ny.gov/marihuana-regulation-and-taxation-act-mrta-public-comment-process [last accessed Nov. 4, 2026]). The MRTA added Penal Law § 222.05 (*see* L 2021, ch 92, § 16). Subdivision (3) of that section, at issue on this appeal, provides, in relevant part, as follows:

> " . . . [I]n any criminal proceeding including proceedings pursuant to [CPL 710.20], no finding or determination of reasonable cause to believe a crime has been committed shall be based solely on evidence of the following facts and circumstances, either individually or in combination with each other:

> (a) the odor of cannabis;
>
> (b) the odor of burnt cannabis;
>
> (c) the possession of or the suspicion of possession of cannabis or concentrated cannabis in the amounts authorized in this article" (Penal Law § 222.05 [3]).

In turn, CPL 710.20, entitled "[m]otion to suppress evidence; in general; grounds for," states, as pertinent here:

> "Upon motion of a defendant who . . . is aggrieved by unlawful or improper acquisition of evidence and has reasonable cause to believe that such may be offered against him in a criminal action . . . , a court may, under circumstances prescribed in this article, order that such evidence be suppressed or excluded upon the ground that it:
>
> 1. Consists of tangible property obtained by means of an unlawful search and seizure under circumstances precluding admissibility thereof in a criminal action against such defendant" (CPL 710.20 [1]).

Thus, Penal Law § 222.05 (3) limits a suppression court's authority to make a finding or determination of reasonable cause based solely upon evidence of the odor of cannabis or the possession of a legally authorized amount of cannabis.

In addition, subdivision (2) of Penal Law § 222.05 provides, among other things, that "no conduct deemed lawful by this section shall constitute the basis for approach, search, seizure, arrest or detention" (Penal Law § 222.05 [2]). The reference to "conduct deemed lawful by this section" refers to subdivision (1) of section 222.05, which declares that certain cannabis-related "acts"—such as possessing up to three ounces of cannabis and using cannabis—"are lawful for persons [21] years of age or older," "[n]otwithstanding any other provision of law to the contrary" (Penal Law § 222.05 [1]). In effect, subdivision

(2) realizes the Legislature's intended legalization of the possession and use of small amounts of cannabis and other cannabis-related acts by emphasizing that those acts cannot serve as the legal predicate for a police search and seizure.

II.

The relevant underlying facts are undisputed. Prior to the enactment of Penal Law § 222.05, on September 30, 2020, defendant Darnell M. Martin was a passenger in a vehicle stopped by a state trooper for its excessively tinted windows. The trooper approached the vehicle and, after detecting the odor of cannabis, searched the vehicle and its occupants. The trooper found defendant and another occupant each in possession of a marijuana cigarette and also found and searched a backpack belonging to defendant in the trunk of the vehicle. The backpack contained illegal drug paraphernalia and a white powdery substance later confirmed to be cocaine.

On March 25, 2021, defendant was indicted for criminal possession of a controlled substance in the third and fourth degrees and criminal use of drug paraphernalia in the second degree (Penal Law §§ 220.16 [1]; 220.09 [1]; 220.50 [3]). Six days later, on March 31, 2021, the MRTA was enacted and Penal Law § 222.05 (3) took effect.

Thereafter, on May 13, 2021, defendant moved before County Court to suppress the physical evidence recovered from his person and the vehicle. Defendant argued that section 222.05 (3) applied, and thus the court could not base a finding that the trooper had reasonable cause to believe a crime had been committed solely on the odor of cannabis or the possession of a legally permissible amount of cannabis. Because those were the only

reasons the trooper articulated for the search and seizure, defendant contended that the evidence must be suppressed and the charges dismissed. In opposition, the prosecution argued that defendant sought impermissible retroactive application of section 222.05 (3), because the search was lawful at the time it was conducted. Defendant responded that the statute provides that it applies in all suppression hearings and thus it has no retroactive effect.

County Court concluded that section 222.05 (3) applies only to searches conducted after the MRTA's effective date and denied suppression based on its finding that the odor of cannabis was a lawful predicate for the search. Defendant subsequently pleaded guilty to criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]), and the court sentenced him to five years' probation.

The Appellate Division reversed, vacated defendant's guilty plea, granted the motion to suppress, and remitted the matter to County Court for further proceedings (242 AD3d 18, 25 [3d Dept 2025]). The Appellate Division concluded that section 222.05 (3) applies in a post-enactment suppression hearing concerning a pre-enactment search (*id.* at 19, 21-22). The Court reasoned that section 222.05 (3) has no retroactive effect in such circumstances because it "addresses the trial court's fact-finding authority in a pending criminal proceeding, not the conduct of the participants in the underlying event" (*id.* at 21). Two Justices dissented on the ground that application of section 222.05 (3) under these circumstances was impermissibly retroactive (*id.* at 23 [Egan, Jr., J., dissenting]). One of the dissenting Justices granted the People leave to appeal (44 NY3d 985 [2025]).

III.

A.

"The primary consideration of courts in interpreting a statute is to ascertain and give effect to the intention of the Legislature" (*People v Galindo*, 38 NY3d 199, 203 [2022] [internal quotation marks omitted], quoting *Riley v County of Broome*, 95 NY2d 455, 463 [2000]). "As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (*People v Williams*, 45 NY3d 383, 386 [2025] [internal quotation marks omitted], quoting *Majewski v Broadalbin-Perth Cent. Sch. Dist.*, 91 NY2d 577, 583 [1998]). "[A]s a general rule, unambiguous language of a statute is alone determinative" (*Galindo*, 38 NY3d at 203 [internal quotation marks omitted], quoting *Riley*, 95 NY2d at 463). Thus, "when the statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used" (*People v Williams*, 19 NY3d 100, 103 [2012] [internal quotation marks omitted], quoting *People v Finnegan*, 85 NY2d 53, 58 [1995]).

Further, "a core principle of statutory construction [is] that 'effect and meaning must, if possible, be given to the entire statute and every part and word thereof' " (*Galindo*, 38 NY3d at 205, quoting McKinney's Cons Laws of NY, Book 1, Statutes § 98 [a]). Therefore, "[a] statute must be construed as a whole and its various sections must be considered together and with reference to each other" (*Anonymous v Molik*, 32 NY3d 30, 37 [2018] [internal quotation marks omitted]; *Matter of Peyton v N.Y. City Bd. of Stds. & Appeals*, 36 NY3d 271, 280 [2020]), and a construction which renders one part

meaningless or superfluous should be avoided (*Galindo*, 38 NY3d at 205, quoting *Majewski*, 91 NY2d at 587; *Molik*, 32 NY3d at 37). In sum, "[w]henever possible, statutory language should be harmonized, giving effect to each component and avoiding a construction that treats a word or phrase as superfluous" (*Matter of Lemma v Nassau County Police Officer Indemnification Bd.*, 31 NY3d 523, 528 [2018]).

"[G]enerally, a statute is presumed to apply only prospectively" (*Matter of Regina Metro. Co., LLC v N.Y. State Div. of Hous. and Community Renewal*, 35 NY3d 332, 370 [2020], citing *Majewski*, 91 NY2d at 584). "Retroactive operation is not favored by the courts and statutes will not be given such construction unless the language expressly or by necessary implication requires it" (*Gottwald v Sebert*, 40 NY3d 240, 258 [2023] [internal quotation marks and brackets omitted], quoting *Majewski*, 91 NY2d at 584).

Where the Legislature has not " 'expressly prescribe[d] the statute's proper reach[,]' . . . [a court] must apply the 'judicial default rules' in assessing retroactivity" (*id.*, quoting *Landgraf v USI Film Prods.*, 511 US 244, 280 [1994]). "Pursuant to these rules, [courts] look to the text of the statute to determine whether it was intended to have retroactive effect," or if instead "[t]he language chosen . . . makes clear that the intended application is prospective" (*id.*, citing *Landgraf*, 511 US at 280). If the text is unclear, then the court must consider whether application of the statute to the proceedings would result in retroactive effect.

As this Court has explained, "[a] statute has retroactive effect if 'it would impair rights a party possessed when [they] acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed,' thus impacting

'substantive' rights" (*Regina*, 35 NY3d at 365, quoting *Landgraf*, 511 US at 278-280; *see Garcia v Monadnock Constr., Inc.*, — NY3d —, —, 2026 NY Slip Op 03217, *2 [2026] [same], quoting *American Economy Ins. Co. v State of New York*, 30 NY3d 136, 147 [2017]). "On the other hand, a statute that affects only 'the propriety of prospective relief' or the nonsubstantive provisions governing the procedure for adjudication of a claim going forward has no potentially problematic retroactive effect even when the liability arises from past conduct" (*Regina*, 35 NY3d at 365, quoting *Landgraf*, 511 US at 273). "[A]pplication of a new statute to conduct that has already occurred *may, but does not necessarily*, [result in] 'retroactive' effect" (*id.* [emphasis added], citing *Landgraf*, 511 US 244). More to the point, "a statute does not operate retrospectively merely because it is applied in a case arising from conduct antedating the statute's enactment" (*Gottwald*, 40 NY3d at 258 [internal quotation marks and brackets omitted], quoting *Landgraf*, 511 US at 269). "This approach reflects a deeply rooted presumption against retroactivity based on elementary considerations of fairness" (*id.* [internal quotation marks and ellipsis omitted], quoting *Regina*, 35 NY3d at 370).

B.

By its plain terms, Penal Law § 222.05 (3) applies "in any criminal proceeding including" suppression proceedings pursuant to CPL 710.20. That mandate is without reservation. At the time of the suppression hearing in this case, section 222.05 (3) had been in effect for several months, as the Legislature specified that the MRTA would "take effect immediately" upon its enactment, which was on March 31, 2021 (*see* L 2021, ch 92, § 64). Therefore, pursuant to the text of section 222.05 (3), County Court erred in finding that the

odor of marijuana provided a lawful predicate for the search and seizure in this case, as application of section 222.05 (3) in the suppression proceedings was mandatory (*see Garcia*, 2026 NY Slip Op 03217, *1).

As we have previously held, a newly enacted law applies in a pending legal action regarding events that occurred prior to the effective date of the statute where the plain language of the relevant provision is directed at determinations to be made in court proceedings occurring on or after the statute takes effect (*see id.* at *1-2). Such application has no retroactive effect where no substantive rights are impaired (*id.*). Here, the statutory text indicates that section 222.05 (3) applies after its effective date in a post-enactment suppression hearing concerning a pre-enactment search or seizure (*see id.*). No retroactive effect impairing substantive rights results from application of section 222.05 (3) to pending suppression proceedings involving prior searches or seizures (*see id.* at *2; *Regina*, 35 NY3d at 365). Indeed, as noted above, and as we have repeatedly reaffirmed, "[a] statute does not operate retrospectively merely because it is applied in a case arising from conduct antedating the statute's enactment" (*see Garcia*, 2026 NY Slip Op 03217, *2 [internal quotation marks omitted], quoting *Gottwald*, 40 NY3d at 258, quoting *Landgraf*, 511 US at 269).

Section 222.05 (3) is an evidentiary rule which instructs suppression courts that certain evidence may not serve as the sole basis for a reasonable cause determination (*contra* dissenting op at 17-18). This provision does not address law enforcement's conduct at all. Instead, section 222.05 (3) is directed at courts, and precludes them from basing an

ultimate judicial finding or determination of reasonable cause to believe a crime has been committed solely upon several specified categories of evidence relating to cannabis.

Unlike section 222.05 (3), subdivision (2), as noted above, addresses the permissibility of actions taken by law enforcement, providing that "no conduct deemed lawful by this section shall constitute the basis for approach, search, seizure, arrest or detention" (Penal Law § 222.05 [2]). If, as the prosecution and the dissent contend, the Legislature only intended that subdivision (3) apply to proceedings involving a search or seizure conducted after this provision's effective date, there would be no need to enact subdivision (2), as it would simply restate that conduct now lawful—possession of a legally permissible amount of cannabis and certain other cannabis-related acts—cannot serve as the legal predicate for a search or seizure. Further, the distinct ambits of subdivisions (2) and (3) are complementary—the former is directed at pre-prosecution law enforcement conduct and the latter at a court's reasonable cause determination.

The prosecution's and the dissent's contrary interpretation of subdivision (3) violates at least three of our well-established canons of statutory interpretation, which require us to give effect to the plain meaning of the statutory text, ascribe meaning to the entire statute and every part and word thereof, and avoid an interpretation that renders language superfluous (*see* dissenting op at 5-9, 11; *Williams*, 19 NY3d at 103; *Galindo*, 38 NY3d at 205; *Molik*, 32 NY3d at 37; *Lemma*, 31 NY3d at 528). Despite the dissent's repeated assertions, it is simply untrue that our canons of construction require us to restrict subdivision (3)'s scope only to post-enactment searches and seizures when its plain language dictates otherwise, just because subdivision (2) applies to law enforcement action

taken after the statute's effective date (*contra* dissenting op at 5-6; *see id.* at 6-9). Such an interpretation is unnecessary to achieve statutory harmony and, in fact, it has the opposite result (*contra id.* at 5, citing *Lemma*, 31 NY3d at 528).

Indeed, the dissent fails to appreciate that its reading of subdivision (3) would render subdivisions (2) and (3) redundant. On its view, "subdivision (2) says nothing about the circumstances under which an officer may approach, search, seize, arrest, or detain an individual for *unlawful* activity associated with cannabis," whereas subdivision (3) places limits on an officer's basis for a search and seizure under subdivision (2) (*id.* at 7; *see id.* at 6-9). That assertion is a red herring. An officer trained in the requirements of the MRTA should be aware that subdivision (3) enumerates types of evidence which could not supply the lawful basis for a search or seizure in light of subdivision (2). After all, factors such as "the odor of cannabis" or "burnt cannabis," the "possession of cannabis or concentrated cannabis in the amounts authorized" by the MRTA, and even "the presence of cash or currency in proximity to cannabis or concentrated cannabis," on their own, evince only lawful activity associated with cannabis (Penal Law § 222.05 [3] [a], [b], [c], [e]). Accordingly, if subdivision (3)'s purpose is merely to instruct law enforcement as to what would constitute a lawful basis for a search or seizure, as the dissent suggests, then it would be redundant with subdivision (2) (*contra* dissenting op at 6-9).[1] Instead, subdivision (3)

[1] Contrary to the dissent's assertions, it is of no moment that subdivision (2) also addresses "approach" by law enforcement officers, which requires a lower quantum of suspicion than "reasonable cause," because the MRTA left the state of the law pertaining to the standards justifying an "approach" by law enforcement unchanged (*contra* dissenting op at 6-9). Moreover, we do not opine on the hypothetical situations addressed by the dissent, as they are not before us (*see id.* at 9; *see also id.* at 7).

explains how the Legislature's policy choice applies to the suppression of evidence, and, as of the effective date of the legislation, constrains courts, not law enforcement.

The dissent's arguments based on subdivision (4) are similarly unpersuasive (*see id.* at 10-11, 11 n 3). That provision states that subdivision (3) (b)—which addresses a court's consideration of "the odor of burnt cannabis"—"shall not apply when a law enforcement officer is investigating whether a person is" driving while impaired (Penal Law § 222.05 [4]). The dissent contends that subdivision (4)'s "plain terms" make clear that it is "prospective," as it addresses "conduct taking place after the effective date of the statute," and thus subdivision (4)'s exception to subdivision (3) (b) only applies to post-enactment searches and seizures (*see* dissenting op at 11).[2] That may well be true with respect to those instances in which subdivision (4) applies—a question not presented in this appeal, as defendant was a passenger in the vehicle and there is no indication that the trooper was investigating anyone for driving while impaired—but subdivision (4) has no bearing on whether subdivision (3) applies in a post-enactment suppression hearing concerning a pre-enactment search or seizure not involving impaired driving. It would be unreasonable to interpret the statute such that the scope of an exception to only a portion of subdivision (3) constrains the applicability of subdivision (3) in its entirety. Indeed, there is no indication

[2] It is curious that the dissent fails to apply these same principles of statutory interpretation to subdivision (3), which also, by its "plain terms," addresses events "taking place after the effective date of the statute"—namely, criminal proceedings (*see* dissenting op at 11).

that statutory disharmony would necessarily result if subdivision (3) and (4) were to apply differently in the case of a post-enactment suppression proceeding concerning a pre-enactment search or seizure.[3]

Further, the prosecution and the dissent misapply *People v Pastrana* to support their misinterpretation of the reach of the MRTA (*see* 41 NY3d 23 [2023]; dissenting op at 12-17). That case involved a convicted defendant who advocated on appeal for application of section 222.05 (3) to a pre-enactment suppression determination upholding a vehicle search

[3] The dissent's other argument based on CPL 710.20 also collapses under basic principles of statutory construction (*see* dissenting op at 9 n 2). The specific prohibitions of Penal Law § 222.05 (3)—which, by their plain language, apply to all post-enactment suppression proceedings—trump the general discussion of motions to suppress evidence in CPL 710.20, including that "a defendant who claims to have been 'aggrieved by unlawful or improper *acquisition* of evidence' [may] seek suppression of that evidence on the ground that it was '*obtained by* means of an unlawful search and seizure' " (*see id.*, quoting CPL 710.20 [1] [emphasis added in dissenting op]). Indeed, "it is a commonplace of statutory construction that the specific governs the general" (*Morales v Trans World Airlines, Inc.*, 504 US 374, 384 [1992]; *see Morton v Mancari*, 417 US 535, 550-551 [1974] ["Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment"]). Furthermore, the title of CPL 710.20 makes clear that it merely addresses motions to suppress evidence "*in general*" (emphasis added). Thus, the dissent's claim that CPL 710.20 delineates the scope of section 222.05 (3) only to searches and seizures conducted after its effective date utterly fails to persuade (*see* dissenting op at 9 n 2).

Moreover, the prosecution's and the dissent's reliance on the exclusionary rule is misplaced (*see id.* at 3-4, 13-14). That rule is intended to deter police misconduct and requires the suppression of evidence obtained in violation of a defendant's constitutional rights (*see e.g. Mapp v Ohio*, 367 US 643, 646-653 [1961]). Thus, the exclusionary rule protects against the deprivation of some of our most cherished individual liberties. However, it is a judge-made invention, and not necessarily relevant to legislative enactments. That is true for Penal Law § 222.05 (3). The MRTA legalized the possession and use of small amounts of cannabis, among other cannabis-related acts, and section 222.05 (3) expressly forecloses courts from basing a finding or determination of reasonable cause to believe a crime has been committed solely on this specific evidence.

conducted years before section 222.05 (3)'s effective date (41 NY3d at 26-27, 29). We rejected the defendant's proposed statutory interpretation because such an application would invalidate convictions that became final before section 222.05 (3)'s effective date and therefore result in an impermissible retroactive effect (*id.* at 29-30). Key to our reasoning was the absence of any statutory language or history to support a legislative intent for such an outcome (*id.*). *Pastrana* is thus limited to cases involving a pre-enactment suppression hearing regarding a pre-enactment search or seizure that resulted in a pre-enactment final conviction.

Indeed, we expressly left open the question presented in this appeal in *Pastrana* when we stated, "we do not address whether Penal Law § 222.05 applies in a post-enactment suppression hearing regarding a pre-enactment search, as that issue is not before us" (*id.* at 30 n *). The dissent, nevertheless, suggests that *Pastrana*'s analysis requires the same outcome here (*see* dissenting op at 12-17). We disagree. Although *Pastrana* noted, as the dissent points out, that "[t]he fact that Penal Law § 222.05 was to take effect 'immediately' merely supports the conclusion that as of March 31, 2021, law enforcement could no longer conduct searches based solely on the odor of cannabis" (*Pastrana*, 41 NY3d at 30; *see* dissenting op at 13), the dissent elides the subsequent sentence, which reveals that the *Pastrana* Court was considering the impact of the legislation's effective date in the context of its retroactivity analysis (*see* 41 NY3d at 30). Here, in contrast, the fact that section 222.05 took effect immediately is directly relevant to a textual analysis of subdivision (3)'s plain language. Moreover, the retroactivity considerations in *Pastrana* were also distinct—a point the dissent fails to appreciate (*see* dissenting op at 12-17)—

because the conviction in that case was already final at the time section 222.05 (3) took effect, and the implications of applying section 222.05 (3) to completed convictions would be vastly greater than the limited effect of applying the statute to pending suppression proceedings, as in this case.

Pastrana's reasoning is "instructive" to our analysis of the MRTA (*id.* at 12), but not in the manner advocated by the dissent, because we find that *Pastrana* supports our conclusion that no disfavored retroactive effect is present here. In contrast to the defendant in *Pastrana*, defendant Martin was convicted *after* section 222.05 (3) took effect, and his suppression hearing also occurred *after* its effective date. No substantive rights are implicated or impaired in this context. A defendant has substantive rights guaranteed by the federal and state constitutions, statutes, and judicial decisions—all designed to protect against an unlawful deprivation of a defendant's liberty. The prosecution, on the other hand, does not have a substantive right for purposes of retroactivity to admit at trial the evidence at issue here (*contra id.* at 15-17). Therefore, no impermissible retroactive effect results from section 222.05 (3)'s application to the court's suppression determination here (*contra id.* at 12, 14-17).

Indeed, just as the Legislature could not have been unaware of the potential to upset "scores of convictions" if we had interpreted the MRTA as the defendant advocated for in *Pastrana*, which rightfully informed our analysis in that case (41 NY3d at 30; *see* dissenting op at 13), so too the Legislature could not have been unmindful of the possibility that application of section 222.05 (3) in a post-enactment hearing concerning a pre-enactment search or seizure might result in the suppression of evidence (*contra* dissenting

op at 14-17).[4] And yet, the Legislature adopted a clear, broad mandate that this section applies "in any criminal proceeding," without limitation, and specifically referenced suppression proceedings under CPL 710.20 (*see* Penal Law § 222.05 [3]). In sum, unlike in *Pastrana*, and for the reasons we have explained, section 222.05 (3)'s application in a post-enactment suppression hearing involving a pre-enactment search is mandated by its plain language—"the best evidence of legislative intent" (*see Galindo*, 38 NY3d at 203 [internal quotation marks omitted]).

IV.

Our analysis could end there, but we note that comparison to a different section and the legislative purpose of the MRTA lends additional support for our interpretation. Notably, the Legislature knew how to prohibit application of the MRTA to pending matters. Albeit in a separate context, section 62-h of the MRTA directly addresses "[p]ending actions and proceedings," and provides:

> "No action or proceeding pending at the time when this act shall take effect, brought by or against the department of health, or the commissioner thereof, shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the executive director of the office of cannabis management" (L 2021, ch 92, § 62-h).

[4] Contrary to the dissent's claim, we do not, in any sense, "overturn[ ] . . . the retroactivity analysis of *Pastrana*" (dissenting op at 17). Rather, it is the dissent who ignores that the retroactivity considerations here are materially distinct (*see id.* at 12-17).

If the Legislature intended the same limitation to apply to pending suppression proceedings concerning the legality of a pre-enactment search or seizure, it knew how to say so, and yet, it chose not to (*see El-Dehdan v El-Dehdan*, 26 NY3d 19, 34 [2015] ["(W)here the (L)egislature intended to require (a certain element), it knew how to do so, and any omission of such element is intentional"]; *Matter of Kosmider v Whitney*, 34 NY3d 48, 58 [2019]). Thus, construing the MRTA as a whole, as we must (*see Molik*, 32 NY3d at 37), "the absence of any similar language" in section 222.05 (3) suggests that the Legislature did not intend to exempt pending suppression proceedings from the provision's scope (*see Matter of Gruber [N.Y. City Dept. of Personnel-Sweeney]*, 89 NY2d 225, 234 [1996]; *see also Walker v Town of Hempstead*, 84 NY2d 360, 367 [1994], citing McKinney's Cons Laws of NY, Book 1, Statutes § 240 ["(W)here a statute creates provisos or exceptions as to certain matters the inclusion of such provisos or exceptions is generally considered to deny the existence of others not mentioned"]; *People v Viviani*, 36 NY3d 564, 580 [2021], citing McKinney's Cons Laws of NY, Book 1, Statutes § 74 ["(T)he failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended"]).

Our interpretation also comports with the overarching goal of the MRTA. The Legislature intended for the MTRA to "address" the "devastating collateral consequences" of cannabis criminalization, "including mass incarceration and other complex generational trauma," and "end the racially disparate impact of [prior] cannabis laws" (Cannabis Law § 2, enacted by L 2021, ch 92, § 2). Application of section 222.05 (3) in a post-enactment suppression proceeding addressing the legality of a pre-enactment search and seizure is

consistent with the legislative purpose of mitigating the harm caused to individuals by the former cannabis laws and the Legislature's intent to reduce convictions that result from evidence which can no longer be considered as the sole basis for reasonable cause to justify a search or seizure.[5] The dissent's speculative claims that expansive and dire consequences will result from our holding ignores that our decision has limited impact (*see* dissenting op at 1-4, 14-17). To be clear, our decision here applies only to those finite number of cases pending but not yet final when the statute took effect, where the suppression determination occurred after the statute's effective date and the court's reasonable cause finding was based solely on the cannabis evidence described in the statute.[6]

[5] The dissent contends that our conclusion is not "justified by any overarching goal of the MRTA" (dissenting op at 3), which it claims was aimed at, among other things, curbing discriminatory and excessive police practices (*id.*, quoting Senate Introducer's Mem in Support, Bill Jacket, L 2021, ch 92 at 3). Certainly, reigning in such practices was one of the salutary goals of the legislation. Indeed, as we have noted, subdivision (2) of section 222.05 specifically addresses actions taken by law enforcement, providing that "no conduct deemed lawful . . . shall constitute the basis for approach, search, seizure, arrest or detention" (Penal Law § 222.05 [2]). The fact that subdivision (3) is instead directed at courts and judicial determinations is consistent with achieving other purposes of the legislation and does not make our application of that subdivision in a post-enactment suppression proceeding concerning a pre-enactment search or seizure impermissible.

[6] Of course, a court may base its finding on any other properly admitted evidence demonstrating that law enforcement had reasonable cause to support "an approach, search, seizure, arrest or detainment" (*see* Penal Law § 222.05 [2]). Judicial reliance on other evidence meaningfully limits the number of defendants who will be able to prevail in challenging their convictions based on the suppression court's failure to apply section 222.05 (3)'s prohibitions, thus providing further support for our conclusion that the Legislature intended for us to interpret section 222.05 (3) as we do here.

V.

At the end of the day, many of the dissent's complaints with our interpretation, including the dissent's arguments regarding its separation of powers concern (*see* dissenting op at 17-22),[7] persist even if section 222.05 (3) applies only to *post-enactment* searches and seizures.[8] Under the dissent's analysis, section 222.05 (3) is unconstitutional regardless of whether the underlying search or seizure occurred before or after the statute's effective date. Put another way, the dissent's separation of powers argument is not a complaint about retroactivity, as the dissent claims. Ultimately, the dissent's various attacks on our interpretation and the statute's constitutionality only serve to reveal the dissent's own disagreement with the policy underlying the MRTA.

[7] The parties did not raise this separation of powers concern before us or expressly raise a constitutional challenge to section 222.05 (3) on this basis at any point in this litigation. In any event, the statute's text is unambiguous, and thus the canon does not come into play. Moreover, contrary to the dissent's assertion that we do not dispute that our interpretation places the constitutionality of subdivision (3) in doubt (*see* dissenting op at 21), we have stated exactly the opposite. Our retroactivity analysis concludes there is no constitutional infirmity with subdivision (3) because no impermissible retroactive effect results from its application in post-enactment suppression proceedings concerning pre-enactment searches or seizures (*see* Section III.B., *supra*).

[8] Indeed, the dissent bemoans that firearms and dead bodies will be arbitrarily suppressed as a result of our holding, allowing defendants to "get away with . . . murder" and other serious crimes (*see* dissenting op at 1-4, 14-15), but if a police officer today conducts a search or seizure based solely on evidence of the odor of marijuana, contrary to section 222.05's plain mandates, and recovers such evidence, it will still be suppressed. The Legislature chose to enact section 222.05 despite these consequences, and it is not our role to second-guess whether it struck the right balance as a policy matter (*see Wolpoff v Cuomo*, 80 NY2d 70, 79 [1992]; *Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 172 [2019]).

In sum, we conclude that section 222.05 (3) applies after its effective date in a pending suppression proceeding addressing the legality of a pre-enactment search and seizure. The Appellate Division order should be affirmed.

GARCIA, J. (dissenting):

It is 2019 and a police officer stops a vehicle for a routine traffic violation. When the driver rolls the window down, the officer smells marijuana smoke. The driver is arrested, the car is subsequently searched, and a body is discovered in the trunk. All the

actions by the officer are lawful when they take place (*see generally People v Chestnut*, 36 NY2d 971 [1975], *affg* 43 AD2d 260 [3d Dept 1974]; *People v Babadzhanov*, 204 AD3d 685 [2d Dept 2022]). The defendant is indicted for murder. The legislature then passes a law instructing courts that, in any criminal proceeding including suppression hearings, the odor of burnt cannabis alone cannot support a finding of reasonable cause. The law is effective March 31, 2021. Under today's holding, if the trial court's schedule had allowed for the suppression hearing in the murder prosecution to take place on March 30, 2021, the stop and subsequent search would be deemed lawful and the evidence recovered admissible at trial. If, however, court congestion delayed the suppression hearing for two days, so that it occurred on April 1, 2021, the court would be instructed by the new law that it could not, on the exact same facts, find reasonable cause for the officer's actions and the evidence discovered in the trunk would be suppressed.

Courts in this State—including this Court—are now *required to rule* that, although the odor of marijuana, alone or in combination with other enumerated factors, provided an officer with reasonable cause to take the relevant action at the time, that action was nevertheless taken without such "reasonable cause" under Penal Law § 222.05 (3). Here, the evidence suppressed is cocaine and drug packaging materials; in other cases, guns (*see People v Ocampos,* 250 AD3d 666, 667-668 [1st Dept 2026]; *People v Townsend*, 225 AD3d 1156, 1157 [4th Dept 2024]), and in the "finite"—but unmapped—universe of cases subject to the majority's holding (majority op at 18), it may mean evidence of any violent crime as in the above hypothetical. No fair reading of the text of the Marihuana Regulation and Taxation Act (MRTA) requires such an unprecedented and absurd result.

Nor is that outcome justified by any overarching goal of the MRTA, which was enacted by the legislature because it found that the "existing marihuana laws have not been beneficial to the welfare of the general public" (Cannabis Law § 2), and "led to costly overuse of law enforcement resources and in some instances discriminatory police practices" (Senate Introducer's Mem in Support, Bill Jacket, L 2021, ch 92 at 3; *see People v Pastrana*, 41 NY3d 23, 30 [2023]). The MRTA was, among other things, aimed at curbing those police practices. The legislation also provided that the records of certain prior convictions related to marijuana use and possession would be automatically expunged (CPL 160.50 [5] [a], [3] [k] [i]-[vi]; *see also* CPL 440.46-a [1]). The legislature, however, did not intend for those individuals who were lawfully stopped and from whom evidence was lawfully seized prior to the statute's enactment to get away with a murder or weapons possession "because the police conducted a search based on the odor of marijuana that was lawful at the time" (*Pastrana*, 41 NY3d at 30). Nor is there any evidence that the legislature believed the use of evidence lawfully obtained prior to the enactment of the law was one of the " 'devastating collateral consequences' of cannabis criminalization" requiring "mitigati[on]" (majority op at 17-18, quoting Cannabis Law § 2). The only devastating consequence here flows from the majority's holding.

At times this Court must reverse convictions knowing that doing so may result in pain for an individual victim and a cost to society, but secure in the fact that we protect not only the right of an individual defendant but that we are upholding a right held by the People. The majority does nothing of the kind today. Instead, the Court overturns convictions without serving any greater good—no vindication of rights, no penalty for

police misconduct, no deterrence. The majority claims the legislature wants us to do this (*see* majority op at 19 n 8 [we should not "bemoan() that firearms and dead bodies will be arbitrarily suppressed as a result of our holding" because "the Legislature chose to enact section 222.05 despite these consequences, and it is not our role to second-guess whether it struck the right balance as a policy matter"]). I disagree.

The search and seizure in this case occurred on September 30, 2020, six months before Penal Law § 222.05 (3) became effective, at a time when it was well-established that the actions taken by the officer here based solely on the odor of marijuana were lawful (*see Pastrana*, 41 NY3d at 30 ["the police conducted a search based on the odor of marijuana that was lawful at the time"]; *People v Robinson*, 103 AD3d 421, 421-422 [1st Dept 2013] [odor of marijuana emanating from open window during a vehicle stop "was sufficient, by itself, to provide probable cause to arrest defendant and search the car"]; *People v McLaren*, 131 AD3d 548, 549 [2d Dept 2015] [same]; *People v Gaines*, 57 AD3d 1120, 1121 [3d Dept 2008] [same]; *People v Cuffie*, 109 AD3d 1200, 1201 [4th Dept 2013] [same]). In other words, the conduct provided the officer with reasonable cause for the ensuing enforcement action. The issue before us is whether subdivision (3) of Penal Law § 222.05, which prohibits a court from finding reasonable cause based on, among other things, the odor of burnt marijuana, applies where the conduct at issue occurred before the effective date of the statute but the suppression hearing was held after that date.

The majority concludes that it does. According to the majority, the statute's "mandate" to apply subdivision (3)'s limitations in " 'any criminal proceeding' " is "without reservation" and therefore applies to all suppression hearings taking place after

the statute's effective date regardless of the timing of the underlying law enforcement action (majority op at 8, quoting Penal Law § 222.05 [3]). With this superficial analysis, the majority rejects not only the most straightforward reading of the plain text of the statute but also misapplies—or ignores—three of our well-established rules regarding statutory interpretation: all sections of a statute should be read in harmony and each given meaning (*see Matter of Lemma v Nassau County Police Officer Indemnification Bd.*, 31 NY3d 523, 528 [2018]; majority op at 6), retroactive application of a statute is disfavored (*see Gottwald v Sebert*, 40 NY3d 240, 258 [2023]; majority op at 7), and statutes "should be construed, whenever possible, in a way that avoids placing its constitutionality in doubt" (*People v Viviani*, 36 NY3d 564 [2021]). The majority's misreading of the statute makes a hash of the interplay between the subdivisions, gives subdivision (3) a retroactive effect, and raises a substantial separation of powers issue.

The starting point is the plain language of Penal Law § 222.05 and how its four subdivisions interact. The first subdivision makes certain acts related to use and possession of cannabis lawful. The second, in relevant part, regulates law enforcement conduct based on those now-lawful acts. The third subdivision concerns the effect of subdivisions one and two on a court's determination of reasonable cause, and the fourth contains an exception applicable only to subdivision three. The statute must be interpreted with the goal of harmonizing these provisions (*see Lemma*, 31 NY3d at 528). Instead, the majority's reading fractures the statute by making only some of its provisions applicable to conduct predating the statute, while others apply only to law enforcement action taken after the effective date: subdivision (2) does not apply to pre-enactment conduct, subdivision (3)

does in the circumstances here, but the exception to subdivision (3) found in subdivision (4) does not. One strains to hear the melody. A simpler approach that harmonizes all four provisions is to give them consistent application, namely to conduct occurring only after the statute's effective date. At the suppression hearing held here, for example, the statute's subdivisions would simply not apply; at a suppression hearing concerning conduct that occurred after March 31, 2021, all would apply. This common-sense interpretation also has the benefit of being supported by the plain text and structure of the statute.

Subdivision (1) sets out certain cannabis-related acts deemed "lawful for persons twenty-one years of age or older," including the possession, display, purchase, or transfer of small quantities of cannabis or concentrated cannabis; the use of cannabis or concentrated cannabis, including smoking or ingesting cannabis; the possession, use, or purchase of cannabis paraphernalia; and the cultivation or harvesting of cannabis, among other things (Penal Law § 222.05 [1] [a]-[f]).

Subdivision (2) is directed to, in relevant part, conduct by law enforcement officers.[1] The provision ensures that "no conduct deemed lawful by this section shall constitute the basis for approach, search, seizure, arrest, or detention" (*id.*). The subdivision refers to an "approach" by an officer, and under New York law, an officer may not approach without an "articulable reason" (*People v De Bour*, 40 NY2d 210, 213 [1976]; *People v Hollman*, 79 NY2d 181, 191 [1992]), or "founded suspicion" (*Hollman*, 79 NY2d at 191-192), standards less than reasonable cause. Importantly, subdivision (2) says nothing about the

[1] Subdivision (2) also contains a clause related to forfeiture of assets.

circumstances under which an officer may approach, search, seize, arrest, or detain an individual for *unlawful* activity associated with cannabis (*see* William C. Donnino, Practice Commentary, McKinney's Cons Laws of NY, Penal Law § 222.00). In other words, "the issue [subdivision 2] presents is that the police may not be able to determine whether the conduct is lawful (e.g. whether the amount of cannabis a person is holding in his or her hand is less than 3 ounces) . . . [and] [s]ubdivision 2 does not preclude such police conduct if, for example, there is 'reasonable cause' to believe the person is engaged in unlawful conduct (e.g. the amount a person possesses is more than 3 ounces)" (*id*.; *see e.g. United States v Washington*, 2026 WL 607697, *3, [MD Fla, Mar 4, 2026, No. 5:24-cr-94-TPB-PRL] [officers testified to the "degree of odor as indicating a quantity more than mere personal use"]). In such a case, the officer would not be precluded from taking any of the aforementioned investigative steps if the activity observed led the officer to reasonably believe that the person approached or seized was engaged in unlawful activity.

Subdivision (2), which does not refer to a "criminal proceeding," does not apply to searches conducted before MRTA's effective date, even if the suppression hearing occurs after that date (*see* majority op at 8). Its prospective application is clear, given that the conduct in subdivision (1) was for the most part *unlawful* until "deemed lawful" by subdivision (2) on the statute's effective date (Penal Law § 222.05 [2]); *see* Donnino, Prac Commentary, McKinney's Cons Laws of NY, Penal Law § 222.00), making its application prior to that date impossible under subdivision (2)'s plain terms.

Penal Law § 222.05 (3) complements the first two subdivisions. It states:

> "Except as provided in subdivision four of this section, in any criminal proceeding including proceedings pursuant to section 710.20 of the criminal procedure law, no finding or determination of reasonable cause to believe a crime has been committed shall be based solely on evidence of the following facts and circumstances, either individually or in combination with each other:
>
> (a) the odor of cannabis;
>
> (b) the odor of burnt cannabis;
>
> (c) the possession of or the suspicion of possession of cannabis or concentrated cannabis in the amounts authorized in this article;
>
> (d) the possession of multiple containers of cannabis without evidence of concentrated cannabis in the amounts authorized in this article;
>
> (e) the presence of cash or currency in proximity to cannabis or concentrated cannabis; or
>
> (f) the planting, cultivating, harvesting, drying, processing or possessing cultivated cannabis in accordance with section 222.15 of this article" (Penal Law § 222.05 [3] [a]-[f]).

Subdivision (3) does both more and less than subdivision (2). On the one hand, it "places a limit on the factors which an officer (and a court reviewing an officer's conduct) may utilize in determining whether there is 'reasonable cause' " (Donnino, Pract Commentary, McKinney's Cons Laws of NY, Penal Law § 222.00). At the same time, it covers only actions requiring "reasonable cause," and therefore, unlike subdivision (2), does not apply to an "approach" or a "common-law inquiry" under *De Bour* (40 NY2d at 215-216, 218-219). For example, if an officer smelled the strong odor of burnt marijuana, saw three containers with a small amount of marijuana in each and cash and currency in

close proximity (*see* Penal Law § 222.05 [3] [b], [d], [e]), and as a result concluded that the person was selling marijuana, a seizure would likely not violate subdivision (2) but it would not provide reasonable cause for any search or seizure under subdivision (3). Subdivisions (2) and (3) work in tandem.

The majority views the relationship between the subdivisions differently, claiming that if "subdivision (3) appl[ied] [only] to proceedings involving a search or seizure conducted after this provision's effective date, there would be no need to enact subdivision (2), as it would simply restate that conduct now lawful—possession of a legally permissible amount of cannabis—cannot serve as the legal predicate for a search or seizure" (majority op at 10). This is incorrect on several levels. First, as discussed, subdivision (2) covers an "approach" by an officer, a level of intrusion that does not require reasonable cause. Second, the "lawful activity" listed in subdivision (1) and referenced in subdivision (2) goes beyond "possession." The idea that application of subdivision (3) to pre-enactment conduct is required to give meaning to subdivision (2) is baseless and applying subdivision (3), but not (2), in the circumstances here disrupts the interplay between the subdivisions.[2]

[2] Penal Law § 222.05 (3)'s cross reference to CPL 710.20—the proceeding at issue in this case—reinforces this interpretation. By its plain terms, the latter statute permits a defendant who claims to have been "aggrieved by unlawful or improper *acquisition* of evidence" to seek suppression of that evidence on the ground that it was "*obtained by* means of an unlawful search and seizure" (CPL 710.20 [1] [emphases added]). The relevant determination is whether the evidence was acquired or obtained unlawfully or improperly and the legislature's specific cross reference to CPL 710.20 reinforces the intention to have subdivision (3) apply only to post-enactment conduct.

Subdivision (4) further demonstrates the flaw in the majority's interpretation. That subdivision provides that if an officer "is investigating whether a person is operating a motor vehicle, vessel or snowmobile while impaired by drugs or the combined influence of drugs or of alcohol and any drug or drugs[,]" subdivision (3) (b) related to the "odor of burnt cannabis" does not apply, although there are certain limits on the authorized area of a search in such a case (Penal Law § 222.05 [4]). The provision refers to an officer who "is investigating whether a person is" driving while impaired and puts precise limits on what the officer can do during that investigation, with the clear import that the conduct is taking place after the effective date of the statute (*see id.*).

Is a court now required to suppress evidence where an officer investigating impaired driving in 2019 conducted a search beyond the limits set out in subdivision (4) based on a statute providing that "the odor of burnt cannabis *shall not* provide probable cause to search any area of a vehicle that is not readily accessible to the driver"? (*id.* [emphasis added]). Should subdivision (3) really apply to suppression hearings held after March 31, 2021, even though the conduct in question occurred before that date, while subdivision (4) would only provide an exception to subdivision (3) when the underlying conduct occurred after that date? The majority believes that "there is no indication that statutory disharmony would necessarily result if subdivision (3) and (4) were to apply differently in the case of a post-enactment suppression proceeding concerning a pre-enactment search or seizure" (majority op at 12-13). This is quite a high bar for "disharmony." By its plain terms, subdivision (4) is prospective and its application to subdivision (3) makes clear that the legislature understood that subdivision (3) applies only to conduct taking place after the

effective date of the statute. Making the subdivisions of section 222.05 apply similarly to post-enactment conduct furthers the goals of the statute, provides law enforcement officers and courts with clear guidance, and avoids any of the issues—or the absurdities—described above.[3]

In sum, despite citing the relevant authority, the majority's interpretation violates both the rule that meaning must be given to each provision of the statute (*see Galindo* 38 NY3d at 205; majority op at 6) as well as the rule that the various sections "must be considered together and with reference to each other" (*Matter of Anonymous v Molik*, 32 NY3d 30, 37 [2018] [internal quotation marks and citation omitted]; majority op at 6). As a result, the majority creates a hodgepodge of applications in the circumstances here—some subdivisions apply and some do not—disrupting the complementary design of the provisions and going so far as to eliminate an exception to one subdivision depending on the timeframe of the hearing. To this chaotic interpretation of the statute, the majority then purports to apply our retroactivity rules.

In its discussion of retroactivity, the majority once again cites the relevant rule and misapplies it. We all agree this Court takes a firm position that " '[r]etroactive operation is not favored by the courts and statutes will not be given such construction unless the

[3] The majority's further response to this point seems to be that the subdivision (4) tail should not wag the subdivision (3) dog (*see* majority op at 12 ["the scope of an exception to only a portion of subdivision (3)" should not "constrain() the applicability of subdivision (3) in its entirety"]), a rule of construction seemingly at odds with the " 'core principle of statutory construction that effect and meaning must, if possible, be given to the entire statute and every part and word thereof" (*Galindo*, 38 NY3d at 205, quoting McKinney's Cons Laws of NY, Book 1, Statutes § 98 [a]; majority op at 6). "Entire statute" apparently does not encompass provisions containing exceptions (*id.*).

language expressly or by necessary implication requires it' " (majority op at 7, quoting *Gottwald*, 40 NY3d at 258 [internal citation omitted]), and that this rule " 'reflects a deeply rooted presumption against retroactivity based on elementary considerations of fairness' " (majority op at 8, quoting *Gottwald*, 40 NY3d at 258 [internal citation omitted]). With that rule established, the majority goes on to conclude that its interpretation of Penal Law § 222.05 (3) is "directed at determinations to be made in court proceedings occurring on or after the statute [took] effect" and therefore its application is prospective only (majority op at 9). Essentially, the majority claims it need not apply the presumption against retroactivity since its interpretation is not a retroactive application at all. Even if the majority's interpretation was arguably supported by the text, it would face that presumption against retroactivity and fail to overcome it.

The retroactivity analysis should begin with our approach to this same statutory language just three years ago in *People v Pastrana* where the Court considered whether this same subdivision of Penal Law § 222.05 retroactively applied to invalidate a search that took place before the effective date of the statute (41 NY3d at 29-30). In *Pastrana*, unlike here, both the search and conviction occurred before the statute was enacted and it was for this reason that we declined to answer the question raised in this appeal (*id.* at 30 n *; *see* majority op at 14). The Court's analysis and conclusions, while not *requiring* any outcome (*see* majority op at 14), are nevertheless instructive.

Based on a reading of the plain text and the relevant definitions, the Court rejected the argument that "an appeal to the Appellate Division from a judgment of conviction and sentence is a 'criminal proceeding' within the meaning of Penal Law § 222.05 (3)"

(*Pastrana*, 41 NY3d at 30 n *). But that was not the end of the analysis; indeed the "criminal proceeding" point is found in a footnote. The analysis instead focused on retroactivity: the defendant's contention that subdivision (3) of Penal Law § 222.05 "should be applied retroactively to invalidate searches that occurred *before* the effective date of the statute" (*id*. at 29)—in other words, applied to police conduct occurring prior to March 31, 2021. We concluded that "[n]othing in the text or legislative history of the MRTA requires or supports the conclusion that the legislature intended for the newly-enacted Penal Law § 222.05 to apply retroactively to invalidate searches that were conducted before the effective date of the statute" and the fact that the statute took effect immediately "merely supports the conclusion that as of March 31, 2021, law enforcement could no longer conduct searches based solely on the odor of cannabis" (*id*. at 29-30, citing L 2021, ch 92, § 64). We also noted that "applying the MRTA retroactively to invalidate searches that have already occurred would not deter any police misconduct because, as defendant concedes, at the time police searched his car in 2015, a search based on the odor of marijuana was lawful" (*id*. at 30). In sum, we found that "no provision in the text or legislative history of the MRTA [] would support the staggering impact" of retroactive application: "the vacatur of scores of convictions, even those for weapons possession or violent crimes, because the police conducted a search based on the odor of marijuana that was lawful at the time" (*id*.). The majority appears to "elide" these sentences from *Pastrana* (majority op at 14).

The majority concludes that none of the *Pastrana* considerations apply because a suppression hearing, as opposed to the direct appeal in *Pastrana*, is a "criminal proceeding" (*see* majority op at 2, 8, 16). This is not right. As we held in *Pastrana*, nothing in the

statute indicates that we should use subdivision (3) "to invalidate searches that occurred *before* the effective date of the statute" and the majority has unearthed no new evidence to the contrary (41 NY3d at 29; majority op at 13-16). Nor can it be argued that the majority's application will have any deterrent effect because the conduct at issue here, as in *Pastrana*, was lawful at the time. [4]

The majority's application of the statute will have a "staggering impact," namely "the vacatur of scores of convictions, even those for weapons possession or violent crimes, because the police conducted a search based on the odor of marijuana that was lawful at the time" (*Pastrana*, 41 NY3d at 30). While the pool of cases subject to the rule may be, as in *Pastrana*, a "finite number" (majority op at 18), that number may well be substantial and the cost to society steep given the delays that can take place between indictment and a suppression hearing (*see e.g. People v Rodriguez*, 251 AD3d 1410, 1410 and n 1 [3d Dept 2026] [search took place on July 30, 2019, and suppression hearing occurred on March 8, 2021, three weeks prior to the MRTA's effective date]) and the nature of the evidence seized (*see e.g. Ocampos*, 250 AD3d at 667 [gun seized from second felony offender prior to effective date, but hearing occurred after]). This is true despite the majority's perplexing

[4] In *United States v Burt*, state officers testified in federal court at a suppression hearing that took place after the effective date of the MRTA about a search conducted prior to the statute's enactment (2024 WL 3244380, *1 [2d Cir, July 1, 2024, No. 23-6020 (L)]. The Second Circuit assumed that we would apply our reasoning in *Pastrana* in those circumstances (2024 WL 3244380, *1 n 1 [concluding that because of the rule in *Pastrana*, "we need not decide how (the MRTA) would have affected the validity of the search"]). Now that we have disappointed those expectations, federal courts will have to revisit the issue with our now-retroactive application in mind.

argument that suppressing evidence is somehow different from excluding it and that if suppression results only from legislative action, we need not engage in any cost/benefit analysis (*see* majority op at 13 n 3; *but see Pastrana*, 41 NY3d at 30 [considering the cost to society and concluding that "applying the MRTA retroactively to invalidate searches that have already occurred would not deter any police misconduct"]).

Moreover, the majority's "not retroactive" label is unsupported by our caselaw. As the dissent below concluded, the "prospective only" view adopted by the Appellate Division and now given state-wide effect by the majority here "overlooks that the 'impos[ition of] a limitation on the nature of the proof required to establish' reasonable cause to believe a crime was committed for suppression purposes itself impairs 'the substantive rights' of the parties in a criminal proceeding, not only because it would effectively alter the standard applicable at the time of the search, but also because it would significantly, and perhaps fatally, limit the admissible evidence available to the People at trial" (242 AD3d at 23 [Egan, J., dissenting], quoting *Matter of Mia S. [Michelle C.]*, 212 AD3d 17, 21 [2d Dept 2022]; *see People v Fasoli*, 242 AD3d 900, 901-902 [2d Dept 2025] [adopting the view of the dissent in *Martin*]). In *Regina Metro. Co., LLC v New York State*, we made clear that "[a] statute has retroactive effect if 'it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed,' thus impacting 'substantive' rights" (35 NY3d 332, 365 [2020], quoting *Landgraf v USI Film Prods.*, 511 US 244, 278-280 [1994]). "On the other hand, a statute that affects only 'the propriety of prospective relief' or the nonsubstantive provisions governing the procedure for adjudication of a claim

going forward has no potentially problematic retroactive effect even when the liability arises from past conduct" (*id.* at 365, quoting *Landgraf*, 511 US at 273]). Given our statements in *Pastrana*, it is impossible to conclude that application of subdivision (3) "to invalidate searches that were conducted before the effective date of the statute" leading to "scores" of overturned convictions despite the fact that "police conducted a search based on the odor of marijuana that was lawful at the time" (41 NY3d at 30) would affect only "nonsubstantive provisions" governing the adjudication of the criminal charges (*Regina*, 35 NY3d at 365).[5] Conduct that was legal is now deemed illegal; evidence that would be admissible at trial is now suppressed. The majority's application of subdivision (3) to searches conducted before the effective date is retroactive and there should be a presumption against such an interpretation.[6]

The majority's fallback argument is most telling; a declaration that the People have no substantive rights when it comes to the admission of lawfully obtained evidence because the impact does not result in "an unlawful deprivation of a defendant's liberty" (majority op at 15). In that one paragraph, the majority overturns not only the retroactivity analysis

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[5] Nor does our memorandum opinion in *Garcia v Monadnock Constr., Inc*. require a different result (2026 NY Slip Op 03217) as that case concerned the collateral estoppel effect of a workers' compensation decision, properly adjudicated based on applicable law, on later judicial proceedings. The new law did not affect the rights and obligations of the parties in the underlying workers' compensation proceeding and accordingly did not " 'impair rights a party possessed when [they] acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed' " (*Garcia*, 2026 NY Slip Op 03217, *1, quoting *American Economy Ins. Co. v State of New York*, 30 NY3d 136, 147 [2017]; *see* majority op at 9).

[6] Section 62-h of the MRTA, which governs the transfer of proceedings regarding medical marijuana licensing from the Department of Health to the new Office of Cannabis Management (*see* majority op at 16), has no bearing on the issues here.

of *Pastrana* (*see* 41 NY3d at 29-30 [assuming this same retroactive effect on the People]) but also pronounces that no statute that changes conduct from lawful to unlawful such that the People are prohibited from admitting the relevant evidence at a later trial can *ever* have an "impermissible retroactive effect" (majority op at 15). The repercussions of this new decree—a principle found nowhere in our precedent—are hard to fathom.

The majority's interpretation violates yet another rule of statutory construction: constitutional avoidance or the rule that "a statute ought normally to be saved by construing it in accord with constitutional requirements" if "the saving construction" is "one which the court may reasonably find implicit in the words used by the Legislature" (*People v Dietze*, 75 NY2d 47, 52 [1989] [internal quotations marks and citations omitted]). In the majority's view, the statute is merely "an evidentiary rule which *instructs suppression courts* that certain evidence may not serve as the only basis for a reasonable cause determination" (majority op at 9 [emphasis added]). At this point, separation of powers alarm bells should be ringing.

Contrary to the majority's conclusion, subdivision (3) is not an "evidentiary rule" (majority op at 9). Those rules make clear they apply to the admissibility of evidence (*compare* Penal Law § 222.05 [3] *with* CPL 60.49 [evidence of possession of any opioid antagonist inadmissible at any trial or hearing]; *see also* MD Crim Proc § 1-211 [c] [statute governing stops based on certain activities, including searches based solely on the odor of burnt cannabis, provides that "(e)vidence discovered or obtained in violation of this section . . . is not admissible in a trial, a hearing or any other proceeding"]; Conn Gen Stat Ann § 54-33p [a], [b] [in a similar context, "(a)ny evidence discovered as a result of any stop or

search conducted in violation of this section shall not be admissible in evidence in any trial, hearing or other proceeding"]; *see also Montgomery v Commonwealth*, 75 Va App 182, 196, 199 [2022] [noting that had the legislature intended to make evidence obtained by a search based solely on the odor of marijuana inadmissible, it could have passed a statute to that effect]). Nor does Subdivision (3) provide for suppression resulting from conduct in violation of the statute.

Subdivision (3) does something different and, given the majority's interpretation of the statute to apply to lawful pre-enactment conduct, much more problematic; it does not exclude evidence seized as a result of an officer smelling the odor of burnt cannabis, or instruct that a court cannot consider that factor as evidence supporting a reasonable cause determination, but rather mandates that the court must hold that certain evidence alone or in combination with other evidence does not support such a finding. For example, if an officer lawfully stops a vehicle for a traffic violation and takes certain action in response to the odor of burnt cannabis, the officer's observation of multiple containers of cannabis, and the presence of cash or currency in proximity to those containers, the suppression court cannot find that the officer had reasonable cause to believe a crime was being committed (*see* Penal Law § 222.05 [3]). Yet, whether reasonable cause, which equates to probable cause, supports a search or seizure is a determination for the court (*see People v Maldonado*, 86 NY2d 631, 635 [1995] ["(r)easonable cause means probable cause"]; *People v Bigelow*, 66 NY2d 417, 423 [1985] [the determination of whether probable cause exists based on the evidence is a "legal conclusion () to be made" by the court "after considering all of the facts and circumstances together"]). Accordingly, this "instruct[ion]

[to] suppression courts" (majority op at 9) potentially intrudes on the core function of the judiciary, unavoidably so by mandating that a court in any criminal proceeding, even though the conduct provided an officer with reasonable cause to take action at the time it occurred, rule otherwise.

It is the "imperative duty" of the judicial branch "to protect its jurisdiction at the boundaries of power fixed by the Constitution" and "the legislature can have no constitutional authority to enact rules, *either of evidence or otherwise*, that strike at the very heart of a court's exercise of judicial power" (*State v Lowe*, 552 SW3d 842, 857 [Tenn 2018] [internal quotation marks and citations omitted] [emphasis added]; *see Schieffelin v Komfort*, 212 NY 520, 531 [1914] [it is for the courts to "expound and interpret" the rule and "apply the rule to particular cases"], quoting *Marbury v Madison*, 1 Cranch 137, 5 US 137 [1803]). This is reason alone to avoid the majority's interpretation, even if it was arguably supported by the text.[7]

[7] Similarly phrased statutes in other jurisdictions have raised separation of powers issues. An analogous statute in Washington, D.C. provides that the odor of marijuana may not on its own "constitute reasonable articulable suspicion of a crime" (DC ST § 48-921.02a). In *United States v Armstrong* (2019 WL 964532 *4 [Sup Ct, District of Columbia 2019]), the court noted that the United States Attorney's Office "anticipated a defense challenge to the effect that (the statute) required suppression of evidence . . . based on the plain smell of marijuana" and "formulated and approved a litigating position to the effect that (the statute) could not alter the Fourth Amendment" (*see also Virginia v Moore*, 553 US 164, 175-178 [2008]; Barry Kamins, *The New Marihuana Law: Some Burning Issues*, NYLJ [May 28, 2021] [an "argument could be made" that subdivision (4) "violates the separation of powers provisions of the state constitution" given that the "(i)nterpretation of the federal and state constitutions is left to the courts and one can argue that the Legislature cannot impose restrictions on a court's interpretation of a Fourth Amendment principle, i.e., probable cause"]).

The majority proffers three reasons for avoiding constitutional avoidance. The first is to suggest that application of this canon of construction is somehow a substantive "constitutional challenge" that must be preserved (*see* majority op at 19 n 7). Even if this were the case, this precise separation of powers point was raised by County Court below in rejecting the interpretation of subdivision (3) the majority adopts today. Judge McKeighan concluded that, "[t]he defense theory that the legislature has brazenly decreed how the judicial branch must rule is as shockingly dubious as if the judicial branch were to tell the legislative branch what laws to pass and what to write in those laws. Such apparent oversteps by co-equal branches of government calls to mind an oft forgot clause in the constitution, the separation of powers." That separation of powers issue is now unavoidable with the majority's holding that, despite the lawfulness of the police conduct at the time, the statute *requires* a suppression court to rule that it does not satisfy the reasonable cause standard. Moreover, if this majority believes that County Court's ruling on this specific issue was insufficient to preserve an argument, parties should take note of this new preservation rule going forward (*see People v Feingold*, 7 NY3d 288, 290 [2006] [preservation was established where "(t)he trial judge's decision . . . demonstrates that (the court) specifically confronted and resolved th(e) issue" although the specific argument was not "plainly present(ed)" to the court]). If the majority means the parties "abandoned" the argument by not "rais[ing] this separation of powers concern before us" (majority op at 19 n 7), the answer of course is that parties do not get to dictate the canons of construction we apply.

The majority's second reason is that "the statute's text is unambiguous" and therefore the canon of constitutional avoidance "does not come into play" (*see* majority op at 19 n 7). Constitutional avoidance counsels that "a statute should be construed, whenever possible, in a way that avoids placing its constitutionality in doubt" if the statute is "fairly susceptible of such an interpretation" (*People v Viviani*, 36 NY3d 564, 579 [2021] [internal quotation marks and citations omitted]). The majority does not dispute that its interpretation places the constitutionality of subdivision (3) in doubt but appears to conclude there is no other possible way to construe the statute that would save it. There is one (*see supra* at 5-11).

The third reason offered is a variation on this theme, namely that the constitutional infirmity identified would obtain even when the statute is applied to conduct occurring after its effective date (*see* majority op at 19), with the point being it is unavoidable. "The statute is unconstitutional either way" appears a suspect star to guide our approach to constitutional avoidance, but in any case, its use here by the majority demonstrates a misunderstanding of what is being avoided. Reading subdivision (3) to apply to post-enactment conduct, consistent with all the other sections, means, for example, that it only applies at a time when the conduct in section (1) related to smoking and possessing marijuana is lawful. Under the majority's retroactive application of subdivision (3), however, a court that would otherwise find reasonable cause for a search or seizure based on the lawful conduct of the officer investigating then-unlawful activity is now compelled to rule that there was no reasonable cause for that officer's actions at that time. In other words, exactly what happens here. Judge McKeighan in County Court held that "[t]he

strong smell of marijuana coming from the vehicle provided [the officer] with probable cause to direct the occupants to exit the vehicle and to search both the vehicle and the occupants." This ruling was correct based on the law in effect at the time the search was conducted (*see supra* at 2, 4). The majority holds that the statute mandates Judge McKeighan rule differently.

For well over one hundred years, this Court stood firm in its view that "it is our high prerogative to defend the Constitution, and to protect the humblest judge from interference with his [or her] judicial functions in violation of its command" (*People ex rel. Burby* v *Howland*, 155 NY 270, 283 [1898]). Today, the majority does the reverse, forcing an interpretation of a statute that creates an unintended legislative encroachment on a core judicial function, reversing a judge's decision that rejected that interference, and justifying its holding by claiming that perhaps a similar constitutional violation would occur with any application of the statute. I dissent.

Order affirmed. Opinion by Judge Rivera. Chief Judge Wilson and Judges Troutman and Halligan concur. Judge Garcia dissents in an opinion, in which Judges Singas and Cannataro concur.

Decided November 23, 2026