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Summarizing recent significant New York appellate cases

Can a search warrant compel a criminal defendant to open his phone to let the police investigate its contents? The Fourth Department addressed that question recently, holding that the compelled opening of defendant's cell phone violated his Fifth Amendment right against self-incrimination. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

SECOND DEPARTMENT

CIVIL PROCEDURE, SERVICE ON SCHOOL DISTRICT

***Aideyan v Mount Vernon City Sch. Dist.*, 2025 NY Slip Op 03787 (2d Dept June 25, 2025)**

Issue: **Does personal delivery of a summons and complaint to an Assistant Superintendent for Curriculum & Instruction constitute delivery to a "school officer" as defined in Education Law § 2(13), so as to constitute personal service upon a school district pursuant to CPLR 311(a)(7)?**

Facts: In July 2021, a retaining wall on the school district's property collapsed, which would subject the plaintiffs' downhill properties to flooding if heavy rains came. And they did. "On September 1, 2021, that heavy rain event occurred when Hurricane Ida struck the New York metropolitan area. The plaintiffs contend that because the retaining wall was not repaired, their properties and homes were flooded by a cascade of water from the defendant's property onto their properties."

Plaintiffs served the school district with a notice of claim, and then sued, serving the summons and complaint "at the defendant's district office located at 165 N. Columbus Avenue in Mount Vernon. The server personally handed the summons and complaint to Jamal Doggett, who, according to the affidavit of service, identified himself and specifically told the process server that he was authorized to accept service of process." The school district answered, asserting lack of personal jurisdiction as an affirmative defense, and then moved under CPLR 3211(a)(8) to dismiss for failure of proper service, arguing that "Doggett was not an authorized agent to accept service of process."

Supreme Court granted the motion to dismiss, holding that "Doggett was not an officer of the defendant within the meaning of the Education Law and that, therefore, service on him did not constitute proper service on the defendant."

Holding: The Second Department reversed and reinstated the complaint, holding that "the definition of school officer under the Education Law is broad enough to include an individual such as Doggett, who is an assistant superintendent whose duties generally relate to the administration of affairs in a public school system," and thus service of the complaint on him was effective service on the school district. The Court explained, under CPLR 311(a)(7), which governs personal service upon a corporation or governmental subdivision, "service 'upon a school district' must be made upon 'a school officer, as defined in the education law.' The applicable section of the Education Law defining a school officer . . . is section 2(13), which defines a 'school officer' as 'a clerk, collector, or treasurer of any school district; a trustee; a member of a board of education or other body in control of the schools by whatever name known in a union free school district, central school district, central high school district, or in a city school district; a superintendent of schools; a district superintendent; a supervisor of attendance or attendance officer; *or other elective or appointive officer in a school district whose duties generally relate to the administration of affairs connected with the public school system*'" (emphasis in court's opinion). The Court reasoned that the final clause acts as a catchall for the otherwise unlisted officers of the school district "whose duties generally relate to the [district's] administration of affairs." The Court therefore rejected the school district's arguments that because the position "assistant superintendent" is not listed in the statute and because Doggett is an employee, he cannot be an authorized person to accept service on behalf of the school district.

THIRD DEPARTMENT

CRIMINAL LAW, SUPPRESSION OF EVIDENCE, MARIHUANA REGULATION AND TAXATION ACT

***People v Martin*, 2025 NY Slip Op 03842 (3d Dept June 26, 2025)**

Issue: **Does Penal Law § 222.05 (3) (a), enacted as part of the Marihuana Regulation and Taxation Act, apply to a post-enactment suppression hearing concerning a pre-enactment search?**

Facts: "In September 2020, a state trooper stopped a vehicle in the Village of Fort Ann, Washington County, for having excessively tinted windows. When the driver rolled down the window, the trooper detected the odor of marihuana emanating from the vehicle and directed the occupants to exit. Upon a search of the occupants, the trooper discovered that two of them — including defendant, who was a

passenger in the vehicle — had marihuana cigarettes in their possession. A backpack containing a digital scale and a white powdery substance was subsequently located in the trunk of the vehicle. The substance was confirmed to be cocaine and defendant admitted that the backpack was his."

Defendant was indicted for various drug crimes, and subsequently moved to suppress the evidence recovered in the stop because "the odor of marihuana or possession of marihuana in legally authorized amounts could no longer be the sole basis for a police search under provisions of the MRTA that had taken effect on March 31, 2021. Following a suppression hearing, County Court denied defendant's motion, concluding that Penal Law § 222.05 did not apply retroactively to invalidate the search and that the trooper had probable cause to search the vehicle and its occupants after detecting the smell of marihuana. Defendant pleaded guilty to criminal possession of a controlled substance in the third degree in satisfaction of the indictment with the understanding that he would be sentenced to five years of probation."

Holding: The Third Department, in a 3-2 opinion, reversed the conviction, "answering a question left open by the Court of Appeals in *People v Pastrana* (41 NY3d 23, 29 [2023], cert denied ___ US___, 144 S Ct 1066 [2024]) — namely, whether Penal Law § 222.05 (3) (a), enacted as part of the MRTA, applies to a post-enactment suppression hearing concerning a pre-enactment search." The Third Department majority held that it does, reasoning that MRTA's "comprehensive and present tense language . . . limits a suppression court's authority to base a probable cause finding solely upon evidence of the odor of marihuana without regard to when the vehicle search occurred." Recognizing that statutes are generally to apply prospectively without the Legislature providing explicitly for retroactive effect, the majority held that because this limitation applied to the court's evidentiary findings in pending criminal proceedings, applying that limit on the court's authority did not constitute retroactive application of the statute. "Since Penal Law § 222.05 (3) (a) was in effect at the time of the suppression hearing and the suppression court's probable cause finding was based solely upon the fact that the trooper smelled the odor of marihuana emanating from the vehicle, that determination was erroneous as a matter of law."

The Third Department dissent disagreed, and would have held that in light of MRTA's significant substantive changes in the law, "the evidence of the Legislature's intent that the amendment should not apply retroactively,' namely, the effective date of the statute itself, points to the conclusion that Penal Law § 222.05 (3) does not apply where a suppression hearing addresses a search conducted during an earlier period." The dissent explained, "the remainder of the MRTA, and its goal of repealing the existing system of marihuana prohibition and replacing it with a far more permissive framework, strongly suggests that this substantive effect was intended only for criminal conduct occurring after the effective date of the legislation. The directive in Penal Law § 222.05 (3) that the odor of marihuana does not provide 'reasonable cause to believe a crime has been committed' makes perfect sense in the aftermath of that repeal, as the possession of marihuana is generally not a crime under the new Penal Law article 222. It makes no sense when applied to suppression hearings addressing conduct under the old statutory regime, a time when law enforcement could conclude from the odor of marihuana that a crime had been committed because marihuana possession was, in fact, illegal. It accordingly appears to us that Penal Law § 222.05 (3) is inextricably tied to the broader repeal of marihuana prohibition effectuated by the MRTA and that we are bound by the statutory directive that 'all actions and proceedings, civil or criminal, commenced under or by virtue of any provision of a statute so repealed, and pending immediately prior to the taking effect of such repeal, may be prosecuted and defended to final effect in the same manner as they might if such provisions were not so repealed,' absent a specific direction to the contrary." And the dissent believed that MRTA contains no such direction.

Since this is a dual-dissent on a question of law, the People will have an as of right appeal to the Court of Appeals, and this open question will soon be resolved once and for all.

FOURTH DEPARTMENT

CRIMINAL LAW, FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION

People v Manganiello, 2025 NY Slip Op 03873 (4th Dept June 27, 2025)

Issue: **Did a search warrant that compelled the defendant to provide his biometric data to unlock a cell phone, which uncovered over 100 sexually explicit videos involving children, violate his right against self-incrimination under the Fifth Amendment of the United States Constitution?**

Facts: Following tips from Google that child sexual abuse materials had been uploaded to its servers, the Oswego County Sheriff's Depart obtained a warrant to search defendant, his apartment, and his electronic devices. "Investigators stated, in the search warrant application, that 'it will likely be necessary to press the finger(s) of the user(s) of the device(s) found during the search to the biometric sensor, or make the user(s)' face visible to the scanner, in an attempt to unlock the device for the purpose of executing the search.' County Court signed the search warrant, which stated, in relevant part, that

> '[e]xecuting police officers may, if necessary, press the fingers or capture a facial image of [defendant] or any person located within the premises for the purpose of attempting to unlock any computer or electronic device secured via a biometric lock to search and examine the contents therein as requested by this search warrant application.'

The Sheriff's Department executed the search warrant on March 2, 2023. During the execution of the warrant, an investigator informed defendant . . . that all electronic devices were to be secured and directed defendant to hand over his cell phone. When that investigator

attempted to grab the cell phone, defendant 'pulled away,' but the investigator 'grabbed [defendant] by the wrist, took the phone and placed his hands behind his back.' Defendant was thereafter handcuffed and placed in the back of a police vehicle by another investigator. Defendant was then told that the warrant required him to unlock his cell phone, and defendant unlocked the cell phone by placing the tip of one of his fingers on the phone, which unlocked the device. The Sheriff's Department found over 100 sexually explicit videos involving children on defendant's phone in a folder labeled 'child porn' as well as artificial intelligence-generated sexually explicit images of children."

Defendant was thereafter charged and moved to suppress the evidence, arguing that because "the search warrant compelled him to provide his biometric data to unlock his electronic devices—or, alternatively, authorized police officers 'to forcefully do the same'—his Fifth Amendment right against self-incrimination was violated. He specifically contended that the act of using a fingerprint to open a device is testimonial for Fifth Amendment purposes." County Court denied the motion, and defendant pleaded guilty to one of the charges.

Holding: The Fourth Department reversed defendant's conviction, noting that "[f]or a defendant to invoke the Fifth Amendment privilege, the communication at issue must be: (1) compelled; (2) incriminating; and (3) testimonial. Critical to our analysis here, testimonial communications are those that, explicitly or implicitly, relate a factual assertion or disclose information." Notably, the People conceded on appeal that defendant's communications were compelled and incriminating, so the only issue left to decide was whether they were also sufficiently testimonial to invoke the Fifth Amendment's right against self-incrimination.

After discussing two lines of cases that explore the line for testimonial communications—"(1) the physical trait cases (where compelled physical acts, such as standing in a lineup or providing a handwriting exemplar, are not testimonial); and (2) the act of production doctrine cases (where purely physical acts can be testimonial when the act implicitly communicates the existence, control, or authenticity of evidence)"—the Court held that "[w]ith respect to the physical trait cases, we conclude that defendant's act of unlocking the phone represented the thoughts 'I know how to open the phone,' 'I have control over and access to this phone,' and 'the print of this specific finger is the password to this phone.' The biometric data defendant provided 'directly announced defendant's access to and control over the phone, as well as his mental knowledge of how to unlock the device. The act of production cases also support the conclusion that, upon execution of the warrant, defendant's compelled unlocking of his phone through biometric data was testimonial. We conclude that in response to the command to unlock the phone, defendant opened it, and that act disclosed his control over the phone and his knowledge of how to access it. At a minimum, the authentication through biometric data implicitly communicated that the contents contained therein were in defendant's possession or control." Thus, the Court concluded, "the execution of the search warrant violated defendant's right against self-incrimination under the Fifth Amendment . . . Because the compelled opening of the cellphone during the execution of the search warrant was testimonial, both the message and any evidence obtained from that communication must be suppressed."

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