**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA<br><br>Appellant<br><br>v.<br><br>TRAA ALAN WAGNER | :<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>: | IN THE SUPERIOR COURT OF PENNSYLVANIA<br><br><br><br><br><br><br><br>No. 491 WDA 2021 |

Appeal from the Order Entered March 18, 2021
In the Court of Common Pleas of Jefferson County Criminal Division at No(s): CP-33-CR-0000507-2020

BEFORE: MURRAY, J., SULLIVAN, J., and COLINS, J.*

MEMORANDUM BY MURRAY, J.: **FILED: APRIL 5, 2022**

The Commonwealth of Pennsylvania appeals from the trial court's order concluding that Pennsylvania's Medical Marijuana Act (MMA), 35 P.S. §§ 10231.101 – 10231.2110, creates an affirmative defense to driving under the influence (DUI) under Section 3802 of the Motor Vehicle Code, such that the Commonwealth must disprove that the Delta-9 THC and corollary metabolite found in a defendant's bloodstream came from a source other than his lawfully prescribed medical marijuana. After careful review, and under existing legal authority at this writing, we conclude the MMA does not create an affirmative defense to DUI. Accordingly, we reverse.

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* Retired Senior Judge assigned to the Superior Court.

## Background

On November 23, 2020, the Commonwealth charged Appellee, Traa Alan Wagner (Wagner), with three counts of DUI, two counts of endangering the welfare of a child, and one count each of possession of marijuana and possession of drug paraphernalia.[1] Pennsylvania State Police (PSP) Trooper Devin Nicholson (Trooper Nicholson) testified that on July 23, 2020, he observed a white Chevrolet Impala driving southbound on State Route 28 near Summerville Road with its driver's side headlight out. Trooper Nicholson initiated a traffic stop and encountered Wagner, who was driving the vehicle with two small children in the back seat.

Trooper Nicholson testified he "immediately smelled the strong odor of marijuana from the window." N.T., 3/9/21, at 8. Wagner acknowledged the smell of marijuana, and explained he had a Pennsylvania medical marijuana card. Wagner presented his card and a tin of marijuana products. Trooper Nicholson confirmed the marijuana appeared to be packaged from a dispensary, but noted cigar wrappers and cigars inside the tin. Based on his training and experience, Trooper Nicholson stated, "people cut [the cigars] open, take the tobacco out and replace it with marijuana and then smoke the marijuana inside the items." ***Id.*** at 8-9. Trooper Nicholson asked Wagner whether he had smoked the marijuana. Wagner admitted he smoked it "occasionally" and did not know it was not allowed. ***Id*** at 9. Wagner informed

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[1] 75 Pa.C.S.A. §§ 3802(d)(1)(i), (iii), 18 Pa.C.S.A. § 4304(a)(1), 35 P.S. § 780-113(a)(31)(I), (a)(32).

Trooper Nicholson he last used marijuana approximately 12 hours earlier. ***Id.*** at 21.

Trooper Nicholson observed Wagner's "eyes were bloodshot. He had dilated pupils, and he was very relaxed for coming in contact [with] the police and having marijuana in his car." N.T., 3/9/21, at 9. Based on these observations, Trooper Nicholson directed Wagner out of the vehicle for field sobriety testing.

After Wagner's performance during the field sobriety tests indicated impairment, Trooper Nicholson believed he had probable cause to arrest Wagner and transport him for a blood draw. N.T., 3/9/21, at 11. However, Trooper Nicholson decided to use the services of a Drug Recognition Expert (DRE) and defer to the DRE's expertise. According to Trooper Nicholson, DREs are police officers who have specialized training in detecting signs of drug impairment, and could reach one of three conclusions: Wagner was impaired; Wagner was not impaired; or Wagner was medically impaired. ***Id***. Trooper Nicholson advised Wagner that a finding of no impairment or medical impairment would result in Wagner being free to go, whereas a blood draw would almost certainly result in DUI charges because it would reveal that Wagner had THC in his system. Wagner agreed to the DRE evaluation. Trooper Nicholson testified he handcuffed Wagner and placed him in the rear

of the patrol car for transport to the DRE evaluation, but did not ***Mirandize***[2] him.

PSP Corporal Mike Meko (Corporal Meko) performed Wagner's DRE evaluation. Corporal Meko issued Wagner ***Miranda*** warnings and confirmed Wagner's consent for evaluation. After conducting a full evaluation, Corporal Meko concluded Wagner was impaired by cannabis. N.T., 3/9/21, at 29-30. Trooper Nicholson then escorted Wagner to the hospital for a blood draw, which revealed the presence of Delta-9 THC, 11-Hydroxy Delta-9 THC and Delta-9 Carboxy THC.

On December 18, 2020, Wagner filed an omnibus pretrial motion, seeking suppression of all evidence obtained from the traffic stop because: 1) Trooper Nicholson did not have reasonable suspicion to effect an investigatory detention; 2) Trooper Nicholson did not have probable cause to arrest Wagner for DUI; 3) Wagner's consent to the blood draw was not voluntary; and 4) Wagner was subjected to a custodial interrogation without being ***Mirandized***. Omnibus Pretrial Motion, 12/18/20, at 1-5 (unnumbered).

Wagner further sought dismissal of the DUI charges based on his status as a legally registered medical marijuana patient, arguing that he was shielded from violating 75 Pa.C.S.A. § 3802(d)(1)(i) and (iii). ***Id***. at 6-8. In particular, Wagner argued medical marijuana is distinct from marijuana obtained illegally, and should not be classified as a controlled substance under the

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[2] ***See Miranda v. Arizona***, 384 U.S. 436 (1966).

Controlled Substance, Drug, Device and Cosmetic Act (CSA), 35 P.S. § 780-104(1)(iv). ***Id.*** at 6 (citing ***Commonwealth v. Jezzi***, 208 A.3d 1105 (Pa. Super. 2019). He further claimed the DUI law denies him and others equal protection by "essentially bar[ring] legally registered medical cannabis patients from driving [while] patients taking powerful Schedule II substances are able to drive unless they are impaired." ***Id***. at 5 (unnumbered).

On March 18, 2021, the trial court denied Wagner's omnibus pretrial motion. Regarding Wagner's constitutional challenge, the trial court concluded ***Jezzi*** "did not *hold* that medical marijuana was not a Schedule I substance. What it did was expressly note a distinction between marijuana and medical marijuana, observing that the latter was not listed as a Schedule I substance under the [CSA]." Trial Court Opinion, 3/18/21, at 5 (emphasis in original). However, the trial court opined:

> Being a lawful recipient of marijuana under the auspices of the MMA thus does not shield Wagner from prosecution. Neither the act itself nor ***Jezzi*** supports that proposition. **What the MMA does, however, is offer an affirmative defense that the Commonwealth may disprove with evidence that the Delta-9 THC and corollary metabolite found in a defendant's blood came from a source other than his lawfully prescribed medical marijuana.** ***See Commonwealth v. White***, 492 A.2d 32, 36 (Pa. Super. 1985) (reiterating what it means for a defense to be an affirmative defense and the Commonwealth's corresponding burden to disprove that type of defense).

***Id.*** at 6 (emphasis added).

The Commonwealth objected to the trial court's recognition of an affirmative defense for medical marijuana users, and thus filed this timely interlocutory appeal,[3] as well as a court-ordered Pa.R.A.P. 1925(b) statement.

## Issues

The Commonwealth presents the following issues for review:

> I. Did the suppression court err in holding the [MMA] creates an affirmative defense that the Commonwealth must disprove with evidence that the Delta-9 THC and corollary metabolites found in [Wagner's] blood came from a source other than the medical marijuana when none of the provisions of the MMA nor the Vehicle Code explicitly recognize such an affirmative defense?
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> II. Does 75 Pa.C.S.A. § 3810 preclude the suppression court's holding that the MMA creates an affirmative defense to a charge of Driving Under the Influence under 75 Pa.C.S.A. § 3802(d)?
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> III. Does 75 Pa.C.S.A. § 3810 preclude a defendant from asserting the defense of lawful use of medical marijuana to a charge under 75 Pa.C.S.A. § 3802(d)(1)?

Commonwealth Brief at 2.[4]

## Legal Standards

We review trial court suppression orders to determine whether the factual findings are supported by the record and whether the court's legal

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[3] The Commonwealth certified in its notice of appeal that the interlocutory order has the effect of terminating or substantially handicapping the prosecution. ***See*** Pa.R.A.P. 311(d) (the Commonwealth may appeal as of right from an order that does not end an entire case where the Commonwealth certifies that the order will terminate or substantially handicap the prosecution); ***see also*** 42 Pa.C.S.A. § 742.

[4] As the issues are related, we address them together.

conclusions are correct. ***Commonwealth v. Yandamuri***, 159 A.3d 503, 516 (Pa. 2017). We are not bound by a suppression court's conclusions of law; "rather, when reviewing questions of law, our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Hicks***, 208 A.3d 916, 925 (Pa. 2019) (quoting ***Commonwealth v. Wilmer***, 194 A.3d 564, 567 (Pa. 2018)).

Here, the Commonwealth's arguments involve the relationship between the CSA, the MMA and DUI laws. Issues involving statutory interpretation are questions of law and our review is plenary and non-deferential. ***Commonwealth v. Conklin***, 897 A.2d 1168, 1175 (Pa. 2006).

> When interpreting a statute, we look to ascertain and effectuate the intention of the General Assembly. Additionally, we must give effect to all of the laws['] provision[s] and are not to render language superfluous or assume language to be mere surplusage. If the text of the statute is clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

***Commonwealth v. Bundy***, 96 A.3d 390, 395 (Pa. Super. 2014) (case citations and quotations omitted). A statute is ambiguous when there are at least two reasonable interpretations of the text. ***See Freedom Med. Supply Inc. v. State Farm Fire & Cas. Co.***, 131 A.3d 977, 984 (Pa. 2016). In construing and giving effect to the text, "we should not interpret statutory words in isolation, but must read them with reference to the context in which they appear." ***Roethlein v. Portnoff Law Assoc.***, 81 A.3d 816, 822 (Pa. 2013) (citing ***Mishoe v. Erie Ins. Co.***, 824 A.2d 1153, 1155 (Pa. 2003)).

If there is a conflict in terms of a statute or statutes, 1 Pa.C.S.A. § 1933 provides:

> Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.

1 Pa.C.S.A. § 1933.

## Parties' Arguments

### A. Commonwealth's Argument

The Commonwealth argues it was improper for the trial court to "add an 'affirmative defense' not found in the law." Commonwealth Brief at 8. It contends the trial court overreached its authority without explicit "legislative intent to provide such an affirmative defense." ***Id.*** at 10. In addressing the interplay between the MMA and Pennsylvania's DUI law, the Commonwealth observes, "the MMA only legalized the 'use or possession' of medical marijuana, it did not say that people could now **drive** with THC in their bloodstream and to extend its terms in that way is improper overreach." ***Id.*** at 10-11 (emphasis added). The Commonwealth emphasizes that the legislature had the opportunity to amend Section 3802(d) of the Motor Vehicle Code upon passing the MMA, "to craft an exception to the DUI law and/or create an affirmative defense," but did not do so. ***Id.*** at 11. The

Commonwealth submits the legislature's inaction "make[s] it clear that they did not intend to change the DUI law." ***Id.*** at 12. While the Commonwealth concedes the legislature's failure to amend the Motor Vehicle Code creates "inequitable results," the Commonwealth asserts "it is for the legislature to address such matters and not the courts." ***Id.***

The Commonwealth cites ***Commonwealth v. Grimes***, 980 MDA 2019 (Pa. Super. Jan. 31, 2020) (unpublished memorandum),[5] in which we stated:

> This Court has provided that "a conviction under Section 3802(d)(1) does not require that a driver be impaired; rather, it prohibits the operation of a motor vehicle by *any* driver who has *any* amount of specifically enumerated controlled substances in his blood, regardless of impairment." ***Commonwealth v. Etchison***, 916 A.2d 1169, 1174 (Pa. Super. 2007), ***aff'd***, 596 Pa. 351, 943 A.2d 262 (2008) (emphasis in original).
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> Appellant's sufficiency challenge is meritless as the Commonwealth presented evidence that Appellant drove a vehicle with measured amounts of marijuana and its metabolite in his blood in violation of both Sections 3802(d)(i) and (iii).
>
> We are not persuaded to reach a different result by Appellant's citation to the Medical Marijuana Act, which states that "[s]cientific evidence suggests that medical marijuana is one potential therapy that may mitigate suffering in some patients and also enhance quality of life." 35 P.S. § 10231.102(1). Appellant has never claimed that he was prescribed marijuana. Moreover, even **assuming *arguendo* that Appellant was prescribed marijuana, "[t]he fact that a person charged with violating this chapter is or has been legally entitled to use alcohol or controlled substances is not a defense to a charge of violating this chapter."** 75 Pa.C.S.A. § 3810.

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[5] ***See*** Pa.R.A.P. 126(b)(2) ("Non-precedential decisions [filed after May 1, 2019,] may be cited for their persuasive value.").

***Id.*** at *6 (emphasis added).

The Commonwealth suggests that if this Court adheres to the above *dicta*, we must conclude in Appellant's case that "the trial court's holding is in error and no affirmative lawful use defense exists under the MMA to a charge of § 3802(d)(1)(i) and (iii)." Commonwealth Brief at 23.

**B. Wagner's Argument**

Wagner disputes the Commonwealth's claim that the trial court overreached its authority by creating an affirmative defense. To the contrary, Wagner asserts the trial court's decision is consistent with our decisions in ***Jezzi*** and ***Commonwealth v. Murray***, 245 A.3d 1119 (Pa. Super. Dec. 31, 2020) (unpublished memorandum). Wagner's Brief at 6.

In ***Jezzi***, the Commonwealth charged the defendant with several drug offenses. Following a bench trial, the trial court convicted the defendant of possession with intent to deliver marijuana and possession of drug paraphernalia. The defendant appealed, arguing the MMA and CSA are in conflict. Although not a registered medical marijuana patient, the defendant argued the passage of the MMA prohibits the continued classification of marijuana as a Schedule I substance. This Court affirmed the defendant's convictions, but observed that "medical marijuana is not listed in the CSA as a Schedule I substance, only marijuana is listed." ***Id***. at 1115.

In ***Murray***, our Court reinforced our ***Jezzi*** pronouncement "that there is a legal distinction between marijuana and medical marijuana." ***Murray***,

245 A.3d at *5. The defendant in ***Murray*** was paid to drive a passenger from the Pittsburgh area to the State Correctional Institution in Greene County (SCI-Greene). ***Id***. at *1. Upon arriving at SCI-Greene, an officer with the Pennsylvania Department of Corrections searched the defendant and his vehicle at a checkpoint designed to "eradicat[e] or slow[] the flow of drugs, weapons, and other contraband into the [SCI]." ***Id***. Ultimately, the officer discovered marijuana on defendant. ***Id***. The defendant, although a registered medical marijuana patient, admitted he had obtained the marijuana from an unlicensed source at a Kentucky Fried Chicken restaurant near the prison. ***Id***. The officer then performed a field sobriety test and concluded the defendant drove while impaired. ***Id***. The officer transported the defendant for a blood draw, which revealed the presence of THC. ***Id***. at 2.

The Commonwealth charged the defendant with, *inter alia*, two counts of DUI. At a bench trial, the defendant argued, "because he was authorized under the MMA to procure and use medical marijuana at the time of the traffic stop, he could not be convicted of DUI—controlled substance pursuant to Section 3802(d)(1)(i) because he could not be found to have had a Schedule I controlled substance in his bloodstream." ***Id***. The trial court rejected the defendant's argument and convicted him of DUI. The defendant appealed.

This Court affirmed, explaining:

> [O]ur legislature allows for the limited use of medical marijuana under very specific guidelines which, when followed, will not lead to criminal punishment. [Murray], however, did not follow those guidelines. By his own admission, [Murray] did not legally procure

> medical marijuana at an official dispensary despite having an authorized medical marijuana identification card to do so. Furthermore, having an authorized medical marijuana identification card did not give [Murray] *carte blanche* to procure marijuana illegally from a random person on the street. Additionally, [Murray] also admitted to using the marijuana illegally obtained from the KFC restaurant prior to driving. In this matter, medical marijuana is simply not at issue and no additional fact-finding is warranted. Put simply, there was ample evidence introduced at trial to prove beyond a reasonable doubt that [Murray] operated a motor vehicle with marijuana in his bloodstream, in violation of Section 3802(d)(1)(i).

***Id***. at 5.

Wagner argues that the legal distinction between marijuana and medical marijuana, recognized in ***Jezzi*** and ***Murray***, supports his prescribed use of medical marijuana as an affirmative defense to his DUI charges. Wagner asserts that unlike the defendants in ***Jezzi*** and ***Murray***, "who were clearly in possession of marijuana that was not procured from a licensed source pursuant to the MMA," his status as a legally registered medical marijuana patient, "in possession of properly packaged medical marijuana," created a question "as to whether the marijuana in [Wagner's] blood was medical marijuana or marijuana not procured appropriately under the MMA[.]" Wagner's Brief at 10. Accordingly, Wagner claims the trial court properly applied ***Jezzi*** and ***Murray*** in holding Wagner can claim an affirmative defense that the THC "in his blood constituted medical marijuana and not marijuana classified as a [S]chedule I substance." ***Id***.

## Analysis

Wagner is charged with violating the Motor Vehicle Code under the following provisions:

> **§ 3802. Driving under influence of alcohol or controlled substance**
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> . . .
>
> **(d) Controlled substances.** – An individual may not drive, operate or be in actual physical control of the movement of a vehicle under any of the following circumstances:
>
> (1) There is in the individual's blood any amount of a:
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> (i) Schedule I controlled substance, as defined in the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act;
>
> (ii) Schedule II or Schedule III controlled substance, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, which has not been medically prescribed for the individual; or
>
> (iii) metabolite of a substance under subparagraph (i) or (ii).

75 Pa.C.S.A. § 3802(d).

The CSA identifies Schedule I substances, in relevant part, as follows:

> **§ 780-104. Schedules of controlled substances**
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> **(1) Schedule I**—In determining that a substance comes within this schedule, the secretary shall find: a high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision. The following controlled substances are included in this schedule:
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> . . .
>
> (iv) Marihuana.

35 P.S. § 780-104(1)(iv) (effective June 14, 1972). Consistent with the foregoing, the Commonwealth has the burden of proving beyond a reasonable doubt that an individual drove, operated or was in actual physical control of a motor vehicle with **any** amount of marijuana (or its metabolites) in their bloodstream.

Effective May 17, 2016, our legislature established the MMA, "[a] medical marijuana program for patients suffering from serious medical condition[s.]" 35 Pa.S.C.A. § 10231.301.

> [T]he MMA creates a temporary program for qualified persons to access medical marijuana, for the safe and effective delivery of medical marijuana, and for research into the effectiveness and utility of medical marijuana. 35 P.S. § 10231.301. Significantly, the MMA does not declare that marijuana is safe and effective for medical use; instead, the MMA is a temporary vehicle to access the substance pending research into its medical efficacy and utility. 35 P.S. § 10231.102(1)-(4).

***Jezzi***, 208 A.3d at 1111 (some citations omitted). The MMA states the "growth, processing, distribution, possession and consumption of medical marijuana permitted under [the MMA] shall not be deemed a violation of the Controlled Substances" Act, and "[i]f a provision of the [CSA] relating to marijuana conflicts with a provision of [the MMA], [the MMA] shall take precedence." 35 P.S. § 10231.2101.

After careful consideration of the above legal authority and the particular facts of this case, we conclude the trial court abused its discretion in concluding the MMA creates an affirmative defense to DUI charges under Section 3802 of the Motor Vehicle Code. An affirmative defense is defined as

one where the defendant admits his commission of the act charged, but seeks to justify or excuse it. ***Commonwealth v. Rose***, 321 A.2d 880, 884 (Pa. 1974).[6] When evidence is introduced which raises an issue relating to an affirmative defense, the burden of proof falls on the Commonwealth to disprove the defense.[7] ***Commonwealth v. Mouzon***, 53 A.3d 738, 742 (Pa. 2012). "This is because the truth of all affirmative defenses goes to the final analysis of the guilt and the rightness of punishing the accused. Therefore, at the close of the evidence, the jury must be told that if they have a reasonable doubt of the element thus raised they must acquit." ***Commonwealth v. White***, 492 A.2d 32, 36 (Pa. Super. 1985).

By statute, compliance with the MMA will not constitute a crime under the CSA. 35 P.S. § 10231.2101; ***see also Commonwealth v. Barr***, 266 A.3d 25, 41 (Pa. 2021). Critically, however, although the MMA legalized the "use or possession" of medical marijuana, the CSA and Motor Vehicle Code still render it illegal for a person to **drive** a motor vehicle with marijuana or its metabolites in their blood. ***See Barr***, 266 A.3d at 41 ("[T]he MMA makes abundantly clear that marijuana no longer is *per se* illegal [to possess] in this

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[6] Jurisprudence in this area arises largely in the context of homicide prosecutions.

[7] In ***Rose, supra***, the Pennsylvania Supreme Court adopted this burden of proof for all affirmative defenses. Previously, defendants had the burden of proving by a preponderance of the evidence the facts relating to an affirmative defense. By shifting the burden to the Commonwealth, the Court adopted a standard consistent with the constitutional requirement that the Commonwealth must convince the jury of each element of a crime. ***Rose***, 321 A.2d at 883.

Commonwealth."); 75 Pa.C.S.A. § 3802 ("An individual may not drive, operate or be in actual physical control of the movement of a vehicle [when t]here is in the individual's blood any amount of … [marijuana]."). The MMA's silence regarding lawful driving cannot be interpreted as creating an affirmative defense. Accordingly, because an individual's legally prescribed use of medical marijuana does not negate any element of a DUI offense, it is impermissible to create an affirmative defense and alter the Commonwealth's burden of proof.

Moreover, the trial court fails to cite authority for its pronouncement. ***See*** Trial Court Opinion, 3/18/21, at 5-6. Even applying ***Murray*** and ***Jezzi***, the respective conduct of the defendants in those cases is not sufficiently analogous to compel the trial court's result. While there is a legal distinction to be made between the conduct in ***Murray*** (DUI following consumption of illegally obtained marijuana) and the conduct of Wagner in this case, the ***Murray*** decision was not premised on whether Murray's status as a medical marijuana patient shielded him from violating the DUI law. Rather, we emphasized, "[i]n this matter, medical marijuana is simply not at issue … ." ***Murray***, 245 A.3d at *5.

Likewise, ***Jezzi*** did not involve an interpretation of the Motor Vehicle Code. The defendant, who did not have a medical marijuana card, sought to avoid prosecution for possession of marijuana. ***Jezzi***, 208 A.3d at 1109. Notably, both ***Murray*** and ***Jezzi*** do not address the MMA in the context of the

Motor Vehicle Code's restriction on driving under the influence of a controlled substance.

Finally, the intent of the MMA to be "a temporary measure," ***see*** 35 P.S. § 10231.102(4), militates against a conclusion that status as a lawful marijuana user provides an affirmative defense to DUI. We stated:

> [T]he temporary nature of the MMA serves as an acknowledgement of the General Assembly that more research into the medical value of marijuana is necessary. ***See*** 35 P.S. § 10231.102(4). The MMA established a medical marijuana program to serve as a stopgap measure, "pending Federal approval of and access to medical marijuana through traditional medical and pharmaceutical avenues." ***See id***.

***Jezzi***, 208 A.3d at 1114.

This area of the law is fluid and evolving. Unless and until the Legislature amends the Motor Vehicle Code and/or CSA, it would be premature for this Court — as an intermediate appellate court — to conclude the MMA offers an affirmative defense to individuals lawfully prescribed medical marijuana.[8] ***See Matter of M.P.***, 204 A.3d 976, 986 (Pa. Super. 2019) (quoting ***Commonwealth v. Montini***, 712 A.2d 761, 769 (Pa. Super. 1998) ("the Superior Court is an error correcting court and we are obliged to apply the decisional law as determined by the Supreme Court of Pennsylvania.")); ***Moses v. T.N.T. Red Star Exp.***, 725 A.2d 792, 801 (Pa. Super. 1999) ("It is

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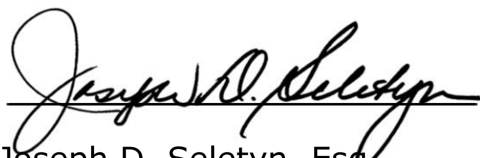
[8] There is pending legislation which would amend to 75 Pa.C.S.A. § 3802(1)(i) to include "except marijuana used lawfully in accordance with the act of April 17, 2016 (P.L.84, No.16), known as the Medical Marijuana Act[.]" ***See*** H.B. 900 (introduced June 23, 2021); S.B. 167 (introduced February 5, 2021).

not the prerogative of an intermediate appellate court to enunciate new precepts of law or to expand existing legal doctrines. Such is a province reserved to the Supreme Court.”).

Accordingly, we conclude that the MMA, in the absence of authority or directive from the Pennsylvania Legislature or Supreme Court, does not create an affirmative defense to DUI charges under Section 3802 of the Motor Vehicle Code. We therefore reverse the trial court’s order holding that the MMA “offer[s] an affirmative defense that the Commonwealth may disprove with evidence that the Delta-9 THC and corollary metabolite found in a defendant’s blood came from a source other than his lawfully prescribed medical marijuana.”[9]

Order reversed. Case remanded. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/5/2022

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[9] Our decision is limited to whether the MMA created an affirmative defense to a violation of Section 3802 of the Motor Vehicle Code. We express no opinion as to the remainder of the trial court’s March 18, 2021, order and opinion.