

Circuit Court for Worcester County
Case No. C-23-CR-23-000077

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1731

September Term, 2023

ZHAOBIN HE

v.

STATE OF MARYLAND

Graeff,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: May 22, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

Zhaobin He, appellant, was charged in the Circuit Court for Worcester County with unlawful possession of a controlled substance (50 pounds or more of cannabis) and related offenses after the police stopped him for a traffic violation. Appellant subsequently filed a motion to suppress the evidence recovered from his vehicle, which the court denied after a hearing. Appellant then pleaded not guilty pursuant to an agreed statement of facts. The court found appellant guilty of possession of a large amount of cannabis and sentenced him to five years of imprisonment without the possibility of parole.

On appeal, appellant presents the following questions for this Court’s review,¹ which we have rephrased slightly, as follows:

Did the circuit court err in admitting evidence that was acquired in violation of Md. Code Ann., Crim. Proc. (“CP”) § 1-211, where law enforcement acquired the evidence prior to enactment of the statute, but the court received the evidence after enactment of the statute?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On April 6, 2023, Corporal Wechtenhiser, a corporal with the Dagsboro Police Department in Delaware, contacted Detective Corporal Zachary Converse of the Worcester County Sheriff’s Office. Corporal Wechtenhiser told Detective Converse that he had conducted a traffic stop on a 2021 silver Toyota Sienna driven by appellant, and he believed that appellant was involved in criminal activity.

¹ This appeal was one of several cases stayed by Order of this Court on October 1, 2025, pending the Supreme Court of Maryland disposition in *Cutchember v. State*, 493 Md. 187 (2026). The stay was lifted after the Supreme Court issued its opinion on March 3, 2026.

Detective Converse, and other detectives with the Worcester County Sherriff's Office, subsequently observed the 2021 silver Toyota Sienna driving through Worcester County. The vehicle entered a shopping center parking lot, and it remained there for an hour and a half. Detectives observed the vehicle exit the parking lot. They followed the vehicle, observed a traffic violation, and conducted a traffic stop.

Detective Converse requested a K-9 unit, and within three to four minutes, it arrived on the scene and scanned the vehicle. The scan resulted in a positive alert, and based on that alert, Detective Converse searched the vehicle. Detective Converse observed two Home Depot boxes in the back seat of the vehicle. He opened the boxes and observed multiple heat-sealed bags containing a leafy green material. Officers seized approximately 113 pounds of marijuana from the vehicle.

On May 8, 2023, appellant filed a motion to suppress, alleging, among other things, that all evidence and testimony against appellant resulted from an illegal arrest or search and seizure, and therefore, should be suppressed. The State, pursuant to Maryland Rule 4-252, denied "each, every, and all of the allegations" in appellant's motion to suppress.

On August 15, 2023, the court held a hearing on the motion to suppress. Detective Converse testified that he received a call from Corporal Wechtenhiser, who stated that he had been involved with a suspicious traffic stop, and he believed the operator of the vehicle was involved in criminal activity. Detective Converse, along with several undercover officers, identified and followed the vehicle into a shopping mall parking lot. They observed the driver park the vehicle, chain smoke cigarettes, and talk on the phone.

Approximately an hour and a half later, the vehicle exited the parking lot and the officers followed. The driver committed a traffic violation, and Detective Converse conducted a traffic stop. Detective Converse called a K-9 unit to the scene, and the K-9 gave a positive alert. After receiving the positive alert, Detective Converse searched the vehicle and recovered contraband from the vehicle.

Corporal Chris Bireley, an officer with the Berlin Police Department K-9 patrol division, testified that a K-9 demonstrates certain behavioral changes when it detects the odor of one of five controlled dangerous substances. The K-9 is not trained to distinguish between the five dangerous substances. On April 6, 2023, Corporal Bireley's K-9 partner alerted to the presence of narcotics in the 2021 silver Toyota Sienna.

Appellant argued that, pursuant to CP § 1-211, which provides that evidence obtained from a search based “solely on” the “odor of burnt or unburnt cannabis” is inadmissible, the evidence recovered from the search was inadmissible.² The State countered that “no officers smelled the odor of marijuana,” and no officers “conducted the traffic stop because of that.” Rather, the K-9 alert provided the basis for the search.

On August 25, 2023, the court denied the motion to suppress, finding that it could not “discern any legislative intent to suggest that the remedy” set forth in CP § 1-211(c) “was intended to retroactively apply.” The court found that the evidence discovered or

² We note that although appellant did not concede “the constitutional argument,” the issue was not raised on appeal, and therefore, we will not address it.

obtained on April 6, 2023, was not discovered or obtained “in violation of the section because the section was not enacted or effective as of April of 2023.”

On September 14, 2023, appellant appeared for trial, and by way of motion in limine, he renewed his objection to the introduction of evidence he argued was inadmissible under CP § 1-211. The court denied the motion on the grounds that (1) by its plain language, CP § 1-211 was not retroactive and (2) there was no evidence that the K-9 alert was based solely on the odor of unburnt cannabis as the K-9 was trained to alert on multiple controlled dangerous substances.

As indicated, appellant was found guilty of unlawful possession of 50 pounds or more of cannabis, and sentenced to five years’ incarceration. This appeal followed.

DISCUSSION

Appellant contends that the circuit court erred in admitting “evidence obtained in violation of” CP § 1-211. He argues that, although CP § 1-211 was not in effect at the time of the search of Appellant’s vehicle, the statute was in effect at the time of the hearing, and because it is remedial and procedural, it applies retroactively.

The State contends that the court did not err in denying appellant’s motions because CP § 1-211 “applies only to searches that occurred after the statute’s effective date.” It argues, therefore, that the statute does not apply retroactively to searches that occurred before the statute became effective.

Since appellant filed his brief, the Supreme Court of Maryland decided *Cutchember v. State*, 493 Md. 187 (2026), which resolves this issue. In *Cutchember*, the Supreme Court

held that the exclusionary remedy in CP § 1-211(c) applies only to evidence discovered or obtained in violation of the statute’s substantive prohibitions in subsections (a) and (b). *Id.* at 204. Because those prohibitions did not take effect until July 1, 2023, no violation occurs during searches conducted before that date. *Id.* The Court determined that the statute contained a “right” prong and a “remedy” prong: subsection (a) creates a substantive right to be free from searches based on the odor of cannabis alone, and subsection (c) provides an exclusionary remedy triggered only by a violation of that right. *Id.* The Court concluded that, “[b]ecause a violation of subsection (a) was legally impossible before July 1, 2023, the exclusionary remedy in subsection (c) is unavailable to these Petitioners.” *Id.* The Court in *Cutchember* rejected the same arguments that appellant advances here. The Court held that CP § 1-211(a) is not merely procedural. *Id.* at 205. Instead, CP § 1-211(a) created a new substantive right, as “Marylanders did not have a specific right to be free from cannabis-odor searches” before the statute’s effective date. *Id.*

Cutchember controls the analysis here. Appellant’s vehicle was searched on April 6, 2023, just under three months before CP § 1-211 took effect. At the time of the search, the odor of cannabis emanating from a vehicle provided probable cause to search under *Robinson v. State*, 451 Md. 94, 137 (2017), *superseded by statute as stated in Cutchember*, 493 Md. at 145, and *Bowling v. State*, 227 Md. App. 460, *cert. denied*, 448 Md. 724 (2016). Because there was no right to be free from cannabis odor-based searches in April 2023, Detective Converse did not violate CP § 1-211 when he searched appellant’s vehicle. *Cutchember*, 493 Md. at 204. That appellant’s suppression hearing and not guilty agreed

statement of facts trial occurred after the statute's effective date does not alter the analysis. Indeed, "the 'date of the search is the key event in determining whether the right created by the statute in fact existed and thus whether a violation of that right had occurred.'" *Id.* (quoting *Cutchember v. State*, 265 Md. App. 690, 701 (2025)). The circuit court did not err in denying appellant's motion to suppress or motion in limine.

**JUDGMENT OF THE CIRCUIT COURT
FOR WORCHESTER COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**