

Circuit Court for Washington County  
Case No.: C-21-CR-23-000175

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 2094

September Term, 2023

---

ANTONIO RONALD HART, III

v.

STATE OF MARYLAND

---

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

JJ.

---

Opinion by Woodward, J.

---

Filed: June 24, 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 its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

On February 3, 2023, Officer Ty Larrain and Officer Wheat<sup>1</sup> of the Hagerstown Police Department conducted a traffic stop of a vehicle driven by Antonio Hart, appellant. Upon detecting an odor of cannabis<sup>2</sup> emitting from appellant’s vehicle and observing appellant reaching for the gear shift and “towards his waistband,” the officers ordered appellant from his vehicle to conduct a search. The officers recovered fentanyl, cocaine, cannabis, and drug paraphernalia, and arrested appellant. Effective July 1, 2023, the Maryland General Assembly enacted a new section of the Criminal Procedure Article, Section 1-211, which provides, among other things, that (1) a law enforcement officer may not search a motor vehicle based solely on “the odor of burnt or unburnt cannabis,” and (2) evidence discovered or obtained “in violation” of this section is not admissible in a trial, a hearing, or any other proceeding. Md. Code Ann., Crim. Pro. (“CP”) § 1-211(a) & (c).

On October 5, 2023, the Circuit Court for Washington County held a hearing on appellant’s motion to suppress the controlled dangerous substances and paraphernalia seized by the officers on February 3, 2023, and denied the motion. On November 14, 2023, a jury acquitted appellant of possession of paraphernalia, but convicted him of possession with intent to distribute fentanyl, possession of fentanyl, possession with intent to distribute cocaine, and possession of cocaine. The court sentenced appellant to 20 years, with all but 8 years suspended for possession with intent to distribute fentanyl, a concurrent sentence of 20 years, with all but 8 years suspended for possession with intent to distribute cocaine,

---

<sup>1</sup> Officer Wheat’s first name is not stated in the transcript.

<sup>2</sup> As of June 2022, Maryland statutes have replaced the term “marijuana” with “cannabis.”

and 3 years of probation upon release. The possession convictions were merged for sentencing purposes.

Upon appeal, appellant presents one question for our review:<sup>3</sup>

Did the suppression court err when it denied [appellant]’s motion to suppress?

During the briefing period in the instant appeal, this Court held in *Kelly v. State*, 262 Md. App. 295, 311 (2024), that CP § 1-211 was “intended to apply prospectively from its effective date of July 1, 2023.” However, in *Kelly*, the search, suppression hearing, conviction, and sentencing all occurred before the statute’s effective date of July 1, 2023. Therefore, this Court asked the parties to submit supplemental briefing on the following question:

In a case where the search occurred prior to July 1, 2023, but the trial or hearing at which the evidence was sought to be admitted or excluded occurred after July 1, 2023, which event should the Court view as establishing the operative date in determining whether CP § 1-211 applies?

For the reasons set forth herein, this Court holds that the operative date for determining the applicability of CP § 1-211 is the date of the search.

### **BACKGROUND**

On February 3, 2023 at 12:49 a.m., Officers Larrain and Wheat stopped a vehicle driven by appellant for failing to come to a complete stop at a stop sign. During the traffic stop, Officers Larrain and Wheat recognized the odor of cannabis emitting from appellant’s

---

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

vehicle. Officer Larrain observed appellant “continuously” reaching for the gear shift and “towards his waistband area.” Officer Larrain, thinking appellant could be armed, ordered appellant out of the vehicle. Based on the odor of cannabis, the officers searched the vehicle and recovered a “knotted cellophane bag” containing suspected drugs. Officer Larrain searched appellant and recovered a bag of cannabis and additional suspected drugs.

Appellant filed a motion to suppress the illegal drugs and drug paraphernalia seized during the search. The motion to suppress hearing took place on October 5, 2023. At the hearing, appellant argued that the evidence should be suppressed based on the newly enacted CP § 1-211. Section 1-211 states, in relevant part:

**Initiation of a stop or search**

- (a) A law enforcement officer may not initiate a stop or a search of a person, a motor vehicle, or a vessel based solely on one or more of the following:
  - (1) the odor of burnt or unburnt cannabis;
  - (2) the possession or suspicion of possession of cannabis that does not exceed the personal use amount, as defined under § 5-601 of the Criminal Law Article; or
  - (3) the presence of cash or currency in proximity to cannabis without other indicia of an intent to distribute.

\* \* \*

**Admissibility of evidence**

- (c) Evidence discovered or obtained in violation of this section, including evidence discovered or obtained with consent, is not admissible in a trial, a hearing, or any other proceeding.

The statute took effect on July 1, 2023, after the search of appellant’s vehicle on February 3, 2023, but before the suppression hearing on October 5, 2023. Appellant argued to the trial court that he should receive the benefit of the newly enacted CP § 1-211. The

court disagreed and denied the motion. The court determined that at the time of the search, February 3, 2023, the odor of cannabis gave the officers probable cause to search the vehicle. On November 14, 2023, a jury convicted appellant of possession with intent to distribute fentanyl and cocaine, possession of fentanyl and cocaine, but acquitted him of possession of drug paraphernalia. After appellant was sentenced to a total term of 20 years' imprisonment, with all but 8 years suspended, and 3 years of probation, this timely appeal followed.

### **DISCUSSION**

On March 3, 2026, the Supreme Court of Maryland decided *Cutchember v. State*, 493 Md. 187 (2026), which resolves this appeal. In *Cutchember*, on January 6, 2023, police conducted a traffic stop of Cutchember's vehicle and detected an odor of cannabis emitting from the vehicle. *Id.* at 195. Based only on the odor of cannabis, the police searched the vehicle and found cannabis, along with other suspected drugs and drug paraphernalia. *Id.* Appellant was arrested and charged with possession. *Id.* Cutchember filed a motion to suppress the illegal drugs and drug paraphernalia seized during the search, and the hearing took place on August 23, 2023. *Id.* at 196. At the hearing, appellant argued that the evidence should be suppressed based on the newly enacted CP § 1-211. *Id.* The trial court denied the motion, reasoning that CP § 1-211 was not retroactive and at the time of the stop, January 6, 2023, the odor of cannabis gave the deputy probable cause to search appellant's vehicle. *Id.* Cutchember appealed.

The Supreme Court of Maryland determined that subsection (a) of CP § 1-211 created a substantive right to be free from searches based solely on the odor of cannabis and subsection (c) provided a remedy for the violation of that right. *Id.* at 193. The Court unanimously held: “Criminal Procedure § 1-211(c) makes clear that only ‘[e]vidence discovered or obtained in violation of this section’ is inadmissible. Because a violation of subsection (a) was legally impossible before July 1, 2023, the exclusionary remedy in subsection (c) is unavailable to these Petitioners.” *Id.* at 204. The Court rejected the argument that CP § 1-211(a) was merely procedural and did not create a new substantive right. *Id.* at 205. The Court determined that CP § 1-211(a) created a new substantive right because “[p]rior to the statute’s effective date, Marylanders did not have a specific right to be free from cannabis-odor searches[.]” *Id.* The Court also rejected Cutchember’s reliance on *Waker v. State*, 431 Md. 1 (2013), stating that “[b]ecause the ‘event’ regulated by CP § 1-211 is the police encounter itself, the legality of that encounter is fixed at the moment it occurs.” *Id.* Therefore, an exclusionary remedy cannot apply to searches conducted before the right existed regardless of the date of the hearing. *Id.*

In the instant case, the search of appellant’s vehicle took place on February 3, 2023, over four months before the statute took effect. At the time of the search, police had probable cause to search appellant’s vehicle based solely on the odor of cannabis under *Robinson v. State*, 451 Md. 94, 137 (2017) *superseded by statute*. Because the officers could not have violated CP § 1-211(a) before July 1, 2023, the exclusionary remedy cannot apply to the search of appellant’s vehicle. It is the date of the search, February 3, 2023, and

not the date of the hearing that “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.”

*Cutchember*, 493 Md. at 199 (quoting *Cutchember v. State*, 265 Md. App. 690, 701 (2025)).

Accordingly, the trial court correctly denied appellant’s motion to suppress.

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