

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1698

September Term, 2015

MORGAN LAUREN SCOTT

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

PER CURIAM

Filed: July 22, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Convicted of possession of marijuana with intent to distribute, possession of over ten grams of marijuana, and possession of drug paraphernalia, in the Circuit Court for Kent County, Morgan Lauren Scott, appellant raises a single issue on appeal: whether the trial court erred in denying his motion to suppress evidence seized from his residence, pursuant to a search warrant, that was issued based on the officers having smelled marijuana inside the home. Scott does not contend that the search violated his rights under the United States or Maryland Constitutions. Instead, because the possession of less than ten grams of marijuana was decriminalized by the Legislature prior to the issuance of the search warrant, *see* Maryland Code (2015 Supp.), Criminal Law Article, § 5–601(c)(2)(ii), he argues that it was not property subject to seizure under the criminal laws of the State, and therefore that its probable presence in the residence did not support the issuance of a warrant under Section 1-203(a)(1) of the Criminal Procedure Article. Alternatively, Scott asserts that even if marijuana remains contraband that is subject to seizure under Maryland criminal law, Section 1-203(a)(1) required the judge to also find probable cause that a misdemeanor or felony was being committed before issuing the warrant. Finding no error, we affirm.

Section 1-203(a)(1) of the Criminal Procedure Article plainly states that a search warrant may issue if there is probable cause to believe that:

- (i) a misdemeanor or felony is being committed by a person or in a building apartment, premises, place, or thing within the territorial jurisdiction of the judge; *or*
- (ii) property subject to seizure under the criminal laws of the State is on the person or in or on the building, apartment, premises, place or thing [.]

(emphasis added). Moreover, contrary to Scott’s contention, we do not read *State v. Intercontinental, Ltd.*, 302 Md. 132 (1985) as eliminating the disjunctive phrasing contained in Section 1-203(a)(1).

Marijuana, while decriminalized, is still illegal and is subject to seizure under Title 5 of the Criminal Law Article. *See Bowling v. State*, 227 Md. App. 460, 474-76 (2016). Accordingly, the search warrant was properly issued pursuant Section 1-203(a)(1)(ii) and the trial court did not err in denying Scott’s motion to suppress. We further note that, because Scott does not claim that the search of his residence infringed upon his Fourth Amendment rights, even if the warrant was issued in contravention of Section 1-203, suppression of the evidence would not be warranted. *See Pearson v. State*, 126 Md. App. 530, 544 (1999) (noting that there was no sanction of exclusion of evidence for a violation of the predecessor statute to Section 1-203 unless the violation coincidentally was also a violation of the Constitution).

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