

Circuit Court for Montgomery County
Case No. C-15-CR-23-000078

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 661

September Term, 2024

XAVIER SANCHEZ-SANTOS

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 25, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a conditional guilty plea in the Circuit Court for Montgomery County, Xavier Sanchez-Santos, appellant, was convicted of possession of a firearm by a person convicted of a crime of violence. He raises a single issue on appeal: whether the court erred in denying his motion to suppress evidence that was recovered following a warrantless search of his vehicle. For the reasons that follow, we shall affirm.

On December 27, 2022, Sergeant Dan McCarthy stopped appellant for failing to stop at a flashing red light. During the stop, Sergeant McCarthy noticed “cannabis or marijuana [] in plain view” on appellant’s right pant leg, and detected “an odor of freshly burnt marijuana emanating from the vehicle.” Based on these observations, he and other officers conducted a search of appellant’s vehicle and recovered a large bag of marijuana and a black Glock 17 handgun.

Appellant filed a motion to suppress that evidence, claiming that the search was unlawful because Section 1-211 of the Criminal Procedure Article (“CP”) prohibits the warrantless search of a vehicle based solely on the odor of marijuana. Although the effective date of that statute was July 1, 2023, appellant maintained that it should be retroactively applied to the search of his vehicle. Following a February 8, 2024, hearing, the motions court denied the motion to suppress finding that Section 1-211 did not apply and that the “odor of marijuana at the time of the stop was sufficient to provide probable cause to search.”

On appeal, appellant contends that the motions court erred in finding that Section 1-211 “did not apply to render illegal a warrantless search of a properly stopped vehicle when that provision was in effect at the time of the motion to suppress and at the time of trial and

sentencing.” Appellant acknowledges that in *Kelly v. State*, 262 Md. App. 295 (2024), this Court held that Section 1-211 did not apply retroactively to a search that occurred before July 1, 2023. He nevertheless asserts that his case is distinguishable because, unlike *Kelly*, the court decided his motion to suppress after Section 1-211 went into effect.

However, we recently addressed this exact claim in *Cutchember v. State*, No. 1474, September Term, 2023, 2025 WL 1553991 (Md. App. June 2, 2025), and determined that the “difference in the procedural posture [in] *Kelly*” was a “distinction without a difference.” *Id.* at *5 (quotation marks omitted). We further held that “[b]ecause a search cannot violate a nonexistent statutory right, the exclusionary remedy of CP § 1-211(c) cannot apply to a search that took place before the statute’s effective date of July 1, 2023.” *Id.* at *8. Thus, “the operative date for determining the applicability of CP § 1-211 is the date of the search.” *Id.* at *1. Because the search of appellant’s vehicle in the instant case occurred on December 27, 2022, CP § 1-211 did not apply. Consequently, the court did not err in denying appellant’s motion to suppress.

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