

MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Danielle Vina Sallee,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 26, 2022

Court of Appeals Case No.
21A-CR-2726

Appeal from the Shelby Superior
Court

The Honorable Jennifer Kinsley,
Magistrate

Trial Court Cause No.
73D02-2105-CM-471

Mathias, Judge.

- [1] Danielle Sallee appeals her conviction for possession of paraphernalia, a Class C misdemeanor, following a bench trial. Sallee contends that the State presented insufficient evidence to support her conviction. We reverse.

Facts and Procedural History

- [2] On May 25, 2021, a Shelbyville Police Officer observed that a vehicle driven by Sallee did not have an operational license plate light, and he initiated a traffic stop. Tr. Vol. 2 p. 8. Sallee had two passengers in the backseat of the vehicle, Tiffanie Spurlin, the vehicle's owner, and Kendra Wiles. *Id.* at 25. Sallee was on probation and consented to a vehicle search. *Id.* at 11.
- [3] During the search, the officer found various items containing marijuana or marijuana residue.¹ Pertinent to this appeal, the officer found a metal grinder in a bag on the backseat floorboard. The bag was wedged between the front passenger seat and the center console. The bag also contained prescription pill bottles in Sallee's name.
- [4] The State charged Sallee with possession of paraphernalia, as a Class C misdemeanor, based on the grinder in the bag with her prescription medication. Appellant's App. Vol. 2 p. 2. Following the State's close of its case in chief at her ensuing bench trial, Sallee moved for an involuntary dismissal on the

¹ The officer found marijuana on Spurlin as well as marijuana and a metal grinder containing marijuana residue in the vehicle's glovebox. Appellant's App. Vol. 2 p. 17. The State charged Spurlin with possession of marijuana, a Class B misdemeanor, and possession of paraphernalia, a Class C misdemeanor. *Id.*

ground that the State failed to show that the grinder qualified as paraphernalia under [Indiana Code § 35-48-4-8.3\(b\)](#). Tr. Vol. 2 pp. 19-20. The State responded that the grinder qualified as paraphernalia because it was an instrument used to help prepare marijuana to be introduced into the body. *Id.* at 22. The trial court took the motion under advisement, and then implicitly denied the motion when it found Sallee guilty as charged. The court then imposed a sixty-day suspended sentence. *Id.* at 51. Sallee now appeals.

Discussion and Decision

- [5] Sallee contends that the State presented insufficient evidence to support her conviction. In reviewing the sufficiency of the evidence, we consider only the evidence and reasonable inferences most favorable to the conviction, neither reweighing the evidence nor reassessing witness credibility. [Griffith v. State, 59 N.E.3d 947, 958 \(Ind. 2016\)](#). Unless no reasonable fact-finder could find the defendant guilty, we will affirm. *Id.*
- [6] For Sallee’s possession of paraphernalia conviction, the State had to prove that Sallee knowingly or intentionally possessed an instrument, a device, or another object that Sallee intended to use for: “(1) introducing into the person’s body a controlled substance; (2) testing the strength, effectiveness, or purity of a controlled substance; or (3) enhancing the effect of a controlled substance.” [Ind. Code § 35-48-4-8.3\(b\)](#). Sallee asserts that the State did not present evidence at trial that the grinder was used to introduce, test, or to enhance the effect of marijuana. We agree.

- [7] At trial, the State asserted that the grinder was an instrument used to prepare marijuana to be introduced into a person's body. Tr. Vol. 2 p. 22. Therefore, the State argued that the grinder was paraphernalia under [§ 35-48-4-8.3\(b\)\(1\)](#). But, on appeal, the State abandons that argument and instead argues that Sallee's conviction should be affirmed because the grinder was an instrument that Sallee intended to use for enhancing the effect of a controlled substance under [subsection \(b\)\(3\)](#). Appellee's Br. p. 8.
- [8] The State's new argument on appeal is unsupported. The State presented no evidence at trial to support its current theory. Indeed, in its Appellee's brief, instead of citing to the trial record the State instead cites, in a footnote, two internet articles. But those articles are beside the point. The State cannot limit its evidence in the trial court to one theory and then argue a wholly new evidentiary theory on appeal. Accordingly, we do not consider the State's argument under [subsection \(b\)\(3\)](#).
- [9] Sallee consistently argued that the grinder and its purported use does not fit within [§ 35-48-4-8.3\(b\)\(1\)](#). We resolved a nearly identical question in [Granger v. State](#), 113 N.E.3d 773 (Ind. Ct. App. 2018). In that case, this court reversed Granger's conviction for possession of paraphernalia based only on his possession of a grinder. We held that the term "paraphernalia" as used in [Indiana Code § 35-48-4-8.3\(b\)\(1\)](#) does not apply to an instrument or device that merely prepares a substance for introduction into the body by another means. [Id.](#) at 775.

[10] Sallee is correct that, as in *Granger*, here the State argued at trial only that the grinder was used to introduce marijuana into a person's body. Sallee is further correct that, in light of our holding in *Granger*, the State's argument here was insufficient as a matter of law. The State produced no evidence at trial that the grinder itself could be used to introduce a controlled substance into Sallee's body.² For purposes of a conviction under § 35-48-4-8.3(b)(1), therefore, the State's argument failed.

Conclusion

[11] The State failed to present evidence at trial that the grinder could be used to introduce marijuana into Sallee's body. Accordingly, we reverse Sallee's conviction for Class C misdemeanor possession of paraphernalia.

[12] Reversed.

Bailey, J., and Altice, J., concur.

² The State cites *Perkins v. State*, 57 N.E.3d 861 (Ind. Ct. App. 2016), to support the argument that a conviction may be based upon an inference if reasonably drawn from the evidence. Appellee's Br. at 9. *Perkins* is readily distinguishable from this case. In *Perkins*, evidence was presented to support the inference that syringe needles were intended to be used to inject a controlled substance into the defendant's body. 57 N.E.3d at 866. A grinder is not comparable to a syringe, and the State presented no such evidence here concerning the grinder.