

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D2024-3216

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PRISCILLA FRANCES HALL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Bay County.  
Timothy Register, Judge.

October 8, 2025

TREADWELL, J.

Priscilla Hall was tried and convicted of introducing marijuana into a state correctional institution. Hall argues on appeal that the State failed to meet its burden at trial to prove the substance Hall introduced was marijuana, because marijuana would have been indistinguishable from hemp based on smell alone. We affirm because Hall did not preserve this argument for appeal.

I.

While employed by the Florida Department of Corrections, Hall was caught smuggling several small packages on her person into the Bay Correctional Facility. Some of the packages contained

a white, crystalline substance that was sent to the Florida Department of Law Enforcement (“FDLE”) for chemical testing, but other packages contained a leafy substance that was not sent to FDLE. Instead, a responding narcotics officer, Sergeant Jeremy Head, identified the leafy substance as marijuana based on its odor and his eight years of narcotics experience.

At trial, Sgt. Head did not claim to be an expert and conceded that there was “some debate” on whether the odor of marijuana was distinguishable from hemp. Yet he testified that, for “high grade marijuana, in [his] experience, there is a distinction” and that these packages contained “higher grade marijuana.” In contrast, the State’s expert witness (who tested the white, crystalline substance for FDLE) testified that marijuana has some “unique smells” but that she would not have been able to distinguish between marijuana and hemp by smell alone.

After the State rested, Hall moved for a judgment of acquittal by arguing the State had not proven the substance was, in fact, marijuana because it was never tested by FDLE. Without such a test, Hall argued that Sgt. Head’s testimony could not carry the State’s burden, because the State’s own expert could not even identify marijuana by smell. In other words, because the State’s expert could not smell the difference between marijuana and hemp, there were serious doubts regarding Sgt. Head’s “inane super human ability” to tell the difference. Hall’s argument concluded, “And so, if we’re weighing the testimony, Your Honor, of the State’s own witnesses, they’ve not met their burden.” Importantly, Hall did not argue that Sgt. Head’s testimony was itself legally insufficient to identify the substance as marijuana, only that his testimony should be discredited in view of the State’s expert testimony.

The State countered with *Austin v. State*, where this Court held that “[a]n officer with narcotics experience can offer testimony as to the identity of marijuana based on smell and appearance, as marijuana is easily identified without chemical analysis.” 276 So. 3d 968, 971 (Fla. 1st DCA 2019). Although the trial court allowed Hall time to research if there had been a change in the law, Hall failed to make any argument on that point. Based on *Austin*, the trial court denied the motion, reasoning that Hall’s comparison

between the State’s witnesses might be a good argument for the jury, but it failed to satisfy the standard for a judgment of acquittal. *See Sapp v. State*, 913 So. 2d 1220, 1223 (Fla. 4th DCA 2005) (“Because conflicts in the evidence and the credibility of the witnesses have to be resolved by the jury, the granting of a motion for judgment of acquittal cannot be based on evidentiary conflict or witness credibility.” (citing *Hitchcock v. State*, 413 So. 2d 741, 745 (Fla. 1982))).

## II.

“This Court reviews the denial of a motion for judgment of acquittal de novo ‘to determine whether competent, substantial evidence supports the elements of the crime.’” *Carter v. State*, 238 So. 3d 362, 364 (Fla. 1st DCA 2017) (quoting *Chambers v. State*, 200 So. 3d 242, 245 (Fla. 1st DCA 2016)). Yet “in order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below.” *Aills v. Boemi*, 29 So. 3d 1105, 1108 (Fla. 2010) (citation modified) (quoting *Harrell v. State*, 894 So. 2d 935, 940 (Fla. 2005)). “While no magic words are required[,]” the argument below “must be sufficiently specific to inform the court of the perceived error.” *Id.* at 1109 (citing *Williams v. State*, 414 So. 2d 509, 511–12 (Fla. 1982)). Absent fundamental error, an appellate court cannot consider grounds not raised below. *Id.* (citing *Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982)).

Hall argues on appeal that the rationale behind *Austin* is no longer valid due to the subsequent legalization of hemp, *see* § 581.217, Fla. Stat. (2023), which Hall contends is indistinguishable from marijuana based on smell alone. Hall cites the decisions of our sister courts in *Baxter v. State*, 389 So. 3d 803 (Fla. 5th DCA 2024), and *Campbell v. State*, 407 So. 3d 558 (Fla. 2d DCA 2025), concluding the legalization of hemp means that the smell of marijuana can no longer support a finding of reasonable suspicion for an investigatory detention. By Hall’s logic, if the smell of marijuana is insufficient evidence for reasonable suspicion of illegal activity, it follows that smell is insufficient to identify marijuana beyond a reasonable doubt at trial.

Based on the record, Hall did not preserve this argument for appeal. Hall’s argument below did not compare hemp with marijuana to contend that testimony based on smell cannot provide competent, substantial evidence to identify marijuana. Instead, Hall’s argument below contrasted the expert’s testimony that she personally could not smell the difference between marijuana and hemp with Sgt. Head’s testimony that he personally could smell the difference, thus raising “questions” regarding Sgt. Head’s “inane super human ability where he can tell the difference” but the expert cannot. In other words, Hall’s argument expressly addressed the *weight* of Sgt. Head’s testimony rather than its legal sufficiency. This is too far removed from the argument on appeal—that smell alone is legally insufficient to identify a substance as marijuana (instead of hemp) beyond a reasonable doubt. Indeed, Hall was prompted by the trial court to discuss recent changes in the law but still failed to raise the argument below. Accordingly, the issue was not preserved for appeal. *See Sanchez v. Miami-Dade Cnty.*, 286 So. 3d 191, 195 (Fla. 2019) (“A litigant seeking to overturn a lower court’s judgment may not rely on one line of argument in the trial court and then pursue a different line of argument in the appellate courts.”).

Finally, the trial court’s denial of Hall’s motion for judgment of acquittal did not constitute fundamental error because marijuana and hemp are both illegal contraband that would support Hall’s conviction. *See* § 944.47(1)(a)4, Fla. Stat. (2023) (making it unlawful to introduce into a state correctional institution “[a]ny controlled substance as defined in s. 893.02(4), . . . [or] hemp as defined in s. 581.217 . . . ); §§ 893.02(4), 893.03 (designating “cannabis” as a “controlled substance”). For cases reviewed by this Court, an unpreserved challenge to the sufficiency of the evidence only constitutes fundamental error “when there is insufficient evidence that a defendant committed *any* crime.” *Monroe v. State*, 191 So. 3d 395, 401 (Fla. 2016) (emphasis in original). Accordingly, because there was evidence that, at the very least, Hall introduced contraband into a state correctional facility, her conviction is not fundamental error. *See Hudson v. State*, 368 So. 3d 20, 23 (Fla. 1st DCA 2019) (“Because there was sufficient evidence that [the defendant] committed a crime, even if not the crime charged, [the defendant]’s conviction is not fundamental error.”).

### III.

Because the issue on appeal is unpreserved and not fundamental error, the judgment is AFFIRMED.

OSTERHAUS, C.J., and LEWIS, J., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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Jessica J. Yeary, Public Defender, and Justin F. Karpf, Assistant Public Defender, Tallahassee, for Appellant.

James Uthmeier, Attorney General, and Kristie Regan, Assistant Attorney General, Tallahassee, for Appellee.