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**In the
Indiana Supreme Court**

No. 49S02-0606-CR-234

JOSHUA KENDALL,

Appellant (Defendant below),

v.

STATE OF INDIANA,

Appellee (Plaintiff below).

Appeal from the Marion Superior Court, No. 49G20-0012-CF-221196
The Honorable Michael Jensen, Magistrate

On Petition To Transfer from the Indiana Court of Appeals, No. 49A02-0312-CR-1032

June 28, 2006

Boehm, Justice.

Joshua Kendall was arrested after a police search of a duplex revealed over 300 grams of cocaine, weapons, cash, and other items associated with the manufacture of narcotics. Kendall was tried jointly with his brother, Thomas Kendall, who was acquitted, and Albert Hardister, whose convictions are affirmed in Hardister v. State, __N.E.2d__ (Ind. 2006), handed down today. A jury found Kendall guilty of four counts: dealing cocaine, Class A felony possession of cocaine, Class C felony possession of cocaine and a firearm, and resisting law enforcement. The court sentenced Kendall to forty years for dealing and imposed eight years for possession of co-

caine and a firearm and one year for resisting law enforcement, both to be served concurrently with the dealing count. The trial court entered no judgment or conviction on the count for Class A felony possession of cocaine, citing double jeopardy concerns. At a second sentencing hearing, the trial court sua sponte vacated the judgment and sentence on the possession of cocaine and a firearm count, again citing double jeopardy concerns.

Kendall appealed his conviction and sentence on several grounds. The State cross-appealed, challenging the trial court's vacating of the judgment and sentence on the possession of cocaine and a firearm count. The Court of Appeals affirmed the trial court in all respects. Kendall v. State, 825 N.E.2d 439, 455-56 (Ind. Ct. App. 2005). We granted transfer in the related case Hardister v. State, 821 N.E.2d 912 (Ind. Ct. App. 2005), reh'g denied, 2005 Ind. App. LEXIS 535 (Ind. Ct. App. Mar. 29, 2005), involving Kendall's codefendant, Albert Hardister. 481 N.E.2d 175 (Ind. 2005).

Two of the five challenges Kendall raises and the issue presented by the State's cross-appeal are addressed in Hardister. For the reasons cited in Hardister, we hold that (1) the trial court did not err in denying Kendall's Batson challenge; (2) police violated neither the federal nor state constitutional prohibition on unreasonable searches and seizures; and (3) Class C felony possession of cocaine and a firearm is a lesser included offense of Class A dealing cocaine. Kendall's conviction for Class C felony possession of cocaine therefore cannot stand, and the trial court's ruling was correct. We summarily affirm the Court of Appeals as to Kendall's remaining three challenges. Ind. Appellate Rule 58(A)(2). Transfer is granted. The judgment of the trial court is affirmed.

Shepard, C.J., and Dickson, Sullivan, and Rucker, JJ. concur.