

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Nikeesha Haggard,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 6, 2022

Court of Appeals Case No.
21A-CR-2352

Appeal from the Marion Superior
Court

The Honorable David J. Certo,
Judge

Trial Court Cause No.
49D19-2003-CM-10439

Tavitas, Judge.

Case Summary

- [1] Nikeesha Haggard appeals her convictions for operating a vehicle while intoxicated, a Class C misdemeanor, and operating a vehicle with an alcohol concentration equivalent (“ACE”) of at least 0.08 but less than 0.15, a Class C misdemeanor. Haggard argues that her convictions violate the prohibition against double jeopardy. The State concedes that the convictions violate the prohibition against double jeopardy, and we agree. Accordingly, we reverse Haggard’s conviction for operating a vehicle with an ACE of at least 0.08 but less than 0.15, a Class C misdemeanor, and remand with instructions to vacate the conviction and sentence imposed.

Issue

- [2] Haggard raises one issue, which we restate as whether Haggard’s convictions for operating a vehicle while intoxicated and operating a vehicle with an ACE of at least 0.08 but less than 0.15 violate the prohibition against double jeopardy.

Facts

- [3] On March 3, 2020, during a traffic stop, Officer Zane Taylor Faw of the Indianapolis Metropolitan Police Department (“IMPD”) concluded that Haggard was operating a vehicle while intoxicated, and a blood draw chemical test further indicated that Haggard’s blood had an ACE of 0.142. The State charged Haggard with: Count I, operating a vehicle while intoxicated endangering a person, a Class A misdemeanor; Count II, operating a vehicle

while intoxicated, a Class C misdemeanor; and Count III, operating a vehicle with an ACE of at least 0.08 but less than 0.15, a Class C misdemeanor.

- [4] The trial court found Haggard guilty of: Count I, operating a vehicle while intoxicated, a Class C misdemeanor, as a lesser-included offense; and Count III, operating a vehicle with an ACE of at least 0.08 but less than 0.15, a Class C misdemeanor. The trial court vacated Count II on double jeopardy grounds. Haggard was sentenced to sixty days in jail, with fifty-eight days suspended on each count and 180 days of probation. The trial court's oral sentencing statement and the written sentencing order are silent with respect to whether the court ordered the sentences to be served concurrently or consecutively. Haggard now appeals.

Analysis

- [5] Haggard claims that her convictions for Count I, operating a vehicle while intoxicated, a Class C misdemeanor, pursuant to Indiana Code Section 9-30-5-2(a), as a lesser-included offense and Count III, operating a vehicle with an ACE of 0.08 but less than 0.15, a Class C misdemeanor, pursuant to Indiana Code Section 9-30-5-1(a), violate the prohibition against double jeopardy. Here, Haggard was convicted on two counts for one act of driving while intoxicated. Article 1, Section 14 of the Indiana Constitution provides, "No person shall be put in jeopardy twice for the same offense." In *Wadle v. State*, 151 N.E.3d 227, 235 (Ind. 2020), our Supreme Court held that courts must conduct a two-part inquiry on claims of double jeopardy when a defendant's single act or transaction implicates multiple criminal statutes:

First, a court must determine, under our included-offense statutes, whether one charged offense encompasses another charged offense. Second, a court must look at the underlying facts—as alleged in the information and as adduced at trial—to determine whether the charged offenses are the “same.” If the facts show two separate and distinct crimes, there’s no violation of substantive double jeopardy, even if one offense is, by definition, “included” in the other. But if the facts show only a single continuous crime, and one statutory offense is included in the other, then the presumption is that the legislation intends for alternative (rather than cumulative) sanctions

Id. We review double jeopardy claims de novo. *Morales v. State*, 165 N.E.3d 1002, 1009 (Ind. Ct. App. 2021).

[6] The State concedes that Haggard’s convictions for operating a vehicle while intoxicated, a Class C misdemeanor, and operating a vehicle with an ACE of 0.08 but less than 0.15, a Class C misdemeanor, violate double jeopardy principles. *See, e.g., Wadle*, 151 N.E.3d at 253 (holding that convictions for both operating a vehicle while intoxicated endangering a person and operating a vehicle with a BAC of 0.08 or more violated double jeopardy principles).

[7] When a double jeopardy violation is found it “cannot be remedied by the ‘practical effect’ of concurrent sentences or by merger after conviction has been entered.” *Hines v. State*, 30 N.E.3d 1216, 1221 (Ind. 2015). We agree that one of Haggard’s convictions must be vacated. *See Morales*, 165 N.E.3d at 1010. Accordingly, we reverse Haggard’s Count III conviction for operating a vehicle with an ACE of at least 0.08 but less than 0.15, a Class C misdemeanor, and

remand with instructions to vacate the conviction and sentence imposed on Count III.

Conclusion

- [8] Haggards' conviction on Count III violates the prohibition against double jeopardy. We reverse the conviction and sentence in Count III, and remand to the trial court with instructions to vacate Count III, operating a vehicle with an ACE of at least 0.08 but less than 0.15, a Class C misdemeanor.
- [9] Reversed and remanded.

Riley, J., and May, J., concur.