MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Amanda K. Huff,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 26, 2022

Court of Appeals Case No. 22A-CR-583

Appeal from the Spencer Circuit Court

The Honorable Jonathan A. Dartt, Judge

Trial Court Case No. 74C01-1911-F4-331

Friedlander, Senior Judge.

[1] After her trial by jury, Amanda K. Huff appeals her conviction of and sentence for one count of Level 4 felony leaving the scene of an accident resulting in death or catastrophic injury[1] and one count of Level 4 felony causing death when operating a vehicle with a schedule I or II controlled substance or its metabolite in the blood.[2] Huff was acquitted of the remaining charges filed against her and was sentenced to an aggregate sentence of fifteen years in the Indiana Department of Correction and three years of probation. Huff appeals raising the following issues; namely:

> 1. Was there independent evidence of the charged crimes prior to the admission of Huff's statement acknowledging that she drove?
>
> 2. Did the court abuse its discretion by admitting certain exhibits and the results of Huff's blood draw?
>
> 3. Did the court abuse its discretion in sentencing?
>
> 4. Was there an abuse of discretion in the imposition of consecutive sentences?

We affirm.

[2] The facts supporting the jury's verdict follow. On November 14, 2019, a construction crew was tapping into a water line for a new Dollar General Store that was being built in the Town of Dale near the intersection of Washington

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[1] Ind. Code § 9-26-1-1.1(b)(3) (2019).

[2] Ind. Code § 9-30-5-5(a)(2) (2019).

and Cherry Streets. That morning, Dean Moore, the Dale Utility Superintendent, was present at the construction site. Brad Kippenbrock, who led the crew of Quality Craft Construction, also was there with his crew. The men were standing along Washington Street near its intersection with Cherry Street where they were digging an exploratory pit. The crew was having difficulty locating various utility lines.

[3] Eighty-two-year-old Eugene Hufnagel, who lived nearby, rode up on his red and black scooter or motorized wheelchair and began talking with Moore and the crew about the project. Eugene, who was a longtime resident of the area, helped the men by sharing his recollection of where things were located. That day all of the men, including Eugene, were standing or seated away from the edge of the road. Kippenbrock testified that he "felt safe where I was at . . . . we were far enough off the road that I didn't feel we needed signs or anything," and "that Eugene was far enough off the road when [he] saw him." Tr. Vol. 3, p. 183.

[4] At some point during the conversation, Eugene pointed to something in the opposite direction from the road. The men's attention was directed toward the location Eugene had pointed out, and they walked there. While they were looking, they heard an "alarming[ly]" loud crash. *Id.* at 107. When Moore turned around, he saw Eugene laying on the ground on Cherry Street about fifteen to twenty feet from where he had been seated just moments prior. Moore ran over to Eugene and observed that he was not breathing and not responding to his attempts to communicate with him. Moore also observed a

"blueish-green Chevy" driving away, turning into the nearby Stone's Restaurant's parking lot, executing a slow U-turn, and then pulling out of the parking lot and driving away. *Id.* at 108. All of this happened as Moore and others assisted Eugene and Kippenbrock called 911.

[5] Kippenbrock's account of what transpired was much the same as Moore's testimony. Kippenbrock, who was seated in an excavator that he was using to dig the pit, was looking into the pit when Eugene was struck. He looked up when he heard the "deafening[ly]" loud sound of the crash over the noise of his excavator, and saw a green Chevy Trailblazer driving away with its front passenger wheel over the fog lines next to where Eugene had been sitting and where the other men had been standing. *Id.* at 183-85, 189. He looked to see what the vehicle had struck and saw Eugene laying on the ground. Kippenbrock did not recall any other vehicles on the road at that time. He called 911 and while doing so saw the Trailblazer pull into the Stone's Restaurant's parking lot. He shouted for one of the men to go to the Trailblazer, but the Trailblazer drove off as his crew was tending to Eugene's injuries.

[6] Another account of the incident came from Matthew Conner. Conner, a sales representative with Core and Main, a company that sells to municipalities and contractors, went to the site to speak with Moore that day. He observed approximately six to eight people there at the site including Eugene. At some point, he observed the men move to where Eugene had pointed, leaving Eugene seated on his scooter. As Conner watched the men, he heard a loud noise, and

then felt the wheels of Eugene's scooter strike his leg, which later "swelled up fairly large[sic]," and the scooter "actually ricocheted off [Conner's] leg." *Id.* at 154-55. As he turned to identify the source of the loud sound, out of the corner of his eye, he saw "a blur go by" him, meaning Eugene, who had been ejected from his scooter. *Id.* at 155. Conner also saw a green Trailblazer driving away from the scene. Though he did not see the collision, Conner believed that the noise he heard was the "vehicle hitting Eugene." *Id.* at 157. The Trailblazer slowed and turned off the road into the nearby parking lot, so the men turned their attention back to Eugene. When they turned around, the vehicle was gone.

[7] Eugene's body had come to rest about seven feet from the fog line on the side of the road where the men were digging. Kippenbrock observed Eugene's injuries which he described as "a big knot on his head, his eyes were bulging out of his head," and "he had a big laceration on his head." *Id.* at 189. An autopsy was performed, indicating that he likely died in less than a minute after the collision due to serious chest and abdominal injuries, including a severed aorta. Eugene's cause of death was determined to be chest and abdominal injuries resulting from a motor vehicle crash.

[8] After hearing the dispatch report that Eugene had been hit by a blue/green Trailblazer, local law enforcement officers remembered that Huff and her husband owned a Trailblazer similar to the one eyewitnesses were describing. An officer drove past Huff's house but did not see the vehicle. Huff and her husband were later found in her blue/green Chevy Trailblazer at a gas station

in Rockport, Indiana. Officers noticed some damage to the front passenger side of the vehicle. Huff was taken to Deaconess Gateway Hospital for a blood draw. Sheriff Kelli Reinke arrived at the hospital around 5:00 p.m. and met Deputy Tyler Foss who was holding Huff until a search warrant for her blood could be obtained.

[9] The search warrant was issued and Deputy Foss and Sheriff Reinke took Huff to what Reinke believed to be a lab room for the blood draw. Teknejah Phillips, a phlebotomist at Deaconess Gateway Hospital, performed Huff's blood draw while Deputy Foss and Sheriff Reinke were in the room, though at the time of trial, Phillips did not remember Sheriff Reinke being present. Sheriff Reinke then took the blood to the police department and mailed it for testing.

[10] Huff's blood samples were tested at two different places. The blood was tested at the Indiana State Department of Toxicology where it was received without issue and it was found to have 2.5 nanograms per milliliters of THC and 23 nanograms per milliliter of THC metabolite, THC carboxy. Huff's blood sample was also sent to NMS Labs for methamphetamine testing and was received without issue. NMS Labs found that Huff's blood had 480 nanograms of methamphetamine per milliliter plus or minus 130 nanograms.

[11] After the completion of the blood draw, Huff waived her *Miranda* rights and Sheriff Reinke interviewed her at the hospital. During the interview, Huff told Sheriff Reinke that on the day in question, she drove her blue/green Trailblazer at around 2:30 p.m. or "a quarter after" to Rockport to pick up her husband.

State's Exhibit 60. She indicated that she thought she had driven over something while passing the construction site because she heard a "thunk." *Id.* She believed that she had struck a piece of debris from the work site, though she admitted that after looking through her rearview mirror, she saw workers gathered in a circle. She claimed that because she did not see them wave their arms in an attempt to flag her down, she decided to drive away. Huff claimed that she never saw Eugene and that she did not use any illegal substances that day. She did admit that she had used marijuana three days prior.

[12] Huff's Trailblazer was taken to a secure garage and searched. The Trailblazer had a black material transferred onto the right side of the front bumper on the passenger's side of the car, there was damage to the undercarriage of the car on the front passenger's side, and recent scuff marks on the front passenger's tire. The vehicle had additional damage just underneath the rear door of the passenger's side of the car. The front bumper of Huff's Trailblazer was collected as were pieces of Eugene's scooter for additional testing. Test results revealed that the black transfer material found on the bumper matched the chemical makeup of the armrest on Eugene's scooter. A small fragment of black plastic containing embedded fiberglass was also found in debris that fell from the Trailblazer's bumper. This black plastic debris containing fiberglass was found to be consistent with the plastic seat of Eugene's scooter, which was black plastic embedded with fiberglass.

[13] After amendments, the State's charges against Huff were as follows: 1) one count of Level 4 felony leaving the scene of an accident resulting in death or

catastrophic injury; 2) one count of Level 3 felony leaving the scene of an accident; 3) one count of Level 4 felony causing death when operating a vehicle with a schedule I or II controlled substance in the blood; 4) one count of Class A misdemeanor operating a vehicle while intoxicated endangering a person, and 5) one count of Level 4 felony causing death when operating a vehicle while intoxicated. The State further sought to elevate the charge of operating while intoxicated with endangerment to a Level 6 felony based on Huff's prior convictions for operating while intoxicated.

[14] At the conclusion of Huff's jury trial, she was found guilty of one count of Level 4 felony leaving the scene of an accident resulting in death or catastrophic injury and one count of Level 4 felony causing death with operating a vehicle with a schedule I or II controlled substance or its metabolite in the blood. The jury acquitted her of the remaining charges.

[15] A sentencing hearing was held, during which the court sentenced Huff to twelve years for leaving the scene of an accident and a consecutive sentence of six years with three years executed and three years suspended to probation for causing death when operating a vehicle with a schedule I or II controlled substance or its metabolite in the blood, for an aggregate sentence of fifteen years in the Department of Correction and three years of probation. Huff's motion to correct error was denied and this appeal ensued.

1. Independent Evidence of the Charged Crimes[3]

[16] At trial, there was no eyewitness testimony from those present at the scene of the collision identifying Huff as the driver of the blue/green Trailblazer that struck and killed Eugene. Huff frames her argument on appeal in terms of insufficiency of the evidence. It appears from the substance of Huff's argument, however, that she is challenging the admission of her "nonjudicial confession of guilt" absent "independent proof of the corpus delicti." Appellant's Br. 21.

[17] Trial courts are afforded wide discretion in ruling on the admissibility of evidence. *Shinnock v. State*, 76 N.E.3d 841, 842 (Ind. 2017). Evidentiary decisions are reviewed on appeal for abuse of discretion and are reversed only when the decision is clearly against the logic and effect of the facts and circumstances. *Id.* at 842-43.

[18] In *Shinnock*, our supreme court set out the purpose of the corpus delicti rule as follows:

> In Indiana, a person may not be convicted of a crime based solely on a nonjudicial confession of guilt. Rather, independent proof of the corpus delicti is required before the defendant may be convicted upon a nonjudicial confession. Proof of the corpus delicti means "proof that the specific crime charged has actually been committed by someone." Thus, admission of a confession requires some independent evidence of commission of the crime

[3] As an initial matter, to the extent Huff argues that there was no evidence of her intoxication, we observe that she was acquitted of the offenses alleging she was intoxicated. Consequently, we do not address that argument further.

> charged. The independent evidence need not prove that a crime was committed beyond a reasonable doubt, but merely provide an inference that the crime charged was committed. This inference may be created by circumstantial evidence.
>
> The purpose of the corpus delicti rule is to prevent the admission of a confession to a crime which never occurred. The State is not required to prove the corpus delicti by independent evidence prior to the admission of a confession, as long as the totality of independent evidence presented at trial establishes the corpus delicti.

Id. at 843 (internal citations omitted).

[19] As further explained in *Shinnock*, there are two different corpus delicti categories: 1) the requirement for admitting a confession into evidence; and 2) the evidence sufficient to uphold a conviction. *Id.* Here, our focus is directed primarily to the first category, but we choose to address both.

[20] To establish the admissibility of Huff's confession, all the State was required to present was independent evidence allowing for an inference that the charged crime was committed. *See Malinski v. State*, 794 N.E.2d 1071, 1086 (Ind. 2003). Such evidence may be circumstantial. *Id.* Further, there is no requirement that all of the elements of the crime be proven prior to introduction of the confession. *See Jones v. State*, 253 Ind. 235, 249, 252 N.E.2d 572, 580 (1969) ("it is not necessary to make out a prima facie case as to each element of the crime charged nor is it necessary to prove each element of the crime charged beyond a reasonable doubt before a confession is admissible.").

[21] The State satisfied the requirement of the corpus delicti for purposes of admitting Huff's confession in evidence here. Moore, Kippenbrock, and Conner all testified that they observed a blue/green Trailblazer driving away after Eugene had been hit, and that they saw the Trailblazer had slowed and entered a nearby parking lot before driving away. Eugene died from a collision with a moving object that destroyed his scooter and caused serious blunt force trauma, causing his death within a minute's time after the impact. Huff's Trailblazer had damage to the front passenger's side of the bumper, undercarriage, and the front passenger side tire. Black plastic was transferred to the bumper of Huff's car that was consistent with the arm rest of Eugene's scooter. And a black plastic piece of debris with fiberglass in it found on the Trailblazer's bumper was consistent with the plastic seat of Eugene's scooter. It was Kippenbrock, not the driver of the vehicle, who called 911. Indiana Code section 9-26-1-1.1 (2019) requires a driver in an accident to 1) stop at the scene of the accident or as close as possible; 2) provide her name, address, the registration number of the motor vehicle she was driving, exhibit her driver's license to any person involved in the accident; and 3) provide assistance to each injured person and as soon as possible provide notice of the accident to law enforcement authorities or a 911 operator. The trial court did not abuse its discretion by admitting Huff's statement into evidence.

[22] Next, we consider whether there was sufficient corpus delicti for Huff's conviction of causing death while operating a vehicle with a schedule I or II controlled substance or its metabolite in the blood. As discussed above, there

was sufficient independent evidence to support the crime of Level 4 felony leaving the scene of an accident resulting in death or catastrophic injury. Thus, Huff's confession to police was admissible, and in that confession, she also admitted to consumption of marijuana, though she claimed the consumption was three days prior, in addition to her admission that she drove the Trailblazer.

[23] Furthermore, implied consent laws allow officers to offer a blood draw based solely on the occurrence of a fatal accident, if the officer has reason to believe the person operated a vehicle that was involved in a fatal accident. *See* Ind. Code § 9-30-7-3 (2001); *Brown v. State*, 744 N.E.2d 989, 994 (Ind. Ct. App. 2001). Through that routine testing, officers found evidence that Huff had 2.5 nanograms per milliliters of THC and 23 nanograms per milliliter of THC metabolite, THC carboxy in her blood. Methamphetamine testing of Huff's blood provided results that her blood had 480 nanograms of methamphetamine per milliliter plus or minus 130 nanograms. This evidence alone was sufficient to provide the corpus delicti for the crime of causing death while operating a vehicle with a schedule I or II controlled substance or its metabolite in the blood.

[24] Last, to the extent Huff is arguing that there is insufficient evidence to support her convictions, her argument fails. There was sufficient evidence to support her convictions of both crimes. The State presented evidence through eyewitnesses to the crash, Eugene's injuries, the damage and forensic evidence

taken from Huff's Trailblazer, and the toxicology reports from her blood draw. The evidence is sufficient.

2. Abuse of Discretion in Admission of Blood Draw Results[4]

[25] Huff asserts that the trial court abused its discretion by admitting Exhibits 65 and 67 into evidence in addition to her blood draw results. She claims that there are foundational defects which should have precluded admission of that evidence; namely, (1) hearsay, (2) chain of custody; (3) failure to follow protocol and procedure; and (4) incomplete documents.

[26] A trial court enjoys broad discretion when ruling on the admissibility of evidence. *Guilmette v. State*, 14 N.E.3d 38, 40 (Ind. 2014). On appeal, we review the court's rulings for an abuse of that discretion and will reverse only when the admission of evidence is clearly against the logic and effect of the facts and circumstances and the error affects a party's substantial rights. *Id.* We consider the evidence most favorable to the court's decision and any uncontradicted evidence to the contrary. *Burkes v. State*, 842 N.E.2d 426, 429 (Ind. Ct. App. 2006), *trans. denied.* Further, we will sustain a ruling on the admissibility of evidence on any reasonable basis apparent in the record regardless of whether it was relied on by the parties or the trial court. *Turner v. State*, 183 N.E.3d 346, 353 (Ind. Ct. App. 2022), *trans. denied.*

[4] We need not address Huff's argument claiming error in the admission of Exhibit 57 as the exhibit was not admitted at trial. Tr. Vol. IV, p. 193.

[27] State's Exhibit 65 is a chain of custody sample history report for Huff's blood draw, while State's Exhibit 67 is a chain of custody posting history report for Huff's blood draw. Both reports were generated by NMS Labs.

[28] We agree with the State's argument that both reports meet the requirements for the business record exception to the hearsay rule. Evidence Rule 803(6) provides as follows:

> **(6) Records of a Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:
>
> (A) the record was made at or near the time by--or from information transmitted by--someone with knowledge;
>
> (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
>
> (C) making the record was a regular practice of that activity;
>
> (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
>
> (E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

[29] "'To admit business records pursuant to this exception, the proponent of the exhibit may authenticate it by calling a witness who has a functional understanding of the record-keeping process of the business with respect to the specific entry, transaction, or declaration contained in the document.'" *Houston v. State*, 957 N.E.2d 654, 658 (Ind. Ct. App. 2011) (quoting *Rolland v. State*, 851 N.E.2d 1042, 1045 (Ind. Ct. App. 2006)), *trans. denied*. The witness need not

have personally made or filed the record or have firsthand knowledge of the transaction represented by it in order to sponsor the exhibit. *Id.*

[30] State's Exhibit 65 was admitted during the testimony of Jeremy Ellis, a laboratory analyst with NMS, while State's Exhibit 67 was admitted during the testimony of Robert Hessler, a technical team leader with the routine two department of NMS. Each testified to the chain of custody practices within NMS and the protocols for handling the blood samples and confirmed that the exhibits were chain of custody documents created in the regular course of NMS Labs' business. Ellis and Hessler had personal knowledge of the means by which these documents were created and understood the NMS Labs' system for its chain of custody record-keeping system, known as Laboratory Information Management System (LIM). Though they did not have firsthand knowledge of all of the transactions set out in those exhibits, such was not required for their admission. After all, our Supreme Court has long held that the "sponsor of an exhibit need not have personally made it, filed it, or have firsthand knowledge of the transaction represented by it." *Boarman v State*, 509 N.E.2d 177, 181 (Ind. 1987). "The sponsor need only show that the exhibit was part of certain records kept in the routine course of business and placed in the records by one who was authorized to do so, and who had personal knowledge of the transaction represented at the time of entry." *Id.*

[31] Ellis testified about his personal knowledge of the events reflected in Exhibit 65 inasmuch as he testified that he took possession of the sample and prepared it for an amphetamine analysis. When taking possession of the same, he input his

data in LIM. Similarly, Hessler testified that Exhibit 67 recorded his taking possession of the sample when he analyzed the samples. Both testified to the record-keeping process by which the documents were created, and that each input their credentials whenever taking possession of a sample, including Huff's blood samples. And as for trustworthiness, the two documents did not indicate a lack thereof because the information was created contemporaneously with each individual's handling of the samples and inputting of their credentials. We find no error in the court's admission of the exhibits on these grounds.

[32] Next, Huff contends that her blood draw was not done in substantial compliance with the physician-approved protocol. Specifically, Huff argues that the blood draw lacked a proper foundational requirement under Indiana Code section 9-30-6-6 (2019).

[33] Indiana Code section 9-30-6-6 provides in pertinent part that

> a person trained in retrieving contraband or obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician, or a licensed health care professional acting within the professional's scope of practice and under the direction of or under a protocol prepared by a physician, who:
>
> (1) obtains a blood, urine, or other bodily substance sample from a person, regardless of whether the sample is taken for diagnostic purposes or at the request of a law enforcement officer under this section; or
>
> (2) performs a chemical test on blood, urine, or other bodily substance obtained from a person; or

> (3) searches for or retrieves contraband from the body cavity of an individual;
>
> shall deliver the sample or contraband or disclose the results of the test to a law enforcement officer who requests the sample, contraband, or results as a part of a criminal investigation. Samples, contraband, and test results shall be provided to a law enforcement officer even if the person has not consented to or otherwise authorized their release.

"'The foundation for admission of laboratory blood drawing and testing results, by statute, involves technical adherence to a physician's directions or to a protocol prepared by a physician.'" *Martin v. State*, 154 N.E.3d 850, 853 (Ind. Ct. App. 2020) (quoting *Hopkins v. State*, 579 N.E.2d 1297, 1303 (Ind. 1991)), *trans denied*. "'This is not a requirement that may be ignored.'" *Id.*

[34] Here, Phillips, a phlebotomist employed by Deaconess Gateway Hospital, was taught "the protocol of drawing blood" at the hospital where she conducts blood draws "every day." Tr. Vol. 4, pp. 154-55. She also testified about her familiarity with the protocols and procedures used by the hospital for blood draws in general, and for the "specific protocol for drawing blood" for a "State kit." *Id.* at 155. She further testified that the protocol was approved by a physician and that she followed "the physician approved hospital blood draw protocol on November 14th," the date of Huff's blood draw. *Id.* at 196.

[35] Huff suggests that the blood draw was not valid because it was not conducted in compliance with hospital policy and protocol. She directed the court's attention to Phillips' testimony that she drew Huff's blood in the ER, rather than a lab, as required by protocol. On the other hand, Sheriff Reinke testified

that she remembered that the blood draw occurred in "the lab room" inside the hospital rather than the ER. *Id.* at 248. As such, this testimonial conflict was for the trial court to resolve because the trier of fact resolves conflicts in the evidence and decides which witnesses to believe or disbelieve. *Marshall v. State*, 621 N.E.2d 308, 320 (Ind.1993). We will not disturb the trial court's determination as we find no abuse of discretion.

[36] If we had determined that the court erred by disbelieving Phillips' testimony about the location where Huff's blood draw occurred, the error would be harmless. Phillips testified that the hospital has a separate blood-draw policy for the various counties it serves, and those policies allow for blood to be drawn in areas other than the lab. The court's conclusion was that "there was substantial compliance with the protocol. There was a complete lack of evidence that the alleged deviations affected the blood draw in this case to be tested." Tr. Vol. 4, p. 236. We have put it differently, holding "[t]here is no contention on appeal that this mattered in any real-world sense, much less any medical evidence so suggesting." *State v. Bisard*, 973 N.E.2d 1229, 1237 (Ind. Ct. App. 2012), *trans. denied.* We agree with the trial court that the slight deviation from protocol goes to the weight of the evidence, not to its admissibility. *See Turner v. State*, 953 N.E.2d 1039, 1052 (Ind. Ct. App. 1993).

[37] Huff also challenges the admissibility of the exhibits based on Phillips' use of the form provided in the State's kit instead of the form in the hospital's protocol. Phillips testified that she did not use the hospital form. She further testified, however, that protocol required her to complete the form used in the

State's kit. By her own testimony, Phillips established that she followed the hospital's protocol. This deviation raises no inference that the blood draw or the results of any tests thereon would be compromised. *See Bisard*, 973 N.E.2s at 1237. And as for the signatures on the admitted exhibits, to the extent this argument is developed, we find that the any deficiency goes to the weight to be given the evidence, not its admissibility. We find no error in this regard.

[38] As a final matter, Huff suggests that Deputy Foss' absence at trial affected the admissibility of the blood-draw evidence. "To establish a proper chain of custody, the State must give reasonable assurances that the evidence remained in an undisturbed condition." *Troxell v. State*, 778 N.E.2d 811, 814 (Ind. 2002). "However, the State need not establish a perfect chain of custody, and once the State strongly suggests the exact whereabouts of the evidence, any gaps go to the weight of the evidence and not to admissibility." *Id.* Here, the State did just that. The evidence reflects that Deputy Foss was in possession of the blood draw for a few minutes during which Phillips and Sheriff Reinke were present. Phillips testified that she drew the blood and that Deputy Foss was in the room and took possession of the sample. State's Exhibit 58 and Sheriff Reinke's testimony indicate that Deputy Foss then handed the samples to Sheriff Reinke, who was also present for the blood draw. Sheriff Reinke took possession of the blood draw samples before mailing them for testing. Thus, the absence of Deputy Foss' testimony impacts the weight rather than the admissibility of the evidence.

[39] We conclude that the court did not abuse its discretion in admitting State's Exhibits 65 and 67. They were admissible under the business records exception to the hearsay rule, the blood draw complied with Indiana Code section 9-30-6-6(a), and the blood was drawn according to the hospital's physician-approved protocol. The deviations noted by Huff do not call into question the laboratory test results.

3. Abuse of Discretion in Sentencing

[40] At sentencing, the trial court found three aggravating circumstances, but declined to find Huff's six proposed mitigating circumstances. On appeal, Huff asserts that the court abused its discretion. "Sentencing decisions rest within the sound discretion of the trial court." *Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019) (citing *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). "So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion." *Id.* "An abuse of discretion will be found where the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.* "A trial court may abuse its discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law." *Id.*

A. Aggravating Factors

[41] We begin our review with the aggravating factors as found by the trial court. The court found that: (1) Huff had a prior criminal history; (2) Eugene was more than sixty-five years of age; and (3) Huff had violated the conditions of her pretrial placement at community corrections. Huff's main contention is not a denial of the existence of these factors, but instead, that these facts have less significance than that given by the trial court. Put differently, she argues that the court improperly weighed these factors. But our Supreme Court has said, "a trial court can not . . . be said to have abused its discretion in failing to 'properly weigh'" aggravators or mitigators. *Morrell v. State*, 118 N.E.3d 793, 796 (Ind. Ct. App. 2019) (quoting *Anglemyer*, 868 N.E.2d at 491).

[42] As for the court's finding of Huff's prior criminal history, we conclude that evidence reflects that it is significant. Huff describes her behavior as follows: "Although several, over 19-years[sic] she was involved in only five non-violent offenses," further observing that "she was never before convicted of a felony." Appellant's Br. pp. 35-36. One of those misdemeanor convictions, however, involved the use of drugs or alcohol in connection with her operation of a vehicle endangering a person. And another of her prior misdemeanor offenses was for marijuana possession. The weight of a defendant's criminal history, in part, is measured by the prior convictions' similarity to the present offense such that it reflects on a defendant's culpability. *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006). We find no error in the court's identification of this aggravating factor.

[43] The court also found Eugene's age to be an aggravating factor. It is a statutory aggravating factor where a defendant's victim is "less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense." Ind. Code § 35-38-1-7.1 (2019). The record reflects that Eugene was eighty-two years old at the time of his death. This aggravating circumstance was properly found.

[44] The court also found Huff's violation of the conditions of her pre-trial release to be an aggravating factor. Raven Roy, a case manager with Spencer County Community Corrections, testified about multiple instances where Huff's GPS monitoring system showed she was at various locations without having sought permission to do so. Many of the fabrications Huff provided when confronted about her violations suggested that Huff just happened to be with her daughter when her daughter needed to stop somewhere. However, the GPS information showed, for example, that Huff went into the mall to a food court before returning to her daughter's car, attended a cookout at another residence, treated her daughter to a meal at O'Charley's, went through the drive up at McDonald's, and went to an AutoZone, without having received permission to do so. We find no error in the court's determination that Huff's pre-trial violations amounted to an aggravating circumstance.

B. Proffered Mitigating Factors

[45] On appeal, Huff proposes mitigating circumstances which she claims were supported by the record; namely: (1) the crime was the result of circumstances unlikely to recur, (2) Huff is likely to respond affirmatively to probation or

short-term imprisonment, (3) Huff will make restitution to the victim; (4) she should not be punished for requesting a trial; (5) she should not be punished beyond driving penalties for refusing a blood draw; and (6) she was incarcerated without incident while awaiting trial. Appellant's Br. pp. 37-38. Of those mitigating circumstances, only one was presented to and rejected by the trial court—that Huff is likely to respond affirmatively to probation or short-term imprisonment.[5]

[46] The State makes a compelling argument that most, if not all, of the arguments have been waived for our review because they have not been supported with cogent reasoning or citations to the authorities, statutes, and the Appendix or parts of the record on appeal relied on or by failing to advance the proposed mitigator for consideration at sentencing. Ind. Appellate Rule 46(A)(8)(a); *Henley v. State*, 881 N.E.2d 639, 651 (Ind. 2008) (issue waived where defendant failed to advance mitigating circumstance at sentencing).

[47] Nevertheless, we conclude that the proffered mitigating circumstances were not improperly omitted. First, as to whether the circumstances are unlikely to reoccur, we agree with the trial court's observation, "This is a re [sic] reoccurrence. There's already been a prior Operating While Intoxicated, Operating Under the Influence, Operating Under Controlled Substances. . . .

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[5] At trial, Huff also offered her history of substance abuse as a mitigating factor. *See* Tr. Vol. VI, p. 208. That factor is not at issue in this appeal.

This is the reoccurrence. It has reoccurred. So, to state that this will not reoccur is not accurate." Tr. Vol. 6, p. 208.

[48] And as for Huff's argument that she is likely to respond affirmatively to probation or a short term of imprisonment, we also disagree. Huff has convictions for both driving and drug offenses, yet has remained undeterred by her contacts with the law. When given the opportunity to serve her pre-trial incarceration in community corrections, she chose to violate its terms and conditions. The court did not abuse its discretion in not finding this mitigating circumstance.

[49] As for Huff's contention about restitution, the court, sua sponte, ordered Huff to pay restitution to Eugene's family "as agreed upon by the parties," and noted that it "want[ed] to see the restitution paid back to the family first" ahead of court costs and fines. *Id.* at 215. Though not argued in mitigation, the court was aware of the parties' agreement as to restitution. Further, a trial court need not agree with the mitigating weight or value of a defendant's plan to pay restitution. *Creekmore v. State*, 853 N.E.2d 523, 530 (Ind. Ct. App. 2006).

[50] Huff contends on appeal that she should not be punished for requesting a trial and that she should not receive additional punishment beyond driving penalties because the court had to order that she provide blood. Huff has waived these arguments by failing to provide cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a). Huff has failed to provide evidence that the trial court punished her for her decisions. Further, a trial court is presumed to follow the law.

Tharpe v. State, 955 N.E.2d 836, 842 (Ind. Ct. App. 2011), *trans. denied*. Additionally, the trial court's thorough sentencing statement does not reflect any penalty for those decisions. We find no error.

[51] Last, Huff argues that the court abused its discretion by failing to find as a mitigating factor that she behaved well and without incident while incarcerated awaiting trial. Again, Huff has waived this argument for appellate consideration because her one sentence statement lacks citations and argument. Appellant's Br. p. 38; *see Badelle v. State*, 754 N.E.2d 510, 538 (Ind. Ct. App. 2001), *trans. denied.* Further, she failed to raise this argument at her sentencing hearing. Generally, arguments not made before the trial court are waived on appeal. *Shorter v. State*, 144 N.E.3d 829, 841 (Ind. Ct. App. 2020), *trans. denied.* Waiver notwithstanding, Huff was in jail while awaiting trial because she had violated the terms of her pretrial release. Instead of mitigating toward a more lenient sentencing placement, her good behavior while incarcerated supports the court's placement of Huff in the DOC, in that she misbehaved while on pretrial release, but was compliant while incarcerated.

[52] We find that the trial court did not abuse its discretion in sentencing Huff.

4. Consecutive Sentences

[53] Huff's arguments on this issue are two-fold. First, Huff argues that the court abused its discretion by determining that Huff's sentences could be served consecutively under Indiana Code section 35-50-1-2 (2019). Her second argument is that the court's sentencing decision violates double jeopardy

because it is also in violation of the common law continuous crime doctrine. We address these contentions in turn.

A. Indiana Code section 35-50-1-2

[54] Huff contends that the court abused its discretion in imposing consecutive sentences pursuant this statute, arguing that the maximum she should have received for her two Level 4 felonies arising from the fatal vehicular collision should be fifteen years. Because Huff's arguments center around the court's application of the statute in sentencing, our standard of review concerns whether the court abused its discretion. *See McElfresh v. State*, 51 N.E.3d 103, 107 (Ind. 2016).

[55] As stated when addressing the previous issue, "[s]entencing decisions rest within the sound discretion of the trial court." *Hudson*, 135 N.E.3d at 979. "So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion." *Id.* "An abuse of discretion will be found where the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.* Further, as is pertinent here, a court may abuse its discretion if it has misinterpreted or misapplied the law. *State v. Smith*, 179 N.E3d 516, 519 (Ind. Ct. App. 2021), *trans. denied.*

[56] Huff says that pursuant to Indiana Code section 35-50-1-2(d)(3), the maximum sentence for which she may be sentenced for her two Level 4 felony convictions arising from a single episode of conduct is fifteen years. Indiana Code section

35-50-1-2(d)(3) provides that "the total of the consecutive terms of imprisonment to which the defendant is sentenced for felony conviction arising out of an episode of criminal conduct may not exceed the following: if the most serious crime or which the defendant is sentenced is a Level 4 felony, the total of the consecutive terms of imprisonment may not exceed seven (7) years."

[57] "Matters of statutory interpretation are reviewed de novo because they present pure questions of law." *Thompson v. State*, 5 N.E.3d 383, 388 (Ind. Ct. App. 2014) (citing *Nicoson v. State*, 938 N.E.2d 660, 663 (Ind. 2010)). "'The primary purpose of statutory interpretation is to ascertain and give effect to the legislature's intent.'" *Id.* (quoting *State v. Oddi-Smith*, 878 N.E.2d 1245, 1248 (Ind. 2008)). "When interpreting a statute, 'we will not read into the statute that which is not the expressed intent of the legislature' and 'it is just as important to recognize what the statute does not say as to recognize what it does say.'" *Id.* (quoting *N.D.F. v. State*, 775 N.E.2d 1085, 1088 (Ind. 2002)). "Additionally, '[p]enal statutes should be construed strictly against the State and ambiguities should be resolved in favor of the accused.'" *Id.* (quoting *Porter v. State*, 985 N.E.2d 348, 357 (Ind. Ct. App. 2013)).

[58] Indiana Code section 35-50-1-2 limits the length of consecutive sentences where the highest offense is a Level 4 felony to fifteen years unless the defendant is convicted of a crime of violence. *Thompson*, 5 N.E.3d at 388. A crime of violence as defined by Indiana Code section 35-50-1-2(a)(15)(2019), the version applicable at the time Huff committed her crimes, includes "Operating a vehicle while intoxicated causing death or catastrophic injury (IC 9-30-5-5)." Huff was

convicted of that offense. As such, the trial court did not misinterpret or misapply the law when ordering consecutive sentences in excess of fifteen years. *See Thompson*, 5 N.E.3d at 390 (the reference to the entire statute, without specifying subsections, in the statutory citation after the offense defined as a crime of violence defines all of the various types of offenses under that statute as a crime of violence). We find no abuse of discretion here.

B. Wadle, Double Jeopardy, and the Continuous-Crime Doctrine

[59] Huff's next contentions involve constitutional claims. Courts on appeal review constitutional issues and questions of law de novo. *Wadle v. State*, 151 N.E.3d 227, 237 (Ind. 2020)(constitutional issues reviewed de novo); *Miller v. State*, 188 N.E.3d 871, 874 (Ind. 2022) (questions of law reviewed de novo).

[60] The double-jeopardy analysis was changed when our Supreme Court overruled *Richardson v. State*, 717 N.E.2d 32 (Ind. 1999), and announced a new framework for the analysis of substantive double jeopardy claims in a pair of cases; *Wadle*, 151 N.E.3d 227, and *Powell v. State*, 151 N.E.3d 256, 263 (Ind. 2020). Substantive claims of double jeopardy come in two forms: "when a defendant's single act or transaction violates multiple statues with common elements and harms one or more victims" and "when a single criminal act or transaction violates a single statute but harms multiple victims." *Wadle*, 151 N.E.3d at 247.

[61] Huff argues that her sentences violate the common law continuous crime doctrine. As we said in *Hill v. State*, 157 N.E.3d 1225, 1229 (Ind. Ct. App. 2020), "The only common-law rule that survived *Wadle* and *Powell* is the

continuous-crime doctrine, though only as part of the new tests, not as a separately enforceable double-jeopardy standard."[6] "[T]he Court's intent was to do away with all existing rules and tests for substantive double jeopardy—including both the *Richardson* constitutional tests and Justice Sullivan's five protections—and start from scratch with new tests." *Id.* The Supreme Court "then set forth two new tests that start with statutory interpretation but that also incorporate, where appropriate, the common-law continuous-crime doctrine." *Id.* at 1228 (citing *Wadle*, 151 N.E.3d at 263; *Powell*, 151 N.E.3d at 263-65).

[62] Under the new test, the *Powell* decision addressed the variety of substantive double jeopardy that occurs when a single criminal act or transaction violates a single statute but harms multiple victims. *See Wadle*, 151 N.E.3d at 247. Whereas *Wadle* addressed the variety of substantive double jeopardy concerns that occur when a single criminal act or transaction violates multiple statutes with common elements and harms one or more victims. *See id.*

[63] Here, we analyze Huff's claims under *Wadle*. The first step of our analysis then requires us to determine if either statute under which Huff was convicted clearly permits multiple punishment. *See id.* at 248. Neither of the statutes involved here clearly permits multiple punishments. The crime of leaving the scene of an accident resulting in death required the State to prove Huff drove a vehicle that

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[6] In a footnote, the *Hill* Court observed that two panels of this Court had held that *Wadle* and *Powell* left undisturbed the five protections identified by Justice Sullivan in *Richardson*. *See id.* n1.

was involved in an accident, knowingly failed to stop the vehicle at the scene of the accident or as close as possible thereto, provide specified information and help, and that the accident resulted in Eugene's death. *See* Ind. Code § 9-26-1-1.1. Indiana Code section 9-30-5-5 required the State to prove that Huff caused Eugene's death when driving with a controlled substance listed in schedule I or II or its metabolite in her blood. Because we may not draw a conclusion from the statutes, as they do not indicate whether they permit or prohibit Huff to be punished multiple times, we turn to the second step of the *Wadle* analysis. *See Diaz v. State*, 158 N.E.3d 363, 369 (Ind. Ct. App. 2020).

[64] The second step requires us to examine whether either one of Huff's offenses is included in the other, either inherently or as charged, under the included-offense statute, Indiana Code section 35-31.5-2-168 (2012). *Wadle*, 151 N.E.3d at 254. If neither of the offenses is included in the other, there is no double jeopardy violation. *Id.* An included offense is defined by statute as an offense that:

> (1) is established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged;
>
> (2) consists of an attempt to commit the offense charged or an offense otherwise included therein; or
>
> (3) differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property, or public interest, or a lesser kind of culpability, is required to establish its commission.

Ind. Code § 35-31.5-2-168. Though several elements are common between the two offenses, the material elements of Huff's offenses differ.

[65] Neither of Huff's offenses is established by proof of the same material elements or less than the material elements required to establish the other offense. For example, the offense leaving the scene of an accident resulting in death differs from the offense of driving with a controlled substance in the blood causing death in that Huff left the scene without fulfilling the requirements of stopping, providing information, and helping Eugene. *See* Ind. Code § 9-26-1-1.1. But, driving with a controlled substance in the blood causing death required proof that Huff had a schedule I or II controlled substance or its metabolite in her blood when driving. *See* Ind. Code § 9-30-5-5. Huff's convictions are not included offenses under subsection 1 of Indiana Code section 35-31.5-2-168.

[66] Subsection 2 of Indiana Code section 35-31.5-2-168 pertains to attempts to commit the charged offense or an offense otherwise included. Leaving the scene of an accident resulting in death is not an attempt of causing death while operating a vehicle with a controlled substance in the blood or its lesser included offense. The opposite is equally true. And subsection 3 is inapplicable because both of Huff's offenses differ in more respects than just the degree of harm or culpability required. Each offense requires some conduct that the other does not. Leaving the scene of an accident resulting in death requires the driver, in this case Huff, to stop, provide information, and help the victim, Eugene. *See* Ind. Code § 9-26-1-1.1. Causing death while operating a vehicle with a controlled substance in the blood requires the driver to have a controlled

substance or its metabolite in the blood. *See* Ind. Code § 9-30-5-5. Because neither offense is inherently included in the other, Huff's convictions do not subject her to a double jeopardy violation. *Wadle*, 151 N.E.3d at 248. Consequently, there is no need to analyze her claims under the third step of the *Wadle* analysis. That step is where the continuous crime doctrine is applied. *See id.* at 249. We find no error here.

[67] In light of the foregoing, we affirm the judgment of the trial court.

[68] Judgment affirmed.

May, J., and Weissmann, J., concur.