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

Coltyn M. Toosley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 30, 2022

Court of Appeals Case No. 21A-CR-2789

Appeal from the Pulaski Circuit Court

The Honorable Mary C. Welker, Judge

Trial Court Cause No. 66C01-1906-F3-11

Najam, Judge.

Statement of the Case

[1] Coltyn M. Toosley appeals his convictions for neglect of a dependent, as a Level 3 felony, and domestic battery, as a Level 5 felony. Toosley raises the following two issues for our review:

1. Whether the State presented sufficient evidence to show that his victim suffered serious bodily injury, as required for the State's charge of Level 3 felony neglect of a dependent.

2. Whether Toosley's two convictions violate his right to be free from double jeopardy under Article 1, Section 14 of the Indiana Constitution.

[2] We affirm.

Facts and Procedural History

[3] In June 2019, Holly Ammann was working as a case manager for the Indiana Department of Child Services. Ammann had been assigned to assist Toosley with gaining placement and custody of Toosley's nineteen-month-old daughter, I.G.[1] Ammann had worked with Toosley and I.G. since October 2018.

[4] The evening of Sunday, June 2, Ammann called Toosley and confirmed with him that she would stop by Toosley's residence the next morning to check on him and I.G. Toosley confirmed that "that[wa]s fine." Tr. Vol. 2 at 134.

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[1] For unknown reasons, in his brief on appeal Toosley refers to I.G. as I.T.

However, the next morning, Ammann arrived at Toosley's residence and neither he nor I.G. were there. Instead, Toosley's sister was present. She told Ammann that Toosley had taken I.G. over to Toosley's uncle's house, but Toosley's sister only knew a description of the house and not an address.

[5] Ammann proceeded to try to locate Toosley's uncle's house while attempting, unsuccessfully, to call Toosley "several times." *Id.* at 136. Eventually, Ammann located Toosley's uncle's residence. Toosley was not there when she arrived, but Toosley's wife, Maylin, was there, and Maylin called Toosley, who then answered his phone.

[6] Ammann asked Maylin to give her the phone, and Ammann then asked Toosley where he was and why he had missed their meeting. Toosley responded that he was "driving around . . . trying to decide what to do next." *Id.* at 139. Ammann asked him what he meant, and he responded that I.G. "does not look like herself today." *Id.* at 140. Ammann directed Toosley to meet her at his uncle's residence, and Toosley responded that he would be there in fifteen minutes.

[7] Toosley arrived at the residence and took I.G. out of his car "right away." *Id.* I.G. was wearing only a diaper. Ammann immediately "noticed . . . visible bruises around her entire face. Her eye was swollen. Her lips were swollen, and . . . they looked like they had been bleeding." *Id.* Ammann then removed I.G.'s car seat from Toosley's vehicle and placed it in her own and then put I.G. in her car to take her to the nearest emergency room. I.G. "grabbed a hold" of

Ammann and "clung to" her with her arms "around [Ammann's] neck[] and her legs around [Ammann's] waist." *Id.* at 141. I.G. appeared "terrified" and was "crying." *Id.* While Ammann moved I.G. to Ammann's vehicle, Toosley said that "he had been running with [I.G.] that morning" and he "tripped and fell[] with her in his arms." *Id.* Toosley added that, after that purported incident, he took I.G. to his home and "g[ave] her a bath," but he had left again before Ammann had showed up for the scheduled meeting. *Id.*

[8] In the emergency room, Dr. George Librandi examined I.G. He immediately observed that I.G. had suffered "more extensive" injuries than would have been consistent with Toosley's report of tripping and falling. In particular, Dr. Librandi observed that I.G.'s injuries covered her "entire face and the sides of her face. . . . [I]t was . . . a complete, mask-like distribution of injury, as opposed to a small area" that one would expect with falling down. *Id.* at 168. I.G.'s injuries included bruising across "the entirety of her forehead," "the bridge of her nose," and "[b]ilaterally around the eyes." *Id.* at 168-69. She also had bruised cheeks and a "moderate amount" of swelling around her left eye. *Id.* at 169. And Dr. Librandi further observed evidence of older bruising on I.G.'s back.

[9] Dr. Librandi attributed I.G.'s injuries to either "multiple traumas" or "a direct trauma of something that . . . held pressure on her face." *Id.* at 172. He opined that I.G. suffered "[s]ignificant" pain at the time she sustained her injuries based on "the distribution of the injuries." *Id.* at 173.

[10] Local law enforcement and DCS officers referred I.G.'s records to Dr. Tara Holloran, a specialist in child abuse pediatrics at Riley Hospital for Children. Dr. Holloran opined that "to get this many bruises in this many locations would take multiple impacts." Tr. Vol. 3 at 47. Dr. Holloran especially noted the bruises to I.G.'s cheeks because "cheeks don't bruise very easily, so it takes a significant amount of force to bruise" them. *Id.* She further noted that "linear aspects" of the bruising were consistent with "something that strikes the skin and comes right back off quickly like a slap," and were inconsistent with falling down. *Id.* at 48, 50-51.

[11] On June 5, I.G. exhibited an abnormal gait, and Dr. Holloran examined her. Dr. Holloran was concerned that I.G. may have had a concussion "based on her changed behavior and her changed gait[,]" which were "symptoms of a neurologic injury." *Id.* at 55. Dr. Holloran believed that it was "really important to get medical care" for a child with "head trauma" and "evaluate them quickly," because children with those injuries can "have bleeding inside their head" that is not obvious. *Id.* at 58-59. Dr. Holloran further opined that I.G.'s injuries "would have been painful," and that the bruising of her cheeks would have been "very painful." *Id.* at 59.

[12] The State charged Toosley with neglect of a dependent, as a Level 3 felony, because the alleged neglect resulted in extreme pain to I.G. The State also charged Toosley with domestic battery, as a Level 5 felony, because it resulted in bodily injury to a family member who was less than fourteen years old and was committed by a person at least eighteen years old. At his ensuing jury trial,

the State's opening argument made clear that the domestic battery charged was based on Toosley hitting I.G. and the neglect of a dependent charge was based on his failure to seek medical treatment for her. Tr. Vol. 2 at 125-26. Ammann, Dr. Librandi, and Dr. Holloran all testified against Toosley. And, in its closing argument, the State reiterated that the evidence showed not only that I.G. had suffered her injuries while in Toosley's exclusive care but also that he then "continue[d] to drive around and let this get worse," "did not even seek medical treatment for that baby," and "fail[ed] to give [I.G.] the medical treatment that she needed." Tr. Vol. 3 at 110-11. The jury found Toosley guilty as charged. The court entered its judgment of conviction and sentenced Toosley accordingly. This appeal ensued.

Discussion and Decision

Issue One: Sufficiency of the Evidence

[13] On appeal, Toosley first asserts that the State failed to prove that I.G. suffered serious bodily injury as required for Level 3 felony neglect of a dependent. As our Supreme Court has made clear:

> For sufficiency of the evidence challenges, we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact. On sufficiency challenges, we will neither reweigh evidence nor judge witness credibility. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.

Hall v. State, 177 N.E.3d 1183, 1191 (Ind. 2021).

[14] As relevant here, to show Level 3 felony neglect of a dependent, the State needed to prove beyond a reasonable doubt that I.G. suffered "serious bodily injury." Ind. Code § 35-46-1-4(b)(2) (2018). "Serious bodily injury" includes "extreme pain." I.C. § 35-31.5-2-292(3). According to Toosley, the State "did not provide any evidence that there was any severe pain." Appellant's Br. at 8.

[15] Toosley is incorrect. Dr. Librandi attributed I.G.'s injuries to either "multiple traumas" or "a direct trauma of something that . . . held pressure on her face." Tr. Vol. 2 at 172. Either way, he testified that I.G. likely suffered "[s]ignificant" pain at the time she sustained her injuries based on "the distribution of the injuries." *Id.* at 173. Similarly, Dr. Holloran testified that a "significant amount of force" was required to bruise I.G.'s cheeks. Tr. Vol. 3 at 47. She further testified that I.G.'s injuries "would have been painful," and that the bruising of her cheeks would have been "very painful." *Id.* at 59.

[16] Toosley's argument on appeal simply disregards that evidence, but we will not do so. A reasonable fact-finder could have concluded that I.G. suffered extreme pain as a result of Toosley's actions. We therefore affirm his Level 3 felony neglect of a dependent conviction.

Issue Two: Double Jeopardy

[17] Toosley next asserts that his two convictions violate the Indiana Constitution's prohibition against double jeopardy.[2] As relevant here, Toosley asserts that his Level 5 felony domestic battery conviction was a factually included lesser offense to his Level 3 felony neglect of a dependent conviction.[3] Our Supreme Court has recently made clear that Article 1, Section 14 of the Indiana Constitution prohibits multiple convictions for the same act, and, where there is an allegation that one act is being punished under multiple statutes, we are to consider whether one of those offenses "is an included offense of the other (either inherently or as charged)." *Wadle v. State*, 151 N.E.3d 227, 248 (Ind. 2020). If one offense is not included within the other, "there is no violation of double jeopardy." *Id.*

[18] Toosley does not suggest that Level 5 domestic battery is inherently included in Level 3 neglect of a dependent. Rather, he asserts only that the State's evidence for both charges was premised on "the same child . . . , the same injury . . . , and . . . the [same] date and time period . . . ." Appellant's Br. at 10. In effect, Toosley contends that his domestic battery conviction was a factually lesser included offense of his neglect of a dependent conviction. The State's charge of

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[2] Toosley makes a passing reference to federal constitutional law in this part of his brief, but the substance of his argument is based on Indiana law. We limit our review of his argument accordingly. *See* Ind. Appellate Rule 46(A)(8)(a).

[3] Toosley also relies on *Richardson v. State*, 717 N.E.2d 32 (Ind. 1999). However, the Indiana Supreme Court overruled *Richardson* in *Wadle v. State*, 151 N.E.3d 227, 235 (Ind. 2020).

Level 5 domestic battery was premised on the evidence that Toosley had battered a family member and the relative ages of Toosley and I.G. *See* I.C. § 35-42-2-1.3. In contrast, the State's charge of Level 3 neglect of a dependent—as the State made clear in its opening and closing arguments at trial—was premised on the State's evidence of Toosley's failure to immediately seek medical attention for I.G. upon her injuries becoming apparent. *See* I.C. § 35-46-1-4. The Level 5 charge was therefore not factually included within the Level 3 charge. Thus, there is no double jeopardy violation, and we affirm his convictions.

[19] Affirmed.

Bradford, C.J., and Bailey, J., concur.