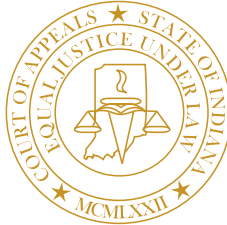


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Rodney Spells,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



November 18, 2024

Court of Appeals Case No.
24A-CR-412

Appeal from the Marion Superior Court
The Honorable Charles F. Miller, Judge

Trial Court Cause No.
49D29-2307-F2-19925

Memorandum Decision by Judge Kenworthy
Judges Felix and DeBoer concur.

Kenworthy, Judge.

Case Summary

- [1] While fleeing from police, Rodney Spells crashed his truck into two other vehicles, killing one driver and injuring the other. Spells then exited his truck and ran from police. After Spells was caught and arrested, police recovered narcotics and other illicit substances from Spells' person and truck. The State charged Spells with twelve felonies and two misdemeanors.
- [2] Spells proceeded to jury trial, after which he was convicted and sentenced for five felonies and a misdemeanor. Spells now appeals, raising three issues for our review:

1. Did the State present sufficient evidence to support Spells' conviction for Level 3 felony resisting law enforcement?¹

2. Do Spells' convictions for Level 3 felony leaving the scene of an accident and Level 4 felony operating a vehicle while intoxicated causing death violate the state prohibition against double jeopardy?²

3. Did the trial court fundamentally err in its management of jury deliberations?

¹ Ind. Code § 35-44.1-3-1(a)(1), (c)(3) (2021).

² I.C. § 9-26-1-1.1(a)(1), (b)(4) (2019) (Level 3 felony leaving the scene of an accident); I.C. § 9-30-5-5(a)(3) (2019) (Level 4 felony operating a vehicle while intoxicated causing death).

[3] We affirm in part, reverse in part, and remand.

Facts and Procedural History

[4] Around 9:30 p.m. on July 7, 2023, Indianapolis Metropolitan Police Department (“IMPD”) Officers Kyle Maldonado, Cody Hopkins, and Jacob Liebhauser responded to a FLOCK alert regarding a silver Dodge Ram 1500 heading westbound on 34th Street.³ As the officers approached the intersection of 34th Street and Keystone Avenue—each in their own vehicle—Officer Hopkins spotted the Ram. Officer Hopkins began to follow the Ram on Keystone Avenue. Near the intersection of 38th Street and Keystone Avenue, the driver of the Ram—later identified as Spells—ran through a red light, making an abrupt, illegal U-turn. Officer Hopkins turned and followed Spells, who began accelerating to “an extremely high rate of speed.” *Tr. Vol. 2* at 172. Officer Hopkins activated his lights and siren, notified dispatch, and reached speeds of about eighty miles per hour chasing Spells.

[5] About sixteen seconds after the pursuit began, Spells crossed into the lane of oncoming traffic and struck Warren Morphis’ sedan head-on. Morphis died on scene. Spells’ vehicle then spun and struck another vehicle, injuring the

³ FLOCK is a database that utilizes a system of cameras placed throughout Indianapolis to analyze the license plates of vehicles that pass by. Once a vehicle’s license plate number is entered into the database, FLOCK sends alerts to law enforcement, notifying them of the location of targeted vehicles. Officer Maldonado entered the Ram’s license plate number into the FLOCK database after he previously attempted to stop it for a traffic violation in June 2023. The driver pulled to the side of the road, but when Officer Maldonado exited his vehicle, the truck took off. IMPD policy prevented Officer Maldonado from pursuing the truck.

vehicle's driver. After his truck had come to a stop, Spells opened his driver's side door, exited his truck, and "took off running." *Id.* at 176. Officers Hopkins and Liebhauser chased Spells on foot through a nearby apartment complex. Spells eventually tripped and fell and was arrested.

[6] While searching Spells, police recovered \$5,920 in cash and a plastic bag containing a "large soft ball" of "possible narcotics." *Id.* at 220. Police then returned Spells to the crash scene and conducted a second, "more thorough search." *Id.* at 222. During this search, police found another bag of suspected narcotics in Sells' pocket. Later testing revealed the recovered substances included 29.84 grams of fentanyl, 0.50 grams of oxycodone, and 0.18 grams of methamphetamine. Spells was transported to the hospital and a subsequent blood test revealed he had opiates and THC in his system at the time of the crash.

[7] After obtaining a warrant, police also searched Spells' truck and found three cell phones, a digital scale, commercial cannabis packaging, plastic bags, a shopping bag containing hydrocodone, a "non-pharmaceutical stamped press pill," erectile dysfunction medication, and a bluish white powder law enforcement believed was a street drug known as "sextasy." *Tr. Vol. 3* at 3–4.

[8] In July 2023, the State charged Spells with the following offenses relevant to this appeal: Level 3 felony resisting law enforcement; Level 3 felony leaving the

scene of an accident; and Level 4 felony operating a vehicle while intoxicated causing death.⁴ The State also alleged Spells was a habitual offender.

[9] Spells' trial began on October 24, 2023. The State's presentation of evidence lasted into the afternoon of October 25. After the State rested, Spells testified in his defense, claiming he was merely a passenger in the Ram, which was being driven by his acquaintance "Cheese" at the time of the wreck. The trial court submitted the case to the jury at 8:39 p.m. on October 25—the second day of Spells' trial. A few minutes after 2:00 a.m. on October 26, the trial court told the parties it had received a note from the jury saying it was "hung on a few counts." *Tr. Vol. 4* at 157. The jury returned to the courtroom at 2:19 a.m. The trial court found out which counts the jury was hung on and asked whether additional arguments would be helpful. Each side then presented about five minutes of additional argument related to the timeline of events underlying Spells' charges. The jury left the courtroom at 2:32 a.m. and resumed deliberations. At 4:13 a.m., the jury delivered its verdict, finding Spells guilty on all eleven counts submitted to the jury.

⁴ The State also charged Spells with: Level 2 felony dealing in methamphetamine; Level 3 felony possession of methamphetamine; Level 4 felony leaving the scene of an accident resulting in death or catastrophic injury; Level 5 felony reckless homicide; Level 6 felony possession of a narcotic drug; and Class A misdemeanor resisting law enforcement. The State also twice amended Spells' information, adding charges for Class A misdemeanor leaving the scene of an accident; Level 2 felony dealing in a narcotic drug; Level 3 felony possession of a narcotic drug; Level 6 felony possession of methamphetamine; and Level 6 felony possession of a narcotic drug. The morning of Spells' trial, the trial court dismissed Spells' charges for Level 2 felony dealing in methamphetamine, Level 3 felony possession of methamphetamine, and Level 3 felony possession of a narcotic drug upon the State's motion. So, at trial, Spells faced charges for nine felony offenses, two misdemeanor offenses, and an allegation he was a habitual offender.

[10] Before beginning the habitual-offender phase of Spells’ trial, defense counsel asked about delaying this portion until a later date. The State shared this phase would take around fifteen minutes and it preferred to continue with the proceeding despite the early-morning hour. The jury then heard about thirty minutes of evidence and argument on whether Spells was a habitual offender. At 5:27 a.m.—after about fifteen minutes of deliberation—the jury found Spells was not a habitual offender.

[11] After vacating several of Spells’ convictions due to double jeopardy concerns, the trial court sentenced Spells to consecutive sentences of twenty-four years for Level 2 felony dealing in a narcotic drug; ten years for Level 3 felony resisting law enforcement; ten years for Level 4 felony operating while intoxicated causing death; and six years for Level 5 felony reckless homicide, resulting in an aggregate fifty-year sentence.⁵

1. The State failed to present sufficient evidence to support Spells’ conviction for Level 3 felony resisting law enforcement.

[12] Spells first contends the State failed to present sufficient evidence to support his conviction for Level 3 felony resisting law enforcement. The State concedes it failed to do so.

⁵ The trial court also sentenced Spells to ten years for Level 4 felony leaving the scene of an accident resulting in death and one year for Class A misdemeanor resisting law enforcement. The trial court ordered Spells to serve these two sentences concurrently with the sentences on his other charges.

[13] A sufficiency-of-the-evidence claim warrants a “deferential standard of review in which we ‘neither reweigh the evidence nor judge witness credibility[.]’” *Hancz-Barron v. State*, 235 N.E.3d 1237, 1244 (Ind. 2024) (quoting *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). Instead, we respect the fact-finder’s exclusive province to weigh conflicting evidence, *Phipps v. State*, 90 N.E.3d 1190, 1195 (Ind. 2018), and consider only the probative evidence and reasonable inferences that support the judgment of the trier of fact, *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Teising v. State*, 226 N.E.3d 780, 783 (Ind. 2024).

[14] To prove Spells guilty of resisting law enforcement as charged, the State was required to present evidence from which a reasonable fact-finder could find beyond a reasonable doubt Spells: (1) knowingly or intentionally; (2) forcibly resisted Officer Hopkins while he was lawfully engaged in his duties as a law enforcement officer; and (3) operated a vehicle in a manner that caused the death of Morphis while committing the offense.⁶ See I.C. § 35-44.1-3-1(a)(1), (c)(3). Because the word “forcibly” appears in the relevant statutory language, it is an essential element of the crime of resisting law enforcement under

⁶ The charging information alleged:

On or about July 7, 2023, RODNEY SPELLS did knowingly or intentionally forcibly resist Officer Cody Hopkins, a law enforcement officer, while said officer was lawfully engaged in his duties as a law enforcement officer and in committing said act RODNEY SPELLS operated a vehicle in such a manner that it caused the death of Warren Morphis[.]

Appellant’s App. Vol. 2 at 31.

subsection (a)(1). *See Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993) (explaining “forcibly” modifies the entire string of “resists, obstructs, or interferes”). “[A] person ‘forcibly’ resists, obstructs, or interferes with a police officer when he or she uses strong, powerful, violent means to impede an officer in the lawful execution of his or her duties.” *Walker v. State*, 998 N.E.2d 724, 727 (Ind. 2013). The forcible resistance must be directed toward the law enforcement officer. *See Spangler*, 607 N.E.2d at 724.

[15] Here, a reasonable fact-finder could not have found Spells “forcibly” resisted Officer Hopkins by fleeing from him in his truck. The State did not present evidence Spells used “strong, powerful, violent means” to impede Officer Hopkins in the lawful execution of his duties. *See id.* (concluding evidence that the defendant refused to accept service and walked away from law enforcement was insufficient to show forcible resistance); *cf. Cole v. State*, 69 N.E.3d 552, 558 (Ind. Ct. App. 2017) (concluding sufficient evidence supported the defendant’s charge of forcibly resisting law enforcement where the defendant led police on a high-speed chase and used his vehicle to trap a police officer between his car and a fence), *trans. denied*. We therefore agree with Spells and the State that insufficient evidence supports this conviction. Accordingly, we reverse Spells’ conviction for Level 3 felony resisting law enforcement.⁷

⁷ Essentially, the State charged Spells under the wrong section of the resisting law enforcement statute. Indiana Code Section 35-44.1-3-1(a)(3) criminalizes “flee[ing] from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer’s siren or emergency

2. Spells’ convictions for Level 3 felony leaving the scene of an accident and Level 4 felony operating a vehicle while intoxicated causing death violate Indiana’s prohibition against substantive double jeopardy.

[16] Next, Spells argues his convictions for Level 3 felony leaving the scene of an accident and Level 4 felony operating a vehicle while intoxicated causing death subjected him to double jeopardy. The State agrees. This raises a question of law, which we review *de novo*. *Wadle v. State*, 151 N.E.3d 227, 237 (Ind. 2020).

[17] “[W]hen a defendant’s single act or transaction implicates *multiple* criminal statutes[,]” we apply the *Wadle* test. *Id.* at 235. Before delving into *Wadle*’s multi-part framework, we first set forth the implicated criminal statutes. An “operator of a motor vehicle” commits Level 3 felony leaving the scene of an accident when the operator knowingly or intentionally leaves the scene of an accident without providing the necessary information and assistance “during or after the commission of the offense of . . . operating while intoxicated causing death or catastrophic injury (IC 9-30-5-5).” I.C. § 9-26-1-1.1(a)(1), (b)(4). And a person commits Level 4 felony operating a vehicle while intoxicated causing death when the person “causes the death . . . of another person when operating a vehicle . . . while intoxicated.” I.C. § 9-30-5-5(a)(3).

lights, identified himself or herself and ordered the person to stop[.]” As Spells seems to suggest, he could have properly been charged under subsection (a)(3). *See Appellant’s Br.* at 17. But he was not, and “[w]here the State charges a specific offense, the defendant cannot lawfully be convicted by proof that he or she committed a similar offense.” *C.T. v. State*, 28 N.E.3d 304, 308 (Ind. Ct. App. 2015), *trans. denied*.

[18] *Wadle* step 1 asks whether the language of either implicated statute “clearly permits multiple punishment, either expressly or by unmistakable implication[.]” *Wadle*, 151 N.E.3d at 248 (footnote omitted). Few statutes permit multiple punishment, and the relevant statutes here are no exception. True, both statutes at issue permit an enhanced punishment; but an enhanced punishment, “whether based on attendant circumstances or on a prior conviction, presents no double jeopardy issue at all.” *Id.* at 254 (quotation omitted). We thus proceed to *Wadle* step 2.

[19] When the applicable statutory language does not clearly permit multiple punishment, *Wadle* step 2 directs us to Indiana’s included-offense statutes to determine statutory intent. *Id.* at 248. An included offense is 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.”

I.C. § 35-31.5-2-168 (2012); *see* I.C. § 35-38-1-6 (1983) (prohibiting a trial court from entering a judgment of conviction and sentence for both an offense and an “included offense”).

[20] Level 4 felony operating a vehicle while intoxicated causing death is an included offense of Level 3 felony leaving the scene of an accident under subsection (3). That is, both offenses involve operating a vehicle while intoxicated resulting in death. The only difference is one offense—Level 4 felony operating a vehicle while intoxicated—creates “a less serious harm or risk of harm to the same person, property or public interest” than the other offense—leaving the scene of an accident “during or after” operating a vehicle while intoxicated causing death. *See Wadle*, 151 N.E.3d at 254 (concluding the offense of Level 5 felony operating a vehicle while intoxicated causing serious bodily injury was included in the offense of Level 3 felony leaving the scene of an accident during or after commission of the offense of operating while intoxicated causing serious bodily injury). So, we move to *Wadle* step 3.

[21] Under *Wadle* step 3, we must “examine the facts underlying those offenses, as presented in the charging instrument and as adduced at trial” “to determine whether the offenses are the same.” *Id.* at 248–49. When making this determination, we ask “whether the defendant’s actions were so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction.” *Id.* at 249 (quotation omitted). “[I]f the facts show only a single continuous crime, and one statutory offense is included in the other, then the prosecutor may charge these offenses only as alternative (rather than as cumulative) sanctions.” *Id.*

[22] Here Spells’ actions were so condensed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction. For

example, Officer Hopkins testified he witnessed Spells crash into oncoming traffic, exit his vehicle, and take off running all within about fifteen seconds. The State’s closing argument made a similar point. On multiple occasions, the State argued Spells exited his truck “within seconds of [his] truck coming to rest” and fled the crash scene a “few seconds” later. *Tr. Vol. 4* at 146–47. Moreover, Spells’ actions were united by a single purpose—avoiding police apprehension. Spells’ convictions for Level 3 felony leaving the scene of an accident and Level 4 felony operating a vehicle while intoxicated causing death therefore subjected him to double jeopardy. We therefore vacate Spells’ conviction for Level 4 felony operating a vehicle while intoxicated causing death and accompanying sentence.

[23] But that is not the end of the road. Although both sides agree Spells’ double jeopardy rights were violated, they differ on the proper remedy—*i.e.*, whether we should remand for resentencing. Trial courts often fashion individual sentences in a multi-count proceeding with an eye toward reaching a desired cumulative sentence. *See Sanjari v. State*, 981 N.E.2d 578, 583 (Ind. Ct. App. 2013), *trans. denied*. In other words, sentences on individual counts are often interdependent parts of a bundled sentencing package or plan. Such a plan “can be overthrown if one or more of the convictions is reversed or reduced in degree.” *Id.* To avoid rendering the sentencing plan ineffective in carrying out the trial court’s intent, we remand with instructions for the trial court to “review the efficacy of what remains in light of the original plan, and to reconstruct the sentencing architecture . . . within applicable constitutional and statutory

limits, if that appears necessary . . . to ensure that the punishment still fits both crime and criminal.” *Id.* (quotation omitted).⁸

3. The trial court did not fundamentally err in managing jury deliberations.

- [24] Lastly, Spells claims the trial court fundamentally erred in managing jury deliberations because it “sacrificed the jury’s ability to remain rational and clear-headed” by having it deliberate into the early-morning hours of October 26. *Appellant’s Br.* at 31.
- [25] The “fundamental error” exception to waiver is “extremely narrow, and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process.” *Mathews v. State*, 849 N.E.2d 578, 587 (Ind. 2006). This “formidable standard . . . applies only where the error is so flagrant that the trial judge should have corrected the error on [their] own, without prompting by defense counsel.” *Tate v. State*, 161 N.E.3d 1225, 1229 (Ind. 2021). The appellant “faces the heavy burden of showing that the alleged errors are so prejudicial to [their] rights as to ‘make a fair trial impossible.’” *Ryan v. State*, 9 N.E.3d 663, 668 (Ind. 2014) (quoting *Benson v. State*, 762 N.E.2d 748, 756 (Ind. 2002)).

⁸ In our view, remanding for resentencing is also most consistent with a victim’s “right to be heard at any proceeding involving sentencing[.]” I.C. § 35-40-5-5 (2004).

- [26] Trial judges are participants in a trial and are therefore best situated to assess fatigue and weigh the pros and cons of adjournment. *See Farrell v. State*, 622 N.E.2d 488, 492 (Ind. 1993). We therefore afford the trial court “wide discretion” regarding its control of jury deliberations. *Id.* So, “where defendants have been unable to show more than late hours and an adverse verdict, courts have been reluctant to reverse a conviction.” *Id.* at 493.
- [27] That said, it is the trial court’s “obligation to conduct the trial proceedings ‘in a manner that facilitates ascertainment of truth, [e]nsures fairness, and obtains economy of time and effort commensurate with the rights of both society and the criminal defendant.’” *Id.* at 492 (quoting *Proctor v. State*, 584 N.E.2d 1089, 1091 (Ind. 1992)). The trial court “must be careful not to allow considerations of economy to outweigh the process of fairness” because “[o]ur system of criminal justice demands a logical verdict which is based, not upon the ability of jurors to remain awake and rational . . . but upon the evidence presented at trial.” *Id.*
- [28] The second day of Spells’ trial began at 8:45 a.m. The trial court submitted the case to the jury at 8:39 p.m. After about eight hours of deliberation—interspersed with a few trips into the courtroom—the jury found Spells guilty as charged and determined he was not a habitual offender. In arguing the trial court fundamentally erred, Spells does not direct our attention to any portion of the record showing how he was prejudiced by the trial court having the jury deliberate until almost 5:30 a.m. Without anything in the record to support Spells’ assertion that the jury was sleep-deprived and incapable of making a

rational decision, we cannot say the alleged error made a fair trial impossible. *See Morris v. State*, 364 N.E.2d 132, 139 (Ind. 1977) (rejecting a claim of error relating to a trial court’s management of jury deliberations where there was “no showing in the record” the alleged error “in any way influenced the jury in their decision[,]” but “only the naked statement” the alleged error occurred); *cf. Farrell*, 622 N.E.2d at 492 (remanding for a new trial where the jury reached a verdict after a thirty-hour period without sleep and where both parties requested the jurors be allowed to rest, the foreperson shared the jury was tired, and a juror cried in the jury box when instructed to keep deliberating). Put differently, the trial court did not fundamentally err.

Conclusion

[29] For the reasons provided above, we: (1) reverse Spells’ conviction for Level 3 felony resisting law enforcement because the State failed to present sufficient evidence to support the charge; (2) vacate Spells’ conviction for Level 4 felony operating a vehicle causing death because it subjected him to double jeopardy and remand for resentencing to avoid rendering the trial court’s sentencing plan ineffective; and (3) conclude the trial court did not fundamentally err in managing jury deliberations.

[30] Affirmed in part, reversed in part, and remanded.

Felix, J., and DeBoer, J., concur.

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