

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

Labrand Jay Holt-Spencer,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 27, 2022

Court of Appeals Case No.
21A-CR-2795

Appeal from the Marshall Superior
Court

The Honorable Robert O. Bowen,
Judge

Trial Court Cause No.
50D01-2006-F3-3

Mathias, Judge.

- [1] Labrand Jay Holt-Spencer (“Holt-Spencer”) was convicted in Marshall Superior Court of Level 3 felony armed robbery and Level 6 felony theft. Holt-Spencer

appeals, arguing that his convictions violate the Double Jeopardy Clause of the Indiana Constitution. We agree and instruct the trial court to vacate Spencer-Holt's Level 6 felony theft conviction.

[2] Reversed and remanded for proceedings consistent with this opinion.

Facts and Procedural History

[3] On January 11, 2020, Holt-Spencer and his girlfriend robbed an Amish business named Rentown Store owned by Dennis Hochstetler and located in Bremen, Indiana. During the robbery, Holt-Spencer pointed a gun at Hochstetler's head and demanded cash from the register. After Hochstetler emptied the cash register, Holt-Spencer ordered him to retrieve the cash located in the office safe. Hochstetler gave Holt-Spencer a box, and Holt-Spencer placed the cash totaling approximately \$12,000 into the box. Holt-Spencer and his girlfriend put the box into their vehicle and drove away from the store. Holt-Spencer's girlfriend eventually confessed that she and Holt-Spencer had robbed Rentown Store.

[4] On June 10, 2020, the State charged Holt-Spencer with Level 3 felony armed robbery and Level 6 felony theft. The armed robbery charge alleged that Holt-Spencer pointed a handgun at Dennis Hochstetler's head and "took US Currency." Appellant's App. p. 18. The theft charge alleged that Holt-Spencer exerted unauthorized control over approximately \$15,000 from Rentown Store with the intent to deprive the store of any part of its use or value. *Id.* The State also alleged that Holt-Spencer was a habitual offender.

- [5] Holt-Spencer’s jury trial was held in October 2021, and the jury found him guilty of both charges. Holt-Spencer subsequently pleaded guilty to the habitual offender allegation. On November 17, the trial court ordered Holt-Spencer to serve sixteen years for the Level 3 felony armed robbery conviction and a concurrent term of two and one-half years for the Level 6 felony theft conviction. The trial court also imposed an additional fifteen-year term for the habitual offender enhancement.
- [6] Holt-Spencer now appeals.

Discussion and Decision

- [7] The State proved that Holt-Spencer threatened Dennis Hochstetler with a handgun and stole cash from Hochstetler’s business. Because this same evidence was used to prove both crimes, Spencer-Holt argues that his convictions violate [Article 1, Section 14 of the Indiana Constitution](#) which provides, “No person shall be put in jeopardy twice for the same offense.” We review double jeopardy claims de novo. [Morales v. State](#), 165 N.E.3d 1002, 1009 (Ind. Ct. App. 2021).
- [8] The State concedes that Holt-Spencer’s convictions for both armed robbery and theft violate double jeopardy principles.¹ Our supreme court recently adopted

¹ Although the State concedes the double jeopardy violation, the State argues that Holt-Spencer waived his double jeopardy claim by failing to argue the framework established by our supreme court in [Wadle v. State](#), 151 N.E.3d 227 (Ind. 2020). Holt-Spencer committed his crime before [Wadle](#) was decided but was convicted post-[Wadle](#). We agree with the State that [Wadle](#) likely applies retroactively to double jeopardy claims. See [Woodcock v. State](#), 163 N.E.3d 863 (Ind. Ct. App. 2021) (comparing [Richardson v. State](#), 717 N.E.2d 32 (Ind. 1999) to [Wadle](#) and observing that [Wadle](#) is a new rule of criminal procedure and should be applied retroactively), *trans. denied*.

an analytical framework that applies the statutory rules of double jeopardy.... This framework, which applies when a defendant’s single act or transaction implicates multiple criminal statutes (rather than a single statute), consists of a two-part inquiry: 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

Wadle v. State, 151 N.E.3d 227, 235 (Ind. 2020).

[9] Here, the charging information alleged that Holt-Spencer committed armed robbery and theft by taking Hochstetler’s currency.² The State used the same evidence at trial, i.e. Holt-Spencer’s act of intentionally taking Hochstetler’s

Holt-Spencer applied only the *Richardson* “actual evidence” test to support his claim that his convictions violate double jeopardy principles and did not cite to or apply the framework announced in *Wadle*. Appellant’s Br. at 7-11. However, we “routinely correct double jeopardy violations even when not first invited by the parties.” *Phillips v. State*, 174 N.E.3d 635, 644 (Ind. Ct. App. 2021). Given the State’s concession, we consider Holt-Spencer’s claim under the framework announced in *Wadle*. Finally, we note the State’s concession that if *Wadle* were not applied retroactively, Holt-Spencer’s convictions also violate double jeopardy under the *Richardson* actual evidence test.

² As is relevant to this case, a person commits Level 3 felony robbery when the person, while armed with a deadly weapon, “knowingly or intentionally takes property from another person or from the presence of another person . . . by using or threatening the use of force on any person.” *Ind. Code § 35-42-5-1(a)(1)*. *Indiana Code section 35-43-4-2* provides that “[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft[.]” Theft is an inherently included offense of robbery. *See Wadle*, 151 N.E.3d at 249 n.27.

currency, to establish both offenses. Because the facts show only a single continuous crime, the dual convictions constitute double jeopardy. See *Phillips v. State*, 174 N.E.3d 635, 647 (Ind. Ct. App. 2021) (“[A] prosecutor cannot secure two convictions for the same act using the exact same evidence.”).

[10] The trial court imposed concurrent sentences for Spencer-Holt’s armed robbery and theft convictions but a double jeopardy violation “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). Therefore, one of Spencer-Holt’s convictions must be vacated. See *Morales*, 165 N.E.3d at 1010. “As the State satisfied its burden for both felonies, the lesser should fall.” *Jones v. State*, 159 N.E.3d 55, 65 (Ind. Ct. App. 2020), *trans. denied*. Accordingly, we reverse Holt-Spencer’s Level 6 felony theft conviction and remand with instructions to vacate the conviction and sentence imposed on that charge.

[11] Reversed and remanded for proceedings consistent with this opinion.

Brown, J., and Molter, J., concur.