

## 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

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Holly Jane Ann Hurt,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 14, 2022

Court of Appeals Case No.  
22A-CR-747

Appeal from the Vanderburgh  
Circuit Court

The Honorable Celia M. Pauli,  
Magistrate

Trial Court Cause No.  
82C01-2103-F6-1179

**Robb, Judge.**

## Case Summary and Issue

- [1] Following a jury trial, Holly Jane Ann Hurt was convicted of battery against a public safety official, a Level 6 felony, and resisting law enforcement as a Class A misdemeanor. She was sentenced to concurrent sentences of 547 days for the battery against a public safety official conviction and one year for the resisting law enforcement conviction, with the entire sentence suspended to probation. Hurt now appeals, raising one issue for our review, which we restate as whether her convictions for both battery against a public safety official and resisting law enforcement violate the prohibition against double jeopardy. Concluding Hurt’s convictions do not violate the principles of substantive double jeopardy, we affirm her convictions.

## Facts and Procedural History

- [2] While Indiana State Trooper Zentravian Stewart was on patrol in Vanderburgh County on the evening of March 2, 2021, he saw Hurt wrapped in a blanket and driving a moped scooter that lacked a working headlight. Trooper Stewart initiated a traffic stop and discovered that Hurt did not have a valid identification card to operate a moped. He was unable to “get a return” when he ran Hurt’s license plate through the computer system, and the vehicle identification number “returned back to a different vehicle[.]” Transcript of Trial, Volume II at 12. The trooper then told Hurt that “she needed to call someone” and arrange to be picked up because “she wasn’t going to be able to drive” the moped. *Id.*

- [3] Trooper Stewart returned to his patrol car and watched Hurt while she placed her phone call. Because Hurt was pacing back and forth and appeared to talk to herself while on the phone, the trooper became suspicious. He exited his car, approached Hurt, and asked her if she had consumed alcohol or drugs. The trooper then administered standard field sobriety tests on Hurt.
- [4] During the tests, Hurt became agitated and irritated and attempted to walk away. Trooper Stewart grabbed Hurt's arm and tried to explain to her the consequences of not completing the tests. He then resumed the testing process, but Hurt again walked away from him. The trooper grabbed Hurt's arm, told her to turn around, and placed one of her hands in handcuffs. Before the trooper could place Hurt's other hand in the cuff, Hurt turned around and tried to kick him. She screamed, "help me[,]” and pulled away from the trooper. *Id.* at 16. The trooper then initiated a "take down" maneuver and brought Hurt to the ground. *Id.*
- [5] Trooper Stewart attempted to gain control of Hurt's uncuffed hand. Before he could do so, however, Hurt bit his left hamstring. Her bite pierced the fabric of his pants and left a bite mark on his skin. Trooper Stewart jumped up. Hurt rose to her feet and began "walking and running in the opposite direction." *Id.* at 38. The trooper then initiated another take down maneuver and brought Hurt back to the ground. Hurt continued to scream and kick. With the help of a bystander who had witnessed the incident from across the street, Trooper Stewart was able to secure Hurt in handcuffs. After the trooper handcuffed

Hurt, she continued to scream, kick, yell, and act “pretty squirely [sic].” *Id.* at 40.

[6] Hurt was arrested and transported to a local hospital for treatment for a forehead injury she sustained during the second takedown.<sup>1</sup> Trooper Stewart went to the same hospital to be treated for the bite wound and received medication and shots for the injury.

[7] The State charged Hurt with one count of Level 6 felony battery against a public safety official and one count of Class A misdemeanor resisting law enforcement.<sup>2</sup> On February 18, 2022, a jury found Hurt guilty as charged, and the trial court entered judgment of convictions on both counts. On March 11, the trial court sentenced Hurt to concurrent terms of 547 days for the battery conviction and one year for the resisting law enforcement conviction with the entire sentence suspended to probation on the condition that Hurt submit to a mental health evaluation and follow all recommended treatment. Hurt now appeals.

## Discussion and Decision

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<sup>1</sup> Trooper Stewart obtained a search warrant to have Hurt’s blood drawn at the hospital. Hurt’s blood tested negative for the presence of both alcohol and drugs. *See* Transcript of Trial, Volume II at 47.

<sup>2</sup> The State also charged Hurt with one count of operating a vehicle while intoxicated, as a Class C misdemeanor, but later dismissed the charge.

## Double Jeopardy

- [8] Hurt argues that her convictions for Level 6 felony battery against a public safety official and Class A misdemeanor resisting law enforcement violate Indiana’s prohibition against double jeopardy. She contends that her conviction for resisting law enforcement should be vacated because, according to Hurt, the offense of battery against a public safety official “encompasses” the resisting law enforcement offense. Appellant’s Brief at 9.
- [9] The Indiana Constitution provides, “No person shall be put in jeopardy twice for the same offense.” Ind. Const. art. 1, § 14. Whether convictions violate double jeopardy is a pure question of law, which we review de novo. *Morales v. State*, 165 N.E.3d 1002, 1007 (Ind. Ct. App. 2021), *trans. denied*. “Substantive double-jeopardy claims principally arise in one of two situations: (1) when a single criminal act or transaction violates multiple statutes with common elements, or (2) when a single criminal act or transaction violates a single statute and results in multiple injuries.” *Powell v. State*, 151 N.E.3d 256, 263 (Ind. 2020).
- [10] Here, Hurt’s single act implicates more than one criminal statute. Therefore, we apply the multi-step process outlined in *Wadle v. State*, 151 N.E.3d 227, 235 (Ind. 2020), to determine whether her two convictions comport with double jeopardy principles. *Wadle* directs that we first ask whether either statute permits multiple punishments, either expressly or by unmistakable implication. *Id.* at 253. If neither statute permits multiple punishments, we then analyze

whether under Indiana’s included-offense statute either offense is included in the other. *Id.*; *see* Ind. Code § 35-31.5-2-168.

### **A. Multiple Punishments**

[11] A person commits Level 6 felony battery if she “knowingly or intentionally . . . touches another person [here, a ‘public safety official while the official is engaged in the official’s official duty’] in a rude, insolent, or angry manner[.]” Ind. Code § 35-42-2-1(c)(1), -(e)(2). A person who “knowingly or intentionally . . . forcibly resists, obstructs, or interferes with a law enforcement officer . . . while the officer is lawfully engaged in the execution of the officer’s duties” commits Class A misdemeanor resisting law enforcement. Ind. Code § 35-44.1-3-1(a)(1).

[12] Under the facts of the case before us, the battery against a public safety official and resisting law enforcement statutes do not clearly permit multiple convictions, either expressly or by unmistakable implication. *See Wadle*, 151 N.E.3d at 253; *see also* Ind. Code. §§ 35-42-2-1(c)(1), -(e)(2); 35-44.1-3-1(a)(1).<sup>3</sup> Therefore, we proceed to the second part of the statutory analysis and apply our included-offense statutes to determine statutory intent. *Wadle*, 151 N.E.3d at 248.

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<sup>3</sup> While a subsection of the resisting law enforcement statute explicitly provides for multiple punishments in certain cases, that subsection is not applicable here because the offense as charged did not allege that Hurt caused bodily injury when she resisted Trooper Stewart. *See* Ind. Code § 35-44.1-3-1(i).

## B. Included Offenses

[13] Indiana Code section 35-38-1-6 provides: “Whenever: (1) a defendant is charged with an offense and an included offense in separate counts; and (2) the defendant is found guilty of both counts; judgment and sentence may not be entered against the defendant for the included offense.” Indiana Code section 35-31.5-2-168 defines “included offense” 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.

[14] An offense is “inherently included” in another if it “may be established by proof of the same material elements or less than all the material elements defining the crime charged” or if “the only feature distinguishing the two offenses is that a lesser culpability is required to establish the commission of the lesser offense.” *Wadle*, 151 N.E.3d at 251 n.30 (quotations omitted). An offense is “factually included” in another when “the charging instrument alleges that the means used to commit the crime charged include all of the elements of the alleged lesser included offense.” *Id.* (quotations omitted).

[15] Battery and resisting law enforcement offenses are not inherently included offenses because each contains an element that the other does not. Indeed, battery requires a knowing touching, while resisting requires the act of forcibly resisting.<sup>4</sup> Nor do the offenses differ from one another only in that a less serious harm is required to establish its commission. *See* Ind. Code § 35-31.5-2-168(1), (3). Thus, we look to whether the offenses were included as charged. We conclude that they were not.

[16] Here, Count 1 alleged that Hurt “knowingly or intentionally touch[ed Trooper] Stewart, a public safety official, in a rude, insolent, or angry manner by biting said victim while the said official was engaged in the official’s official duty[.]” Appellant’s Appendix, Volume 2 at 23 (citing Ind. Code § 35-42-2-1(c)(1) and -(e)(2)). Count 2 alleged that Hurt “knowingly or intentionally forcibly resist[ed] Law Enforcement Officer while said officer was lawfully engaged in its duties as a law enforcement officer[.]” *Id.* (citing Ind. Code § 35-44.1-3-1(a)(1)).

[17] Because neither the battery against a public safety official offense nor the resisting law enforcement offense is included in the other either inherently or as charged, Hurt’s convictions do not constitute double jeopardy. *See Wadle*, 151

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<sup>4</sup> The term “forcibly” is a distinct element of the resisting law enforcement offense that modifies all three verbs found in the statute – “resists, obstructs, or interferes.” *See K. W. v. State*, 984 N.E.2d 610, 612 (Ind. 2013) (citing Ind. Code § 35-44.1-3-1). It means “something more than mere action.” *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993). “[O]ne ‘forcibly resists’ law enforcement when strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.” *Id.* at 723.



N.E.3d at 253. And according to *Wadle*, there is therefore no need to further examine the specific facts of the case to determine whether, as Hurt asserts, Hurt’s actions were “so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction[.]” *Id.*; see also Appellant’s Br. at 10. Accordingly, we find that there is no double jeopardy violation with Hurt’s convictions.

## Conclusion

[18] We conclude that Hurt’s convictions for both Level 6 felony battery against a public safety official and Class A misdemeanor resisting law enforcement do not violate principles of substantive double jeopardy. Her convictions are therefore affirmed.

[19] Affirmed.

Mathias, J., and Foley, J., concur.