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IN THE COURT OF APPEALS OF INDIANA

Briana Desha Rice,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 28, 2022

Court of Appeals Case No. 22A-CR-964

Appeal from the Lake Superior Court

The Honorable Diane Ross Boswell, Judge

Trial Court Cause No. 45G03-1904-MR-15

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Briana Rice (Rice), appeals her convictions and sentences for voluntary manslaughter, a Level 2 felony, Ind. Code § 35-42-1-3(a)(1); domestic battery by means of a deadly weapon, a Level 5 felony, I.C. § 35-42-2-1.3(c)(2) (2016); and leaving the scene of an accident resulting in death, a Level 5 felony, I.C. §§ 9-26-1-1.1(a)(1)-(3), (b)(3) (2017).

[2] We affirm in part, reverse in part, and remand with instructions.

ISSUES

[3] Rice presents this court with three issues, which we restate as:

(1) Whether her convictions for voluntary manslaughter and leaving the scene of an accident resulting in death violate double jeopardy principles;
(2) Whether remand is necessary to vacate her conviction for domestic battery by means of a deadly weapon; and
(3) Whether her sentence is inappropriate given the nature of her offenses and her character.

FACTS AND PROCEDURAL HISTORY

[4] As of April 2019, Rice and Terrondy Jones (Jones) had been dating for between eight and nine months. On the morning of April 24, 2019, Rice picked up Jones in her car, and by 11:00 a.m., Rice was driving Jones to his home in East Chicago, Indiana. The two had a heated argument. Jones eventually got out of

Rice's car near the intersection of Hemlock Street and 135th Street. Jones told Rice to "go about [her] business" and walked down the sidewalk, away from her car. (Transcript Vol. III, p. 39). Rice drove alongside Jones for a half a block but then accelerated her car in Jones' direction. Jones jumped out of the way. Rice put her car in reverse, put it back in drive, and accelerated in Jones' direction a second time. Rice struck Jones with her car. Jones rolled onto the hood and then onto the ground. Rice drove over the entire length of Jones' body, paused long enough to look back in her rear-view mirror to see him lying on the ground, and then drove off. Rice did not stop to render Jones aid, did not call for assistance for Jones, and did not alert the authorities. Two neighborhood residents, neither of whom knew Rice or Jones but who had seen Rice run over Jones, telephoned 911. Jones had sustained massive blunt force injuries to his head, chest wall, pancreas, and liver. Jones' body was marked by tire tread from his left shoulder to his abdomen. Jones was treated at St. Catherine's Hospital before being airlifted to the University of Chicago Hospital, where he succumbed to his injuries later in the day of April 24, 2019.

[5] After conducting a preliminary investigation, Detective Isaac Washington (Detective Washington) of the East Chicago Police Department telephoned Rice to determine if she could provide any information about Jones' injuries. Rice calmly told Detective Washington that she and Jones had been arguing, Jones had gotten out of her car and had thrown a brick at her window, and that she had attempted to drive away. According to Rice, Jones then jumped on her car but rolled off, whereupon she accidentally drove over him. Rice told the

police that she had panicked and had driven to her brother's house, where she left her car because she was concerned that it might be impounded. Detective Washington requested that Rice come to the police station and that she bring her car with her. Rice came to the police station around 5:00 p.m. on April 24, 2019, but she did not bring her car. Rice reported that she had an image on her cell phone of the damage done to her car window where Jones purportedly had thrown a brick, but she did not share the image with investigators. Rice told the authorities that she had not reported the incident because it looked like she had hit Jones intentionally.

[6] On April 26, 2019, the State filed an Information, which it amended on July 25, 2021, charging Rice with murder, Level 2 felony voluntary manslaughter, Level 5 felony domestic battery by means of a deadly weapon, and Level 5 felony leaving the scene of an accident resulting in death. On July 29, 2021, the trial court convened Rice's four-day jury trial. The two eyewitnesses to the offenses testified at trial, but neither testified to seeing Jones throw a brick at Rice's car or jump onto her car. Elisha Chandler (Chandler), the mother of Jones' young son, also testified at trial. Chandler knew Rice and contacted her once she found out that Jones had been injured. Chandler described Rice's demeanor during the call as though Rice "was in a bubble bath with a glass of wine." (Tr. Vol. IV, p. 63). Rice had also told Chandler that Jones had jumped onto her car, leading to her running him over accidentally. The jury found Rice not-guilty of murder but guilty of the remaining charges. The trial court entered

judgment of conviction for voluntary manslaughter, domestic battery by means of a deadly weapon, and leaving the scene of an accident resulting in death.

[7] On August 1, 2021, Rice's presentence investigation report was filed. Twenty-five-year-old Rice had been arrested in 2017 for Class B misdemeanor marijuana possession, and the charge was resolved through a diversion program. Rice's nine-year-old daughter had been living with the child's father in Arizona since Rice's arrest in this matter. Rice was able to maintain contact with her daughter through video calls. Rice admitted smoking marijuana almost every day since the age of eighteen. Rice reported that she had not smoked marijuana before committing the instant offenses but admitted that she had consumed marijuana after the offenses.

[8] On February 17, 2022, the trial court held Rice's sentencing hearing. Due to double jeopardy concerns and with the agreement of the parties, the trial court merged, but did not vacate, Rice's domestic battery conviction with her voluntary manslaughter conviction. The trial court found the nature and circumstances of the offenses, which it characterized as "gruesome in the execution," "heinous overall," and shocking to "the conscience of any reasonable person[,]" to be a significant aggravating factor. (Tr. Vol. V, p. 13). The trial court found as an additional aggravating circumstance that Rice attempted to conceal her crimes. The trial court found Rice's lack of criminal history and undue hardship to Rice's daughter to be mitigating circumstances. The trial court found the mitigators and aggravators to be in equipoise and imposed advisory sentences, namely seventeen and one-half years for her

voluntary manslaughter conviction and three years for her leaving the scene of an accident resulting in death conviction. The trial court ordered Rice to serve her sentences consecutively because she had committed two distinct offenses.

[9] Rice now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Voluntary Manslaughter and Leaving the Scene Convictions*

[10] Rice contends that her convictions for voluntary manslaughter and leaving the scene of an accident resulting in death constitute double jeopardy. We review double jeopardy claims de novo. *Woodcock v. State*, 163 N.E.3d 863, 872 (Ind. Ct. App. 2021), *trans. denied*.

A. *Common Law Claim*

[11] Rice first argues that her dual convictions cannot stand because Jones' death was a common element of the two offenses and because "[t]he Indiana Supreme Court has long accepted as precedent the common law double jeopardy principle that an action or consequence forming the basis for one conviction cannot then be used to enhance a second offense." (Appellant's Br. p. 10). On August 18, 2020, our supreme court handed down *Wadle v. State*, 151 N.E.3d 227, 244 (Ind. 2020), announcing a sea change in double jeopardy jurisprudence in that the court expressly overruled the longstanding constitutional double jeopardy tests set forth in *Richardson v. State*, 717 N.E.2d 32 (Ind. 1999), and provided a new analytical framework for substantive double jeopardy analysis as set forth more fully below. In its historical analysis of the

application of *Richardson*, the *Wadle* court observed that after handing down *Richardson*, our supreme had increasingly turned to the rules of statutory construction and to common law principles to address scenarios that did not fit easily within *Richardson*'s framework. *Id*. at 243. After observing that the application of *Richardson* had "proved largely untenable" and had resulted in "a patchwork of conflicting precedent" and "a jurisprudence of double jeopardy double talk[,]" the *Wadle* court expressly overruled *Richardson* itself but did not expressly and directly state that it was overruling the body of common law jurisprudence that had developed to address various problems posed by *Richardson*'s application. *Id*. at 235, 244 (quotation omitted). Indeed, in explaining that the Indiana Constitution only protects against successive prosecutions for the same offense and, thus, that the new analytical framework for addressing substantive double jeopardy claims would focus on protections flowing from other sources, the *Wadle* court alluded to "statutory, *common law*, and constitutional" sources for additional double jeopardy protections. *Id*. at 246 (emphasis added).

[12] The first published opinion handed down by this court applying *Wadle* was *Rowland v. State*, 155 N.E.3d 637 (Ind. Ct. App. 2020), *trans. not sought*. Authored by former Indiana Supreme Court justice Senior Judge Rucker, *Rowland* observed that

> [a]lthough overruling the *Richardson* [c]onstitutional tests in resolving claims of substantive double jeopardy, the *Wadle* Court appears to have left undisturbed the long adhered to series of rules of statutory construction and common law that are often

> described as double jeopardy but are not governed by the constitutional test set forth in *Richardson*.

Id. at 640 (cleaned up). The court analyzed but rejected Rowland's claim that his dual convictions for marijuana possession and paraphernalia possession violated the common law "very same act test[.]" *Id*. at 640-41. The second published opinion from this court discussing *Wadle* was *Shepherd v. State*, 155 N.E.3d 1227 (Ind. Ct. App. 2020), *trans. denied*, which was issued six days after *Rowland* and was written by the author of the instant opinion. In addressing Shepherd's claim that her convictions for Level 6 felony criminal recklessness and Class A misdemeanor reckless driving convictions violated double jeopardy, the *Shepherd* court observed that "it is our understanding that *Wadle* left Indiana's common law double jeopardy jurisprudence intact." *Id*. at 1240. The *Shepherd* court acknowledged the State's concessions at sentencing and on appeal to the double jeopardy violation based on the common law double jeopardy principle that both convictions were based on the same act and concluded that the State's concession remained valid. *Id*. at 1240-41.

[13] Rice relies on *Rowland* and *Shepherd*, the only two cases from this court to date holding that Indiana's common law double jeopardy jurisprudence survived *Wadle*. The Indiana supreme court has not directly addressed the issue. However, it has denied petitions to transfer in several cases that declined to follow *Rowland* and *Shepherd*. *See Morales v. State*, 165 N.E.3d 1002, 1006-07 (Ind. Ct. App. 2021) (holding that *Wadle* obviated Morales' common law claim that an act used to enhance one offense cannot be used to convict him of

another offense), *trans. denied*; *Woodcock*, 163 N.E.3d at 870-71 (examining the decisions applying *Wadle* to date and holding that "the common law rules are incorporated into the *Wadle* analysis and no longer exist independently"), *trans. denied*; *Jones v. State*, 159 N.E.3d 55, 61-62 (holding that *Wadle* "swallowed" and supplanted common law double jeopardy doctrine and rejecting his argument that the continuing crime doctrine was still a viable independent claim for relief post-*Wadle*), *trans. denied*. In light of the development of the case law applying *Wadle* and our supreme court's reaction to that case law, we must conclude that it intended for *Wadle* to clear away both *Richardson* and the common law double jeopardy jurisprudence that developed following *Richardson*. As such, we reject the portion of Rice's argument that relies on common law double jeopardy principles and address only the merits of her double jeopardy claim made within the framework of *Wadle*.

B. *Wadle Analysis*

[14] Where a defendant has been charged with multiple offenses for a single act or transaction implicating two or more statutes, there is no violation of substantive double jeopardy "[i]f the language of either statute clearly permits multiple punishment, either expressly or by unmistakable implication[.]" *Wadle*, 151 N.E.3d at 248. If the statutory language is not clear, we then apply our included-offense statutes to determine whether the offenses are the same. *Id*. at 253 (citing I.C. § 35-31.5-2-168). If neither offense is included in the other, either "inherently or as charged", there is no double jeopardy violation. *Id*. However, if one offense is included in the other, we must examine the facts

underlying the offenses, as alleged in the charging instrument and adduced at trial, to determine 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). If that is the case, then the prosecutor may only charge the offenses as alternative sanctions. *Id.* If not, the defendant may be convicted on each charged offense. *Id.* In addition, the elevation of a charge, whether due to an attendant circumstance or a prior conviction, is irrelevant to a *Wadle* analysis, because such elevations are not separate offenses or convictions. *Id.* at 254.

Step One

[15] The voluntary manslaughter statute provides in relevant part that a "person who knowingly or intentionally . . . kills another human being . . . while acting under sudden heat commits voluntary manslaughter[.]" I.C. § 35-42-1-3(a)(1). The amended charging information for the voluntary manslaughter offense named Jones as the victim but otherwise tracked the language of the statute. As to leaving the scene of an accident resulting in death, the statute in effect at the time Rice was charged provided in relevant part as follows:

> (a) The operator of a motor vehicle involved in an accident shall do the following:
>
> (1) . . . immediately stop the operator's motor vehicle . . . in a manner that does not obstruct traffic more than is necessary.
>
> (2) Remain at the scene of the accident until the operator does the following:

(A) Gives the operator's name and address and the registration number of the motor vehicle the operator was driving to any person involved in the accident.

(B) Exhibits the operator's driver's license to any person involved in the accident or occupant of or any person attending to any vehicle involved in the accident.

(3) If the accident results in the injury or death of another person, the operator shall, in addition to the requirements of subdivisions (1) and (2):

(A) provide reasonable assistance to each person injured in or entrapped by the accident, as directed by a law enforcement officer, medical personnel, or a 911 telephone operator; and

(B) as soon as possible after the accident, immediately give notice of the accident, or ensure that another person gives notice of the accident, by the quickest means of communication to one (1) of the following:

(i) The local police department, if the accident occurs within a municipality.

(ii) The office of the county sheriff or the nearest state police post, if the accident occurs outside a municipality.

(iii) A 911 telephone operator.

* * *

(b) An operator of a motor vehicle who knowingly or intentionally fails to comply with subsection (a) commits leaving the scene of an accident [which is]

* * *

(3) a level 5 felony if the accident results in the death of another person[.]

I.C. §§ 9-26-1-1.1(a)(1)-(3), (b)(3) (2017). In its Amended Information, the State charged in relevant part that Rice was the operator of a vehicle involved in a collision that resulted in Jones' death. Neither of these statutes clearly permits multiple punishments, either expressly or by unmistakable implication. *See Wadle*, 151 N.E.3d at 248. Therefore, we proceed to the next step and consider whether either offense is included in the other. *Id*. at 253.

Step Two

[16] 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.

[17] Subsection (1) is not implicated in this case, as neither offense is established by proof of the other. Voluntary manslaughter simply requires the knowing or intentional killing of another person while under sudden heat, *see* I.C. § 35-42-1-3(a)(1), but the offense does not require knowingly or intentionally failing to stop at the scene of an accident, remaining to provide information, providing reasonable assistance, or providing timely notice of the accident, *see* I.C. §§ 9-

26-1-1.1(a)(1)-(3), (b)(3) (2017). Likewise, leaving the scene of an accident resulting in death does not require a knowing or intentional killing of another person; rather, no mens rea applies to the "resulting in death" provision of the leaving the scene of an accident statute. *Cf.* I.C. § 9-26-1-1.1(b)(3) (2017) with I.C. § 35-42-1-3(a)(1). Contrary to Rice's implication, the offenses were not factually included through allegations that Rice ran over Jones with her vehicle. In the Amended Information for voluntary manslaughter, the State did not allege the means of the killing. In addition, the fact that Jones' death was the basis for the voluntary manslaughter charge and was also used to elevate the leaving the scene charge to a Level 5 felony did not constitute double jeopardy. *See Wadle*, 151 N.E.3d at 254 (holding that the elevation of a charge, whether due to an attendant circumstance or a prior conviction does not implicate double jeopardy because such elevations are not separate offenses or convictions). Subsection (2) of the included offense statute is not implicated here, as Rice was not charged with an attempt crime, and neither is Subsection (3) at issue, because, as we have already explained, these offenses each contain material elements the other does not, so they differ in other ways than just the degree of harm or culpability required. *See* I.C. § 35-31.5-2-168(2)-(3). Because the voluntary manslaughter and leaving the scene of an accident offenses were not inherently or factually included, there was no double jeopardy violation, and there is no need to examine the facts presented at trial to determine if the offenses were the same. *See Wadle,* 151 N.E.3d at 253 (explaining that only if the offenses are inherently or factually included does the analysis proceed to the last step of examining the charging instrument and the facts adduced at trial to

determine whether the defendant's actions were so compressed as to constitute a single transaction).

II. *Voluntary Manslaughter and Domestic Battery Convictions*

[18] Rice was found guilty of voluntary manslaughter and domestic battery by means of a deadly weapon, and the trial court entered judgment on each conviction. At sentencing, the parties agreed that those dual convictions violated double jeopardy principles, and the trial court merged them for sentencing purposes. On appeal, the parties agree on the double jeopardy violation and that the trial court's merging of the offenses for sentencing did not cure the violation. Therefore, we reverse Rice's conviction for domestic battery by means of a deadly weapon and remand with instructions to the trial court to vacate Rice's conviction for that offense. *See Morales*, 165 N.E.3d at 1010 (observing that a double jeopardy violation cannot be remedied through entry of concurrent sentences or merger after entry of judgment of conviction and remanding for the vacatur of the violating conviction).

III. *Sentence*

[19] Rice requests that we review and revise her sentence. "Appellate Rule 7(B) enables this [c]ourt to 'revise a sentence authorized by statute if, after due consideration of the trial court's decision, the [c]ourt finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.'" *Hall v. State*, 177 N.E.3d 1183, 1197 (Ind. 2021). The principal role of such review is to attempt to leaven the outliers. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The defendant bears the burden to persuade the

reviewing court that the sentence imposed is inappropriate. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018). Rice does not expressly challenge her individual sentences but asserts that the trial court's imposition of consecutive sentences is overly harsh. However, she also requests that we revise her sentence to fifteen years, which, as set forth below, is less than the advisory sentence for voluntary manslaughter. Therefore, we will review her sentence for overall inappropriateness.

[20] When assessing the nature of offenses, the advisory sentence is the starting point that the legislature selected as an appropriate sentence for the particular crimes committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006); *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Rice was sentenced for Level 2 felony voluntary manslaughter and Level 5 felony leaving the scene of an accident resulting in death. A Level 2 felony carries a sentencing range of between ten and thirty years, with an advisory sentence of seventeen and one-half years. I.C. § 35-50-2-4.5. A Level 5 felony carries a sentencing range of between one and six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). Therefore, Rice faced up to thirty-six years of imprisonment for her offenses. The trial court imposed consecutive advisory sentences, resulting in an aggregate sentence of twenty and one-half years.

[21] Our supreme court has observed that the nature of the offenses "can certainly be significant" in assessing the appropriateness of consecutive sentences and that "additional criminal activity directed to the same victim should not be free of consequences." *Cardwell*, 895 N.E.2d at 1225. The nature of the instant

offenses is heinous. Rice pursued Jones as he literally walked away from their argument. Having once missed ramming Jones with her car, Rice backed up and tried again, this time succeeding. After running over the length of Jones' body with her car, Rice paused long enough to see Jones lying on the ground but did not render aid or alert the authorities. Two strangers called for aid for Jones, not his girlfriend, Rice. As we have already held, Rice's convictions for voluntary manslaughter and leaving the scene of an accident resulting in death do not violate double jeopardy principles. In addition, voluntary manslaughter is a crime of violence that is exempt from consecutive sentencing limitations. *See* I.C. §§ 35-50-1-2(a)(3), (c). We find nothing inappropriate in the imposition of advisory consecutive sentences for these two distinct, egregious offenses against Jones, neither of which should be free of consequences. *See Cardwell*, 895 N.E.2d at 1225.

[22] Nor can we accept Rice's argument that her character merited what would essentially be a mitigated sentence for her voluntary manslaughter conviction and concurrent sentences. Rice stresses her lack of criminal history prior to the instant offenses, but we observe that the trial court already considered that mitigator in imposing advisory sentences for the separate offenses. Rice implicitly blamed Jones for his death when she reported that he had jumped onto her car during their argument. Rice showed more concern about her car than about Jones, the person she claimed to have accidentally run over. Rice reported smoking marijuana after the offenses, and, given that she was taken into custody the same day of the offenses, it is reasonable to conclude that,

instead of rendering aid to Jones, she got high after crushing him with her car. None of these circumstances reflect well upon Rice's character.

[23] We do not disturb a trial court's sentencing decision unless the defendant presents us with "compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). Finding no such evidence before us, we decline to revise Rice's sentence.

CONCLUSION

[24] Based on the foregoing, we conclude that Rice's convictions for voluntary manslaughter and leaving the scene of an accident resulting in death do not violate double jeopardy principles and that her sentence is not inappropriate. However, we hold that Rice's conviction for domestic battery resulting in death cannot stand; therefore, we reverse and remand so that the trial court may vacate that conviction.

[25] Affirmed in part, reversed in part, and remanded with instructions.

[26] Bradford, C.J. and Pyle, J. concur