ATTORNEY FOR APPELLANT

Matthew D. Anglemeyer
Marion County Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Josiah Swinney
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

John Woodcock,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

January 28, 2021

Court of Appeals Case No. 20A-CR-432

Appeal from the Marion Superior Court

The Honorable Lisa F. Borges, Judge

Trial Court Cause No. 49G04-1807-MR-22730

Robb, Judge.

Case Summary and Issues

[1] Following a jury trial, John Woodcock was convicted of murder, a felony, and battery by means of a deadly weapon, a Level 5 felony. He was sentenced to fifty-nine years for the murder conviction, to be served consecutively to three years for the battery conviction. Woodcock now appeals, raising three issues for our review: 1) whether his convictions for both murder and battery violate the prohibition against double jeopardy; 2) if not, whether sufficient evidence supports his conviction of battery; and 3) whether his sentence is inappropriate in light of the nature of his offenses and his character. Concluding Woodcock's convictions do not violate the principles of substantive double jeopardy, his conviction for battery is supported by sufficient evidence, and his sentence is not inappropriate, we affirm his convictions and sentence.

Facts and Procedural History

[2] On July 8, 2018, Woodcock used methamphetamine twice at Tammy Baker's house – once with his friend Michael Packard, who goes by "Grim," and once with Jackie Dotts. In the early morning hours of July 9, Baker sent Woodcock and Dotts to Packard's house to collect some money. Adam Walls and his girlfriend, Heather Mandujano, also lived there.

[3] Woodcock and Dotts rode bicycles to Packard's house and Woodcock got there first. When Dotts arrived, he saw Packard asleep in his truck that was parked

in front of the house. He saw Woodcock's bike in the bed of the truck but did not immediately see Woodcock himself. Dotts stopped to talk to Packard.

[4] In the meantime, Walls was asleep in his room with Mandujano when someone knocked on the window. Walls asked who it was, and the reply was "Grim[.]" Transcript, Volume II at 148. Assuming Packard needed to be let into the house, Walls got up, unlocked the back door, and then went back to bed. Another knock on his window brought Walls to the back door again. Finding no one at the door, Walls walked around the outside of the house and saw Woodcock on the porch and Packard in his truck in front of the house. Woodcock started talking to Walls, "saying that we had a problem and that he needed to talk with me. . . . [He] came down the steps and kinda got personal with me, like, up close and whatnot, and . . . I didn't know what was goin' on." *Id.* at 151. With Woodcock "acting weird and crazy[,]" Walls went to talk to Packard because Woodcock and Packard "are better friends and I figured . . . he could figure out what's goin' on, maybe help the situation." *Id.*

[5] Walls told Packard and Dotts that Woodcock was mad at him for some reason, and the three men walked toward the house, but Woodcock was "nowhere in sight[.]" *Id.* at 152. They walked around the house and entered through the back door because the front door was boarded up and screwed shut. When they entered the house, they found Woodcock standing in the kitchen. Walls' bedroom opened directly onto the kitchen and Walls explained that as he tried to walk past Woodcock to go back to his room, "that's when [Woodcock] grabbed me by the head, spun me around and pointed the gun at my head,

which I was then able kinda to deflect him by pushing him away, and . . . I went into the bedroom." *Id.* at 153. Awakened by the commotion, Mandujano went to the bedroom door "and that's when [Woodcock] was trying to . . . come into the room and [Mandujano] went to push him and at that time, [Woodcock] just shot." *Id.* at 154. Walls testified that Woodcock raised his arm and with the gun mere inches away from Mandujano, shot her in the forehead. Walls was standing behind Mandujano and the bullet traveled "front to back, right to left and slightly downward" through Mandujano's head and into Walls' left bicep. *Id.* at 191. Woodcock walked away from the bedroom in the direction of the front door, but a minute or two later, he came back to the bedroom doorway. While Walls crouched on the floor next to Mandujano, Woodcock pointed the gun at Walls, who was saying, "No, no, no." *Id.* at 156. Woodcock told Walls, "This is all your fault. You're the reason this happened." *Id.* He then left the house through the back door.

[6] Packard testified that when he entered the house, Woodcock had a gun in his hand and "[s]eemed to be excessively serious." *Id.* at 213. Packard told him to put the gun away and went into the Jack-and-Jill bathroom that Walls and Mandujano's bedroom shared with another bedroom. While in the bathroom, Packard heard one gunshot. Dotts testified that as he entered the house, he saw Woodcock standing in the kitchen in front of Walls' room, where the two were "just havin' words back and forth." *Id.* at 108. Dotts heard Woodcock say "he was gonna teach the guy a lesson for puttin' his hands on a woman" and then heard one gunshot. *Id.*

[7] Mandujano died from her gunshot wound. The bullet that struck both her and Walls remains lodged in Walls' arm. The State charged Woodcock with one count of murder, a felony, and one count of battery committed by means of a deadly weapon, a Level 5 felony. A jury found Woodcock guilty of both charges, and the trial court entered judgment of conviction on both counts and sentenced him to consecutive terms of fifty-nine years for murder and three years for battery. Woodcock now appeals.

Discussion and Decision

I. Double Jeopardy

[8] Woodcock first argues that his convictions for murder and Level 5 felony battery with a deadly weapon violate Indiana's prohibition against double jeopardy. Until recently, claims of both procedural double jeopardy – barring subsequent prosecution for the same offense, whether after acquittal or conviction – and substantive double jeopardy – barring multiple convictions or punishments for the same offense in a single trial – were treated with "equal reverence under the Indiana Constitution" by the "comprehensive analytical framework" established in *Richardson v. State*, 717 N.E.2d 32 (Ind. 1999). *Wadle v. State*, 151 N.E.3d 227, 235 (Ind. 2020). Following *Richardson*, procedural and substantive double jeopardy claims were analyzed under the "statutory elements" and "actual evidence" constitutional tests or under a variety of statutory and common-law rules "that are often described as double jeopardy, but are not governed by the constitutional test set forth in *Richardson*." *Pierce v.*

State, 761 N.E.2d 826, 830 (Ind. 2002). The common law rules were summarized by Justice Sullivan in his concurrence in *Richardson*, 717 N.E.2d at 55, and later acknowledged and employed by the full court, *see Guyton v. State*, 771 N.E.2d 1141, 1143 (Ind. 2002). When Woodcock filed his Brief of Appellant on July 1, 2020, he relied on one of those common law rules for his argument that principles of double jeopardy preclude his two convictions: that "[c]onviction and punishment for a crime which consists of the *very same act* as another crime for which the defendant has been convicted and punished" is prohibited. *Richardson*, 717 N.E.2d at 55 (emphasis added).

[9] After Woodcock filed his brief, the Indiana Supreme Court "expressly overrule[d] the *Richardson* constitutional tests in resolving claims of substantive double jeopardy" and adopted an analytical framework that applies the statutory rules of double jeopardy where a defendant's "single criminal act or transaction violates multiple statutes with common elements and harms one or more victims." *Wadle*, 151 N.E.3d at 235, 247.[1] The State thereafter filed its Appellee's Brief and argued exclusively that under the *Wadle* analysis, Woodcock had no substantive double jeopardy protection.

[10] In his reply brief, Woodcock acknowledged the *Wadle* decision, but argued that 1) the five *Richardson* common law rules, including the "very same act" rule, survived the decision and may continue to be independently applied and 2) if

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[1] *Powell v. State*, 151 N.E.3d 256 (Ind. 2020), decided the same day as *Wadle*, addressed the analysis to be applied where a single criminal act or transaction violates a single statute but harms multiple victims.

not, the *Wadle* decision should not be applied retroactively. We address these two arguments first, as they impact the analysis to be applied to Woodcock's claims.

A. Does the "Very Same Act" Rule Survive *Wadle*?

[11] In *Hill v. State*, we held that the five protections identified by Justice Sullivan in *Richardson*, and specifically, the "very same act" rule, did not survive *Wadle*/*Powell* because it is clear from reading *Wadle* and *Powell* in conjunction that the Court's intent "was to do away with all existing rules and tests for substantive double jeopardy . . . and start from scratch with new tests." 157 N.E.3d 1225, 1229 (Ind. Ct. App. 2020), *trans. not sought*.[2] *Jones v. State* followed suit, holding, "These new tests incorporate principles of statutory interpretation and common law, supplanting both." 159 N.E.3d 55, 62 (Ind. Ct. App. 2020), *trans. pending; see also Diaz v. State*, 158 N.E.3d 363, 368 (Ind. Ct. App. 2020) ("We reiterate that *Wadle* did away with the 'old law' on claims of substantive double jeopardy, including the *Richardson* constitutional tests and all common-law rules like the continuous-crime doctrine."), *trans. not sought*.

[12] At least two panels of this court have decided otherwise. In *Shepherd v. State*, 155 N.E.3d 1227, 1240 (Ind. Ct. App. 2020), *trans. denied*, the court stated that "it is our understanding that *Wadle* left Indiana's common law double jeopardy

[2] *Hill* did note that the common law continuous crime doctrine survived *Wadle* and *Powell*, "though only as part of the new tests, not as a separately enforceable double-jeopardy standard." *Id.*

jurisprudence intact" and in *Rowland v. State*, 155 N.E.3d 637, 640 (Ind. Ct. App. 2020), *trans. not sought*, we noted that "the *Wadle* Court appears to have left undisturbed" the *Richardson* common law rules.

[13] Having considered both positions, the argument Woodcock has made for continuing to apply the common law rules in double jeopardy analysis, and the text of the *Wadle* decision, we agree with the reasoning in *Hill* and *Jones* that the purpose of *Wadle* and *Powell* was to create a new and complete framework for analyzing substantive double jeopardy claims. *See Madden v. State*, 2021 WL 97227 at *4 (Ind. Ct. App. Jan. 12, 2021). Specifically, *Wadle* acknowledged that the common law principle that a "lesser included" offense is the "same" as its greater offense has long been recognized in Indiana and identified the five common law protections set forth by Justice Sullivan as applying "variations of this principle[.]" 151 N.E.3d at 246-47. The court also noted that "today, we have legislation codifying these principles." *Id*. at 247 (citing Ind. Code §§ 35-38-1-6 and 35-41-5-3). It seems clear, then, that if the common law rules prohibiting conviction and punishment in certain circumstances are codified, and the second step of the *Wadle* analysis is to turn to statutory language to determine intent regarding multiple punishment, *id.* at 248, the common law rules are incorporated into the *Wadle* analysis and no longer exist independently.

[14] In announcing that the "more practical approach" to substantive double jeopardy claims was to follow the familiar rules of statutory construction, the *Wadle* court "recognize[d] the importance of charting a clear path going

forward." *Id.* at 244. As stated in *Jones*, "The Court did not recite these criticisms [that *Richardson* generated confusion and a patchwork of conflicting precedent] only to repeat the confusion[.]" 159 N.E.3d at 62.

B. Is *Wadle* Retroactive?

[15] Concluding the "very same act" rule did not survive the *Wadle* decision, we address Woodcock's argument that the *Wadle* analysis should not be applied retroactively to his case because the "new construction of double jeopardy analysis announced in *Wadle* and *Powell* was so unexpected that it denied Woodcock fair warning of what conduct would be considered criminal when analyzed under double jeopardy principles. It represents a marked and unpredictable departure from prior precedent." Reply Brief of Appellant at 9.[3]

[16] When *Richardson* changed the double jeopardy landscape twenty years ago, our supreme court described it as a new constitutional rule of criminal procedure. *Taylor v. State*, 717 N.E.2d 90, 95 (Ind. 1999) (stating that *Richardson* "formulated a new methodology for analysis of claims under the Indiana Double Jeopardy Clause"). And "[i]t is firmly established that, 'a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for

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[3] Although retroactivity is a legitimate question under these circumstances where Woodcock was tried and convicted prior to the decision in *Wadle*, Woodcock's tack of claiming that if *Wadle* were applied, he would have been "denied fair warning of what conduct would be considered criminal" is a non-starter. The *Wadle* decision does not change what *conduct* is considered criminal – shooting a person, to kill or to injure, was criminal conduct in 2018 and remains so today. What *Wadle* affects is the *punishment* a person may be subjected to for that criminal conduct.

cases in which the new rule constitutes a clear break with the past.'" *Smylie v. State*, 823 N.E.2d 679, 687 (Ind. 2005) (quoting *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987)). Thus, as a new rule of criminal procedure, the *Wadle* analysis is potentially applicable to this case. *See Shepherd*, 155 N.E.3d at 1240-41.

[17] Nonetheless, we find it unnecessary to definitively decide whether or not the *Wadle* analysis is to be applied retroactively, especially as the State has not had the opportunity to specifically brief this issue.[4] Under either the *Richardson* common law formulation prohibiting multiple convictions and sentences for "the very same act" or the *Wadle* analysis, there is no violation.

[18] We apply a de novo standard of review to double jeopardy claims. *Wadle*, 151 N.E.3d at 237 (noting that we review statutory and constitutional questions of law de novo); *Hines v. State*, 30 N.E.3d 1216, 1219 (Ind. 2015) (same).

1. Pre-Wadle Law

[19] Woodcock claims his convictions and sentences for both murder and battery with a deadly weapon impermissibly punish him twice for the very same act. It is undisputed that Woodcock fired only one shot, that the same bullet killed Mandujano and injured Walls, and that the alleged battery was committed by means of the bullet striking Walls. The jury found Woodcock guilty of both murder and battery, and the trial court entered judgment of conviction and

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[4] Clearly the State believes *Wadle* is to be applied retroactively, as its brief addresses Woodcock's double jeopardy claim only under *Wadle*. *See* Brief of Appellee at 12-16. But it did not provide any analysis of why this is so.

sentenced him for both crimes. The common law double jeopardy rules prohibit "[c]onviction and punishment for a crime which consists of the very same act as another crime for which the defendant has been convicted and punished." *Richardson*, 717 N.E.2d at 55.

[20] Woodcock cites *Clem v. State*, 42 Ind. 420 (1873) and *Taylor v. State*, 101 N.E.3d 865 (Ind. Ct. App. 2018), in support of his position that his two convictions are based on the very same act and he cannot be convicted of both. In *Clem,* our supreme court stated, "Where, by the discharge of a fire-arm, or a stroke of the same instrument, an injury is inflicted upon two or more persons, or their death is produced, there is but one crime committed." 42 Ind. at 429. *Powell* expressly overruled *Clem*, while also noting that more recent precedent had already rendered *Clem* an outlier. 151 N.E.3d at 266 n.12; *see Johnson v. State*, 455 N.E.2d 932, 937 (Ind. 1983) (holding defendant could be separately sentenced for two counts of attempted murder when there were two victims); *see also Atchley v. State*, 730 N.E.2d 758, 765-66 (Ind. Ct. App. 2000) (noting "the extensive body of countervailing law that developed in the more than 100 years following the *Clem* decision" and that at the time of the defendant's direct appeal in 1993, "it was regarded as settled law that the double jeopardy clause of the Indiana Constitution permitted multiple convictions of murder where a single act resulted in the deaths of multiple victims"), *trans. denied*. Thus, *Clem* would not have compelled the result Woodcock seeks even under pre-*Wadle* law.

[21] Likewise, *Taylor*, which acknowledged that the "very same act" test is different than the *Richardson* actual evidence test and applies when the defendant's behavior underlying one offense is "coextensive with the behavior . . . necessary to establish an element of" another offense, 101 N.E.3d at 872, does not compel the conclusion that Woodcock's murder and battery convictions violate double jeopardy. "Coextensive" means "[e]xtending over the same space or time; *corresponding exactly in extent*." Lexico US Dictionary (Jan. 12, 2021), https://www.lexico.com/en/definition/coextensive [https://perma.cc/2GU3-KSH8] (emphasis added). Thus, in *Taylor*, because confinement of the victims was "part and parcel of how [the defendant] accomplished the robbery[,]" and the confinement lasted only until the robbery was completed, both confinement and robbery convictions could not stand under the very same act rule. 101 N.E.3d at 873; *see also Wethington v. State*, 560 N.E.2d 496, 508 (Ind. 1990) (a confinement conviction may not stand if a defendant was convicted of a second offense that inherently required confinement of the victim and the confinement was no more extensive than necessary to carry out the other offense).

[22] Had Woodcock been convicted of the murder and battery of Mandujano alone, his behavior underlying the murder would have been coextensive with the behavior necessary to establish battery. But here, the convictions for the murder of Mandujano and the battery of Walls, though accomplished by a single gunshot, did not correspond exactly in extent, as the single act constituted crimes against separate victims. And it is clear that *Richardson*'s five common law protections are not violated where, as here, the convictions at

issue involve different victims. *See Bald v. State*, 766 N.E.2d 1170, 1172 n.4 (Ind. 2002) (stating the defendant's convictions for arson and the murder of three people killed in the fire "arise from a situation where separate victims are involved, which has been a scenario that does not constitute double jeopardy") (internal quotation omitted); *see also Hill*, 157 N.E.3d at 1230 (holding defendant's convictions for two counts of reckless homicide for the single act of running a red light at a high rate of speed and killing two people would not have constituted double jeopardy under the "very same act" rule); *Bunch v. State*, 937 N.E.2d 839, 847 (Ind. Ct. App. 2010) (holding conviction for robbery of mother and seven convictions of criminal confinement, one for each of her seven children, did not violate double jeopardy because the defendant harmed or threatened harm to distinct victims), *trans. denied*. Thus, under pre-*Wadle* law, Woodcock's double jeopardy claim would fail.

2. Current Law

[23] The *Wadle* test begins by examining the statutory language of the statutes defining the crimes at issue.

> If either statute clearly permits multiple punishment, whether expressly or by unmistakable implication, the court's inquiry comes to an end and there is no violation of substantive double jeopardy. But if the statutory language is not clear, then a court must apply our included-offense statutes to determine whether the charged offenses are the same. *See* [Ind. Code] § 35-31.5-2-168. If neither offense is included in the other (either inherently or as charged), there is no violation of double jeopardy. But if one offense is included in the other (either inherently or as charged), then the court must examine the facts underlying those

> offenses, as presented in the charging instrument and as adduced at trial. If, based on these facts, 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," then the prosecutor may charge the offenses as alternative sanctions only. But if the defendant's actions prove otherwise, a court may convict on each charged offense.

Wadle, 151 N.E.3d at 253.

[24] Applying the test here, we first observe that neither the murder statute nor the battery statute clearly permits multiple convictions, either expressly or by unmistakable implication. *See* Ind. Code §§ 35-42-1-1(1); 35-42-2-1(c). With no statutory language clearly permitting multiple convictions, we move to analyzing whether battery is a lesser included offense of murder, either inherently or as charged.

[25] 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*.

[26] 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."[5] 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.

[27] Murder is established by proof that a person knowingly or intentionally killed another human being. Ind. Code § 35-42-1-1(1). Battery is established by proof that a person knowingly or intentionally touched another person in a rude, insolent, or angry manner. Ind. Code § 35-42-2-1(c). To prove battery as a Level 5 felony, there also must be proof that the battery was committed with a deadly weapon. Ind. Code § 35-42-2-1(g)(2). Battery is not established by proof of the same or less than all the material elements required to establish murder, nor does it differ from murder only in that a less serious harm is required to

[5] Similarly, Indiana Code section 35-41-5-3 provides that a person may not be convicted of both conspiracy and attempt to commit the same underlying crime and may not be convicted of both a crime and an attempt to commit that same crime.

establish its commission. *See* Ind. Code § 35-31.5-2-168(1), (3).[6] Battery is not therefore an inherently included lesser offense of murder. *Ratcliffe v. State*, 553 N.E.2d 1208, 1212 (Ind. 1990); *cf. Porter v. State*, 671 N.E.2d 152, 154 (Ind. Ct. App. 1996) (holding battery by means of a deadly weapon is not an inherently lesser included offense of attempted murder because battery by means of a deadly weapon requires a touching and it is possible to commit attempted murder without touching the intended victim), *trans. denied*.

[28] But battery can be a lesser included offense of murder as charged if the killing is alleged to have been performed by a touching. *Graziano v. State*, 685 N.E.2d 1064, 1065 (Ind. 1997). Here, Woodcock was charged with murder for knowingly killing Mandujano and with battery for knowingly touching Walls in a rude, insolent, or angry manner by striking and/or shooting him with a deadly weapon. Appellant's Appendix, Volume II at 118. The murder is not alleged to have been performed by a touching and more critically, the two crimes were alleged to have been committed on different victims. The battery of one person is not a factually included offense of the murder of another.

[29] We do note that this case highlights the tenuous distinction between *Wadle* and *Powell* (if both victims had met the same fate, we might be conducting a *Powell* analysis instead of *Wadle*) and the perils of mechanically applying the *Wadle* test. An included offense analysis involves comparing the material elements of

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[6] Subsection (2) does not apply because Woodcock was not charged with or convicted of any attempt crime.

the offenses; where, as here one of the material elements of both offenses is a victim, and a separate victim is alleged for each offense, it would seem by definition one offense cannot be either a factually or inherently included lesser offense of the other. *See* Ind. Code § 35-31.5-2-168(3) (defining "included offense" in pertinent part as an offense that "differs from the offense charged only in the respect that a less serious harm or risk of harm *to the same person* . . . is required to establish its commission") (emphasis added). In effect, if there are two separate victims there cannot be a double jeopardy problem as to the offenses they might have in common.

[30] Because neither murder nor battery by a deadly weapon is included in the other either inherently or as charged, Woodcock's convictions do not constitute double jeopardy. *Wadle*, 151 N.E.3d at 253. According to *Wadle*, there is therefore no need to further examine the specific facts of the case to determine whether Woodcock's actions were "so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." *Id*. But even if we were to analyze the third step of the *Wadle* test, we still do not find a double jeopardy violation.

[31] "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." *Id*. at 249. There is no question that Woodcock's action of pulling the trigger on his gun one time and striking both Mandujano and Walls with a single bullet were "so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." However, the

murder of Mandujano and the battery of Walls were two distinct chargeable crimes because there were two separate victims. *See Walker v. State*, 932 N.E.2d 733, 738 (Ind. Ct. App. 2010) (concluding the continuous crime doctrine did not apply because defendant's charges of, *inter alia*, the robbery of one victim and the criminal confinement of another were distinct chargeable crimes despite being part of the same comprehensive criminal scheme).

[32] Thus, because one statutory offense was not included in the other, either inherently or as charged, and because the facts show two separate and distinct crimes, Woodcock's convictions of both murder and battery for the single act of shooting his gun did not violate substantive double jeopardy and cumulative sanctions were appropriate.

II. Sufficiency: Battery

A. Standard of Review

[33] Woodcock also contends that his battery by means of a deadly weapon charge is not supported by sufficient evidence; specifically, evidence of his mens rea.

[34] Our standard of review for sufficiency of the evidence claims is well settled: we do not reweigh the evidence or judge the credibility of the witnesses. *Purvis v. State*, 87 N.E.3d 1119, 1124 (Ind. Ct. App. 2017). We consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom. *Id*. We will affirm a defendant's conviction "if there is substantial evidence of probative value supporting each element of the crime from which a

reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." *Stewart v. State*, 866 N.E.2d 858, 862 (Ind. Ct. App. 2007).

B. Proof of Mens Rea

[35] Battery by means of a deadly weapon, a Level 5 felony, is committed by a person who knowingly or intentionally touches another person in a rude, insolent, or angry manner with a deadly weapon. Ind. Code § 35-42-2-1(c)(1), (g)(2). Woodcock was charged with committing battery on Walls by "knowingly touch[ing him] in a rude, insolent, or angry manner, by striking and/or shooting [him] with a handgun; said touching being committed with a deadly weapon[.]" Appellant's App., Vol. II at 118. To engage in conduct "knowingly," one must be aware, when he engages in the conduct, of "a high probability that he is doing so." Ind. Code § 35-41-2-2(b).

[36] Woodcock argues the State did not present sufficient evidence that he knowingly touched Walls. Conceding that he was aware of a high probability that he was shooting Mandujano in the head, he argues that "[a]fter piercing two bones and traveling through bodily tissue, the trajectory of the bullet could not have been predictable" and therefore he was not aware of a high probability that the bullet would strike Walls. Brief of Appellant at 16.

[37] The trier of fact may infer that conduct was knowingly or intentionally performed from the voluntary commission of a prohibited act as well as from surrounding circumstances. *Wells v. State*, 555 N.E.2d 1366, 1371 (Ind. Ct. App. 1990). And our supreme court has held that "if the evidence shows the

requisite mental state to exist in conjunction with the performance of a criminal act, then the law may punish the perpetrator, although the particular person injured was a mere bystander." *Straub v. State*, 567 N.E.2d 87, 91 (Ind. 1991) (citation omitted).

[38] Here, the surrounding circumstances show that Woodcock was angry with Walls; that when Walls tried to move past Woodcock to get to his room, Woodcock pointed his gun at Walls' head; that Mandujano intervened and while she stood between Woodcock and Walls, Woodcock fired the gun at close range, striking her in the forehead; that Walls, standing behind Mandujano, was struck in the arm by the bullet; and that before Woodcock left the house, he again pointed his gun at Walls and told him, "This is all your fault." Tr., Vol. II at 156. Woodcock concedes that he knowingly shot his firearm at Mandujano. He may not have intended for the bullet to go through Mandujano's head and strike Walls, but a reasonable trier of fact could have found that when he shot her at close range, he was aware of a high probability that anyone in close proximity to her could be struck by the exiting bullet, especially a person standing nearly directly behind her.

[39] Based on the course of conduct in which Woodcock engaged and his ultimate use of the deadly weapon, the evidence was sufficient to support the jury's conclusion that he knowingly touched Walls with the bullet.

III. Inappropriate Sentence

A. Standard of Review

[40] Indiana Appellate Rule 7(B) provides this court the authority to revise a defendant's sentence "if, after due consideration of the trial court's decision, [we] find[] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Sentencing is "principally a discretionary function" of the trial court to which we afford great deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference should prevail unless overcome by 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). It is the defendant who bears the burden of persuading this court his or her sentence is inappropriate under the standard. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[41] On review, the question is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. *Fonner v. State*, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007). We may consider any factors appearing in the record in making this determination. *Stokes v. State*, 947 N.E.2d 1033, 1038 (Ind. Ct. App. 2011), *trans. denied*. Whether a defendant's sentence is inappropriate turns on our "sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell*, 895 N.E.2d at 1224. The trial

court's recognition and non-recognition of aggravators and mitigators serves as an initial guide in our determination. *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017), *trans. denied*.

B. Woodcock's Sentence

[42] Woodcock argues his sixty-two year sentence is inappropriate in light of the fact that his offense is not "particularly more deplorable" than other murders and that the offense was a "tragic aberration and out-of-character[.]" Br. of Appellant at 18, 20.

[43] The advisory sentence is the starting point our legislature has selected as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. The sentencing range for murder is between forty-five and sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3. The sentencing range for a Level 5 felony is between one and six years, with an advisory sentence of three years. Ind. Code § 35-50-2-6(b). The trial court sentenced Woodcock to a slightly aggravated sentence of fifty-nine years for murder, the advisory sentence of three years for battery, and ordered the sentences to be served consecutively.

1. Nature of the Offense

[44] The nature of the offense is found in the details and circumstances surrounding the offense and the defendant's participation therein. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). When evaluating a defendant's sentence that deviates from the advisory sentence, we consider whether there is anything

more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017), *trans. denied*.

[45] Woodcock acknowledges the "stark reality" that he took Mandujano's life and caused damage to her family and friends but argues his offense was not brutal or protracted and pain and suffering to loved ones "is inherent in any murder[.]" Br. of Appellant at 18. In fact, Woodcock pretended to be one of Walls and Mandujano's roommates to gain entry to the house; Walls unlocked the door without hesitation and went back to bed because he thought it was Packard who needed in. Woodcock was aggressive with Walls outside the house, entered the house without an invitation while Walls was out front talking with Packard, and threatened Walls with his gun when Walls returned to the house. Most egregiously, however, after Woodcock shot Mandujano and while Walls, injured himself, crouched on the floor next to Mandujano trying to "stop the bleedin' and hold the wound[,]" Woodcock returned to the doorway and threatened Walls with his gun again while casting blame on Walls. Tr., Vol. II at 157. The actual murder of Mandujano was mercifully quick, but the circumstances before and after belie Woodcock's claim that his crime was no different than the typical murder accounted for by the advisory sentence. Walls did not attend the sentencing hearing or submit a victim impact statement because he was "attempting to put the entire ordeal behind him." Tr., Vol. III at 108. But the damage to him, who held Mandujano as she died and carries the

bullet that killed her in his arm, is surely more than that inherent in every murder. Woodcock has not persuaded us that the nature of his offense makes the above-advisory sentence for murder inappropriate.

2. Character of the Offender

[46] The "character of the offender" portion of the Rule 7(B) standard refers to general sentencing considerations and relevant aggravating and mitigating factors, *Williams v. State*, 782 N.E.2d 1039, 1051 (Ind. Ct. App. 2003), *trans. denied*, and permits a broader consideration of the defendant's character, *Anderson v. State*, 989 N.E.2d 823, 827 (Ind. Ct. App. 2013), *trans. denied*. "A defendant's life and conduct are illustrative of his or her character." *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*.

[47] In examining a defendant's character, one relevant factor is his or her criminal history, the significance of which "varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Woodcock, thirty-six years old at the time of this offense, had his first delinquency adjudication when he was eleven years old, for criminal mischief. He had several more true findings over the next seven years, including true findings for disorderly conduct for engaging in fights or tumultuous conduct and battery resulting in bodily injury. In each instance, he successfully completed the terms of his disposition. Although Woodcock has been arrested several times as an adult, primarily for battery and methamphetamine-related offenses, his only conviction was in 2014 for

misdemeanor possession of methamphetamine. His probation for that offense was revoked.

[48] Woodcock's criminal history, though not lengthy as an adult, reflects poorly on his character as his history of arrests for battery and drug-related offenses demonstrates his disregard for the personal well-being of others and his continued drug use, both of which are reflected in this offense as well. And although his only conviction was four years prior to this offense, Woodcock's admission that he used marijuana and methamphetamine daily, including on the day of the murder and the day of his arrest, and that the only crime in his neighborhood was "just us selling drugs" indicates he has not been living a law-abiding life in the interim. Appellant's App., Vol. II at 175.

[49] Woodcock points to his long-term substance abuse and its effect on his behavior as lessening his culpability from that of a "stone-cold sober murderer." Br. of Appellant at 22. The presentence investigation report reveals that he began using marijuana at age thirteen and methamphetamine at age nineteen. His drug use has cost him two long-term relationships and has kept him from having a relationship with his three children because "he does not go around them when he is using drugs." Appellant's App., Vol. II at 174. In 2015, he was fired from a job of nearly two decades because of drug use. Also in 2015, he completed a rehabilitation program. But by the time of this offense in 2018, he was again using marijuana and methamphetamine daily and selling drugs to support himself. He was homeless and surviving by staying with friends who

used drugs in a neighborhood where drugs were readily available. While in jail awaiting trial and sentencing, he began attending AA and NA meetings.

[50] We acknowledge all of what Woodcock argues about the detrimental effects of chronic methamphetamine use as it relates to short-term behavioral changes, long-term psychological effects, and cognitive problems. *See* Br. of Appellant at 21-22. And we applaud his prior and current efforts at rehabilitation. Successfully overcoming drug addiction is a difficult task often fraught with setbacks and we sincerely hope that Woodcock's statement during the presentence investigation that he does not have a problem with drugs because he is in treatment is optimism and resolve rather than denial or deflection. But the cycle of addiction does not mitigate the devastating consequences that Woodcock's drug use had in this instance. The trial court indicated its belief that absent Woodcock's long habit of illegal substance abuse, Mandujano might still be alive as there was no other apparent precipitating event that would explain Woodcock's actions. Tr., Vol. III at 112. We agree with the trial court that Woodcock's substance abuse was the cause of, not an explanation for, his crimes.

[51] In sum, Woodcock has not met his burden of persuading us that the nature of his offenses or his character make his sixty-two-year sentence for the murder of Mandujano and battery of Walls inappropriate.[7]

Conclusion

[52] Woodcock's convictions for both the murder of Mandujano and the battery of Walls do not violate principles of substantive double jeopardy under either the old or new formulations of double jeopardy analysis. Further, there was sufficient evidence to support his conviction of battery. His convictions are therefore affirmed. In addition, his combined sixty-two-year sentence is not inappropriate in light of the nature of his offenses or his character and his sentence is likewise affirmed.

[53] Affirmed.

Crone, J., and Brown, J., concur.

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[7] In his conclusion, Woodcock requests that a portion of his sentence for murder be suspended to probation. He does not otherwise make an argument that his placement in DOC for a fully executed term is inappropriate and we therefore do not address it.