

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 Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Sarah Medlin
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Justin F. Roebel
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Aundre Dix,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 1, 2023

Court of Appeals Case No.
23A-CR-342

Appeal from the Marion Superior
Court

The Honorable Angela D. Davis,
Judge

Trial Court Cause No.
49D27-1909-F5-37456

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Aundre Dix appeals his convictions for Level 5 felony sexual misconduct and Level 6 felony official misconduct. Dix raises the following two issues for our review:

1. Whether the trial court abused its discretion when it denied Dix's request for a continuance following the State's late disclosure of potentially exculpatory evidence.

2. Whether Dix's two convictions violate Indiana's substantive protections against double jeopardy.

[2] We affirm.

Facts and Procedural History

[3] In 2018, Dix worked as a maintenance foreman at the Indiana Women's Prison. In February or March of that year, A.V., one of the prisoners, was assigned to be a part of the maintenance crew with Dix. In April, Dix and A.V. began to have a sexual relationship. They had sexual intercourse ten to fifteen times in various locations around the prison, and fellow inmates of A.V. would act as lookouts to make sure the two did not get caught.

[4] Sometime that month, another inmate reported an inappropriate relationship on the maintenance crew at the prison. Bonnie Russell, an investigator with the Department of Correction, opened an investigation. However, when "no one reported . . . seeing anything inappropriate," Russell concluded that the investigation was "stalled." Tr. Vol. 3, pp. 197-98.

[5] In July, Russell received a second report of an inappropriate relationship on the maintenance crew at the prison, and this time the report identified A.V. as the alleged victim. Over the course of several interviews, A.V. informed Russell of her relationship with Dix and identified various locations around the prison where Dix and A.V. had had sexual intercourse. Thereafter, forensic investigators went to those locations, and, in at least two of those locations, they recovered seminal fluid samples. Later DNA testing of those samples connected them to Dix.

[6] The State charged Dix with Level 5 felony sexual misconduct by a public servant against a person subject to lawful detention. *See Ind. Code § 35-44.1-3-10(b) (2018)*. The State additionally charged Dix with Level 6 felony official misconduct for being a public servant who knowingly or intentionally committed an offense, i.e., the Level 5 felony sexual misconduct, in the performance of his official duties. *See I.C. § 35-44.1-1-1(1) (2018)*.

[7] After numerous continuances, the trial court set Dix's trial for December 20, 2022. The day before his scheduled trial, Dix filed an unopposed motion for another continuance, stating as follows:

2. On December 19, 2022, at 6:24 p.m., the Defense received an e-discovery link from the State. That link included two (2) statements from witnesses. These statements had not been previously disclosed;

3. One of the statements^[1] was of Sonora Eastman, whom the alleged victim (A.V.) had identified to investigators and testified in a taped statement had knowledge of the alleged events;

4. In the statement discovered on December 19, Ms. Eastman tells investigators that she knew nothing of these events, never saw inappropriate behavior from Mr. Dix, and had never seen Mr. Dix go off alone with anyone . . .

Appellant’s App. Vol. 2, p. 157. Dix then requested a continuance “to explore the exculpatory nature of Ms. Eastman’s statements[.]” *Id.* at 158.

[8] The court heard Dix’s continuance request at the beginning of his scheduled jury trial the next morning. The court then denied Dix’s request for several reasons, noting in particular that Dix knew that A.V. had identified Eastman as a person with potential knowledge of the events well before the State’s December 19 disclosure; that Eastman’s recorded statement, which Dix now possessed, was already significantly damaging to the State; that Eastman had been released from prison some time ago and her present whereabouts were unknown; and that the likelihood that Eastman, if she even could be located, would remember anything significant from 2018, when she had previously represented that she had no knowledge of the alleged events, “weigh[ed] against” granting Dix’s continuance request. Tr. Vol. 3, pp. 12-14.

¹ Dix did not request a continuance based on the other previously-undisclosed statement.

[9] The court then held Dix’s jury trial. A.V., Russell, and a forensic interviewer, among others, testified for the State. Regarding Eastman’s possible knowledge of the alleged events, A.V. testified that Eastman “maybe” had acted as a lookout “once,” but Eastman “wasn’t with us throughout.” *Id.* at 149. And Dix played Eastman’s recorded statement, in which she acknowledged that she was often on a different maintenance crew than A.V. and then stated that she had heard of rumors of Dix and A.V. being in a relationship but had no knowledge of the truth of those rumors. Thereafter, the jury found Dix guilty as charged, and the court entered its judgment of conviction and sentenced Dix to three years suspended to probation. This appeal ensued.

1. The trial court did not abuse its discretion when it denied Dix’s request for a continuance.

[10] On appeal, Dix first asserts that the trial court erred when it denied his December 19 request for a continuance, which Dix, in turn, had based on the State’s late disclosure of Eastman’s recorded statement. Dix initially frames his argument on this issue around *Brady v. Maryland*. In *Brady*, the Supreme Court of the United States held that the State in a criminal prosecution has an affirmative obligation under the Due Process Clause to disclose potentially exculpatory evidence to the defense. 373 U.S. 83, 87 (1963). But “*Brady* is a disclosure rule, not a discovery rule.” *Church v. State*, 189 N.E.3d 580, 592 (Ind. 2022) (cleaned up). And, here, the State did disclose Eastman’s statement prior to trial, it just did so late. That is a discovery violation, not a constitutional

disclosure violation under *Brady*. See, e.g., *Berry v. State*, 715 N.E.2d 864, 866 (Ind. 1999).

[11] “Generally, the proper remedy for a discovery violation is a continuance.” *Id.* However, “[t]he trial court has broad discretion in dealing with discovery violations and may be reversed only for an abuse of that discretion . . . and resulting prejudice.” *Id.* An abuse occurs only where the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018). “There is a strong presumption that the trial court properly exercised its discretion.” *Id.* (quoting *Warner v. State*, 773 N.E.2d 239, 247 (Ind. 2002)).

[12] We cannot say the trial court abused its discretion when it denied Dix’s request for a continuance. Dix knew that A.V. had identified Eastman as a person with potential knowledge of the events well before the State’s December 19 disclosure, yet he made no attempt to discern what additional information she may have had prior to receiving the State’s late disclosure. Further, Eastman’s location was unknown, and several years had passed since her recorded statement. And, in that statement, which Dix played for the jury, she provided a damaging statement against the State’s case, namely, that she had only heard rumors of the alleged events but had no personal knowledge of them. Dix does not identify what further information Eastman may have contributed had his request for a continuance been granted.

[13] Accordingly, we cannot say that the trial court’s denial of Dix’s request for a continuance was an abuse of the court’s discretion.

2. Dix’s two convictions do not violate Indiana’s substantive protections against double jeopardy.

[14] Dix also asserts that his two convictions violate the prohibition against double jeopardy. We review whether two convictions violate Indiana’s substantive protections against double jeopardy de novo. *Carranza v. State*, 184 N.E.3d 712, 715 (Ind. Ct. App. 2022).

[15] Dix’s argument invokes the test announced by our Supreme Court in *Wadle v. State*, 151 N.E.3d 227 (Ind. 2020). As we have explained:

Wadle requires a multi-step analysis to evaluate substantive double jeopardy claims that arise when a single criminal act implicates multiple statutes. 151 N.E.3d at 235. First, we look to the statutes. *Id.* If they explicitly allow for multiple punishments, no double jeopardy occurs, and our inquiry ends. *Id.* at 248. If the statutes are unclear, we apply Indiana’s included-offense statute. *Id.* (citing Ind. Code § 35-31.5-2-168). If either offense is included in the other, we proceed to the second step and ask whether the defendant’s actions are “so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction.” *Id.* at 249. If the facts show only a single crime, judgment may not be entered on the included offense. *Id.* at 256.

Carranza, 184 N.E.3d at 716.

[16] Dix’s two convictions certainly share some common elements, but they are also plainly distinct under our precedent. To support his Level 5 felony conviction,

the State was required to show that Dix was a public servant who engaged in sexual intercourse with a person who was subject to lawful detention. [I.C. § 35-44.1-3-10\(b\) \(2018\)](#). And to support his Level 6 felony conviction, the State was required to show that Dix was a public servant who knowingly or intentionally “commit[ted] an offense in the performance of the public servant’s official duties.” [I.C. § 35-44.1-1-1\(1\) \(2018\)](#).

[17] However, “our Courts have repeatedly upheld” the principle that there is “no double-jeopardy violation where there are multiple victims of the same crime.” [Frazier v. State, 988 N.E.2d 1257, 1264 \(Ind. Ct. App. 2013\)](#). Dix does not suggest that *Wadle* or any other precedent of our Supreme Court changed that long-standing principle. And we have further recognized that the victim of a sexual assault is the person assaulted, while the “victim of . . . official misconduct” is “the public.” *Id.* Accordingly, Dix’s two offenses were against two separate victims, A.V. and the public. We therefore conclude that there is no double-jeopardy violation in his two convictions.

Conclusion

[18] For all of these reasons, we affirm Dix’s convictions.

[19] Affirmed.

Vaidik, J., and Pyle, J., concur.