

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jameicio D. Wallace,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 30, 2023

Court of Appeals Case No.
22A-CR-2893

Appeal from the Marion Superior
Court

The Honorable Clark Rodgers,
Judge

Trial Court Cause No.
49D25-2109-CM-28256

Memorandum Decision by Judge Kenworthy
Judges Bailey and Tavitas concur.

Kenworthy, Judge.

Case Summary

[1] Following a bench trial, Jameicio Wallace was convicted of four offenses from a single traffic stop: Count 1, Class A misdemeanor operating a vehicle while intoxicated (“OWI”) in a manner endangering a person;¹ Count 2, Class A misdemeanor driving while suspended;² Count 3, Class C misdemeanor OWI;³ and Count 4, Class C misdemeanor operating a vehicle with a blood alcohol concentration equivalent to at least 0.08 grams per 100 milliliters.⁴ Wallace appeals, arguing the trial court’s entry of judgment on Counts 1, 3, and 4 violate principles of double jeopardy. We agree.

[2] Concluding Wallace’s right not to be placed in double jeopardy was violated, we reverse only the trial court’s entry of judgment on Counts 3 and 4 and remand for the trial court to vacate its entry of judgment on those counts. We otherwise affirm the trial court.

Facts and Procedural History

[3] Around 2:00 a.m. in September 2021, a police officer saw Wallace’s vehicle fail to stop at a red light. The officer initiated a traffic stop. When he approached the window of Wallace’s vehicle, the officer noticed “a strong odor of an

¹ Ind. Code § 9-30-5-2(a), (b) (2021).

² I.C. § 9-24-19-2 (2016). Wallace does not appeal the conviction of driving while suspended.

³ I.C. § 9-30-5-2(a).

⁴ I.C. § 9-30-5-1(a)(1) (2021).

alcoholic beverage,” *Tr. Vol. 2* at 22, and saw Wallace’s “[r]ed bloodshot eyes,” *id.* at 23. Wallace eventually produced his driver’s license, which was suspended.

[4] After the officer asked Wallace to step out of the vehicle, the officer conducted three standard field sobriety tests, which Wallace failed. The officer read Wallace the Indiana implied consent law, and Wallace refused to take a chemical test. Then, the police officer drove Wallace to the hospital and applied for a warrant for a blood draw. The court granted the warrant, and a nurse took a blood sample from Wallace. The blood was tested, and the results showed Wallace had a blood alcohol concentration of 0.149 grams per 100 milliliters.

[5] The State charged Wallace with three offenses related to his operation of the vehicle—Counts 1, 3, and 4—and driving while suspended. After a bench trial, the trial court found Wallace guilty as charged. The court entered judgments of conviction for all counts. For Count 1, the court sentenced Wallace to 365 days, with credit for eight days, and suspended the remaining 357 days to probation. For Counts 2, 3, and 4, the court sentenced Wallace to concurrent time served of eight days. Wallace now appeals.

Discussion and Decision

[6] Wallace argues, and the State agrees, Wallace’s substantive double jeopardy rights were violated when the trial court entered judgment of conviction on all three alcohol-related charges. We agree.

- [7] “[W]e review a trial court’s legal conclusions whether convictions violate double jeopardy de novo.” *Sloan v. State*, 947 N.E.2d 917, 920 (Ind. 2011). *Wadle v. State* provides the analytical framework for cases where—as here—a defendant’s single act or transaction implicates multiple criminal statutes. 151 N.E.3d 227, 235 (Ind. 2020).
- [8] First, we look to the statutes implicated in the double jeopardy claim. If the statutes do not clearly permit multiple punishment, we apply the included-offense statute to determine “whether one charged offense encompasses another charged offense.” *Id.*; accord Ind. Code § 35-31.5-2-168 (2012). If one offense is included in the other, we “must look at the underlying facts—as alleged in the information and as adduced at trial—to determine whether the charged offenses are the ‘same.’” *Wadle*, 151 N.E.3d at 235. If 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[,]” there is a violation of substantive double jeopardy. *Id.* at 249 (quoting *Walker v. State*, 932 N.E.2d 733, 735 (Ind. Ct. App. 2010)).
- [9] The Indiana Supreme Court in *Wadle* looked to the statutes describing the offenses of (1) operating a vehicle with a blood alcohol concentration of at least 0.08 milliliters and (2) OWI in a manner endangering a person (Counts 4 and 1 here). 151 N.E.3d at 253. The court in *Wadle* held the statutes do not clearly permit multiple punishment and the former is included in the latter. *Id.* Likewise, here, Count 4 is included in Count 1. Next, Indiana Code Section 9-30-5-2 does not clearly permit multiple punishment. And because Indiana

Code Section 9-30-5-2(b) adds an element to the offense described in Indiana Code Section 9-30-5-2(a), the offense of OWI is included in the offense of OWI in a manner endangering a person. That is, Count 3 is also included in Count 1.

[10] Next, we turn to whether the facts show Wallace’s actions underlying the convictions constitute a single transaction. The State concedes, and we agree, Wallace “was convicted for all three offenses during a single act of driving.” *Appellee’s Br.* at 8. Therefore, Wallace’s substantive double jeopardy rights were violated, and all three of his alcohol-related convictions cannot stand. We leave intact the lead conviction on Count 1 and remand to the trial court to vacate its judgments of conviction on Counts 3 and 4.

Conclusion

[11] We conclude Wallace’s right not to be placed in double jeopardy was violated. Accordingly, although we affirm Counts 1 and 2 and the imposed sentence, we remand to the trial court to vacate its judgments of conviction for Counts 3 and 4.

[12] Affirmed in part, reversed in part, and remanded.

Bailey, J., and Tavitas, J., concur.