

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.



ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke
Wieneke Law Office, LLC
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General
Jodi Kathryn Stein
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jill N. Thompson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 31, 2022

Court of Appeals Case No.
22A-CR-1199

Appeal from the Vanderburgh
Circuit Court

The Honorable Kelli E. Fink,
Magistrate

Trial Court Cause No.
82C01-2012-F6-6419

Crone, Judge.

Case Summary

- [1] Jill N. Thompson was found guilty of both battery against a public safety official, a level 6 felony, and resisting law enforcement, a class A misdemeanor. Thompson contends that her two convictions violate Indiana’s prohibition on double jeopardy and requests that the resisting law enforcement conviction be reversed. Concluding that Thompson was subjected to double jeopardy, we affirm her battery conviction and sentence, reverse her conviction for resisting law enforcement, and remand with instructions to vacate the resisting conviction.

Facts and Procedural History

- [2] One evening in December 2020, Evansville Police Department Officer Ryan Eagleson was following a prisoner transport wagon when a female prisoner within the wagon complained of a medical emergency. The wagon pulled into the parking lot of a gas station, and Officer Eagleson pulled his police car in behind the wagon. Because the prisoner indicated chest pain, the officers called for medical personnel to be dispatched.
- [3] Minutes later, forty-one-year-old Thompson, carrying a large soft drink, exited the gas station. Seeing the transport wagon and the police car, Thompson walked toward Officer Eagleson. She greeted him and engaged in what both the State and the defendant described as “friendly conversation.” Appellant’s Br. at 5; Appellee’s Br. at 6. Officer Eagleson characterized Thompson as “just curious,” and he explained that the female prisoner’s medical situation

necessitated the stop and a call for an ambulance. Tr. Vol. 2 at 6. When Officer Eagleson mentioned that the prisoner was anxious, Thompson volunteered to speak with her to calm her. Officer Eagleson declined. However, he invited Thompson to be his guest and watch the situation if she wished.

[4] Meanwhile, Officer Steve Carlile arrived at the scene in his police vehicle, and Thompson said hello to him. Officer Eagleson updated Officer Carlile regarding the prisoner's situation and clarified that Thompson was just an onlooker. Officer Eagleson then went to his car to work on a report. Officer Carlile stood near the transport wagon, commanded Thompson to go away from his police vehicle, and motioned her to the left. Officer Carlile followed up with a warning that if Thompson did not move away, she would end up in the prisoner transport wagon. A loud argument ensued during which Thompson denied wrongdoing and Officer Eagleson tried to explain that the officers did not want her to jump into one of their police vehicles. Thompson verbalized her belief that the officers were being disrespectful. Officer Eagleson repeated his request that she not be close to the incident. Officer Eagleson instructed Thompson to stand in a particular place as the ambulance arrived and then stand in another place behind a line in the concrete. Thompson told the officers to be safe, and Officer Eagleson again asked her to step back. Thompson stated she was going to be leaving the parking lot and walking between the ambulance and Officer Carlile's vehicle. The conversation escalated, with Thompson taunting the officers and "yelling and saying odd things." *Id.* at 8. Officer Eagleson said he would arrest her for interfering if she stepped over another line in the concrete.

She stepped over the line, and Officer Eagleson began to arrest her. Officer Carlile assisted with the arrest because Thompson was flailing mightily. As the two officers attempted to restrain her arms behind her to be handcuffed, Thompson was screaming expletives and kicking. “[D]uring the struggle,” one of her kicks hit “Officer Carlile in the groin.” *Id.* at 10. The officers immediately brought her to the ground face down and worked together to handcuff her wrists. Thompson spoke loudly, rapidly, repetitively, and rather incoherently as she lay on the concrete before the officers loaded her into the transport wagon. After closing the wagon’s door, the officers laughed about the incident. The entire episode was captured from more than one vantage point by officer body cameras.

[5] The State charged Thompson with three counts: battery against a public safety official, resisting law enforcement, and refusing to leave emergency incident area. At the conclusion of a bench trial in mid-March 2022, the court took the matter under advisement. A couple of weeks later, the court found Thompson guilty of the battery and resisting counts and acquitted her of refusing to leave emergency area. Thompson received a one-year sentence suspended to probation on the battery count and a six-month sentence suspended to probation on the resisting count. Appellant’s App. Vol. 2 at 55. The court ordered the sentences to be concurrent and stated that if Thompson participated in a mental health evaluation and successfully completed any recommended treatment, the battery conviction would convert from a level 6 felony to a class A misdemeanor. *Id.* at 55-56.

Discussion and Decision

[6] Citing double jeopardy concerns, Thompson contends that a defendant “cannot be convicted and sentenced for both an offense and an ‘included offense’ that arose as part of a single act/transaction.” Appellant’s Br. at 9. She asserts that resisting law enforcement is a factually included offense of battery on a police officer in her case. Specifically, she argues that her kicking of Officer Carlile occurred as part of her forcible resistance of her arrest by Officers Carlile and Eagleson.

[7] 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).

[8] As a result of her behavior, Thompson was charged with and convicted of battery against a public safety official and forcibly resisting law enforcement. A person commits level 6 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). The term “forcibly” is a distinct element of the offense that modifies all three verbs “resists, obstructs, or interferes.” See *K. W. v. State*, 984 N.E.2d 610, 612 (Ind. 2013). 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. “[A]ny action to resist must be done with force in order to violate this statute. It is error as a matter of law to conclude that ‘forcibly resists’ includes all actions that are not passive.” *Id.* at 724.

[9] Because Thompson’s single act or transaction implicates more than one criminal statute, 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. If neither statute permits multiple punishments, we then analyze whether under Indiana’s included-offense statute either offense is included in the other. *Id.* at 248; see Ind. Code § 35-31.5-2-168.

[10] Both the State and Thompson agree that the above-cited battery and resisting law enforcement statutes do not, under the facts here, clearly permit multiple

punishments.¹ Hence, we move to examine whether either offense is included in the other. Our legislature defines an “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.

Ind. Code § 35-31.5-2-168. An offense may be included either inherently or as charged. *Wadle*, 151 N.E.3d at 248.

[11] The parties agree that the 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. Thus, we look at whether the offenses were included as charged. Count 1 alleged that Thompson “knowingly or intentionally touch[ed] S. Carlile, a public safety official, in a rude, insolent, or angry manner by striking said victim while the said official was engaged in the

¹ Indeed, the State notes that 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 charge did not allege that Thompson caused bodily injury. *See* Ind. Code § 35-44.1-3-1(i).

official's official duty[.]” Appellant’s App. Vol. 2 at 14 (citing Ind. Code § 35-42-2-1(c)(1) and –(e)(2)). Count 2 alleged that Thompson “knowingly or intentionally forcibly resist[ed] Evansville Police Department Officers while said officers were lawfully engaged in their duties as law enforcement officers[.]” *Id.* at 14 (citing Ind. Code § 35-44.1-3-1(a)(1)). The striking of the officer encompassed the forcible resistance while the officers were engaged in their duty, here, arresting Thompson. Under these specific circumstances, as charged, the resisting offense was included within the offense of battery of the officer.

[12] Per *Wadle*, because one offense is included in the other, we must examine the facts underlying the offenses as presented in the charging instrument and as adduced at trial. 151 N.E.3d at 249. Based on this information, we must ask whether Thompson’s actions were “so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction.” *Id.* (citing *Walker v. State*, 932 N.E.2d 733, 735 (Ind. Ct. App. 2010)). If the facts show “only a single continuous crime, and one statutory offense is included in the other, then the prosecutor may charge these offenses only as alternative (rather than as cumulative) sanctions.” *Wadle*, 151 N.E.3d at 249.

[13] Six minutes elapsed between the time that Thompson and Officer Eagleson first engaged in friendly conversation at a gas station until the moment he announced he was arresting her. Within one minute of Officer Eagleson’s arrest announcement, as Thompson yelled and thrashed and the officers attempted to

maneuver her arms behind her to be handcuffed, one of Thompson's kicks connected with Officer Carlile. Thompson was immediately brought to the ground, successfully cuffed, and left lying on the concrete parking lot of the gas station for a few minutes as she continued to loudly express her frustration. Having viewed the footage from both officers' body cameras and read the transcript of Officer Eagleson's² testimony, and given the speed at which the situation deteriorated, we find it impossible to disentangle the forcible resistance from the battery. The forcible resistance and battery in this particular case were so compressed in terms of time, place, singleness of purpose,³ and continuity of action as to constitute a single transaction. As such, Thompson has demonstrated double jeopardy. Accordingly, we affirm her battery conviction and sentence, reverse her conviction for resisting law enforcement, and remand with instructions to vacate the resisting conviction. Because Thompson's sentences were to run concurrently, her aggregate sentence remains unchanged.

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

May, J., and Weissmann, J., concur.

² Officer Carlile did not appear at trial. Further, an initial restitution request was retracted because the dates did not match up with the incident.

³ We are unpersuaded that Thompson's fleeting response (exclaimed amid a barrage of rapid-paced, expletive-filled, odd comments) that she kicked Officer Carlile because an officer tried to "f--" with her head constitutes a different purpose sufficient to rebut the singleness of the transaction.