MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Elrice Lynn Williams,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 25, 2024

Court of Appeals Case No.
23A-CR-681

Appeal from the Lake Superior Court

The Honorable Natalie Bokota, Judge

Trial Court Cause No.
45G02-1903-MR-10

Memorandum Decision by Judge Mathias
Judges May and Vaidik concur.

Mathias, Judge.

[1] Elrice Lynn Williams appeals his convictions for murder, three counts of Level 3 felony attempted robbery, Level 4 felony attempted burglary, and Level 4 felony burglary. Williams raises four issues for our review, which we restate as the following two issues:

> 1. Whether the trial court abused its discretion when it admitted into evidence testimony regarding Williams's gang affiliation.
>
> 2. Whether Williams's convictions violate Indiana's prohibition against double jeopardy.

[2] We affirm.

Facts and Procedural History

[3] In January 2019, William Hawkins sold marijuana in Gary. Hawkins had several friends sell the marijuana on his behalf. One of those friends was Donald Shields, who lived with his girlfriend, Chyanne Miller, in a house on Madison Street.

[4] Giovante Galloway knew that Shields sold marijuana for Hawkins and knew of Shields's residence on Madison Street. Galloway reached out to his uncle, Juarez Rogers, to see if Rogers would help Galloway break into the Madison Street house to steal the marijuana. Rogers, in turn, recruited Joe Chuck Pittman, and the three men then met and agreed on a plan to break into the Madison Street house.

[5] On January 9, the three men met with two other men—Williams and Joshua Wright—in Rogers's basement to finalize their plan. The five men then drove in one vehicle to the Madison Street house. There, they attempted to open the back door, but a piece of wood near the door fell over and made a loud noise. That noise was promptly followed by the sound of gunshots coming from inside the house. The five men "scatter[ed]" but, after some time, met back up at their vehicle. Tr. Vol. 5, p. 36.

[6] Meanwhile, Shields called Hawkins and asked Hawkins to pick Shields and Miller up and to take them to a different residence. Hawkins arrived about ten minutes later with his girlfriend, Alayna Ortiz. Hawkins was driving Ortiz's vehicle. Shields and Miller then exited the house and entered the vehicle; Miller had some clothing in a pink duffel bag that she brought with her.

[7] The five men had returned to their vehicle by the time Hawkins arrived at the scene, and they watched Shields and Miller enter the other vehicle with the duffel bag. They concluded that the marijuana was traveling with Hawkins, and they followed Ortiz's vehicle.

[8] Hawkins drove to an apartment complex and parked in a spot that had a wooden post in front of it. Wright, who was driving the other vehicle, immediately pulled in behind Hawkins, blocking him in. Williams and Pittman "jump[ed] out" of their vehicle, with Williams taking the driver's side and Pittman the passenger's side. *Id.* at 49. Both men were armed. From the back seat, Shields yelled at Hawkins to "drive," and Hawkins put the car into gear

and then powered over the wooden post. Tr. Vol. 4, p. 125. As Hawkins did so, Williams fired his gun through the rear driver's side window. The bullet struck Ortiz in the head and killed her.

[9] Hawkins found local law enforcement nearby and drove to them for assistance. The five men went back to the Madison Street house and completed their burglary of it. Later, Galloway informed law enforcement of what had happened and who had been involved.

[10] The State charged Williams with numerous offenses. The State called multiple witnesses, several of whom identified Williams in open court and testified that he went by the name "BD." Tr. Vol. 5, p. 24. During his cross-examination of Galloway, Williams's counsel engaged him in the following colloquy:

> Q. And you also said that the front passenger was being called BD[,] right?
>
> A. Yeah.
>
> Q. But everybody in the car, they were calling each other BD[,] weren't they?
>
> A. Yes.

Id. at 101. Following that exchange, the State asked to approach the bench regarding a possible redirect examination of the witness:

> [State]: There was a fact that the State was staying away from but I believe counsel has now opened the door to.

> The initials BD not only go to the name, but also a gang affiliation, Black Disciples. Counsel . . . in his questioning[,] said, everybody was calling each other BD. I have to be able to clarify why these people were being referenced as BD because it's not a name; it was their affiliation.

Id. at 121. Over objection, the court permitted the State to ask its questions to Galloway on redirect. Galloway then testified that BD referred to a gang called the "Black Disciples," that "anybody affiliated with the Black Disciples . . . would be called [BD] for nicknames," and "[e]veryone" in the car except for Galloway and Rogers was affiliated with the gang. *Id.* at 124-25.

[11] The jury found Williams guilty on multiple counts, and the trial court entered judgment of conviction against Williams for murder, three counts of Level 3 felony attempted robbery, Level 4 felony attempted burglary, and Level 4 felony burglary. The court sentenced Williams accordingly, and this appeal ensued.

1. The trial court did not abuse its discretion in admitting into evidence testimony of Williams's gang affiliation after Williams made an issue out of it in his cross-examination of the witness.

[12] We first address Williams's argument that the trial court abused its discretion when it permitted the State to ask Galloway, on redirect, about Williams's affiliation with the Black Disciples gang.[1] A trial court has broad discretion

[1] The State contends that Williams's objections in the trial court were not specific enough to preserve his arguments on this issue for appellate review. But the trial court cut Williams's counsel off as he was

regarding the admission of evidence, and its decisions are reviewed only for abuse of discretion. *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021). We will reverse only if the trial court's ruling was clearly against the logic and effect of the facts and circumstances before it and the errors affect a party's substantial rights. *Id*.

[13] Williams initially contends that the State's questions to Galloway about Williams's gang affiliation should have been prohibited under Indiana Evidence Rule 404(b). That Rule provides that "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Ind. Evidence Rule 404(b)(1). However, such evidence "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Evid. R. 404(b)(2).

[14] Williams's gang affiliation was admissible under Rule 404(b) to prove Williams's identity as *the* "BD" Galloway identified as participating in the events of January 9, 2019. Tr. Vol. 5, p. 24. Galloway's initial testimony identified one participant in that day's events as "BD," which testimony Galloway coupled with an in-court identification of Williams. *Id.* On cross-examination, Williams's counsel then elicited testimony that other men

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articulating his objection. *See* Tr. Vol. 5, p. 122. We therefore choose to address the merits of Williams's contentions on this issue.

involved in that day's events were also known as "BD." *Id.* at 101. That line of questioning from Williams's counsel opened the door for the State to disambiguate the situation by asking Galloway, on redirect, to explain why he had identified Williams in particular as BD and why others in the car may have also been known as BD even though Galloway was not using that abbreviation to refer to them in his testimony. *Id.* at 121. Thus, the trial court properly admitted Galloway's testimony on redirect.

[15] Williams also asserts that the trial court abused its discretion in admitting Galloway's testimony under Evidence Rule 403. Rule 403 provides that the trial court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence."

[16] The trial court did not abuse its discretion under Rule 403. Williams's questioning of Galloway created a misleading impression with the jury, namely, that Galloway may have been referring to any of the gang-affiliated members in the group and not about Williams specifically in his testimony. The State's questions on redirect were necessary to dispel that misleading impression. That is, not only was Galloway's testimony on redirect relevant, excluding it would have permitted, not avoided, a misleading impression with the jury. Thus, the trial court properly allowed Galloway's testimony under Rule 403.

2. Williams's convictions do not violate Indiana's prohibition against double jeopardy.

[17] We thus turn to Williams's arguments on appeal that several of his convictions violate Indiana's prohibition against double jeopardy. We review these questions de novo. *See* *Wadle v. State*, 151 N.E.3d 227, 237 (Ind. 2020).

2.1. Williams's convictions for murder and the three Level 3 felony attempted robberies are not contrary to *Wadle*.[2]

[18] Williams first asserts that his conviction for murder and his three Level 3 felony attempted robbery convictions are contrary to our Supreme Court's analysis in *Wadle* for substantive double jeopardy claims. "*Wadle* set forth a multi-step analysis to evaluate substantive double jeopardy claims that arise when, as here, a single criminal act implicates multiple statutes with common elements." *Garth v. State*, 182 N.E.3d 905, 920 (Ind. Ct. App. 2022), *trans. denied*. As relevant to our analysis, the question is whether Williams's three attempted robbery convictions are included offenses to his murder conviction. *See id.*

[19] They are not. Williams's murder conviction is for his shooting and killing of Ortiz, while his three Level 3 felony attempted robbery convictions are for him approaching Ortiz's vehicle with a firearm and attempting to steal what he believed to have been marijuana from its three other occupants—Hawkins,

[2] While this appeal was pending, our Supreme Court handed down its opinion in *A.W. v. State*, No. 23S-JV-40 (Ind. Mar. 12, 2024), in which the Court made important clarifications to the *Wadle* analysis. However, those clarifications do not impact our analysis here, and we need not discuss them.

Shields, and Miller. Appellant's App. Vol. 3, pp. 2-3 (charging information); Appellant's App. Vol. 4, pp. 128-30, 136, 141-46 (final jury instructions).

[20] In other words, each of these four convictions had a different victim. As we have previously recognized, "by definition one offense cannot be either a factually or inherently included lesser offense" of another offense where "a separate victim is alleged for each offense." *Woodcock v. State*, 163 N.E.3d 863, 875 (Ind. Ct. App. 2021), *trans. denied*; *see also* Ind. Code § 35-31.5-2-168(3) (2023) (defining an "included offense" in 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*") (emphasis added). Accordingly, Williams's argument under *Wadle* fails.

2.2. Williams's convictions for three counts of Level 3 felony attempted robbery are not contrary to *Powell*.

[21] Williams additionally contends that his singular act of attempting to rob the surviving occupants of Ortiz's vehicle cannot result in three convictions under our Supreme Court's analysis in *Powell v. State*, 151 N.E.3d 256 (Ind. 2020). Unlike *Wadle*, our Supreme Court's analysis in *Powell* controls when a single criminal act violates a single statute but results in multiple injuries. *Id.* at 263.

[22] As we have explained, "[t]he analysis under *Powell*, potentially a two-step process, begins by reviewing the text of the statute to determine the appropriate unit of prosecution." *Kerner v. State*, 178 N.E.3d 1215, 1232 (Ind. Ct. App. 2021), *trans. denied*. "If the minimum action required to commit a new and

independent violation of the statute is clear, we follow the legislature's guidance and our analysis is complete." *Id.* (quotation marks omitted). Further:

> A conduct-based statute . . . consists of an offense defined by certain actions or behavior (e.g., operating a vehicle) and the presence of an attendant circumstance (e.g., intoxication) . . . . A result-based statute, on the other hand, consists of an offense defined by the defendant's actions and the results or consequences of those actions.

Powell, 151 N.E.3d at 266. The distinction matters when multiple consequences flow from a single criminal act: conduct-based statutes permit only a single conviction whereas result-based statutes permit multiple convictions. *Id.*

[23] Williams's argument on this issue relies on our opinion in *Kerner v. State*, 178 N.E.3d 1215 (Ind. Ct. App. 2021), *trans. denied*. In *Kerner*, the defendant attempted to rob Thomas of liquid THC cartridges. But Thomas did not have any cartridges, and the defendant killed Thomas. The defendant then located Molley, who had arrived at the scene with Thomas but was not nearby when the defendant killed him. The defendant told Molley that if she told anyone what had happened he would kill her too. Molley agreed not to say anything and turned to leave, at which point the defendant shot and killed her.

[24] Among other convictions, the State sought and obtained two convictions against the defendant for attempted robbery, both of which were enhanced to Level 2 felonies based on the degree of injury to Thomas and Molley. Specifically, one of those convictions was based on the State's charge that the defendant had attempted to rob Thomas, which resulted in serious bodily injury

to Thomas. The other conviction was based on the State's charge that the defendant had attempted to rob Thomas, which resulted in serious bodily injury to Molley.

[25] Assessing the viability of those two convictions under *Powell*, we held as follows:

> Attempted robbery is a conduct-based crime, as its commission is marked by conduct, not results. The crime is complete when the defendant, acting with the requisite culpability, "engages in conduct that constitutes a substantial step toward" committing the robbery, I.C. § 35-41-5-1, regardless of whether that conduct results in taking property from another by force. The fact that a specific consequence—serious bodily injury—can elevate the offense does not change this result.
>
> Although both Thomas and Molley suffered serious bodily injury, there was only one act of attempted robbery. As reflected in the State's charging information, the core of the criminal act was Kerner's attempt to take property from Thomas by using or threatening the use of force on him. While serious bodily injury to a second victim can elevate the offense, it cannot form the basis of a separate attempted robbery. . . .

Id. at 1232-33 (some citations omitted).

[26] Williams's three Level 3 felony attempted robbery convictions are readily distinguishable from the two Level 2 felony attempted robbery convictions at issue in *Kerner*. Unlike in *Kerner*, here the State did not allege that Williams had attempted to rob one victim, which attempt resulted in some degree of injury to multiple victims. Rather, here the State alleged that Williams had attempted to

rob three victims. Thus, Williams's circumstances do not relate to the level of the felony charged; they relate to the elements of the offense itself.

[27] And the elements of robbery expressly require the taking—or, here, the attempted taking—of property "from another person or from the presence of another person." I.C. § 35-42-5-1(a). The minimum action required to commit a new and independent violation of the statute is clear: there must be at least one person from whom the defendant is attempting to take property in order for the State to be able to allege robbery. *Powell*, 151 N.E.3d at 264. Where the minimum action required is clear, "we follow the legislature's guidance and our analysis is complete." *Id.* Our analysis here is therefore complete. Following the plain language of the robbery statute, the State may properly charge multiple offenses of robbery where a defendant simultaneously attempts to take property from multiple persons. Williams's three Level 3 felony attempted robbery convictions are therefore not contrary to Indiana law.

2.3. Williams's convictions for Level 4 felony attempted burglary and Level 4 felony burglary are also not contrary to *Powell*.

[28] Last, Williams argues that his conviction for Level 4 felony attempted burglary and his conviction for Level 4 felony burglary are also contrary to *Powell* because they were "a single, continuous offense." 151 N.E.3d at 265. This part of the *Powell* analysis requires us to look to whether the multiple acts were "so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." *Id.* at 268.

[29] Put simply, Williams's Level 4 felony attempted burglary conviction and his Level 4 felony burglary conviction were not a single, continuous offense, and it is not close in time. Williams's Level 4 felony attempt conviction was based on his initial attempt to enter into the Madison Street house. That initial attempt resulted in one of the occupants of the house firing a gun, followed by Williams and his confederates fleeing and then approximately ten minutes later meeting back up at their vehicle. There, they observed Hawkins and the others exit the residence, get into Ortiz's vehicle, and leave the scene. Williams and his confederates then followed Ortiz's vehicle for some time to a different residence, where Williams then shot and killed Ortiz and attempted to rob the other occupants of her vehicle. After the attempt to rob Hawkins and the others failed, Williams and his confederates once again decided to return to the Madison Street house and steal whatever might have been left behind of value, which was the basis for Williams's Level 4 felony burglary conviction.

[30] Nothing about the "time, place, singleness of purpose, and continuity of action" of the initial, attempted burglary and the later burglary were "so compressed . . . as to constitute a single transaction." *Id.* There is therefore no violation of *Powell* from Williams's convictions for Level 4 felony attempted burglary and Level 4 felony burglary.

Conclusion

[31] For all of the above-stated reasons, we affirm Williams's convictions.

[32] Affirmed.

May, J., and Vaidik, J., concur.

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