

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Edmande R. Hill,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 16, 2024

Court of Appeals Case No.
23A-CR-2310

Appeal from the St. Joseph Superior Court
The Honorable John M. Marnocha, Judge
Trial Court Cause No.
71D02-2204-F5-84

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

- [1] While driving in South Bend, Edmande Hill fired two gunshots into Jacob Teshka's vehicle. The State charged Hill with three counts of Level 5 felony criminal recklessness and one count of Level 5 felony attempted battery by means of a deadly weapon. After a trial, a jury found him guilty as charged. At sentencing, the trial court entered judgment of conviction on all three of the criminal-recklessness charges and sentenced Hill to an aggregate term of six years of incarceration. Hill argues that his three criminal-recklessness convictions violate Indiana's prohibition against double jeopardy and the State agrees. Consequently, we affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

- [2] On December 8, 2021, Teshka was driving in South Bend with his two children when Hill, driving in the vehicle beside him, fired two gunshots into his vehicle in an apparent road-rage incident. The State charged Hill with Level 5 felony attempted battery by means of a deadly weapon and three counts of Level 5 felony criminal recklessness, differentiated by the three victims.
- [3] In July of 2023, the trial court conducted a jury trial, at the conclusion of which a jury found Hill guilty as charged. Prior to sentencing, the State submitted a sentencing memorandum to the trial court, in which it conceded that two of Hill's three criminal-recklessness convictions should be vacated to avoid

double-jeopardy violations. The State further conceded that Hill’s conviction for criminal recklessness—as it concerned Teshka—was a lesser-included offense of attempted battery by means of a deadly weapon. Consequently, the State asked the trial court to enter a judgment of conviction on Hill’s conviction for attempted battery with a deadly weapon and vacate the remaining counts.

- [4] That August, the trial court held a sentencing hearing, at which it expressed its disagreement with the State’s double-jeopardy analysis. The trial court entered judgments of conviction on Hill’s three criminal-recklessness convictions and vacated his conviction for attempted battery with a deadly weapon due to double-jeopardy concerns. The trial court then imposed a six-year term of incarceration on each count to be served concurrently.

Discussion and Decision

- [5] Whether a conviction violates Indiana’s prohibition of double jeopardy is a question of law that we review de novo. *Wadle v. State*, 151 N.E.3d 227, 237 (Ind. 2020). Substantive double-jeopardy claims come in two flavors: “(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). *Wadle* governs the first scenario while *Powell* governs the latter. *Id.*
- [6] Hill’s double-jeopardy claim falls under *Powell* because his three criminal-recklessness convictions stem from multiple violations of the same statute. “In

resolving a claim of multiplicity, our task is to determine whether the statute permits punishment for a single course of criminal conduct or for certain discrete acts—the ‘successive, similar occurrences’—within that course of conduct.” *Id.* at 264 (quoting *Hines v. State*, 30 N.E.3d 1216, 1220 (Ind. 2015)). The analysis is a two-step process: first, we review the statute’s text to determine whether the statute (expressly or by judicial construction) indicates a unit of prosecution. *Id.* If so, we follow the legislature’s guidance and that ends our analysis. *Id.* If the statute is ambiguous, however, we move to the second step. *Id.* In that step, we determine whether the facts indicate a single offense or distinguishable offenses. *Id.* To answer that question, we consider 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.” *Walker v. State*, 932 N.E.2d 733, 735 (Ind. Ct. App. 2010).

[7] Our criminal recklessness statute provides that a “person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person commits criminal recklessness.” Ind. Code § 35-42-2-2(a). We have previously concluded that this statute is ambiguous with respect to its “unit of prosecution.” *See Moore v. State*, 181 N.E.3d 442, 447–48 (Ind. Ct. App. 2022). Consequently, we proceed to step two of the *Powell* test.

[8] Hill and the State agree that Hill’s multiple convictions for criminal recklessness violate prohibitions against double jeopardy. We agree with the parties that there was no meaningful break in time between these gunshots, rendering them “so compressed in terms of time, place, singleness of purpose, and continuity of

action as to constitute a single transaction.” *Walker*, 932 N.E.2d at 735. We reverse in part and remand with instructions to vacate two of Hill’s Level 5 felony criminal-recklessness convictions and resentence him in a manner consistent with this decision.

- [9] The judgment of the trial court is affirmed in part, reversed in part, and remanded with instructions.

Altice, C.J., and Felix, J., concur.

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