## MEMORANDUM DECISION





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# IN THE COURT OF APPEALS OF INDIANA

Curtis R. Jones,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

May 11, 2023

Court of Appeals Case No. 22A-CR-1517

Appeal from the Porter Superior Court

The Honorable Michael A. Fish, Judge

Trial Court Cause No. 64D01-1704-F3-3653

**Memorandum Decision by Judge Tavitas**
Judges Vaidik and Foley concur.

**Tavitas, Judge.**

## Case Summary

[1] Curtis Jones was convicted of Count II, neglect of a dependent, a Level 3 felony; and Count III, neglect of a dependent, a Level 6 felony. Jones appeals and argues that: (1) the trial court abused its discretion by denying Jones's motion to dismiss Count II; (2) the State presented insufficient evidence to support Jones's convictions; and (3) Jones's convictions constitute double jeopardy. We find that Jones's arguments are without merit and, accordingly, affirm.

## Issues

[2] Jones raises three issues on appeal, which we restate as:

I. Whether the trial court abused its discretion by denying Jones's motion to dismiss Count II.

II. Whether the State presented sufficient evidence to support Jones's convictions.

III. Whether Jones's convictions constitute double jeopardy.

## Facts

[3] In the summer of 2016, Jones, a former police officer with the Porter County Sheriff's Department, was attending nursing school, and his now-ex-wife, Susan Naden, was a practicing nurse. Jones and Naden were also raising two young boys, Bx. and Bn. Bx. was born in January 2016.

[4] At some point, Jones and Naden noticed that Bx. periodically made "loud sounds during breathing," and they took a video of Bx. "doing [] this little hiccup when he was sleeping." Tr. Vol. V pp. 38, 124. On May 14, 2016, Jones and Naden took Bx. to the emergency room and showed the attending physician the hiccup video; however, the physician did not find anything abnormal about Bx.'s breathing.

[5] Jones and Naden took Bx. to the emergency room on four other occasions that summer. The attending physicians, however, found no serious physical or breathing abnormalities. Bx. was developing normally.

[6] On the evening of July 23, 2016, Jones and Naden were working night shifts and hired a babysitter, Michelle Anderson, to watch Bn. and Bx. at the boys' home. Before Naden left, Naden recorded a video of the boys, who both appeared healthy. Anderson testified that: Bx. was active, happy, and not fussy; she did not notice anything wrong with Bx. that evening; and she put B.x. to bed at approximately 10:45 p.m. Anderson watched the boys from approximately 6:00 p.m. until Jones returned around midnight.

[7] Jones did not notice anything abnormal about Bx. when Jones returned home. Approximately an hour later, Jones texted Naden to advise that Bn. fell in the shower and was "probably gonna have a black eye." Ex. Vol. XII p. 65.

[8] At approximately 2:30 a.m., Jones put Bn. to bed and began studying for his nursing classes. Jones was under pressure from school due to his grades and performance on exams.

[9] At 4:29 a.m., Jones texted Naden to inform her that he was heading to bed. At 4:53 a.m., Jones called the hospital where Naden was working and told Naden, "[Bx. is] breathing but he's kind of not breathing. He's cold, stiff, not really waking up." Tr. Vol. V p. 70. Naden could hear Bx. "gasping for air" in the background and instructed Jones to call 911. *Id*.

[10] Jones called 911 at 4:55 a.m. Jones recognized the dispatcher's voice from his time as a police officer and asked her how she was doing. When prompted by the dispatcher, Jones reported Bx.'s symptoms and explained that he had placed Bx. in a beanbag cushion to warm him up for approximately fifteen to twenty minutes prior to calling 911, but that Bx. was not warming up. Bx.'s breathing could be heard in the background of the call.

[11] The first responders arrived at approximately 5:00 a.m. Bx. was in respiratory distress and had poor circulation, but he did not display any external injuries at the time. Several first responders observed that Jones was acting "[s]tandoffish" and demonstrated "a lack of care" by not asking questions about Bx. Tr. Vol. IV p. 85. The first responders transported Bx. to the emergency department at St. Mary's hospital.

[12] At St. Mary's, the attending physician, Dr. Christopher Shinneman, observed a bruise above Bx.'s left eye and a petechial rash on Bx.'s neck. Further examination revealed retinal hemorrhages; hemorrhages to the neck, chest, and lower lumber area; "an acute left-sided subdural hematoma;" and brain swelling. Tr. Vol. VI p. 51. Dr. Shinneman diagnosed Bx. with abusive head

trauma based on Bx.'s injuries and the absence of alternative explanations for the injuries. He reported the suspected abuse to the Department of Child Services, who later alerted law enforcement. Meanwhile, at the hospital, Naden observed that Jones "wasn't concerned" and "was just pissed about something." Tr. Vol. V p. 73.

[13] St. Mary's determined that Bx. needed a higher level of care and transferred him to Lurie's Children's Hospital in Chicago. There, the physicians performed a hemicraniectomy to relieve the swelling of Bx.'s brain. The physicians also confirmed Bx.'s diagnosis of abusive head trauma. At this point, Jones was "still pissed off about something" and would "get[] mad" when Naden asked him questions. *Id*. at 78. Bx. survived the surgery; however, he is now unable to communicate, feed himself, or see, and he is "a hundred percent bed bound." *Id*. at 94.

[14] The Porter County Police Department interviewed Jones as a part of their investigation into the alleged abuse. Jones stated that, when he arrived home and checked on Bx., "periodically [Bx.] would have a [] hiccup" in his sleep. State's Ex. 124 at 16:47. Jones stated that Bx. continued to "do[] the weird breathing thing" as Jones checked on him throughout the night and that this breathing sound was the same sound Bx. made during the 911 call. *Id*. at 17:20. Jones denied harming Bx. The police later determined that Jones deleted his text messages to Naden regarding Bn. sustaining a black eye.

[15] The State filed charges against Jones on April 13, 2017, and moved to amend those charges on March 3, 2021.[1] The amended charges allege three counts: Count I, battery resulting in serious bodily injury to a person less than fourteen years of age, a Level 3 felony; Count II, neglect of a dependent, a Level 3 felony; and Count III, neglect of a dependent, a Level 3 felony. Count II alleged that Jones "did knowingly or intentionally place [Bx.] in a situation that endangered [Bx.'s] life or health and which resulted in serious bodily injury to [Bx.]" Appellant's App. Vol. II p. 46. Count III alleged that Jones "did knowingly or intentionally deprive [Bx.] of necessary support, to-wit: prompt medical attention, which resulted in serious bodily injury to [Bx.]" *Id*. On March 8, 2021, the trial court granted the State's motion to amend Count II but not Count III.

[16] On September 1, 2021, Jones moved to dismiss the amended charging information. The trial court found that Jones was not prejudiced by the amendments to the charging information and that the charges were sufficiently pleaded. The trial court, accordingly, granted the State's motion to amend Count III and denied Jones's motion to dismiss.

[17] The trial court held a three-week jury trial in April and May 2022. Naden testified regarding incidents where Jones punched a wall and a refrigerator in

[1] The original charging information alleged: Count I, battery resulting in serious bodily injury to a person less than fourteen years of age, a Level 3 felony; Count II, aggravated battery, a Level 3 felony; and Count III, neglect of a dependent, a Level 3 felony.

the presence of Bn. and Bx. Naden also testified that the breathing sounds Bx. made during the 911 call were "[n]othing close" to the hiccup sounds Bx. had been making beforehand. Tr. Vol. V p. 71. Dr. Shannon Thompson, a specialist in child abuse pediatrics, testified that, based on Bx.'s breathing during the 911 call, a reasonable caregiver would understand that Bx. needed prompt medical intervention.

[18] The State also presented medical testimony from several physicians regarding Bx.'s diagnosis of abusive head trauma, the mechanism for which is "a sudden, forceful acceleration/deceleration movement of the head." Tr. Vol. VIII p. 26. The physicians testified that Bx.'s injuries were characteristic of abusive head trauma and that the physicians ruled out alternative medical and accidental causes for Bx.'s injuries. They further testified that Bx.'s injuries would have appeared within "a few minutes" of the abuse and that "minutes matter[ed]" in obtaining treatment. Tr. Vol. VIII p. 43-44.

[19] After approximately three days of deliberations, the jury returned a verdict of not guilty on Count I and guilty on Counts II and III. The trial court entered judgments of conviction on Count II as a Level 3 felony and Count III as a Level 6 felony. The trial court found that elevating Count III to a Level 3 felony based on the same injury underlying Count II presented double jeopardy concerns. Jones was sentenced to thirteen years, with three years suspended, on Count II, and two years, all suspended, on Count III, to be served consecutively. Jones now appeals.

## Discussion and Decision

### *I. Abuse of Discretion—Denial of Motion to Dismiss Amended Count II*

[20] Jones argues that the trial court abused its discretion by denying his motion to dismiss Count II, neglect of a dependent, because: (1) Count II failed to "state the offense with sufficient certainty" in violation of Indiana Code Section 35-34-1-4(a)(4); and (2) "[t]he facts stated do not constitute an offense" in violation of Indiana Code Section 35-34-1-4(a)(5). We disagree.

[21] "We review a trial court's denial of a motion to dismiss for an abuse of discretion. An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances or when the trial court has misinterpreted the law." *Johnson v. State*, 194 N.E.3d 98, 105 (Ind. Ct. App. 2022) (quoting *Estrada v. State*, 969 N.E.2d 1032, 1038 (Ind. Ct. App. 2012), *trans. denied*), *trans. denied*. "We may affirm a trial court's judgment if it is sustainable on any basis in the record." *Id*.

[22] "The purpose of an information is to advise the defendant of the particular crime charged so that she can prepare a defense." *Myers v. State*, 510 N.E.2d 1360, 1366 (Ind. 1987). As relevant here, Indiana Code Section 35-34-1-2(a) requires that an information set forth "in plain and concise language" the name, date, place, elements, and perpetrator of the offense as well as the statutory provisions alleged to have been violated. We have further explained that:

> "The State is not required to include detailed factual allegations in a charging information." *Laney v. State*, 868 N.E.2d 561, 567 (Ind. Ct. App. 2007), *trans. denied*. "An information that enables

> an accused, the court, and the jury to determine the crime for which conviction is sought satisfies due process. Errors in the information are fatal only if they mislead the defendant or fail to give him notice of the charge filed against him." *Dickenson v. State*, 835 N.E.2d 542, 550 (Ind. Ct. App. 2005) (citations and quotation marks omitted), *trans. denied*. "[W]here a charging instrument may lack appropriate factual detail, additional materials such as the probable cause affidavit supporting the charging instrument may be taken into account in assessing whether a defendant has been apprised of the charges against him." *State v. Laker*, 939 N.E.2d 1111, 1113 (Ind. Ct. App. 2010), *trans. denied*.

*Gutenstein v. State*, 59 N.E.3d 984, 995 (Ind. Ct. App. 2016), *trans. denied*. "Usually an information is sufficient if it tracks the language of the statute defining the offense to be charged." *Gebhard v. State*, 459 N.E.2d 58, 60 (Ind. Ct. App. 1984) (citing *Merry v. State*, 335 N.E.2d 249, 256-57 (Ind. Ct. App. 1975)), *trans. denied*.

[23] First, Count II was sufficiently pleaded to permit Jones to prepare a defense.[2] As amended, Count II alleged that Jones "did knowingly or intentionally place [Bx.] in a situation that endangered [Bx.'s] life or health and which resulted in serious bodily injury to [Bx.,] contrary to I.C. 35-46-1-4(a)(1)(b)(1)." Appellant's App. Vol. II p. 46. Count II, thus, tracks the statutory language for

[2] The State urges, as a threshold matter, that Jones waived this argument by failing to file a motion to dismiss within twenty days of the June 26, 2017 omnibus date. *See* Ind. Code § 35-34-1-4(b). We need not decide if Jones waived this argument, however, because his claim fails on the merits.

the offense; provides the name, date, and elements of the offense; cites the statutory provision allegedly violated; and names Jones as the perpetrator. In addition, the probable cause affidavit alleges that: (1) the offense occurred between approximately midnight and 5:00 a.m. on July 24, 2016, while Bx. was in the exclusive care of Jones; (2) Bx.'s injuries were "consistent with an acceleration/deceleration injury to the brain" and that "the usual mechanism is . . . shaking"; and (3) Bx.'s injuries "were caused by a violent force." *Id*. at 42-43. Jones indicated that he understood the allegations of physical abuse against him early on when, in the October 28, 2019 hearing, he recognized this was a "shaken baby syndrome case[]," Tr. Vol. II p. 45, and Jones's trial strategy consisted of rebutting those allegations.

[24] Jones relies on *Gebhard*, 459 N.E.2d 58. In that case, the defendant was charged with disorderly conduct for "knowingly engag[ing] in tumultuous conduct." *Id*. at 59. We observed:

> "[T]umultuous conduct" encompasses a large realm of activity which is potentially prohibited. Count III does not specify whether Gebhard's conduct endangered a person or property nor does it indicate *which* of his activities on November 2nd fell within the range of prohibited conduct. "Tumultuous conduct" is precisely the type of generic charge which requires additional facts and circumstances in order to fully apprise the defendant of the nature of the offense with which he is charged.

*Id*. at 61 (emphasis in original; citation omitted).

[25] Jones argues that, like the allegation of "tumultuous conduct" in *Gebhard*, here, the State's allegation that Jones placed Bx. in a situation that endangered Bx.'s life or health fails to inform Jones of the particular prohibited conduct in which Jones allegedly engaged. We find *Gebhard* distinguishable. Whereas there appears to be no mention of a probable cause affidavit in *Gebhard*, here, the probable cause affidavit sufficiently identified the alleged prohibited conduct, i.e., forceful acceleration and deceleration of Bx.'s head. Accordingly, Count II was not insufficiently pleaded.

[26] We also find that Count II alleged sufficient facts to constitute an offense. We have held that inflicting physical injuries on a dependent places that dependent in a dangerous situation and, thus, might constitute neglect. *See Eastman v. State*, 611 N.E.2d 139, 141 (Ind. Ct. App. 1993) (affirming mother's neglect by endangerment conviction when mother inflicted injuries to child's head). The fact that such conduct might also constitute battery, as Jones argues, is of no moment to the issue before us. Thus, Count II alleged sufficient facts, and the trial court, accordingly, did not abuse its discretion by denying Jones's motion to dismiss.

### *II. Sufficiency of the Evidence*

[27] Jones next argues that the State presented insufficient evidence to support his convictions. We disagree.

[28] Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151

N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). "When there are conflicts in the evidence, the jury must resolve them." *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Powell*, 151 N.E.3d at 262 (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[29] Here, the State charged Jones with neglect of a dependent pursuant to Indiana Code Sections 35-46-1-4(a)(1) and (a)(3), which provide, in relevant part:

> A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:
>
> > (1) places the dependent in a situation that endangers the dependent's life or health [or]
> >
> > * * * * *

(3) deprives the dependent of necessary support;

* * * * *

commits neglect of a dependent, a Level 6 felony.

The offense is a Level 3 felony if it "results in serious bodily injury." I.C. § 35-46-1-4(b)(2). Jones was convicted of Count II as a Level 3 felony and Count III as a Level 6 felony.

### *A. Count II—Neglect by Endangerment*

[30] Jones first argues that the State presented insufficient evidence that Jones placed Bx. in a situation that endangered Bx.'s life or health. To amount to neglect, the danger in which the dependent is placed must be "actual and appreciable." *White v. State*, 547 N.E.2d 831, 835 (Ind. 1989).

[31] The evidence most favorable to the jury's verdict reveals that Bx. was diagnosed with abusive head trauma, which is associated with forceful acceleration and deceleration of the brain. Bx.'s injuries included a bruise above his left eye, the same side on which he sustained a subdural hemorrhage; brain swelling; a petechial rash on his neck; and hemorrhages throughout his spine. The State's expert witnesses, which consisted of several treating physicians and other medical experts, testified that they ruled out alternative medical and accidental causes for Bx.'s injuries. Based on these facts, the jury could have reasonably concluded that Bx.'s injuries were the result of physical abuse, which placed Bx. in actual and appreciable danger. *See Eastman*, 611 N.E.2d at 141 (affirming

conviction for neglect when mother placed dependent in a dangerous situation by inflicting physical injuries).

[32] In addition, the jury heard evidence that Bx. appeared normal before Jones arrived home and that Bx.'s injuries would have manifested within minutes of the abuse. Bx. was in the exclusive care of Jones during that time frame. Jones also attempted to conceal his text messages regarding Bn. sustaining a black eye the same evening that Bx. was injured, and Jones was acting "[s]tandoffish" and avoided Naden's questions after Bx. began receiving treatment. Tr. Vol. IV p. 85. Jones points out Bx.'s medical history and suggests that Bx.'s injuries could have been the result of alternative causes; however, it is the responsibility of the jury to weigh the conflicting evidence at trial, and we cannot reweigh that evidence here. *Young*, 198 N.E.3d at 1176.

[33] Jones also argues that, because the jury found Jones not guilty of battery, the jury could not have found that Jones physically injured Bx. That is not the case. As the Indiana Supreme Court has explained, "[t]he evaluation of whether a conviction is supported by sufficient evidence is independent from and irrelevant to the assessment of whether two verdicts are contradictory and irreconcilable." *Beattie v. State*, 924 N.E.2d 643, 648 (Ind. 2010). Indeed, a finding of not guilty does not necessarily indicate that the required facts were not proved; rather, such a finding might also be the product of the jury's "exercise [of] lenity" or "a compromise among disagreeing jurors[.]" *Id*. at 648-49. Accordingly, the jury's finding of not guilty on the battery charge says nothing about the jury's finding of guilty on Count II.

[34] Jones next argues that, even if the jury could have found that he placed Bx. in a situation that endangered Bx.'s life or health, the jury could not have found that Jones did so **knowingly**. "Under the child neglect statute a 'knowing' mens rea requires a subjective awareness of a 'high probability' that a dependent has been placed in a dangerous situation." *Villagrana v. State*, 954 N.E.2d 466, 468 (Ind. Ct. App. 2011) (citing *Scruggs v. State*, 883 N.E.2d 189, 191 (Ind. Ct. App. 2008), *trans. denied*); *see also* Ind. Code § 35-41-2-2(b) (defining "knowingly"). "Because, in most cases, such a finding requires the factfinder to infer the defendant's mental state, this Court must look to all the surrounding circumstances of a case to determine if a guilty verdict is proper." *Villagrana*, 954 N.E.2d 466. Here, the jury could have reasonably found that Jones physically abused Bx and, thus, knowingly placed Bx. in a situation that endangered Bx.'s life or health.

[35] Lastly, Jones argues that the State presented insufficient evidence that Jones's conduct **resulted** in serious bodily injury to Bx. Bx. undoubtedly suffered serious bodily injury and, as we have explained, based on Bx.'s diagnosis of abusive head trauma and the circumstances of his injuries, the jury could have reasonably found that Bx.'s injuries were the result of physical abuse by Jones. The State, accordingly, presented sufficient evidence to support Jones's conviction for neglect by endangerment resulting in serious bodily injury.

### *B. Count III—Neglect by Delay in Seeking Medical Treatment*

[36] Jones next argues that the State presented insufficient evidence that Jones deprived Bx. of necessary support by delaying medical treatment.

[37] We have explained that:

> Neglect is the want of reasonable care—that is, the omission of such steps as a reasonable [caregiver] would take, such as are usually taken in the ordinary experience of mankind. When the allegation of neglect is the failure to provide medical care, the State must show that the need for medical care was actual and apparent and the accused was actually and subjectively aware of that need. When there are symptoms from which the average layperson would have detected a serious problem necessitating medical attention, it is reasonable for the jury to infer that the defendant knowingly neglected the dependent.

*Dunn v. State*, 202 N.E.3d 1158, 1163-64 (Ind. Ct. App. 2023) (internal citations omitted), *trans. denied*.

[38] Here, the evidence most favorable to the jury's verdict reveals that, while under Jones's exclusive care that evening, Bx. had been making the same breathing sounds that he did during the 911 call. The evidence also revealed that a reasonable caregiver would have understood that Bx.'s breathing sounds and physical condition that evening necessitated prompt medical attention. Jones, however, did not call 911 until 4:55 a.m.

[39] Jones argues that he did not discover that Bx. was cold, stiff, and unable to wake up until after Jones texted Naden at 4:29 a.m. and that Jones promptly called Naden and 911 thereafter. The jury, however, was not obligated to believe this timeline of events. Moreover, in the 911 call, Jones spent precious seconds catching up with the dispatcher and informed the dispatcher that he had placed Bx. in a beanbag cushion to warm up for approximately fifteen to

twenty minutes prior to calling 911. Thus, even under Jones's timeline, the jury could have found that Jones failed to promptly seek medical treatment. *See Lush*, 783 N.E.2d at 1198 (affirming neglect conviction for fifteen-minute delay in seeking medical treatment for unconscious child).

[40] Jones next argues that the State presented insufficient evidence that the delay in seeking medical attention **resulted** in serious bodily injury. The trial court, however, entered judgment of conviction on Count III as a Level 6 felony, not as a Level 3 felony as charged, and the offense of Level 6 felony neglect of a dependent does not require proof that the neglect resulted in serious bodily injury. Thus, even if the State presented insufficient evidence that the delay resulted in serious bodily injury, Jones's argument is moot because the judgment was entered as a Level 6 felony and, accordingly, did not require proof that the neglect resulted in serious bodily injury. *Cf. Clark v. State*, 597 N.E.2d 4, 7 n.8 (Ind. Ct. App. 1992) (finding that reversal of conviction mooted sufficiency argument). Accordingly, the State presented sufficient evidence to support Jones's conviction.

### *III. Double Jeopardy*

[41] Jones's final argument is that his convictions for neglect by endangerment and neglect by failing to seek medical treatment constitute double jeopardy. Because the two neglect convictions are for separate offenses, we disagree.

[42] In *Wadle*, the Indiana Supreme Court set forth a framework for analyzing whether a defendant's convictions violate principles of "substantive" double

jeopardy.[3] 151 N.E.3d 227 (Ind. 2020). *Wadle* applies "when a single criminal act or transaction violates multiple statutes with common elements and harms one or more victims." *Id.* at 247. We agree with Jones and the State that *Wadle* applies here.

[43] Under *Wadle*, we first determine if either statute "clearly permits multiple punishment, whether expressly or by unmistakable implication." *Id*. at 253. If the answer to that question is negative or unclear, we proceed to the next step, which asks whether the offenses are included offenses, either inherently or factually. *Id*. Only if the offenses are included do we proceed to the third step, which asks whether the facts underlying those offenses were "so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." *Id*. We review double jeopardy violation claims de novo. *Id*. at 237.

[44] The State argues that the neglect statute clearly permits multiple punishment. We need not decide that issue because, even if we proceed to *Wadle* step two, Jones's convictions are not included offenses. An offense is inherently included if it meets the requirements of Indiana Code Section 35-31.5-2-168, which provides:

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[3] Substantive double jeopardy refers to "claims concerning multiple convictions in a single prosecution," as opposed to procedural, also known as constitutional, double jeopardy claims, "which concern convictions for the same offense in successive prosecutions[.]" *Carranza v. State*, 184 N.E.3d 712, 715 Ind. Ct. App. 2022) (quoting *Wadle*, 151 N.E.3d at 248-49; *Powell v. State*, 151 N.E.3d 256, 263 (Ind. 2020)).

> "Included offense" means 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.

[45] Here, Jones's offenses are not inherently included. Count II required that Jones knowingly or intentionally "place[d] the dependent in a situation that endangers the dependent's life or health," whereas Count III required that Jones "deprive[d] the dependent of necessary support." In addition, neither offense consists of an attempt to commit the other or differs only in the risk of harm or level of culpability. Neglect by endangerment and neglect by failure to provide necessary support both present a potential for serious harm, and both require either knowing or intentional conduct.

[46] Jones's offenses are also not factually included. "An offense is 'factually included' when 'the charging instrument alleges that the means used to commit the crime charged include all of the elements of the alleged lesser included offense.'" *Wadle*, 151 N.E.3d at 251 n.30 (quoting *Young v. State*, 30 N.E.3d 719, 724 (Ind. 2015)). Here, the State's charging information explicitly states

the different time frames and facts for each count. Jones, thus, was not convicted of included offenses.

[47] Jones argues that his convictions constitute double jeopardy because the facts "show only a single continuous crime," Appellant's Br. p. 38, which essentially directs us to *Wadle* step three. Because Jones's convictions are not included offenses under *Wadle* step two, however, *Wadle* instructs that our analysis ends at step two, and Jones's argument is, therefore, unavailable. Accordingly, Jones's convictions do not constitute double jeopardy.

## Conclusion

[48] The trial court did not abuse its discretion by denying Jones' motion to dismiss Count II; the State presented sufficient evidence to support Jones's convictions; and Jones's convictions do not constitute double jeopardy. Accordingly, we affirm.

[49] Affirmed.

Vaidik, J., and Foley, J., concur.