

In the
Indiana Supreme Court

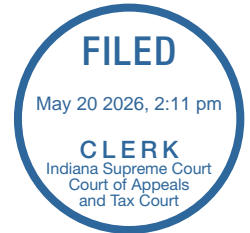
Domonic Chester Brothers,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
24A-CR-02327

Trial Court Case No.
64D02-2306-MR-5624



Published Order

This matter has come before the Indiana Supreme Court on petitions to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the requests to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petitions.

Being duly advised, the Court DENIES the petitions to transfer.

Done at Indianapolis, Indiana, on 5/20/2026.

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush
Chief Justice of Indiana

Rush, C.J., Goff, J., and Molter, J., concur.

Slaughter, J., concurs in the denial of transfer with separate opinion.

Massa, J., votes to grant the petition to transfer.

Slaughter, J., respecting the denial of transfer.

Earlier this year, our Court issued its opinion in *Moyers v. State*, 277 N.E.3d 33, 38 (Ind. 2026), which purported to resolve prevailing “uncertainty” over when to apply our two substantive-double-jeopardy tests, *Wadle v. State*, 151 N.E.3d 227 (Ind. 2020), and *Powell v. State*, 151 N.E.3d 256 (Ind. 2020). I dissented in *Moyers* because I concluded the time has come to discard *Wadle* and *Powell* altogether. I did so for two reasons. First, I have come to see *Wadle* and *Powell* as court-created tests at odds with the legislature’s prerogative to decide for which crimes a defendant may be charged, tried, convicted, and sentenced. Second, I have determined that both these tests are unworkable. Today, the State of Indiana specifically asks us to move on, at least as to *Wadle*.

A jury convicted Domonic Brothers of both murder and robbery resulting in serious bodily injury. Before the appellate court, Brothers conceded that these offenses “do not meet the statutory definition of an ‘included offense’” but argued that the dual convictions amounted to a substantive-double-jeopardy violation because they were “factually included” and amounted to a “single criminal transaction”. *Brothers v. State*, 271 N.E.3d 589, 594–95 (Ind. Ct. App. 2025). Applying *Wadle*, the appellate panel agreed that “the time, place, purpose, and continuity” of Brothers’s actions “all point toward” a substantive-double-jeopardy violation. *Id.* at 596. Thus, the panel vacated the robbery conviction as the offense with the lesser penalty. *Ibid.*

The State now seeks transfer, arguing that “*Wadle* should be overruled” because its test “is no longer workable”. The problem, the State says, is *Wadle*’s preoccupation with the alleged facts of the underlying offenses. The State argues that because the specific facts of any crime are unique, adopting “any global rule or analysis” would be “unmanageable”. The State’s prescription is simple: adopt the federal *Blockburger* test, referring to *Blockburger v. United States*, 284 U.S. 299 (1932), and apply “the raft of other conviction and sentencing protections” the Indiana legislature has provided for, like the included-offense, Ind. Code § 35-38-1-6, and successive-prosecution statutes, *id.* § 35-41-4-4. I largely agree with the State’s diagnosis and remedy.

The State correctly identifies *Wadle*’s problems. By its terms, *Wadle* purports to “appl[y] the statutory rules of double jeopardy.” 151 N.E.3d at

235. Yet key parts of *Wadle*'s analysis are divorced from any underlying statute. For example, no statute creates *Wadle*'s byzantine series of "steps", "presumptions", and "rebutta[ls]". *Moyers*, 277 N.E.3d at 50 (Slaughter, J., dissenting) (quoting *A.W. v. State*, 229 N.E.3d 1060, 1069 n.10, 1069–71 (Ind. 2024)). And, relevant here, no statute directs courts to identify "factually included" offenses based on facts alleged in the indictment or charging information. It is no small matter that a test supposedly based on "statutory rules" can point to no **current** statute for such a key part of its analysis.

There **used** to be such a statute. At one time, Indiana law required that courts determine whether two offenses were "necessarily included" within the other as "charged in the indictment or information." 1905 Ind. Acts 644, ch. 169, § 271 (codified at I.C. § 35-1-39-2), repealed by 1976 Ind. Acts 815, Pub. L. 148, § 24. This now-repealed statutory provision was difficult to apply, our appellate court observed, because "the determination of whether a lesser offense is a necessarily included offense depends not merely on the legal definitions of the greater and lesser offenses, **but also on the allegations of fact contained in the charging instrument.**" *Roddy v. State*, 394 N.E.2d 1098, 1102 (Ind. Ct. App. 1979) (emphasis in original) (citing *Lawrence v. State*, 375 N.E.2d 208, 212 (Ind. 1978)). This factual analysis, predictably, led to a "piecemeal approach" and "precipitated a confusing body of case law" that had the "appearance of inconsistency." *Id.* at 1102–03.

This same problem infects *Wadle* today. Rather than perpetuate this flawed inquiry—derived from a long-ago-rescinded statute—I would limit "factually included" offenses to those referenced in the included-offense statute. Here, however, the appellate panel's correct holding that Brothers's convictions "do not meet the statutory definition of an 'included offense'", *Brothers*, 271 N.E.3d at 594, should have ended the matter in favor of the State.

Further, the State is largely right about how to fix *Wadle*'s woes. The second half of the State's proposed rule is spot on: Our substantive-double-jeopardy doctrine should be about applying statutes, period—no more, no less. But the first part of the State's proposed test strikes me as unnecessary. I see little need to adopt *Blockburger* for substantive-double-jeopardy claims because Indiana's statutory definition of an included

offense—our legislature’s explicit tool for identifying substantive-double-jeopardy problems—already incorporates the *Blockburger* test. Indiana law defines an “included offense” as, among other things, one that is “established by proof of the same material elements or less [sic] than all the material elements required to establish the commission of the offense charged”. I.C. § 35-31.5-2-168(1).

That leaves the question of *Wadle*’s fate. Though I have concluded that *Wadle* is neither workable nor salvageable, our Court recently tread this very ground in *Moyers*, from which Justice Massa and I dissented. Our colleagues, though, have not yet reached the same conclusion. Given *Moyers*’s recency, I am comfortable with today’s vote not to revisit *Wadle* in this case. For now, I can live with pausing for a brief period and seeing how (and where) the dust settles. It remains to be seen whether our Court’s *Moyers*-modified, substantive-double-jeopardy framework proves to be confounding, on one hand, or clarifying, on the other. Whichever proves to be right, I expect we shall have our answer soon.

* * *

For these reasons, I concur with the Court’s denial of transfer.