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IN THE  
COURT OF APPEALS OF INDIANA

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Jesse L. Mathews,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 21, 2022

Court of Appeals Case No.  
20A-CR-2229

Appeal from the Clay Circuit Court  
The Honorable Joseph D. Trout,  
Judge

Trial Court Cause No.  
11C01-1708-MR-622

**Shepard, Senior Judge.**

## Outline of the Case

- [1] For several decades, Indiana courts have examined various jury instructions about the role of motive in criminal trials. In this case, the trial court considered two very suitable alternatives. The appellant contends that giving the one chosen by the court was reversible error.

- [2] We conclude that the instruction the court elected to give, plus extensive final argument on the issue, adequately equipped the jury to perform its role.
- [3] The evidence at trial revealed that Virginia Myrtle (also known as “Dee”) failed to respond to messages and did not appear for a previously arranged visit with her son, so her family and friends searched for her and visited her home. They eventually discovered her partially decapitated body on the floor of her bedroom, concealed under blankets and debris. During the week prior to her death, Myrtle had spent time with Jesse L. Mathews, and the State filed charges against Mathews in relation to Myrtle’s death. He appeals his convictions by jury of murder, a felony,<sup>1</sup> and abuse of a corpse, a Level 6 felony.<sup>2</sup> We affirm.

## Issues

- [4] Mathews raises four issues, which we restate as:
- I. Whether the trial court erred while instructing the jury on motive.
  - II. Whether the court erred in excluding evidence of a witness’s attempted communication with a police officer about another possible culprit.
  - III. Whether the court fundamentally erred in failing to order a mistrial after a witness testified that he was willing to take a polygraph examination.

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<sup>1</sup> Ind. Code § 35-42-1-1 (2014).

<sup>2</sup> Ind. Code § 35-45-11-2 (2014).

IV. Whether the cumulative effect of these matters requires reversal of the jury's verdict.

## Facts and Procedural History

- [5] Myrtle lived in a mobile home in Staunton, Indiana. Daniel Speck also lived there, sleeping in a bedroom at the opposite end of the home from Myrtle's room. Myrtle used and dealt in methamphetamine, and she conducted deals in her bedroom. She kept her bedroom door locked when she was not at home.
- [6] In late January 2016, Mathews, who worked with Speck, frequently visited Myrtle. He used methamphetamine with Myrtle in her bedroom. Mathews later told a police officer that he had also had a sexual relationship with Myrtle, but it had occurred "several days or weeks" before her death. Tr. Vol. IV, p. 233. He also told Speck that he had a handgun, which he kept in his vehicle.
- [7] During the period when Mathews was a frequent visitor to her home, Myrtle noticed that coins that had belonged to her father were missing. She was "furious" and suspected that Mathews had stolen them. Tr. Vol. V, p. 25. On Wednesday, January 27, 2016, Myrtle told a friend, Melodie Lucas, that she intended to confront Mathews about the theft.
- [8] Lucas last saw Myrtle at her mobile home on the afternoon of Friday, January 29, 2016. Speck and Mathews were present at that time. Later that afternoon, Speck left to go pick up his son and bring him back for weekend visitation. He borrowed Myrtle's car, and Myrtle asked him to purchase a soft drink for her.

Mathews was still at the home when Speck left. A child who lived near Myrtle's home heard gunshots that afternoon after returning home from school.

[9] At 4:30 that same Friday afternoon, an acquaintance of Myrtle's, Amy Booe, drove to Myrtle's home to sell her some jewelry. Booe did not see Myrtle's car, but she saw a green sport utility vehicle. She texted Myrtle but did not receive a response, so she left.

[10] Meanwhile, Speck and his son returned to the mobile home on Friday evening, and Mathews' vehicle was still there. Speck approached Myrtle's bedroom to return her car keys and deliver her soda, but her door was closed. When he knocked on the door, Mathews told Speck, without opening the door, that he and Myrtle "were in there getting freaky." Tr. Vol. VII, p. 60. Speck returned to his own bedroom. Fifteen to twenty minutes later, Mathews came to Speck's room and told him that Myrtle had left with someone in a pickup truck. Later that night, Speck called Myrtle, but she did not respond.

[11] Meanwhile, Booe returned to the mobile home around 9 p.m. that night, and this time Myrtle's car and the green sport utility vehicle were both present. When she knocked on the door, Mathews answered. Booe, who did not know Mathews, asked if Myrtle was there, and Mathews said she was not. Tr. Vol. V, p. 54. Booe left.

[12] As Booe drove home, she received a text stating, "You could've come in." *Id.* at 55. Booe initially thought that it was from Myrtle and responded by asking, "Are you home?" *Id.* She then noticed that she did not recognize the number

and further replied that she was confused. Later that evening, she received a response saying, “No she’s not.” *id.*, which she interpreted as referring to Myrtle. The texter then identified himself as “Jesse. The guy who opened the door.” *Id.* Booe asked how he’d found her number, and he stated that he had looked in one of Myrtle’s old phones. Booe thought that Mathews was “trying to hit on [her],” *id.* at 56, so she told him she was married and asked him to have Myrtle call her. She never heard from Myrtle.

[13] Also on Friday night, Jamia Keuthan, who was dating Myrtle’s incarcerated son but had also been romantically involved with Mathews, received text messages from Mathews. He wanted to get together with her that night, but she declined.

[14] On Saturday, January 30, Speck noticed that Mathews was not present, but the mobile home’s back door had been left open at some point, and it was cold throughout the home. Mathews returned later that day, and he told Speck that he had left the back door open.

[15] Myrtle stopped responding to texts or calls on the evening of Friday, January 29 and her mobile phone records show that the phone was not used to make calls after 3:17 p.m. that day. Her family and friends considered this lack of contact to be odd because Myrtle always kept her phone close by and was quick to respond to calls and messages. In addition, on Saturday, January 30, she did not show up for a previously arranged visit with her incarcerated son. Again, her absence was unusual because she had never failed to appear for visits

without prior notice. On Saturday evening, Myrtle's sister and niece went to her home. Speck and his son were there, but Myrtle did not appear to be present, so they left. That same night, Mathews picked up Keuthan at her home at 9 p.m., and they went out and used drugs. He told Keuthan that Myrtle had left home on Friday. Mathews returned Keuthan to her home at 11:30 p.m.

[16] On the morning of Sunday, January 31, Speck woke up and found Mathews walking out of Myrtle's bedroom. He told Speck he had been going through Myrtle's possessions. Next, Myrtle's daughter, Amanda Henning, arrived at the home with Keuthan. Myrtle's car was parked outside, along with a green SUV that Keuthan recognized as belonging to Mathews. Mathews, whom Henning had not previously met, let them inside. He claimed he had not seen Myrtle. A forensic analysis of Mathews' phone revealed he had not tried to contact Myrtle since Thursday.

[17] Henning did not see Myrtle, but she noticed that Myrtle's bedroom door was open, and the light was on. When she asked Mathews why Myrtle's bedroom light was on, he said that he had gone into her room to use the attached bathroom. Mathews' answer struck Henning as strange, because the home had another bathroom that would have been easier for him to access.

[18] Keuthan, Henning, and Mathews discussed where Myrtle might have gone, and Mathews repeatedly said she had left in a pickup truck. In addition, Mathews showed Henning a fresh cut on his hand, and she saw blood on the loveseat or

couch. Henning thought that was unusual because Myrtle usually kept a tidy home, and the blood would have made her “really mad.” Tr. Vol. IV, p. 24.

[19] Next, Myrtle’s sister and niece arrived at the home after looking for Myrtle in several other locations. Speck and his son were still there, and so was Mathews. After Mathews left, which was sometime between 1 p.m. and 2 p.m., Myrtle’s family members decided to call the police. Her sister first attempted to locate and clean up any evidence related to controlled substances. She moved a pile of blankets and other items from the floor of Myrtle’s bedroom and saw Myrtle’s feet. Keuthan called 911.

[20] The police cleared the mobile home of people and requested a search warrant before examining the home’s interior. A crime scene technician noted blood drops on the floor by the main entrance to the trailer, as well as on a nearby love seat. He also discovered a stethoscope on the bed, near Myrtle’s body. The technician removed the debris under which the body had been concealed and discovered that an eighteen-inch-long handsaw was embedded in her neck.

[21] A medical examiner later determined Myrtle had been killed by two gunshots to the head from a small caliber weapon, which was never located. The attempt to sever her head occurred post-mortem, and the culprit had first tried to use a knife before switching to the saw. In addition, DNA testing revealed that a mixture of Mathews’ and Myrtle’s DNA profiles had contributed to genetic material found on the handle of the saw and the stethoscope. Mathews’ DNA was also found on a roll of tape in Myrtle’s bedroom.

- [22] Meanwhile, police officers located Mathews at a gas station, and he agreed to go to the police station for questioning. As they put him in a vehicle, Mathews volunteered that he had recently cut his hand with a knife.
- [23] On February 1, 2016, officers received a report from highway workers that they had located items that appeared to have belonged to Myrtle. A detective went to the road crew's location and retrieved a wallet, several mobile phones, and thirty-one small envelopes designed to hold coins. One of the phones listed Myrtle as the owner, and her identification was found in the wallet.
- [24] On August 10, 2017, a grand jury indicted Mathews for murder and abuse of a corpse. The State later filed an habitual offender sentencing enhancement.
- [25] The court presided over a seven-day jury trial. Among other defenses, Mathews claimed that another of Myrtle's associates, Craig Wilson, was the murderer. The jury determined Mathews was guilty of murder and abuse of a corpse. Next, Mathews waived his right to a jury trial on the habitual offender enhancement and admitted he was an habitual offender. The court imposed a sentence, and this appeal followed.

## Discussion and Decision

### **I. Jury Instruction on Motive**

- [26] Mathews claims the trial court erred by giving a pattern jury instruction on the subject of motive, because he contends the instruction was incomplete and invaded the province of the jury.



[27] The manner of instructing a jury is left to the sound discretion of the trial court, and we will reverse only if the court abuses that discretion. *King v. State*, 799 N.E.2d 42 (Ind. Ct. App. 2003), *trans. denied*. When evaluating jury instructions on appeal, we look to whether the tendered instructions correctly state the law, whether there is evidence in the record to support giving the instruction, and whether the substance of the proffered instruction is covered by other instructions. *Treadway v. State*, 924 N.E.2d 621 (Ind. 2010). We will reverse a conviction only if the appellant demonstrates an error that prejudices substantial rights. *Id.*

[28] In *Cook v. State*, 544 N.E.2d 1359 (Ind. 1989), Cook was convicted of murder, and motive was an issue at trial. Cook offered the following instruction:

Proof of motive is not a necessary element of the crime with which the defendant is charged.

Proof of motive does not establish guilt nor does want of proof of motive establish that a defendant is innocent.

If the guilt of a defendant is shown beyond a reasonable doubt, it is immaterial what the motive for the crime may be—or whether any motive may be shown, but the presence or absence of motive is a circumstance which you may consider as bearing on the intent of a defendant.

*Id.* at 1364. The trial court instead gave the State’s proposed instruction:

“Motive is that which prompts a person to act. The State is not required to prove a motive for the commission of the crime charged in this case.” *Id.*

[29] On appeal, Cook claimed the trial court should have given his proposed instruction, but the Indiana Supreme Court affirmed. Noting that the State’s

proposed jury instruction was a pattern jury instruction, the Court determined that the instruction given to the jury “was adequate [and] approved before.” *Id.* The Court further concluded that the differences between the two instructions did not merit reversal. *Id.*; *see also Rogers v. State*, 506 N.E.2d 481 (Ind. 1987) (affirming trial court’s use of pattern instruction on motive; instruction was correct statement of law and did not provide improper perspective to jury).

[30] In *Kriner v. State*, 699 N.E.2d 659 (Ind. 1998), Kriner was convicted of murder despite claiming at trial that one or two other men had committed the offense. He had submitted the following jury instruction on motive:

Absence of motive for committing the crime charged is in the nature of an exculpatory circumstance which a defendant on trial is entitled to establish and which may be considered by the jury as a circumstance favorable to the accused.

*Id.* at 664. The trial court instead gave an instruction similar to the pattern instruction: “[t]he State is not required to prove a motive for the commission of the crime charged.” *Id.*

[31] Kriner argued to the Indiana Supreme Court that the trial court should have given his proposed instruction. The Court disagreed, stating that the proposed instruction improperly singled out one evidentiary circumstance and identified it as exculpatory. Further, the justices noted Kriner was free to present evidence as to motive and to argue to the jury that he had no motive for the killing, thus giving the jurors “ample opportunity” to draw the conclusion that Kriner was less likely to be the killer. *Id.* at 665; *see also Rogers*, 506 N.E.2d at

483 (“The law prefers to leave subjects such as [motive] to the summation of counsel . . . .”).

[32] In Mathews’ case, the court initially proposed to instruct the jury as follows:

Motive is what causes a person to act. Motive is not an element of the crime and therefore does not have to be proven beyond a reasonable doubt. However, presence of motive may tend to establish guilt, and absence of motive may tend to establish innocence. You may therefore give its presence or absence the weight you believe it should have as evidence.

Appellant’s App. Vol. 3, p. 52.

[33] The State, citing Indiana’s pattern jury instruction, instead proposed to instruct the jury as follows: “Motive is what causes a person to act. The State is not required to prove a motive for the crime charged.” *Id.* at 21. Mathews argued that the trial court should give the instruction the court originally proposed, but the court ultimately gave the State’s instruction.

[34] Mathews claims the trial court’s original proposed instruction was more appropriate. The original proposed instruction did correctly state the law. Further, the State does not dispute that there was sufficient evidence regarding motive to support giving the instruction.

[35] That leaves us with the third element of our jury instruction analysis, namely: whether the substance of the trial court’s original instruction was covered by other instructions. In *Cook*, the Indiana Supreme Court determined that a motive instruction based on the pattern jury instruction was sufficient, and

Cook's more elaborate instruction, although "even-handed," did not require reversal of the jury's verdict. 544 N.E.2d at 1364. That reasoning applies here.

[36] Further, as was the case in *Kriner*, Mathews's counsel argued to the jury at length about motive. During his opening statement, he claimed, "[The State has] no clear motive in this case as to why Jesse Mathews would do this." Tr. Vol. III, p. 201. And during closing arguments, Mathews told the jury about another potential culprit's motive:

Now we're going to Craig Wilson, or is it Bird Man? I don't know. The witnesses we asked early on were pretty adamant the street name was Bird Man, and Craig seemed a little annoyed when Mr. Springer suggested that that was in fact his street name. Doesn't really matter. What does matter, we're just starting. How about the fact that Craig had ripped Dee off for 3- or \$4,000. I don't care who you are, that's a lot of money. And for Dee, it might have been all that she had at that time.

I think it might have been Jamie Hardig that told us - should remember Jamie had lived at Dee's for quite some time. She told us that she had never seen Dee broke, and it was a weird thing for her to see. How many witnesses told us how angry Dee was about not being able to get her money back, how desperate Dee was, how desperate she was getting about Craig giving her the runaround.

And remember what Dan said. He said Dee discussed some options with him for dealing with Craig and this money situation, and one of those options was turning Craig in to the police as a drug dealer. And Dan says in their world you don't do that. You don't even threaten to do that. It's the kind of thing that gets people hurt in the world of meth dealing, the kind of threat that gets people killed.

Did Dee convey this threat to Craig or someone else that told Craig? I would say all signs point to yes. We don't know. This gives Craig a motive. The prosecutor correctly told you before that she did not have a proven [sic] motive, and that is true. But the prosecution still kept trying to sell you on this idea that Dee might have suspected Jesse of stealing some random items and the coins from the house as a possible motive and that Dee was going to maybe confront Jesse about this possibility. Even if Jesse were really doing that, and Dee did confront him, is that a motive? Is that a strong motive? Is that stronger than Craig's motive? I think not.

Tr. Vol. VIII, pp. 58-59. Mathews further argued:

So we really have no idea whether Jesse had actually stolen anything from anyone in the trailer. No, Jesse did not have a motive. I think a much more obvious motive would be for Craig Wilson to be concerned that Dee was going to go to the police to get back at him for stealing thousands of dollars from her. Craig himself told us how paranoid he could be and that he was specifically paranoid about Dee and her constant messaging him about the money. Craig Wilson had a reason to kill Dee. Jesse did not.

*Id.* at 61. In a rebuttal argument, the prosecutor told the jury there was no evidence that Myrtle had directly threatened Wilson with the police, and Mathews had the superior motive to kill her. Thus, the jury received ample information about motive and could weigh the evidence accordingly.

[37] We conclude that either instruction would have produced the same verdict and an affirmance.

[38] Under these facts and circumstances, and following the Indiana Supreme Court's precedent, the trial court did not abuse its discretion by choosing to give

the pattern jury instruction on motive over the instruction it originally proposed.

## **II. Exclusion of Witness’s Purported Call to Police Officer**

[39] Mathews next argues the trial court erred in excluding testimony from a witness about her attempt to call a police officer with information about Myrtle’s murder. We review a ruling on the admissibility of evidence for an abuse of discretion. *Carter v. State*, 932 N.E.2d 1284 (Ind. Ct. App. 2010). We reverse only when the trial court’s decision is clearly against the logic and effect of the facts and circumstances. *Id.* We consider the evidence in favor of the trial court’s ruling and any unrefuted evidence in the defendant’s favor. *Goldsberry v. State*, 821 N.E.2d 447 (Ind. Ct. App. 2005).

[40] In general, relevant evidence is admissible at trial, and irrelevant evidence is not admissible. Ind. Evid. Rule 402. Evidence is relevant, and thus admissible, if “it has any tendency to make a fact more or less probable than it would be without the evidence; and . . . the fact is of consequence in determining the action.” Ind. Evid. Rule 401.

[41] Jamia Keuthan was among those present when Myrtle’s body was discovered, and she described her observations to the jury. Outside of the presence of the jury, she testified as an offer of proof that after Myrtle had been murdered and Mathews had been charged, she encountered a woman who explained that Craig Wilson had told her he had killed Myrtle. Keuthan then stated that she called and texted a detective to let him know she had information about the

murder regarding Wilson, but he never called her back. She conceded that she may not have called the right number, and the detective testified that he did not remember any communications from Keuthan during that period of time.

Keuthan further conceded she did not know the woman's name and did not know how to contact her. The trial court determined Keuthan's testimony about speaking with the unknown woman and then attempting to contact the detective was inadmissible.

[42] Mathews argues that, setting aside the obvious hearsay, the trial court should have allowed Keuthan to tell the jury that she attempted to contact the detective with information implicating Wilson, but that the detective never responded to her. Mathews further claims her testimony would have been relevant to show that the police had unreasonably failed to investigate other potential suspects. We disagree. Keuthan's testimony did not tend to make a fact—the police's allegedly unreasonable failure to investigate other suspects—more or less probable because there is no evidence that the detective or any other officer received her information about the unknown woman who had implicated Wilson. Keuthan was unsure if she had called the correct number, and the detective did not recall receiving a call from her during the relevant period of time. The trial court did not abuse its discretion in excluding this evidence.

### **III. Wilson's Suggestion of a Polygraph Test**

[43] Mathews argues the trial court should have ordered a mistrial in response to Wilson's spontaneous testimony regarding a possible polygraph test, in violation of a motion in limine. Mathews did not object to the testimony, and

failure to contemporaneously object to the admission of evidence at trial results in waiver of the error on appeal. *Weedman v. State*, 21 N.E.3d 873 (Ind. Ct. App. 2014), *trans. denied*.

[44] Mathews claims that the trial court’s failure to act on its own amounted to fundamental error. The doctrine of fundamental error permits appellate courts a means to correct the most egregious and blatant trial errors that otherwise would have been procedurally barred. *Ryan v. State*, 9 N.E.3d 663 (Ind. 2014). A defendant claiming fundamental error “faces the heavy burden of showing that the alleged errors are so prejudicial to the defendant’s rights as to ‘make a fair trial impossible.’” *Id.* (quoting *Benson v. State*, 762 N.E.2d 748, 756 (Ind. 2002)). That is, the error claimed must either make a fair trial impossible or amount to clearly blatant violations of basic and elementary principles of due process. *Weedman*, 21 N.E.3d at 881.

[45] Prior to trial, Mathews filed a motion in limine asking the court to bar the State from presenting to the jury any evidence related to polygraph examinations or polygraph test results. The court granted Mathews’ request. At trial, during Mathews’ cross-examination of Wilson, he asked Wilson about the testimony of another witness, who claimed Wilson had told her he had killed “that woman in Staunton.” Tr. Vol. VI, p. 159. Wilson stated: “Well, then Lindsey’s lying, that’s the only thing I can tell you. I’ll take a polygraph, whatever you need.” *Id.* at 160.



[46] Indiana's courts have noted the "unreliability of polygraph examinations and the danger that juries will give undue weight to their results." *Pavone v. State*, 273 Ind. 162, 165, 402 N.E.2d 976, 978 (1980). Polygraph examinations are generally inadmissible unless certain standards are met, including a joint stipulation or waiver by the parties. *Id.* at 164, 402 N.E.2d at 978. But Mathews' case does not involve an actual polygraph examination, merely an offer to undergo one. Further, it does not appear that the State intentionally violated the order in limine, because Wilson blurted out his statement on cross-examination. Mathews points to no evidence that the State encouraged Wilson to offer to take a polygraph examination. *Cf. Houchen v. State*, 632 N.E.2d 791 (Ind. Ct. App. 1994) (reversing conviction on grounds of fundamental error; nineteen-year veteran police officer testified twice about offering a polygraph examination to Houchen, an evidentiary harpoon that was intended to damage Houchen's credibility).

[47] Mathews claims that Wilson's credibility was a key issue at trial, and his polygraph comment undermined Mathews' right to present a defense that Wilson committed the murder. Mathews cross-examined Wilson at length, and he also argued to the jury extensively about Wilson's credibility and possible motive to kill Myrtle. Considering all of the evidence and arguments presented during the seven-day jury trial, Wilson's statement did not make a fair trial impossible or amount to a clearly blatant violation of basic and elementary principles of due process. There was no fundamental error on this point.

## IV. Cumulative Error

[48] Mathews argues that the cumulative effect of the trial court's decisions requires reversal of his convictions because the State's case against him was "circumstantial and weak." Appellant's Br. p. 38. Our Supreme Court has stated, "for the sake of argument," that under some circumstances the cumulative effect of trial errors may warrant reversal "even if each might be harmless in isolation." *Hubbell v. State*, 754 N.E.2d 884, 895 (Ind. 2001). But we have determined the trial court did not err in instructing the jury on motive or in excluding Keuthan's testimony about Wilson. And there was no fundamental error in the trial court choosing not to order a mistrial after Wilson offered to take a polygraph examination. Reversal is not warranted.

## Conclusion

[49] For the reasons stated above, we affirm the judgment of the trial court.

[50] Affirmed.

Riley, J., and Brown, J., concur.