

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Charles David Bussard,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

June 29, 2022

Court of Appeals Case No.  
21A-CR-2325

Appeal from the Elkhart Circuit  
Court

The Honorable Michael A.  
Christofeno, Judge

Trial Court Cause No.  
20C01-2002-MR-1

**Weissmann, Judge.**

[1] Charles David Bussard challenges his conviction and sentence for the 2015 murder of his uncle, whose body was never recovered. Bussard claims the State failed to introduce independent evidence of the murder—that is, the *corpus delicti*—before admitting his confession. Bussard also contends the trial court improperly penalized him for maintaining his innocence during trial when it found as an aggravating circumstance that he had lied to the jury. Finding *corpus delicti* was established and any sentencing error was harmless, we affirm.

## Facts

[2] At all relevant times, Bussard lived with his father, Charles Allen Bussard (Allen), and paternal uncle, Byron Bussard, at Allen’s home in Elkhart County. Allen worked as a long-distance truck driver, and Byron would bully Bussard while Allen was on the road. Bussard was diagnosed with autism as a teenager.

[3] In January 2015, Allen left on a work trip. Byron, who had a history of addiction, used crack cocaine and argued with Bussard. Bussard called Allen to report the arguments, complaining that Byron was getting on Bussard’s nerves and needed to move. Allen called Byron and asked him to stop fighting with Bussard.

[4] Byron did not report to his factory job on January 22, 2015, and the last activity in his bank account was the prior day. On January 23, Bussard told his paternal grandmother that he did not sleep the night before because he had burned his broken mattress in a bonfire. He also reported that Byron was still asleep. When Allen returned a week or two later, Bussard told him that Byron had left in a

minivan to smoke cocaine. Allen's repeated calls to Byron went unanswered. After reporting Byron's disappearance to police on February 3, Allen left on another work trip. While police searched for Byron, Bussard began driving Byron's car in violation of Byron's rules. Bussard also received a newly ordered mattress and placed it on Byron's bed.

- [5] Allen authorized police to search his home a week after reporting Byron's disappearance to police. When police noticed the new mattress and bedding in Byron's bedroom, Bussard told police that Byron had purchased it. Bussard also reported that he had argued with Byron and that Byron left Allen's home with friends. Bussard attributed cuts on his arm and leg to his chopping wood.
- [6] Police did not find Byron's cell phone, keys, or wallet in Allen's home. But on the living room floor, they found the key to Allen's locked bedroom, which contained Allen's guns. Unbeknownst to Allen, Bussard had fired Allen's guns while he was away. Yet Bussard denied knowing which door the key unlocked. At Allen's request, police retained the key. That night Bussard searched on his phone for information about police questioning techniques and when seized evidence is returned.
- [7] Police determined the next day that the last ping on Byron's phone was at Allen's home. A detective returned to the home, and Bussard handed him Byron's phone. Bussard claimed that he found the phone in Byron's desk, which police had searched the prior day. Bussard again told police that Byron had purchased the new mattress. Bussard also stated that he had burned his

own mattress. The next day Bussard searched on his computer tablet for information about the death penalty, death versus prison, and voluntary manslaughter.

[8] During another consensual search of Allen's home on February 16, police found that the mattresses on Byron's bed and on Bussard's bed had been switched. Allen confronted Bussard, who admitted he had burned Byron's mattress. Byron's blood was found on the door jams and floor along the path from Byron's bedroom to the back door. Police testing revealed blood in various parts of Byron's room, particularly on his metal bedframe and in front of the bed.

[9] Police found a burned, folded mattress spring in the home's garage. Testing showed blood on the springs, particularly in an area showing a depression shaped like a human body. Some fabric remaining on the springs contained Byron's blood. Based on the depression in the springs and other evidence, a fire investigator believed a body had been placed on a fire, covered with the mattress, and then weighted down with other trash.

[10] Police searched Allen's home twice more, including once with cadaver dogs. They also seized Bussard's phone and computer tablet. The Elkhart County prosecutor declined to file charges, but the Elkhart County Homicide Unit later agreed to investigate Byron's death as a "cold case." During that investigation, police arrested Bussard's girlfriend for an unrelated offense, and Bussard agreed to reveal what he knew about Byron's death to obtain her release and resolve

their housing challenges. Bussard claimed he was the “only one on the planet” who knew Byron’s whereabouts. Tr. Vol. III, pp. 132, 148.

[11] In his later recorded statement to police, Bussard confessed to shooting Byron in the face with a 12-gauge pump action shotgun. He also admitted dragging Byron’s body out of the house on a tarp and burning it under a mattress and trash. After moving Byron’s bones and remaining tissue to a log burning stove inside the home, Bussard ground those remains and flushed them down the toilet.

[12] The State charged Bussard with murder. At his jury trial, Bussard testified that Byron accidentally shot himself when Bussard handed him an AK-47 rifle but that he did dispose of the body as he had described in his statement to police. The jury found Bussard guilty of murder. The trial court sentenced him to 63 years imprisonment based on its finding of 14 aggravating circumstances, including that Bussard lied to the jury. Bussard appeals.

## Discussion and Decision

[13] Bussard raises two issues. He first claims the trial court committed fundamental error by admitting his statement to police without first requiring the State to establish the *corpus delicti*. He also claims the trial court abused its discretion during sentencing by finding as an aggravating circumstance that Bussard lied to the jury. We reject both claims, finding the first to be inaccurate and the second to allege only harmless error.

## I. Corpus Delicti

[14] Bussard claims the State, before admission of his confession, presented no independent evidence that Byron had been the victim of crime. An extrajudicial confession is not admissible absent independent proof of the *corpus delicti*. *Oberst v. State*, 748 N.E.2d 870, 874 (Ind. Ct. App. 2001). The State establishes the *corpus delicti* by producing evidence, other than the confession, that shows: 1) a specific kind of injury occurred; and 2) the injury was caused by a person's criminal act. *Id.* The evidence need only support an inference that a crime was committed; proof beyond a reasonable doubt is not required. *Id.* "The purpose of this [*corpus delicti*] rule is to reduce the risk of convicting a defendant based on his confession for a crime that did not occur, to prevent coercive interrogation tactics, and to encourage thorough criminal investigation." *Id.* (citing *Willoughby v. State*, 552 N.E.2d 462, 480 n.1 (Ind. 1990)).

[15] Bussard acknowledges he did not object to admission of his confession at trial. To avoid waiver, however, he argues that the error was fundamental. The fundamental error doctrine is extremely narrow and applies only when the error renders a fair trial impossible or constitutes a clearly blatant violation of basic and elementary principles of due process presenting an undeniable and substantial potential for harm. *Kincaid v. State*, 171 N.E.3d 1036, 1039 (Ind. Ct. App. 2021) (citing *Kelly v. State*, 122 N.E.3d 803, 805 (Ind. 2019)).

[16] Bussard contends this case meets that test. When Bussard's confession was admitted, the State had not presented evidence that Byron had been murdered

or that Bussard did it, according to Bussard. He claims the evidence merely showed that Byron bled in Byron's own home and that Byron had disappeared, as was his custom. Bussard concludes the evidence, at most, revealed Byron died but not at Bussard's hand.

[17] Contrary to Bussard's argument, the order of evidence is not vital for purposes of *corpus delicti*. See *Hart v. State*, 570 N.E.2d 16, 20 (Ind. 1991). Supporting evidence admitted after the confession may be considered in determining whether the *corpus delicti* was established. *Id.* The evidence showed Byron had disappeared five years earlier and never returned to work, contacted his family, or used his bank account. Other evidence showed Byron's blood was found in a path from his bedroom through the back door and on a burnt mattress. Testing showed a large amount of blood in front of Byron's bed, on his metal bedframe, and on the mattress springs, most prevalently in the area showing a body-shaped depression.

[18] Evidence of Bussard's actions after Byron's disappearance also supported an inference that Bussard killed Byron. Bussard admitted burning the mattress. He bought a new mattress that he first placed on Byron's bed and then moved to his own. He lied to police and family about Byron's cell phone and the key to Allen's room containing guns. He also engaged in internet searches about police interrogation and the various types of killing offenses.

[19] The circumstantial evidence, which alone may establish the *corpus delicti*, was sufficient to that task here. *Evans v. State*, 460 N.E.2d 500, 502 (Ind. 1984); see

*Scott v. State*, 632 N.E.2d 761, 766 (Ind. Ct. App. 1994) (finding sufficient *corpus delicti* based on defendant’s presence at the crime scene where the evidence showed the victim was injured by an unseen person, had immediately reported being battered, had injuries consistent with a battery, and had reported a crime consistent with the physical evidence); *Groves v. State*, 479 N.E.2d 626, 628 (Ind. Ct. App. 1985) (ruling that *corpus delicti* established in operating while intoxicated prosecution where defendant was owner of the vehicle and found near the vehicle soon after the accident).

## II. Sentencing

[20] Bussard next argues that the trial court abused its discretion by finding as an aggravating circumstance that Bussard “flat-out lied to the jury and told them it was an accidental shooting and gave them what I consider to be a preposterous story . . . .” Tr. Vol. IV, p. 24. Bussard claims the trial court improperly penalized him for testifying and maintaining his innocence at trial. *See Bluck v. State*, 716 N.E.2d 507, 512 (Ind. Ct. App. 1999) (rejecting as an aggravating circumstance that the defendant, in good faith, maintained his innocence).

[21] Sentencing decisions are reviewed for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (2007). A trial court abuses its discretion in several ways, including by either entering a sentencing statement that includes aggravating and mitigating factors unsupported by the record or by entering a sentencing statement including reasons improper as a matter of law. *Id.*



[22] We find no abuse of discretion because Bussard offered two highly conflicting accounts of Byron’s death: one to police in which Bussard admitted he was the shooter and the other to the jury in which Bussard claimed Byron shot himself. A failure to give a “fully truthful” account of the offense has been considered a proper aggravating circumstance. *Shields v. State*, 699 N.E.2d 636, 639 (Ind. Ct. App. 1998). But even if the trial court mistakenly considered the challenged aggravating circumstance, any error would be harmless.

[23] The trial court found 13 other aggravating circumstances that Bussard does not challenge:

- \* Bussard has a criminal history.
- \* He pretended that he was incompetent to avoid prosecution.
- \* He routinely used alcohol, methamphetamine, and other substances.
- \* He is at high risk of reoffending.
- \* He failed previously to take advantage of programs or alternative sanctions.
- \* Other sanctions failed to deter Bussard’s criminal behavior.
- \* Bussard lied to police about Byron leaving and never returning.
- \* He attempted to cover up his crimes by cleaning the home and burning evidence.
- \* He used a firearm in the murder.
- \* He shot his uncle in the face and then burned his body, thus desecrating it after death.

- \* He attempted to misdirect and fool law enforcement by buying a new mattress and then placing the old one in Byron's room.
- \* He burned Byron's bones in the wood burning stove, crushed them into powder, and flushed them down the toilet.
- \* At the time of the offense, Bussard was drunk on whiskey and high on synthetic marijuana.

App. Vol. II, pp. 9-14; Tr. Vol. IV, pp. 21-24.

[24] These aggravating circumstances are so numerous and significant in total that we can say with great confidence that the trial court would have imposed the same sentence even if the challenged aggravator had been excluded. *See Anglemeyer*, 868 N.E.2d at 491 (ruling that even if sentencing error occurs, appellate court need not remand for resentencing unless “we cannot say with confidence that the trial court would have imposed the same sentence” without the error).

[25] The trial court's judgment is affirmed.

Robb, J., and Pyle, J., concur.