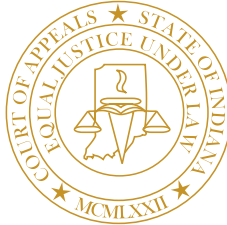


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Tyrone Pete Boyd,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

November 18, 2025

Court of Appeals Case No.
24A-CR-2853

Appeal from the Marion Superior Court
The Honorable Mark D. Stoner, Judge

Trial Court Cause No.
49D32-2212-F1-34174

Memorandum Decision by Judge DeBoer
Chief Judge Altice and Judge Pyle concur.

DeBoer, Judge.

Case Summary

- [1] In August 2022, Tyrone Boyd woke up from a nap and found his three-year-old child, T.B., unresponsive. Shortly after T.B. was rushed to the hospital and pronounced dead, Boyd sat for a brief recorded interview with representatives from law enforcement, the coroner’s office, and the Department of Child Services (DCS). Boyd was later charged with Level 1 felony neglect of a dependent resulting in death. At his trial, Boyd unsuccessfully requested that the jury be instructed on Class B misdemeanor criminal recklessness as a lesser included offense. Boyd was convicted of the neglect charge and now appeals, arguing the trial court erred by admitting his statements from the interview at the hospital and failing to instruct the jury on his proposed lesser included offense. We affirm.

Facts and Procedural History

- [2] On August 22, 2022, when Boyd’s friend, Randall Hampton, stopped by and knocked on his apartment door, Boyd answered looking “panick[ed]” and “nervous.” Transcript Vol. 2 at 203. Boyd told Hampton “something was wrong” with his three-year-old son, T.B., who “wasn’t [waking] up.” *Id.* Hampton took over CPR on T.B. and told Boyd to call 911.
- [3] Boyd was waiting outside the building when Officer Lauren Cramer arrived, and he directed her upstairs to his apartment. She entered his apartment and observed Hampton on the bed administering chest compressions to T.B. The

child was “not awake” and “didn’t appear to be breathing.” *Id.* at 183. There were pieces of Oreo cookie on the bed, and the paramedics believed T.B. “had choked on an Oreo.” *Id.* at 221. T.B. was in cardiac arrest, so the paramedics continued chest compressions and attempted to shock his heart back into rhythm. They ventilated him, gave him seven rounds of epinephrine, and then transported him to Riley Hospital where he arrived at 8:35 p.m. and was pronounced dead.

[4] At 10:07 p.m., two detectives, a deputy coroner, and a DCS trauma case manager interviewed Boyd for approximately fifteen minutes in a private room in the hospital. He was not handcuffed during the interview. At the beginning of the interview, Detective Alisha Daugherty stated the date, time, case reference number, and introduced the others in the room.¹ Boyd provided his personal information, including his name, date of birth, phone number, and information about T.B. and T.B.’s mother, Shertaryn Scruggs, who lived at the apartment with Boyd.

[5] After gathering this information, Detective Daugherty asked Boyd to “walk [them] through today[,] just everything that was goin[g] on today[.]” Exhibits at 10. Boyd responded with a lengthy and detailed narrative. He explained that he and T.B. were eating cookies in bed and T.B. was playing on his tablet. T.B. fell asleep, then Boyd dozed off. When Boyd awoke, T.B. “was face down in a

¹ Detective Daugherty was known as Detective Bernhardt when she was first assigned the case and interviewed Boyd. Exhibits at 48.

pool of . . . saliva . . . mixed with Oreos.” *Id.* at 11. T.B. did not respond when Boyd tried to wake him, so Boyd tried to stand him up, but T.B. “just wobbled” and had “no strength in his leg.” *Id.* At that point, Boyd panicked, and he tried wiping T.B.’s face with a cold towel. He attempted CPR until Hampton took over, and Boyd called 911. Boyd also recounted the first responders’ efforts to revive T.B.

[6] Detective Daugherty asked Boyd to clarify certain details, such as Hampton’s name and relationship to Boyd, when Scruggs left the apartment, that Boyd and T.B. had been lying in Boyd’s bed, and when the two fell asleep. Someone asked whether T.B. normally slept in the same bed as his parents, and Boyd answered that he occasionally did. The detective asked whether T.B. had fallen in the last forty-eight hours, and Boyd stated that he did not know if T.B. had fallen while at daycare that day. Boyd shared that T.B. had just returned to daycare after recovering from a cold and ear infection. T.B.’s doctor had prescribed him medicine, and his coughing had improved. To the extent he could remember, Boyd answered questions about T.B.’s doctor and insurance network. Boyd confirmed that T.B. attended his regularly scheduled medical appointments.

[7] As for any relevant medical history, Boyd relayed that high blood pressure ran in his family and Scruggs had sleep apnea. Boyd then confirmed that he used tobacco products and alcohol at home, but he denied using any illegal substances, including marijuana. After a few more questions about personal

information, the interview ended. After the interview, the DCS representative asked Boyd to submit to a drug screen, and he declined.

- [8] Back at the apartment, police located a rock-like substance in the middle of Boyd's bed. The substance was later confirmed to be fentanyl. More fentanyl and a lighter were found on the mattress under a pillow. Officers also found a jar of marijuana in a duffel bag, and NyQuil Kids, Robitussin, and Zarbees cough medicine on a shelf in a closet.
- [9] In December 2022, the State charged Boyd with Level 1 felony neglect of a dependent resulting in death,² alleging he knowingly placed T.B. in a situation that endangered his life or health which resulted in his death.
- [10] In January 2023, Boyd texted Scruggs about his missing "hard drugs[,] " and she responded that she would not touch his "hard sh** knowing tht sh** wat took [her] baby[.]" *Id.* at 110 [sic throughout]. The next month, he sent her a text stating, "losing . . . my son [], dats all mines nd igtta take dat guilt nd hurt to da grave wid me[.]" *Id.* at 111 [sic throughout]. In a phone call from jail, Boyd told his then-girlfriend the police had obtained a text message exchange in which he accused his "baby momma" of "let[ting] a mother fu****[] break into [his] house [and] steal all [his] weed all [sic] [his] hard drugs." *Id.* at 115. He confirmed that Scruggs had told him T.B. died because he did "not put[] that sh** up." *Id.* at 116. After recounting these messages in the phone call, Boyd

² Ind. Code § 35-46-1-4(a)(1), (b)(3).

stated that these messages “blew [his] whole . . . trial” and that taking his case to trial would be “dumb as fu** now because they ha[d] so much text evidence against [him].” *Id.*

[11] At Boyd’s October 2024 jury trial, his hospital interview statements were admitted over his objection during the deputy coroner’s testimony. She explained that her job was to “assist in death investigations” to “determine whether . . . there was any need for further forensic examination.” Tr. Vol. 2 at 234. She testified that her attendance at post-death interviews like Boyd’s was necessary because it allowed her to “obtain a lot of information regarding both the decedent’s medical history, parents’ medical history, and . . . the circumstances of the death[.]” *Id.* at 235. She explained that her office, DCS, and law enforcement “preferred” to conduct these interviews together because they “ask [] similar questions” and the interviews “usually occur[] within an hour or less of the time of death, [and they] want to make the process as easy as possible for the parents.” *Id.* After participating in Boyd’s hospital interview, the coroner went to his apartment to investigate T.B.’s death.

[12] The forensic pathologist testified that T.B.’s death was accidental and caused by “fentanyl, dextromethorphan[,] and doxylamine toxicity[.]”³ Tr. Vol. 3 at 47. A forensic toxicologist testified that the amount of doxylamine present in T.B.’s blood at death was within the clinical “therapeutic range” for adults. *Id.* at 60.

³ The forensic pathologist explained that fentanyl is a synthetic opioid and scheduled narcotic drug, dextromethorphan is an ingredient commonly found in cough syrup, and doxylamine is an antihistamine.

The level of dextromethorphan found was above the therapeutic range. The amount of fentanyl was twenty-one nanograms per milliliter—above the comatose and fatal range of three to twenty nanograms per milliliter for adult usage.

[13] The forensic pathologist also testified that T.B. had “fluid buildup” in his lungs, known as pulmonary edema. *Id.* at 46. A juror asked her, “Is there substantial evidence of interactions between dextromethorphan or antihistamine or pseudoephedrine and fentanyl? [] Does such interaction increase efficacy of fentanyl? Is pulmonary edema typical of fentanyl overdose?” Appellant’s App. Vol. 2 at 208. The pathologist explained, “By convention, we include any medication that will cause respiratory depression. Although, it’s basically the fentanyl, you know.” *Id.* at 51. She testified that the mixture of medications could “[t]heoretically” increase the efficacy of fentanyl, which is why they were accounted for. *Id.* She also testified that pulmonary edema is typical of fentanyl overdose “because the fentanyl causes the breathing to slow down, [] so the fluid is then allowed to build up.” *Id.*

[14] After the presentation of evidence, the defense requested an instruction on Class B misdemeanor criminal recklessness as a lesser included offense of Level 1 felony neglect of a dependent resulting in death. The defense gave a copy of the proposed instruction to the trial court but never filed it in the case and did not provide the instruction on appeal. Finding there was no serious evidentiary dispute as to whether the alleged criminal act had resulted in T.B.’s death, the court declined to instruct the jury on criminal recklessness. The jury found

Boyd guilty of the Level 1 felony, and the court sentenced him to thirty-two years executed in the Department of Correction, enhanced by ten years because Boyd was found to be a habitual offender.

Discussion and Decision

1. Admission of Interview

[15] Boyd argues that he was “in custody” during the hospital interview and his Fifth Amendment right against self-incrimination was violated when law enforcement failed to read him his *Miranda* rights. Appellant’s Brief at 10; *see also Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (holding states cannot admit a defendant’s statements made during custodial interrogation unless it “use[s] [] procedural safeguards . . . to secure the privilege against self-incrimination”), *reh’g denied*. As a result, he claims the trial court erred in admitting these statements at trial.

[16] We review a trial court’s ruling on the admission of evidence for an abuse of discretion, which occurs if the court’s decision was “clearly against the logic and effect of the facts and circumstances before [it].” *Wahl v. State*, 148 N.E.3d 1071, 1079 (Ind. Ct. App. 2020), *trans. denied*. However, “[t]he custody inquiry is a mixed question of fact and law: the circumstances surrounding [the] interrogation are matters of fact, and whether those facts add up to *Miranda* custody is a question of law.” *State v. E.R.*, 123 N.E.3d 675, 679 (Ind. 2019), *cert. denied*. In conducting this inquiry, we do not reweigh the evidence and we

resolve conflicting evidence in favor of the trial court's ruling. *Id.* But we use de novo review when examining whether the facts amounted to custody. *Id.*

[17] If a defendant is subject to custodial interrogation, “the police [are] required to give him certain warnings about his rights, and the absence of those warnings precludes the use of his statements to prove guilt.” *Id.* at 679-80 (citing *Miranda*, 384 U.S. at 444). “Custody, therefore, is ‘a term of art that specifies circumstances that are thought generally to present a **serious** danger of coercion.’” *State v. Diego*, 169 N.E.3d 113, 117 (Ind. 2021) (quoting *Howes v. Fields*, 565 U.S. 499, 508-09 (2012)) (emphasis in original). “Custody under *Miranda* occurs when two criteria are met. First, the person’s freedom of movement is curtailed to the degree associated with formal arrest. And second, the person undergoes the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.” *Id.* (quoting *E.R.*, 123 N.E.3d at 680).

[18] “[F]reedom of movement is curtailed when a reasonable person would feel not free to terminate the interrogation and leave.” *E.R.*, 123 N.E.3d at 680. As our Supreme Court has stated,

This freedom-of-movement inquiry requires a court to examine the totality of objective circumstances surrounding the interrogation—such as the location, duration, and character of the questioning; statements made during the questioning; the number of law-enforcement officers present; the extent of police control over the environment; the degree of physical restraint; and how the interview begins and ends.

Id. (citing *Howes*, 565 U.S. at 509).

[19] Boyd argues that he “was treated as a suspect, not as a grieving parent[,]” and he claims that the hospital interview was held unnecessarily close in time to T.B.’s death and in a manner “consistent with any police interrogation.” Appellant’s Br. at 12, 13. The State, on the other hand, contends the interview served the permissible fact-finding purposes of “obtain[ing] T.B.’s medical history and his parents’ medical history, as well as ask[ing] what happened to T.B. that evening[.]” Appellee’s Br. at 13. Given the circumstances of the interview, we conclude Boyd was not in custody when he was questioned at the hospital.

[20] “[G]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process” does not require law enforcement to observe *Miranda* requirements. *Wahl*, 148 N.E.3d at 1085 (quoting *Miranda*, 384 U.S. at 477). “[A]n officer may ask routine questions for the purpose of obtaining basic identifying information without the need for *Miranda* warnings.” *Green v. State*, 753 N.E.2d 52, 58 (Ind. Ct. App. 2001), *trans. denied*.

[21] In *Wahl*, a similarly tragic case, a toddler was choked to death by a security gate in the Wahls’ home daycare facility. 148 N.E.3d at 1078. Over four hours after the toddler was pronounced dead and officers had responded to the Wahls’ residence, a detective asked Saundra Wahl “to participate in a video reenacting the events leading to the moment she discovered [the toddler] stuck in the

gate.” *Id.* at 1077. The detective told her the video would “assist the coroner in determining [the toddler’s] cause of death.” *Id.* at 1084. After Sandra performed the reenactment, the officers realized the gate did not latch properly and the Wahls were charged with involuntary manslaughter. *Id.* at 1078. The video reenactment was introduced at trial, and a jury found the Wahls guilty of involuntary manslaughter. *Id.* at 1079.

[22] On appeal, Sandra argued, among other things, that the video reenactment was obtained in violation of *Miranda*. *Id.* at 1083. A panel of this Court found that the detective’s facilitation of the video constituted general on-scene questioning in the fact-finding process which did not require law enforcement to advise Sandra of her *Miranda* rights. *Id.* at 1085. Despite the length of time that passed after the toddler’s death and the fact that Sandra was never told she was free to leave, the Court noted that officers had come and gone all afternoon and had helped the Wahls care for the other children in the daycare, so the detective was still “unaware of the events leading to [the toddler’s] death” when he engaged Sandra in the video reenactment. *Id.*

[23] Judge Tavitias wrote a concurrence “emphasiz[ing] relevant statutory provisions” that “further support[ed] the conclusion that *Miranda* warnings were not required” under the circumstances. *Id.* at 1088 (Tavitias, J., concurring). Indiana Code section 36-2-14-6 provides:

- (a) Whenever the coroner is notified that a person in the county:
 - (1) has died from violence;

(2) has died by casualty;

(3) has died when apparently in good health;

(4) has died in an apparently suspicious, unusual, or unnatural manner; or

(5) has been found dead;

the coroner shall, before the scene of the death is disturbed, notify a law enforcement agency having jurisdiction in that area.

The agency shall assist the coroner in determining the cause, manner, and mechanism of death. . . .

Ind. Code § 36-2-14-6(a). (emphasis added). Because the coroner and his aide were present during the reenactment and its purpose was to assist the coroner in determining the toddler's cause of death, Judge Tavitas reasoned that "law enforcement was conducting a general on-scene investigation pursuant to [the statute's] mandate that law enforcement 'shall assist the coroner', and Sandra was not in custody." *Wahl*, 148 N.E.3d at 1089 (Tavitas, J., concurring).

[24] Here, although the "scene" was originally Boyd's apartment, the hospital interview was still conducted "on-scene" for purposes of determining custody because the circumstances necessitated rushing T.B. to the hospital with Boyd in tow. *See Morales v. State*, 749 N.E.2d 1260, 1265 (Ind. Ct. App. 2001) (finding a mother was not in custody under *Miranda* when she spoke with an officer about her child's injuries in a hospital's chapel and was not told she was free to leave). Additionally, while Detective Daugherty could not recall if she told Boyd he was free to leave, the circumstances of the interview support the

conclusion that a reasonable person would have felt free to terminate the interview and leave.

[25] The record reflects that Boyd was not told he “needed to talk” and that he was not handcuffed during the hospital interview. Ex. at 53. The interview was short, lasting only fifteen minutes, and was conducted about an hour and a half after T.B. was brought to the hospital. Detective Daugherty maintained a consistent tone throughout her questioning and did not use deceptive tactics or accuse Boyd of any misconduct. Rather, the interviewers sought basic information, such as names, contact information, family medical history, and the events of the day as Boyd remembered them. When Detective Daugherty asked Boyd to “walk [her] through” the events, he did not hesitate and gave a complete, uninterrupted narrative about what he and T.B. had been doing before he found T.B. unresponsive. After the interview, Boyd felt free to refuse a drug screen.

[26] These facts are distinguishable from *E.R.*, where E.R. was told there were allegations against him and he “needed to interview[.]” 123 N.E.3d at 680. When he arrived at the police station, E.R. was taken through “a labyrinthine [] route” to the interrogation room “with many obstructions to egress.” *Id.* at 681. And although he was told once he could leave the interrogation, he was also instructed to “sit tight” multiple times and the officers “dramatically changed the interrogation atmosphere[,]” which became “aggressive” and “accusatory—not exploratory.” *Id.* Furthermore, E.R. was subjected to prolonged questioning lasting nearly an hour. *Id.* Under those circumstances, our

Supreme Court found that a reasonable person would not have felt free to end that interrogation and leave. *Id.* at 682.

[27] Instead, the present circumstances are comparable to those in *Wahl*, because Boyd’s hospital interview constituted general on-scene questioning at the very outset of the fact-finding process. Given the preliminary, information-gathering nature of the brief line of questioning, paired with Boyd’s forthright and detailed recitation of the day’s events, a reasonable person would have felt free to leave. Moreover, in light of the deputy coroner’s presence during the interview and her testimony that it helped her obtain relevant medical information and discern the circumstances of the death, the interview was conducted in furtherance of law enforcement’s statutory mandate to “assist the coroner in determining the cause, manner, and mechanism of death.” I.C. § 36-2-14-6(a). Thus, the totality of the circumstances show that Boyd was not in custody, and it was not necessary for him to be advised of his *Miranda* rights at the time he gave the hospital interview.

[28] Finally, even if the trial court erred in admitting the statements Boyd made during that interview, which it did not, “statements obtained in violation of the federal constitution and erroneously admitted are subject to harmless error analysis.” *Hendricks v. State*, 897 N.E.2d 1208, 1215 (Ind. Ct. App. 2008). Accordingly, we will not set aside an otherwise valid conviction if we can confidently say “that the constitutional error was harmless beyond a reasonable doubt.” *Zanders v. State*, 118 N.E.3d 736, 743 (Ind. 2019) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986)). The State bears the heavy burden to

show that error was “unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.” *Id.* (quoting *Yates v. Evatt*, 500 U.S. 391, 403 (1991), *disapproved of on other grounds by Estelle v. McGuire*, 502 U.S. 62, 72 n.4 (1991)).

[29] Boyd’s hospital interview statements were inconsequential in relation to the totality of the evidence supporting the neglect charge. First, Boyd did not say anything inculpatory in his interview. He denied using illicit substances and, as he described it, he and T.B. were just hanging out in bed before an inexplicable tragedy struck. While Boyd described that he and T.B. were home alone and in bed, the jury could have learned these facts from other evidence. *See* Tr. Vol. 2 at 201-04, 227, 229. Second, the medical evidence showed that the amount of fentanyl in T.B.’s system could have killed an adult. Third, the State presented evidence of text messages and phone calls showing that Boyd knew he had “hard drugs” and never “put the sh** up[.]” Ex. at 110, 116. In these exchanges, Boyd appeared to accept responsibility for his son’s death and admitted there was overwhelming evidence against him. *See id.* at 111, 115-16; *see also Hendricks*, 897 N.E.2d at 1215-16 (sustaining a felony dealing in cocaine conviction based on harmless error when a statement obtained in violation of *Miranda* was admitted, but the defendant’s recorded phone conversations provided overwhelming evidence that he committed the crime).

[30] Ultimately, the probable impact of the statements Boyd made during his interview have not undermined our confidence in the verdict. These statements

were unnecessary for his conviction in light of all the other evidence against him. Thus, if any error occurred in their admission, such error was harmless.

2. Lesser Included Instruction

- [31] Boyd also argues that the trial court erred by failing to instruct the jury that it could convict him of Class B misdemeanor criminal recklessness as a lesser-included offense of Level 1 felony neglect of a dependent resulting in death.
- [32] After the close of evidence, Boyd tendered a proposed criminal recklessness instruction to the trial court. *See* Tr. Vol. 3 at 115 (court acknowledging it “ha[d] [] two proposed finals from the defense”); *see also id.* at 122 (court stating defense counsel “sent it” the criminal recklessness instruction). Despite preparing an instruction and providing it to the trial court, Boyd did not file the instruction in the case, nor did he take any steps to supplement the appellate record with the proposed instruction as required by the Appellate Rules. *See* Ind. Appellate Rule 46(A)(8)(e) (“When error is predicated on the giving or refusing of any instruction, the instruction shall be set out verbatim in the argument section of the brief with the verbatim objections, if any, made thereto.”); App. R. 50(B)(1)(c) (“The appellant’s Appendix in a Criminal Appeal shall contain . . . copies of the following documents, if they exist: . . . any instruction not included in appellant’s brief under Rule 46(A)(8)(e) when error is predicated on the giving or refusing of the instruction[.]”); *see also* App. R. 31(A) (outlining procedures to certify a statement of evidence “[i]f no Transcript of all or part of the evidence is available”).

[33] “[T]he failure to include a tendered jury instruction in the record of proceedings precludes appellate review of alleged error in the trial court’s rejection thereof.” *Custard v. State*, 629 N.E.2d 1289, 1291 n.4 (Ind. Ct. App. 1994). Boyd’s failure to provide his proposed lesser included criminal recklessness instruction on appeal has impeded our review of whether it was an instruction that should have been given. *See Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015) (stating failure to comply with Rule 46 results in waiver where the non-compliance is sufficiently substantial so as to impede our review). In determining whether an instruction should have been given, we consider, among other things, “whether the instruction correctly state[d] the law.” *Coy v. State*, 999 N.E.2d 937, 943 (Ind. Ct. App. 2013). Because we do not have the tendered instruction, we cannot determine whether it correctly stated the law or whether all aspects of the test formulated in *Wright v. State* would have been satisfied given the language of the proposed instruction. *See* 658 N.E.2d 563, 566-67 (Ind. 1995).⁴ Thus, he has waived this issue for our review.

[34] Waiver notwithstanding, because his proposed instruction was not included on appeal, Boyd himself submits that his claim is reviewable only for fundamental error. Appellant’s Br. at 28 (“This is an unusual case in which the trial court

⁴ The test articulated in *Wright* and its progeny requires the trial court to first “determine whether the lesser offense is inherently or factually included in the charged offense.” *Larkin v. State*, 173 N.E.3d 662, 668 (Ind. 2021), *reh’g denied*. “If it is either, the court must determine whether ‘a serious evidentiary dispute’ exists between the elements that distinguish the offenses.” *Id.* (quoting *Wright*, 658 N.E.2d at 567). A serious evidentiary dispute is one that provides “sufficient evidence for the jury to find the defendant committed the lesser offense but not the charged offense.” *Id.* If this test is satisfied, “it is reversible error for a trial court not to give an instruction, when requested[.]” *Wright*, 658 N.E.2d at 567.

had the proposed instruction to inform its ruling, but on appeal this Court does not. As such, Mr. Boyd must still argue that the failure to give the instruction was fundamental error.”). Fundamental error review “is extremely narrow and ‘available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for harm cannot be denied, and which violation is so prejudicial to the rights of the defendant as to make a fair trial impossible.’” *In re Eq. W.*, 124 N.E.3d 1201, 1214-15 (Ind. 2019) (quoting *Jewell v. State*, 887 N.E.2d 939, 942 (Ind. 2008)).

- [35] The “entitlement to included offenses instructions, in an appropriate case, is not a fundamental right but rather is one that must be claimed and the claim preserved, in accordance with established rules of trial and appellate procedure.” *Barthallow v. State*, 119 N.E.3d 204, 211 (Ind. Ct. App. 2019) (quoting *Helton v. State*, 402 N.E.2d 1263, 1266 (Ind. 1980)). Thus, even if the criminal recklessness instruction had been warranted, the trial court’s decision not to give the instruction did not amount to fundamental error. We also note that Boyd does not claim any error in the jury instruction for the offense of conviction, nor does he argue the evidence adduced at trial was insufficient to support that conviction, so we cannot conclude that any error in the court’s decision deprived Boyd of fundamental due process. Accordingly, the court’s decision to deny Boyd’s request to instruct the jury on criminal recklessness was not fundamental error.

Conclusion

[36] For the foregoing reasons, we affirm Boyd’s conviction of Level 1 felony neglect of a dependent resulting in death.

[37] Affirmed.

Altice, C.J., and Pyle, J., concur.

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