

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael O'Brien,
Appellant-Defendant

v.

State of Indiana,
Appellee / Cross-Appellant-Plaintiff.

October 17, 2023

Court of Appeals Case No.
23A-CR-49

Appeal from the Marion Superior
Court

The Honorable Jennifer Harrison,
Judge

Trial Court Cause No.
49D20-2207-F3-20127

Memorandum Decision by Judge Pyle

Judges Vaidik and Mathias concur.

Pyle, Judge.

[1] A jury convicted Michael O’Brien (“O’Brien”) of two counts of Level 5 felony intimidation,¹ Level 6 felony killing a domestic animal,² and Class A misdemeanor domestic battery.³ On appeal, O’Brien raises a fundamental error challenge to the trial court’s admission of State’s Exhibit 53, a series of text messages that O’Brien, while incarcerated, sent to a friend. At trial, after the State had agreed to redact from the text messages a reference to O’Brien’s incarceration, the trial court asked O’Brien what was “the Defense position as to State’s 53.” (Tr. Vol. 3 at 146-47). O’Brien responded that the defense “would not object as redacted[,]” which, in essence, is the equivalent of saying no objection. (Tr. Vol. 3 at 147). This Court has recently noted that “[o]ur supreme court has stated that ‘we will not review claims, even for fundamental error, when appellants expressly declare at trial that they have no objection.’” *Maddox v. State*, 213 N.E.3d 579, 579 (Ind. Ct. App. 2023) (quoting *Taylor v. State*, 86 N.E.3d 157, 161 (Ind. 2017), *cert. denied*). Accordingly, we will not review O’Brien’s claim of fundamental error regarding the admission of State’s Exhibit 53, and we affirm his convictions. *See Maddox*, 213 N.E.3d at 579-80.

¹ IND. CODE § 35-45-2-1.

² I.C. § 35-46-3-12.

³ I.C. § 35-42-2-1.3.

- [2] On cross-appeal, the State correctly points out that the trial court failed to enter a judgment of conviction and a sentence for O'Brien's Class A misdemeanor domestic battery conviction. We, therefore, remand this case to the trial court with instructions to enter a judgment of conviction and sentence for that conviction. *See* IND. CODE § 35-38-1-1 (requiring the trial court to enter a judgment of conviction after a guilty verdict) and I.C. § 35-50-1-1 (requiring the trial court to sentence a person convicted of an offense).
- [3] We affirm O'Brien's convictions and remand with instructions for the trial court to enter a judgment of conviction and a sentence for O'Brien's Class A misdemeanor domestic battery conviction.
- [4] Affirmed and remanded with instructions.

Vaidik, J., and Mathias, J., concur.