

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Angela Cunningham-Goble,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 2, 2022

Court of Appeals Case No.
22A-CR-1101

Appeal from the Henry Circuit
Court

The Honorable David L. McCord,
Judge

Trial Court Cause No.
33C03-2111-CM-757

Bailey, Judge.

Case Summary

- [1] Following her conviction of two misdemeanors, Angela Cunningham-Goble (“Cunningham-Goble”) appeals the trial court order regarding payment of fines, fees, costs, and attorney fees.
- [2] We affirm.

Issues

- [3] Cunningham-Goble raises the following two issues:
- I. Whether the trial court erred when it ordered the surrender of the cash bail proceeds on a case that was dismissed to be used for fines, fees, and costs in a different case.
 - II. Whether the trial court erred in imposing a \$300 public defender fee when Cunningham-Goble was only convicted of misdemeanors.

Facts and Procedural History

- [4] On March 12, 2021, the State charged Cunningham-Goble with driving while suspended, a Class A misdemeanor,¹ under Cause Number 33C03-2103-CM-165 (“Cause 165”). On July 20, 2021, Cunningham-Goble failed to appear for a hearing, and the court issued a warrant with a cash bond set at \$500.

¹ Ind. Code § 9-24-19-2.

[5] On November 22, 2021, Cunningham-Goble was driving a car and was stopped by police officer Joshua Harter (“Officer Harter”) because he noticed an expired license plate sticker. Officer Harter checked Cunningham-Goble’s driver’s license records and discovered that her license was suspended and there was a warrant for Cunningham-Goble’s failure to appear that was issued under Cause 165. Officer Harter arrested Cunningham-Goble, and a person named Russell Guffey (“Guffey”) then posted a \$500 cash bond for Cunningham-Goble in Cause 165. Under Cause Number 33C01-2111-CM-757 (“Cause 757”), the State charged Cunningham-Goble with driving while suspended, a Class A misdemeanor, and operating with expired plates, a Class C infraction.² Guffey posted a cash bond of \$350 in Cause 757 for Cunningham-Goble.

[6] At the November 30, 2021, initial hearing in Cause 757, Cunningham-Goble requested appointed counsel, and the court conducted an indigency hearing. The court then appointed a public defender to represent Cunningham-Goble but reserved “the right to have [Cunningham-Goble] partially reimburse County public defender fees.” App. at 4, 31.

[7] On April 13, 2022, the trial court conducted a bench trial in Cause 757 and found Cunningham-Goble guilty on both counts. The court then granted the State’s motion to dismiss the charges in Cause 165. The trial court proceeded directly to sentencing, imposed a suspended sentence of 365 days, and set

² I.C. § 9-18.1-11-2(b)(2) and (c).

another hearing to decide whether Cunningham-Goble would be placed on probation. The court stated,

On the dismissed case, you also had a cash bond there of \$500.00. On that one the Clerk would keep \$50.00, so you have \$450.00 available. So, your total of [the] \$300.00 public defender fee, \$185.50 court costs, \$15.00 fees[,] and \$75.00, is that—that comes to \$575.00.... [T]hen, count two, the operating with the expired plates, there will be a fine of \$35.50 on that. So, there's more than enough money to pay for all of that. The remainder of that bond money will be released and paid to whoever the cash depositor was.

Tr. at 23.

[8] In its written order entitled “Order Releasing Bonds,” the trial court stated,

The Court hereby orders the Clerk of Courts to release total bonds in the sum of \$765.00 to pay in 33C03-2111-CM-000757-- \$185.50 court costs, \$50.50 fine, \$300.00 public defender fee[,] and \$75.00 to Henry County Community Corrections for community service fees. The balance of \$154.00 to remain in trust in 33C03-2111-CM-000757.

App. at 51.

[9] After ordering the surrender of the cash bond posted in Cause 165 and after stating that there would be a public defender fee of \$300, the trial court stated, “[Defense counsel], as far as sentencing, anything else?,” to which defense counsel replied, “No, your Honor. Thank you.” Tr. at 23-24. After discussing appointment of appellate counsel, the trial court asked again, “Anything else,

[defense counsel]?,” to which counsel again replied, “No, your Honor. Thank you.” *Id.* at 26. This appeal ensued.

Discussion and Decision

- [10] Cunningham-Goble challenges the trial court orders that the cash bond in Cause 165 be used to pay some of the fees and costs in Cause 757 and that \$300 in public defender attorney fees also be paid from cash bond money. However, Cunningham-Goble failed to object to those orders despite having the opportunity to do so.
- [11] It is well-settled that a party’s failure to object to an alleged error at trial results in waiver of the issue. *See, e.g., Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018). There is a narrow exception to such waiver if fundamental error occurred. *Treadway v. State*, 924 N.E.2d 621, 633 (Ind. 2010). However, the defendant must raise and show fundamental error on appeal or else that claim, too, is waived. *See, e.g., Stewart v. State*, 167 N.E.3d 367, 373 (Ind. Ct. App. 2021), (holding failure to raise claim of fundamental error on appeal resulted in waiver of that claim), *trans. denied*. Here, Cunningham-Goble both failed to object at trial to the now challenged orders and failed to so much as mention fundamental error on appeal. Therefore, Cunningham-Goble has waived both her claims on appeal.
- [12] Waiver notwithstanding, Cunningham-Goble could not show fundamental error in any case.

“The ‘fundamental error’ exception is extremely narrow and applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process.” *Mathews v. State*, 849 N.E.2d 578, 587 (Ind. 2006). “The error claimed must either make a fair trial impossible or constitute clearly blatant violations of basic and elementary principles of due process.” *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010) (internal quotation omitted).

Stewart, 167 N.E.3d at 373.

[13] Cunningham-Goble personally suffered no harm at all—much less the substantial harm or potential harm required to show fundamental error—because she did not post the cash bonds used to pay the fees, costs, and attorney fees in this case; Guffey did. It is clear that, following disposition of a case, any remainder of “a bond posted by a third party is to be returned to the third party.” *Garner v. Kempf*, 93 N.E.3d 1091, 1098 (Ind. 2018); *see also* I.C. § 35-33-8-3.2(b) (providing that, within thirty days from disposition of the case, the trial court “shall order the clerk to remit the amount of the deposit remaining ... *to the person who made the deposit.*”)³ (emphasis added). Thus, even if the trial court had erred in ordering the payment of fees, costs, and attorney fees from the cash bonds, that money would not be owed to Cunningham-Goble. Because she has

³ We note that Cunningham-Goble misquotes the statute as saying the deposit remaining shall be remitted “to the defendant.” Appellant Br. at 7.

suffered no harm from any alleged error, there was no fundamental error as to her.

Conclusion

[14] Cunningham-Goble has waived her challenges to the court orders regarding payment of fees and costs from the cash bonds by failing to object in the trial court and failing to even allege fundamental error on appeal. Waiver notwithstanding, we find no fundamental error in those orders as to Cunningham-Goble.

[15] Affirmed.

Riley, J., and Vaidik, J., concur.