

Victor Adamson-Scott appeals his conviction of felony murder.¹ He challenges the admission of an audio recording police made while they interviewed him. We affirm.

FACTS AND PROCEDURAL HISTORY

On March 19, 2009, Constantino Lanza and Jose Wilfredo Mejia Garcia were standing in front of Garcia's apartment when three men came around the corner. One stayed at the corner while the other two approached Lanza and Garcia. One of approaching men, who was armed with a .380 caliber handgun, started screaming in English. Garcia did not understand English, but he understood the men's intent and put his arms up. Lanza took a step back, and the gunman shot him. Lanza later died at the hospital. The two men stole Garcia's wallet and keys, then rejoined the third man on the corner and fled.

During the police investigation, Garcia and Jordan Anderson, a classmate of Adamson-Scott, implicated Adamson-Scott in the robbery and shooting. The police brought Adamson-Scott in for an interview, which they recorded.

After police advised him of his rights, Adamson-Scott waived his right to counsel and answered questions about the crime. He told police two of his friends had said, "We about (sic) to go rob somebody." (Ex. at 106.) He drew a picture and explained the execution of the crime. After the interview, police took Adamson-Scott to the scene of the crime, where Adamson-Scott recounted the crime and confessed he was a lookout. (Tr. at 329.)

¹ Ind. Code § 35-42-1-1(2).

Defense counsel moved *in limine* for the court to admonish the jury that the audio recording of the interview contained inadmissible hearsay statements by the police. The trial court responded, “Well, when – when you get to [the audio recording] make your objection, all right?” (*Id.* at 10.) The judge also asked defense counsel to remind him to give a limiting instruction² to the jury.

When the State presented the audio recording at trial, the court asked if there were any objections, and defense counsel responded, “No objection” (*Id.* at 310.) The trial court admitted the transcript of the audio recording without a limiting instruction.

On August 25, 2010, Adamson-Scott was found guilty of felony murder.

DISCUSSION AND DECISION

Adamson-Scott argues the trial court committed fundamental error when it admitted the tape without a limiting instruction, because the police expressed opinions about his guilt during the interview. We disagree.

Adamson-Scott did not object at trial to admission of the recording and therefore has waived this argument for appeal. *See Johnson v. State*, 725 N.E.2d 864, 867 (Ind. 2000).

² Adamson-Scott asserts that an appropriate instruction would have said,

On the tape there are some statements made by [police officers], and I want to instruct you that what the police officers say in the course of the interview . . . is not evidence and is not to be considered by you as evidence. But is to be considered only as questioning and questions in order to elicit information to draw out information from [the defendant]. There are certain things that the police officers say and representations that they make that may or may not be true. They are not to be considered as evidence other than to bring out information from [the defendant].

Strong v. State, 538 N.E.2d 924, 928 (Ind. 1989).

Fundamental error is an exception to the rule of waiver. *Jewell v. State*, 887 N.E.2d 939, 940 n.1 (Ind. 2008). Error is “fundamental” when there are “clearly blatant violations of basic and elementary principles, and the harm or potential for harm could not be denied.” *Warriner v. State*, 435 N.E.2d 562, 563 (Ind. 1982). This exception is “extremely narrow.” *Benson v. State*, 762 N.E.2d 748, 755 (Ind. 2002).

Any error herein was harmless and therefore not “fundamental.”³ *See Sturma v. State*, 683 N.E.2d 606, 610 (Ind. Ct. App. 1997) (holding no fundamental error where the defense did not properly object to a tape, when the tape was not formally admitted into evidence but had been treated like evidence during the trial). Adamson-Scott confessed to the robbery, drew a picture of the crime scene, and walked police through how the crime occurred. Any statements by the police during the interview that implicated Adamson-Scott in this crime were either cumulative of other evidence or insignificant in light of his confession and identification by a victim. *See Borders v. State*, 688 N.E.2d 874, 878 (Ind. 1997) (error in admission of evidence harmless when there is other overwhelming evidence of defendant’s guilt).⁴

³ Adamson-Scott’s felony murder conviction was predicated on his involvement in the robbery. Adamson-Scott’s admission that he was a lookout in the robbery amounts to an admission he committed a felony resulting in death. *See Wieland v. State*, 736 N.E.2d 1198, 1202 (Ind. 2000).

⁴ Adamson-Scott argues the number of police hearsay statements makes the error fundamental. We find no merit in this argument in light of the length of the interview and other statements made by Adamson-Scott.

Because Adamson-Scott has not demonstrated reversible error, we affirm.

Affirmed.

BAKER, J., and BRADFORD, J., concur.