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IN THE
COURT OF APPEALS OF INDIANA

JANICE WHITE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-1102-CR-88
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Christina Klineman, Judge
Cause No. 49G05-1006-FC-45151

September 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Following a jury trial, Janice White was convicted of Criminal Mischief[1] as a class A misdemeanor. On appeal, White presents one issue for our review: Did the trial court's admission of purported hearsay constitute fundamental error?

We affirm.

Around 2:30 a.m. on May 30, 2010, White was in an altercation with Aisha Cameron-Brown in the parking lot of the Triangle Club in Indianapolis. A police officer broke up the fight and ordered White and Cameron-Brown to leave or they would be arrested. Cameron-Brown and her friend, Suzette Clayton, left together in Brown's rental car. Cameron-Brown had rented the car from Enterprise Rent-A-Car. White remained with the police officer. After speaking with the officer, White called Clayton's cell phone and told her, "I'm going to fuck you up" and warned Cameron-Brown and Clayton to watch their backs. *Transcript* at 37.

Cameron-Brown drove out of the parking lot of the club but was stopped by a train at a railroad crossing that was in close proximity to the club. White approached Cameron-Brown's rental car and struck the vehicle several times with what Cameron-Brown described as a metal pole. White dented the vehicle in many places and broke out the rear window. Cameron-Brown opened the driver's door to stop White, and White struck her with the pole. Cameron-Brown closed the car door and drove back to the club parking lot to find the police officer who had intervened in the altercation between Cameron-Brown and White. Ultimately, an officer with the Indianapolis Metropolitan Police Department was dispatched

[1] Ind. Code Ann. § 35-43-1-2 (West, Westlaw current through 2011 1st Regular Sess.).

to the scene and Cameron-Brown filed a police report regarding the incident.

On June 8, 2010, the State charged White with class C felony battery and class A misdemeanor criminal mischief. A jury trial was held on February 3, 2011. During the jury trial, the State offered State's Exhibit 10, which included, among other things, the rental car agreement signed by Cameron-Brown. White responded that she had "No objection" to the admission of the exhibit, and the trial court admitted the exhibit into evidence. *Id*. at 56. At the conclusion of evidence, the jury found White not guilty of battery and guilty of criminal mischief. The trial court sentenced White to 180 days with 180 days suspended to probation. The court also ordered White to pay restitution. White now appeals.

On appeal, White argues that the trial court erred in admitting State's Exhibit 10. Specifically, White maintains that State's Exhibit 10 is not admissible because it does not qualify under the business records exception to the hearsay rule. *See* Ind. Evidence Rule 803(6). Acknowledging that she did not object to the admission of the evidence at trial, White argues that the admission of State's Exhibit 10 constituted fundamental error in that without the evidence contained therein establishing Cameron-Brown had rented the vehicle in question, there was no evidence that Cameron-Brown was in lawful possession thereof when the incident occurred. *See Wallace v. State*, 896 N.E.2d 1249 (Ind. Ct. App. 2008) (noting that criminal mischief conviction will be affirmed if the evidence, either direct or circumstantial, is sufficient to prove rightful possession), *trans. denied*.

As noted above, White expressly did not object to the admission of State's Exhibit 10. Failure to object at trial normally results in waiver of the issue on appeal. *Konopasek v. State*, 946 N.E.2d 23 (Ind. 2011). To avoid waiver, White argues that the error was

fundamental. *See id.* "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). In other words, fundamental error is defined as an error so prejudicial to the rights of a defendant that a fair trial is rendered impossible. *Mathews v. State,* 849 N.E.2d 578.

Even assuming without deciding that State's Exhibit 10 does not qualify under the business records exception to the hearsay rule, White cannot establish that she was harmed by the admission of State's Exhibit 10 because the relevant evidence contained in State's Exhibit 10 was cumulative of the unchallenged testimony of Cameron-Brown and her passenger that Cameron-Brown had indeed rented the vehicle for her own personal use.[2] Cameron-Brown testified that she had rented the vehicle for a trip to Atlanta and that she had yet to return it. Any error in the admission of State's Exhibit 10 was harmless at worst and therefore, cannot be said to amount to fundamental error.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.

[2] Although White challenges other documents contained within State's Exhibit 10 as not falling within the business records exception, White does not allege any harm resulting therefrom.