

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Victoria Bailey Casanova
Casanova Legal Services, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ian McLean
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Alfredo Rivera Garduno,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 10, 2023

Court of Appeals Case No.
23A-CR-861

Appeal from the Marion Superior
Court

The Honorable Angela D. Davis,
Judge

The Honorable Ross F. Anderson,
Magistrate

Trial Court Cause No.
49D27-2104-F1-12999

Memorandum Decision by Judge Mathias
Judges Riley and Crone concur.

Mathias, Judge.

- [1] Alfredo Rivera Garduno appeals his convictions for Level 1 felony child molesting and Level 4 felony child molesting. Garduno raises a single issue for our review, namely, whether the trial court committed fundamental error when it accepted Garduno’s waiver of his right to a jury trial. We affirm.

Facts and Procedural History

- [2] In 1997, Garduno, who was twenty-one-years old at the time, immigrated to the United States from Mexico. Here, he moved to Indianapolis, where he “continue[d] his education,” “got better in English,” and became a supervisor at the JW Marriott, “assist[ing] . . . guests with many issues.” Tr. Vol. 2, p. 241; Appellant’s App. Vol. 2, p. 116.
- [3] In 2014, Garduno married America Millan and moved into an apartment with her and her three children, which included Millan’s then-eight-year-old daughter C.G. Beginning in 2014 and over the next three years, Garduno repeatedly molested C.G. In 2017, Garduno moved out of the family residence, and, in 2019, Millan filed for the dissolution of their marriage.
- [4] Thereafter, C.G. disclosed Garduno’s molestations of her. Indianapolis Metropolitan Police Department officers then arrested Garduno, and the State charged him in relevant part with Level 1 felony child molesting and Level 4 felony child molesting.

- [5] In May 2021, the court held Garduno’s initial hearing. At the commencement of that hearing and without any request to do so, the court appointed a Spanish interpreter for Garduno. One week later at a bond-review hearing, however, the court did not appoint an interpreter and instead spoke directly to Garduno about the conditions of his release on bond, including a no-contact order, with no apparent difficulties.
- [6] At a pretrial conference in August, Garduno’s counsel asked to have Garduno’s placement changed from home detention to GPS monitoring. Again, without using an interpreter, the court spoke directly to Garduno about that request and the conditions of his new placement. Garduno appeared to have no difficulties with that communication.
- [7] At another pretrial conference, in June 2022, Garduno’s counsel sought to reset the trial date. Garduno appeared in person for that conference. He did not request an interpreter, nor did the court appoint one. At the conclusion of the conference, Garduno asked the court if he needed to say anything, and his counsel informed him that he did not. The court then concluded the conference.
- [8] On December 5, Garduno and his counsel both signed a written “Verified Waiver of Trial by Jury” document. Appellant’s App. Vol. 2, p. 88. The written waiver was in English. It stated that Garduno, personally and through his counsel, “underst[ood]” his right to a jury trial and his right to waive a trial by jury. *Id.* at 88-89. The document then stated that Garduno wished to waive his right to a jury trial and, instead, to have his trial to the court.

[9] The court held a hearing on Garduno’s request to waive his right to a jury trial that same day. At the commencement of that hearing and without any request to do so, the court appointed an interpreter for Garduno. The court then engaged Garduno as follows:

THE COURT: I have before me a waiver of trial by jury. You have a constitutional right to a jury trial with twelve (12) members of the public being selected from a larger group. With a Court trial, it would be me or someone like me that would hear the case. Has anyone promised you or told [you] you’d get any special treatment by waiving [the] jury?

THE DEFENDANT (through interpreter): No.

THE COURT: [The] Court will find your waiver is freely and voluntary[ily given] and set this matter for a Court trial. . . .

Tr. Vol. 2, pp. 43-44.

[10] Following an ensuing bench trial, the court found Garduno guilty of Level 1 felony child molesting and Level 4 felony child molesting. The court then ordered Garduno to serve an aggregate term of thirty years in the Department of Correction, with ten years suspended. This appeal ensued.

Discussion and Decision

[11] On appeal, Garduno asserts that the trial court committed fundamental error when it accepted the written waiver of his right to a jury trial because no Spanish version of that document was presented to him. As our Supreme Court has explained:

A claim that has been waived by a defendant's failure to raise a contemporaneous objection can be reviewed on appeal if the reviewing court determines that a fundamental error occurred. 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. The error claimed must either make a fair trial impossible or constitute clearly blatant violations of basic and elementary principles of due process. This exception is available only in egregious circumstances.

Brown v. State, 929 N.E.2d 204, 207 (Ind. 2010) (quotation marks and citations omitted). Further, “[t]o prove fundamental error,” Garduno must show “that the trial court should have raised the issue sua sponte” *Taylor v. State*, 86 N.E.3d 157, 162 (Ind. 2017).

- [12] Garduno cannot demonstrate fundamental error. Garduno has lived in the United States since 1997. He admitted to improving his command of the English language while he has lived here, and he was employed as a supervisor at an Indianapolis hotel, which required him to interact with guests on “many issues.” Appellant’s App. Vol. 2, p. 116.
- [13] But, more significantly, Garduno repeatedly and personally communicated with the court in English. At a bond-review hearing in May 2021, Garduno and the court communicated directly and in English about the conditions of his release on bond with no apparent difficulties. At an August 2021 pretrial conference, the court spoke directly to Garduno about a change in his pretrial placement. That communication was in English, and Garduno again appeared

to have no difficulties with that communication. Further, at a June 2022 pretrial conference, Garduno appeared in person and, at the end of the conference, asked the court if it needed to hear from him. That conference was also in English.

[14] Further, at the December 5, 2022, hearing on Garduno’s waiver of his right to a jury trial, the court spoke with Garduno, with the unrequested assistance of an interpreter, about the written waiver Garduno had signed along with his counsel earlier that same day. Garduno did not express any confusion about what the court was talking about. And the signature of Garduno’s counsel on the same document further supports the conclusion that Garduno’s execution of the document was knowing, voluntary, and intelligent.

[15] Nothing in this record supports Garduno’s argument that the trial court should have acted *sua sponte* and rejected Garduno’s written waiver of his right to a jury trial on the basis that a Spanish version of the document did not also exist. Garduno therefore cannot demonstrate fundamental error, and we affirm his convictions.

[16] Affirmed.

Riley, J., and Crone, J., concur.