

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Sean C. Mullins
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General
Jodi Kathryn Stein
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Gerald Lamont Reed,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 29, 2023

Court of Appeals Case No.
23A-CR-1361

Appeal from the Lake Superior
Court

The Honorable Gina L. Jones,
Judge

Trial Court Cause No.
45G03-2210-F3-117

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

- [1] Gerald Lamont Reed appeals his convictions for level 3 felony robbery and class A misdemeanor resisting law enforcement. He asserts that the trial court abused its discretion by granting the State’s motion in limine to exclude evidence regarding the victim’s immigration status. Because Reed did not attempt to introduce this evidence at trial, he has failed to preserve the issue for appellate review. Therefore, we affirm.

Facts and Procedural History

- [2] On September 29, 2022, Yessica Virginia Hernandez Bautista parked her vehicle in a Hammond Walmart parking lot. After she exited the vehicle, a man, later identified as Reed, approached her and said something in English. Bautista does not understand English, but she thought he was asking for money and said, “No.” Tr. Vol. 2 at 206. Reed lifted his shirt to reveal a handgun, and Bautista handed him her car keys and her wallet. Reed entered Bautista’s car. Bautista walked toward the Walmart entrance, saw Juan Toledo and his daughter, and asked them for help. They called 911. Toledo saw Reed exit Bautista’s vehicle and start walking away. Toledo, his daughter, and Bautista followed Reed in Toledo’s car without losing sight of him and relayed his location to dispatch.
- [3] A Hammond police officer responding to the 911 call observed Reed, flicked on his emergency lights, and stepped from his vehicle. The officer drew his weapon and ordered Reed to show his hands. Reed ran to a nearby gas station, where

he threw his handgun under a vehicle. Reed was eventually apprehended and was found to be in possession of \$78.78. Bautista later found her wallet in her car, and it was missing approximately \$70. Testing of the DNA profile recovered from the handgun provided “strong support” for the inclusion of Reed as a contributor. Tr. Vol. 3 at 139.

[4] The State charged Reed with level 3 felony attempted robbery, level 3 felony robbery, level 4 felony unlawful possession of a firearm by a serious violent felon, and class A misdemeanor resisting law enforcement. The State later dismissed the charges for attempted robbery and unlawful possession. Prior to trial, the State filed a motion in limine to exclude evidence that Bautista was not a legal resident of the United States and had recently applied for a visa. The State argued that the evidence was not relevant, constituted improper character evidence, and was unduly prejudicial. Reed contended that the evidence went to Bautista’s credibility, in that her identification of him as the perpetrator was made to prevent her arrest based on her immigration status. The trial court granted the motion but informed Reed that he could “bring [the issue] back up.” Tr. Vol. 2 at 13.

[5] Bautista testified at Reed’s jury trial. Reed did not attempt to introduce evidence of her immigration status. The jury found Reed guilty as charged. The trial court sentenced Reed to an aggregate term of ten years, executed. This appeal ensued.

Discussion and Decision

Reed contends that the “trial court abused its discretion by granting the State’s motion in limine regarding Hernandez’s immigration status.” Appellant’s Br. at 7. Our supreme court has stated, “Rulings on motions in limine are not final decisions and, therefore, do not preserve errors for appeal.” *Swaynie v. State*, 762 N.E.2d 112, 113 (Ind. 2002)). Here, Reed did not attempt to introduce evidence of Hernandez’s immigration status at trial, and therefore he has not preserved his claim of error. *See Harman v. State*, 4 N.E.3d 209, 217 (Ind. Ct. App. 2014) (concluding that Harman waived his argument that trial court abused its discretion by excluding evidence where he failed to make an offer to prove at trial showing why the evidence was admissible), *trans. denied*. Furthermore, Reed’s claim of fundamental error, which he raises for the first time in his reply brief, is waived. *See Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011) (“[P]arties may not raise an issue, such as fundamental error, for the first time in a reply brief.”). Accordingly, we affirm Reed’s convictions.

[6] Affirmed.

Riley, J., and Mathias, J., concur.