MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

James R. Melton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

May 28, 2021

Court of Appeals Case No. 20A-CR-2045

Appeal from the Brown Circuit Court

The Honorable Mary Wertz, Judge

Trial Court Cause No. 07C01-2004-F3-126

Robb, Judge.

Case Summary and Issue

[1] Following a jury trial, James Melton was found guilty of pointing a firearm, a Level 6 felony, and domestic battery by means of a deadly weapon, a Level 5 felony. The trial court sentenced Melton to four and one-half years with two and one-half years executed in the Indiana Department of Correction and two years suspended to probation. Melton now appeals, raising one issue which we restate as whether there was sufficient evidence that Melton's actions were voluntary. We conclude that Melton failed to raise the issue of voluntariness at trial and is precluded from raising the issue for the first time on appeal. Accordingly, we affirm.

Facts and Procedural History

[2] On April 28, 2020, Melton sent a text message to his mother, Brenda Longtin, indicating that he was going to commit suicide. Longtin forwarded the text message to her daughter and Melton's sister, Leigh Anne Proffitt. Proffitt then drove to Longtin's home where Melton was living at the time. When Proffitt arrived, the front door was held shut by a screw that Melton had to remove with a power drill to let Proffitt inside.

[3] After Proffitt entered the home, she noticed that Melton was acting very agitated and wearing a holster with a gun in it. *See* Transcript of Evidence, Volume 2 at 149, 152. Proffitt attempted to speak with Melton but not long after she entered the home, Proffitt and Melton's father, Jim Melton, arrived.

Jim's arrival caused Melton's behavior to become more erratic and aggressive. *See id.* at 152. Melton blamed Proffitt for Jim's arrival and took his gun out of the holster and pressed it against Proffitt's chest, pushing her backwards with the barrel and causing bruising to Proffitt's chest. *See id.* at 154. Melton then re-installed the screw into the front door to prevent Jim from entering the home. When Jim walked toward the home, Proffitt banged on the window at the front door and told Jim to call the police. Jim began to return to his car to call the police, causing Melton to remove the screw and go outside. Proffitt exited with Melton and attempted to get to her vehicle to use her cell phone but Melton ran at her, grabbed her by the neck, and took her cellphone.[1] Melton then ran toward Jim, "shoved [Jim] and grabbed the cell phone, pulled the cord out of it and [] knocked [his] glasses off." *Id.*, Vol. 3 at 36. However, before Melton could knock Jim's phone out of his hand, the call to 9-1-1 went through. As the police were on the way, Melton re-entered his home and screwed the door shut again.

[4] Officers Chad Williams and Chris Griggs of the Brown County Sheriff's Office arrived on the scene in response to the dispatch of a suicidal male. Officer Williams approached the front door which Melton answered. Once Officer Williams was inside, Melton gave him the gun. While Officer Williams was

[1] Proffitt testified that Melton was not choking her, "[h]e was more trying to control where [she] was going." Tr., Vol. 2 at 165.

inside with Melton, Officer Griggs interviewed Jim and Proffitt and was given their account of events. The officers then arrested Melton.

[5] The State charged Melton with criminal confinement, a Level 3 felony; pointing a firearm, a Level 6 felony; domestic battery by means of a deadly weapon, a Level 5 felony; and two counts of interference with the reporting of a crime, both Class A misdemeanors.

[6] Prior to trial, the State filed a motion in limine which included the following:

> The State of Indiana anticipates argument that the Defendant was allegedly suffering from a "mental health episode" without any known evidence in support thereof. The State of Indiana would object to any such characterization absent evidence; such a statement is indicative of a health care professional diagnosis and there is no known basis to support such a statement. Moreover, such a statement comes dangerously close to purporting a defense under [Indiana Code section 35-36-2] or [Indiana Code section 35-41-3-6] while circumventing the requirements of said statutes.

Appellant's Appendix, Volume 2 at 80.[2] The trial court granted the State's motion, stating that the defense was "not permitted to present evidence or argument regarding mental disease or defect as a defense or legal excuse for conduct." *Id.* at 108. However, the trial court's order also reminded the parties

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[2] Under Indiana Code section 35-41-3-6, "[a] person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was unable to appreciate the wrongfulness of the conduct at the time of the offense." Indiana Code chapter 35-36-2 concerns the affirmative defense of insanity or mental illness and requires, in part, that when a defendant intends to raise an insanity defense "he must file notice of that intent" within a certain time frame. Ind. Code § 35-36-2-1.

that "Motions in Limine are preliminary rulings and are subject to review, upon request, outside the presence of the jury." *Id.*

[7] A jury found Melton guilty of pointing a firearm and domestic battery by means of a deadly weapon. The trial court sentenced Melton to four and one-half years. Melton now appeals his convictions.

Discussion and Decision

[8] When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id.* (citation omitted). We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

[9] Melton frames his issue in the context of whether the evidence was sufficient to sustain his conviction. *See* Brief of Appellant at 12. However, Melton does not challenge that the State proved the elements of his crimes. Instead, Melton argues that the State failed to prove that Melton's conduct was voluntary and that his actions were the result of automatism. *See id.* at 13, 20. In Indiana, automatism is a recognized defense separate from the insanity defense. *McClain v. State*, 678 N.E.2d 104, 107 (Ind. 1997). Where unconscious behavior

manifests in a person of sound mind, evidence of automatism may show a lack of criminal intent. *Id.* at 107-08 (citing Ind. Code § 35-41-2-1).

[10] Under Indiana Code section 35-41-2-1(a), a person commits an offense "only if he voluntarily engages in conduct in violation of the statute defining the offense." As used in this statute, the term "voluntarily" refers to "behavior that is produced by an act of choice and is capable of being controlled by a human being who is in a conscious state of mind." *McClain*, 678 N.E.2d at 107. "[O]nce evidence in the record raises the issue of voluntariness, the State must prove the defendant acted voluntarily beyond a reasonable doubt." *Id.* If a defendant's conduct is found to be involuntary, then the State has not proved every element of its case and the law requires an acquittal. *Id.* at 108. However, contrary to Melton's assertion, the record does not support that the issue of voluntariness was raised at trial.[3]

[11] Melton presented evidence that he was potentially suicidal prior to and when Proffitt arrived at his home and portrays his behavior as erratic and even out of character. *See* Tr., Vol. 3 at 40. However, Melton made no argument that his actions were involuntary. Melton's trial counsel even stated at a pretrial conference discussing the State's motion in limine that despite the prospect of

[3] We also note that there was not a jury instruction as to the volition requirement. Melton argues that "automatism was proven by the State's own evidence and it was not disproved beyond a reasonable doubt." Br. of Appellant at 13. "The evidence need not come from the defendant but if it is admitted and the defendant does not request a jury instruction, then the issue is waived." *See State v. Huffman*, 643 N.E.2d 899, 900 (Ind. 1994) (discussing burden of production and waiver in intoxication defense context).

testimony that Melton was suicidal, he did not believe "*McClain* is anywhere near what we need here." *Id.*, Vol. 2 at 45. Therefore, we conclude Melton's argument is waived.[4] *See Leatherman v. State*, 101 N.E.3d 879, 885 (Ind. Ct. App. 2018) (stating "we generally will not address an argument that was not raised in the trial court and is raised for the first time on appeal").

Conclusion

[12] Melton failed to raise the issue of voluntariness at trial and is precluded from raising the issue for the first time on appeal. Accordingly, we affirm.

[13] Affirmed.

Bailey, J., and May, J., concur.

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[4] To the extent that Melton contends he was precluded from arguing at trial that his actions were not voluntary due to the trial court's ruling on the motion in limine, a ruling on a motion in limine does not determine the ultimate admissibility of evidence; rather, that determination must be made by the trial court in the context of the trial itself. *Prewitt v. State*, 761 N.E.2d 862, 871 (Ind. Ct. App. 2002). It is well settled that an offer of proof is required to preserve an error in the exclusion of evidence. *See Baker v. State*, 750 N.E.2d 781, 786 (Ind. 2001) (holding failure to make an offer of proof "forfeits appellate review even when the trial court earlier granted a motion in limine"). As our supreme court has explained, the purpose of an offer of proof is to convey the point of the witness's testimony and provide the trial court the opportunity to reconsider the earlier evidentiary ruling. *State v. Wilson*, 836 N.E.2d 407, 409 (Ind. 2005). "To accomplish these two purposes, an offer of proof must be sufficiently specific to allow the trial court to determine whether the evidence is admissible and to allow an appellate court to review the correctness of the trial court's ruling and whether any error was prejudicial." *Id.* Because Melton failed to make an offer of proof, he has waived any error in the exclusion of evidence dictated by the motion in limine. *See Dowdell v. State*, 720 N.E.2d 1146, 1150 (Ind. 1999).