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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CR-17-739

ALISON DELORD BROWN	**Opinion Delivered:** February 7, 2018
APPELLANT	APPEAL FROM THE CHICOT COUNTY CIRCUIT COURT
V.	[NO. 09CR-14-52]
STATE OF ARKANSAS	HONORABLE SAM POPE, JUDGE
APPELLEE	AFFIRMED

WAYMOND M. BROWN, Judge

Appellant appeals from his conviction of aggravated assault and felon in possession of a firearm. His sole point on appeal is that the circuit court erred in denying his affirmative defense of mental disease or defect. We affirm.

On June 18, 2014, appellant was involved in an altercation with his friend, Cedric Johnson, in which appellant pulled a gun on Johnson. Appellant left the premises and went home after Johnson was able to "talk [appellant] down." The following morning, appellant began texting Johnson to get out of his father's house and leave the keys, eventually texting Johnson a message at approximately 5:19 p.m. that appellant was on his way and that he was going to kill Johnson if he did not leave his father's house. The home in which Johnson resided did not belong to appellant's father.

Johnson called the police. The officer who was dispatched arrived at Johnson's residence to find appellant sitting on a lawnmower behind the residence. Appellant

pointed his gun at the officer and gunfire was exchanged between the two; neither party was injured, though the police officer's vehicle was damaged. Appellant fled to his home where he was taken into custody by the Arkansas State Police and the FBI SWAT team.

Appellant was charged by criminal information on July 18, 2014, with one count each of aggravated assault, a Class D felony; and felon in possession of a firearm, a Class B felony. Appellant filed a motion for mental evaluation on September 15, 2014. An order for a criminal-responsibility examination was entered on September 23, 2014; a separate order for a fitness-to-proceed examination was entered on the same date. The examination was completed on October 23, 2014, and submitted on October 28, 2014. The report stated that appellant (1) did not have substantial mental disorder or defect, (2) did have the capacity for the culpable mental state that is an element of the charged offenses, (3) did have the capacity to appreciate the criminality of his own conduct, and (4) did have the capacity to conform his conduct to the requirements of the law. However, it noted that appellant could not remember the events of June 19, 2014, as far as what he did to Johnson or the police; only what the police did to him. Appellant orally moved for a second mental evaluation at the May 2, 2015 omnibus hearing; the motion was denied.

Appellant filed a motion for a second mental evaluation on August 13, 2015. Following a hearing on August 18, 2015, in which the circuit court noted that it was granting the motion "out of an abundance of caution," the circuit court entered orders for a criminal-responsibility examination and for a fitness-to-proceed examination on August 21, 2015. The second evaluation was completed at the Arkansas State Hospital (ASH) on

January 7, 2016, and issued on January 27, 2016. The examiner found that appellant possessed a basic factual understanding of the criminal proceedings against him, but opined that a period of inpatient observation and treatment would clarify the diagnostic issue of whether symptoms of a mental disease or defect were substantially impairing appellant's rational understanding of the proceedings against him as well as his capacity to rationally and effectively assist his attorney. The examiner deferred any opinion on appellant's mental state until a determination could be made about his adjudicative fitness. A not-fit-to-proceed commitment order was entered on February 10, 2016.

A third mental evaluation was completed on April 18, 2016, and submitted on April 28, 2016. Therein, the examiner found that appellant (1) did not have substantial mental disorder or defect, (2) did not lack the capacity to appreciate the criminality of his own conduct, (3) did have the capacity to conform his conduct to the requirements of the law, and (4) did not lack the capacity for the culpable mental state that is an element of the charged offenses. Appellant filed a notice of his intent to invoke the affirmative defense of mental disease or defect on June 7, 2016. On September 2, 2016, appellant filed a motion to require the ASH to follow its recommendation from its January 7, 2016 examination for a period of inpatient observation and treatment. Following a hearing on September 6, 2016, the circuit court entered an order to show cause on September 15, 2016; it was withdrawn on September 30, 2016, as appellant had been delivered to the ASH on September 26, 2016, in accordance with the circuit court's previous orders. A fourth mental evaluation was completed on December 16, 2016, and submitted on February 2,

2017. The examiner came to the same conclusions made by the examiner who had conducted the April 18, 2016 mental evaluation.

A bench trial was held on the matter on May 16, 2017. At the conclusion of appellee's case, appellant moved for a directed verdict on each charge, stating the following:

> Before we proceed, I would make a motion for directed verdict on aggravated assault in that the State has failed to make a prima facie case that my client acted under circumstances manifesting extreme indifference to the value of human life and that, secondly, he created a substantial danger of serious physical injury or death to Lee Brown or others.
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> . . . .
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> With respect to felon in possession of a firearm, I would move for a directed verdict on grounds that the State has failed to make a prima facie case that my client possessed a firearm in the commission of a crime. The evidence does not indicate that a firearm was ever confiscated from my client and there is no proof that he used a firearm. And I would move for dismissal of that charge.

Appellant renewed the same at the close of his case stating, "I do want to renew my motion on the same grounds that I made earlier on both the aggravated assault and felon in possession of a firearm." Appellant never referenced his affirmative defense of mental disease or defect in his motions for directed verdict below. A party is bound by the nature and scope of the objections and arguments made at trial and may not enlarge or change those grounds on appeal.[1] To preserve for appeal whether appellant is entitled to the affirmative defense of insanity, appellant must specifically move for directed verdict on the basis of mental disease or defect.[2] Accordingly, the issue is not preserved.

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[1]*Brewer v. State*, 2017 Ark. App. 119, at 3, 515 S.W.3d 629, 631 (citing *Stewart v. State*, 2012 Ark. 349, 423 S.W.3d 69).

[2]*Marcyniuk v. State*, 2010 Ark. 257, at 11, 373 S.W.3d 243, 251.

Affirmed.

GLADWIN and WHITEAKER, JJ., agree.

Potts Law Office, by: *Gary W. Potts*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Pamela Rumpz*, Ass't Att'y Gen., for appellee.