UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1617

September Term, 2014

JOHN B. DORSEY

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Hotten,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 16, 2015

John B. Dorsey, appellant, was convicted in Circuit Court for Harford County with possession of cocaine and possession with intent to distribute cocaine. In this appeal, he presents one question for our review: was the evidence sufficient to support the convictions? We shall hold that appellant has not preserved the sufficiency of the evidence for our review.

I.

Appellant was convicted by a jury on August 20, 2014 of possession with intent to distribute cocaine and possession of cocaine, and he was acquitted on possession of marijuana and firearm charges. The court sentenced appellant to a term of incarceration of twenty years, with all but ten years suspended, followed by five years probation.

The following evidence was presented at trial. The police executed a search warrant at 8 Post Road, Aberdeen, Maryland, at 6:29 a.m. on September 12, 2013. The home was leased to Diana George, and at the time the warrant was executed, the officers found three people inside the home: Diana George, Steven George (Ms. George's thirteen year old son) and appellant. The Georges were seated in the living room, and appellant was in an upstairs bathroom. From a bedroom on the same floor as appellant, which Ms. George told officers was appellant's room, the police seized cocaine from a jacket pocket, eighteen bags of cocaine and one bag of marijuana from in between the mattress and box spring, a scale and purse containing $1000 from the closet, cellphones and a drink can containing baggies and razor blades. The police found two handguns, inside gloves, in a floor vent, a letter addressed to Ms. George's older son Chaz and a letter, located on a closet shelf in a box,

addressed to appellant from the Harford County Health Department, listing appellant's address as 210 Perrywood Court. They also seized a letter addressed to "Yah-yah."

Detective William Garrett, the lead investigator, testified at trial. He testified that appellant's nickname was Yah-yah and that appellant stated that the drugs belonged to him, although he later recanted ownership of the drugs. Diana George had told the detective that appellant stayed at the house at times along with her son Chaz and they both used the same bedroom. Detective Garrett charged both appellant and Chaz with possession of the drugs. Chaz pled guilty to possession of cocaine and theft of property valued at less than $1000 for one of the guns, which had been stolen.

At the conclusion of the State's case, appellant moved for judgment of acquittal. He told the court that as to counts one, two, three and five, it's "a jury question."[1] He stated as follows:

> "Your Honor, with regard to counts one, two, three and five, quite candidly, the evidence is such that certainly a jury could find either way. It's certainly a jury question at this point so I'm not going to belabor those counts. I think there is sufficient evidence, quite candidly, that can go to the jury, viewing the evidence in the light most favorable to the State. So I'll just submit on those."

Appellant then presented one witness, rested his case and renewed his motion for judgment of acquittal. His motion at this stage, at the close of all of the evidence, was even narrower

[1]Counts one and two were for possession of cocaine and possession with intent to distribute, the subjects of this appeal.

than his motion at the close of the State's case—one only directed toward the gun charge. He argued as follows:

> DEFENSE COUNSEL: —[I'd like to make a motion] at the end of my case for judgment of acquittal. *The only motion I would make would be with regard to the gun found in the heat register.* I don't think there has been any nexus shown between my client, the drugs and the guns, other than the fact he was present on the premises when the warrant was executed. I don't believe there's any nexus shown, other than his mere presence at the house. So I think there's probably insufficient evidence as a matter of law to connect him to the gun."

The court denied the motion.

As indicated the jury convicted appellant, the court imposed sentence and this timely appeal followed.

II.

Appellant's sole contention in this appeal is that the evidence is insufficient to sustain his convictions. He argues that if the police did not know who possessed the items they seized, as evidenced by the detective's statement that the drugs belonged to either Chaz George or appellant, the jury could not have been convinced beyond a reasonable doubt that appellant possessed the drugs and guns. The State responds that the issue is not preserved for our review because, in his motions for judgment of acquittal, appellant conceded that the evidence was sufficient on the drug charges and that it was a jury question. In his motion at the conclusion of all the evidence, he moved for judgment of acquittal only as to the gun

charge. Alternatively, the State contends that the evidence was sufficient to support the convictions.

III.

In a criminal action, when a jury is the trier of fact, appellate review of sufficiency of evidence is available only when the defendant moves for judgment of acquittal at the close of all the evidence and argues with particularity and specificity the ways in which the evidence is lacking. Md. Rule 4-324; *Ennis v. State*, 306 Md. 579, 585 (1986). The issue of sufficiency of the evidence is not preserved when appellant's appeal argument is different from those grounds set forth before the trial court. *Arthur v. State*, 420 Md. 512, 522-23 (2011). A defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal in challenging the denial of a motion for judgment of acquittal. *Id. Accord Jones v. State*, 213 Md. App. 208, 215 (2013); *Albertson v. State*, 212 Md. App. 531, 569-70 (2013).

Maryland Rule 4-324(a) provides, in pertinent part, as follows:

> "A defendant may move for judgment of acquittal on one or more counts, or on one or more degrees of an offense which by law is divided into degrees, at the close of the evidence offered by the State and, in a jury trial, at the close of all the evidence. The defendant shall state with particularity all reasons why the motion should be granted."

We hold that the issue of sufficiency of the evidence for appellant's convictions is not preserved for our review. Counsel explicitly conceded the issue to the trial court on the controlled dangerous substance charges, the only charges related to this appeal, as appellant was acquitted of the gun charges. As such, he stated no grounds to support an argument that the evidence was insufficient.

Assuming *arguendo* that the issue was preserved for our review, we would find that the evidence was sufficient to support the convictions beyond a reasonable doubt. Appellant is simply wrong when he asserts that the only evidence presented by the State was "mere presence." To be sure, appellant was present in the home where the drugs were found. Additionally, however, Ms. George stated that appellant occupied the bedroom where the drugs were found, and appellant told the police the drugs belonged to him. Even though appellant later recanted his ownership statement, the jury was entitled to believe his first statement. The State presented more than "mere presence" and thus, the evidence was sufficient for the jury to convict appellant.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.