

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1234

September Term, 2016

GAVEN SHAMAR DENNIS

v.

STATE OF MARYLAND

Berger,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 11, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In the Circuit Court for Wicomico County, Gaven Shamar Dennis was convicted of theft of property with a value of less than \$1000. On appeal, Dennis contends that the State failed to prove that the value of the stolen goods was more than \$100, and requests that his conviction be vacated, that a conviction be entered for the “lesser included offense” of theft under \$100, and that he be sentenced for that offense. We conclude that the issue was not preserved for review, but, even if preserved, it would not be grounds for the relief Dennis requests. Accordingly, we shall affirm.

Dennis was charged with theft of property with a value of under \$1000, after a loss prevention officer for Walmart observed Dennis leaving the store with items he did not pay for. On appeal, Dennis contends that the evidence was insufficient to prove that the value of the items that he stole was more than \$100. Specifically, Dennis asserts that the loss prevention officer’s testimony that the total value of the stolen items was \$112.94 was inadmissible, and that there was no other evidence from which the jury could determine value.

Dennis’s claim of insufficiency is not properly before this Court for review because, at trial, Dennis claimed that the evidence was insufficient for a different reason. In moving for a judgment of acquittal, defense counsel acknowledged that “the State is alleging \$112 worth of items that were taken[,]” but argued that “fair market value” had not been established because, in order to prove the case, the State “need[ed] to show . . . what [the stolen items] actually cost Walmart.”

“It is a well established principle that our review of claims regarding the sufficiency of evidence is limited to the reasons which are stated with particularity in an appellant’s

motion for judgment of acquittal.” *Claybourne v. State*, 209 Md. App. 706, 750 (citation omitted), *cert. denied*, 432 Md. 212 (2013). “Thus, ‘[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.’” *Mulley v. State*, 228 Md. App. 364, 388 (2016) (citation omitted)). Accordingly, Dennis’s claim of insufficiency was not preserved.¹

In any event, as the State points out, it is immaterial whether the evidence showed that the value of the stolen property was greater, or less, than \$100, as “a conviction for theft under [\$1000] does not require proof that the defendant stole property worth at least \$100[.]” *Stubbs v. State*, 406 Md. 34, 38 (2008).

In *Stubbs*, the defendant was charged only with theft of property valued at less than \$500. *Id.* at 39. (In 2009, after *Stubbs* was decided, the felony threshold for theft was increased from \$500, to the current \$1,000.²) After the evidentiary phase of trial was concluded, *Stubbs* moved for a judgment of acquittal on the ground that the State had not proven that the value of the items he stole was more than \$100. *Id.* at 40-41. The Court

¹ Even if Dennis had claimed at trial, as he does on appeal, that the evidence was insufficient because the loss prevention officer’s testimony regarding the value of the stolen items was inadmissible, that claim was also unpreserved. Although defense counsel objected when the prosecutor asked the loss prevention officer to state the value of the stolen items, the court never ruled on the objection. Defense counsel did not request a ruling, nor did he move to strike the answer. *See State Roads Comm’n v. Berry*, 208 Md. 461, 467 (1955) (holding that, in the absence of a ruling on an objection, “there is nothing for the [appellate court] to review and no basis for the contention that the trial court committed reversible error.”) (citations omitted).

² Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article, § 7-104(g)(2).

of Appeals affirmed the trial court’s denial of the motion, holding that “a defendant charged with theft under \$500 [currently \$1,000] – but not charged with theft under \$100 – is not entitled to a judgment of acquittal on the ground that the State has failed to establish that the defendant stole property worth at least \$100.” *Id.* at 44 (emphasis supplied). The *Stubbs* court further held that, “pursuant to § 7-108 of the Criminal Law Article, unless a defendant charged with theft under \$500 [currently \$1,000] is also specifically charged with theft under \$100, the trial court is prohibited from entering a judgment of conviction for theft under \$100.”³ *Id.* at 47.

Dennis does not contend that the stolen merchandise had no value, indeed, by requesting that his conviction for theft of property valued “less than \$1000” be vacated, and replaced with a conviction for the offense of theft under \$100, Dennis effectively concedes that the property had some value. Because Dennis was not also charged with theft under \$100, he would not be entitled to the relief he requests.

**JUDGMENT OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

³ Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article § 7-108(d) provides that “[u]nless specifically charged by the State, theft of property or services with a value of less than \$100 as provided under § 7-104(g)(3) of this subtitle may not be considered a lesser included crime of any other crime.”