

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR11-395

PHILLIP D. WOFFORD

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 4, 2012

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CR-2010-475]

HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Phillip D. Wofford appeals his conviction in a jury trial for theft of property. He was charged with the crime after a camera was discovered missing from a Wal-Mart store where he had shopped. He contends in his sole point on appeal that the trial court erred in denying his motion for a directed verdict. The issue is not preserved for our review; we therefore affirm.

A person commits theft of property if he or she knowingly takes or exercises unauthorized control over or makes an unauthorized transfer of an interest in the property of another person with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(1) (Repl. 2006). A general motion for directed verdict is insufficient to preserve a defendant's argument that the statutory elements of the crime were not proven. *Eastin v. State*, 370 Ark. 10, 257 S.W.3d 58 (2007). A directed-verdict motion is treated as



a challenge to the sufficiency of the evidence and requires the movant to apprise the trial court of the specific basis on which the motion is made. *Smallwood v. State*, 326 Ark. 813, 935 S.W.2d 530 (1996); Ark. R. Crim. P. 33.1(a) (2011). Failure to challenge the sufficiency of the evidence at the times and in the manner required by the rule constitutes a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment. Ark. R. Crim. P. 33.1(c) (2011). A directed-verdict motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense. *Id.*

The parties stipulated at trial that Wofford was shown on Wal-Mart video-surveillance tapes. Some of the surveillance footage, shot from the ceiling above an area where customers could examine cameras tethered to a display bar, showed both Wofford and a woman handling a \$799 Canon Rebel at the end of the camera bar the night of May 21, 2009. Footage of the tapes was played for the jury, and testimony about the theft was given by Wal-Mart's asset-protection coordinator and State's witness Russell Farris.

Farris testified that he viewed security tapes the next morning, after receiving a report that the Canon was missing. He explained that the following events occurred in about five minutes' time: the woman pulled the camera to her face; the camera was put into a basket; she covered the camera with other items; she and Wofford walked to the "Rubbermaid tote aisle," which lacked specific security cameras; the couple exited the aisle, straight to checkout; and they checked out without the camera. Farris stated that he did not see Wofford leaving the store with the camera and, because Wofford was wearing a shirt tucked into jeans, did not



think he “had stuffed it in his person.” Farris stated that he could not locate the camera the next morning in any aisles or in the lock-boxes where “misplaced items” were placed. He testified that he had been present on an earlier occasion when Wofford observed the same footage shown at trial, and when a third party asked if the security alarm had gone off, Wofford responded that it did not.

After moving for a directed verdict at the close of the State’s case, the defense rested without putting on a case. Wofford stated in his directed-verdict motion, “Any finding of guilt . . . would require the jury to engage in speculation and assumptions. They would have to go beyond what is in evidence to believe that a theft of property occurred here.” Wofford now challenges the denial of his motion for directed verdict with arguments such as the State showed merely that the camera was missing, the store could not say the camera was in fact removed from the store, Farris could not say when the security tether had been removed, and Farris had not seen Wofford remove it.

Wofford’s motion for a directed verdict stated merely that guilt could be found only through speculation and assumptions. Because his motion did not specify the manner in which the evidence was insufficient, his sufficiency argument is not preserved for appeal and we cannot address it. Ark. R. Crim. P. 33.1(c) (2011).

Affirmed.

GLOVER and HOOFFMAN, JJ., agree.

Donald L. Dunagin, for appellant.

Dustin McDaniel, Att’y Gen., by: *Kathryn Henry*, Ass’t Att’y Gen., for appellee.