STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY DEWAIN ALLEN,

Defendant-Appellant.

UNPUBLISHED
February 27, 1998

No. 194358
Macomb Circuit Court
LC No. 95-000189 FH

Before: O'Connell, P.J., and Gribbs and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree retail fraud, MCL 750.356c: MSA 28.588(3), and sentenced to one to two years' imprisonment. He appeals as of right. We affirm.

Defendant's conviction arises out of an incident in which an assistant store manager at a General Nutrition Center observed defendant put a box of vitamins in a bag and leave the store without paying for the vitamins.

Defendant raises two grounds for his argument that the trial court erred in refusing to admit into evidence a police report containing statements purportedly made by the assistant store manager concerning the circumstances of defendant's offense. First, defendant contends, as he did below, that the report was admissible as substantive evidence under the business records exception to the hearsay rule. See MRE 803(6). Certainly the officer was acting in the regular course of his business in making the report. See *Hewitt v Grand Trunk W R Co*, 123 Mich App 309, 324; 333 NW2d 264 (1983). However, at trial the assistant store manager testified that he spoke to and filled out a report for mall security, and that he saw the police take defendant into custody, but that he could not recall whether he spoke or gave information to the police. The police officer in charge of the investigation attempted to testify for defendant but no information was elicited from the officer by either party concerning whether the statements in the police report were made by the assistant store manager. Thus, the record does not establish that the assistant store manager actually made the statements recorded in the police report. Moreover, even assuming that the assistant store manager did make the statements recorded in the report, defendant has failed to persuade us that the assistant store manager's statements concerning

defendant's offense constituted a "report . . . of . . . occurrences" that were kept by General Nutrition Center "in the course of a regularly conducted business activity" that was "the regular practice of that business activity to make . . . ." MRE 803(6). In other words, defendant has failed to persuade us that the assistant store manager was acting in the regular course of his business when making the statements. *Hewitt, supra* at 325. Accordingly, we conclude that the trial court did not abuse its discretion in refusing to admit the police report as substantive evidence under the business records exception. *Moncrief v Detroit*, 398 Mich 181, 189; 274 NW2d 783 (1976); *People v Sawyer*, 222 Mich App 1, 5; 564 NW2d 62 (1994); *Hewitt, supra*.

Second, defendant argues that the report was not hearsay and was admissible for the non-substantive purpose of impeaching the assistant store manager. However, defendant did not raise this argument below. An objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). Thus, by analogy, this issue is not preserved because a ground for admissibility raised at trial is insufficient to preserve an appellate argument based on a different ground for admissibility. It is true that this Court will address arguments that involve issues of law for which the necessary facts are available. *Richards v Pierce*, 162 Mich App 308, 316; 412 NW2d 725 (1987). However, as indicated previously, the record is not clear concerning whether the assistant store manager even made the statements recorded in the police report. Thus, we decline to address this argument. *Asevedo, supra*; *Richards, supra*; see also *People v Jenkins*, 450 Mich 249, 256-260; 537 NW2d 828 (1995).

Affirmed.

/s/ Peter D. O'Connell
/s/ Roman S. Gribbs
/s/ Michael R. Smolenski