IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

ROOSEVELT DESRAVINES,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

Appeal from the County Court, for Orange County, Florida, Jerry L Brewer, County Court Judge

Robert Sauerheber, Esq., for Appellant

Lawson Lamar, State Attorney and David H. Margolis, Assistant State Attorney, for Appellee

Before POWELL, LUBET, and O'KANE, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Roosevelt Desravines (Appellant) appeals his conviction for Petit Theft (Retail) of More Than \$100. We have carefully considered his initial brief, the record on appeal, the applicable law, and have read the entire trial transcript. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320, and affirm.

Since Appellant failed to object to the department store loss prevention officer's testimony as to the contents of a surveillance video, and stated he had no objections to the admission in evidence of several photographs taken of the stolen items, he has failed to preserve these two arguments for appeal. In the absence of a timely and proper objection at trial, an appellate court will not consider an argument that evidence was improperly admitted. *See Maharaj v. State*, 597

CASE NO: 2009-AP-25 Lower Court Case No: 2008-MM-13545 So. 2d 786, 790 (Fla. 1992) ("At trial, [appellant] failed to object when the [hearsay newspaper] articles were presented and admitted into evidence; *Polite v. State*, 41 So. 3d 935, 939 (Fla. 5th DCA 2010); (litigants must make a timely contemporaneous objection in trial to preserve an issue for appellate review); *U.S. v. Redditt*, 381 F.3d 597,602 (7th Cir. 2004) ("When trial counsel affirmatively represents he has no objections to the admission of certain evidence, he has intentionally waived any argument to the contrary.") Consequently we find that he did not preserve the issue for appellate review.

As to his third and last argument, we find that the photographs and the loss prevention officer's un-objected to hearsay testimony was sufficient to withstand Appellant's motion for judgment of acquittal on grounds that there was not legally sufficient evidence that the fair market value of the stolen items was more than \$100. *See Baker v. State*, 336 So. 364, 366 (Fla. 1976) (inadmissible hearsay evidence admitted without objection may properly be considered); *Laws v. State*, 356 So. 2d 7 (Fla. 4th DCA 1977) (inadmissible evidence received without objection may be considered in determining facts in issue an denial of motion for judgment of acquittal affirmed); *Jackson v. State*, 23 So. 3d 206 (Fla. 4th DCA 2009) (where the theft is from a department store, evidence of retail price is sufficient to establish fair market value of the merchandise).

The trial court was correct in denying the motion. Consequently, Appellant's judgment of conviction is **AFFIRMED**.

DONE AND ORDERED at Orlando, Florida this <u>9th</u> day of <u>January</u>, 2012.

<u>NOM W. POWELL</u> Senior Judge

<u>/S/</u> JULIE H. O'KANE Circuit Judge

<u>/S/</u> MARC L. LUBET Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to Robert Sauerheber, P.A., P.O. Box 1944, Orlando, Florida 32802-1944; David H. Margolis, Assistant State Attorney, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and Honorable Jerry L. Brewer, 425 N. Orange Avenue, Orlando, Florida 32801, this <u>10th</u> day of <u>January</u>, 2012.

<u>/S/</u>____

Judicial Assistant