

Circuit Court for Baltimore City
Case No. 117324022

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1373

September Term, 2019

MICHAEL CAMPBELL

v.

STATE OF MARYLAND

Fader, C.J.,
Kehoe,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 23, 2020

*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.

Following a jury trial in the Circuit Court for Baltimore City, Michael Campbell, appellant, was convicted of first-degree murder; use of a firearm in a crime of violence; prohibited possession of a handgun; wearing, carrying, or transporting a handgun; and possession of a handgun in a vehicle. On appeal, he contends that there was insufficient evidence to sustain his convictions. For the reasons that follow, we shall affirm.

In reviewing the sufficiency of the evidence, we ask “whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Ross v. State*, 232 Md. App. 72, 81 (2017) (citation omitted). Furthermore, we “view[] not just the facts, but ‘all rational inferences that arise from the evidence,’ in the light most favorable to the” State. *Smith v. State*, 232 Md. App. 583, 594 (2017) (citation omitted). In this analysis, “[w]e give ‘due regard to the [fact-finder’s] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.’” *Potts v. State*, 231 Md. App. 398, 415 (2016) (citation omitted).

Mr. Campbell first contends that there was insufficient evidence to sustain his convictions because the State failed to prove his identity as the perpetrator. We disagree. Viewed in a light most favorable to the State, the evidence at trial demonstrated that: (1) on October 28, 2017, Mr. Campbell entered the Good Luck Carryout on Edmondson Avenue; (2) shortly thereafter, the victim was shot inside the Good Luck Carryout; (3) immediately after the shooting a person wearing the same clothing as Mr. Campbell ran out of the Good Luck Carryout; (4) after the shooting, Mr. Campbell got into a car that was parked several blocks away and being driven by his former girlfriend; (5) a handgun was

subsequently found on the passenger floorboard of that vehicle; (6) Mr. Campbell was the source of a “major male DNA profile” found on the handgun; and (7) a subsequent examination of the handgun by the State’s ballistics expert revealed that it had fired the six 9 mm shell casings that were recovered at the scene of the shooting and a bullet and three bullet fragments that were recovered from the victim’s body. Mr. Campbell contends that this evidence was insufficient to prove his criminal agency because no one observed him shoot the victim. However, “proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitnesses accounts.” *Neal v. State*, 191 Md. App. 297, 314 (2010). He also contends that he provided “uncontradicted” testimony explaining why he possessed the gun that was used in the shooting. However, the jury was free to disregard that testimony, as it apparently did. *See Correll v. State*, 215 Md. App. 483, 502 (2013) (“It is the jury’s task to resolve any conflicts in the evidence and assess the credibility of witnesses. In so doing, the jury can accept all, some, or none of the testimony of a particular witness.” (internal quotation marks and citation omitted)). Based on the above evidence, we are persuaded that the jury could reasonably find that Mr. Campbell was the person who shot the victim inside the Good Luck Carryout. Consequently, the court did not err in denying his motion for judgment of acquittal.

Mr. Campbell also asserts that, even if the State proved his identity as the perpetrator, his conviction for first-degree murder should be reversed because there was no evidence that the “killing was deliberate, premeditated, and willful.” However, Mr. Campbell did not raise this issue when making his motion for judgment of acquittal. Rather, defense counsel’s sole contention was that “the State hasn’t presented any ID

witness associated with this case, and hasn't proved that Mr. Campbell even shot a weapon." Consequently this claim is not preserved for appellate review. *See Peters v. State*, 224 Md. App. 306, 354 (2015) (“[R]eview of a claim of insufficiency is available only for the reasons given by [the defendant] in his motion for judgment of acquittal.” (citation omitted)).

Relying on *Testerman v. State*, 170 Md. App. 324 (2006), Mr. Campbell alternatively asks us to conclude that his defense counsel's failure to preserve the issue constituted ineffective assistance of counsel.¹ However, “[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel . . . omitted to act, and such proceedings allow for fact-finding and the introduction of testimony and evidence directly related to the allegations of the counsel's ineffectiveness.” *Mosley v. State*, 378 Md. 548, 560 (2003). And, unlike *Testerman*, we are not persuaded that the record in this case is sufficiently developed to permit a fair evaluation of Mr. Campbell's claim that his defense counsel was ineffective.

¹ Although Mr. Campbell does not specifically ask us to do so, we decline to exercise our discretion to engage in “plain error” review of this issue pursuant to Maryland Rule 8-131(a).

Consequently, *Testerman* does not require us to consider Mr. Campbell’s claim of ineffective assistance of defense counsel on direct appeal, and we decline to do so.

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**