

Circuit Court for Baltimore City
Case No. 120324033

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1429

September Term, 2021

NICHELLE GREENE

v.

STATE OF MARYLAND

Graeff,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 27, 2022

*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, Nichelle Greene, appellant, was convicted of first-degree assault and second-degree assault based on her having hit the victim in the face with an unknown object, breaking the victim’s jaw. On appeal, she claims that the evidence was insufficient to sustain her convictions because the State failed to prove her identity as the perpetrator. This contention, however, is not preserved for appellate review as she did not raise it when making her motion for judgment of acquittal. *See Peters v. State*, 224 Md. App. 306, 353 (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.” (quotation marks and citation omitted)).

Relying on *Testerman v. State*, 170 Md. App. 324 (2006), appellant alternatively asks us to conclude that her defense counsel’s failure to preserve this issue constituted ineffective assistance of counsel. 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 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 appellant’s claim that her defense counsel was ineffective. Consequently, *Testerman* does not require us to consider that claim on direct appeal, and we decline to do so.

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