

Circuit Court for Charles County
Case No.: C-08-CR-18-000246

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2462

September Term, 2019

PATRICK PORTZEN

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: October 7, 2021

*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 trial in the Circuit Court for Charles County, a jury found Patrick Portzen, appellant, guilty of theft of at least \$100 but less than \$1,500, conspiracy to commit theft of at least \$100 but less than \$1,500, and disturbing the peace. The court sentenced him to six months’ imprisonment for theft and conspiracy to commit theft, to be served concurrently, and 60 consecutive days’ imprisonment for disturbing the peace. Appellant noted an appeal from his convictions contending that he was denied his right to effective assistance of counsel when his trial counsel failed to argue that the evidence was legally insufficient to support the crime of disturbing the peace. For the reasons explained below, we shall affirm.

In the light most favorable to the State, the evidence at trial established that appellant and a woman were caught, by the store’s owner and employees, attempting to steal a number of winter hats from a convenience store. After the employees watched on a surveillance video monitor what appellant and the woman were doing, the owner locked the doors and instructed the employees to confront appellant and the woman. Appellant and the woman responded aggressively by shouting profanity and gesticulating frantically. At one point appellant screamed “come outside I’m going to kill you” and “go back where you come from.” Eventually, appellant and the woman left the store. Surveillance video shown to the jury captured the events from multiple angles.

As noted above, appellant claims that the evidence was legally insufficient to support the charge for disturbing the peace and that he was denied his Sixth Amendment right to effective assistance of counsel, within the meaning of *Strickland v. Washington*, 466 U.S. 668 (1984), and its progeny, when his trial counsel failed to make that sufficiency

of the evidence argument with specificity when making a motion for judgment of acquittal at trial.

As the Court of Appeals has repeatedly pointed out, although it is possible for an appellate court to address a claim of ineffective assistance of counsel on direct appeal, “[p]ost-conviction proceedings are preferred with respect to ineffective assistance of counsel claims because the trial record rarely reveals why counsel acted or 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.” *Bailey v. State*, 464 Md. 685, 704 (2019) (quoting *Mosley v. State*, 378 Md. 548, 560 (2003)). We think appellant’s claim of ineffective assistance of counsel is best heard within a post-conviction posture.

Consequently, we shall affirm the judgments of the circuit court.

**JUDGMENTS OF THE CIRCUIT
COURT FOR CHARLES COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**