

Circuit Court for Allegany County  
Case No. K-16-17855

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 667

September Term, 2017

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BRIAN GARLETTS

v.

STATE OF MARYLAND

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Woodward, C.J.,  
Friedman,  
Kenney, James A., III  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: April 9, 2018

\*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 Allegany County, Brian Garletts, appellant, was convicted of second-degree assault and reckless endangerment. On appeal, Garletts claims that the State elicited testimony, and made arguments during closing, that improperly referenced his silence in the presence of law enforcement.<sup>1</sup> Garletts acknowledges that these claims are not preserved because he did not object at trial. However, relying on *Testerman v. State*, 170 Md. App. 324 (2006), he asks us to conclude that his defense counsel’s failure to preserve the issue constituted ineffective assistance of counsel. For the reasons that follow, we affirm.

“Post-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). Unlike *Testerman*, we are not persuaded that the record regarding defense counsel’s strategy in this case is sufficiently developed to permit a fair evaluation of appellant’s claim that defense counsel was ineffective. Consequently, *Testerman* does

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<sup>1</sup> Garletts concedes that, “[o]n this record, it is unclear at which point” he was arrested. Therefore, he alternatively contends that the State either elicited evidence of his post-arrest silence, which would implicate his Fifth Amendment right against self-incrimination or elicited evidence of his pre-arrest silence, which was “not admissible as substantive evidence of guilt under Maryland evidence law.” See *Weitzel v. State*, 384 Md. 451, 461 (2004).

not require us to consider Garletts’s claim of ineffective assistance of defense counsel on direct appeal, and we decline to do so.

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