

Circuit Court for Anne Arundel County
Case Nos. 02-K-15-001276

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1055

September Term, 2021

ANTONIO ANTHONY ADAMS

v.

STATE OF MARYLAND

Graeff,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 26, 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 Anne Arundel County, Antonio Anthony Adams, appellant, was convicted of robbery and theft of property valued less than \$1,000. He raises two issues on appeal: (1) whether there was sufficient evidence to sustain his robbery conviction, and (2) whether the court erred in failing to redact a portion of his video recorded statement to the police before it was introduced into evidence. For the reasons that follow, we shall affirm.

Mr. Adams first contends that the evidence was insufficient to sustain his conviction for robbery because the State failed to prove that the theft was committed using force or the threat of force. However, he did not raise this claim when making his motion for judgment of acquittal. In fact, when the court asked defense counsel if he was making an argument as to the robbery count, counsel indicated that he did not “think it [was] appropriate to argue a motion for judgment of acquittal” on that count. Consequently, this claim is not preserved for appellate review. *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.” (citation omitted)).¹

Relying on *Testerman v. State*, 170 Md. App. 324 (2006), Mr. Adams alternatively asks us to conclude that his defense counsel’s failure to preserve this issue constituted ineffective assistance of counsel. However, “[p]ost-conviction proceedings are preferred

¹ Mr. Adams asserts that we can consider this issue because, after making his motion for judgment of acquittal, he challenged the applicability of a jury instruction regarding the “intent-to-frighten” modality of assault. However, he cites no authority in support of this claim. Moreover, this contention is at odds with the plain language of Maryland Rule 4-324(a) and the numerous cases interpreting that Rule.

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 Mr. Adams’s claim that his defense counsel was ineffective. Consequently, *Testerman* does not require us to consider that claim on direct appeal, and we decline to do so.

Mr. Adams also asserts that the court erred in refusing to redact a portion of the videotaped statement that he made to Detective Nicholas Klapaska following his arrest, wherein he admitted to the theft but denied touching the victim, stating “if they do any of that, I rolls [sic] out.” Specifically, Mr. Adams claims, that this statement was irrelevant and unduly prejudicial because it suggested that he may have committed other robberies in the past. Just before Detective Klapaska testified, counsel made a motion *in limine* requesting the court to redact the above statement from the video. After hearing arguments from counsel, the court denied that request. During Detective Klapaska’s direct examination, the State then moved to enter the unredacted video into evidence and play it for the jury. At that point, the court asked defense counsel if he had “any objection,” and counsel stated “No, Your Honor.” Thereafter the video was admitted into evidence and played to the jury.

An affirmative acquiescence to the admission of evidence effects a waiver of any prior objection a defendant might have made to the admission of that evidence. *See Jackson*

v. State, 52 Md. App. 327, 332 (1982) (“[I]f a pretrial motion is denied and at trial appellant says he has no objection to the admission of the contested evidence, his statement effects a waiver[.]”); *Erman v. State*, 49 Md. App. 605, 630 (1981) (when defense counsel stated that he had no objection to the admission of the evidence, that affirmative acquiescence effected a waiver of the objection). Here, defense counsel’s statement that he did not object to the unredacted video being admitted constituted an affirmative acquiescence to the admission of that evidence and, as a result, waiver that precludes appellate review of this issue.

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