Circuit Court for Charles County
Case No. C-08-CR-23-000310

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1571

September Term, 2023

HOLLY NICOLE DANIELSON

v.

STATE OF MARYLAND

Beachley,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 4, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

Following a jury trial in the Circuit Court for Charles County, Holly Nicole Danielson, appellant, was convicted of one count of disorderly conduct and two counts of second-degree assault. On appeal, she contends that the evidence was insufficient to sustain one of her assault convictions because the State failed to disprove that she was either acting in self-defense or resisting an unlawful arrest. For the reasons that follow, we shall affirm.

Viewed in a light most favorable to the State, the evidence at trial established that appellant was drinking alcohol inside a Wal-Mart, and then assaulted a loss prevention officer who attempted to confront her. Appellant was eventually escorted from the store and the police were called. Corporal Jordan Madison responded to the call and encountered appellant in a parking lot behind the Wal-Mart. Corporal Madison testified that he received a description of the assailant in the "call for service" and that appellant matched that description.

Video from Corporal Madison's body-worn camera was played for the jury and showed that as soon as he exited the car, appellant began to walk "aggressively" toward him, causing him to back up. He instructed appellant to "[g]o in front of my car" at least three times and stated: "I'm not gonna tell you again." Appellant ignored him and asked what she had done. When Corporal Madison didn't respond, she began to walk away from him. Corporal Madison indicated that she was "not free to leave" at that point and that he considered her to be detained because she "matched the description" of the assault suspect and he "needed to identify [her]." He therefore grabbed her arm to keep her from leaving.

Appellant tried to pull her arm away and when Corporal Madison grabbed her with his other hand, she hit him, making contact with his vest and body-worn camera.

During a subsequent struggle, which resulted in appellant being pulled to the ground, appellant also kicked Corporal Madison in the left eye. Corporal Madison eventually handcuffed appellant and put her in the back of his police car because she was "still actively swinging or trying to get away from me." Appellant was subsequently identified by the loss-prevention officer as the person who assaulted her inside the Wal-Mart.

Appellant first contends that the evidence was insufficient to sustain her conviction because she was acting in perfect self-defense. Specifically, she claims that she reasonably believed her initial interaction with Corporal Madison was a consensual encounter, and therefore that she had a right to defend herself when he grabbed her shoulder as she tried to walk away. We disagree.

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) (quotation marks and 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) (quoting *Abbott v. State*, 190 Md. App. 595, 616 (2010)). 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).

Even if we assume that the evidence at trial was sufficient to generate the issue of self-defense, appellant's claim of error is not that the court refused to consider it. In fact, appellant did not even request a self-defense jury instruction. Instead, appellant essentially asserts that the evidence was insufficient because the State failed to disprove that she acted in self-defense as a matter of law.

However, in *Hennessy v. State,* 37 Md. App. 559 (1977), we rejected a similar argument stating:

> [Hennessy] concedes by silence that there was sufficient evidence to sustain a manslaughter verdict, but argues that because the State did not affirmatively negate this self-defense testimony, he was entitled to what amounts to a judicially declared holding of self-defense as a matter of law. That is of course, absurd. The factfinder may simply choose not to believe the facts as described in that, or any other, regard[.]

Id. at 561 (internal citations omitted).

Appellant's contention is equally meritless as the jury was "free to believe some, all, or none of the evidence presented" that supported her claim of self-defense. *Sifrit v. State*, 383 Md. 116, 135 (2004). For example, the jury could reasonably find that her initial interaction with Corporal Madison was not a consensual encounter as he instructed her on multiple occasions to move to the front of his car and warned her that he was not "gonna tell [her] again." *See generally Swift v. State*, 393 Md. 139 (2006) (noting that the test for whether an encounter is consensual, or a seizure, is whether by physical force or show of authority reasonable persons would believe they are not free to leave). And to the extent

that the encounter was a *Terry* stop and not a consensual encounter, appellant had no right to resist when Corporal Madison attempted to prevent her from leaving. *Hicks v. State*, 189 Md. App. 112, 125 (2009). Alternatively, the jury could have found that appellant did not subjectively believe that she was involved in a consensual encounter, did not subjectively believe she was in imminent danger when she struck Corporal Madison, or that the force she used against Corporal Madison was excessive under the circumstances. *See, e.g., Rajnic v. State*, 106 Md. App. 286, 291-93 (1995) (finding that sufficient evidence existed from which a jury could reject appellant's claim of self-defense despite the undisputed testimony that the victims were larger than appellant, intoxicated, threatened to beat up appellant, and charged into his bedroom on the heels of those threats). In short, the evidence did not establish that appellant acted in self-defense as a matter of law. Consequently, the court did not err in denying her motion for judgment of acquittal.

Appellant alternatively asserts that the assault of Corporal Madison was justified because the evidence established that she was resisting an unlawful arrest. As appellant acknowledges, however, this contention 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 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 CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.