

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

TIMOTHY STUART RING,
Petitioner.

No. 2 CA-CR 2014-0318-PR
Filed March 23, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County

No. CR1995001754

The Honorable Robert Duber II, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Arthur Hazelton, Deputy County Attorney, Phoenix
Counsel for Respondent

Sharmila Roy, Laveen
Counsel for Petitioner

STATE v. RING
Decision of the Court

MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Presiding Judge Kelly and Judge Howard concurred.

VÁSQUEZ, Judge:

¶1 After a jury trial petitioner Timothy Ring was convicted of first-degree, felony murder, conspiracy to commit armed robbery, armed robbery, first-degree burglary, and theft. In this petition, Ring seeks review of the trial court's orders denying relief on claims Ring raised in his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. The court summarily dismissed some claims it found precluded and others that it found were not colorable, and denied relief on the remaining claims after an evidentiary hearing. We grant review and deny relief for the reasons stated below.

Factual and Procedural Background

¶2 The facts related to the 1994 robbery of an armored bank van and the murder of the van's driver, resulting ultimately in these convictions, are set forth in our supreme court's opinion in *State v. Ring*, as is the relevant procedural history. 200 Ariz. 267, 25 P.3d 1139 (2001), *rev'd in part sub nom. Ring v. Arizona*, 536 U.S. 584 (2002), *remanded to* 204 Ariz. 534, 65 P.3d 915 (2003). In July 2007, upon remand, the trial court resentenced Ring to a natural life term of imprisonment on the murder conviction pursuant to an agreement he entered with the state. Ring filed a notice of post-conviction relief in September 2007, and filed his extensive petition in April 2010. He raised claims of ineffective assistance of trial counsel, prosecutorial misconduct, and denial of the right to present a complete and meaningful defense based on the trial court's denial of his request to present third-party culpability evidence. Ring filed a supplemental petition, adding additional information to support the claims.

STATE v. RING
Decision of the Court

¶3 In its twelve-page order dated April 13, 2012, the trial court identified and addressed Ring’s claims. Employing the test articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the Arizona Supreme Court in *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985), the court found that, with respect to most of the alleged instances of ineffective assistance of counsel, Ring had not raised colorable claims warranting an evidentiary hearing. The court found Ring had waived his claims that trial counsel was ineffective in failing to request a jury instruction on second-degree murder and to object to the consecutive prison terms on all of the offenses because he had not raised these issues on appeal. The court addressed and evaluated the various claims of prosecutorial misconduct as well, summarily denying relief on most of them. The court found certain alleged instances of ineffective assistance of trial counsel and prosecutorial misconduct colorable, setting those matters for an evidentiary hearing.

¶4 Following a three-day evidentiary hearing and submission by the parties of post-hearing memoranda, the trial court denied relief on all remaining claims in a thirteen-page order. This petition for review followed.

Discussion

¶5 We will not disturb the trial court’s rulings unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). When a trial court finds a claim colorable and conducts an evidentiary hearing, the defendant has the burden of proving all factual allegations by a preponderance of the evidence. Ariz. R. Crim. P. 32.8(c). We will not disturb an order entered after such a hearing unless the factual findings upon which the order is based are clearly erroneous. *See State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993). And, we “view the facts in the light most favorable to sustaining the lower court’s ruling, and . . . resolve all reasonable inferences against the defendant.” *Id.* We defer to the trial court with respect to any determination of witness credibility. *See State v. Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d 919, 924 (App. 2003); *State v. Fritz*, 157 Ariz. 139,

STATE v. RING
Decision of the Court

141, 755 P.2d 444, 446 (App. 1988) (trial court determines credibility of witnesses in Rule 32 evidentiary hearing).

¶6 We address Ring's claims in the order he has presented them in his petition for review.

Counsel's failure to obtain and present ballistics and stippling evidence.

¶7 Ring contends the trial court abused its discretion by summarily denying relief on his claim that trial counsel Greg Clark had been ineffective in failing to request testing and information regarding ballistics and gunshot residue (GSR) or stippling, which was noted in the autopsy report. Arguing he was entitled to an evidentiary hearing on this claim, Ring refers to juror affidavits, which "[t]he defense presented,"¹ stating GSR testing results would have been of interest to them. Ring asserts such evidence would have refuted the state's theory of the case that Ring, known for proficiency with guns and accuracy with respect to long-range shots, was the shooter, establishing instead that the victim had been shot at close range. Ring maintains this type of evidence also would have refuted the statements of Ring's co-defendant James Greenham, who testified only during the sentencing phase of trial, that Ring had shot the victim from a distance. He also argues the evidence would have suggested the shooting had taken place somewhere other than the known crime scene, because there was no evidence anyone had

¹Ring first submitted these affidavits as an appendix to his reply to the state's response to his petition for post-conviction relief and the state filed an opposition to the court's consideration of the them, relying, in part on Rule 24.1(c)(3) and (d), Ariz. R. Crim. P. Matters raised for the first time in a reply need not be considered. *See State v. Lopez*, 223 Ariz. 238, ¶¶ 6-7, 221 P.3d 1052, 1054 (App. 2009). We note, too, that although we were able to find the affidavits, in his petition for review Ring simply referred to them, neither specifying he had attached them to his reply nor citing to the portion of the record where they could be found. *See Ariz. R. Crim. P. 32.9(c)(1)* (petition for review shall contain "specific references to the record").

STATE v. RING
Decision of the Court

approached the victim, giving that person an opportunity to shoot the victim at close range. And there was no evidence placing Ring at any other possible locations.

¶8 The trial court determined Ring had not raised a colorable claim that Clark's performance had been deficient or prejudicial. The court relied, in part, on our supreme court's comment in *Ring*, 200 Ariz. 267, ¶ 48, 25 P.3d at 1152, that the jury found him guilty of murder based on felony murder, not premeditated murder, possibly signifying jurors did not believe Ring had participated in, planned, "or even expect[ed] the killing." Thus, the court implicitly found it would have made no difference if Ring was the shooter or an accomplice, given the evidence that was presented at trial and the verdict. The court stated any effect such evidence might have had on the sentence made no difference, given that the original sentence was vacated.

¶9 The trial court's ruling appears to be related specifically to the effect this testimony might have had on the sentence, presumably because Greenham testified only at sentencing, not trial. Nevertheless, we infer from the denial of relief on this claim that the court was addressing the claim as presented, which was that the absence of this evidence affected the proceedings as a whole. In any event, to the extent the court failed to address this claim more broadly, any complaint in this regard was waived. The court held a hearing on April 11, 2012, after distributing its ruling as a draft, and asked counsel to specify if it had failed to address or mischaracterized any claim that Ring had raised. Ring never challenged the ruling on this claim as being too restrictive.

¶10 Even assuming the trial court considered the jurors' affidavits and the claim as it related to the convictions, Ring's arguments are based on speculation about what might have occurred at trial and possibly could occur during a retrial, such as the impeachment of Greenham if he testified. *See State v. Meeker*, 143 Ariz. 256, 264, 693 P.2d 911, 919 (1984) ("Proof of ineffectiveness must be a demonstrable reality rather than a matter of speculation."). Furthermore, in view of the jury's verdict specifying the murder conviction was based on felony murder and the guilty

STATE v. RING
Decision of the Court

verdicts on the remaining offenses, Ring has not established there is a reasonable probability the outcome would have been different if Clark had obtained and presented this evidence. *See Strickland*, 466 U.S. at 694.

Counsel's failure to challenge grand jury proceeding.

¶11 Ring next argues he was entitled to an evidentiary hearing on his claim that Clark had been ineffective in failing to challenge the grand jury proceeding on the ground that Detective Thomas Clayton allegedly had provided perjured testimony. The trial court correctly concluded that grand jury proceedings must be challenged by special action and can be challenged on appeal only if an indictment was based on perjured testimony. *See State v. Gortarez*, 141 Ariz. 254, 258, 686 P.2d 1224, 1228 (1984) (grand jury proceedings must be challenged by special actions, except when proceedings are tainted with information the state knew was based on perjured, material testimony). The issue Ring raised, however, was one of ineffective assistance of trial counsel, which can be raised only in a post-conviction proceeding. *See State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002).

¶12 Ring has not, however, persuaded us the trial court abused its discretion. Ring has not established that counsel's failure to seek dismissal of the indictment was deficient or that such dismissal probably would have been granted. Clayton testified before the grand jury that the actual size of the bullet could not be determined because it had disintegrated. This apparently was incorrect; the bullet had exited the victim's head and was not found and, therefore, the exact caliber could not be determined. Thus, although Clayton incorrectly described the reason for law enforcement's inability to identify the caliber of the bullet, his answer to the grand juror's question about what the wound showed in relation to the caliber of the weapon was correct—it could not be determined. In light of that fact and the other evidence of Ring's participation in the robbery as an accomplice, and given the fact that the jury found him guilty of the charged offenses, the trial court either would have denied a grand jury challenge, or Ring would have been re-indicted as the verdicts demonstrate there was

STATE v. RING
Decision of the Court

probable cause. Thus, even assuming *arguendo* Clark's performance had been deficient, it was not prejudicial, and the court did not err in denying relief on this claim summarily.

Informing the jury during opening statement that cross-border abductions are illegal and failing to investigate and provide expert testimony to support Ring's defense.

¶13 One of Ring's defenses at trial was that he had been paid by the Federal Bureau of Investigations (FBI) to kidnap individuals in Mexico and return them to the United States for prosecution, thereby explaining his increased expenditures after the robbery and murder and his possession of a large amount of cash. He contends Clark undermined this defense during his opening statement at trial when he stated it was illegal for law enforcement agents to engage in such conduct, insisting Clark should have presented evidence to refute the testimony of federal agents that it was against the law for them to conduct such operations.

¶14 The trial court summarily denied relief on this claim, finding the agents' testimony "was not clearly wrong." The court rejected Ring's assertion that the Supreme Court held in *United States v. Alvarez-Mechain*, 504 U.S. 655 (1992), that abductions of persons from another country is lawful. The court further found Ring had failed to support his claim with expert testimony, did not establish such evidence "was available or admissible at the time of trial," and did not otherwise show he had been paid by the FBI.

¶15 Ring contends the trial court's interpretation of *Alvarez-Mechain* was incorrect. We disagree. The Supreme Court stated the issue in that case was "whether a criminal defendant, abducted to the United States from a nation with which it has an extradition treaty, thereby acquires a defense to the jurisdiction of this country's courts." *Alvarez-Mechain*, 504 U.S. at 657. The Court held, "he does not, and . . . he may be tried in federal district court for violations of the criminal law of the United States." *Id.* Based on the terms of the extradition treaty between Mexico and the United States and prior case law, the Court concluded that because the treaty did not expressly prohibit prosecution in this country of persons abducted

STATE v. RING
Decision of the Court

from Mexico, the defendant could be prosecuted here following his abduction. *Id.* at 670. The Court observed, however, that the abduction could have violated “general international law principles,” *id.* at 669, noting the Mexican government had asked the United States to extradite individuals suspected of having kidnapped the defendant, *id.* at 669 n.16. The case does not, therefore, stand for the proposition that such abductions are lawful.

¶16 Ring’s contention on review that presentation of expert testimony about *Alvarez-Machain* and cross-border kidnappings “would, in all likelihood, have made a difference in the outcome,” was not only contrary to the Court’s holding in that case, but speculative and unsupported as well. Ring did not establish a colorable claim that Clark’s performance fell below prevailing professional norms. *See Strickland*, 466 U.S. at 687-88 (colorable claim of ineffective assistance of counsel requires showing counsel’s performance was deficient and prejudicial); *Nash*, 143 Ariz. at 397-98, 694 P.2d at 227-28 (prejudice element requires showing outcome probably would have been different without deficient performance). Ring has not persuaded this court that the trial court abused its discretion in denying relief on this claim without an evidentiary hearing.

Summary dismissal of claim regarding third-party culpability evidence.

¶17 In his Rule 32 petition, Ring asserted the trial court had erred when it precluded him from presenting third-party culpability evidence regarding Michael Sanders, an informant for the Maricopa County Attorney’s Office (MCAO) who admitted to Glendale police officers that he had helped plan the robbery but insisted he had been cut out of the plan, and had not participated in committing it. Ring acknowledged he had raised the claim on appeal and our supreme court rejected it. *See Ring*, 200 Ariz. 267, ¶ 32, 25 P.3d at 1148. But he argued both the trial court and our supreme court had erred by applying the “inherent tendency” test set forth in *State v. Fulminante*, 161 Ariz. 237, 252, 778 P.2d 602, 617 (1988),² notwithstanding federal

²Under that test, the defendant “must show that the evidence has an inherent tendency to connect such other person with the

STATE v. RING
Decision of the Court

authority applying a test based on Rules 401, 402, and 403 of the Federal Rules of Evidence. And, he maintained, our supreme court erred by acknowledging the evidence was relevant but finding any error in its preclusion was harmless because it did not tend to exculpate Ring.

¶18 The trial court rejected this claim summarily on the ground it would not second-guess our supreme court and find it had erred as a matter of law. Although Ring challenges the court's ruling on this claim, he argues our supreme court did not have available to it significant evidence about Sanders discovered after the trial. He contends the trial court should have granted him an evidentiary hearing to present evidence supporting his third-party culpability defense that was not part of the record on direct appeal. But this argument relates more to Ring's claim of prosecutorial misconduct. And, in addition to the trial court's sound reason for rejecting the claim as it was presented below, Ring was precluded from raising the claim because it was adjudicated on appeal. *See* Ariz. R. Crim. P. 32.2.

¶19 We will not consider Ring's argument, made for the first time in his petition for review, that *State v. Machado*, 226 Ariz. 281, ¶ 16, 246 P.3d 632, 635 (2011), and *State v. Gibson*, 202 Ariz. 321, ¶ 16, 44 P.3d 1001, 1004 (2002), are significant changes in the law regarding the proper test for determining the admissibility of third-party culpability evidence entitling him to relief under Rule 32.1(g). Although he mentioned these authorities in his reply to the state's response to his Rule 32 petition, he did not present an independent claim for relief pursuant to Rule 32.1(g). He did not argue before the trial court that these authorities constitute a significant change in the law as that principle is defined by case law, that these new authorities apply to him, and that application of these cases to him "would probably overturn [his] conviction or sentence." Ariz. R. Crim. P. 32.1(g). We will not consider claims and arguments raised for the first time on review. *State v. Lopez*, 223 Ariz. 238, ¶¶ 6-7, 221

actual commission of the crime. Vague grounds of suspicion are not sufficient." *Fulminante*, 161 Ariz. at 252, 778 P.2d at 617.

STATE v. RING
Decision of the Court

P.3d 1052, 1054 (App. 2009); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii).

Denial of relief, after an evidentiary hearing, on claims of prosecutorial misconduct based on violations of Brady v. Maryland, 373 U.S. 83 (1963).

¶20 On appeal, Ring challenged the trial court’s denial of his motion for new trial based on, *inter alia*, Ring’s claim that the state had failed to disclose evidence regarding the relationship between the MCAO and Sanders, which would have supported Ring’s third-party culpability defense and established the nexus the trial court had stated was missing before trial. *Ring*, 200 Ariz. 267, ¶¶ 31, 33, 25 P.3d at 1148-49. Our supreme court refused to address this ruling because the claim was raised in a supplement to the initial motion for new trial and was untimely, and the trial court therefore had lacked jurisdiction to address it. *Id.* ¶ 33. The court added, “Of course, Defendant can raise these claims in post-conviction relief proceedings pursuant to Ariz. R. Crim. P. 32.1 *et seq.*” *Id.*, *citing Brady v. Maryland*, 373 U.S. 88 (1963).

¶21 Ring raised the claim in his Rule 32 petition, relying on evidence that he had cited in his motion for a new trial and other evidence discovered thereafter. The trial court found that, as to these claims of prosecutorial misconduct, Ring had raised a colorable claim warranting an evidentiary hearing. Following that hearing, the court denied relief on this and other claims raised, summarizing the record that already existed and entering extensive factual findings based on the evidence and testimony presented in this post-conviction proceeding.

¶22 In his petition for review, Ring contends the trial court abused its discretion in denying relief on this claim, insisting the information the state failed to disclose violated *Brady*. He argues he was entitled to relief because the evidence would have “undermine[d]” the state’s case, *citing Milke v. Ryan*, 711 F.3d 998 (9th Cir. 2013). He argues the evidence was material and therefore prejudicial, undermining confidence in the verdict.

STATE v. RING
Decision of the Court

¶23 Like the trial court, we disapprove the state’s lack of disclosure regarding Sanders. Particularly compelling was Clark’s testimony at the Rule 32 evidentiary hearing about the effect this had on his ability to defend Ring, as was similar testimony by his co-counsel, Treasure VanDreumel. The court acknowledged “[t]he State did, indeed, fail to disclose the existence of the prior informant status of Sanders,” and rejected its characterization of funds paid to Sanders as “reimbursement for lost wages and living expenses and not compensation.”

¶24 Nevertheless, the trial court concluded the evidence the state failed to disclose

would [not] have substantially undermined Sanders’ testimony—Sanders did not testify. Nor was information provided by Sanders of critical significance at trial to the determination of Ring’s guilt or innocence—the State’s case against Ring utilized evidence developed entirely from sources independent of Sanders.

The trial court also addressed Ring’s related claim that the lack of disclosure deprived him of evidence that would have supported a third-party culpability defense. The court stated that the claim was precluded, having been raised and rejected by our supreme court on appeal, adding that the argument in this proceeding “is simply an attempt to bootstrap his argument that the trial court erred in deciding the issue of third party defense.” The court stated, in any event, the additional information would not have changed the trial court’s rulings.

¶25 On review Ring argues the trial court’s conclusion is erroneous. But there was sufficient evidence before the court to support the ruling and we have no basis for disturbing it.

¶26 Ring also contends the trial court erred by denying relief based on misconduct and *Brady* violations related to the FBI’s failure to disclose information that would have supported his

STATE v. RING
Decision of the Court

defense that he had been paid by the FBI to abduct individuals in Mexico. Ring contends the FBI's file was *Brady* material because the FBI and the Glendale Police Department had worked together in investigating the robbery and murder. The court observed this was the subject of the timely portion of Ring's motion for new trial, the denial of which our supreme court did address but rejected. Nevertheless, the court thoroughly addressed this claim in light of arguments and evidence presented in this post-conviction proceeding, including testimony by Clark and prosecutor Alfred Fenzel, and documents obtained through a Freedom of Information Act request. Because the record supports the court's ruling and Ring has not sustained his burden of establishing the court abused its discretion, we adopt this portion of the ruling. *See State v. Whipple*, 177 Ariz. 272, 273, 866 P.2d 1358, 1359 (App. 1993).

Denial of relief after evidentiary hearing on claim of ineffective assistance of counsel with respect to wiretap tapes.

¶27 Ring contends the trial court abused its discretion in denying relief after an evidentiary hearing on his claim that Clark had failed to adequately prepare for trial in a variety of respects: failing to listen to multiple, extensive tapes of wiretapped conversations, failing to compare transcripts of the conversations with the tapes, failing to play the tapes to the jury and point out the discrepancies, and failing to play certain tapes to impeach one of the state's witnesses.

¶28 Clark testified at the evidentiary hearing about his preparation, including his review of the tapes. Characterizing the court's order as "manifestly unreasonable," Ring faults the trial court for believing Clark in light of other evidence, including his own testimony and that of VanDreumel. But as we stated above, we defer to the trial court with respect to credibility determinations and will not reweigh the evidence. *Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d at 924. It was for the trial court, not this court, to resolve the conflicts in the testimony presented. We agree with the state that, in any event, Ring did not sustain his burden of establishing prejudice.

STATE v. RING
Decision of the Court

Denial of relief after evidentiary hearing on claim of ineffective assistance of counsel based on the stun belt Ring was compelled to wear during trial.

¶29 The trial court denied relief on this claim after the evidentiary hearing in part because it expressly found Clark more credible than Ring. The court also found (1) there was no evidence Ring had been prejudiced in terms of what the jurors might have seen, and (2) Clark had made a tactical decision “to forego alternative security measures” that did not amount to “deficient representation.” There is reasonable evidence in the record to support these findings. And again, we defer to the trial court with respect to any credibility determinations. *Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d at 924. We have no basis for interfering here.³

Summary denial of relief on claims of ineffective assistance of counsel based on counsel’s failure to request a second-degree murder instruction and failure to object to consecutive sentences.

¶30 Ring contends the trial court erred as a matter of law because it found these claims precluded. We agree. The court’s April 13, 2012 ruling begins with the heading entitled, “Precluded Issues,” but under that heading the court evaluated some of the claims that fell under the category of “Ineffective Assistance of Counsel,” to determine whether they were colorable and warranted an evidentiary hearing, or were otherwise subject to summary dismissal. However, the court found Ring had waived the claim that he was entitled to a jury instruction for second-degree murder by not raising it on appeal, commenting that Ring “did not urge” this issue “at the time of his appeal, nor in the exercise of his judgment did appellate counsel see fit to do so.” Similarly, the court found Ring had waived the challenge to consecutive sentences, noting that even though there was no objection at sentencing, appellate counsel could have argued the sentence was unlawful and

³The trial court also found the claim precluded because it could have been raised on appeal. But Ring raised this as a claim of ineffective assistance of trial counsel. As such, the claim is not precluded. *See Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d at 527.

STATE v. RING
Decision of the Court

the error fundamental and not waived. The court added, “If Ring was prejudiced at all, it was the result of appellate counsels’ representation, not Mr. Clark’s.”

¶31 These claims were raised as claims of ineffective assistance of trial counsel. As such, they were not precluded. *See Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d at 527. That appellate counsel also may have been ineffective for failing to raise these issues on appeal does not mean Ring waived the claim that Clark had been ineffective in failing to object in the trial court. But this court will affirm a trial court’s ruling when it reaches the correct result even if it did so for an incorrect reason. *State v. Oakley*, 180 Ariz. 34, 36, 881 P.2d 366, 368 (App. 1994).

¶32 Ring was sentenced on October 29, 1997, to consecutive prison terms of twenty-one years on counts two, three, and four, and a term of 8.75 years for theft, the first twenty-one-year term to commence upon his discharge from the death sentence imposed for the murder conviction. Pursuant to an agreement Ring entered into with the state after the case was remanded for resentencing on the murder conviction, he was sentenced on July 17, 2007, to a prison term of natural life. Clark’s alleged ineffectiveness in failing to object to consecutive sentences is moot in light of the natural-life term that Ring agreed would be imposed for first-degree murder.

¶33 Furthermore, in light of Ring’s defense, Ring has not shown that Clark’s failure to request a second-degree murder instruction as a lesser-included offense of first-degree murder based on premeditated murder, was deficient performance or prejudicial. Rather, the record before us shows that Clark made a tactical decision. “[D]isagreements as to trial strategy or errors in trial tactics will not support an effectiveness claim so long as the challenged conduct could have some reasoned basis.” *Meeker*, 143 Ariz. at 262, 693 P.2d at 917. Ring’s alibi defense – that payment he received from the FBI and for work as a bounty hunter explained his excessive expenditures around the time of the robbery and the large amount of cash found in his garage – was, as he admitted in his Rule 32 petition, an “all-or-nothing defense.” As the state points out in its response to the petition for review, further illustrating the lack of

STATE v. RING
Decision of the Court

prejudice here, the jury found Ring guilty of murder based on felony murder, not first-degree, premeditated murder. Thus, the trial court did not err in summarily denying relief on this claim.

Disposition

¶34 We grant Ring's petition for review. But for the reasons stated, we deny relief.