

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3787

CARL EZEKIEL WOODS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Maureen Horkan, Judge.

October 30, 2020

LONG, J.

Carl Woods appeals the trial court's denial of his motion for postconviction relief after an evidentiary hearing. He presents three arguments, all relating to jury instructions he claims his trial counsel was ineffective for failing to request. We affirm and write only to address the first argument: whether trial defense counsel should have requested a jury instruction on common law self-defense.

I.

After a 2016 jury trial, Woods was found guilty and convicted of first-degree murder, armed robbery, and armed burglary. The

convictions stemmed from an incident that Woods testified was a drug deal gone bad.

Woods claimed he was the middleman between Rolando Valencia, a drug dealer, and his roommate Xavier Davis. He testified the drug transaction was to take place in Valencia's apartment. When they arrived, Woods introduced Valencia and Davis. Then, inexplicably, after a "split second" Valencia and Davis became engaged in a violent physical encounter. Furniture was knocked over and Woods saw Valencia and Davis with guns out trying to shoot one another. Woods testified this turn of events was unexpected and he was only trying to watch Valencia's television. But because the other two were attempting to shoot one another, Woods thought it best to approach them in an effort to break up the fight. Shots rang out and Woods believed he had been struck by a bullet.¹ Though he had not anticipated a firefight, he had indeed brought along his own firearm. He did not know who shot him. Nevertheless, Woods testified he drew his firearm, approached Valencia who was up against a wall in a corner of the room fending off an attacking Davis, reached around Davis who was standing between them, pressed the barrel of his gun against Valencia and pulled the trigger—in self-defense. Davis and Woods then fled the scene together. Neither called to report the incident. To avoid disclosing his involvement by going to a hospital, Woods stated he had a friend remove the bullet from his leg.²

Woods acknowledged he was engaged in criminal activity—facilitating the purchase and sale of illicit drugs—when he shot Valencia. The State sought to disprove the self-defense claim and put on strong circumstantial evidence that Woods intended to rob and murder Valencia.

The jury found Woods guilty on all three charges. On the murder charge, it found him guilty on theories of premeditation

¹ Woods later testified he was not sure if he had been struck by a bullet.

² Woods showed the jury a mark on his leg and testified it was the location of his injury.

and felony murder. It found Woods committed the murder during the commission of a burglary or robbery. It found Woods guilty of burglary, necessarily finding Woods entered Valencia's apartment or remained therein with criminal intent to commit another offense. It also found Woods guilty of robbery, that he carried a firearm while committing the offense, and that he discharged the firearm during the commission of the robbery causing death or great bodily harm. Woods appealed his convictions and they were affirmed by this Court. He subsequently filed a postconviction motion.

II.

In his postconviction motion, Woods claimed his trial defense counsel provided ineffective assistance by failing to request a jury instruction on common law self-defense as it pertains to a person engaged in an unlawful activity. This instruction can be given when a defendant admits being engaged in unlawful activity but is forced to act in self-defense. *Dorsey v. State*, 74 So. 3d 521, 527 (Fla. 4th DCA 2011) (“[W]here, as here, a defendant was engaged in an unlawful activity or was in a place where he did not have a right to be at the time he was attacked, the common law duty to retreat still applies.”). Florida abrogated the common law duty to retreat in all circumstances except when engaged in unlawful activity. *Id.* at 526 (“Section 776.013 thus altered the law so that now there is ‘no duty to retreat’ under a broad array of circumstances.”). In such a case a defendant is entitled to, upon request, the common law instruction which includes a duty to retreat unless one cannot safely do so. *Id.*

Because Woods admitted to being engaged in unlawful activity, he argued this instruction should have been given. And he argues because it was not given, even if the jury believed his account, an acquittal was extremely unlikely because the instruction given conveys the impression deadly force can only be used when in a lawful position.

The postconviction court denied the claim. It found that because the jury determined the murder was premeditated, Woods' self-defense claim was necessarily rejected and he could not show

prejudice from the error. This appeal followed. We affirm, but on different grounds.

III.

Strickland v. Washington, 466 U.S. 668 (1984), governs ineffective assistance of counsel claims. “The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694.

Even if Woods was entitled to the common law self-defense instruction, a conclusion we need not reach, his claim fails because he cannot demonstrate prejudice. *See Boone v. State*, 45 Fla. L. Weekly D1869 (Fla. 1st DCA Aug. 6, 2020) (denying relief after finding the jury instruction the defendant argued his counsel should have requested would not have changed the outcome of the proceeding); *Martinez v. State*, 655 So. 2d 166, 169 (Fla. 3d DCA 1995) (“The question for our review is whether his counsel's failure to request that instruction was so prejudicial that had the request been made the outcome of the trial would have been different.”). The jury found Woods guilty of robbery and, therefore, found Woods had criminal intent to use force in furtherance of an unlawful taking. There was an express finding that Woods carried a firearm and shot Valencia during the commission of the robbery. That is, the jury found Woods shot Valencia as part of his commission of a robbery and not in self-defense. There is no reasonable probability the jury accepted his account of self-defense but, due to the jury instructions, felt compelled to find him guilty of murder.

AFFIRMED.

LEWIS and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Matthew R. McLain of McLain Law, P.A., Longwood, for Appellant.

Ashley Moody, Attorney General, and Robert “Charlie” Lee, Assistant Attorney General, Tallahassee, for Appellee.