

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D20-3350

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CECIL FORD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Duval County.  
Adrian G. Soud, Judge.

October 19, 2022

TANENBAUM, J.

In this direct criminal appeal, Cecil Ford identifies two instances that he claims constitute trial-court error: refusing his request to instruct the jury on his duress theory of defense, and allowing the State to introduce evidence of his gang affiliation. We affirm as to both these claims. Ford also raises an ineffective assistance of counsel claim, which, though inappropriately raised on direct appeal, we briefly address.

I

On November 9, 2012, Ford, along with two of his acquaintances—Qortez Goshay and Calvin Powell—drove to a trap house (a location where illegal drugs were sold). This was not

Ford's first trip to the trap house; he had been there several days before, when he assisted a friend in delivering wheel rims to a buyer at the house in exchange for \$250 and seven grams of cocaine. According to Goshay's testimony at trial, the return trip was a planned robbery, but Ford contested this fact in his own testimony. Another witness, Cecil Bell, testified that before the return trip, Ford borrowed a gun from him.

Upon their arrival at the trap house, Ford and Goshay approached the home while carrying firearms. Recognizing Ford from his prior trip to the trap house, the murder victim let Ford and Goshay inside. Once inside, Ford, Goshay, the murder victim, and a second shooting victim congregated in the entryway of the home. Ford confronted the murder victim about money he supposedly still owed in connection with the sale of the rims. The murder victim then called Will Foster, the buyer of the rims and a drug dealer operating out of the trap house. The murder victim handed Ford the phone.

According to Goshay's testimony, after this phone call, Ford gave a signal, and they both drew their firearms. An argument erupted, and Ford demanded that both victims turn over the drugs and the money. Ford went with the shooting victim to get the drugs, and when he returned, he asked the murder victim whether there was any more. He then instructed Goshay to shoot the murder victim, which he did, "two to three times" in the "chest and stomach area." The victim fell to the ground injured, but not dead. Ford then proceeded to shoot the same victim several times as he lay on the floor. The other shooting victim ran, and according to Goshay, Ford told him to shoot that victim, too. Goshay shot him several times as he was fleeing.

Ford testified that Goshay pulled his gun without any instruction and started shouting about drugs and money, and then instructed Ford to go with the shooting victim to get the drugs. Ford went with that victim to get the drugs, and the argument continued upon his return. Ford testified it was Goshay who asked the murder victim about any additional drugs and then shot him on his own accord without any involvement from Ford. According to Ford, Goshay then went after the other shooting victim and shot

him as he fled. Goshay then returned to shoot the murder victim dead on the floor.

Bell testified that Ford returned to his house after the shooting and admitted to the murder. Ford did not return the gun he had borrowed. A prison informant also testified. The informant had been incarcerated with Ford on a separate conviction. The informant was wearing a wire provided by the State, and Ford brought up the murder on his own. The State played the recording of the conversation for the jury. In the conversation, Ford described the robbery (a “lick”), explaining that he and Goshay had gone to the trap house to “hit them” for drugs. While there, Ford became upset that Goshay had used his real name, so he had to kill the murder victim. He wanted to kill the other victim for the same reason, but that victim fled. Ford explained that he committed the murder with Bell’s gun and that he cut his hair after the shootings to conceal his identity.

The jury convicted Ford of first-degree murder and attempted first-degree murder, and he was adjudicated guilty of both offenses. The trial court sentenced him to life in prison for the murder conviction and to thirty years for the attempted murder conviction.

## II

### A

Ford first contends that the trial court abused its discretion and committed reversible error by refusing his request for a jury instruction on duress. One of the State’s theories for Ford’s guilt was that the murder occurred during the commission of a robbery in which both Goshay and Ford participated. Ford admits on appeal that a finding that Ford grabbed the drugs during the events at the trap house would support the first-degree murder conviction. According to Ford, he was entitled to the duress instruction as a defense to the underlying robbery—his thinking presumably being, if he could obviate the robbery, he would obviate the basis for a first-degree felony murder conviction. Ford contends there was evidence to support the duress instruction because he had testified that Goshay was waving his gun around and demanding that Ford go get the drugs. Ford contends that this

evidence showed he had no choice but to retrieve the container of drugs and deliver it to Goshay. The trial court determined there was insufficient evidence to support the instruction and denied the request. We agree with the trial court.

The following are the six elements of a duress defense: “(1) the defendant reasonably believed that a danger or emergency existed that he did not intentionally cause; 2) the danger or emergency threatened significant harm to himself or a third person; 3) the threatened harm must have been real, imminent, and impending; 4) the defendant had no reasonable means to avoid the danger or emergency except by committing the crime; 5) the crime must have been committed out of duress to avoid the danger or emergency; and 6) the harm the defendant avoided outweighs the harm caused by committing the crime.” Fla. Std. Jury Instr. (Crim.) 3.6(k); *In re Standard Jury Instructions in Crim. Cases*, 143 So. 3d 893, 895–96 (Fla. 2014).

Upon examination of the record, there was no evidence supporting Ford’s position. His contention that he was apprehensive in the presence of Goshay’s behavior and that he went to get the drugs only in response to that behavior was inconsistent with the other evidence presented at trial, including his own prior admissions. *Cf. Gahley v. State*, 567 So. 2d 456, 459 (Fla. 1st DCA 1990). In contrast to Ford’s stated apprehension, the evidence showed that Ford planned to commit the robbery prior to arriving at the trap house. Ford’s admissions on the wire showed that Ford and Goshay planned to go to the trap house to “hit them” for drugs. Ford and Goshay were specifically going to rob “bricks,” another name for crack cocaine. Goshay’s testimony also indicated that Ford already had planned to commit the robbery to obtain drugs at the trap house. It follows then that there was no danger or emergency impelling Ford to commit the robbery. Even Ford’s own version of events—particularly the supposed danger from Goshay’s waving of the gun—if true, did not demonstrate that Ford had to retrieve the drugs to avoid any danger from Goshay. The trial court did not abuse its discretion in its denial of the duress instruction.

## B

Ford also contends that the trial court reversibly erred when it overruled his objection to testimony regarding Ford's affiliation with the Pakistan Yulee Clique (PYC), a local gang. Ford argues that the State's evidence of gang affiliation had an unfairly prejudicial effect because the jurors likely associated his gang membership with criminal offenses. We need not comment further on this claim because Ford failed to preserve it for appellate review. Ford's counsel objected to a question directed to the State's witness about whether Ford was a member of PYC, but counsel failed to state a specific legal basis for the objection. This was not enough to preserve Ford's contention on appeal that the testimony's risk of unfair prejudice outweighed its probative value. *Cf. Harrell v. State*, 894 So. 2d 935, 940 (Fla. 2005) (explaining that to preserve a legal argument for appeal, the party "must state a legal ground for that objection" and assert on appeal that same legal ground as a basis for reversal); *see also Rodriguez v. State*, 609 So. 2d 493, 499 (Fla. 1992) (stating that "the specific legal ground upon which a claim is based must be raised at trial and a claim different than that raised below will not be heard on appeal").

As an aside, however, we note that even if Ford had properly preserved his objection, there still would not have been reversible error. It was Ford's counsel who first brought up gang membership. Counsel asked the State's witnesses in cross-examination about their affiliation with PYC to impeach their testimony. The State brought out testimony about Ford's gang membership in response to that effort. In addition, in the light of the overwhelming evidence against Ford—including his own statements—the testimony about Ford's gang membership could not have been prejudicial.

## C

Finally, we address Ford's claim on direct appeal that his convictions should be reversed based on what he contends was his trial counsel's ineffectiveness. According to Ford, his counsel failed to meet the constitutional standard of competence when she failed to object to the jury's access to portions of the wire recording in which he discussed his involvement in other, unrelated offenses.

An ineffective assistance of counsel claim may be raised on direct appeal only “in the context of a fundamental error argument.” *Steiger v. State*, 328 So. 3d 926, 928 (Fla. 2021). Fundamental error “must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.” *Brown v. State*, 124 So. 2d 481, 484 (Fla. 1960). In a direct appeal, we review the record to determine whether the *trial court* erred, not counsel. If, then, we are to assess Ford’s ineffective-assistance claim as a claim of fundamental error in the context of *Steiger’s* directive, we must consider whether counsel’s alleged failure to object or otherwise act was so egregious that the trial court should have intervened even without a prompting by an objection. We cannot say here whether counsel was ineffective for failing to ask that the wire recording be redacted to keep the jury from hearing Ford’s mention of his own involvement in unrelated offenses. We can say, though, that even if counsel should have made that request, there was no fundamental error in the trial court’s failure to step in on its own.

AFFIRMED.

B.L. THOMAS and NORDBY, JJ., concur.

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

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Jessica J. Yeary, Public Defender, and Maria Ines Suber, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Michael L. Schaub, Assistant Attorney General, Tallahassee, for Appellee.