

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT

Jose Ramon Nieves Rivera v. State of Florida

No. 4D2024-2528 · No. 4D2024-2528 · Decided August 27, 2025

SUMMARY

The Florida Fourth District Court of Appeal affirmed in part, reversed in part, and remanded an order summarily denying Jose Ramon Nieves Rivera's amended Florida Rule of Criminal Procedure 3.850 motion. The court held that claims alleging ineffective assistance for failing to present a use-of-force expert and witnesses concerning the victims' violent reputations were facially sufficient and required an evidentiary hearing or conclusively refuting records. The court did not separately address the cumulative-error claim because it would be reconsidered on remand.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Klingensmith, J.; Ciklin, J.; Levine, J.
JURISDICTION	Florida District Court of Appeal, Fourth District
DECIDED	August 27, 2025
DOCKET	4D2024-2528
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the summary denial, without an evidentiary hearing, of an amended Florida Rule of Criminal Procedure 3.850 motion alleging ineffective assistance of counsel and cumulative error.
STANDARD OF REVIEW	The court reviewed the summary denial of the Rule 3.850 motion and whether the claims were facially sufficient and conclusively refuted by the record.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Jose Ramon Nieves Rivera v. State of Florida

TOPICS

state post-conviction relief

ineffective assistance

self defense

evidence

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Rivera's claim that counsel was ineffective for failing to present a use-of-force expert was facially sufficient and entitled to an evidentiary hearing.
2. Whether Rivera's claim that counsel was ineffective for failing to present witnesses concerning the victims' reputations for violence and aggression was facially sufficient and entitled to an evidentiary hearing.
3. Whether the summary denial of Rivera's cumulative-error claim should be reversed when multiple ineffective-assistance claims were being remanded for further proceedings.
4. Whether the summary denial of Rivera's claim concerning improper jury instructions should be affirmed.

HOLDINGS

1. The claim was facially sufficient because Rivera identified the proposed expert, specified the substance of the expected testimony, alleged that the expert was available to testify, and alleged prejudice from counsel's failure to present the testimony.
2. The claim was facially sufficient because Rivera identified the witnesses, described their proposed testimony, alleged their availability, and alleged prejudice to his self-defense theory.
3. The summary denial of claims one and three was improper because the trial record did not conclusively refute Rivera's allegations. The claims had to be remanded for either an evidentiary hearing or attachment of records conclusively refuting them.
4. The summary denial of the cumulative-error claim was reversed for consideration by the trial court on remand.

KEY QUOTATIONS

“[A] claim of ineffectiveness in failing to present important exculpatory evidence cannot be resolved on the basis of the mere existence of conflicting evidence in the record. Rather, the record evidence must conclusively rebut the claim if the claim is to be resolved without a hearing.” (at 3)

“To state a facially sufficient ineffective assistance claim based on counsel’s failure to call a witness, the defendant must (1) identify the witness, (2) specify the content of his or her testimony, (3) allege that he or she was available to testify at trial, and (4) sufficiently allege that the failure to call the witness to testify resulted in prejudice.” (at 2)

FACTUAL BACKGROUND

The criminal charges arose from a late-night argument during which Rivera shot at three victims, killing one. Rivera claimed self-defense at trial and was convicted of first-degree murder with a firearm, attempted first-degree murder with a firearm, aggravated battery, and discharging a firearm in public or on a residential

property. In his post-conviction motion, Rivera alleged that trial counsel failed to present a use-of-force expert and witnesses concerning the victims' reputations for violence and aggression.

PROCEDURAL HISTORY

Rivera was convicted of first-degree murder with a firearm, attempted first-degree murder with a firearm, aggravated battery, and discharging a firearm in public or on a residential property. The Fourth District affirmed his direct appeal. Rivera then filed an amended Rule 3.850 motion alleging four ineffective-assistance claims and cumulative error; the circuit court denied all claims without an evidentiary hearing. On appeal, the Fourth District affirmed the denial of claim two, reversed the denial of claims one, three, and five, and remanded for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct further proceedings on claims one and three, including either an evidentiary hearing or attachment of records conclusively refuting the claims. The trial court must also reconsider claim five, the cumulative-error claim. The denial of claim two is affirmed; claim four was not appealed.

CASES CITED

- Nieves Rivera v. State, 300 So. 3d 757 (Fla. 4th DCA 2020)
- McCullough v. State, 247 So. 3d 6, 7 (Fla. 4th DCA 2018)
- Antoine v. State, 138 So. 3d 1064, 1074 (Fla. 4th DCA 2014)
- Mohler v. State, 165 So. 3d 773, 775 (Fla. 2d DCA 2015)
- Perez v. State, 128 So. 3d 223, 225-26 (Fla. 2d DCA 2013)
- Jacobs v. State, 880 So. 2d 548, 555 (Fla. 2004)
- Terrell v. State, 9 So. 3d 1284, 1289 (Fla. 4th DCA 2009)
- Joseph v. State, 304 So. 3d 17, 19-20 (Fla. 4th DCA 2020)
- Lucas v. State, 147 So. 3d 611, 612 (Fla. 4th DCA 2014)
- Robledo v. State, 359 So. 3d 850, 853 (Fla. 2d DCA 2023)
- Davidson v. State, 278 So. 3d 741, 744 (Fla. 5th DCA 2019)