

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Jonathan E. Rivera-Enriquez v. State of Florida

No. 3D24-2154 (Fla. 3d DCA May 6, 2026) · No. No. 3D24-2154 · Decided May 6, 2026

SUMMARY

The Florida Third District Court of Appeal affirmed the judgment in Jonathan E. Rivera-Enriquez's criminal appeal. The court addressed permissive lesser-included-offense instructions, amendment of a charging information, reliability of out-of-court statements, and abuse-of-discretion review.

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed May 6, 2026. Not final until disposition of timely filed motion for rehearing. _____ No. 3D24-2154 Lower Tribunal No. 23-CF-135-A-P _____ Jonathan E. Rivera-Enriquez, Appellant, vs. State of Florida, Appellee. An Appeal from the Circuit Court for Monroe County, James W. Morgan, III, and Luis Garcia, Judges.

The Law Office of Robert David Malove, P.A., and Hani Demetrious (Fort Lauderdale), for appellant. James Uthmeier, Attorney General, and Kayla Heather McNab, Assistant Attorney General, for appellee. Before FERNANDEZ, LOGUE and BOKOR, JJ. PER CURIAM. Affirmed. See *State v. Espinosa*, 686 So. 2d 1345, 1347 (Fla. 1996) (“Under Florida Rule of Criminal Procedure 3.510(b) the giving of an instruction on a lesser offense is a matter of discretion for the trial judge, who must determine whether the charging document and evidence at trial support the giving of the instruction on the lesser offense as a permissive lesser- included offense....

An instruction on a permissive lesser included offense should be precluded only where there is a total lack of evidence of the lesser offense.” (quotations omitted)); *Thach v. State*, 342 So. 3d 620, 623–24 (Fla. 2022) (“The state may substantively amend an information midtrial unless it prejudices the defendant’s substantial rights.... Prejudice, in this context, depends not on any one factor, but on the totality of the circumstances at the time of the amendment.” (citation modified)); *Perez v. State*, 536 So.

2d 206, 210 (Fla. 1988) (“Absent a showing of an abuse of discretion... the trial judge’s determination that the out-of-court statements bear sufficient indicia of reliability will be upheld.”); *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980) (“Discretion... is abused when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that

discretion is abused only where no reasonable man would take the view adopted by the trial court.” (quotation omitted)).