

FIRST DISTRICT COURT OF APPEAL OF FLORIDA

Bing v. State of Florida

No. 1D2025-2592 · No. No. 1D2025-2592 · Decided May 13, 2026

SUMMARY

The First District Court of Appeal reversed the summary denial of Darren Bing’s successive motion for postconviction relief based on a trial witness’s notarized recantation. The court held that the recantation was not inherently incredible or obviously immaterial and remanded for either record evidence conclusively refuting the claim or an evidentiary hearing.

CASE DETAILS

COURT	First District Court of Appeal of Florida
WRITING FOR THE COURT	NEFF, J.; ROBERTS, J.; M.K. THOMAS, J.
JURISDICTION	First District Court of Appeal of Florida
DECIDED	May 13, 2026
DOCKET	No. 1D2025-2592
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the summary denial, without an evidentiary hearing, of a successive Florida Rule of Criminal Procedure 3.850 motion alleging newly discovered evidence in the form of a trial witness's recantation affidavit.
STANDARD OF REVIEW	De novo review applies to a summary denial of a Florida Rule of Criminal Procedure 3.850 motion. Summary denial is proper only when the motion is legally insufficient or its allegations are conclusively refuted by the record.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Darren Bing v. State of Florida

TOPICS

- state post-conviction relief
- successive petitions
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure
- evidence

QUESTIONS PRESENTED

1. Whether the trial court properly summarily denied Bing's successive Rule 3.850 motion alleging newly discovered evidence without conducting an evidentiary hearing.
2. Whether the record conclusively demonstrated that Ritter's recantation was inherently incredible or obviously immaterial to the verdict.
3. Whether excerpts from the State's closing argument could conclusively refute the newly discovered-evidence claim.

HOLDINGS

1. The trial court erred by summarily denying Bing's motion because the motion adequately alleged newly discovered evidence and the record did not conclusively refute the claim.
2. Once a defendant properly alleges newly discovered evidence, an evidentiary hearing is ordinarily required to evaluate the new evidence and the trial evidence, unless the affidavit is inherently incredible or obviously immaterial to the verdict.
3. Excerpts from the State's closing argument could not demonstrate that the alleged newly discovered evidence was obviously immaterial to the verdict because closing argument is advocacy, not evidence.

KEY QUOTATIONS

"However, closing argument is not evidence; it is advocacy. A party's characterization of the evidence is not the evidence itself." (at 2)

"These closing argument excerpts therefore cannot demonstrate that the alleged newly discovered evidence is obviously immaterial to the verdict." (at 2)

"We therefore reverse the order of summary denial. On remand, the trial court shall either attach record evidence conclusively demonstrating the recantation to be obviously immaterial to the verdict or conduct an evidentiary hearing at which it may properly assess the credibility of Ritter's recantation and, if credited, determine whether the recanted testimony, weighed against all evidence presented at trial, would probably produce an acquittal on retrial." (at 3)

FACTUAL BACKGROUND

At Bing's trial, Lamont Ritter testified that Bing confessed to him in jail that Bing had been paid to commit William Redd's murder. Ritter later executed a notarized affidavit recanting that testimony, and Bing alleged that he learned of the recantation on June 5, 2025. The trial court relied in part on excerpts from another witness's direct examination, Ritter's trial testimony, and the State's closing arguments in denying relief without a hearing. The appellate court noted that Ritter's testimony was the only direct evidence purporting to recount Bing's own words acknowledging culpability.

PROCEDURAL HISTORY

Bing filed a successive Rule 3.850 motion on July 1, 2025, alleging that he had newly discovered a notarized affidavit in which trial witness Lamont Ritter recanted testimony that Bing had confessed to participating in the

murder. The Circuit Court for Alachua County denied the motion without an evidentiary hearing, concluding that Ritter's testimony was not a substantial part of the State's case and that overwhelming evidence supported guilt. The First District Court of Appeal reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must either attach record evidence conclusively demonstrating that the recantation is obviously immaterial to the verdict or conduct an evidentiary hearing. At the hearing, the court may assess the credibility of Ritter's recantation and, if it is credited, determine whether the recanted testimony, weighed against all evidence presented at trial, would probably produce an acquittal on retrial.

CASES CITED

- Morris v. State, 275 So. 3d 230, 234 (Fla. 1st DCA 2019)
- McLin v. State, 827 So. 2d 948, 954-55 (Fla. 2002)
- Taylor v. State, 3 So. 3d 986, 999 (Fla. 2009)
- Taylor v. State, 260 So. 3d 151, 158-59 (Fla. 2018)
- John v. State, 98 So. 3d 1257, 1259 (Fla. 3d DCA 2012)
- Davis v. State, 26 So. 3d 519, 526 (Fla. 2009)
- Braddy v. State, 111 So. 3d 810, 843 (Fla. 2012)
- Anderson v. State, 627 So. 2d 1170, 1171 (Fla. 1993)
- Lazo v. State, 419 So. 3d 1097, 1100 (Fla. 4th DCA 2025)
- Robinson v. State, 736 So. 2d 93, 93 (Fla. 4th DCA 1999)
- Jones v. State, 709 So. 2d 512, 521-22 (Fla. 1998)

OPINION

Bing v. State of Florida

PER CURIAM.

FIRST DISTRICT COURT OF APPEAL

STATE OF FLORIDA

_____ No. 1D2025-2592 _____

DARREN BING,

Appellant, v.

STATE OF FLORIDA,

Appellee. _____ On appeal from the Circuit Court for Alachua County. James Matthew Colaw, Judge. May 13, 2026 NEFF, J. On July 1, 2025, Darren Bing filed a successive motion for postconviction relief alleging newly discovered evidence. The alleged

newly discovered evidence is a notarized recantation affidavit from trial witness Lamont Ritter. Ritter testified at trial that Bing confessed to him in jail that Bing had been paid to commit the murder of William Redd. In the notarized affidavit, Ritter recants that trial testimony. According to Bing's motion, he became aware of Ritter's recantation on June 5, 2025. Thus, the motion filed July 1, 2025, was timely under Rule 3.850(b)(1), Fla. R. Crim. P. The trial court denied the motion without an evidentiary hearing, finding that Ritter's testimony was not a substantial part of the State's case and that even if Ritter did not testify, there was still overwhelming evidence of Bing's guilt. "The standard of review of a summary denial of a rule 3.850 motion is de novo." *Morris v. State*, 275 So. 3d 230, 234 (Fla. 1st DCA 2019) (quoting *McLin v. State*, 827 So. 2d 948, 954 (Fla. 2002)). A summary denial of a Rule 3.850 motion is upheld only if the motion is legally insufficient or its allegations are conclusively refuted by the record. *Taylor v. State*, 3 So. 3d 986, 999 (Fla. 2009) (citing *McLin*, 827 So. 2d at 954). All factual allegations in a Rule 3.850 motion not refuted by the record are accepted as true. *Taylor v. State*, 260 So. 3d 151, 158-59 (Fla. 2018). "Once it has been determined that the defendant properly alleged the existence of newly-discovered evidence, an evidentiary hearing is ordinarily required so the trial court may properly weigh and evaluate both the newly-discovered evidence and the evidence which was introduced at the trial." *John v. State*, 98 So. 3d 1257, 1259 (Fla. 3d DCA 2012). A hearing may be dispensed with only if the affidavit is inherently incredible or obviously immaterial to the verdict. *Davis v. State*, 26 So. 3d 519, 526 (Fla. 2009). The trial court's order attached three categories of material: portions of Demaria Watts's direct examination, Lamont Ritter's trial testimony, and extensive excerpts from the State's closing arguments. However, closing argument is not evidence; it is advocacy. A party's characterization of the evidence is not the evidence itself. *Braddy v. State*, 111 So. 3d 810, 843 (Fla. 2012) (noting the "trial court properly instructed the jury that statements made during closing argument did not constitute evidence"); Fla. Std. Jury Instr. (Crim.) 2.7 ("Please remember that what the attorneys say is not evidence or your instruction on the law. However, do listen closely to their arguments. They are intended to aid you in understanding the case."). Generally, closing argument is not among the files and records that may conclusively refute this type of postconviction claim. See *Anderson v. State*, 627 So. 2d 1170, 1171 (Fla. 1993) ("This Court has stated many times that under rule 3.850, a movant is entitled to an evidentiary hearing unless the motion, files, and records conclusively show that the movant is not entitled to relief."). These closing argument excerpts therefore cannot demonstrate that the alleged newly discovered evidence is obviously immaterial to the verdict. 2 The remaining attachments fare no better. The Watts attachment consists solely of direct examination, omitting the cross-examination necessary to assess whether his testimony was sufficiently unchallenged to render the recantation obviously immaterial to the verdict. Although the Ritter attachment includes cross-examination, it includes statements in which Ritter acknowledged he could not remember specifically what Bing told him and could not distinguish what Bing said from what he learned from other sources—the very uncertainty that makes a hearing necessary. Neither is the recantation made by Ritter

inherently incredible on its face. See *Lazo v. State*, 419 So. 3d 1097, 1100 (Fla. 4th DCA 2025) (“[A]n affidavit is deemed inherently incredible when its content is so implausible that the affidavit cannot be believed, and further examination is not needed.”). Ritter’s affidavit, which is notarized and addressed to the presiding judge, is consistent with his own cross-examination testimony that Bing was paranoid and did not trust other inmates. Moreover, Ritter’s testimony was the only direct evidence of guilt—the only evidence purporting to be Bing’s own words acknowledging culpability. The trial court’s determination that this testimony was not a substantial part of the State’s case is precisely the kind of credibility and materiality weighing that Florida law ordinarily reserves for an evidentiary hearing. *McLin v. State*, 827 So. 2d 948, 955 (Fla. 2002); see also *Robinson v. State*, 736 So. 2d 93, 93 (Fla. 4th DCA 1999) (“After conducting the same review, we cannot conclude that [the witness]’s affidavit was inherently incredible or that his trial testimony was obviously immaterial to the verdict, so as to allow the trial court to reject his recantation without holding an evidentiary hearing.”). We therefore reverse the order of summary denial. On remand, the trial court shall either attach record evidence conclusively demonstrating the recantation to be obviously immaterial to the verdict or conduct an evidentiary hearing at which it may properly assess the credibility of Ritter’s recantation and, if credited, determine whether the recanted testimony, weighed against all evidence presented at trial, would probably produce an acquittal on retrial. *Jones v. State*, 709 So. 2d 512, 521– 22 (Fla. 1998). 3 REVERSED and REMANDED. ROBERTS and M.K. THOMAS, JJ., concur. _____ Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331. _____ Darren Bing, pro se, Appellant. James Uthmeier, Attorney General, and Anne Catherine Conley, Assistant Attorney General, Tallahassee, for Appellee. 4