

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)).