

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

TERRY LEE COLEY,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

CASE NO. 2D02-214

Opinion filed May 10, 2002.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court
for Hillsborough County;
Jack Espinosa Jr., Judge.

DAVIS, Judge.

Terry Lee Coley seeks review of the summary denial of his Florida Rule of Criminal Procedure 3.850 motion. Three of the four issues raised by Coley were correctly denied by the trial court, and we affirm without comment the portion of the order that addresses these claims. Coley's fourth issue is a facially sufficient claim of ineffective assistance of trial counsel that is not conclusively refuted by the attachments

to the trial court's order. On this issue we reverse and remand the case to the trial court for reconsideration.

Coley was convicted of aggravated battery. In his motion Coley contended that his trial counsel was ineffective for failing to enter into evidence a tape of a 911 call made by Coley. Coley asserted that the tape would show that the assault for which he was convicted was an act of self-defense, because the tape reflected that just before the assault a woman was about to hit him with a baseball bat.

The trial court denied this claim on the grounds that several witnesses testified about the attempted assault reflected on the tape and admission of the tape would have been cumulative. However, the trial court did not attach portions of the trial transcript that contained these witnesses' testimony, and this court is unable to adequately review this claim. Furthermore, Coley's demeanor and statements on the tape may have provided information to the jury not provided by the other witnesses. The trial court is directed to review this claim, and if the claim cannot be conclusively refuted by the record, the trial court must conduct an evidentiary hearing to determine the merits of the issue.

Affirmed in part, reversed in part, and remanded.

FULMER and GREEN, JJ., Concur.

