

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

MARSHALL LANDEVERDE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-4016

[January 16, 2008]

PER CURIAM.

Marshall Landeverde seeks review of an order denying his motion for post-conviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Landeverde was convicted following a jury trial of first degree felony murder and two counts of burglary of a dwelling. His motion is based on “newly discovered evidence” in the form of a codefendant’s “statement.” Because the statement is not inherently incredible as a matter of law and would have been material to Landeverde’s “independent act” defense, an evidentiary hearing is required to determine whether it in fact constitutes newly discovered evidence. *Barrow v. State*, 940 So.2d 1235 (Fla. 5th DCA 2006); *Brantley v. State*, 912 So.2d 342 (Fla. 3d DCA 2005).

GROSS, TAYLOR and MAY, JJ., concur.

* * *

Appeal of order denying rule 3.850 motion from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Larry Schack, Judge; L.T. Case No. 431998CF000315B.

Marshall Landeverde, Crawfordville, pro se.

Bill McCollum, Attorney General, Tallahassee, and Joseph A. Tringali, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing