

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

DANIEL A. TAYLOR,

Appellant,

v.

Case No. 5D18-3367

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed November 8, 2019

3.850 Appeal from the Circuit
Court for Brevard County,
Kelly J. Mckibben, Judge.

Daniel A. Taylor, Bushnell, pro se.

Ashley Moody, Attorney General,
Tallahassee, and Bonnie Jean Parrish,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED. See Hough v. State, 679 So. 2d 1300 (Fla. 5th DCA 1996).

WALLIS and EDWARDS, JJ., concur.
EISNAUGLE, J., dissents with opinion.

I would reverse the trial court's summary denial of Appellant's newly discovered evidence claim. In similar situations, we have held that claims of newly discovered evidence "generally require an evidentiary hearing to allow the court to test the credibility of the newly discovered evidence 'unless the affidavit is inherently incredible or obviously immaterial to the verdict and the sentence.'" *Grays v. State*, 246 So. 3d 520, 521 (Fla. 5th DCA 2018) (quoting *Nordelo v. State*, 93 So. 3d 178, 185 (Fla. 2012)).

Appellant was convicted of carjacking with a firearm and was sentenced in March 1998 to life in prison as a prison releasee reoffender. The State's evidence at trial identifying Appellant as the perpetrator consisted solely of the testimony of the two victims.

Appellant's motion alleging newly discovered evidence below included an affidavit from a cousin of one victim. The affiant swore under oath that he committed the carjacking and that his cousin (one of the victims) admitted to the affiant that she identified Appellant as the perpetrator in order to protect her family. Thus, the affiant not only confessed to the crime and alleged that Appellant was not involved, but also provided grounds for impeaching one of the two victims of the carjacking.¹

Notably, our record indicates that rims from the stolen car were discovered in the possession of a person with the affiant's last name. Based on Appellant's allegations and the affidavit, I conclude that this case is distinguishable from *Hough v. State*, 679 So. 2d 1300 (Fla. 5th DCA 1996), and that *Grays v. State*, 246 So. 3d 520 (Fla. 5th DCA 2018)

¹ As to the second victim, our record indicates that he did not identify Appellant until months later after seeing Appellant in court on other matters.

applies. I would therefore reverse and remand for an evidentiary hearing or for the trial court to attach records that conclusively refute Appellant's claim.