

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

JESSIE J. BORDERS,

Appellant,

v.

Case No. 5D21-921
LT Case No. 1994-CF-2069-A-O

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 3, 2021

3.850 Appeal from the Circuit Court
for Orange County,
Elaine A. Barbour, Judge.

Jessie J. Borders, Bushnell, pro se.

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

COHEN, J.

Jessie Borders appeals the lower court's order denying his motion for
postconviction relief, filed pursuant to Florida Rule of Criminal Procedure

3.850, following an evidentiary hearing. He argues that the recantation of a co-defendant's trial testimony constitutes newly discovered evidence warranting a new trial. For the reasons discussed below, we affirm.

In 1994, Borders was tried and convicted of five counts: first-degree murder, attempted first-degree murder, robbery with a firearm, armed burglary, and armed kidnapping. His convictions and sentences were per curiam affirmed on appeal. See Borders v. State, 657 So. 2d 1180 (Fla. 5th DCA 1995). Since then, Borders has brought numerous challenges to his convictions; this is his sixth 3.850 motion.¹

All but one of his challenges have been unsuccessful below and affirmed on appeal.² See Borders v. State, 677 So. 2d 850 (Fla. 5th DCA 1996) (affirming denial of first 3.850 motion); Borders v. State, 883 So. 2d 813 (Fla. 5th DCA 2004) (second); Borders v. State, 902 So. 2d 814 (Fla. 5th DCA 2005), rev. dismissed, 907 So. 2d 1170 (Fla. 2005) (third); Borders v. State, 926 So. 2d 1291 (Fla. 5th DCA 2006) (fourth); Borders v. State,

¹ Borders also brought a habeas petition, which was denied. See Borders v. State, Case No. 5D96-2204.

² The only successful challenge concerned a prior appeal stemming from the lower court's summary denial of the instant motion. This Court reversed and remanded for an evidentiary hearing. See Borders v. State, 309 So. 3d 314 (Fla. 5th DCA 2020). Subsequent to the hearing, the lower court again denied the motion, which is the matter currently on appeal.

Case No. 5D19-2851 (fifth; dismissed for failure to prosecute). The fifth motion, which also alleged newly discovered evidence of recantation, was denied when the named witness—co-defendant Philip Jenkins—failed to appear at the evidentiary hearing.

Borders' instant 3.850 motion again sought relief based upon newly discovered evidence of recantation, this time by his other co-defendant, Anthony Richardson. According to Richardson's sworn affidavit, he only testified against Borders because law enforcement coerced him to do so. Borders' motion also asserted that Jenkins' failure to testify at the earlier evidentiary hearing effectively discredited his trial testimony and that both co-defendants testified pursuant to negotiated pleas. Finally, Borders contended that the discreditation of both co-defendants' testimonies would prompt acquittal.

After the evidentiary hearing, where several witnesses testified, including Richardson and Borders, the lower court denied Borders' motion and entered a detailed order determining that:

This Court does not find Richardson to be credible, given the inconsistencies between his evidentiary hearing testimony and trial testimony, as well as other co-defendants' testimonies at trial. While his trial testimony indicated there was a robbery in which Defendant was involved and shot at [the victim], his testimony at the evidentiary hearing indicated there

was no plan to rob [the victim] and the Defendant was not involved at all.

This Court also finds the Defendant's claim that Mr. Jenkins's trial testimony is discredited because he failed to testify at the evidentiary hearings is without merit. In addition, this Court does not find credible the Defendant's testimony that he did not admit to [the investigator with the Florida Commission Offender Review] that he was involved in the crime by providing the guns. His rebuttal testimony did not satisfactorily explain why her notes would reflect such an admission. This Court is not convinced that Richardson's recantation testimony is true and the recantation testimony would not result in an acquittal upon retrial. Therefore, Defendant is not entitled to a new trial.

This appeal followed.

"The standard for reviewing recantation of testimony as grounds for a new trial is to deny relief unless the trial court is satisfied the recantation testimony is true." Montgomery v. State, 826 So. 2d 531, 532 (Fla. 5th DCA 2002) (citing State v. Spaziano, 692 So. 2d 174, 177 (Fla. 1997); Armstrong v. State, 642 So. 2d 730, 735 (Fla. 1994)). The outcome of this case hinges entirely upon the credibility of the witnesses, and as the first-hand observer of their testimony, the lower court is in the best position to evaluate credibility and render this determination. As an appellate court, we are neither better suited to make that judgment nor in a position to second-guess it. See Blake v. State, 180 So. 3d 89, 123 (Fla. 2014) ("Because the trial judge 'has a

superior vantage point to see and hear the witnesses presenting the conflicting testimony,' this Court is 'highly deferential' to the postconviction court's 'determination relating to the credibility of a recantation.'" (quoting Spann v. State, 91 So. 3d 812, 816 (Fla. 2012))).

Furthermore, it is well-settled that recantation testimony is "exceedingly unreliable." Id.; see also McLin v. State, 159 So. 3d 870, 873 (Fla. 3d DCA 2015) ("[R]ecanting testimony is exceedingly unreliable, and it is the duty of the court to deny a new trial where it is not satisfied that such testimony is true. Especially is this true where the recantation involves a confession of perjury." (citations omitted)). Here, Richardson's recantation renders his trial testimony perjured. Moreover, the postconviction court's order indicates that additional considerations informed the court's determination. When evaluating the reliability of recantation testimony, lower courts examine myriad factors, including—but not limited to—the witness's demeanor, quality of recall, motive and benefit, delay in coming forward and the length of the delay, internal and external testimonial inconsistencies, and former statements to law enforcement. See Sweet v. State, 248 So. 3d 1060, 1066–68 (Fla. 2018); see also Archer v. State, 934 So. 2d 1187, 1196–99 (Fla. 2006). The lower court's perceptions are central to this nuanced inquiry and warrant substantial deference. See Archer, 934 So. 2d at 1199.

Thus, our role is to review the record and determine whether there is competent, substantial evidence to support the lower court's findings on questions of fact and the credibility of witnesses. See Spann, 91 So. 3d at 825. Having done so, we conclude that the record sufficiently supports the postconviction court's determination that Richardson's recantation was not credible and, therefore, we must affirm the denial of Borders' motion for postconviction relief.

AFFIRMED.

EISNAUGLE AND WOZNIAK, JJ., concur.