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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

DAVID R. KEEN, Appellant, v. STATE OF FLORIDA, Appellee.	)	Case No. 2D02-5510

Opinion filed July 25, 2003.

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

KELLY, Judge.

David R. Keen appeals the summary denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm without discussion as to six of Keen's claims, but we reverse and remand on his remaining claim.

In his motion, Keen alleged that the State's main witness recanted his testimony inculpating Keen for first-degree murder. The trial court denied this claim because, although Keen attached a letter from the witness to his motion, he did not

provide a notarized statement from the recanting witness. However, Keen is not required to provide such a statement; he must only provide a brief statement of facts in support of the motion. See Fla. R. Crim. P. 3.850; Smith v. State, 837 So. 2d 1185 (Fla. 4th DCA 2003). Keen claimed that the recanting witness originally testified that Keen admitted to planning the murder. He further alleged that absent this testimony the State would have been unable to prove the premeditated intent required for first-degree murder. These allegations are legally sufficient to state a prima facie claim of newly discovered evidence based upon the recantation of trial testimony. See McLin v. State, 827 So. 2d 948 (Fla. 2002); Padron v. State, 827 So. 2d 393 (Fla. 2d DCA 2002); Smith, 837 So. 2d at 1186. Because the allegations are not refuted by the record, we reverse and remand for the trial court to either hold an evidentiary hearing or attach portions of the record which conclusively refute Keen's claim.

Affirmed in part, reversed in part, and remanded.

DAVIS and VILLANTI, JJ., Concur.