

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM A.D., 2004

GERALD TAYLOR

Appellant,

vs.

THE STATE OF FLORIDA

Appellee.

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\*\* CASE NO. 3D03-2102

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\*\* LOWER

TRIBUNAL NO. 93-15569

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Opinion filed July 7, 2004.

An Appeal under Florida Rule of Appellate Procedure  
9.141(b) (2) from the Circuit Court for Miami-Dade County, Rosa  
Rodriguez, Judge.

Gerald Taylor, in proper person.

Charles J. Crist, Jr., Attorney General, and Meredith L.  
Balo, Assistant Attorney General, for appellee.

Before, COPE, GERSTEN and FLETCHER, JJ.

PER CURIAM.

This is an appeal from an order denying a Rule 3.850 motion  
filed by defendant-appellant Gerald Taylor, asserting newly

discovered evidence. Under the circumstances of this case, the denial was proper.

Defendant's newly discovered evidence claim is based on an affidavit provided by an alleged witness to the crime, a fellow inmate. The fellow inmate offered an affidavit which states that he saw the shooting which defendant was convicted. The affidavit states that both shooters wore ski masks and that the build of the shooters did not resemble the build of the defendant. The affidavit concludes that because the description of the shooters did not match the build of the defendant, the defendant could not have committed the crime.

The state properly argues, and our review of the transcript reveals, that two eyewitnesses to the crime identified defendant as one of the shooters. Both eyewitnesses had known defendant for years. Further, there was no mention by these eyewitnesses--or any suggestion by the prosecutor, the defense, or anyone at the trial--that the shooters were wearing ski masks or masks of any type. Thus, the trial court could properly reject the affidavit, for it is "inherently incredible." See McLin v. State, 827 So. 2d 948, 955 (Fla. 2002); Evans v. State, 843 So. 2d 938 (Fla. 3d DCA 2003).

Affirmed.