

IN THE SUPREME COURT OF FLORIDA
CASE NO. 83,829

OMAR BLANCO,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

FILED

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ON APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, STATE OF FLORIDA

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

This proceeding involves an appeal of the circuit court's denial, following an evidentiary hearing, of **Blanco's** second motion for post-conviction relief brought pursuant to Fla. R. Crim. P. 3.850. This appeal is being presented simultaneously with the direct appeal in Case No. 85,118, in which **Blanco** appeals reimposition of the death penalty following the vacation of his death sentence by the United States Court of Appeals for the Eleventh Circuit. See **Blanco v. Singletary**, 943 F.2d 1477 (11th Cir. 1991).

As only one Record on Appeal was prepared for both the direct appeal and the instant appeal, references to the record on appeal in this case will be marked by the letter "R" followed by the appropriate page number. References to the original trial transcript that were before this Court in **Blanco v. State**, 452 So.2d 520 (Fla. 1984) (case nos. 62371 and **62598**), were made a part of the evidentiary hearing below and will be referred to by the letters "T" followed by the appropriate page number.

STATEMENT OF THE CASE;

Appellee accepts Appellant's Statement of the Case as found on pages v and vi of the Initial Brief.

STATEMENT OF THE FACTS

Blanco presented two (2) witnesses in support his claim of alleged newly discovered evidence at the evidentiary hearing below.

Carmen Gongora testified at the evidentiary hearing that on the night of the crime for which **Blanco** was arrested, she saw her husband, Rey Alonso, come home at about **11:00** p.m. with "**Kiki**" and Fidelito (R 525). She explained that "**Kiki**" was Enrique Gonzales (R 525). She stated that she saw Enrique take off a pullover full of blood and that he threw it in the garbage (R 526). She described Enrique Gonzales as having a skinny stomach, and pimples, or holes in his face (R 529). She never saw Enrique with a big stomach (R 529). At the time of the murder Ms. Gongora testified that she was living with her husband Rey and that **Blanco** lived nearby (R 523-524). She also testified that she did not see **Blanco** that night (R 529). Ms. Gongora stated that she currently lives in a boarding home for the mentally impaired and that she has mental problems and is easily confused (R 527). She also testified that she had told a detective, Walter **LaGraves**, about the bloody shirt (R 535).

On cross-examination, **Ms.** Gongora stated that she did not remember the day or the year that she saw the bloody shirt and that **Roberto** Alonso was not living with her at the time that she saw it (R 538). She testified that Roberto Alonso came to live with her and her husband Rey Alonso, about a year after she saw this shirt (R 540-541). Ms. Gongora testified that she had seen **Blanco** with a gun that he carried in his purse (R **538-539**), but that she had never seen him with blood on his shirt (R 541). She never washed **Blanco's** clothes and she never had an affair with **Blanco** (R 540).

She testified that at the time of the murder, **Blanco**, Fidel Romero, Rey Alonso and Enrique Gonzales were committing many robberies and that after the robberies they would come back to the house she shared with Rey (R 542). Recalling the night of the murder, Ms. Gongora testified that she thought she lived in Hollywood, but that she didn't know and that it was in 1983 (R 542). Ms. Gongora also testified that she was threatened by a detective two (2) or three (3) times that she would be arrested and go to jail if she **didn't** come to court and testify for **Blanco** (R 542-543, 545). This made her nervous (R 545). She identified the detective who threatened her as Edward **Maus** (R 544). **Maus** worked on behalf of **Blanco** (R 589). Upon examination, **Maus** admitted that he went to see Ms. Gongora on two (2) occasions (R 589-590).

Prior to her testimony, Ms. Gongora gave a sworn statement to Walter **LaGraves**, Chief Investigator for the Broward State Attorney's Office, on February 18, 1993, as well as a deposition to defense counsel on July 23, 1993. Both were attached to the **State's** Response to Defendant's Memorandum Following Evidentiary Hearing on Alleged Newly Discovered Evidence (R 3064-3099) as exhibits. In her sworn statement, Ms. Gongora stated that at the time of the murder, Roberto Alonso was not living with her and her husband Rey (R 3297). She also stated that on the night of the murder Enrique Gonzales and Fidel Romero returned to the house and that both men had blood on their shirts (R 3299-3330). In her deposition, Ms. Gongora stated that her husband Rey told her on the night **Blanco** was arrested that **Blanco** had killed a millionaire (R 3325). She also stated in her deposition that on the night of the murder, **Blanco** and Enrique Gonzales returned to the house and that

both men had blood on their clothes (R 3326-3327, 3330). She had seen **Blanco** with blood on his clothes on two (2) occasions (R 3327). In her February **23rd**, 1994 affidavit, offered by the defense **as a** proffered exhibit at the evidentiary hearing, Ms. Gongora stated that Enrique Gonzales returned to her house with a bloody shirt in his hand, and that he himself threw the shirt away.

Blanco also presented the testimony of Roberto Alonso in support of his claim of newly discovered evidence.

Alonso, a convicted murderer, testified that at the time of the murder, he lived with Carmen Gongora and Rey Alonso at their house in Hollywood (R 554). Although the murder occurred on January 14, 1982, Roberto Alonso previously stated that he had been released from a federal prison in Atlanta on the 2nd of January or February in 1982 (R 553, 567-572). Alonso testified that on the day of the murder he had been out for a bicycle ride with **Blanco** and that upon their return to Rey **Alonso's** house, both he and **Blanco** gave their sweaty clothes to Carmen Gongora to wash (R 557-558). According to Alonso, **Blanco's** wallet was in his pants and Carmen took money from the wallet and gave it to Rey Alonso, unbeknownst to **Blanco** (R 558). That night while Roberto Alonso was at the home of Rey Alonso, Rey Alonso, Enrique Gonzales and Fidel Romero returned to the house at two-thirty A.M. **(2:30)**. (R 581). Alonso testified that Enrique Gonzales had blood on his shirt and that Rey Alonso threw the shirt away in the garbage (R 557). According to Roberto Alonso, Enrique Gonzales told Rey Alonso that he didn't want to shoot the victim but **that he did it only after** the victim came after him and that the gun went off a lot of times (R 555-556).

On cross examination, Roberto Alonso admitted to using two (2) aliases and to committing prior crimes including arson, robbery, armed burglary, and grand theft (R 562-565). At the time of the evidentiary hearing he was in prison for murdering someone with a machete (R 563). He also admitted to seeing **Blanco** in prison in 1990 and had seen him previously in 1989 (R 560, 581).

The State presented several witnesses to refute **Blanco's** claim of newly discovered evidence.

Eduardo Chong, an inmate in the Broward County Jail, was the State's first witness. At the time of the evidentiary hearing Chong had been incarcerated for two (2) years and had met **Blanco** on the fifth floor of the jail (R 604). Chong was in a cell with another inmate and **Blanco** was in the cell below which he shared with Rigaberto Delgado (R 605). Chong later shared the same cell with **Blanco** at the Broward County Jail for approximately one and a half (1.5) to two (2) months (R 614). His total time in contact with **Blanco** was almost five (5) months (R 605). Chong characterized his relationship with **Blanco** as "the best" but felt as though **Blanco** had betrayed him and that he had said hurtful things about **Chong's** wife (R 606, 618). Chong testified that while he was on good terms with **Blanco**, **Blanco** discussed his case with him (R 606). **Blanco** originally told Chong that he was innocent and Chong felt sorry for him (R 606). Chong tried to help **Blanco** and had his wife send **Blanco** money as well as a suit (R 607). **Blanco** later told Chong that defense counsel **Hilliard Moldof** was going to Cuba to see Enrique Gonzales and that Gonzales was going to say that he was the person that killed the victim (R 608). As an alternative plan, Chong testified that **Blanco** wanted **Chong's**

brother in Cuba to imitate Gonzales so that it would be believed that "... the one in Cuba was the one that killed **him.**" (R 610). This way the responsibility for the murder would be taken away from **Blanco** (R 610). **Chong's** brother never did this however (R 610-611).

Blanco eventually told Chong about the murder:

Q. What did Omar **Blanco** tell you about what he did?

A. Do you want me to tell you the story like he told me?

Q. What did he tell you about what he did?

A. He told me that --

Q. Who is he?

A. Omar **Blanco**. Okay. Omar **Blanco** said to me that he had some friends and one of them was named Fidel Romero and Ray Alonso and the one that's in Cuba his name is Mr. Gonzales, Enrique Gonzales. Omar said that they were supposed to go to a person's house, I think he was a cook from somewhere, and that person had money, jewels, and drugs.

Q. Okay. What did Omar **Blanco** tell you that Omar **Blanco** did?

A. Omar **Blanco** told me that on that day he had drank a lot with a woman from Columbian origin. And he was a bit drunk. And he fell asleep and when he woke up his two friends were not there. And that the car he recently bought wasn't there either and then at the apartment where he lived he had a lease where he **couldn't** have animals or bikes or anything. Then he went to Fidel **Romero's** house and he took the bike and he took like a little hanging purse and it had like pliers and he put the revolver in the shoe. And he went to look for them thinking his friends had went to do that by themselves.

Q. Okay.

A. And then he went around and around because he had a hard time finding the place. Until he found them when he found them he told me he had the bike behind a house somewhere.

Q. What did he find?

A. Then he found the house.

Q. Okay.

A. And he entered inside the home.

Q. This is Omar **Blanco** now?

A. Yes. And he entered into the house and he said he found the girl and he entered the house

and he found out the person he was looking for wasn't there. And then he found a young girl, about thirteen or fourteen years old. She was reading, and when the girl saw him she got scared because his hair was long with curls. And he said to the girl don't be scared and that he wasn't going to do anything. And he cut the telephone cord so that she couldn't call the police. He said he **wasn't** going to do any harm to the girl. And at the time when he was going out, the person or the victim was arriving at that moment and he also didn't want to kill him. In his small english talk, said to him, "**What** are you doing?" And he said some nasty words.

Q. Who said some nasty words?

A. The victim.

Q. Okay.

A. And then Omar **Blanco** was leaving and the victim jumped on the weapon. And he had no other choice but to shoot him. Then he realized that he had a witness. And he also tried to hit the little girl, and the guy tried to cover her with his body.

Q. The victim?

A. Yes.

Q. Okay.

A. And then he left and he hid on top of a wall behind a bush and he waited, according to him, about five or ten minutes. And that gave him time to hide the weapon by the bush. And so, when the girl ran across the street looking for help, then he took the bicycle and he left and then he got on the bike, oh, and he realized that he had shot with that hand and he peed on his hands so he would take the proof from the, you know, the gunshot.

Q. Okay.

A. And then he kept going-and for about two blocks the police followed him until they detained him. And that's it.

(R 611-613). Chong also testified regarding **Blanco's** wallet:

Q. Was a wallet ever discussed between you and Omar **Blanco**?

A. Yes.

Q. What was the discussion about the wallet?

A. When he left the scene of the crime, he forgot the purse that he had with a -- it was like clippers, he said clippers, or what did I say before pliers, or pliers and that he left, that he forgot it and that's the reason that he was identified.

(R 618-619).

Chong also testified that **Blanco** told him that **Blanco** had met with Roberto Alonso and that he had told Roberto Alonso to say that Enrique Gonzales was the killer and that if **Blanco** won his case he would pay Alonso "**good pay**" (R 613-614). It was during the last month that Chong and **Blanco** shared a cell that **Blanco** told Chong about Roberto **Alonso's** involvement (R 614).

Chong testified that he later wrote two (2) letters to the Broward State Attorney's Office, one in Spanish and one in English (R 614-615). Both letters contained the same information and Chong explained the purpose of the letters:

Q. What was the purpose of sending me, the State Attorney's Office, the letter?

A. Well, in the last -- when I went to South Florida, my relation and Omar **Blanco's** was the best. For a reason unknown Omar **Blanco** started saying I worked for the F.B.I. and I was a snitch and he created a lot of conflicts in prison for me. I was hurt by what he did. He said that I was a snitch because I was going to tell the truth in another case. **I'm** doing it now in his case to show him that it's not a snitch, that **I'm** not a snitch, that **I'm** just declaring the situation.

(R 615).

* * * * *

THE WITNESS: The reason I wrote the letter was not only because he hurt me; he also hurt my wife. After the way my wife had behaved with him, she said, he said that my wife was negra, a black person, cleaning Pampers at the hospital and that he had used her. And that's not true. Oh, and that's not true. My wife doesn't do that kind of work. And then if she did do that work, at least that's not being dishonest.

(R 618).

On cross-examination, Chong admitted that he had three (3) or four (4) prior convictions and that he was currently serving a sentence for kidnapping (R 619). Upon questioning by defense counsel Chong related certain conversations he had had with defense counsel, **Hilliard Moldof** (R 626-633). Chong specifically testified that Mr. **Moldof** was going to represent him at one time (R 627-628). The **trial** court questioned **Chong's** credibility as follows:

THE COURT: I have a question. Is it your testimony that you asked Mr. **Moldof** to represent you?

THE WITNESS: Yes.

THE COURT: And Mr. **Moldof** wanted \$15,000 to represent you?

THE WITNESS: No, not me.

THE COURT: What did the \$15,000 come from? Why am I thinking **\$15,000**?

MR. **MOLDOF**: He said \$15,000.

THE WITNESS: For Omar **Blanco**.

THE COURT: Oh, what did Mr. **Moldof** say about representing you?

THE WITNESS: He said he would represent me.

THE COURT: Did he say when?

THE WITNESS: When my wife would pay him and when my wife went to pay him, he said it wasn't enough money.

THE COURT: Was Mr. Bush present at this point?

THE WITNESS: I don't know when my wife went to pay him at his office, if he was there.

THE COURT: Was Mr. Bush present when you spoke to Mr. **Moldof**?

THE WITNESS: About my case? No. We were alone.

THE COURT: Any follow-up?

MR. **MOLDOF**: When you sent your wife, I told you I would represent you if you wanted to fire Mr. Trachman, right? And I **don't** remember, but I quoted you some fee?

THE WITNESS: Yes.

MR. **MOLDOF**: And you sent your wife to my office with like a couple hundred dollars?

THE WITNESS: No, a thousand dollars.

MR. **MOLDOF**: Okay, a thousand dollars. And I said that's not what I asked you and I won't take the **case** for a thousand dollars, right?

THE WITNESS: We left off, my wife brought you a thousand dollars and we were going to pay you monthly for my case and **Omar's** case.

MR. **MOLDOF**: I told you that was acceptable and I sent her away with her money, right?

THE WITNESS: Yes.

MR. **MOLDOF**: I never took one dime from you, did I Mr. Chong?

THE WITNESS: No.

THE COURT: This is true, then?

MR. **MOLDOF**: Yeah, he asked me to help represent him. Absolutely, oh yeah, he asked me to represent him.

THE COURT: Oh, okay.

MR. **SATZ**: I have no further questions, your Honor.

MR. **MOLDOF**: Judge, if you want, we can fully explore that. There is no question.

THE COURT: To be honest with you, I was ready to disbelieve that.

MR. **MOLDOF**: He asked me to represent him if he was going to fire Mr. Trachman, but he couldn't come up with legal fees and I sent his wife away.

THE COURT: But you agree this is all true?

MR. **MOLDOF**: Yeah, absolutely.

THE COURT: I was ready to disbelieve all of that because I didn't think that happened, but I guess it did.

MR. **MOLDOF**: It happened that he asked me to represent him when he was firing Mr. Trachman, absolutely.

(R 637-640).

Chong also made clear that he was not-promised anything from the State in exchange for his testimony and only came forward "... to clear the situation and to show him [**Blanco**] that he lost a friend and **family.**" (R 641).

The State also presented the testimony of inmate Carlos Ruiz, who at one time was incarcerated on the fifth floor of the Broward **County** Jail (R 643). Ruiz knew Chong from the South Florida Reception Center and met **Blanco** through inmate George Gonzales at the Broward County Jail (R 644). He did not know **Blanco** before that time (R 644). Ruiz had several conversations with **Blanco** about **Blanco's** case (R 644). At first, **Blanco** told Ruiz that he

wasn't at the scene of the murder (R 645). **Blanco** then confided to Ruiz that it was a robbery and that things went bad, that it wasn't Successful (R 645-646). Blanco never told Ruiz that he "**did it**" although he did give Ruiz details regarding the crime (R 645). Ruiz testified that he read some of the paperwork on **Blanco's** case and did research in the law library of the jail for Blanco (R 644, 647). Ruiz also testified that he was present during a conversation between **Blanco** and inmate Jorge Gonzales that took place in the church at the jail (R 646). **Blanco** asked Gonzales in **Ruiz's** presence to falsely testify **that .he** saw Eduardo Chong reading his paperwork in the shower (R 647). **Blanco** knew that Gonzales never saw Chong reading **Blanco's** papers while **Blanco** was in the shower (R 646). Ruiz elaborated:

A. **Okay**, your Honor, this man right here with the white shirt [Omar Blanco], wanted George Gonzales to bring false testimony. At the beginning, George didn't want to do it. You know, George, he felt uncomfortable. The friendship that they had, all had together, although one time at church they went in deep conversation and they didn't want me to be in it. Next thing I find out, Omar tells me his lawyer went personal to see him and that he was going to testify and was going to work with him. **So**, that was going to be a successful point in his case and it was going to be a reasonable doubt and, you know, that's one of the good issues in the case.

(R 646-647). Eventually, Gonzales agreed to testify falsely against Chong for money, although he finally decided not to (R 649).

Ruiz testified that **Blanco** also asked him to get involved:

Q. Did he ever ask you to possibly be a witness?

A. No, not to be a witness. He wanted me to say Eduardo was doing this, Because I was located in South Florida. Why don't you talk to the man? Why are they doing this to me? We had everything

down pat. In other words, they had a good relationship and everything went chaos. Unfortunately, you know, **we're** in the position we're in now.

(R 648). Ruiz further testified that **Blanco** also discussed Roberto **Alonso's** involvement in the plot to pin the murder on someone else:

Q. Did you discuss with Omar Blanco about any false testimony about any other witnesses?

A. Yeah, we talked about -- he told me --

Q. Omar Blanco?

A. Yes, sir. And about a -- I think his name is Robert, in another institution. He was going to come up with this story, his brother, which is dead, passed away, I don't know was it was, had killed a person. This was going to be the second testimony. That name was Robert Alonso. Maybe, perhaps, and he was going to come and testify it was his brother and not him.

Q. And he discussed that with you?

A. Exactly, yes.

(R 648). Ruiz testified that he was receiving nothing in exchange for his testimony.

Inmate Jorge Gonzales also testified on behalf of the State. Gonzales was housed in the fifth floor of the Broward County Jail and shared a cell with Eduardo Chong at one time (R 660). **Blanco** shared a cell with Rigaberto Delgado underneath Gonzales' cell (R 659-660). Gonzales testified as to the conversation he had with **Blanco** in the church at the Broward County Jail (R 652). He specifically testified that he was in church with **Blanco** and inmate Carlos Ruiz when Blanco began discussing his case (R 652-653). **Blanco** asked Gonzales to testify falsely against Eduardo Chong:

Q. Did he ask you to do something?

A. The only thing that happened, we had a conversation in church. I knew that he had, that he was facing the electric chair and I felt sorry for him and we came to an agreement that I was going to say that I saw **Edwardo** Chong reading some papers.

Q. Did you see Eduardo Chong reading any of Omar's papers?

A. No.

(R 652). Gonzales testified that he was not receiving anything in return for his testimony against **Blanco** (R 654-656).

Following the evidentiary hearing, memorandums were submitted by both the Defense (R 3029-3043) and the State (R 3064-3099).

Prior to opening statements at the resentencing proceedings, the defense told the trial court that it wanted to show Thalia Vezos, the victim's niece, a photo of Enrique Gonzales. (R 1248-1249) Defense counsel stated that Gonzales had pock marks, big pores and looked similar to **Blanco** (R 1249). The trial court allowed defense counsel to call Ms. Vezos, proffer her testimony outside of the presence of the jury and show her the photo of Gonzales (R 1255).

Thalia Vezos ultimately testified on April 21, 1994 regarding **Blanco's** 3.850 allegations outside the jury's presence. Upon questioning by defense counsel, Ms. Vezos confirmed that she was aware that since 1982 another individual had confessed to the murder of her uncle (R 1313). She testified that when she gave her statement to police, as to the assailant's description, she said he had large pores in describing his complexion (R 1315-1316). The assailant did not have pock marks (R 1316). When shown a photograph of Enrique Gonzales, Ms. Vezos stated that the man in the photo did not have the complexion she had described to police, and that he was not the man she saw in her bedroom the night her uncle was murdered (R 1316). When invited to take a closer look at **Blanco** by defense counsel, Ms. Vezos stated that she didn't need to: "I know **he's** the man that killed my uncle." (R 1319) Upon

questioning by the State, Ms. Vezos selected **Blanco's** photo from a photographic lineup, the same lineup she viewed in 1982 when she originally identified him (R 1319-1320).

On April 27, 1994, the trial court entered a written Order denying **Blanco's** 3.850 and his Motion for New Trial based upon newly discovered evidence (R 3396, 3406-3407).

Following the jury's recommendation that **Blanco** be sentenced to death for the murder of John Ryan, **Blanco** filed a Motion to Disqualify Judge (R 3474-3477). The State filed its responses (R 3489-3501). **Blanco** filed a reply (R 3502-3504).

On October 28, 1994, State Attorney Michael J. Satz stated in open court that he had never worked on the case of State v. **Lloyd Duest** (R 2408-2409). The trial court denied **Blanco's** motion as being legally insufficient on its face (R 2411) and entered a written Order stating same (R 3505).

The trial court entered a written Order sentencing **Blanco** to death on January 6, 1995 (R 3515-3522).

SUMMARY OF THE ARGUMENT

I. **Blanco's** allegations of newly discovered evidence were properly rejected by the trial court after a full-blown evidentiary hearing. The allegations as presented through the testimony of Carmen Gongora and Roberto Alonso are at odds with the physical and testimonial evidence adduced at the original trial, as well as with each other. The trial court did not abuse its discretion in denying Blanco's Motion for Post-Conviction Relief where the allegations of newly discovered evidence were a sham, fabricated and engineered by **Blanco** himself, and did not satisfy the standard set forth in Jones v. State, 591 **So.2d** 911 (Fla. 1991).

II. Blanco's Motion to Disqualify and his Petition for Writ of Prohibition were properly denied where **Blanco's** Motion and the accompanying affidavit did not set forth a reasonably sufficient fear of not receiving a fair hearing in front of the trial court. Additionally, the Motion was not filed in good faith, was untimely, and the certificate was legally insufficient. In short, the Motion was legally insufficient on its face and properly denied.

ARGUMENT

POINT 3

BLANCO'S CLAIM OF NEWLY DISCOVERED EVIDENCE WAS PROPERLY DENIED AFTER A FULL EVIDENTIARY HEARING

Prior to **Blanco's** resentencing proceeding, he filed a Motion **for** Evidentiary Hearing on Newly Discovered Evidence. As grounds for his Motion, **Blanco** alleged the following:

1. The Defendant was convicted by a jury in 1982 of Murder in the First Degree of one John Ryan.

2. That the defense, at the time of the original trial, did not call Roberto Alonso as a witness to suggest that Omar **Blanco** was not the individual responsible for the homicide.

3. That after undertaking the representation of Mr. **Blanco** for resentencing, the undersigned was put in contact with Roberto Alonso as an individual who had pertinent information regarding the shooting in the above-styled cause.

4. That upon the undersigned's speaking with Roberto Alonso, while Mr. Alonso has been incarcerated at Collier Correctional Institution, it was the substance of Mr. **Alonso's** testimony that he was present in the home of his brother, Ray Alonso, when Ray Alonso, Fidel Romero and Enrique Gonzales returned from the burglary that resulted in the homicide of the victim in the above-styled [case].

(R 2933-2937). The trial court held an evidentiary hearing on these allegations on February 25, 1994.

The trial court heard testimony from two (2) defense witnesses, Carmen Gongora and Roberto Alonso. The defense also presented various letters in support of their claim. The State presented the testimony of Eduardo Chong, Carlos Ruiz and Jorge

Gonzales. The State also introduced the original trial transcript (R 668). Thalia Vezos, the victim's niece, also testified.

After hearing all of this testimony and considering the evidence presented by the Defense and the State, including the trial transcripts, and after receiving memorandums from the State and Defense, the trial court entered an Order denying **Blanco's** 3.850 and his Motion for New Trial Based on Newly Discovered Evidence (R 3396).

The State maintains the correctness -of the trial court's ruling.

As this Court is well aware, it was **Blanco's** burden to prove his allegations of newly discovered evidence. Richardson v. State, 546 **So.2d** 1037 (Fla. 1989); Cammarano v. State, 602 **So.2d** 1369 (Fla. 5th DCA 1992). Specifically, Blanco had to show that his alleged newly discovered evidence was unknown by the trial court, by the party, or by counsel at the time of the trial, and it must appear that **Blanco** or his counsel could not have known of the evidence by the use of due diligence. Jones v. State, 591 **So.2d** 911 (Fla. 1991). Blanco also had to show that the newly discovered evidence would be of such a nature that it-would probably produce an acquittal on retrial. Id. At 915.

The standard for evaluating this alleged newly discovered evidence was announced by this Court in Jones:

At the hearing, the trial judge should consider all newly discovered evidence which would be admissible and determine whether such evidence, had it been introduced a the trial, would have probably resulted in an acquittal. In reaching this conclusion, the judge will necessarily have to evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial.

Id. At 916.

The trial court in its **discretion**, after hearing all of the evidence, denied Blanco's Motion. **Linkous v. State**, 585 **So.2d** 486 (Fla. 2d DCA 1991). The trial court did not abuse its discretion where **Blanco's** evidence did not satisfy the **Parker** standard. **v. State**, 641 **So.2d** 369 (Fla. 1994). Indeed, Blanco's allegations of newly discovered evidence were nothing more than a sham and have not and cannot diminish the overwhelming evidence against **Blanco** established at his capital trial. The State will detail that evidence herein, so as to put **Blanco's** contrived allegations in their proper place.

The first witness to testify on behalf of the State at Blanco's trial was Officer Karen Bull of the Ft. Lauderdale Police Department. Bull testified that on January 14, 1982 at **11:11** P.M. she received a call on her radio that a shooting had occurred at 2701 N.E. 35th Drive in Ft. Lauderdale (T 773-774). She and Officer Gibbons arrived at the scene at **11:14** P.M. (T 774). The door to the house was open slightly and she and Gibbons entered the house along with two other officers who also responded to the scene (T 776). Bull located the victim inside the northeast bedroom, lying on the bed (T 776). The bedroom light **was** on (T 785). It was apparent to Bull that the victim had been shot (T 776-777). Bull then went next door to speak with Thalia Vezos who was the victim's niece and who was an eyewitness to the murder (T 779). Thalia gave Bull a description of the attacker (T 780). She described the attacker as a Latin male, approximately **5' 8"** to **5' 10"**, 180 to 190 pounds, wearing a gray or green, light green jogging suit, with dark curly hair (T **780**). Bull testified that

she then radioed out the description Thalia had just given her at **11:24** P.M. (T 780).

Officer Gibbons also testified and corroborated Officer Bull's testimony. Gibbons specifically testified that lights in the hallway and in the bedroom where the victim was found were on (T 789, **792**). Gibbons also testified that he observed a brown purse inside the bedroom (T **790-791**), along with numerous cartridge casings and spent bullets. He also noticed that the screen located by the bed had been pushed out instead of pushed in (T 790).

George Abdeni testified that he lives opposite the home where the victim was found (T 793). He testified that on the night of the shooting at around **10:30** to **11:00** P.M., he heard faint shots then a woman screaming (T 794). He ran to his living room window and saw in front of the driveway of the house opposite him, a form dressed in a grayish jogging suit. The person was walking in front of the house on the lawn and heading east toward **Bayview** Drive (T 794). Abdeni could not tell if the figure was a man or a woman because the tree tops obstructed his view of the figure's head (T **801**), but described the person as being 6' tall and weighing 200 or less pounds (T 795). Abdeni testified that he could see the figure pretty clearly because the street light was on (T 795-796). Abdeni testified that he saw the figure again about an hour later when he stepped out of a car at the scene (T 798-799). Abdeni testified that he recognized the jogging suit the figure was wearing as well as the shape of the figure (T 799). Abdeni was about 15 to 20 feet away from **Blanco** when he made the identification (T 799).

Officer Curtis Price of the Ft. Lauderdale Police Department testified that he received a BOLO at approximately **11:29** P.M. on

January 14, 1982 for a Latin male, approximately **5' 10"**, black curly hair, dark complexion, some kind of mustache, grey or light green sweatsuit, running in an easterly direction (T 814). Price then looked for anyone driving by or walking fitting that description (T 816). He then saw Blanco, a Latin male, riding a woman's bicycle who fit the description except for the fact that his pants looked like corduroy because of the lighting (T 816). Price radioed in for some information concerning the description (T 816). Price then watched **Blanco** for approximately **1/10** of a mile riding the bicycle on the sidewalk (T 816-817). Price stopped **Blanco** at approximately **11:57** P.M. (T 818). When he stopped him, Price noticed that **Blanco was** not wearing corduroy pants but rather was wearing a matching sweatsuit (T 819). He then called for a back-up and frisked **Blanco** (T 819). **Blanco** was not carrying a gun or any identification and had nothing on his person (T 820). He then took **Blanco** back to the scene which was 1.4 miles away (T 824, 820). Price identified Blanco in Court **as** the person he apprehended (T 821). Price testified that **Blanco's** skin looked much lighter and that he had shaved and cut his hair since he was picked up (T 822-823). Price also testified that **Blanco** had lost between 20 and 25 pounds (T 823).

Thalia Vezos, then fifteen (15) years old, testified at trial that on January 14, 1982 she lived in the same house as her mother and uncle, John Ryan, the victim (T 881). She testified that on January 14, 1982, she was reading in bed (T 885). A light was on inside of her room and a light was on in the hallway outside of her room (T 885). Her bedroom door was open (T 886). At about **11:05** P.M. she **saw** a man in the hallway to her bedroom holding a black

gun (T 886). The man **was** white skinned, medium height, with dark shaggy hair down to his shoulders (T 886). She described the man as having a pot belly (T 920-921). He saw her and put the gun to his lips and said "**Shhh**" (T 886). He said "**telephone**" and Thalia pointed to the end of her bed (T 887). With that, he pulled out wire clippers and cut the wires to the telephone (T 887). Blanco then walked out of the bedroom and into the hallway (T 887). Thalia testified that she got out of bed and got on her knees and said to **Blanco** "**Please, don't kill me.**" (T 887). **Blanco** then pointed to the bed. **Blanco walked** over to her and held out his **hand** and said "**Friend**" (T 892). Thalia put her pinky in his hand and noticed that **Blanco's** hands were **covered by** some reddish, maroon material (T 892). Thalia testified that the closest **Blanco came** to her was **1½ feet away.** (T 892). **Blanco** then walked out of the bedroom and into the hallway (T 888). At that point, Thalia **heard her uncle, John** Ryan, walk down the hall (T 888). John Ryan spotted **Blanco** and said to him "**What** are you doing in my **house?**" (T 890). John Ryan then tried to knock the gun out of **Blanco's** hands (T 888). John Ryan was then shot 2 or 3 times in the hallway (T 888). Thalia testified that she rolled over in her bed and that her uncle jumped on top of her and Blanco shot him 2 or 3 more times (T 888-889). Thalia testified that she felt the bullets go into her uncle's back as he laid on top of her (T 889). After the last shot, **Blanco** walked out of the room and closed the door (T 894). Thalia testified that the man who shot her uncle was wearing a "**beigy, off-green color**" jogging suit (T 890). She identified **Blanco** in-court as the person who shot the victim (T 892). She also identified in-court the material **Blanco** had on his hands

(T 893). She also testified that **Blanco** was carrying a type of "wallet" under his **arm** during the attack (T 901), and that he spoke in broken English to her (T 904). She testified that **Blanco** was in her presence for approximately 8 to 10 minutes from the first time he appeared in her bedroom doorway until the time he fled after the shooting (T 898). After the shooting, Thalia testified that she tried to get out of the room through her bedroom window but couldn't (T 894). She then ran to the front door, unlocked it, and ran to the next-door neighbor's house screaming (T 895). Thalia identified **Blanco** the next day from a live line-up as the man who killed her uncle (T 899). She also identified in-court a watch found in the purse recovered in her bedroom as the watch her mother had given her which she had left in another room earlier in the evening (T 904-905). Thalia testified that since the murder, **Blanco** had lost weight and that his hair was shorter (T 905).

John Matheson, an Identification Technician with the police department, went to the scene at approximately **11:30** P.M. (T 939). Matheson recovered 7 casings and 4 projectiles from the scene (T 941, 943). He also recovered the brown purse from the bedroom and the wallet inside and processed the driver's license inside the wallet for fingerprints (T 963). He also processed the other items inside the purse for prints, such as the screwdriver, and knife (T 965). Matheson could not get any usable latent prints off of these objects (T 965). He testified that two out of the four telephones in the house had had their wire cut (T 973). At about **2:30** A.M. Matheson came into contact with **Blanco** at the police station (T 978). Matheson swabbed **Blanco's** hands with a 5% solution of nitric acid (T 979). During this procedure, an

interpreter was present (T 980), however, Blanco responded to directions given in English by Matheson (T 984).

Detective Michael Walley of the Fort Lauderdale Police Department testified that he responded to the scene shortly after midnight (T 1024). Inside the bedroom where the victim was found, Walley saw a brown leather purse lying on the floor (T 1025). He looked inside the purse and saw a man's wallet (T 1025). Inside the wallet was a driver's license (T 1026). Walley immediately recognized the photo on the driver's license as Blanco, who he had seen outside of the house when he arrived at the scene (T 1026). Also inside the purse was a watch and a key ring with two keys on it (T 1028). After Walley left the scene he drove to **Blanco's** apartment which was 14 miles from the crime scene (T 1028-1029). Once there he obtained a key to **Blanco's** apartment from the apartment manager and sent that key along with the keys found inside the wallet to the FBI for comparison (T 1030). On January 15, 1982, Walley took part in a line-up (T 1033). Walley was with Thalia when she viewed the live line-up (T 1034). Walley testified that after about 2 or 3 seconds Thalia said she knew who it was but that he told her to wait and look at the entire line-up (T 1035). Thalia then identified **Blanco** as the person who shot her uncle (T 1036).

Officer James **Wigand** of the Fort Lauderdale Police Department testified that he found a pair of pliers on January 15, 1982 in front of a home on the 3500 block of **Bayview** Drive, about a half a block away east from the crime scene and on the path of **Blanco's** flight and apprehension (T 1092). Officer Carl Borino identified

the mark he had put on the pliers (T 1097) and testified as to the chain of custody.

Margaret Vezos, the victim's sister and **Thalia's** mother testified that the victim was born in Ireland and that he lived with her and Thalia (T 1107). Vezos was in London on January 14, 1982 when the murder occurred (T 1106) and owned the house where the victim was killed (T 1109). She did not give **Blanco** permission to enter her home (T 1109). Vezos was shown a pair of socks found in **Thalia's** bedroom and testified that she had never seen them before (T 1108). Vezos identified the watch found in the brown purse as her watch which she had given to Thalia (T 1108).

Dr. Keene Garvin, an Associate Medical Examiner in Broward County, performed an autopsy on the victim and testified that the victim had 7 gunshot wounds to his body as well as a superficial gunshot wound that grazed the elbow (T 1122). All of the wounds were inflicted from a gun held at least two to three feet from the victim's body with the exception of a neck wound which was inflicted from a distance of three to five inches away (T 1123-1124). Dr. Garvin testified that the victim suffered a bullet wound to the neck (T **1123-1124**), a wound to the right shoulder which lodged in the neck (T **1124-1125**), a wound to the right arm which went clear through the arm (T **1129**), three wounds to the back (T 1129-1130); and a wound to the belt-line area (T 1132-1133). Dr. Garvin testified that two of these wounds were unquestionably fatal (T 1134). He testified that the victim died of multiple gunshot wounds (T 1133).

Dennis Gray, a criminalist with the Broward County Sheriff's Office testified that bullets from the victim's body and the

bullets found **at** the scene as well as the cartridges retrieved were from a **.380** semi-automatic hand gun (T 1192).

Neil Price, a special agent with the F.B.I. testified that the keys sent to him, one of which **was** found **in** Blanco's purse at the scene and the other obtained from the apartment where he lived, both opened the same lock (T 1219).

William Kinard, a forensic chemist with the Bureau of Alcohol and Tobacco and Firearms, U.S. Treasury Department, testified that the level of barium and antimony found on Blanco's hands were consistent with gunshot residue and also consistent with a gun being discharged while being held in his right hand (T 1241-1244). He also testified that the levels were also consistent with **Blanco** using both hands to hold the gun (T 1245). The State rested.

German Barrios testified that he knew **Blanco** for 5 years and was his roommate 2 or 3 times (T 1316-1317). Barrios moved to Hollywood with **Blanco** 3 or 4 days before **Blanco's** arrest (T 1317). Barrios testified that shortly before the murder, **Blanco** lost his wallet and identification (T 1318). Barrios helped **Blanco** look for the wallet in a bar but **couldn't** find them (T 1318). Barrios testified that **Blanco** likes to exercise, play baseball and run (T 1320). Barrios couldn't say he had seen **Blanco** with a bicycle (T 1320). Barrios had never seen the brown leather purse before (T 1321). Barrios last saw **Blanco** 3 or 4 days before his arrest (T 1334).

Rey de las Angeles Alonso Ponce testified that he knew **Blanco** for approximately 4 months and that **Blanco** lived with 2 men in Hollywood (T 1337-1338). Rey Alonso testified that he had been to Blanco's apartment 5 or 6 times and that he had seen Blanco's

identification papers (T 1338). About 3 or 4 days before **Blanco's** arrest **Blanco** came to him and told him that he lost some papers (T 1338). The next day he, **Blanco** and 2 other men went to a bar to look for the papers (T 1338-1339). Rey Alonso did not see Barrios at the bar (T 1339). Alonso recognized the purse and driver's license as **Blanco's** (T 1340). Alonso testified that **Blanco** went everywhere with his purse (T 1341). Alonso only knew **Blanco's** papers were lost because **Blanco** told him so (T 1347).

Blanco testified on his own behalf. He testified that he did not kill the victim and had never been to the victim's house before (T 1420-1421). **Blanco** testified that he lost his wallet and identification on January 4th and 5th (T 1424). He testified that he left the items in Rey **Alonso's** house while having a relationship with **Alonso's** wife, Carmen (T 1426-1428). **Blanco** went to a bar to look for the items (T 1429). He admitted to one prior conviction (T 1429). He also testified as to his exercise habits (T 1430). On cross-examination **Blanco** testified that the purse found in the bedroom of the victim's home was not his (T 1430). He testified that he rode his bicycle to the beach then ran (T 1435-1436). He did not remember telling Officer Perez-Cubas shortly after the incident that he left his wallet at home (T 1438). He also denied that the bicycle introduced in court was his or that he was even riding it (T 1439-1440).

Fidel Romero testified that he knew and had lived with **Blanco** (T 1492). Romero had never seen **Blanco** with a purse before and did not recognize the purse found in the victim's bedroom (T 1493). He did recognize the documents found inside the purse as belonging to **Blanco** (T 1493). Romero had seen **Blanco** with a bicycle but never

with a woman's bicycle at the apartment (T 1496). Romero testified that he started helping **Blanco** look for his papers and wallet back in December (T 1497). They first looked at the apartment then looked at Rey **Alonso's** house (T 1497-1498).

Enrique Gonzales testified that he knew **Blanco** for 2 years (T 1509). He did not recognize the purse as being **Blanco's** (T 1511). He also helped **Blanco** look for the documents about 2 weeks before the incident (T 1511). He admitted that he had been convicted of a felony (T 1520).

After the defense rested, the State presented the rebuttal testimony of two witnesses. Officer Perez-Cubas of the Fort Lauderdale Police Department testified that on January 15, 1982 **Blanco** told him that he rode his bicycle down to Ft. Lauderdale Beach, then ran 10 miles and bicycled again (T 1652). **Blanco** told Perez-Cubas he did this routine 3 or 4 times a day for a total of 30 to 40 miles (T 1652). When he was asked where his driver's license was, **Blanco** told Perez-Cubas he left it at his home in Hollywood (T 1653). Detective Mundy testified that the route **Blanco** said he had taken on his bicycle to the beach in Fort Lauderdale was 22.5 miles from his home in Hollywood (T 1665).

After both sides rested the jury was instructed (T 1716). After deliberating for 2 hours the jury found **Blanco** guilty as charged on both counts (T 1745, 1749-1750).

The State would also point out that during **Blanco's** trial, the defense sought to introduce evidence that someone other than **Blanco** had committed the murder. Specifically, the defense wished to present evidence regarding another incident in which four (4) Mariel **boatlift** refugees armed with semi-automatic weapons broke

into and committed a robbery in a house at 2700 Northeast 37th Drive in Fort Lauderdale on December 29, 1981 (T 854-855; 858). The incident in the instant case took **place .on** January 14, 1982 at 2701 Northeast 35th Drive in Fort Lauderdale (T 858). After hearing argument from both parties as well as listening to the testimony of several witnesses, including the victim in the instant case, Thalia Vezos, who when shown a photo line-up of the four suspects in the other robbery, did not identify any of them as the individual who perpetrated the murder in this case (T 909-910), the trial court denied **Blanco's** request to present proof of the other crime as part of the defense (T 1050-1052). The trial court, however, allowed **Blanco** to proffer the evidence he sought to introduce during the course of the trial (T 1275-1289). The State **also** proffered its own evidence to rebut **Blanco's** proffer (T 1290-1291; 1292-1295).

It should be noted that **Blanco** appealed the denial of his motion to present evidence regarding the other robbery to this Court. This Court rejected his argument and affirmed the conviction stating:

Appellant next contends that the trial court erred in refusing to admit evidence of an armed robbery which had occurred two weeks before the murder in the present case and at a house that is back to back with the house where the murder occurred. The trial judge determined that the defense hypothesis that the evidence of the robbery would tend to show someone other than the accused committed the murder was speculative and irrelevant. We agree and find no abuse of discretion. Appellant's theory is far-fetched and unsupported. Thalia did not recognize the photographs of any of the robbers and she positively identified appellant as the murdered of her uncle. Appellant has failed to present any reasonable theory upon which the admission of

evidence of the robbery would have tended to exculpate him. A trial judge's ruling on the admissibility of evidence will not be disturbed absent an abuse of discretion. Booker v. State, 397 So.2d 910 (Fla.), cert. denied, 454 U.S. 957, 102 S.Ct. 493, 70 L.Ed.2d 261 (1981). The test of admissibility is relevancy. J o h n s o n, 130 So.2d 599 (Fla. 1961). To be admissible, evidence must be both logically and legally relevant., Wolf v. State, 72 Fla. 572, 73 so. 740 (1917). (Emphasis added)

Blanco v. State, 452 So.2d 520, 523 (Fla. 1984).

It is against this backdrop of evidence, proving beyond any reasonable doubt that it was Blanco who committed the burglary and murdered John Ryan, that the Defendant presents his incredible allegations of newly discovered evidence.'

The first witness to testify on Blanco's behalf was Carmen Gongora. She testified at the evidentiary hearing that on the night of the crime for which Blanco was arrested, she saw her husband, Rey Alonso, come home at about 11:00 p.m. with "Kiki" and Fidelito (R 525). She explained that "Kiki" was Enrique Gonzales (R 525). She stated that she saw Enrique take off a pullover full of blood and that he threw it in the garbage (R 526). She described Enrique Gonzales as having a skinny stomach, and pimples, or holes in his face (R 529). She never saw Enrique with a big

¹At the evidentiary hearing held before the trial court on February 25, 1994, Blanco presented the testimony of two (2) witnesses, Carmen Gongora and Roberto Alonso. Although neither of these witnesses testified at Blanco's trial, it is signigicant to note that both Carmen Gongora and Roberto Alonso were available to testify at Blanco's trial and that Ms. Gongora's husband, Rey Alonso, did testify on Blanco's behalf at his trial (T 1336-1350). Furthermore, Ms. Gongora gve a satment to the State on April of 1982, in which the substance of her current testimony is conspicuously absent (R 3278-3287). It is also worthy of noting that Enrique Gonzales, a/k/a "Kiki", the person Blanco now says committed the murder, also testified on Blanco's behalf at his trial (T 1509-1520).

stomach (R 529). At the time of the murder Ms. Gongora testified that she was living with her husband Rey and that **Blanco** lived nearby (R 523-524). She also testified that she did not see **Blanco** that night (R 529). Ms. Gongora stated that she currently lives in a boarding home for the mentally impaired and that she has mental problems and is easily confused (R 527). She also testified that she had told a detective, Walter **LaGraves**, about the bloody shirt (R 535).

On cross-examination, Ms. Gongora stated that she did not remember the day or the year that she saw the bloody shirt and that Roberto Alonso was not living with her at the time that she saw it (R 538). She testified that Roberto Alonso came to live with her and her husband Rey Alonso, about a year after she saw this shirt (R 540-541). Ms. Gongora testified that she had seen **Blanco** with a gun that he carried in his purse (R 538-539), but that she had never seen him with blood on his shirt (R 541). She never washed **Blanco's** clothes and she never had an affair with **Blanco** (R 540). She testified that at the time of the murder, **Blanco**, Fidel Romero, Rey Alonso and Enrique Gonzales were committing many robberies and that after the robberies they would come back to the house she shared with Rey (R 542). Recalling the night of the murder, Ms. Gongora testified that she thought she lived in Hollywood, but that she didn't know and that it was in 1983 (R 542). Ms. Gongora also testified that she **was** threatened by a detective two (2) or three (3) times that she would be arrested and go to jail if she didn't come to court and testify for the Defendant (R 542-543, 545). This made her nervous (R 545). She identified the detective who threatened her as Edward **Maus** (R 544). **Maus** worked on behalf of

the Defendant (R 589). Upon examination, **Maus** admitted that he went to see Ms. Gongora on two (2) occasions (R 589-590).

Prior to her testimony, Ms. Gongora gave a sworn statement to Walter **LaGraves**, Chief Investigator for the Broward State Attorney's Office, on February 18, 1993, as well as a deposition to defense counsel on July 23, 1993. Both were attached to the State's Response to Defendant's Memorandum Following Evidentiary Hearing on Alleged Newly Discovered Evidence (R 3064-3099) as exhibits. In her sworn statement, Ms. Gongora stated that at the time of the murder, Roberto Alonso was not living with her and her husband Rey (R 3297). She also stated that on **the** night of the murder Enrique Gonzales and Fidel Romero returned to the house and that both men had blood on their shirts (R 3299-3330). In her deposition, Ms. Gongora stated that her husband Rey told her on the night **Blanco** was arrested that **Blanco** had killed a millionaire (R 3325). She also stated in her deposition that on the night of the murder, **Blanco** and Enrique Gonzales returned to the house and that both men had blood on their clothes (R 3326-3327, 3330). She had seen **Blanco** with blood on his clothes on two (2) occasions (R 3327). In her February **23rd**, 1994 affidavit, offered by the defense as a proffered exhibit at the evidentiary hearing, Ms. Gongora stated that Enrique Gonzales returned to her house with a bloody shirt in his hand, and that he himself threw the shirt away.

The State submits that the testimony of Ms. Gongora at the evidentiary hearing was totally **inconsistent** with her prior statements and depositions and was simply not credible as the trial court so found (R 3396). **Linkous, supra**. The State would also point out that **Blanco's** allegation that Chief Investigator Walter

LaGraves "... suppressed the evidence . . ." regarding Enrique Gonzales' allegedly returning to the Alonso home wearing a bloody shirt, is nothing short of reckless and irresponsible. Indeed, Mr. **LaGraves** did not learn of Enrique Gonzales' allegedly bloody shirt until 1993 when he took Carmen **Gongora's** statement (R 3362-3363). This statement was provided by the State to the Defense on April 19, 1993 (R 3350-3352). At no time did the State or any member of the Sate Attorney's Office ever suppress evidence in **Blanco's** case.

As for the testimony of Roberto Alonso, it too is totally incredible. Alonso, a convicted murderer, testified that at the time of the murder, he lived with Carmen Gongora and Rey Alonso at their house in Hollywood (R 554). Although the murder occurred on January 14, 1982, Roberto Alonso previously stated that he had been released from a federal prison in Atlanta on the 2nd of January or February in 1982 (R 553, 567-572). Alonso testified that on the day of the murder he had been out for a bicycle ride with **Blanco** and that upon their return to Rey **Alonso's** house, both he and **Blanco** gave their sweaty clothes to Carmen Gongora to wash (R 557-558). According to Alonso, **Blanco's** wallet was in his pants and Carmen took money from the wallet and gave it to Rey Alonso, unbeknownst to **Blanco** (R 558). That night while Roberto Alonso was at the home of Rey Alonso, Rey Alonso, Enrique Gonzales and Fidel Romero returned to the house at two-thirty A.M. (R 581). Alonso testified that Enrique Gonzales had blood on his shirt and that Rey Alonso threw the shirt away in the garbage (R 557). According to Roberto Alonso, Enrique Gonzales told Rey Alonso that he didn't want to shoot the victim but that he did it only after the victim

came after him and that the gun went off a lot of times (R 555-556).

On cross examination, Roberto Alonso admitted to using two (2) aliases and to committing prior crimes including arson, robbery, armed burglary, and grand theft (R **562-565**). At the time of his testimony, he was in prison for murdering someone with a machete (R 563). He also admitted to seeing **Blanco** in prison in 1990 and had seen him previously in 1989 (R 560, 581).

The State maintains that Roberto **Alonso's** testimony at the evidentiary hearing was totally incredible by its very nature. This is especially true in light of the testimony presented by the State.

Eduardo Chong, an inmate in the Broward County Jail, was the State's first witness. Chong has been incarcerated for two (2) years and had met **Blanco** on the fifth floor of the jail (R 604). Chong was in a cell with another inmate and **Blanco** was in the cell below which he shared with Rigaberto Delgado (R 605). Chong later shared the same cell with **Blanco** at the Broward County Jail for approximately one and a half (1.5) to two (2) months (R 614). His total time in contact with **Blanco was** almost five (5) months (R 605). Chong characterized his relationship with **Blanco** as "**the best**" but felt as though Blanco had betrayed him and that he had said hurtful things about **Chong's** wife (R 606, 618). Chong testified that while he was on good terms with Blanco, **Blanco** discussed his case with him (R 606). **Blanco** originally told Chong that he was innocent and Chong felt sorry for him (R 606). Chong tried to help **Blanco** and had his wife send **Blanco** money as well as a suit (R 607). **Blanco** later told **Chong** that defense counsel Hilliard **Moldof** was going to Cuba to see Enrique Gonzales and that

Gonzales was going to say that he was the person that killed the victim (R 608). As an alternative plan; Chong testified that **Blanco** wanted **Chong's** brother in Cuba to imitate Gonzales so that it would be believed that "... the one in Cuba was the one that killed **him**" (R 610). This way the responsibility for the murder would be taken away from **Blanco** (R 610). **Chong's** brother never did this however (R 610-611).

Blanco eventually told Chong about the murder:

Q. What did Omar **Blanco** tell you about what he did?

A. Do you want me to tell you the story like he told me?

Q. What did he tell you about what he did?

A. He told me that --

Q. Who is he?

A. Omar **Blanco**. okay. Omar **Blanco** said to me that he had some friends and one of them was named Fidel Romero and Ray Alonso and the one that's in Cuba his name is Mr. Gonzales, Enrique Gonzales. Omar said that they were supposed to go to a person's house, I think he was a cook from somewhere, and that person had money, jewels, and drugs.

Q. Okay. What did Omar **Blanco** tell you that Omar **Blanco** did?

A. Omar **Blanco** told me that on that day he had drank a lot with a woman from Columbian origin. And he was a bit drunk. And he fell asleep and when he woke up his two friends were not there. And that the car he recently bought **wasn't** there either and then at the apartment where he lived he had a lease where he couldn't have animals or bikes or anything. Then he went to Fidel **Romero's** house and he took the bike and he took like a little hanging purse and it had like pliers and he put the revolver in the shoe. And he went to look for them thinking his friends had went to do that by themselves.

Q. Okay.

A. And then he went around and around because he had a hard time finding the place. Until he found them when he found them he told me he had the bike behind a house somewhere.

Q. What did he find?

A. Then he found the house.

Q. Okay.

A. And he entered inside the home.

Q. This is Omar **Blanco** now?

A. Yes. And he entered into the house and he said he found the girl and he entered the house and he found out the person he was looking for **wasn't** there. And then he found a young girl, about thirteen or fourteen years old. She was reading, and when the girl saw him she got **scared** because his hair was long with curls. And he said to the girl **don't** be scared and that he wasn't going to do anything. And he cut the telephone cord so that she couldn't call the police. He said he wasn't going to do any harm to the girl. And at the time when he was going out, the person or the victim was arriving at that moment and he also didn't want to kill him. In his small english talk, said to him, "**What** are you doing?" And he said some nasty words.

Q. Who said some nasty words?

A. The victim.

Q. Okay.

A. And then Omar **Blanco** was leaving and the victim jumped on the weapon. And he had no other choice but to shoot him. Then he realized that he had a witness. And he also tried to hit the little girl, and the guy tried to cover her with his body.

Q. The victim?

A. Yes.

Q. Okay.

A. And then he left and he hid on top of a wall behind a bush and he waited, according to him, about five or ten minutes. And that gave him time to hide the weapon by the bush. And so, when the girl ran across the street looking for help, then he took the bicycle and he left and then he got on the bike, oh, and he realized that he had shot with that hand and he peed on his hands so he would take the proof from the, you know, the gunshot.

Q. Okay.

A. And then he kept going and for about two blocks the police followed him until they detained him. And that's it.

(R 611-613). Chong also testified regarding **Blanco's** wallet:

Q. **Was** a wallet ever discussed between you and Omar **Blanco**?

A. Yes.

Q. What was the discussion about the wallet?

A. When he left the scene of the crime, he forgot the purse that he had with a -- it **was** like clippers, he said clippers, **or** what did I say before pliers, or pliers and that he left, that he

forgot it and that's the reason that he was identified.

(R 618-619).

Chong also testified that **Blanco** told him that **Blanco** had met with Roberto Alonso and that he had told Roberto Alonso to say that Enrique Gonzales was the killer and that if **Blanco** won his case he would pay Alonso "good pay" (R 613-614). It was during the last month that Chong and **Blanco** shared a cell that **Blanco** told Chong about Roberto **Alonso's** involvement (R 614).

Chong testified that he later wrote two (2) letters to the Broward State Attorney's Office, one in Spanish and one in English (R 614-615). Both letters contained the same information and Chong explained the purpose of the letters:

Q. What was the purpose of sending me, the State Attorney's Office, the letter?

A. Well, in the last -- when I went to South Florida, my relation and Omar **Blanco's** was the best. For a reason unknown Omar **Blanco** started saying I worked for the F.B.I. and I was a snitch and he created a lot of conflicts in prison for me. I was hurt by what he did. He said that I was a snitch because I was going to tell the truth in another case. **I'm** doing it now in his case to show him that **it's** not a snitch, that **I'm** not a snitch, that **I'm** just declaring the situation.

(R 615).

* * * * *

THE WITNESS: The reason I wrote the letter was not only because he hurt me, he also hurt my wife. After the way my wife had behaved with him, she said, he said that my wife was negra, a black person, cleaning Pampers at the hospital and that he had used her. And **that's** not true. Oh, and **that's** not true. My wife doesn't do that kind of work. And then if she did do that work, at least that's not being dishonest.

(R 618).

On cross-examination, Chong admitted that he had three (3) or four (4) prior convictions and that he was currently serving a sentence for kidnapping (R 619). Upon questioning by Defense counsel Chong related certain conversations he had had with Defense counsel, **Hilliard Moldof** (R 626-633). Chong specifically testified that Mr. **Moldof** was going to represent him at one time (R 627-628). The trial court questioned **Chong's credibility** as follows:

THE COURT: I have a question. Is it your testimony that you asked Mr. **Moldof** to represent you?

THE WITNESS: Yes.

THE COURT: And Mr. **Moldof** wanted \$15,000 to represent you?

THE WITNESS: No, not me.

THE COURT: What did the \$15,000 come from? Why am I thinking **\$15,000**?

MR. **MOLDOF**: He said \$15,000.

THE WITNESS: For Omar **Blanco**.

THE COURT: Oh, what did Mr. **Moldof** say about representing you?

THE WITNESS: He said he would represent me.

THE COURT: Did he say when?

THE WITNESS: When my wife would pay him and when my wife went to pay him, he said it wasn't enough money.

THE COURT: Was Mr. Bush present at this point?

THE WITNESS: I **don't** know when my wife went to pay him at his office, if he was there.

THE COURT: Was Mr. Bush present when you spoke to Mr. **Moldof**?

THE WITNESS: About my case? No. We were alone.

THE COURT: Any follow-up?

MR. **MOLDOF**: When you sent your wife, I told you I would represent you if you wanted to fire Mr. Trachman, right? And I don't remember, but I quoted you some fee?

THE WITNESS: Yes.

MR. **MOLDOF**: And you sent your wife to my office with like a couple hundred dollars?

THE WITNESS: No, a thousand dollars.

MR. **MOLDOF**: **Okay**, a thousand dollars. And I said that's not what I asked you and I won't take the case for a thousand dollars, right?

THE WITNESS: We left off, my wife brought you a thousand dollars and we were going to pay you monthly for my case and **Omar's** case.

MR. **MOLDOF**: I told you that was acceptable and I sent her away with her money, right?

THE WITNESS: Yes.

MR. **MOLDOF**: I never took one dime from you, did I Mr. Chong?

THE WITNESS: No.

THE COURT: T h i s ?

MR. **MOLDOF**: Yeah, he asked me to help represent him. Absolutely, oh yeah, he asked me to represent him.

THE COURT: oh, okay.

MR. **SATZ**: I have no further questions, your Honor.

MR. **MOLDOF**: Judge, if you want, we can fully explore that. There is no question.

THE COURT: To be honest with you, I was ready to disbelieve that.

MR. **MOLDOF**: He asked me to represent him if he was going to fire Mr. Trachman, but he couldn't come up with legal fees and I sent his wife away.

THE COURT: But you agree this is all true?

MR. **MOLDOF**: Yeah, absolutely.

THE COURT: I was ready to disbelieve all of that because I didn't think that happened, but I guess it did.

MR. **MOLDOF**: It happened that he asked me to represent him when he was firing Mr. Trachman, absolutely.

(R 637-640).

Chong also made clear that he was not promised anything from the **State** in exchange for his testimony and only came forward "... to clear the situation and to show him [**Blanco**] that he lost a friend and **family**" (R 641).

The State also presented the testimony of inmate Carlos **Ruiz**, who at one time was incarcerated on the fifth floor of the Broward County Jail (R 643). **Ruiz** knew Chong from the South Florida Reception Center and met **Blanco** through inmate George Gonzales at the Broward County Jail (R 644). He did not know **Blanco** before that time (R 644). **Ruiz** had several conversations with **Blanco** about **Blanco's** case (R 644). At first, **Blanco** told **Ruiz** that he

wasn't at the scene of the murder (R 645). **Blanco** then confided to Ruiz that it was a robbery and that things went bad, that it wasn't successful (R 645-646). **Blanco** never told Ruiz that he "**did it**" although he did give Ruiz details regarding the crime (R 645). Ruiz testified that he read some of the paperwork on Blanco's case and did research in the law library of the jail for **Blanco** (R 644, 647). Ruiz also testified that he was present during a conversation between **Blanco** and inmate Jorge Gonzales that took place in the church at the jail (R 646). **Blanco** asked Gonzales in **Ruiz's** presence to falsely testify that he saw Eduardo Chong reading his paperwork in the shower (R 647). **Blanco** knew that Gonzales never saw Chong reading **Blanco's** papers while **Blanco** was in the shower (R 646). Ruiz elaborated:

A. **Okay**, your Honor, this man right here with the white shirt [Omar **Blanco**], wanted George Gonzales to bring false testimony. At the beginning, George didn't want to do it. You know, George, he felt uncomfortable. The friendship that they had, all had together, although one time at church they went in deep conversation and they didn't want me to be in it. Next thing I find out, Omar tells me his lawyer went personal to see him and that he was going to testify and was going to work with him. **So**, that was going to be a successful point in his **case** and i-t was going to be a reasonable doubt and, you know, that's one of the good issues in the case.

(R 646-647). Eventually, Gonzales agreed to testify falsely against Chong for money, although he finally decided not to (R 649).

Ruiz testified that **Blanco** also asked him to get involved:

Q. Did he ever ask you to possibly be a witness?

A. No, not to be a witness. He wanted me to say Eduardo was doing this, Because I was located in South Florida. Why **don't** you talk to the man? Why are they doing this to me? We had everything

down pat. In other words, they had a good relationship and everything went chaos. Unfortunately, you know, we're in the position we're in now.

(R 648). **Ruiz** further testified that **Blanco** also discussed Roberto **Alonso's** involvement in the plot to pin the murder on someone else:

Q. Did you discuss with Omar **Blanco** about any false testimony about any other witnesses?

A. Yeah, we talked about -- he told me --

Q. Omar **Blanco**?

A. Yes, sir. And about a -- I think his name is Robert, in another institution. He was going to come up with this story, his brother, which is dead, passed away, I don't know was it was, had killed a person. This was going to be the second testimony. That name was Robert Alonso. Maybe, perhaps, and he was going to come and testify it was his brother and not him.

Q. And he discussed that with you?

A. Exactly, yes.

(R 648). **Ruiz** testified that he was receiving nothing in exchange for his testimony.

Inmate Jorge Gonzales also testified on behalf of the State. Gonzales was housed in the fifth floor of the Broward County Jail and shared a cell with Eduardo Chong at one time (R 660). **Blanco** shared a cell with Rigaberto Delgado underneath Gonzales' cell (R 659-660). Gonzales testified as to the conversation he had with **Blanco** in the church at the Broward County Jail (R 652). He specifically testified that he was in church with **Blanco** and inmate Carlos Ruiz when **Blanco** began discussing his case (R 652-653). **Blanco** asked Gonzales to testify falsely against Eduardo Chong:

Q. Did he ask you to do something?

A. The only thing that happened, we had a conversation in church. I knew that he had, that he was facing the electric chair and I felt sorry for him and we came to an agreement that I was going to say that I saw **Edwardo** Chong reading some papers.

Q. Did you see Eduardo Chong reading any of Omar's papers?

A. No.

(R 652). Gonzales testified that he was not receiving anything in return for his testimony against **Blanco (R 654-656)**.

Following the evidentiary hearing, memorandums were submitted by both the Defense (R 3029-3043) and the State (R 3064-3099).

Prior to opening statements at the resentencing proceedings, the defense told the trial court that it wanted to show Thalia Vezos, the victim's niece, a photo of Enrique Gonzales. (R 1248-1249) Defense counsel stated that Gonzales had pock marks, big pores and looked similar to **Blanco (R 1249)**. The trial court allowed defense counsel to call Ms. Vezos, proffer her testimony outside of the presence of the jury and show her the photo of Gonzales (R 1255). Thalia Vezos ultimately testified on April 21, 1994 regarding the Defendant's 3.850 allegations outside the jury's presence. Upon questioning by defense counsel, Ms. Vezos confirmed that she was aware that since 1982 another individual had confessed to the murder of her uncle (R 1313). She testified that when she gave her statement to police, as to the assailant's description, she said he had large pores in describing his complexion (R 1315-1316). The assailant did not have pock marks (R 1316). When shown a photograph of Enrique Gonzales, Ms. Vezos stated that the man in the photo did not have the complexion she had described to police, and that he was not the man she saw in her bedroom the night her uncle was murdered (R 1316). When invited to take a closer look at **Blanco** by defense counsel, Ms. Vezos stated that she didn't need to: "I know **he's** the man that killed my uncle." (R 1319) Upon questioning by the State, Ms. Vezos selected **Blanco's** photo from a

photographic lineup, the same lineup she viewed in 1982 when she originally identified him (R 1319-1320). The trial court likewise considered this testimony along with the transcript of the original trial.

The State submits that the testimony presented at the evidentiary hearing established beyond any reasonable doubt that **Blanco's** allegations of newly discovered evidence were a sham engineered and fabricated by **Blanco** himself.

The State would also submit that this claim is not new. Indeed, this Court rejected Blanco's argument on direct appeal that someone else committed the murder, characterizing **Blanco's** claim as "far-fetched and unsupported" Blanco v. state, 452 **So.2d** 520, 523 (Fla. 1984). Yet, **Blanco** still persists in raising this claim. See Porter v. State, 653 **So.2d** 374, 377-378 (Fla. 1995). As noted by this Court in Cherry v. State, 659 **So.2d** 1069 (Fla. 1995):

Although Cherry has rephrased this claim in terms of newly discovered evidence, we find it inappropriate for Cherry to use a different argument to collaterally relitigate an evidentiary issue already known and specifically considered and rejected on direct appeal... In addition, to the extent that this can be characterized as a different issue, we find the allegations insufficient as a matter of law to merit relief.

Id. At 1072.

Blanco's claim of newly discovered evidence is again "far-fetched and unsupported" as well as being legally insufficient under Jones.

Blanco has failed to prove that his alleged newly discovered evidence was unknown to him or his counsel at the time of the original trial and that **Blanco** or his counsel could not have known

of the evidence by the use of due diligence. Jones, supra; Bolender v. State, 658 **So.2d** 82, 85 (Fla. 1995); porter, supra. Specifically, both Carmen Gongora and Roberto Alonso were available to testify at **Blanco's** trial. Indeed, Carmen Gongora gave a statement in April of 1982 that she had only seen **Blanco** at her house on one (1) occasion. She did not mention anything about Enrique Gonzales' pullover having blood on it at that time. Furthermore, Carmen's then husband, Rey Alonso, now deceased, did in fact testify on **Blanco's** behalf at his trial and did not mention Enrique Gonzales' having blood on his shirt (T 1337-1347) or the conversation that he allegedly had with Enrique Gonzales in front of Roberto Alonso. It is crucial to note that Enrique Gonzales, who also testified on **Blanco's** behalf at his trial, Carmen Gongora, Rey Alonso and Roberto Alonso, were all intimates of Blanco, were all available to Blanco, and that the current testimony of Carmen Gongora and Roberto Alonso could have been discovered by **Blanco** at the time of his trial, if it were true. **Blanco** has failed to prove this testimony was unknown and could not have been known by him and thus has failed to meet his preliminary burden as the trial court correctly found. Jones, supra; Torres-Arboleda v. Dugger, 636 **So.2d** 1321 (Fla. 1994).

Furthermore, the State would point out that **Blanco's** alleged newly discovered **evidence** would not "probably produce an acquittal on retrial" as required under Jones. Id. at 915. This is partially because of the fact that much of the alleged new evidence would be inadmissible at a new trial. Indeed, the Statement of **Blanco's** mother, Zenaida Blanco, and the letters from Maria **del** Carmen Guerra and Julio Guerra, all of whom reside in Cuba are

unauthenticated under § 90.901 Florida Statutes. Furthermore, the State did not, has not and cannot have an opportunity to investigate the authenticity of the statement and letters as members of the Broward State Attorney's Office have been refused entry into Cuba by the Cuban government. Counsel for **Blanco** was only able to travel to Cuba to investigate **Blanco's** claims by traveling improperly under a tourist visa.

As for Roberto **Alonso's** testimony, which **Blanco** claims would be admissible at trial, the State submits that testimony that Enrique Gonzales committed the murder would not be admissible as "reverse Williams rule evidence" under Savino v. State, 567 **So.2d** 892 (Fla. 1990), since this evidence does not constitute reverse Williams rule evidence. Even if it did, the evidence would still not be admissible as reverse Williams rule evidence since **Blanco** has not shown what other similar crimes Gonzales allegedly perpetrated. Furthermore, for Roberto **Alonso's** testimony to be admissible at a new trial as a statement against interest under **§ 90.804(2)(c), Fla. Stat.**, **Blanco** must show that Enrique Gonzales is unavailable and that the statement was against his penal interest. Jones v. State, 678 **So.2d** (Fla. 1996); Lightbourne v. State, 644 **So.2d** 54, 56-57 (Fla. 1994). Assuming **Blanco** can establish the foregoing, Roberto **Alonso's** testimony regarding what he **heard** Enrique Gonzales say would still be inadmissible since there are no corroborating circumstances to show the trustworthiness of the statement. **Id.** at 57. Section **90.804(2)(c)** Flit. Stat. provides in pertinent part:

A statement tending to expose the declaration of criminal liability and offered to exculpate the accused is inadmissible, unless corroborating

circumstances show the trustworthiness of the statement.

The State submits that Roberto Alonso's testimony that he heard Enrique Gonzales tell Rey Alonso that he committed the murder is totally uncorroborated. See, Jones, 678 So.2d at 304. Rey Alonso never testified as to this alleged statement made to him when he testified at Blanco's trial and Carmen Gongora did not testify or corroborate this alleged statement at any time during her various statements. As such, Roberto Alonso's testimony regarding what he heard is untrustworthy. This is especially true where the State rebutted Alonso's testimony with its own witnesses. Eduardo Chong specifically testified that Blanco and Roberto Alonso met in prison and agreed that Roberto Alonso would testify that Enrique Gonzales killed the victim and that Blanco was going to pay Roberto Alonso for his testimony (R 613-614). State witness Carlos Ruiz's testimony at the evidentiary hearing that Blanco had told him that Roberto Alonso would come forward and give false testimony that Rey Alonso committed the murder as an alternative theory corroborated Chong's testimony that Blanco fabricated and engineered Roberto Alonso's false testimony that Enrique Gonzales murdered John Ryan. Furthermore, both Ruiz and Jorge Gonzales testified as to Blanco's efforts to thwart Chong from testifying against him as well as Blanco's efforts to fabricate evidence that Chong knew so much about the crime because he had read Blanco's papers. It is thus clear that Blanco has presented no corroborating circumstances demonstrating the trustworthiness of Roberto Alonso's statement that he heard Enrique Gonzales tell Rey

Alonso that he committed the murder of John Ryan. Jones, 678 So.2d at 314.

Nor would this statement be admissible under Chambers v. Mississippi, 410 US 284, 93 S.Ct 1038, 35 L.Ed.2d 297 (1973), as **Blanco** suggests. Indeed, as this Court noted in Jones, 678 So.2d at 314-315, "... unlike Mississippi at the time Chambers was decided, Florida recognizes a declaration against penal interest exception to the hearsay rule." Moreover, unlike the statements made in Chambers, the statements in this case do not bear persuasive assurances of trustworthiness. See, Jones, 678 So.2d at 315.

It should also be noted that Roberto **Alonso's** testimony that Enrique Gonzales made a statement implicating himself in the murder of John Ryan is totally inconsistent with the physical evidence which established that Thalia Vezos positively identified **Blanco** as the person who entered her bedroom and murdered her uncle, both at trial and at the 1994 evidentiary hearing; that George Abdeni identified **Blanco's** form as the form he had seen at the time of the murder; that **Blanco's** wallet and identification papers were found in Thalia **Vezos's** bedroom and that he had nothing on his person when he was apprehended; that the murder occurred shortly after **11:05** p.m. and that **Blanco** was apprehended-at **11:57** p.m. only 1.4 miles from the scene of the crime; and that gunshot residue was found on **Blanco's** hands. Clearly, Roberto **Alonso's** testimony regarding what he heard Enrique Gonzales say is uncorroborated, untrustworthy and rebutted by the State witnesses and the testimony adduced at trial. As such, the alleged statement by Enrique Gonzales would not be admissible as a declaration against interest

under § 90.804(2)(c), Florida Statutes, or under Chambers at a new trial. Lightbourne, supra; Jones 678 So.2d 309.

Although both Carmen Gongora and Roberto Alonso would be able to testify at a new trial as to what they saw, their testimony would not be of such a nature that it would probably produce an acquittal in retrial which is the standard as set forth in Jones.

Specifically, although Carmen Gongora testified at the February 25th evidentiary hearing that she saw Enrique Gonzales on the night of the murder with blood on his pullover and that she had never seen Blanco with blood on his shirt, Gongora is a medicated mental patient who has given numerous contradictory statements. Prior to her testimony Ms. Gongora gave a sworn statement to Walter LaGraves, Chief Investigator for the Broward State Attorney's Office, on February 18, 1993, as well as a deposition to defense counsel on July 23, 1993. In her sworn statement, Ms. Gongora stated that at the time of the murder, Roberto Alonso was not living with her and her husband Rey (R 3279). She also stated that on the night of the murder Enrique Gonzales and Fidel Romero returned to the house and that both men had blood on their shirts (R 3299-3300). In her deposition, Ms. Gongora stated that her husband Rev told her on the night Blanco was arrested that Blanco had killed a millionaire (R 3325). She also stated in her deposition that on the night of the murder, Blanco and Enrique Gonzales returned to the house and that both men had blood on their clothes (R 3326-3327, e3330) Blanco with blood on his clothes on two (2) occasions (R 3327). In her February 23rd, 1994 affidavit, offered as a proffered exhibit at the evidentiary hearing, Ms. Gongora stated that Enrique Gonzales returned to her

house with a bloody shirt in his hand, and that he himself threw the shirt away. Her latest testimony occurred after she was threatened that unless she testified for **Blanco**, she would be arrested and go to jail (R 542-545). She testified that this made her nervous (R 545). She identified the detective who threatened her as Edward **Maus** (R 544). **Maus** worked on behalf of the Defendant (R 588-589). Upon examination, **Maus** admitted that he went to see Ms. Gongora on two (2) occasions (R 589-591).

It goes without question that Carmen **Gongora's** testimony would be the subject of a rigorous cross-examination at any new trial. It also goes without saying that her credibility would be severely impeached given her status as a medicated mental patient and her numerous contradictory statements. The **State** would also point that in one of those statements, Ms. Gongora stated that she had seen **Blanco** on the night of the murder return to her house with blood on his shirt (R 3326-3327, 3330). This statement given in a deposition is patently false since **Blanco** was apprehended 1.4 miles away from the scene of the murder less than fifty (50) minutes after the murder. If Ms. Gongora did see blood on **Blanco's** shirt, as she said she did on two (2) occasions, neither could have been on the night of the murder since **Blanco** was apprehended immediately thereafter. In short, Carmen **Gongora's** testimony would not probably produce an acquittal on retrial. Jones, supra.

The same holds true for Roberto **Alonso's** testimony. Even if Roberto Alonso could testify as to what he heard and saw regarding Enrique Gonzales, such testimony would be of dubious validity at best, given the fact it was rebutted by the State through the testimony of Eduardo Chong, Carlos Ruiz and Jorge Gonzales, who

would all be called as State witnesses at **any** retrial. Furthermore, the testimony of Roberto Alonso, a convicted murderer, would be impeached and discredited through cross-examination in front of a jury. Lastly, **Alonso's** testimony that on the night of the murder Enrique Gonzales stated that he committed the murder and was seen by Alonso with blood on his shirt, is inconsistent with the physical evidence which established that Thalia Vezos positively identified **Blanco** as the person who entered her bedroom and murdered her uncle; that George Abdeni identified **Blanco's** form as the form he had seen **at the time** of the-murder; that **Blanco's** wallet and identification papers were found in Thalia **Vezos's** bedroom and that he had nothing on his person when he was apprehended; that the murder occurred shortly after **11:05** p.m. and that **Blanco** was apprehended at **11:57** p.m. only 1.4 miles from the scene of the crime; and that gunshot residue was found on **Blanco's** hands.

The State maintains that **Blanco's** allegations of newly discovered evidence were properly rejected by the trial court. Indeed, his witnesses simply lacked credibility. **Blanco's** allegations of newly discovered evidence were a sham, fabricated and engineered by **Blanco** himself. The allegations as set forth in the testimony of Carmen Gongora and Roberto Alonso are at odds with the physical evidence adduced at the original trial as well as with each other. **Torres-Arboleda, supra, Jones, supra.** Accordingly, this evidence would not probably result in an acquittal at a retrial and the denial of his motion for post-conviction relief based on newly discovered evidence should be affirmed.

POINT 11

BLANCO'S MOTION TO DISQUALIFY WAS PROPERLY DENIED BY THE TRIAL COURT, AND HIS PETITION FOR WRIT OF PROHIBITION WAS PROPERLY DENIED BY THE FOURTH DISTRICT COURT OF APPEALS, WHERE BLANCO'S MOTION TO DISQUALIFY WAS LEGALLY INSUFFICIENT ON ITS FACE

Blanco has raised in this appeal of his denial of his Motion for Post-Conviction Relief based on newly discovered evidence, the propriety of the trial **court's** denial of his Motion to Disqualify and the Fourth District's denial of his Petition for Writ of Prohibition.

Initially, the State would point out that **Blanco's** Motion for Post-Conviction Relief based on alleged newly discovered evidence was denied by the trial court on April 27, 1994, (R 3396-3406, 3407). **Blanco** filed his Notice of Appeal of the denial of his Motion for Post-Conviction Relief on May 25, 1994 (R 3416, 3417).

Blanco did not file his Motion to Disqualify until September 29, 1994 (R 3474-3487).

The State submits that this appeal is not the proper forum for **Blanco** to raise the issue of the trial **court's** denial of his Motion for Disqualification. Indeed, **Blanco** did not file his Motion to Disqualify until four (4) months after he filed the Notice of Appeal from the denial of his Motion for Post-Conviction Relief. It is thus clear that this issue is not properly a part of this appeal.

Even if this issue has been properly raised in this forum, **Blanco** would still not be entitled to relief where the Motion to Disqualify was a sham pleading, filed to avoid **Blanco's** capital

resentencing, was not filed in good faith, and legally insufficient on its face.

Specifically, **Blanco** was represented at his resentencing proceeding by **Hilliard Moldof**, Esquire. The Office of Capital Collateral Representative also had a CCR lawyer present to represent **Blanco** at his February 25, 1994 3.850 hearing which commenced prior to his penalty proceeding.*

Mr. **Moldof** was appointed to represent **Blanco** at his capital resentencing proceeding on June 12, 1992. After the granting of numerous defense continuances, jury selection finally commenced on April 18, 1994. At the conclusion of the proceedings, the jury recommended, by a vote of ten (10) to two (**2**), that the Defendant be sentenced to death. Sentencing memoranda were filed by the State and Defense in early September 1994. A pre-sentencing hearing was scheduled for October 28, 1994. However, on September

²The State objected to **CCR's** participation in the 3.850 proceeding as well as the resentencing proceeding. CCR had no standing to appear as counsel in this case, to sign pleadings in this case, or to otherwise participate in these proceedings. Under **§27.702**, Florida Statutes, the Capital Collateral Representative shall represent indigent defendants sentenced to death for the purpose of instituting and prosecuting collateral actions challenging the legality of the judgement and sentence imposed. The Statute specifically provides that representation by the Capital Collateral Representative shall commence upon termination of direct appellate proceedings in state or federal courts. **Blanco's** resentencing was a totally new proceeding. Hitchcock v. State, 578 **So.2d** 685 (Fla. 1991). He was not under sentence of death and his direct appellate proceedings had not yet begun. Accordingly, CCR was acting without authority and beyond the jurisdiction allowed a Capital Collateral Representative under Florida law in their involvement in this case when a CCR attorney was present in court not only on February 25, 1994 at the evidentiary hearing, but also on April 18-22, April 27-29, and May 2-4, 1994, where a CCR lawyer sat at counsel table during **Blanco's** resentencing proceeding.

29, 1994, Defense counsel filed a Motion to Disqualify which alleged:

On September 26 ,1994, counsel [Moldof] was present in court during a proceeding before the Honorable Barry Goldstein in State v. Lloyd Duest. When Mr. Duest appeared in front of Judge Goldstein, Mr. Duest recognized him as an Assistant State Attorney who had assisted at his trial in 1983.

When counsel became aware that Judge Goldstein was an Assistant State Attorney in 1983, he realized that Judge Goldstein was also an Assistant State Attorney in the Broward County State Attorney's Office not only at the time of Blanco's trial and original sentencing proceedings, proceedings which eventually resulted in Mr. Blanco's case being remanded for a new jury sentencing proceeding. See Blanco v. Singletary 943 F.2d 1977 (11th Cir. 1991). Counsel have since verified that Judge Goldstein was in fact employed as an Assistant State Attorney from August 1, 1976, through May 6, 1988. Judge Goldstein's employment as an Assistant State Attorney during Mr. Blanco's trial, sentencing, and post-conviction proceedings, give Mr. **Blanco** reasonable fear of not receiving a fair sentencing and **post-conviction** proceedings before a Judge who had worked for the prosecution at the time of all prior proceedings in this case.

Mr. Blanco's fear of not receiving a fair re-sentencing and post-conviction hearing before Judge Goldstein is further heightened by the fact that the prosecutor handling these proceedings, Michael Satz, the **State** Attorney, was Judge Goldstein's employer and the person to whom he was directly responsible as an Assistant State Attorney.

(R 3474-3487)

The State filed a Response pointing out that Mr. **Moldof** had had twenty (20) cases while he was an Assistant Public Defender with then Assistant State Attorney Barry Goldstein, beginning in 1978, that the Motion was untimely under Florida Rule of Judicial

Administration **2.160(e)**, and that the Motion was legally insufficient on its face (R 3489-3496).

The Defense filed a Reply (R 3502-3504).

On October 28, 1994, in open court, State Attorney Michael J. Satz stated that he had never worked on the Case of State v. Lloyd Duest (R 2408-2409). Mr. **Moldof** stated to the trial court:

I understood you had worked on vehicular homicides. I know you were a supervisor of the felony trial units at some point, but I don't recall this Court ever working on the capital cases, certainly not that of Mr. **Blanco** and certainly not that of Mr. Duest.

(R 2410).

The trial court denied **Blanco's** Motion as being legally insufficient on its face (R 2411) and entered a written Order stating same (R 3505). **Blanco** filed a Petition for Writ of Prohibition in the Fourth District Court of Appeals. The Fourth District ordered the State to file a response. After receiving the **State's** Response, the petition **was denied** (R 3507).

The State maintains that **Blanco's** Motion to Disqualify and Petition for Writ of Prohibition were properly denied. Indeed, defense counsel **Moldof** admitted that he was aware that the trial court had worked as a prosecutor (R 2409).

Furthermore, the defense's statement that after the September 26th revelation that:

Counsel have since verified that Judge Goldstein was in fact employed as-an Assistant State Attorney from August 1, 1976 through May 6, 1988. (emphasis added)

was a blatant factual misrepresentation. The Office of the Capital Collateral Representative made a public records request of the Broward County State Attorney's Office on September **21st**, 1994

regarding the dates of Judge Goldstein's employment as an Assistant State Attorney. Thus, **Blanco's** Motion was legally insufficient where it was not filed in good faith as certified by counsel for defense where Mr. **Moldof** knew of Judge Goldstein's previous employment long before the Motion was filed.

It was for these same reasons that **Blanco's** Motion was not timely under Florida Rule of Judicial Administration **2.160(e)** which specifically provides:

(e) Time. A motion to disqualify shall be made within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. **Any** motion for disqualification made during a trial must be based on facts discovered during the trial and may be stated on the record and shall also be filed in writing on compliance with subdivision **(c)**. Such trial motions shall be ruled on immediately.

Clearly, **Blanco's** Motion was not timely under the Rule where the basis of the motion was known by Mr. **Moldof** all along and not recently discovered, as alleged. Mr. **Moldof** was assigned to **Blanco's** case on June 12, 1992 and yet waited until after Blanco's capital resentencing hearing to challenge the trial court's qualifications to preside over this case. **McGauley v. Goldstein**, 653 So.2d 1108 (Fla. 4th DCA 1995). The State would further point out that there was no good cause of the delay in filing the Motion. Indeed, suffering an adverse ruling is not grounds for delay in filing the Motion. **Barwick v. State**, 660 So.2d 685 (Fla. 1995); **Fier v. Knuck**, 497 So.2d 240 (Fla. 1986); **Lawson v. Longo**, 547 So.2d 1279 (Fla. 1989). The State would also point out that Defense counsel's certification also rendered the Motion legally

insufficient. Rule 2.160 specifically provides that counsel must certify that the motion and the client's statements are made in good faith. No such certification regarding **Blanco's** statements was contained in counsel's certification.

As for the relative merit of **Blanco's** Motion, the State maintains that the basis for Blanco's Motion did not warrant the disqualification of the trial court, a fact not lost on the Fourth District. The fact that the trial court served as an Assistant State Attorney at the time this case was originally tried was not a reason for the trial court's disqualification. Assistant State Attorney Barry Goldstein had no involvement whatsoever in the prosecution or post-conviction proceedings of Omar **Blanco**. As this Court is well-aware, a State Attorney's Office is not a "law firm" within the meaning of the Florida Bar's ethical standards requiring disqualification. State v. Fitzpatrick, 464 **So.2d** 1185, 1188 (Fla. 1985). State Attorney Michael J. Satz at no time ever discussed this case with then Assistant State Attorney Barry Goldstein, nor did Assistant State Attorney Goldstein assist in any capacity in the prosecution of **Blanco** (R 3489-3497). In any event, the case of State ex rel. Shelton v. Sepe, 254 **So.2d** 12 (Fla. 3d DCA 1971), is directly on point and states:

We hold to be without merit the contention of the relator that disqualification of the respondent judge should result from the fact that the respondent was employed as an assistant state attorney at the time the relator was bound over to the criminal court of record. It was disclosed that the respondent, while so acting as assistant state attorney, had no dealings or contact with the prosecution proceeding involving the relator.

Id. at 14. Clearly, disqualification was not warranted under case law.

The State would further point out that Assistant State Attorney Barry Goldstein's letter of resignation to State Attorney Michael **J. Satz** was also not a reason for the trial court to disqualify itself from presiding over **Blanco's** case. The letter of resignation and the language contained therein is standard fare upon any employee's voluntary resignation. It should also be noted that Assistant State Attorney Barry Goldstein was not hired by **State** Attorney Michael Satz but by his predecessor, **Phillip** S. Shailer (R 3489-3497). The fact that the letter expresses gratitude is of no moment. The State would point out that even if the letter expressed friendship, which it does not, friendship between a judge and assistant state attorney, and the fact that the judge and prosecutor had previously worked together in the office of the state attorney and enjoyed a close working relationship, does **not** require disqualification. Chastine v. Broome, 629 **So.2d** 293 (Fla. 4th DCA 1993). Here, there was no friendship, or a relationship as alleged by defense counsel, merely an employer and employee who eventually severed their professional ties. As noted previously, the fact that Judge Goldstein served as an Assistant State Attorney at the time of **Blanco's** trial and post-conviction proceedings is likewise not a ground for disqualification.

The State would also point out that the decision in Duest v. Goldstein, 654 **So.2d** 1004 (Fla. 4th DCA 1995) has no bearing on **this** case. In Duest the Fourth District found that Judge Goldstein, as an assistant state attorney, delivered a document to trial counsel during the proceedings and was the supervising state

attorney of the division in which Duest was tried. Judge Goldstein had no such connection to the prosecution of Blanco. If he did, the Fourth District would have issued the Writ of Prohibition and would not have treated this case differently from Duest. See Mahar v. State, 21 FLW S387 (Fla. Sept. 19, 1996).

Blanco's citation of Mitchell v. State, 642 So.2d 1109 (Fla. 4th DCA 1994) and Gonzalez v. Goldstein, 633 So.2d 1183 (Fla. 4th DCA 1994), likewise have no bearing on this case. Indeed, there has never been an allegation that Judge Goldstein prejudged this case or engaged in improper ex parte communications in this case.

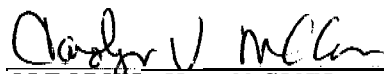
The State thus maintains that Blanco's Motion and the accompanying affidavit did not set forth a reasonably sufficient fear of not receiving a fair hearing in front of the trial court. Fischer v. Knuck, supra. As noted previously, the Motion was not filed in good faith, was untimely, the certificate was legally insufficient under the Rules, and the grounds for the Motion did not warrant disqualification under prevailing case law. In short, the Motion was legally insufficient on its face and was properly denied. The trial court and the Fourth District Court of Appeals correctly denied Blanco relief. Their decision should be affirmed by this Court.

CONCLUSION

WHEREFORE, based upon the foregoing reasons and authorities cited herein, the State respectfully requests this Honorable Court AFFIRM the trial court's denial of **Blanco's** Motion for **Post-Conviction Relief** based on Newly Discovered Evidence and his Motion to Disqualify.

Respectfully submitted,


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CRRTICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Answer Brief of **Appellee** has been furnished by U.S. Mail to Todd G. **Scher**, Esquire, 1444 Biscayne Boulevard, Suite 202, Miami, Florida 33132-1422, and Sara Baggett, Esquire, Department of Legal Affairs, 1655 Palm Beach Lakes Boulevard, Suite 300, West Palm Beach, FL 33401-2299, this **18th** day of December, 1996.



OF COUNSEL