

IN THE SUPREME COURT OF FLORIDA

SCOTT MANSFIELD,

Appellant,

v.

CASE NO. SC15-411
L.T. No. 1995-CF-2078
DEATH PENALTY CASE

STATE OF FLORIDA,

Appellee.

ON APPEAL FROM THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR OSCEOLA COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

PAMELA JO BONDI
ATTORNEY GENERAL

KATHERINE MARIA DIAMANDIS
Assistant Attorney General
Florida Bar No. 069116
capapp@myfloridalegal.com
katherine.diamandis@myfloridalegal.com

STEPHEN D. AKE
Assistant Attorney General
Florida Bar No. 0014087
Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
stephen.ake@myfloridalegal.com
capapp@myfloridalegal.com

COUNSEL FOR APPELLEE

RECEIVED, 10/05/2015 01:23:36 PM, Clerk, Supreme Court

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... ii

STATEMENT OF THE CASE AND FACTS..... 1

SUMMARY OF THE ARGUMENT..... 10

ARGUMENT..... 11

 ISSUE I..... 11

 COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTS THE
 DENIAL OF MANSFIELD’S NEWLY DISCOVERED
 EVIDENCE CLAIM. (Restated by Appellee)

CONCLUSION..... 21

CERTIFICATE OF SERVICE..... 22

CERTIFICATE OF FONT COMPLIANCE..... 22

TABLE OF AUTHORITIES

Federal Cases

Mansfield v. Secretary, Dep't of Corr.,
601 F. Supp. 2d 1267 (M.D. Fla. 2009) 6

Mansfield v. Secretary, Dep't of Corr.,
679 F.3d 1301 (11th Cir. 2012),
cert. denied, 133 S. Ct. 861 (2013) 6

State Cases

Duckett v. State,
918 So. 2d 224 (Fla. 2005) 15

Hurst v. State,
18 So. 3d 975 (Fla. 2009) 12

Jones v. State,
591 So. 2d 911 (Fla. 1991) 16

Jones v. State,
709 So. 2d 512 (Fla. 1998) 12

Lightbourne v. State,
841 So. 2d 431 (Fla. 2003) 12

Mansfield v. State,
758 So. 2d 636 (Fla. 2000),
cert. denied, 532 U.S. 998 (2001) 1, 5, 19, 20

Mansfield v. State,
911 So. 2d 1160 (Fla. 2005) 6

Robinson v. State,
707 So. 2d 688 (Fla. 1998) 15

Rogers v. State,
783 So. 2d 980 (Fla. 2001) 12

Spann v. State,
91 So. 3d 812 (Fla. 2012) 11, 16

Tompkins v. State,
994 So. 2d 1072 (Fla. 2008) 16

Waterhouse v. State,
82 So. 3d 84 (Fla. 2012) 12

Other Authorities

§ 90.804(2)(c), Fla. Stat..... 15

Fla. R. Crim. P. 3.851..... 6

STATEMENT OF THE CASE AND FACTS

Appellant, Scott Mansfield, was found guilty and sentenced to death for the brutal murder of Sara Robles in 1995. This Court affirmed Mansfield's conviction and sentence on direct appeal. See Mansfield v. State, 758 So. 2d 636 (Fla. 2000), cert. denied, 532 U.S. 998 (2001). This Court set forth the following factual summary of Mansfield's conviction and sentence:

On the morning of October 15, 1995, the body of Sara Robles was found lying in a grassy area next to a Winn-Dixie grocery store in Kissimmee, Florida. Robles was lying on her back with her legs and arms outstretched. Her shirt and skirt were pushed up partially revealing her breasts and pelvic area which were mutilated.

Examination revealed that Robles' nipples had been excised, as well as portions of her labia minor, majora and clitoris.

The police recovered from the scene a Winn-Dixie bag with a receipt inside, and another receipt reflecting the purchase of some groceries which were found scattered near Robles' body. [n1] Robles was found wearing a watch, apparently broken during the murder, which was cracked and stalled at 3 a.m. Additionally, among the items recovered strewn around her body were food stamps and a pager.

[n1] Juanita Roberson, a Winn-Dixie night-clerk working the early morning hours of October 15, testified that Robles, accompanied by Mansfield, made the purchases reflected in the receipts recovered by the police at the scene.

The ensuing investigation revealed that the receipts found near Robles' body reflected purchases made roughly at 2:35 and 2:36 a.m. [n2] The police then questioned Jesus Alfonso, a friend of Robles, who visited with Robles the previous evening. Alfonso told police that he and Robles went to Rosie's Pub, located in the same shopping plaza as the Winn-Dixie. Alfonso left the bar at 1:30 a.m., but Robles remained at the bar playing pool with a male whose description matched Mansfield's.

[n2] The receipts found at the crime scene indicated that the documented purchases were made at 1:35 and 1:36 a.m. However, when the police took the receipts to the Winn-Dixie and had the assistant manager run some receipts to check the accuracy of the time reflected therein it was discovered that the registers were approximately an hour behind.

Karen Hill, a bartender at Rosie's Pub, was then interviewed and indicated that Robles was at the bar the previous evening in the company of Mansfield. According to Hill, Mansfield, Robles, and a third individual by the name of William Finneran exited the bar together shortly after 2 a.m.

After speaking with other witnesses confirming that Robles was in the company of Mansfield and Finneran during the early morning hours of October 15, the police questioned Finneran who indicated that he had exited the bar with Mansfield and Robles shortly after 2 a.m. and that he last saw them around 3 a.m. at Winn-Dixie.

The police, after learning that the pager found at the murder scene was traced to Mansfield, focused their investigation on him. Additionally, the police interviewed Juanita Roberson, a Winn-Dixie night clerk, who indicated that Robles purchased the items reflected in the recovered receipts with a man whose description matched Mansfield's and that Robles was in the company of that same man outside the Winn-Dixie when Roberson took her break at approximately 3 a.m. the night of the murder. With this information in

hand, three detectives went to Mansfield's residence the night following the murder to question him. Mansfield agreed to be interviewed by the detectives at the police station.

Prior to being transported to the station, the detectives noticed that Mansfield had fresh scratches on his knees and hands. Once at the station, he avoided and inconsistently answered many of the questions posed to him during the roughly two-and-a-half hour videotaped session. Specifically, Mansfield admitted to being at Rosie's Pub with Robles, but initially insisted that he had gone directly home after leaving the bar. Following further questioning, he begrudgingly admitted going to Winn-Dixie after leaving Rosie's Pub.

Shortly before the interrogation ended, the police received further evidence placing Mansfield at the scene of the crime. Juanita Roberson, the Winn-Dixie night clerk, identified Mansfield in a photograph lineup at the police station as the man she saw with Robles outside the Winn-Dixie the previous evening at approximately 3 a.m. The detectives directed Mansfield to lift his shirt at which time they observed a bruise on his chest. The police then arrested Mansfield and took into evidence a ring he was wearing with a distinctive "grim reaper" design.

The following day, Mansfield's brother, Charles, called the police and asked them to come down to his apartment to gather some items found in Mansfield's room. Once there, the police recovered food stamps, a knife and sheath, clothing, and a towel. [n3]

[n3] During its case in chief, the State's senior crime lab analyst, David Baer, testified as to the results of DNA and blood testing done on the items recovered from Mansfield's room. His testimony established that some of the items had blood that was consistent with Mansfield's. The tests conducted on the items recovered from Mansfield's room, however, did not reveal the presence of Robles' blood.

While at the apartment the police also questioned Mansfield's 10-year-old niece, Melissa Mansfield, who told them that Mansfield arrived home on the morning of October 15 at about 4:30. Melissa told police that Mansfield came to the door soaking wet, wearing shorts but no shirt, and carrying his shoes. Melissa told police she gave Mansfield a towel at his request, and that she noticed what appeared to be a small blood stain on his shorts. [n4]

[n4] During Mansfield's interrogation with police the previous evening, Mansfield told police that he had taken a swim in the pool in the early morning hours of October 15 before entering the apartment and that his niece saw him enter the apartment afterwards.

The State introduced several other witnesses at trial who placed Mansfield with Robles at or near the crime scene at approximately the time the murder was presumed to have occurred. The State's medical examiner, Dr. Julie Martin, testified as to the existence of a pattern injury on the neck of Robles consistent with the pattern found on the "grim reaper" ring removed from Mansfield following his arrest.

Dr. Martin testified that Robles died of asphyxia due to airway compression as a result of blunt force trauma to the neck. Specifically, Dr. Martin opined that the murderer, while straddling Robles, strangled her with one hand, using the other hand or an object (the ring) to press down on her lower neck, causing her trachea to collapse. She further testified as to the existence of extensive bruising about Robles' eye, neck and collarbone. Dr. Martin concluded that Robles was conscious and struggling to breathe for "more than a few minutes" before becoming unconscious. According to Dr. Martin, Robles was alive but most likely unconscious when parts of her genitalia were excised by a sharp object consistent with the knife recovered from Mansfield's room.

The State also introduced the testimony of convicted felon Michael Derrick Johns who recounted a jailhouse conversation with Mansfield in which Mansfield confessed to Robles' murder. The defense did not present any evidence.

The jury, after being instructed on both first-degree premeditated murder and first-degree felony murder, found Mansfield guilty of first-degree murder. The jury unanimously recommended the death penalty. The trial court followed the recommendation and sentenced Mansfield to death.

In support of the death sentence, the trial judge found two aggravating circumstances: (1) the crime was especially heinous, atrocious, or cruel; and (2) the crime was committed during the commission of or an attempt to commit a sexual battery. The court found no statutory mitigation and five nonstatutory mitigators and found the following three mitigators were entitled to very little weight: (1) the defendant's good conduct during trial; (2) the defendant is an alcoholic; and (3) the defendant's mother was an alcoholic during his childhood. The court accorded the remaining two mitigators some weight: (1) the defendant had a poor upbringing and dysfunctional family; and (2) the defendant suffers from a brain injury due to head trauma and alcoholism.

Mansfield v. State, 758 So. 2d 636, 640-42 (Fla. 2000).

On June 15, 2001, Mansfield filed a "shell" Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend. (PCR V1:45-69).¹ The trial court dismissed the motion without prejudice. (PCR V1:70-73). On April 19, 2002,

¹ The State will cite to the instant successive postconviction record by referring to the volume number, and appropriate page number (SPCR V_:____). The State will follow the same format for the postconviction record (PCR V_:____), and the direct appeal record (DAR V_:____).

Mansfield filed a Second Amended Motion to Vacate Judgment of Conviction and Sentence with Special Request for Leave to Amend. (PCR V1:74-147).

Pursuant to Florida Rule of Criminal Procedure 3.851, the trial court granted Mansfield an evidentiary hearing on all of his postconviction claims involving factual disputes. The case proceeded to an evidentiary hearing during the week of January 21, 2003. Subsequently, the trial court entered an order denying postconviction relief, and this Court affirmed this ruling on appeal. Mansfield v. State, 911 So. 2d 1160 (Fla. 2005).

Following his state postconviction proceedings, Mansfield sought relief in federal court by filing a petition for writ of habeas corpus. The federal district court erroneously granted Mansfield a new trial, Mansfield v. Secretary, Dep't of Corr., 601 F. Supp. 2d 1267 (M.D. Fla. 2009), but the Eleventh Circuit Court of Appeals reversed the court's order granting habeas relief and found that the admission of Mansfield's statement to law enforcement in violation of Miranda was indeed harmless error as correctly found by this Court on direct appeal. Mansfield v. Secretary, Dep't of Corr., 679 F.3d 1301 (11th Cir. 2012), cert. denied, 133 S. Ct. 861 (2013).

SUCCESSIVE POSTCONVICTION PROCEEDINGS

In October, 2013, the State Attorney's Office for the Ninth Judicial Circuit received a letter purportedly written by witness Michael Derrick Johns indicating that he had previously sent a letter to Assistant State Attorney Dorothy Sedgwick and had not heard back regarding his request. The letter further indicated that he intended to contact the parties in Mansfield's case and Wilfredo Collado's case "to provide them with sworn and notarized affidavits detailing a full and complete recantation of all testimony elicited from me." (SPCR V3). The letter stated that he intended to detail "certain schemes that both the Osceola County S.O. and State Attorney's Office employed in those cases - particularly 'Mansfield's' - where my involvement was concerned that would constitute egregious and invidious due process violations, that, if proven at an evidentiary hearing based on newly discovered evidence would more than likely require a reversal on the convictions." Assistant State Attorney Ryan Vescio responded to the letter and immediately provided copies of the original letter and his response to collateral counsel for Mansfield.

On September 10, 2014, Mansfield filed a successive motion for postconviction relief, relying exclusively on the letter purportedly written by Michael Johns to argue that this newly

discovered evidence entitled him to a new trial. (SPCR V1:88-122).² The State filed a Response to Mansfield's successive motion to vacate on September 29, 2014. (SPCR V1:123-35). Following the case management conference on October 28, 2014, an evidentiary hearing was held December 16, 2014, before The Honorable Frederick J. Lauten.

At the hearing, Mansfield presented Johns and postconviction counsel's investigator William Cordova as witnesses, and offered "the Johns letter" as evidence. The State did not present any witnesses or evidence. Prior to Johns being questioned, the court advised him of his constitutional right not to testify, and appointed Deputy Chief Public Defender Eileen Forrester, upon Johns' request, to assist him. (SPCR V5:263-77).³ Forrester advised the court that Johns wished to invoke his Fifth Amendment privilege and did not want to "answer questions regarding anything." (SPCR V5:277).

When called as a witness, Johns invoked his right not to testify regarding the letter. (SPCR V5:279, 287). However, Johns did indicate that his testimony at Mansfield's trial was

² The letter purportedly written by Johns and Assistant State Attorney Vescio's letter were both attached to Mansfield's motion. (SPCR V1:120-22).

³ Mansfield's counsel did not object to the court's advice or to the appointment of Forrester. (SPCR V5:264).

truthful, and "remains unchanged." (SPCR V5:279). At no point did Johns recant his testimony or even indicate whether or not he authored the letter.

Investigator Cordova was called to authenticate the letter. Even though Cordova was unable to authenticate the letter, the State asked the postconviction court to assume for the sake of argument that Johns authored the letter. (SPCR V5:287-314). The State's hearsay objection to the letter was sustained and the letter was not entered into evidence, but was proffered as "Defense Exhibit A". (SPCR V3; V5:304-13).

After the evidentiary hearing concluded, Mansfield and the State offered oral closing arguments. (SPCR V5:314-25). Judge Lauten denied relief and issued an Order Denying First Successive Motion to Vacate Judgment of Conviction and Sentence, filed January 12, 2015. (SPCR V2:188-95). Mansfield's motion for rehearing was denied January 30, 2015. (SPCR V2:196-209).

This appeal follows.

SUMMARY OF THE ARGUMENT

The postconviction court's findings are supported by the record and the law was applied properly. Johns never recanted, and the unsworn letter purportedly written by him, at most, indicated only an intent to recant. Moreover, even if the letter is considered, Mansfield did not carry his burden of proving he probably would be acquitted or receive a life sentence on retrial. The denial of Mansfield's motion for successive postconviction relief should be affirmed.

ARGUMENT

ISSUE I

**COMPETENT, SUBSTANTIAL EVIDENCE SUPPORTS THE DENIAL OF
MANSFIELD'S NEWLY DISCOVERED EVIDENCE CLAIM.
(Restated by Appellee).**

While Mansfield comes to this Court as if his claim was subject to *de novo* review, the "sole question before this Court is whether the trial court's decision is supported by competent, substantial evidence." Spann v. State, 91 So. 3d 812, 825 (Fla. 2012). Mansfield's attempt to relitigate the various stages of his case from his conviction to federal court should not be entertained as the only issue before this Court is the lower court's denial of Mansfield's successive postconviction claim of newly discovered evidence. After conducting an evidentiary hearing on this claim, the court properly denied it. As competent, substantial evidence supports the court's ruling, this Court should affirm.

In order to prevail on a claim of newly discovered evidence two requirements must be met:

First, in order to be considered newly discovered, the evidence "must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known [of it] by the use of diligence."

Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. To reach this conclusion the

trial court is required to "consider all newly discovered evidence which would be admissible" at trial and then evaluate the "weight of both the newly discovered evidence and the evidence which was introduced at the trial."

Jones v. State, 709 So. 2d 512, 521 (Fla. 1998) (internal citations omitted).

"In reviewing the circuit court's decision as to a newly discovered evidence claim following an evidentiary hearing, where the court's findings are supported by competent, substantial evidence, we will not substitute our judgment for that of the trial court on questions of fact, credibility of the witnesses, or the weight to be given to the evidence by the trial court." Hurst v. State, 18 So. 3d 975, 992-93 (Fla. 2009); see also Waterhouse v. State, 82 So. 3d 84, 101 (Fla. 2012) (explaining when trial court rules on newly discovered evidence claim after a hearing this Court accepts the courts findings on questions of fact, credibility of witnesses, and weight of evidence); Lightbourne v. State, 841 So. 2d 431, 442 (Fla. 2003) (affirming denial of postconviction relief based on conclusion trial court's finding defendant had "not established a reasonable probability that a life sentence would have been imposed is supported by competent, substantial evidence"); Rogers v. State, 783 So. 2d 980, 1003-04 (Fla. 2001) (reiterating "this Court will not substitute its own judgment

for that of the trial court on question of fact, likewise of the credibility of the witnesses as well as the weight to be given to the evidence by the trial court").

Following an evidentiary hearing, the postconviction court denied relief finding there was not a basis to conclude an actual recantation existed, and that the Johns' letter was not credible as Johns would not offer a recantation under oath or submit to cross-examination. Moreover, the court found even if Johns did recant under oath "there is no reasonable probability" that it "would probably produce an acquittal on retrial or that it would result in a less severe sentence." (SPCR V2:194).

In denying Mansfield's successive motion for postconviction relief, the court stated its rationale and findings:

Throughout the hearing, Mr. Mansfield's counsel stressed Mr. Johns' lack of credibility, including the fact he was thoroughly impeached at trial. It is disingenuous to suggest that Mr. Johns is now an eminently credible witness, particularly where he has never filed a formal affidavit actually recanting his trial testimony. For all the debate about the admissibility of the letter, it contains, at most, his *intention* to recant.

The distinction is significant. As the State correctly argues, Mr. Mansfield is asking the Court to pyramid inference upon inference about the possible meaning of the letter, and such speculation cannot form the basis for postconviction relief. The Florida Supreme Court has recognized that "... recanting testimony is exceedingly unreliable, and it is the duty of the court to deny a new trial where it is not satisfied that such testimony is true. Especially is

this true where the recantation involves a confession of perjury." Spann v. State, 91 So. 3d 812, 816 (Fla. 2012), quoting Armstrong v. State, 642 So. 2d 730, 735 (Fla. 1994). **In the instant case, there is no sworn affidavit or testimony given under oath at an evidentiary hearing. Therefore, this Court has no basis to conclude that an actual recantation even exists, let alone determine whether it is credible or whether it is likely to produce an acquittal on retrial. The unsworn letter is neither admissible nor sufficient, standing alone, to warrant collateral relief.**

In the alternative, assuming without finding that Mr. Johns' unsworn letter would be admissible for consideration as newly discovered evidence, this Court finds that it lacks any indicia of credibility due to his apparent unwillingness to submit an actual recantation under oath and to subject himself to cross-examination in the courtroom. Whitton v. State, 39 Fla. L. Weekly S595 (Fla. October 9, 2014); Duckett v. State, 918 So. 2d 224 (Fla. 2005); Robinson v. State, 707 So. 2d 688 (Fla. 1988) ("The absence of direct testimony by the alleged recanting witness is fatal to this claim."); and Lightbourne v. State, 644 So. 2d 54 (Fla. 1994) (recanting witness' refusal to answer questions pertaining to his statements severely undermined his credibility).

Finally, even if Mr. Johns actually did recant his trial testimony under oath in the courtroom, this Court would have to evaluate the weight of such newly discovered evidence along with the evidence introduced at trial. In the instant case, the Florida Supreme Court's 2000 opinion indicates that Defendant was the last person seen with the victim while she was alive, his beeper was found at the scene, he was wearing a "Grim Reaper" ring that matched distinctive imprints found on the victim's neck, he had a bloodstain on his shorts when he was seen shortly after the murder, and his brother found food stamps and a knife in his room, after the victim had used food stamps to make purchases with him immediately before her murder. Mansfield v. State, 758 So. 2d 636, 640-642 (Fla.

2000). This circumstantial evidence carries considerable weight.

The United States District Court for the Middle District of Florida, the same court that granted Defendant a new sentencing hearing on another ground (subsequently reversed), even held that it was necessary to take Mr. Johns' testimony with "a grain of salt" and "there is good reason to reject his testimony as incredible." Mansfield v. Secretary, 601 F.Supp. 1267, 1288-1290 (M.D. Fla. 2009).

Therefore, this Court finds that Mr. Johns' testimony regarding Defendant's purported confession was certainly a useful piece of evidence, which the trial and appellate courts reasonably considered, but it was by no means the only evidence of guilt or as essential to Defendant's conviction as his counsel asserts. In conclusion, there is no reasonable probability that Mr. Johns' recantation, or the absence of his testimony regarding Defendant's purported jailhouse confession, would probably produce an acquittal on retrial or that it would result in a less severe sentence.

(SPCR V2:192-95) (emphasis supplied).

Here, when Johns was called as a witness he did not recant his testimony in any form or fashion. To the contrary, he affirmed his trial testimony was truthful and remained unchanged. Mansfield's claim fails here. He did not establish any newly discovered evidence that would alter the outcome of his case. The complete lack of evidence compels this Court to affirm the denial of relief.⁴ See Duckett v. State, 918 So. 2d

⁴ The letter was hearsay, inadmissible and properly excluded. See § 90.804(2)(c), Fla. Stat. (2012); Robinson v. State, 707 So. 2d 688, 690-93 (Fla. 1998).

224, 232-33 (Fla. 2005) (where recanting witness invoked right not to testify defendant could not establish basis for new trial).

Even considering the letter, which is at best a letter of an intent to recant written by a disgruntled inmate who would not subject himself to questioning, Mansfield is not entitled to relief. First, as noted, the letter does nothing more than express a desire to recant. It does not even detail in any fashion what specific facts he is recanting. Even if Johns were to give sworn testimony recanting his trial testimony, and even if his new testimony was found to be credible, Mansfield could still not establish that it would be evidence that is of such a nature that it would probably produce an acquittal on retrial.

The law is well settled that in determining whether newly discovered evidence compels a new trial, the trial court must consider all newly discovered evidence which would be admissible, and must evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial. Jones v. State, 591 So. 2d 911, 916 (Fla. 1991); Tompkins v. State, 994 So. 2d 1072, 1086 (Fla. 2008). This Court addressed the issue of recanting testimony in Spann v. State, 91 So. 2d 812, 816 (Fla. 2012):

While this Court has recognized that the recantation of a witness may under some circumstances qualify as newly discovered evidence, see Wyatt v. State, 71 So. 3d 86, 100 (Fla. 2011), we have also observed that recantations are, as a general matter, "exceedingly unreliable." Bell v. State, 90 So. 2d 704, 705 (Fla. 1956). Our decision in Armstrong v. State, 642 So. 2d 730 (Fla. 1994), sets forth the principles to be followed when the testimony of a recanting witness is submitted as newly discovered evidence:

Recantation by a witness called on behalf of the prosecution does not necessarily entitle a defendant to a new trial. In determining whether a new trial is warranted due to recantation of a witness's testimony, a trial judge is to examine all the circumstances of the case, including the testimony of the witnesses submitted on the motion for the new trial. "Moreover, recanting testimony is exceedingly unreliable, and it is the duty of the court to deny a new trial where it is not satisfied that such testimony is true. Especially is this true where the recantation involves a confession of perjury." Only when it appears that, on a new trial, the witness's testimony will change to such an extent as to render probable a different verdict will a new trial be granted.

Id. at 735 (citations omitted) (quoting Bell, 90 So. 2d at 705); see also Lambrix v. State, 39 So. 3d 260, 272 (Fla. 2010); Archer v. State, 934 So. 2d 1187, 1196 (Fla. 2006). In accordance with Armstrong, "recanted testimony that is alleged to constitute newly discovered evidence will mandate a new trial only if (1) the court is satisfied that the recantation is true, and (2) the recanted testimony would probably render a different outcome in the proceeding." Davis v. State, 26 So. 3d 519, 526 (Fla. 2009).

Moreover, this Court has explained that when, as in this case, "a newly discovered evidence claim relies on an admission of perjury, the critical issue of credibility necessarily arises." Archer, 934 So. 2d at 1196. Unlike this Court, "the trial judge is there and has a superior vantage point to see and hear the witnesses presenting the conflicting testimony. The cold record on appeal does not give appellate judges that type of perspective." State v. Spaziano, 692 So. 2d 174, 178 (Fla. 1997); see also Nixon v. State, 2 So. 3d 137, 141 (Fla. 2009) (noting that appellate courts do not "reweigh the evidence or second-guess the circuit court's findings as to the credibility of witnesses" (quoting Brown v. State, 959 So. 2d 146, 149 (Fla. 2007))). For that reason, "[t]his Court will not substitute its judgment for that of the trial court on issues of credibility." Johnson v. State, 769 So. 2d 990, 1000 (Fla. 2000). "When reviewing a trial court's determination relating to the credibility of a recantation, this Court is 'highly deferential' to the trial court and will affirm the lower court's determination so long as it is supported by competent, substantial evidence." Lambrix, 39 So. 3d at 272 (quoting Heath v. State, 3 So. 3d 1017, 1024 (Fla. 2009)).

Here, there is no recantation. However, even if Johns did recant his testimony or if the letter was presented, there is no reasonable probability of a different result. This evidence is not of such a nature that it would probably produce an acquittal or alter the sentence in any way. Contrary to Mansfield's assertions, the State has not latched onto Johns' testimony in order to obtain and maintain Mansfield's conviction. While the State has certainly cited to Johns' trial testimony as it was properly admitted and has not been proven to be untruthful, the State relied extensively on the overwhelming circumstantial

evidence incriminating Mansfield. This evidence was outlined in this Court's opinion cited above, including the fact that Mansfield was the last person seen alive with the victim and his beeper was found at the murder scene, Mansfield was wearing a unique Grim Reaper ring when he strangled the victim and left the ring's distinct imprint on her neck, Mansfield was seen shortly after the murder having gone swimming at 4:00 in the early October morning, Mansfield had what appeared to be a blood stain on his shorts, and his brother subsequently found food stamps and a knife in Mansfield's room when the victim had utilized food stamps to make purchases with Mansfield immediately before her murder.

In the instant case, after law enforcement officers had arrested Mansfield, his brother called the police to alert them to the fact that he had found food stamps in his brother's room that did not belong to anyone in the apartment, and he had also found a knife in his brother's room. (DAR V43E:635). The medical examiner testified that the knife found in Mansfield's room could have caused the victim's injuries. Mansfield, 758 So. 2d at 648. Furthermore, the evidence at trial established that the victim had food stamps in her possession and utilized them to make purchases at the Winn-Dixie shortly before her murder. Food stamps were also found scattered near her body. As this Court

properly noted, "the testimony tended to show that the food stamps found in Mansfield's room the day after the murder belonged to Robles." Mansfield, 758 So. 2d at 645.

Additionally, this Court has noted the "significant" circumstantial evidence placing Mansfield at the scene of the crime with the victim near the time of her death.⁵ This Court also noted the significance of the medical examiner's testimony regarding the pattern injury found on the victim's neck which was consistent with the distinctive pattern found on the ring recovered from Mansfield during his arrest. Mansfield, 758 So. 2d at 641, 645.⁶

⁵ Mansfield was seen accompanying the victim inside the Winn-Dixie grocery store when she made purchases at 2:35-2:36 a.m. with food stamps, and then shortly afterward, a Winn-Dixie employee saw Mansfield and the victim together around 3:00 a.m. The victim's watch "appeared to have been broken during some type of struggle and it was stopped right around 3:00." (DAR V43B:317). Also, Mansfield's pager was found at the crime scene next to a gold chain, with another gold chain found on the victim. (DAR V43B:326).

⁶ At trial, the medical examiner testified at length regarding a distinctive pattern injury found on one part of the victim's neck. The medical examiner testified that she initially thought the mark may have been caused by a belt buckle or jewelry and requested that law enforcement look for distinctive jewelry. Subsequently, shortly before her trial testimony, the State showed the medical examiner photographs of the "Grim Reaper" ring Mansfield was wearing at the time of this arrest. The State introduced enlarged photographs of the victim's injuries made to scale, and had the medical examiner place Mansfield's ring next to the photographs to demonstrate to the jury how the victim's injuries were entirely consistent with the distinctive pattern on Mansfield's ring. (DAR V43C:462-68).

Thus, even without Johns' testimony regarding Mansfield's confession, Mansfield would have been convicted based on all of the circumstantial evidence. There is substantial, competent evidence supporting the court's denial of Mansfield's newly discovered evidence claim. This Court should affirm.

CONCLUSION

In conclusion, Appellee respectfully requests that this Honorable Court affirm the postconviction court's order denying Mansfield relief.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Katherine M. Diamandis
KATHERINE MARIA DIAMANDIS
Assistant Attorney General
Florida Bar No. 069116
capapp@myfloridalegal.com [and]
katherine.diamandis@myfloridalegal.com

/s/ Stephen D. Ake
STEPHEN D. AKE
Assistant Attorney General
Florida Bar No. 0014087
Office of the Attorney General
3507 East Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813) 287-7910
Facsimile: (813) 281-5501
capapp@myfloridalegal.com [and]
stephen.ake@myfloridalegal.com
COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 5, 2015, I electronically filed the foregoing with the Clerk of the Florida Supreme Court by using the e-portal filing system which will send a notice of electronic filing to the following: James L. Driscoll, Jr. and David Dixon Hendry, Assistants CCRC-M, Capital Collateral Regional Counsel, Middle Region, 3801 Corporex Park Drive, Suite 210, Tampa, Florida 33619-1136 (**driscoll@ccmr.state.fl.us**, **hendry@ccmr.state.fl.us** and **support@ccmr.state.fl.us**).

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

/s/ Stephen D. Ake

COUNSEL FOR APPELLEE