

2015 WL 4778257 (Fla.Cir.Ct.) (Trial Order)  
Circuit Court of Florida.  
Eleventh Judicial Circuit  
Miami-dade County

STATE of Florida, Plaintiff,  
v.  
Jerron WILLIAMS, Defendant.

No. F10-32674.  
March 5, 2015.

### **Amended Order Granting Motion to Vacate Judgment and Sentence**

Miguel M. de la O, Judge.

**\*1 THIS CAUSE** came before the Court on Defendant, Jerron Williams' ("Williams"), Sworn Motion to Vacate Judgment and Sentence ("Motion") filed April 15, 2014 pursuant to [Florida Rule of Criminal Procedure 3.850](#). The Court held an evidentiary hearing on the Motion on December 11 and 12, 2014 ("Hearing").<sup>1</sup> Williams and the State submitted proposed orders to the Court on December 30, 2014 and January 28, 2015, respectively.

The evidence at trial established that four persons pulled up in a car to an apartment complex referred to as the "Carter's" or the "Pink and Gray" and opened fire with multiple firearms. Although various witnesses testified about the incident, only one - Meshika Anderson - identified Williams as a participant in the shooting. The State's evidence against Williams consisted solely of this witness's testimony, inconclusive observations of Williams' demeanor, inconsistent statements Williams made to the police about his whereabouts, and one witness's testimony that she saw Williams hours earlier in the car that later returned with the shooters.

In light of the significant, admissible evidence introduced at the Hearing which casts serious doubt on Williams' guilt, which would probably have resulted in his acquittal if known at the time of trial and which will probably result in his acquittal on retrial, this Court grants the Motion, vacates the previously entered judgment and sentence, and orders a new trial.

#### **I. BACKGROUND.**

##### **A. THE CRIME.**

On November 12, 2010 at approximately 8:35 p.m., a four-door sedan containing four assailants pulled up along Northwest 52d Street in Miami, Florida outside of the Carter's. (T. 264, 279, 302).<sup>2</sup> The occupants of the car opened fire with AK-47s on a crowd of people gathered in the parking lot. (T. 302, 396-99). Two children, C.T. and E.L. were hit with gunfire but survived. (T. 342, 353, 399-400). Diane Metellus, an innocent bystander, was shot and killed. (T. 399-400).

##### **B. THE TRIAL.**

On March 25, 2013, Williams stood trial on two counts of Attempted First Degree Premeditated Murder, one count of Second Degree Murder, and one count of Unlawful Possession of a Firearm During the Commission of a Felony, stemming from the shooting at the Carter's.

The State argued that Williams committed the shooting at the Carter's apartments while trying to murder a man known as “Bo Jeezy.” (T. 900-901). A single eyewitness, Meshika Anderson, identified Williams (also known as “Gaitor”) as the perpetrator of the shooting. (T. 483). The State based its prosecution almost exclusively on the testimony of Meshika Anderson. Anderson testified that she witnessed the shooting from the kitchen window of her second-story apartment, located across the street from the Carter's. (T. 481).

\*2 Meshika Anderson provided a detailed description of the incident. She testified that a car drove to the entrance of the apartment complex and stopped. (T. 482-83). Three men exited the car, stood in the street, and began shooting. (T. 482-83). When the men got out of the car, she was able to see and identify Williams, whom she knew from the neighborhood. (T. 483-84). Meshika Anderson testified that each of the three men she saw had guns. (T. 485). She testified that Williams was firing an AK-47 during the attack, but he was the only assailant with that type of weapon. (T. 485, 488). According to Meshika Anderson, the two other gunmen had a 9 millimeter semi-automatic handgun and a revolver, respectively. (T. 485-86). Meshika Anderson's testimony was not entirely consistent with the physical evidence from the scene. For example, the firearms examiner testified that an analysis of casings collected from the scene established that the assailants fired at least two different rifles during the incident. (T. 660).

Meshika Anderson testified that at the end of the shooting, Williams shot Diane Metellus just before reentering the car. (T. 527). Meshika Anderson did not call 911, nor did she immediately identify Williams as one of the perpetrators. (T. 542, 544). It was only after she saw Williams drinking and socializing on the porch of another apartment in her complex, approximately 30 to 45 minutes after the shooting, that she first informed the police he was involved. (T. 540, 544).

Meshika Anderson's testimony conflicted with Charlene Berry's (Diane Metellus' cousin). Charlene Berry was standing next to Diane Metellus when she died, and was only a few feet from the shooters. (T. 396-400). Contrary to Meshika Anderson's claim that Williams' face was uncovered (T. 484, 541-42), Charlene Berry testified that the shooters obscured their faces with bandanas, did not exit the car, and that her cousin was killed as the shooting began while the assailants' car was still approaching the Carter's apartments. (T. 396-99, 412).

The State attempted to corroborate Meshika Anderson's testimony with three pieces of circumstantial evidence: (1) testimony from Shunterri Williams that she saw Williams at the Carter's apartments earlier in the day, in the same car used in the shooting, angrily looking for Bo Jeezy (T. 360, 363), (2) testimony from Bruce McElliott that he saw Williams approximately 30 minutes after the shooting, across the street from the scene, socializing with mutual friends, and that Williams appeared nervous (T. 440-43), and (3) inconsistent statements Williams gave to the police about his whereabouts and the location of his residence (T. 598, 691, 714-15, 718).

The latter two pieces of circumstantial evidence prove next to nothing about Williams' involvement in the shooting. Although Shunterri Williams' testimony would provide strong corroboration for Meshika Anderson's identification, her testimony is weak. She described the car used in the shooting as a black Taurus (T. 348), but the other witnesses said the car was green Taurus or a bluish gray Mitsubishi Galant. (T. 474, 390). She testified that the car was facing westbound during the shooting (T. 349), but all other witnesses said it was facing east. (T. 395, 474). Lastly, but most importantly, she did not recall seeing Williams in the same car earlier until her deposition on March 16, 2012, over a year after the crime. (T. 370-71). This is a remarkable, and hard to reconcile, oversight. Shunterri Williams' own son was shot in the foot during the shooting spree. (T. 352-54). She met with at least two detectives that very night at the hospital where her son was taken, but she did not mention seeing Williams in the same car hours before the shooting. (T. 371). Nor did she mention it to the prosecutors.(T.371).

At trial, the State offered no explanation for why Williams would want to kill Bo Jeezy or any other person at the Carter's apartments. Other than Shunterri Williams' testimony that Williams appeared angry when asking for Bo Jeezy earlier in the day, the State presented no evidence to suggest or prove why this incident occurred.

\*3 On March 28, 2013, the jury convicted Williams of three lesser included crimes: two counts of Aggravated Battery, and one count of Manslaughter. The jury found that Williams carried, used, displayed, or threatened to use a firearm during the commission of all three crimes. In addition, the jury found Williams actually possessed, and discharged, a firearm causing great bodily harm and death during the commission of all four crimes. This Court sentenced Williams to fifty years in State prison on July 3, 2013.<sup>3</sup>

## II. STANDARD FOR POSTCONVICTION RELIEF BASED ON NEWLY DISCOVERED EVIDENCE.

To obtain a new trial based on newly discovered evidence, a defendant must meet two requirements. First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense 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. See *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (*Jones II*). Newly discovered evidence satisfies the second prong of the *Jones II* test if it “weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.” *Jones II*, 709 So. 2d at 526 (quoting *Jones v. State*, 678 So. 2d 309, 315 (Fla. 1996)). If the defendant is seeking to vacate a sentence, the second prong requires that the newly discovered evidence would probably yield a less severe sentence. See *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991) (*Jones I*).

*Hildwin v. State*, 141 So. 3d 1178, 1184 (Fla. 2014) (quoting *Marek v. State*, 14 So. 3d 985, 990 (Fla. 2009)); accord *McLin v. State*, 40 Fla. L. Weekly D452a (Fla. 3d DCA, February 18, 2015).

Based on the standard set forth in *Jones II*, this Court must consider the effect of the newly discovered evidence, in addition to all of the admissible evidence that could be introduced at a new trial. *Swafford v. State*, 125 So. 3d 760, 775-76 (Fla. 2013). “In determining the impact of the newly discovered evidence, the court must conduct a cumulative analysis of all the evidence so that there is a ‘total picture’ of the case and ‘all the circumstances of the case.’” *Hildwin*, at 1184 (quoting *Lightbourne v. State*, 742 So. 2d 238, 247 (Fla. 1999)).

## III. THE EVIDENCE PRESENTED AT THE RULE 3.850 EVIDENTIARY HEARING

Several months after Williams' conviction, Defense counsel became aware of new witnesses who pointed to a different set of perpetrators. Those witnesses testified at the Hearing that twin brothers Keith “Scar” Williams (“Scar”) and Kenneth “Screw” Williams (“Screw”) (collectively referred to as the “Twins”), were leaders of a violent criminal street gang and were responsible for the shooting at the Carter's. The testimony implicating Scar and Screw was corroborated by recorded jail conversations in which Scar and Screw discussed their motive to commit this and other homicides and made admissions inculcating themselves in these crimes. The newly discovered evidence demonstrates that the Carter's shooting may have been just one of many chapters in a long-standing, violent dispute between rival gang leaders.

In sum, the Defense theory goes like this: the Twins were leaders of the gang “New Moneii.” New Moneii operated in the Annie Coleman Housing projects in Brownsville, commonly referred to as “the Rockies.” Emmanuel Duncanson (“Bo Jeezy,”), known on the street as “Bo Jeezy,” was a member of the rival gang “Straight Drop.” By 2010, the Twins and Bo Jeezy had been feuding for years. A disagreement over drug money led to a series of violent acts between the gangs and their principals.

\*4 On November 10, 2010, two days before the shooting at the Carter's apartments, Screw was shot in the back and buttocks. Scar believed that Bo Jeezy and a man named David Sands were responsible. In an act of revenge, Scar and Taji Pearson (“Slim”), killed David Sands, in the early morning hours of November 12, 2010.

On the evening of November 12, 2010, Scar and three associates, “Jit,” “Mawoo” and Slim, went looking for Bo Jeezy. The four men drove to the Carter's apartments around 8:30 p.m. Bo Jeezy was outside, in the complex's parking lot, among a gathering of people. In an attempt on Bo Jeezy's life, Scar and Slim opened fire on the crowd with two AK-47s.

At the Hearing the Defense supported its theory by introducing the testimony of William Brown (“Brown”), Maurice Berry (“Berry”), Bo Jeezy, Dwayne Graham (“Graham”), selected recorded jail conversations between Scar, Screw, Slim, and incarcerated persons, and ballistics connections between the Carter's homicide and other violent incidents tied to this gang feud.

## **A. TESTIMONY OF WILLIAM BROWN.**

In the fall of 2010, Brown was incarcerated with Scar. Although he did not know Scar and Screw on the streets, he befriended them in jail. Brown spoke to Screw several times on the phone and in the holding cell at court.<sup>4</sup> Brown, Scar and Screw bonded over their common enemies: the leaders of “Straight Drop.” Brown had a long-standing dispute with a man named Nakavius Paul (“Paul”) who shot Brown's brother, Antonio, at Club Rolexx in 2009. Scar and Screw had an ongoing dispute with Bo Jeezy. Nakavius Paul and Bo Jeezy were close associates and members of the gang Straight Drop. Brown's pre-existing friendship with “Joe,” the Twins' older cousin, also facilitated the bond between the men.

Brown testified that Scar also introduced him to his cousin, Leandre Howard (“Bam”), known on the street as “Bam,” in the recreation yard. Brown and Bam became friends, in part, because they had mutual friends in Opa-Locka.

### **1. Scar and Screw's Ongoing Dispute with Bo Jeezy.**

On several occasions in September and October, 2010, in the recreation yard at the jail, Scar told Brown about his and Screw's gang involvement and their ongoing dispute with Bo Jeezy. Scar said he and Screw had once been close with Bo Jeezy, selling drugs together in Brownsville. However, Bo Jeezy and the Twins had a falling out over drug money. This feud resulted in the murder of Scar and Screw's little brother, “Cochief,” in 2008. The Twins blamed Bo Jeezy for their brother's death. Scar admitted that he and Screw were the leaders of “New Moneii,” a criminal street gang they formed after their break with Bo Jeezy.

Scar and Screw also spoke to Brown about their dispute with Bo Jeezy in a court holding cell in October, 2010. Brown advised the Twins to transfer their probation out of town once released, but Scar and Screw were intent on continuing their violent dispute with Bo Jeezy. The Twins made clear they intended to kill Bo Jeezy upon their release from custody.

### **2. Bo Jeezy's Attempt on Screw's Life, the Murder of David Sands, and the Shooting at the Carter's**

\*5 Brown testified that Scar and Screw were released from jail in October of 2010. Court records confirm that both entered guilty pleas to attempted first-degree murder and were sentenced to a terms of probation that month. Scar was sentenced to 5 years of probation on October 12, 2010. Screw was sentenced to 5 years of probation on October 7, 2010.

When Screw returned to jail on a probation violation in 2011, he was housed in Brown's unit.<sup>5</sup> Brown and Screw spoke at length about the Twins' dispute with Bo Jeezy and the shooting at the Carter's apartments. Screw explained that Bo Jeezy and David Sands had shot him in the back and buttocks shortly after he was released from jail in 2010. The Twins planned and retaliated against David Sands and Bo Jeezy a day or two later. Screw could not physically participate in the retaliation efforts due to his gunshot wounds, but he told Brown he helped plan both the murder of David Sands and the attempt on Bo Jeezy's life. Screw told Brown that David Sands was murdered first. Scar and Slim ambushed David Sands on someone's porch in a part of town known as “Beaver Creek,” shooting and killing him.

Screw also described the shooting at the Carter's apartments. According to Screw, he, Scar, and Slim planned the attack. Screw initially suggested they should shoot Bo Jeezy from a vantage point on 27th Avenue. Slim wanted to drive into the Carter's instead, but Screw advised against it because they could be ambushed. Screw said there was only one way in and one way

out of the complex, and Bo Jeezy usually had shooters on the roof of those apartment buildings. Scar suggested they instead shoot from outside the parking lot.

Screw told Brown that Scar, Slim, Jit, and Mawoo attempted to kill Bo Jeezy at the Carter's.<sup>6</sup> According to Screw, the car pulled up outside of the complex parking lot and the occupants opened fire. Scar and Slim each used an AK-47 during the shooting. He described how the shooters sat on the windowsills of the car and fired over the roof. Screw told Brown that Jit had a handgun but did not fire it. Mawoo was the driver. Screw admitted to Brown that, instead of hitting Bo Jeezy, Scar and Slim accidentally killed a woman who was walking home from the corner store.

Screw's statements to Brown are consistent with the timing of these events, as reflected by the evidence introduced at the Hearing and the parties' stipulation ("Stipulation"). Screw was shot on November 10, 2010; David Sands was murdered shortly after four in the morning on November 12, 2010; and the shooting at the Carter's apartments took place at 8:35 p.m. on the evening of November 12, 2010.

## **B. LEANDRE HOWARD'S ("BAM") RECORDED JAIL CONVERSATIONS.**

Because Bam was incarcerated in November of 2010, his phone conversations were recorded by the Department of Corrections. Williams introduced several recorded jail conversations between Bam, Scar and Screw that took place in the days surrounding these events. In those calls, Bam, Scar and Screw utilized street slang. Brown provided testimony translating selected words and phrases included in these calls.

\*6 The State objects to this Court giving any weight to Brown's "interpretation" of these calls. The objection is ironic for two reasons. First, the State uses interpretation of coded calls when it suits its needs.

By his fifth point appellant contends that the trial judge committed reversible error when permitting a police officer, over the objection of the defendant, to be qualified as an expert witness regarding street language in the drug culture and permitting the officer to explain to the jury his interpretation of words used by the alleged conspirators in intercepted conversations, the tapes of which were played to the jury. During those conversations the speakers used the terms "C"; "white girl"; "lady"; "snow"; "party pack"; "rock and roll"; "boy"; "white boy"; "doogee"; "kattie" and the expression "three, but I know a deuce smoking." The words were used in contexts wherein their normal lexicographical meanings would be illogical and meaningless. They would make no sense at all to the average juror. We find no error.

*Slater v. State*, 356 So. 2d 69, 71 (Fla. 1st DCA 1978). See *United States v. Brown*, 872 F.2d 385, 392 (11th Cir. 1989) (no error to allow government agent and a co-defendant to testify that references in intercepted calls to "paper", "candy," "dresses", certain numbers and "the full house" referred "to the sales of cocaine."); *United States v. Borrone-Iglar*, 468 F.2d 419, 421 (2d Cir. 1972) ("It was proper to permit Detective Cruet to testify concerning the narcotics vernacular used in the telephone conversations."). Brown's testimony about the meaning of coded language used in these calls is admissible as either expert or lay testimony under sections 90.701 or 90.702 of the Florida Statutes. See *Smith v. State*, 7 So. 3d 473, 496-97 (Fla. 2009). Brown testified that he was familiar with the language in the calls and used it himself on thousands of occasions.

Second, the State intends to use Brown in the same exact role in its prosecution of Slim and his co-defendants. See William Brown Plea Agreement, ¶ 7 ("Defendant agrees that he will explain the language of the telephone conversations as it related to any slang or code that was used in the phone calls which were recorded by the Miami-Dade County Jail recording system.").

### **1. The Attempted Murder of Screw on November 10, 2010.**

On November 10, 2010, Scar spoke to Bam about the attempted murder of his brother, Screw. On that call, Scar told Bam that Screw was shot the previous night. Scar explained that they were together, just “vibing,” when a car pulled up and “Bo and [David Sands]” jumped out. Brown explained that “jumped out” means that Bo Jeezy and David Sands were the shooters.

## **2. The Murder of David Sands on November 12, 2010.**

On November 12, 2010 at 1:36 p.m., less than ten hours after the murder of David Sands, Scar, Screw and Bam discussed the murder of a Bo Jeezy associate that occurred that same morning. Bam addressed the incident and advised Scar to “fall back” or lay low. Scar boasted, “too late for that.”

Bam also spoke to Screw about the incident. When Screw asked Bam how he heard about the shooting, Bam says a woman told him. Bam gave Screw the same advice he shared with Scar, telling Screw to “fall back” and “play the ghost.” Screw then indicated that the dispute is too heated for a reprieve. Shortly thereafter, Screw began to tell Bam what occurred during the murder. Bam sharply interrupted, urging silence and advising that Screw doesn't need to explain – Bam already knew what happened.

\*7 Later in the same call, Screw again addressed the news about the murder with Bam. After Screw asked how the news about the murder got down South so fast, Bam explained how he learned about it. Screw showed his surprise, remarking that the murder occurred less than twenty-four hours earlier.

The following day, on November 13, 2010 at 6:03 p.m., Bam and Scar again discussed David Sands' murder. Bam told Scar that Brown told him all about it. Bam reported that Slim shot David Sands and that one of the Twins planned the shooting and controlled the participants. Scar agreed with Bam's account.

## **3. The Shooting at the Carter's Apartments on November 12, 2010.**

Bam and Scar also discussed the attempted murder of Bo Jeezy at the Carter's apartments in the November 13, 2010 call. While the two were discussing something completely unrelated, Scar mentioned the shooting at the Carter's. While speaking to Screw, Bam also broached the subject of the Carter's shooting. Bam claimed that Brown already told him about the shooting. Screw remarked, “He must have got it from Slim.”

On November 15, 2010 at 11:35 a.m., Bam called Scar again. Scar spoke to someone in the background about fixing a hole in a car. Scar mentioned that “Cowboy” gave the car to him. Scar explained, “They had done plugged the little whippy, when we were getting missing.” Brown explained that the phrase “they ... plugged the little whippy” means that someone shot a hole in the car. “When we were getting missing” means the shooting occurred when Scar was trying to get away from a scene. Bam asked if the car was damaged in the first shooting or the second. Scar responded it was the second – the shooting at the Carter's apartments.

## **C. WILLIAM BROWN'S RECORDED JAIL CONVERSATIONS.**

Williams introduced several of Brown's recorded jail conversations with Slim. On November 12, 2010 at 5:42 p.m., thirteen hours after Dave's murder and three hours prior to the shooting at the Carter's, Brown spoke to Slim on the phone. Slim told Brown that David Sands, who was affiliated with Bo Jeezy, was murdered that day. Immediately thereafter, Slim referenced the Twins, Scar and Screw. Brown testified that he understood Slim to be implicating the Twins in Dave's murder by doing so.<sup>7</sup> Slim also said that he wanted to be around Scar and Screw because they had drugs and liquor. Slim told Brown, “I want to be in the field. And get my little checks up, you know?” “The field” is a reference to the battlefield. Slim was saying that he wanted to commit shootings with Scar and Screw so that he could get paid.

Brown also understood Slim to implicate himself in David Sands' murder during this call. Brown asked about Bo Jeezy's whereabouts during David Sands' murder, "Where BJ was when that happened? When his main man got flipped today?" Slim laughed and responded, "this ain't what they want.... This ain't what they want." Brown testified he understood Slim to be saying that Bo Jeezy and his associates should not tangle with Slim. Brown also understood Slim to be implying that he had some involvement in David Sands' shooting.

\*8 On December 7, 2010, Slim admitted to being with the Twins, in their safe house with their guns, on the night "that girl got killed at the Carter's." In two calls that took place on December 9, 2010, Slim repeatedly admitted to associating with the Twins, Jit and Mawoo and discussed his interest in the status that would follow if he murdered Bo Jeezy, who Slim described as a "real heavy hitter."

#### **D. JERRON WILLIAMS' TELEPHONE RECORDS.**

Bam's jail telephone log revealed that Scar's phone number in November of 2010 was (786) 488-2840. Brown's jail telephone log showed that Slim's phone number was (754) 244-2937. The Defense introduced Williams' telephone records, which the State provided in pretrial discovery. According to those records, Williams did not make or receive any calls to or from Scar's or Slim's telephone.

#### **E. TESTIMONY OF MAURICE BERRY.**

For several months in late 2012 and early 2013, Berry and Scar were incarcerated together at the Pretrial Detention Center. In early 2013, a man that Berry knew as "Butterfly" was transferred into his cell. Scar was housed in a nearby cell within the same unit. Berry overheard Scar and Butterfly speaking about a shooting at the Pink and Gray apartment complex.

Butterfly asked Scar if he was in jail for "what went down at the Pink and Gray." Scar denied it, saying he was in for a probation violation. Scar then asked how Butterfly knew about the shooting. Butterfly responded, "you know how the streets talk." Scar admitted that he and others "sprayed up" the Pink and Gray while trying to kill Bo Jeezy. Scar told Butterfly that two girls had been hit during the shooting and one was killed, and that a person named Gaitor had been charged with it.

Berry identified a photograph of Brandon Potter as "Butterfly." Department of Corrections records show that Berry, Scar, and Brandon Potter were incarcerated together at the Pretrial Detention Center, unit PT5C1, from January 14, 2013 until March 14, 2013.

#### **F. TESTIMONY OF DWAYNE GRAHAM.**

Graham was at the Carter's, standing next to Bo Jeezy in the parking lot, immediately before the shooting. Graham saw a green Taurus turn off 27th Avenue onto 52nd Street. As the car approached the Carter's apartments, assailants within the car began shooting. Although it was dark and he was unable to identify the perpetrators, he could see that there were two shooters firing from the car. One was on the windowsill of the rear passenger door, firing over the car. Graham also testified that the gunfire sounded like it was coming from AK-47s. Graham ducked and ran between two apartment buildings. As he ran, the Taurus pulled away, continuing down 52nd Street towards 24th Avenue. He never saw anyone exit the car.

Graham also testified about Bo Jeezy's relationship with the Twins. In 2010, Graham and Bo Jeezy were close friends. That year, prior to the shooting at the Carter's, Graham was at a club with Bo Jeezy when they ran into the Twins. Bo Jeezy and the Twins exchanged hostile words and threats. There was bad blood between Bo Jeezy and the Twins.

### **G. TESTIMONY OF EMMANUEL DUNCANSON (“BO JEEZY”).**

Bo Jeezy testified about his relationship with Williams and David Sands, and what he witnessed at the Carter's apartments on November 12, 2010. Bo Jeezy was close friends with David Sands. Bo Jeezy explained that David Sands was murdered the night before the shooting at the Carter's apartments. They had been out together at a club but parted ways around four in the morning that day. He was not with David Sanders when he was murdered. Bo Jeezy testified that David Sands was killed near Brownsville in an area known as “Beaver Creek.”

\*9 Bo Jeezy and Williams are from the same neighborhood. Although never close friends, they were always on good terms. There is no reason why Williams would try to kill him. Bo Jeezy testified that he and Williams were incarcerated together on two occasions since the shooting, and there were no incidents or altercations between them. Bo Jeezy testified that no one from the State or the police ever contacted him about the shooting at the Carter's apartments, nor did anyone inquire about any potential dispute he may have had with Williams.

Bo Jeezy testified that he was present in the parking lot of the Carter's apartments on November 12, 2010. He saw the car as it pulled up in front of the entrance to the parking lot. The car was lined up with where he was standing at the time, and he saw fire coming from the car. He could not tell how many shooters there were, but is certain it was more than one. He could tell based on the sound that the shooters were using AK-47s. He did not see any of the occupants exit the car. Once the shooting began, he ran inside one of the buildings. He left the apartments shortly after the gunfire ceased. As he left, he saw Diane Metellus had been shot.

On cross-examination, Bo Jeezy denied having any dispute or beef with the Twins. He claimed that he did not have any problems with anyone at the time of the shooting at the Carter's apartments and does not believe he was the target.

### **H. BALLISTICS EVIDENCE LINKING THE METELLUS HOMICIDE TO TWO OTHER SHOOTINGS.**

The parties stipulated that ballistics evidence demonstrated that casings recovered from the scene of the Carter's shooting were fired from the same weapon as casings recovered in two additional shootings. Stipulation, ¶ 1. One of those shootings was the attempted murder of Antwain Easterling, which occurred on November 27, 2010. Brown testified that Antwain Easterling was an associate of Nakavius Paul and Bo Jeezy, both of whom were members of the criminal street gang Straight Drop.

Williams introduced a recorded telephone conversation between Scar and Bam that took place the day after the Easterling shooting, on November 28, 2010. In that phone call, Scar tells Bam that members of Straight Drop perpetrated a raid on the Twins' safe house a few days earlier. According to Scar, members of Straight Drop shot up the Twins' house and, as a result, Scar and his associates lost a substantial quantity of drugs, money and firearms.

### **I. TESTIMONY OF OFFICER THOMAS FRAZIER.**

Officer Thomas Frazier is an expert on the New Moneii criminal organization, having investigated and documented the New Moneii gang during 2010 and 2011. New Moneii operated in the Annie Coleman Housing Projects, also known as “the Rockies.” Scar and Screw were the leaders of New Moneii. The two were violent members of the gang who were known to engage in shootings, drug dealing, and other illegal activity.

During his investigation, Officer Frazier learned that Scar and Screw were writing a book about their exploits. He testified it is possible the two bragged about crimes they did not actually commit in order to have more material for the book.

Officer Frazier also documented other members and affiliates of New Moneii. Among its members was a man named Jarvis Marshall, who was one of the youngest members of the gang. Marshall was known on the street as “Jit.” Officer Frazier testified



that “Jit’s” role in the gang was to accompany gang members on shootings during 2010, but he never fired a weapon during any of those shootings.

Officer Frazier testified that he never received or uncovered any information that Williams was a member of New Moneii.

#### **J. TESTIMONY OF DANIEL AIKEN.**

\*10 The State called Detective Daniel Aiken, the lead detective in the David Sands homicide investigation. Detective Aiken testified that David Sands was murdered on November 12, 2010 at approximately four in the morning. According to Detective Aiken, David Sands was a member of the criminal street gang “Straight Drop.” Over defense objection to inferential hearsay, Detective Aiken testified that he developed a suspect in his investigation, but the person was not Scar or Screw. Detective Aiken testified that the information about the suspect was largely based on anonymous tips. He conceded that he had not identified any witness willing to come to court and implicate the suspect. Because the case is still open, Detective Aiken would not reveal the name of the suspect in court.

The Court gives this testimony no weight because it is inadmissible hearsay that cannot be introduced by the State at a new trial. See *Postell v. State*, 398 So. 2d 851, 854 (Fla. 3d DCA 1981) (“We hold that where, as in the present case, the inescapable inference from the testimony is that a non-testifying witness has furnished the police with evidence of the defendant’s guilt, the testimony is hearsay, and the defendant’s right of confrontation is defeated, notwithstanding that the actual statements made by the non-testifying witness are not repeated. In so holding, we announce no novel rule.”); *State v. Ferrey*, 35 So. 3d 177, 180 (Fla. 3d DCA 2010) (same).

#### **K. TESTIMONY OF MICHEL VON ZAMPT.**

The State called Senior Assistant State Attorney Michael Von Zamft to testify about Brown’s debriefing by law enforcement officers and his Plea Agreement. In 2009, Mr. Von Zamft was tasked with investigating a homicide on 70<sup>th</sup> street and N.W. 7<sup>th</sup> Avenue where 9 people were shot (2 died). The investigation ultimately focused on two gangs: Straight Drop and 21 Jumpstreet. In 2010, obtained information that Brown was responsible for a murder. Brown was arrested and charged for that crime. As a result of the State listening to Brown’s jail calls in this case, the State learned about Brown and Slim’s involvement in a shooting where a woman named Sabrina O’Neill died.

Just before indictment returned in the Sabrina O’Neill case, Mr. Von Zamft informed Brown’s lawyer about the impending indictment and a meeting was arranged early March 2013. Mr. Von Zamft does not recall any discussion of the Diane Metellus homicide at this meeting. He recalls a discussion at this time of only cases where Brown was directly involved in the shooting. Nor does he recall Brown ever discussing any shooting at the Carter’s or any shooting involving the Twins. The first time Mr. Von Zamft heard of the alleged involvement of the Twins in the Carter’s shooting was when Assistant State Attorney Chiaka Ihekwa showed him Brown’s Affidavit filed in conjunction with the Motion.

#### **L. TESTIMONY OF DETECTIVE NIRSOL PIMENTAL.**

Detective Nirsol Pimental testified that he spoke to Bam on July 23, 2014. He asked Bam about the murder of Diane Metellus. Bam denied having any knowledge about the shooting at the Carter’s. Nor did he recall having any conversations with the Twins the shooting at the Carter’s.

The Court is unsure whether to even consider this testimony. Certainly, Detective Pimental cannot testify at the retrial about his conversation with Bam except to impeach Bam if Bam testifies contrary to this July 23, 2014 conversation. The State did not introduce any evidence that Bam would be willing to testify at a new trial to repudiate the recorded jail conversations.

Regardless, in light of the fact this Court is relying on the words spoken by the Twins and Bam on recorded calls, it gives far more weight to those statements than to the denial Bam gave Detective Pimental.

#### **IV. TIMELINESS OF THE NEWLY DISCOVERED EVIDENCE.**

\*11 With the exception of Bo Jeezy's testimony, the evidence presented at the Hearing qualifies as “newly discovered.” Brown testified that he first spoke with Defense counsel in September, 2013, more than five months after the Williams' trial. Before that conversation, Brown did not know that anyone had been charged with the Carter's shooting. In fact, Brown never met Williams until they both were present in the courtroom for the Hearing.

Defense counsel learned about Brown and Bam's recorded jail conversations after speaking with Brown. Brown also provided Defense counsel with information that led to the discovery of Graham as a witness. Prior to trial, none of this information was known nor could have been known by the Defense through the exercise of due diligence.

The same is true of Berry's testimony. When Berry heard Scar's statement, he did not know who “Gaitor” was, nor did he know anything about a shooting at the Carter's apartments. In July of 2013, after Berry was transferred to unit PT5B1, he heard Williams talking to Bo Jeezy through the bars of his cell. Based on Williams' conversation, Berry realized that Scar's statement may have something to do with the shooting with which Williams was convicted. Before that date, Berry did not have any contact with Williams or his Defense attorneys.

The ballistics evidence is also newly discovered. The State and defense stipulated that, although members of the Miami-Dade crime lab had completed the ballistics comparison over five months before Jerron Williams' trial, the information was never disclosed to the defense.

The only witness whom the State contends is not newly discovered is Bo Jeezy. Because the State argued at trial that Bo Jeezy was the target of the shooting at the Carter's, Defense counsel was aware of his existence and the potential value of his testimony. However, Bo Jeezy testified he rejected Defense counsel's pre-trial request that he testify because he had open cases and was concerned that testifying would negatively affect their resolution. Therefore, Bo Jeezy's testimony qualifies as newly discovered. See *Nordelo v. State*, 93 So. 3d 178, 187 (Fla. 2012) (testimony of co-defendant who refused to testify on behalf of defendant prior to trial because he was concerned State would take away his plea offer can be considered “newly discovered” under [Rule 3.850](#)).

#### **V. ADMISSIBILITY OF NEWLY DISCOVERED EVIDENCE.**

The State objected to the introduction of numerous out-of-court statements by Scar, Screw and Slim where they discuss their participation in the homicide of David Sands and the shooting at the Carter's apartments, and their motives for doing so. The Court finds that nearly all of these statements are admissible at trial.

##### **A. STATEMENTS OF THEN-EXISTING STATE OF MIND.**

Statements are admissible of a “declarant's then-existing state of mind [or] emotion . . . , including a statement of intent, plan, motive, design, mental feeling, . . . , when such evidence is offered to . . . prove the declarant's state of mind [or] emotion . . . at that time or at any other time when such state is an issue in the action . . . [or to] prove or explain acts of subsequent conduct of the declarant.” § 90.803(3)(a), Fla. Stat. See *Huggins v. State*, 889 So. 2d 743, 757 (Fla. 2004) (“a statement of the declarant's then-existing state of mind, including a statement of intent, is not inadmissible when offered to prove or explain acts of subsequent conduct of the declarant”). Specifically, statements of a declarant's intent to commit a future crime, which is later committed, are admissible.

\*12 Craddock testified that on the day before Monlyn escaped, Monlyn told him he was going to escape from jail, get a shotgun, and kill the first person he saw who had a car. The court denied the pretrial motion to suppress the statement.... [W]e find no error in allowing the testimony. Craddock said the statement was made the day before Monlyn escaped. This is exactly the kind of evidence contemplated by [section 90.803\(3\)\(a\) 2, Florida Statutes \(1995\)](#), as satisfying the state of mind exception to explain subsequent conduct.

[Monlyn v. State, 705 So. 2d 1, 5 \(Fla. 1997\)](#).

Scar and Screw made numerous statements about their ongoing dispute with Bo Jeezy and his affiliates to Brown – before the David Sands and Diane Metellus homicides – which reflect their then-existing state of mind. Most relevant are (1) Scar's statement to Bam that he believed Bo Jeezy and David Sands had shot Screw, and (2) Slim's statement to Brown, prior to the shooting at the Carter's, that he wanted to commit shootings with the Twins for money. Those statements are admissible to prove Scar and Screw's motive to murder David Sands and attempt to murder Bo Jeezy (which resulted in the death of Diane Metellus). The subsequent murders of David Sands and Diane Metellus are sufficient to demonstrate that “the declarant acted in accord with the state of mind or intent.” [Penalver v. State, 926 So. 2d 1118, 1128 \(Fla. 2006\)](#).

These statements are also admissible non-hearsay because they are offered to demonstrate the declarant's motive to commit a crime. See [Jean-Phillipe v. State, 123 So. 3d 1071, 1079 \(Fla. 2013\)](#) (text messages from defendant's phone admissible not to prove the truth of the matters asserted therein but because they were relevant to establish defendant's motive to kill his wife). Put another way, these out-of-court statements would not be introduced to prove that David Sands and Bo Jeezy shot Screw, but rather to show that Scar and Screw believe it and were therefore motivated to retaliate. See [Foster v. State, 778 So. 2d 906, 914-15 \(Fla. 2000\)](#) (“A statement may, however, be offered to prove a variety of things besides its truth.”).

## **B. STATEMENTS AGAINST PENAL INTEREST.**

The Twins' statements to Brown are also admissible as statements against their penal interest pursuant to section 90.804(2)(c).

The test for admissibility under 90.804(2)(c) is 1) whether the declarant is unavailable, and if so, 2) whether the statements are relevant, 3) whether the statements tend to inculpate the declarant and exculpate the defendant, and 4) whether the statements are corroborated.

[Merritt v. State, 68 So. 3d 936, 940 \(Fla. 3d DCA 2011\)](#).

Williams easily satisfies the first three prongs.<sup>8</sup> In determining whether the statement is corroborated or trustworthy, “the trial judge should consider ‘the language used and the setting in which the statement was made,’ and decide whether the statement is ‘consistent with both the defendant's general version of events and the other evidence presented at trial.’” [DeWolfe v. State, 62 So. 3d 1142, 1145 \(Fla. 1st DCA 2011\)](#), (quoting [Masaka v. State, 4 So. 3d 1274, 1282 \(Fla. 2d DCA 2009\)](#)). Thereafter, “the weight to be given the statements [is] for the jury to determine.” [Voorhees v. State, 699 So. 2d 602, 613 \(Fla. 1997\)](#).

\*13 It is for the jury, not the judge, to decide whether a declaration against penal interest should be credited. The trial judge exercises only a gatekeeping function, by deciding whether corroborating circumstances show the declaration's “trustworthiness.” “In determining what constitutes ... a showing [of particularized guarantees of trustworthiness], ... the relevant circumstances only include those that surround the making of the statement and those that render the declarant worthy of belief.” [Franqui v. State, 699 So. 2d 1312, 1318– 19 \(Fla. 1997\)](#) (citing [Idaho v. Wright, 497 U.S. 805, 819 \(1990\)](#)).

*Dewolf v. State*, 62 So. 3d 1142, 1145 (Fla. 1st DCA 2011). Consequently, the State's attempt to question Brown's credibility by pointing to his physical attack on Screw is misguided. This Court is not allowed to pass on Brown's credibility.

Under Florida law, however, the credibility of an in-court witness who is testifying with regard to an out-of-court declaration against penal interest is not a matter that the trial court should consider in determining whether to admit the testimony concerning the out-of-court statement. See *Maugeri v. State*, 460 So. 2d 975, 979 (Fla. 3d DCA 1984); see generally Charles W. Ehrhardt, *Florida Evidence*, § 804.4 at 804–05 (1999). Instead, it is the jury's duty to assess the credibility of the in-court witness who is testifying about the out-of-court statement.

*Carpenter v. State*, 785 So. 2d 1182, 1203 (Fla. 2001). Nevertheless, this Court finds Brown to be credible. See section VI.B, *infra*.

Florida courts have repeatedly acknowledged that statements which are voluntarily made to acquaintances, friends, and family members carry “particularized guarantees of trustworthiness.” See *DeWolfe*, at 1147 (trial court committed reversible error by excluding declarant's confession and apology made to defendant's daughter); *Machado v. State*, 787 So. 2d 112 (Fla. 4th DCA 2001) (statements made in personal setting to son of declarant's friend admissible as statements against interest); see also *Chambers v. Mississippi*, 410 U.S. 284, 300 (1973) (confession made spontaneously to close acquaintance provided assurance of reliability).

Corroborating circumstances which “render the declarant worthy of belief,” can come in many forms. Where a declarant makes multiple statements to independent parties, each corroborates the other. See *DeWolfe*, at 1146. Corroboration is also found where the statements are consistent with the other evidence introduced in the case. *Carpenter v. State*, at 1203.

The statements, as heard by Brown and Berry, were admissions of responsibility for homicides and were indisputably against the penal interest of Scar and Screw when made. The same is true of the recorded jail conversations. Although the those conversations are in coded language, the entire context of those phone calls appears to show that Scar and Screw admitted their involvement in the homicides of David Sands and Diane Metellus. Scar, Screw and Slim's statements are also consistent with one another, and with the other evidence in the case.

### **1. Statements Relating to the Murder of David Sands on November 12, 2010.**

Scar, Screw, and Slim each made statements against interest regarding the murder of David Sands, who was a close associate of Bo Jeezy's.<sup>9</sup> When Screw was incarcerated with Brown, Screw admitted to conspiring with Scar and Slim to retaliate against David Sands. Scar and Slim carried out that retaliation effort, murdering Sands in an area known as “Beaver Creek” in the early morning hours of November 12, 2010.

\*14 In addition to Screw's admissions to Brown, Scar and Screw also discussed their role in David Sand's murder with Bam over the telephone. During phone calls on November 12 and 13, 2010, Scar and Screw indicated to Bam that they were responsible for David Sand's death and implicated Slim in the homicide as well. This acknowledgment is consistent with Scar and Screw's stated motive to murder Mr. Sands: that David Sands participated in the attempted murder of Screw on November 10, 2010.

Slim also made statements against his interest regarding David Sands' murder in a phone call with Brown on November 12, 2010. In this call, Slim spoke about the murder and implied that he played some role in the homicide. Each of the above-described statements by Scar, Screw and Slim, therefore, corroborates the others.

Scar, Screw and Slim's statements about Dave's murder are also consistent with the other information about the Twins' and David Sands' death. Officer Thomas Frazier, who is an expert in "New Moneii" membership and activities, testified that Scar and Screw were leaders of a violent gang that, if attacked, would retaliate and would do so swiftly. Therefore, this speedy retaliation against David Sands - and later Bo Jeezy - was consistent with Ofr. Frazier's knowledge of New Moneii's gang culture and activities.

With respect to David Sands' death, Bo Jeezy admitted that he and David Sands were close friends, just as Scar, Screw and Slim claimed. Also consistent with Screw's account to Brown, Bo Jeezy testified that Dave was murdered in a part of town known as "Beaver Creek."

Scar, Screw, and Slim's statements, therefore, are "consistent with the [defense's] general version of events and the other evidence" regarding Dave's killing. *DeWolfe*, at 1146-47. As such the statements carry "particularized guarantees of trustworthiness" and are admissible as statements against interest. *Id.*

## **2. Statements regarding the Shooting at the Carter's Apartments on November 12, 2010, which Led to the Death of Diane Metellus.**

Evidence presented at the hearing demonstrated that Scar and Screw continued their retaliation efforts on the evening of November 12, 2010 when they attempted to murder Bo Jeezy at the Carter's apartments. Scar, Screw, and Slim made numerous statements against interest implicating themselves in this shooting. While incarcerated with Brown, Screw admitted to conspiring to murder Bo Jeezy, a conspiracy that resulted in the shooting at the Carter's apartments on November 12, 2010. Screw admitted to advising Scar and Slim about how best to commit the shooting. He specifically advised Scar and Slim not to drive into the Carter's apartments because there would be shooters on the roof. Screw also told Brown that Scar, Slim, Jit and Mawoo committed the shooting. Screw said that Scar and Slim used AK-47s, Jit had a handgun but did not fire it, and Mawoo was the driver of the car. Screw admitted that a woman who was walking home from the corner store was killed during the shooting.

Screw's statements are corroborated by known facts regarding the Carter's shooting. Just as Screw admitted to Brown, ballistics analysis revealed that two AK-47s were used during the Diane Metellus homicide (T. 660). Charlene Berry testified that, during the shooting, someone on the roof of the Carter's apartments fired back at the assailants (T. 405). It is also uncontroverted that an innocent woman, Diane Metellus, was killed by gunfire on her way home from the corner store (T. 394, 398). Screw's statement is also consistent with the State's theory of prosecution in this case - that the shooting was an attempt on Bo Jeezy's life (T. 900-901).

\*15 Berry also heard Scar admit to perpetrating this shooting in a statement he made to "Butterfly," or Brandon Potter, while he was incarcerated. Scar's statement to Butterfly is consistent with both Screw's version of the night's events and the other evidence in the Diane Metellus homicide. Scar admitted to Butterfly that he perpetrated the shooting, with others, in an attempt on Bo Jeezy's life. Just as Charlene Berry testified at trial, Scar told Butterfly that two women were hit during the shooting and that one was killed (T. 399-400). Scar also said that someone named "Gaitor" had been charged with the shooting. The State established at trial that "Gaitor" was Williams' nickname (T. 357, 433, 477).

Scar's admissions to Bam over the phone on November 13, 2010 and November 15, 2010 provide additional corroboration. In a recorded jail conversation, Scar claimed responsibility for the shooting the day after it occurred. In a phone call two days later, on November 15, 2010, Scar tells Bam that his car was hit with a bullet while he was trying to get away from the shooting at the Carter's apartments. The presence of this hole is corroborated by witness testimony and physical evidence recovered from the scene of the Carter's shooting, which demonstrated that someone from within the parking lot of the Carter's apartments had fired a 9 mm weapon at the assailants (T. 315, 414).

Slim also makes numerous statements against interest regarding his association with Scar, Screw, Jit and Mawoo during his conversations with Brown. Each statement corroborates Scar and Screw's account of the shooting at the Carter's. Slim admits that he was with the Twins, in their safe house, with their guns, on the night of the Carter's shooting. Slim also repeatedly refers to Scar, Screw, Jit and Mawoo together, as a group with which he associates.

Like the statements regarding Dave's murder, Scar, Screw, and Slim's statements are also corroborated by Scar's admission that he had a motive to kill both Dave and Bo Jeezy -retaliation for the attempt on Screw's life. Additionally, the statements are corroborated by Officer Frazier's testimony regarding Scar and Screw's pattern of speedy retaliation as leaders the New Moneii gang. Officer Frazier also identified a 2010 New Moneii gang member who was known as "Jit" as Jarvis Marshall. Officer Frazier testified that Marshall's role in the gang was to participate in shootings. Officer Frazier specifically noted that his gang investigation had revealed that Marshall accompanied other gang members on shootings in 2010 but, just as Screw told Brown, he did not fire his weapon.

## **VI. IMPACT OF NEWLY DISCOVERED EVIDENCE.**

The standard this Court applies in ruling on the Motion is *not* whether Williams can establish that the Twins are responsible for the shooting at the Carter's or the death of Diane Metellus. Rather, this Court is tasked with considering all of the evidence presented at the Hearing and at trial, and determining whether, if Williams were to receive a new trial, it is more likely than not that the jury would have a reasonable doubt about his guilt and acquit him of all charges in this case. In reaching the conclusion that Williams has met his burden, this Court is not tasked with making credibility findings about Williams' witnesses. *See* section V.B, *supra*.<sup>10</sup> Nevertheless, in an abundance of caution, this Court will make credibility findings to aid in appellate review of its decision.

\*16 Williams presented credible and substantial evidence demonstrating that the shooting for he was convicted was part of a larger pattern of gang warfare. The new evidence supports the conclusion that Scar and his associates committed this offense to retaliate for Bo Jeezy's attempt on Screw's life. Brown's testimony to that effect was clear, direct, and internally and externally consistent. He relayed a substantial amount of information about Scar and Screw, their affiliations and activities, and their involvement in the murder of David Sands and the shooting at the Carter's apartments.

### **A. THE BALLISTICS REPORT.**

The Ballistics Report supports Williams' theory that the shooting at the Carters was part of a larger pattern of gang warfare between New Moneii and Straight Drop. The Ballistics Report alone, however, would not warrant granting Williams a new trial because it is insufficient to rebut the State's case and this Court cannot find that the Ballistics Report alone would likely produce an acquittal on retrial. The Florida Supreme Court recently restated the standard this Court must apply in evaluating a *Brady* violation.

To successfully raise a *Brady* violation claim, Whitton must show that: (1) the evidence was favorable to him, either because it was exculpatory or impeaching; (2) the evidence was suppressed by the State; and (3) that the suppression resulted in prejudice. *Conahan v. State*, 118 So. 3d 718, 729 (Fla. 2013) (citing *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999); *Johnson v. State*, 921 So. 2d 490, 507 (Fla. 2005); *Rogers v. State*, 782 So. 2d 373, 378 (Fla. 2001)). "To establish the materiality element of *Brady*, the defendant must demonstrate a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Conahan*, 118 So. 3d at 730 (quoting *Guzman v. State*, 868 So. 2d 498, 506 (Fla. 2003)) (internal quotation marks omitted).

*Whitton v. State*, 2014 WL 5026410, at \*3 (Fla., October 9, 2014). Therefore, this Court does not grant a new trial based on the *Brady* violation as a result of the State not providing the Ballistics Report to Williams prior to trial.

Combined with the other evidence adduced by Williams at the Hearing, however, the ballistics report is powerful corroborating evidence of the motive for the shooting at the Carter's. Especially in light of the fact that the weapon used to murder David Sands on November 12, 2010, was also fired at the scene where someone attempted to murder Screw on November 10, 2010. The evidence of the existence of a war between New Moneii (*i.e.*, the Twins) and Straight Drop (*i.e.*, Bo Jeezy) is strong.

#### **B. WILLIAM BROWN.**

The Court finds Brown and his testimony very credible. First, there is no apparent benefit to Brown in testifying about the Twins' involvement in the homicide of Diane Metellus. Although Brown is a witness for the State in a case involving Slim, the prosecutor in that case (Michael Von Zamft) testified that Brown would not receive any cooperation credit for assisting Williams in this case. Indeed, according to Mr. Von Zamft's testimony and the Plea Agreement Brown signed with the State, if Brown provides false testimony in Williams' case it would be a violation of his Plea Agreement and Brown "shall be sentenced to life in prison" in one case and 30 years in another. Therefore, there is no upside to Brown testifying on behalf of Williams, and plenty of downside. Brown is - almost literally - risking his life by testifying for Williams.<sup>11</sup>

\*17 Second, Brown recounted the statements made to him in detail and his recitation of events was consistent with the physical evidence in the case. Importantly, it was also consistent with the eyewitness testimony of Charlene Berry, Dwayne Graham, and Bo Jeezy.

Third, Brown's and Bam's recorded jail conversations corroborate Brown's testimony. The conversations support Brown's testimony about Scar's motive to retaliate against David Sands and Bo Jeezy. It also appears that Scar admits an involvement in both of the shootings, and recounts an ongoing dispute with Bo Jeezy and other members of "Straight Drop." These recorded conversations are powerful, credible evidence of Scar and Screw's motive, opportunity, and criminal responsibility for these homicides.

#### **C. MAURICE BERRY.**

The Court also finds Berry's testimony to be credible. Berry's testimony is consistent with Brown's, with the evidence introduced at trial, and with the testimony of the other witnesses at the Hearing. The insinuation that Berry is fabricating his testimony to assist Williams or Brown, despite any evidence of a close relationship or other benefit to him (or Brown), is unsupported by the evidence, particularly because he came forward with his information in July of 2013, two months before the defense identified Brown as a potential witness. It is also relevant that Berry is Charlene Berry's cousin, and is related to Diane Metellus by marriage.

The testimony of Brown and Berry was also corroborated by Dwayne Graham's observations of interactions between Bo Jeezy, Scar and Screw. Graham, a close friend of Bo Jeezy's, testified credibly that he had seen the three exchange words and threats at Bayside, a Miami shopping center and park, in the months prior to the shooting at the Carter's apartments.

#### **D. BO JEEZY.**

Bo Jeezy also testified credibly to his positive relationship with Williams. The State argued at trial that the Defendant murdered Diane Metellus while trying to kill Bo Jeezy. Bo Jeezy denied that any conflict existed between the two, insisted that he and Williams had always been on good terms, and testified that there was no reason why Williams would have tried to kill him in 2010.

Bo Jeezy also testified that he and Williams were housed together at the jail, without incident, on two separate occasions since the shooting at the Carter's apartments took place. Bo Jeezy's testimony was corroborated by Berry, who recounted hearing Williams and Bo Jeezy speaking to each other through the bars of their cells at the PreTrial Detention Center. The Court finds that this

testimony about the relationship between Bo Jeezy and Williams was credible. Bo Jeezy's account of his history with Williams was clear and believable. Furthermore, Bo Jeezy was not forced to provide testimony during the [Rule 3.850](#) proceedings. He did so voluntarily. The State has not offered any logical explanation for why Bo Jeezy would willingly participate in the Hearing if he did have an actual, violent conflict with Williams.

Finally, the Court finds that Dwayne Graham and Bo Jeezy provided credible accounts of what transpired during the shooting at the Carter's apartments. Each testified that the shooters fired from inside the car and did not exit. Dwayne Graham saw the car as it approached the Carter's apartments and testified that the shooters began to fire before the car ever reached the entrance to the parking lot. Bo Jeezy also testified that he saw fire coming from the car as the shooting began. The testimony of Dwayne Graham and Bo Jeezy is consistent with both the trial testimony of Charlene Berry and Screw's description of the incident in his discussions with Brown.

**\*18** This testimony materially conflicts with Meshika Anderson's account of the shooting. Anderson testified the assailants stopped the car and got out before the shooting began. This is a *critical* detail because Meshika Anderson testified that she was able to see and identify Williams precisely because the shooters exited the car. If the jury heard Bo Jeezy's and Graham's accounts, which are corroborated by Charlene Berry's, it would have significantly undermined Meshika Anderson's identification of Williams as Diane Metellus' murdered.

The fact that Bo Jeezy denied any conflict with Scar and Screw on cross-examination does not conclusively refute the Defense's theory. There is ample evidence that such a conflict existed in the form of witness testimony and recorded jail conversations. In light of the evidence presented, Bo Jeezy's denial rings hollow. Perhaps Bo Jeezy seeks to downplay his feud because he wants to avoid prosecution for attempting to murder Screw. Perhaps it is just his effort to save face, or to avoid being labelled a "snitch." It is obvious to this Court that Bo Jeezy was utterly unconvincing when he testified he had no "beef with the Twins." His denial was pro forma, especially when compared to his responses regarding his knowledge of Williams and the events that transpired during the shooting at the Carter's. Bo Jeezy went so far as to testify that he was not the target of the shooting at the Carter's, a fact not even the State disputes.

#### **E. MESHKA ANDERSON.**

At trial, the State presented a theory of prosecution premised on the testimony of a single eyewitness. As is the case with most eyewitness testimony, it was powerful. It was especially powerful because Meshika Anderson is familiar with Williams, and lives in the same apartment complex with Williams' mother. It did not escape this Court's notice that Meshika Anderson undertook great person risk in testifying against Williams if he was in fact the cold-blooded assassin who shot up the Carter's and murdered Diane Metellus.

However, the newly discovered evidence undercuts any motive that would tie Williams to the shooting, impeaches the account of the shooting provided by the Meshika Anderson, and, most importantly, demonstrates the motive, opportunity, and guilt of another party. Because the witnesses testified credibly and consistently at the Hearing, it is difficult to imagine how a jury, when provided with this new evidence, would find Williams guilty of these offenses notwithstanding Meshika Anderson's eyewitness testimony.

#### **CONCLUSION**

This Court previously denied multiple motions for judgments of acquittal and a motion for a new trial. At the time, the Court concluded that the totality of the evidence was sufficient to convict Williams, and the Court remains of the view that the evidence presented at trial - *absent any newly discovered evidence* - was sufficient to support Williams' conviction. However, facts matter. When the facts change, so do the conclusions which should be drawn from those facts. It is a matter of record that eyewitness testimony should be viewed with caution.



Mistaken identity is the chief cause of wrongful convictions. See Edward Connors et al., *Convicted by Juries, Exonerated by Science: Case Studies in the Use Of DNA Evidence to Establish Innocence After Trial* (1996) (finding that twenty-four out of twenty-eight cases of postconviction exoneration based on DNA testing were due in great part to mistaken eyewitness identifications); Connie Mayer, *Due Process Challenges To Eyewitness Identification Based On Pretrial Photographic Arrays*, 13 *Pace L. Rev.* 815, 819 (1994) (“[S]tudies have shown that approximately fifty percent of those wrongly convicted were convicted based on eyewitness identification evidence.”).

\*19 *Simmons v. State*, 934 So. 2d 1100, 1126 (Fla. 2006) (Pariante, Anstead, and Cantero, concurring). Whether due to the inherent fallibility of our mind to accurately recollect, or through intentional deception, courts should exhibit a healthy skepticism of eyewitness testimony.

This Court took comfort in the fact that Ms. Anderson was familiar with Williams because she lived in the same apartment complex as his mother for many years. However, in light of the newly discovered evidence, this Court now has grave doubts about the accuracy of Ms. Anderson's recollection and/or credibility of her testimony.

It is possible, of course, that Screw and Scar's statements to Brown were the result of a concerted effort by them to burnishing their gangster reputations because they are writing a book. The choice facing this Court, therefore, is whether it is more likely that Screw and Scar were taking credit for shootings they actually organized and committed, or that they were puffing for the sake of their literary dreams. Given their violent history, their contemporaneous statements, and Brown's testimony, it is not difficult for this Court to conclude that it is far more likely than not that Screw and Scar were responsible for the shooting at the Carter's. In the end, “[i]f reasonable doubt exists as to the defendant's culpability, a jury must resolve this factual matter—not this Court.” *Hildwin*, 141 So. 3d at 1185.

For the reasons set forth above, Williams' Sworn Motion to Vacate Judgment and Sentence is granted, his conviction and sentence are vacated, and a new trial is ordered.

**DONE and ORDERED** in Miami-Dade County, Florida this 5th day of March, 2015.

<<signature>>

Miguel M. de la O

Circuit Judge

#### Footnotes

- 1 Although the Motion raises claims of newly discovered evidence, violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and ineffective assistance of trial counsel, the evidentiary hearing proceeded solely as to the first two issues.
- 2 References to the transcript of the trial are cited as (T. \_\_\_\_\_).
- 3 The Court sentenced Williams to 25 years in State prison on each of the three counts. The Aggravated Battery counts ran consecutively, and the Manslaughter count ran concurrent to the Aggravated Battery counts.
- 4 Department of Corrections records reflect that William Brown and Keith (“Scar”) Williams were both incarcerated in unit 91 at Turner Guilford Knight Correctional Center from September 25, 2010 to October 12, 2010. Stipulation, ¶7.
- 5 Department of Corrections records reflect that Brown and Screw were both incarcerated in unit 91 at Turner Guilford Knight Correctional Center from October 24, 2011 to November 12, 2011.
- 6 Brown does not know the real name of either “Jit” or “Mawoo.” However, he has seen “Mawoo” and confirmed that “Mawoo” is not Williams. Officer Thomas Frazier testified Jit is not Williams.
- 7 The Court gives no consideration to this particular testimony because it would not be admissible at a new trial. Slim's statements are hearsay and are not statements against Slim's penal interest. Perhaps, if charged with David Sand's murder, Slim's statements would

be admissible as his state of mind prior to the murder of David Sands. They are not, however, admissible in Williams' retrial. The Court does give weight to the remaining statements Slim made during these jail calls.

8 That the statements at issue are relevant and tend to exculpate Williams is beyond dispute. Moreover, Scar, Screw, and Slim are all unavailable to testify. The parties stipulated that, if called to the stand, each would invoke his Fifth Amendment right and refuse to answer any questions pertaining to the homicides and other shootings addressed in the Defendant's motion. Stipulation, ¶ 9. Because the Court would uphold these claims of privilege, each of the three declarants is "unavailable" under Florida law. § 90.804, Fla. Stat. (2014).

9 "Reverse Williams Rule" evidence regarding the murder of David Sands, or "Dave," is admissible under Section 90.404(a), Fla. Stat., to demonstrate motive, identity, and a common scheme or plan. See *State v. Savino*, 567 So. 2d 892 (Fla. 1990). See also *Edwards v. State*, 857 So. 2d 911, 913 (Fla. 3d DCA 2003) ("As the Florida Supreme Court has recognized, reverse Williams rule evidence has a lower potential for prejudice to the State than standard Williams rule evidence has to the defendant, thus, the trial court has somewhat less discretion to exclude reverse Williams rule evidence.").

10 This is not to imply that *any* exculpatory testimony automatically entitles a defendant to a new trial. Such is certainly not the case. The trial court must weigh the defendant's claim. "Where there is conflicting evidence of the defendant's guilt, it is sometimes necessary for the trial court to evaluate the weight of the newly discovered evidence to determine whether its introduction at trial would probably have resulted in an acquittal." *Poff v. State*, 41 So. 3d 1062, 1064 (Fla. 3d DCA 2010). Therefore, the Court weighs Brown's testimony, without passing judgment on whether he is credible, by comparing it to all the evidence in the case.

11 This Court is troubled that there is a discrepancy between Brown and Mr. Von Zamft regarding whether Brown informed the State about the Twin's involvement in the Carter's shooting, and the timing of this disclosure. In light of all the other factors this Court has identified, however, this discrepancy is not sufficiently material to cast doubt on Brown's testimony. Even if it was, ultimately his credibility must be judged by the jury.