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Key Facts The factual background to the Bencivenga decision has been previously reported on this site. See In re Bencivenga (Part I) 2017 ABCA 40. Bencivenga was charged with murder. Two witnesses testified that he was the shooter. He called no witnesses. He was convicted. He did not appeal. More than five years later he sought a new trial. A new trial is generally available only for failure to appeal. New Trial Based on Perjury Under Criminal Procedure Rule 35.2, the trial judge must grant a new trial if: newly discovered evidence concerning a witness or a witness'

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