

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

KENNETH LLOYD SOMERS,

Appellant,

v.

Case No. 5D19-896

STATE OF FLORIDA,

Appellee.

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Opinion filed December 13, 2019

3.850 Appeal from the Circuit  
Court for Orange County,  
John E. Jordan, Judge.

Kenneth Lloyd Somers, Perry, pro  
se.

Ashley Moody, Attorney General,  
Tallahassee, and L. Charlene  
Matthews, Assistant Attorney  
General, Daytona Beach, for  
Appellee.

PER CURIAM.

Appellant, Kenneth Lloyd Somers, appeals the denial of his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Appellant argues on appeal, *inter alia*, that he is entitled to an evidentiary hearing on his claims that

his trial counsel was ineffective for failing (1) to test a knife for fingerprints, and (2) to call Mr. Glassmore as a witness at trial.

Specifically, Appellant argues that only the victim's fingerprints were on the knife, which would have supported his claim of self-defense. Further, he argues that Mr. Glassmore, his neighbor, would have directly contradicted law enforcement's testimony that Appellant was hiding in his neighbor's shed when law enforcement arrived. Instead, he alleges that Mr. Glassmore would have testified that Appellant ran over to his house to call 911, but that he decided not to call 911 when he heard sirens. Additionally, he alleges Mr. Glassmore would have testified that Appellant was returning to his home to meet with law enforcement as they arrived, and that he never entered the shed. Appellant observes that this testimony would have weakened the State's argument that hiding from law enforcement evidenced a guilty mind.

When a postconviction claim is properly made, a defendant is entitled to an evidentiary hearing unless the record conclusively shows that the defendant is entitled to no relief. *O'Callaghan v. State*, 461 So. 2d 1354, 1355 (Fla. 1984). We conclude that Appellant's motion was sufficient as to these claims and these claims were not conclusively refuted by the records attached to the trial court's order. We therefore reverse and remand for the trial court to either attach records that conclusively refute these claims or to hold an evidentiary hearing. We otherwise affirm.

AFFIRMED in part; REVERSED in part; and REMANDED for further proceedings.  
EVANDER, C.J., COHEN and EISNAUGLE, JJ., concur.