

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

ALLEN LEE DAVIS,

Appellant,

v.

Case No. 5D17-3239

STATE OF FLORIDA,

Appellee.

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Opinion filed February 16, 2018

3.850 Appeal from the Circuit  
Court for Orange County,  
Marc L. Lubet, Judge.

Allen L. Davis, Lowell, pro se.

No Appearance for Appellee.

PER CURIAM.

Allen Davis appeals the summary denial of his amended motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. In his first claim, Davis alleged that his trial counsel was ineffective in failing to file a motion to suppress certain incriminating statements that Davis had made to a detective. In summarily denying the claim, the trial court relied on the detective's trial testimony to determine that a motion to suppress would have been fruitless. However, the record does not conclusively refute Davis' claim that his statements were made during a custodial interrogation, during which

he was not advised of his *Miranda*<sup>1</sup> rights. Accordingly, on remand, the trial court must either attach records conclusively refuting this claim or hold an evidentiary hearing. We affirm, without discussion, the summary denial of the remainder of Davis' claims.

AFFIRMED, in part; REVERSED, in part; and REMANDED.

PALMER, EVANDER and LAMBERT, JJ., concur.

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).