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

DCA NO.: 5D11-2357

CASEY MARIE ANTHONY,
Petitioner,
vs.

STATE OF FLORIDA
Respondent,
_____/

MOTION FOR REHEARING

Comes now, the Appellant, CASEY ANTHONY, by and through her undersigned counsel, and pursuant to Fla. R. App. P. 9.330, files this Motion for Rehearing and in support asserts the following:

1. On January 25, 2013, this Court issued a written opinion concluding that the trial court did not err in denying Appellant's motion to suppress, reversing two of Appellant's four convictions based on double jeopardy, and found no merit in Appellant's argument that Fla. Stat. § 837.055 is unconstitutional. The undersigned has carefully and seriously considered the necessity and desirability of asking this Court to rehear the case, but nonetheless concludes that such a request is merited. In reaching its decision that the trial court did not err in denying the Appellant's motion to suppress statements, it appears that this Honorable Court may have overlooked points of law and fact.

2. First, it appears that this Court may have misapprehended the law in that in this Order, the Court relied upon *Sanchez-Velasco v. State*, 570 So. 2d 908 (Fla. 1990) and *Parks v. State*, 644 So. 2d 106 (Fla. 4th DCA 1994) for the proposition that "because Appellant was released from handcuffs and voluntarily remained to answer Detective Melich's questions, a causal link between her arrest and her subsequent statements had been broken." However, the Appellant respectfully submits that in both *Sanchez-Velasco* and *Parks*, the defendants **were** *Mirandized*. See *Sanchez-Velasco*, 570 So. 2d at 910 ("the officers gave proper *Miranda* warnings to Sanchez–Velasco before discussing the case and that he declined attorney representation and waived his rights"); and *Parks*, 644 So. 2d at 107 ("After appellant was informed of his *Miranda* rights, he was questioned by detectives").
3. In the case *sub judice*, the Appellant was never informed of her rights under *Miranda*. It appears that the causal link was broken in the cases relied upon by this Court by a voluntary waiver of *Miranda* after a formal arrest. No such facts exist in the Appellant's case. Because a formal arrest and interrogation, on any matter, require *Miranda* warnings and because the law relied upon by the Court affirms this long standing legal

standard, the undersigned respectfully requests a rehearing as to this issue.

4. Second, on page eleven of the Order, this Honorable Court reiterated the Trial Court's findings that the overall tone of the questioning of the Appellant at Universal Studios "was not accusatorial and the officers did not speak to Appellant in an intimidating manner." However, the Trial Court's conclusion was not supported by the facts. In requesting the record for appeal under rule 9.200(A)(1), the undersigned believed that a CD recording of the interrogation in question had been provided to this Court. A contemporaneous amended Motion to supplement the record will be filed with this Motion in order to provide this Court an audio copy of the interrogation. The Appellant respectfully believes that this Court will find that the tone of the interrogation was highly confrontational; the Appellant was confronted with evidence of her guilt of her lies; and no reasonable person would have felt free to leave under the circumstances. (See *Sowerby v. State*, 73 So. 3d 329, 331 (Fla. 5th DCA 2011) ("A trial court's ruling on a motion to suppress is subject to a mixed standard of review. *An appellate court is bound by such of a trial court's findings of fact as are supported by competent, substantial evidence*; however, the application of the law to those facts is subject to *de novo* review").

Emphasis added. Because the Trial Court's historical findings are not supported by competent, substantial evidence, the Appellant respectfully request this Honorable Court to grant this Motion for Rehearing.

5. The Appellant also seeks to have this Court reconsider the concept of "materiality" as a necessary and inherent element to be alleged and proved in the Statutes for which the Appellant was prosecuted and convicted. The Appellant requested the Trial Court to give the jury an instruction requiring that they find that any false statement had to be material in order to convict the Appellant. The request was denied.

6. This Court, in its opinion, has upheld the Trial Court on that basis and, interestingly enough, referred to the basic perjury Statute in its argument with respect to the application of a concept of double jeopardy. That Statute, interestingly enough, specifically also requires that the statement be material.

7. There are numerous other situations in Florida law which include, but are not necessarily limited to the following, all of which require materiality.

   a. Florida Statute 718.506 dealing with condominiums and regulations for disclosure prior to sale provides for the rescission of condominium purchase agreements where a purchaser relied upon a developer's false

material statement. Also see in re Mona Lisa at Celebration, LLC, Bkrtcy.M.D.Fla.2010, 436 B.R. 179.

b. False testimony in divorce action has been sufficient for prosecution of perjury where the same was material. State v. Rowe, 149 Fla. 494, 6 So.2d 267 (1942).

c. Florida Statute 641.441 dealing with unfair methods of competition in healthcare services prohibits making a false entry of a material fact.

d. Standard 6.1 of the Standards for Imposing Lawyer Sanctions condemns statements for documents that are false in making material statements or presentations.

e. Florida Bar Rule 4-3.3 regarding Candor Toward the Tribunal condemns making of a false statement of a material fact or failure to disclose a material fact.

f. Florida Statute 443.071 dealing with unemployment compensation sets forth penalties for making false statements or representations regarding a material fact.

g. Florida Rule of Civil Procedure 1.120 requires Pleadings of Special Matters to include a requirement that an alleged false statement be regarding a material fact.

h. Florida Statute 440.105 regarding Workers' Compensation claims for benefit prohibits statements that are false or incomplete regarding a material fact.

i. Florida Statute Section 817.2341 regarding fraudulent practices condemns misleading statements that are material.

j. Florida Bar Rule 4-4.1 condemns misrepresentations and statements to others with respect to material allegations of fact.

k. Florida Statute 633.819 dealing with fire prevention and control – insurance claim prohibits making or concealing material facts.

l. Florida Statute 837.021 regarding perjury in unofficial proceedings. Statute makes it a misdemeanor crime for one to make a false statement regarding a material matter not in official proceedings and not under oath.

m. Florida Statute 634.336 also penalizes the making of a false material fact in any book, report or statement in attempting to settle home warranty insurance claims.

n. Florida Statute 817.59 establishes a criminal offense for making false statements as to financial condition or identity of a person where the statements are material.

8. Thus, as it can be seen, there are numerous and diverse areas of Florida law prohibiting and condemning false statements and averments of material facts. Interestingly, the Statute upon which the Appellant has been convicted and is appealing did not include any element or requirement of establishing materiality. As such, the Appellant respectfully suggests that the Statute is unconstitutionally vague because it leaves open to prosecution within the discretion of the prosecuting authority virtually any statement at any time (under oath or not) without requiring that it be material. Surely, it would have been appropriate for the Court to not only dismiss the charges for the fundamental error of failing to meet Constitutional muster and/or to have required a jury to make a determination of the materiality of the allegations before convicting the Appellant. Accordingly, the Appellant prays this Court rehear and/or clarify its determination on the issue of "materiality" in accordance with the foregoing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was furnished by electronic delivery to Assistant Attorney General, Wesley Heidt, Office of the Attorney General, on this 11th day of February, 2013.

/s/ J. Cheney Mason .

J. Cheney Mason, Esquire
Florida Bar No.: 131982
J. Cheney Mason, P.A.
250 Park Avenue South

Suite 200
Winter Park, Florida 32789
Telephone: (407) 843-5785
AND

/s/ Lisabeth Fryer .
Lisabeth J. Fryer
Florida Bar No.: 89035
Snure & Ponall, P.A.
425 W. New England Avenue
Suite 200
Winter Park, Florida 32789
Telephone: (407) 469-6200
Attorneys for Appellant

DESIGNATION OF E-MAIL ADDRESS

The undersigned designates fryerl@criminaldefenselaw.com as her primary email address and fryerlaw@mindspring.com as her secondary address.

/s/ Lisabeth Fryer

DESIGNATION OF E-MAIL ADDRESS

The undersigned designates cheneylaw@aol.com as his primary email address and chenmas4@aol.com as his secondary address.

/s/ J. Cheney Mason