IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIFTH DISTRICT

CASEY MARIE ANTHONY,

Appellant,

v. Case No. 5D11-2357

STATE OF FLORIDA,

Appellee.
_____/

ON APPEAL FROM THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

ANSWER BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Appellant's statement of the case and facts are substantially accurate for the purpose of this appeal; however, the State adds the following more detailed facts relevant to the four convictions:

Appellant was charged by indictment with First Degree Murder, Aggravated Child Abuse, and providing False Information to Law Enforcement. (R 29, Vol. II). On July 5, 2011, Appellant was found guilty of the four counts of providing False Information to Law Enforcement which read in the indictment as follows:

> COUNT 4: On July 16, 2008, Anthony knowingly and willfully gave false information to YURI MELICH, a law enforcement officer with the Orange County Sherriff, who was conducting a missing person's investigation, to-wit: that Anthony was employed at Universal Studios Orlando during the year 2008.
>
> COUNT 5: On July 16, 2008, Anthony knowingly and willfully gave false information to YURI MELICH, a law enforcement officer with the Orange County Sherriff, who was conducting a missing person's investigation, with the intend to mislead YURI MELICH or impede his investigation to-wit: that Anthony left the child Caylee Marie Anthony at the Sawgrass Apartments, 2863 South Conway Road, Apt 210, Orlando Florida with a person identified as ZENAIDA FERNANDEZ-GONZALEZ on June 9, 2008 or any subsequent date.
>
> COUNT 6: On July 16, 2008, Anthony knowingly and willfully gave false information to YURI MELICH, a law enforcement officer with the Orange County Sherriff, who was conducting a missing person's investigation, with the intend to mislead YURI MELICH or impede his investigation to-wit: that Anthony informed persons identified as JEFFREY MICHAEL HOPKINS and JULIETTE LEWIS, a former Universal Studios Orlando employees, of the disappearance of the child Caylee Marie Anthony between June 9, 2008 and July 16, 2008.

> COUNT 7: On July 16, 2008, Anthony knowingly and willfully gave false information to YURI MELICH, a law enforcement officer with the Orange County Sherriff, who was conducting a missing person's investigation, with the intend to mislead YURI MELICH or impede his investigation to-wit: that Anthony received a phone call from the child Caylee Marie Anthony on July 15, 2008 at approximately 12:00 p.m.

(T 3-4, Vol. II). Appellant was, thereafter, sentenced to 1 year in the Orange County Jail to run consecutive for each count with credit for 1,043 days time served; a $1,000.00 fine for each of the four convictions, court costs, cost of prosecution, and cost of investigation. (R 19963-67, Vol. 109).

At trial, the testimony of the witnesses revealed that from June 16, 2008 to July 15, 2008, Appellant was residing with her boyfriend Anthony Lazarro and his two roommates: Nathan Lezniewcz and Cameron Campana. (Supp T 233, Vol. II; Supp T 421, 425-426, Vol. III;). Further, it is undisputed that Appellant told Anthony Lazzaro, friends, and family members not only that she was employed as an event coordinator by Universal Studies during the time in question, but also that a babysitter by the name of "Zanny" cared for her child, Caylee Marie Anthony, (hereinafter "the child"). (Supp T 233, Vol. II; Supp T 421, Vol. III;). The testimony further revealed that on or about June 16, 2008, Cindy Anthony (Appellant's mother) started a dialogue with Appellant regarding Appellant's whereabouts and when Appellant was planning on returning home to 4937 Hopespring Drive. (T 02653, Vol. 17; Supp T 1058, Vol. VII).

However, from June 16, 2008, until July 15, 2008, Appellant, according to the testimony, contrived the following facts:

On June 16, 2008, Cindy Anthony testified that she had a brief conversation with Appellant on the telephone regarding Appellant's plans for that afternoon. (Supp T 1121, Vol. VII). According to Cindy Anthony, Appellant told her that she was planning on taking the child "to Zanny's and ... probably just crash[ing] at Zanny's when she got off of work because she had an early morning the next day at work." (Supp T 1122, Vol. VII). Cindy Anthony testified to agreeing with the child staying at Zanny's on that day because everyone had to work the next day. (Supp T 1122, Vol. VII). However, Cindy Anthony expected that Appellant and the child would return home on June 17, 2008. (Supp T 1123, Vol. VII). They did not. (Supp T 1123, Vol. VII).

On June 17, 2008, Appellant called Cindy Anthony to let her know that work was conducting various meetings and "negotiations were going to be very lengthy." (Supp T 1124, Vol. VII). As such, Appellant "didn't know when she would get done." (Supp T 1124, Vol. VII). Cindy Anthony testified that because of Appellant's work schedule, Appellant "was going to stay [at Zanny's] and keep the child . . . with Zanny." (Supp T 1124, Vol. VII). However, Appellant and child were scheduled to return on June 18, 2008. (Supp T 1124, Vol. VII). Again, they did not return. (Supp T 1124, Vol. VII).

Cindy Anthony testified that Appellant called her on June 18, 2008, and told her that she was being sent from Universal Studios, Orlando to Bush Gardens, Tampa. (Supp T 1124, Vol. VII). Appellant explained that Zanny would be free to take the trip with her in order to help her watch the child. (Supp T 1124, Vol. VII). Additionally, Appellant stated that her coworker (Juliette Lewis) was accompanying them and bringing her daughter (Anabelle) so that the child could have a playmate. (Supp T 1124-1125, Vol. VII). Cindy Anthony testified that she expected Appellant and child to return home on June 21, 2008, after visiting Bush Gardens and Animal Kingdom. (Supp T 1124-1125, Vol. VII).

However, on June 21, 2008, Appellant informed Cindy Anthony that she had meetings on that day and was unable to return because she had not been able to enjoy the park with the child, as such she was staying in Tampa until either the 22nd or 23rd of June. (Supp T 1126-1127, Vol. VII).

On June 23, 2008, after not hearing from Appellant, Cindy Anthony testified to calling and leaving messages on Appellant's telephone. (Supp T 1127, Vol. VII). Cindy Anthony stated that Appellant finally called back, told her not to panic, and informed her that Zanny had been in a car accident on their way back from Tampa to Orlando. (Supp T 1128, Vol. VII). According to Appellant, Zanny was driving ahead of her, and she witnessed Zanny get into a pretty serious car accident. (Supp T 1128, Vol. VII). Because of

the wreck, "she had been all day at the hospital. And that was her first chance to call and let [Cindy Anthony] know." (Supp T 1128, Vol. VII). However, Appellant assured Cindy Anthony that she and the child "were perfectly fine," but could not come home. (Supp T 1128, Vol. VII). Cindy Anthony testified that Appellant told her she checked back into the Tampa hotel. (Supp T 1128, Vol. VII).

On June 24, 2008, the Orange County Sheriff's Office contacted George Anthony, regarding a break-in of the Anthony's shed and the theft of gas cans. (Supp T 1129-1130, Vol. VII). Cindy Anthony testified to communicating this information to Appellant and then finding out that Appellant was home on that day. (Supp T 1130, Vol. VII). According to Cindy Anthony, Appellant was home because she volunteered to drive to Zanny's apartment to pick up an insurance card and to make arrangements with Zanny's family members regarding her stay at the hospital. (Supp T 1131, Vol. VII). Appellant told Cindy Anthony "that she stopped home to get some things because she was headed back to Tampa, and she didn't know, at that point, when she would be home." (Supp T 1131, Vol. VII). During that conversation, Appellant admitted to taking the gas cans out of the shed because "she had run out of gas a few times." (Supp T 1132, Vol. VII). During the time frame June 25th, 26th, and 27th, Appellant claimed she was at the hospital with Zanny, due to Zanny's concussion and internal bleeding. (Supp T 1140, Vol. VIII). According to Cindy Anthony, Zanny was released on the June 26,

2008, and Appellant drove her back to their hotel room at the Hard Rock in Tampa. (Supp T 1140, Vol. VIII). Appellant was scheduled to return home on June 27, 2008. (Supp T 1141, Vol. VIII).

On June 27, 2008, Appellant returned to Orlando; however, she informed Cindy Anthony that she had to go into work in order to debrief her boss on the events that occurred in Tampa. (Supp T 1141, Vol. VIII). Cindy Anthony testified that she expected Appellant, and the child to be home later that evening when she got off work. (Supp T 1141, Vol. VIII). That evening Appellant called Cindy Anthony and explained that her friend Jeffrey Hopkins was in town. (Supp T 1141, Vol. VIII). Moreover, he had heard about Zanny's accident and wanted to see how she was. (Supp T 1141, Vol. VIII). According to Cindy Anthony, Appellant and Jeffrey Hopkins had plans to go to dinner. (Supp T 1144, Vol. VIII). Appellant told Cindy Anthony that, although dinner did not occur, Jeffrey Hopkins invited Zanny, Appellant, and the child to stay with them that night, and then the next day they planned on taking the kids to Universal Studios. (Supp T 1144-1145, Vol. VIII).

Between June 30th and July 1st, Cindy Anthony believed that Appellant was heading back to work and that Zanny was keeping the child. (Supp T 1147-1148, Vol. VIII). Cindy Anthony testified that she asked Appellant to let her keep the child because she was on vacation, and Zanny had been in an accident. (Supp T 1148, Vol. VIII). However, Appellant denied the request. (Supp T 1148, Vol.

VIII).

According to Cindy Anthony, Appellant denied the request because Appellant was working on a pool party for children event that had to do with Make-A-Wish Foundation, and Appellant wanted Caylee to attend. (Supp T 1148-1149, Vol. VIII). Eager to see the child, Cindy Anthony asked Appellant if she could attend the event, and Appellant answered negatively because it required a reservation. (Supp T 1149, Vol. VIII).

On July 3, 2008, Cindy Anthony decided to drive to Universal Studios to visit her granddaughter. (Supp T 1149, Vol. VIII). Cindy Anthony arrived at Universal Studios between 2:00 P.M. and 3:00 P.M., paid the $10 parking fee, and proceeded into guest services. (T 02676, Vol. 17; Supp T 1151, Vol. VIII). Once there, Cindy Anthony called Appellant to inform her she was there. (Supp T 1151, Vol. VIII). At that point, Appellant told Cindy Anthony that she was not in Orlando, but in Jacksonville at Jeffrey Hopkins' condo. (Supp T 1151, Vol. VIII). Appellant told Cindy Anthony that she decided to travel to Jacksonville because she and Jeffrey Hopkins were trying to rekindle their relationship "because it had gone very well those days that he was in town and she didn't want . . . [Cindy Anthony] to know beforehand that she had left town without [Cindy Anthony] seeing her and the child." (Supp T 1152, Vol. VIII). Cindy Anthony testified that she "didn't know what to think" because she had realized that Appellant had "lied to her for the

last couple days," by telling her that she was at work, while she was really in Jacksonville. (Supp T 1152, Vol. VIII).

At that point, Cindy Anthony started texting Appellant just to make sure that everything was okay. (Supp T 1189, Vol. VIII). When Cindy Anthony spoke with Appellant on the telephone, Cindy Anthony asked Appellant permission to speak with the child because she "missed hearing her little voice." (Supp T 1189, Vol. VIII). However, Cindy Anthony was never given the opportunity to speak with the child. (Supp T 1189, Vol. VIII). Based on their conversations, Cindy Anthony expected Appellant to return home during the Fourth of July weekend. (Supp T 1190, Vol. VIII).

During the Fourth of July weekend, Cindy Anthony awaited Appellant's return. (Supp T 1190, Vol. VIII). Appellant, however, notified Cindy Anthony that there was something wrong with the Pontiac (Appellant's vehicle), and that Jeffrey Hopkins was going to take it to his mechanic. (Supp T 1190, Vol. VIII). According to Cindy Anthony, Appellant thought that the gas gauge was broken. (Supp T 1190, Vol. VIII). So after being told that the car was going to need some repair, Cindy Anthony testified that she expected Appellant to remain in Jacksonville for another week. (Supp T 1191, Vol. VIII). Soon thereafter, Cindy received a text from Appellant informing her that she was staying in Jacksonville a bit longer because Jeffrey Hopkins's mother was getting married, and Appellant wanted to attend the wedding. (Supp T 1191, Vol.

VIII). Appellant then ensured Cindy Anthony that she would return either July 14, 2008, or July 15, 2008. (Supp T 1191, Vol. VIII). On July 14, 2008, Appellant told Cindy Anthony that she and Jeffrey Hopkins were in the process of loading their vehicles for their trip back the next day. (Supp T 1192, Vol. VIII).

On July 15, 2008, George Anthony drove to the post office to retrieve a certified letter that, according to Cindy Anthony, she noticed hanging on her glass door. (Supp T 1192, 1195, Vol. VIII). After reading the letter, George Anthony learned that Appellant's car had been in Orlando, and he informed Cindy Anthony of the contents of the letter. (Supp T 1195, Vol. VIII). When Cindy Anthony realized that Appellant's vehicle was in Orlando at a tow yard, she started unsuccessfully calling Appellant. (Supp T 1195, Vol. VIII). Cindy Anthony testified that she tried calling and texting Appellant regarding a "major problem that she needed to discuss with her immediately." (Supp T 1217, Vol. VIII). However, Appellant did not respond. (Supp T 1217, Vol. VIII).

After the vehicle was released and the Anthony's retrieved it, Cindy Anthony searched the vehicle and found Amy Huizenga's phone number inside Appellant's purse. (Supp T 1217, Vol. VIII). Cindy Anthony testified that she was hesitant to call Amy Huizenga, but decided to do so because she realized that Appellant had been lying about her whereabouts. (Supp T 1223, Vol. VIII). Cindy Anthony called Amy Huizenga. (Supp T 1223, Vol. VIII).

Amy Huizenga told Cindy Anthony that she had seen Appellant "a few hours ago" when Appellant picked her up from the airport. (Supp T 1224, Vol. VIII). Amy Huizenga stated that she lent Appellant her vehicle while she travelled to Puerto Rico. (Supp T 1224, Vol. VIII). Thereafter, Amy Huizenga took Cindy Anthony to Anthony Lazzaro's apartment. (Supp T 1224, Vol. VIII).

Cindy Anthony confronted Appellant at Anthony Lazzaro's apartment. (Supp T 1036-1037, Vol. VII). Anthony Lazzaro testified that there was a knock at his door; he stated: "come in," and Amy Huzeinga, who is Appellant's friend entered. (Supp T 1036, Vol. VII). She and Appellant "looked at each other, and they walked out of the apartment." (Supp T 1036, Vol. VII). Shortly thereafter, "the door flung open, [Appellant] came running in," and her mother (Cindy Anthony) stood at the door. (Supp T 1036, Vol. VII). Anthony Lazzaro heard Appellant, on her way out, state that she would be "coming back" to the apartment. (Supp T 1037, Vol. VII). Cindy Anthony testified that she told Appellant that she could return, but not until they talked, and she saw the child. (Supp T 1227, Vol. VIII).

After Appellant left Anthony Lazzaro's apartment, Cindy Anthony testified that she asked Appellant about the whereabouts of the child. (Supp T 1226-1227, Vol. VIII). Appellant informed Cindy Anthony that the child was with the nanny. (Supp T 1226, Vol. VIII). At that point, according to Cindy Anthony, they started

driving around and then Appellant started making excuses as to why it would not be a good idea for Cindy Anthony to retrieve the child. (Supp T 1228, Vol. VIII). Cindy Anthony testified that she was getting "very, very frustrated." (Supp T 1228, Vol. VIII). At that point, Appellant was not answering her questions nor taking her to pick up the child so they "drove around for quite some time." (Supp T 1228, Vol. VIII). According to Cindy Anthony, at one point, Appellant asked her to take her back to Anthony Lazzaro's apartment, and Cindy Anthony responded that "she wasn't going anywhere until [she] got the answers" she needed. (Supp T 1228-1229, Vol. VIII). Still, Appellant refused to pick up the child. (T 028012-02813, Vol. 17).

While driving, Cindy Anthony testified that she noticed the Orlando police station and told Appellant that if she did not give her some answers, that "she was going to get someone to help her get them." (Supp T 1229, Vol. VIII). Then, Cindy Anthony pulled into the substation for the Orlando Police Department. (Supp T 1229, Vol. VIII). As she pulled up to the door and started to get out of the vehicle, she realized that the police station closed at 5:00 P.M. (Supp T 1229, Vol. VIII). Since it was after 5:00 P.M., she got back into the vehicle and told Appellant that this was her last chance to tell her what was going on. (Supp T 1229, Vol. VIII). Appellant refused. (Supp T 1229, Vol. VIII). At that point, Cindy Anthony proceeded to make her first 911 call. (Supp T 1229,

Vol. VIII).

The State read Cindy Anthony's 911 call into the record. (Supp T 1241, Vol. VIII). According to the 911 call, Cindy Anthony told the 911 operator that she needed to bring into the police station her 22-year-old daughter because she had committed grand theft. (Supp T 1241, Vol. VIII). The 911 operator asked what Appellant had stolen, and Cindy Anthony stated: "my car and also money." (Supp T 1242, Vol. VIII). Cindy Anthony told the 911 operator that she wanted to press charges against Appellant. (Supp T 1242, Vol. VIII). After the 911 operator established that the Sheriff's Department and not the Orlando Police Department had jurisdiction, Cindy Anthony's telephone call was transferred over to the Sherriff's communication sections for Orange County. (Supp T 1242-1243, Vol. VIII). The Sherriff's communication sections told Cindy Anthony to either "go home or to drive to the side of the road and make the call." (Supp T 1244, Vol. VIII). Cindy Anthony testified that she was not going "to do this at the side of the road," so she drove home. (Supp T 1244, Vol. VIII).

When she arrived at her residence, Lee Anthony who was Appellant's brother was present. (Supp T 1245, Vol. VIII). Once inside the house, Cindy Anthony explained to Lee Anthony the urgency of trying to get Appellant to take her to the child, and Appellant's refusal to do so. (Supp T 1245-1246, Vol. VIII). At that point, Lee Anthony attempted to talk to Appellant. (Supp T

1246, Vol. VIII). However, Appellant "continued to insist that it was not a good idea to get the child that night." (Supp T 1247, Vol. VIII).

Cindy Anthony testified that she was "getting more irritated and was not happy with that answer," so she "threatened again to call the police." (Supp T 1247, Vol. VIII). When Appellant continued to refuse to produce the child, Cindy Anthony made her second 911 call, and the State read it into evidence as State's exhibit 55. (Supp T 1247, Vol. VIII).

According to the second 911 call, Cindy Anthony stated that "she had someone [at her home] that. . . need[ed] to . . . be arrested." (Supp T 1248, Vol. VIII). The operator then asks who needs to be arrested, and Cindy Anthony replies: "My daughter....For stealing an auto and stealing money." Finally, the operator told Cindy Anthony that a deputy would be sent out as soon as one was available. (Supp T 1251, Vol. VIII). While Cindy Anthony was waiting for law enforcement, Lee Anthony was speaking with Appellant regarding the child's whereabouts. (Supp T 1253, Vol. VIII).

Cindy Anthony testified to hearing Appellant tell Lee Anthony that the child "had been gone for 31 days and that Zanny had taken her." (Supp T 1253, Vol. VIII). Cindy Anthony testified she "lost it" at this point; she started yelling, swearing, and hitting the bed before she ran out and made her last 911 call. (Supp T

1253-1254, Vol. VIII).

During the last 911 call, Cindy Anthony explained to the 911 operator that her granddaughter has been missing for a month and that Appellant has finally admitted that the babysitter had taken her. (Supp T 1255, Vol. VIII). Cindy further explained that the babysitter took the child a month ago and that Appellant had been looking for her. (Supp T 1255, Vol. VIII). The operator asked Cindy Anthony to calm down. (Supp T 1256, Vol. VIII). Due to Cindy Anthony's inability to calm down, the operator asked to speak with Appellant.(Supp T 1256, Vol. VIII). Appellant got on the phone and told the operator the following facts:

> Hello.
>
> Yes
>
> Hi.
>
> What can you -- can you tell me whats going on a little bit?
>
> I'm sorry?
>
> Can you tell me a little bit what's going on?
>
> My daughter has been missing for the last 31 days.
>
> And you know who has her?
>
> I know who has her. I've tried to contact her. I actually received a phone call today now from a number that is no longer in service. I did get to speak to my daughter for about a moment -- about a minute.
>
> Okay....Who has her? Do you have a name?
>
> Her name is Zenaida Fernandez-Gonzalez.

> Who is that, the baby-sitter?
>
> She's been my nanny for about a year and a half, almost two years.
>
> Why -- why are you calling now? Why didn't you call 31 days ago?
>
> I have been looking for her and have gone through other resources to try to find her, which was stupid.

(Supp T 1257-1258, Vol. VIII).

During that conversation, George Anthony arrived, followed shortly thereafter by the police. (Supp T 1259-1260, Vol. VIII). Corporal Fletcher was the first to arrive at the Anthony home. (T 574-575, Vol. IV). When Corporal Fletcher arrived, he made contact with the caller and began to gather information on the nature of the 911 call. (T 576, Vol. IV). Corporal Fletcher testified that Cindy Anthony, George Anthony, and Appellant were present upon his arrival. (T 577, Vol. IV). Corporal Fletcher further testified that he spoke with Cindy Anthony and that she was "quite upset." (T 577, Vol. IV). Corporal Fletcher asked Cindy Anthony questions regarding the nature of the call, in relation to the vehicle. (T 577, Vol. IV). Thereafter, he gathered information on the whereabouts of the child. (T 577, Vol. IV). Corporal Fletcher testified that he questioned Appellant and she eventually told him that her daughter had been missing for approximately about a month. (T 5-577-579, Vol. IV). Appellant told Corporal Fletcher that she had last seen the child when she left the child in the custody of the nanny. (T

579, Vol. IV). Corporal Fletcher testified that, at that point, Appellant did not know the exact location, by name, where she said she last saw the child; however, Appellant was willing and able to show Corporal Fletcher the location. (T 580, Vol. IV).

Shortly after Corporal Fletcher's arrival, Deputy Acevedo arrived and took written statements from George Anthony, Cindy Anthony, Lee Anthony, and ultimately Appellant. (T 579, 595-596, Vol. IV). Additionally, Sergeant Reginald Hosey also arrived. (T 596, Vol. IV).

Sergeant Hosey directed Deputy Acevedo to escort Appellant to the last stated location of the nanny. (T 597-599 Vol. IV). Deputy Acevedo asked Appellant if she was willing to go with them, and Appellant advised that she would. (T 597, Vol. IV). Appellant sat in the backseat of the patrol car. (T 597, Vol. IV). Deputy Acevedo testified that Appellant was not placed under arrest nor was she handcuffed. (T 597, Vol. IV). According to Deputy Acevedo, Appellant entered the back of her vehicle freely and voluntarily. (T 597, Vol. IV). During the drive, Deputy Acevedo testified that Appellant directed her to the particular location. (T 600, Vol. IV). During the drive, Deputy Acevedo took steps to ensure that Appellant was participating voluntarily. (T 597, Vol. IV). Moreover, Deputy Acevedo testified to keeping the lines of communication open with Appellant. (T 598, Vol. IV). Deputy Acevedo continuously asked Appellant if she was fine, how she doing inside

the vehicle, and to inform her if, at any time, she did not want to be in the vehicle. (T 598, Vol. IV). Deputy Acevedo stated that through the entire length of time, Appellant did not want to return to her residence, did not want to get out of the vehicle, and did nothing else that would indicate that she was not there voluntarily. (T 598, Vol. IV).

Once they arrived at the nanny's apartment complex, Appellant identified the apartment and "was certain that that was the location where she had last seen her daughter." (T 600, Vol. IV). Deputy Acevedo related that information to Corporal Fletcher, who remained behind to further investigate. (T 600, Vol. IV). Corporal Fletcher testified that he followed Deputy Acevedo in his own car to the apartment complex. (T 580, Vol. IV). Corporal Fletcher testified that Appellant pointed to the "first buildings, second floor, [and] second-story apartment . . . apartment 210."(T 580-581, Vol. IV).

After Appellant identified the correct apartment, she and Deputy Acevedo returned to the Anthony residence. (T 600, Vol. IV). Corporal Fletcher attempted to contact the occupants; however, when he looked into the apartment through the window, he could not see any furniture inside. (T 582, Vol. IV). According to Corporal Fletcher, the apartment appeared to be vacant. (T 582, Vol. IV). Corporal Fletcher knocked, and there was no answer. (T 582, Vol. IV). Corporal Fletcher, however, stayed behind to speak with

management and gather information regarding the child's disappearance. (R 7750-7751, Vol. 42; T 582, Vol. IV).

Deputy Acevedo returned to the Anthony residence, parked, exited the vehicle, and let Appellant out of the patrol car. (T 601-602, Vol. IV). When Appellant returned from the apartment complex without the child, Lieutenant Reginald Hosey testified to asking Appellant where the child could be other than there. (T 614, Vol. IV). According the Lieutenant Hosey, Appellant mentioned that the child was with the nanny, Zenaida. (T 614, Vol. IV). Lieutenant Hosey testified that during his conversation with Appellant, Appellant was constantly talking about how she and her mother were not getting along, which led him to think that Appellant was trying to keep the child from Cindy Anthony. (T 614, Vol. IV). Next, Lieutenant Hosey testified that they did not succeed in locating the child. (T 615, Vol. IV). To that end, Lieutenant Hosey followed Orange County Sheriff's Office procedure and contacted a detective, Corporal Yuri Melich. (T 615, Vol. IV).

Corporal Melich arrived, at the Anthony residence at about 3:30 A.M. on July 16, 2008. (T 639, Vol. IV). Before Detective Melich arrived, Cindy Anthony testified that her biggest concern was that law enforcement was going to leave that night without somebody taking Appellant to retrieve the child. (R 52-53, Vol. I). Cindy Anthony stated that she wanted the child back as soon as she found out that the child was not in the custody of Appellant

because Appellant did not know whether the child was okay. (R 54, Vol. I). As such, Cindy Anthony wanted law enforcement to arrest Appellant for stealing money from her if Appellant failed to take her to the child. (R 55, Vol. I). Cindy Anthony testified that she recalled the detective asking if Appellant had taken anything from her, and she answering affirmatively. (R 52-53, Vol. I). Additionally, George Anthony testified that he saw his wife Cindy Anthony "very hysterical, very upset, walking back and forth in their immediate garage area, crying." (R 73, Vol. I). He stated that he asked her what was going on, and she said that "Caylee was missing – someone had Caylee."(R 73, Vol. I). To that end, Cindy Anthony wanted Appellant to speak with the officers so that they could get information from her about the child. (R 55, Vol. I). As such, there came a time, during the course of the investigation, where Appellant was handcuffed and placed in the back of a police car. (R 52, 56-76, Vol. I).

Deputy Eberlin testified that he was the officer that placed handcuffs on Appellant. (R 115, Vol. I). Appellant was placed in handcuffs because Appellant's mother Cindy had approached him with copies of receipts claiming that fraudulent credit card usage had been used on her credit card, alleged that Appellant had stolen from her, and stated that she did not want the officers to leave her residence without them knowing where the child was because she feared that Appellant would leave. (R 135, Vol. I). Deputy Eberlin

testified that Cindy asked him to help her put Appellant in jail so that she would know where she would be. (R 135, Vol. I). Cindy Anthony wanted to press charges. (R 135, Vol. I). Deputy Eberlin testified that he believed the allegations made by Mrs. Anthony of the fraudulent use of her credit card and the stolen credit card. (R 135, Vol. I). According to Deputy Eberlin, Appellant was inside the residence when Cindy Anthony was making the latter statements. (R 135, Vol. I). Deputy Eberlin stated that "Cindy was outside at my vehicle [and Appellant] was inside the house." (R 135, Vol. I). So after Cindy made these statements, Deputy Eberlin testified to going inside the house and placing Appellant in handcuffs. (R 135-136, Vol. I). Deputy Eberlin then led Appellant outside to his vehicle and placed her in the vehicle.(R 136, Vol. I). At that point, Deputy Eberlin testified that he had a brief conversation with his supervisor, Sergeant Hosey. (R 116, Vol. I). Sergeant Hosey told Deputy Eberlin "to take Ms. Anthony out of handcuffs." (R 116, Vol. I). According to Deputy Eberlin, the suspect appeared to be Zenaida Fernandez Gonzalez. (R 133, Vol. I). Appellant was uncuffed and allowed to go about her business back into the house. (R 57, Vol. I). Deputy Eberlin testified that Appellant was handcuffed for no more than four to five minutes. (R 136, Vol. I). After the handcuffs were removed, Deputy Eberlin testified that he did not accompany her inside the house. (R 136, Vol. I). He did, however, see her again after that moving about freely. (R 136, Vol.

I).

When Corporal Melich arrived, he proceeded to talk to Appellant about the whereabouts of the child. (T 640, Vol. IV). Corporal Melich testified that Appellant acknowledged previoulsy giving a written statement. (T 640, Vol. IV). The State introduced into evidence Appellant's written statement as State's Exhibit Number 60 and read it into the record. (T 641, Vol. IV). Appellant's written statement indicated the following facts:

> Monday June 9th, 2008, between 9 a.m. and 1 p.m., I, Casey Anthony, took my daughter, Caylee Marie Anthony, to her nanny's apartment. Caylee will be three years old on August 9th, 2008. She was born on August 9, 2005. Caylee is about three feet tall, white female with shoulder-length, light brown hair. She has dark hazel eyes(brown/green), and a small birthmark on her left shoulder. On the day of her disappearance, Caylee was wearing a pink shirt with jean shorts, white sneakers and her hair was pulled back in ponytail.
>
> On Monday, June 9, 2008, between 9 a.m. and 1 p.m., I took Caylee to the Sawgrass Apartments located on Conway Road. Caylee's nanny, Zenaida Fernandez-Gonzalez, has watched her for the past year and a half to two years. Zenaida is 25 years old and is from New York. She is roughly five-foot seven-inches tall, 140 pounds. She has dark brown curly hair and brown eyes. Zenaida's birthday is in September. I met Zenaida through a mutual friend, Jeffrey Michael Hopkins. She has watched his son Zachary Hopkins for six months to a year. I met Zenaida in 2004 around Christmas.
>
> On the date listed above, June 9, 2008, after dropping Caylee off at Zenaida's apartment, I proceeded to head to my place of employment at Universal Studios Orlando. I have worked at Universal for over four years since June of 2004. I left work around 5 p.m. and went back to the apartment to pick up my daughter; however, after

reaching the apartment, I realized that neither Zenaida or Caylee or either of her two roommates were home. I had briefly met Raquel Farrell and Jennifer Rosa on various occasions after calling Zenaida to see where she and Caylee were and when they were coming home. I waited outside of the apartment. I had called Zenaida earlier that morning prior to bringing Caylee over for the afternoon. When I called her that afternoon, her phone was no longer in service.

Two hours passed, and around 7 p.m., I left the apartment and headed to familiar places that Zenaida would go with Caylee. One of Caylee's favorite places is Jay Blanchard Park. I spent the rest of the evening --correction -- rest of that evening pacing and worrying that one of the few places I felt, quote, at home, unquote, my boyfriend Anthony Lazzaro's apartment. For the past four weeks since Caylee's disappearance, I have stayed at Anthony's apartment in Sutton Place. I have spent every day since Monday, June 9, 2008, looking for my daughter. I have lied and stolen from my friends and family to do whatever I could by any means to find my daughter. I have avoided calling the police or even notifying my own family out of fear. I have been and still am afraid of what has or may happen to Caylee. I have not had any contact with Zenaida since Thursday, June 12, 2008. I received a quick call from Zenaida. Not once have I been able to ask her for my daughter or gain any information on where I can find her. Every day I have gone to malls, parks, anyplace I could remember Zenaida taking Caylee. I have gone out and tried to find any information about Caylee or Zenaida whether by going to a popular bar or restaurant. I have contacted Jeff Hopkins on several occasions to see if he had heard from or seen Zenaida. Jeff currently lives in Jacksonville, Florida.

On Tuesday, July 15th, 2008, around 12 p.m., I received a phone call from my daughter Caylee. Today was the first day I have heard her voice in over four weeks. I'm afraid of what Caylee is going through. After 31 days, I know that the only thing that matters is getting my daughter back. With many and all attempts to contact Zenaida and within the

> one short conversation on June 12th, 2008, I was never able to check on the status or well-being of my daughter. Zenaida never made an attempt to explain why Caylee is no longer in Orlando or if she is ever going to bring her home.

(T 643-646, Vol. IV).

Corporal Melich testified that, in addition to discussing Appellant's written statement, he also recorded their conversation. (T 647, Vol. IV). Appellant's recorded conversation was transcribed and introduced into evidence as State's Exhibit Number 61. (T 647, Vol. IV).

During the recorded conversation, Corporal Melich told Appellant that she was being recorded and asks if she had any objections to their conversation being recorded. (T 648, Vol. IV). Appellant stated that she did not. (T 648, Vol. IV). At that point, Corporal Melich explained that he was called to the residence in reference to a missing child. (T 648, Vol. IV). Corporal Melich then asked if the written statement was accurate. (T 648, Vol. IV). Appellant responds affirmatively. (T 649, Vol. IV). Corporal Melich then gave Appellant an opportunity to rescind the written statement to which Appellant stated that she was telling the truth. (T 649, Vol. IV).

During the recorded conversation, Appellant explained that she had two cell phones: one was her personal phone, and the other she received from her job at Universal Studios. (T 649, Vol. IV). Appellant, however, added that she lost her personal phone at

Universal Studies. (T 652, Vol. IV). In addition, Appellant added that she reported the loss to the security there. (T 654, Vol. IV). According to Appellant, she had done so nine days ago. (T 654, Vol. IV). At that moment, Corporal Melich directed Appellant's attention to the nanny, "Zanny." (T 654, Vol. IV).

According to Appellant, Jeffrey Hopkins introduced her to Zanny. (T 654, Vol. IV). Appellant explained that she used to take the child to "Jeff's house," when he "lived over in Avalon Park."(T 655, Vol. IV). Appellant further explained that "that was a couple of years ago," and, "that's where Zenaida would go to watch both of the kids" - her child and Jeff's child. (T 655, Vol. IV). However, around the end of 2006 and 2007, Appellant started taking the child "over to Zenaida's apartment." (T 656, Vol. IV). Appellant explained that Zenaida's apartment was located off of Bumby and Robinson, close to downtown. (T 656, Vol. IV). Appellant told Corporal Melich that Zenaida "lived there for quite a few months and moved over to Sawgrass just recently this year." (T 656, Vol. IV). Appellant could not remember the address for the Bumby and Robinson apartment, however. (T 656, Vol. IV). Appellant told Corporal Melich that Zenaida lived with her mother for a "little bit" before she moved to the Sawgrass Apartments. (T 657, Vol. IV). The mother, according to Appellant, lived in a house "in a very well-marked neighborhood off of Michigan, which crosses just over Conway." (T 657, Vol. IV). Appellant admitted to dropping her

daughter off there, too. (T 657, Vol. IV).

Next, Appellant told Corporal Melich that on June 9, 2008, she dropped her daughter off at the Sawgrass Apartments prior to going to work. (T 658, Vol. IV). Corporal Melich then asked Appellant to explain what she did when she got off work. With that, Appellant narrated the following:

> I got off of work, left Universal, driving back to pick up Caylee like a normal day. And I show up to the apartment, knock on the door, nobody answers. So I called Zenaida's cell phone, and its out of service. Says that the phone is no longer in service. So I sit down on the steps and wait for a little bit to see if maybe it was just a fluke, if something happened. And time passed. I didn't hear from anyone. No one showed up to the house, so I went over to Jay Blanchard Park and checked a couple other places where maybe possibly they would have gone. A couple stores. Just regular places that I know Zenaida shops at and she's taken Caylee before. And after about seven o'clock when I still hadn't heard anything, I was getting pretty upset, pretty frantic. And I went to a neutral place. I didn't really want to come home. I wasn't sure what I would say about not knowing where Caylee was, still hoping that I would get a call or, you know, find out that Caylee was coming back so that I could go get her. And I ended up going to my boyfriend Anthony's house who lives in Sutton Place.

(T 658-659, Vol. IV).

Although Appellant did not reveal the events of the day to Anthony Lazzaro, she admitted to confiding to a couple of mutual friends that the child was missing. (T 658-659, Vol. IV). According to Appellant, she told Jeffrey Hopkins and Juliette Lewis. (T 659-660 Vol. IV). She also "attempted to contact Zenaida's mother

and never received a call back from her." (T 659, Vol. IV). Appellant further asserted that Juliette Lewis was one of her co-workers at Universal Studios. (T 659-661 Vol. IV). Appellant stated that she spoke with Juliette about three weeks ago, shortly after the child went missing. (T 662, Vol. IV). Appellant then told Corporal Melich that although she continued to work at Universal Studios, as an event coordinator, Juliette Lewis does not work there anymore. (T 661, Vol. IV). According to Appellant, Juliette Lewis left Universal Studios two months ago in order to move back to New York. (T 661, Vol. IV). Appellant stated that she did not have Juliette Lewis's current phone number. (T 661, Vol. IV).

After Corporal Melich asked if there was anything that she wanted to change, Appellant stated that her story was true,. (T 663, Vol. IV). In addition, Appellant told Corporal Melich that Zenaida had the child and that Zenaida, too, worked at Universal Studios. (T 664, Vol. IV). Appellant stated that Zenaida had a seasonal ID for Universal Studios because she was a seasonal employee there. (T 664, Vol. IV). To that, Corporal Melich asked Appellant if Appellant would take a drive with him and direct him to Zenaida's mother's house and the Sawgrass Apartments. (T 666, Vol. IV).

Corporal Melich next drove Appellant to the locations stated above.(T 667, Vol. IV). According to Corporal Melich, the first location turned out to be a building at 301 North Hillside which

was off Glenwood and Bumby. (T 668, Vol. IV). Although they did not get out of the vehicle, Corporal Melich asked Appellant to point to the apartment or windows that belonged to Zenaida or her family. (T 668, Vol. IV). Respondking to that instruction, Appellant pointed out two windows on the side of the building facing Robinson. (T 668, Vol. IV). Appellant indicated that those two windows, one above and one below, belonged to the same apartment and that Zenaida (and her family) had lived there at one point. (T 668, Vol. IV). From 301 North Hillside, they proceeded to go to the Sawgrass Apartments. (T 669, Vol. IV).

Corporal Melich testified that once they arrived at the Sawgrass Apartments he directed Appellant to point out the apartment where she had left Caylee on June 9, 2008. (T 669, Vol. IV). Appellant directed Corporal Melich to the first apartment building inside the complex on the right, apartment 210. (T 669, Vol. IV). Corporal Melich testified that they did not exit the vehicle. (T 669, Vol. IV). Lastly, Corporal Melich and Appellant decided to also visit th Apartments at Conway which were several single-story townhomes that have several homes attached to one building but each were individually owned. (T 669-670, Vol. IV). According to Corporal Melich, Appellant claimed this was one of the locations that Zenaida had lived and where she had dropped off the child several times in the past. (T 670, Vol. IV). So, Corporal Melich asked her to direct him to the apartment or the townhome

where she dropped the child off at. (T 670, Vol. IV). Corporal Melich testified that they drove through the entire complex at least once, and Appellant "wasn't quite sure which apartment it was, but said that it was in the generic or general area." (T 670, Vol. IV). Nevertheless, Corporal Melich exited the vehicle, asked Appellant to remain in the front passenger side, and knocked on the doors of several apartments in that area. (T 670, Vol. IV). Corporal Melich told her to let him know if she noticed anyone familiar, and they would go from there. (T 670, Vol. IV). Once this process was completed, Corporal Melich drove Appellant home. (T 672, Vol. IV).

Leonard Turtora, assistant manager of loss prevention at Universal Studios, testified to coming into contact with Corporal Melich the next day - July 16, 2008. (T 727-728, Vol. V). According to Mr. Turtora, Corporal Melich showed up at security out at City Walk, and was asking question regarding an employee. (T 728, Vol. V). Mr. Turtora testified that he was asked by Corporal Melich to assist him in determining whether Appellant was a current employee of Universal Studios. (T 728, Vol. V). Mr. Turtora agreed. (T 728, Vol. V). Utilizing databases at Universal Studios to determine employment status, Detective Melich found out that Appellant was not currently employed at Universal Studios. (T 728-729, Vol. V). And, through past databases, Mr. Turtora was able to determine that Appellant had been employed by a third party (Kodak), not actually

Universal Studios, until April or May of 2008. (T 729, Vol. V). In addition, Mr. Turtora was able to determine that Jeffrey Hopkins was employed by Universal Studios from late 2001 to early 2002. (T 730, Vol. V). However, according to the Universal Studios database, neither Juliette Lewis nor Zenaida Gonzalez had ever been employed at Universal Studios or through a third party vendor. (T 730, Vol. V). Mr. Turtora and Detective Melich were able to verify that Appellant was not currently employed with Universal Studios or a third party vendor. (T 731, Vol. V). At that point, Detective Melich called Appellant, placed her on speaker phone, and asked a series of questions regarding her employment. (T 731, Vol. V). Mr. Turtora testified that he could not confirm anything that she was saying. (T 731-732, Vol. V). Detective Melich asked Appellant if she would ride over to Universal with some officers he was sending over. (T 731-732, Vol. V). Appellant agreed. (T 732, Vol. V).

That same day Detectives John Allen and Appling Wells returned to the Anthony home, picked up Appellant, and took her to Universal Studios. (R 64, Vol. I). According to Mr. Turtora, he received a call about forty-five minutes later from Detective Melich informing him that two detectives had arrived with Appellant. (T 732, Vol. V). Mr. Turtora testified that he met them outside of Universal's security gate which was also the employees' entrance. (T 732, Vol. V). After Mr. Turtora met them, Detective Melich introduced him to Appellant and explained that he was an investigator with Universal

Studios and that he would be assisting them. (T 732, Vol. V). Mr. Turtora testified that he asked Appellant if she was a current employee, and Appellant stated that she was. (T 732, Vol. V). Mr. Turtora then asked if she had her ID on her, and she stated that she did not. (T 732, Vol. V). Appellant was then asked if she knew her employee number. (T 733, Vol. V). Again, Appellant did not. (T 733, Vol. V). Mr. Turtora asked Appellant in which department she worked. (T 733, Vol. V). Appellant stated that she worked in events. (T 733, Vol. V). Mr. Turtora testified that he asked if it was marketing or entertainment, and Appellant replied it was "a little bit of both." (T 73, Vol. V). Mr. Turtora testified that that statement could not be true; then, one of the security guards tried to look her name up and learned that the computer showed she was not a current employee. (T 733, Vol. V). At that point, Appellant was asked the name of her supervisor, and Appellant stated that her supervisor's name was Thomas Manley. (T 733, Vol. V). The officer used the Universal Studios's phone book to look up the name and could not find a record of that name either. (T 733, Vol. V).

Thereafter, Appellant entered Universal Studios along with the detectives. (T 734, Vol. V). According to Mr. Turtora, they entered the security gate and began to walk towards a building. (T 734, Vol. V). At that point, Appellant was asked where she was going. (T 734, Vol. V). According to Mr. Turtora, Appellant pointed to a

building nearby. (T 733, Vol. V). They walked inside the building. (T 734, Vol. V). Detective Melich began to look around and asked if they were in the events building. (T 734, Vol. V). At that point, Appellant, according to Mr. Turtora, looked at him, placed her hands in her back pocket, and stated "I don’t work here." The detectives proceed to take Appellant to one of the conference rooms in the building. (T 734, Vol. V). According to Mr. Turtora, they stayed in the conference room somewhere between 30 and 45 minutes. (T 735, Vol. V) Appellant was thereafter arrested for lying to the police. (T 2872, Vol. 17).

SUMMARY OF ARGUMENT

The trial court correctly found Appellant was not in custody, there was no Miranda requirement, and her statements were admissible. When the officers initially arrived at the Anthony home, their concern quickly focused on the missing child. Cindy Anthony did want Appellant arrested, but only because she was so worried about Caylee and did not want her daughter to leave without leading them to the child. She had been exposed to lie after lie from her daughter and simply wanted her to stay and assist in the search. Outside of being handcuffed for a few minutes, Appellant freely went about her home, and the only reason there were so many officers were there was to help the family in its search for Caylee.

As to issue two, Appellant gave multiple statements to law enforcement leading them down numerous paths that had no end. The officers were simply attempting to assist Appellant find her child. Instead of helping, Appellant told numerous lies forcing the officers to pursue the stories she created. Four convictions for her actions do not violation double jeopardy.

Lastly, Appellant was properly convicted under a constitutional statute that is not vague.

ARGUMENT

ISSUE I

GIVEN THAT APPELLANT WAS NOT IN CUSTODY, THE TRIAL COURT PROPERLY DENIED THE DEFENDANT'S MOTION TO SUPPRESS.

Appellant contends that the trial court erred in denying the motion to suppress submitting her statement to law enforcement should not have been admitted at trial because she was never read Miranda[1] warnings. Based on the facts in the record, the State disagrees.

Miranda warnings are required as a protection against the practice of coercing statements from a defendant in police custody. As the Florida Supreme Court has explained:

> In Miranda, the United States Supreme Court established a procedural safeguard to protect an individual's fifth amendment privilege against compelled self-incrimination from *the coercive pressures of custodial interrogation*. The procedural safeguard does not, however, apply 'outside the context of the inherently coercive custodial interrogations for which it was designed.' The police are required to give Miranda warnings only when the person is in custody.

Caso v. State, 524 So. 2d 422, 423 (Fla.) (citations omitted) (emphasis added), cert. denied, 488 U.S. 870 (1988).

Here, the trial court rejected Appellant's argument that the facts showed she was in custody. This Court must accord a presumption of correctness to the trial court's determination of

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[1]Miranda v. Arizona, 384 U.S. 436 (1966).

the facts, reversing only if the findings are not supported by competent substantial evidence in the record; whereas, the application of the law to these facts is reviewed de novo. Connor v. State, 803 So. 2d 598, 608 (Fla. 2001), cert. denied, 535 U.S. 1103 (2002). Applying that standard here, the trial court's order should be affirmed.

When determining whether a defendant is in custody for Miranda purposes, the key inquiry is whether "a reasonable person in the same position as the defendant would believe that his or her freedom was curtailed to a degree associated with actual arrest." Bedoya v. State, 779 So. 2d 574, 579 (Fla. 5th DCA), rev. denied, 797 So. 2d 584 (Fla. 2001). Relevant factors to be considered in making this determination include the manner in which the police summon the suspect for questioning, the purpose, place and manner of the questioning, the extent to which the suspect is confronted with evidence of guilt, and whether the suspect is informed that he or she is free to leave. Id. See also Ramirez v. State, 739 So. 2d 568, 574 (Fla. 1999) (same), cert. denied, 528 U.S. 1131 (2000).

Now turning to the trial court's ruling, there were two statements by Appellant to Det. Melich. The first one was at the Anthony home and the second was at Universal Studios. The trial court treated each separately finding that neither violated Miranda.

As to the first statement, the main argument by Appellant that she was in custody was the fact she was handcuffed while at the Anthony home. Deputy Eberlin did admit to handcuffing Appellant and placing her into his patrol car based upon the request of Cindy Anthony. Cindy accused Appellant of stealing money from her and feared that Appellant would leave the house without telling them where Caylee was. What the facts show is a very upset grandmother who would do and say anything to ensure her daughter - who was not cooperating - would not leave. Within minutes, the officer's supervisor told him to remove the handcuffs because they were there to concentrate on the missing child and that the suspect was a Zenaida Gonzalez, not Appellant. Appellant returned to the home and moved about freely again interacting with the officers who were attempting to obtain all relevant information as to Caylee's location.

The trial court correctly found that the main case relied upon by Appellant was easily distinguishable. Williams v. State, 757 So. 2d 597 (Fla. 5th DCA 2007), does hold that for speedy trial purposes a defendant can not be unarrested. However, the defendant in that case was clearly arrested; whereas, Appellant was not.

The question then become whether Appellant was in custody. In its order the trial court specifically set out the Ramirez test. (R 14394, Vol. 77). The trial court noted that the defense submitted that Appellant was in custody from the very beginning of

the officers arrival at the Anthony home.[2] This premise was rejected by the trial court given that law enforcement arrived at the request of Cindy Anthony. The trial court set out the following summary of its detailed application of the Ramirez test in its order:

> This conclusion that the Defendant was not subjected to custodial interrogation by Det. Melich at the Defendant's home is also supported by applying the Ramirez test. First, Melich was summoned to the home in regards to the Defendant's missing child; he did not summon the Defendant. Second, the purpose of his interview was to obtain information about Zenaida, the suspected kidapper. Also, the interview took place in a spare bedroom of the home, with the door open. Thirdly, Det. Melich did not confront the Defendant with any inculpatory evidence. The focus of the conversation was finding Caylee. And lastly, the Defendant was freely and voluntarily giving Det. Melich information concerning Caylee's whereabouts. Based on the totality of the circumstances, the Court finds that the Defendant was not in custody when she made this statement.

(R 14399, Vol. 77).

As to the issue of whether the fact Appellant was handcuffed automatically created custody, it is well established that the use of handcuffs does not convert an investigatory stop into an arrest when the use of handcuffs "was reasonably necessary to protect the officers' safety or to thwart a suspect's attempt to flee."

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[2]Interestingly, Appellant's father admitted at the suppression hearing that he would have had 2000 officers arrive to assist his family in finding Caylee. (R 20655, Vol. 113).

Reynolds v. State, 592 So. 2d 1082, 1084 (Fla. 1992); see also State v. K.N., 66 So. 3d 380, 385 (Fla. 5th DCA 2011)("officer may detain the individual even at gunpoint and with handcuffs for the officer's safety without converting the Terry stop into a formal arrest."); United States v. Crittendon, 883 F.2d 326 (4th Cir. 1989)(use of handcuffs during investigative stop reasonably necessary to maintain status quo and protect officer's safety); United States v. Glenna, 878 F.2d 967 (7th Cir. 1989)(use of handcuffs during investigative stop not improper where police found ammunition and explosives on suspect); United States v. Taylor, 716 F.2d 701, 709 (9th Cir. 1983)(use of handcuffs not improper where suspect made furtive movements with hands after refusing an order to put his hands in the air); United States v. Bautista, 684 F.2d 1286 (9th Cir. 1982)(use of handcuffs during Terry stop upheld where an armed robbery suspect was still at large and handcuffs eliminated possibility of assault or escape attempt), cert. denied, 459 U.S. 1211 (1983); Howard v. State, 664 P.2d 603 (Alaska Ct. App. 1983)(drawn guns and handcuffing do not necessarily turn investigative stop into arrest); People v. Allen, 73 N.Y.2d 378, 540 N.Y.S.2d 971, 538 N.E.2d 323 (1989)(police justified in handcuffing armed robbery suspect to ensure their safety while moving him out of alley to conduct pat down); State v. Wheeler, 108 Wash. 2d 230, 737 P.2d 1005 (1987)(handcuffing suspected burglar for two-block ride to scene of burglary upheld); United States v.

Kapperman, 764 F.2d 786, 790, n. 4 (11th Cir. 1985) (neither handcuffing nor other restraints automatically convert Terry stop into an arrest requiring probable cause; inquiry is reasonableness); Saturnino-Boudet v. State, 682 So. 2d 188 (Fla. 3d DCA 1996) (noting that during investigatory stop an officer may detain someone at gunpoint and/or by handcuffs without converting the stop into a formal arrest).[3] Appellant in this was not even the subject of an investigatory stop. She simply was handcuffed at her mother's insistence in order to prevent her from leaving. The handcuffs were almost immediately removed, and she remained willingly at the home "assisting" the officers efforts to find her daughter.

The second statement by Appellant was made at Universal Studios. The trial court again conducted an extensive analysis of custody and again found that the facts did not support Appellant's argument. (R 14399-14404, Vol. 77). Appellant voluntarily went to Universal with law enforcement as they were attempting to resolve inconsistencies in her version of facts. She had initially told them that she worked there as did two of her friends who she had told about Zenaida taking Caylee. Det. Melich testified that

[3]The trial court also cited Sanchez-Velasco v. State, 570 So. 2d 908 (Fla. 1990), and Parks v. State, 644 So. 2d 106 (Fla. 4th DCA 1994), for the added position that even if Appellant had been arrested, she had been released and approximately one hour had elapsed prior to Det. Melich arriving and taking her voluntary statement; thus, creating a sufficient break and making any statement admissible.

he did not understand why a mother of a missing child would be lying to him and he hoped he had misunderstood her. (R 20764-20766, Vol. 114). He was seeking to find out where she worked and why her story was proving false. (R 20766, Vol. 114).

As to the second prong, the second interview was in an employee conference room at Universal, but they were there because of Appellant's own actions of leading them there. The door was closed, however, that was because of the private nature of the topic. Furthermore, the trial court found the majority of the interview was in a conversational tone.

As to being confronted with evidence of guilt, the court found that any confrontation was not of evidence of murder or of a serious crime but of the inconsistencies of her stories. In essence, the officers were attempting to get Appellant to explain her lies to assist in finding Caylee. Furthermore, questioning a defendant about criminal conduct alone does not convert an otherwise consensual encounter into a custodial interrogation. State v. Scott, 786 So. 2d 606, 610 (Fla. 5th DCA 2001).

As to the last prong, the trial court correctly found Appellant was there voluntarily. She was trying to "assist" law enforcement find Caylee but still continuing to provide the officers with false information. The trial court noted that Appellant agreed from the outset of the interview she was there on her own volition and a reasonable person would believe she was free

to leave at any time. Appellant has presented nothing to overcome this finding of the trial court.

Given the above facts and law, Appellant's arguments alleging a violation of Miranda should be rejected and the trial court's order denying the motion to suppress should be affirmed.

ISSUE II

APPELLANT WAS PROPERLY CONVICTED OF FOUR COUNTS OF PROVIDING FALSE INFORMATION TO A LAW ENFORCEMENT OFFICER, AND APPELLANT HAS FAILED TO SHOW A DOUBLE JEOPARDY VIOLATION.

Appellant contends her four convictions for providing false information to a law enforcement officer during an investigation violate double jeopardy because each count stemmed from one, continuous interview. The State disagrees.

The standard for determining the constitutionality of multiple convictions for offenses arising from the same criminal transaction is whether the Legislature intended to authorize separate punishments. Valdes v. State, 3 So. 3d 1067 (Fla. 2009); M.P. v. State, 682 So. 2d 79 (Fla. 1996); Boler v. State, 678 So. 2d 319, 321 (Fla. 1996). In Valdes, the Florida Supreme Court wrote:

> We note that this case involves a circumstance where, because one criminal act gave rise to multiple separate offenses, double jeopardy is not violated. Thus, the circumstance in this case is distinguishable from cases in which double jeopardy is not a concern because multiple convictions occurred based on two distinct criminal acts. See Paul, 934 So. 2d at 1172 n.3 ("Of course, if two convictions occurred based on two distinct criminal acts, double jeopardy is not a concern.") (citing Hayes, 803 So. 2d at 700.)

Id. at 1078 n. 12. Therefore, in the absence of a legislative directive to the contrary, by necessity, in order for there to be a violation of the prohibition of double jeopardy for the "same offense," the defendant must be facing punishment for a single

legislatively defined offense which is based on a single criminal act within a single criminal episode. Otherwise the offense cannot be the "same offense." Accordingly, a double jeopardy violation requires a defendant twice being punished or prosecuted for violating a single, legislatively defined, offense, within a single criminal act (or instance of conduct), within a single criminal episode or transaction. Otherwise, there is no double jeopardy violation.

In the instant case Appellant was charged and found guilty of four counts of violating section 837.055, Florida Statutes. That section provides as follows:

> Whoever knowingly and willfully gives false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Appellant submits that she provided all statements to Det. Melich "during the same interview and never had time to pause, reflect and form new criminal intent between occurrences. (IB p. 21). Respectfully, the State would assert that Appellant gave multiple statements to law enforcement - including two recorded statements to Det. Melich which were the subject of issue one. In fact, it appears her first statement to him was simply a summary and confirmation of the previous statements she had made to law enforcement prior to Det. Melich arriving. While her story

included many lies, the State choice to focus on four specific ones given the degree they impeded the investigation. Specifically, the State charged and proved the separate lies that Appellant worked at Universal, Appellant left Caylee with Zenaida at the Sawgrass Apartments, Appellant told Jeffrey Hopkins and Juliette Lewis about her child's disappearance, and Appellant talked to her daughter on July 15, 2008. These separate, pieces of false information impeded the investigation, were proven, and do not violate double jeopardy.

The two cases relied upon by Appellant can be easily distinguished. First, Appellant submits that Burke v. State, 475 So. 2d 252 (Fla. 5th DCA 1985), rev. denied, 484 So. 2d 10 (Fla. 1986), requires reversal. Burke involved a situation of a tenant giving a landlord three one-dollar bills in one simultaneous act and being convicted of three counts of uttering forged bills. There is almost no analysis in the majority opinion of Burke. It is in a concurring opinion that a judge wrote that the focus of the uttering statute was on the uttering, not on the number of individual bills. Within that very same concurrence, Judge Cowart recognized that a defendant could be convicted of three counts of forgery for altering three bills given there would be different acts of forgery. Id. at 253, n. 3. Similarly to the forgery statute, the emphasis of the instant statute is on the false information misleading law enforcement, and Appellant told at least four such lies. Thus, Burke is not controlling.

As to the second authority relied upon by Appellant, this Court in Hoag v. State, 511 So. 2d 401 (Fla. 5th DCA 1987), found that double jeopardy barred five counts of leaving the scene of **an** accident with injuries when the facts may show multiple people hurt but only one accident. This Court cited Burke and placed the emphasis of the statute on the leaving the scene of one accident writing, "there was but one scene of the accident and one failure to stop." Id. at 402. Again, such an analysis does not apply to the instant case because the instant statute was passed to punish the giving of false information that impedes a search for a missing person. There was not one giant lie, but many which delayed the officers, and based upon the controlling law and facts, the four instant convictions do not violate double jeopardy.

ISSUE III

THERE IS NOT A MATERIALITY ELEMENT TO THE CHARGED OFFENSE, THE INSTANT STATUTE IS NOT UNCONSTITUTIONAL, AND APPELLANT WAS PROPERLY CONVICTED OF PROVIDING FALSE INFORMATION TO LAW ENFORCEMENT.

Appellant contends that the offenses of which she was convicted should contain a materiality element, and since they do not, the statute is unconstitutionally vague. The State disagrees.

In assessing a statute's constitutionality, court are bound "to resolve all doubts as to the validity of [the] statute in favor of its constitutionality, provided the statute may be given a fair construction that is consistent with the federal and state constitutions as well as with the legislative intent." State v. Stalder, 630 So. 2d 1072, 1076 (Fla. 1994) (quoting State v. Elder, 382 So. 2d 687, 690 (Fla. 1980)). Further, "[w]henever possible, a statute should be construed so as not to conflict with the constitution. Just as federal courts are authorized to place narrowing constructions on acts of Congress, this Court may, under the proper circumstances, do the same with a state statute when to do so does not effectively rewrite the enactment." Id. (quoting Firestone v. News-Press Publishing Co., 538 So. 2d 457, 459-60 (Fla. 1989) (citations omitted)).

In order to withstand a vagueness challenge, a statute must be specific enough to give persons of common intelligence and understanding adequate warning of proscribed conduct. State v.

Mitro, 700 So. 2d 643, 645 (Fla. 1997). Furthermore, it is the legislature's power to enact and define laws as the Florida Supreme Court recently reiterated in State v. Adkins, 37 Fla. L. Weekly S 449 (Fla. July 12, 2012). Specifically, the Court wrote,

> "Enacting laws—and especially criminal laws — is quintessentially a legislative function." Fla. House of Representatives v. Crist, 999 So.2d 601, 615 (Fla.2008). "[T]he Legislature generally has broad authority to determine any requirement for intent or knowledge in the definition of a crime." State v. Giorgetti, 868 So.2d 512, 515 (Fla.2004). We thus have recognized that generally "[i]t is within the power of the Legislature to declare an act a crime regardless of the intent or knowledge of the violation thereof." Coleman v. State ex rel. Jackson, 193 So. 84, 86 (Fla.1939). "The doing of the act inhibited by the statute makes the crime[,] and moral turpitude or purity of motive and the knowledge or ignorance of its criminal character are immaterial circumstances on the question of guilt." Id.

Consistent with that legislative enactment, the jury instructions for instant offense provide as follows:

§ 837.055 Fla. Stat.

> To prove the crime of False Information to Law Enforcement, the State must prove the following five elements beyond a reasonable doubt:
>
> 1. (Name of law enforcement officer) was conducting a [missing person investigation] [felony criminal investigation].
>
> 2. (Name of law enforcement officer) was a law enforcement officer.
>
> 3. (Defendant) knew that (name of law enforcement officer) was a law enforcement officer.
>
> 4. (Defendant) knowingly and willfully gave false

information to (name of law enforcement officer).

5. (Defendant) intended to mislead (name of law enforcement officer) or impede the investigation.

Definition.

"Willfully" means intentionally, knowingly and purposely.

There is nothing misleading or vague about this statute. In fact, there is a *mens rea* requirement of "knowingly" and "willfully." The State charged four counts of this offense, and the jury convicted Appellant of all four counts. Appellant references the fact that there is a materiality element in the perjury statute. While within the same general chapter, perjury is a separate statute. For the instant misdemeanors, the legislature defined the offense as set out and instructed above, and Appellant have failed to show it is unconstitutional.

CONCLUSION

Based on the argument and authorities presented herein, the State requests this Honorable Court affirm Appellant's judgments and sentences.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was furnished by electronic service to Lisabeth Fryer, attorney for Appellant, this _____ day of September 2012.

DESIGNATION OF E-MAIL ADDRESS

_____The State designates CrimAppDAB@MyFloridaLegal.com as its primary e-mail address and Wesley.Heidt@MyFloridaLegal.com as its secondary address.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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