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

CASE NO.: 5D11-2357

CASEY MARIE ANTHONY,
Petitioner,

vs.

STATE OF FLORIDA
Respondent,
_____/

APPELLANT'S REPLY BRIEF

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

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ARGUMENT

POINT ONE

I. THE LOWER COURT ERRED IN DENYING THE DEFENSE MOTION TO SUPPRESS STATEMENTS TO LAW ENFORCEMENT OFFICERS BECAUSE THE APPELLANT WAS ARRESTED AND IN CUSTODY, BUT NEVER APPRISED OF HER *MIRANDA* RIGHTS BEFORE BEING SUBJECT TO INTERROGATION

The trial court analyzed whether the Appellant was "in custody" for purposes of *Miranda* from the perspective of law enforcement. The State's answer brief invites the Court to analyze whether the Appellant was "in custody" for purposes of *Miranda* from the perspective of the Appellant's mother. (A. 32). While it is understandable to empathize with both perspectives, neither addresses the appropriate and ultimate legal inquiry: "simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *State v. Pitts*, 936 So. 2d 1111, 1123 (Fla. 2006) quoting *Miranda v. Arizona*, 384 U.S. 436 (1966). Moreover, "[w]hether a suspect has been subjected to such a restraint on freedom of movement depends on how ***a reasonable person in the suspect's position*** would have understood his situation." *Pitts*, 936 So. 2d at 1123, quoting *Berkemer v. McCarty*, 468 U.S. 420 (1984) (emphasis added).

The State concedes that the Appellant was not the subject of an investigatory stop. (A. 38).Nor did the Appellant present any articulated threat to any identified individual or the community at large. Rather, "[s]he was simply handcuffed at her

mother's insistence in order to prevent her from leaving." (A. 38). However, this subjective fear on the part of the Appellant's mother was not articulated as the reason for handcuffing the Appellant and placing her in the cage of the officer's car. It must also be noted that there was no hint, let alone objective evidence, that the Appellant had any plan to leave. Instead, Officer Eberlin handcuffed an individual accused of a crime who was not the subject of an investigatory stop, and placed her in the cage of police car with the purpose of restraining their freedom of movement. This is the definition of a formal arrest. Under the circumstances, Miranda warnings were required before any further interrogation by law enforcement occurred. The subsequent "unarrest" of the Appellant did not restore the Appellant to her pre-arrest position. Instead, the formal arrest, the continued and escalating presence of law enforcement, and the 4:00 a.m. interrogation viewed from the perspective of a reasonable person in the Appellant's shoes created a coercive situation which could not be described as a voluntary encounter.

Moreover, the Appellant was subjected to a confrontational, interrogative state of mind the entire day. After the formal arrest and interrogation, the Appellant was then summoned by law enforcement, picked up by two armed officers from her home, driven approximately twenty miles, and further interrogated. She was confronted with evidence against her in a small room flanked by three law enforcement officers approximately twenty miles from her home.

The Appellant was not advised she was free to leave, she was summoned for questioning in a way that suggested she had no choice but to submit (both in her home and when picked up by law enforcement), the purpose, place and manner of the questioning all indicated an involuntary situation, and the confrontation with evidence of guilt all point to a custodial interrogation. *See Pitts*, 936 So. 2d at1125-29 (finding all factors pointing to custodial interrogation).

In explaining the confrontational accusations from law enforcement, the answer brief states that "the officers were attempting to get Appellant to explain her lies to assist in finding Caylee." (A. 39). However, the lies *are* the crime in this matter and any heated accusations of lying, under the circumstances, were a direct confrontation of evidence against the Appellant.

The Appellant was subjected to custodial interrogation without the constitutionally guaranteed right to *Miranda* warnings. In short, his is not an appeal on the sufficiency of the evidence. The Appellant lied, but the lies are inadmissible because law enforcement conspired to prevent the Appellant from exercising her Constitutional rights, as such the undersigned respectfully requests that this Court reverse the trial court as to its Order on Defense Motion to Suppress Statements.

POINT TWO

II. THE APPELLANT'S CONSTITUTIONAL DOUBLE JEOPARDY RIGHTS WERE VIOLATED WHEN SHE WAS CONVICTED OF

FOUR SEPARATE COUNTS OF PROVIDING FALSE INFORMATION TO A LAW ENFORCEMENT OFFICER BECAUSE EACH COUNT STEMMED FROM THE SAME SINGLE OFFENSE WHERE THERE WAS NO BREAK IN THE TEMPORAL ASPECT OF THE CRIME

In response to the State's answer brief, the Appellant reiterates that her statements to Detective Melich stem from one act; the interrogation of the Appellant. However, even if this Court determines that there were two discrete interrogations (one at the Appellant's home and one at Universal Studios), the constitutional proscription against double jeopardy precludes more than two counts of a violation of the statute of providing False Information to a Law Enforcement Officer, as the statements of the Appellant were made during the interrogations and there was no time to pause, reflect, and for a new intent. *Vasquez v. State*, 778 So. 2d 1068 (Fla. 5th DCA 2001). Based on the foregoing, the Appellant respectfully requests this court to vacate her sentence as to Counts 5, 6, and 7.

POINT THREE

III. THE LOWER COURT COMMITTED REVERSIBLE ERROR IN DENYING DEFENDANT'S REQUEST TO REQUIRE A FINDING OF MATERIALITY IN FLORIDA STATUTE § 837.055

Fla. Stat. § 837.055 is constitutionally infirm. However, it is unlikely that this Court need reach this argument, as the original statements at issue in this matter were erroneously entered into evidence and should have been suppressed. *State v.*

Williams, 584 So. 2d 1119 (Fla. 5th DCA 1991). However, should this Court reach this issue a new trial is warranted.

CONCLUSION

The trial court erred in denying the Defense Motion to Suppress the statements in question, as the Appellant was no *Mirandized* before being subjected in custodial interrogation. Additionally, the Appellant was sentenced in violation of Double Jeopardy Principles. Further, the trial court erred in failing to interrupt Fla. Stat. § 837.055 as including a materiality component, as any interpretation without such component renders the statute unconstitutional.

Respectfully Submitted, *One of the Attorneys for the Defendant*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was furnished by electronic delivery to Wesley Heidt, Office of the Attorney General, this 26th day of October, 2012.

/s/ Lisabeth Fryer

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this petition complies with the font requirements of Rule 9.100(*l*) of the Florida Rules of Appellate Procedure.

/s/ Lisabeth Fryer
Lisabeth Fryer

DESIGNATION OF E-MAIL ADDRESS

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

/s/ Lisabeth Fryer