

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

CRIMINAL: DIVISION

JAN 08 2007

STATE OF FLORIDA

CASE NO: F01-7975

Vs.

JUDGE: GLICK

SEAN CASEY,
Defendant

**ADDENDUM TO MOTION TO VACATE
CONVICTION AND SENTENCE**

Comes now the Defendant, by and through undersigned counsel, pursuant to Florida Rule of Criminal Procedure 3.850, with an Addendum To Motion To Vacate Conviction and Sentence due to ineffective assistance of counsel, and states as grounds in support thereof:

1. The Defendant had no prior criminal history and no prior experience or knowledge about the criminal justice system until arrested in this cause.
2. Prior counsel filed a Motion to Suppress Statement and Physical Evidence in this cause. A hearing was held on the motion and

counsel neglected to call the Defendant as a witness to establish record evidence of the averments in the motion, despite the fact that the Defendant wished to testify.

3. The Court granted the Motion, apparently because it simply did not believe the testimony of the police officers. The State prevailed on appeal. See *State v. Casey*, 821 So2d. 1187 (3DCA 2002). The Court reversed because “the testimony of the police officers was not impeached, discredited, controverted, contradictory within itself, or physically impossible”. The Court cited a series of controlling precedent, which counsel should have been aware of, that held that a Court was “**required to accept**” such evidence. There was no record evidence introduced by the Defendant to support the allegations of police misconduct plead in the motion. Had counsel done so, the suppression order would have been affirmed and the State would have been unable to continue the prosecution.
4. Counsel provided ineffective assistance of counsel by not calling the Defendant as a witness so that there would be record evidence to support the allegations raised in the motion, particularly where the Defendant had previously advised counsel he wished to testify.

5. The only just remedy would be for the Court to take judicial notice of the prior Order, motions, memoranda, and testimony, and allow the Defendant to proffer under oath what he would have testified to had he been given the opportunity, or conduct a de novo hearing. If the Court determines that the Motion would have been granted if counsel had effectively represented the Defendant by calling the Defendant as a witness, it should vacate the conviction, suppress the evidence previously suppressed and allow the State to appeal if it chooses.

Respectfully submitted this 5th day of January, 2007.



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6) The Defendant would testify that he was in police custody and was coerced into making a statement to police. Police used threats of violence and refused to allow him to contact an attorney despite his request to be allowed to speak to counsel.

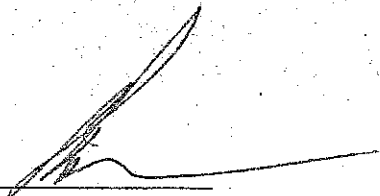
I hereby swear that I have read this Motion and that the facts contained herein are true and correct.

Sean Casey

Sean Casey, Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to Assistant State Attorney Gail Levine, Office of the State Attorney, 1350 N.W. 12th Avenue, Miami, Florida, 33125; this 5th day of January, 2007.


David S. Markus