

	)	In the Circuit Court of the
	)	Ninth Judicial Circuit, in and for
	)	Orange County, Florida
STATE OF FLORIDA	)	
	)	Case No.: 482008-CF-0015606-O
v.	)	Division 16
	)	
CASEY MARIE ANTHONY,	)	Hon. BELVIN PERRY JR.
	)	
Defendant.	)	

**AMENDED MOTION FOR SPOILIATION OF EVIDENCE TO EXCLUDE ALL  
REFERENCES TO THE SMELL OF THE PONTIAC SUNFIRE**

COMES NOW, the Defendant CASEY MARIE ANTHONY, by and through undersigned counsel hereby files this motion and amends it's previously filed motion for spoliation of evidence to include all references to the smell of the Pontiac Sunfire including but not limited to a carpet sample preserved in a tin can and all lay testimony indicating that it was human decomposition instead of any other organic decomposition and in support thereof states the following:

**FACTS**

On July 16<sup>th</sup> 2008, law enforcement confiscated a 1998 Pontiac Sunfire believed to be driven by Miss Anthony. Detective Yuri Melich, CSI Bloise, CSI Vincent, John Allen, George Anthony and Cindy Anthony have given testimony that they believe the trunk of the vehicle had the smell of decomposition. (Cindy Anthony gave references to a dead body in the trunk of the car) Although no determination can be made by any individual what kind of "decomposition" they smelled, they all appear to be willing to testify as such. Upon questioning George Anthony and Simon Birch (a tow yard manager that towed the car) It came to law enforcement's attention

that a bag of garbage which included various foods and biological materials was in the trunk of the vehicle for a minimum of 18 days in the summer of 2008.

Simon Birch has given statements to law enforcement that upon opening the trunk his first conclusion was that the source of the smell in the trunk of the car was that of the garbage.

At no time did either individual call law enforcement and describe the smell as human decomposition. Yuri Melich provided a supplemental report and made the following statement:

**"Although there were food items inside, as well as small flies and maggots, the smell from the trash was distinctively different from the smell coming from within the car. The trash did not smell like the inside of the car, but the odor of decomposition did carry over to the trash bag."**

It is the aforementioned statement that constitutes the bases for what the State of Florida intends to try to prove and is the basis for this motion for spoliation of evidence. The State of Florida has gone to extreme measures to try to prove that a decomposing body was the source of the smell in the trunk of the Pontiac Sunfire. However, the bag of garbage found in the trunk of the vehicle poses a major obstacle in the State's attempts to take such a leap of faith. The State will ask the jury to take a leap of faith with them in their conclusions despite ignoring the obvious: There was a bag of garbage in the trunk of a vehicle for 18 days in the summer months. Especially if the trash had food items, flies and maggots as described by Detective Melich. Faced with this issue law enforcement decided to preserve certain evidence and destroy others.

#### **SPOILIATION OF EVIDENCE**

In an attempt to preserve the smell of the trunk to later present before a jury, law enforcement cut a piece of the trunk liner and placed it in a tin can and sealed the smell. This is not a good indicator of preservation as testified by the State's own expert Dr. Wise of Oak Ridge Laboratories when describing chloroform levels. He testified, "*It means that a trunk is kind of an open area with some air flow and concentration dynamically changing and it is true with just about every real world sample. When you take a sample like the carpet and put it in the Tedlar bag in some small volume and it was in an incubator 35 degree centigrade for several days so it had time to equilibrate and build up a head space of the constituents in there. And so those concentrations I don't think could reliably be transferred back to what the concentration of the*

*trunk of the car was.*" This put simply means that a carpet sample in a tin can cannot reliably show the jury what the smell was like in the car at the time it was recovered.

While law enforcement took great measures to attempt to preserve the carpet liner, they intentionally **destroyed** any evidence that could rebut their assertions. Crime scene investigators have testified that the garbage was taken out of the container and was "aired out" and placed in a "dry room." This was so the items would eventually dry and the smell can dissipate. The items would eventually be stored in a cardboard box that remains unsealed today. The only logical explanation for these actions was to preclude Miss Anthony or her defense from demonstrating to the jury that the smell in the trunk of the vehicle came from the garbage and not a decomposing body.

Where the State of Florida now has a preserved (although not a reliable indication of what the trunk's chemical composition was actually like) tin can of a carpet sample with an unknown odor, the Defense can only present a box of garbage items that have not been preserved in any way to attempt to show the true source of the smell. The garbage evidence in this case has become increasingly important given the fact that law enforcement found no items that can determine that a dead body was ever in the trunk of the vehicle. (One hair was found with what the FBI laboratory calls *CONSISTENT* with decomposition, while this word makes for a good sound bite on the six o'clock news it is far from a definitive answer as to whether a dead body was ever in the trunk of that vehicle. The same FBI laboratory concluded that the trunk liner carpet had **no biological** evidence on or in it.) The smell of the trunk of the vehicle has become a highly contested issue in this case. Law enforcement has destroyed exculpatory evidence, the only remedy currently available is to exclude all references to the smell of the vehicle as it pertains to decomposition and exclude any attempts to introduce the tin can containing the carpet sample collected by law enforcement.

WHEREFORE, the defense respectfully requests that this honorable court preclude the admission of the carpet sample and any mention pertaining to the smell of the trunk of the Pontiac Sunfire.



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