

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

STATE OF FLORIDA,

CASE NUMBER: 08-CF-0015606-O

Plaintiff,

Vs.

CASEY ANTHONY,

Defendant.

**AMENDED RESPONSE TO DEFENDANT'S MOTION FOR RECONSIDERATION OF
CERTAIN PRIOR RULINGS BY DISQUALIFIED JUDGE**

COMES NOW, Texas Equusearch, (hereinafter referred to as "TES"), by and through its undersigned counsel and pursuant to Florida Rules of Criminal Procedure 3.361(c), files its Amended Response to Defendant's Motion for Reconsideration of Certain Prior Rulings by Disqualified Judge, and as grounds therefore would state:

1. Contrary to Defendant's dismissive assertion that it is not necessary to recite the history of the pending issue, TES through its undersigned counsel, respectfully disagrees and believes that a truthful review of the facts will provide helpful and necessary insight to this Honorable Court so that a fully informed decision may be rendered, as it is the contention of Defendant's counsel that the pending matter should be reconsidered anew.

2. On July 16, 2009, the Defendant through her counsel, requested an Application for a Subpoena Duces Tecum for the documents owned, controlled by and in the possession of Texas Equusearch, for any and all records in its possession relating to its searches of Caylee Anthony of the area in and around Suburban Drive and Hidden Oaks Elementary School, Orlando, Florida.

3. On August 20, 2009, TES, through its undersigned counsel, filed a response to the Defendant's Application for Subpoena Duces Tecum. This response applied the case of *South Florida Blood Service vs. Rasmussen*, 467 So.2d 798 (1985), which held against the Petitioner, Rasmussen, when he requested the names and addresses of volunteer blood donors. The court held that such disclosure was not discoverable, as to do so would not protect the donors' constitutional privacy interests. Additionally, to do so would be contrary to society's interest in maintaining a strong blood donation program. The Supreme Court of Florida affirmed this decision. *Rasmussen vs. South Florida Blood Service, Inc.*, 500 So. 2d 533 (1987). Undersigned counsel recommended and the Court adopted TES position that that an examination of the records indicated that there were no searchers for TES at the immediate site where Caylee was found but that there were 32 TES searchers that were within a distance of approximately fifty (50) yards of the specific spot where Caylee was found and that only these 32 searchers names should be disclosed. Moreover, it was argued and ordered that counsel for Casey Anthony, with restrictions on copying, could come to the office of Mark NeJame and review and inspect each and every file to determine if there were other files they deemed relevant. If the parties could not agree on their disclosure and release, then the Court would conduct an in camera inspection of the requested files and make a determination as to whether a copy of the files could be released to Defendant's counsel.

4. On August 21, 2009, a hearing was held on this issue before the Honorable Stan Strickland. On August 27, 2009, the Honorable Stan Strickland entered an Order which states in relevant part: *That the documents of the thirty-two (32) searchers, which were referenced by Mark E. NeJame as counsel for Timothy Miller and (TES) at the hearing on August 21, 2009, are to be disclosed to both the State and Defense; That all documents related to all the other searchers working with or under Texas Equusearch are not to be disclosed. However, counsel for the defendant, CASEY MARIE ANTHONY, and the State are independently permitted to review all of the other documents relating to the other searchers, at the Law Office of NeJame, LaFay, Jancha, Ahmed, Barker & Joshi, P.A., at a mutually convenient time.*

5. That it was not until approximately three weeks later on September 18, 2009, a member of the Baez Law Firm, present counsel for Casey Anthony, finally contacted the undersigned's office to make an appointment to come by and review the aforementioned documents. Over the next few days, through several conversations, the undersigned's office was informed by the Baez Firm that they were not sending a member of its firm over to review the documents but were in fact going to send "The Presentation Group" instead. "The Presentation Group" was determined to be a document copying company, which was to come and copy all the documents from all of the files. Upon learning this, Mr. Baez' representative was informed that their request was contrary to the directives, instructions and dictate as was set forth in this Honorable Court's Order of August 27th, 2009 and would not be acceptable. Upon being advised this, the meeting was canceled by Mr. Baez' representative.

6. Thereafter, for the next approximately 4 months, Mr. Baez' office had never contacted undersigned counsel or his office to reschedule, review, inspect or look at any of the documents, even though the documents have been available throughout.

7. On or about October 5, 2009, eighteen (18) days after the cancellation of the hoped for meeting and still having heard no word about a subsequent meeting to acquire the agreed upon documents of the thirty two (32) searchers, undersigned counsel's Firm contacted Mr. Baez' law office and inquired as to what they intended to do about obtaining the documents on the thirty two (32) searchers. Undersigned counsel's office was requested to simply fax the documents over to the Baez firm. Determining that such a procedure was not the best means to transmit such sensitive documents and so that no issue could surface that the documents weren't all made available, undersigned counsel voluntarily had the documents of the thirty two (32) searchers hand delivered to Mr. Baez' office. This procedure was a safeguard so that counsel for defendant would have what was instructed to be provided to them by the Court Order and so that there could not be a complaint that the documents were never received, regardless of the fact that no effort was made to pick up or inspect the documents in the approximately five (5) weeks since the entry of the court Order.

8. On November 23, 2009, the Defendant, through her undersigned counsel, filed a Motion to Modify the Court's Order on Defendant's Application for Subpoena Duces Tecum for the Documents in the Possession of Texas Equusearch. The grounds for this motion relied upon two individuals, Joe Jordan and Laura Buchanan, who both purportedly stated that they searched the exact area where Caylee Anthony's remains were found, and that neither individual was disclosed in their packet of thirty-two searchers.

9. On March 10, 2010, TES, through its undersigned counsel, filed a Response to the Defendant's Motion to Modify the Court's Order. The undersigned stated in this response that Joe Jordan was in fact disclosed in the packet delivered to the Defendant's counsel. Furthermore, Laura Buchanan stated in her affidavit that she searched several areas on her own and not under the guidance of TES, which is unrealistic for TES to monitor the searches the volunteers are doing on their own, outside of their groups.

10. On April 5, 2010, the Defendant, through her counsel and TES, through its counsel were heard on the Motion to Modify the Court's Order. The Honorable Stan Strickland entered an Order denying the Defendant's Motion to Modify the Court's Order on Defendant's Application for Subpoena Duces Tecum for Documents in the Possession of Texas Equusearch. That Order states in pertinent part: *Having now reviewed all of the exhibits submitted, this Court sees no reason to modify its original Order of August 27, 2009. The files are still available for review at the office of Mr. NeJame, and, if flagged for review and no agreement can be reached, this Court remains able to schedule an in camera review followed by a ruling.*

11. A time certain was coordinated between the undersigned's office and the attorneys for the Defendant, Casey Anthony, for April 23, 2010. Prior to the meeting, the undersigned informed the attorneys for the Defendant of the statute and the Order signed August 27, 2009, stating in pertinent part: *The Defendant, CASEY MARIE ANTHONY, shall bear all costs necessary as to enable her counsel to fully review all above-reference documents and said expenses shall be paid in advance, pursuant to Florida Rules of Criminal Procedure 3.361(c)(2).* The Defendant's counsel informed the undersigned that the Defendant has been declared indigent for cost and would not be able to provide advanced payment. The undersigned requested from the Defendant's attorneys that they, in good faith, submit an expense request to the JAC and just bring proof of that request during the review of the files.

12. While the undersigned understands that a Defendant may be declared indigent for costs, this does not mean that he should have to bear the costs necessary to have a monitor available to make sure the Court Order is followed. Counsel for the Defendant has made it abundantly clear with their motions that these records are of extreme importance to their capital case, however they did not at any time file an expense request.

13. The Order entered on April 5, 2010 also states: *TES argued that the 32 searchers listed were flagged as a result of an inspection of the 4,000 files by Attorney Brad Conway.* The attorneys for the Defendant are relying on this statement made by the Honorable Stan Strickland as part of their basis for their motion. Ms. Anthony's counsel knows very well that this is not entirely the case. They were present in both hearings on this issue when the undersigned stated that it was Mr. Conway, along with members of TES, attorneys in his firm, law enforcement, and the State Attorney who reviewed the files to determine the names of those in the area of where Caylee Marie Anthony's remains were found. At no time did anyone outside of the undersigned's office take any notes or make any photocopies of the searcher's files. Such disingenuous omission of material facts only serves to mislead this Honorable Court. In point of fact, Mr. Conway, counsel for the parents of the Defendant, was afforded a courtesy review as false rumors were circulating that records of the search were being hidden. Mr. Conway took no notes or made any copies of any files. Rather, he tabbed multiple files that indicated searchers were in the general area of where Caylee was found. He did this over a period of approximately three (3) days of visits and reviews. Moreover, the same opportunity that has been afforded to counsel for Defendant to review the files was similarly afforded to the State. They came by the office of the undersigned and spent approximately six (6) hours reviewing and tabbing files, with the same preconditions given to Mr. Conway and afforded to counsel for Defendant.

14. On April 23, 2010, Attorneys Cheney Mason and Jose Baez came to the undersigned counsel's office to review the files containing the searches of the approximately 4,000 searchers. Pursuant to Court Order, a \$12 per hour TES representative was there to serve as a monitor and the monitor was to be paid in advance. When they arrived Mr. Mason was arrogant, rude and disrespectful to the staff of undersigned and to the monitor. Mr. Mason threw \$12 cash on the table at the monitor saying that this would be enough to cover the one hour they were going to be there. The monitor, Bill Fitzgerald, is a TES volunteer and is currently unemployed. He offered his services at a mere \$12 an hour since he was without a job and wanted to assist. The office of undersigned counsel also learned that when the meeting was scheduled, Mr. Baez had to leave within two hours from the start of the meeting to go to another appointment. With the \$12 prepaid throw down by Mr. Mason and Mr. Baez' limited schedule, it is patently obvious that there was no real interest or good faith attempt to review any of the documents that counsel for Casey Anthony has claimed were important. This is entirely consistent with the fact that it took them from August 22, 2009 until April 23, 2010 to finally get around to even coming by to peruse the documents... a full seven (7) months and twenty seven (27) days later.

15. The undersigned's office is in possession of four (4) boxes of documents from TES all of which are file boxes. Two of the four boxes contain documents which are irrelevant to the issue at hand because they do not contain any information about the searched areas; they are administrative records and were brought in to show Mr. Baez and Mr. Mason that no boxes were being hidden from them.

16. The Honorable Stan Strickland's Order entered on August 27, 2009 states:

If any searchers are further identified by counsel for the Defendant, CASEY MARIE ANTHONY, as being in the immediate proximity of where the remains of Caylee Marie Anthony were found, said searchers may be presented to the Court for an in camera review and inspection so that a decision can be made by the Court to determine materiality, relevance and possible disclosure.

17. During their brief visit Attorney Baez and Attorney Mason flagged several items as supposedly being relevant and therefore requested disclosure of these documents. The *documents* of the original 32 searchers which were turned over to the Defendant's counsel contained searches of areas within approximately 50 yards of where the remains of Caylee Marie Anthony were found. The documents requested on April 30, 2010 contained records of searches that occurred over 300 yards and as far as approximately eight (8) miles away from where her remains were found. Three hundred yards is equivalent to the length of three football fields which is not in the immediate proximity; however the undersigned still turned them over, so there would be no issue as to the conditions in the general area where Caylee was found. To disclose the names of these additional searchers would be allowing the defense to harass individuals who volunteered to help find a little girl. A Google map indicating the location of the remains in reference to the documents the defense is requesting is attached hereto and incorporated as Exhibit A.

18. The counsel for the defendant argued in their motion regarding the wishes of the searchers to remain anonymous: Respectfully, such a statement sounds absurd, given the fact that the searchers, many of them, were interviewed by television, were filmed by both television and still cameras, and obviously knew that they were not proceeding “anonymously” as volunteers. This issue has been fully addressed and will be again. If a searcher had come across relevant evidence; i.e., bodily remains or clothing, etc., then those limited individuals would arguably not have an expectation of privacy in that they would have become a witness as to relevant evidence. However, searchers who were within 50 yard to 8 miles away from where Caylee was found are completely and totally irrelevant and immaterial. The only issue of relevancy suggested by Defendant’s counsel would be the ground conditions of where Caylee was found. Hence, in an abundance of fairness, TES did not oppose the information being released as to the thirty two (32) limited of searchers who were in relative close proximity to where Caylee was found. This was based on the position of Defendant’s counsel at the time, which has apparently changed.

19. Halfway through the review of the documents on April 30, 2010, counsel for the Defendant gave the monitor an addition \$12 for the last hour they apparently decided to be there. The monitor was treated rudely and unprofessionally. Counsel for the Defendant states that when the media showed up it was mysterious and sudden, however the undersigned along with the reporter for Channel 6 both stand by the representation that it was not the undersigned or anyone from undersigned counsel's office who called the news station. The reporter and his cameraman videotaped for approximately one minute, from across the lobby, when Mr. Mason burst out of the conference room causing a scene in front of the camera. It is the epitome of irony that almost contemporaneously when Mr. Mason and Mr. Baez' review of the files concluded, the television cameras appeared, allowing Mr. Mason's to cast aspersions on the media against undersigned counsel, which Mr. Mason has a history of doing. In point of fact, undersigned counsel was several miles away from the site when the inspection occurred, leaving his associate attorney, Jaya Balani, to be present in her office if any questions or issues needed to be addressed. Undersigned counsel, being previously subjected to Mr. Mason's sarcasm, insults and unprofessionalism thought it best not to allow a confrontational situation with Mr. Mason to possibly erupt if he were present. Although undersigned counsel desired to address the stream of unprofessional comments from Mr. Mason, he thought it more appropriate to address them in Court and will do so accordingly.

20. When the review occurred, there were some documents that the monitor was unsure or unclear about allowing to be reviewed. As such, he didn't allow the review at that time since Ms. Balani wasn't in the room so that the attorneys review wouldn't be monitored by her. She fully expected that if a question arose she would be there to make a determination, since she stated out of the inspection allowing Defendant's counsel privacy in their review. Rather than bringing this to her attention when she appeared, the counsel for Defendant stormed out, name calling and acting all dramatic in front of the television cameras. When undersigned counsel received a telephone call on this within minutes of the attorneys leaving, undersigned counsel immediately called Cheney Mason to discuss and resolve, but Mr. NeJame's call was never returned.

21. When the disruption caused by Mr. Mason occurred, Ms. Balani left her office to offer another conference room to Mr. Mason and Mr. Baez. This overture was rejected with both stating that they had already looked through all of the documents and tabbed what they needed. Furthermore, despite the courtesy being extended to the Defendant's counsel to use the undersigned's office, offered beverages by his staff and move them to another conference room, Mr. Mason nevertheless still took it upon himself to make rude and childish comments about the undersigned behind his back and to his staff. This is consistent when after losing in court after the last hearing Mr. Mason took to the media airwaves and unprofessionally and immaturely insulted undersigned counsel personally, rather than addressing the case or its facts. There is an old adage which states, "When you have the facts, attack the case. When you don't have the facts, attack the lawyer."


As such, undersigned counsel opted to avoid be present at the review so as not to provide defense counsel another opportunity to possibly create questionable appeal issues and allow distractions to occur for the business at hand. Unfortunately, even Mr. NeJame's absence didn't prevent the apparent ruse of defense counsel. The purported efforts to obtain the records have been nothing but a charade. Although the defense has characterized his representation as "fun", a child is dead, an accused is facing the death penalty and 4,000 kind and compassionate searchers are possibly going to have their privacy destroyed. This was not a time for ego jousting or media fanfare.

22. The motion to which the defense is asking for reconsideration has been thoroughly heard twice already in Court. The issues in this case have not changed and they have not brought up any new facts changing the circumstances, except the Defense has reversed its position as to the relevancy of the searchers. The documents that were flagged by counsel have been reviewed and have been determined outside of the scope of the original Order which states immediate proximity of where the remains were located. Those documents still remain available for an in camera review if this Honorable Court so requires. However, in light of the current position of Defendant, even the 32 searchers should no longer be deemed relevant.

WHEREFORE, the undersigned requests that the Defendant's Motion for Reconsideration of Certain Prior Rulings by Disqualified Judge as it pertains to TES be denied for those grounds set forth above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/hand delivery to the OFFICE OF THE STATE ATTORNEY, Linda Drane-Burdick, ASA, 415 North Orange Avenue, Orlando, Florida 32801, Jose Baez, 522 Simpson Road, Kissimmee, Florida 34744 and J. Cheney Mason, 390 N. Orange Avenue, Suite 2100, Orlando, Florida 32801, this 14th day of July, 2010.


Mark E. NeJame, Esquire
NeJame, LaFay, Jancha, Ahmed,
Barker & Joshi, P.A.
189 South Orange Avenue
Suite 1800
Orlando, Florida 32801
Telephone: (407) 245-1232
Facsimile: (407) 245-2980
Florida Bar Number 310931
Attorneys for the Texas Equusearch

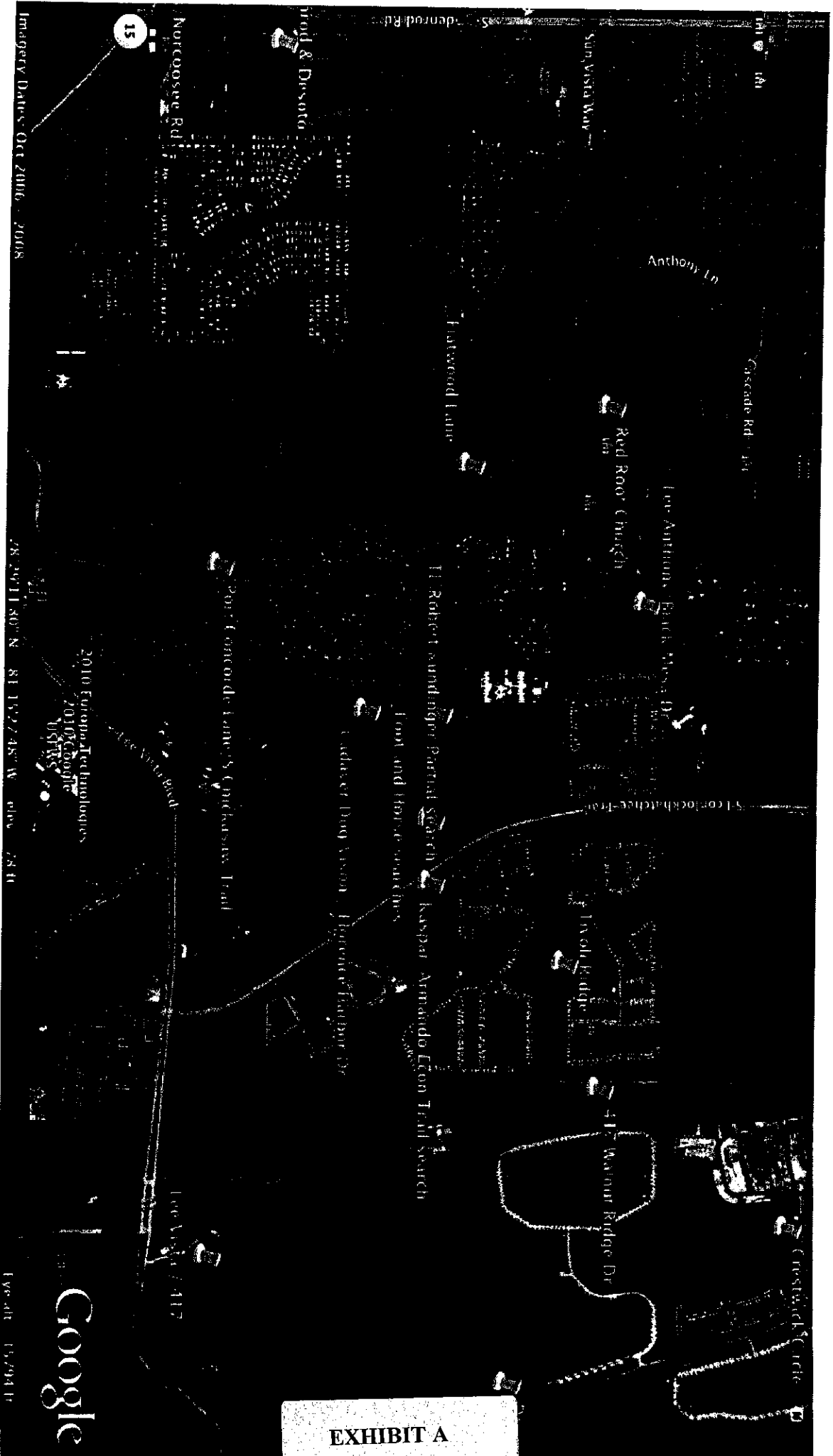


EXHIBIT A

Imagery Date: Oct 2006 2008

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