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

STATE OF FLORIDA,
Plaintiff,

CASE NO.: 48-2008-CF-0015606-O

v.

CASEY MARIE ANTHONY,
Defendant.

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

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through her undersigned attorney, and, pursuant to Florida Judicial Administration Rules 2.330(h), moves this Court for reconsideration of certain prior rulings by the former (disqualified) Judge in this case, and shows:

1. This Motion is timely filed in accordance with the aforesaid Rule.
2. The defense requests reconsideration of the following Motions and rulings by the disqualified Judge as to the factual and legal merits of said Motions and rulings thereon:
 - a. Defendant's Motion to Compel Production of Tape Recorded Statement of Joe Jordan and the Court's Order on same dated April 7, 2010.
 - b. Motion for Production of Grand Jury Testimony of George Anthony filed by the state of Florida on September 16, 2009 and joined in by the defense, and the Order of the Court dated October 6, 2009.
 - c. Defendant's Motion to Compel Tips Gathered by Law Enforcement, dated November 4, 2008.
 - d. The Order on 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.

3. Regarding the Motion to Compel Production of Tape Recorded Statement of Joe Jordan, the Defendant adopts and incorporates by reference the defense Motion on same, dated April 5, 2010, as if fully set forth herein. (A copy of same is attached hereto as "Exhibit A" for the convenience of the Court.)

4. The former Judge did not fully consider the facts, overlooking the initial involvement of Mr. Jordan. In fact, Mr. Jordan e-mailed law enforcement on December 13, 2008, two days after the remains of Caylee were discovered. Mr. Jordan's e-mail to the detective was that they were mistaken, and that he, in fact, had searched the area off of Suburban Drive in Orlando where the remains were found during the "Equusearch" involvement and that there were no remains found and the area was dry. This significantly pre-dated the alleged call from Mr. Jordan to the Sheriff's office as recited by the disqualified Judge in his Order.

5. This issue involves a significantly material fact, to wit: whether or not it is possible that the Defendant could have placed the body there during a time when she was incarcerated. It also brings in to significant question, the role, if any, of another witness, Mr. Krunk.

6. Mr. Jordan's interview with defense investigator Mort Smith was further done in the presence of Mr. Jordan's then lawyer, attorney Kelly Sims of Orlando.

7. By virtue of Mr. Jordan's discussions in the presence of these two people (Smith, working for the Defendant, and Sims, as his lawyer) there could not legitimately be a reasonable expectation of privacy in said communications and, thus, such statements were not "oral communications" as contemplated by Florida Statute 934.03. Accordingly, even if Mr. Jordan surreptitiously recorded the statements, without that expectation of privacy by both Mr. Smith and Mr. Sims, there is no violation of law.

8. It is transparently clear that the law enforcement involved in this case, not being pleased with the December 13th e-mail from Mr. Jordan, have intimidated Mr. Jordan about his very valuable and exculpatory evidence in threatening Mr. Jordan with a potential exposure to prosecution for the possible felony of purportedly surreptitiously violating Florida Statute 934.03 by making the recording.

9. It is undisputed that neither Mr. Sims, nor Mr. Smith, have sought any prosecution of Mr. Jordan and that, further, they have declined same. Given the apparent consent of both potential “victims”, there would be no violation of the law, and, accordingly, the tape recording should be produced to the defense. The Court failed to appreciate the significant value to the defense of having Mr. Jordan’s voice as recorded, with counsel, corroborating his testimony before being pressured by law enforcement. The Court should, and must remember, that “death is different” and this evidence is so important that it should be disclosed.

10. The Court apparently misunderstood the law in citing the Statute, thinking that it is absolutely without exception in prohibiting the use. [The Court made an apparent scrivener’s error by citing “943.06”, when it is obvious that he meant to cite “934.06” of the Florida Statutes.] As a matter of law, there are numerous exceptions to an interpretation of an “absolute prohibition” as apparently misconceived by the Court in his statement, “Thus, the dictates of the Statute are clear.”

11. Both Mr. Sims and Mr. Smith have a right to consent to the use of the recording; the Court has a right to require the State to grant immunity, if deemed necessary, to ensure the availability of this testimony on behalf of the Defendant; and, as said above, since the statements were not made in confidential situations, the automatic waiver of the third parties being present eliminates the recorded conversation as being “oral communication” for purposes of the Statute.

12. As to the Motion for reconsideration regarding the Grand Jury Testimony, it was the prosecution in this case, Mr. Jeffrey Ashton, who filed a Motion of September 6, 2009. He, presumably in good faith, alleged that Mr. George Anthony had given materially inconsistent testimony in a deposition (civil case) regarding his prior Grand Jury testimony. A copy of Mr. Ashton's Motion is attached hereto as "Exhibit B" for the convenience of the Court.

13. The Motion was joined in by counsel for the defense, with a simultaneous request for the defense to be provided with that same testimony that was being sought and, ultimately, given to the state of Florida.

14. The Court entered its Order on October 6, 2009, without making provisions for production to the defense, "Pending further Order of the Court".

15. While the Court did reference Florida Statute 905.27, regarding secrecy, he apparently did not do a balancing test or weigh the policy behind confidential proceedings versus the Constitutional Rights of the accused. As stated by the United States Supreme Court a long time ago:

"It is unconscionable to allow the Government privileges to deprive the accused of anything which might be material to his defense. This principal is applicable in this case and the Trial Court's Order depriving the Defendant access to the dependency hearing tape constitutes a departure from the essential requirements of law and a miscarriage of justice, which cannot stand."

United States v. Reynolds, 345 U.S.1, 73 Supreme Court 528, 97 Law Ed 727 (1953). This declaration was cited with approval, and forcibly so by the 5th District Court of Appeal in the case of Powell v. Foxman, 528 So.2d 91 (Fla. 5 DCA 1988). Accordingly, both the 5th District Court of Appeal and the United States Supreme Court have recognized clearly that otherwise privileged matters lose their protection when outweighed by the Defendant's Constitutional Right to cross

examine.

16. The Defendant must not be relegated to a decision made by the prosecution, as to whether or not that which they sought, because of their good faith belief of inconsistent statement, should not now be disclosed, because they decided (apparently) that the differences were not material. This should be a matter for the defense to decide.

17. Regarding the Motion to Compel Tips Gathered by Law Enforcement, the Defendant sought, in its request for discovery, this exact information (along with other) and said Motion for that was granted on October 10, 2008. The State was allowed ten days in order to produce the information. However, the record in this cause reflects that, on the 10th day, the State dismissed the case against Casey Marie Anthony by filing a “Nollo Prosequi”, thus, rendering that October 10th Order compelling production ineffective.

18. Upon information and belief, and representations by law enforcement, there are approximately five thousand tips that have been reported. It is unknown whether any of these might lead to additionally discoverable evidence and/or be material to the defense of this case, because they have not been turned over to the defense. Florida Rules of Criminal Procedure 3.220, as well as legion of United States Supreme Court Cases, requires ongoing obligations of discovery and, specifically, revelation to the defense of any evidence that may be potentially material and relevant to either the defense or potential punishment in the case.

19. Regarding the Order on 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, your undersigned does not believe it is necessary to recite the history of this particular issue, however, there are some observations that are important: first, there can be no issue that if

there is evidence establishing that the remains of Caylee Anthony were not at the location where they were ultimately discovered when the property was searched by anyone, and then said remains were found at a later time while the Defendant was incarcerated, during the initial search and the subsequent discovery, the Defendant could not have placed the remains there. As has been stated, this is fundamentally material to a reasonable doubt: somebody else placed the body there. Assuming that evidence, then it is also inescapable reasonable doubt that the person or persons doing so may well be responsible for the child's death in the first place. Essential facts and merit of this position are set forth in the prior Motion of the defense to Modify the Court's Order and Memorandum of Law in Support thereof attached hereto as "Exhibit C" and "Exhibit D", respectively.

20. The Order to be reconsidered was entered by the Honorable Stan Strickland on April 5, 2010. There are several issues of facts and legal merits that justify reconsideration. Among them (but not exclusively) is the fact that the former Judge accepted that an attorney, Brad Conway, reviewed all the documents that Texas Equusearch (TES) is attempting to argue should be treated as confidential or privileged. Mr. Conway has only limited involvement in this case and that is "representing" parents of the Defendant. The mere disclosure of these so-called "confidential" documents to him, voluntarily by TES, waives any claim of confidentiality that they might otherwise have attempted to assert.

21. The Court has apparently accepted as absolute, that the various TES documents only included some identities of thirty-two searchers of the area where the remains were recovered. Notwithstanding that assertion, by Affidavit and prior Motion, the Court has been put on notice that there are others that searched the area, but had not been disclosed.

22. The Court has further misapprehended the value and obligations of defense counsel, particularly in death cases, to properly investigate. An attorney representing TES, injecting himself into this case, has asserted that these documents were available to be viewed. Unfortunately, both that attorney and the disqualified Judge did not comprehend that viewing documents, while at the same time being prohibited from making copies, taking notes, or in any way whatsoever memorializing those documents “viewed”, was a meaningless exercise of futility. By the various searches of TES, they claim to have “four thousand files”. Moreover, the Court’s prior Order conditioned any “viewing” by defense upon the payment of fees to the TES lawyer.

23. After the Court determined, upon defense Motion, that the Defendant was “indigent”, efforts were made by the defense to “view” the documents, even with the restrictions. TES lawyer still required payment and, moreover, insisted on payment being in cash, to pay a TES “monitor” twelve dollars an hour ostensibly to babysit the file.

24. The Court, in its Order, referenced the disclosure of Mr. Joe Jordan, as a searcher, admitting that “...the name and signature are difficult to read on the document...”. In fact, only a half of the signature was disclosed in the margin of a document and no other contact information whatsoever. It should be remembered that it was only the e-mail of the said Joe Jordan to law enforcement advising them of their mistake that facilitated the defense identifying him as a searcher.

25. The Court further, in its Order, attempted to downplay the role of Ms. Buchanan, despite her Affidavit. The Judge, in his Order, characterized her as going to Suburban Drive on her own. He did not acknowledge that she did not go by herself, but with the others on her team, in accordance with her Affidavit of October 24, 2009. For whatever reason, the Court, in its Order, segued into suggesting it would be unreasonable for TES to monitor every searcher. No one has

asked them to. What is clear, however, is that Ms. Buchanan did search this specific area, concluding, without hesitancy, that there were no remains there at the time of her search, regardless of whether she was “assigned” to that area by TES.

26. As further “supplement” to the Motion ruled on by the Court, the defense requests this Court, during its reconsideration, to further deal with the following:

a. Defense counsel, upon coordinating an appointment with the TES attorney did finally agree to the cash only payment of twelve dollars an hour to go to that attorney’s office and review documents. This was done on Friday, April 23, 2010.

b. Upon arrival at the TES attorney’s office, the staff of that office kindly and professionally delivered and presented four boxes into a conference room for the “review” of counsel. The boxes bore no labels; they were of different sizes; and they had no inventories or indexes of any description whatsoever.

c. Upon attempting to “view” the first box of the documents, the box was removed by the TES monitor, him advising your undersigned that we could not look at those documents at this time. Upon attempting to view the second box of “documents”, the same thing happened: the monitor refused your undersigned opportunity to review those files. Those two boxes were the largest boxes of the four and apparently contained the very subject matter that the defense was after: identity of searchers who could be questioned as to whether or not they had also searched the relevant area as Ms. Buchanan has stated that she and others did, as set forth in her Affidavit.

d. Your undersigned then began reviewing the third box, which was only about one-half or less full. Again, no index, no inventory whatsoever. In a short period of time some suspension files within the box that had notations of “no Suburban” on them were revealed to, in

fact, contain some TES documents revealing searches on Suburban Drive property. Additional names of dog handlers were also noted, but, in the absence of the ability to take notes or copies, could not be followed up on.

e. At this time, after about two hours, suddenly and mysteriously, news media appeared with a television camera surreptitiously videoing counsel through the glass door of TES lawyer's conference room. Such action completely thwarted the ability of counsel to engage in conversation amongst themselves and point out any documents that might be important.

f. Counsel did tab numerous documents thought to be relevant that apparently had never been produced before and contained identities of searchers not included within the "thirty-two".

27. The Court, in its Order, apparently also, for reasons known only to himself, gave some credence to an assertion by counsel for TES that the volunteers wish to maintain anonymity. Respectfully, such a statement sounds absurd, given the fact that the searchers, many of them, were interviewed by television, were filmed both by television and still cameras, and obviously knew that they were not proceeding "anonymously" as volunteers. How would any reasonable person expect that such a searcher, if they found the remains of the child, or other meaningful evidence, would remain anonymous? Please review the Memorandum, "Exhibit D".

28. An additional consideration of the "death is different" status of this case and a decision from the 5th District Court of Appeal in *Powell v. Foxman*, Id. is warranted.

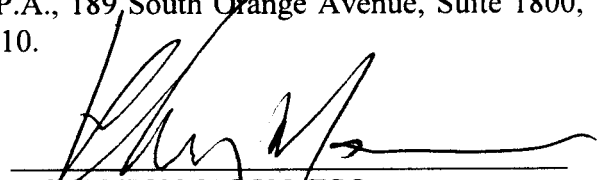
29. In reconsideration of this issue regarding Equusearch, as herein supplemented, this Court should enter a new Order compelling that all of the Texas Equusearch documents be presented to the defense, without fee or charge to the indigent Defendant, and without restrictions of defense

team's ability to take notes and find, thereby, witnesses to investigate. All the defense wants to do is learn the identity of these people so they can be contacted to determine if they, like Jordan and Buchanan, and those whose names could not be "noted" from the prior viewing, actually searched the relevant area or not.

WHEREFORE, the Defendant prays this Court reconsider the rulings of the afore described Orders of the former Judge, as provided for by Florida Judicial Administration Rules 2.330(h).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Jeff Ashton, Esq. and Linda Drane-Burdick, Esq. at the Office of the State Attorney, 415 N. Orange Avenue, Orlando, Florida 32801 and by U.S. Mail to Mark E. NeJame, Esq., NeJame, LaFay, Jancha, Ahmed, Barker & Joshi, P.A., 189, South Orange Avenue, Suite 1800, Orlando, Florida 32801 this 6th day of May, 2010.



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Attorneys for Defendant

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

STATE OF FLORIDA,

Plaintiff,

v.

CASEY MARIE ANTHONY,

Defendant.

CASE NO.: 48-2008-CF-0015606-O

DIVISION: 16

Hon. Stan Strickland

**DEFENDANT'S MOTION TO COMPEL PRODUCTION OF
TAPE RECORDED STATEMENT OF JOE JORDAN**

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through her undersigned attorneys, and moves this Court to enter its Order compelling the state of Florida, by and through its prosecuting authorities in this cause, to produce a certain tape recording of an interview with witness Joe Jordan to the defense, and as grounds therefore shows:

1. On December 9, 2009 the prosecution in this case informed this Court that they were in possession of a tape which was surreptitiously made by Joe Jordan while he was being interviewed by defense investigator Mort Smith in the presence of Mr. Jordan's lawyer, Mr. Kelly Sims. That interview took place on October 27, 2009.
2. At that time, the State asked to be relieved of their responsibility to turn that tape over to the defense, because it was taken in violation of Florida Statute 934.03.
3. Mr. Smith has reviewed the police interviews with Mr. Jordan, which occurred after his interview, and has determined that the statements to the police differ substantially from what was said in his lawyer's office. See Affidavit of Mort Smith, attached.
4. Among other things, Mr. Jordan, in the presence of his attorney, Mr. Sims, revealed to defense investigator Smith that he, (Jordan), had personally searched the ground

area where ultimately the remains of the victim, Caylee Anthony, were found, and that the area was dry in September of 2008. More importantly, Mr. Jordan confirms that during his search of that area there was no body there and no evidence of animal activity or other indications that the victim's remains were in the place where subsequently they were alleged to have been found for the second time by Mr. Kronk.

5. Both Mr. Sims and Mr. Smith have declined to seek any prosecution of Mr. Jordan for the surreptitious recording and potential violations of Florida law. Accordingly, Mr. Jordan is not in legal jeopardy.
6. The "exculpatory nature" of this evidence should be obvious. The Defendant, at all potentially material times related to the discovery of her daughter's remains, was in custody and, accordingly, could not have placed her daughter's remains where they were located by Mr. Kronk. Eye witness testimony to the absence of such remains and in that location conclusively establishes that some other person than the Defendant had to have placed the child's remains where they were found.
7. While there may technically be a violation of Florida Statute 934.03, since neither of the aggrieved parties desire prosecution, this Court can order the production of this tape recording as a clearly exculpatory statement. Any statute, such as 934.03, must give way to the Constitutional Rights of a person facing a criminal charge and the potential death sentence, which is being sought by the State. *See for example Lee v. Kemna*, 534 U.S. 362 (2002) and *Davis v. Alaska*, 415 U.S. 308 (1974)¹.
8. This Court is simultaneously considering defense Motions to compel full disclosure

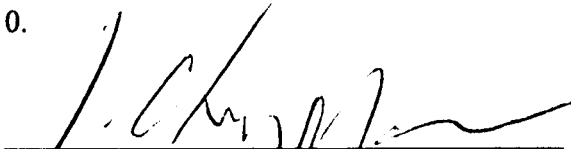
¹ If need be, this Court can exercise its supervisory authority and grant Mr. Jordan immunity from prosecution under *Kastigar v. United States*, 406 U.S. 441 (1972) theory, or order the State to do so.

of all search records from Equusearch, which have been opposed by that company. The surfacing of witness Jordan, and now the disclosure of the recording involved, additionally supports the contention that all of the Equusearch records must be turned over for the defense to view and for the defense to determine the values thereof.

WHEREFORE, the Defendant prays this Court enter its Order compelling the prosecution in this cause to turn over to the defense the entirety of the tape recorded statement made by Mr. Jordan on October 27, 2009.

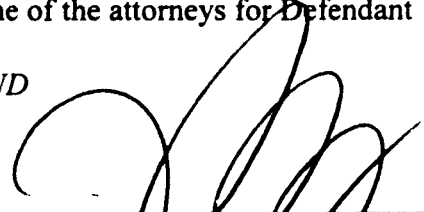
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Appearance has been furnished by hand delivery to the Office of the State Attorney, 415 N. Orange Avenue, Orlando, Florida 32801 this 25th day of April, 2010.



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AND



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One of the attorneys for Defendant

SWORN STATEMENT BY Mort Smith

I, Mort Smith, state the following under oath:

1. My Name Is Mortimer "Mort" Smith.
2. I am an Illinois Licensed Private Detective (IL #115-000975).
3. I am employed as the Associate Director for the Center for Justice in Capital Cases at DePaul University College of Law.
4. I am the Lead Investigator for the Casey Anthony Capital Defense Team.
5. As lead Investigator for the Casey Anthony capital defense team part of my responsibilities include following up on investigative leads given to the defense.
6. During my investigation I was informed by a former Texas Equu Search volunteer that Mr. Joseph Jordan possibly searched the area around Hopespring and Suburban Streets in Orlando, Florida and that he would be willing to speak with me.
7. In October 2009, I contacted Joseph Jordan via telephone and requested an interview. He said he wanted to consult with his attorney first. I agreed.
8. Within the hour I received a telephone call from Attorney Kelly Sims who said that he represented Joseph Jordan. I explained to Mr. Sims who I was and why I wished to interview his client.
9. Mr. Sims agreed to allow me to interview his client. We agreed to meet at Mr. Sims' law office on October 27, 2009.
10. I arrived at Mr. Sims' office and was introduced to Mr. Jordan by Mr. Sims. The interview took place in Mr. Sims' office. Prior to the interview I asked Mr. Sims if I could record the interview and he said he would rather not have me record it. He said he was going to allow me to interview his client and then he would notify the prosecution that the defense had interviewed his client.
11. Attorney Sims was very active during the interview. He assured Mr. Jordan that it was O.K. to tell me the truth. He even helped clarify many of my questions to Mr. Jordan.
12. Attorney Sims was very specific when he clarified my questions of whether Mr. Jordan noticed anything unusual about the area he searched. I later learned that Mr. Jordan surreptitiously recorded my interview with him. He did so without my permission.
13. I recently reviewed the statements given to law enforcement by Mr. Jordan and there are "material differences" between the statements he gave to Law Enforcement and what Mr. Jordan told me during my interview with him.

DECLARATION

I declare under the penalty of perjury under the laws of the United States of America that the information contained in this **SWORN STATEMENT** is true and if called upon to testify I could do so competently.

Executed on: April 2, 2010

Signature _____

A handwritten signature in black ink, appearing to be "J. W. ...", written over a horizontal line.

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

STATE OF FLORIDA

CASE NO: 48-2008-CF-015606-0

Plaintiff,

DIVISION: 16

vs.

CASEY MARIE ANTHONY

Defendant.

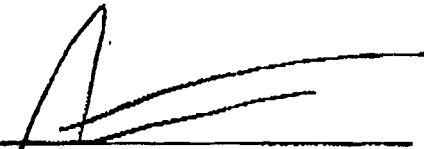
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2009 SEP 17 AM 8:55
LINDA GARDNER
CLERK
ORANGE COUNTY
FLORIDA

MOTION FOR TRANSCRIPTION OF GRAND JURY TESTIMONY

COMES NOW the State of Florida and moves this Honorable Court to Order the Official Court Reporter, to transcribe for purposes of trial preparation and discovery, the testimony of George Anthony presented to the Orange County Grand Jury held on October 14th 2008 in the above-styled cause. As grounds therefore the State would show that:

1. George Anthony appeared as a witness before the grand jury.
2. George Anthony testified at deposition in a manner that, to the recollection of the undersigned, was materially inconsistent with his grand jury testimony on some points.
3. It will be necessary for the undersigned to examine the testimony before the grand jury and, if the undersigned's recollection is confirmed, move this court to unseal the testimony and allow the undersigned to provide that testimony to the Defendant pursuant to the rules of discovery.

I HEREBY CERTIFY that a true and correct copy of this Motion has been furnished by U.S. mail/hand delivery/fax/courier to Jose A. Baez, 522 Simpson Road, Kissimmee, FL 34744, this 16th day of September, 2009.



Jeffrey L. Ashton
Assistant State Attorney
Florida Bar # 318337
415 N. Orange Ave., P.O. Box 1673
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(407)836-2405

STATE OF FLORIDA

v.

CASEY MARIE ANTHONY,
Defendant.

) In the Circuit Court of the
) Ninth Judicial Circuit, in and for
) Orange County, Florida

) Case No.: 482008-CF-0015606-O
) Division 16

) Hon. Stan Strickland
)
)
)

**MOTION TO MODIFY THE COURT'S ORDER ON DEFENDANT'S APPLICATION
FOR SUBPOENA DUCES TECUM FOR DOCUMENTS IN THE POSSESSION OF
TEXAS EQUSEARCH**

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through her attorneys JOSE A. BAEZ and ANDREA D. LYON, and submits this Motion to Modify the Court's Order on Defendant's Application for Subpoena Duces Tecum for Documents in the Possession of Texas Equusearch.

In support of this motion, Miss Anthony states the following:

1. Miss Anthony's previous Motion, and accompanying Memorandum of Law, to Certify Timothy Miller as a Material Witness in the Instant Prosecution, or in the Alternative Application for Subpoena Duces Tecum for Documents in the Possession of Texas Equusearch, is incorporated here by reference.

2. In the response, to Miss Anthony's previous Motion, which was filed on behalf of Texas Equusearch (TES), it is asserted that "[n]one of thousands of searchers, who volunteered with TES, were ever at the exact spot where Caylee Anthony's remains were found." The response then goes on to state that, upon going through the documents from its thousands of

FILED IN OFFICE 11/23/09
LYDIA GARDNER, Clerk, Cir. Ct., Orange Co., FL
By _____ D.C.

volunteers, TES identified only thirty-two who "searched the area between Hidden Oaks Elementary School and around where the remains were found."

3. On August 29, 2009, this Court entered an Order requiring TES to disclose, to the State and Defense, documents relating to those thirty-two (32) searchers who performed a search of the area on Suburban Drive, near Hidden Oaks Elementary School.

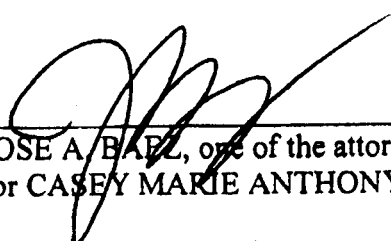
4. The Defense, through its own independent investigation, has interviewed several TES searchers who not only searched the area where the remains were found, but who were not among the thirty-two (32) identified by TES. As reflected in their individual signed statements, these individuals each submitted detailed reports of their search to TES, none of which were disclosed to the Defense. *See Exhibits A and B.*

5. None of the persons who searched the area where Caylee Anthony's remains were ultimately found reported finding anything unusual. The searchers did not find a body, did not notice any smells which might be associated with a body, and did not see any unusual animal or insect activity which might be indicative of a decaying body. *See Exhibits A and B.*

6. This evidence, discovered by the Defense, shows that the statements made by TES, to this Court, were inaccurate. There were indeed TES searchers who searched the area where Caylee Anthony's remains were found. There were also many more than thirty-two (32) individuals who searched the area on Suburban Drive, near Hidden Oaks Elementary School. The information most relevant to Miss Anthony's defense was withheld.

WHEREFORE, for the foregoing reasons, Miss Anthony, by and through undersigned counsel, respectfully asks this Honorable Court to revise the previous Order entered and require TES to disclose all materials relating to the searches it conducted relating to Caylee Anthony and provide counsel with copies of everything forthwith.

Respectfully submitted,



JOSE A. BAEZ, one of the attorneys
for CASEY MARIE ANTHONY.



ANDREA D. LYON, one of the attorneys
for CASEY MARIE ANTHONY.

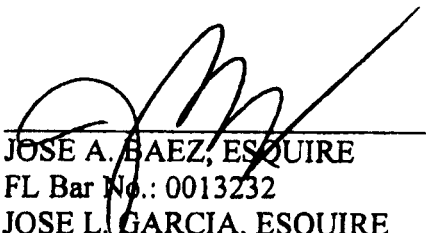
Dated: 11/23, 2009

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312-362-6918 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to Mark E. NeJame, counsel for TES, 189 South Orange Avenue, Orlando, Florida 32801; and the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; via facsimile and/or U.S. Mail on this 23 day of November, 2009.



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FL Bar No.: 0013232
JOSE L. GARCIA, ESQUIRE
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STATE OF FLORIDA

v.

CASEY MARIE ANTHONY,

Defendant.

) In the Circuit Court of the
) Ninth Judicial Circuit, in and for
) Orange County, Florida
)
) Case No.: 482008-CF-0015606-O
) Division 16
)
) Hon. Stan Strickland
)
)
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**MEMORANDUM OF LAW IN SUPPORT OF
 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**

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through her attorneys JOSE A. BAEZ and ANDREA D. LYON, and submits this Memorandum of Law in support of her Motion to Modify the Court's Order on Defendant's Application for Subpoena Duces Tecum for Documents in the Possession of Texas Equusearch.

In support of the motion, Miss Anthony states the following:

STATEMENT OF FACTS

1. The facts specified in the Memorandum of Law in support of Miss Anthony's original Motion to Certify Timothy Miller as a Material Witness in the Instant Prosecution, or in the Alternative Application for Subpoena *Duces Tecum* for Documents in the Possession of Texas Equusearch, are incorporated here by reference.

2. Texas Equusearch (TES), through their attorney, Mark NeJame, stated to this Court that no one, acting on their behalf, ever searched "at the exact spot where Caylee Anthony's remains were found." TES then further stated that it had reviewed all of the

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 LYDIA GARDNER, Clerk, Cir. Ct., Orange Co., FL
 By _____ D.C.

documents in its possession and discovered only thirty-two (32) searchers had ever even been in the Suburban Drive neighborhood.

3. On August 29, 2009, this Court ordered TES to disclose documents relating to those thirty-two (32) searchers who were identified as having searched the Suburban Drive neighborhood.

4. On September 1, 2008, Joe Jordan, a volunteer for TES, along with approximately 30 other TES volunteers went to the Suburban Drive neighborhood to search for Caylee Anthony. Of those 30 volunteers, approximately five or six, along with Joe Jordan, searched the area near the wooden stockade fence on the south side of 8750 Suburban Drive. Along with Joe Jordan, and the other five or six searchers, were two dog handlers with dogs, Danny Ibison and a Panama City Sheriff's Deputy. The area they searched was within feet of where Caylee Anthony's remains were ultimately found. Joe Jordan documented his search in detail on forms specifically provided by TES and submitted those forms to TES officials. Joe Jordan's name was not among the thirty-two (32) searchers identified by TES and none of his reports were disclosed to the Defense. *See Exhibit A.*

5. On September 3, 2008, Laura Buchanan, a volunteer for TES, along with the team to which she was assigned, searched the area on Suburban Drive near where Caylee Anthony's remains were ultimately found. The group searched the area for three to four hours, and Laura Buchanan personally searched near the wooden privacy fence and worked her way towards, and beyond where Caylee Anthony's body was ultimately found. She did not notice anything unusual. There were no strange smells or any unusual animal or insect activity. It is Laura Buchanan's opinion based on her observations that Caylee Anthony's body was not there at the time of her team's search. Laura Buchanan was not listed among the thirty-two (32) searchers

identified by TES as having been on Suburban Drive. Furthermore, no documents among those disclosed by TES, relate to a search on September 3, 2008. *See Exhibit B.*

ARGUMENT

I. The Defense's showing before this Court warrants a full and complete disclosure of documents by TES.

The Defense, through its original Motion and Memorandum of Law, has properly requested this Court to grant a Subpoena *Duces Tecum* for Documents in the Possession of TES. Florida Rule of Criminal Procedure 3.361(c)(1) allows the issuance of a subpoena to, "a person or entity to produce books, papers, documents, or tangible things." Jurisdiction of this Court, to grant such a subpoena is appropriate for three reasons. As stated in the Defense's original Motion and Memorandum of Law, TES has both conducted business within the state of Florida and also acted as an agent of law enforcement through its efforts to locate the missing child Caylee Anthony. Both of these are rationale for subjecting TES to the jurisdiction of this court. *See Steel Joist Institute, Inc. v. J. H. Mann, III, Inc.*, 171 So.2d 625 (Fla. 2d Dist. Ct. App. 1965) (Conducting business within Florida subjects a nonprofit corporation to the reach of Florida's long-arm statute). and *State v. Moninger*, 957 So.2d 2 (Fla. 2d Dist. Ct. App. 2007) (When government is aware and acquiescent in conduct and the individual actor intends to assist law enforcement, the actor is an agent of the state). Furthermore, through the course of argument on the original motion, it has come to be known that the documents in question are kept in Florida at the office of counsel for TES, and thus subject to the powers of this Court.

A. Documents in the possession of TES are material and relevant.

A critical part of any homicide case, for both the prosecution and defense, is determining how and when the victim died. Necessary to this determination is finding the deceased's body

and determining at what time it was placed in the location it was found. Records in the possession of TES contain information directly pertaining to this determination.

TES played a significant role in the initial search for Miss Anthony's missing daughter Caylee. From August 30, 2008 through November, 2008, members of, and volunteers for, TES conducted several searches for Caylee Anthony. On a number of occasions during this time frame TES searchers were in the Suburban Drive neighborhood, and searched very near where the remains of Caylee Anthony were ultimately found. *See Miss Anthony's original Motion and Memorandum of Law as well as attached Exhibits A and B.* TES kept detailed records pertaining to the coordination and execution of these searches and even provided searchers with specific forms on which to document their findings. *See Exhibit A.* The notes and observations of persons who searched the Suburban Drive neighborhood are essential to answering whether the remains of Caylee Anthony were present in late August and November, or if they were placed at the location where they were discovered sometime later. The date at which Caylee Anthony's remains were placed at the site of ultimate discovery is highly material and extremely relevant to Miss Anthony's case.

B. This Court's Order largely relied on misrepresentations made by TES as to the contents of the documents it possessed.

TES, in its response to Miss Anthony's original request for a Subpoena *Duces Tecum*, states that: "[T]he items requested by the Defendant, through her counsel, would be immaterial and irrelevant. None of thousands of searchers, who volunteered with TES, were ever at the exact spot where Caylee Anthony's remains were found." (emphasis added) The response then goes on to state that members of TES have combed through the thousands of documents and identified only thirty-two (32) volunteers who searched the Suburban Drive neighborhood. TES did not object to turning over the paperwork of these thirty-two (32) volunteers it identified,

however, stated that disclosing documents pertaining to any other searchers, "would be immaterial and irrelevant to this issue."

This Court, in its ensuing Order, seems to rely upon the representation of TES's description of the contents of the documents in its possession. In the Order, this Court required disclosure of documents pertaining to the thirty-two (32) searchers identified as having been on Suburban Drive. This Court, however, ended the mandatory disclosure there and placed a burden upon the Defense to review documents at the office of counsel for TES and identify further documents for *in camera* review. The reason for levying such a heavy burden on the Defense was likely that the Court accepted TES's statement that it had already carefully examined the documents and that the thirty-two (32) identified were the only volunteers to search the Suburban Drive neighborhood.

The signed statements from Joe Jordan and Laura Buchanan, included with this Memorandum of Law, indicate that there were several searchers who searched the Suburban Drive neighborhood but who were not among the thirty-two (32) names disclosed by TES. *See Exhibits A and B.* Despite TES having stated that none of its searchers were ever at the spot where Caylee Anthony's remains were ultimately found, the statement made by Laura Buchanan says that she started searching before where the remains were found, worked her way along, and ended her searching beyond where Caylee Anthony was ultimately found. *See Exhibit B.* Such a search would naturally include the exact location the remains were ultimately found, contrary to the statement made by TES. Joe Jordan also states that he too searched the area where Caylee Anthony's remains were ultimately found, however his name was not disclosed by TES. *See Exhibit A.* Joe Jordan was accompanied in his search by two dog handlers with their dogs, Danny Ibison and an unnamed Panama City Sheriff's Deputy. *See Exhibit A.* The names of

these dog handlers were also not included among the documents released by TES. Furthermore, Joe Jordan kept detailed logs of the search on Suburban Drive, written on forms specifically provided to him by TES, which he turned over to TES. *See Exhibit A.* None of Joe Jordan's reports were among the documents disclosed by TES.

The representations made by TES have been shown here, by the Defense, to be inaccurate and as such this Court should revise its Order.

C. TES has not shown a sufficient bar to requiring full disclosure.

The argument TES makes in opposition of full disclosure is based on the perceived "chilling effect" such disclosure would have on TES's ability to obtain volunteers for future search efforts. TES argues that allowing the disclosure of the searchers' identities would subject them to media scrutiny and deter people from volunteering in the future. In support of this argument TES cites *South Florida Blood Service v. Rasmussen*. 467 So.2d 798 (1985). This argument is flawed for a number of reasons.

Given the overwhelming media presence in Miss Anthony's case, it cannot reasonably be argued that searchers volunteered to search for Caylee Anthony because they wished or expected to remain anonymous. Miss Anthony's original Motion and Memorandum of Law cites numerous examples of times when the searchers were being videotaped or interviewed by the media. Joe Jordan himself has even given a radio interview.¹

Furthermore, TES has already disclosed search records from volunteer searchers identified by TES as having been in a specific area relevant to Miss Anthony's case. If a "chilling effect" were to take place, it would have occurred already. When a person volunteers

¹ <http://scaredmonkeys.com/2008/08/26/the-dana-pretzer-show-on-scared-monkeys-radio-wednesday-august-27-2008-guests-include-tim-miller-of-texas-equusearch-discussing-the-caylee-anthony-search-caylee-anthony-searcher-joe-jordan-disc/>

to search for TES, they don't volunteer on the condition that they are assigned only to areas that will ultimately be irrelevant to a future criminal case. TES is obviously unable to make such a guarantee and if they could state ahead of time, which areas were and were not important, they wouldn't need searchers in the first place, as they would already know where the missing person was. Persons volunteering to search for TES do so knowing full well that they may become an integral part of the investigation and a possible future criminal case.

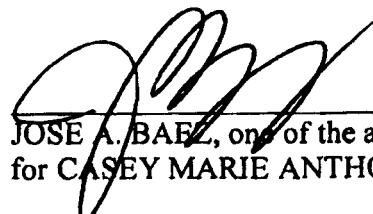
The reliance by TES on *South Florida Blood Service v. Rasmussen* is misplaced. 467 So.2d 798. In that case the court was confronted with the issue of whether disclosure of the identities of blood donors, with acquired immune deficiency syndrome (AIDS), was required. The privacy interests identified by the court in *Rasmussen* are fundamentally different than those in Miss Anthony's case. In *Rasmussen* the court found an individual's interest in preventing disclosure of information, which was probative of the most intimate details of their lives, "including their sexual practices, drug use and medical histories," outweighed any interest in disclosure. *Id.* at 802. In Miss Anthony's case, the privacy interests are much different. It can hardly be argued that disclosing a name and phone number – information readily obtained through a phone book – would have the same, or even close to the same, chilling effect on volunteerism as would disclosing information about a volunteer's sexual practices, drug use, or medical history.

Due to the significant showing as to the materiality and relevance of the documents in possession of TES, and because of TES's inaccurate representations to this Court regarding of the contents of such documents, it cannot be said that a rationale outweighing the need for full disclosure has been shown.

CONCLUSION

WHEREFORE, for the foregoing reasons, Miss Anthony, by and through undersigned counsel, respectfully asks this Honorable Court to revisit the previous Order entered and require TES to disclose all materials relating to the searches it conducted relating to Caylee Anthony.

Respectfully submitted,



JOSE A. BAEZ, one of the attorneys
for CASEY MARIE ANTHONY.



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Dated: 11/23, 2009

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TABLE OF EXHIBITS

- A. Signed statement of TES searcher Joseph Jordan.
- B. Signed statement of TES searcher Laura Buchanan.

EXHIBIT A

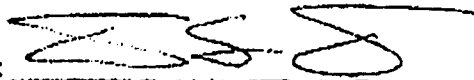
STATEMENT OF JOSEPH JORDAN

On October 27, 2009 at approximately 9:30 a.m. I met with my attorney at the time, Kelly B. Sims and an Investigator for the defense in the Casey Anthony case. The purpose of this meeting was to answer questions pertaining to my search efforts with Texas Equu Search in the area of Suburban and Hope Springs Streets in Orlando, Florida. I provided the following information:

- a. On September 1, 2008, I was a volunteer member for Texas Equu Search (TES).
- b. On September 1, 2008, I and a group of approximately 30 TES volunteers went to the area of Suburban and Hope Springs Streets in Orlando, Florida. We went to that area to search for the remains of Caylee Anthony.
- c. Although I was in the area with over 30 people, only five to six volunteers and I searched the area by the stockade fence along the south side of Suburban Street near Hope Springs Street. Among the five to six volunteers with me were Danny Ibson and his dog and a Panama City Sheriff's Deputy with one of his two dogs.
- d. All of the information concerning the search was reduced to writings which were placed on specific forms provided to me by TES. I am a very detailed person and I kept a detailed list of the items I saw and their location which I believed were important to a missing person investigation. All of this information was provided to TES.

The above is true and accurate to the best of my recollection.

Signed:



Joseph Jordan

Date:

11/16/2009

EXHIBIT B

STATEMENT BY LAURA BUCHANAN

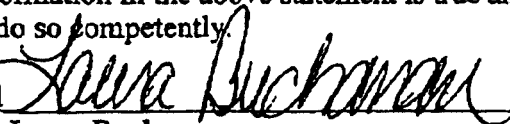
I, Laura Buchanan, Give the following statement of my own free will.

1. My name is Laura Buchanan and I currently live in Mendham, New Jersey.
2. On September 3, 2008, I was a volunteer for Texas Equus Search.
3. On September 3, 2008, the team in which I was assigned went to Suburban Street in Orlando and searched the area near where the remains of Caylee Anthony were found.
4. We were not officially assigned to search that area. We went on our own.
5. We were in that area for approximately 3 to 4 hours.
6. I personally searched near the privacy fence and worked my way towards and then beyond the spot where the body was found
7. I did not notice anything unusual.
8. I did not notice a strange smell. I noticed no buzzards, nor unusual animal or insect activity.
9. It is my opinion that the remains of Caylee Anthony were not there during the time of our search.

DECLARATION OF LAURA BUCHANON

I declare under the penalty of perjury and the laws of the United States of America that the information in the above statement is true and accurate. If called upon to testify I could do so competently.

Signed


Laura Buchanan

Date

10/24/09

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to Mark E. NeJame, counsel for TES, 189 South Orange Avenue, Orlando, Florida 32801; and the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; via facsimile and/or U.S. Mail on this 23 day of November, 2009.



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