

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

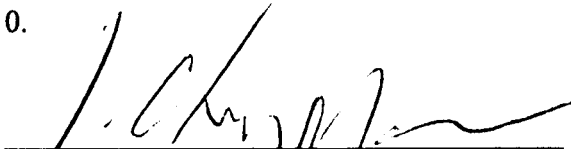
¹ If need be, this Court can exercise its supervisory authority and grant Mr. Jordan immunity from prosecution under *Kastigar v. United States*, 406 U.S. 441 (1972) theory, or order the State to do so.

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.

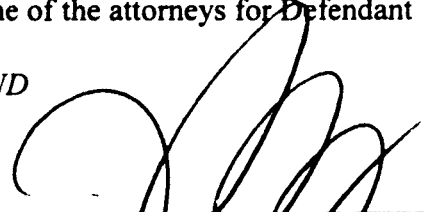
CERTIFICATE OF SERVICE

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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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. [unclear]", written over a horizontal line.