

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. Belvin Perry

FILED IN OFFICE ORIGINAL DISCOVERY 2010 DEC 30 PM 4:21

DEFENSE MOTION TO EXCLUDE IRRELEVANT EVIDENCE OF TATTOO

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through attorneys JOSE BAEZ, J. CHENEY MASON and ANN FINNELL respectfully submits this Motion to exclude irrelevant evidence and in support of her motion to exclude from trial all evidence of her tattoo states as follows upon information and belief:

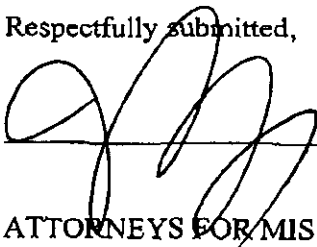
1. Based on reading of the discovery and the ongoing media scrutiny of her case, the Defense believes that the prosecution intends to introduce evidence which is irrelevant to any issue of material fact that is in question.
2. Since Miss Anthony's arrest, the media and popular blogs have repeatedly published stories regarding her tattoo. These stories led to an outpouring of prejudice and contempt from potential jurors. If the Prosecution introduced this evidence at trial, a substantially similar response will be provoked.
3. Evidence must be relevant and material to the issues in dispute. *Robertson v. State*, 829 So.2d 901, 912 (2002). Evidence not relevant to any matter in dispute is inadmissible. *Id.*
4. Evidence that goes solely to Miss Anthony's character is inadmissible because her character is not a matter in dispute.

5. Even where character evidence is relevant to a matter that is in dispute, the tendency of character evidence to provoke a highly inflammatory reaction has led the Supreme Court of the United States to declare that it is generally inadmissible. *Michelson v. U.S.* 335 U.S. 469, 476 (1948). Because a risk exists that the tattoo evidence would lead to prejudicial inferences about her character, it should be excluded from trial.

WHEREFORE, Miss Anthony Respectfully Requests:

1. That her motion be granted and that the prosecution be directed not to introduce or refer in any way to Miss Anthony's tattoo.
2. As a less favored alternative, the Defense asks that this court hold an evidentiary hearing at which this evidence can be presented prior to trial so this Court can make its own determination as to the materiality and relevance of the evidence.
3. At very least, this Honorable Court should require the prosecution to make an offer of proof in writing by the prosecution as to how the evidence is relevant and material and, therefore, admissible.
4. Further, Miss Anthony requests that, should such an offer be made, or hearing held.
5. In addition, Miss Anthony reserves the right to renew this motion at trial.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail, Fax, hand and/or email delivered to the Office of the State Attorney at 415 North Orange Avenue, Orlando, Florida 32801; on this the 30th day of December, 2010.



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FILED IN OFFICE
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ORANGE COUNTY

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO EXCLUDE IRRELEVANT EVIDENCE OF TATTOO

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through her attorneys J. CHENEY MASON and JOSE BAEZ, and respectfully submits this Memorandum of law in support of her motion to exclude from trial all evidence of her tattoo. In support whereof, Miss Anthony states as follows upon information and belief:

Statement of Facts

Caylee Marie Anthony was last seen on June 16, 2008, and was reported missing to law enforcement on July 15, 2008. Casey Marie Anthony was arrested and indicted for the charges of first degree murder (capital), aggravated child abuse, aggravated manslaughter of a child, and four counts of providing false information to a law enforcement officer on October 14, 2008. Caylee Marie Anthony's remains were found on December 11, 2008. The State filed its "Notice of Intent to Seek the Death Penalty" pursuant to Fl. St. § 921. 141 on April 13, 2009, having originally declined to seek the death penalty on December 5, 2008.

On June 19, 2009, the State filed a motion to compel photographs of Miss Anthony's tattoo. The tattoo in question is a script tattoo that reads "La Bella Vita," (the Beautiful Life), and was obtained on July 2, 2008, approximately two weeks after Caylee was reported missing.

The motion was granted, and on October 9, 2009, the State disclosed photographs to the public pursuant to Florida's sunshine laws.

In addition to the photographs which were disclosed to the public, Orange County also disclosed a video tape of Miss Anthony talking to her brother Lee when he visited her in jail. In that tape, Miss Anthony referred to the tattoo as Caylee related.

The media has used pictures and other evidence of this tattoo to portray Miss Anthony as a cold, cruel individual who did not care that her daughter was missing. Like the "party pictures," that the Defense has also moved to suppress, the tattoo pictures have been used to show that Miss Anthony was "carefree" throughout the 31 days between the disappearance of Caylee Anthony and her being reported missing. This is intended to support the conclusion that Miss Anthony must be guilty because she did not have the appropriate emotional response of someone who was innocent.

Through the media, especially the Internet, the public has been inundated with images of Miss Anthony's tattoo and speculation as to its bearing on her guilt. Fox News, CNN, WESH, WFTV, WDBO, WKMG, Orlando Sentinel, CF 13 News, and CBS are some of the news agencies covered this "story." It was also covered in countless other popular blogs and websites.¹ Through these media and other internet sources, Miss Anthony's reputation, maturity, intelligence, capacity for compassion, and fitness of a mother have been attacked by news pundits and members of the public relying on these photographs. They have created a deep moral prejudice against Miss Anthony in the minds of potential jurors.

Miss Anthony now moves to exclude these photos and all other evidence of her tattoo as irrelevant and impermissible character evidence, intended only to prejudice the jurors against her, and distract them from the real issues in the case.

¹ Casey Anthony Tattoo yields 37 hits on youtube.com, 2 of which appear to relate to her father George's tattoo.

Argument

Miss Anthony seeks to exclude all evidence of her tattoo including photographs, drawings, and statements by her and others. The basis of this motion is that (1) evidence of her tattoo constitutes irrelevant character evidence serving no other purpose than to unfairly prejudice the jury against her, and (2) even if evidence of her tattoo was found to be relevant in some limited way, its prejudicial impact would so far outweigh its probative value as to deprive her of a fair trial.

I. Under the Eighth Amendment, Heightened Standards of Due Process Apply to This Case.

The Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, and Article 1, Section 9 of the Florida Constitution, provide that the State shall not “deprive any person of life, liberty, or property, without due process of the law.” U.S. Const. amend. V; U.S. Const. amend. XIV § 1; Fla. Const. art. 1 § 9. It is well established that in a criminal case, the State has the burden of proving defendant’s guilt beyond reasonable doubt. *Patterson v. New York*, 432 U.S. 197, 208 (1977); *Mullaney v. Wilbur*, 421 U.S. 684, 698 (1975); *In Re Winship*, 397 U.S. 358, 361 (1970); *Davis v. United States*, 160 U.S. 469, 493 (1895). This principle is based on a “fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free.” *Winship*, 397 U.S. at 372 (Harlan, J., concurring).

Because this is a case in which the prosecution is asking this Court to impose the death penalty, heightened standards of due process apply. See *Mills v. Maryland*, 486 U.S. 367, 376 (1988) (“In reviewing death sentences, the Court has demanded even greater certainty that the jury’s conclusions rested on proper grounds”); *Proffitt v. Wainwright*, 685 F.2d 1227, 1253 (11

th Cir. 1982) (“Reliability in the fact-finding aspect of sentencing has been a cornerstone of [the Supreme Court’s death penalty] decisions”), and *Beck v. Alabama*, 447 U.S. 625, 638 (1988) (same principles apply to guilt determination). “Where a defendant’s life is at stake, the Court has been particularly sensitive to ensure that every safeguard is observed.” *Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (plurality opinion). This Court should thus consider Miss Anthony’s motion in the light of these stringent Due Process standards established by the Supreme Court.

II. Evidence of the Tattoo Constitutes Impermissible Character Evidence That Does Not Fall Into Any Exceptions.

Evidence of Miss Anthony’s tattoo constitutes impermissible character evidence, the admission of which could lead the jury to base its verdict on improper grounds. *Wainwright*, 685 F.2d at 253. At issue is whether Miss Anthony committed first degree murder, not whether she had an appropriate emotional response to her daughter’s disappearance. The tattoo has been described as a demonstration of her stupidity,² showing that she is “pure evil personified,” guilty, and a bad mother,³ ugly,⁴ sickening,⁵ “really mak[ing] her look like a killer,”⁶ and showing that she is the “psycho of the century.”⁷ Public perception is that evidence of the tattoo is highly relevant to – even dispositive of – her guilt, in spite of the fact that it has no bearing whatsoever on any of the elements of first degree murder.

Florida rules of evidence, which are substantially the same as the federal rules on this point, dictate that evidence of a defendant’s character may not be introduced at trial to prove

² Casey Anthony case: Read report regarding photos taken in jail of ‘Bella Vita’ tattoo, comments section, www.examiner.com (last visited Nov. 17, 2010).

³ *Id.*

⁴ New photo evidence released in Casey Anthony case: Tattoo, shovel, duct tape, Oct. 9, 2009, www.examiner.com (last visited Nov. 17, 2010).

⁵ New photo evidence released in Casey Anthony case: Tattoo, shovel, duct tape, Oct. 9, 2009, www.examiner.com (last visited Nov. 17, 2010).

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action in conformity with it except in a few limited exceptions such as proof of motive, opportunity, intent, knowledge, or absence of mistake or accident, when these are material facts at issue. Fla. Stat. § 90.404(2)(a) (2010); Fed. R. Evid. 404 (2010). Evidence of any facts relevant to a material fact is not admissible where “the sole relevancy is character or propensity of the accused.” *Williams v. State*, 100 So.2d 654, 663 (Fla. 1959); *see also King v. State*, 545 So.2d 375, 379 (1989) (“Absent some specific relevancy to the case at hand, defendant may not be proven guilty by proof that he is generally a bad person or has been guilty of other misconduct.”); *Robertson v. State*, 829 So.2d 901, 912 (2002) (“The character of a person accused of crime is not a fact in issue, and the state cannot, for the purpose of inducing belief in his guilt, introduce evidence tending to show his bad character or reputation, unless the accused, conceiving that his case will be strengthened by proof of good character, opens the door to proof by the prosecution that his character in fact is bad”); *Michelson v. U.S.* 335 U.S. 469, 476 (1948) (“not that the law invests the defendant with a presumption of good character but it simply closes the whole matter of character”).

Where the defendant has not put her character at issue, the Prosecution may not use innuendo and suggestion of the defendant’s general bad character to lead the jury to think the defendant should be found guilty of the crime charged. *Robertson*, 829 So.901 at 912. In *Robertson* the Supreme Court of Florida quashed the defendant’s conviction where the Prosecution introduced evidence that he threatened his ex-wife with an AK-47. *Id.* at 914. The court distinguished between evidence that a defendant *threatened* his wife with a firearm and evidence that he had *experience* with firearms, the latter tending to negate his claim of accidental shooting without improperly alluding to his generally bad character as evidence of his guilt. *Id.*

at 913. Because evidence that he threatened his ex-wife was highly inflammatory the Court concluded that it was not admissible. *Id.* at 914.

Here, evidence of Miss Anthony's tattoo serves no purpose other than to antagonize the jury towards her. Like the past conduct evidence in *Roberston*, the tattoo evidence involves conduct wholly unrelated to the crimes charged in the indictment. In *Roberston*, evidence of threatening conduct was used to argue the defendant's general propensity for criminal behavior, therefore making it more likely that he killed the victim. Evidence of Miss Anthony's tattoo could only be used to attempt to demonstrate the character traits of self-indulgence, impropriety, and immaturity, to sway the jury towards the conclusion that she had a role in her daughter's death. In both cases, the character evidence served no legitimate purpose other than to attack the defendant's character. Because the rules of evidence prohibits use of evidence solely to attack the defendant's character, evidence of Miss Anthony's tattoo should be excluded where it can serve no other purpose than to prejudice the jury against Miss Anthony based on her general character.

III. The Contempt the Tattoos Have Already Provoked Among Potential Jurors Demonstrates that Any Probative Value The Evidence Might Have is Far Outweighed by its Prejudicial Effect.

To permit the jury to rely on such character evidence, when it has already been established by clear and convincing evidence to have an inflammatory impact on potential jurors, would violate Florida's rules of evidence. If evidence of Miss Anthony's tattoo were deemed probative evidence of any of any material fact at issue, the court could still exercise its discretion to exclude the evidence on the basis of its extremely inflammatory effect on potential jurors.

Evidence of Miss Anthony's tattoo has been described as "definitely strange,"⁸ "bizarre,"⁹

⁸ Tattoo Photo Among Newly Released Evidence in Caylee Anthony Case, Fox News, Oct. 11, 2009 (quoting tattoo artist Bobby Williams).

“another sign of her joy in the freedom she got from killing, murdering her baby,”¹⁰ a tribute to her daughter who never made it to her third birthday (as evidenced by the missing third dot in the center of one of the stars)¹¹, and either of the foregoing, but in both cases evidence of her guilt.¹² These responses demonstrate a substantial likelihood for potential jurors to draw improper inferences from the tattoo evidence if it were introduced at trial. Because improper inferences would cast grave doubt on the validity of a conviction, the tattoo evidence should be suppressed from trial.

Florida law provides that “all relevant evidence is admissible, except as provided by law.” Fla. Stat. § 90.402. The rules of evidence further provided that evidence is inadmissible “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.” Fla. Stat. § 90.403; *See also*, F. R. Evid. 403.

Character evidence is impermissible because it has a strong tendency to distract from the issues at trial. *See McDuffie v. State*, 970 So.2d 312 (Fla. 2007); *Michelson*, 335 U.S. at 475-46 (“The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so over persuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.”) The trial court has an obligation to exclude evidence where unfair evidence outweighs the probative value “in order to avoid the danger that a jury will convict a defendant based upon reasons other than evidence establishing his guilt. *McDuffie v. State*, 970 U.S. 312, 327 (Fla. 2007). Evidence is inadmissible if it is only tangentially related to the crimes alleged, but injects evidence of the

⁹ Casey Anthony/Casey Anthony's bizarre tattoo, youtube.com, comments section (last visited Nov. 17, 2010).

¹⁰ Casey Anthony/Casey Anthony's bizarre tattoo, youtube.com, comments section (last visited Nov. 17, 2010).

¹¹ Caylee/Casey Anthony: The Tattoo is “Caylee-Related,” blinkoncrime.com (last visited Nov. 17, 2010).

¹² Casey Anthony Tattoo to be Photographed by Prosecution, caylecanthony.wordpress.com, response section, Aug. 12, 2009 (last visited Nov. 17, 2010).

defendant's character into the proceedings. *Davis v. State*, 718 So.2d 874, 877 (Fla. Ct. App. 1998).

Evidence suggestive of defendant's bad character is inadmissible where it has a poisoning effect on the jury's deliberations. *Davis v. State*, 718 So.2d at 877. In *Davis*, a videotape of victim introduced to show victim's incompetent state of mind resulting from dementia was held to constitute reversible error on appeal, where the victim called the defendant an untrustworthy "wretch" and a "devil." *Id.* at 876. Because the tape was made prior to the events the court held its relevance could not outweigh the prejudice caused to the defendant by having this character evidence introduced. *Id.* The court concluded that "showing this tape lobbed the proverbial skunk into the jury box, and deprived the defendant of a fair trial," and accordingly reversed her conviction. *Id.*

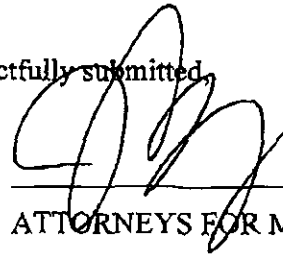
Evidence of Miss Anthony's tattoo is similarly prejudicial to the videotape in *Davis*. In both cases, any legitimate purpose for which the evidence could be introduced would be eclipsed by its inherently inflammatory nature. In *Davis*, the victim's vehement loathing of the defendant was more deeply impressing than the victim's incompetent state of mind, the legitimate purpose for which it was introduced. In Miss Anthony's case, whatever purpose is served by introducing evidence of her tattoo will pale by comparison to the prejudicial impact it will have on how the jury views her, depriving her of a fair trial. Just as in *Davis*, where the evidence was held to have a poisonous effect on the jury that precluded proper weighing of the evidence, so in Miss Anthony's case is the risk of prejudice to great to permit the State to introduce evidence of her tattoo.

Conclusion

Miss Anthony has been under constant attack in the media for more than two years. Evidence of her tattoo is a single episode in this uninterrupted diatribe. The impact of that evidence is clear from the articles that appear in various print and online publications, and the comments to those stories. Character evidence is impermissible where its sole purpose is to cast the defendant's character in poor light. Even if the tattoo evidence served some limited purpose, the public reaction has demonstrated that it would only poison the jury's deliberative process. The foregoing arguments lead to the conclusion that all evidence of Miss Anthony's tattoo should be excluded from trial.

WHEREFORE, the Defendant CASEY MARIE ANTHONY respectfully asks this Court to grant her Motion in Limine to Exclude Irrelevant Evidence, and further requests that this Court direct the prosecution to respond in writing within 30 days of the submission of her Motion and Memorandum of Law.

Respectfully submitted,



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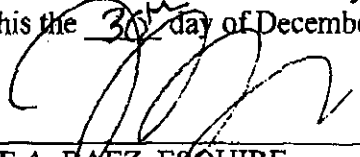
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail, Fax, hand and/or email delivered to the Office of the State Attorney at 415 North Orange Avenue, Orlando, Florida 32801; on this the 30 day of December, 2010.



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