

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

**STATE OF FLORIDA,
Plaintiff,**

**CASE NO.: 482008-CF-0015606-O
Judge Perry**

vs.

**CASEY MARIE ANTHONY,
Defendant.**

**MOTION IN LIMINE TO PRECLUDE TESTIMONY CONNECTED TO QUESTIONS
AND RESPONSES OF WITNESS ANTHONY ROSCIANO IN THE INTERVIEW BY
CORPORAL YURI MELICH AND SERGEANT JOHN ALLEN RELATED TO SEXUAL
RELATIONS WITH THE DEFENDANT**

COMES NOW THE Defendant, CASEY MARIE ANTHONY, by and through her attorneys J. CHENEY MASON and JOSE BAEZ and pursuant to Rules 401 and 403, Florida Rules of Evidence, and the United States and Florida Constitutions and moves this Court for entry of its Order in Limine to prohibit any testimony related to the questioning and answers of witness Anthony Rosciano by law enforcement agents, and shows:

The witness Anthony Rosciano was "interviewed" by Detectives Yuri Melich and John Allen in this cause.

During the questioning, the said Detectives improperly inquired of the witness private and personal matters regarding his alleged sexual relationship with the Defendant.

The subject matter and the questions and responses given in said interview are not relevant or material to any issue in this case and, further, are scandalous and incompetent and should not be allowed in any aspects of this case.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION IN LIMINE TO PRECLUDE
TESTIMONY CONNECTED TO QUESTIONS OF WITNESS ANTHONY ROSCIANO
IN THE INTERVIEW BY CORPORAL YURI MELICH AND SERGEANT JOHN
ALLEN RELATED TO SEXUAL RELATIONS WITH THE DEFENDANT**

A motion in limine is used to shorten trial, simplify issues, and reduce the potential for mistrial, thereby moving the case toward a conclusion on the merits. *Rosa v. Fl. Power & Light Co.*, 636 So. 2d 60 (Fla. 2d DCA 1994); *See also* § 90.403, Fla. Stat. (2009) (“Relevant 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.”). Further, “[a] motion in limine ... is generally used to prevent the introduction of improper evidence, the mere mention of which at trial would be prejudicial.” *Dailey v. Multicon Development, Inc.*, 417 So. 2d 1106 (Fla. 4th DCA 1982); *Adkins v. Seaboard Coast Line R. Co.*, 351 So. 2d 1088 (Fla. 2d DCA 1977).

Additionally, Florida Statute § 90.105 provides, “[t]he court shall determine preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence.” Also, § 90.104(2) provides “[i]n cases tried by a jury, a court shall conduct proceedings, to the maximum extent practicable, in such a manner as to prevent inadmissible evidence from being suggested to the jury by any means.” Based upon due process, a fair trial, an impartial jury, and effective assistance of counsel, Ms. Anthony is entitled to a hearing and ruling on the following issue before the selection of a jury.

STATEMENT OF FACTS

Based on Discovery Materials provided by the State, Mr. Anthony Rosciano engaged in a taped interview with Corporal Yuri Melich and Sergeant John Allen. (Taped Transcript of Anthony Rosciano Interview Conducted by Corporal Melich, August 18, 2008; hereinafter,

“Interview”). During the Interview, Sergeant Allen and Corporal Melich both asked Mr. Rosciano questions related to his previous sexual relations with Ms. Anthony. After establishing that Mr. Rosciano met in January of 2008, Sergeant Allen asked “where did you guys have sex?” to which Mr. Rosciano answered “at my apartment.” (Interview, p. 6; l.11-13). Further, Sergeant Allen asked, “The, the, the, the, the, that first time you and her had sex at your apartment... was there any discussion about her daughter...at that time.” (Interview p. 8; l. 5-7). After a brief exchange about Caylee Anthony, Sergeant Allen continued “Okay. Alright, uh, and then after y’all have had sex that first time in you apartment what happened after that?” (Interview p. 9; l. 1-2).

Moreover, Sergeant Allen asked “So the first time you guys had sex was she still engaged, that first time, uh...” to which Mr. Rosciano replied “No. No.” (Interview, p. 9; l. 17-18). Later, Corporal Melich queried “How was she when she had sex? Was she one of those people that would be real clingy, or was it just matter of factly (sic), or was it just okay, we’re done, I’m going home?” (Interview, p. 33; l. 17-20). Mr. Rosciano replied “Nonchalant...” (Interview p. 33; l. 20). Corporal Melich also asked “Did you use protection?” to which Mr. Rosciano responded “Once out of the twice.” (Interview, p. 34, l. 20). Corporal Melich inquired “Did she tell you of any sexual transmitted disease she has?” (Interview, p. 34; l. 17). Mr. Rosciano responded that Ms. Anthony did not (nor is there any assertion that she did). (Interview, p. 34; l. 18).

Next, Corporal Melich pursued a somewhat different line of questioning; “Anyone else from your Academy class, uh, well let me rephrase it this way. How many people from your Academy class hooked up with her either before or after you did?” to which Mr. Rosciano replied “I, I don’t know of any just Jesse.” (Interview, p. 50; l. 1-4). Corporal Melich prodded

further “Come on you’re, you’re a guy” and “[g]uys compare notes.” (Interview p. 50; l. 10-12). Mr. Rosciano responded that he was only certain of Jesse Grund, Ms. Anthony’s former finance. (Interview p. 50; l. 13).

ARGUMENT

Mr. Anthony Rosciano’s testimony related to prior sexual relations with Ms. Anthony, as well as any related reference to Sergeant Allen and Corporal Melich questioning regarding such testimony, must be precluded from trial in order to protect Ms. Anthony’s right to a fair trial. First, the testimony regarding prior sexual relations is utterly irrelevant to the case at hand. Second, any alleged probative value is substantially outweighed by its potential prejudicial effect on the jury.

I. ANY STATEMENTS RELATED TO MR. ROSCIANO’S PRIOR SEXUAL RELATIONS WITH MS. ANTHONY ARE UTTERLY IRRELEVANT AND HAVE NO TENDENCY TO PROVE OR DISPROVE A MATERIAL FACT AT ISSUE.

The test of admissibility is relevancy. *Reddish v. State*, 167 So. 2d 858, 861 (Fla. 1964); FLA. STAT. § 90.401 (2009). Relevant evidence is evidence that has “any logical tendency to prove or disprove a fact” in issue. *State v. Taylor*, 648 So. 2d 701, 704 (Fla. 1995). Although evidence tending to prove or disprove one material element of an offense is relevant, whether Ms. Anthony engaged in passed sexual relations with Mr. Rosciano is irrelevant and has no tendency to prove or disprove a material fact at issue in this capital criminal prosecution. In particular, Mr. Rosicano and Ms. Anthony’s sexual relationship predates the disappearance of Caylee Anthony by at least a month. (Orange County Sheriff’s Office Report, July, 16, 2008, Corporal Yuri Melich). As such, any testimony related to previous sexual relationship between Mr. Rosciano

and Ms. Anthony is wholly irrelevant and a violation of Ms. Anthony's right to privacy. Fla. Const. Art. I, § 23.

Further, Corporal Melich's crude question, "How was she when she had sex? Was she one of those people that would be real clingy, or was it just matter of factly (sic), or was it just okay, we're done, I'm going home?" and Mr. Rosciano's subsequent answer is unrelated, in any way, to not only the then occurring investigation, but certainly the current charged offenses. (Interview, p. 33; l. 17-20). Additionally, Sergeant Allen's questions related to the location of sexual intercourse (Interview, p. 6; l. 11-13), whether protection was used (Interview, p. 34; l. 17), and discussion of potentially sexually transmitted diseases (Interview, p. 34; l. 17), appear of dubious value at the investigation stage, but are wholly immaterial to the case at hand.

Because of the personal nature of the questions and the lack of connection between the line of inquiry and the charged offenses, there is a danger that such irrelevant character evidence will be used by a jury to decide this case on issues unrelated to the merits. As such, where evidence of this nature is presented simply to show bad character, such evidence must be excluded as improper. FLA. STAT. § 90.104(2) (2009) ([i]n cases tried by a jury, a court shall conduct proceedings, to the maximum extent practicable, in such a manner as to prevent inadmissible evidence from being suggested to the jury by any means); FLA. STAT. § 90.404(1) (2009) ("[e]vidence of a person's character or a trait of character is inadmissible to prove action in conformity with it on a particular occasion").

II. ANY ALLEGED PROBATIVE VALUE OF ANY STATEMENTS RELATED TO MR. ROSCIANO'S PRIOR SEXUAL RELATIONS WITH MS. ANTHONY ARE SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE TO MS. ANTHONY.

As stated above, the any prior sexual relationship between Mr. Rosciano and Ms. Anthony is irrelevant to the charges in the present case. However, if this Honorable Court does deem such testimony somewhat relevant, such testimony must still be excluded. FLA. STAT. § 90.403 (2009) (Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury or needless presentation of cumulative evidence).

It is unclear whether Corporal Melich and Sergeant Allen's questions were related to some perceived valid line of inquiry, or if the questions were an unfortunately recorded situation in which, as Corporal Melich stated, "guys compare notes." (Interview, p. 50; l. 12). In either case, this Court must exclude the admission of any related testimony as unfairly prejudicial to Ms. Anthony. Because any purported relevancy of testimony related to Mr. Rosciano and Ms. Anthony's past sexual relationship would create a danger of unfair prejudice, failing to preclude any related testimony would seriously and irreparably undermine Ms. Anthony's right to a fair trial.

CONCLUSION

Therefore, in the interests of Casey Marie Anthony's constitutional rights, the Defense respectfully asks this Honorable Court to:

- a. Order the Prosecution to file a response motion and memorandum of law within thirty days of the filing of this motion and accompanying memorandum of law;
- b. Allow the defense ten business days from the Prosecution's filing of its responsive motion and memorandum of law to file a reply motion and memorandum of law;
- c. Set a hearing date, at which time this Honorable Court may hear arguments relating to the motions; and

- d. Grant her Motion in Limine to Preclude Testimony Connected to questions of Witness Anthony Rosciano and in the Interview by Corporal Yuri Melich and Sergeant John Allen Related to Sexual Relations with the Defendant;
- e. If this Honorable Court denies the instant Motion in Limine, Ms. Anthony reserves the right to renew this motion at trial.

Respectfully Submitted,



J. CHENEY MASON, attorney for
CASEY MARIE ANTHONY.

JOSE A. BAEZ, attorney for
CASEY MARIE ANTHONY.

Dated: 12-21, 2010

J. CHENEY MASON, ESQUIRE
Florida Bar No.: 131982
390 North Orange Avenue
Suite 2100
Orlando, Florida 32801-1967
Telephone (407) 843-5785
Facsimile (407) 422-6858