

**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 REGARDING ANY TESTIMONY THAT THE DEFENDANT
HAS A HISTORY OF LYING AND/OR STEALING**

COMES NOW THE Defendant, CASEY MARIE ANTHONY, by and through her attorneys J. CHENEY MASON and JOSE BAEZ and moves this Court for entry of its Order in Limine prohibiting the State of Florida from soliciting from any witness in the State's case in chief regarding any testimony of the Defendant having a history of lying or stealing, and as grounds therefore shows:

1. Various investigative reports in this case have attributed to the Defendant's father, George Anthony, and to other extended family members assertions that the Defendant has a history of lying and/or has a history of stealing.
2. In addition to the following Memorandum in support of this Motion, Defendant shows that any such allegations would not be relevant or material to any issue in dispute in this case, and that any potentially probative value, under Section 90.401(1), would be outweighed by the prejudicial impact of such improper character evidence, in violation of 90.403.

MEMORANDUM OF LAW IN SUPPORT OF MOTION IN LIMINE

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 THE FACTS

Based on Discovery Materials provided by the State, the Defendant’s father and other relatives made allegations to investigators that the Defendant had a history of lying and stealing.

ARGUMENT

The objected to testimony would be highly prejudicial to the Defendant and not tend to prove any element(s) of the crimes charged.

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 there was a history of Defendant’s lying or stealing has no tendency to prove or disprove a material fact at issue in this capital criminal prosecution. Specifically, Ms. Anthony has been charged with Capital First Degree Murder, Aggravated Child Abuse, and four counts of Providing False Information to a Law Enforcement Officer. (Indictment). Evidence that there was a history of lying or stealing does not tend to prove any element of the offenses for which she is charged and, thus, is inadmissible as irrelevant.

I. ANY ALLEGED PROBATIVE VALUE OF THE INTRODUCTION OF THE HISTORY OF LYING OR STEALING IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE TO MS. ANTHONY.

As stated above, the history of lying and stealing are 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). *Huhn v. State*, 511 So. 2d 583, 588 (Fla. 4th DCA 1987).

In the present case, any purported probative value is tenuous, and thereby worthy of exclusion. There are no allegations that the character history of the Defendant had anything to do with the charged offenses. There is no sufficient nexus.

There is no proper inclusion in similar fact evidence per 90.404.

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 Exclude Evidence of the alleged history of Defendant's lying and stealing;
- 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

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