

- A statement indicating that Mr. Kronk knew of the location of Caylee Anthony's remains and indeed may have had possession or control of them in November 2008, weeks before he alerted law enforcement on December 11, 2008.

These statements will be supported by the testimony of, *inter alia*, Brandon Sparks, Mr. Kronk's son; Crystal Sparks, Mr. Kronk's ex-wife and the mother of Brandon Sparks; Jill Kerley, another ex-wife of Mr. Kronk's; and April Hensley, the daughter of Mr. Kronk's ex-girlfriend Sandy Hensley.

In support of her Motion, Miss Anthony states as follows upon information and belief:

- 1) The child Caylee Marie Anthony was reported missing on July 15, 2008. The defendant Casey Marie Anthony was arrested on charges of child neglect and making false statements to law enforcement on July 16, 2008, and was detained in the Orange County Jail until her release on August 20, 2008.
- 2) On August 11, 2008, one Roy M. Kronk, a meter reader employed by Orange County, placed a 911 call reporting a "suspicious bag" in the wooded area along the south side of the 8700 block of Suburban Drive, Orlando. Mr. Kronk described the bag as "gray," "vinyl-colored," and "metallic," and also claimed that he saw a "something round and white" that "just didn't look like something that should be there." When Mr. Kronk repeated his phone calls on August 12 and 13, the Orange County Sheriff's Office responded by sending a deputy to investigate his tips. The deputy sheriff found no sign of the missing child Caylee Anthony.
- 3) On the weekends of September 8, 2008, and November 5, 2008, the Orange County Sheriff's Office in conjunction with a private, out-of-state search-and-

rescue organization conducted a massive search of the Orlando area for the missing child Caylee Anthony. During the search, volunteers and cadaver dogs combed the wooded area south of the 8700 block of Suburban Drive where Mr. Kronk claimed to have seen his suspicious bag in August. No sign of the missing child was found.

- 4) On October 14, 2008, Miss Anthony was indicted on the present charge of first-degree murder and was taken into custody. She has been detained in the Orange County Jail since that date.
- 5) On December 11, 2008, the same Roy M. Kronk placed another 911 call reporting finding a skull in a suspicious bag in the wooded area along the south side of the 8700 block of Suburban Drive. Mr. Kronk described the bag as a closed, black plastic bag which appeared to have “like a dome in it.” When Orange County law enforcement responded to the scene, they found Mr. Kronk alone with the skeletonized remains of a small child. The State has since identified the remains as those of the child Caylee Anthony.
- 7) Despite the suspicious circumstances of Mr. Kronk’s involvement in the discovery of the child’s remains, the State seems to have never treated Mr. Kronk as a possible suspect in the disappearance and death of Caylee Anthony. Instead, law enforcement and the prosecution have focused solely on Miss Anthony, to the neglect of other suspects and the detriment of their investigation.
- 8) Miss Anthony has a constitutional right to present a defense at trial. *Chambers v. Mississippi*. This right includes the right to present evidence of third-party guilt.

Holmes v. South Carolina.¹ Furthermore, the State must prove a case that is completely incompatible with any reasonable hypothesis of innocence.

Washington v. State, 737 So.2d 1208 (Fla. 1st Dist. Ct. App. 1999). “[W]here evidence tends in any way, even indirectly, to establish a reasonable doubt of defendant's guilt, it is error to deny its admission.” *Rivera v. State*, 561 So.2d 536 (Fla. 1990).

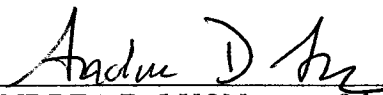
- 9) Despite the State’s sole focus on herself, Miss Anthony has uncovered circumstantial evidence which tends to indicate that Ray M. Kronk, and not Miss Anthony, is equally as likely to be responsible for the death of Caylee Anthony. While circumstantial in nature, this evidence points to Mr. Kronk just as strongly as the State’s circumstantial evidence points to Miss Anthony, and clearly raises a reasonable doubt as to her guilt.
- 10) In order to vindicate Miss Anthony’s right to present a defense, and her concomitant right to introduce evidence which could raise a reasonable doubt as to her guilt, including evidence of third-party guilt, the above-listed evidence should be admitted at trial.

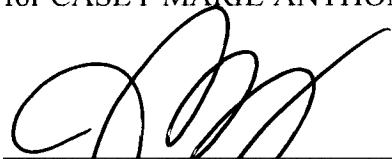
In support of her motion, Miss Anthony presents the attached Memorandum of Law and accompanying Exhibits.

WHEREFORE, the Defendant, CASEY MARIE ANTHONY, respectfully moves this court to allow her to introduce the above-listed evidence at her trial.

Respectfully submitted,

¹ It is Miss Anthony’s position that the circumstantial evidence against Mr. Kronk is at least as strong as that against her. She uses the phrase “evidence of third-party guilt” throughout this Motion and Memorandum of Law as a legal term of art to refer to such circumstantial evidence.


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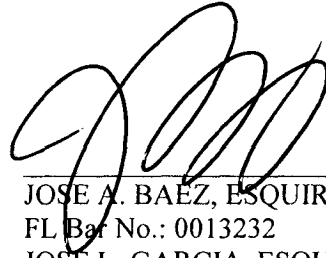
Dated: 11/12/09, 2009

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; via facsimile and /or U.S. Mail on this 18 day of November, 2009.



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- A statement indicating that Mr. Kronk knew of the location of Caylee Anthony's remains and indeed may have had possession or control of them in November 2008, weeks before he alerted law enforcement on December 11, 2008.

These statements will be supported by the testimony of, *inter alia*, Brandon Sparks, Mr. Kronk's son; Crystal Sparks, Mr. Kronk's ex-wife and the mother of Brandon Sparks; Jill Kerley, another ex-wife of Mr. Kronk's; and April Hensley, the daughter of Mr. Kronk's ex-girlfriend Sandy Hensley.

In support whereof, Miss Anthony states as follows upon information and belief:

Summary of Argument

Stripped of the media hype which has surrounded it from the very beginning, the present case is notable for the prosecution's complete reliance upon circumstantial evidence for its claim that Miss Anthony is guilty of the first-degree murder of her child. Orange County law enforcement has, since the day Caylee Anthony was first reported missing, focused its attention and investigation exclusively on Miss Anthony, to the neglect of other possible suspects and the detriment of its investigation. Despite several red flags pointing to the possible involvement of parties other than Miss Anthony in the death of Caylee Anthony, the State has chosen to bring the full weight of its investigative power upon the nearest and easiest target. In doing so it has neglected to investigate a suspect whose possible guilt is indicated by evidence at least as strong as the evidence which the prosecution claims points to Miss Anthony's.

The right to present a defense is one of the cornerstone rights protected by the Fifth, Sixth, and Fourteenth Amendments. In its landmark case *Chambers v. Mississippi*, 410 U.S. 284 (1973), the United States Supreme Court established the principle that a defendant's right to present a defense is fundamental to the fair trial required by the Due Process clause of the

Fourteenth Amendment. In *Chambers* and subsequent cases, the Court explained that the right to present a defense is so fundamental to a fair trial that it can, on occasion, require a court to admit evidence that could be otherwise barred by a state's rules of evidence. *Id.* at 302. In *Holmes v. South Carolina*, 547 U.S. 319 (2006), the Court ruled that the constitutional right to present a defense specifically includes the right to present evidence of third-party guilt. Furthermore, because Florida case law requires the prosecution's theory of the case to exclude all reasonable alternative hypotheses, a defendant must be allowed to present evidence that could tend to raise a reasonable doubt as to her guilt. *See, e.g., Rivera v. State*, 561 So.2d 536 (Fla. 1990); *Washington v. State*, 737 So.2d 1208 (Fla. 1st Dist. Ct. App. 1999).

In this case, the Defendant Casey Marie Anthony has been charged with capital murder. The prosecution's case relies entirely upon circumstantial evidence: the state can present no eyewitness or scientific testimony linking Miss Anthony with the crime scene or the remains of the victim. *See* Def.'s Motion to Dismiss Counts I and II of the Indictment, *filed* September 30, 2009 (dismissed without prejudice). In these circumstances, evidence pointing to third-party guilt should be admitted at trial, notwithstanding any provisions of the Florida Rules of Evidence that could otherwise work to keep it out of court. Specifically, the Defense has uncovered evidence during the course of its investigation suggesting that one Roy M. Kronk is at least equally as likely to be responsible for the death of Caylee Marie Anthony as is Miss Anthony. This evidence is crucial to Miss Anthony's right to present her defense, and should be admitted at trial.

Statement of Facts

1. The disappearance of and search for Caylee Anthony

The child Caylee Marie Anthony was reported as missing on July 15, 2008, from her home at 4937 Hopespring Drive in Orlando. According to the child's grandfather, she was last seen at her home on June 16, 2008. The defendant, Casey Marie Anthony, was arrested on charges of child neglect and making false statements to law enforcement on July 16, 2008. Miss Anthony was detained in the Orange County Jail until August 21, 2008, at which time she was released to home confinement. Miss Anthony was arrested again on August 29, 2008, on unrelated charges, and released again on September 5, 2008.

On August 31, 2008, a massive search for the missing child Caylee Anthony began in and around the Orlando area. This search was conducted by Texas EquuSearch ("TES"), a Texas non-profit corporation, in conjunction with the Orange County Sheriff's Office ("OCSO"). During the city-wide search, dozens of TES members and volunteers searched the wooded area just off Suburban Drive, near Hidden Oaks Elementary School. These searches included the use of cadaver dogs. The dogs showed no interest in any area to the north or the south of Suburban Drive on the stretch between Hopespring Drive and Hidden Oaks. *See Exhibit A.* By the time the search was called off on September 7, 2008, no sign of the missing child had been found. TES and law enforcement searched the area again on the weekend of November 5, 2008. Again, no sign of the missing child was found. Casey Marie Anthony was indicted for the first-degree murder of her missing daughter on October 14, 2008 and has been in custody since that date.

2. The discovery of Caylee Anthony's remains

On August 11, 2008, one Roy M. Kronk, a meter reader formerly employed by Orange County, placed a 911 call in which he described seeing a "something that looks white and . . . a gray bag" in the wooded area on the south side of Suburban Drive between Hopespring Drive and Hidden Oaks Elementary School. *See Transcript of August 11, 2008 911 call, hereafter*

Exhibit B, at 1:22. Mr. Kronk also stated, unprompted, “I don’t know what it is. I’m not telling you it’s, you know, it’s Caylee, or anything of that nature.” *Id.* at 1:23-24. Deputy Sheriff Adriana Acevedo of OCSO investigated the call but found no sign of either Mr. Kronk, a gray bag, or Caylee Anthony. *See* Excerpt of OCSO Interview of D/S Adriana Acevedo, *hereafter Exhibit C*, at 6:21.

On August 12, 2008, just after 9pm, Mr. Kronk called 911 again. In this second call, he described what he saw as “a gray, vinyl-like bag” that “looked rather suspicious.” *See* Transcript of August 12, 2008 911 call, *hereafter Exhibit D*, at 1:19-20. He also described seeing “something round and white” that “just didn’t look like something that should be there.” *Id.* at 1:24-25. Mr. Kronk also stated in this call that he wished to remain anonymous. *Id.* at 3:7-8. Deputy Sheriff Elizabeth Collins of OCSO responded to the call and, due to darkness, could not effectively search the wooded area. *See* Transcript of OCSO Interview of D/S Elizabeth Collins, *hereafter Exhibit E*, at 4:1-7. D/S Collins then contacted Mr. Kronk and advised him to call the Sheriff’s Office the next day so he could lead an investigator to the spot where he claimed to have seen a bag. *Id.* at 6:7-19. She also advised Mr. Kronk to call the tip line. *Id.* at 6:23.

On August 13, 2008, Mr. Kronk called 911 for a third time in as many days. In this call he described himself as a meter reader on “Caylee’s route.” *See* Transcript of August 13, 2008 911 call, *hereafter Exhibit F*. Deputy Sheriffs Kethlin Cutcher and Richard Cain responded to the call. *See* OCSO Interview of Roy Kronk, January 6, 2009(a), *hereafter Exhibit G*. Mr. Kronk told D/S Cain that he believed the bag, which he had not examined, “has bones in it.” *See* OCSO Interview of D/S Richard Cain, December 18, 2008, *hereafter Exhibit H*, at 3:1. D/S Cain investigated the area and found only a bag containing sticks and yard debris. *Id.* at 7:1-2.

On December 11, 2008, Mr. Kronk placed a 911 call in which he claimed that he had discovered a skull inside a black plastic bag in the wooded area just to the south of Suburban Drive. Mr. Kronk told the responding officers that the skull had “rolled out of the bag.” See OCSO Incident Report, December 11, 2008, *hereafter* Exhibit I. Responding deputies recovered the skeletonized remains of a small child from the scene. The State has since identified those remains as those of the child Caylee Anthony. When law enforcement interviewed Mr. Kronk on that day, he described finding a closed black plastic bag which appeared to have “like a dome in it.” See OCSO Interview of Roy Kronk, December 11, 2008, *hereafter* Exhibit J, at 2:18. He described prodding the bag with his meter stick, upon which he claims the skull “dropped out.” *Id.* at 3:4-5. According to Mr. Kronk, when he informed the responding officers of his previous 911 calls about the area, those deputies told him to “shut [his] mouth.” See OCSO Interview of Roy Kronk, January 6, 2009(b), *hereafter* Exhibit K, at 12:18-22.

3. Orange County and Roy Kronk

In January of 2009, Mr. Kronk appeared on “Good Morning America.”¹ He received an undisclosed “licensing fee” from the talk show, ostensibly for the use of a photograph of a snake.² He was also paid a \$5,000 reward by attorney Mark Nejame, former counsel for George

¹ Lee Ferran, “Exclusive: Meter Reader Denies Tip To Caylee’s Body,” ABC News, January 13, 2009, *available at* <http://abcnews.go.com/GMA/story?id=6635154&page=1>.

² Bianca Prieto & Walter Pacheco, “Deputy’s Actions Under Scrutiny In Casey Anthony Case,” The Orlando Sentinel, January 14, 2009, *available at* <http://www.orlandosentinel.com/news/local/orange/orl-casey1409jan14,0,787726.story>.

and Cindy Anthony.³ Orange County also agreed to pay Mr. Kronk for his legal fees, advancing \$10,000 by January of 2009.⁴

In April of 2009, Orange County agreed to pay Mr. Kronk another \$2,500 for his attorney.⁵ In July of 2009, after paying Mr. Kronk an additional \$2,500 for his attorney, Orange County placed a cap on the amount of money it would disburse to him.⁶ Orange County's payments for Mr. Kronk's fees ended in November of 2009 when he was terminated by the County.⁷

Argument

I. Miss Anthony's Right to a Fair Trial Requires That She Be Allowed To Present Evidence of Third Party Guilt.

A. *Chambers v. Mississippi* and *Holmes v. South Carolina* have established the right of a defendant to present evidence of third party guilt.

Miss Anthony's right to a fair trial is a fundamental right protected by the Due Process Clause of the Fourteenth Amendment. The United States Supreme Court's landmark decision in *Chambers v. Mississippi*, 410 U.S. 284 (1973), established the principle that the right to present a defense is basic to that fundamental constitutional right. In *Holmes v. South Carolina*, 547 U.S. 319 (2006), the Court explicitly held that the right to present a defense includes the right to

³ Amy L. Edwards & Bianca Prieto, "Meter Reader Receives \$5,000 Reward In Casey Anthony Case," The Orlando Sentinel, January 16, 2009, *available at* <http://www.orlandosentinel.com/news/local/orange/orl-casey1609jan16,0,1967378.story>.

⁴ Susan Jacobs, "Taxpayers Pay Lawyer Of Worker Who Found Caylee's Remains," The Orlando Sentinel, February 5, 2009, *available at* <http://www.orlandosentinel.com/news/local/orange/orl-kronk0509feb05,0,6026009.story>

⁵ "County Pays More Of Kronk's Fees," WKMG-Local 6, April 28, 2009, *available at* <http://www.clickorlando.com/news/19312027/detail.html>.

⁶ "County Up To \$15,000 In Meter Reader's Legal Fees," Central Florida News 13, July 1, 2009, *available at* http://www.cfnews13.com/News/Local/2009/6/30/more_money_approved_for_meter_readers_lawyer.html.

⁷ Henry Pierson Curtis, "Meter Reader Who Found Caylee's Remains Fired," The Orlando Sentinel, October 29, 2009, *available at* <http://www.orlandosentinel.com/services/newspaper/printedition/monday/orl-loccasey-anthony-roy-kronk-1030103009oct30,0,6601908.story>.

introduce evidence of third party guilt. It is Miss Anthony's position that the circumstantial evidence against Mr. Kronk is at least as strong as that against her. She uses the phrase "evidence of third-party guilt" throughout this Motion and Memorandum of Law as a legal term of art to refer to such circumstantial evidence.

1. *Chambers v. Mississippi*

In *Chambers*, the defendant was accused of shooting a Mississippi police officer during a street disturbance. 410 U.S. at 285. The defendant maintained his innocence and pled not guilty. The state's case was largely circumstantial, due to the confusion of the near-riot, and at trial, only one of the other police officers at the scene testified that he actually saw the defendant fire the fatal shots. *Id.* at 290. The defense tried to introduce evidence that a third party had actually committed the crime. *Id.* at 289. The evidence consisted of an out-of-court statement by the third party to defendant's counsel that he, and not the defendant, had shot the officer during the disturbance. *Id.* at 291. The trial court refused to admit the evidence, however, ruling that Mississippi's hearsay rules prohibited the admission of out-of-court statements to show the third party's guilt. *Id.* at 294.

The Supreme Court reversed, holding that the Mississippi court's refusal to admit the evidence of the third party's guilt violated the defendant's right to a fair trial. As the Court said in that case, "[t]he right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Id.* at 294. The Court also explained that "few rights are as fundamental as that of an accused to present witnesses in his own defense." *Id.* at 302. The Court emphasized that its holding did not represent any "diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures." *Id.* at 302-303. It insisted,

however, that this traditional respect does not allow the States to “mechanistically” apply their rules of evidence so as to exclude evidence vital to the defendant’s right to defend herself in court. *Id.* at 302.

Like the defendant in *Chambers*, Miss Anthony has been charged with first-degree murder, and like that defendant, the case against her relies on circumstantial and conflicting evidence. She also possesses circumstantial evidence indicating that a third party, and not herself, is equally as likely to have committed the crime for which she is charged. This Court should not, therefore, mechanistically apply the Florida rules of evidence to exclude this evidence and deny Miss Anthony her right to present her defense.

2. *Holmes v. South Carolina*

The Supreme Court broadened its *Chambers* holding in *Holmes v. South Carolina*, where it held that the right to present a defense includes the right to introduce evidence of third party guilt. In *Holmes*, the defendant was charged with rape, burglary, and first-degree murder. 547 U.S. at 322. At trial, the defendant attempted to introduce evidence that a third party, who had been seen near the crime scene, had made several suspicious comments possibly indicating that he, and not the defendant, had committed the crime. *Id.* at 322. The third party denied making the statements and provided an alibi. *Id.* The trial court refused to admit the evidence of third party guilt, and the South Carolina Supreme Court affirmed, holding that the supposed forensic evidence of the defendant’s guilt precluded any reasonable inference from the excluded statements of his innocence. *Id.* at 323-24.

In a unanimous opinion, the Supreme Court reversed, holding that the South Carolina court’s rule requiring the inference of innocence to overcome the prosecution’s forensic evidence in order to be admitted violated the defendant’s right to present a defense. The Court relied on

the fact that the defendant “strenuously claimed that the prosecution’s evidence was so unreliable . . . that the evidence should not have even been admitted.” *Id.* at 329. Where the prosecution’s case relied upon contested forensic evidence, and where the defendant’s evidence indicated that another suspect was at least equally as likely to be guilty, the defendant’s right to a defense precluded the trial court from excluding that evidence. Citing *Chambers* for the proposition that automatically excluding evidence of third party guilt in accordance with state evidentiary laws can deny a defendant a fair trial “in accord with traditional and fundamental standards of due process,” *id.* at 326, the Court held that the application of South Carolina’s rules to the defendant’s proffered evidence violated the “criminal defendant’s right to have a meaningful opportunity to present a complete defense.” *Id.* at 331 (internal citations and quotation marks omitted).

Like the defendant in *Holmes*, Miss Anthony has been charged with capital murder on the basis of circumstantial and possibly compromised forensic evidence. *See* Def.’s Motion to Dismiss Due to Spoliation of Evidence, *filed* September 16, 2009. Also like the defendant in *Holmes*, Miss Anthony wishes to introduce at trial a number of suspicious statements and actions by a third party whom the police have failed to adequately investigate as a suspect in this case. Miss Anthony has a right to present a defense, and a concomitant right to offer circumstantial evidence pointing to third party guilt which is reasonably susceptible to an inference of her innocence. Because the evidence she wishes to offer does support such an inference, *see* Part II *infra*, it should be admitted at trial.

B. *Chambers* and the right to present evidence of third-party guilt under Florida law.

Florida courts have recognized that specific rules of evidence must, at times, give way to a defendant’s constitutional right to present a defense. *Lewis v. State*, 591 So.2d 922, 925 (Fla.

1991). They have interpreted *Chambers* and *Holmes* in the light of Florida cases placing the burden on the prosecution to produce evidence excluding any reasonable hypothesis of the defendant's innocence. When applying Florida evidentiary rules such as the requirement of relevance (Fla. Stat. §§ 90.401, 402) and the hearsay rule (Fla. Stat. §§ 90.801, 802), courts have been careful not to run afoul of the *Chambers* requirement that such rules not be employed to deny the defendant's right to a fair trial. Moreover, Florida courts have allowed evidence of similar bad acts by a third party when intended to show that party's guilt under the so-called "reverse-*Williams*" rule.

- 1. A defendant's right to present evidence of third-party guilt in her defense must be considered in light of the prosecution's burden to prove a theory excluding every reasonable hypothesis of the defendant's innocence.**

Florida courts have followed the *Chambers* rule recognizing that, on occasion, a defendant's right to present evidence of third-party guilt in her defense may require the admission of some evidence that a formal application of the rules of evidence might otherwise exclude. In *Curtis v. State*, 876 So.2d 13 (Fla. 1st Dist. Ct. App. 2004), for example, the First District Court of Appeal reversed a defendant's conviction because the trial court had excluded evidence of third party guilt. In that case, the defendant argued that a third party, and not himself, was guilty of the murder for which he was being tried. *Id.* at 23. When the state presented evidence that the third party had an alibi at the time of the crime, the defense sought to introduce a statement made by the third party confessing to the crime. *Id.* at 16. The trial judge refused to admit evidence of the statement because it did not satisfy the formal requirements of the Florida Evidence Code. *Id.* Although the confession was shown to have been inconsistent with the physical evidence of the case, and although the third party was later shown to have had an alibi for the time of the murder, the Court of Appeal nonetheless held that the confession

should have been admitted at trial. Citing *Chambers*, the court reiterated that, “in some cases, judges have a duty to admit evidence that does not fit neatly within the confines of the Evidence Code in order to protect a defendant’s right to a fair trial.” *Id.* at 19. Despite the rebuttals of the third-party confession offered by the prosecution at Curtis’s trial, the judge’s refusal to admit the evidence nevertheless deprived the jury of a chance to weigh the out-of-court statement against the prosecution’s evidence and to consider a reasonable hypothesis of the defendant’s innocence. *Id.* at 24.

Moreover, Florida courts have consistently held that any evidence which tends to establish a reasonable doubt as to the defendant’s guilt must be admitted at trial. *See, e.g., Rivera v. State*, 561 So.2d 536, 539 (Fla. 1990) (“[W]here evidence tends in any way, even indirectly, to establish a reasonable doubt of defendant's guilt, it is error to deny its admission.”). In *Vannier v. State*, 714 So.2d 470 (Fla. 4th Dist. Ct. App. 1998), the Fourth District Court of Appeal held that the trial court in a murder trial had erred in excluding, for relevance, evidence that the decedent had written letters evincing possibly suicidal thoughts. The letters showing the decedent’s possibly suicidal frame of mind should have been admitted because, if given that construction by a jury, they would cast a reasonable doubt on the defendant’s guilt. The court cited *Chambers* for the proposition that “few rights are more fundamental than that of an accused to present witnesses in his own defense,” and went on to note that “[a]lthough this quotation refers to ‘witnesses’, the principle obviously includes other forms of evidence as well.” *Vannier*, 714 So.2d at 471 (quoting *Chambers v. Mississippi*, 410 U.S. at 302). Further, “while the defense is bound by the same rules of evidence as the state, the question of *what is relevant to show a reasonable doubt* may present different considerations than the question of what is relevant to show the commission of the crime itself.” *Vannier*, 714 So.2d at 472 (emphasis added).

Finally, a defendant's constitutional right to present evidence in her defense extends to evidence which could tend to impeach a witness, and thereby raise a reasonable doubt as to the defendant's guilt. *Washington v. State*, 737 So.2d 1208 (Fla. 1st Dist. Ct. App. 1999). In *Washington*, the defendant sought to introduce statements which impeached a witness against him, and whose own guilt the defendant was seeking to establish. *Id.* at 1220. The Court of Appeal reiterated that in circumstantial-evidence cases, the prosecution must exclude every reasonable hypothesis of evidence, "no matter how forcefully the evidence indicates guilt." *Id.* at 1215.

The admission of circumstantial evidence pointing to third-party guilt should be even more important where the prosecution's case itself is entirely circumstantial. Here, the prosecution's case against Miss Anthony is based entirely upon circumstantial evidence, including forensic evidence which has been compromised by state actors. *See* Def.'s Motion to Dismiss Due To Spoliation of Evidence. In order to convict Miss Anthony, the prosecution must present evidence which completely excludes—beyond a reasonable doubt—any reasonable hypothesis that another party is responsible the death of the child Caylee Anthony. *Id.* Because the State has focused exclusively on Miss Anthony as the only suspect in this case, it has failed to scrutinize other suspects against whom the circumstantial evidence is just as strong. In order to vindicate her constitutional rights to a fair trial and to present evidence of third-party guilt in her defense, Miss Anthony must be allowed to admit the evidence she has uncovered indicating that another party is equally as likely to be responsible for the death of Caylee Anthony.

2. Evidence of a third party's other bad acts may be admitted under the "reverse *Williams* rule."

The *Williams* rule takes its name from *Williams v. State*, 110 So.2d 654 (Fla.1959), and has been codified as Florida's rule of evidence concerning other crimes by a defendant. The rule

as contained in the statute specifies that other bad acts evidence can be admissible when relevant to prove, *inter alia*, motive or opportunity, and is inadmissible for other character purposes. § 90.404(2)(a), Fla. Stat. (2005). “Reverse *Williams*” evidence is evidence offered by the defendant of other crimes or bad acts by a third party, intending to show the possibility of third-party guilt and thereby raise a reasonable doubt as to the defendant’s own guilt. *McDuffie v. State*, at 970 So.2d 312, 323 n.2 (Fla. 2007). Courts have generally held that, when presenting reverse *Williams* evidence, the defendant is bound by the same rules of evidence as the State; that is, the evidence must be offered as relevant to prove a material fact at issue, and not merely to show bad character of the third party. Such material facts include, but are not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. § 904.404(2)(a). However, the issue of what is relevant to show a reasonable doubt can involve different considerations from the question of what is relevant to prove the guilt of the crime itself. *Vannier*, 714 So.2d at 472. The right of defendants to present reverse *Williams* evidence has been found important enough to merit reversal of a summary dismissal of an ineffective assistance of counsel claim for failure to introduce such evidence. *McLin v. State*, 877 So.2d 948, 958-59 (Fla. 2002).

In *Washington v. State*, the First District Court of Appeal broadened the reverse *Williams* rule to include evidence not only of other crimes by the third party, but of other bad acts as well. 737 So.2d at 1225. In *Washington*, the defendant was charged with the first-degree murder and aggravated child abuse of the infant son of his girlfriend. *Id.* at 1211. Medical evidence tended to show that the victim had been violently shaken and beaten, resulting in horrific injuries. *Id.* at 1213-1214. At trial, the girlfriend was the prosecution’s main witness and testified that she had never struck or shaken the child. *Id.* at 1218. The defendant sought to introduce evidence that

the girlfriend had, in fact, previously abused the child on several occasions. *Id.* at 1219-1220. The trial judge refused to admit the testimony, ruling that it was irrelevant because the bad acts did not constitute the crime of aggravated child abuse. *Id.* at 1225.

The Court of Appeal reversed, holding that the exclusion of the evidence of the girlfriend's prior abuse of the child violated the defendant's right to a fair trial. Because the proffered evidence served to raise a reasonable doubt as to the defendant's own guilt, it should have been admitted under the reverse *Williams* rule in order to show the similarity of the previous abuses to the crime for which the defendant was being tried. *Id.* The evidence was also relevant to impeach the girlfriend, whose testimony exculpated herself while pointing the finger at the defendant. *Id.* at 1222. Citing a "broad rule of admissibility based on the relevancy of the evidence to a fact to be proved," the court acknowledged that the alleged acts did not have to rise to the level of aggravated child abuse in order to be relevant to show the girlfriend's state of mind, or to show her motive for testifying against the defendant at trial. *Id.* at 1225 (quoting *Snowden v. State*, 537 So.2d 1383, 1384 (Fla. 3d Dist. Ct. App. 1989)).

Here, the evidence Miss Anthony seeks to introduce includes evidence of prior bad acts by a third party whose own responsibility for the death of Caylee Anthony is suggested by circumstantial evidence at least as strong as that against Miss Anthony. See Section II, *infra*. Although the third party has not been tried for any crime in connection with the prior bad act, as in *Williams*, evidence of prior inappropriate behavior with a three-year-old girl is relevant to show both motive and Mr. Kronk's state of mind toward young girls he may have seen along his meter-reading route. This evidence is also relevant for the purpose of impeaching Mr. Kronk if and when he testifies at trial. See Section II(D), *infra*.

II. Evidence that Roy M. Kronk Should Have Been a Suspect In The Death of Caylee Marie Anthony Should Be Admitted At Trial

A. Mr. Kronk's initial statements to law enforcement should have raised red flags and led to his being investigated as a potential suspect.

Roy M. Kronk contacted police claiming to know the location of Caylee Anthony's remains on two discrete occasions separated by four months. His stories to law enforcement about his actions on those occasions—and about what he did or did not see in the wooded area south of Suburban Drive—have changed significantly over time. These inconsistencies, combined with Mr. Kronk's avowed monetary interest in being the 'discoverer' of Caylee Anthony's remains should have put investigators on notice to treat Mr. Kronk as a possible suspect in her disappearance and death. Miss Anthony must be able to introduce evidence at trial to show that the police did not investigate Roy Kronk even as his behavior raised red flag after red flag.

1. Inconsistencies between statements.

Mr. Kronk's inconsistent statements about what just what he saw and didn't see in the wooded area just south of Suburban Drive in August and December of 2008 should have raised a red flag to the detectives investigating Caylee Anthony's disappearance and death. In his 911 call of August 12, 2008, Mr. Kronk described what he saw as a "gray, vinyl-like bag." *See Exhibit D.* He also describes seeing "something round and white." *Id.* The FDLE tip sheet records Mr. Kronk's anonymous tip as describing "a silver metallic thing that looked like a vinyl bag" and, "a little further up there . . . a little white round object." *See* FDLE Tip Sheet, August 12, 2008, *hereafter* Exhibit L. According to his co-workers, Mr. Kronk explicitly identified this white object as a skull. *See* Transcript of OCSO Interview of David Dean, January 6, 2009, *hereafter* Exhibit M. According to Orange County Deputy Sheriff Richard Cain, who responded

to the August 13 call, Mr. Kronk stated that the bag “contained bones possibly . . . that’s what he said, ‘I think it has bones in it.’” See Exhibit H at 2:16-3:1.

However, when interviewed on December 11, 2008, about his ‘discovery’ earlier that day, Mr. Kronk described finding a closed, black plastic bag. See OCSO Interview of Roy Kronk, December 11, 2008, *hereafter* Exhibit N, at 2:18. He also described how he “saw like a dome in it,” and how, when he struck the “dome” with his meter stick, “it thudded . . . it sounded like either plastic or like you know, hollow bone or something.” *Id.* at 2:18-3:2. Then, on January 6, 2009, Mr. Kronk revised his story about seeing the gray bag in August, for the first time claiming that “the bag was submerged in water” and that the object he had seen was “something white that was protruding out of the water.” See Exhibit G at 16:23-24; 4:16-17.

Mr. Kronk’s statements in the January 6 interview also contradicted his initial interview on December 11, in which he claimed that when he “pulled” at the bag with his meter stick, “a human skull dropped out.” See Exhibit N at 3:4-5. In the Incident Report filed by D/S Turso of the Orange County Sheriff’s Office (“OCSO”) on December 11, 2008, Mr. Kronk is recorded as describing the skull having “rolled out of the bag.” See Exhibit J. On January 6, however, when prompted by Cpl. Eric Edwards of OCSO Mr. Kronk claimed that he saw “what distinctly looked like a skull again under a bag, or you know, in a bag, under a bag. I don’t know. I just saw a bag over top of this thing.” See Exhibit G at 13:19-21. When Cpl. Edwards further prompted Mr. Kronk by saying “And like we said before, we came to your house and you were, it wasn’t a rolling skull,” Mr. Kronk replied, “No, it, no.” *Id.* at 13:23-25.

The inconsistencies in Mr. Kronk’s stories, in conjunction with the seeming coincidence of his having found the remains of Caylee Anthony in precisely the same spot where he called in a tip about “bones” and a “skull” four months earlier, should have raised a red flag to the law

enforcement agents investigating the disappearance and death of Caylee Anthony. Miss Anthony must be able to argue at trial that, even when confronted with Mr. Kronk's suspicious stories and inconsistencies, law enforcement declined to investigate him as a possible suspect and instead focused their attentions squarely on Miss Anthony, who had already been indicted—on purely circumstantial evidence—for the first-degree murder of her child. This argument is buttressed by the second police interview of Mr. Kronk on January 6. When asked whether he had disclosed his August 911 calls to the responding deputies on December 11, Mr. Kronk answered, "I told them I called crime line in on it. I said, 'I reported this back in August' . . . they told me to shut my mouth." See Exhibit K at 12:18-22. Law enforcement seems to have had no interest in delving into the inconsistencies and incredible coincidences evinced by Mr. Kronk's two 'discoveries.'

The plain inconsistencies between Mr. Kronk's various descriptions of what he claimed to see in August and what he claimed to see in December should have put law enforcement on notice that Mr. Kronk may have been involved in the disappearance and death of Caylee Anthony. Mr. Kronk appears to have claimed that he knew the "gray," "vinyl," "metallic" bag of the August calls contained bones, without having examined it. He appears to have claimed that he knew that the "white object" he could see—first with no mention of any water, then "submerged" in water—was a human skull. He also appears to have claimed that, when he tapped the black bag he 'discovered' on December 11, he recognized the sound as being "like hollow bone." His inconsistencies as to the relative location of the skull and the black bag in December—now under it, now inside it; now rolling out, now not rolling out—combined with the fact that he was the only person who saw or touched the remains before the arrival of law enforcement should have warned the police that Mr. Kronk's stories may conceal another truth.

2. The money motive.

Mr. Kronk's statements to his co-workers and to law enforcement during the time following the 'discovery' of the remains in the Suburban Drive area should have raised another red flag to the investigators in this case. Specifically, Mr. Kronk's repeated mention of his expectation of a hefty reward for his 'discovery' of the remains of Caylee Anthony should have alerted investigators to the possibility that Mr. Kronk may have been involved at least in the moving of the remains to the location where they were ultimately found.

Officers' suspicions should have been raised when Mr. Kronk's supervisor, Carl Spare, told them in an interview that Mr. Kronk spent the morning after his 'discovery' talking about the reward he expected to receive. *See* Transcript of OCSO Interview of Carl Spare, January 20, 2009, *hereafter* Exhibit O, 2:17-19. Another of Mr. Kronk's supervisors reported that Mr. Kronk, told investigators, "He said, he freaking uh, he freaking not, not to lie to anybody, he freaking gonna get a reward or something." *See* Transcript of OCSO Interview of Alex Roberts, January 6, 2009, *hereafter* Exhibit P, 6:12-13. Investigators' suspicions would only have been buttressed by a comment that Mr. Kronk made in one of his own interviews with police. When an investigator requested that Mr. Kronk try to stay out of the media, Mr. Kronk responded by saying, "you know what? . . . Roy has to eat too." Exhibit K at 24:15-17. The reward Mr. Kronk ultimately received from attorney Mark Nejame, combined with the 'licensing fee' he received from "Good Morning America" and the funding from Orange County for his legal bills, support Mr. Kronk's avowed interest in profiting from his 'discovery.'

Had the officers investigating this case not been single-mindedly and myopically fixed on their chosen target, they could have picked up on the indications of Mr. Kronk's monetary interest in being right about the location of the remains of Caylee Anthony. Combined with the

inconsistencies and contradictions in the various stories he proffered to the police between August of 2008 and January of 2009, Mr. Kronk's money motive could and should have spurred law enforcement to investigate his own suspicious statements and past. Had they done so, they would have come across the very evidence Miss Anthony seeks now to introduce at trial as evidence of the willful myopia of the investigation of her daughter's disappearance and death.

B. The evidence Miss Anthony seeks to introduce at trial should be admitted because it supports her argument that law enforcement did not investigate a potentially guilty party.

Had law enforcement followed up on the inconsistencies and suspicious coincidences in Mr. Kronk's stories, they would have learned Mr. Kronk could and should have been a suspect in the disappearance and death of Caylee Anthony. Indeed, Miss Anthony has uncovered evidence of Mr. Kronk's possible involvement which is at least equally as strong as the circumstantial evidence that law enforcement has marshaled against her. First, Miss Anthony must be allowed to introduce the statement of Brandon Sparks that Mr. Kronk disclosed his knowledge of the location of Caylee Anthony's remains approximately one month *before* the 'discovery' date of December 11, 2008. Second, this statement opens the door to other evidence Miss Anthony has discovered which supports the inference of Mr. Kronk's involvement in Caylee Anthony's disappearance and death.

1. Mr. Kronk's statement to his son in November of 2008 should be admitted at trial because it raises serious suspicions about his involvement in the disappearance and death of Caylee Anthony.

Miss Anthony has uncovered evidence which indicates that Mr. Kronk's involvement in the discovery of Caylee Anthony's remains is not as he has claimed. The attached statement of Brandon Sparks indicates that Mr. Kronk had contact with the remains before December 11, 2008, the date on which he 'discovered' them in the wooded area just off Suburban Drive.

Brandon Sparks is the son of Mr. Kronk and Crystal Sparks, to whom Mr. Kronk was married from 1982 until 1991. Mr. Sparks is prepared to testify that Mr. Kronk called him the week before Thanksgiving in November, 2008. *See* Statement of Brandon Sparks, October 5, 2008, *hereafter* Exhibit Q; *see also* Transcript of Defense Interview of Brandon Sparks, November 14, 2009, *hereafter* Exhibit R. In that phone call, Mr. Kronk told Mr. Sparks that that he had “found the skull of a little girl.” Exhibit R at 3:5-6. He informed Mr. Sparks that he had picked up a bag “and a skull rolled out.” *Id.* at 4:18-19. He also told his son that he, Kronk, “was going to be on television and that [Sparks] should watch for it.” Exhibit Q. Mr. Sparks reports that he didn’t “pay any mind,” however, because he found Mr. Kronk’s story “far-fetched.” Exhibit R at 5:18-19. Toward the end of the interview, Mr. Sparks confirmed that the phone call took place on “a night in November.” *Id.* at 4:12. The statements of Mr. Sparks are evidence that Mr. Kronk knew the location of the remains of Caylee Anthony before the alleged discovery date of December 11, 2008. Not only did Mr. Kronk tell his son that he had found a skull, he claimed to know that the skull belonged to a “little girl.”

This evidence is material to the issue of Mr. Kronk’s credibility. Though Mr. Kronk had previously called in a tip to Orange County law enforcement three months earlier, that tip purported to describe a “gray,” “vinyl-colored” bag with a “white, skull-shaped” object near by. Since the remains that Mr. Kronk ultimately ‘discovered’ on December 11, 2008 were in a black plastic bag, and since Mr. Kronk’s story as to the location of the skull relative to the bag, while inconsistent, has never purported to describe finding the skull *away* from the bag, it is clear that Mr. Kronk’s previous tip cannot have referred to the remains he ultimately ‘discovered.’ Furthermore, Mr. Kronk took a ‘personal day’ from where he used to work on December 10, 2008, providing him with an opportunity to possibly stage his discovery of Caylee Anthony’s

remains. In conjunction with the inconsistencies between Mr. Kronk's August, 2008 tips and his statements in December, 2008 following his 'discovery' of the remains, the evidence of his prior knowledge of the remains' location raises an inference that Mr. Kronk has knowledge of, or may have been involved in, the placing of the remains of Caylee Anthony in the wooded area off Suburban Drive. The language in Mr. Sparks's statement about watching for Mr. Kronk on television further suggests a motive for, and thus a basis for impeachment of, any testimony Mr. Kronk may give at trial about his alleged discovery of the remains on December 11, 2008.

Miss Anthony must be able to examine Mr. Kronk at trial about the information contained in Brandon Sparks's statement. Although the statement is hearsay, and although it is not a 'confession' of Mr. Kronk's guilt in the charged crime as was the hearsay testimony in *Chambers*, it fulfills the other requirements of *Chambers* as construed by Florida courts. *Curtis*, 876 So.2d at 20. First, Mr. Kronk's statement to his son appears to have been spontaneous. Second, it is both reliable and corroborated by other sources. Brandon Sparks signed his statement that Mr. Kronk evinced knowledge of the location of Caylee Anthony's remains *before* December 11, 2008 is corroborated by the interview of Crystal Sparks, Brandon's mother. *See* Defense Interview of Crystal Sparks, September 14, 2008, *hereafter Exhibit S*, at 29:1-7. Third, Mr. Kronk's statement is against his interest. As an acknowledgement that he was aware of the location of Caylee Anthony's remains before he 'discovered' them on December 11, 2008, Mr. Kronk's statement to his son exposes him to liability for, at a minimum, obstructing an investigation and misleading investigators. Finally, Mr. Kronk is available for trial and in fact is likely to testify for the State.

Because Mr. Kronk's statement to his son in November, 2008 indicates his knowledge of the location of the remains of Caylee Anthony before their discovery by law enforcement, and

because Brandon Sparks's statement as to that statement meets the *Chambers* test as construed by Florida courts, it should be admitted at trial.

2. In light of the information contained in Brandon Sparks's statement, other evidence of Mr. Kronk's possible involvement in the disappearance and death of Caylee Anthony should be admitted at trial as support for the inference of third-party guilt.

Miss Anthony has the right to present evidence of third-party guilt in her defense. See Section I, *supra*. That right embraces the right to present any evidence which could tend to raise a reasonable doubt in the mind of the jury as to her own alleged guilt. "[W]here evidence tends in any way, even indirectly, to establish a reasonable doubt of defendant's guilt, it is error to deny its admission." *Rivera*, 561 So.2d at 539. Under the "reverse *Williams*" rule, such evidence may include evidence of bad acts by the third party so long as the evidence is presented in order to show material facts including, but not limited to, motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Section 904.404(2)(a), Fla. Stat.; *Washington v. State*, 737 So.2d at 1225.

In light of the evidence of Mr. Kronk's knowledge of the location of Caylee Anthony's remains prior to his alleged discovery of them on December 11, 2008, other evidence that Miss Anthony has uncovered should be admitted because it supports the inferences raised by Brandon Sparks's statement. Miss Anthony has discovered, for example, that Mr. Kronk may have a history of behaving inappropriately with young girls. Specifically, Miss Anthony must be able to introduce at trial testimony by Crystal Sparks, Mr. Kronk's ex-wife, that she was suspicious of Mr. Kronk's actions involving his then-three-year-old niece. Ms. Sparks has indicated that she is willing to testify that Mr. Kronk's family had "a lot of concern for Roy being around young girls." Exhibit S at 23:22-23. She is also willing to testify, for example, that "Susan [Mr. Kronk's sister] made sure that Jessica [Mr. Kronk's niece] did not sit on Roy's lap." *Id.* at

24:13-14. She is further willing to testify that Mr. Kronk's sister was suspicious of the "closeness" that Mr. Kronk "tried to have" with his niece. *Id.* at 22:14-16.

In addition, April Hensley, the daughter of Mr. Kronk's former girlfriend Sandy Hensley, is willing to testify that, during her adolescence when Mr. Kronk lived in her house and was in a relationship with her mother, "there were times when I would take a shower and go to my bedroom and change and either be in the bathroom or be in the bedroom. Sometimes he would, you know, walk in while I was putting my clothes on." *See* Defense Interview of April Hensley, September 15, 2009, *hereafter* Exhibit T, at 3:16-20. She is also prepared to testify that Mr. Kronk made inappropriate comments about videotaping her having sex with animals. *Id.* at 3:20-23. This evidence of inappropriate closeness and attention to young girls is clearly relevant to the issue of a motive for a third party to be involved in the disappearance and subsequent death of Caylee Anthony.

Mr. Kronk's knowledge of the location of Caylee Anthony's remains prior to the date of his alleged discovery of them also opens the door to other prior bad acts related to the facts of this case. Jill Kerley, another of Mr. Kronk's ex-wives, is willing to testify that Mr. Kronk used duct tape on at least two occasions to restrain her in the course of his physical abuse of her. *See* Defense Interview of Jill Kerley, September 28, 2009, *hereafter* Exhibit U, at 6:24. Ms. Kerley describes one occasion:

when I was in Maryland, he beat me up in front of his dad and I had to go to the hospital. He would tell me to sit on the couch, if I moved, he would beat me. He duct taped my hands one time . . . and I was sitting in a chair, and he told me that if I moved, that he would beat me, he would know if I moved. And I couldn't – he duct taped my hands so I couldn't call my mom and dad.

Id. at 4:7-14. Ms. Kerley will testify that, on one occasion, Mr. Kronk kidnapped her and held her in a house in Waldorf, Maryland for two weeks. *Id.* at 8:1-12. Ms. Kerley is also willing to

testify that Mr. Kronk liked to brag about his use of duct tape and about the particular kind of heavy-duty duct tape with which he restrained her. *Id.* at 6:15-23. This evidence is corroborated by the statement of Mr. Kronk's former roommate Bradley Wright, who avers that he "saw bruises on Jill [Kerley] that she said were caused by Kronk. Jill also told me that Roy Kronk tied her up with duct tape." *See* Statement of Bradley Wright, November 8, 2009, *hereafter* Exhibit V. Further, according to Crystal Sparks, when Mr. Kronk was arrested for the alleged kidnapping of a former girlfriend, he was found to have duct tape along with handcuffs and a plastic gun. Exhibit S at 26:20-23. In light of Mr. Kronk's apparent knowledge of the location of Caylee Anthony's remains *before* he informed police of it on December 11, 2008, and in light of the fact that duct tape was found on or near the skull, this evidence of Mr. Kronk's previous use of duct tape in restraining and kidnapping situations should be admissible as material to the issue of a possible *modus operandi*.

Finally, Miss Anthony should be able to present evidence that Mr. Kronk has been, for many years, been involved in a fantasy world characterized by violence and the denial of reality. According to Crystal Sparks, for example, Mr. Kronk "believed in black magic, he believed in wizards, he believed in fantasy, he believed in fairy tales, he believed in demons, vampires." *Id.* at 34:16-19. When she divorced Mr. Kronk in 1991, she did so in order "to protect myself, protect my child. I didn't want to be around the abuse, I didn't want to be around the violence, I didn't want to be around the alcohol." *Id.* at 36:16-19. In addition, April Hensley, the daughter of Mr. Kronk's former girlfriend Sandy Hensley, is prepared to testify that Mr. Kronk's addiction to violent video and computer games was such that he often ignored and neglected Sandy during her final illness. Ms. Hensley describes "times my mom would tell me that she would be in the bathtub, taking a bath, and couldn't get out of the bathtub and would be

screaming for – for hours, for 30 minutes to an hour, and that it would take [Mr. Kronk] that long to take his headphones off and realize that she was stuck in the tub.” Exhibit T at 10:17-23. This evidence of Mr. Kronk’s inability to perceive the reality around him while he was engaged in the violent fantasies of these computer games will be corroborated by the testimony of Crystal Sparks and Jill Kerley. Such evidence is material to the issue of Mr. Kronk’s mental state and his ability to distinguish between fantasy and reality, an issue in turn relevant to his credibility on the stand.

Mr. Kronk’s statement to his son in November 2008, as reported both by Brandon Sparks and by Crystal Sparks, indicates that Mr. Kronk knew the location of Caylee Anthony’s remains long before he reported them to law enforcement. This evidence would, at trial, serve to undermine Mr. Kronk’s credibility and cast significant doubts on the State’s theory that Miss Anthony was responsible for the disappearance and death of her daughter. It also opens the door to evidence which could confirm Mr. Kronk as a significant suspect in this case, whose past experiences with young girls, forcible kidnapping, tying up women with duct tape, and violent fantasy worlds went unprobed and unnoticed by an investigation focused solely on the nearest, most convenient, and most media-acceptable target.

C. This court should admit Miss Anthony’s proffered evidence because it is relevant to an issue in this case and because, as third-party guilt evidence, it would raise a reasonable doubt as to Miss Anthony’s alleged guilt.

The United States Supreme Court in *Holmes* specified that its holding guaranteeing criminal defendants the right to present evidence of third-party guilt does not work to forbid judges from excluding evidence that is, for example, “repetitive . . . only marginally relevant or poses an undue risk of harassment, prejudice, [or] confusion of the issues.” *Holmes*, 547 U.S. at 327 (ellipsis and brackets in original; citations and internal quotation marks omitted). *Holmes*

does, however, preclude a trial judge from taking relying upon the strength of the prosecution's case in making its admissibility ruling. *Id.* at 330. It also requires that the evidence of third-party guilt be admitted if it serves a purpose being defeated by an arbitrary state rule or the rigid, mechanistic application of a state rule. *Id.* at 326; *see also Chambers*, 410 U.S. at 302.

Here, were this Court to exclude Miss Anthony's proffered evidence for relevance, it would be rigidly—and mistakenly—applying Florida's rules of evidence to keep out evidence that bears directly on the issue of reasonable doubt as to Miss Anthony's guilt. The baseline test in Florida for admissibility is relevance. Section 90.402, Fla. Stat. ("All relevant evidence is admissible, except as provided by law."); *see also, e.g., Dixie-Bell Oil Co., Inc. v. Gold, App.*, 275 So.2d 19, 21 (Fla. 1973) (test of admissibility is relevancy and test of inadmissibility is lack of relevancy). Given the repeated rulings of Florida courts that evidence tending to establish, even indirectly, a reasonable doubt as to a defendant's guilt is relevant, Miss Anthony's evidence relating to Mr. Kronk cannot be excluded on that ground. *Rivera*, 561 So.2d at 539.

Furthermore, the proffered evidence is relevant to the issue of the thoroughness and goals of the State's investigation. By the time Mr. Kronk 'discovered' the remains of Caylee Anthony in December of 2008, the State had already indicted Miss Anthony—on purely circumstantial evidence—for the murder of her child. The media frenzy surrounding the case was at a fever pitch. *See* Def.'s Amended Motion For a Change of Venue, *filed* September 17, 2009. So intent was the State on tying the disappearance of the child to Miss Anthony that, on the very day when Mr. Kronk informed law enforcement of the location of Caylee Anthony's remains, Orange County law enforcement deliberately arranged for Miss Anthony's reaction to the discovery of her missing child's body to be videotaped. *See* Def.'s Deposition of Lt. Tammy Uncer, May 5, 2009, *hereafter Exhibit W*. Clearly, by December of 2008 the State had little interest in

investigating other suspects; it already had a suspect acceptable to the media and to the mobs of protestors surrounding and attacking the Anthony family home on a near-nightly basis.⁸

This argument that the State ignored Mr. Kronk as a suspect is supported by his own statement that, when he initially informed law enforcement of his previous suspicious 911 calls, he was told to “shut [his] mouth.” It is also supported by Orange County’s treatment of Deputy Sheriff Richard Cain, who had responded to Mr. Kronk’s August 13, 2008 call to 911 and who had not discovered anything suspicious. After the remains of Caylee Anthony were discovered in December of 2008, Orange County promptly investigated D/S Cain, ultimately forcing him to resign.⁹ The haste with which Orange County pursued D/S Cain—apparently for failing to support Mr. Kronk’s story—supports Miss Anthony’s position that law enforcement had little interest in following up on him as a possible suspect.

The evidence Miss Anthony has uncovered—of Mr. Kronk’s interactions with other young girls, his fondness for using duct tape to restrain women, and his immersion in a violent fantasy world to the extent of being unable to cope with reality—is evidence that the State would have found had it followed up on the red flags inherent in Mr. Kronk’s statements alone. Far from being irrelevant, confusing or misleading, as forbidden by the relevance requirement of Florida evidence law, this evidence will illuminate the entire picture for the jury of an investigation that focused on a single suspect, to the exclusion of all others, from the very start.

⁸ See, e.g., “Protest Turns Violent Outside Anthony Home,” WESH-2 Orlando, September 8, 2008, *available at* <http://www.wesh.com/news/17417069/detail.html>; “Casey Calls 911 When Protesters Get Violent Outside House,” WFTV-9 Orlando, September 18, 2008, *available at* <http://www.wftv.com/news/17497948/detail.html>.

⁹ See “Deputy In Caylee Search To Be Fired,” WKMG Local 6, April 10, 2009, *available at* <http://www.clickorlando.com/news/19150673/detail.html>; “Deputy In Caylee Search Resigns,” WKMG Local 6, May 18, 2009, *available at* <http://www.clickorlando.com/news/19496302/detail.html>.

This case is distinguishable from other Florida cases in which courts have held evidence of third-party guilt inadmissible under a *Chambers* analysis. For example, in *Gudinas v. State*, 693 So.2d 953 (Fla. 1997), the Florida Supreme Court declined to allow a defendant to introduce at trial much of his evidence of third-party guilt. In *Gudinas*, the defendant was charged with first-degree murder and sexual battery. *Id.* At trial, he sought to introduce the testimony of the investigating detective about other suspects, and in particular a suspect who had been “infatuated” with the victim. *Id.* at 965. Most of this evidence was excluded at trial as inadmissible hearsay. *Id.* The Florida Supreme Court upheld the exclusions, reasoning that, unlike the defendant in *Chambers*, *Gudinas* had not been denied his Due Process rights. *Id.* *Gudinas* had been able to ask the detective some questions about other suspects. *Id.* Moreover, the exhaustive investigation had ultimately cleared the allegedly “infatuated” suspect. *Id.*

In contrast to the four hundred leads developed in *Gudinas*, Miss Anthony has, from day one, been the only suspect Orange County law enforcement have chosen to investigate, other than attempting to debunk Miss Anthony’s initial statements to law enforcement. Unlike the third party in *Gudinas*, Roy M. Kronk seems to have never been investigated by law enforcement, despite his inconsistent and suspicious statements relating to his ‘discovery’ of Caylee Anthony’s remains. Accordingly, denying Miss Anthony the ability to inquire into Mr. Kronk’s suspicious statements and past would impermissibly impinge on her due process right to present evidence that another party is equally as likely to have committed the crime for which she is being tried. The prosecution’s case in *Gudinas* was not purely circumstantial, as it is here: the police had the offender’s palm and finger prints and other forensic evidence linking the defendant to the crime, in addition to statements of witnesses that *Gudinas* had admitted the murder. *Id.* at 957. Furthermore, in *Gudinas* the thoroughness of the police investigation seems

not to have been at issue, given the hundreds of leads developed and the eyewitness descriptions of the defendant. Here, by contrast, Miss Anthony seems to be the only suspect the police have chosen to investigate, despite the fact that she has not been linked in any way to the crime scene.

The evidence Miss Anthony seeks to introduce at trial of Mr. Kronk's suspicious statements and past are directly relevant to the issue of the thoroughness of the police investigation in this case. Despite the several warning signs of Mr. Kronk's inconsistent statements and stories of incredible coincidences, Orange County law enforcement officers appear to have declined to investigate him as a potential suspect in this case. Had they done, so they would have uncovered the statements and evidence discussed above. The evidence is therefore relevant to any showing Miss Anthony could make at trial that the police single-mindedly and unfairly targeted her during their investigation, to the exclusion of other potential suspects and to the detriment of their investigation. Furthermore, the evidence is also relevant because, if believed by a jury, it would cast significant doubt on Miss Anthony's own alleged guilt.

D. This evidence is relevant for impeachment purposes.

This circumstantial evidence Miss Anthony has uncovered pointing toward Mr. Kronk as a suspect ignored by the police should also be admitted because it has value as impeachment evidence. A defendant's constitutional right to present evidence in her defense extends to evidence which could tend to impeach a witness, and thereby raise a reasonable doubt as to the defendant's guilt. *Washington v. State*, 737 So.2d 1208 (Fla. 1st Dist. Ct. App. 1999). If and when Mr. Kronk testifies at trial, Miss Anthony must be able to impeach his credibility before the jury.

The impeachment value of this evidence is evident from the results of Mr. Kronk's deposition, conducted by the defense on November 19, 2009. At that deposition, Mr. Kronk gave inconsistent and conflicting answers when questioned about, among other things:

- His conversation with his son Brandon Sparks in November of 2008;
- Whether Mr. Kronk told Brandon in November of 2008 that he had already discovered the remains of Caylee Anthony;
- His ex-wife Jill Kerley and whether he had previously stated that she is deceased;
- Whether he claimed to have seen a skull in the wooded area by Suburban Drive in August of 2008;
- Whether the skull Mr. Kronk claimed to have seen was submerged in water;
- Whether the skull Mr. Kronk ultimately 'discovered' in December of 2008 was inside or underneath the black plastic bag;
- Whether the skull 'rolled' out of the bag;
- Whether Mr. Kronk was disciplined for using cocaine during his tenure in the Coast Guard;
- Whether Mr. Kronk forcibly restrained his ex-wife Jill Kerley with duct tape;
- Whether Mr. Kronk's sister would let his niece sit on his lap.

Miss Anthony's ability to impeach Mr. Kronk's credibility with his own inconsistencies and contradictions is neither speculative nor uncertain. The evidence she seeks to introduce at trial is crucial to her ability to undermine Mr. Kronk's credibility before the jury. Because its impeachment value has already been demonstrated by its contrast with Mr. Kronk's answers at his November 19, 2009 deposition, this evidence should be admitted at trial.


Conclusion

Roy M. Kronk should have been a suspect in this case. His inconsistent statements and the frankly incredible coincidence of his being the same person to 'discover' the remains in the precise spot where he had called in a tip four months previously should have raised red flags to the detectives investigating the disappearance and death of Caylee Anthony. Instead, the police ignored Mr. Kronk as a suspect and kept their focus squarely on their chosen villain. In order to vindicate her constitutional right to present evidence of third-party guilt in her defense, therefore, Miss Anthony must be able to present the following evidence at trial:

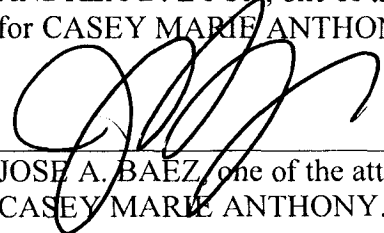
- Mr. Kronk's statement to his son in November of 2008 that he knew where the remains of Caylee Anthony were located and that his son should look for him on television;
- The evidence of Mr. Kronk's past inappropriate interactions with young girls;
- The evidence of Mr. Kronk's prior use of duct tape to restrain and tie up women;
- The evidence of Mr. Kronk's immersion in an imaginary world of fantasy and violence.

WHEREFORE, the Defendant CASEY MARIE ANTHONY respectfully asks this Court to grant her Motion in Limine to Introduce Evidence of Third Party Guilt.

Respectfully submitted,



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for CASEY MARIE ANTHONY.



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

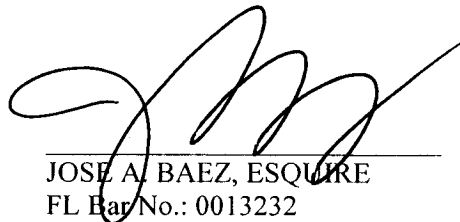
Dated: 11/18/09, 2009

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; via facsimile and /or U.S. Mail on this 18 day of November, 2009.



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