

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
 CRIMINAL DIVISION
 2010 DEC 30 PM
 CLERK OF CIRCUIT COURT
 ORANGE COUNTY, FLORIDA

WITH ATTACHMENTS

MOTION AND MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO EXCLUDE IRRELEVANT EVIDENCE OF STAIN IN TRUNK OF CAR

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through her attorneys JOSE BAEZ, J. CHENEY MASON and ANN FINNELL and respectfully submits this Memorandum of law in support of her motion to exclude any mention of a stain in the Pontiac Sunfire driven by Miss Anthony. 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 July 22, 2008, Detective Yuri Melich testified at a bond hearing for Miss Anthony and referenced a stain in the trunk of the Pontiac Sunfire driven several weeks prior by Miss

Anthony. Mr. Melich testified that law enforcement found a stain in the trunk of the car that came up questionable. This stain was brought up again during the questioning of George Anthony. The speculation and imaginary theory was that the stain was either blood or decompositional fluid of Caylee Marie Anthony.

On August 7th 2008, tests were conducted by the FBI laboratory which concluded that the stain was NOT biological material. (See Serological Examination Exhibit A) On September 30, 2008, Intelligence Analyst Karen Cowan with the FBI submitted a photo to a forensic photo analyst claiming that she possibly saw what "appears to be the outline or silhouette of a child in the fetal position." (Exhibit B) It should be noted that an Intelligence Analyst is not a Special Agent, nor are they forensic scientists, it is an administrative position with no training or expertise on such matters. A photographic technologist supervisor at the FBI laboratory responded by saying "we do not report conclusions about what may or may not have left any marks or impressions in cases like this."..."IT IS TOO SPECULATIVE." (Exhibit C)

Argument

Miss Anthony seeks to exclude all evidence of this imaginary stain, silhouette or fantasy image. While it may not be difficult to imagine that someone would have a stain in the trunk of their car, this creation of imaginary evidence has become common place in the State of Florida vs. Casey Anthony. While pictures and theories of a stigmata or the Virgin Mary on a piece of toast may be good for television, it has no place in a Court of law. This evidence is pure speculation and irrelevant. The basis of this motion is that (1) the stain is irrelevant, and (2) even if evidence 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.

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 (11th 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.

The Stain in the trunk of Miss Anthony’s car is irrelevant and does not prove any material fact in this capital case.

The stain in the trunk Miss Anthony's car is irrelevant and therefore not admissible under The Florida Rules of Evidence. The Florida Rules define relevant evidence as any evidence tending to prove or disprove a material fact. Fla. Stat. § 90.401 (2010). Evidence that does not tend to prove or disprove a material fact is inadmissible. Fla. Stat. § 90.402 (2010). Unless the State of Florida can prove the source of the stain it does not tend to prove or disprove a material fact, has absolutely no bearing on guilt or innocence, and must be excluded as a matter of law. (Exhibit D lab notes explaining other possible sources of the stain)

Any alleged probative value of the stain is substantially outweighed by its prejudicial effect.

The prejudicial nature of the stain would seriously impede Miss Anthony's ability to receive a fair trial were it introduced. Evidence is inadmissible if its prejudicial effect substantially outweighs any probative value is *Fla. Stat. § 90.403 (2009)*. The court must use a balancing test in order to determine where the probative value for the party seeking to introduce the evidence is weighed against the danger of unfair prejudice to the party who objects to the introduction of the evidence. When applying this balancing test, appropriate considerations include "the need for the evidence; the tendency of the evidence to suggest an improper basis to the jury for resolving the matter, e.g., an emotional basis; the chain of inference necessary to establish the material fact; and the effectiveness of a limiting instruction." *McClain v. State*, 525 So. 2d 420 at 422 (quoting I C. Ehrhardt, *Florida Evidence* 403.1 at 100-03 (2d ed. 1984) (footnotes omitted); see also *State v. Gerry*, 855 So. 2d 157 (Fla. Dist. Ct. App. 5th Dist. 2003). Evidence which inflames the jury, or appeals improperly to the jury's emotions, must be excluded when that unfair prejudice substantially outweighs the probative value of the evidence being offered. *McClain* 525 So. 2d at 422 (quoting *Ehrhardt, supra*). *Id.*

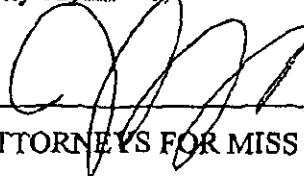
There could be no better example of the prejudicial effect than to see how Judge Strickland accepted this evidence as well as other evidence and issued an unprecedented \$500,000 bond when Miss Anthony was only charged with a third degree felony and two misdemeanors.

Conclusion

Allowing any mention of this type of evidence would result in a serious miscarriage of justice. This type of evidence should not be admitted in any case, much less one that seeks the ultimate penalty of death. This motion should never have seen the light of day, because we should expect professionalism from our law enforcement. We should expect our police to fact check and verify instead of leak and speculate. The defense requests that all State witnesses be precluded mentioning the stain in this case.

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,



ATTORNEYS FOR MISS ANTHONY

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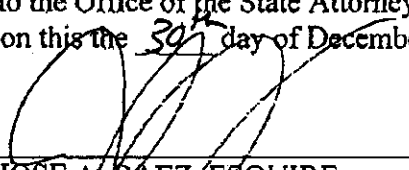
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CERTIFICATE OF SERVICE

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 30th day of December, 2010.



JOSE A. BAEZ, ESQUIRE
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SEROLOGICAL EXAMINATION

Lab No.: 080805005 TO NR		Contributor: Tampa (Orlando RA)		Remarks	
Specimen	Pheno	Hemo	Blood		Other
			Semen	Other	
Reagent Batch #	9		Acid Phos	Sperm Cells	PSO
Known Positive Known Negative	POS NEG				
Q22 Piece of spare tire cover (Back, bottom left corner)					August 7, 2008 vkt One dark gray carpeted section with brown particleboard-type backing "... Tighten Wheel Nuts and Store Equipment", measures ~3 in x 4.5 in, worn. Pungent odor detected. Received in one 4 1/2 bag (outermost packaging) "080805005 ... Q22", packaged one closed metal-type canister "... Q22".
Spot-tested	NEG				Yellow and brown areas throughout.
General swabbed	NEG				Remainder of item.

8967

POS = Positive

NEG = Negative

NFC = Not Further Characterized

QNS = Quantity Not Sufficient

SEROLOGICAL EXAMINATION

Blood		Semen			Other	
Specimen	Pheno	Hemo	Acid Phos	Sperm Cells	p30	Remarks
Reagent Batch #	9					Knows Blood Batch # 2
Known Positive Known Negative	POS NEG					August 7, 2008 vkt
Q23 Spare tire cover (Back, bottom right corner)						Two pieces consisting of one dark gray carpet section with brown particleboard-type backing "SERVICE PARTS IDENTIFICATION 1G2JB1243W7596648" worn. Measures ~25 in x 32 in with a ~8.5 cm diameter hole in the center region and a ~4.5 in x 13 in piece of the section apparently removed. And one black plastic-type panel "CAV 3 ...", worn. Measures ~3 in x 23 in. Pungent odor detected.
Spot-tested	NEG					Received in one 1/8 box (outermost packaging) "080805005 ... Q23"
General swabbed	NEG					Brown and yellow areas throughout. Remainder of item.

Lab No.: 080805005 TO NR

Contributor: Tampa (Orlando RA)

8968

POS = Positive

NEG = Negative

NFC = Not Further Characterized

QNS = Quantity Not Sufficient

SEROLOGICAL EXAMINATION

Specimen	Blood			Semen			Other	Remarks
	Pheno	Hemo	Acid Phos	Sperm Cells	p30			
Reagent Batch #	9						Known Blood Batch # 2	
Known Positive Known Negative	POS NEG							August 7, 2008 vkt
Q24 Left side of trunk liner (back, right corner)								One dark gray carpeted section with multi-colored fabric backing (primarily gray/white/red), measures ~34 in x 48.5 in, worn. Pungent odor detected. Received in one US box "080805005 ... Q24".
Spot-tested	NEG							Brown and yellow areas throughout.
General swabbed	NEG							Remainder of item.

Lab No.: 080805005 TO NR

Contributor: Tampa (Orlando RA)

8969

POS = Positive

NEG = Negative

NFC = Not Further Characterized

QNS = Quantity Not Sufficient

SEROLOGICAL EXAMINATION

Specimen	Blood			Semen		Other	Remarks
	Pheno	Hemo	Acid Phos	Sperm Cells	p30		
Reagent Batch #	9						Known Blood Batch #: 2
Known Positive Known Negative	POS NEG						August 7, 2008 vkt
Q25 Right side of trunk liner (Back, right corner)							One dark gray carpeted section with multi-colored fabric backing (primarily gray/white/red), measures ~34.5 in x 50 in, worn. Pungent odor detected.
Spot-tested	NEG						Received in one (1) box (outermost packaging) "080805005 ... Q25".
General swabbed	NEG						Brown and yellow areas throughout. Remainder of item.

8970

POS = Positive

NEG = Negative

NEC = Not Further Characterized

QNS = Quantity Not Sufficient

Cc: MARTIN, ERIN P. (LD) (FBI)
Subject: RE: 7A-TP-71176: CAYLEE ANTHONY

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

I'd be happy to look at anything else from the vehicle for additional hairs showing characteristics of decomp. The car has been in law enforcement custody this whole time, correct?

From: COWAN, KAREN B. (TP) (FBI)
Sent: Tuesday, September 30, 2008 5:48 PM
To: MARTIN, ERIN P. (LD) (FBI)
Cc: VANARSDALE, MICHAEL (LD) (FBI); LOWE, KAREN K. (LD) (FBI); RICKENBACH, MICHAEL P. (LD) (FBI); THEISEN, CATHERINE E. (LD) (FBI); SEUBERT, HEATHER (LD) (FBI); BRAZIEL, CHARLOTTE F. (TP) (FBI)
Subject: 7A-TP-71176: CAYLEE ANTHONY

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Hi Erin -

I haven't bugged you in at least a week so I figured you might miss me and thought I would write. Hope you are well and can continue offering guidance to the ORA.

We met with the Orange County Sheriff's Office (OCSO) on Friday. I asked a lot of questions about the processing of the vehicle we continue to exploit, and learned some interesting things.

- The baby car seat which was in the vehicle was removed and put into evidence storage. Nothing had been done to it.
- Nothing had been done to the interior, passenger compartment, of the vehicle in question. Nothing.

Perhaps I am a bit overzealous, but when ERT processes a vehicle, we process the WHOLE car. OCSO just processed the trunk. So, I requested the baby car seat be brought out of storage and the interior of the vehicle be processed. Once again, we are not certain of where CASEY ANTHONY did what to CAYLEE, but that car is clearly the focus of the investigation. I would like to send you the car seat and the vacuumings from the vehicle to exploit in the various units of the lab. Okay? Absolutely nothing has been done to the seat and remaining items I will send. OCSO also vacuumed the spare tire well of the trunk and that will be included. Perhaps we can continue the search for additional hairs showing signs of decomposition from that vacuum sweep in particular.

Of note, I also requested the photos that were taken in the processing of the trunk. A very interesting photo exists of the trunk liner, which you have, which highlights the very large stain. If you look closely at this photo, there appears to be the outline or silhouette of a child in the fetal position. You can make out what may be the back, bottom, and legs most clearly. The image is best viewed on a computer screen, rather than a printout, but several of us can see this image and agree there is good chance we are seeing something significant. What can we do with this? Can this be enhanced? Can this be used to further process that liner focusing on certain areas of this stain? Would it be beneficial to send the photo and the liner to the Body Farm for further analysis? Help. I can send you the photo electronically if you would like to query some folks.

Once again, we in the ORA so appreciate the hard work of everyone at the Lab. You guys are terrific and we are indebted. I will be in the office on Wednesday, in and out of meetings. Let's connect when you get a chance to absorb some of this information. Anyone else copied can also weigh in, please!

THANKS!

Karen B. Cowan, Intelligence Analyst
FBI - Tampa Division/Orlando Resident Agency
850 Trafalgar Court, Suite 400
Maitland, FL 32751
407-838-2689 office
407-468-7885 cell
407-838-2694 fax (non-secure)

11/24/08 8407
AKI

MARTIN, ERIN P. (LD) (FBI)

From: VORDER BRUEGGE, RICHARD W. (OTD) (FBI)
Sent: Thursday, October 02, 2008 9:03 AM
To: COWAN, KAREN B. (TP) (FBI)
Cc: MARTIN, ERIN P. (LD) (FBI); ZUEHLKE, RANDY (OTD) (FBI); SMITH, PETER J. (OTD) (FBI)
Subject: RE: 7A-TP-71176: CAYLEE ANTHONY
Importance: High

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Karen,

Please go to the following website to obtain more information about submitting evidence to FAVIAU:
<http://30.18.201.161/faviaw/>

If you submit the photo to us we can attempt to improve the visibility of detail in the image, including any signs of impressions or stains. I would also request (demand?) that you send us ALL of the photos of the trunk, as we are likely to be able to learn a lot more from multiple photographs of the same features, particularly if taken from different angles and different lighting conditions.

Furthermore, we want to have the original photos shot by OCSO - not prints or photocopies. If they were film negatives, we want the film negatives. If they took digital photos, we want the raw files that were saved on the camera, or EXACT, bit-for-bit duplicates of the images that they took. We DO NOT want images that have been emailed through multiple parties. The following web page links to a document on digital image submissions that can provide more information about submitting such photos (look at the right hand side under "Minimum Quality Requirements");
<http://30.18.201.161/FAVIAU/imageanalysis.cfm?page=30>

Finally, I would note that, although we may be able to draw conclusions about whether marks represent impressions or stains, for example, we do not report conclusions about what may or may not have left any marks or impressions in cases like this - it is too speculative. Others can draw their own conclusions about that.

Call me if you need more assistance.
Richard W. Vorder Bruegge
OTD - DES - FAVIAU
Supervisory Photographic Technologist
703-985-1192
(Fax x1695)
(Blackberry: 202-306-1196)

From: MARTIN, ERIN P. (LD) (FBI)
Sent: Wednesday, October 01, 2008 5:13 PM
To: VORDER BRUEGGE, RICHARD W. (OTD) (FBI)
Subject: FW: 7A-TP-71176: CAYLEE ANTHONY

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Hi Richard,

This is a high profile case that the Lab has been working - the Director has asked about it in his morning briefings before. The ERT agent is Karen Cowan and the primary agent is SA Nick Savage. Not sure if there is anything OTD can do w/ this. Please let me know if you have any suggestions. Thanks.
Erin

11/24/08 8405
081202002 AH

7-245 (Rev. 05-03-06)

FBI Laboratory Activity and Communication Log

Laboratory No.: 080730003 TO NRtc.Case ID No.: 7A-TP-71176

8/15/08 HS I conveyed the results for trunk liner and spare tire cover to SA Savage. He stated that there were significant staining observed utilizing ALS. I relayed that staining can be caused by other substances (i.e. detergent, cleaners). I let him know if we have the results from the shovel, today. We will try the spare-tire cover in the same manner as the above as far as swabbing in sections and processing for DNA.

8/18/08 HS I spoke with SA Savage regarding the swabs from shovel. I asked if we could consume them. He said he would look into it and call me back. He said we could go ahead and process the swabs.

8889

AS

EXHIBIT D