

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

STATE OF FLORIDA,
Plaintiff,

CASE NO. 48- 2008-CF-15606

DIVISION: 99

vs.

CASEY MARIE ANTHONY,
Defendant.

_____ /

**ORDER ADDRESSING MOTION FOR RECONSIDERATION OF
CERTAIN PRIOR RULINGS BY DISQUALIFIED JUDGE**

THIS MATTER came before the Court for hearing on June 1, 2010 to address reconsideration of several prior rulings made by the previously assigned Judge, the Honorable Stan Strickland. Based upon review of the Motion for Reconsideration filed on May 6, 2010 and hearing arguments of counsel, the Court makes the below findings:

A. Reconsideration of prior ruling on April 7, 2010 Order Denying Motion to Compel Production of Tape Recorded Statement of Joe Jordan:

Defendant seeks reconsideration of her Motion requesting the State to produce a tape recording. The tape recording was surreptitiously made by witness, Joe Jordan while he was being interviewed on October 10, 2009 by defense investigator Mort Smith in the presence of Mr. Jordan's lawyer, Kelly Sims. Defense counsel claims that there is an issue as to whether or not the remains of the victim in this case were at the site where they were ultimately found in December 2008 at a time when Defendant was in custody and could not have placed the remains at that location. The location was searched by various people, including Joe Jordan, who was associated principally with Texas EquuSearch. The State has not listened to the tape recording claiming that it was taken in violation of section 934.03, Florida Statutes, and therefore has not

produced said tape recording. Defense claims that, while there may technically be a violation, since neither of the aggrieved parties desire prosecution, the Court can order production of the tape recording as an exculpatory statement.

At the hearing on June 1, 2010, defense counsel presented case law for this Motion including the case, *State v. Inciarrano*, 473 So. 2d 1272 (Fla. 1985) which dealt with a surreptitious recording of a robbery and homicide. This case involved a murder victim who had a recording device hidden in his office. The defendant had entered the victim's office not knowing that there was a recording device and then murdered the victim. The recording included a conversation between the victim and Inciarrano regarding the business deal in which the victim no longer wanted a part, the sound of a gun being cocked, five shots being fired by Inciarrano, several groans by the victim, the gushing of blood, and the victim falling from his chair to the floor. Inciarrano moved to suppress the tape recording pursuant to chapter 934, Florida Statutes. The Florida Supreme Court held that there was no expectation of privacy in recordings of conversations made by people during the commission of crimes.

Inciarrano is distinguishable from the case at hand because it dealt with a very particularized and unusual set of facts involving a recording of the crime as it was committed. Thus, *Inciarrano* involved a different fact scenario from the case at hand. Further, the Court in *Atkins v. State of Florida*, 930 So. 2d 678 (4th DCA 2006), found that a conversation surreptitiously recorded of a mere witness was not the type of conversation allowed under the statute. *Atkins* is similar to the case at hand because it involved a recording of a witness's conversation. An attempt was made to use the recording for impeachment purposes. The witness, a doctor, was not a law enforcement officer nor was the recording done at the direction of law enforcement. The Court stressed that the exclusionary rule was statutorily mandated and

expressed the Legislature's desire to suppress evidence obtained in violation of that chapter. The prohibition of the statute was absolute and could not be used for impeachment purposes.

Lastly, the purpose of reconsideration by a successor judge of the original judge's orders after recusal is to remove the taint of prejudice where rulings might be perceived as so tainted and it should not be used merely to obtain a second bite at the apple with respect to prior judicial rulings. See *Rath, M.D. and Health Now, Inc. v. Network Marketing, L.C.*, 944 So. 2d 485 (4th DCA 2006), rehearing denied (July 2006).

In an abundance of caution and pursuant to chapter 934, Florida Statutes, Defendant's Motion to Compel Production of the Tape Recorded Statement of Joe Jordan is **DENIED**. However, if appropriate, this issue may be readdressed at trial.

B. Order of the Court dated October 6, 2009 regarding the Motion for Production of Grand Jury Testimony of George Anthony filed by the State on September 16, 2009:

Defendant seeks reconsideration of her Motion requesting production of the transcript of the testimony of George Anthony from the Grand Jury proceeding on October 14, 2008. Assistant State Attorney Jeffrey Ashton in the State's Motion for Transcription of Grand Jury Testimony filed on September 16, 2009, stated that, based on his recollection, George Anthony's testimony at his deposition was materially inconsistent with his grand jury testimony on some points. Accordingly, Mr. Ashton claimed that it was necessary for the State to examine the grand jury testimony and, if his recollection was confirmed, then move the Court to unseal the testimony and allow the State to provide the testimony to Defendant pursuant to the rules of discovery. Counsel for defense joined in this Motion to be provided with that same testimony. On October 6, 2009, the Court entered its Order granting the Motion pursuant to section 905.27, Florida Statutes. However, the Court did not make provisions for production to the defense, but instead reserved that issue pending a further order of the Court.

At the June 1, 2010 hearing, defense counsel presented the cases, *United States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1953) and *Powell v. Foxman*, 528 So. 2d 91 (Fla. 5th DCA 1988) where the Courts recognized that otherwise privileged matters lose their protection when outweighed by the defendant's constitutional right to cross examine. At the hearing, the State responded that, upon examination of grand jury testimony, the State filed a report informing the defense and the Court that they did not have a basis to request release of the grand jury testimony. The State believes Judge Strickland's Order was appropriate by indicating that grand jury secrecy should remain in effect until further order of the Court. The State stressed that if defense counsel wants the transcript, then it's incumbent upon them to file an appropriate motion stating the legal grounds and request the Court to do an in camera inspection of said transcript. Lastly, the State pointed out that grand jury secrecy remains in effect, thus the State, like defense, cannot use the transcript for any purpose.

The Florida Supreme Court addressed this issue in the case, *Evans v. State*, 808 So. 2d 92 (Fla. 2001), citing a similar case *Brookings v. State*, 495 So. 2d 135 (Fla. 1986) that involved a defendant who claimed that he was entitled to an inspection of the grand jury testimony due to certain inaccuracies and conflicts between two witnesses' depositions and their original affidavit. The Court basically concluded that defendant's claim was not enough to overcome the secrecy dealing with the grand jury which is to be held sacrosanct. Parties seeking disclosure must make a strong showing of a particularized need in order to outweigh the public interests in the secrecy of the grand jury proceeding. Reported inconsistencies as to testimony is not enough. Therefore, applying *Evans*, the motion to reconsider Judge Strickland's Order addressing Defendant's Motion for Production of Grand Jury Testimony of George Anthony is **DENIED**.

C. Defendant's Motion to Compel Tips gathered by Law Enforcement:

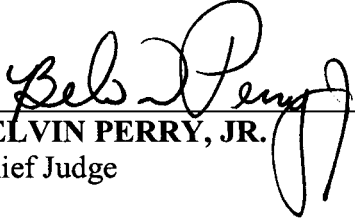
Defendant seeks all tips gathered by law enforcement pursuant to Florida Rule of Criminal Procedure 3.220 and governing case law. Defense counsel estimates that there are over 5,000 tips that have been gathered by the Orange County Sheriff's Office. Judge Strickland's Order dated October 10, 2008 (in a separate case that was nolle prossed) provided that Defendant could obtain the tips via a public records request. The State informed the Court that they have no objection with the tips being provided to defense counsel and they intend to adhere to Judge Strickland's Order. The State claims that the tips have been compiled, copied and have been ready for pick up by defense counsel. The State estimated the cost for compilation and copying of said tips is \$1,500. Defense counsel predicted the cost to be above \$1,500.

Accordingly, this Court **GRANTS** Defendant's motion to provide that defense counsel shall not be required to pay for the compilation and copying costs up front, but instead they may submit the invoice from the Orange County Sheriff's Office to Justice Administrative Commission (JAC) for direct payment to the Sheriff's Office in accordance with JAC's policies and procedures. Further, this Court authorizes a **cap of \$2,000** for the payment of these costs.

D. Defendant's Motion to Modify the Court's Order on Defendant's Application for Subpoena Duces Tecum for Documents in the Possession of Texas Equusearch:

Per Defendant's Second Amended Notice of Hearing filed May 27, 2010, this Motion was not addressed at the June 1, 2010 hearing, but will be deferred to a later date.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida this 8th day of June, 2010. Nunc pro tunc to June 1, 2010.




BELVIN PERRY, JR.
Chief Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order addressing Pending Death Penalty Motions has been furnished by U.S. Mail or hand delivery this 8th day of June, 2010 to:

- Linda Drane Burdick, Jeffrey L. Ashton, and Frank George, Assistant State Attorneys, Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801
- Jose Baez, Esquire, The Baez Law Firm, 522 Simpson Road, Kissimmee, Florida 34744
- J. Cheney Mason, Esquire, J. Cheney Mason, P.A., 390 North Orange Avenue, Suite 2100, Orlando, Florida 32801
- Andrea Lyon, Esquire, Director, Center for Justice in Capital Cases, DePaul University College of Law, 1 East Jackson Boulevard, Chicago, Illinois 60604
- Linda Kenney Baden, Esquire, 15 West 53rd Street, Suite 18B, New York, New York 10019



Judicial Assistant