

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

STATE OF FLORIDA,

CASE NO.: 2008-CF-15606-O

Plaintiff,

vs.

CASEY MARIE ANTHONY,

Defendant.

**ORDER DENYING DEFENDANT'S MOTION TO
PRECLUDE THE DEATH PENALTY PROCEDURES**

Being duly advised in the premises, the defendant's Motion to Preclude the Death Penalty Procedures is denied. The defendant argued that the judiciary has the authority to restrict a prosecutor's discretion in seeking the death penalty when the prosecutor has impermissible motives such as bad faith or the desire to prevent the exercise of a defendant's constitutional rights. *State v. Donner*, 500 So.2d 532, 533 (Fla. 1987); also *State v. Bloom*, 497 So.2d 2 (Fla. 1986). The parties disagree as to the breadth of the application of this principle. The state's position is that a circuit judge has no authority to interfere with the prosecutor's decision in a proceeding where it seeks the death penalty. The defendant contended that the judiciary does have the authority to restrict the prosecutor's discretion under certain circumstances. While this Court agrees with the defendant's contention, those circumstances must be, and are rare. The Court would agree that in certain limited circumstances the judiciary can intervene and potentially curb prosecutorial discretion. The defendant's position herein is that the prosecution is seeking the death penalty based upon impermissible motives. In support of her position the

defendant cites a litany of facts in the instant matter which might lead a jury to decide that, if convicted, the defendant should not be subject to the death penalty. Assuming those facts to be true, the defendant argued that the state's motives for seeking death are impermissible, and constitute bad faith. Obviously, the prosecution disagreed.

While the Court found much of defense counsel's argument regarding death penalty law and procedures to be compelling, her argument as to the state's bad faith and impermissible motives cannot withstand scrutiny. While the quantum of evidence sufficient to seek the death penalty will virtually always be an issue, that matter is generally best left for the jury. The prosecution's brief recitation of facts supporting its decision to seek the death penalty in this matter was also compelling, and therefore sufficient. Therefore, no impermissible motives can be attributed to the state, and its decision to seek the death penalty will not be disturbed by this Court.

The defendant's Motion to Preclude the Death Penalty Procedures is denied.

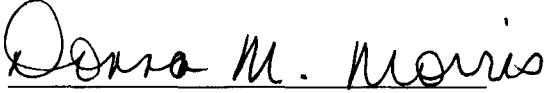
DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, this 18th day of December, 2009.



STAN STRICKLAND
Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order has been furnished via U.S. Mail or hand delivery to Linda Drane Burdick, Esquire, Office of the State Attorney, 415 North Orange Avenue, Orlando, FL 32801; to Jose Baez, Esquire, 522 Simpson Road, Kissimmee, FL 34744; and to Andrea Lyon, Esquire, Director, Center for Justice in Capital Cases, DePaul University College of Law, 1 East Jackson Boulevard, Chicago, IL 60604, this 18th day of December, 2009.


Donna M. Morris
Judicial Assistant