

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

CASE NUMBER 2008-CF-15606

STATE OF FLORIDA,  
Plaintiff,

v.

CASEY MARIE ANTHONY,  
Defendant.

ORDER DENYING MOTION IN LIMINE  
REGARDING ANY TESTIMONY THAT THE  
DEFENDANT HAS A HISTORY OF LYING OR STEALING

This matter came before the Court for consideration of this defense Motion, which was filed December 21, 2010 and the State's Response, filed January 18, 2011.

The defense alleges such allegations are not relevant or material to any issue in dispute in this case and argues any probative value would be outweighed by the prejudicial impact of such improper character evidence, in violation of Florida Statute section 90.403.

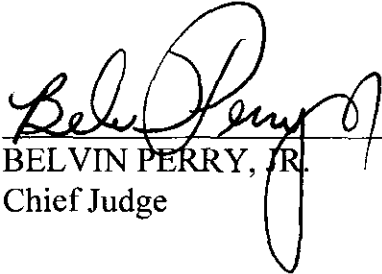
On January 3, 2011, the state asserted there is a basis, independent of character evidence, to admit this testimony, although she conceded it would be limited. In the written Response, the state argues that "collateral crimes or other wrongs or acts that pre-date Caylee's disappearance" may be admissible if the Defendant opens the door by offering a trait of her good character or inaccurately testifies to material facts. The state also argues that getting caught lying and stealing by her relatives may have provided a

motive for the Defendant “to rid herself of the financial and social burden of raising a young child.” Finally, the state argues many of the lies are inextricably intertwined with the evidence of the Defendant’s activities between June 16, 2008 to July 15, 2008.

Evidence of a defendant’s collateral acts is not admissible to show bad character or a propensity to commit the crime charged. However, the state may be able to introduce evidence of collateral acts - such as lying or stealing - which are inextricably intertwined with the crime charged if necessary to adequately describe the deed, provide an intelligent account of the crime charged, establish the entire context out of which the charged crime arose, or adequately describe the events leading up to the charged crime. *Dorsett v. State*, 944 So. 2d 1207, 1213 (Fla. 3d DCA 2006). All relevant evidence is admissible. §90.402, Fla. Stat. (2008).

It is hereby ORDERED AND ADJUDGED that the Motion in Limine Regarding Any Testimony That the Defendant Has a History of Lying or Stealing is DENIED.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida this 10<sup>th</sup> day of February 2011.

  
BELVIN PERRY, JR.  
Chief Judge

Certificate of Service

I certify that a copy of the foregoing Order has been provided this 10<sup>th</sup> day of February 2011 to the following:

- Linda Drane Burdick, Jeffrey L. Ashton, and Frank George, Assistant State Attorneys, 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

  
Judicial Assistant

*Zack v. State*, 911 So. 2d 1190, 1205 (Fla. 2005)

A. “Liar”

It is “unquestionably improper” for a prosecutor to state that the defendant has lied. *Washington v. State*, 687 So. 2d 279, 280 (Fla. 2d DCA 1997) (quoting *O’Callaghan v. State*, 429 So. 2d 691, 696 (Fla. 1983)). This is especially true in an instance where the defendant takes the stand in his own defense because the prosecutor’s reference to the defendant as a liar encroaches on the jury’s job by improperly weighing in with his or her own opinion of the credibility of the witnesses. *See, e.g., Gomez v. State*, 751 So. 2d 630, 632 (Fla. 3d DCA 1999). However, courts have held that where such commentary is supported by the evidence, there will be no reversal. *See, e.g., Lugo v. State*, 845 So. 2d 74, 107-08 (Fla. 2003) (holding that where the evidence substantially proved the defendant’s deceitful actions, the prosecutor’s remarks calling into question the defendant’s veracity were nothing more than appropriate comments on the evidence). In *Craig v. State*, 510 So. 2d 857, 865 (Fla. 1987), this Court stated that when the prosecutor called the defendant a “liar” it was “somewhat intemperate.” However, this Court also stated that when it can be understood that the name “liar” is made in reference to that person’s testimony, then the prosecutor is merely submitting to the jury a conclusion he has drawn from the evidence. *Id.* It is only when, viewed in the totality of the case, the prosecutor’s comments drift far afield from the evidence adduced at trial that they may constitute fundamental error. *Lugo*, 845 So. 2d at 101.

*Davis v. State*, 937 so. 2d 273, (Fla. 4th DCA 2006)

It is not improper for a prosecutor to raise the credibility of witnesses and allow the jury to decide the ultimate issue. *Craig v. State*, 510 So. 2d 857, 865 (Fla. 1987) (“When counsel refers to a witness or a defendant as being a ‘liar,’ and it is understood from the context that the charge is made with reference to testimony given by the person thus characterized, the prosecutor is merely submitting to the jury a conclusion that he is arguing can be drawn from the evidence.”) Here, the evidence was in conflict, either the defendant rode the sports bike or he did not. Thus, the evidence gave rise to the prosecutor’s questions and comments. We find no error here.