

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 TESTIMONY OF NEIGHBOR
BRIAN BURNER IN REFERENCE TO SHOVEL

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.

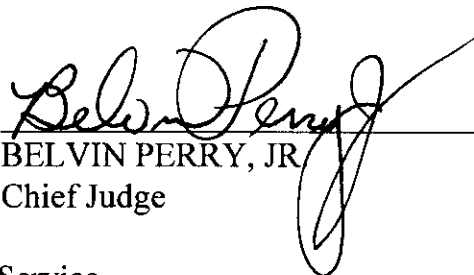
Mr. Burner told Detective Wells that during the week of June 16, 2008, the Defendant asked to borrow a shovel so she could dig up a bamboo root. He loaned her the shovel and she returned it the same day. He noticed nothing unusual about her demeanor. The defense alleges the shovel has not been linked to this case by witness or forensic evidence and argues it is irrelevant and immaterial.

The state argues in response that Mr. Burner reported seeing the Defendant backing into the garage on June 17, 2008; she pulled into the garage and asked him for the shovel on June 18 or 19, 2008; and finally, he again saw her backing into the garage on June 20, 2008. The state contends the Defendant's actions are relevant to rebut her statements to law enforcement that she was conducting her own search for her daughter.

There is nothing inherently prejudicial about borrowing a shovel, nor is a shovel “gruesome” evidence that would tend to inflame the passions of the jury. *State v. Engeman*, 420 P.2d 389, 390 (Or. 1966). Thus, the potentially prejudicial effect of Mr. Burner’s testimony does not outweigh its potentially probative value. The weight of this evidence is a matter for the jury. *State v. Holland*, 283 A.2d 897, 900 (NJ 1971).

It is hereby ORDERED AND ADJUDGED that the Motion in Limine Regarding Testimony of Neighbor Brian Burner in Reference to Shovel is DENIED.

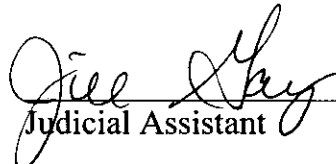
DONE AND ORDERED in chambers at Orlando, Orange County, Florida this 10th day of February 2011.


BELVIN PERRY, JR.
Chief Judge

Certificate of Service

I certify that a copy of the foregoing Order has been provided this 10th 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