

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 TO
COMPEL FORENSIC DISCOVERY

This matter came to be heard on June 7, 2010 on the defense Motion to Compel Forensic Discovery, filed May 20, 2010, and the state's Response, filed May 24, 2010.

The defense seeks an order compelling the state to provide certain forensic discovery and attaches Chart One listing material requested from Oak Ridge Laboratories and Chart Two, listing all other discovery materials. The defense specifically alleges Oak Ridge has refused to supply information concerning the 424 compounds associated with its experimental research, although it relies on the compounds in journal articles which are considered backup to have the research validated for the first time ever in the United States, for use in this case.

The state questions whether the rules of discovery cover this issue and contends there has been no motion establishing materiality pursuant to Florida Rule of Criminal Procedure 3.220(f). Furthermore, the state contends the documents request in Chart One are not in its possession and, with respect to Chart Two, the state should not be compelled to provide additional discovery the defense can obtain on its own.

Chart 1: Rule 3.220(b) provides, inter alia, that the state is required to disclose to the defense whatever material it intends to use at trial. However, if the material is not within the state's actual or constructive possession, the state cannot be required to produce it. *Barron v. State*, 990 So. 2d 1098, 1101-1102 (Fla. 3d DCA 2007); *Moe v. State*, 944 So. 2d 1096, 1097 (Fla. 5th DCA 2006). Therefore, the defense must try to obtain it through other means.

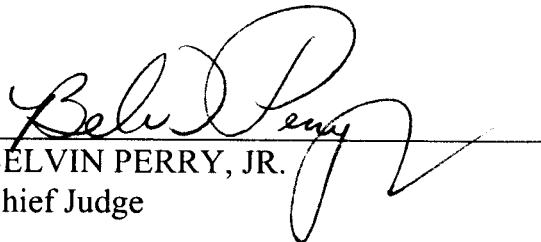
The Court accepts the state's representation that it does not have the Oak Ridge Laboratory materials sought by the defense, and furthermore, finds the instant Motion to be premature. The defense is directed to proceed with depositions of witnesses from the Oak Ridge Laboratory and file such further motions as circumstances require

Chart 2: The defense has agreed to narrow its request.

It is hereby ORDERED AND ADJUDGED that the Motion to Compel Forensic Discovery is hereby DENIED without prejudice to be re-filed upon a showing of materiality.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida this

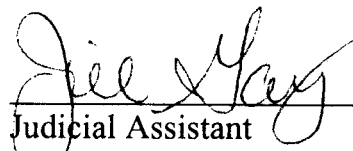
7th day of June 2010.


BELVIN PERRY, JR.
Chief Judge

Certificate of Service

I certify that a copy of the foregoing Order Denying Motion to Compel Forensic Discovery has been provided this 24th day of June 2010 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
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