

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

STATE OF FLORIDA
Plaintiff,

vs.

CASE NO: 48-2008-CF-013331-O

DIVISION: 16

CASEY M. ANTHONY
Defendant.

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS COUNTS 1, 2,
4,5,7,8,10,11,13 FOR VIOLATION OF DOUBLE JEOPARDY CLAUSE**

COMES NOW the State of Florida, in response to Defendant's Motion to Dismiss Counts 1,2,4,5,7,8,10,11,and 13, and pursuant to Florida Statute 775.021, requests this court deny said Defense motion. In support, the State responds as follows:

1. The Defendant is charged in a thirteen count Information filed on September 22, 2008.
2. The charges consist of one count of Grand Theft, (Pursuant to Scheme or Course of Conduct), four counts of Fraudulent Use of Personal Identification Information, four counts of Forgery, and four counts of Uttering a Forged Check.
3. It is well settled that a defendant may be charged and tried for both an offense and a necessarily lesser included offense even though the defendant cannot ultimately be adjudicated and sentenced for both offenses. Claps v. Florida, 971 So2d 131 (2nd DCA 2007). As such, the defendant's argument is premature and improper. Double jeopardy concerns require that the trial judge filter out multiple punishments at the end of the trial, not the beginning, and double jeopardy protections cannot be extended to an earlier stage of the proceedings. See Florida v. Sholl, 2009 WL 3047390 (Fla.App.1 Dist. September 25, 2009).

4. Assuming the Court denies the Defense motion for the reasons stated above, the court should also deny a future motion to dismiss these counts after plea or trial. Florida Statute 775.021 provides what amounts to a two-pronged test to determine if the offenses are separate. First, each offense must require proof of an element that the other does not. Second, even if the charges contain different elements, none of the exceptions contained in section 775.021 (4)(b) can apply. The three exceptions are as follows: 1) The Offenses require identical elements of proof, 2) Offenses which are degrees of the same offense as provided by statute; or 3) Offenses which are lesser offenses the statutory elements of which are subsumed by the greater offense.

5. The thirteen count Information contains four distinct crimes: Grand Theft (pursuant to Scheme or Course of Conduct), Fraudulent Use of Personal Identification Information, Forgery of a Check, and Uttering a Forged Check. All of these crimes contain independent elements of proof. None are degrees of the same offense. None of the charges are lesser included offenses of any other charged crime. (See State Exhibit A, the Standard Jury Instructions for the crimes charged).

WHEREFORE, for the foregoing reasons, the State of Florida respectfully requests that this Honorable Court deny the Defendant's Motion to Dismiss Counts 1, 2, 4, 5, 7, 8, 10, 11, and 13.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Jose A. Baez, 522 Simpson Road, Kissimmee, FL 34744 on this 4 day of ~~November~~
December, 2009.

LAWSON LAMAR
State Attorney



Frank George
Assistant State Attorney
Florida Bar # 0874760
PO Box 1673, 415 N Orange Ave
Suite 400
Orlando, FL 32802-1673
(407)836-2416

EXHIBIT A

14.1 THEFT
§ 812.014, Fla. Stat.

To prove the crime of Theft, the State must prove the following two elements beyond a reasonable doubt:

1. Casey Anthony knowingly and unlawfully obtained or used the United States Money Current of Amy Huizenga.
2. She did so with intent to, either temporarily or permanently,
 - a. deprive Amy Huizenga of her right to the property or any benefit from it.
 - or
 - b. appropriate the property of Amy Huizenga to her own use or to the use of any person not entitled to it.

If you find the defendant guilty of theft, you must also determine if the State has proved beyond a reasonable doubt whether:

- a. the value of the property taken was \$300 or more but less than \$5,000.

§ 812.012(3), Fla. Stat.

“Obtains or uses” means any manner of

- a. Taking or exercising control over property.
- b. Making any unauthorized use, disposition, or transfer of property.
- c. Obtaining property by fraud, willful misrepresentation of a future act, or false promise.
- d. Conduct previously known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, deception; or other conduct similar in nature.

“Endeavor” means to attempt or try.

§ 812.012(4), Fla. Stat.

“Property” means anything of value, and includes:

tangible or intangible personal property

§ 812.012(10), Fla. Stat.

“Value” means the market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

If the exact value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine the minimum value, you must find the value is less than \$100.

In the case of a written instrument that does not have a readily ascertainable market value, such as a check, draft, or promissory note, the value is the amount due or collectible.

Amounts of value of separate properties involved in thefts committed pursuant to one scheme or course of conduct, whether the thefts are from the same person or several persons, may be added together to determine the total value of the theft.

**20.13 FRAUDULENT USE OR POSSESSION OF PERSONAL
IDENTIFICATION INFORMATION**
§ 817.568(2), Fla. Stat.

To prove the crime of Fraudulent Use of Personal Identification Information, the State must prove the following two elements beyond a reasonable doubt:

1. Casey Anthony willfully and without authorization fraudulently used personal identification information concerning Amy Huizenga.
2. She did so without first obtaining the consent of Amy Huizenga.

“Willfully” means intentionally and purposely.

“Fraudulently” means purposely or intentionally suppressing the truth or perpetrating a deception or both.

“Authorization” means empowerment, permission, or competence to act.

“Personal identification information” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state or United States issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer’s identification number, Medicaid or food stamp account number, bank account number, credit or debit card number or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized use of such card, unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, unique electronic identification number, address, or routing code, medical record, telecommunication identifying information or access device, or other number or information that can be used to access a person’s financial resources.

17.2 FORGERY — UTTERING
§ 831.02, Fla.Stat.

To prove the crime of Uttering a Forgery, the State must prove the following three elements beyond a reasonable doubt:

1. Casey Anthony passed or offered to pass as true a check.
2. Casey Anthony knew the check to be false, altered, forged, or counterfeited.
3. Casey Anthony intended to injure or defraud some person or firm.

17.1 FORGERY
§ 831.01, Fla.Stat.

To prove the crime of Forgery, the State must prove the following two elements beyond a reasonable doubt:

1. Casey Anthony falsely made, altered, forged, or counterfeited a check.
2. Casey Anthony intended to injure or defraud some person or firm.

It is not necessary that the defendant intended to use the check herself or to profit herself from its use. It is sufficient if she intended that some person would use it to injure or defraud.