

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

STATE OF FLORIDA,

Plaintiff,

CASE NUMBER: 2008-CF-15606-O

vs.

DIVISION 16 (CHIEF JUDGE
BELVIN PERRY, JR.)

CASEY MARIE ANTHONY,

Defendant.

STATE OF FLORIDA'S RESPONSE TO DEFENDANT'S MOTIONS IN LIMINE

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and files this response to the following defense motions in lieu of hearing: (1) Motion in Limine to Preclude Testimony or Alleged Statements of witness Anthony Lazaro Connected to Inquiries, Conversations, or Interrogation by Corporal William Edwards Related to Sexual Relations with the Defendant; (2) Motion in Limine to Preclude Testimony Connected to Questions and Responses of Witness Anthony Rosciano in the Interview by Corporal Yuri Melich and Sergeant John Allen Related to Sexual Relations with the Defendant; (3) Motion in Limine Regarding any Testimony that the Defendant has a History of Lying and/or Stealing; (4) Motion in Limine Regarding Testimony of Neighbor Brian Burner in Reference to the Shovel; (5) Defense Motion to Exclude Irrelevant Evidence of Tattoo; (6) Motion in Limine to Prohibit the Use, in any fashion, of Internet MySpace References Attributable to the Defendant as "Diary of Days"; (7) Motion in Limine to Prohibit the Use, in any fashion, of a Posting on the Internet MySpace References Attributable to Cindy Anthony, the Mother of the Defendant.

SCANNED

LEGAL ANALYSIS

Because Miss Anthony is facing the death penalty if convicted of the crime of Murder in the First Degree, a significant number of the defendant's motions urge this Court to make rulings on evidentiary motions "in light of these stringent Due Process Standards established by the Supreme Court." Indeed the Florida Supreme Court has reiterated a constant awareness that their primary responsibility in capital litigation is to follow the law in each case and to ensure that the death penalty is fairly administered in accordance with the rule of law and both the United States and Florida Constitutions. "While all judicial proceedings require fair and deliberate consideration by a trial judge, this is particularly important in a capital case because, as we have said, death is different." Crump v. State, 654 So.2d 545, 547 (Fla.1995); accord Walker v. State, 707 So.2d 300, 319 (Fla.1997). Despite this admonition to the trial courts, there is no case, that the undersigned is aware of, that suggests that the Rules of Evidence in the guilt phase of a First Degree Murder trial be abrogated or applied any differently because of the sanction the defendant is facing. Relevant evidence is relevant evidence despite the crime or the penalty. Hearsay is hearsay despite the crime or the penalty. Improper character evidence is improper character evidence despite the crime or the penalty.

DEFINITION OF RELEVANT EVIDENCE

The defendant suggests to the court that the definition of relevant evidence is evidence that tends to "prove or disprove any issue" in the case or "prove or disprove any element of the offense for which she is charged." Although this distinction may be dismissed as semantics, the definition of relevant evidence is not as restrictive as argued by the defense. Quite simply,

relevant evidence is evidence tending to prove or disprove a material fact. *Florida Statute §90.401* The question this court must answer in the face of a relevancy objection is whether or not the proffered evidence has a legitimate tendency to prove a given proposition material to the case. 1 *McCormick on Evidence*, §185 (6th edition) states that relevant evidence “has a tendency to establish a fact in controversy or to render a proposition in issue more or less probable. To be probable, evidence must be viewed in light of logic, experience and accepted assumptions concerning human behavior.”

These principals apply with equal force in a circumstantial evidence case. Each item of evidence is a link in the chain of proof. Each link may not conclusively prove the proposition for which it is offered, but relevant evidence in the chain need only tend to make the existence of any fact of consequence more or less probable than it would be without the evidence. As stated by Judge Learned Hand in *United States v. Pugliese*, 153 F.2d 497, 500 (2d Cir. 1945), “most convictions result from the cumulation of bits of proof which, taken singly, would not be enough in the mind of a fair minded person. All that is necessary, and all that is possible, is that each bit may have enough rational connection with the issue to be considered a factor contributing to an answer.”

PREJUDICIAL VS. PROBATIVE ANALYSIS UNDER 90.403

Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. *Florida Statutes*, §90.403 However, in order for relevant, probative evidence to be deemed unfairly prejudicial, it must go beyond the inherent prejudice associated with any relevant evidence. Exclusion under the F.S. §90.403 is directed at evidence which

inflames the jury or appeals improperly to the jurors' emotions. State v. Gad, 27 So.3d 768 (Fla. 2010). Relevant evidence is inherently prejudicial; however, it is only unfair prejudice, substantially outweighing probative value which permits exclusion of relevant matters. State v. Blackwell, 787 So.2d 963 (Fla 1st DCA 2001). A trial court has broad discretion in determining the admissibility of evidence and in weighing its probative value against any prejudicial effect. The Court's rulings will not be disturbed absent an abuse of discretion. Collier v. State, 681 So.2d 856, 858 (Fla. 5th DCA 1996). Pertinent considerations include the need for the evidence, the tendency of the evidence to suggest an emotional basis for the verdict, the chain of inference from the evidence necessary to establish the material fact, and the effectiveness of a limiting instruction. Taylor v. State, 855 So.2d 1 (Fla.2003) quoting State v. McClain, 525 So.2d 420 (Fla. 1988).

ARGUMENT REGARDING MOTION IN LIMINE TO PRECLUDE TESTIMONY OR ALLEGED STATEMENTS OF WITNESS ANTHONY LAZARO CONNECTED TO INQUIRIES, CONVERSATIONS OR INTERROGATION BY CORPORAL WILLIAMS EDWARDS RELATED TO SEXUAL RELATIONS WITH THE DEFENDANT
and MOTION IN LIMINE TO PRECLUDE TESTIMONY CONNECTED TO QUESTIONS AND RESPONSES OF WITNESS ANTHONY ROSCIANO IN THE INTERVIEW BY CORPORAL YURI MELICH AND SERGEANT JOHN ALLEN RELATED TO SEXUAL RELATIONS WITH THE DEFENDANT

Evidence gathered to date indicates that Casey Anthony's relationship with Anthony Rusciano predated the disappearance of Caylee Anthony on June 16, 2008 and the State of Florida would agree that the details of their sexual relationship are irrelevant to proving or disproving a material fact in the case. However, defendant Anthony's relationship with Anthony Lazzaro began in late May, 2008 and continued until her arrest on July 16, 2008. Typically, evidence of past sexual conduct is directed to evidence of the sexual conduct of an alleged victim and "rape shield" laws have been enacted by almost every state, including Florida, to prevent

defense counsel from eliciting evidence of a victim's promiscuity as part of a general credibility attack. Thus, evidence of past sexual conduct introduced to challenge the general credibility of a witness is collateral in nature and may be excluded as too prejudicial. As stated in the preliminary response to this motion, the State of Florida agrees that the *details* of the sexual relationship between Mr. Lazzaro and Miss Anthony are irrelevant to proving or disproving a material fact in the case. Nevertheless, the existence of an intimate relationship between the two during the time frame when Caylee Anthony was last seen and when she was reported missing by her grandmother is highly relevant. Miss Anthony never mentioned to Mr. Lazzaro that any particular fate had befallen Caylee Anthony—except that she was being cared for by her grandmother or a nanny--despite the fact that she spent nearly every day of the 31 days with him, excepting when Mr. Lazzaro had traveled to New York. In fact, upon learning of the child's "kidnapping", one of the first text messages from Mr. Lazzaro to Miss Anthony expressed incredulity that she did not confide these "facts" in him. Does this proffered evidence—that Casey Anthony and Anthony Lazzaro engaged in an intimate relationship yet she told him nothing of her daughter's disappearance--have a legitimate tendency to prove that the child was not kidnapped? Casey Anthony told the police that she was conducting her own investigation into her daughter's disappearance. Does the proffered evidence that Casey Anthony was playing "house" with Anthony Lazzaro after her daughter was "missing" tend to disprove that she was conducting her own investigation? The answer, of course, is an unequivocal "yes."

There is nothing prejudicial in introducing evidence that the defendant was having sex with her boyfriend. The level of intimacy implied by that relationship would raise in the juror's minds an expectation of trust between them, making her withholding of the information about

the kidnapping all the more implausible. The probative value of the evidence is not outweighed by unfair prejudice.

**ARGUMENT REGARDING MOTION IN LIMINE REGARDING ANY TESTIMONY
THAT THE DEFENDANT HAS A HISTORY OF LYING AND/OR STEALING**

Section 90.404 of the Florida Statutes prohibits the state's use of evidence of the defendant's prior bad acts to show bad character in its case-in-chief unless such evidence qualifies as "similar fact" evidence. In this way, the statute protects the defendant against the possibility that the fact finder might convict the defendant on the charged crime because of prejudice deriving from knowledge of prior bad conduct. However, when a defendant places a character trait into evidence, the state may pursue cross-examination regarding that trait. *Ivey v. State*, 586 So.2d 1230 (Fla. 1st DCA 1991). In other words, if a defendant places a character trait into evidence, he cannot later complain about rebuttal testimony concerning conduct inconsistent with that trait. Even if the prior crime evidence is not relevant under section 90.404(2)(a), a testifying defendant may nonetheless open the door to the prior crime evidence by (1) offering a trait of the defendant's good character, *see* § 90.404(1)(a) (character of accused), or (2) inaccurately testifying to material facts, *see* § 90.404(1)(c) (character of witness), § 90.608(5) (contradiction on relevant facts). *Robertson v. State*, 829 So.2d 901 (Fla. 2002).

The defendant's motion asserts "based upon the discovery materials provided by the State, the Defendant's father and other relatives made allegations to investigators that the Defendant had a history of lying and stealing." From this vague statement, the State of Florida is unable to fully respond to the defendant's motion. Collateral crimes or other wrongs or acts that predate Caylee's disappearance may fall within the parameters set out above. Alternatively,

getting caught lying and stealing by her relatives may have provided motivation to the defendant to rid herself of the financial and social burden of raising a young child.

As previously argued, many acts of lying and, to a lesser extent, stealing are inextricably intertwined with the evidence of Miss Anthony's activities during the time frame listed in the indictment—June 16, 2008 to July 15, 2008. To exclude other wrongs or acts occurring during the relevant time frame would miss the fundamental connection between the crime, the concealment of the crime and the flight after the crime. Although not “flight” in the traditional sense, it is apparent from the evidence that Miss Anthony was doing everything in her power to flee—to the extent possible—from her family, to include lying to them as to her whereabouts and stealing from her friend to avoid having to rely on her family for financial support. Nevertheless, Cindy Anthony pursued the truth about the welfare of her “little angel” with the dogged determination of a police detective. Casey Anthony's efforts to thwart her mother's investigation are just as relevant to consciousness of guilt as her later attempt to thwart the investigation by law enforcement. When suspected persons in any manner attempt “to escape or evade a threatened prosecution by flight, concealment, resistance to lawful arrest, or other indications after the fact of a desire to evade prosecution, such fact is admissible, being relevant to the consciousness of guilt which may be inferred from such circumstances.” Straight v. State, 397 So.2d 903, 908 (Fla.) (citations omitted), cert denied, Straight v. Florida, 454 U.S. 1022, 102 S.Ct. 556, 70 L.Ed.2d 418 (1981); State v. Young, 217 So.2d 567 (Fla.1968), cert. denied, 396 U.S. 853, 90 S.Ct. 112, 24 L.Ed.2d 101 (1969); Daniels v. State, 108 So.2d 755 (Fla.1959); Blackwell v. State, 79 Fla. 709, 86 So. 224 (1920).

**ARGUMENT REGARDING MOTION IN LIMINE REGARDING TESTIMONY OF
NEIGHBOR BRIAN BURNER IN REFERENCE TO THE SHOVEL**

The Defendant, through her counsel has filed a Motion in Limine seeking to exclude evidence of the Defendant borrowing a shovel from her next door neighbor, Brian Burner.

During the relevant time period between June 15, 2008 and July 16, 2008, Mr. Brian Burner lived next door to the Defendant. According to Mr. Burner, his contact with the Anthony family, and the Defendant in particular was sporadic. Mr. Burner told police, "...a lot of times I would just see them in crossing you know they're pulling or I'm pulling out and ...or I'm outside and is just a hey how you doing?" (Interview with Detective Wells, transcript P. 9; 20-22, Attached as Exhibit A). Mr. Burner told police that during the week of June 16, 2008, he saw the Defendant on three different dates. Mr. Burner saw the Defendant back into the garage of the Anthony home on June 17, 2008 (July 30, 2008 interview with Detective Edwards transcript, P. 5-lines11-14, Attached as Exhibit B). On either June 18 or June 19, 2008, Mr. Burner again saw the Defendant pull into the garage. It was during this sighting that the Defendant asked Mr. Burner for a shovel. After keeping the shovel for approximately one hour, the Defendant returned it. According to Mr. Burner, the Defendant appeared "...calm, just normal, normal Casey. No sweat. She wasn't, didn't appear to be muddy or the shovel wasn't even muddy." (July 30, 2008 interview with Detective Edwards, P.7 20-25; P.8; 1). The third sighting occurred on June 20, 2008 when Mr. Burner reported seeing Defendant again backing into the garage (July 30, 2008 interview with Detective Edwards, transcript P9; 2-3).

All three of these sightings are relevant under §90.401 Fla.Stat.(2010). As stated above, all of the Defendant's actions between June 15, 2008 and July 16, 2008 are relevant to rebut the Defendants statement to law enforcement that she was conducting her own search for her daughter. On all three occasions, the Defendant arrived at generally the same time, (late morning, early afternoon) and when no other member of the Anthony household was present; on all three occasion, she did not stay long; on all three occasions, Mr. Burner did not see Caylee with the Defendant.

Evidence that is prejudicial to the Defendant is not excluded simply because it is prejudicial. In order for this evidence to be excluded, the evidence would have to have the effect of inflaming the jury, or improperly appealing to the juror's emotions. The visit resulting in the Defendant borrowing Mr. Burner's shovel is relevant and probative as it was approximately 48 hours since anyone other than the Defendant last saw Caylee Anthony alive. The notion that that Defendant borrowed a shovel to do some light yard work is preposterous, and is not supported by Mr. Burner reporting that the shovel did not appear to be used extensively, nor did the Defendant appear to have spent about an hour outside in the June heat digging up bamboo roots. The Defendant, through her counsel, is, of course, free to argue to the jury that the borrowing of a shovel during this time frame does not equate with her guilt. The more reasonable explanation is that the Defendant borrowed the shovel with the intent to bury her daughter.

The question for the court is: Does the evidence of borrowing a shovel from the neighbor within two days of the child being missing have a tendency to render a proposition in issue—that it was borrowed with the intent to conceal the remains--more or less probable? Again, the obvious answer is "yes."

As there is nothing inherently prejudicial in introducing evidence that the defendant borrowed a shovel from a neighbor, the probative value of the evidence is not outweighed by unfair prejudice.

**ARGUMENT REGARDING DEFENSE MOTION TO EXCLUDE IRRELEVANT
EVIDENCE OF TATTOO**

A motion filed by counsel for Defendant Anthony requests this court exclude evidence or testimony regarding a tattoo Defendant acquired on July 2, 2008.

The Defendant is mistaken to suggest that the State is offering the tattoo to show the Defendant's character, or lack thereof. In this day and age, getting a tattoo, in and of itself, is not indicative of any character trait. Case law dealing with tattoos, exclusive of using a tattoo as a means of identification, tends to focus on the inflammatory nature of the tattoo. For example, a tattoo reading "12 Gauge" was not admissible in murder prosecution to show that the defendant had a propensity to use a 12 gauge shotgun like that used to kill the victim (*Belmar v. State*, 279 Ga. 795 (2005)); a tattoo reading "Assassin" obtained in jail after the murder inadmissible as impermissible character evidence (*State v. Wells*, 24 So.3d 187 (La. 2009)); however see *State v. Novak*, 949 S.W. 2d 168 (Mo. Ct. App. 1997) where "White Pride" tattoo admissible to show motive for racially motivated murder; and *People v. Gipson*, 787 N.W. 2d 126 (Mich. Ct. App. 2010) where "Murder 1" tattoo obtained after charged homicide relevant to issue of defendant's intent.

The facts and circumstances surrounding the timing of the tattoo, as well as the nature of the tattoo are relevant and probative. Caylee Marie Anthony was last seen on June 16, 2008. She was not reported missing until July 15, 2008. It is the State's position

that all evidence of the Defendant's actions between the above dates is wholly relevant to the Defendant's state of mind, and therefore, her guilt. The defendant told police in interviews that during this time period, she was conducting her own investigation regarding her child's disappearance. The fact that she had the time in her "search" to stop and get a tattoo is relevant to her credibility on that issue. A jury is entitled to view the Defendant getting a tattoo during this time period with the inscription "La Bella Vita" (meaning "The Beautiful Life" or "The Good Life") as an expression of her preference for her life without Caylee. Because it is difficult to show intent by direct evidence, it normally must be inferred from circumstantial evidence. Since the defendant accepted the spoils of her crime—La Bella Vita—the prosecution should be permitted to show the very permanent way the defendant has acknowledged this.

The facts and circumstances surrounding the Defendant and her state of mind in obtaining the tattoo are also relevant. According to Bobby Williams, the Defendant appeared at Cast Iron Tattoo on July 2, 2008. The Defendant came in the middle of the day, and she came alone. According to Mr. Williams, the Defendant "...seemed fine. She didn't, she didn't seem worried or anything. She wasn't like crying or anything like that. She was just normal." (Attached as Exhibit C, page 7) According to Sean Daly, who had contact with the Defendant on July 1, 2008 at the Ale House, on July 5, 2008 at Buffalo Wild Wings, and on July 2, 2008 while the Defendant obtained her tattoo, she acted "normal". When Mr. Daly asked how her daughter was, her reply was "Fine." (Attached as Exhibit D, pages 7-8) Florida Statute §90.403 (2010) is aimed at evidence which inflames the jury, or would improperly appeal to the juror's emotions. Evidence of the defendant's tattoo would not "inflame" the jury, nor does the evidence improperly appeal

to their emotions. This incident would not so overwhelm the jury that they would think of nothing else. It is merely one of many examples of the defendant's actions during the crucial time period that Caylee went missing unreported, and according to the Defendant, when she was conducting her own search. The tattoo is relevant to show the Defendant's state of mind during this time period, and the inscription obtained can certainly be read either as an epitaph for her daughter, or signaling a new beginning for herself.

ARGUMENT REGARDING MOTION IN LIMINE TO PROHIBIT THE USE, IN ANY FASHION, OF INTERNET MYSPACE REFERENCES ATTRIBUTABLE TO THE DEFENDANT AS "DIARY OF DAYS"

On July 7, 2008, the defendant posted on her MySpace account an entry titled by the writer as "Diary of Days." While the defense, in their motion, contends that the posting contains lyrics from a song by Hayden Christianson, the undersigned has been unable to confirm this. It is interesting to note that Hayden Christiansen, the actor, was in a movie called "Jumper" that the defendant rented at Blockbuster with her boyfriend Anthony Lazzaro on June 16, 2008, the day that Caylee was last seen alive.

As previously asserted, the State believes that every act of Miss Anthony's between June 16 and July 15, 2008 is relevant to rebut her statements that Caylee Anthony was taken from her against her will on (or about) June 16, 2008 and that she was conducting her own investigation into her daughter's whereabouts.

The posting on the internet, presumably designed to be an expression of her current thoughts and feelings for all of her friends and family to see, is inconsistent in content with that of a mother desperately seeking her kidnapped child.

ARGUMENT REGARDING MOTION IN LIMINE TO PROHIBIT THE USE, IN ANY FASHION, OF A POSTING ON THE INTERNET MYSPACE REFERENCES ATTRIBUTABLE TO CINDY ANTHONY, THE MOTHER OF THE DEFENDANT

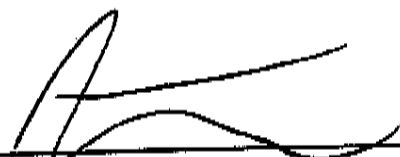
On July 3, 2008, after not seeing her granddaughter Caylee for several weeks, Cindy Anthony asked her son Lee to assist her in posting a MySpace page message to her daughter Casey Anthony. It is not the intent of the State of Florida to use the My Space posting in the absence of testimony by Cindy Anthony as to its' meaning. As detailed in pages 233 to 257 of her deposition on July 29, 2009 (attached as Exhibit E), it clearly refers to the issues she was having with her daughter Casey Anthony during 2008, particularly June and July 2008.

The assertion by the defendant that her mother's posting has no relevance to the case is without merit. The posting is an untarnished view of the relationship that existed between Casey Anthony and her mother at the time of Caylee's "disappearance" and evidence of a desperate attempt by the grandmother to learn of the fate of her grandchild. The posting is also relevant to show what Casey Anthony did or did not do in response to her mother's attempts to see Caylee.

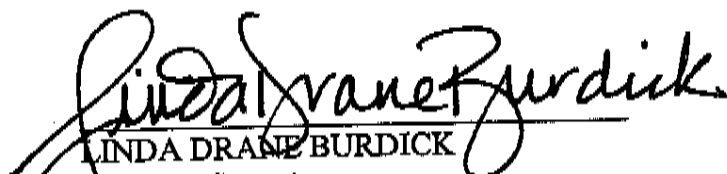
The State recognizes that the posting contains references to other "bad acts" of the defendant and, as such, may be subject to redaction if the Court also excludes *in limine* the "history of lying and stealing" as detailed above.

WHEREFORE, the State of Florida respectfully requests that this Honorable Court deny the Defendant's Motions in Limine as detailed above.

Respectfully submitted this 18th day of January, 2010

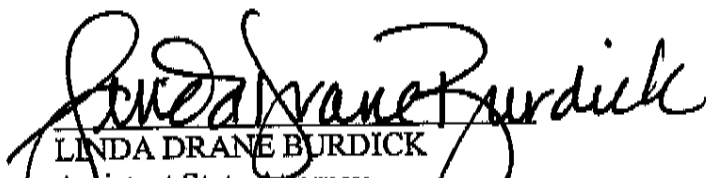

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was delivered via email transmission and U.S. Mail Delivery to Jose Baez, Esquire, attorney for the defendant Casey Anthony, 522 Simpson Road, Kissimmee, FL 34744 this 18th day of January, 2010


LINDA DRANE BURDICK
Assistant State Attorney