

)	In the Circuit Court of the
)	Ninth Judicial Circuit, in and for
)	Orange County, Florida
STATE OF FLORIDA)	
)	Case No.: 482008-CF-0015606-O
v.)	Division 16
)	
CASEY MARIE ANTHONY,)	Hon. Stan Strickland
)	
Defendant.)	
)	

**MOTION TO DISMISS COUNTS I AND II OF THE INDICTMENT AGAINST
CASEY MARIE ANTHONY**

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through her attorneys ANDREA D. LYON and JOSE A. BAEZ, and respectfully asks this Honorable Court to secure her rights as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, Sections 9, 16, 17, 21 and 22 of the Florida Constitution and dismiss the First Degree Murder and Aggravated Child Abuse charges, Counts I and II of the indictment, respectively, filled against Miss Anthony.

In support of this motion, the Defense states the following upon information and belief:

1. Casey Marie Anthony was indicted for First Degree Murder and Aggravated Child Abuse on October 14, 2008 in relation to the death of Caylee Marie Anthony, Miss Anthony's daughter. See State's Indictment of Casey Marie Anthony, herein **Exhibit C**.

2. Fl. Stat. Ann. § 782.04(1)(a)(1) states that the "unlawful killing of a human being when perpetrated from a premeditated design to effect the death of the

person killed is murder in the first degree and constitutes a capital felony, punishable as provided in § 775.082.”

3. Pursuant to Fl. Stat. Ann. § 775.082(1), “[a] person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in § 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.”

4. Under Florida law, a motion to dismiss may be based on any defense available to the defendant, with the exception of the defense of not guilty, whether it is based on form, substance, acquittal, double jeopardy, or any other defense. Fla. R. Crim P. 3.190(b) (2003). Generally, a motion to dismiss must be made either before or at the arraignment. *Id.* at (c). However, the Court may entertain a motion to dismiss at any time if the grounds for the motion are that “[t]here are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant.” *Id.* at (c)(4).

5. There are no material facts in dispute in this case. Even viewed in the light most favorable to the prosecution, the undisputed facts of this case show that the prosecution cannot prove its prima facie case for first degree murder. Specifically, the State cannot establish whether Caylee Anthony’s death was accidental, natural, or the result of an intentional or negligent homicide. Most importantly, there is no evidence to substantiate that Miss Anthony unlawfully and with premeditated design killed Caylee Anthony.

6. Furthermore, the State's first degree murder case is based purely on circumstantial and speculative evidence. When a case is purely circumstantial, the evidence must support an inference of guilt "to the exclusion of all other inferences" to substantiate a conviction. *Ballard v. State*, 923 So.2d 475, 485 (Fla. 2006). In circumstantial evidence cases, the circumstances must lead "to a reasonable and moral certainty that the accused and no one else committed the offense charged. It is not sufficient that the facts create a strong probability of, and be consistent with guilt. They must be inconsistent with innocence." *Lindsey v. State*, No. SC07-1167, 2009 Fla. LEXIS 1012, at *8-9 (Fla. 2009) (per curiam).

7. The evidence in this case is wholly circumstantial and does not prove beyond a reasonable doubt that Miss Anthony unlawfully and with premeditated design killed Caylee Anthony. The evidence upon which the State will rely does nothing more than show a suspicion that Miss Anthony is responsible for Caylee Anthony's death.

8. Florida Statute § 827.03 (2003) defines aggravated child abuse as occurring when a person: "(a) [c]ommits aggravated battery on a child; (b) [w]illfully tortures, maliciously punishes, or willfully and unlawfully cages a child; or (c) knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child."

9. The undisputed facts of this case, even viewed in the light most favorable to the prosecution, show that the State also cannot prove its prima facie case for the aggravated child abuse charge. There is no evidence showing that Miss Anthony ever harmed Caylee Anthony. In fact, the facts show that Miss Anthony was a good mother and provided Caylee Anthony with a safe and secure living environment.

10. In support of this Motion, the Defense has provided the attached Memorandum of Law for the Court's review.

11. Therefore, in the interests of Casey Marie Anthony's right to due process and a fair trial, the Defense respectfully asks this Honorable Court to:


- a. Order the State to file a response motion and memorandum of law within thirty days of the filing of this motion and accompanying memorandum of law;
- b. Allow the defense ten business days from the State's filing of its responsive motion and memorandum of law to file a reply motion and memorandum of law;
- c. Set a hearing date, at which time this Honorable Court may hear arguments relating to the defense and prosecution's motions;
- d. Dismiss the First Degree Murder charge against Casey Marie Anthony;
- e. Dismiss the Aggravated Child Abuse charge against Casey Marie Anthony.

WHEREFORE, the Defendant CASEY MARIE ANTHONY respectfully requests this Honorable Court to enter an order to dismiss the First Degree Murder and Aggravated Child Abuse charges.

Respectfully submitted,



ANDREA D. LYON, one of the attorneys
for CASEY MARIE ANTHONY.



JOSE A. BAEZ, one of the attorneys for
CASEY MARIE ANTHONY.

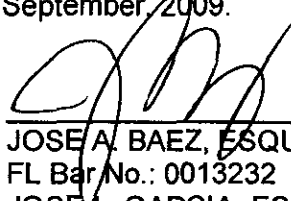
Dated: September 30, 2009

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; via facsimile and /or U.S. Mail on this 30 day of September, 2009.



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