

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

**MOTION TO DISMISS DUE TO SPOILIATION OF EVIDENCE**

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through undersigned counsel, and moves this Honorable Court to enter an order compelling the State of Florida to dismiss all charges. In support thereof the Defendant would allege that:

1. On December 11, 2008, the unidentified remains of a small child were discovered.
2. The location of the discovery was then processed by the Orange County Sheriff's Office (OCSO) and the Office of the Medical Examiner as a crime scene.
3. Later that evening, the OSCO used evidence from the crime scene to obtain and execute a search warrant of the Anthony home [REDACTED] where Casey Anthony lived prior to her arrest.
4. On December 12, 2008, the Defense requested in open court that its own forensic experts be present at the crime scene as observers.
5. The Assistant State Attorney represented to the court that the State "would work it out" with the Defense and come to an agreement as to the access by the Defense to the crime scene.
6. The Court advised that it was "counting on cooperation" between the two parties.
7. In open court, the OCSO indicated that the processing would be completed on the evening of December 12, 2008.

8. It was ultimately agreed that the OSCO would provide reasonable notice to the defense and that the defense may hire off-duty Sheriff Officers to secure the scene and provide security.
9. In reliance on these representations, the Defense arranged for the following experts to travel to Orlando:
  1. Forensic Pathologist Dr. Werner Spitz (Detroit, MI)
  2. Forensic Anthropologist Dr. Kathy Reichs (Montreal, Canada)
  3. Forensic Criminalist Dr. Henry Lee (New York, NY)
  4. Forensic Entomologist Dr. Timothy Huntington (Lincoln, NE)
  5. Private Criminal Investigator Dennis Fahey (Naples, FL)
  6. Private Criminal Investigator Patrick McKenna (West Palm Beach, FL)
10. Later that afternoon, December 12, 2008, the Defense was notified that they would not be permitted to hire off-duty police officers to secure the scene and that the crime scene would not be released until the following afternoon.
11. On the following afternoon, December 13, 2008, law enforcement then advised the defense that it would not be available until the following afternoon.
12. On the following afternoon, December 14, 2008, the defense was again advised that the scene would not be available until possibly December 15, 2008.
13. In short, the State represented to the Court did not know the identity of the remains when in fact they had been informed of the positive identification from the FBI. The State deliberately misled the Court and delayed the formal identification of the remains so that it could retain exclusive control of the crime scene through December 19, 2008.


14. The State has prevented the Defense from observing the remains in the condition that they were discovered.
15. Given the failure of the numerous searches prior to December 11, the arrangement of the remains *in situ* and the condition of the surrounding vegetation are evidence that is material to determining whether the remains were moved to the scene while Casey was in custody.
16. Without access to crime scene before the State removed the remains and topsoil, Miss Anthony was unable to gather evidence regarding the precise arrangement of the remains and the surrounding landscape. Without this evidence, defense experts cannot effectively examine or challenge the conclusions made by State experts.
17. By destroying the crime scene, the State has prevented Miss Anthony from gathering evidence to challenge the credibility of those witnesses who will describe the prior searches as well as those who ultimately discovered the crime scene.
18. The State has excavated the crime scene and dismantled the remains so as to effectively prevent Miss Anthony's access to exculpatory evidence.

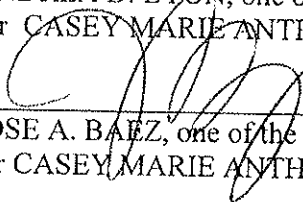
Therefore, in the interests of Casey Marie Anthony's constitutional rights, the Defense respectfully asks this Honorable Court to:

- a. Order the Prosecution 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 Prosecution'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 motions; and
- d. Grant her Motion to Dismiss the Charges Due to Spoliation of Evidence.

Respectfully submitted,

  
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for CASEY MARIE ANTHONY.

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

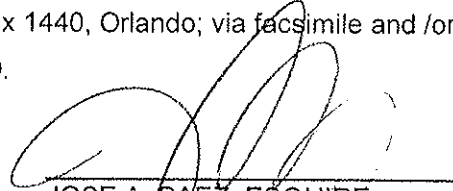
Dated: 9/17/09, 2009

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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, and the Orange County Sheriff's Office, P.O. Box 1440, Orlando; via facsimile and /or U.S. Mail on this 17 day of September, 2009.



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