

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

STATE OF FLORIDA

CASE NO: 48-2008-CF-15606-O

Plaintiff,
vs.

DIVISION: 16

CASEY MARIE ANTHONY

Defendant.

FILED IN OFFICE
CRIMINAL DIVISION
2009 OCT 15 AM 10:54
LYDIA GAROBY
CLERK CIRCUIT COURT
ORANGE CO., FL

**STATE OF FLORIDA'S MOTION TO STRIKE DEFENDANT'S LEGALLY FLAWED
MOTION TO DISMISS COUNTS I AND II OF THE INDICTMENT AGAINST
CASEY MARIE ANTHONY**


COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to Florida Rule of Criminal Procedure 3.190(c) and moves this Honorable Court for an Order striking the defendant's legally insufficient Motion to Dismiss Counts 1 and 2 of the Indictment. In support thereof, the State says as follows:

1. The Florida Rules of Criminal Procedure were adopted on March 1, 1967 with an effective date of January 1, 1968. Since that time, Florida law has permitted the pretrial dismissal of criminal charges under very limited circumstances as outlined in Florida Rule of Criminal Procedure 3.190(c).
2. Although Miss Anthony's Motion to Dismiss does not specifically move for dismissal under any particular rule of procedure, it appears that she was inartfully attempting to ask this court for dismissal pursuant to Florida Rule of Criminal Procedure 3.190(c)(4) under which a defendant may move for dismissal alleging that "[t]here are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant." Under this rule, it is the defendant's burden to specifically allege and swear to the undisputed facts in a motion to dismiss and to demonstrate that no prima facie case exists upon the facts set forth in detail in the motion. The purpose of this procedure is to avoid a trial when there are no material facts genuinely in issue. *State v. Davis*, 243 So.2d 587, 591 (Fla. 1971); *State v. Kalogeropolous*, 758 So.2d 110 (Fla. 2000).
3. The flaws in Miss Anthony's motion are glaring and fatal. The courts of this state have repeatedly ruled that "facts must be specifically alleged, under oath, must be considered in a light most favorable to the prosecution and must clearly demonstrate that no crime or one lesser than the one charged, was committed before the court can properly afford relief under the rule." *State v. Bruner*, 526 So.2d 1076 (Fla.5th DCA 1988). In this instance, the court can not even begin to consider the motion because Miss Anthony has alleged no facts and has not sworn to any material facts. Failure to swear to a Motion to Dismiss is fatal where brought pursuant to Florida Rule of Criminal Procedure 3.190(c)(4). *Styron v. State*, 662 So.2d 965 (Fla. 1st DCA 1995); Motion insufficient

where defendant merely alleges what he expects another witness to say and discusses some law relative to circumstantial evidence State v. Bruner, 526 So.2d 1076 (Fla. 5th DCA 1988); Motion to Dismiss did not satisfy requirement of "sworn motion" where it was a narrative by the attorney much of it consisting of a recitation of interviews with witnesses and what he believes such witnesses will say and swearing motion true "to the best of his knowledge." State v. Upton, 392 So.2d 1013 (Fla. 5th DCA 1981); Oath of accused on Motion to Dismiss criminal charge must be based upon his own knowledge of the facts and not upon "information and belief". State v. Fordham, 465 So.2d 580 (Fla. 5th DCA 1985). "To swear" means to declare on oath the truth, and such requires that the declarant state on oath that the facts alleged are true, to his knowledge, not that he believes it to be true because someone else told him that it is. State v. Upton, 392 So.2d 1013 (Fla 5th DCA 1981)

4. If and when Miss Anthony decides to swear to any or all material facts, the State of Florida will issue the response required under Florida Rule of Criminal Procedure 3.190 (d). However, as stated in Upton and State v. Ortiz, 766 So.2d 1137 (Fla 3d DCA 2000), in considering a Motion to Dismiss for failure of undisputed facts to establish a prima facie case against the defendant, if the state's evidence is all circumstantial, then whether it has carried its burden of excluding all reasonable hypotheses of innocence must be decided at the close of all the evidence.

WHEREFORE, the State of Florida respectfully requests this Honorable Court strike the Defendant's Motion to Dismiss Counts I & II of the indictment as legally insufficient under Florida Rule of Criminal Procedure 3.190(c)(4).

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Jose A. Baez, attorney for defendant ANTHONY, 522 Simpson Road, Kissimmee, Florida 34744 this  day Of October, 2009.


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