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

STATE OF FLORIDA

Plaintiff,

vs.

CASEY MARIE ANTHONY,

Defendant.

_____/

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

DIVISION: 16

STATE OF FLORIDA'S SECOND MOTION TO COMPEL RECIPROCAL DISCOVERY and MOTION FOR DISCOVERY SCHEDULE

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to Florida Rule of Criminal Procedure 3.220(d), and moves this Honorable Court for an order compelling CASEY MARIE ANTHONY to provide the names and current addresses of any witnesses she intends to call at hearing or trial in the above-entitled action. The State of Florida also requests this Honorable Court enter a pretrial order outlining a discovery schedule in anticipation of a trial date in the summer of 2010. In support of this request, the State says as follows:

1. At a scheduling conference with the court on July 7, 2009, counsel for defendant Anthony advised that trial preparation in the case would take approximately one year with anticipated filing dates for defense motions shortly after Labor Day, 2009. Counsel suggested that once the motions were filed, she would submit a proposed motions schedule to the court.

2. Understanding the volume of information that counsel needed to review, the Court agreed to a suggested trial status date of January 21, 2010 striking the case from the October 12, 2009 trial docket. As pretrial discovery continued, it was anticipated that by January, 2010, counsel for both parties would be in a better position to address a realistic trial date during the summer of 2010.

3. As previously noted in *State of Florida's Motion to Compel Reciprocal Discovery* filed September 10, 2009, the only response that the defendant has made toward fulfilling her reciprocal obligation was a *Defense Witness List* filed November 20, 2008 and an *Amended Defense Witness List* filed January 22, 2009 due to improper form of the original.

4. In a written response to the original *Motion to Compel Reciprocal Discovery*, as well as during a hearing on the motion on October 16, 2009, counsel for the defendant informed this Court that the defendant understood her reciprocal discovery obligations and was prepared to meet same. Despite these assurances to the Court, Miss Anthony has filed motions with attached statements from witnesses purporting to have information regarding specific aspects of the case. See *Defendant's Motion in Limine to Introduce*

Prior Bad Acts and other Circumstantial Evidence Pertaining to Roy Kronk signed November 18, 2009, but served on the Office of the State Attorney on November 19, 2009 and *Motion to Modify the Court's Order on Defendant's Application for Subpoena Duces Tecum for Documents in the Possession of Texas Equusearch* signed and served on November 23, 2009.

5. Neither motion was filed with a list of the names and addresses of witnesses as required by Florida Rule of Criminal Procedure 3.220(d)(1)(A). Instead, upon inquiry, the undersigned was informed initially via email from Andrea Lyon on Friday, November 20, 2009 that the "potential witnesses should be obvious from the filing", and then ultimately an email was received from Jose Baez on Tuesday, November 24, 2009 with "witness contact information" listing lawyers for Crystal & Brandon Sparks (in Washington DC), Jill Kerley (in Knoxville, TN), and Laura Buchanan (in Woodbridge, NJ). At that point, the undersigned made a specific request for a formal witness list with current addresses as required by the Rule and was advised that the defense feels they have no "further obligation to file anything" and "...the witnesses do not want the media harassing them in the meantime."

6. This unilateral decision on the part of a party to hold the witness addresses confidential runs afoul of the basic tenets of the Rules of Criminal Procedure and well-established case law. The FRCP do not permit any party to hold confidential the names and addresses of witnesses except in certain proscribed circumstances. FRCP 3.220(g)(2) While those circumstances are not applicable here, the case law dealing with the disclosure of the name and address of a confidential informant is instructive. Litigation on this issue in both the Federal and State courts quite naturally deals with the potential constitutional violation when a defendant's ability to confront the witness(es) against him/her is hampered. While the State can not assert a constitutional violation, the issue before this Court is one of fundamental fairness. In Hassberger v. State, 350 So.2d 1 (Fla. 1977), the Supreme Court of Florida cited language in Smith v. Illinois, 390 U.S. 129 (1968) for the proposition that "when the credibility of a witness is in issue, the very starting point in 'exposing falsehood and bringing out the truth' through cross-examination must necessarily be to ask the witness who he is and where he lives. The witness' name and address open countless avenues of in-court examination and out-of-court investigation. To forbid this most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself."

7. Florida Rule of Criminal Procedure 3.220(e) states "the court on its own initiative or on motion of counsel shall deny or partially restrict disclosures authorized by this rule if it finds there is substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, that outweighs any usefulness of the disclosure to either party." Hassberger, *supra* approved the "personal safety" exception outlined in United States v. Palermo, 410 F.2d 468 (7th Cir. 1979) wherein (1) an actual, not implied, threat to the witness or to his family must be shown; (2) the government must disclose to the judge in camera the information sought to be withheld from the accused; (3) the judge must then determine whether the facts must be disclosed; and (4) accused must be allowed to show any special need for the information requested. There is no legal reason why this same procedure should not be applied to a defendant refusing to disclose address information on witnesses to be called at trial or hearing particularly in light of the fact that the defendant

has not sought a protective order under Florida Rule of Criminal Procedure 3.220(l)(1). Counsel's stated reason for nondisclosure -- avoiding media harassment – does not rise to the level of a "threat" contemplated by the Rules or case law.

8. In addition to the concern detailed above, the State of Florida can not adequately address the scheduling of the trial without the legally appropriate notification by the defendant of ALL witnesses she will call during trial.

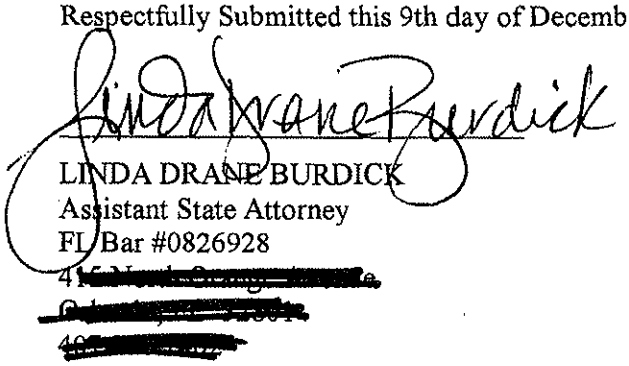
9. At a hearing on December 12, 2008, the defendant suggested that she had retained a bevy of expert witnesses to assist with her defense. Yet, a year later, not one of these individuals is listed by the defendant, nor have they sought to examine any of the evidence collected either before or after December 11, 2008. The only evidence review to date occurred on November 14, 2008 when Dr. Henry Lee examined the defendant's vehicle at the Orange County Sheriff's Office noting that he would need to return to finish the exam at a later date. He has yet to do so.

10. The defendant has conducted depositions of a few "civilian" witnesses, including several that were not completed and has done no depositions of the law enforcement investigators or any listed expert witness.

11. Certainly the defendant can choose to not review the evidence, or depose particular witnesses, or even file additional motions. However, if the defendant does choose to avail herself of these pretrial processes, the Court should insure that these matters are addressed and concluded within a reasonable period of time prior to commencement of trial so as to not thwart the fair administration of justice. "A trial judge is invested with inherent and expressed powers to manage and control the conduct of a trial and the participants in that trial in all respects. In the context of the adjudicative process, those inherent powers include, among others, the power to preclude the admission of evidence in order to curb litigation abuses; to reasonably manage and control the conduct of the litigation and its participants; to control the mode and interrogation of witnesses; and, to remedy different forms of litigation abuse." *See concurring opinion of Judge Salcines* in Grant v. State, 764 So.2d 804 (2d DCA 2000).

WHEREFORE, the State of Florida respectfully requests that this Honorable Court conduct a hearing on this matter, or alternatively, order the defendant to immediately turn over any and all evidence to include the names and addresses of witnesses, any statements or reports generated by those witnesses, and any tangible papers or objects to be used at hearing or trial. The State additionally requests that this Court enter a pretrial order setting discovery, motion, and hearing deadlines, applicable to both parties, so this matter can proceed to trial as expeditiously as possible.

Respectfully Submitted this 9th day of December, 2009,



LINDA DRANE BURDICK
Assistant State Attorney
FL Bar #0826928
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was delivered via FAX transmission to Jose Baez, Esquire, attorney for defendant Casey Anthony, 522 Simpson Road, Kissimmee, FL 34744 this 9th day of December, 2009.

LINDA DRANE BURDICK
Assistant State Attorney