

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

STATE OF FLORIDA,

PLAINTIFF,

vs.

CASEY MARIE ANTHONY,

DEFENDANT./

CASE NUMBER: 48-2008-CF-15606-O

DIVISION NUMBER: 16

JURY TRIAL EXCERPT (BENCH CONFERENCE)

BEFORE

THE HONORABLE BELVIN J. PERRY JR.

In the Orange County Courthouse  
Courtroom 23A  
Orlando, Florida 32801  
June 24, 2011  
Nikki Peters, RPR, CRR

A P P E A R A N C E S:

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1                                    P R O C E E D I N G S

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3                    (The following conference was held at the bench.)

4                    MR. MASON: Your Honor, there's several things I'd  
5                    like to point out. First, which, of course, this is  
6                    for the record.

7                    THE COURT: Uh-huh.

8                    MR. MASON: Statements by counsel in opening or  
9                    closing are not evidence.

10                  THE COURT: I know that.

11                  MR. MASON: That's why I said I'm just putting it  
12                  on the record.

13                  THE COURT: Okay.

14                  MR. MASON: The fact of the matter is, the theory  
15                  has consistently been, however, that this child drowned  
16                  in the pool as an accident. The issue is the coverup  
17                  of that and why the defendant and/or the other members  
18                  of the family involved, if so, failed to report this  
19                  for the infamous 31 days.

20                  The issue of the failure to report for 31 days was  
21                  and still is, depending on what comes up, we claim, in  
22                  part, the product of a totally dysfunctional family  
23                  that included, as Mr. Baez said, allegations of sexual  
24                  abuse in the family. There's more dysfunction than  
25                  just that. And the reason I wanted to approach the

1 sidebar, this sort of stuff doesn't need to be  
2 unnecessarily publicized until there's some rulings on  
3 it, but, as we have a side issue, we have an expert --

4 **THE COURT:** Just a second. Oh. Just a second.

5 (Brief pause.)

6 Okay. Go ahead.

7 **MR. MASON:** We have a grief expert whose name I  
8 can't pronounce.

9 **MR. BAEZ:** Karioth. Karioth.

10 **MR. MASON:** And it is my understanding that a  
11 requirement for such a witness to testify, is that they  
12 have a factual basis predicated of certain dysfunctions  
13 in the family, so forth. So one of the things that  
14 we're wanting to talk about, more with this witness  
15 asking questions, and conceivably with others, is the  
16 dysfunction in the family, such as George and Casey  
17 fighting, and fighting over money, George and Cindy  
18 fighting over his gambling, not known to her, resulting  
19 in her paycheck being garnished, those types of things  
20 that we would ask in questions of this witness and/or  
21 other witnesses we have, to wit: The coworkers.

22 If the Court is of the opinion that the relevancy  
23 of those issues going to the theory of defense is not  
24 sufficient and will bar it all, then substantially  
25 you're barring the presentation of a theory of defense.

1 And I believe that *Mateo*, regardless of the specific  
2 facts of the Court, it talked about the -- is it the  
3 *Vannier* case that's in there?

4 THE COURT: Yeah, the *Vannier* case is in there.

5 MR. MASON: And they -- of course, the theory of  
6 defense cases are a legion. I found quite -- they're  
7 not with me today but the theory of defense can be  
8 established by cross-examination and established by  
9 inferences. There has to be something somewhere.  
10 We're saying, this one, there's a reasonable inference  
11 that this child did, indeed -- could have drowned in  
12 the pool. We don't have to have a -- a witness to say  
13 they saw her drown. How would you ever do that on an  
14 unattended death of a child? You couldn't.

15 THE COURT: Well, in -- *Vannier* was a murder case.

16 MR. MASON: Uh-huh.

17 THE COURT: The issue in *Vannier*, or the theory of  
18 defense in *Vannier*, was suicide. There was a letter  
19 that the Court would not let in --

20 MR. MASON: Depression.

21 THE COURT: -- of depression, which directly  
22 relates to what? Suicide. So . . .

23 MR. MASON: It could.

24 THE COURT: Or it could. But it was a letter of  
25 depression. And as we all know, depression leads to

1 suicide. But how do you make the connection to  
2 Ms. Anthony --

3 MR. MASON: Let me suggest an answer to that.

4 THE COURT: Does -- does Ms. Anthony know about  
5 all these things and all these things had some effect  
6 on her? Because if -- parents can be having all the  
7 problems in the world, but if the kids don't know about  
8 it, then how does that affect them and . . .

9 MR. MASON: Well, let me answer the best I can.  
10 Just one of the issues I just told you about, the  
11 showing of the dysfunction, is the fighting between  
12 George and Casey. And the activities of the family  
13 were -- will establish all of the -- which she can  
14 predicate, of course, arguments in front of everybody.  
15 Just as depression leads to suicide, dysfunction leads  
16 to lying and covering up. And so we're into the whole  
17 ball of wax here.

18 We offered and wanted to have admitted the  
19 photograph that had been previously talked about of the  
20 efforts to conceal the pregnancy. We have witnesses  
21 that if -- depending on your ruling -- could say that,  
22 yes --

23 THE COURT: But --

24 MR. MASON: -- they didn't -- nobody knew of  
25 this --

1           **COURT REPORTER:** I'm sorry?

2           **MR. MASON:** I was going to say this child but I  
3           need to make the record clear, the defendant concealed  
4           her pregnancy.

5           **THE COURT:** Okay. But you know why that  
6           photograph wasn't admitted at the time?

7           **MR. MASON:** I don't remember.

8           **THE COURT:** Okay. If you fast-forward back to the  
9           beginning of this testimony, there was testimony by  
10          Mrs. Anthony about when she testified the first time  
11          around, and was shown the photograph, they talked about  
12          efforts to conceal her pregnancy. Nobody offered that  
13          photograph at that particular time. When she got back  
14          up here this time, not one question was asked of her  
15          about concealing pregnancy. Thus, at the time of  
16          admission of the photograph, it was not relevant 'cause  
17          it was not relevant to any issue that was articulated  
18          on direct examination.

19          **MR. MASON:** Okay. The State didn't ask her about  
20          that in their case. Mr. Baez had marked and offered  
21          the photograph --

22          **THE COURT:** He didn't ask about --

23          **MR. MASON:** -- do it in their case.

24          **THE COURT:** He did not ask not one question about  
25          it when she came up here today.

1           **MR. MASON:** Okay.

2           **MR. BAEZ:** Okay. So it's a predicate issue.

3           **THE COURT:** So it wasn't relevant. And it's not  
4 my job --

5           **MR. MASON:** I understand.

6           **THE COURT:** -- to tell folks how to get things  
7 into evidence.

8           **MR. MASON:** I agree. And that's a different  
9 position than we were in.

10           So, indeed, with a sufficient predicate, then that  
11 photograph should be admissible to go to this whole  
12 concept, and so will the testimony of the coworkers,  
13 that this pregnancy was concealed until she's seven  
14 months pregnant.

15           **MS. DRANE BURDICK:** That's all hearsay.

16           **MR. ASHTON:** You don't have a witness who's going  
17 to say, we concealed the pregnancy. In fact,  
18 Ms. Anthony has already said, we didn't. So what  
19 you're basically doing is you're putting a witness on  
20 the stand and you're saying, don't believe what the  
21 witness says, believe me. You can't be a witness in  
22 this case. You have to rely on what the witnesses say  
23 and reasonable inferences from what the witnesses say.  
24 You can't take a witness that says, no, A didn't  
25 happen, impeach them and say, ladies and gentlemen of



1       the jury, we've just proven that B happened. That's  
2       not how it works.

3           **MR. MASON:** You're missing it entirely. Let me  
4       suggest to you that Mr. Crittendon, if called, will  
5       testify that he was a daily worker, coworker, with  
6       Cindy, and never knew that Casey was pregnant. She  
7       would come by the office periodically and finally, in  
8       June, she shows up and she's wearing a corduroy  
9       overcoat over, concealing her --

10       **THE COURT:** But that's why I asked the question.  
11       What is the theory of the defense? It has to be  
12       related to the theory of defense. If the theory of the  
13       defense is that she -- it was an accidental drowning --

14       **MR. MASON:** Yes, sir.

15       **THE COURT:** -- and -- and the only thing I have  
16       any foggy idea about what it is -- because at least the  
17       person who has to rule has to know what the theory of  
18       defense is. I just -- I can't use my own imagination.  
19       So the only thing I have to do is depend on what you --  
20       you --

21       **MR. MASON:** Sure.

22       **THE COURT:** -- the only thing that you've laid out  
23       so far, that I can see, is that it's an accidental  
24       drowning -- and it's based upon Mr. Baez's opening  
25       statement -- and that the reason she didn't -- didn't

1       report it, and -- and the reason that she has lied so  
2       much is because she was forced to lie because of the  
3       dastardly deeds done to her by her father and her  
4       brother.

5               **MR. MASON:** I don't know that there's a claim that  
6       she was forced to lie. I'm telling you that I believe  
7       that the evidence has established, and will continue  
8       to, if allowed, will tell the dysfunction of this  
9       family. And that's why they have all covered up and  
10      have lied about everything.

11             **MS. DRANE BURDICK:** But that --

12             **MR. ASHTON:** Here's the problem, is you're dealing  
13      with collateral impeachment. You're wanting to impeach  
14      Cindy Anthony on whether she knew her daughter was  
15      pregnant at a particular point and hid it. That's a  
16      collateral matter.

17             **THE COURT:** But what I'm saying is I don't know  
18      how you get the fact -- you haven't tied into your  
19      theory of defense, unless it's another theory, of the  
20      pregnancy. I mean . . .

21             **MR. BAEZ:** The theory --

22             **THE COURT:** Well, let me say this.

23             **MR. BAEZ:** Okay.

24             **THE COURT:** It -- it makes it difficult, and then  
25      I guess this is what I'll spend the night doing, and

1 the rest of the weekend, I will read every theory of  
2 defense case that's known to man and see. But from the  
3 cases that I remember, is you gotta have a theory and  
4 it has to be related to the theory and the evidence  
5 still has to be admissible. What theory of defense  
6 basically does, it takes evidence that may not  
7 generally be relevant to proving the named elements of  
8 a crime, to extend relevancy to prove the theory. And  
9 that's what -- that's what theory of defense is about.  
10 Because the defense sometimes has no relevancy and  
11 that's what that is all about.

12 **MR. MASON:** Let me make a suggestion that we --  
13 and then I'll send over what you want. Don't get  
14 excited. I've given seminars on theory of defense all  
15 over the United States and I have some cases to tell  
16 you about that are of interest. One of the earliest is  
17 the case of *United States versus Alfonso-Perez*. It's a  
18 1972 [sic] federal appeals court case --

19 **THE COURT:** Right.

20 **MR. MASON:** -- that says it was error for the  
21 court not to grant a theory of defense instruction to  
22 the jury which was -- is the theory of the defense --  
23 of the defendant, Mr. Perez, that the government agent  
24 witness is a liar. And that was approved by the  
25 federal courts and that started a whole -- opening

1 things for years and years and years.

2 THE COURT: There are cases in Florida that says  
3 that the standard jury instructions are not adequate to  
4 advise the jury of the theory of defense.

5 MR. MASON: Sure, *Palm versus State*.

6 THE COURT: So your entire theory of defense  
7 instructions --

8 MR. BAEZ: Can I give you an additional aspect of  
9 the pregnancy?

10 MR. ASHTON: Judge, may I suggest that we have a  
11 proffer so that we know what the witnesses are actually  
12 going to say? Because all of these discussions are in  
13 hypothetical and the record is not going to be pristine  
14 for appellate purposes.

15 THE COURT: I've listened and at this point you  
16 have not shown me how, at this point, there's a  
17 relationship to your theory of defense, unless you've  
18 changed it --

19 MR. BAEZ: No, Judge.

20 THE COURT: -- that -- that -- that they've had  
21 the marital problems between George and Cindy -- the  
22 theory of defense that -- let me back up. What is the  
23 theory of defense?

24 MR. BAEZ: The theory of defense is that this was  
25 an accident that was covered up and that the behavior

1 of the defendant is consistent with, of course, she  
2 reacted that way, acted that way, for various reasons,  
3 family dysfunction, her abuse, and she -- this is a  
4 family that's used to covering things up, like the  
5 pregnancy. And, in addition to that, the defendant  
6 did -- it was an issue where, um, you have . . .

7 **MS. DRANE BURDICK:** We can't allow the wholesale  
8 admission of bad character evidence on --

9 **THE COURT:** Just a second. He hadn't finished.  
10 You'll get an opportunity.

11 **MR. BAEZ:** All that was done during the  
12 defense's -- I mean, the State's first two weeks we're  
13 talking about her behavior, and why would a guilt --,  
14 you know, why would an innocent person act in that  
15 manner, this is inconsistent with innocence and only  
16 consistent with guilt. That's allegedly what their --  
17 what their consciousness of guilt argument has been.

18 **THE COURT:** Well, on your argument about covering  
19 up her pregnancy, there's been absolutely no testimony  
20 that they covered anything up. What they said was they  
21 thought she was just puffy because her mom suffered  
22 from the same malady of having an extended abdomen  
23 during the time of her period and that -- I will -- I  
24 will go back and -- and read the testimony, but there  
25 has absolutely been -- been no evidence that anybody

1           was trying to cover up anything. If the  
2           coverup, I don't know when the defendant kne.  
3           pregnant. But momma certainly didn't say they trie  
4           cover it up.

5                   And the -- I -- I can't recall, but I don't even  
6           think the daddy knew.

7                   **MR. ASHTON:** He testified that he was informed, I  
8           think, in June, that mom and Casey sat him down and  
9           told him about the pregnancy.

10                   **THE COURT:** But there was no record evidence --  
11           Ms. Anthony didn't say that they were trying to hide it  
12           from everybody that she was pregnant. That wasn't what  
13           she testified to.

14                   But, you know, it was put on. And . . . but . . .  
15           You still gotta make the leap and show me how does  
16           marital problems between George and Cindy Anthony  
17           figure into, quote, your theory of defense, that this  
18           was an accidental drowning and that because of . . .

19                   **MR. BAEZ:** It goes to his motive for wanting --  
20           not wanting it to get out that she died on his watch,  
21           that he was home.

22                   **THE COURT:** His motive?

23                   **MR. BAEZ:** His motive to lie.

24                   **THE COURT:** His motive to lie.

25                   **MR. BAEZ:** Uh-huh.

1           **MR. ASHTON:** But you haven't -- there's no  
2 evidence that --

3           **MR. BAEZ:** To cover it up.

4           **MR. ASHTON:** There's no evidence that he lied.  
5 First you got to show he lied before you do a motive.

6           **MR. BAEZ:** No, you don't.

7           **THE COURT:** Okay. Anything else?

8           **MR. ASHTON:** No, sir.

9           **THE COURT:** At this point the objection will be  
10 sustained. But if you can connect it up outside of the  
11 presence of the jury, I will permit you to do it. If  
12 you want to proffer the testimony for the record,  
13 because I think we'll be here next week on this.

14           **MS. DRANE BURDICK:** Uh-huh.

15           **THE COURT:** So if I -- if you want to proffer it,  
16 I'll let you proffer the testimony, but at -- for  
17 purposes of the record. But at this time, this  
18 evidence doesn't even remotely deal with your theory of  
19 defense.

20           **MR. MASON:** May I suggest if you're going to do a  
21 proffer, we might as well do it at one time with these  
22 other witnesses that are here that's going to be . . .

23           **THE COURT:** I don't know what they're going to  
24 say. I'm talking about Ms. Anthony.

25           **MS. DRANE BURDICK:** And you're going to open the

1 door up to her criminal activity.

2 MR. MASON: I'm sorry?

3 MS. DRANE BURDICK: You're going to open the door  
4 up to her criminal activity, to Ms. Anthony's criminal  
5 activity.

6 MR. MASON: What, by talking about George?

7 MS. DRANE BURDICK: Talking about family  
8 dysfunction.

9 MR. MASON: Uh-huh.

10 MR. ASHTON: You think you're going to be able to  
11 keep out all the stealing if you start that? That's  
12 what she's saying.

13 MS. DRANE BURDICK: There's hundreds of checks  
14 that she wrote on her mother's account. Hundreds.

15 MR. BAEZ: It's her mother.

16 MS. DRANE BURDICK: All right.

17 MR. ASHTON: The Court has ruled, so . . .

18 THE COURT: Okay.

19 (This concludes the requested excerpt.)  
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C E R T I F I C A T E

STATE OF FLORIDA:

COUNTY OF ORANGE:

I, Nikki Peters, RPR, CRR, Official Court  
Reporter of the Ninth Judicial Circuit of Florida,  
do hereby certify, pursuant to Florida Rules of Judicial  
Administration 2.535(h)(3), that I was authorized to and did  
report in stenographic shorthand the foregoing proceedings,  
and that thereafter my stenographic shorthand notes  
were transcribed to typewritten form by the process  
of computer-aided transcription, and that the  
foregoing pages contain a true and correct  
transcription of my shorthand notes taken therein.

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_  
2011, in the City of Orlando, County of Orange,  
State of Florida.

\_\_\_\_\_  
Nikki Peters, RPR, CRR