

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

STATE OF FLORIDA,

CASE NUMBER: 08-CF-0015606-O

Plaintiff,

Vs.

CASEY ANTHONY,

Defendant.

REQUEST TO STRIKE AND RESPONSE TO DEFENDANT'S AMENDED

APPLICATION FOR SUBPOENA DUCES TECUM

COMES NOW, Texas Equusearch, (herein after referred to as "TES"), by and through its undersigned counsel, pursuant to Florida Rules of Criminal Procedure 3.361(c), files its Request to Strike and Response to Defendant's Amended Application for *Subpoena Duces Tecum* as a limited appearance for the sole purpose of challenging the jurisdiction of this Honorable Court, and as grounds therefore would state:

1. TES is a non-profit Texas corporation. It is outside the jurisdiction of this honorable Court and for which the Court has no authority or jurisdiction to order them to comply with this subpoena.

2. Florida's Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings, *ch. 942, Fla. Stat.*, contains a procedure by which a Florida court may obtain the attendance of a material witness from another state in a pending prosecution or grand jury investigation. *§ 942.03, Fla. Stat. (2005)*. The requesting court may issue a certificate under the seal of the court stating that he is a material witness and the number of days the witness will be required. This certificate shall be presented to a judge of a court of

record in the county in which the witness is found. However, *General Motors Corporation, v. State of Florida*, 357 So.2d 1045 (1978), ruled that the Uniform Act does not apply where there is a mere request for documents without an accompanying subpoena of a witness. *The State of Florida vs. Bastos*, 985 So.2d 37 (2008).

3. The Defendant, through her counsel, failed to meet the first prong set out in the Rules which require the person to be subpoenaed to be a material witness. The Amended Application for *Subpoena Duces Tecum* is critically flawed in that it has failed to state or make a requisite showing that TES is a material witness in the case sub judice. In order for this Honorable Court to issue a certificate, the first prong has to be established, which it clearly has not.

4. The Defendant's request, through her counsel, is additionally critically flawed and deficient in that the requisite accompanying subpoena of a witness has not been attached or even identified.

5. A *Subpoena Duces Tecum* of the items requested by the Defendant, through her counsel, would be immaterial and irrelevant. None of thousands of searchers, who volunteered with TES, were ever at the exact spot where Caylee Anthony's remains were found.

6. In *Nathaniel Dean vs. State of Florida*, 478 So.2d. 38 (1985) the Supreme Court of Florida looked to the United States Supreme Court's position on the application of the fourth amendment to a *subpoena duces tecum* and stated that:

“...All that is required is that the subpoenaed materials be relevant to the investigation being conducted and that the subpoena not be overly broad or burdensome. A proper subpoena is one that is properly limited in scope, relevant in purpose, and specific in directive so that compliance will not be unduly burdensome.” *United States v. Palmer*, 536 F.2d 1278 (9th Cir. 1976);

7. The Defendant, through her counsel, has failed to meet its burden as indicated by the *Nathaniel Dean* ruling above in that the request is overly broad, burdensome to TES, not limited in scope, not relevant or material in purpose and is not specific and directive.

8. TES is a non-profit organization, which relies on donations and their efforts to assist communities throughout the United States in finding and locating missing and deceased loved ones. It does not have the time, money or resources to pay for and provide the Defendant with all of the items requested. To require them to comply with this deficient subpoena would work a substantial hardship on TES and would be unduly burdensome.

9. If this Honorable Court is inclined to grant this deficient application, TES respectfully requests that Defendant provide TES with adequate and sufficient advanced funds in order to gather and provide this information and verification that the advanced funds have come from a permissible source.

10. The above request for advanced funds is reasonable and appropriate in that Florida Rules of Criminal Procedure 3.361(c)(2) states “The court may (A) quash or modify the subpoena if it is unreasonable and oppressive, or (B) require the person in whose behalf the subpoena is issued to advance the reasonable cost of producing the books, papers, documents, or tangible things.”

11. In further support of TES's request for advanced funds, it has been widely reported and in fact confirmed by Defendant's counsel in the media that there was a previous incident in which Defendant, through her counsel, has neither picked up or paid for requested documents. Previously, Defendant, through her counsel, subpoenaed voluminous records, which also numbered in the thousands, regarding tips or leads of sightings for Caylee Anthony prior to her remains being discovered. As undersigned counsel understands, these documents were neither picked up or paid for and still remain at the Orange County Sheriff's Office today. TES cannot afford to allow this to happen to them due to the lack of resources and finances of this non-profit organization.

12. Moreover, if the Defendant's deficient application was to be granted, it would cause a chilling effect on future volunteers not only with TES, but also with other charitable organizations as well. Some searchers, who volunteered their time and requested that their identities not be made public, have contacted the undersigned counsel requesting that their information not be disclosed or made public. To have their identity and personal information disclosed and available for publication and broadcast across the media and Internet throughout the world, would violate their privacy expectations.

13. In support of the above, the Supreme Court of Florida in *South Florida Blood Service vs. Rasmussen*, 467 So.2d 798 (1985) held against the Petitioner, Rasmussen, when he requested the names and addresses of volunteer blood donors. The court held that such disclosure was not discoverable, as to do so would not protect the donors' constitutional privacy interests. Additionally, to do so would be contrary to society's interest in maintaining a strong blood donation program. The Supreme Court of Florida affirmed this decision. *Rasmussen vs. South Florida Blood Service, Inc.*, 500 So. 2d 533 (1987). Analogous to this, if TES's volunteer records are released, the chilling effect of dissuading future volunteers is contrary to the best interest of society and TES in maintaining volunteers.

14. The requests in the Defendant's Amended Application for *Subpoena Duces Tecum*, through her counsel, in Paragraph 5, Subsections (a) and (e) are vague, immaterial and irrelevant. The word "near" is overbroad and does not identify with a reasonable degree of specificity from the information relevant and material where Caylee Anthony's remains were found.

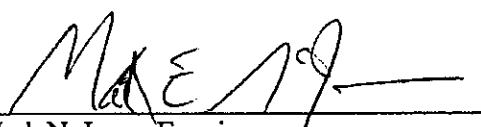
15. In *General Motors Corporation, v. State of Florida*, 357 So.2d 1045 (1978), the Third District Court of Appeals cited several cases in determining the validity of a *subpoena duces tecum*. "To avoid being overbroad a *subpoena duces tecum* must designate and specify with some degree of certainty and particularity the documents sought to be produced." *State ex rel. Everglades Cypress Co. v. Smith*, 104 Fla. 91 (1932). Furthermore, "This test prohibits the issuance of *subpoena duces tecum* requiring the production of large numbers of documents merely to allow for such a search through them to gather evidence." *Imperate (Imperato) v. Spicola*, 238 So.2d 503 (2nd D.C.A. Fla. 1970).

16. The Defendant, through her counsel, claims that it has been reported that the searchers have been at this site. This claim lacks foundation and merit. The volunteers with TES never searched the exact location where Caylee Anthony's body was found. Furthermore, the Defendant, through her counsel, has failed to provide any source that supports their claim that the volunteers were at the site. The Defendant's request, through her counsel, is nothing more than an impermissible fishing expedition.

WHEREFORE, the undersigned requests that the Defendant's Amended Application for *Subpoena Duces Tecum* be denied as this Honorable Court lacks the requisite jurisdiction or authority and for the other grounds set forth above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail/hand delivery to the OFFICE OF THE STATE ATTORNEY, Jeffrey Ashton, ASA, 415 North Orange Avenue, Orlando, Florida 32801 and Jose Baez, 522 Simpson Road, Kissimmee, Florida 34744 this 21st day of January, 2009.


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