

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

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO.: 48-2008-CF-0015606-O

DIVISION: 16

JUDGE: STAN STRICKLAND

CASEY MARIE ANTHONY,

Defendant.

**DEFENDANT'S MOTION TO CERTIFY TIMOTHY MILLER AS A MATERIAL  
WITNESS IN THE INSTANT PROSECUTION, OR IN THE ALTERNATIVE  
APPLICATION FOR SUBPOENA DUCES TECUM FOR DOCUMENTS IN THE  
POSSESSION OF TEXAS EQUUSEARCH**

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through her attorneys JOSE A. BAEZ and ANDREA D. LYON, and pursuant to the Uniform Act to Secure a Witness from Without a State in Criminal Proceedings moves this Court to certify Timothy Miller as a material witness in the instant prosecution for the purposes of an interstate subpoena duces tecum. As a less favored alternative, Miss Anthony respectfully asks this Court to issue a subpoena for documents in the possession of Texas EquuSearch under its own power.

In support of her motion, Ms. Anthony states as follows upon information and belief:

1. Texas EquuSearch is a 501(c)(3) organization headquartered in Dickinson, Texas.
2. Timothy Miller is the president of Texas EquuSearch.
3. In the fall of 2008, Texas EquuSearch conducted search-and-rescue operations in Orlando, Florida, in concert with the Orange County Sheriff's Office.
4. During the course of its business in Florida, Texas EquuSearch employees, members, and volunteers were engaged in searching for the missing child Caylee Marie Anthony.

5. During these searches, Texas EquuSearch employees, members, and/or volunteers searched the wooded area around Suburban Drive, near Hidden Oaks Elementary School, in Orlando, Florida.
6. On December 11, 2008, the remains of a child were discovered at the edge of the wooded area near Hidden Oaks, just off Suburban Drive in Orlando, by a county employee who had previously called in three tips resulting in searches of the same area. The state has since identified the remains as those of the missing child Caylee Marie Anthony.
7. As President of Texas EquuSearch, and as director and coordinator of its portion of the search for Caylee Marie Anthony in the fall of 2008, Timothy Miller has knowledge of the search methods used and the locations searched.
8. As President of Texas EquuSearch, Timothy Miller is in possession of the records of its searches, maps of the areas searched, lists of members and volunteers who participated in the searches of the area where remains were ultimately found, video and/or photographic records of its search activities, and records of communications between Texas EquuSearch and Florida law enforcement.
9. The above-mentioned documents and information are material to Ms. Casey's capital murder charge because they directly pertain to the timing and manner of the arrival of the remains of Caylee Marie Anthony at the site where they were discovered.
10. This Court should grant Miss Anthony's Motion because Timothy Miller is a material witness in the instant prosecution, who is also in possession of documents and records material to Miss Anthony's defense both at trial and at any sentencing proceeding which might ensue.

11. If this Court does not certify Mr. Miller as a material witness, as a less favored alternative, it should grant her Application for a Subpoena Duces Tecum for Documents in the Possession of Texas EquuSearch because:

- A) Texas EquuSearch, while an out-of-state corporation, did business in Florida within the meaning of the Florida long-arm statute and so is within the subpoena jurisdiction of this Court; and,
- B) Texas EquuSearch acted as an agent of the State of Florida during the course of its business in Florida, receiving payment, equipment, support, and direction from Florida law enforcement agencies, and is therefore within the subpoena jurisdiction of this Court.

12. In support of her motion, Defendant presents the attached Memorandum of Law.

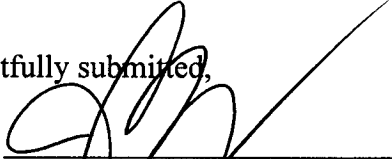
WHEREFORE, the Defendant, CASEY MARIE ANTHONY, respectfully requests that this Court grant her motion and certify Timothy Miller as a material witness in this case so that, pursuant to the Uniform Act to Secure the Attendance of a Witness Without the State in a Criminal Proceeding, she may serve him with a subpoena duces tecum for certain documents in his possession, to wit:

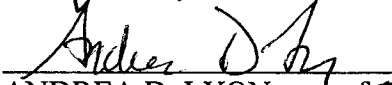
- 1) Any and all records in its possession relating to its searches of the area in and around Suburban Drive and Hidden Oaks Elementary School, Orlando, Florida;
- 2) Any and all video or photographic records of its searches of the above area;
- 3) Any and all maps, charts, diagrams, drawings, and other pictorial representations relating to its search activities in and around the above area;

- 4) Any and all records of communications between Texas EquuSearch, its employees, members, and volunteers, and law enforcement made during the period of its search operations in Orlando, Florida; and
- 5) Any and all names, phone numbers, and other contact information of any employees, members, or volunteers with Texas EquuSearch who may have searched the area in and around Suburban Drive and Hidden Oaks Elementary School, Orlando, Florida;

In the alternative, Miss Anthony requests that the Court grant her application for a subpoena for the above-listed documents.

Respectfully submitted,

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

  
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ANDREA D. LYON, one of the attorneys  
for CASEY MARIE ANTHONY.

Dated: 7/16/09

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**MEMORANDUM OF LAW  
IN SUPPORT OF DEFENDANT'S MOTION FOR CERTIFICATION OF TIMOTHY  
MILLER AS A MATERIAL WITNESS IN THE INSTANT PROSECUTION, OR IN THE  
ALTERNATIVE APPLICATION FOR SUBPOENA FOR DOCUMENTS IN THE  
POSSESSION OF TEXAS EQUUSEARCH**

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through her attorneys JOSE A. BAEZ and ANDREA D. LYON, and submits this Memorandum of Law in Support of her Motion to Certify Timothy Miller as a Material Witness in the Instant Prosecution, or in the alternative Application for Subpoena for Documents in the Possession of Texas EquuSearch.

In support of her motion, Defendant states as follows:

**STATEMENT OF FACTS**

1. The child Caylee Marie Anthony was reported missing to law enforcement on July 15, 2008. *See* Appendix A.
2. During the following months, public and private entities began large-scale search operations for the missing child in and around Orlando, Florida. *Sheriff Beary*

*Discusses Search for Caylee*, WESH-2 Orlando, Aug. 18, 2008, available at <http://www.wesh.com/news/17192364/detail.html>.

3. On August 5, 2008, a FOX News crew filmed a search of The Wooded Area. The video shows no body or suspicious objects, and cameramen reported no suspicious odor. *On The Record with Greta Van Susteren* (FOX News television broadcast Dec. 17, 2008), available at [http://www.youtube.com/watch?v=\\_gNJdDjZrgg](http://www.youtube.com/watch?v=_gNJdDjZrgg).
4. On August 11th, 12th, and 13th, 2008, Orange County law enforcement responded to calls from Roy Kronk, a county employee who claimed to have seen a suspicious bag in the Wooded Area. An Orange County Deputy Sheriff searched the spot and found nothing suspicious. *See Appendix C at 3.*
5. On August 18, 2008, an Orange County Deputy Sheriff responded to a call from one Keith Williams, who claimed to have found possible evidence in the Wooded Area. No body or remains were found. *See Appendix D at 9-10.*
6. On August 30, 2008, Texas EquuSearch (“TES”), a Texas 501(c)(3) corporation, arrived in Orlando from its headquarters in Dickinson, TX, to search for the missing child. TES set up its base of operations at the Holiday Inn at 5750 T.G. Blvd., Orlando, FL. Personnel from the Orange County Sheriff’s Office Criminal Investigation Division (“CID”) were present at the command center. *See Appendix E at 3.*
7. On August 31, 2008, TES and OCSO began their search for the missing child Caylee Marie Anthony. The Orange County Sheriff’s Office Critical Incident Management Team (“CIMT”) evaluated the organization of the TES search effort

- and supplied the searchers with bottled water. *Id.* Cmdr. Matthew Irwin, Sgt. John Allen, and Det. Cpl. Yuri Melich represented CID. *Id.* at 7.
8. On September 1, 2008, TES and law enforcement continued their search of “areas of interest” provided by OCSO. *Id.* at 3. Sgt. Allen and Det. Melich represented CID. *Id.* at 7.
  9. On September 2, 2008, TES and law enforcement continued their search. CIMT set up a tent at TES’s command center. *Id.* at 3. Cmdr. Irwin, Sgt. Allen, and Det. Melich represented CID. *Id.* at 7.
  10. On September 3, 2008, then-Orange County Sheriff Kevin Beary provided TES with \$5,000 of OCSO funds. *See* Appendix F. TES and law enforcement continued their search. *See* Appendix E at 3. Cmdr. Irwin, Sgt. Allen, and Det. Melich represented CID. *Id.* at 7. Also on this date, Miss Anthony was released from custody following her August 29 arrest on economic charges.
  11. On September 4, 2008, TES and law enforcement continued their search. Cmdr. Irwin, Sgt. Allen, Det. Melich, and Tanya DePalmo represented CID; a large team of CIMT and Agriculture personnel also participated in the joint search. *Id.* at 7.
  12. On September 5, 2008, TES and OCSO personnel continued their search. *Id.* at 3. Sgt. Allen and Det. Yurich represented CID. *Id.* at 7.
  13. On September 6, 2008, TES and OCSO personnel continued their search. *Id.* at 3. Chief Ron Stucker, Det. Melich, and Investigator Kari Roderick represented CID. *Id.* at 7.
  14. On September 7, 2008, TES and OCSO continued their search. In the afternoon, investigative crime writer David Lohr posted to his website that he had searched

the Wooded Area with TES, writing that “they [TES] were in the process of completing a thorough sweep of the area.” *See* Appendix G. That evening, TES called off their search for Caylee Marie Anthony. Amy L. Edwards, *Heat, Bugs Don't Deter Caylee Anthony Search Volunteers*, Orlando Sentinel, Sept. 8, 2008, available at <http://www.orlandosentinel.com/community/news/wintergarden/orl-caylee0808sep08,0,311925.story>. No remains were found.

15. In October of 2008, a former TES team leader informed Orange County Sergeant John Allen that, while searching with TES in September, she had searched the area where Caylee Anthony's remains were ultimately found. *See* Appendix B at 2:25.
16. On October 14, 2008, Miss Anthony was indicted in the present case and taken into custody.
17. On November 8, 2008, TES began a new search. Orange County law enforcement loaned TES a helicopter to use in the search. *Updates from Search for Caylee Marie*, WESH-2 Orlando, available at <http://www.wesh.com/news/17929243/detail.html>. TES searchers did not find Caylee Anthony.
18. On November 15, 2008, one Dominic Casey, a private investigator under contract to Miss Anthony's parents, George and Cynthia Anthony, conducted a search of the Wooded Area accompanied by James Hoover, another private investigator. Mr. Hoover videotaped the search, during which no body or remains were found. *See* Appendix H at 12.
19. On December 2, TES opened an Orlando chapter of Texas EquuSearch. *Texas EquuSearch Opens Orlando Branch*, CF News-13, available at

[http://www.cfnews13.com/News/Local/2008/12/2/equusearch\\_opens\\_orlando\\_branch.html](http://www.cfnews13.com/News/Local/2008/12/2/equusearch_opens_orlando_branch.html)

20. On December 11, 2008, law enforcement responded to a call from Roy Kronk stating that he had discovered a human skull at the edge of the Wooded Area, just off Suburban Drive.
21. When law enforcement arrived on the scene, they found the skeletonized remains of a small child at the edge of the Wooded Area, just off Suburban Drive. The State has since identified the remains as those of the child Caylee Marie Anthony.

#### **SUMMARY OF ARGUMENT**

Timothy Miller is a material witness in the instant case. As President of TES and director of its search operations in the Orlando area, Mr. Miller led, coordinated, and managed TES searchers and the methods they used. His testimony as to the areas searched by TES and the methods used by its searchers is necessary and material to the issue of Miss Anthony's guilt or innocence, and to any punishment phase that may ensue. During TES's searches of the Orlando area, Miller and TES came into possession of documents and materials that pertain directly to the issue of the location of the remains found in the Wooded Area on December 11, 2008 and the date of their arrival at that site. Pursuant to the Uniform Act to Secure a Witness from Without a State in a Criminal Proceeding, Miss Anthony therefore requests that this Court certify Timothy Miller as a material witness in this prosecution so that she may serve him with a subpoena duces tecum to come to Florida, testify in a deposition, and bring with him the requested material documents.

If this Court does not certify Miller as a material witness, as a less favored alternative it should grant Miss Anthony's Application for a Subpoena for Documents in the Possession of

Texas EquuSearch, for three reasons. First, TES is within the jurisdiction of this Court because, during the months of August, September, and November 2008, TES did business within the State of Florida within the meaning of Florida's long-arm statute. By conducting its business within the State of Florida, TES subjected itself to the personal jurisdiction of Florida courts over matters relating to its business there. Second, while TES was conducting its business within the State of Florida, it acted as an agent of the State of Florida in conducting its search-and-rescue operations in and around Orlando. While carrying out these operations, TES received payment, equipment, logistical support and direction, and supervision from Florida law enforcement agencies and personnel. Therefore, the records it made of those searches while it was acting as an agent of the State are within the subpoena power of this Court. Finally, public policy militates against permitting state law enforcement agencies from being able to escape discovery requirements by farming out their investigatory functions to private entities.

**I. TIMOTHY MILLER IS A MATERIAL WITNESS IN THE INSTANT PROSECUTION WITHIN THE MEANING OF THE UNIFORM ACT TO SECURE A WITNESS FROM WITHOUT A STATE IN CRIMINAL PROCEEDINGS.**

The issuance of subpoenas to out-of-state witnesses is governed by the Uniform Act to Secure a Witness from Within or Without a State in Criminal Proceedings (hereafter "The Uniform Act"). Fla. Stat. ch. 942. The Uniform Act contemplates a two-step procedure for securing the appearance in Florida of a witness from a State having reciprocal duties under The Uniform Act. First, the requesting court issues a certificate that the named witness is material and specifying the number of days he will be required to appear. Fla. Stat. ch. 942.03(1). The certificate is then presented to a judge in the State where the witness is to be found. Fla. Stat. ch. 942.03(2).

Timothy Miller and Texas EquuSearch are located in Dickinson, Tex. *See* Appendix I. Texas is a State having reciprocal duties under The Uniform Act. *See* Tex. Code Crim. Proc. art. 24.28 § 3(a). This Court should grant Miss Anthony's motion because (1) The Uniform Act applies to subpoenas duces tecum and (2) Timothy Miller is a material witness in this prosecution.

**A. The Uniform Act to Secure a Witness from Without a State in Criminal Proceedings applies to a subpoena duces tecum.**

Miss Anthony's Motion to Certify Timothy Miller as a Material Witness is appropriate because Miss Anthony seeks Mr. Miller's testimony on the organization and methodology of TES's searches for her missing daughter. She also seeks the documents in his possession, as President of TES, relating to the search of the 8750 block of Suburban Drive, Orlando.

The Uniform Act applies to a subpoena duces tecum. Previously, the law in Florida had been unsettled as to the question of whether The Uniform Act applied to documents as well as witnesses. *State v. Delit*, 583 So. 2d 1083, 1085 (Fla. 4th Dist. Ct. App. 1991). However, in 2008 the Third District Court of Appeal held that the Act did in fact authorize a request for testimony accompanied by a request for the production of documents. *State v. Bastos*, 985 So.2d 37, 40 (Fla. 3d Dist. Ct. App. 2008). Because Miss Anthony seeks both the testimony of Timothy Miller and the documents in his possession as President of TES, the Uniform Act is the appropriate mechanism by which to secure his appearance in Florida.

**B. Timothy Miller is a material witness in this prosecution because he has knowledge of the searches performed in and around the area where the remains of Caylee Marie Anthony were ultimately found.**

As President of TES, Timothy Miller is a material witness in the instant prosecution. Specifically, as the director and coordinator of TES's portion of the search operations mounted by the Orange County Sheriff's Office, Miller has intimate knowledge of the search procedures

and methods utilized by TES in its operations. In his capacity as President of TES, he is also in possession of records, communications, maps, and other documents relating to the searches performed in and around the area where the remains of Caylee Marie Anthony were discovered on December 11, 2008.

The remains of a small child, later identified as Caylee Marie Anthony, were found by the side of the road in a wooded area just off Suburban Drive in Orlando, Florida. The wooded area in question lies on both sides of the 8750 block of Suburban Drive and extends approximately 500 feet between Hopespring Drive and Hidden Oaks Elementary School. *See* Appendix J. This area was searched by several individuals, including Orange County law enforcement and TES volunteers, between July and December 2008. Several searchers have made statements to Orange County law enforcement and to the media stating either that they searched the 8750 block of Suburban Drive with TES, or that they encountered TES searchers in that area. *See, e.g.,* Appendix B at 2; Appendix G.

Timothy Miller is a material witness in his own right, and as President of TES is in possession of documents material to this proceeding and Miss Anthony's defense, either at trial or at any penalty phase that might ensue. As President of TES, Timothy Miller coordinated TES's portion of the search for Caylee Anthony in Orlando. *Search for Caylee Suspended Amid Wet Conditions*, WESH-2 Orlando, Sept. 7, 2008, available at <http://www.wesh.com/news/17415099/detail.html>. TES enlisted dozens of volunteer searchers, who were required to fill out forms with their names and contact information. *See* Appendix B at 33. TES printed and consulted gridded maps of the areas Orange County law enforcement targeted for them to search. *See* Appendix E at 5. Furthermore, Orange County knew that the wooded area across Suburban Drive and behind Hidden Oaks was a former hangout of Miss

Anthony's. *See* Appendix K. As an area of interest, this area appears on one of the gridded maps provided by Orange County law enforcement to TES. *See* Appendix L. Several witnesses have stated that TES searchers combed the Suburban Drive area near Hidden Oaks Elementary. *See generally* Appendices B and G. TES's own Member Application states that "all information, paperwork, or equipment issued, etc. are the property of Texas EquuSearch." *See* Appendix I.

All of the above facts make a strong showing that Timothy Miller, as President of TES, possesses information and documents that pertain directly to the issue of when the remains of Caylee Marie Anthony were placed at the site where they were ultimately found. Unlike the showing in *State v. Delit*, 583 So.2d 1083 (4th Dist. Ct. App. 1991), these statements do establish the materiality of the requested witness to the proceeding at hand. In *Delit*, the requesting party presented affidavits amounting "to no more than mere supposition" that the witness possessed the information it required. *Id.* at 1085. Furthermore, the court held, the affidavits contained allegations which, if true, did not establish the witness's materiality. *Id.* Here, by contrast, Miss Anthony has shown that Orange County law enforcement provided TES with documents identifying the area in question as an area of interest; that witnesses have made various statements (including in a sworn interview) to the effect that they searched the area in question on behalf of TES or saw TES searchers in that area; and that it is TES's practice to claim as its property all the documents relating to their search operations, including its membership and volunteer applications. These showings establish the materiality of Timothy Miller and the documents in his possession to this case.

For the above reasons, Miss Anthony requests that the Court grant her motion so that she may subpoena Timothy Miller, in his capacity as President of Texas EquuSearch, as a material witness to testify in a deposition about TES's searches of the area where Caylee Anthony was

found and to bring with him any and all records, communications, maps, directions, and other documents relating to those searches and the members and volunteers who performed them.

**II. THIS COURT PROPERLY HAS JURISDICTION TO ISSUE A SUBPOENA TO TEXAS EQUUSEARCH FOR DOCUMENTS MATERIAL TO THIS CASE.**

For the reasons argued above, the Court should grant Miss Anthony's motion to certify Timothy Miller as a material witness in this case so that, as authorized by the Uniform Act, she may subpoena him to testify and bring documents relating to TES's searches in Orlando. However, if this Court does not grant her motion, Miss Anthony respectfully requests that, as a less favored alternative, the Court grant her application for a subpoena for documents in the possession of Texas EquuSearch under its own power.

This Court has jurisdiction over Texas EquuSearch, a Texas corporation, for two reasons. First, during the months of September and November 2008, Texas EquuSearch conducted business within the State of Florida and so brought itself within the reach of Florida's long-arm statute. Second, while conducting its searches for Caylee Marie Anthony in the fall of 2008, TES acted as an agent of law enforcement, receiving money, equipment, and direction from various Orange County agencies. Finally, as a matter of public policy, this Court should not allow the State to avoid its discovery responsibilities by turning over portions of its investigations to private entities.

**A. This Court has personal jurisdiction over Texas EquuSearch because Texas EquuSearch did business in the State of Florida within the meaning of Florida's long-arm statute.**

A subpoena issued by a Court reaches all documents under the control of the party required to produce them, even if those documents are located outside the territorial jurisdiction of the court. *G.M. v. Florida*, 357 So.2d 1045, 1047 (Fla. 3d Dist. Ct. App. 1978). Florida's long-arm statute confers upon Florida courts jurisdiction over any foreign corporation which