



Could Casey Anthony Be Tried Again for Murder?

By Aaron Kase Casey Anthony should have been convicted of murder, her trial judge said this week. Anthony was acquitted in 2011 for the killing of her 2-year-old daughter, Caylee. Caylee's corpse was found in a trash bag in the woods with duct tape on her head months after she went missing in 2008. After a series of denials including blaming the baby's disappearance on her nanny, Anthony asserted a defense that Caylee had drowned in a swimming pool, and her dad disposed of the body. In a high-profile trial, a jury found Anthony not guilty of murder and child abuse. Now, the judge in the case says that the jury made a big mistake. "There was sufficient evidence to sustain a verdict of murder in the first degree in this case," Judge Belvin Perry told the Today Show in a televised interview. Perry described a two-sided nature of Anthony's personality during the trial. "There was the side that was before the jury, where she portrayed the role of a mother who had lost a child, someone who was wrongfully accused, and then you could notice the change and transformation in her when the jury went out," he said. "She was very commanding, she took charge of different things, and you could see her sometimes scolding her attorneys." Ultimately, the judge acknowledged, it was up to the jury to make its own determination. "I thought [the prosecutors] had proved a great case, but you've got to realize this was a circumstantial evidence case," he told Today. "All the defense had to do was create that reasonable doubt, and that's what they did."

Double Jeopardy

Is there any circumstance under which Anthony could be tried again for the death of her child? It's possible, but unlikely. Right off the bat, the Fifth Amendment to the Constitution stipulates that no person "be subject for the same offense to be twice put in jeopardy of life or limb." That means that once she's been acquitted, the state cannot try her again for the same crime. "The whole reason for that is to prevent prosecutors or tyrannical government from going after you time and time again," explains Lincy M. Jacob, a criminal defense attorney with Tully Rinckey, noting that authorities could drain the time, energy and bank account of a defendant in perpetuity if they could prosecute more than once, to say nothing of indefinite pre-trial detention for people who couldn't make bail. An exception could be made if the federal government decided to prosecute after someone was acquitted in state court, under the separate sovereign doctrine. "The state is one sovereignty, the federal government is another," Jacob says. However, the federal government would almost never intervene unless it could bring substantially different charges. By policy, it defers to the verdict in state court if a defendant is tried on charges that would be similar to those brought under federal law. The Attorney General's Office can make an exception in cases of total state incompetence, or acquittal based on a lack of certain evidence that could be available in a federal trial.

Foolproof Suffocation

In Anthony's case, there is some evidence that the jury didn't know about — police detectives failed to discover that she had searched the Internet for "foolproof suffocation" on the last day Caylee was known to be alive. While there is a Change.org petition to try Anthony in federal

court, there has been no indication that any new charges have been considered. On the other side of the coin, defendants who are found guilty have several opportunities to appeal their conviction. "The whole criminal justice system is based on the premise that they'd rather let 10 guilty people go than convict one innocent person," says Jacob. One other way that a defendant could find him or herself back in court after an acquittal is through a civil suit. This was famously demonstrated in the case of O.J. Simpson, who was acquitted in the 1994 murder of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman, but was found liable for wrongful death in civil court. "The standard of truth is different in a criminal trial, where you need proof beyond reasonable doubt," Jacob says. "You just need a preponderance of evidence in a civil trial."