

ORIGINAL

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9 GEORGIA DEFILIPPO

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF STANISLAUS

12 PEOPLE OF THE STATE OF CALIFORNIA,  
13 Plaintiff,  
14 vs.  
15 GEORGIA DEFILIPPO,  
16 Defendant.

Case No.: 1490969

OPPOSITION TO QUASH DEFENSE  
SUBPOENA DUCES TECUM AND  
COMPEL RELEASE OF SUBPOENAED  
DOCUMENTS

Dept No.26  
Date:  
Time:

17 **I. THE SUBPOENA DUCES TECUM IS NOT OVERBROAD**

18 All items requested by the subpoena duces tecum are in the possession of the  
19 custodian of records for the CDCR who was validly served. It is anticipated that the subpoenaed  
20 material is relevant to Patrick Hampton's credibility. The items requested are necessary for the  
21 proper preparation of counsel, specifically for the effective cross-examination of Patrick  
22 Hampton. The release of the items is, therefore, essential in affording Ms. Defillipo her rights to  
23 Due Process and a Fair Trial. The request is far from a mere "fishing expedition".  
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1 Mr. Hampton's files requested by the subpoena are easily obtained by CDCR and should  
2 not be so voluminous as to be burdensome to bring or send to the court. Any burden in  
3 collecting visiting logs of Mr. Hampton which is caused by the misfiling of CDRC should not be  
4 considered by this court. Ultimately, the constitutional rights of the defendant in this case must  
5 trump any inconvenience to CDCR in collecting and turning over the requested material.  
6

## 7 II. PRIVACY RIGHTS OF THIRD PARTIES

8 The subpoena duces tecum procedure itself implicitly recognizes an expectation of  
9 privacy on the part of the person whose records are subpoenaed. (People v. Blair (1979) 25  
10 Cal.3d 640, 651, 159 Cal.Rptr. 818, 602 P.2d 738.) The subpoena duces tecum in a criminal  
11 case requires the witness to appear before a *judge* and to bring the described books, papers or  
12 documents. (Pen.Code, § 1327.) The Judicial Council subpoena duces tecum form allows the  
13 subpoenaing party to offer the witness the option of not appearing before the judge in person. To  
14 exercise this option, the witness must place a copy of the records in a sealed envelope, place that  
15 envelope inside another envelope and mail it *to the clerk of the court*, not to the subpoenaing  
16 party. The reason the records are produced to the court instead of to the attorney for the  
17 subpoenaing party was explained in Blair: "The issuance of a subpoena duces tecum ... is purely  
18 a ministerial act and does not constitute legal process in the sense that it entitles the person on  
19 whose behalf it is issued to obtain access to the records described therein until a judicial  
20 determination has been made that the person is legally entitled to receive them." (25 Cal.3d at p.  
21 651, 159 Cal.Rptr. 818, 602 P.2d 738; citation and fn. omitted.)  
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1 **III. STATUTORY PRIVILEGES DO NOT APPLY**

2 Statutory privilege cannot be enforced if nondisclosure of the information deprives a  
3 criminal defendant of the federal constitutional right to a fair trial (Delaney v. Superior Court, 50  
4 Cal. 3d 785, 805 (1990)). A leading case in this area is Davis v. Alaska, which balanced the  
5 defendant's constitutional rights of confrontation and cross-examination against the state's  
6 interest in protecting the anonymity of juvenile offenders, and found the defendant's rights  
7 paramount (Davis v. Alaska, 415 U.S. 308 (1974)). In Pennsylvania v. Ritchie, 480 U.S. 39

8  
9 (1987) the high court held that during trial, the psychotherapist-patient privilege may be  
10 overridden to the extent necessary to ensure a defendant's right of confrontation, and therefore  
11 the trial judge must review subpoenaed psychotherapy records of victim-witnesses to determine  
12 what privileged matters are essential to vindicate defendants' rights of confrontation.  
13

14 Additionally, the defendant might be entitled to pretrial disclosure of this

15 confidential information if failure to disclose it would deny him due process of law or the right  
16 of confrontation. For example, if the prosecution learns that the records sought contain  
17 exculpatory information, undoubtedly there is a federal constitutional duty to disclose the  
18 information under Brady v. Maryland 373 U.S. 83 (1963).  
19

20 In People v. Hammon (1997) 15 Cal.4th 1117 the defendant was charged with  
21 committing lewd and lascivious acts upon a child and sought to compel disclosure of records  
22

23 held by psychotherapists. The Court upheld the trial court's decision to quash the subpoenas,  
24 holding that such disclosure was not required at the pretrial phase of a case. Id. at 1128.

25 However, the Hammon court emphasized that the decision in no way affected the defendant's  
26 Sixth Amendment rights of confrontation and cross-examination at trial, as articulated in Alaska  
27 v. Davis (1974) 415 US 308.  
28

1           Clearly the CDRC records are material and favorable to the defense, especially given the  
2 questionable credibility of the prosecution witnesses in the instant case. Moreover, the defense  
3 cannot effectively cross-examine Mr. Hampton in the absence of the subpoenaed records.  
4

5           Quashing the subpoena would bar the defense's access to this material evidence and, thereby  
6 violate Ms. Defillipo's right to a fair trial.

7           In Alaska v. Davis, *supra*, 415 US 308, at the time of trial, a prosecution witness was on  
8 juvenile probation. Despite defense counsel's argument that he needed on cross-examination to  
9 reveal to the jury the witness's possible bias, the trial court refused to permit counsel to inquire  
10 into the subject. The United States Supreme Court reversed. The confrontation clause of the  
11 Sixth Amendment, the high court wrote, entitled the defendant to expose the possible bias of a  
12 key prosecution witness despite Alaska's confidentiality statute. "The State's policy interest in  
13 protecting the confidentiality of a juvenile offender's record cannot require yielding of so vital a  
14 constitutional right as the effective cross-examination for bias of an adverse witness. Davis at p.  
15 320.  
16

17  
18           Here, as in Davis, the essential rights of a defendant to meaningfully confront and cross-  
19 examine her accusers require that the requested items be produced. Further, such essential rights  
20 of the defendant must outweigh whatever privilege is claimed by the witness, the Attorney  
21 General, or the district attorney. At the very least, the defendant must be able to exercise her  
22 right "to seek out the truth in the process of defending [her]self" Id. Given the already evident  
23 questions regarding the credibility of Mr. Hampton, it is essential that the items requested be  
24 produced so that an effective cross-examination can be conducted and so that the defendant can  
25 be given a fair trial.  
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1 IV. IN CAMERA REVIEW

2 The court's in camera review of the records produced under the subpoena duces tecum  
3 (Pen.Code, § 1326, subd. (c)) and hearing concerning the defendant's entitlement to those records  
4 may be held ex parte in order to safeguard privileged information or attorney work product.

5  
6 (People v. Superior Court (Humberto S.), *supra*, 43 Cal.4th at pp. 749–750, 76 Cal.Rptr.3d 276,  
7 182 P.3d 600 and Kling v. Superior Court of Ventura Cnty., 50 Cal. 4th 1068, 1079, 239 P.3d  
8 670, 677 (2010), as modified (Nov. 17, 2010). Thus, the defense or the court may require the

9 showing of further grounds for release of the subpoenaed material in an ex parte hearing.

10 In addition to protecting the work product of the defense, an ex parte, in camera hearing  
11 excluding the prosecution may be necessary to preserve the prosecution's impartial standing as it  
12 relates to third parties in this matter. An attempt by the prosecution to protect multiple interests  
13 (the decedent, Mr. Hampton, and the CDCR) creates a potential for conflict that could inhibit the  
14

15 "exercise of balanced discretion necessary to ensure a just and fair trial." People v. Superior  
16 Court (Humberto S.), 43 Cal. 4th 737, 745 (2008). If the actions by the prosecution are

17 "designed not to adhere to the statutory procedures to preserve the integrity of the process, but  
18 instead to block [] counsel from access to records potentially critical to the defense", then recusal  
19 may be required. Id.

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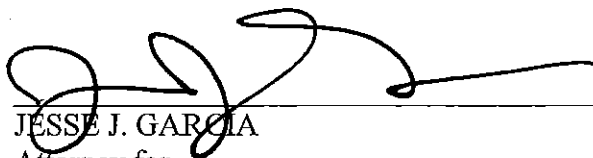
1 **VI. CONCLUSION**

2 Based on the authority outlined above, the court should review the documents produced thus far  
3 and order the production of any documents missing from the subpoenaed material. Upon review,  
4 the court should make an order to release all subpoenaed materials to the defense pursuant to  
5 statute and the Constitutional rights of the defendant in this matter.  
6

7 Dated this 5 day of February 2016.  
8

9 Respectfully submitted,

10 GARCIA, SCHNAYERSON & THOMPSON  
11 ATTORNEYS AT LAW

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13

14 JESSE J. GARCIA  
Attorney for  
GEORGIA DEFILIPPO

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18 DECLARATION OF COUNSEL AND  
19 SUPPORT OF OPPOSITION TO SQUASH  
20 SUBPOENA DUCES TECUM

21 Dept No.26  
22 Date:  
23 Time:

24 I

25 I, Jesse J. Garcia, am the attorney for Georgia DeFilippo in the above captioned

26 matter. Defendant DeFilippo, through counsel, seeks further records from CDCR through a  
27 subpoena Duces Tecum on file with this court regarding CDCR#E79747.

28 II

This court has previously reviewed and released records related to  
CDCR#E79747 to counsel following an in camera hearing.

1 III

2 I have reviewed those records and determined that they contain information which  
3 initially impeaches the testimony of witness Patrick Hampton.  
4

5 IV

6 Specifically the records thus far released reveal Mr. Hampton [REDACTED]  
7 [REDACTED] and that the testimony thus far given by Mr. Hampton reveals that he was  
8 removed from Pelican Bay in 1994 to testify on behalf of the prosecution in a murder trial  
9 wherein Mr. Hampton alleged the defendant in said trial confided to Mr. Hampton his  
10 participation in a murder.  
11

12 V

13 Mr. Hampton was interviewed by law enforcement and CDCR personnel with  
14 regard to his information in that murder case and [REDACTED] to  
15 [REDACTED]  
16

17 VI

18 The facts surrounding Mr. Hampton's proffer in the earlier murder case bears a  
19 striking similarity to his testimony on direct evidence in the instant case.  
20

21 VII

22 I believe there may be additional information in Mr. Hampton's intelligence file  
23 which bears on his credibility [REDACTED]  
24

25 VIII

26 Mr. Hampton's CDCR records already disclosed also reveal he has been subject  
27 to disciplinary action for assaultive conduct, theft, possession of weapons, and other misconduct.  
28



IX

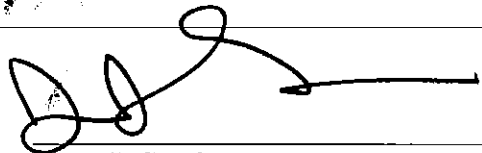
I believe Mr. Hampton's intelligence file contains additional information related to this type of conduct.

X

Mr. Hampton's visitor logs are also requested because I believe his pattern of visits will reveal a web of connections to others in the greater criminal community that bear on his testimony in the current action.

I declare the foregoing to be true and correct under penalty of perjury.

Executed this day February 5, 2016 at Modesto, CA.



Jesse J. Garcia  
Attorney for Georgia DeFilippo