

1 BIRGIT FLADAGER
Stanislaus County District Attorney
2 832 12th Street, Suite 300
3 Modesto, CA 95354
Telephone: (209) 525-5550

4 Attorney for the Plaintiff

FILED

MAR 02 2016
CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY [Signature]
CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF STANISLAUS

10 -----o0o-----

11 THE PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO.: 1490969
12)
13 Plaintiff,) PEOPLE'S RESPONSE TO MOTION
TO COMPEL ANSWERS TO
14 vs.) DISCOVERY QUESTIONS
15)
16 **FRANK CLIFFORD CARSON,**)
BALJIT ATWAL,)
DALJIT ATWAL,)
17 WALTER WESTLEY WELLS,)
GEORGIA DEFILIPPO,)
CHRISTINA DEFILIPPO,) Date: March 2, 2016
18 EDUARDO QUINTANAR, and) Time: 9:30 a.m.
SCOTT MCFARLANE,) Dept: 26
19) The Honorable Barbara Zúñiga
Defendants.

20 -----o0o-----

21 Comes now the People of the State of California, by and through their attorney, BIRGIT
22 FLADAGER, Stanislaus County District Attorney, MARLISA FERREIRA, Chief Deputy
23 District Attorney, and respectfully submits the following response to the defendant's motion to
24 compel the prosecutor to definitely answer his discovery questions.

25 ///

26 ///

27 ///

28 ///

1 **LAW AND ARGUMENT**

2 **I.**

3 **REPETITIVE MOTIONS ARE BARRED.**

4 The defendant has repeatedly brought this motion before the court. The court should
5 decline to consider the defendant's motion on the ground that it raises no new or different facts,
6 circumstances or law. The result of repetitive motions is the waste of judicial and governmental
7 resources.

8 **II.**

9 **THE DEFENDANT'S MOTION TO COMPEL ANSWERS FROM THE PROSECUTOR**
10 **IS UNSUPPORTED BY AUTHORITY.**

11 The defendant has failed to cite any authority that holds that the defendant may
12 "demand" answers of the prosecutor. Accordingly, the defendant's motion lacks merit and
13 should be denied on that ground. The Stanislaus County Superior Court Local Rules, Rule 4.04
14 B, provide:

15 Absence of a memorandum of points and authorities shall be deemed by the
16 Court to be a concession that the motion lacks merit. No issues other than those
17 set forth in the memorandum of points and authorities will be considered unless
18 the new issues were not reasonably discoverable before the motion was filed or
19 there is other good cause shown.

20 ///

21 **III.**

22 **THE DEFENDANT IN A CRIMINAL CASE HAS NO RIGHT TO TAKE**
23 **DEPOSITIONS.**

24 The questions posed by the defendant are reminiscent of interrogatories. However, in
25 *Clark v. Superior Court* (1961) 190 Cal.App.2d 739, the court held that a defendant in a
26 criminal case has no right to take the depositions of witnesses except in limited situations
27 permitted by the Constitution and statutes.

28 First, the prosecutor is not a witness in this case. Second, it is unlikely that the "limited
situations" referred to in *Clark* extend to deposing the prosecutor. As such, the defendant's
motion should be denied.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.

**PRELIMINARY HEARING DISCLOSURE EXTENDS ONLY TO MATTERS WITHIN
THE POSSESSION OR CONTROL OF THE PROSECUTION BEFORE THE
CONCLUSION OF THE HEARING.**

In *Bridgeforth v. Superior Court* (2013) 214 Cal.App.4th 1074, the appellate court explained:

We emphasize that the precise scope of a defendant's due process right to disclosure and the determination of whether that right has been violated are necessarily tailored to the context and purpose of the preliminary hearing. [Citation.] Accordingly, the standard of materiality is whether there is a reasonable probability that disclosure of the exculpatory or impeaching evidence would have altered the magistrate's probable cause determination with respect to any charge or allegation.

(*Bridgeforth* at p. 1087 citing *Merrill v. Superior Court* (1994) 27 Cal.App.4th 1586, 1596-1597.)

More importantly in this instance, the *Bridgeforth* court stated that “[i]n addition, of course, the duty of pre-preliminary hearing disclosure extends only to **matters within the possession or control of the prosecution team before the conclusion of the preliminary hearing.** (*Ibid.*; boldface added.) The preliminary hearing has not reached its conclusion in this case.

V.

**THE PROSECUTOR HAS TAKEN REASONABLE STEPS TO MEET HER BRADY
OBLIGATION.**

The Due Process Clause of the federal Constitution requires that the prosecution disclose to the defendant information that is both material and exculpatory. (*Brady v. Maryland* (1963) 373 U.S. 83, 87.) “There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” (*Strickler v. Greene* (1999) 527 U.S. 263, 281–

1 282.) The *Brady* rule “encompasses evidence ‘known only to police investigators and not to the
2 prosecutor.’ [Citation.] In order to comply with *Brady*, therefore, ‘the individual prosecutor has
3 a duty to learn of any favorable evidence known to the others acting on the government's behalf
4 in the case, including the police.’ ” (*Strickler* at pp. 280–281.)

5 The prosecutor has taken reasonable steps to meet her *Brady* obligation. Rap sheets
6 have been provided to the defense before prosecution witnesses have been called to testify.
7 Further, law enforcement agencies have been contacted in an effort to secure *Brady* material.

8 **VI.**

9 **THE *BRADY* IMPEACHMENT EVIDENCE OBLIGATION DOES NOT ATTACH TO**
10 **A POTENTIAL WITNESS.**

11 “It is undisputed that materials that ‘may be used to impeach a witness’ fall within the
12 class of information subject to *Brady* because impeachment information affects the fairness of
13 trial.” (*City of Los Angeles v. Superior Court (Brandon)* (2002) 29 Cal.4th 1, 16.)

14 However, here, the defendant demands answers from the prosecution as to whether all
15 discussions with *potential* witnesses regarding leniency have been disclosed. The prosecutor is
16 under a duty to provide impeachment evidence for witnesses *called to testify*. No such duty
17 exists for potential witnesses. Clearly, discussions as to leniency with a potential witness can in
18 no way be considered exculpatory. The defendant has provided no authority to the contrary.

19 **VII.**

20 **THE SEARCH IS FOR TRUTH.**

21 The prosecution seeks the truth. If the defendant is aware of *Brady* material, he is
22 invited to disclose that material to the court.

23 **CONCLUSION**

24 For the foregoing reasons, the People request that the court deny the defendant’s motion

25 ///

26 ///

27 ///

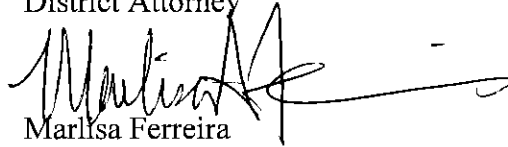
28 ///

1 to compel answers to his discovery questions.

2 Dated this 29 day of March, 2016, at Modesto, California.

3 Respectfully submitted,

4 BIRGIT FLADAGER
5 District Attorney

6 

7 Marlisa Ferreira
8 Chief Deputy District Attorney

9 MAF/BC/bc

PROOF OF SERVICE BY ELECTRONIC MAIL

STATE OF CALIFORNIA)
COUNTY OF STANISLAUS)


I, the undersigned, declare as follows:

That I am over the age of 18 years and am not a party to this action and I am employed by the Stanislaus County District Attorney's Office, 832 12th Street, Suite 300, Modesto, California.

That I served a copy of the **People's Response to Motion to Compel Answers to Discovery Questions** on March 22, 2016 pursuant to California Code of Civil Procedure section 1010.6(a)(6) by electronically sending a copy thereof to the offices of Jesse Garcia at JesseJGARCIA@aol.com, Timothy Rien at rienlaw@sbcglobal.net, Martha Carlton-Magana at carltnm@hotmail.com, Preciliano Martinez at attymartinezp@yahoo.com, Hans Hjertonsson at Hans.hjertonsson@gmail.com, Alonzo Gradford at gradfordlaw@gmail.com, Lawrence Niermeyer at lnniermeyer@aol.com, Robert Lee Forkner at RLFCrimLaw@aol.com, Bruce Perry at brucerperry@msn.com and Stephanie Mitchell at stephanie.mitchell@stanct.org.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of March 2016, at Modesto, California.


Declarant

Case No. 1490969
People v. Carson et al.
Dept. 26