

1 DANIEL A. HOROWITZ Bar No. 92400  
2 Attorney at Law  
3 P.O. Box 1547  
4 Lafayette, California 94549  
5 (925) 283-1863

6 Attorney for Christopher Kirkpatrick

7 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

8  
9 COUNTY OF CONTRA COSTA

10  
11 PEOPLE OF THE STATE  
12 OF CALIFORNIA,

No. 5-081463

13 Plaintiff,

Trial Date: July 6, 2009

14 vs.

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16 CHRISTOPHER KIRKPATRICK,

17 Defendants.  
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23 **In Limine 13**

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25 **Motion for Preclusions**  
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**Introduction**

The prosecution has made representations to the Court and to opposing counsel regarding what discovery it has produced, what witnesses it will call and what the scope of the evidence is that they will use at trial.

There has been extensive litigation of motions and ultimately the prosecution has produced little material. Many times, the prosecution’s reason for not producing material is that they do not intend to prove certain facts or raise certain issues at trial. Other times, the prosecution has stated unequivocally that they have produced all evidence that they will be introducing on a certain subject and/or they have disclosed all witnesses to be called. Therefore, the defense lists representations of the prosecution and asks that they be precluded from varying from these representations.

This motion is based upon the rules and dictates of Penal Code § 1054 et seq and upon state and federal due process and federal Sixth Amendment grounds.

**1. The prosecution should not be allowed to call any witness in its case in chief who is not a member of the Contra Costa County Sheriff’s Department.**

In response to defense requests for discovery from agencies other than the Contra Costa County Sheriff, the prosecution asserted that:

The prosecution’s duty to disclose is limited to information in the actual or constructive possession of the “prosecution team” that participated in building the case against a defendant. Penal Code section 1054.5(a).

(Points and Authorities in Opposition to Motion to Compel Discovery 1:22-24, Exhibit

A)

1 The prosecution then stated that only the Sheriff's Department participated in building the  
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3 case against the defendants.

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5 Here, Defendant's Requests are Vague and Overbroad. The law enforcement  
6 agencies which participated in building the case against defendant would include  
7 the Contra Costa Sheriff's Office only.

8 (Points and Authorities in Opposition to Motion to Compel Discovery 2:9-11)

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11 In support of this position the prosecution cited the following law.

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13 Information possessed by an agency that has **no connection to the investigation**  
14 **or prosecution** of the criminal charge against the defendant is not possessed by  
15 the prosecution team, and the prosecutor does not have the duty to search for or to  
16 disclose such material." In re Steele (2004) 32 Cal. 4th 682,697; People v. Superior  
17 Court (Barrett) (2000) 80 Cal.App.4th 1305, 1315.

18 (Points and Authorities in Opposition to Motion to Compel Discovery 2:12-16)

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20 Based on this statement and law no discovery was provided. The prosecution must be  
21 bound by this representation and both sides must accept that except for the Contra Costa County  
22 Sheriff, no agency has any "connection to the investigation or prosecution."

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25 2. The Prosecution should be barred from calling any witness who is not listed in the police  
26 reports produced on or before April 16, 2009.

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28 Defense discovery requests included the names and addresses of all witnesses that the

1 prosecution intended to call at trial. The prosecution in its Points and Authorities in Opposition  
2 to Motion to Compel Discovery stated as follows:

3 Names and addresses of witnesses to be called to testify trial. At this time the  
4 People only intend to call those witnesses listed in the police reports that have  
5 previously been supplied to the defense. As such, at this time, this information has  
6 already been provided.  
(Points and Authorities in Opposition to Motion to Compel Discovery 3:14-16)

7 This was repeated approximately a month later.

8 The names of all witnesses that the People intend to call at trial at this point.  
9 These names are contained in the police reports that have been discovered.  
(Opposition to Defense Motions to Compel Discovery, 4:7-8)

10 There has been no supplemental list and no supplemental addresses provided. Therefore  
11 the prosecution must be limited to those witnesses listed in the police report(s).

12 **3. The jury should be instructed that the prosecution failed to comply with its discovery**  
13 **obligations regarding the disclosure of felony convictions of its witnesses.**

14 Penal Code § 1054.1 (d) requires the prosecution to disclose “(d) The existence of a  
15 felony conviction of any material witness whose credibility is likely to be critical to the outcome  
16 of the trial.”

17 The defense asked for this material but the prosecution by own admission produced only  
18 a subset of those materials. This admission by the prosecution is as follows:

19 The existence of any felony conviction of any material witness whose credibilily  
20 is likely to be critical to the outcome ofthe trial. This material with respect to the  
21 witnesses the People anticipate calling at this time has previously been turned  
22 over with respect to felony convictions **involving moral turpitude.**  
(Points and Authorities in Opposition to Motion to Compel Discovery 3:14-16, emphasis added)

23 The jury should be informed that the prosecution has chosen to produce only a limited  
24 portion of what the law requires.

25 **4. The gang expert (Deputy Tucker) should be limited to rendering an opinion based upon**  
26 **evidence or information provided to the defense on or before April 16, 2009.**

27 The defense sought a broad scope of gang related materials in preparation for the  
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1 examination of the prosecution expert. The prosecution refused to provide additional materials  
2 stating:

3 That information which the people anticipate their expert will rely on at this time  
4 has previously been disclosed to the defense.

(Points and Authorities in Opposition to Motion to Compel Discovery 5:9-10)

5 Some information has been provided (e.g. the report of Deputy Tucker attached hereto as  
6 Exhibit B. However, this information is very sparse. It is true that Deputy Tucker broadly  
7 *opines* in this report but there is very little “information” upon which the expert relies. An  
8 opinion in a police report need not have any factual support. An opinion in court must have  
9 factual support. When the prosecution finds itself limited to “information” that they disclosed,  
10 the scope of Deputy Tucker’s opinions will be significantly narrowed.

11 **5. No witness has received any threats related to this case.**

12 The prosecution has produced no evidence that any witness in this case has been  
13 threatened. In response to a specific request for information regarding any such threats, the  
14 prosecution provided no information.

15 12. Any statement by any witness(es) that may be relied on by the prosecution or  
16 the “gang expert” that tends to indicate that there were possible threats to said  
17 witness(es).-All statements of witnesses have been provided.

(Points and Authorities in Opposition to Motion to Compel Discovery 4:22-25)

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19 **6. The prosecution should be barred from arguing that Jose Banuelos was a Sureno**  
20 **member or a Sureno dropout. Their evidence should be limited to whether Banuelos had**  
21 **tattoos which reflected Sureno membership.**

22 The defense attempted to obtain discovery relating to whether Banuelos was a Sureno  
23 member or a Sureno drop out. The prosecution refused to provide that information stating:

24 The information relied upon by the prosecution regarding the gang affiliation of  
25 the victims in this case has previously been provided to the defense. **Further,**  
26 **whether the actual victims were drop outs or active members in the Sureno**  
27 **gang is not relevant, material or exculpatory to the instant case. What is**  
28 **relevant is that they had Sureno tattoos that provoked this attack.**

(Points and Authorities in Opposition to Motion to Compel Discovery 7:22-25, emphasis added)

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2 **7. No testimony regarding “The City of Oakley” police report relied upon by**  
3 **Tucker should be admitted.**

4 The prosecution promised to provide a copy of a City of Oakley police report which  
5 expert witness Tucker relied upon.

6 The City of Oakley Police report relied on by Corporal Tucker. I anticipate  
7 receiving this police report shortly. It will be turned over once it is received.  
(Points and Authorities in Opposition to Motion to Compel Discovery 8:14-15)

8 This report has not been turned over and any testimony based upon it must be excluded or  
9 alternatively, the jury should be informed that the defense was entitled to the material, promised  
10 the material but never given the material.

11 **8. The prosecution should be barred from introducing any document or item not**  
12 **provided to the defense in discovery.**

13 The defense sought indicia or documentary evidence associated with the investigation  
14 beyond that produced in discovery. The prosecution said that there was none.

15 6. There was no indicia or documentary evidence seized in association with this  
16 investigation that has not been previously provided.  
17 (Points and Authorities in Opposition to Motion to Compel Discovery 9:22-23)

18 Since there is none, no surprises should surface at trial.

19 **9. Expert witness Tucker should be barred from relying upon any CAL/GANG**  
20 **information as part of his opinion.**

21 The defense sought CAL/GANG information but the prosecution refused stating:

22 The CAL/GANG system-that, in fact, has not been relied upon by the People’s  
23 designated gang expert, Corporal Tucker, in rendering his expert opinion  
24 regarding Defendants’ involvement in the Norteno gang.  
(Opposition to Defense Motions to Compel Discovery, 10:10-14)

25 The should be held to this.  
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Exhibit A

(Points and Authorities in Opposition to Motion to Compel Discovery )

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