

VENTURA COUNTY  
DISTRICT ATTORNEY

2008 DEC 26 AM 11:41

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VENTURA SUPERIOR COURT

DEC 26 2008

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13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

15 PEOPLE OF THE STATE OF  
16 CALIFORNIA

17 Plaintiff,

18 vs.

19 BRANDON MCINERNEY

20 Defendant

Case No.: 2008005782

Department: 14

Hearing Date: December 29, 2008

Time: 8:30 a.m.

DEFENDANT'S REPLY TO PEOPLE'S  
OPPOSITION TO FORMAL  
DISCOVERY MOTION

22 LAW AND ARGUMENT

23 I.

24 THE DISTRICT ATTORNEY'S "OPPOSITION TO  
25 DEFENSE MOTION FOR FORMAL DISCOVERY AND  
26 FORMAL DISCOVERY ORDER (MURGIA)" FAILS TO  
27 ADDRESS THE LEGAL THEORY UPON WHICH  
28 BRANDON IS SEEKING DISCOVERY.

1 On December 18<sup>th</sup>, 2008 the district attorney filed an Opposition to Brandon's  
2 Formal Motion for Discovery. In it, she spends nearly six pages addressing the legal  
3 standard by which a defendant may seek and obtain discovery relevant to a claim of  
4 discriminatory prosecution based on an equal protection violation, as set forth in the case  
5 of *Murgia v. Municipal Court* (1975) 15 Cal.3d 286. While this analysis might be helpful  
6 if Brandon were seeking discovery for the purpose of claiming discriminatory  
7 prosecution, his discovery motion expressly asserted that he was seeking this discovery to  
8 establish that the district attorney "abused their discretion by filing an accusatory  
9 pleading in criminal court, and that in so doing the prosecution denies him of his liberty  
10 without due process of law". See Motion for Defendant's Formal Discovery Order at 17-  
11 18. Therefore, the district attorney's misplaced reliance on the necessary showing  
12 required by *Murgia* is not instructive with regard to Brandon's discovery request.  
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## 17 II.

18 NEITHER THE DELIBERATIVE PROCESS PRIVILEGE  
19 NOR THE WORK-PRODUCT PRIVILEGE CAN BE USED  
20 TO PREVENT BRANDON FROM OBTAINING  
21 DISCOVERY RELEVANT TO HIS CLAIM THAT THE  
22 PROSECUTION DENIES HIM OF HIS LIBERTY  
WITHOUT DUE PROCESS OF LAW.

23 The district attorney seeks to shield itself from having to disclose the sought after  
24 information by contending that they are protected by both the deliberative process and  
25 work-product privileges. Nevertheless, the district attorney cannot hide behind either  
26 purported privilege as a means of escaping from their constitutionally mandated  
27 discovery obligations.  
28

1 The district attorney suggests that the deliberative process privilege, while  
2 stemming from federal law, has been adopted by the California Supreme Court.  
3  
4 However no case has been cited by the district attorney, in which a California court has  
5 held that the deliberative process privilege applies and can be invoked in a criminal case.  
6 Further, they have failed to demonstrate that the discovery sought would fall within the  
7 scope of the deliberative process privilege, should it be available in this case. In the  
8 absence of both of these showings, it is improper for the district attorney to attempt to  
9 claim the deliberative process privilege to avoid disclosure of the materials at issue.  
10

11  
12 The work-product privilege also cannot be used by the district attorney to prevent  
13 Brandon from obtaining the sought after discovery. As the California Supreme Court has  
14 noted, "...the work-product doctrine is not an absolute bar to discovery; manifestly it  
15 cannot be invoked by the prosecution to preclude discovery by the defense of material  
16 evidence, or to lessen the state's obligation to reveal material evidence even in the  
17 absence of a request thereof." *People v. Collie* (1981) 30 Cal.3d 43, 59.  
18

19  
20 In this case, Brandon is requesting the discovery of various items, which constitute  
21 material evidence for his defense of abuse of discretion amounting to a due process  
22 violation. Accordingly, the district attorney cannot invoke the work-product privilege to  
23 deny Brandon of this evidence, which is necessary for the preparation and presentation of  
24 his defense.  
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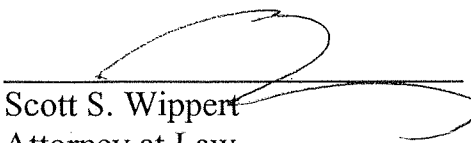
**CONCLUSION**

Brandon McInerney is seeking various materials through discovery, which the district attorney is refusing to disclose. These materials are necessary for the preparation and presentation of his defense of prosecutorial abuse of discretion. Since Brandon is seeking these materials because of their relevance to his defense, which is based on a due process violation and not an equal protection violation, the district attorney's analysis as it relates to *Murgia*, is inapplicable. Due to the materiality of the information sought by Brandon, the district attorney is precluded from invoking the work-product privilege as an attempt to bar discovery. For these reasons Brandon respectfully requests that the court grant his motion for formal discovery and order the district attorney to provide the requested information.

DATED: December 26, 2008

Respectfully submitted,

  
\_\_\_\_\_  
Robyn Bramson  
Attorney at Law

  
\_\_\_\_\_  
Scott S. Wippert  
Attorney at Law