

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE, :
 : Case No. 1405012220
 v. :
 :
 MARVIN D. SPADY, :
 :
 Defendant. :

Submitted: October 13, 2015
Decided: October 19, 2015

ORDER

Upon Defendant's Motion to Compel Disclosure of
Confidential Informant's Identity.
Denied.

Gregory R. Babowal, Esquire of Department of Justice, Dover, Delaware; attorney
for the State of Delaware.

Andre M. Beauregard, Esquire of Brown Shiels & Beauregard, LLC, Dover,
Delaware; attorney for Defendant.

WITHAM, R.J.

Defendant Marvin Spady (“Spady”) has filed this motion to compel the disclosure of a confidential informant’s identity. Spady contends the disclosure of the informant’s identity is required under *State v. Flowers*¹ because the informant was an actual party to the illegal transaction. For the following reasons, the motion to compel the disclosure of a confidential informant’s identity is DENIED.

FACTS

In July 2014, the State obtained an indictment charging Spady with Drug Dealing, Conspiracy Second Degree, Possession of Marijuana, and Possession of Drug Paraphernalia. Similar indictments were obtained against Spady’s codefendant, Jennifer M. Sparacio (“Sparacio”). The charges were the result of a search conducted at the Traveler’s Inn Motel in Milford, Delaware. The Milford Police Department obtained a search warrant after using an informant to make controlled purchases at the motel. Although the search warrant was based on these controlled purchases, the purchases themselves were not charged. Based upon the informant’s involvement in the transactions supporting the search warrant, Spady has filed this motion to disclose the informant’s identity.

DISCUSSION

Under Rule 509 of the Delaware Uniform Rules of Evidence, the State has “a privilege to refuse to disclose the identity of a person who has furnished information

¹ *State v. Flowers*, 316 A.2d 564, 567 (Del. Super. 1973) (noting that the disclosure of a informant’s identity is required when the Informant was an actual party to the illegal transaction).

relating to or assisting in an investigation . . . to a law-enforcement officer.”² An exception to this rule exists if it appears “an informer may be able to give testimony which would materially aid the defense.”³ “To invoke this exception, the defendant must ‘show, beyond mere speculation, that the confidential informant may be able to give testimony that would materially aid the defense.’”⁴ In *State v. Flowers*, the court found four standard situations in which the issue of a confidential informant’s identity may arise: “(1) The informer is used merely to establish probable cause for a search. (2) The informer witnesses the criminal act. (3) The informer participates but is not a party to the illegal transaction. (4) The informer is an actual party to the illegal transaction.”⁵ In *Butcher v. State*, the Delaware Supreme Court recognized “that generally the privilege afforded under Rule 509 is protected in the first *Flowers* scenario, but not in the fourth.”⁶ The second and third scenarios require the trial court to hold an *in camera* examination in order to determine whether the identity of the informant should be revealed.⁷

In *State v. DiFilippo*, an informant was supplied with money to make a controlled drug purchase.⁸ After the purchase was completed, police officers

² D.R.E. 509(a).

³ D.R.E. 509(c).

⁴ *Cooper v. State*, 2011 WL 6039613, at *9 (Del. 2011) (quoting *Davis v. State*, 1998 WL 666713, at *2 (Del. July 15, 1998)).

⁵ *State v. Flowers*, 316 A.2d 564, 567 (Del. Super. 1973).

⁶ *Cooper*, 32 A.3d at 988 (citing *Butcher v. State*, 906 A.2d 798, 802-03 (Del. 2006)).

⁷ *Butcher*, 906 A.2d at 803.

⁸ *State v. DiFilippo*, 1986 WL 4051, at *1 (Del. Super. 1986).

confirmed the substance purchased was cocaine. The information from the controlled purchase was part of the information provided in an affidavit filed with an application for a search warrant. The informant did not participate in any of the drug transactions that were charged in the case. The defendant filed a motion to disclose the identity of the informer, but the trial court held that the situation was one where the informer was used merely to establish probable cause for a search. The defendant countered that information surrounding the controlled purchase would corroborate her assertion that the drugs and paraphernalia seized were the property of her codefendant because at the time of the controlled purchase, it was the codefendant who sold drugs to the informer. The court noted that no proposition of evidentiary law “would suggest that where an individual does not participate in one drug related crime or act that fact would tend to make his/her involvement in a later drug related crime less probable.”⁹ The court held that the defendant’s assertion that the codefendant sold drugs to the informant was not relevant and that information available from the informant would not materially aid the defense.

“Ultimately, it is the defendant’s responsibility to show, beyond mere speculation, that the confidential informant may be able to give testimony that would materially aid the defense.”¹⁰ It is not sufficient that an informant who witnessed a transaction underlying the State’s case *may* give exculpatory testimony.¹¹

⁹ *Id.* at *3.

¹⁰ *Davis*, 1998 WL 666713, at *2 (internal quotations omitted).

¹¹ *Id.*

Spady claims that the informant was an actual party to the illegal transactions providing the basis for the search warrant, and disclosure is therefore required. Spady further claims that he was residing with Sparacio, and that a key dispute that will arise at trial is whether the drug transactions were conducted by Spady or Sparacio. Spady contends that although the drug purchases involving the informant are not being charged, the informant could prove or disprove whether he was the actual seller of the drugs in the transactions giving rise to the charges.

In the case at bar, as in the *DiFilippo* case, the transactions forming the basis for the search warrant are not being charged. In both cases, the information from the controlled purchases was used to obtain a search warrant. Neither the informant in *DiFilippo* nor the informant in this case participated in any charged drug transactions. In addition, Spady wishes to use the informant to show it was Sparacio who participated in the controlled purchases, thus further proving or disproving “that Spady was the actual seller in the transactions which are the basis of the charges.”¹² This is similar to the *DiFilippo* defendant’s attempt to use the informant to show that seized drugs and paraphernalia were property of the codefendant rather than the defendant. Just as the *DiFilippo* defendant’s lack of participation or presence during an earlier drug transaction had no probative value to the charged offenses, neither does Spady’s lack of participation have any probative value to the charged offenses. Spady’s lack of participation in one drug related crime or act does not tend to make his involvement in a later related incident less probable. Thus, as in *DiFilippo*, this

¹² Reply to State’s Resp., item 6.

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situation is one where the informer was used merely to establish probable cause for a search.

Moreover, Spady has failed to show, beyond mere speculation, that the confidential informant would be able to give testimony that would materially aid his defense. Spady claims the informant's identity *could be* of material aid to the defense as to whether Spady or Sparacio was the one conducting the charged drug transactions. That the informant *could be* of material aid will not suffice. This is mere speculation. Moreover, there is no claim that the informant was present when the charged drug transactions occurred, therefore Spady's contention that the informant could help determine whether Spady or Sparacio was conducting the charged drug offenses fails.

CONCLUSION

For the foregoing reasons, Spady's motion to compel disclosure of a confidential informant is **DENIED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary
xc: Gregory R. Babowal, Esquire
Andre M. Beauregard, Esquire