

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	:	
	:	Case No. 1507012560
v.	:	In and For Kent County
	:	
ISAAC W. MONTAGUE,	:	
	:	
Defendant.	:	

Submitted: February 1, 2016
Decided: February 5, 2016

ORDER

Upon Defendant's Motion to Disclose
Confidential Informant.
Denied.

Zachary A. George, Esquire of Department of Justice, Dover, Delaware; attorney for the State.

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

WITHAM, R.J.

On February 1, 2015, this Court held an *in camera* proceeding to determine whether a confidential informer had information that could materially aid the defense of Defendant Isaac Montague (“Montague”). The Court concludes that the confidential informer had no information that would materially aid the defense, and the informer’s identity should therefore remain confidential. The Defendant’s motion to identify the confidential informant is therefore **DENIED**.

FACTUAL BACKGROUND

Montague was charged with five counts of Possession of a Firearm by a Person Prohibited (“PFBPP”), one count of Drug Dealing, one count of Tampering with Physical Evidence, one count of Endangering the Welfare of a Child, and one count of Possession of Drug Paraphernalia. These charges are the result of a search warrant executed on July 16, 2015 at 408 New Castle Avenue in Dover, Delaware. Prior to the request for the search warrant, an unidentified confidential informant cooperated with the Dover City Police Department by participating in several controlled buys with Montague at 408 New Castle Avenue. These controlled buys were used in support of an affidavit for probable cause for a search warrant. Montague now seeks to have the identity of the confidential informant disclosed.

DISCUSSION

Delaware Rule of Evidence 509 grants the State the privilege to refuse to disclose the identity of a confidential informant.¹ An exception to this privilege exists

¹ D.R.E. 509(a) states:

The United States or a state or subdivision thereof has a privilege to refuse to

when it appears “an informer may be able to give testimony which would materially aid the defense.”² It is the Defendant’s burden to show beyond mere speculation that the informer’s testimony will provide such aid.³ It is not sufficient that an informant who witnessed a transaction underlying the State’s case *may* give exculpatory testimony.⁴ There are 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 The Delaware Supreme Court recognized “that generally the privilege afforded under Rule 509 is protected in the first *Flowers* scenario, but not in the forth.”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

disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law-enforcement officer or member of a legislative committee or its staff conducting an investigation.

² D.R.E. 509(c).

³ *Cooper v. State*, 2011 WL 6039613, at *9 (Del. 2011) (“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 *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.

Montague is charged only with offenses that were committed in the presence of police officers during the execution of the search warrant. The confidential informant was not on the premises when the search warrant was executed. Thus, the informant does not fall under scenario two because he did not witness the criminal act, nor does he fall under scenario three because he did not participate in any illegal transaction for which Montague is charged, nor does he fall under scenario four because he was not an actual party to any of the charged illegal transactions. Montague agrees that this case falls under the first *Flowers* scenario. Under this scenario, the informer's identity is generally protected.

Assuming the privilege is not protected in the first category, Montague would still be required to show beyond mere speculation that the informer's testimony will materially aid the defense. Montague argues that the informer could assist in proving the weapons found at the residence did not belong to Montague, could assist in proving that Montague was not actually involved in the drug dealing, could assist in proving that Montague was not involved in drug dealing which was witnessed by children, or could assist in proving that Montague was not in possession of drug paraphernalia. However, all of the offenses occurred in front of police officers performing a validly executed search warrant at a time when the informer was not present. At no point does Montague offer an argument that would rise above mere speculation. In fact, it was apparent to the Court that the informant could be harmful to the Defendant's case.

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CONCLUSION

For the foregoing reasons, Montague's motion to disclose the identity of the confidential informer is **DENIED**.

IT IS SO ORDERED.

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

WLW/dmh

oc: Prothonotary

xc: Zachary A. George, Esquire
Andre M. Beauregard, Esquire