

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :  
 :  
 V. : CRIMINAL NO. 99-43  
 :  
 CHARLES GRAVES, a/k/a :  
 :  
 CRAIG MOORE :

O R D E R

AND NOW, this            day of            , 1999, upon  
consideration of defendant Charles Graves' Motion for Disclosure  
of Identity and Information Pertaining to Informant and the  
government's response thereto, it is hereby

ORDERED

that this Motion is DENIED.

BY THE COURT:

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HONORABLE EDUARDO C. ROBRENO  
UNITED STATES DISTRICT COURT JUDGE



information he/she provided was confirmed in detail by police officers who conducted their own independent investigation into the defendant's activities at 518 Dudley Street and who will testify at the trial. This independent corroboration of the C/I's "tip" lead to the issuance of Search Warrant 90832 and its execution on October 15, 1998. The source of the C/I's information - indeed, even the existence of any "credibility or reliability" problems which he/she may have - are irrelevant to this case, which centers upon the work and testimony of the police.

The minor role of the C/I becomes even more apparent when one realizes that this defendant is charged only with crimes which became evident through the execution of Search Warrant 90832. He is not charged with the delivery of heroin to the C/I on either October 14<sup>th</sup> or 15<sup>th</sup>, 1998. The C/I was not an eyewitness to the execution of this warrant or the recovery of the evidence which forms the basis of the charges in this case. Accordingly, he/she has no information which is material to the charges, and the defendant's motion should be denied.

Courts have long recognized that effective law enforcement and the protection of the public interest require that the government be permitted, absent exigent circumstances, to withhold the identity of informants. See Rovario v. United States, 353 U.S. 53 (1957). The reason for this rule has been described as follows:

a genuine privilege, on...fundamental principal..., must be recognized for the identity of persons supplying the government with information concerning the commission of crimes. Communications of this kind ought to receive encouragement. They are discouraged if the informer's identity is disclosed. Whether an informer is motivated by good citizenship, promise of leniency or prospect of pecuniary reward, he will usually condition his cooperation on an assurance of anonymity - to protect himself and his family from

harm, to preclude adverse social reactions and to avoid the risk of defamation or malicious prosecution actions against him. The government also has an interest in nondisclosure of the identity of informers. Law enforcement officers often depend upon professional informers to furnish them with a flow of information about criminal activities. Revelation of the dual role played by such persons ends their usefulness to the government and discourages others from entering into a like relationship. That the government has this privilege is well established, and its soundness cannot be questioned.

McCray v. Illinois, 386 U.S. 300, 308-309 (1967); quoting 8 Wigmore, Evidence 2374 (McNaughton, rev. 1961)(emphasis in original).

The government's privilege will give way **only** if the defense could make an adequate showing that disclosure is "relevant and helpful to the defense of an accused" or "essential to a fair determination of a cause." Rosario, 353 U.S. at 60-61. The defendant bears the burden of setting forth a **specific** need for disclosure. United States v. Jiles, 658 F.2d 194, 197 (3d Cir. 1981), cert. denied, 455 U.S. 923 (1982). Absent such an affirmative showing, the courts repeatedly have refused to compel the government to disclose an informant's identity. See e.g., United States v. Allen, 566 F.2d 193, 194 (3d Cir. 1977), cert. denied, 435 U.S. 926 (1978); United States v. Cantor, 470 F.2d 890, 892 (3d Cir. 1972); United States v. Ferrone, 438 F.2d 381, 386-387 (3d Cir.), cert. denied, 402 U.S. 1008 (1971); United States v. Konigsberg, 336 F.2d 844, 848 (3d Cir.), cert. denied, 379 U.S. 930 (1964). Mere speculation that disclosure would be helpful is not sufficient to override the government's privilege. United States v. Brenneman, 455 F.2d 809, 811 (3d Cir.), cert. denied, 408 U.S. 923 (1972). The rule applies even where, unlike here, the informant was an eyewitness to events involved in the case. United States v. Jiles, 658 F.2d at 197. In Jiles, the

Third Circuit refused to require the government to disclose the identity of a confidential informant, even though the informant had been an eyewitness to the crime. Only upon such a specific showing by the defendant should a court even enter into a determination of whether the defendant's interests are sufficiently strong to overcome the government's privilege of nondisclosure. See id., at 196 and 197. See also Rugendorf v. United States, 376 U.S. 528, 533-536 (1964) (Supreme Court held that a defendant was not entitled to disclosure of an informer's identity to attack an affidavit supporting a search warrant in a motion to suppress evidence, ruling that the defendant had not made the requisite showing that the informer's identity was essential to help establish his innocence at trial); Cooper v. California, 386 U.S. 58, 62 n.2 (1967) (Supreme Court summarily rejected defendant's contention that he was deprived of his right to confrontation because the government did not produce the informant to testify against him).

Courts have generally required disclosure where it has been found that "it is reasonably probable that the informer can give relevant testimony" material to the defense, United States v. McManus, 560 F.2d 747, 751 (6th Cir. 1977), cert. denied, 434 U.S. 1047 (1978), and where disclosure is deemed necessary to ensure a fair trial. United States v. Jiles, 658 F.2d at 198. For instance, in Rosario, supra, "the informant played an active and crucial role in the events underlying the defendant's potential criminal liability." United States v. Jiles, 658 F.2d at 196-197. Disclosure of the informant's identity was therefore necessary for a fair trial. Id. Disclosure has not been required where an informant, as here, was involved solely as a source of information or "tipster" and was not a participant or eyewitness to the offense charged.

The Third Circuit has repeatedly recognized that the defendant bears the burden to show his need for the sought disclosure. See, e.g., Jiles, 658 F.2d at 197; Pickel, 746 F.2d at 181. See also, e.g., United States v. Alexander, 761 F.2d 1294, 1303 (9th Cir. 1983); United States v. Tenorio-Angel, 756 F.2d 1505, 1511 (11th Cir. 1983); United States v. Diaz, 655 F.2d 580, 588 (5th Cir. 1981), cert. denied, 455 U.S. 910 (1982). Further, the defendant's burden is an exacting one. The defendant does not satisfy his burden by providing "[m]ere speculation as to the usefulness of the informant's testimony to the defendant . . ." United States v. Bazzano, 712 F.2d 826, 839 (3d Cir. 1983)(en banc), cert. denied, 465 U.S. 1078 (1984) (quoting United States v. Estrella, 567 F.2d 1151, 1153 (1st Cir. 1977); Pickel v. United States, 746 F.2d at 181 (quoting Bazzano) (mere speculation as to the Government's bad faith found insufficient to meet burden). See also, Jiles, 658 F.2d at 197 ("mere speculation that an eyewitness may have some evidence helpful to the defense's case is not sufficient to show the specific need required by Roviaro"). Rather, a defendant must make a particularized showing that the informant can provide concrete material evidence that significantly aids the defendant to establish a specific asserted defense.<sup>2</sup>

In sum, to be entitled to disclosure of an informant's identity and other related information a defendant has an onerous

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<sup>2</sup> Accordingly, the courts have held in a wide variety of contexts that the defendant was not entitled to disclosure of informant identities and related information where the defendant had not met his burden of establishing that the informant would provide testimony that would significantly aid the defendant in establishing an asserted defense, and hence had material exculpatory evidence essential to affording the defendant a fair trial. See, e.g., United States v. Jiles, 658 F.2d 194, 196-199 (3d Cir. 1981), cert. denied, 455 U.S. 923 (1982); United States v. Schultz, 855 F.2d 1217, 1223 (6th Cir. 1988); United States v. Cerone, 830 F.2d 938, 947-48 (8th Cir. 1987); United States v. Kerris, 748 F.2d 610, 614 (11th Cir. 1984); United States v. Lilla, 699 F.2d 99, 105 (2d Cir. 1983); United States v. Tham, 665 F.2d 855, 859-860 (9th Cir. 1981); United States v. Garcia, 625 F.2d 162, 166 (7th Cir. 1980).

burden of establishing that the informant can provide significant exculpatory evidence essential to a fair trial that overrides the government's interests in nondisclosure. Because Graves has not met this burden, his motion for disclosure should be denied.

WHEREFORE, for the foregoing reasons, the government respectfully requests that the defendant's Motion for disclosure of Identity and Information Pertaining to Informant be DENIED.

Respectfully Submitted,

MICHAEL R. STILES

United States Attorney

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J. HUNTLEY PALMER, JR.  
Assistant United States Attorney  
Chief, Firearms/Arson

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CAROL MEEHAN SWEENEY  
Special Assistant United States  
Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the government's response to defendant Charles Graves' Motion for Disclosure of Identity and Information Pertaining to Informant has been served by me this date, by hand delivery, upon:

Elizabeth Hey, Esquire  
Federal Defender  
Suite 800  
Lafayette Building  
437 Chestnut Street  
Philadelphia, PA 19106-2414

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CAROL MEEHAN SWEENEY  
Special Assistant United States  
Attorney

DATED: \_\_\_\_\_