

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

<b>UNITED STATES OF AMERICA</b>	:	
	:	<b>CRIMINAL ACTION</b>
<b>v.</b>	:	
	:	<b>No. 11-74</b>
<b>TYRONE BAZZLE</b>	:	

**MEMORANDUM**

**Schiller, J.**

**March 23, 2012**

In a one-count indictment, Tyrone Bazzle is charged with knowingly possessing twenty-eight grams or more of cocaine base (crack) with the intent to distribute. Bazzle was arrested based upon information from a confidential informant. After his arrest, a search warrant for his vehicle was obtained, and he provided a written statement to police officers. Bazzle now seeks to suppress and exclude all of the evidence marshaled against him, and he seeks disclosure of the identity of the confidential informant. The Court conducted a suppression hearing on March 19, 2012. For the reasons that follow, the Court will deny Bazzle’s motion to suppress as well as his motion for disclosure of the identity and information pertaining to the confidential informant.

**I. BACKGROUND**

On January 4, 2011, Bensalem Township Police Officer Adam Schwartz<sup>1</sup> spoke to Philadelphia Police Officer Tim Bogan from the Narcotics Field Unit South about a crack investigation. Officer Bogan informed Officer Schwartz that he had a confidential informant (“CI”) who told him that he had arranged to meet with his crack supplier in the area of Route 413 and Lincoln Highway in Bucks County, Pennsylvania. Officer Bogan and Sergeant William Torpey, a

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<sup>1</sup> Officer Schwartz has since been promoted to corporal.

twenty-six-year veteran of the Philadelphia Police Department, met with the CI at the Frankfort Arsenal in Philadelphia.

The CI, who had met his supplier approximately twenty times in the past two months, said his supplier was a black male who drove a silver Volkswagen Jetta. The CI placed a call to his supplier to set up a drug deal while Officer Bogan and Sergeant Torpey listened to both sides of the conversation. The supplier instructed the CI to take I-95 North to Route 413 and await further instructions. The supplier also said that he was currently at a doctor's appointment in the area.

Officer Bogan drove the CI and Sergeant Torpey to an area where Officer Schwartz and Sergeant Robert Bugsch of the Bensalem Township Police Department were located. During the drive, the CI and his supplier had numerous phone discussions about the pending transaction. When Officer Bogan, Sergeant Torpey, and the CI arrived in the area specified by the supplier, the supplier contacted the CI by cell phone. The CI told the officers that his supplier said he was at the Shell gas station located at Route 413 and Lincoln Highway. The three men proceeded to the Shell gas station, and Officer Bogan parked the vehicle at a gas pump next to a silver Jetta. The CI identified the black male sitting in the Jetta parked at the gas pump as his supplier.

Officer Schwartz and Sergeant Bugsch were surveilling the area and saw the silver Jetta parked at a gas pump. At that moment, a marked Middletown Township Police vehicle, unrelated to the investigation, pulled into the gas station. Seconds later, a black male exited the Jetta and walked for approximately five feet before he began to run away from the scene.

Officer Schwartz chased the man and arrested him. The male identified himself to Officer Schwartz as Tyrone Bazzle and said that he had been arrested in the past for drugs and was currently on probation for cocaine and marijuana possession. During a search incident to arrest, Officer

Schwartz found a clear bag containing over 100 grams of crack in Bazzle's front left pants pocket and \$3,160.00 in his right pants pocket. Most of the money found was divided into thousand-dollar increments and was wrapped in rubber bands. Bazzle also had a key to the Jetta, a cell phone, and a business card from a doctor's office a short distance away.

The Jetta was towed and secured so a search warrant could be obtained. Bazzle was transported to Bensalem Police Headquarters, where officers learned that his real name was Charles Williams, though he was on probation under the name Tyrone Bazzle.

Sergeant Bugsch read Bazzle his *Miranda* rights and then interviewed him. According to Bazzle's signed statement, he admitted to selling drugs for approximately twenty years. He said that he had three customers and revealed that he cooked his crack in the Logan section of Philadelphia. He also said that a digital scale he used to weigh drugs could be found under the passenger seat of his Jetta and that he had been planning to sell the crack found on him for \$1,075.00 per ounce. He reported earning a couple hundred dollars per week selling drugs. Bazzle wrote that he was saving money for a kidney transplant and that he smoked marijuana to manage the pain he suffered as a result of kidney failure.

A search of the Jetta executed on January 4, 2011 recovered a digital scale, a rock of crack, and paperwork bearing Bazzle's name.

At the suppression hearing, Anthony Brown, a friend of Bazzle's co-worker, testified on behalf of Bazzle. According to Brown, who was at the gas station when the January 4, 2011 incident occurred, Bazzle never fled from the vehicle. Instead, a gray Jetta pulled into the gas station and, within minutes, numerous plainclothes officers ordered Bazzle to place his hands on the steering wheel. The officers then yanked Bazzle from the car.

## II. DISCUSSION

### A. Probable Cause to Arrest

Bazzle's first argument for suppression is that Officer Schwartz and Sergeant Bugsch lacked probable cause to arrest him, and therefore, all evidence seized from Bazzle and from the Jetta, as well as his statements, must be suppressed as the fruit of the poisonous tree.

The movant bears the burden of proving, by a preponderance of the evidence, that the evidence in question should be suppressed. *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir.1995) (citing *United States v. Acosta*, 965 F.2d 1248, 1256 n. 9 (3d Cir.1992)). "However, once the defendant has established a basis for his motion, *i.e.*, the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable." *Johnson*, 63 F.3d at 245.

The Fourth Amendment protects individuals from "unreasonable searches and seizures." U.S. Const. amend. IV. In general, "every arrest, and every seizure having the formal attributes of a formal arrest, is unreasonable unless it is supported by probable cause." *Michigan v. Summers*, 452 U.S. 692, 700 (1981). Thus, to satisfy the Fourth Amendment, a warrantless arrest must be based on probable cause that a crime has been or is being committed. *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004); *see also United States v. Stubbs*, 281 F.3d 109,122 (3d Cir. 2002). "Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest." *Devenpeck*, 543 U.S. at 152; *see also United States v. McGlory*, 968 F.2d 309, 342 (3d Cir.1992). Probable cause should be evaluated based on the "totality of the circumstances" with reference to the "factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Illinois v. Gates*, 462 U.S. 213, 230-31

(1983). “[P]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *Id.* at 243 n.13.

Bazzle argues that probable cause to arrest was lacking because at that time, police knew only that a CI told them that a black male in Bucks County drove a silver Jetta. (Def.’s Mem. of Law in Supp. of Mot. to Suppress Physical Evidence and Statements [Def.’s Suppression Mem.] at 3.) The police did not have a description of the man, nor did they know the license plate number of the Jetta. (*Id.*) The police also knew that the informant arranged a meeting with his supplier at a Shell gas station on January 4, 2011, although the police did not intimate in the affidavit of probable cause for the vehicle search or the incident report that the CI was meeting his supplier to buy drugs. (*Id.*) The fact that Bazzle fled on foot upon seeing a marked police vehicle does not provide probable cause because flight alone is insufficient to establish probable cause. (*Id.* at 3-4.) But Bazzle also disputes that he fled; he relies on Brown’s testimony to contend that he was forcibly removed from his car by officers.

The Court finds that probable cause to arrest Bazzle existed given the totality of the circumstances. Officers Schwartz and Bogan and Sergeants Bugsch and Torpey are all veteran law enforcement officials with significant experience in conducting drug investigations. Officer Schwartz learned from a Philadelphia narcotics officer that a CI had arranged to meet with his crack supplier in a specific location. Although the affidavit of probable cause did not assert that the CI specifically told officers that he was meeting his supplier to buy drugs, he did tell them that he had met with his cocaine supplier in Bucks County approximately twenty times in the past two months. Furthermore, Sergeant Torpey testified that he heard the CI and the supplier negotiate a drug transaction. The CI said that his source was a black male who drove a silver Volkswagen Jetta. Additionally, once the

CI was in the specified area where his supplier was and told him to be, the supplier provided the CI with the exact location where he could be located. As described by the CI, police spotted a silver Jetta at a Shell gas station. Furthermore, the CI identified the individual in the Jetta as his supplier. Finally, upon seeing a marked police vehicle (which turned out not to be involved with the investigation), Bazzle darted out of the silver Jetta.

Thus, it was not flight alone that led to Bazzle's arrest. Rather, it was a CI, whose tips proved reliable during this investigation, and Bazzle's flight upon the mere sight of police, that led officers to believe that the black male in a silver Jetta at the Shell gas station had crack on him. This belief was reasonable. Accordingly, the personal observations that corroborated the CI's reliability establish probable cause under the totality of the circumstances. *See United States v. Rosario Vazquez*, Crim. A. No. 03-53, 2004 WL 50848, at \*2 (D.V.I. Jan. 6, 2004); *see also Stubbs*, 281 F.3d at 122 (concluding that informant's tip corroborated by surveillance established probable cause); *United States v. Miller*, 925 F.2d 695, 700 (4th Cir. 1991) (“[W]e believe that when [a police officer] personally observed the events at the bus station which corroborated most of the tip, it was reasonable for him to believe that the unverified portion of that tip was correct. Therefore we conclude that a reasonable person would believe that appellant was committing a felony—transporting illegal drugs—and that [the police officer] had probable cause to arrest appellee before he searched her belongings.”). And, while flight alone may be insufficient to establish probable cause, this Court may consider the fact that Bazzle fled upon the sight of the police. *See United States v. Laville*, 480 F.3d 187, 195 (3d Cir. 2007); *see also United States v. Colon*, 654 F. Supp. 2d 326, 335 (E.D. Pa. 2009) (“The weight of the evidence before the Court indicates that the Defendant's flight was unprovoked, and therefore, the Court can consider the flight in determining

whether there was probable cause to arrest the Defendant.”).

The Court does not credit Brown’s testimony. All of the facts in this case suggest that police were at the Shell gas station to witness a drug deal between Bazzle and the CI. That deal would have been jeopardized if they had approached the Jetta and ordered Bazzle out of the car before any interaction between Bazzle and the CI.

Finally, though the reliability of the CI was an issue at the suppression hearing, the Court’s analysis does not depend on the CI’s prior veracity or lack thereof. When Officer Schwartz completed the search warrant affidavit for the Jetta, he stated that he “was advised by Officer Bogan that [Officer Bogan] had an informant (reliable federal C.I.).” (Def.’s Suppression Hr’g Ex. C [Probable Cause Aff.]) That statement was wrong; the CI was a first-time informant whom officers had promised not to prosecute for drug possession in exchange for his cooperation. Regardless, the information officers had at the time of Bazzle’s arrest support a finding of probable cause.

Having concluded that the police had probable cause to arrest Bazzle, the search of Bazzle was clearly permissible as a search incident to arrest. *See Arizona v. Gant*, 556 U.S. 332, 335 (2009). Therefore, the Court will not suppress the evidence found on Bazzle when he was arrested, nor will it suppress the evidence found in the Jetta as the fruit of the poisonous tree. Likewise, the Court rejects Bazzle’s argument that any of the evidence against him must be suppressed because the affidavit of probable cause was tainted.

**B. Suppression of Statements Made During Arrest**

When he was arrested, Bazzle identified himself and told Officer Schwartz that he had been arrested previously for drugs and that he was on federal probation for possessing a kilo of cocaine and five pounds of marijuana. Bazzle seeks to suppress these statements because they were made

without the police providing *Miranda* warnings. The Government has represented to this Court that it does not intend to introduce these statements in its case-in-chief. (Gov't's Resp. to Mot. to Suppress Physical Evidence and Statements at 10 n.3.) This issue is therefore moot, though the Court will revisit the issue if the Government later seeks to introduce the statements Bazzle made when he was arrested.

**C. Voluntariness of Statements Made During Police Questioning**

Bazzle also seeks to exclude the written statements he provided to police when he was questioned at the Bensalem Police Headquarters. Although it is undisputed that Bazzle was informed of his *Miranda* rights prior to making these statements, he claims that he did not knowingly and voluntarily waive his *Miranda* rights. Specifically, he only agreed to waive his rights because Sergeant Bugsch threatened to withhold Bazzle's medication unless he gave a statement. (Def.'s Suppression Mem. at 9-11.) During the suppression hearing, Bazzle also argued that his statements were not voluntary because he was not offered food or drink though he is an insulin-dependent diabetic awaiting a kidney transplant.

A waiver of one's *Miranda* rights must be made "voluntarily, knowingly and intelligently" based on the totality of the circumstances. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966); *Arizona v. Fulminate*, 499 U.S. 279, 285 (1991). "Whenever the State bears the burden of proof in a motion to suppress a statement that the defendant claims was obtained in violation of our *Miranda* doctrine, the State need prove waiver only by a preponderance of the evidence." *Colorado v. Connelly*, 479 U.S. 157, 168 (1986).

The voluntariness of a waiver depends upon on the absence of police overreaching. *Id.* at 169-70. To determine whether a waiver was voluntary, knowing, and intelligent, two factors must

be shown. First, “the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986). Second, “the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” *Id.*

Withholding medication is one of the factors a court can consider when deciding if a *Miranda* waiver was voluntary. *See Greenwald v. Wisconsin*, 390 U.S. 519, 519-21 (1968). The record, however, contains no support for Bazzle’s contention that any police officer knowingly withheld medication from him. Although Bazzle told Officer Bugsch and Edward Gallant that he was waiting for a new kidney and that he smoked marijuana to alleviate pain, Bazzle never told anybody that he had to take medicine while in the custody of the police. Bazzle did not make clear that he was an insulin-dependent diabetic, and the record contains no evidence that Bazzle appeared disoriented, unable to understand or answer questions, or that his medical condition rendered him incapable of voluntarily waiving his *Miranda* rights. To the contrary, he affirmatively answered that he understood his *Miranda* rights and proceeded to provide lucid written answers to the questions posed to him. (Def.’s Suppression Hr’g Ex. E [Bazzle *Mirandized* statements].) Finally, although Bazzle notes that he was held without food or drink, he was questioned mere hours after his arrest and never informed officers that he had to eat or drink to regulate his blood sugar. The Government has met its burden that after Bazzle was read his *Miranda* rights, he provided statements voluntarily, knowingly, and intelligently, and the Government may present those statements at trial.

#### **D. Disclosure of Confidential Informant**

Bazzle also seeks disclosure of the CI’s identity as well as information about the CI. The

Government enjoys a privilege to withhold disclosure of the identity of confidential sources. *Roviaro v. United States*, 353 U.S. 53, 59 (1957). “The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.” *Id.* This privilege is not absolute, and if disclosure is relevant and helpful to the defense, or essential to a fair trial, disclosure will trump the privilege. *United States v. Jiles*, 658 F.2d 194, 197 (3d Cir. 1981).

To overcome the privilege, the defendant must first make a particularized showing that disclosure is necessary. *Id.* Only if a defendant sets forth a specific need for disclosure must the court then balance the public interest in protecting the flow of information with the defendant’s need to prepare his defense. *Id.* at 197-98 (“[T]he first step in determining whether the identity of an informant must be disclosed is to ascertain what need, if any, the defendant has alleged for disclosure. The burden is on the defendant to show the need for disclosure. . . . The second part of the ‘Roviaro test’ requires a balancing of the appellee’s interest in disclosure against the Government’s interest in maintaining the confidentiality of its informant.”).

The identity of a CI must be disclosed if: (1) the possible testimony is highly relevant; (2) it might disclose an entrapment; (3) it might cast doubt upon the defendant’s identity; and (4) the informant is the sole participant, other than the accused, in the transaction charged. *Id.* at 198-99 (citing *McCray v. Illinois*, 386 U.S. 300, 310-11 (1967)); *Roviaro*, 353 U.S. at 63-65).

When faced with a request for disclosure of a CI, one of three cases may emerge. *Jiles*, 658 F.2d at 196. At one extreme, if the CI “played an active and crucial role in the events underlying the defendant’s potential criminal liability . . . disclosure and production of the informant will in all

likelihood be required to ensure a fair trial.” *Id.* at 197. At the other extreme, if the CI was only a tipster, disclosure is normally not required. *Id.* The third group of cases falls in between the extreme and are the most difficult to balance. *Id.*

According to Bazzle, the CI witnessed the events leading up to his arrest and was the only individual who spoke to Bazzle to coordinate the drug purchase. (Mem. of Law in Supp. of Def.’s Mot. for Disclosure of the Identity and Information Pertaining to the CI at 2, 4-5.) The Government counters that Bazzle has failed to sustain his burden of showing a specific need for the CI’s testimony. (Gov’t Resp. to Mot. for Disclosure of the Identity and Information Pertaining to the CI at 6.) The CI was not an eyewitness to Bazzle’s possession of the crack, nor was he present when Bazzle confessed his intent to sell crack. (*Id.*) This is what the indictment charges.

Where does this case fall? The Government has the better of the arguments here because Bazzle fails to make a particularized showing of need. The Government makes no argument that Bazzle sold to the CI, and the CI was not present when Bazzle was interrogated by police officers. The fact that the CI witnessed Bazzle’s arrest is not relevant to the crime with which Bazzle has been charged: possession of crack with the intent to distribute. Because the planned drug transaction never occurred, the CI’s identity is not necessary to Bazzle’s defense. Because this Court concludes that the CI acted more as a tipster who provided probable cause to arrest than as a direct participant in the crimes with which Bazzle is charged, Bazzle has failed to meet his burden to overcome the privilege. *See United States v. Bazzano*, 712 F.2d 826, 839 (3d Cir. 1983) (“Where an informant’s role was in validating a search, disclosure of his identity is not required.”).

### **III. CONCLUSION**

Following a suppression hearing, the Court concludes that the warrantless arrest of Bazzle on January 4, 2011 was reasonable and the evidence seized from Bazzle and the Jetta may be introduced against him at trial. The Government may use Bazzle's statements he provided to Sergeant Bugsch while in custody. Finally, Bazzle's motion to reveal the identity of the CI is denied. An Order consistent with this Memorandum will be docketed separately.

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<b>UNITED STATES OF AMERICA</b>	:	
	:	<b>CRIMINAL ACTION</b>
<b>v.</b>	:	
	:	<b>No. 11-74</b>
<b>TYRONE BAZZLE</b>	:	

**ORDER**

**AND NOW**, this 23<sup>rd</sup> day of **March, 2012**, upon consideration of Defendant’s Motion to Suppress Physical Evidence and Statements, and upon consideration of Defendant’s Motion for Disclosure of the Identity and Information Pertaining to the Confidential Informant, the Government’s responses thereto, following a suppression hearing on March 19, 2012, and for the reasons provided in this Court’s Memorandum dated March 23, 2012, it is hereby **ORDERED** that:

1. Defendant’s motion for disclosure (Document No. 19) is **DENIED**.
2. Defendant’s motion to suppress (Document No. 20) is **DENIED**.

**BY THE COURT:**

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**Berle M. Schiller, J.**