

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

UNITED STATES

CRIMINAL ACTION

v.

TABREAL MARTIN

NO. 18-416

DuBois, J.

May 13, 2019

MEMORANDUM

I. INTRODUCTION

Defendant Tabreal Martin is charged in a Superseding Indictment¹ with possession with intent to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C); knowingly possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A); and felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).

Defendant filed two motions. First, defendant filed a Motion to Suppress Physical Evidence (Document No. 21, filed March 8, 2019), seeking to suppress all physical evidence arising from the alleged “search and seizure” of January 20, 2018. Second, defendant filed a Motion for Disclosure of Identity and Information Pertaining to Confidential Informant¹ (Document No. 26, filed March 8, 2019). An evidentiary hearing on the Motion to Suppress and oral argument on the Motion for Disclosure were held on April 2, 2019, and April 17, 2019. For the reasons stated below, the Motion to Suppress and the Motion for Disclosure are denied.

¹ In a telephone conference on May 10, 2019, the government advised the Court that there was an error made in the Superseding Indictment and that a second superseding indictment would be required. The Superseding Indictment was obtained in order to change the charge in Count Two of the Indictment that defendant “...knowingly used and carried a firearm in furtherance of a drug trafficking crime,” to a charge that defendant “...knowingly possessed a firearm...in furtherance of a drug trafficking crime.” That change was made in the Superseding Indictment but, in addition, the Superseding Indictment erroneously omitted the charge in Count One that defendant knowingly and intentionally possessed with intent to distribute a mixture and substance containing a detectable amount of “fentanyl,” in addition to heroin. The Government advised that a second superseding indictment will be obtained on May 15, 2019, to correct that error.

II. FACTS²

On January 19, 2018, a confidential informant (“CI”) informed Chester Police Department Narcotics Officer Marc Barag that Tabreal Martin was driving around Chester, Pennsylvania, in a black Ford SUV with New Jersey registration. April 2, 2019 Hr’g Tr. 15:2–17:3. The CI further informed Officer Barag that Martin had a firearm. *Id.* Barag relayed this information to Sergeant Matthew Goldschmidt. April 2, 2019 Hr’g Tr. 16:12–17. The reason for this notification by the CI was not stated on the record, but presumably it was related to the fact that Martin was a suspect in one or more criminal matters. *Id.* at 53:8–10. Goldschmidt was familiar with Martin, having interacted with him previously in the course of his police work. *Id.* at 15:15–17. After receiving the information provided by the CI, Goldschmidt ran Martin’s name through the National Crime Information Center (“NCIC”) for a driver status. *Id.* at 17:14–24. Goldschmidt’s search revealed that Martin did not have a valid driver’s license. *Id.* Goldschmidt relayed this information to officers working that night but neither Goldschmidt nor any other officer on duty encountered Martin on January 19, 2018. *Id.* at 17:4–10.

On January 20, 2018, Barag informed Goldschmidt that the CI again reported that they³ had observed Martin driving a black Ford SUV with New Jersey registration in Chester and that Martin was in possession of a gun. *Id.* at 17:11–12. Goldschmidt relayed this information to Officers Michael Costello and Joe Dougherty. *Id.* at 17:25–18:4.

Around 9:30 p.m. on January 20, 2018, Goldschmidt, while on patrol in Chester, sitting in his police car facing east on West 7th street, observed a black vehicle similar to the one described by the CI traveling west on West 7th Street in his direction. *Id.* at 18:10–20. Goldschmidt put on his high beams and turned his car slightly to see into the black SUV. *Id.* at

² The factual background is taken from the evidence presented at the hearing on April 2 and April 17, 2019.

³ Because the gender of the CI is unknown, the Court will use the gender-neutral pronouns “they/them/theirs” to refer to the CI.

18:23–24. Goldschmidt testified that he was able to visually identify Martin as the driver and sole occupant of the vehicle. *Id.* at 19:1–4.

Goldschmidt advised Costello, who was in a police car nearby, that the black SUV with New Jersey registration was coming his way. *Id.* at 19:11–13. Goldschmidt did not identify the driver of the car over the radio when he spoke to Costello. *Id.* at 81:11–18; April 17, 2019 Hr’g Tr. 8:24–9:1. In his testimony, Costello explained that it is standard practice to avoid identifying suspects by name over the radio to prevent individuals with police scanners from using the information to assist the suspect. April 17, 2019 Hr’g Tr. 47:24–48:6. It was Goldschmidt’s testimony that he believed Costello knew Martin was driving the vehicle based on their conversations during roll call. *Id.* at 55:9–14.⁴ On the same subject, Costello testified he had prior information from Goldschmidt about the car they were looking for, the information provided by the CI, and the status of Martin’s driver’s license. April 17, 2019 Hr’g Tr. 7:4–20. With that information Costello began to follow the black SUV. *Id.* at 11:22–12:7. While doing so he witnessed the vehicle “jolt” over to the right side of the road without using a turn signal, “as if to park.” *Id.* at 12:9–13:5. Costello then conducted a traffic stop and notified Goldschmidt. *Id.*

In initiating the traffic stop, Costello pulled up behind the stopped black SUV, turned his lights and siren on, and exited his vehicle. *Id.* at 13:8–14:15. Goldschmidt drove up alongside Martin’s car, visually confirmed that Martin was the driver, and then pulled around Martin’s vehicle, blocking it from moving forward. April 2, 2019 Hr’g Tr. 21:1–6. As soon as Goldschmidt cracked his door to get out of his car, Martin drove up on the sidewalk and fled at a high speed down West 7th. *Id.* at 21:18–20. Seconds before Martin pulled up onto the sidewalk,

⁴ Costello also testified that this information was provided to him during roll call on January 20, 2019. April 17, 2019 Hr’g Tr. 7:4–20. Additionally, Costello testified that he knew Goldschmidt suspected that Martin was driving the black SUV prior to conducting the traffic stop. *Id.* at 49:8–14.

Officer Dougherty, an officer patrolling nearby, drove up and stopped alongside the black SUV. April 17, 2019 Hr’g Tr. 59:18–60:8. Costello estimated that the black SUV was stopped for “forty-five seconds at the most” before Martin drove it onto the sidewalk and away from the officers. *Id.* at 47:9–13. When Martin fled, a chase ensued with Dougherty, Goldschmidt, and Costello pursuing Martin’s vehicle on West 7th Street at a high speed until Martin’s vehicle crashed into several parked cars on the 2600 block of West 7th Street. April 2, 2019 Hr’g Tr. 22:7–12; April 17, 2019 Hr’g Tr. 60:2–61:23.

After the crash, Officer Dougherty saw Martin exit his vehicle and flee on foot. April 17, 2019 Hr’g Tr. 63:13–19. Dougherty observed him run behind a few parked cars, drop a bag of drugs, and continue running, cutting through several yards. *Id.* at 64:4–16. Dougherty and Costello pursued Martin while Goldschmidt stayed with Martin’s vehicle. April 2, 2019 Hr’g Tr. 32:12–33:6; April 17, 2019 Hr’g Tr. 20:10–22, 65:16–67:1. Dougherty and Costello ultimately lost track of Martin. April 17, 2019 Hr’g Tr. 67:2–3.

While checking Martin’s vehicle, Goldschmidt observed, in plain view, on the dashboard a black “glock-style” handgun wedged between the crushed windshield and the dash on the driver’s side of the vehicle. April 2, 2019 Hr’g Tr. 33:8–12. After seeing the gun, Goldschmidt secured the vehicle and began to look around the area where Martin had fled. *Id.* at 35:2–10. On the ground alongside a green Hyundai, behind which Martin had fled, Goldschmidt observed a clear sandwich bag containing what appeared to be heroin packaged in blue wax bags stamped “Jack.” *Id.* at 35:7–16, 38:15–39:1. Goldschmidt remained at the location at which he found the suspected heroin until other officers arrived on the scene. *Id.* at 35:18–25. Once the scene was secured Goldschmidt conducted an inventory search of the black SUV before the car was towed. *Id.* at 38:12–15. Through the inventory search, Goldschmidt recovered additional blue wax bags

stamped “Jack” containing suspected heroin from the center console, an extra magazine for the handgun from the dash compartment, and a Pennsylvania state ID card and two credit cards in Martin’s name also from the dash compartment. *Id.* at 38:12–39:16.

Martin was arrested on February 16, 2018, in Aston, Pennsylvania, for an unrelated matter. Def. Mot. Suppress 5. A Superseding Indictment charges Martin with three counts: possession with intent to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C); knowingly possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A); and felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). On March 8, 2019, defendant filed the Motion to Suppress and Motion for Disclosure that are currently pending. An evidentiary hearing on the Motion to Suppress and oral argument on the Motion for Disclosure were held on April 2, 2019 and April 17, 2019. The motions are thus ripe for review.

III. LEGAL STANDARD

a. Motion to Suppress

“On a motion to suppress, the government bears the burden of showing that each individual act constituting a search or seizure under the Fourth Amendment was reasonable.” *United States v. Ritter*, 416 F.3d 256, 261 (3d Cir. 2005). The applicable burden of proof is by a preponderance of the evidence. *United States v. Matlock*, 415 U.S. 164, 178 n.14 (1974).

b. Motion for Disclosure

The Supreme Court has recognized “the Government’s privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law.” *United States v. Jiles*, 658 F.2d 194, 196 (3d Cir. 1981) (citing *Roviaro v. United States*, 353 U.S. 53, 59 (1957)). That privilege, however, is limited.

“Where the disclosure of an informer’s identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way.” *Id.*

IV. DISCUSSION

a. Defendant’s Motion to Suppress

The Fourth Amendment protects the public from “unreasonable searches and seizures.” U.S. Const. amend. IV. In evaluating defendant’s Motion to Suppress, the Court must determine whether defendant’s Fourth Amendment rights were violated by the police officers’ conduct in performing the traffic stop and gathering physical evidence. The crux of defendant’s argument is that Officer Costello’s initial traffic stop of the defendant was a seizure that was not supported by reasonable suspicion and that, as a result, the evidence flowing from that illegal seizure must be suppressed. The Court disagrees. The evidence shows that (1) defendant was not “seized,” and (2) even if there had been a momentary seizure, Costello had “reasonable suspicion” to support his attempted traffic stop.

i. Seizure

Critically, “[t]here can be no Fourth Amendment violation until a seizure occurs.” *United States v. Valentine*, 232 F.3d 350, 358 (3d Cir. 2000). “[A] person is “seized” only when, by means of physical force or a show of authority, his freedom of movement is restrained.” *United States v. Mendenhall*, 446 U.S. 544, 553 (1980); *see also California v. Hodari D.*, 499 U.S. 621, 626 (1991). “[A] person has been ‘seized’ within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *Mendenhall*, 446 U.S. at 554.

“[I]f the police make a show of authority and the suspect does not submit, there is no seizure.” *Valentine*, 232 F.3d at 358. Submission to authority can take many forms. For instance, a person can submit to a show of authority by standing still. *United States v. Lowe*, 791 F.3d 424, 431-32 (3d Cir. 2015). However, no seizure occurs where there is momentary compliance in response to a show of authority. *See e.g., Valentine*, 232 F.3d at 359 (“Even if Valentine paused for a few moments and gave his name, he did not submit in any realistic sense to the officers’ show of authority, and therefore there was no seizure until Officer Woodard grabbed him”); *United States v. Baldwin*, 496 F.3d 215, 216 (2d Cir. 2007) (holding that “a seizure requires submission to police authority, and conclud[ing] that the driver’s initial fleeting stop [did] not amount to such submission”).

In this case Martin was not “seized” because he did not submit to the officers’ show of authority. Officer Costello made a show of authority when he activated the lights and siren on his police car after pulling up behind Martin’s vehicle. April 17, 2019 Hr’g Tr. 13:8–14:15. Similarly, Goldschmidt made a show of authority when he pulled his police car around in front of Martin’s car to prevent him from driving away. *Id.* at 17:9–25. Defendant argues that Martin submitted to this show of authority when he “stopped and acknowledged the police presence by remaining in his vehicle as Officer Costello approached him.” Def. Mot. Suppress 11. However, there is no evidence that Martin actively acquiesced in any way before he fled. There was no testimony that Martin responded to any police commands or verbally engaged with any of the officers on the scene. In fact, all officers deny having an opportunity to speak to Martin before he drove onto the sidewalk and fled. April 2, 2019 Hr’g Tr. 21:18–20; April 17, 2019 Hr’g Tr. 18:7–9, 67:19–68:10. Although Martin’s vehicle remained stationary for a few moments, he quickly fled and did not acquiesce to police authority.

“When a suspect flees after a show of authority, the moment of submission is often quite clear: It is when the fleeing suspect stops, whether voluntarily or as a result of the application of physical force.” *Lowe*, 791 F.3d at 431.

After defendant fled, he was not captured until weeks later when he was arrested on an unrelated matter in Aston, Pennsylvania. As a result, the Court concludes that Martin was not “seized” at any time on January 20, 2018, and therefore, defendant’s rights under the Fourth Amendment were not violated. *See United States v. Rose*, No. 08-569, 2009 WL 2230749, at *3 (E.D. Pa. July 24, 2009) (finding that “because Defendant did not submit to the officers’ show of authority when the officers pulled their patrol car in front of the Cadillac, the officers’ actions constituted, at most, an attempted seizure. There was no seizure until Defendant was physically restrained by the officers after he fled the vehicle.”).

ii. Reasonable Suspicion

Even if Martin had been momentarily “seized” his Motion to Suppress would still be denied because the officers involved had reasonable suspicion to conduct the traffic stop.

“Generally, for a seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause.” *United States v. Lewis*, 672 F.3d 232, 237 (3d Cir. 2012). One exception to the Fourth Amendment’s warrant requirement allows “[l]aw enforcement officers [to], without a warrant, ‘conduct a brief, investigatory stop’—commonly dubbed a ‘*Terry* stop’—‘when the officer has a reasonable, articulable suspicion that criminal activity is afoot.’” *United States v. Alvin*, 701 F. App’x 151, 153 (3d Cir. 2017) (citing *Terry v. Ohio*, 392 U.S. 1, 22–23 (1968)). The officer must have a “particularized and objective basis” for suspecting a specific individual to be committing a crime. *United States v. Cortez*, 449 U.S. 411, 417 (1981).

The requirement of reasonable suspicion for a *Terry* stop “applies with equal force to a traffic stop of a vehicle.” *Lewis*, 672 F.3d at 237. “It is well-established that a traffic stop is lawful under the Fourth Amendment where a police officer observes a violation of the state traffic regulations.” *United States v. Moorefield*, 111 F.3d 10, 12 (3d Cir. 1997). Even pretextual stops are acceptable when the officer conducting the stop observes a traffic code violation. *See Whren v. United States*, 517 U.S. 806, 806–07 (1996); *United States v. Toney*, 124 F. App’x 713 (3d Cir. 2005). “When determining whether an officer possessed reasonable suspicion to conduct a traffic stop, we must consider the totality of the circumstances.” *Lewis*, 672 F.3d at 237. Reasonable suspicion is evaluated based on what was known at the moment of seizure. *Id.*

In this case, the government offers three theories supporting Costello’s reasonable suspicion to conduct the traffic stop. They argue that (1) Officer Costello witnessed the driver of the SUV pull out of the flow of traffic and over to the right curb without using his turn signal and reasonably believed such conduct violated 75 Pa. Cons. Stat. § 3334(a); (2) Officer Costello was aware that Martin did not have a valid driver’s license in violation of 75 Pa. Cons. Stat. § 1501; and (3) Officer Costello and Sergeant Goldschmidt knew that the CI reported Martin was in possession of a gun. Gov. Resp. Mot. Suppress 7–14.

In support of the government’s first argument, Costello testified that he witnessed the driver of the black SUV turn into the curb lane without using his turn signal and that he believed this violated the traffic code, 75 Pa. Cons. Stat. § 3334(a). April 17, 2019 Hr’g Tr. 12:23–14:3. Section 3334(a) states “no person shall turn a vehicle or move from one traffic lane to another or enter the traffic stream from a parked position . . . without giving an appropriate signal in the manner provided in this section.” This statute, however, does not specifically refer to a vehicle

exiting the stream of traffic without signaling as a traffic violation. The parties do not cite any case law applying § 3334(a) to a vehicle exiting the stream of traffic and the Court has been unable to find case law supporting Costello’s interpretation of the law.

The government argues that even if Costello is wrong in his interpretation of § 3334(a) his “mistake of law” is reasonable and, therefore, does not violate the Fourth Amendment. The Court disagrees. In order to establish reasonable suspicion where there is a mistake of law, an officer’s Fourth Amendment burden is to:

(1) identify the ordinance or statute that he believed had been violated, and (2) provide specific, articulable facts that support an objective determination of whether any officer could have possessed reasonable suspicion of the alleged infraction. As long as both prongs are met, an officer’s subjective understanding of the law at issue would not be relevant to the court’s determination.

United States v. Delfin-Colina, 464 F.3d 392, 399–400 (3d Cir. 2006). Based on a survey of cases from other circuits, the *Delfin-Colina* court further observed that “a mistake of law is only unreasonable when the officer does not offer facts that objectively show that the identified law was actually broken.” *Id.* at 399. Assuming arguendo that 75 Pa. Cons. Stat. § 3334(a) does not proscribe exiting the stream of traffic without using a turn signal, Costello’s traffic stop based on his mistaken understanding of the law would not be valid because Martin would not have violated § 3334(a) in any other way. However, the Court need not decide whether there is reasonable suspicion based on the validity of this traffic violation because Costello had a preexisting reasonable suspicion to justify his traffic stop based on (1) his knowledge that Martin did not have a valid driver’s license, and (2) his and Goldschmidt’s collective knowledge of the information, provided by the CI, that Martin was in possession of a firearm.

Costello testified that he was told during roll call that Martin, the driver of the black SUV they were looking for, did not have a valid driver’s license and possessed a gun. April 17, 2019 Hr’g Tr. 7:4–20; 49:8–14. Although Costello said he performed the traffic stop in response to

Martin's failure to use his turn signal, he also said he had made up his mind to stop the car *before* witnessing the alleged traffic violation. April 17, 2019 Hr'g Tr. 39:1–3. To explain his initial intention to pull the car over Costello stated, “we were given information about his license status.” *Id.* at 39:4–11. The fact that Costello ultimately justified his stop based on the suspected traffic violation does not vitiate his preexisting reasonable suspicion that Martin was driving without a valid driver's license in violation of 75 Pa. Cons. Stat. § 1501, justifying a traffic stop. An officer's motive in conducting a traffic stop does not invalidate objectively justifiable behavior under the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 812–13 (1996) (concluding that “any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved [has been foreclosed]”). “Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.” *Id.* at 813.

Furthermore, Costello and Goldschmidt were both aware of information provided by the CI that Martin was driving around Chester in a black SUV with New Jersey registration, in possession of a firearm. April 17, 2019 Hr'g Tr. 7:4–20. Goldschmidt was able to confirm some of the details provided by the CI when he witnessed Martin driving on West 7th Street in a black SUV with New Jersey registration, just as described by the CI. April 2, 2019 Hr'g Tr. 18:10–19:4. Although Costello did not visually identify Martin himself, the collective knowledge doctrine extends Goldschmidt's knowledge to Costello. The collective knowledge doctrine “[imputes] the knowledge of one law enforcement officer [] to the officer who actually conducted the seizure, search, or arrest.” *United States v. Whitfield*, 634 F.3d 741, 745 (3d Cir. 2010). The Third Circuit has extended the application of this doctrine to *Terry* stops such as the one at issue in this case. *Id.* at 745–46. Because Goldschmidt and Costello were working together in a “fast-paced and dynamic” environment, it matters not that Costello, instead of

Goldschmidt, initiated the stop. *Id.*; *United States v. Gonzalez*, No. 14-0015, 2014 WL 11395079, at *2 (E.D. Pa. May 14, 2014) (“The legality of a seizure based solely on statements issued by fellow officers depends on whether the officers who issued the statements possessed the requisite basis to seize the suspect.”). In this case, Costello testified that Goldschmidt “told [him] to stop the car.” April 17, 2019 Hr’g Tr. 38:19–20. As a result, in addition to Costello’s reasonable suspicion that Martin was driving without a valid license, Goldschmidt’s reasonable suspicion that Martin possessed a firearm gave Costello a proper basis to stop Martin on that ground.

Taken together, this evidence is more than sufficient to support a “reasonable suspicion” that the driver of the vehicle, Martin, was committing a criminal offense. As a result, the defendant’s Fourth Amendment rights were not violated when Costello attempted to conduct the traffic stop at issue in this case.

For the foregoing reasons, the Court denies defendant’s Motion to Suppress.

b. Defendant’s Motion for Disclosure

Defendant’s Motion for Disclosure asks that the Court order the government to disclose the identity of the CI because “information concerning the source of the CI’s information, evidence of his/her reliability, as well as his/her motives . . . is needed in order to effectively mount a sufficient defense . . .” Def. Mot. Disclosure 5. Specifically, defendant requests: (1) the CI’s true name and residence; (2) the CI’s criminal history; (3) all promises for consideration given to the CI by the government; (4) any prior testimony of the CI, acting as a CI; (5) any psychiatric treatment undergone by the CI; and (6) any prior drug use by the CI. Def. Mot. Disclosure Mem. 8–9.

In *Roviaro v. United States*, the Supreme Court set forth standards for determining when a defendant's request for disclosure of a government confidential informant's identity should be granted: "[w]here disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the [government's] privilege [to safeguard the informant's identity] must give way." 353 U.S. 53, 60-61 (1957). The Court emphasized, however, that protecting an informant's identity serves important law enforcement objectives, most significantly, the public interest in encouraging persons to supply the government with information concerning crimes. *Id.* at 59.

A defendant bears the burden of demonstrating the need for disclosure of a confidential informant's identity. *United States v. Rios*, No. 96-0540-06, 1997 WL 356329, at *1 (E.D. Pa. June 20, 1997). A defendant's speculation that disclosure of an informant's identity will assist in his defense does not defeat the government's interest in protecting its informant. *Id.*; *United States v. Brown*, 3 F.3d 673, 679 (3d Cir. 1993) ("A defendant who merely hopes (without showing a likelihood) that disclosure will lead to evidence supporting suppression has not shown that disclosure will be 'relevant and helpful to the defense . . . or is essential to a fair determination' of the case.") (citing *Roviaro*, 353 U.S. at 60–61); *United States v. Bazzano*, 712 F.2d 826, 839 (3d Cir. 1983) ("Mere speculation as to the usefulness of the informant's testimony to the defendant is insufficient to justify disclosure of his identity.").

In this case, the defendant fails to articulate any "relevant and helpful" information to the defense that the CI would be able to provide and instead advances only the speculative argument that the CI might assist in his defense by contradicting police testimony. April 17, 2019 Hr'g Tr. 119:18–120:2. Because defendant does not specify how the CI's testimony or disclosure of the CI's identity would be relevant and helpful to his defense, the Court concludes that this motion is

based on “mere speculation” and is insufficient to justify disclosure of the confidential informant’s identity.

Furthermore, even assuming *arguendo* that defendant met his burden of describing the information he seeks with particularity, the Court finds, in balancing the defendant’s interest in disclosure against the government’s interest in safeguarding the CI’s identity, that the circumstances of the CI’s role in this case do not warrant disclosure of the CI’s identity.⁵

When the informant has played an active and crucial role in the events upon which the charges against the defendant are based, disclosure of the informant’s identity “will in all likelihood be required to ensure a fair trial.” *Jiles*, 658 F.2d at 196-97 (3d Cir. 1981). However, where a confidential informant is a tipster and not a participant or witness to the acts charged, disclosure of his identity is not required. *Id.* at 197; *United States v. Dixon*, 123 F. Supp. 2d 275, 277 (E.D. Pa. 2000). Courts have also held that disclosure is not necessary where the informant provides information relevant only to the question of probable cause for an arrest or search and not the issue of a defendant’s guilt or innocence. *See Bazzano*, 712 F.2d at 839 (“Where an informant’s role was in validating a search, disclosure of his identity is not required.”); *United States v. Pitts*, 655 F. App’x 78, 80 (3d Cir. 2016) (“An informant need not be disclosed for purposes of a probable cause determination if ‘there was sufficient evidence apart from’ the informant’s ‘confidential communication’ to justify a warrantless search”).

⁵ Circumstances sufficient to require disclosure of the confidential informant’s identity include (1) high relevance of the informant’s testimony, (2) the informant’s testimony might disclose an entrapment, (3) the informant’s testimony might throw doubt on the defendant’s identity, and (4) the informant was the sole participant other than the defendant in the charged offense. *United States v. Jiles*, 658 F.2d 194, 198–99 (3d Cir. 1981) (citing *Roviaro*, 353 U.S. at 63-65). Although defense counsel argues that this case might involve an issue of mistaken identity there is no reason, beyond defendant’s speculation, to believe that the CI would provide testimony calling into question whether Martin was the driver of the vehicle. Martin was visually identified twice on January 20, 2018 as the driver of the vehicle by Sergeant Goldschmidt who testified that he was familiar with the defendant. April 2, 2019 Hr’g Tr. 19:1–4, 21:1–6. Additionally, an ID and two credit cards bearing Martin’s name were found in the vehicle. *Id.* at 38:12–39:16. Based on this evidence, the Court concludes that there is no reason to believe that the CI would cast doubt on Martin’s identity as the driver of the vehicle.

The government claims that the CI in this case acted as a “tipster” and should not be considered a “witness” to the charged crimes. April 17, 2019 Hr’g Tr. 123:19–125:7. Continuing, the government states that the testimony about information provided by the CI is relevant to the issue of reasonable suspicion to conduct the traffic stop and states that it does not plan to use the CI as a witness at trial to provide evidence of the defendant’s guilt. *Id.* Given the government’s representations, the Court agrees that the CI more closely fills the role of a “tipster” than that of a “witness.” *Id.* at 123:19–125:7.

During oral argument on this motion, the government also argued that “there is a grave danger - - if the confidential informant were revealed, to the safety of that individual’s life and the life of their loved ones.” *Id.* at 128:14–24. The Court finds merit in the government’s argument that the CI could be endangered should their identity be disclosed. Where the government claims that a confidential informant may be endangered through disclosure of their identity, such an assertion of danger “will not be disregarded lightly.” *United States v. Almodovar*, No. 96-71, 1996 WL 700267, at *7 (D. Del. Nov. 26, 1996) (finding that discovery of weapons at defendant’s property demonstrated possible danger to confidential informant). In this case, the government recovered a firearm and magazine from the vehicle driven by the defendant. April 2, 2019 Hr’g Tr. 35:2–10, 38:12–39:16. The Court concludes that the discovery of the weapon and ammunition in this case substantiates the government’s claim that the CI might be endangered if their identity is disclosed. Under these circumstances the government’s interest in safeguarding the CI’s identity outweighs the defendant’s interest in disclosure and disclosure of the CI’s identity is not warranted.

Defendant’s Motion for Disclosure requests, in the alternative, that the Court issue an order requiring redacted discovery of the requested information or that the Court “review the

relevant information *in camera*” to determine whether disclosure should be ordered.” Def. Mot. Disclosure Mem. 9. The Court declines to do so under the circumstances presented. Aside from general impeachment evidence, which cannot be used in this case because the CI will not be called as a government witness, defendant fails to specify what exculpatory information he seeks through redacted discovery or *in camera* review. Therefore, the Court denies these requests. *See United States v. Mitchell*, No. 09-105, 2013 WL 12202650, at *12 (W.D. Pa. May 6, 2013) (declining to conduct an *in camera* review of a pre-sentence investigation report where the defendant failed to specify the information contained in the report that he expects will reveal exculpatory or impeachment evidence. “Such broad categorical requests for impeachment material do not establish any special need which would justify an *in camera* review of the cooperating witnesses’ [pre-sentence investigation report]”); *see also United States v. Gaines*, 726 F. Supp. 1457, 1465 (E.D. Pa. 1989), *aff’d*, 902 F.2d 1562 (3d Cir. 1990) (denying a request for an *in camera* proceeding with a confidential informant who acted as a “mere tipster” because “[t]o rule otherwise would open the door to the production of informants, including mere tipsters, in every case where a defendant contradicts the information in the affidavit and then speculates that therefore there may be no informant.”).

Thus, the Court denies defendant’s Motion for Disclosure.

V. CONCLUSION

For the foregoing reasons, the Court denies Defendant’s Motion to Suppress Physical Evidence and Defendant’s Motion for Disclosure of Identity and Information Pertaining to Confidential Informant. An appropriate order follows.

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

UNITED STATES

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v.

TABREAL MARTIN

NO. 18-416

ORDER

AND NOW, this 13th day of May, 2019, upon consideration of defendant's Motion to Suppress Physical Evidence (Document No. 21, filed March 8, 2019), defendant's Motion for Disclosure of Identity and Information Pertaining to Confidential Informant (Document No. 26, filed March 8, 2019), Government's Response to Defendant's Motion to Suppress (Document No. 31, filed March 18, 2019), Government's Response to Defendant's Motion to Compel the Disclosure of the Identity and Information Pertaining to the Disclosure of the Confidential Informant (Document No. 32, filed March 19, 2019), following a Hearing and oral argument in open court on April 2, 2019 and April 17, 2019, for the reasons stated in the accompanying Memorandum dated May 13, 2019, **IT IS ORDERED** as follows:

1. Defendant's Motion to Suppress Physical Evidence is **DENIED**.
2. Defendant's Motion for Disclosure of Identity and Information Pertaining to Confidential Informant is **DENIED**.

BY THE COURT:

/s/ **Hon. Jan E. DuBois**

DuBOIS, JAN E., J.