

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

UNITED STATES OF AMERICA

v.

Case No. [REDACTED]

MOTION TO DISCLOSE CONFIDENTIAL INFORMANT
AND MEMORANDUM IN SUPPORT THEREOF

The defendant, [REDACTED] by and through his undersigned counsel, hereby respectfully moves this court to order the government to disclose the identity (i.e., name, address, birthdate, telephone number, and social security number) of the confidential informant whose information was used by the Food and Drug Administration to obtain a warrant to search the defendant's home. In support of this Motion, the defendant respectfully refers the court to the facts and legal authorities contained in its Memorandum of Law filed herein.

MEMORANDUM

Background

Argument

The defendant has requested the government to confirm the identity of the confidential informant in this case as well as his/her location for the purpose of interviewing. The seminal

case dealing with the issue of the disclosure of a confidential informant is Roviaro v. United States, 353 U.S. 53 (1957). In that case, the Supreme court fashioned a rule balancing the "public interest in protecting the flow of information against the individual's right to prepare his defense." Id. at 62. The Court stated it could establish no "fixed" rule; but that the trial court must look to the "particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors." Id.

In interpreting the Roviaro decision, the Fourth Circuit has had several occasions to publish opinions which lend guidance to the courts of this circuit. In McLawnhorn v. North Carolina, 484 F.2d 1 (4th Cir. 1973), the court reversed the conviction of a state defendant for the state court's failure to require disclosure of the confidential informant to the defendant. In arriving at its decision, the court drew from the Roviaro decision the Supreme Court's mandate to consider the particular circumstances and relevant factors of each case. The Fourth Circuit applied this mandate by considering as one of the factors a distinction between informants who are "participants" in the offense from those informants who are mere "tipsters." The court held that one factor tending to show that the government is not entitled to assert the informant privilege is when an informant is a participant in

the offense and can "testify directly concerning the very transaction constituting the crime." McLawhorn, 484 F.2d at 5.

The Fourth Circuit "has consistently held that the government is not privileged to withhold the name of a confidential informant when the informant's identity is relevant and helpful to the defense or is essential to fundamental requirements of fairness." United States v. Gray, 47 F.3d 1359, 1364 (4th Cir. 1995); e.g., United States v. Price, 783 F.2d 1132, 1137 (4th Cir. 1986) (quoting Roviaro, supra, 353 U.S. at 60-61; United States v. Mabry, 953 F.2d 127, 130-32 (4th Cir. 1991), cert. denied, 112 S. Ct. 1951 (1992).

The facts of the case at bar tip the balance in favor of disclosure. The informant's testimony may be material at trial in terms of refuting the government's proof of intent to defraud and mislead. The informant may be an actual participant in similar acts constituting Rule 404(b), Fed. R. Crim. P. evidence which the government may attempt to educe at trial. The informant may be a competitor who harbors particular ill will against the defendant or be subject to similar prosecution him/herself and was attempting to obtain more favorable treatment by cooperating with the government in other investigations. Finally, "the desirability of calling [the informant] as a witness, or at least interviewing him in preparation for trial [is] a matter for the accused rather than

the Government to decide." Roviaro, 353 U.S. at 64.

WHEREFORE, based upon the foregoing, Defendant respectfully requests this Court to enter an order:

1) Compelling the government to disclose the true identity (i.e., name, address, birthdate, telephone number, and social security number) and location of the confidential informant involved in this matter who supplied information to [REDACTED], Special Agent, Food and Drug Administration; or

2) Dismissing the action should the government refuse to disclose the true identity and location of the confidential informant.

Respectfully submitted this _____ day of May, 1995.

[REDACTED]
Federal Public Defender

[REDACTED]
Assistant Federal Public Defender
NCSB No. [REDACTED]
Post Office Box 400
Greensboro, North Carolina 27402
(910) 333-5455

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Motion to Dismiss on the below-mentioned attorney by hand-delivery to the person named or mailing a copy of the same to the following address:

[REDACTED]

Assistant United States Attorney
United States Attorney's Office
324 West Market Street
Greensboro, North Carolina 27401

This the ____ day of May, 1995.

[REDACTED]

Assistant Federal Public Defender