

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SJC-13341

COMMONWEALTH OF MASSACHUSETTS,
Appellant

v.

JONATHAN GANDIA,
Defendant-Appellee

BRIEF FOR THE COMMONWEALTH ON APPEAL
FROM AN ORDER ALLOWING DEFENDANT'S MOTION FOR
DISCLOSURE OF ALLEGED CONFIDENTIAL RELIABLE
INFORMANT BY THE SPRINGFIELD DIVISION
OF THE DISTRICT COURT DEPARTMENT

HAMPDEN COUNTY

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STATEMENT OF THE ISSUE

Whether the motion judge made an error of law in allowing the defendant's request for the identity of a confidential reliable informant (CRI), where the defendant has not shown that the requested information is relevant and material to his case, where the defendant has not shown that the requested information is relevant at this stage of the proceedings, where the motion judge did not make specific findings as to why identification of the CRI was necessary in this case and at this stage of the proceedings, where the production of the requested information would place the CRI in this case in danger and disincentivize future CRI participation, and where the allowance of such motions without proper analysis unfairly prejudices the Commonwealth's ability to obtain just convictions.

STATEMENT OF THE CASE

On November 12, 2021, a criminal complaint issued from the Springfield District Court charging the defendant, Jonathan Gandia, with trafficking in 18 grams or more, but less than 36 grams, of cocaine (G. L. c. 94C, § 32E(b)(1)), and unlicensed operation of a motor vehicle (G. L. c. 90, § 10). (No. 2123CR006287). (R.A.

3).¹ On February 23, 2022, the Commonwealth moved to amend the trafficking charge to possession with intent to distribute a class B controlled substance (G. L. c. 94C, § 32A(a). (R.A. 5). That motion was allowed. (R.A. 5). On May 10, 2022, the District Court held a hearing on the defendant's motion to disclose the identity of the Commonwealth's CRI. (R.A. 7). On June 13, 2022, the District Court, Williams, J., issued a memorandum and order allowing the defendant's motion to disclose the identity of the Commonwealth's CRI. (R.A. 5). On July 15, 2022, the Commonwealth filed a motion to stay in the District Court in order to pursue a G. L. c. 211, § 3 petition, which was allowed by the Court, (Rooney, J.), on July 21, 2022. (R.A. 5). The Commonwealth filed its G. L. c. 211, § 3 petition with the single justice of the Supreme Judicial Court on July 18, 2022. (SJ-2022-0278). (R.A. 8). On September 14, 2022, the defendant filed his opposition to the Commonwealth's petition. (R.A. 8). On September 19, 2022, the single justice (Georges, Jr., J.), issued an order of stay in the matter. (R.A. 8). On October 5, 2022, the single justice (Georges, Jr., J.) reserved and

¹ References to the Record Appendix will be noted as (R.A. ##).

reported the petition to the full Court for determination. (R.A. 8).²

STATEMENT OF THE FACTS

In determining the motion, the motion judge reviewed the application for criminal complaint and the Springfield Police Department Arrest Report # 21-2780-AR (R.A. 10-16), which she credited in its entirety. (R.A. 25).

On November 10, 2021, the CRI provided members of the Springfield Police Department with a tip that a certain individual was dealing crack cocaine in the city of Springfield. (R.A. 14) In the past, this CRI had given officers information that resulted in the issuance of numerous search warrants, which resulted in the seizures of guns, crack cocaine, cocaine, heroin, and U.S. currency. (R.A. 14). The CRI is a registered informant with the Springfield Firearms Investigation

² The public docket incorrectly reflects that a motion to suppress was heard and allowed on July 21, 2022. (R.A. 7). The docket sheet correctly reflects that the case was continued by agreement on that date and that the Commonwealth's motion for stay was allowed. (R.A. 5).

Unit, and his true identity is known to several members of the Springfield Police Department.³ (R.A. 14).

The CRI told police that a person known to him as "John" was in possession of a large amount of crack cocaine and U.S. currency and was dealing that crack cocaine from within the hallway of 49 School Street in Springfield and the immediate area. (R.A. 14). He described John as having a large beard and wearing a black hooded sweatshirt, black pants, and a black fanny pack. (R.A. 14). The CRI also told police that the defendant operated a white Dodge Durango with black accents and black rims, and that the vehicle was currently parked at the corner of Temple and School Streets in Springfield. (R.A. 14).

The area which the CRI described is a high-crime area with numerous complaints of open-air drug dealing and reports of gun violence. (R.A. 14). It is a highly populated area as there are many buildings and apartments nearby. (R.A. 14).

³ The Commonwealth is not aware of CRI's gender. For the sake of clarity, the Commonwealth will refer to the CRI as a male.

Officers drove to the area of School and Temple Streets and observed a white Dodge Durango with black accents and black rims parked on the corner. (R.A. 15). A query to the Registry of Motor Vehicles (RMV) database returned the information that the car was registered to Jonathan Gandia, the defendant. (R.A. 15). The RMV report also stated that the defendant's motor vehicle license had been canceled. (R.A. 15). Officers used the defendant's RMV photograph to positively identify him as an individual standing in front of 49 School Street. (R.A. 15).

Officers established surveillance of the area and viewed the defendant meet with individuals who arrived on foot. (R.A. 15). After a brief conversation, the defendant would open the door to 49 School Street and allow the individuals to enter as he followed. (R.A. 15). After a few moments officers viewed the defendant and the individuals exiting the building. (R.A. 15). The individuals would then leave the area while the defendant continued to loiter outside the building. (R.A. 15). Police also saw the defendant stand in the hallway of 49 School Street and look out through the door window. (R.A. 15). Officers attempted to stop individuals after they exited the building but were

unable to do so without compromising their surveillance due to the large number of people in the area. (R.A. 15).

During the surveillance, the police remained in direct communication with the CRI. (R.A. 15). At some point, the CRI advised police that the defendant had made a crack cocaine sale and had shown a large amount of crack cocaine in a clear plastic bag before placing the bag in his fanny pack. (R.A. 15). The CRI also advised police that the defendant was getting ready to leave the area. (R.A. 15). Police then observed the defendant quickly walking away from the area and towards the white Dodge Durango. (R.A. 15). Officers began to converge on the defendant and saw him get into the vehicle and engage the ignition. (R.A. 15). Officers then stopped the defendant and ordered him out of the vehicle. (R.A. 10, 15). The defendant was handcuffed and patfrisked for weapons. (R.A. 15). Officers found \$1,376.00 in the center console of the vehicle, \$529.00 in the fanny pack, and approximately 22 grams of crack cocaine in the fanny pack. (R.A. 16).

The motion judge found that, although the CRI did not participate in the crime charged, the CRI was present

in the area and "provided necessary evidence as a percipient witness." (R.A. 27). She further found that the officer's observations of the defendant established only reasonable suspicion of criminal activity. (R.A. 27). She found that the CRI's report of a narcotics deal "provided the requisite probable cause." (R.A. 27). The motion judge's order only required the Commonwealth to divulge the identity of the CRI; the order made no comment as to the additional information that the defendant sought. (R.A. 28).

ARGUMENT

I. The motion judge's order should be vacated because she failed to apply the proper two-stage analysis when determining whether the defendant was entitled to discovery of the CRI's identity long before trial.

"[W]here a single justice reserves decision and reports a case to the full court, [the Court] grant[s] full review of the matters reported." Commonwealth v. Rosado, 480 Mass. 540, 543 n.2 (2018), quoting Charbonneau v. Presiding Justice of the Holyoke Div. of the Dist. Court Dep't, 473 Mass. 515, 518 (2016). The matter is therefore properly before the Court.

This Court has long recognized that the Commonwealth holds a privilege not to disclose the identity of a

confidential informant. Commonwealth v. D.M., 480 Mass. 1004, 1005 (2018) (rescript); Commonwealth v. Dias, 451 Mass. 463, 468 (2008); Commonwealth v. Madigan, 449 Mass. 702, 705-06 (2007); Commonwealth v. Amral, 407 Mass. 511, 516 (1990). The purpose of the privilege is to encourage citizens to be forthright in their interactions with law enforcement without fear of reprisal. D.M., 480 Mass. at 1005; Commonwealth v. Swenson, 368 Mass. 268, 276 (1975). See Roviaro v. United States, 353 U.S. 53, 59 (1957) ("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."); United States v. Mills, 710 F.3d 5, 13 (1st Cir. 2013) (internal citations omitted) ("Police use confidential informants all the time, particularly in the murky world of drug dealings. But snitching is dangerous work, and informants literally put their lives on the line by doing what they do. With so much at stake, confidentiality is key. And that is where the 'tattler's privilege' comes in—that is, the government's privilege to keep secret the names of

persons who give law enforcement information about crimes.").

This privilege is not absolute, however, as there are situations where the interests of justice require that the privilege yield to a defendant's right to a fair trial. Dias, 451 Mass. at 468; Madigan, 449 Mass. at 706. To overcome the privilege, a defendant must carry his burden to demonstrate that disclosure would provide him with material evidence needed for a fair representation of his case to the jury. D.M., 480 Mass. at 1006; Commonwealth v. Lugo, 406 Mass. 565, 574 (1990).

When faced with a motion to disclose the identity of a confidential informant, a motion judge must undertake a two-stage inquiry. D.M., 480 Mass. at 1005-1006; Commonwealth v. Bonnett, 472 Mass. 827, 846-847 (2015). The motion judge here did not undertake the required inquiry. The first stage contains two parts. D.M., 480 Mass. at 1005-1006; Bonnett, 472 Mass. at 846-847. First, the motion judge must determine whether the Commonwealth properly invoked the informant privilege. D.M., 480 Mass. at 1005-1006; Bonnett, 472 Mass. at 846-847. The privilege may only be asserted where revealing the confidential informant would impede law enforcement

efforts or put the informant in danger. D.M., 480 Mass. at 1005-1006; Bonnett, 472 Mass. at 846-847. Second, the motion judge must determine whether the defendant has sufficiently requested that the privilege be set aside because it interferes with a fair defense. D.M., 480 Mass. at 1005-1006; Commonwealth v. Johnson, 365 Mass. 534, 544 (1974), S.C. 372 Mass. 185 (1977). A defendant satisfies this requirement by articulating a basis "sufficient for the judge to 'assess the materiality and relevancy of the disclosure to the defense, if that relevancy is not apparent from the nature of the case.'" D.M., 480 Mass. at 1005-1006; Commonwealth v. Kelsey, 464 Mass. 315, 323 (2013).

If the motion judge determines that these requirements have been met, the analysis moves to the second stage. D.M., 480 Mass. at 1006; Bonnett, 472 Mass. at 846-847. Here, the motion judge must determine whether the identity of the confidential informant is sufficiently relevant and helpful to the defense of the defendant that disclosure is required; this has been described as a "materiality" standard.⁴ D.M., 480 Mass. at 1006;

⁴ The Commonwealth recognizes that materiality does not necessarily mean ultimately conclusive. Lugo, 406 Mass. at 571. Nevertheless, a defendant's mere speculation

Bonnett, 472 Mass. at 847. This requires a balancing between the interests of the public in protecting the flow of information and the defendant's right to prepare a defense, "taking into account the crime charged, possible defenses, the possible significance of the privileged testimony, and other relevant factors." Bonnett, 472 Mass. at 848, quoting Dias, 451 Mass. at 468-469. The proper inquiry at this stage is "whether disclosure would have provided material evidence needed by the defendant for a fair representation of his case to the jury." Madigan, 449 Mass. at 706, quoting Lugo, 406 Mass. at 571.

Generally, a motion judge has wide discretion in weighing these competing interests. D.M., 480 Mass. at 1006. However, when analyzing both stages, this Court has made it clear that a motion judge must take into consideration the point in the proceedings at which the defendant moves for disclosure. D.M., 480 Mass. at 1006; Lugo, 406 Mass. at 570-571. "The distinction between 'a demand for disclosure at a pretrial hearing, where the issue is probable cause for arrest or search, and a demand for disclosure at trial, where the issue is the

will not carry his burden. See United States v. Lewis, 40 F.3d 1325, 1335 (1st Cir. 1994).

defendant's ultimate guilt or innocence,' is an important one that long has been maintained." D.M., 480 Mass. at 1006. See Madigan, 449 Mass. at 706 n.8, quoting Commonwealth v. Snyder, 413 Mass. 521, 532 (1992) ("[n]ondisclosure of a source of information that bears on a preliminary question, such as the suppression of evidence, 'is more readily tolerated than the nondisclosure at trial of a source of evidence, where guilt or innocence is directly involved'"); Lugo, 406 Mass. at 570 ("nondisclosure is rather readily countenanced at pre-trial hearings, but not so at the trial itself"). Therefore, where a motion to disclose is filed before the "trial proper" and a motion judge fails to include such a factor in her analysis, it is analytical error that cannot stand. D.M., 480 Mass. at 1006.

Here, the motion judge did not properly apply the two-stage analysis as she failed to consider that the defendant had filed the motion to disclose long before trial. The motion judge's decision does not discuss the fact that the motion was filed long before the date of trial, and even before a hearing on the motion to

suppress was held.⁵ As D.M. requires a motion judge to consider this fact in his or her decision, it was an abuse of discretion not to do so here. The order should be vacated.

II. The motion judge's order should be reversed, where the CRI was not a percipient witness to the crime of possession with intent to distribute, where the Commonwealth does not need his testimony at trial to establish guilt beyond a reasonable doubt, and where disclosure of his identity would endanger his safety as well as impede current and future investigations.

The motion judge determined that disclosure of the CRI was warranted because he "provided necessary evidence as a percipient witness." (R.A. 27). The motion judge also determined that it "was the CRI who observed what he determined to be crack cocaine and a drug deal prior to the defendant's arrest that provided the requisite probable cause."⁶ (R.A. 27). Both of these statements are errors of law and the motion judge's determination of probable cause at this point of the proceedings was an abuse of her discretion. First, the CRI was not a percipient witness to the crime charged.

⁵ As is noted above, see n.2, supra, to date, a motion to suppress has not yet been heard.

⁶ The motion judge's consideration of whether the CRI added to the probable cause determination is troubling, as again an evidentiary hearing on a motion to suppress has not yet been held.

The defendant is charged with possession with intent to distribute, not distribution or trafficking. (R.A. 3, 5,6). The CRI was not a percipient witness to this crime, as the crime was charged based on the crack cocaine that was found in the fanny pack in the defendant's vehicle after the stop. The charge was not based on any of the transactions that the CRI witnessed, and therefore he cannot be a percipient witness. See Commonwealth v. Figueroa, 74 Mass. App. Ct. 784, 789-790 (2009) (defendant not entitled to identity of CRI where charges relied exclusively on evidence found in defendant's apartment, not on any evidence obtained during CRI's controlled buy); Commonwealth v. Fernandes, 30 Mass. App. Ct. 335, 349 (1991) (disclosure of informant not required where tipster was not an active participant in the crime of possession with intent to distribute, even where tipster had participated in controlled buy within seven days of execution of the warrant).

Second, the CRI's information was not required to supply probable cause to search the vehicle. The CRI's information led officers to surveil the defendant and the Dodge Durango. (R.A. 14-15). The surveillance involved officers watching the defendant outside the

building and watching the vehicle as it was parked on a public street. (R.A. 14-15). The officers required no standard of proof to conduct such surveillance as no search had occurred. See Commonwealth v. Mora, 485 Mass. 360, 368 (2020), quoting Commonwealth v. Almonor, 482 Mass. 35, 42 n.10 (2019) ("Among the factors this court has considered are 'whether the public had access to, or might be expected to be in, the area from which the surveillance was undertaken; the character of the area (or object) that was the subject of the surveillance; and whether the defendant has taken normal precautions to protect his or her privacy.'"). From their vantage point, officers were entitled to run the registration of the vehicle. Commonwealth v. McCarthy, 484 Mass. 493, 502 & n.8 (2020); Commonwealth v. Starr, 55 Mass. App. Ct. 590, 593-594 (2002). From this inquiry, officers learned that the defendant was the owner of the vehicle, saw his RMV photograph, and learned that his license had been canceled. (R.A. 15). When officers saw the defendant enter the vehicle and engage the ignition, (R.A. 15), they had probable cause to stop the vehicle and arrest him for unlicensed operation. See Commonwealth v. Eckert, 431 Mass. 591, 599 (2000) (operation of a motor vehicle under operation under the

influence statute encompasses the intentional act of starting the engine); Commonwealth v. Uski, 263 Mass. 22, 24 (1928) (same); Commonwealth v. McGillivray, 78 Mass. App. Ct. 644, 646 (2011) (operation of a motor vehicle under operation under the influence statute further encompasses turning the key in the ignition so as to only turn on the electricity of the vehicle).⁷

Finally, contrary to the defendant's assertion in his memorandum, (R.A. 23), the Commonwealth does not need the CRI's testimony to prove possession with intent to distribute beyond a reasonable doubt. At trial, the Commonwealth would present evidence that the officers viewed the defendant engaging in conduct that they believed to be narcotics dealing. (R.A. 14-15). After the arrest for unlicensed operation, the defendant and the vehicle were searched, and 22 grams of crack cocaine was found along with over \$2,500 in cash. (R.A. 16). The observations by the officers coupled with the amount of crack cocaine and cash is more than enough to

⁷ The constitutionality of the search of the defendant's person, fanny pack, and vehicle will be determined after a future hearing on a motion to suppress. The facts found by the motion judge after such an evidentiary hearing will provide the appropriate basis for ruling on the defendant's motion for disclosure of the CRI.

establish possession with intent to distribute rather than possession for personal use. See Commonwealth v. Sepheus, 468 Mass. 160, 165-167 (2014) (large amount of narcotics, packaging, and large amount of cash can support inference of intent to distribute). See also Commonwealth v. Lobo, 82 Mass. App. Ct. 803, 812-813 (2012) (twenty-one grams of crack cocaine, along with other facts, supported intent to distribute); Commonwealth v. Bush, 71 Mass. App. Ct. 130, 136-137 (2008) (2.4 grams of crack cocaine, along with other facts, supported intent to distribute). The CRI's testimony would not be necessary to obtain a conviction for possession with intent to distribute.

Because the Commonwealth does not need the CRI to establish probable cause for the search or guilt on the possession with intent to distribute charge, the identity of the CRI is not material to the defendant's ability to put on a fair defense at trial or to otherwise provide the defendant with exculpatory information. See Commonwealth v. Brezenski, 405 Mass. 401, 408 (1989), quoting United States v. Alonzo, 571 F.2d 1384, 1387 (5th Cir. 1978) ("It is well settled that the government is not required to disclose the identity of an informant who is a mere tipster and not an active participant in

the crime charged."). See also Commonwealth v. Maldonado, 456 Mass. 1012, 1012-1013 (2010) (rescript) (evidence from tipster made hours before stop which led to stop and discovery of evidence not sufficiently material to warrant disclosure of tipster). Particularly at this stage of the proceedings, where a motion to suppress has yet to be heard and where the Commonwealth is not aware of whether the CRI will even be needed at trial, requiring the Commonwealth to reveal the identity of a CRI was an abuse of discretion and the motion judge's order should be vacated and reversed.

III. The motion judge's order only requires the Commonwealth to disclose the identity of the CRI, not the additional information including the CRI's history of being an informant. However, if the order were to require the Commonwealth to disclose the additional information, the motion judge's analysis is flawed for the same reasons as those related to the identity of the CRI.

The defendant's motion sought the identity of the CRI along with other information about the CRI's usage by the Springfield Police Department. This information included the length of time that the CRI had been utilized by the Springfield Police Department or other law enforcement agencies, the number of investigations that the CRI has provided information in and the manner of his participation, the manner in which the CRI was

compensated for his participation, and any inducements or promises provided to the CRI as a result of his participation.

The motion judge's decision was entitled "MEMORANDUM AND ORDER ON DEFENDANT'S MOTION FOR DISCLOSURE OF IDENTITIY OF THE COMMONWEALTH'S INFORMANT." (R.A. 25). This differed from the title of the defendant's motion and supporting memorandum, as it was specific to only the informant's identity. (R.A. 17, 21).⁸ See Graycor Construction Company Inc. v. Pacific Theaters Exhibition Corp., 490 Mass. 636, 645 (2022) ("Although a title does not control the meaning of the words of the order, it can be a helpful tool in ascertaining the intent of the order's drafters."). The decision only discussed the identity of the CRI, and the language of the order only required the Commonwealth to divulge the identity of the CRI. (R.A. 25-28). The order specifically reads: "For the foregoing reasons stated above, the defendant's motion for disclosure of the identity of the Commonwealth's Informant is

⁸ The defendant's motion was entitled: "DEFENDANT'S MOTION FOR DISCLOSURE OF ALLEGED CONFIDENTIAL RELIABLE INFORMANT." His memorandum in support was entitled: DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DISCLOSURE OF CONFIDENTIAL INFORMANT." (R.A. 17, 21).

ALLOWED." (R.A. 28). The plain language of the order only requires the Commonwealth to reveal the identity of the CRI. The Commonwealth has not been ordered to release the additional information, and the defendant has not filed a motion for clarification or a motion for reconsideration seeking that information. (R.A. 5). Nor did the defendant discuss this additional information in his opposition to the Commonwealth's G. L. c. 211, § 3 petition. (R.A. 31). The Commonwealth maintains that the motion judge did not order the additional information sought by the defendant to be disclosed.

Even assuming that the motion judge's order did encompass the additional information sought by the defendant, the motion judge's decision as to this information was flawed for the same reasons as her determination that the identity of the CRI was material to the defendant's defense at trial. The CRI here was not a percipient witness to the crime charged, possession with intent to distribute, and his testimony is not necessary for the Commonwealth to prove beyond a reasonable doubt that the defendant is guilty of that crime. See Figueroa, 74 Mass. App. Ct. at 789-790. The crack cocaine and currency taken from the defendant's

person and vehicle were validly seized after surveillance of a public area and an arrest supported by probable cause for unlicensed operation of a motor vehicle. The amount of crack cocaine and currency are indicative of the defendant's intent to distribute. See Sepheus, 468 Mass. at 165-167. The CRI's testimony is not required to establish any of the elements of the crime of possession with intent to distribute, nor is it required to establish probable cause for the search of the defendant's person and vehicle. Therefore, the additional information sought by the defendant concerning the CRI's history cannot be material to the defendant's defense at trial.

Not only is the information not relevant or material to the defendant's defense at trial, much of the requested information, if revealed by the Commonwealth, would create enormous safety concerns and would disincentivize this CRI from cooperating in the investigation and other CRIs from cooperating in current and future investigations. Such a determination would order the Commonwealth to divulge information about a CRI's prior history that, if such information was discovered by the wrong parties, could be used to identify the CRI as a cooperator in multiple prior or

ongoing cases. This creates a tremendous safety concern for a CRI. It is more than reasonable to believe that if a CRI knew that this information was going to be revealed, he would no longer wish to cooperate with a current investigation or any future investigations for the fear that his identity would be revealed to not only one defendant, but perhaps to all of the defendants whose criminal consequences were the result of the CRI's cooperation. This would perversely disincentivize the use of CRIs who have an established history of giving reliable information in prior cases, as revealing these details could subject them to retaliation from many different parties.

Finally, as with the issue of the CRI's identity, the motion judge failed to take into account the stage of the proceedings at which the motion was filed. D.M., 480 Mass. at 1005-1006. The fact that the motion was brought before a motion to suppress had been heard and long before trial was a required factor in the analysis, but it was not considered by the motion judge. The early nature of the defendant's motion cuts against his claim of necessary disclosure as at this point there is no certainty that the CRI's testimony will be introduced at trial, as it is not necessary to prove the charges beyond

a reasonable doubt. Therefore, the defendant cannot credibly claim at this point in the proceedings that the CRI's history or the other requested information is essential to his defense at trial.

CONCLUSION

The motion judge's order in Springfield District Court Number 2123CR006287, requiring the Commonwealth to divulge the identity of a confidential reliable informant, failed to properly apply the two-stage analysis required in D.M., 480 Mass. at 1006. For this reason alone, the order should be vacated. Additionally, the order should be reversed as the defendant is unable to establish the materiality of the confidential reliable informant's identity where his testimony will not be needed at a motion to suppress hearing to establish probable cause for the arrest and search or at trial to prove beyond a reasonable doubt that the defendant committed the crime of possession with intent to distribute. Finally, the motion judge's order does not require the Commonwealth to divulge any additional information beyond that of the CRI's identity. Even if the order were to be read in such a way as to require disclosure of this additional

information, the order is not legally sound for the same reasons applicable to disclosure of the confidential reliable informant's identity.

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COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

DISTRICT COURT DEPARTMENT
SPRINGFIELD DIVISION
DOCKET NO. 2123CR06287

COMMONWEALTH

V.

JONATHAN GANDIA

MEMORANDUM AND ORDER ON DEFENDANT'S MOTION FOR DISCLOSURE OF
IDENTITY OF COMMONWEALTH'S INFORMANT

1. *Introduction.* The defendant, Jonathan Gandia (defendant), is charged possession with intent to distribute cocaine stemming from an arrest that occurred on November 10, 2021, in Springfield, Massachusetts. He filed a motion seeking disclosure of the identity of an informant relied on, leading up to the surveillance and arrest of the defendant. I make the following findings of fact and rulings of law based on my review of the application for criminal complaint, Springfield Police Department Arrest Report # 21-2780-AR dated November 10, 2021, which I find credible.
2. *Facts.* The charges the defendant faces arise from events observed on November 10, 2021, at the corner of School and Temple Streets in the city of Springfield. According to the police report detailing the defendant's arrest (21-2780-AR), on November 10, 2021, a confidential reliable informant (CRI) told police that a person known to him as "John" was in possession of a large amount of crack cocaine and US currency within a black pack. The CRI provided police with a detailed description of "John," noting that he possessed a

large beard and was wearing a black hooded sweatshirt, black pants and a black hat worn backwards.

3. Further, the CRI described the car "John" was driving as a white Durango with black accents and trim parked at the corner of Temple and School Street. Detective Felix Aguirre (Aguirre) who authored the report notes that the CRI has given information resulting in numerous search warrants, which in turn resulted in the seizure of numerous guns, crack cocaine, cocaine, heroin, and US currency. Additionally, the CRI is a registered informant with the Firearms Investigation Unit whose identity is known to Aguirre's supervisor.
4. Upon receiving the foregoing information from the CRI, Aguirre drove to the area of School and Temple Street where he observed a white Durango which fit the description provided by the CRI. Aguirre ran the motor vehicle's registration which came back as belonging to the defendant. A Registry of Motor Vehicles photo of the defendant matched the description of a person standing in front of 49 School Street. The foregoing corroborated the information provided by the CRI.
5. Aguirre continued to surveil the defendant and observed that he continuously met with individuals. He would stand inside 49 School Street and open doors for unknown individuals. After the individuals left the area, the defendant continued to stand at 49 School Street. Based on the foregoing, Springfield Detectives determined that the defendant's behavior was consistent with open air drug dealing. Detectives made attempts to stop the unknown individuals but were unsuccessful. The CRI, who remained in the area, then notified detectives that the defendant was getting ready to leave the area and had shown a large amount of crack cocaine in a clear plastic bag and placed it into his fanny pack. The CRI relayed the defendant's position whereupon detectives arrested the

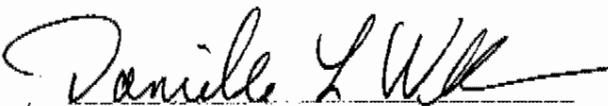
defendant. Recovered from the Durango's center console was \$1,376.00 in US currency. Recovered from a fanny pack was \$529.00 in US currency and approximately 22 grams in crack cocaine.

6. *Discussion.* I agree with the defendant's contention that the informant's identity must be disclosed. "The government's privilege not to disclose the identity of an informant has long been recognized in this Commonwealth... That privilege serves a substantial, worthwhile purpose in assisting the police in obtaining evidence of criminal activity. The privilege, which is not absolute, should be respected as far as reasonably possible consistent with fairness to a defendant." (Citations omitted). *Commonwealth v. Douzanis*, 384 Mass. 434, 441 (1981). *Roviano v. United States*, 353 U.S. 53 (1957).
7. The informant in this case did not participate in the crime charged but, was not only present in the area while the police independently surveilled the defendant before his arrest but provided necessary evidence as a percipient witness. *United States v. Bourbon*, 819 F.2d 856, 860 (8th Cir. 1987). Here Aguirre made observations of the defendant at 49 School Street, which he independently determined to be consistent with an open-air drug deal, but this only provided reasonable suspicion. It was the CRI who observed what he determined to be crack cocaine and a drug deal prior to the defendant's arrest that provided the requisite probable cause. The court finds that the CRI is essential to the defendant's defense. *Commonwealth v. Innis*, 1 Mass. App. Ct. 499, 501 (1973).
8. I rule that in this instance the Commonwealth's interest in maintaining the confidentiality of the informant is not outweighed by the defendant's interest in disclosure. *Commonwealth v. Brzezonski*, 405 Mass. 401, 408 (1989).

ORDER

For the foregoing reasons stated above, the defendant's motion for disclosure of the identity of Commonwealth's Informant is ALLOWED.

June 13, 2022
Dated


Danielle L. Williams
Associate Justice

G. L. c. 94C § 32A(a)

Possession with Intent to Distribute

Any person who knowingly or intentionally manufactures, distributes, dispenses or possesses with intent to manufacture, distribute or dispense a controlled substance in Class B of section 31 shall be punished by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2 ½ years, or by a fine of not less than \$1,000 nor more than \$10,000, or both such fine and imprisonment.

G. L. c. 90, § 10

Operation of a Motor Vehicle without a License

No person under sixteen years of age shall operate a motor vehicle upon any way. No other person shall so operate unless licensed by the registrar unless he possesses a receipt issued under section eight for persons licensed in another state or country or unless he possesses a valid learner's permit issued under section eight B, except as is otherwise herein provided or unless he is the spouse of a member of the armed forces of the United States who is accompanying such member on military or naval assignment to this

commonwealth and who has a valid operator's license issued by another state, or unless he is on active duty in the armed forces of the United States and has in his possession a license to operate motor vehicles issued by the state where he is domiciled, or unless he is a member of the armed forces of the United States returning from active duty outside the United States, and has in his possession a license to operate motor vehicles issued by said armed forces in a foreign country, but in such case for a period of not more than forty-five days after his return. The motor vehicle of a nonresident may be operated on the ways of the commonwealth in accordance with section three by its owner or by any nonresident operator without a license from the registrar if the nonresident operator is duly licensed under the laws of the state or country where such vehicle is registered and has such license on his person or in the vehicle in some easily accessible place. Subject to the provisions of section three, a nonresident who holds a license under the laws of the state or country in which he resides may operate any motor vehicle of a type which he is licensed to operate under said license, duly registered in this commonwealth or in

any state or country; provided, that he has the license on his person or in the vehicle in some easily accessible place, and that, as finally determined by the registrar, his state or country prescribes and enforces standards of fitness for operations of motor vehicles substantially as high as those prescribed and enforced by this commonwealth. The nonresident shall have in their possession a valid international driver's permit, or a document containing a photo and an English translation that substantially corresponds to an international driving permit, that shall be used solely to properly identify the individual appearing on the license for the purpose of enforcing this section if no English translation appears on the front or back of the license that the nonresident is required to have in possession at all times while operating a motor vehicle.

Notwithstanding the foregoing provisions, no person shall operate on the ways of the commonwealth any motor vehicle, whether registered in this commonwealth or elsewhere, if the registrar shall have suspended or revoked any license to operate motor vehicles issued to him under this chapter, or shall have suspended his right to operate such vehicles, and

such license or right has not been restored or a new license to operate motor vehicles has not been issued to him. Operation of a motor vehicle in violation of this paragraph shall be subject to the same penalties as provided in section twenty-three for operation after suspension or revocation and before restoration or issuance of a new license or the restoration of the right to operate.

G. L. c. 211, § 3

**Superintendence of inferior courts;
power to issue writs and process**

The supreme judicial court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided; and it may issue all writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws.

In addition to the foregoing, the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending

therein, and the functions set forth in section 3C; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration; provided, however, that general superintendence shall not include the authority to supersede any general or special law unless the supreme judicial court, acting under its original or appellate jurisdiction finds such law to be unconstitutional in any case or controversy. Nothing herein contained shall affect existing law governing the selection of officers of the courts, or limit the existing authority of the officers thereof to appoint administrative personnel.

**MASS. R. APP. P. 16(k) (2019) CERTIFICATE OF
COMPLIANCE WITH THE RULES PERTAINING TO THE FILING OF
BRIEFS**

I hereby certify, as required by Mass. R. App. P. 16(k) (2019), that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to, the following: Mass. R. App. P. 16(a)(13), Mass. R. App. P. 16(e), Mass. R. App. P. 18, Mass. R. App. P. 20, and Mass. R. App. P. 21. This brief uses Courier New font, size 12, and contains **4,661** non-excluded words. The word count was ascertained using the page count function in Microsoft Word.

November 30, 2022



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CERTIFICATE OF SERVICE

I hereby certify under the pains and penalties of perjury that on this date, I have electronically filed a copy of the Commonwealth's brief and record appendix using this Court's electronic filing system. I further certify that I have served a copy of this brief on the defendant, using the electronic filing system to serve a copy on the defendant's counsel of record, or if counsel is not registered for electronic filing, by first-class mail and/or electronic mail on the following attorney for the defendant:

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COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SJC-13341

COMMONWEALTH OF MASSACHUSETTS,
Appellant

v.

JONATHAN GANDIA,
Defendant-Appellee

BRIEF FOR THE COMMONWEALTH ON APPEAL
FROM AN ORDER ALLOWING DEFENDANT'S MOTION FOR
DISCLOSURE OF ALLEGED CONFIDENTIAL RELIABLE
INFORMANT BY THE SPRINGFIELD DIVISION
OF THE DISTRICT COURT DEPARTMENT

HAMPDEN COUNTY
