

## INFORMANT

### **Trial Court Did Not Err in Denying Defendant's Motion to Require State to Disclose Confidential Informant's Identity**

*State v. Dark*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E. 2d \_\_\_ (15 June 2010).

The defendant was convicted of cocaine offenses involving a sale to an undercover officer set up with the assistance of a confidential informant. The defendant told the informant to come to a specific parking place at an apartment complex. The undercover officer drove there with the informant. The officer paid the defendant for crack cocaine and marijuana. The officer later identified the defendant in a photo lineup. The defendant did not offer evidence at trial. The court ruled that the trial court did not err in denying the defendant's motion to require the state to disclose the confidential informant's identity. Although the informant's presence and role in arranging the purchase was a factor favoring disclosure, the court agreed with the trial court's finding that the defendant did not show how the informant's identity could provide useful information for the defendant to clarify any contradiction between the state's evidence and the defendant's denial that he committed the offenses. Moreover, the informant's testimony was not admitted at trial. The testimony of the undercover officer and another officer established the defendant's guilt.

### **Officer Had Probable Cause to Arrest Defendant Based on Information Given by Anonymous Caller Who Later Revealed His Identity Before Defendant's Arrest, and Caller's Information Was Corroborated by Officer's Investigation**

*State v. Brown*, \_\_\_ N.C. App. \_\_\_, 681 S.E.2d 460 (18 August 2009).

The court ruled that an officer had probable cause to arrest the defendant for murder based on information given by an anonymous caller who later revealed his identity to the officer before the arrest, and the caller's information was corroborated by the officer's investigation. (See the court's opinion for the facts establishing probable cause.)

### **Specific And Accurate Information From A Confidential Informant Provides Probable Cause**

*State v. Evans*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (December 22, 2009).

Information from a confidential informant provided probable cause. The informant told an officer that a cocaine delivery would occur that evening. The informant had provided information to the officer 15-20 times over the previous month; six of those occasions led to arrests; at least once, the informant's information served as the basis for a search warrant; and the officer once used the informant to make an undercover drug buy. The informant provided information about the vehicle that would be used to deliver the drugs, the route the vehicle would take, its destination, and the exact time it arrived at its destination. The informant provided specific information about the vehicle's occupants including the names of the driver and the passenger, a detailed description of the passenger, and where the controlled substance would be on the passenger's person. All of this information was accurate.

### **(1) State Complied with G.S. 15A-903(a)(1) By Providing Substance of Oral Statements**

## **Made By State's Informant to Detective**

*State v. Zamora-Ramos*, \_\_\_ N.C. App. \_\_\_, 660 S.E.2d 151 (6 May 2008).

The defendant was convicted of several cocaine offenses based on controlled buys made by an informant under the supervision of a detective. (1) The court ruled that the state complied with G.S. 15A- 903(a)(1) by providing the substance of oral statements made by the state's informant to the supervising detective after each of the controlled buys. The court noted that the state provided the defendant with all the reports contained in its file, which included reports of the dates of each offense, notations of the detective's meetings with the informant after each buy, as well as a summary of what the informant told the detective during each meeting. The defendant was provided with notice of the substance of the informant's statements, and he did not suffer prejudice or unfair surprise as a result of the admission of the informant's testimony. The court rejected the defendant's contention that the conversations between the detective and informant were not recorded in writing with sufficient detail to comply with G.S. 15A- 903(a)(1).

## **Court Upholds Anticipatory Search Warrant Whose Execution Was Contingent on Confidential Informant, Who Was Working Under Officers' Directions, To Give Prearranged Signal to Officers After Informant Entered Residence and Purchased Marijuana There**

*State v. Stallings*, 189 N.C. App. 376, 657 S.E.2d 915 (18 March 2008).

The court, relying on *State v. Falbo*, 526 N.W.2d 814 (Wisc. Ct. App. 1994), and *State v. Smith*, 124 N.C. App. 565 (1996), upheld an anticipatory search warrant whose execution was contingent on a confidential informant, who was working under officers' directions, to give a prearranged signal to the officers after the informant entered a residence and purchased marijuana there. The confidential informant during a prior one year period had purchased marijuana from the defendant at his residence. Based on the Falbo and Smith rulings, the court set out

a test to consider the legality of this anticipatory search warrant and concluded that the warrant satisfied the test.

### **(3) Court Remands to Trial Court for Determination Whether Independent Source**

#### **Exception to Fourth Amendment's Exclusionary Rule Would Support Finding Probable Cause for Search Warrant With Exclusion of Illegally-Obtained Information That Had Been Included in Search Warrant's Affidavit**

*State v. McKinney*, 361 N.C. 53, 637 S.E.2d 868 (15 December 2006), affirming in part and reversing in part, 174 N.C. App. 138, 619 S.E.2d 901 (18 October 2005).

The defendant was convicted of first-degree murder and sentenced to life imprisonment without parole. Amy advised law enforcement that her roommate, Aja, had told her that Aja's friend, the defendant, had killed his roommate. An address of the residence where the defendant and victim apparently lived was supplied to law enforcement. Officers arrived at the residence and were advised there that the defendant was reportedly driving the victim's vehicle, which was not in the driveway. The victim's sister arrived and informed officers that the victim lived there. The victim's brother arrived shortly thereafter. Officers learned that neither the brother nor sister had any contact with the victim in several days, and the victim had not reported for work the prior day, which was very unusual. The officers also learned that the defendant had told Aja that the victim had pulled a knife on the defendant, and the victim "wouldn't be coming back." The victim's brother then entered the house through a window and officers followed him. The officers saw what appeared to be blood spatter in the front bedroom and other indications of blood elsewhere in the house, secured the house, obtained a search warrant, and thereafter discovered the victim's body in a large garbage can in the house. (3) The court remanded to the trial court for a determination whether the independent source exception to the Fourth Amendment's exclusionary rule [Murray v. United States, 487 U.S. 533 (1988)] would support finding probable cause for the search warrant with the exclusion of illegally-obtained information (the apparent blood spatter and other indications of blood in the house) that had been included in search warrant's affidavit.

#### **Discovery-Identity of confidential informant-Not disclosed**

*State v. Withers, 179 NCA 249 (2006)*

Defendant's motion to disclose the identity of a confidential informant was properly denied in an action remanded on other grounds. The factors favoring nondisclosure outweigh those favoring disclosure.

**Evidence—officer giving payments to informant for bills after cooperation and prior to trial--credibility**

*State v. Brice, 167 NCA 72 (2004)*

The trial court did not err in a trafficking in cocaine by possession and transportation case by denying defendant's motion to dismiss the charges based on a police officer's payments totaling \$350.00 to the State's material witness for her bills several weeks after the witness cooperated in the operation that led to defendant's arrest and prior to his trial, because: (1) both the witness and the officer were subjected to vigorous cross-examination on the issue of the payments, and it is the province of the jury to assess and determine witness credibility; and (2) the evidence does not support defendant's characterization of the two payments as a quid pro quo payment for her testimony since they were not made to secure either her cooperation in defendant's arrest or her testimony at trial.

**Evidence—identity of confidential informant—factors favoring nondisclosure**

*State v. Valladares, 165 NCA 598 (2004)*

The trial court's refusal to disclose the identity of a confidential informant to a cocaine trafficking defendant was not error where the factors favoring nondisclosure outweighed the factors favoring disclosure.

**Constitutional Law—disclosure of informant's identity—denied**

*State v. Gaither, 148 NCA 534 (2002)*

The trial court correctly denied defendant's motion to compel disclosure of an informant's identity where defendant did not present any defense on the merits, did not contend that the confidential informant participated in or witnessed the crime, and failed to make any showing that the particular circumstances of his case mandated disclosure of the identity of the informant.

**Constitutional Law 251 (NCI4th) - narcotics - confidential informant - disclosure of identity – not required**

*State v. Jackson, 103 N.C. App. 239 (1991)*

The trial court did not err in a prosecution for trafficking in cocaine by denying defendant's motion for disclosure of a confidential informant's identity where only the informant's presence at the scene and role in arranging the purchase weighed in favor of disclosure; the factors weighing against disclosure were that defendant offered no defense on the merits, so that there was no contradiction between his evidence and the State's evidence for the informant to clarify; no testimony by the informant was offered at trial; and the State asserted that disclosure would jeopardize pending investigations. The factors favoring nondisclosure outweigh the factors favoring disclosure.

**Constitutional Law 67 - identity of confidential informant - disclosure required**

*State v. Hodges, 51 N.C. App. 229 (1981)*

In this prosecution for sale of marijuana and possession of marijuana with intent to sell, defendant's right to due process was violated by the State's refusal to reveal the identity of a confidential informant who introduced an SBI undercover agent to defendant and was present when defendant sold marijuana to the agent.

## **Constitutional Law 31 - informant who participated in crimes - disclosure of identity**

*State v. Orr, 28 N.C. App. 317 (1976)*

In a prosecution for distribution and possession of heroin, the trial court erred in failing to require disclosure of the identity of an informant where the evidence tended to show that the informant was a participant and helped to set up the commission of the crime.