

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA

V.

[REDACTED], Defendant

No. 06-CR-00025-PB

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**MOTION FOR DISCLOSURE AND PRODUCTION OF
CONFIDENTIAL INFORMANT**

NOW COMES the Defendant, [REDACTED], by and through his attorneys, Michael J. Iacopino and Brennan, Caron, Lenehan & Iacopino, and respectfully moves this Court to order the Government to disclose the identity of, and to produce, the confidential informant identified as 05-TX-013.

IN SUPPORT OF THIS MOTION, the Defendant submits as follows:

1. The Defendant stands charged, in a four count indictment, with possession of a firearm in furtherance of a drug trafficking crime contrary to 18 U.S.C. §924(c); unlawful user of controlled substances in possession of a firearm contrary to 18 U.S.C. §922(g)(3); possession with intent to distribute heroin contrary to 21 U.S.C. §841(a); and possession of a stolen firearm contrary to 18 U.S.C. §922(j).
2. The indictment is the result of an undercover investigation led by Police Officer John F. Stone of the Claremont, New Hampshire Police Department. A copy of Officer Stone's Application for Search Warrant and Supporting Affidavit is attached hereto as Exhibit 1.
3. Officer Stone cultivated a confidential informant identified only as 05-TX-013 in

this case. At the heart of Officer Stone's investigation are two controlled drug purchases wherein 05-TX-013 allegedly purchased illegal drugs from Schuyler C. .

4. The first controlled purchase, which is at the heart of Stone's investigation, occurred on December 30, 2005, involving an alleged sale of heroin from Schuyler C. to 05-TX-013 at the home of one Erica [REDACTED]. According to Stone's Affidavit, 05-TX-013 was a percipient witness and recipient of the alleged narcotics during the course of said sale.

5. Officer Stone's Affidavit also relates that 05-TX-013 met with Schuyler C. on January 12, 2006 and allegedly purchased heroin from Ms. C [REDACTED] on that date. Once again, 05-TX-013 was a percipient witness and in receipt of the alleged drugs.

6. Allegedly, Schuyler C. left the area of the controlled buy and entered a vehicle driven by the Defendant. Thereafter, the vehicle was stopped by the Claremont Police Department and the Defendant was arrested.

7. In this case, 05-TX-013 is a participant in the sale and purchase of heroin which is at the heart of the Government's investigation in this case. 05-TX-013 is the only witness in a position to amplify or contradict the testimony of Officer John Stone or other officers claiming to have controlled the transaction occurring on January 12, 2006.

8. Under the circumstances, disclosure of the identity of 05-TX-013 is required. See, Roviaro v. United States, 353 U.S. 53, 77 S.Ct. 623, 1L.Ed.2d 639 (1957).

9. In this case, 05-TX-013 is not a mere "conduit" or "tipster". See, United States v. Gomez-Genao, 267 F.3d 1, 3 (1st Cir., 2001); United States v. Lewis, 40 F.3d 1325 (1994); United States v. Martinez, 922 F.2d 914 (1st Cir., 1991).

10. The percipient nature of 05-TX-013's involvement in this case, as well as it's

involvement in the alleged crime itself, outweighs any interest the public may have in protecting the flow of confidential information. See, Rovario v. United States at 62; United States v. Lewis, 40 F.3d 1325, 1334 (1st Cir., 1994); United States v. Giry, 818 F.2d 120, 130 (1st Cir., 1987).

11. The failure to disclose the identity of, and produce, confidential informant 05-TX-013 would violate the Defendant's right to due process as guaranteed by the Fifth Amendment to the United States Constitution. The failure to order the disclosure and production of the identity of the confidential informant would violate the Defendant's right to confrontation as guaranteed by the Sixth Amendment to the United States Constitution.

12. Failure to order the Government to disclose and produce the identity of the confidential informant would violate the Defendant's right to compulsory process for obtaining witnesses in his favor as guaranteed by the Sixth Amendment to the United States Constitution.

13. It should be noted that the Government has an obligation to exercise reasonable diligence in maintaining knowledge of the whereabouts of its confidential informants. See, United States v. Davila-Williams, 496 F.2d 378 (1st Cir., 1974). This obligation is not to be taken lightly. United States v. Formanczyk, 949 F.2d 526 (1st Cir., 1991). Thus, the Government should be ordered to maintain reasonable efforts to know and be able to produce informant 05-TX-013.

14. The Defendant's Memorandum of Law accompanies this Motion.

15. Undersigned counsel has attempted to contact Assistant United States Attorney Debra Walsh to obtain her consent to this Motion. The Government does not assent to this Motion.

WHEREFORE, the Defendant respectfully moves this Court grant the following relief:

A. Grant this Motion and order the Government to disclose the identity of confidential informant 05-TX-013; and,

B. Grant this Motion and order the Government to produce informant 05-TX-013; and,

C. Grant this Motion and order the Government to keep track of informant 05-TX-013 and ensure his ability to appear at trial in this matter; and,

D. In the alternative to the foregoing prayers for relief, hold an in-camera hearing to determine whether informant 05-TX-013 should be disclosed and produced; and,

E. Grant such further relief as is just.

Respectfully submitted,
[REDACTED], Defendant
By his Attorneys,
BRENNAN, CARON, LENEHAN & IACOPINO

Date: March 15, 2006

By: /s/ Michael J. Iacopino
Michael J. Iacopino, Esq. (Bar No. 1233)
85 Brook Street
Manchester, NH 03104
(603) 668-8300
Miacopino@bclilaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served on the following person, even date herewith, and in the manner specified herein: electronically served through ECF: Assistant United States Attorney Debra Walsh, United States Attorney's Office, James C. Cleveland Federal Bldg., 55 Pleasant St., Room 352, Concord, NH 03301-3941.

/s/ Michael J. Iacopino, Esq.
Michael J. Iacopino, Esq. (Bar No. 1233)