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FILED

BY: D

2015 APR 22 PM 2: 24

WYLYNN TANNELL
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,
Plaintiff,

vs.

JUSTIN JAMES RECTOR,
Defendant.

NO: CR 2014-01193

DEFENSE MOTION FOR DISCLOSURE
OF IDENTITY OF ANY/ALL
INFORMANTS / MOTION FOR
DISCLOSURE OF INFORMATION
REGARDING INFORMANTS

(ASSIGNED TO THE HON. LEE JANTZEN)

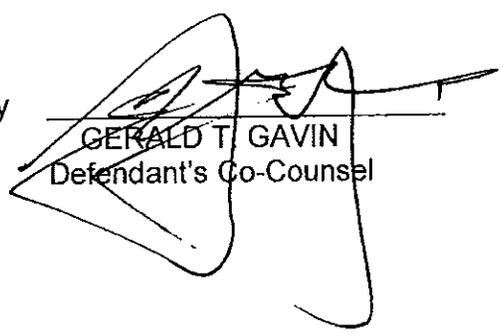
COMES NOW Defendant Justin James Rector, by and through undersigned
counsel, requesting the court compel the state to disclose the identity of all of the
informants involved in this investigation, pursuant to Rule 15 of the Rules of Criminal
Procedure, Roviarro v. United States, 353 U.S. 53, 77 S.Ct. 623, 11 L.Ed.2d 639
(1957), and Brady v. Maryland, 373 U.S. 83 (1963). Mr. Rector also requests the
government disclose all information concerning any and all, past and present informants
providing information to the government, as to the cause number, for the reasons
contained in the memorandum attached hereto and incorporated herein.

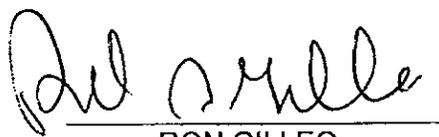
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RESPECTFULLY SUBMITTED this 22nd day of April, 2015.

By 
GERALD T. GAVIN
Defendant's Co-Counsel


RON GILLO
Defendant's Co- Counsel

MEMORANDUM

Mr. Rector is currently being held at the Mohave County Detention Facility in Kingman, Arizona since the date of his arrest in this cause. Jail is not meant to be a comfortable place for inmates, but some facilities statewide seem to go out of their way to be unnecessarily cruel to inmates. That is not the case presently with Mr. Rector. He appreciates the ability to not be isolated, but instead interact with other inmates in "M" pod, an area for offenders whose lives might be endanger from the "average" general population inmate, who threaten to harm offenders accused of crimes against children. Counsel appreciates the jail commander's humane treatment of inmates, and his client in particular. Mr. Rector is cooperating with detention staff and not being a problem inmate.

In many serious cases, especially capital cases, it is not unusual for the government to utilize "snitch" witnesses - confidential informants that befriend certain inmates, who curry favor and gain the trust of investigation targets. Prosecutors often employ such tactics to bolster perceived weaknesses in cases.

Mr. Rector has been counseled to trust no one asking about his case, other than the limited members of his defense team. He has been instructed to speak to no one

1 else about his case, including his own family, media, detention officers, or anyone else,
2 and been instructed to report to counsel immediately if anyone attempts such contact.
3 Additionally, Mr. Rector has been told to safeguard any paperwork in his possession
4 while at jail against anyone wishing to view it; it is very common for "snitches"
5 (informants) to either read the "target" inmates police reports, or be given such reports
6 from law enforcement.

7 IF the government, State or Federal authorities, have used and/or are presently
8 using any individual to gather information on Mr. Rector, in any informant capacity, the
9 defense respectfully requests:

- 10 1. The TRUE identity of any informant;
- 11 2. The current address/ location of any informant;
- 12 3. A photograph of any informant;
- 13 4. The case number(s) and names of prosecutors in any and all cases this
14 informant has provided information to authorities;
- 15 5. The case names and numbers of any evidentiary hearings or trials at which the
16 informant has testified;
- 17 6. The informants complete criminal history;
- 18 7. Any and all payments, rewards, or benefits promised or conferred on each
19 informant in exchange for their assistance to authorities;
- 20 8. Any and all ledgers, sheets, or other document which details the sums paid
21 informant(s), or their families or friends, in this or any other case the informant(s)
22 assisted the government, and the purpose of any such payment;
- 23 9. Any information, whether memorialized in a memorandum, agent's report or
24 other writing, regarding promises of immunity or leniency, preferential treatment, jail or
25 prison relocations, or other inducements made to the informant, the informant's family,
26 friend, or associate, in exchange for the informant's cooperation, including the
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1 dismissal, reduction, or failure to pursue charges in any jurisdiction, assisting in matters
2 of sentencing, promises or eligibility for any reward or award, and any receipts of the
3 above-described benefits.

4 10. Any information or records regarding actual or implied threats of investigations or
5 prosecution made by the government to any prospective government witnesses, family
6 members, associates of the witness, including underlying conduct precipitating such
7 investigations;

8 11. Any statement, information, or documentation provided by a prospective witness
9 that conflicts, in whole or part, with (1) the statement of another prospective witness,
10 (2) a prior statement made by the same witness, with regard to the subject of the
11 expected testimony or (3) any other documents or witnesses.

12 12. Any report, document or information which details the criminal activities of the
13 cooperating informant which were undertaken by the informant without the authority of
14 the government, but for which the government has elected formally or informally, not to
15 prosecute;

16 13. FBI rap sheet, NCIC printout, NADDIS, EPIC, NLETS, ATS and TECS and any
17 other records available to government reflecting the arrest, conviction and investigative
18 history of the informant(s);

19 14. Information regarding the prior misconduct by the informant(s) in their
20 performance as an informant, including: any prior refusal of the informant to testify for
21 or assist the government; any prior allegation that the informant entrapped another
22 person to commit an offense or made false statements in the connection with a criminal
23 investigation; and any offense or made false statements in connection with a criminal
24 investigation; and any prior "blackballing" of the informants by any law enforcement
25 agency;
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1 15. Information concerning misconduct by the informant(s) other than in their role as
2 an informant, including misconduct that reflects on the lack of candor, truthfulness or
3 law-abiding character of the informant(s), such as uncharged criminal conduct or fraud;

4 16. All information, records and transcripts which in any way indicate or reveal that
5 any prospective government witnesses, in connection with this or any other case, have
6 provided untruthful, false, misleading, incomplete or inaccurate information or testimony
7 to:

- 8 A. Any state or federal law enforcement officer or agency;
- 9 B. Any state or federal grand jury;
- 10 C. Any state or federal trial court while testifying at trial and/or any
Related or preliminary proceeding.

11 17. Information reflecting the nature and extent of assets obtained by the
12 informant(s) in connection with their illegal activities over the past ten years;

13 18. Any "records" maintained by law enforcement agencies relating to the
14 cooperating witnesses utilized in this case, including records that the informant(s) were:

- 15 A. Given a code name;
- 16 B. Given assumed/false identity;
- 17 C. Reasons for cooperation;
- 18 D. Whether given a polygraph examination;
- 19 E. Whether briefed on entrapment;
- 20 F. Contracts executed with any law enforcement agency;
- 21 H. Records that informant(s) could not violate the law;
- 22 I. Records which require him or her to protect the false identity'
- 23 L. Records that the witness cannot use any illegal drugs.

24 19. If given a polygraph examination performed on any potential government
25 witnesses as well as any information concerning the failure of any potential government
26 witnesses to submit to a polygraph examination.

27 20. Any government agency files or other information revealing matters relevant to
28 the cooperating witnesses' credibility, mental or physical health, or narcotic or alcohol
use or other dependency.

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LAW AND ARGUMENT

" *The use of informants to investigate and prosecute persons is fraught with peril*"..... "By definition, criminal informants are cut from untrustworthy cloth and must be managed and carefully watched by the government and the courts to prevent them from falsely accusing the innocent, from manufacturing evidence against those under suspicion of crime, and from lying under oath in the courtroom." United States v. Bernal-Obeso, 989 F.2d 331 (9th Cir. 1993).

Rule 15.1(b)(11) of the Arizona Rules of Criminal Procedure requires the state to disclose to the defendant whether or not a confidential informant was involved, and if so, the informant's identity, if the defendant is entitled to know either of these facts under Rule 15.4(b)(2). Rule 15.4(b)(2) states the disclosure of the existence of an informant or the identity of an informant who will not be called to testify shall not be required where disclosure would result in substantial risk to the informant's operational effectiveness, provided the failure to disclose will not infringe on the Constitutional rights of the accused.

"Where the disclosure of an informant's identity is relevant and helpful to the defense or is essential to a fair determination of a cause (due process rights), the (19v. Gutierrez, 121 Ariz. 176, 182, 589 P.2d 50, 56 (App. 1978), citing Roviaro v. United States, Supra.

Any informant is pertinent and relevant to this matter. They may be alleged direct witnesses to action, or are privy to pertinent information to the investigation...if not the State investigation, than possibly the defense investigation.

Case law indicates the defendant need only show that the informant is a material witness on the issue of guilt and who might result in the exoneration of charges, and

1 that the non-disclosure of his or her identity would deprive the defendant of a fair trial.

2 The defendant does not have to prove that the informant would give favorable testimony
3 to the defense. State v. Tuell, 112 Ariz. 340, 343, 541 P.2d 1142, 1145 (1975).

4 Cross-examination of the officer is not a substitute for the opportunity to examine
5 an informant. Id. The accused must be afforded an opportunity to personally interrogate
6 the witness and make the determination for himself. State v. Gutierrez, Supra. A
7 defendant must not be compelled to rely upon what others may testify as to what a
8 witness may or may not have observed in a particular case. Id.

9 The additional information requested in this motion regarding any informant is
10 necessary to adequately determine the informant(s) motive, involvement and credibility.
11 This information would exist in the various levels of files maintained by the Bullhead City
12 Police Department, the Mohave County Sheriffs Office, the Federal Bureau of
13 Investigations, or any other law enforcement involved in this investigation. If such
14 information exists, the defendant has no access to it, and the only way to 1) learn if it
15 exists and 2) obtain any such information is for this court to order disclosure of such
16 material, in furtherance of Brady v. Maryland. Arizona Rule of Criminal Procedure
17 15.1(g) states that if a defendant has a substantial need in preparation of his case for
18 additional material, and if the defendant is unable to obtain the information without
19 undue hardship, the court may order any person to make the information available to
20 him.
21

22 CONCLUSION

23 For the reasons set forth in this memorandum, and to be supplemented at the
24 hearing in this regard, it is requested that the disclosure of the names of any and all
25 informants, along with the additional information relating to them, be ordered disclosed
26 to the defense.
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ORIGINAL of the
Forgoing filed this 22nd day of April, 2015 with:
Clerk of the Court
401 E Spring Street
Kingman Arizona 86401

COPY of the forgoing delivered
This 22nd day of April, 2015 to:

Honorable Lee Jantzen
Judge of the Superior Court
Mohave County Courthouse
401 E. Spring Street
Kingman Arizona 86401

Greg McPhillips
Assigned Deputy County Attorney
PO Box 7000
Kingman Arizona 86401

Ron Gilleo
Mohave County Legal Defender
Co-Counsel for Justin James Rector
313 Pine Street
PO Box 7000
Kingman Arizona 86401

Client Justin James Rector
Mohave County jail

File

BY: _____