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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2019-001405

THE STATE,

Respondent,

vs.

ANTONIO RICARDO LEE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

"Whether the lower court erred when it refused to compel the state to disclose the identity of the confidential informant where the informant was not merely an observer but an active participant in law enforcement's investigation of Appellant because law enforcement would never have made Appellant a suspect without the informant's undercover work in this case?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge somehow abuse her discretion by refusing to require the disclosure of the confidential informant's identity when the informant was neither an active participant in any of the criminal activity upon which Appellant's drug charges were based nor a material witness on the issue of Appellant's guilt or innocence and, therefore, the informant's identity did not have to be disclosed since it was not relevant to Appellant's defense to the charges or essential to the fair resolution of Appellant's case?

STATEMENT OF THE CASE

In July of 2018, Appellant Antonio Ricardo Lee was arrested during the course of a narcotics investigation that led to the discovery of a variety of different illegal drugs along with other incriminating evidence. In December of 2018, the Beaufort County Grand Jury indicted Appellant for trafficking in cocaine, possession of heroin with intent to distribute, possession of a controlled substance with intent to distribute within proximity of a park, and possession of marijuana. In August of 2019, the Beaufort County Grand Jury issued amended indictments charging Appellant with the same four offenses. On August 12, 2019, a jury trial was commenced in the Beaufort County Court of General Sessions with the Honorable Deadra L. Jefferson, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty-five years for trafficking in cocaine, eight years for possession of heroin with intent to distribute, eight years for possession of a controlled substance with intent to distribute within proximity of a park, and one year for possession of marijuana. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

In July of 2018, law enforcement officers from the Beaufort County Sheriff's Office began conducting a narcotics investigation with the assistance of a confidential informant. (Search Warrant). As part of the investigation, the officers reviewed a recorded phone conversation between the confidential informant and an individual named Joseph Atkins. (Search Warrant). During that conversation, the informant asked Atkins if he had any drugs at that time, and Atkins responded he was going to get some soon.[1] (Search Warrant). The informant then asked Atkins where he was going to get the drugs from, and he indicated he was going to get them from an individual named "Tone." (Search Warrant).

Upon hearing the name "Tone," the officers attempted to ascertain who went by that nickname in the area, identified Appellant as a possible suspect, and determined Appellant's girlfriend lived at a particular apartment on Paddle Boat Lane in Hilton Head, South Carolina. (Tr. p. 150; pp. 153-155; Search Warrant). Officers then began conducting covert surveillance of Atkins, followed him to an apartment complex on Paddle Boat Lane, and observed him enter the specific building in which Appellant's girlfriend's apartment was located.[2] (Search Warrant). A few minutes later, Atkins returned to his vehicle, and officers quickly made contact with Atkins and a passenger in his vehicle before the two could leave the area. (Search Warrant). After making contact with them, Atkins and his passenger, Shae Dalrymple, turned over some heroin and cocaine. (Search Warrant). Atkins further revealed he purchased the narcotics from "T,"

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[1] During the call, neither the confidential informant nor Atkins directly identified the subject matter of the conversation as drugs, but the context of the conversation was apparently clear. (Search Warrant). Furthermore, the officers were subsequently able to confirm the conversation had been about drugs through their surveillance of Atkins, their recovery of drugs from Atkins, and Atkins's incriminating admissions. (Search Warrant).

[2] The apartment was located within half of a mile of a park. (Tr. pp. 275-276).

and Dalrymple indicated they had come to the apartment complex to get the drugs from "Tone." (Search Warrant).

After that, the officers proceeded to knock on the door of Appellant's girlfriend's apartment, and Appellant approached the door with a ripped plastic baggie in his hand. (Tr. p. 156; Search Warrant). In response, Appellant was detained and searched, and an officer found $3,000 in cash in his pockets along with some more ripped plastic baggies. (Tr. p. 123; p. 267; p. 282). The apartment was then secured while an officer went to attempt to obtain a search warrant based on the information that had been uncovered up to that point, and a magistrate issued a search warrant for the apartment later that same day. (Tr. p. 68; p. 123; p. 125; p. 166; Search Warrant).

During the ensuing warrant-based search, cocaine, heroin, marijuana, and items associated with drug trafficking were found scattered and hidden all throughout the apartment. (Tr. pp. 70-72; pp. 77-84; p. 92; pp. 93-94; pp. 97-101; pp. 103-114; p. 176; pp. 271-274; pp. 285-287; p. 294). Furthermore, Appellant's driver's license was found in close proximity to some heroin, and mail addressed to Appellant at the apartment's address was found in one of the bedrooms.[3] (Tr. p. 70; p. 72; p. 81; p. 92; pp. 98-100; p. 149).

Following those discoveries, the drugs found during the search were subjected to chemical analysis and identified as 295.8 grams of cocaine, 5.046 grains of heroin, and 0.14 grams of marijuana. (Tr. p. 214; pp. 217-218; pp. 220-221). Likewise, some of the evidence recovered at the scene was analyzed for DNA, and Appellant was identified as having a DNA profile matching the profile of the major contributor of the DNA found on one of the bags of

[3] The address listed on Appellant's driver's license was not the apartment's address, but the license had been issued several years earlier. (Tr. p. 129; p. 150).

cocaine along with another item seized from the apartment. (Tr. p. 131; p. 133; p. 277; pp. 300-307).

Subsequently, based exclusively on the drugs found during the search of the apartment, Appellant was indicted for a variety of offenses, including trafficking in cocaine, possession of heroin with intent to distribute, and possession of marijuana. (Tr. pp. 14-16; Indictments; Arrest Warrants). Prior to trial, defense counsel filed a motion requesting disclosure of the "[n]ames and contact information in the custody or control of any law enforcement for any 'confidential informant' cited in the incident report and search warrant affidavit that provided information used in support of the search warrant, or whose information will be referenced by the State at trial in the subject case."[4] (Rule 5 Motion and Request for Supplemental Disclosure). However, the solicitor declined to reveal that information on the basis the confidential informant was a mere tipster with only peripheral knowledge of Appellant's charged crimes. (Tr. p. 39).

Thereafter, Appellant proceeded forward to trial, and, at its outset, defense counsel moved for the trial judge to require disclosure of the confidential informant's identity. (Tr. pp. 33-34). As support for that motion, defense counsel maintained he did not currently possess sufficient information to raise a challenge to the search that led to the discovery of drugs and speculated a review of the recording of the phone call between the confidential informant and Atkins could potentially be pertinent to the matter. (Tr. pp. 35-36; p. 38).

In response to defense counsel's motion, the trial judge personally reviewed a recording of the call in camera along with the search warrant affidavit, and, after doing so, she noted the role of the confidential informant had been limited to contacting Atkins—and not Appellant—to

[4] Notably, in seeking that particular information, defense counsel did not include in the motion any statements indicating *why* the information was being sought or *how* it might be relevant to Appellant's case or defense. (Rule 5 Motion and Request for Supplemental Disclosure).

see if he had any drugs and to asking Atkins where he intended to get his drugs from when Atkins asserted he was going to get some soon. (Tr. pp. 38-42). The trial judge further noted the confidential informant did not have any direct knowledge of Atkins's transaction with Appellant, which was surveilled by law enforcement and led to Atkins providing inculpatory information about Appellant that established a probable cause basis for the search of Appellant's residence. (Tr. pp. 36-38; pp. 42-43). Under those circumstances, the trial judge concluded the confidential informant only possessed peripheral knowledge and was neither an active participant in the criminal transaction, a material witness on the issue of guilt or innocence, nor essential to a fair determination of the State's case. (Tr. pp. 42-43). Accordingly, the trial judge ruled Appellant failed to meet his burden of establishing disclosure of the confidential informant's identity was required and denied defense counsel's motion seeking that information. (Tr. p. 43).

Following that ruling, the trial proceeded forward, and testimony and evidence was presented about the warrant-based search that led to the discovery of Appellant's drugs and other incriminating evidence.[5] (Tr. pp. 68-151; pp. 165-169; pp. 172-178; pp. 212-221; pp. 224-294; pp. 296-307). However, no testimony was presented in front of the jury about the basis for the search warrant or about Atkins's transaction with Appellant, and Appellant did not present any evidence in his defense outside of what defense counsel elicited through cross-examination of the State's witnesses. (Tr. p. 343). Ultimately, following the presentation of that testimony and evidence, the jury convicted Appellant as indicted. (Tr. pp. 417-418).

[5] During the course of the trial, the drugs were admitted into evidence without objection. (Tr. p. 216; pp. 220-221).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Due to the important public policy interests served by confidential informants who provide assistance to law enforcement, disclosure of such informants' identities to the defense is typically not required, and trial judges are vested with "considerable" discretion on the matter of whether to require disclosure of identifying information when it is sought. State v. Batson, 261 S.C. 128, 134-135, 198 S.E.2d 517, 520 (1973); see United States v. Smith, 780 F.2d 1102, 1108 (4th Cir. 1985) ("The decision of whether the testimony of the informer will be relevant and helpful is usually within the trial judge's discretion."); State v. Wright, 322 S.C. 484, 487, 472 S.E.2d 642, 644 (Ct. App. 1996) (recognizing the prosecution's privilege concerning the identity of an informant is founded upon public policy interests). When confronted with an appeal involving a challenge to a trial judge's ruling refusing to require the prosecution to disclose the identity of a confidential informant, the appellate court will only reverse such a discretionary decision if the appellant can establish both the disclosure of the informant's identity was required under the circumstances involved *and* actual prejudice resulted from the non-disclosure. Batson, 261 S.C. at 134-135, 198 S.E.2d at 520.

ARGUMENT

The trial judge did not abuse her discretion by refusing to require the disclosure of the confidential informant's identity because the informant was neither an active participant in any of the criminal activity upon which Appellant's drug charges were based nor a material witness on the issue of Appellant's guilt or innocence and, therefore, the informant's identity did not have to be disclosed since it was not relevant to Appellant's defense to the charges or essential to the fair resolution of Appellant's case.

Appellant contends the trial judge committed reversible error by refusing to require the solicitor to disclose the identity of the confidential informant. In support of that contention, Appellant maintains he was entitled to the disclosure of the informant's identity because the informant purportedly played an active role in the investigation, the informant's work was the impetus that led the officers to obtain the search warrant that resulted in the discovery of the drugs, and he supposedly could not properly challenge the search warrant that led to the "wrongful" search of his residence on the basis probable cause was lacking without knowing the informant's identity. Contrary to Appellant's contention, the trial judge properly declined to require the disclosure of the confidential informant's identity because the informant was only peripherally connected to Appellant's case and did not have any direct involvement with Appellant, the apartment that was searched, or the drugs for which Appellant was ultimately charged. Under such circumstances, the identity of the confidential informant was neither necessary for Appellant to be able to prepare his defense to the charges nor essential for Appellant's case to be fairly resolved. As a result, the trial judge did not abuse her discretion by refusing to require disclosure of the confidential informant's identity, and Appellant failed—both at the trial level and on appeal—to provide a valid or compelling reason justifying the disclosure of that information. Appellant's convictions should be affirmed.

As has long been recognized in South Carolina and throughout the nation, confidential informants are highly important to the effective functioning of law enforcement, and, as a result,

the prosecution is *generally* privileged to withhold the identity of a confidential informant who provides assistance to law enforcement regarding a crime as a matter of sound public policy. Roviaro v. United States, 353 U.S 53, 59 (1957); Batson, 261 S.C. at 133, 198 S.E.2d at 519; see State v. Bultron, 318 S.C. 323, 330, 457 S.E.2d 616, 620 (Ct. App. 1995) ("Generally, the State may not be compelled to disclose the names of its confidential informants."); State v. Bernotas, 277 S.C. 106, 109, 283 S.E.2d 580, 581 (1981) ("This privilege is necessary for protecting law enforcement."). By maintaining the anonymity of informants, the prosecution is able to encourage an informant to fulfil his or her civic duty to provide assistance the informant might not otherwise be willing to provide without being able to remain anonymous and to protect the informant from harm that might be sought to be inflicted by those whose criminal activity has been exposed. Roviaro, 353 U.S. at 59; see McCray v. Illinois, 386 U.S. 300, 308 (1967) ("Whether an informer is motivated by good citizenship, promise of leniency or prospect of pecuniary reward, he will usually condition his cooperation on an assurance of anonymity—to protect himself and his family from harm, to preclude adverse social reactions and to avoid the risk of defamation or malicious prosecution actions against him." (citation omitted)); Roviaro, 353 U.S. at 57 (Clark, J., dissenting) ("To give [informants] protection governments have always followed a policy of nondisclosure of their identities. Experience teaches that once this policy is relaxed . . . its effectiveness is destroyed. Once an informant is known the drug traffickers are quick to retaliate. Dead men tell no tales. The old penalty of tongue removal, once visited upon the informer Larunda, has been found obsolete.").

Importantly though, the privilege against disclosure of the identity of a confidential informant is *not* absolute. Batson, 261 S.C. at 133, 198 S.E.2d at 519; see Bernotas, 277 S.C. at 109, 283 S.E.2d at 581 ("While this privilege is not absolute, disclosures should only be made

when the informer's identity would be relevant to the accused's defense."). Instead, "[w]here the disclosure of an informant's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way." Roviaro, 353 U.S. at 60-61. As a result, whether disclosure is required necessarily depends on the particular circumstances of each individual case, and the trial judge "must balance the public interest in protecting the flow of information of criminal activities against the individual's right to prepare his defense." Wright, 322 S.C. at 487, 472 S.E.2d at 644. When conducting such a balancing analysis, the trial judge should consider factors such as the specific crime charged, the possible defenses to that crime, and the potential significance of the informer's testimony to the case. Roviaro, 353 U.S. at 62.

Typically, a confidential informant's identity does not have to be disclosed when the informant "possesses only a peripheral knowledge of the crime" or is "a mere tipster who supplies a lead to law enforcement authorities." State v. Blyther, 287 S.C. 31, 33, 336 S.E.2d 151, 152 (Ct. App. 1985); see State v. Hayward, 302 S.C. 75, 76, 393 S.E.2d 918, 919 (1990) ("Where it has not been shown that the informants were participants in, or material witnesses to, the alleged criminal transaction, we have refused to compel disclosure."); Wright, 322 S.C. at 488, 472 S.E.2d at 645 ("The disclosure of the identity of one who is merely an informer and not a participant nor material witness is generally not required."). Meanwhile, if "the informant either is a material witness to the crime or directly participates in it, disclosure *may* be required, . . . particularly where, in a drug related case, [the informant] is the only witness to the transaction other than the buyer and the defendant." Blyther, 287 S.C. 31, 33, 336 S.E.2d at 153 (citations omitted and emphasis added); see State v. Diamond, 280 S.C. 296, 299, 312 S.E.2d 550, 551 (1984) ("Public policy considerations for nondisclosure of an informant's identity are absent

where the informant openly participates in the criminal transaction."). Significantly though, "[e]ven if the informant is an active participant in the criminal act and/or a material witness, the court *may still* sustain an invocation of the nondisclosure privilege if other factors and circumstances warrant doing so." Bultron, 318 S.C. at 330, 457 S.E.2d at 620 (emphasis added); see State v. Riggins, 262 S.C. 466, 468, 205 S.E.2d 376, 377 (1974) (holding the trial judge properly declined to provide the name of a confidential informant even though the informant was present when Riggins sold marijuana to an undercover officer); cf. Wright, 322 S.C. at 489, 472 S.E.2d at 645 (concluding a confidential informant's identity did not have to be disclosed even though the informant actually witnessed the transaction for which Wright was charged to some extent).

When seeking the disclosure of the identity of a confidential informant, the defendant bears the burden of establishing disclosure is warranted under the circumstances involved and must show "facts and circumstances giving rise to an exception to the privilege against disclosure[.]" Batson, 261 S.C. at 134, 198 S.E.2d at 520; cf. State v. Humphries, 354 S.C. 87, 90, 579 S.E.2d 613, 615 (2003) (concluding the trial judge did not abuse his discretion by refusing to require disclosure of a confidential informant's identity because the petitioners "failed to meet their burden establishing the informant was anything more than a mere tipster"). Moreover, mere speculation about the potential usefulness of the informant's identity is *not* sufficient to meet that burden. United States v. Blevins, 960 F.2d 1252, 1259 (4th Cir. 1992); see United States v. Valles, 41 F.3d 355, 358 (7th Cir. 1994) ("The confidential informant privilege will not yield to permit a mere fishing expedition, nor upon bare speculation that the information may possibly prove useful." (citation and internal quotations omitted)); cf. State v. Barron, 266 S.C. 433, 435, 223 S.E.2d 859, 860 (1976) ("When, as here, appellant's counsel

does not contend that he was denied a fair trial but, instead, assert in oral argument that any testimony by the informant would have been purely conjectural, there was no abuse of discretion.").

In the case sub judice, the trial judge properly declined to require the disclosure of the confidential informant's identity because the disclosure of that information was not relevant, significant, or essential to any aspect of Appellant's defense or to the fair resolution of the case when the circumstances involved are properly considered. Looking to those circumstances, Appellant's charges stemmed solely from his possession of drugs found in the apartment and *not* from any transactions he conducted with anyone else, including Atkins or the confidential informant. Compare Bultron, 318 S.C. at 331, 457 S.E.2d at 621 (finding disclosure of the identity of a confidential informant was not required where "[t]he State presented evidence Appellants were in constructive possession of the narcotics independent of the information offered by the informant"); with Diamond, 280 S.C. at 298, 312 S.E.2d at 551 (holding the trial judge erred by refusing to require disclosure of the identity of a confidential informant when "[t]he informant was clearly a participant in the transaction" in light of the fact Diamond directly gave the heroin *to the informant* before the informant handed it over to an undercover police officer). Meanwhile, the confidential informant merely provided information about an interaction with another individual—Atkins—that led law enforcement to begin conducting surveillance of that individual. See United States v. Fisher, 440 F.2d 654, 656 (4th Cir. 1971) ("[T]he informant was used only for the limited purpose of obtaining a search warrant. It is *well established* that the government is privileged to withhold the identity of such informants." (emphasis added)); cf. Bernotas, 277 S.C. at 109, 283 S.E.2d at 581 (finding the trial judge properly refused to require disclosure of the identity of a confidential informant when "it was not

shown that the informer was a participant" in the charged crime and, instead, the informant only provided information that led to a stop that ended in the discovery of drugs in Bernotas's possession). Following that, Atkins, whose identity was *not* concealed from Appellant, personally led law enforcement to uncover Appellant's criminal enterprise through the things he did while being surveilled, and the confidential informant, who was neither a witness to nor a participant in anything for which Appellant was criminally charged, had no further involvement of any kind in the matter. Cf. State v. Shupper, 263 S.C. 53, 56, 207 S.E.2d 799, 800 (1974) (holding disclosure of a confidential informant's identity was not required when the informant merely supplied the information *that led to a search warrant being obtained* and "was not otherwise a participant or witness"). Under such circumstances, the confidential informant's identity was not material, relevant, or significant to any aspect of Appellant's defense or to a fair resolution of Appellant's case since the informant—who did not even directly provide any information about the presence of the narcotics that were found in the apartment—was merely a tipster who supplied a lead that steered law enforcement's investigation in a direction that ultimately led to Appellant's criminal activity being uncovered based on surveillance conducted of someone *other than* the informant himself or herself. See McLawhorn v. North Carolina, 484 F.2d 1, 5 (4th Cir. 1973) (recognizing "the generally accepted rule" is the identity of an informant who "merely provides a lead or tip that furnishes probable cause for a search and seizure" does *not* have to be disclosed); cf. Bultron, 318 S.C. at 331, 457 S.E.2d at 620 ("The informant's role in this case was limited to calling the police and stating he had observed a quantity of cocaine in a hotel room.").

In arguing disclosure was required, Appellant suggests the informant's identity *may* have somehow been relevant and necessary for purposes of attempting to mount an attack on the

validity of the search warrant itself since the informant was involved in the investigation that led to the discovery of Appellant's crimes. Critically though, involvement in a criminal investigation standing alone does *not* require disclosure of a confidential informant's identity, or the privilege against disclosure simply would not and could not exist since an informant whose identity is being sought will inevitably have done something that furthered an investigation into criminal activity.[6] Cf. Humphries, 354 S.C. at 89-90, 579 S.E.2d at 614 (concluding the trial judge correctly declined to require disclosure of a confidential informant's identity even though the information provided by the informant led to the discovery of the Humphries' drugs because the informant "was not present when the package was seized, the dog identified the package as containing drugs, or when the package was delivered to the garage by the undercover officer"); State v. Burney, 294 S.C. 61, 63, 362 S.E.2d 635, 636 (1987) (classifying a confidential informant as a "tipster" and finding disclosure of the informant's identity was *not* required when the informant made a controlled buy from Burney and provided information used to obtain a search warrant for Burney's residence that led to the discovery of the drugs and other evidence that gave rise to Burney's criminal charges). Likewise, a desire to mount a conjectural attack upon a search warrant simply does *not* constitute a valid ground requiring disclosure of a

[6] As support for the argument he is raising on appeal, Appellant alleges—while citing to State v. Humphries, 354 S.C. 87, 579 S.E.2d 613 (2003)—our courts have found disclosure *is* required when the informant was an " 'active participant' in the *investigation*." (App. Br. p. 6) (emphasis added). However though, that is not what our Supreme Court stated in Humphries, and the word "investigation" did not appear anywhere in that decision. Humphries, 354 S.C. at 90, 579 S.E.2d at 614-615. Instead, in Humphries, our Supreme Court simply acknowledged the well-established and non-controversial rule that disclosure generally is required when the informant is "an active participant *in the criminal transaction* and/or a material witness on the issue of guilt or innocence." Id. at 90, 579 S.E.2d at 615; cf. Roviaro, 353 U.S at 64 (concluding disclosure was required "where the Government's informer was the sole participant, other than the accused, *in the transaction charged*" (emphasis added)). Significantly, the distinction between what Appellant claims was stated in Humphries and what was actually stated in that decision is one that very much matters, and it strongly demonstrates the faulty nature of the position Appellant is now advancing on appeal.

confidential informant's identity. See United States v. Whiting, 311 F.2d 191, 196 (4th Cir. 1962) (finding the identity of a confidential informant was properly withheld because, "as the attorney for the defendants admitted, the names of the informers were wanted in support of the effort to invalidate the search warrant and not to help the defendants in the presentation of their case"); cf. Rugendorf v. United States, 376 U.S. 528, 534 (1964) ("[A] careful examination of the whole record shows that *he requested the informers' names only in his attack on the affidavit supporting the search warrant*. Having failed to develop the criteria of Roviaro necessitating disclosure on the merits, we cannot say on this record that the name of the informant was necessary to his defense. All petitioner's demands for identification of the informants were made during the hearings on the motion to suppress and were related to that motion. *Never did petitioner's counsel indicate how the informants' testimony could help establish petitioner's innocence*." (emphasis added and footnote omitted)); Shupper, 263 S.C. at 56, 207 S.E.2d at 800 (concluding a confidential informant's identity did not have to be disclosed because the informant only supplied the information that led to a search warrant being obtained). Moreover, as recognized by the trial judge, the probable cause basis for the search warrant issued in Appellant's case was primarily based upon the information obtained through the officers' surveillance of and interactions with Atkins, who was found to be in possession of drugs after making a brief trip to the apartment and who made incriminating admissions suggesting he had just purchased the drugs from Appellant, instead of upon the limited information provided by the informant, which demonstrates the informant's identity was not something that would have aided Appellant in obtaining suppression of the evidence found in the search even if it had been disclosed.[7] See United States v. Harris, 403 U.S. 573, 583-584 (1971) ("Common sense in the

[7] Notably, despite being fully aware of Atkins's identity, Appellant did *not* attempt to call Atkins

important daily affairs of life would induce a prudent and disinterested observer to credit these statements. People do not lightly admit to a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search."); see also State v. Driggers, 322 S.C. 506, 514, 473 S.E.2d 57, 61 (Ct. App. 1996) ("Klepp-Egge also acted against his best interests by providing the police with information that possibly linked him to the crime."). Under such circumstances, it remains entirely unclear how disclosure of the confidential informant's identity would have aided Appellant in any meaningful way aside from potentially enabling him—or one of his associates—to enact some form of revenge upon an individual peripherally involved in bringing a halt to a lucrative criminal enterprise.[8] See Shupper, 263 S.C. at 57, 207 S.E.2d at 800 (finding no error in the refusal to require disclosure of the confidential informant's identity when the defendant made no showing his position would have been improved by the disclosure of that information).

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as a witness in his defense. (Tr. p. 343).

[8] In an effort to demonstrate how the confidential informant's identity might have been pertinent to his case, Appellant relies heavily on our Supreme Court's recent decision in State v. Dill, 423 S.C. 534, 816 S.E.2d 557 (2018). (App. Br. pp. 7-8; p. 10). In Dill, our Supreme Court reversed Dill's conviction for manufacturing methamphetamine, but the reason it did so was not based on the non-disclosure of a confidential informant's identity. State v. Dill, 423 S.C. 534, 545, 816 S.E.2d 557, 563 (2018). Instead, after finding sufficient information regarding the informant's reliability had arguably been supplied to the magistrate who issued the search warrant, the Supreme Court reversed because it determined the warrant was nonetheless invalid because the critical information that was presented to establish a probable cause basis for the search was not attributed to the informant or *anyone else* and, instead, was wholly conclusory in nature. Id. at 544, 816 S.E.2d at 563. In light of that, it is not readily apparent how the decision in Dill strengthens or aids Appellant's position in the case at bar since Dill was resolved on a basis totally unrelated to the non-disclosure of the informant's identity to Dill.

Accordingly, because Appellant failed—and has continued to fail—to establish the confidential informant's identity was relevant and helpful to his defense or was essential to a fair determination of his case, there were no compelling reasons mandating the disclosure of the confidential informant's identity. See Wright, 322 S.C. at 487, 472 S.E.2d at 644 (recognizing the general privilege of non-disclosure "must give way to the rights of the accused where the informant's identity is relevant and helpful to the defense or is essential for a fair determination of the State's case against the accused"); see also Smith, 780 F.2d at 1108 ("The defendant must come forward with something more than speculation as to the usefulness of such disclosure."). Therefore, the trial judge did not abuse her broad discretion by declining to require the solicitor to reveal the informant's identity in Appellant's case, and nothing suggests Appellant suffered any actual prejudice as a result of that decision. See Batson, 261 S.C. at 134-135, 198 S.E.2d at 520 ("It is also generally recognized that the trial court has *considerable* discretion as to ordering, or refusing to require, disclosure and that in the event of refusal, the burden is upon the accused to show prejudice resulting therefrom." (emphasis added)); cf. Shupper, 263 S.C. at 57, 207 S.E.2d at 800 ("Suffice it to say that the defendant made no showing whatever that his lot may have been improved by the informer's testimony. In truth, he was caught red-handed and had no defense[.]"). Appellant's convictions should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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April 1, 2021

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Deadra L. Jefferson, Circuit Court Judge
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THE STATE,

Respondent,

vs.

ANTONIO RICARDO LEE,

Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Victor R. Seeger, Esq.
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I further certify all parties required by Rule to be served have been served.
This 1st day of April, 2021.

CAROLINE COLLINS
Administrative Coordinator
Office of the Attorney General
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Columbia, SC 29211

Caroline Collins

From: Caroline Collins
Sent: Thursday, April 1, 2021 12:08 PM
To: Seeger, Victor
Cc: Stock, Chris; William Blitch; Mark Farthing
Subject: The State v. Antonio Ricardo Lee (2019-001405)
Attachments: Lee.IBOR (02530347xD2C78).PDF

Good Afternoon Mr. Seeger,

Attached please find a copy of the Initial Brief of Respondent and Designation of Matter in The State v. Antonio Ricardo Lee (2019-001405). These documents will be submitted to the Court of Appeals today via the AIS One Drive System.

If you will, please reply to this email to confirm receipt.

Thank you!

Caroline Collins
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