

No. 14-24-00377-CR & 14-24-00378-CR

In the
Fourteenth Court of Appeals
For the
State of Texas

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
2/28/2025 3:50:08 PM
DEBORAH M. YOUNG
Clerk of The Court

—————◆—————
Cause No. 1866105 & 1866106

In the 337th District Court
Of Harris County, Texas

—————◆—————
THE STATE OF TEXAS

Appellant

v.

CHRISTOPHER LOGAN MANZELLA

Appellee

—————◆—————
APPELLEE'S BRIEF

—————◆—————
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ORAL ARGUMENT REQUESTED

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. PROC. 38.1(e), 38.2(a)(1) , 39.1, and 39.2, Appellee requests oral argument before this Court of Appeals. This is a meritorious appeal of a criminal case, and although Appellee represents that the facts and legal arguments are thoroughly presented in this brief and in the record, Appellee also believes the decisional process of the Court of Appeals will be significantly aided by the oral arguments of counsel.

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. PROC. 38.2(a)(1)(A), the following correction is made to the State's identification of parties:

Inger H. Chandler – counsel for Appellee on appeal

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TO THE HONORABLE FOURTEENTH COURT OF APPEALS:

STATEMENT OF THE CASE

Pursuant to TEX. R. APP. PROC. 38.2(a)(1)(B), Appellee incorporates the State's statement of the case.

ISSUE PRESENTED

Did the trial court abuse its discretion when it granted Appellee's motion to disclose the identity of the confidential informant?

STATEMENT OF FACTS & PROCEDURAL HISTORY

Sometime in 2021, a confidential informant told Deputy J. Wingfield, Harris County Constable Precinct 8, that Appellee was dealing heroin out of his Harris County home. (CR 8-9; 2CR 7-8)(3RR 7); *Defense Exhibit 1*.¹ Dep. Wingfield passed the tip along to Sergeant J. Curry, Harris County Constable Precinct 2, who began to surveil

¹ This appeal involves two cause numbers and therefore has two clerk's records. CR will be used to reference cause number 1760184 (reindicted as cause number 1866106); 2CR will be used to reference cause number 1760185 (reindicted as cause number 1866105).

Appellee's home. *Id.* On December 17, 2021, Appellee was detained after he was observed engaging with an unknown male in behavior that, according to Sgt. Curry, was "consistent with narcotics transactions." *Id.* The unknown male was neither detained nor identified; in fact, to date his identity remains unknown. *Id.* No other probable cause was cited to support Appellee's detention. *Id.* Appellee was not arrested; he was released from the scene "due to cooperating with and ongoing with an on going investigation (sic)." *Id.*

Over two months later, on February 23, 2022, arrest warrants were issued for Appellee for two counts of possession with intent to deliver a controlled substance based on the evidence that was seized from his vehicle and home on December 17th. (CR 7-8; 2CR 8-9)(3RR 7), *see* TEX. HEALTH & SAFETY CODE §§ 481.112, 481.1123. Appellee was arrested on March 3, 2022. (CR 30; 2CR 24). On May 13, 2022, Appellee was indicted in cause numbers 1760184 and 1760185 for the charged offenses. (CR 61; 2CR 34).

Appellee filed his first Motion to Require Disclosure of Identity of Informant on October 24, 2023. (CR 92-104; 2CR 62-74). This initial motion requested disclosure of the identity of the "unknown male" who

Appellee was seen with prior to his detention on December 17, 2022. The State represented to the trial court that the identity of this person was unknown, despite the “young white male” being surveilled arriving at Appellee’s house in a black Infinity sedan, exiting his vehicle and knocking on Appellee’s window, leaving Appellee’s residence in the Infinity sedan, meeting up with Appellee in a Goodwill parking lot, exiting the Infinity sedan and entering the front passenger side of Appellee’s vehicle, driving away with Appellee in Appellee’s vehicle for several minutes, and being dropped off at the same Goodwill parking lot upon their return. *Defense Exhibit 1*. The trial court conducted an *in camera* examination of Sgt. J. Curry on December 13, 2023, and heard arguments of counsel. (4RR).

On January 8, 2024, Appellee filed his Second Motion to Require Disclosure of Identity of Informant. (CR 109-120; 2CR 76-83). This second motion requested disclosure of the identity of the “tipster” who allegedly told Dep. Wingfield that Appellee was selling heroin out of his residence. *Defense Exhibit 1*. On February 7, 2024, the trial court conducted in camera examinations of Officer A. Ayala and Dep. J. Wingfield. (6RR).

The trial court heard arguments of counsel on Appellee's second motion to disclose and Appellee's addendum to his second motion to disclose on March 27, 2024.² (7RR). On the same day, the trial court conducted an *in camera* examination of trial counsel so that she could consider the request for disclosure within the context of Appellee's defensive theories. (8RR).

The trial court granted Appellee's motion on April 11, 2024, and ordered the State to disclose the identity of Dep. Wingfield's tipster. (9RR). On April 24, 2024, the State filed a Motion for Reconsideration. (CR 185-223; 2CR 133-171). On April 29, 2024, the State refiled and re-indicted Appellee's cases alleging either a different weight or a different substance in each case. (CR 7; 2CR 6).

The trial court heard arguments on the State's motion for reconsideration on April 30, 2024. (10RR). Appellee orally moved for dismissal based on prosecutorial misconduct, prosecutorial vindictiveness and malicious prosecution. (10RR).

² Appellee's Addendum to Second Motion to Require Disclosure of Identity of Informant focused on a heavily redacted DEA-6 report that had been provided to Appellee the day before, after numerous requests for all federal reports and representations by the State that there were none. Appellee does not believe the State was dishonest in its representations, but believes the federal government withheld their reports as long as possible.

On May 7, 2024, the trial court denied the State's motion for reconsideration and ordered dismissals in the older cases, cause numbers 1760184 and 1760185, and granted the State's motion to have all filings in those cases transferred to the new cause numbers, 1866106 and 1866105, respectively. (11RR).

Appellee filed a Motion to Dismiss Due to Prosecutorial Misconduct, Prosecutorial Vindictiveness and Malicious Prosecution on May 12, 2024. The trial court denied the motion on May 21, 2024, and also ordered that the new cases, 1866105 and 1866106 be dismissed. (12RR).

This State's appeal follows.

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TIMELINE

Sept. 1, 2021	Effective date of new fentanyl laws
Dec. 17, 2021	Offense date
Feb. 23, 2022	Arrest warrants filed Cause No. 1760184 (man/del fentanyl, 200-400gr) Cause No. 1760185 (man/del meth, 4-200gr)
Mar. 3, 2022	Appellee arrested
May 13, 2022	Indictments issued: Cause No. 1760184 (man/del fentanyl, 200-400gr) Cause No. 1760185 (man/del meth, 4-200gr)

Oct. 24, 2023	Motion to Disclose Confidential Informant (CI) filed
Dec. 13, 2023	Court hears arguments on Motion to Disclose CI <i>In camera</i> examination of J. Curry
Jan. 8, 2024	Second Motion to Disclose CI filed
Feb. 7, 2024	<i>In camera</i> examination of A. Ayala <i>In camera</i> examination of J. Wingfield
Mar. 26, 2024	Addendum to Second Motion to Disclose CI filed
Mar. 27, 2024	Court hears arguments on motion(s) <i>In camera</i> examination of defense counsel
April 11, 2024	Court grants Appellee's Motion to Disclose CI
April 24, 2024	State's Motion for Reconsideration filed
April 29, 2024	Cases reindicted: Cause No. 1760184 (man/del fentanyl) refiled as Cause No. 1866106 (man/del fentanyl, 4-200gr) Cause No. 1760185 (man/del meth) refiled as Cause No. 1866105 (man/del heroin, 4-200gr)
April 30, 2024	Appellee re-arrested Court hears arguments on State's Motion for Reconsideration Appellee moves to dismiss based on prosecutorial misconduct, prosecutorial vindictiveness and malicious prosecution
May 7, 2024	Court denies State's Motion for Reconsideration Cause numbers 1760184 and 1760185 dismissed
May 12, 2024	Motion to Dismiss Based on Prosecutorial Misconduct, Prosecutorial Vindictiveness and Malicious Prosecution filed

May 21, 2024 Court denies Motion to Dismiss Based on
Prosecutorial Misconduct, Prosecutorial
Vindictiveness and Malicious Prosecution
Cause numbers 1866105 and 1866106 dismissed

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SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion when it granted Appellee's motion to disclose the identity of the confidential informant.

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REPLY TO THE STATE'S SOLE POINT OF ERROR

The trial court did not abuse its discretion when it granted Appellee's motion to disclose the identity of the confidential informant.

Appellee re-urges, without waiving, all briefing and arguments that were raised and preserved in the litigation of this pretrial motion.

The trial court granted Appellee's motion to disclose the identity of Dep. Wingfield's confidential "tipster." (9RR 4). The trial court's decision came after *in camera* examinations of Sgt. Curry, Officer Ayala, and Dep. Wingfield, and also an *in camera* discussion with trial counsel about their need for the informant to further their defensive theories. (4RR; 6RR;

8RR). The trial court based her decision, at least in part, on the informant's ability to testify as to Appellee's subjective intent, as well as the potentially exculpatory nature of her testimony. (9RR – 11RR); see *Brady v. Maryland*, 373 U.S. 83 (1963).

STANDARD OF REVIEW

A trial court's ruling on a motion to disclose an informant's identity reviewed for an abuse of discretion. *State v. Lerma*, 639 S.W.3d 63 (Tex.Crim.App. 2021). The evidence must be viewed in the light most favorable to the trial court's ruling. *Id.* (citing *Briggs v. State*, 560 S.W.3d 176, 184 (Tex.Crim.App. 2018)). The prevailing party is afforded, "the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence." *State v. Woodard*, 341 S.W.3d 404, 410 (Tex.Crim.App. 2011). An abuse of discretion does not occur unless the trial court acts "arbitrarily or unreasonably" or "without reference to any guiding rules and principles." *Lerma*, 639 S.W.3d at 68 (citing *State v. Hill*, 499 S.W.3d 853, 865 (Tex.Crim.App. 2016)). A trial court only abuses its discretion when no reasonable view of the record could support its ruling. *Int'l Fid. Ins. Co. v. State*, 586 S.W.3d 9, 12 (Tex.Crim.App. 2019).

APPLICABLE LAW

Generally, the State can protect the identity of a confidential informant under the privilege created by TEXAS RULE OF EVIDENCE 508. The rule has three exceptions. The privilege does not apply in a criminal case (1) if the informer's identity has been voluntarily disclosed, (2) if the informer may be able to give testimony necessary to a fair determination of guilt or innocence, or (3) if the court is not satisfied that information was obtained from an informer reasonably believed to be reliable. TEX. R. EVID. 508(c); *Bodin v. State*, 807 S.W.2d 313, 317 (Tex.Crim.App. 1991).

The informant's potential testimony must significantly aid the defendant and mere conjecture or supposition about possible relevancy is insufficient. *Bodin*, 807 S.W.2d at 318–19. A defendant has the threshold burden of demonstrating that identity must be disclosed. *Id.* However, because the defendant may not actually know the nature of the informant's testimony, he or she is only required to make a plausible showing of how the informer's information may be important. *Id.*

Once a plausible showing is made, the court should conduct an *in camera* hearing to determine whether there is a reasonable probability

the informant could give testimony necessary to a fair determination of guilt or innocence. *See* TEX. R. EVID. 508(c)(2); *Bodin*, 807 S.W.2d at 318. Importantly, the testimony is not limited to exculpatory information but also requires disclosure if the informant could provide inculpatory information. *Lerma*, 639 S.W.3d at 63.

Here, the trial court granted Appellee's motion to disclose based on the second exception to the privilege: there is a reasonable probability that Dep. Wingfield's tipster could give testimony necessary to a fair determination of guilt or innocence. *See Murray v. State*, 864 S.W.2d 111, 118 (Tex.App.—Texarkana 1993, pet. ref'd)(considerations for determining whether an informant should be disclosed include whether the informant had given information about the defendant on a prior occasion and if the informant is a material witness to whether the defendant knowingly committed the offense charged).

FENTANYL IS DIFFERENT

Chapter 481 of the TEX. HEALTH AND SAFETY CODE sets out the Texas Controlled Substances Act. The act categorizes controlled substances by penalty group. *See* TEX. HEALTH & SAFETY CODE §§ 481.101-481.105. Within each penalty group, the act further categorizes

each penalty group by degree of offense and punishment range. *See* TEX. HEALTH & SAFETY CODE §§ 481.112-481.119.

In 2021, the Texas Legislature enacted legislation that created a new penalty group for fentanyl and fentanyl-related substances. TEX. HEALTH & SAFETY CODE § 481.1022. This penalty group, “Penalty Group 1-B” carries levels of offenses and ranges of punishment that differ from those in its sister penalty groups, “Penalty Group 1” and “Penalty Group 1-A.”³ TEX. HEALTH & SAFETY CODE §§ 481.102, 481.1021.

The State argued throughout hearings on this issue and in briefing that Appellee’s subjective knowledge of the substance he possessed was irrelevant to the issue of guilt or innocence. *State’s Brief at 13*. The State argues that it does not matter what substance an accused was in possession of, so long as it was “contraband.” *State’s Brief at 14*.

The State’s argument may very well be true if the substances believed to be possessed versus the substances actually possessed are in the same penalty group. Controlled substance offenses that involve different penalty groups often have different punishment ranges and, as

³ Penalty Group 1-A contains LSD and related substances and is measured in “abuse units.” Because there are no allegations of PG1-A substances in Appellee’s cases, our comparison will be limited to PG1 and PG1-B substances.

a result, create different offenses. Therefore, the offense of possession of a penalty group 1 controlled substance is a separate and distinct offense from possession of a controlled substance belonging to any other penalty group. *Watson v. State*, 900 S.W.2d 60, 62 (Tex.Crim.App. 1995)(holding that the Texas Legislature intended to make possession of each individual substance within the same penalty group a separate and distinct offense).

Relevant to Appellee’s case, the difference between a PG1 substance and a PG1-B substance can be substantial:

Man/Del – PG1	less than 1 gram (STJ) 1-4 grams (2nd) 4-200 grams (1st) 200-400 grams (1st) >400 grams (1st)	180d-2y STJ, \$10k 2-20y TDC, \$10k 5-99y TDC, \$10k 10-99y TDC, \$100k 15-99y TDC, \$250k
Man/Del – PG 1-B	less than 1 gram (3rd) 1-4 grams (2nd) 4-200 grams (1st) 200-400 grams (1st) >400 grams (1st)	2-10y TDC, \$10k 2-20y TDC, \$10k 5-99y TDC, \$20k 10-99y TDC, \$200k 15-99y TDC, \$500k

See TEX. HEALTH & SAFETY CODE §§ 481.112, 481.1123.

Indeed, a defendant who is charged with possession and/or delivery of a penalty group 1-B substance is **not guilty** of possession and/or delivery of a penalty group 1 substance, and vice versa. *Ex parte Mable*, 443 S.W.3d 129, 131 (Tex.Crim.App. 2014). *See also Ex parte Williams*,

WR-82,970-01, 2015 WL 13402425 (Tex. Crim. App. 2015)(not designated for publication), *Ex parte Bisor*, No. WR-82,382-01, 2014 WL 6789865 (Tex.Crim.App. 2014)(not designated for publication), *Ex parte Lucas*, No. WR-82,306-01, 2014 WL 6789947 (Tex.Crim.App. 2014)(not designated for publication), *Ex parte Mayo*, No. WR-82,047-01, 2014 WL 6788221 (Tex.Crim.App. 2014)(not designated for publication), *Ex parte Williams*, No. WR-82,307-01, 2014 WL 6788359 (Tex.Crim.App. 2014)(not designated for publication).

The trial court found, in her sound discretion and based on four *in camera* examinations of law enforcement and defense counsel, that the informant’s “tip” to Dep. Wingfield that Appellee was selling heroin out of his residence could potentially be exculpatory as to Appellee’s charges of possession with intent to deliver methamphetamine and fentanyl. The trial court further found that disclosure of the informant’s identity was necessary to a fair determination of guilt or innocence.⁴ The State cannot establish that the trial court acted arbitrarily or unreasonably or without

⁴ The State notes that the trial court stated that she had a “feeling [this Court] might side with the State.” (11RR 12). What the State omits is the court’s belief that her ruling is the correct one based on the novel issue presented. *Id.*

reference to any guiding rules and principles. Therefore, ruling should not be disturbed.

CONCLUSION & PRAYER

It is respectfully submitted that the trial court operated within her sound discretion in granting Appellee's motion to disclose the identity of the confidential informant; accordingly, the trial court's ruling should be upheld.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been delivered to the Harris County District Attorney's Office via e-filing on February 28, 2025.

/s/ Inger H. Chandler
INGER H. CHANDLER

CERTIFICATE OF COMPLIANCE

This is to certify that this brief complies with the typeface requirements of TEX. R. APP. PROC. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of TEX. R. APP. PROC. 9.4(i), if applicable, because it contains 3,023 words according to the word count on Microsoft Word.

/s/ Inger H. Chandler
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