STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FOR THE EIGHTH JUDICIAL CIRCUIT

COUNTY OF GREENWOOD)

THE STATE) Indictment Numbers: 2010-GS-24-0086-87

v.)

) Order

Willie Siegler,)
Defendant)

2010 APR 27 PM 4:08

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

This matter came before the Court on March 4, 2010 on the defendant's motion to dismiss pursuant to *Roviaro v. U.S.*, 353 U.S. 53 (1957) because of a willful failure to disclose the identity of a witness. The defendant was represented by E. Charles Grose, Jr. and Shane Goranson of the Public Defender's Office. The state was represented by Assistant Solicitor Jane H. Merrill. I make the following findings of fact and conclusions of law.

Findings of Fact

Exhibits to the motion included Greenwood Police Department incident report number 09019955 and SLED drug analysis number L09-10611 for Best Evidence Pack number B-203643. According to the incident report, Greenwood Police Officers Jeremiah Atkins and Nicholaus Futch met with an informant on September 1, 2009. The informant told the officers he could buy crack cocaine from someone named "Willie." According to the incident report, the officers kept the informant under surveillance until he met with the suspect on a closed porch where the alleged transaction took place. According to his Rule 6, SCRCrimP affidavit attached to the SLED drug analysis, Officer Atkins received the drugs from the informant and delivered them to the Greenwood Police Department evidence custodian Travis Clark.

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On September 11, 2009, the Greenwood Police Department served Siegler with warrant numbers I-826907 and I-826908. Warrant number I-826907 alleged:

> Willie Siegler did on 09-01-09 willfully and unlawfully distribute crack cocaine, a Schedule II substance, to a confidential informant of the Greenwood Drug Enforcement Unit without authority of law to do so. The informant met with Siegler inside the residence located at 513 Taggart Ave. Once inside the residence the informant engaged Siegler in a conversation during which time Siegler sold the informant a quantity of an off white rock like substance for a sum of US currency. This substance later field tested positive for crack cocaine and had an approximate weight of 0.4 grams. This incident occurred within the city limits of Greenwood in violation of state law.

Warrant number I-826908 charges Siegler with distribution of crack cocaine within a one-half mile proximity of the Gage Street Playground for the same incident. The warrants alleged the informant bought crack cocaine from Siegler inside a private residence.

Based on the warrants and the incident reports, the Court finds the informant was a material witness to the alleged criminal cnduct.

The Court finds the following chronology significant:

- Siegler's initial appearance under the Greenwood County administrative case management order was on December 4, 2009. Siegler was not represented.

- On December 7, 2009, Assistant Solicitor Merrill brought Siegler before this Court to review his representation. The Court appointed the Public Defender's Office.

- On December 14, 2009, the Public Defender's Office served Rule 5, SCRCrimP and *Brady* motions. The motions were filed on December 18, 2009.

- On January 26, 2010, the state responded to Siegler's Rule 5 and *Brady* motions.

- Siegler's docket appearance under the Greenwood County administrative case management order was on February 19, 2010.

The State's response to the Rule 5 and *Brady* motions included a twelve page document containing limited information about the confidential informant. Siegler attached a copy of this documentation to his motion, and the Court has thoroughly reviewed the material. According to the information, the informant was working for a recommendation for a shoplifting charge. The informant's NCIC report was attached. The informant's NCIC report is extensively redacted. It appears someone concealed entire columns of the report before copying. Also, portions were marked through with a black marker before copying. The Court finds the report was redacted to conceal the informant's identity.

The Court, therefore, finds the state has willfully failed to disclose the identity of the confidential informant who was a material witness to the alleged criminal conduct.

Conclusions of Law

Although the United States Supreme Court has recognized there is an informer's privilege, "[w]here the disclosure of an informer's identity . . . 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 v. U.S.*, 353 U.S. 53, 61 (1957) (reversing conviction where the informant and defendant were the sole participants, and the government refused to reveal the informant's identity). When the informant is a participant or witness in the alleged hand-to-hand transaction, South Carolina has consistently required disclosure of the informant's identity and impeachment evidence. *State v. Diamond*, 280 S.C. 296, 312 S.E.2d 550 (1984) (prosecution must reveal informant's identity when informant is a participant in the transaction and not "mere tipster"); *State v. Blyther*, 287 S.C. 31, 336 S.E.2d 151 (Ct. App. 1985) (prosecution must reveal identity of informant when informant introduces undercover officer to defendant and was present and

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witnessed the transaction). *State v. Burns*, 294 S.C. 338, 364 S.E.2d 465 (1988) (defendant must be afforded reasonable opportunity to locate informant after identity is revealed); and *State v. Hinson*, 293 S.C. 406, 361 S.E.2d 120 (1987) (prosecution must "reveal the deal" between the state and a witness before trial).[1]

Because the informant in this case participated in the alleged hand-to-hand transaction, the prosecution is required to disclose to the defendant the identity of the confidential informant along with impeachment evidence.

Having concluded the state is required to disclose the identity of the informant, the Court turns to the procedural rules governing disclosure. Rule 5(a)(1)(C), SCRCrimP requires the state to disclose all evidence the state plans to introduce at trial and all evidence necessary for a defendant to prepare a defense.[2] Disclosure is required within thirty days unless the state moves for a protective order pursuant to Rule 5(d)(1). The state has not moved for a protective order.

Criminal Case Management Systems have been adopted in every Judicial Circuit in South Carolina.[3] These administrative orders establish procedures for complying with Rule 5. The Court has reviewed the Cooperative Case Management Administrative Order of the Honorable Howard P. King, Chief Administrative Judge for criminal matters for the Eighth Judicial Circuit, dated January 22, 2009. This order directs:

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[1] Regarding impeachment information generally, *see Brady v. Maryland*, 373 US 83, 87 (1963); *U.S. v. Bagley*, 473 U.S. 667 (1985); *Kyles v. Whitley*, 514 U.S. 419, 438 (1995); and *Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006).

[2] The Court is aware of *State v. Valentine*, (S.C.S.Ct. Op. No. 26765) (Filed Feb. 8, 2010) holding the state presented a complete chain of custody without the confidential informant testifying. In *Valentine*, the informant's identity was disclosed. Additionally, unlike in *Valentine*, law enforcement did not make an immediate arrest in Siegler's case.

[3] *See* Consent Order of Chief Justice Toal dated March 1, 2007 signed by the sixteen Circuit Solicitors, http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=371.

> All law enforcement agencies shall provide copies of General Sessions case reports, together with all witness statements, video and audio tapes, photographs and diagrams, and any other material included in the law enforcement case file, to the Solicitor's Office within twenty-one (21) days of the arrest of the defendant.

The Cooperative Case Management Order further provides the Solicitor's Office "shall prepare defense discovery packets" to be provided to defense attorneys at the Initial Appearance if the state has received "the appropriate discovery requests."

Because Siegler was not represented at the initial appearance, the appropriate discovery motions were not served on the state. Disclosure was not required at that time. After being appointed, the Public Defender's Office served the appropriate Rule 5 and *Brady* motions on December 14, 2009. Disclosure of the identity of the confidential informant and impeachment information, therefore, was required no later than thirty days after service of these motions. More than sixty days have passed since these motions were served on the state.

The Court is aware strict compliance with the timetables of Rule 5 and the case management order is not always possible. Sometimes certain information is not available at the beginning of the case. Rule 5(c), however, contemplates this possibility by imposing a continuing duty to disclose. The case management order also contemplates this possibility by providing for law enforcement to provide the Solicitor with a list of items not yet received.

The failure to disclose the informant in this case, however, does not implicate the provisions governing ongoing disclosure. The identity of the informant was known to the Greenwood Police Department at the time of the incident. The case management order required the Greenwood Police Department to provide this information to the Solicitor's Office within 21 days of arrest. This deadline applies regardless of whether a defendant is represented or has filed discovery requests. The Greenwood Police Department, however, redacted the information provided to the Solicitor's Office to deliberately conceal the informant's identity.

In deciding the remedy to impose, the Court takes judicial notice of the proceedings in *State v. Travis Kemp*, indictment numbers 2009-GS-24-0501 and 502. Officers Atkins and Futch, the same officers involved in the investigation of Siegler's case, testified in a hearing in Kemp's case.[4] In that hearing, Officers Atkins and Futch testified the Greenwood Police Department's policy is to delay disclosure of the informant's identity for as long as possible. The Police Department prefers the identity of the informant not be disclosed at all prior to a guilty plea. In cases going to a jury trial, the Police Department prefers not to disclose the identity of the informant until one week before trial. By order dated September 9, 2009, this Court concluded the Greenwood Police Department policy did not comply with Rule 5 and the case management order and ordered disclosure of the confidential informant in Kemp's case.

In Siegler's case, Assistant Solicitor Merrill informed the Court that Solicitor Peace met with Greenwood Police Chief Gerald Brooks and Greenwood County Sheriff Tony Davis, following this Court's order in Kemp's case, regarding law enforcement's desire to continue to conceal the identity of confidential informants. Based on that desire, the state now intends to delay disclosure until thirty days before a jury trial. This policy does not comply with Rule 5 and the case management order.

Roviaro provides, "the trial court may require disclosure and, if the Government withholds the information, dismiss the action." The Court concludes the state's refusal to

[4] During Kemp's hearing, Officer Atkins testified the Police Department relies on *U.S. v. Ruiz*, 536 U.S. 622 (2002) for withholding the identity of a confidential informant. The state cited *Ruiz* during Siegler's hearing. The Court has reviewed *Ruiz* and takes this opportunity to remind the state that *Ruiz* does not apply for three reasons. First, the informant in *Ruiz* was not a participant in a hand-to-hand transaction. Second, *Ruiz* involved a very narrow issue interpreting a procedural practice of the United States Attorney in California. Third, *Ruiz* does not apply under South Carolina rules governing disclosure of the identity of an informant participating in or witnessing a hand-to-hand drug transaction.

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provide the identity of the confidential informant is a willful failure to comply with Rule 5 and the case management order.

Therefore, it is ordered that the Solicitor's Office shall disclose the identity of the confidential informant to the defendant with ten days of receiving this order. If the Solicitor's Office fails to disclose the identity of the confidential informant within ten days, then indictment numbers 2010-GS-24-0086 and 2010-GS-24-0087 shall be dismissed with prejudice.

IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Presiding Judge, Eighth Judicial Circuit

April 27th, 2010
Newberry, South Carolina

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