

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

STATE	)	
v.	)	
	)	
ARIONNA BATTIN,	)	ID. No. 1207016971
	)	
Defendant.	)	
_____	)	
	)	
STATE	)	
v.	)	
	)	
FRANK POPE,	)	ID. No. 1207016962
	)	
Defendant.	)	

**ORDER**

On this 16th Day of October, 2013, it appears to the Court that:

Defendants Arionna Battin (“Defendant Battin”) and Frank Pope each moved to obtain the identity of the State’s Confidential Source (“CS”).<sup>1</sup> The Court has held a *Flowers* hearing and reviewed the parties’ submissions in order to determine whether the CS could have information that could “materially aid the defense.”<sup>2</sup> For the following reasons, Defendants’ motions are **GRANTED, in part, and DENIED, in part.**

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<sup>1</sup> Defendant Pope has also moved to compel the CS’s identity and statements and certain exculpatory information that the State possesses *Brady v. United States*, 373 U.S. 83 (1963).

<sup>2</sup> D.R.E. 509.

## **Background**

In July 2012, Delaware State Police (“DSP”) officers were investigating Defendant Pope’s brother, Kareem Pope (“Kareem”), for suspected drug activity. On July 19, 2012, officers conducted surveillance of the Econo Lodge Hotel in Newark, Delaware and observed Kareem entering and exiting Room 105 during that day.

The CS contacted Detective Jeffrey Gliem and informed him that Kareem was selling heroin in the Newark area. The CS provided Kareem’s cell phone number and physical description and positively identified him in a photograph. The CS also indicated that it could purchase heroin from Kareem and agreed to conduct a controlled purchase from him.

The CS contacted Kareem by telephone and Kareem agreed to meet the CS at the Econo Lodge. Shortly after, Kareem called the CS to inform him that his brother would be conducting the transaction at the Days Inn Hotel in Newark instead. Kareem provided the CS with Defendant Pope’s cell phone number. The CS contacted Defendant Pope and they agreed to meet in the rear parking lot of the Days Inn for the transaction. Defendant Pope stated that he would be in a black truck. Police established surveillance at the Days Inn while they continued their surveillance at the Econo Lodge.

Police observed a black male, later identified as Defendant Pope, exiting Room 105 of the Econo Lodge and enter a black SUV. Thereafter, police observed the black SUV enter the parking lot at the Days Inn. Defendant Battin was driving as Defendant Pope sat in the front passenger seat. Defendant Battin parked the SUV next to the CS's vehicle. Defendant Pope exited the SUV and, as he approached the CS's window, Detective Gliem exited his vehicle. Defendant Pope fled, discarding what appeared to be bundles of heroin bags. Consequently, no transaction took place. Both Defendants were seized.

A search of Defendant Pope revealed \$1379.00 in U.S. Currency, a cell phone, and a female driver's license that was not Defendant Battin's. Four bundles of heroin were discovered on the ground and 9 bundles were found in the SUV. Defendant Battin informed police that Defendant Pope was her boyfriend, the two were residing in Room 105, and that she used the female's license to rent Room 105.<sup>3</sup> However, she indicated that she knew nothing about the heroin sales.

At the Econo Lodge, police observed a Chevy Malibu driven by a black female (later identified as Kareem's girlfriend) with a person matching Kareem's description park directly outside of Room 105. Inside Room 105, police recovered drug packing paraphernalia used to package a log of heroin.

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<sup>3</sup> Room 105 was rented to a female who had the same name as the name on the license.

Inside the Malibu, police found 58 bundles of heroin, a semi-automatic handgun, and identification documents for Defendant Pope.

Defendant Battin was indicted on charges of two counts of Drug Dealing, Possession of Drug Paraphernalia, Conspiracy (with Defendant Pope) Second Degree, Possession of a Firearm by a Person Prohibited, and other related charges. Defendant Pope was indicted on charges of Drug Dealing, Conspiracy Second Degree, Possession of a Firearm by a Person Prohibited, and other related charges. Kareem Pope was also arrested but all charges have been *nolle prossed*.

Defendants Battin and Pope, through counsel, moved separately for the disclosure of the identity of the CS and to request that the Court hold a *Flowers* hearing. The State argued that the Defendants failed to demonstrate that disclosure of the informant could materially aid their defense. Each party submitted questions to the Court and an *in camera Flowers* hearing was held on October 9, 2013.

### **Discussion**

The issue before the Court is whether the CS's identity or statements must be disclosed pursuant to Delaware Uniform Rule of Evidence 509. In a criminal case, the State may refuse disclosure of the identity of a confidential informant, unless a defendant shows, "beyond mere

speculation” that the informant “may be able to give testimony that would *materially aid the defense*.”<sup>4</sup> If it appears that the informant may have such testimony, the Court “will hold a so-called ‘*Flowers* hearing’ to decide, from affidavits and/or testimony, whether the informant’s identity should be revealed or other appropriate relief should be granted.”<sup>5</sup>

In *Flowers v. State*, 316 A.2d 564 (Del. Super. 1973), this Court identified four situations where the privilege may be implicated: “(1) The informer is used merely to establish probable cause for a search. (2) The informer witnesses the criminal act. (3) The informer participates, but is not a party to the illegal transaction. (4) The informer is an actual party to the illegal transaction.”<sup>6</sup> Here, the CS’s involvement is best described as witnessing the criminal activity or participating, without being a party to the transaction. Although the transaction did not occur, the CS arranged the transaction and was present to carry out the transaction.<sup>7</sup> The scenario in the instant case fits more squarely within the second and third *Flowers*

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<sup>4</sup> *Davis v. State*, 1998 WL 666713, at \*2 (Del.), 718 A.2d 527 (Del. 1998) (TABLE)(emphasis added); *But see Flowers*, 316 A.2d at 567 (citing *Brady v. Maryland*, 373 U.S. 83 (1963)) (“Of course, if the State knows the witness can give information favorable to the defense, the State has a duty to disclose”).

<sup>5</sup> *Marin v. State*, 1999 WL 485201, at \*1 (Del.), 734 A.2d 159 (Del. 1999)(TABLE); D.R.E. 509(c)(2).

<sup>6</sup> *Flowers*, 316 A.2d at 567.

<sup>7</sup> *See State v. Woods*, 1999 WL 33495350, at \*2 (Del. Super. Mar. 1, 1999) (“the informant, having arranged the illegal drug transaction and having been present at the time of the illegal transaction was to have occurred, is more accurately characterized as having participated without being a party to the unconsummated transaction.”)

scenarios, for which disclosure “is required only if the trial judge determines that the informer’s testimony is material to the defense.”<sup>8</sup> In making that determination, the trial judge should weigh the “particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer’s testimony, and other relevant factors.”<sup>9</sup>

### ***Defendant Pope’s Motion***

Defendant Pope argued that the “main issue in this case is the possession of the firearm and heroin in found in the Chevy Malibu.”<sup>10</sup>

Defendant Pope also asserted that the informant “has exculpatory information relating to Kareem Pope’s use or control of Room 105 of the Econo Lodge.”<sup>11</sup> Based on the testimony given at the *Flowers* hearing, the Court is satisfied that the CS may have information that could materially aid the Defendant Pope defend against the charges stemming from the items found in the Chevy Malibu. However, the Court does not find that the CS could have exculpatory information relating to the Econo Lodge. Therefore, Defendant Pope’s motion is **GRANTED** only to the extent that Defendant

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<sup>8</sup> *Butcher v. State*, 906 A. 2d 792, 803 (Del. 2006).

<sup>9</sup> *Flowers*, 316 A.2d at 567 (quoting *Rovario v. United States*, 353 U.S. 53, 62 (1957)).

<sup>10</sup> Def. Pope Mot., at ¶ 18.

<sup>11</sup> *Id.* at ¶ 27.

seeks information relating to the Malibu, but **DENIED** as to any information that the CS may have relating to the Econo Lodge.

***Defendant Battin's Motion***

Defendant Battin requests the CS's identity and statements on the ground that such information would be exculpatory because they would support her assertion that she had no prior interaction with the informant or that she did not know of or participate in her boyfriend's drug activities.<sup>12</sup>

The State has not alleged that the CS provided information regarding Defendant Battin or that there has been "any history of any prior drug buys between Defendant Battin, Defendant Pope, and the [CS]."<sup>13</sup> Furthermore, it is not apparent to the Court how the CS's lack of knowledge or involvement with Defendant Battin on prior occasions could aid in her defense to the charges at issue.<sup>14</sup>

Nevertheless, the Court finds that the CS may have information that would materially aid Defendant Battin in her defense against the charges relating to items found in the Chevy Malibu. Thus, Defendant Battin's motion is **GRANTED** only for the purpose of obtaining information regarding the Malibu and **DENIED** insofar as she seeks to obtain

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<sup>12</sup> Def. Battin Mot., at ¶¶ 7-8.

<sup>13</sup> State's Resp. to Def. Battin Mot., at ¶ 20.

<sup>14</sup> Cf. *State v. DiFilippo*, 1986 WL 4051, at \* 3 (Del. Super. Jan. 10, 1986) (defendant's lack of participation during a prior drug transaction was not probative of the drug charges at issue).

information regarding the CS's prior knowledge of or interactions with either defendant.

**IT IS SO ORDERED.**

/s/Calvin L. Scott  
**Judge Calvin L. Scott, Jr.**