

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CESAR DIAZ,	§	
	§	No. 584, 2012
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. I.D. No. 1111008581
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 9, 2013
Decided: December 11, 2013

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 11th day of December, 2013, on consideration of the briefs of the parties,
it appears to the Court that:

1) Cesar Diaz appeals from his conviction, following a jury trial, of one count of drug dealing. His only claim on appeal is that the trial court abused its discretion by denying his motion to disclose the identity of the police confidential informant (CI). We find no merit to this claim and affirm.

2) On November 11, 2011, a CI told Wilmington Police Detective Hector Cuadrado that an Hispanic male would be driving a Buick Rendezvous between Philadelphia and Wilmington, carrying a “load of cocaine” in a hidden compartment.¹ The CI also told Cuadrado when it would happen and the route the car would take.

3) Detective Raymond Mullin, and other members of the Wilmington Police Department, set up surveillance along I-95 at the date and time given by the CI. When they spotted the car, they followed it. The car was traveling at a high speed and changed lanes several times without signaling. The police stopped the car and took the driver, Diaz, into custody.

4) After receiving *Miranda* warnings, Diaz denied knowing anything about drugs being in the car. He signed a consent-to-search form, and the police found cocaine hidden in a secret compartment under the back seat. Mullin then asked Diaz about the drugs. Eventually, Diaz told him that the drugs belonged to “his cousin or his wife’s cousin.”²

5) Diaz was charged with drug dealing, aggravated possession of cocaine, improper lane change and traveling at an unsafe speed. Before trial, he requested that

¹ Appellant’s Appendix, A- 18.

² *Id.* at A-21.

the trial court conduct a “Flowers” hearing³ to determine whether the State would have to disclose the identity of the CI. After the hearing, the trial court denied Diaz’s motion to disclose the CI’s identity, but did require the State to concede that the CI never identified Diaz as the likely driver. Diaz was found guilty of drug dealing. The State *nolle prossed* the remaining charges.

6) Under Delaware Rule of Evidence 509, the State has a privilege to withhold the identity of a CI unless it appears that the CI would provide testimony that would “materially aid the defense.”⁴ The *Flowers* court noted four common situations where a CI becomes involved in a criminal investigation: “(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.”⁵ In this case, the CI’s information only established probable cause, which is a situation where no disclosure is required.⁶

³ See: *State v. Flowers*, 316 A.2D 564 (Del. Super. 1973).

⁴ D.R.E. 509(a),(c)(2).

⁵ *Flowers*, 316 A.2d at 567.

⁶ *Ibid.*

7) Nonetheless, Diaz complains that the trial court abused its discretion in conducting the *Flowers* hearing. The only person who testified was Detective Guy DeBonaventura, an officer who did not know, or have any direct information about, the CI. Diaz contends that, if the CI were available to the defense, the CI might testify that Diaz was not a trusted associate of the drug “kingpin,” and that testimony would support his claim that he did not know that there were drugs hidden in the car he was driving.

8) This argument fails for two reasons. First, it is entirely speculative.⁷ Second, such testimony would not materially aid the defense. Diaz admitted to two officers that he did know there were drugs in the car. The CI would not be in a position to testify that Diaz did not know about the drugs. The most the CI could have said is that the “kingpin” would not have told Diaz about the drugs. A statement like that would do little to establish Diaz’s actual knowledge.

9) In sum, because the CI’s only involvement with the police was to provide probable cause, the limited *Flowers* hearing, which in other circumstances might not have been acceptable, was adequate. For the same reason, there was no abuse of discretion in denying Diaz’s request to obtain the CI’s identity.

⁷ See: *Hooks v. State*, 1992 WL 219078 at *3 (Del. Supr. 1992).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice