

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

CASE NO.: 3:06-cr-211(S1)-J-32HTS

TONY HENDERSON

**DEFENDANT HENDERSON'S MOTION FOR DISCLOSURE OF
CONFIDENTIAL INFORMANT'S IDENTITY, AND TO REQUIRE
PRESENCE OF CONFIDENTIAL INFORMANT AT TRIAL**

The defendant, Tony Henderson, by his counsel, moves for disclosure of the identity of the confidential informant utilized by the government in this case, and to require the government to produce the informant at trial, based on the following factors:

1. Defendant Tony Henderson is charged in an eight count Superseding Indictment with conspiracy to distribute marijuana (Count One), distribution of marijuana (Count Two), and use of a communication facility to facilitate the distribution of marijuana (Counts Three through Eight).

2. The government utilized a confidential informant in the investigation of this case.

3. The informant, on her¹ own and through the use of an unwitting proxy,² participated extensively in the alleged criminal activity.

4. More specifically, on December 10, 2005, the date of the alleged central

¹The discovery makes it clear the informant is female.

²The unwitting proxy is Pedro Fernandez de Campa (Fernandez), whose case is pending sentencing before Judge Covington.

transaction in this case, the informant and Fernandez drove to Henderson's house, where the government contends the transaction happened. Although the informant was sitting in the car when the alleged hand-to-hand transaction occurred between Henderson and Fernandez, the informant orchestrated the event and simply used Fernandez as her agent, while she was acting as the government's agent.

5. Moreover, the informant is a direct participant in several of the "phone count" charges contained in Counts Three through Eight.

6. *Roviaro v. United States*, 353 U.S. 53, 60-61 (1957) favors disclosure of the identity of anyone whose testimony is "relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause."

7. *United States v. Tenorio-Angel*, 756 F.2d 1505, 1509 (11th Cir. 1985) lists three factors for a court to consider in deciding a disclosure issue:

- a. "the extent of the informant's participation in the criminal activity";
- b. "the directness of the relationship between the defendant's asserted defense and the probable testimony of the informant"; and
- c. "the government's interest in nondisclosure."

8. As previously indicated, the informant's participation was long (it spanned the entire year-and-a-half alleged in the Indictment) and extensive (the informant worked closely with law enforcement, both in her utilization of Fernandez and in her direct dealing with Henderson).

9. Because of the informant's extensive involvement, there will naturally be a direct relationship between the asserted defense and the informant's testimony.

10. The defense is unaware of any specific factors that would mitigate against disclosure, other than the government's customary reluctance to reveal the identity of confidential informants.

11. For the foregoing reasons, it is requested that the government be ordered to disclose the confidential informant's identity.

12. Additionally, it is requested that the government be ordered to make the informant available at trial, since the defense has no ability to do so.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

James R. Klindt, Esq. and D. J. Pashayan, Esq.
United States Attorney's Office

s/Mark J. Rosenblum