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SUPERIOR COURT
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FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

-vs-

YUHUA WANG,

Defendant.

CRIMINAL CASE NO. 10-0058A

**ORDER GRANTING DEFENDANT'S
MOTION TO DISCLOSE
CONFIDENTIAL SOURCE**

I. INTRODUCTION

This matter came before the Court on May 03, 2010 at 1:30 p.m. in Courtroom 202A on Defendant's Motion to Disclose Confidential Source. The government was represented by Assistant Attorney General Eli Golob. Defendant, Yuhua Wang, appeared with his Counsel, Assistant Public Defender, Richard Miller.

Based on the papers submitted to date and oral arguments of counsel, the Court GRANTS Defendant's Motion to Disclose Confidential Source.

II. BACKGROUND

On February 25, 2010, Detective Roque Camacho ("Det. R. Camacho") and TFO Sean White ("TFO White"), from the Drug Enforcement Task Force ("DETF"), met with a DPS Confidential Source, referred to as CS#002 ("the Informant"). The Informant stated that he knew Yuhua Wang ("Defendant"), was selling crystal methamphetamine and that another man, referred

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1 to as "Old Man," works for Defendant by making the drug deliveries.

2 On February 27, 2010, the DETF set up a monitored control buy operation whereby the
3 Informant telephoned Defendant to arrange a crystal methamphetamine purchase at the Riviera
4 Hotel parking lot. The Informant first met DETF agents at a pre-arranged area where his person
5 and vehicle were searched for any contraband or large amounts of U.S. currency. The search
6 result was negative. The Informant was then wired and given \$200 of marked bills to conduct
7 the transaction. The Informant left in his own vehicle followed closely by DETF officers. Upon
8 arrival at the Riviera Hotel, a man identified by the Informant as Old Man entered the
9 Informant's vehicle. The drug transaction allegedly took place in the Informant's vehicle. The
10 Informant then drove to a pre-arranged destination where Detective Peter Camacho ("Det. P.
11 Camacho") and other DETF officers were waiting. Det. P. Camacho confiscated from the
12 Informant a zip lock bag containing a clear crystalline substance. The substance was field tested
13 by TFO White using a Narcotics Identification Kit. The field test resulted in a presumptive
14 positive for methamphetamine.

15 Later that afternoon, the DETF set up another monitored control buy operation using the
16 Informant to buy drugs from Old Man at No. Wang College Store & PC Café in Fina Sisu,
17 Saipan. Again, the operation produced another zip lock bag containing a substance that tested
18 presumptively positive for methamphetamine.

19 On February 28, 2010, pursuant to a search warrant, DETF officers searched Defendant's
20 room C at No. Wang College in Fina Sisu, Saipan. During the search the officers confiscated
21 several 2"x 3" zip lock bags, a clear glass tube, and a gram scale.

22 In March 2010, Defendant was arrested. In the information filed March 8, 2010,
23 Defendant is charged with one count of Trafficking of Controlled Substance, in violation of 6
24 CMC § 2141(a)(1), and one count of Illegal Possession of Controlled Substance, in violation of 6
25 CMC § 2142(a).

26 Presently before the Court is Defendant's Motion to Disclose Confidential Source.
27 Defendant requests that the Court order the disclosure of the name and address of the Informant,
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1 his criminal history, and any consideration paid to him by government agents in exchange for his
2 cooperation.

4 III. DISCUSSION

5 While both parties agree that the government's Informant should be disclosed to the
6 Defendant, the issue remains as to when this information should be disclosed. The Defendant
7 contends that the government should disclose the name of the Informant and related information
8 immediately. The government believes that disclosing the name of the Informant at a later date,
9 during the exchange of witness lists provided for in the Pre-Trial Order, will be sufficient.

10 The government has a limited privilege to withhold from disclosure the identity of
11 persons who provide law enforcement officers with information of illegal activity. *Roviaro v.*
12 *United States*, 353 U.S. 53, 59 (1957). However, this privilege "must give way" where the
13 disclosure "is relevant and helpful to the defense of an accused, or is essential to a fair
14 determination of a cause . . ." *United States v. Sanchez*, 908 F.2d 1443, 1451 (9th Cir. 1990)
15 (quoting *Roviaro*, 353 U.S. at 60). The movant has the burden to prove the need for disclosure.
16 *Sanchez*, 908 F.2d at 1451.

17 In determining whether to order disclosure, the court must balance the government's
18 interest in concealing the informant's identity to protect the flow of information to law
19 enforcement officials against the accused's due process right to prepare a defense. *Roviaro*, 353
20 U.S. at 60-61. The same considerations govern the court's determination of when informants
21 must be disclosed. The court must balance three factors: "(1) the degree of the informant's
22 involvement in the criminal activity; (2) the relationship between the defendant's asserted
23 defense and the likely testimony of the informant; and (3) the government's interest in
24 nondisclosure." *United States v. Gonzalo Beltran*, 915 F.2d 487, 489-89 (9th Cir. 1990).

25 The Informant's participation in the crime charged is an important factor in determining
26 whether and when the identity of the confidential informant should be disclosed. Here, the
27 government Informant is inextricably and significantly involved in the alleged crime. Not only
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1 did the Informant notify law enforcement officers of Defendant's alleged drug activities, but he
2 placed a phone call to Defendant to set up a drug buy and further carried out the transaction. The
3 government has conceded that the Informant's involvement in the drug transaction is such that it
4 would be necessary for the government to call the Informant as a witness at trial.

5 Accordingly, the Informant's involvement in the crime charged is significant and weighs
6 considerably towards early disclosure.

7 With respect to the second factor, Defendant was arrested and charged based on the
8 information provided to law enforcement officials by the Informant. Moreover, the Informant is
9 the sole witness to the drug transaction. It is likely that the Informant will be a key witness for
10 the government at trial. Thus, any defenses asserted by Defendant as well as the testimony of the
11 Informant will be closely connected to the facts surrounding the alleged drug transaction.

12 Accordingly, the close relationship between the Defendant's likely defenses and the likely
13 testimony of the Informant weighs towards early disclosure.

14 With respect to the third factor, the government has a legitimate interest in protecting the
15 identity of the informant's safety from retaliation. However, given that the trial date is set for
16 September, 27, 2010, less than four months from the date of this order, this factor is outweighed
17 by Defendant's right to due process and a fair trial. Defendant has shown a need for knowing the
18 identity of the Informant. The disclosure date must allow Defendant sufficient time to fully
19 prepare his defense.

20 Furthermore, the Court's Case Management Order, issued on March 17, 2010, calls for
21 the completion of discovery no later than forty-five days from the date of the order. Given this
22 time frame, the government should have been prepared to hand over information related to the
23 Informant. Accordingly, the government's interest in later disclosure is outweighed by factors
24 favoring early disclosure.

25 In sum and on balance, weighing the above factors favors immediate disclosure of the
26 name and related information of the government Informant.

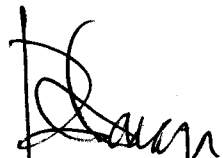
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IV. CONCLUSION

For the forgoing reasons, Defendant's Motion to Disclose Confidential Source is GRANTED. The Court hereby orders the Commonwealth to disclose to the Defendant the name and contact information of the confidential source referred to in the Government's documents as CS#002, the criminal history of CS#002, and any consideration made in exchange for his cooperation no later than Friday, June 25, 2010.

SO ORDERED this 16 day of June, 2010.



ROBERT C. NARAJA
Presiding Judge