

**Affirmed and Opinion filed October 7, 1999.**



**In The**

**Fourteenth Court of Appeals**

-----  
**NO. 14-98-00858-CR**  
-----

**BARRY BERNARD TELLIS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

---

**On Appeal from the 177<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 770,988**

---

**OPINION**

This is an appeal from a conviction for the offense of possession of a controlled substance, cocaine, in an amount weighing less than one gram. See TEX. HEALTH & SAFETY CODE ANN. § 481.115 (Vernon 1992). In accordance with a plea agreement, the trial judge sentenced appellant to confinement for one year in a state jail facility. In his sole point of error, appellant argues that the identity of a confidential informant should have been revealed. We affirm.

On December 15, 1997, Houston Police Officer Alan Brown obtained a search warrant for a house on the 9200 block of Willow. The warrant was based on information that Brown

received from a confidential informant regarding drug trafficking at that address. The informant described the dealer at the location as a black male, approximately 5'11" to 6' 01" tall, 30 to 33 years of age, 155 to 170 pounds, having short black hair, a medium brown complexion and a light mustache. The dealer went by the name of 'Bird.' An arrest warrant was issued in conjunction with the search warrant for a person fitting the given description.

The following day, Brown executed the search warrant and found appellant behind a locked door in the bedroom. Appellant matched the informant's description of 'Bird.' Officers searched a closet in the bedroom and found 9.6 grams of cocaine in a leather bomber jacket. The appellant's first initial and last name written on a tag inside the jacket. Appellant's expired drivers license was also found in the jacket pocket. Appellant was arrested for possession of a controlled substance.

Prior to his plea, appellant requested a pretrial hearing to disclose the identity of the informant. At the hearing, appellant produced the affidavit of Robert Lee, III. Lee claimed that he sold a man cocaine on December 15, 1997, at appellant's house on Willow. Lee stated that he goes by the name 'Bird' and that the cocaine found in the jacket was his own. During the hearing, the trial judge requested an *in camera* hearing to examine Officer Brown. Brown testified that the informant was not present at the arrest, and did not participate in the offense for which appellant was arrested, charged and convicted. Brown testified that the confidential informant only provided probable cause for the search and arrest warrant.

Appellant argues that the identity of the informant was necessary to establish that, when the warrant was executed, appellant was not aware of any cocaine in his residence. We disagree.

As a general rule, the State has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer conducting an investigation. TEX. R. EVID. 508(a). However, an informant's identity should be revealed when the testimony is necessary to a fair determination of the issue of guilt or innocence of the accused. TEX. R. EVID. 508(c)(2);

*Bodin v. State*, 807 S.W.2d 313, 317-318 (Tex.Crim.App.1991); *Abdel-Sater v. State*, 852 S.W.2d 671, 673 (Tex. App.–Houston [14<sup>th</sup> Dist.] 1993, *pet. ref'd*). Mere conjecture or supposition about the relevancy of the potential testimony is insufficient. *Bodin*, 807 S.W.2d at 318.

Generally, when an informant is not present when a search warrant is executed and the informant does not participate in the offense for which the defendant is charged, the identity of the informant need not be disclosed because the informant's testimony is not essential to a fair determination of guilt. *Washington v. State*, 902 S.W.2d 649 (Tex. App.–Houston [14<sup>th</sup> Dist.] 1995, *pet. ref'd*); *Abdel-Sater*, 852 S.W.2d at 674; *Murray v. State*, 864 S.W.2d 111, 118 (Tex.App.--Texarkana 1993, *pet. ref'd*). In our case, the informant's information was only used to establish probable cause. He was not present at the arrest and did not participate in the offense for which appellant was charged. Any contention that the informant could testify as to whether appellant knowingly committed the crime is mere conjecture or supposition.

Moreover, the informant's testimony would have related to events preceding the offense on trial, and would probably have been inadmissible as showing extraneous offenses. Inadmissible evidence could hardly constitute evidence that is necessary to a fair determination of guilt or innocence. See *Murray v. State*, 864 S.W.2d at 118; *Edwards v. State*, 813 S.W.2d 572, 580 (Tex. App.–Dallas 1991, *pet. ref'd*). We hold that the trial court did not abuse its discretion by refusing to reveal the identity of the State's confidential informant. Appellant's sole point of error is overruled. We affirm the judgment of the trial court.

---

Ross A. Sears  
Justice

Judgment rendered and Opinion filed October 7, 1999.

Panel consists of Justices Sears, Cannon, and Lee.<sup>1</sup>

Do Not Publish — TEX. R. APP. P. 47.3(b).

---

<sup>1</sup> Senior Justices Ross A. Sears, Bill Cannon, and Norman Lee sitting by assignment.