

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,            )  
  )  
          Plaintiff,                    )  
  )  
                  v.                    ) Criminal Action No. 02-112-SLR  
  )  
DEWAYNE AYERS,                        )  
  )  
          Defendant.                    )

**MEMORANDUM ORDER**

**I. INTRODUCTION**

Defendant Dewayne Ayers moves to suppress evidence and statements obtained as a result of a search and seizure of his person and vehicle on or about July 26, 2002. (D.I. 10) Defendant also moves to compel disclosure of the identity of a confidential informant. (D.I. 11) An evidentiary hearing was held on November 1, 2002. Post-hearing briefing is complete. The court has jurisdiction pursuant to 18 U.S.C. § 3231. For the reasons that follow, defendant's motions to disclose and to suppress are denied.

**II. BACKGROUND**

Pursuant to Federal Rules of Criminal Procedure 12(e), the following constitutes the court's essential findings of fact. The government presented one witness, Wilmington Police Detective

Jeffrey Silvers, at the suppression hearing.<sup>1</sup> (D.I. 19) Silvers testified that on July 15, 2002, another detective<sup>2</sup> advised him of information received from a confidential informant ("CI"). (Id. at 5) According to Silvers, Detective Cuadrado represented that the CI was used previously and had proven reliable.<sup>3</sup> (Id. at 7) Silvers denied ever meeting or working with the CI. The CI indicated that a silver or gold Mercedes vehicle, with a dark fender and a coat hanger in the front antenna, made regular trips to Philadelphia to purchase heroin, which would be distributed later in Delaware. (Id. at 5) Cuadrado told Silvers that the driver of the vehicle was defendant Dewayne Ayers, who resided at 824 West 10th Street in Wilmington. (Id. at 6) The CI said that defendant drove, during the middle of the day, into Philadelphia and then would later return to distribute the heroin to street level dealers located on the east side of Wilmington. (Id. at 6-7) According to the CI, the defendant would be making a trip to Philadelphia on July 15, 2002 to purchase heroin.

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<sup>1</sup>Silvers was assigned to the Drug, Organized Crime and Vice Division of the Wilmington Police Department. (Id. at 3) He has been a Wilmington police officer for five years and an officer for two years in South Portland, Maine.

<sup>2</sup>Detective Cuadrado.

<sup>3</sup>Cuadrado told Silvers that the CI had given him information that resulted in search warrants and prior drug arrests. (Id. at 8)

Silvers testified that Cuadrado traveled to 824 West 10th Street to verify defendant's residence. (Id. at 9) Silvers testified that Cuadrado found the Mercedes parked directly in front of the 824 West 10th Street residence. Cuadrado copied the car's tag number and had Silvers run a license registration as well as a criminal history check. The investigation revealed that the Mercedes tag numbers were registered to a 1987 Ford vehicle. Silvers testified that Cuadrado discovered that defendant had an outstanding capias for failure to appear on a driving while suspended charge. (Id. at 10)

Silvers stated that after obtaining this information, he and other members of the drug unit set up surveillance of the vehicle to confirm whether defendant was making a trip to Philadelphia. (Id. at 10) At that time, Silvers saw the vehicle parked in front of the 824 West 10th Street residence. Silvers then parked a couple of blocks away and waited inside an unmarked police vehicle. (Id.) Detective Cuadrado observed a black male wearing a baseball hat exit the house and enter the car. (Id. at 11) The driver was the only occupant. The car traveled and stopped at various places in Wilmington until it entered Interstate Route 495 north heading toward Philadelphia. (Id.) The car was followed by police officers into a park located in Philadelphia. Officers lost sight of the vehicle and the surveillance ended shortly thereafter. (Id.)

On July 26, 2002, while serving as back-up for another officer investigating an unrelated case, Silvers saw a silver Mercedes in the vicinity of 824 West 10th Street. (Id. at 12) The tags on this vehicle matched those on the car identified by the CI approximately two weeks earlier. Silvers, dressed in plainclothes, was sitting in an unmarked police vehicle parked on the 900 block of North Adams Street about 60 - 80 feet from defendant's house. (Id. at 12) Silvers stated that he observed the vehicle parked in front of the 824 West 10th Street residence and watched as defendant exited the house, entered the Mercedes and then proceeded to drive toward Interstate 495. (Id. at 13) Silvers followed the car. The Mercedes continued on Interstate 95 and then turned off at the Chester exit. Silvers continued north past the Chester exit and waited for the Mercedes to return to Interstate 95. Approximately ten minutes later, the Mercedes returned to Interstate 95 and headed north toward Philadelphia, on Route 676. Silvers pursued the Mercedes into Philadelphia for about one mile and then returned to Delaware.

Sometime later, several unmarked police cars as well as Silvers were positioned, along Interstate 95 south, awaiting defendant's return to Delaware. (Id.) Once the Mercedes was identified as traveling south on Interstate 95, Silvers commenced his pursuit again. He followed the Mercedes as it exited Interstate 95 and drove into a fast-food restaurant parking lot.

Silver watched defendant enter the restaurant and remain inside for approximately 15 minutes. (Id. at 14) Defendant then returned to the Mercedes and drove south on Interstate 95. Silvers was joined by additional officers in the pursuit of the vehicle.

Apparently anticipating that the vehicle would exit by a certain southbound ramp, the police parked a vehicle at the bottom of the ramp. (Id. at 15) The hood of this vehicle was up and it was staged to appear disabled to any approaching vehicles. As anticipated, all traffic around this ostensibly disabled car stopped. As defendant's vehicle negotiated the exit, it likewise came to a complete stop.<sup>4</sup> (Id. at 15) Silvers' car was parked about two cars behind defendant. (Id. at 16) Silvers, as well as the other officers present, were wearing T-shirts with "police" written across the front.

Silvers approached the Mercedes with his service weapon drawn. Another officer approached with a shotgun drawn. (Id. at 16)<sup>5</sup> Silvers ordered defendant to turn off the car. Silvers opened the car door, removed defendant and then placed him in

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<sup>4</sup>The Mercedes was stopped at 4:30 p.m. during rush hour traffic.

<sup>5</sup>Silvers explained that in his training and experience, it is consistent with individuals involved with drugs to carry weapons to protect their merchandise or proceeds. (Id. at 16) Because Silvers knew of defendant's alleged drug dealing from Detective Cuadrado, he thought the show of force was necessary.

custody. (Id. at 17) Defendant and the Mercedes were transported to the Wilmington Police station. Silvers explained that the car was not searched at the off-ramp site because he had safety concerns, traffic having already been delayed considerably because of the stop on the ramp.

The Mercedes was searched at the police station about twenty minutes after defendant was arrested. (Id. at 17-18) The search uncovered twelve plastic heat sealed bags, each containing a blue glassine bag. (Id. at 18) The bags were found in the inside of the center armrest between the driver and front seat passenger. The bags were all stamped "NyQuil" and all contained a white powdered substance that tested positively for the presence of heroin.

At the police station, Silvers advised defendant of his Miranda rights. (Id. 19-20) Silvers testified that he did not read the Miranda warnings from a form, but instead recited them from memory. (Id. at 19) Defendant was not provided with any document explaining his rights. Although upset about being at the police station, Silvers stated that defendant was coherent and did not appear incapacitated in any way. (Id. at 20) Silvers testified that defendant affirmatively responded to questions regarding an understanding of his rights under Miranda. According to Silvers, defendant indicated that he would give a statement without the presence of an attorney. (Id. at 21)

Silvers testified that defendant admitted obtaining the twelve bags of heroin in Philadelphia and expressed an intention to distribute the drugs to people he usually dealt with in Wilmington. (Id. at 23) Silvers acknowledged that he knew defendant was about 40 years of age and had previous arrests and convictions. (Id. at 22) According to Silvers, their discussion lasted 20 minutes. (Id. at 21)

## **II. DISCUSSION**

### **A. Confidential Informant**

In United States v. Roviario, 353 U.S. 53 (1957), the United States Supreme Court established guidelines to determine whether disclosure of a confidential informant's identity is warranted. The Court recognized "the government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law." Id. at 59. However, the privilege is not without limitations. "Where the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way." Id. at 60-61. Although there is no precise rule as to when disclosure is required, the Court stated that once a defendant sets forth a specific need for disclosure the court should balance "the public interest in protecting the flow of information against the

individual's right to prepare his defense." Id. at 62. The result of this balancing will depend upon the particular circumstances of the case, "taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony and other relevant factors." Id.

The Supreme Court, in McCray v. Illinois, 386 U.S. 300, 311 (1967), turned to whether an informant's identity should be disclosed for purposes of a preliminary proceeding where the issue is one of probable cause and not guilt or innocence. In McCray, the Court rejected the defendant's attempt to establish a mandatory disclosure rule. Instead, the Court upheld the trial court's ruling against disclosure of the informant's identity as a proper exercise of discretion. Id. at 314.

The United States Court of Appeals for the Third Circuit has found that when applying the Roviaro standards "one of three types of cases" may emerge. United States v. Jiles, 658 F.2d 194, 197 (3d Cir. 1981). First, there is the "extreme situation such as that in Roviaro itself, in which the informant has played an active and crucial role in the events underlying the defendant's potential criminal liability. In these cases, disclosure and production of the informant will in all likelihood be required to ensure a fair trial." Id. The second group is where the confidential informant was not an active participant or eye witness but rather a mere tipster. Generally, courts have

found these facts do not warrant disclosure. See United States v. Moreno, 588 F.2d 490, 494 (5th Cir. 1978). The third category “falls between these two extremes and it is in this group that the balancing becomes most difficult.” Id. at 197.

Regardless of which Jiles category is implicated, the burden is on the defendant to demonstrate a need for disclosure. Jiles, 658 F.2d at 197; United States v. Johnson, 302 F.3d 139, 148-149 (3d Cir. 2002). Although defendant asserts the identity of the CI is needed to assist in preparation of his defense, he has failed to particularly outline the reasons this information is essential. Conducting a case specific analysis of this record as required by Roviaro, the court finds the CI identity related only to the issue of probable cause to stop defendant and is not crucial to defendant’s guilt or innocence. In that regard, it was the uncontroverted testimony of Detective Silvers that another detective had previously worked with the CI and found the information provided was reliable. The court credits Silvers’ testimony as credible. Finally, the CI was a mere tipster rather than an active participant or eyewitness. Id. at 149.

#### **B. Traffic Stop**

On this point, defendant weaves several arguments together to suggest that the stop of his Mercedes was not supported by probable cause and, therefore, contrary to the Fourth Amendment. The foundation of this argument rests on defendant’s contention

that the CI was not past proven reliable. However, the court has already concluded this argument is without merit. Moving to the second point, defendant claims that police stopped his vehicle because of the information provided by the informant that defendant was trafficking in heroin. Any assertion that the stop was made for traffic violations (displaying a fictitious license plate) or related to the outstanding capias are a post hoc justification for an otherwise unjustified stop. Defendant submits that if the true reason were the illegal license plate then the police would have stopped the vehicle when this violation was observed two weeks earlier, on July 15, 2002. Instead, defendant states the police waited two weeks and then conducted the stop of the vehicle in a manner inconsistent with the procedure for a traffic stop., i.e., approached the vehicle with guns drawn and handcuffed defendant immediately after removing him from the vehicle. Defendant argues this post hoc justification is contrary to Whren v. United States, 517 U.S. 806 (1996).

In Whren, the United States Supreme Court concluded that a stop of a vehicle is reasonable when a law enforcement officer has probable cause to believe that a violation of the traffic laws has occurred. Id. at 819. In so doing, the Court reaffirmed its long-standing rule that subjective intentions of

the law enforcement officer play no role in ordinary, probable cause analysis. According to the Court,

subjective intent alone does not make otherwise lawful conduct illegal or unconstitutional. We described Robinson as having established that the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.

Id. at 813, quoting Scott v. United States, 436 U.S. 128, 136 (1978). More recently, the Court reaffirmed its commitment to a standard

of probable cause [that] 'applies to all arrests, without the need to balance the interests and circumstances involved in particular situations.' If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest offender.

Atwater v. City of Lago Vista, 532 U.S. 318, 354 (2001).

Viewing this authority in light of the evidentiary hearing record, the court finds the police officers had probable cause to stop defendant's vehicle based on the display of an illegal license plate as well as for suspicion of driving with a suspended license contrary to two Delaware statutes.<sup>6</sup> There has been nothing presented to support defendant's specious assertion

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<sup>6</sup>Under 21 Del.C. § 701(a)(1) it is unlawful for persons to display any number plate or registration plate, knowing the same to be fictitious. Pursuant to 21 U.S.C. § 2756, it is unlawful to a drive a vehicle with a suspended driver's license.

that the traffic stop was a post hoc justification. The fact that two weeks elapsed from the initial finding that defendant may have violated the above cited Delaware laws until the day he was stopped on the off-ramp does not, alone, cause the court to pause on review of this stop. As the Supreme Court clearly announced in Whren, the subjective intentions or thoughts of officers are irrelevant for review under the Fourth Amendment as long as there is probable cause to believe even a minor crime has been committed. Id. at 813 ("the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment"). Accordingly, the reasons for the delay are unimportant in light of the existence of the traffic violations. Moreover, although not the basis for the stop, the approach of the Mercedes with guns drawn is not unreasonable considering the officers' knowledge that the car was used by a suspected drug dealer. Officers' efforts to protect themselves as well as the public will not be second guessed by the court. Courts cannot require or even expect officers to divorce their prior knowledge of an individual from their concerns over safety, merely because this information is not related to the reason the stop was made.

### **C. Search of the Vehicle**

The government argues that police officers searched the vehicle as a valid search incident to defendant's arrest and,

therefore, a warrant to search was unnecessary. Defendant claims the search was not contemporaneous to the arrest, Preston v. United States, 376 U.S. 364 (1964), because Detective Silvers admitted the search did not occur until after the vehicle was transported from the scene to the police station. Once the search is conducted at a different location and when the accused is in custody, defendant submits, a warrant to search must be obtained. Id. at 376. Defendant also claims that police officers created the circumstances for the stop and ignored any other opportunities to stop him during July 15 - 26, 2002.

Detective Silvers testified that defendant's Mercedes was stopped on the ramp of an interstate highway in the afternoon during rush hour. (D.I. 19 at 17) As a result of the stop, traffic became congested and stopped. Rather than searching the Mercedes on the ramp and, thereby, obstructing traffic further, the vehicle was transported from the scene to the police station. Approximately twenty minutes after defendant's processing the Mercedes was searched and the heroin was discovered. (Id. at 17-18)

The Supreme Court has established that once a law enforcement officer has made a lawful custodial arrest of an occupant of an automobile, the officer may search the passenger compartment of that vehicle as a contemporaneous incident of that arrest. New York v. Belton, 453 U.S. 454, 460 (1981); Government

of Virgin Islands v. Rasool, 657 F.2d 582, 585, 588-89 (3d Cir. 1981) (upholding search of automobile incident to driver's arrest after driver had been handcuffed but remained in the vicinity of the arresting officer); United States v. Cotton, 751 F.2d 1146 (10th Cir. 1985) (vehicle search after arrestees had been handcuffed and removed from the vehicle prior to the search found legal).

The court finds the search of the vehicle without a warrant was reasonable as a search incident to the arrest. The transportation of the vehicle to the police station was based on legitimate and unrebuked concerns for traffic safety made by police officers at the scene. The record establishes that the search was conducted within a reasonable time after defendant's arrest and was limited in scope. Defendant's suggestion that the police created this situation ostensibly as a guise to mandate the transfer of the vehicle to the station is purely speculative and unsupported by the record.

#### **D. Defendant's Statements**

Defendant argues that the statements he made to Detective Silvers are inadmissible because he was not adequately advised of nor did he waive his Miranda rights.<sup>7</sup> The government submits it

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<sup>7</sup>It is well-settled that the government may not present statements in its case-in-chief collected during custodial interrogation by law officers unless defendant has been advised of, and validly waived, his "Miranda" rights: (1) to remain silent and that any statements can be used as evidence against

has carried its burden of demonstrating that defendant voluntarily and knowingly waived his Miranda rights. Silvers testified that defendant responded affirmatively when asked if he understand all of the rights announced to him. Silvers was aware of defendant's age as well as his past involvement with the criminal justice system and, apparently based on that information, believed defendant's verbal affirmations of understanding were sufficient waivers of Miranda protections.

Although the presence of a clearly worded and executed waiver form would likely reduce the need for a court to consider these issues, the absence of such a form does not void the waiver of Miranda rights herein. The court credits Silvers testimony as credible and as an accurate reflection of defendant's understanding and waiver of Miranda protections. In so doing, the court notes that the defendant has presented neither evidence nor testimony to cast doubt on the testimony of the officer.

#### **IV. CONCLUSION**

Accordingly, the court finds the police had probable cause to stop defendant's vehicle based on traffic violations and, therefore, the stop was reasonable under the Fourth Amendment. The heroin discovered as well as defendant's statements are admissible.

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him; and (2) to the presence of retained or appointed counsel during questioning. See Miranda v. Arizona, 384 U.S. 436, 444 (1966).

At Wilmington this day of 6th February, 2003;

IT IS ORDERED that:

1. Defendant's motions to compel disclosure of the confidential informant (D.I. 11) and to suppress (D.I. 10) are denied.

2. The court will initiate and conduct a telephonic status conference on **Friday, February 21, 2003 at 8:30 a.m.**

3. The time between this order and the February 21, 2003 teleconference shall be excluded under the Speedy Trial Act in the interests of justice. 18 U.S.C. § 3161(h)(8)(A).

Sue L. Robinson  
United States District Judge