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FOR PUBLICATION

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

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,**

Plaintiff,

v.

GEORGE MASGA
d.o.b. 02/22/1970

Defendant.

) **CRIMINAL CASE NO. 11-0121C**
) **DPS Case No. 11-003346**
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**ORDER GRANTING DEFENDANT’S
MOTION FOR DISCLOSURE OF THE
NAME AND CONTACT INFORMATION
OF THE WITNESS REFERRED TO IN
PREVIOUSLY FILED DISCOVERY**

I. INTRODUCTION

THIS MATTER came before the Court on February 2, 2012 at 9:00 a.m. in Courtroom 202A on Defendant’s Motion for Disclosure of the Name and Contact Information of the Witness Referred to in Previously Filed Discovery (“Defendant’s Motion”). George M. Masga (“Defendant”) was represented by Douglas W. Hartig, Esq. The Commonwealth of the Northern Mariana Islands (“Government”) was represented by Eileen E. Wisor, Esq.

Based on the pleadings, the papers on file and arguments of counsel, the Court GRANTS Defendant’s Motion.

II. DISCUSSION

A confidential informant (“CS”) conducted an undercover investigation in this case that led to Defendant’s arrest. Specifically, the Defendant allegedly handed the CS a controlled substance. Defendant seeks the disclosure of the name and contact information of the CS in order to conduct a meaningful investigation of the charges and to prepare an adequate defense for trial.

1 Both parties recognize that the Government has a limited privilege to withhold from
2 disclosure the identity of confidential informants. There is a presumption in favor of
3 confidentiality, placing the burden on the party seeking disclosure “to demonstrate that
4 knowledge of the identity of a confidential informant is vital to the proper preparation and
5 presentation of his case.” *United States v. Tzannos*, 460 F.3d 128, 139 (1st Cir. 2006) (quoting
6 *United States v. Perez*, 299 F.3d 1, 3-4 (1st Cir. 2002)). The U.S. Supreme Court has held
7 “that the identity of such an informer must be disclosed whenever the informer’s testimony
8 may be relevant and helpful to the accused’s defense.” *Roviaro v. United States*, 353 U.S. 53,
9 56 (1957). Generally, the informer’s identity is “relevant and helpful” if the informer was a
10 participant or percipient witness to the alleged illegal transaction.¹

11 Here, the Government admits that “the confidential informant was involved in the drug
12 transactions with the defendant. Thus it will be necessary to [sic] for the government to call his
13 [sic] as a witness at trial.” (Opp’n to Def’s. Mot. at 3.) Clearly, the CS played a prominent
14 part in the drug transaction, and thus, the CS’s identity is “relevant and helpful” and shall be
15 disclosed. *See Commonwealth v. Tan*, Crim. No. 99-0478T (NMI Super. Ct. June 28, 2000)
16 (Order Granting Mot. to Disclose Confidential Informant at 3). The issue before the Court then
17 is *when* to require the Government to disclose the identity of the CS.

18 In determining when the Government must disclose the identity of a confidential
19 informant, the Court must conduct a balancing test with the following three factors: “(1) the
20 degree of the informant’s involvement in the crime; (2) the relationship between the
21 defendant’s asserted defense and the informant’s likely testimony; and (3) the governmental
22 interest in nondisclosure.” *Commonwealth v. Tan*, Crim. No. 99-0478T (NMI Super. Ct. June
23 28, 2000) (Order Granting Mot. to Disclose Confidential Informant at 4) (citing *United States*
24 *v. Gonzalo Beltran*, 915 F.2d 487, 489 (9th Cir. 1990)).

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27 ¹ *See id* at 63-64 (holding that the confidential informant was a material witness because he “helped to set up the
28 criminal occurrence and had played a prominent part in it”); *see also United States v. Lapsley*, 334 F.3d 762, 764
(8th Cir. 2003); *United States v. Robinson*, 144 F.3d 104, 106 (1st Cir. 1998); *Honore v. Superior Court*, 449 P.2d
169, 172 (Cal. 1969); *In re Benny S.*, 230 Cal. App. 3d 102, 109 (Cal. Ct. App. 1991).

1 The Government maintains that the appropriate time for disclosure is in accordance
2 with the Court's submitted Pre-Trial Order providing for the pre-trial exchange of witness lists.
3 Following the Government's recommendation would give Defendant approximately eighteen
4 days' notice of the CS's identity before the scheduled trial date. The Government contends any
5 earlier disclosure would impair the Government's strong interests in ensuring the CS's safety
6 from retaliation, encouraging the public to disclose valuable information to law enforcement,
7 and preserve the effectiveness of the CS's work on other criminal investigations. *See Roviario*,
8 353 U.S. at 63 ("The problem is one that calls for balancing the public interest in protecting the
9 flow of information against the individual's right to prepare his defense.").

10 In contrast, Defendant argues that more time is necessary between the date of disclosure
11 and the trial date to provide Defendant sufficient time to prepare his case for trial. Specifically,
12 Defendant points out that the CS had a high level of involvement in this case as both a
13 participant and a witness, and the CS will be a prominent witness at trial for the Government.

14 In the balance of interests, the Court would ordinarily agree with the Government that
15 disclosing the CS's identity eighteen days prior to trial is sufficient time for Defendant and his
16 counsel to prepare an adequate defense, while also preserving the vital interests of the
17 Government. However, Defendant needs additional time to review multiple statements and
18 items properly sought through discovery, which the Government is withholding because such
19 discovery may implicate the identity of the CS. Of most significance is the Government's
20 withholding of audio tapes that contain the CS's voice. The Government has the burden of
21 showing that the audio tapes are "authentic, accurate and trustworthy . . . [and] are audible and
22 comprehensible" before admitting them into evidence.² Therefore, there may be issues as to
23 the admissibility of these audio tapes that could delay the trial or prejudice the defense by
24 forcing a hasty review of the audio tapes and other discovery concerning the CS.

25 In the interests of justice and due process, Defendant must have sufficient time to
26 gather information regarding the personal background of the CS, his or her relationship to

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28 ² *Commonwealth v. Dela Cruz*, Crim. No. 10-0111T (NMI Super. Ct. July 8, 2011) (Order Den. The
Government's Mot. to Transfer Venue, Granting the Government's Mot. to Compel, and Granting the
Government's Mot. in Limine at 6.) (citing *United States v. Slade*, 627 F.2d 293, 301 (D.C. 1980)).

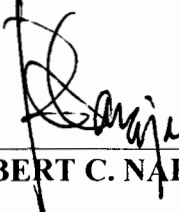
1 Defendant, the circumstances surrounding the involvement of the CS in the instant case, and to
2 carefully review the entire withheld discovery involving the CS. Nonetheless, the Court is
3 particularly mindful of the Government's concern that disclosure of the CS's identity may have
4 a negative impact on the active cases on which the CS is working. Therefore, the Court will
5 provide the Government ample time, prior to ordering disclosure of the CS's identity, to make
6 any necessary adjustments to prevent disruptions to its ongoing investigations. The Court
7 exercises its discretion in ordering the Government to disclose the CS's identity no later than
8 forty days prior to the scheduled trial date.

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III. CONCLUSION

For the reasons set forth above, the Court hereby **GRANTS** Defendant's Motion. The Court hereby **ORDERS** the Government to disclose the name and contact information of the CS no later than May 3, 2012.

IT IS SO ORDERED this 15th day of February, 2012.



ROBERT C. NARAJA, Presiding Judge