Circuit Court for Baltimore City
Case No. 120344040

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1642

September Term, 2021

RICHARD CURTIS

v.

STATE OF MARYLAND

Berger,
Friedman,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 17, 2022

This case arises from the entry of a conditional guilty plea entered by appellant Richard Curtis ("Curtis") in the Circuit Court for Baltimore City in December 2021. Prior to his plea, Curtis sought to compel the disclosure of the identities of two confidential informants who alerted police to the likelihood Curtis could be found possessing and selling cocaine and carrying a firearm, prompting an investigation and Curtis' eventual arrest during a traffic stop. The court ultimately denied Curtis' motion. Curtis pleaded guilty to possession with intent to distribute cocaine and possession of a firearm with a felony conviction, preserving his right to appeal the denial of any pretrial motions. Curtis exercised that right and timely appealed to this Court. He presents one questions for our review, which we have rephrased, as follows: [1]

> I. Whether the circuit court erred by denying the motion to compel the identification of the confidential informants.

For the reasons explained herein, we affirm the circuit court's denial of Curtis' motion to compel the disclosure of the identities of the confidential informants.

FACTS AND PROCEDURAL HISTORY

We address the preliminary facts leading to this appeal below. We will discuss additional facts as necessary in our analysis.

[1] Curtis' original question presented read as follows:

> 1. Did the Lower court err in denying Appellant's motion to compel disclosure of the identity of the confidential informants?

The genesis of the State's investigation of Curtis

Between the third week of October and the first week of November 2020, Baltimore City Police Detective Christopher Amsel ("Amsel") received information from two confidential informants that an individual named "Rich" -- later identified as Curtis -- frequented the 300 block of North Eutaw Street, where he was known to distribute cocaine. The informants said "Rich" drove a black Honda Accord ("the Honda") with heavy window tinting and dark colored rims. The informants claimed to have seen handguns, including "a handgun loaded with a high-capacity extended magazine," in the vehicle. Amsel began monitoring the area to identify "Rich," eventually locating the Honda through the use of closed-circuit television "CitiWatch" cameras in the area.

By searching state Motor Vehicle Administration ("MVA") records, Amsel learned the Honda was registered to Curtis, and that he did not possess a valid driver's license due to his driving privileges being suspended. When Amsel shared Curtis' MVA photo with the informants, they confirmed he was the "Rich" of whom they had previously spoken. Further searches of law enforcement databases revealed Curtis was prohibited from possessing a firearm or ammunition due to a 2009 narcotics conviction in the Circuit Court for Baltimore City for possession with intent to distribute. Amsel continued to monitor Curtis' activities in the area as part of the investigation during the following weeks.

Curtis' arrest and the events of November 6, 2020

On November 6, 2020, at roughly 7:30 p.m., Amsel and his partner spotted Curtis' and the Honda in the 300 block of North Eutaw and began monitoring his activities via

CitiWatch. The detectives noted the car lacked a license plate affixed to the front of the vehicle and had heavy tinting on the windshield and the driver's side front and rear windows. Upon seeing Curtis enter the car and drive from where he had parked, Amsel notified and instructed an "arrest team" to follow Curtis and conduct a traffic stop, which occurred in a nearby gas station. At least two police vehicles parked in a way that prevented Curtis from driving off for fear he may try to flee. Officers approached and demanded Curtis exit the vehicle due to the prior information from sources stating Curtis may be concealing a weapon. In addition, the vehicle had dark tints making it difficult to see inside the passenger compartment. Curtis did not immediately comply with the officers, resulting in repeated shouted demands for him to exit the vehicle. Officers stated they saw Curtis quickly reach downward with his right hand moving out of sight, prompting fears he may be concealing evidence or reaching for a weapon. After demanding Curtis "show [officers] his hands," officers used a window breaking tool to enter the vehicle and forcibly remove Curtis.

Once officers detained Curtis, they entered the Honda to turn it off, at which point officers "observed in plain view" a black handgun magazine with at least one round of ammunition sitting in the front driver's side door pocket. Additionally, officers "observed in plain view" a clear plastic bag containing glass vials of suspected cocaine sitting in the center console. Further search of the vehicle produced: (1) one .40 caliber, 22-round magazine containing 21 rounds found in the driver's side door; (2) 29 glass vials of suspected cocaine in the center console; (3) two jugs of suspected eutylone in the center

console;[2] (4) mail in the name of Richard Curtis; (5) a bag containing 32 vials of suspected cocaine from the passenger floorboard; (6) one Polymer80, .40-calber handgun without a serial number and loaded with 14 rounds, including one in the chamber from under the front passenger seat; (7) an additional 11 vials of suspected cocaine; and (8) a digital scale. After placing Curtis under arrest, a search of his person recovered: (1) nine vials of suspected cocaine; and (2) a pill bottle containing 43 pills suspected to be oxycodone. Curtis also confirmed that he was aware that his driver's license was suspended. Officers then transported him to the Central Booking Intake Facility to be formally charged.

The hearing on the motion to compel disclosure of the informants' identities

Prior to trial, Curtis moved to compel the State to disclose the identities of the "confidential sources" who told police Curtis was selling drugs out of his vehicle and was known to carry a weapon. Curtis asked the Court to conduct *in camera* proceedings where the informants could be questioned by defense counsel or by the court posing defense counsel's questions to determine if the sources were witnesses to the events leading to Curtis' arrest, and to challenge the credibility of the officers who would testify against Curtis during pretrial motions' hearings and at the potential trial.

[2] Eutylone is a synthetic drug that has similar psychoactive effects on the body to drugs like methamphetamine, MDMA, and cocaine. Drug Enf't Admin., *1-(1,3 Benzodioxol-5-yl)-2-)ethylamino)butan-1-one (Eutylone)*, DIVERSION CONTROL DIVISION: DRUG AND CHEMICAL EVALUATIONS SECTION (Jan. 2020), https://www.deadiversion.usdoj.gov/drug_chem_info/eutylone.pdf. It has no approved medical uses within the United States and is known to be abused and illicitly distributed. *Id.* Euthylone is a schedule I synthetic cathinone, commonly known as "bath salts." *Id.*

At the hearing for Curtis' motion to compel disclosure of the informants, Amsel testified that his prior conversations with the confidential sources occurred between the third week of October and the first week of November 2020. During this testimony, Amsel stated that he did not communicate with the informants on the day of Curtis' arrest. Curtis confronted Amsel with a discrepancy between his recall of communications with the informants and how such communications were described in the Statement of Probable Cause authored Amsel. Curtis highlighted how the statement read that such communications with the informants regarding the individual alleged to be Curtis had occurred "[b]etween the third week of October 2020 and the first week of November 2020, *including 06 November 2020*[.]" (emphasis added). Amsel explained that the error was "me misspeaking." Amsel said he "mistyped" the Statement of Probable Cause and did not intend to imply he had conversations with the informants on the day of Curtis' arrest.

Instead, the Statement of Probable Cause was trying to convey that his investigation of Curtis germinated from the conversations with informants beginning in the third week of October, but that those conversations concluded with Curtis' arrest on November 6, 2020.[3] When cross-examined by the State, Amsel definitively stated he had "no doubt I did not speak to [either informant] that day." Upon further cross-examination, Amsel again

[3] Upon direct questioning from Curtis probing the discrepancy between the Statement of Probable Cause implying the informants were consulted the morning of Curtis' arrest and Amsel's testimony that he did not speak to them that day, Amsel explained: "It was me misspeaking. This was – I mistyped. It was encompassing of it started the third week of October and the conclusion of it being November [sixth]. But I do not recall speaking directly with one of the informants on the [sixth] of November."

stated he did not speak to either informant on November 6, 2020 regarding Curtis' whereabouts, explaining that what prompted the traffic stop that day was the observable "traffic violations."

Curtis seized upon this disparity, arguing that the informants' identities were needed since they were "the only witness[es], that could either amplify the State's testimony or contradict the State's testimony." Curtis asserted that without the informants, he could not attempt to impeach Amsel's testimony nor challenge the Statement of Probable Cause, and instead was "just stuck with the officer's testimony." Having heard Curtis' argument about this discrepancy, the circuit court proceeded to accept as true Amsel's testimony that he did not speak to the informants on the day of the arrest. Finding Amsel's testimony credible, the court ruled that the incongruity between Amsel's testimony and the Statement of Probable Cause was a "typo," and that "typos happen in life."[4]

[4] Ruling from the bench, the judge stated:

> I'm going to make a finding. I accept the officer's testimony that it was a typo in the Statement of Probable Cause, so I want to make that clear, although a nice lesson goes to the officer to review what you read because every word matters.
>
> And for what it's worth those things are signed under oath, right, and so I don't fault the State, the defense at all for being in an advocate way upset about this, right, it should be discussed, but I think typos happen in life, and the officer testified clearly and credibly in front of me[,] and I have no reason to question his testimony.
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> In no way was his credibility attacked whatsoever or exposed when he was testifying that raised other suspicions. It just seemed like an error and typo. So that's my finding as to that.

When questioned about the officers converging on Curtis' vehicle during the traffic stop and swiftly removing him from it resulting in the smashing of his window, Amsel explained that information from the confidential sources regarding Curtis' alleged likelihood to carry a weapon in the car prompted a need "to separate him from the vehicle while any further investigation was conducted." When Curtis pressed about how the informants may have known there may be guns in the car, Amsel stated that the informants had seen the gun, and that they "potentially" had to have been inside the vehicle to know about the firearm. Curtis asserted this would make the informants potential witnesses to the events of November 6, 2020, particularly if, in accordance with the Statement of Probable Cause, Amsel had conferred with the sources on the day of Curtis' arrest. Again, upon cross-examination, Amsel stated the informants provided no information as to whether any guns or drugs would be found on Curtis on November 6, 2020.

Focusing on the tactics taken during the car stop, Amsel explained that due to the tip that Curtis may carry a weapon, the arresting officers would "approach slightly more aggressively" than a normal stop "because on top of whatever reason we had to stop this random vehicle we also have information that the person is in possession of a firearm, which leads to a threat to ourselves and the individual in the car." He further explained that the officers could not see into the car due to the darkness of the windows, so when Curtis did not comply with orders to exit the car, and officers thought they saw Curtis attempting to either conceal or reach for something -- cognizant it may be a weapon -- they moved to "extract" him from the vehicle.

The State further argued that probable cause for the stop itself was not based on information from informants, but on the fact that Curtis did not have a valid license and was driving a car with illegal tints and no front license plate.[5] "All of that traffic violation that occurred on November 6, 2020 was separate and apart from the prior investigation. The information from the informants led the detectives to do an investigation to create Mr. Curtis as a suspect. That's it." Though the court expressed skepticism about the aggressiveness of the police response -- smashing in windows "on a no tag driving on a suspended license" stop -- the court reasoned that safety concerns cited by the State and described by Amsel, based on the officer's awareness that Curtis may be armed, led to such tactics likely being reasonable.[6] Further, the court ruled there was "sufficient other

[5] A person may not drive a motor vehicle in Maryland while the person's license or driving privileges are suspended. Md. Code (1977), 2020 Repl. Vol., § 16-303 of the Transportation Article ("TP"). Because Curtis' driving privileges were suspended, by then proceeding to drive, Curtis also violated § 16-101 of the Transportation Article, which prohibits an individual from driving on state roads without a valid license. Further, a vehicle registered in the State of Maryland must have two registration plates displayed at all times, one affixed to the front and the other to the rear of the vehicle. TP § 13-411.

Automobiles may not operate on Maryland highways with window tinting that does "not allow a light transmittance through the window of at least 35%," and officers who observe such a violation may stop the driver and issue a citation. TP § 22-406(i)(1)-(2); *see State v. Williams*, 401 Md. 676, 683–85 (2007).

[6] During the hearing, the judge contemplated aloud the potential probable cause issues regarding the traffic stop, the informants' tips regarding the likely presence of a gun in the car, and the police actions during the stop:

> One thing that is very unique about this case, I have never, I am not aware of a tinted window case where we smash the windows in on no tag driving on a suspended license.

information as the law would see that establishes that they developed their own probable cause to stop that vehicle[,]" independent of any previously received information from the informants.

Reviewing the arguments presented, the circuit court found that Curtis met his burden of showing by a preponderance of the evidence that the information regarding the informants' identities "is necessary and relevant to a fair defense," which shifted the burden to the State to show by clear and convincing evidence that the public interest in protecting the flow of information from confidential informants outweighed the potential harm to a fair defense. The court, acknowledging that "[i]t is extremely important to protect the flow of information because this is exactly what a tipster does," proceeded to rule "that the

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> I don't remember that ever happening. I never heard of it. I feel like I would have heard of it through the grapevine at least, you know, just people talking. I've never heard of it. So that's pretty unique. . . .
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> * * *
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> . . . I can't image that that's the policy of the police department, is if you have tinted windows and we pull you over for a traffic infraction we're going to smash your windows.
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> * * *
>
> . . . I think though - - All it's going to take is one officer on one cross-examination question during trial saying what made you so nervous to smash that window in and he's going to say because I thought he might have been armed, they told me he was armed, he could be armed.

State's interests are met here[,] and they have shown so by clear and convincing evidence." Accordingly, the court ruled in favor of the State, denying the motion to disclose the identities of the confidential informants.

Thereafter, Curtis entered a conditional plea to the weapons and distribution charges that imposed an agreed-upon sentence of five years without parole for the firearm conviction and a concurrent five-year sentence for the possession with intent to distribute cocaine conviction. As a condition of Curtis' plea, he maintained the right to appeal any pretrial motions decided against him. He then exercised that right by appealing to this Court the circuit court's denial of his motion to compel the disclosure of the identities of the informants.

DISCUSSION

I. The Disclosure of the Identity of a Confidential Informant Is a Discretionary Decision of the Motions Court Which Weighs the State's Privilege to Protect the Informant's Anonymity Against the Defendant's Need for Disclosure.

The ultimate decision of whether to disclose the identity of a confidential informant is "within the discretion of the trial court." *Elliott v. State*, 417 Md. 413, 428 (2010). As such, this court reviews whether the court applied the correct legal principles, "and if so whether its ruling constituted a fair exercise of its discretion." *Id.* (citing *Edwards v. State*, 350 Md. 433, 442 (1998)); *see also State v. Sayles*, 472 Md. 207, 230 (2021) (stating an abuse of discretion is a decision by the trial court "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons."). "In determining whether a court properly exercised its discretion, the question is 'whether the court reached the right

balance among the competing interests.'" *Elliott, supra*, 417 Md. at 428 (quoting *Edwards v. State*, 350 Md. 433, 441 (1998)).

The State's interest in protecting the anonymity of informers is "manifestly important." *Id.* at 444 (quoting *Brooks v. State*, 320 Md. 516, 522 (1990)). Similar to the United States Supreme Court, Maryland has long recognized the State's privilege to withhold the disclosure of the identity of informers in the furtherance of protecting the public interest in effective law enforcement. *Brooks v. State*, 320 Md. 516, 522 (1990) (citing *McCray v. Illinois*, 386 U.S. 300, 308–09 (1967).[7] "Whether an informer is motivated by good citizenship, promise of leniency or prospect of pecuniary reward, he will usually condition his cooperation on an assurance of anonymity" as a means of protecting himself or his family from harm, liability, or reprisal. *McCray v. Illinois*, 386 U.S. 300, 308 (1967).

Concerns of fundamental fairness and a defendant's ability to defend the charges against him necessarily limit this privilege. *Elliott*, *supra*, 417 Md. at 444. "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 445 (quoting *Roviaro v. United States*, 353 U.S. 53, 60–61 (1957)); *see also* Md. Rule 4-263(g)(2) ("The State's Attorney is not required to

[7] "The informer's privilege is especially important 'in the enforcement of ... narcotics laws, [since] it is all but impossible to obtain evidence for prosecution save by the use of decoys. There are rarely complaining witnesses.'" *Brooks v. State*, 320 Md. 516, 522 (1990) (quoting *Lewis v. United States*, 385 U.S. 206, 210–11 n.6 (1966)).

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disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.").

The key issue in reviewing such a motion to compel in cases like the one at bar is whether the circuit court properly applied the balancing test, articulated in *Roviaro* and relied upon in Maryland for more than sixty years, in which courts weigh the State's interest in maintaining the anonymity of its sources for a criminal investigation against the defendant's constitutional rights to defend himself against the charges he faces. *Elliott, supra,* 417 Md. at 445 (citing *Roviaro v. United States*, 353 U.S. 53, 62 (1957)). "Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors." *Roviaro v. United States,* 353 U.S. 53, 62 (1957); *Elliott, supra,* 417 Md. at 445.[8]

Maryland courts recognize "three defenses which often require disclosure: entrapment, lack of knowledge, and mistaken identity." *Elliott*, *supra*, 417 Md. at 445.

[8] Where the record may be insufficient for the court to adequately engage in the balancing process, "an *in camera* hearing may be necessary, to allow the court to interview the informant, determine what his or her role was in the matter, and reach an informed judgment as to whether the informant's identity should be disclosed." *Edwards v. State*, 350 Md. 433, 446–47 (1998). "[T]he *in camera* procedure 'has the advantage of giving the trial court considerable flexibility in determining if disclosure is warranted.'" *Warrick v. State*, 326 Md. 696, 709 (1992) (citation omitted). An *in camera* proceeding allows the court to protect the State's interest in unnecessary disclosure while also safeguarding the defendant's rights. *Gibson v. State*, 331 Md. 16, 27 (1993). As such, *in camera* proceedings are most appropriate when the case for or against disclosure is a "close call" or unclear. *See id.* (holding *in camera* hearing unneeded as defendant met burden).

Additionally, disclosure may be "necessary in order to avoid the risk of false testimony or to secure useful testimony." *Drouin v. State*, 222 Md. 271, 280 (1960). If probable cause for the defendant's arrest depends in whole or in part on information received by an informer, or the informer's identity and testimony may be useful to vindicate the innocence of the accused or is essential to the proper disposition of the case, disclosure may be compelled. *Edwards v. State*, 350 Md. 433, 445–46 (1998) (citing *Drouin v. State*, 222 Md. 271, 286 (1960); *see also Gibson v. State*, 331 Md. 16, 26 (1993) (holding trial court erred by denying motion to compel disclosure of informant because discrepancy between informant's and officer's identification of defendant at time of drug transaction could cast doubt on defendant's guilt and supported defense of mistaken identity).

"[T]he key element is the materiality of the informer's testimony to the determination of the accused's guilt or innocence." *Warrick v. State*, 326 Md. 696, 701 (1992). Maryland courts have drawn a distinction between informants who actually witness or participate in the crime with which the defendant has been charged -- and thus who may have direct knowledge of what occurred or can speak to the defendant's criminal agency -- and those who are "mere tipster[s]," doing nothing more than supplying law enforcement with information but not otherwise participating in the alleged criminal activity nor having direct knowledge as to the defendant's innocence or guilt. *Edwards*, *supra*, 350 Md. at 443. Disclosure may be required for the former, but it may not be for the latter. *Id.*; *Lee v. State*, 235 Md. 301, 305 (1964) ("Since the informer was not a direct participant in the sale of the heroin which formed the basis for the appellant's subsequent

conviction, the general rule of nondisclosure is applicable."). While an informant's "tipster" status militates against their potential materiality to a determination of guilt or innocence, the label itself is not dispositive. *See Brooks v. State*, 320 Md. 516, 527 (1990) (holding the trial court erred by labeling informant a "tipster," stopping there and abandoning "his duty to balance" the interests of the defendant against those of the State).

Though the court is charged with weighing these interests, the defendant carries the burden of tipping the scales in favor of disclosure by showing a substantial reason that the identity of the informer is material to his defense or a fair determination of his guilt. *Elliott, supra*, 417 Md. at 444. "Mere conjecture about the relevancy of an informant's testimony is insufficient to compel disclosure." *Jones v. State*, 56 Md. App. 101, 109 (1983). If the defendant can establish by a preponderance of the evidence that information about the informant is necessary to properly prepare for trial, "[t]he burden then shifts to the State to rebut this showing by clear and convincing evidence." *Id.*; *see also Hardiman v. State*, 50 Md. App. 98, 109 (1981) (holding trial court erred by denying motion to compel when defendant did all that "he was permitted to do to compel disclosure" and shift the burden, while State "stood silent and offered not a single auncel to its side of the judicial balance").

This Court has held that disclosure of an informant's identity "would have served little probative value" where the informant did not take part in the narcotics distribution conspiracy being investigated. *Cantine v. State*, 160 Md. App. 391, 404 (2004). In *Cantine*, despite the informant participating in a controlled drug buy from the defendant and police witnessing calls between the informant and the defendant, we held the informant

was a "mere tipster" who did not sufficiently participate in the criminal activity investigated and charged to warrant disclosure. *Id.* Similarly, we have held that a defendant did not meet his burden to require disclosing the identity of an informant who was merely present when the defendant sold contraband to an officer, all conversations leading to that transaction were between the officer and the defendant, and the officer was able to testify, and be cross-examined, in detail about what occurred. *Whittington v. State*, 8 Md. App. 676, 681–82 (1970).

This Court rejected a defendant's argument that an informant's furnishing of such detailed and specific information would make it difficult to "fathom any situation where that person would not have been involved in this illegality at one stage or another," thus requiring disclosure. *Vandegrift v. State*, 82 Md. App. 617, 632 (1990); *see also Howard v. State*, 66 Md. App. 273, 288 (1986) (holding court properly exercised discretion when denying motion to compel disclosure of informant deemed a "conduit and not a participant" in the criminal act). We were similarly unmoved when an appellant's defense relied solely on attacking the credibility of police. *Dorsey v. State*, 34 Md. App. 525, 531 (1977). In *Dorsey*, we affirmed the trial court's denial of a motion to compel disclosure because we saw "no reason, in light of the purpose of the privilege, to require the State to produce the informant's name." *Id.* (holding trial court did not err in denying motion to compel identity of informant who told defendant an individual, who was actually an undercover officer, wanted to buy heroin from defendant).

Such cases are distinct from when the informer plays a more direct role in the police investigation, such as when the informer identifies the defendant as the criminal actor with whom an undercover drug buy takes place, or initiates contact with the defendant in such a clandestine law enforcement action, or otherwise participates in the criminal acts for which the defendant is being prosecuted. *See Brooks*, *supra*, 320 Md. at 520–21, 527. In *Elliott*, the Court of Appeals reversed the trial court's denial of a motion to compel disclosure, holding, under the *Roviaro* balancing test, that the confidential communication of the informant's identity was integral to Elliott's defenses of lack of knowledge and entrapment. *Elliott*, *supra*, 417 Md. at 447. The informant told police on the day of Elliott's arrest that Elliott would be in a certain place at a certain time, transporting a large quantity of cannabis for a sale. *Id.* at 423. Because the informant was the only source linking Elliott to the drugs, the information he provided was integral to establishing probable cause for a search, weighing heavily on the admissibility of such evidence. *Id.* at 447–48. The Court of Appeals, therefore, held that the trial court denied Elliott a fair determination of the issue by withholding the identity of the informant. *Id.* at 448.

These principles and cases establish that upon a motion to compel the disclosure of an informant's identity, the motion's court must: (1) utilize the balancing test and burden shifting articulated in *Roviaro* and its Maryland progeny; and (2) carefully evaluate the informant's role within the particular circumstances of each case.

II. The Circuit Court Applied the Correct Legal Standards to Determine that the Confidential Informants Were Sufficiently Not Material to the Determination of Guilt or Innocence to Warrant Disclosure of Their Identities; Therefore, the Court Did Not Err in Denying Curtis' Motion.

To begin, it is clear the circuit court both articulated the correct legal standards to apply and grappled with those standards throughout the hearing. *See Elliott*, *supra*, 417 Md. at 428. During the hearing on the motion to compel disclosure, the court correctly stated Curtis had "the initial burden to show by a preponderance of the evidence that the information concerning the informant is necessary and relevant to a fair defense [or] . . . material to a fair determination of a case." The presiding judge articulated his role was to "balance the public interest in protecting the flow of information against the individual's right to prepare his defense." He ensured both parties understood the burden shifting framework. After finding that Curtis showed "by a preponderance of the evidence that the information [regarding the identity of the informants was] necessary and relevant to a fair defense," he gave the State "the opportunity to rebut by clear and convincing evidence that showing made by the defense." *See Jones*, *supra*, 56 Md. App. at 109–10. *Contra Hardiman*, *supra*, 50 Md. App. at 109. Therefore, our inquiry, within the deferential guise of the abuse of discretion review, is only concerned with the misapplication of these legal principles, of which we find none. *See Nottingham v. State*, 227 Md. App. 592, 615 (2016) (stating that the motions court is presumed to know and apply that law properly absent a showing to the contrary).

Though the informants alerting police of Curtis' reputation for dealing cocaine and carrying a firearm spawned the initial investigation, the record does not reflect that the

informants were materially involved with the illegal activity investigated, nor the actions undertaken by police on the day of Curtis' arrest. Further, police had independent evidence of Curtis' lack of a front license plate, overly dark window tints, and driving with a suspended license to provide independent probable cause supporting the automobile stop.

Curtis argues this is such a case that warrants the disclosure of the identities of the confidential informants. He maintains that disclosure is necessary to fairly articulate a full defense at trial because the informants played a material role in the events leading to his arrest. He asserts the informants' knowledge of the potential presence of guns or drugs in the Honda means the informants must have been in the car at some point, which makes them either participants in, or witnesses to, the criminal activity leading to Curtis' arrest. Further, Amsel relied on the informants' positive identification of Curtis being the person in the MVA records Amsel pulled in confirming the Honda belonged to the "Rich" of whom the informants spoke. As such, this makes them "an integral part of the illegal transaction," tipping the balance in favor of disclosure. *Warrick*, *supra*, 326 Md. at 699–700. He argues the State's, and the circuit court's, characterization of the informants as "mere tipsters" is inapposite of the facts and relevant law.

Additionally, Curtis argues that, regardless of the traffic offenses cited in the automobile stop leading to his arrest, the initial police focus on him, the assemblage of an "arrest team" to conduct the stop, and the aggressive actions those officers took were all based on the information regarding guns and drugs relayed to police by the informants. As

such, Curtis asserts he cannot properly challenge the probable cause of the investigation and arrest without the ability to question the informants.

Further, Curtis points to three errors made by the circuit court. First, Curtis maintains that the circuit court improperly ruled that the inconsistency between Amsel testifying that he did not speak to the informants the morning of the arrest and the Statement of Probable Cause implying he did speak to the informants was merely a typo. By accepting Amsel's testimony as clear and credible, the court deprived Curtis the chance to question the informants and expose such inconsistency. Second, Curtis asserts that the court ultimately dismissed out of hand the "odd way officers got into the vehicle," reasoning such drastic steps were due to safety concern. This belied that such safety concerns only existed because of the information supplied by the informants as to Curtis' likelihood of having a gun in the car. Lastly, Curtis asserts that the court hypothesized that the events leading to Curtis' arrest would have played out exactly the same without the informers, had police noticed the car while otherwise watching CitiWatch cameras, running the plates, and initiating the stop due to the traffic violations. This distorted the informants' materiality to the case and ignored that the only reason Curtis was initially investigated was due to the tip regarding his potential gun and drug possession.

It is clear to this Court that sufficient probable cause existed to conduct the traffic stop. Whatever the subjective intentions of the officers, "[a]s a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *State v. Williams*, 401 Md. 676, 685 (2007) (quoting

Whren v. United States, 517 U.S. 806, 809–10 (1996)). Pretextual stops and ulterior motives do not invalidate an otherwise permissible stop if police witness a driver or automobile that violates local traffic laws. *See Thornton v. State*, 465 Md. 122, 135 (2019). The police had ample cause to initiate the stop even if the stop was to investigate the tips that Curtis may be in possession of an illegal firearm or drugs, because police confirmed that he was driving without a valid license, saw the car had no front license plate, and suspected the darkness of the window tints violated state law. Further, because officers had information leading them to believe Curtis may be armed, they could not see into the car due to the tints, Curtis did not immediately comply with directions, and police believed they saw him moving inside the car as if grabbing a gun or evidence, it was reasonable for the officers to take swift, drastic measures to ensure safety and the preservation of evidence. Regardless, these actions by police did not implicate the informants who merely provided the knowledge that Curtis may have been armed. Only the events of the stop itself are relevant to the Fourth Amendment analysis of the interaction. *Grant v. State*, 449 Md. 1, 15–16 (2016).

We hold that the circuit court did not err in ruling the informants were more akin to "mere tipsters" than to material participants in Curtis' criminality. *See Edwards*, *supra*, 350 Md. at 443. Curtis posits that the only way the informants could have gained their knowledge of the presence of guns or drugs in the Honda is if they themselves were inside of it or were participating in his criminal endeavor, thus again asserting their materiality. "That an informant provides detailed information is not, by itself, sufficient to support the

conclusion that the informant participated in the criminal activity." *Vandegrift*, *supra*, 82 Md. App. at 632; *see also Howard*, *supra*, 66 Md. App. at 289 ("We cannot say that one who provides detailed information is, of necessity, a witness to, or participant in, a criminal act."). At the motions hearing, Amsel testified that he did not speak with the informants on the morning of Curtis' arrest and that the assemblage of the "arrest team" and the decision to conduct the stop was based on the previous identification of Curtis as the driver of the Honda and the discovery of his suspended license coupled with the observation, via CitiWatch, of Curtis driving the car without a front plate and without a valid license on the morning of his eventual arrest. Further, in the Statement of Probable Cause, Amsel attests that while monitoring Curtis on November 6, 2020, he saw "no other individuals were ever observed inside nor entering into the Honda Accord except Mr. Curtis."

The informants in this case were less active participants in Curtis' criminal activity or the events leading to his arrest than the informants present at incriminating drug buys, yet still found to be "mere tipsters" in *Cantine* and *Whittingham.* 160 Md. App. at 404; 8 Md. App. at 681–82. Additionally, in seeking the informant's identity, Curtis claimed no defenses requiring disclosure, such as mistaken identity, or his lack of knowledge that the drugs or guns were in the car at the time of his arrest, or that the traffic stop and search were products of entrapment. *See Elliott*, *supra*, 417 Md. at 444. Therefore, we hold the circuit court did not err in ruling that the State met its burden in showing that its privilege to protect the anonymity of its informants outweighed the concerns of fundamental fairness for Curtis to defend the case against him. *See id.* at 444; *Jones*, *supra*, 56 Md. App. at 109.

Though we appreciate Curtis' frustrations regarding the inability to probe the inconsistencies of Amsel's testimony -- particularly the discrepancy between his statement that he did not speak to the informants on November 6, 2020 despite the Statement of Probable Cause reading otherwise -- "[n]othing in the Due Process Clause of the Fourteenth Amendment requires a state court judge in every such hearing to assume the arresting officers are committing perjury." *McCray*, *supra*, 386 U.S. at 313. The circuit court was in the best position to decipher the credibility of witnesses before it, and we will not reverse that ruling without ample support in the record when we otherwise find the informants here more akin to tipsters who may remain anonymous than witnesses who must step into the light. Further, though we are mindful of providing the opportunity for a full and fair defense, our established body of case law does not allow us to upset the informant's privilege "solely on attacking the credibility of police." *Dorsey*, *supra*, 34 Md. App. at 531. A defendant "must do more than merely speculate that disclosure will prove helpful." *Brooks*, *supra*, 320 Md. at 528 n.3; *Jones*, *supra*, 56 Md. App. at 109.

Because a trial judge is presumed to know and apply the law properly, we are reluctant to find judicial error absent a clear showing in the record the circuit court made a misstatement of law or acted in a manner inconsistent with the law. *Nottingham*, *supra*, 227 Md. App. at 615 (citing *Medley v. State*, 386 Md. 3, 7 (2005)). We find no such error

here.[9] Therefore, we affirm the circuit court's denial of the motion to compel disclosure of the confidential informants' identities.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[9] Because we hold the court sufficiently engaged in the balancing process, we need not remand the proceedings for an *in camera* hearing. *See Edwards v. State*, 350 Md. 433, 446–47 (1998).