

[CAPTION]

**MOTION FOR ORDER TO REVEAL IDENTITY, CRIMINAL HISTORY,
AND “COOPERATION” AGREEMENT OF WITNESS**

Comes now the Defendant, by counsel, and moves the Court for an order requiring the State of Indiana to reveal to defense counsel the identity, criminal history, and “cooperation” agreement of the witness identified in discovery materials provided by the State only as “Confidential Informant,” and in support thereof states:

1. It is apparent from the Probable Cause Affidavit that the confidential informant was an eyewitness to and participant in alleged criminal activities which form the basis of the charges.
2. Defendant is prejudiced in his ability to prepare a defense and exercise his constitutional right to confront and cross-examine the witnesses against him if he is not allowed to know the identity, history, and benefits received by such witnesses.
3. A suppression hearing is currently schedule on [INSERT DATE].
4. Counsel needs the information regarding this witness to prepare for the suppression hearing.

WHEREFORE, Defendant prays the Court order the State of Indiana to provide to counsel for defense within ten days the identity, criminal history, and “cooperation” agreement of the confidential informant and for all other relief.

(Signature)

CASE LAW

CASEBANK M.2.b.2

Roviaro v. US, 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957) (although concerns about safety of informants can justify withholding their identities until trial, anonymous testimony will not be allowed).

McCray v. Illinois, 386 U.S. 300, 87 S.Ct. 1056, 18 L.Ed.2d 62 (1967) (name of the informer need not be disclosed to the magistrate unless necessary to show his credibility; it may be required prior to trial if necessary to the Defendant's case on merits).

Pennsylvania v. Ritchie, 480 U.S. 39, 58, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987) (where defendant seeks pretrial discovery of information which might be privileged, due process may compel judge to grant defendant access, if standing alone, the information "would" probably alter outcome of case).

Ortez v. State, 165 Ind.App. 678, 333 N.E.2d 838 (1975) (Defendants' criminal convictions reversed and remanded for new trials where the police paid the informant, effectively put him beyond the Defendants' reach, and then refused to produce him for deposition; there was evidence the informant had maintained telephone contact with the undercover officer).

Dorsey v. State, 254 Ind. 409, 260 N.E.2d 800 (1970) (reversed and remanded the Defendant's case for a new trial where the State extensively used its informant, paid him and saw him off to California, and disobeyed a court order for his production).

Burst v. State, 499 N.E.2d 1140 (Ind.Ct.App. 1986) (the trial court erred in refusing to require the State to produce its confidential informant; the confidential informant was not a concerned citizen offering casual observations but was used repeatedly by police over period of several months to establish contacts/facilitate/participate in transactions and was paid for his services, which rendered him a "special employee" of the State; where the State actively makes its "special employee" unavailable to the Defendant and where the Defendant demonstrates materiality of "special employee", the Courts must reverse the convictions so that the Defendant may receive a fair trial).

Parker v. State, 773 N.E.2d 867 (Ind.Ct.App. 2002) (the trial court did not err in ruling that the State did not have to reveal the confidential informant's identity; the informant's information was only marginally helpful to investigation). See also Geiger v. State, 721 N.E.2d 891 (Ind.Ct.App. 1999); Furman v. State, 496 N.E.2d 811 (Ind.Ct.App. 1986).

State v. Cook, 582 N.E.2d 444 (Ind.Ct.App. 1991) (it was error for the trial court to order the State to disclose the identity of the confidential informant for the purpose of allowing the Defendant to challenge probable cause affidavit because the Defendant did not present sufficient evidence to warrant such disclosure).

Smith v. State, 829 N.E.2d 64 (Ind.Ct.App. 2005) (the trial court did not err in refusing to compel the State to disclose the names of the confidential informants as to three separate drug buys; distinguishing Roviaro v. U.S., 353 U.S. 53 (1957), the court found that while the informants were material witnesses, they were not the "sole" material witnesses as the Defendant was accompanied by another individual during two of the buys and the Defendant did not allege that the individual could not have testified at trial; the Defendant's knowledge of an informant's identity actually requires disclosure because the government no longer has a legitimate need to protect it, but knowledge of the confidential informant's identity also establishes harmless error as she could have been subpoenaed).

Commonwealth v. Dias, 886 N.E.2d 713 (Mass. 2008) (Massachusetts Supreme Judicial Court held Defendant may be entitled to discovery of an informant's identity even when the informant would be able to avoid testifying at trial by asserting his or her Fifth Amendment privilege against self-incrimination).

Moore v. State, 839 N.E.2d 178 (Ind.Ct.App. 2005) (trial court did not abuse its discretion in modifying Defendant's subpoena duces tecum requesting the entire file of a confidential informant who was victim in attempted murder case; trial court did in camera review of file and provided Defendant with portion of file that involved Defendant directly).

Dickerson v. State, 957 N.E.2d 1055 (Ind.Ct.App. 2011) (trial court did not commit fundamental error when it granted the State's request to allow the confidential informant to testify, without objection, using a number to identify himself; the record reveals the identity of the "anonymous witness" was well known to Defendant because he had been friends with the witness, as well as the witness's girlfriend, for some time; moreover, defense counsel deposed the witness before trial.).

Heyen v. State, 936 N.E.2d 294 (Ind.Ct.App 2010) (in prosecution for dealing in methamphetamine, any refusal by trial court to disclose identity of confidential informant ("CI") to Defendant was harmless error because record shows Defendant knew CI).

Sheckles v. State, 24 N.E.3d 978 (Ind.Ct.App. 2015) (Defendant seeking disclosure must bear burden of proving its necessity; speculation that disclosure of informant's identity may be useful is insufficient to meet this burden, and informant's identity should not be disclosed to permit a "mere fishing expedition").