

Court Rules Confidential Informants May Have To Be Revealed

By CHARLES POPE

State Staff Writer

The identity of confidential informants — particularly valuable to police in covert drug operations — may have to be revealed in criminal trials if the information they provide has a direct link to a defendant's guilt or innocence, the state Supreme Court ruled Tuesday.

The court's unanimous decision stemmed from a 1982 case involving William Diamond, who was convicted on drug charges largely on informa-

tion supplied by an anonymous informant. The informant, never questioned in court and never identified, said he purchased heroin from a man he identified as Diamond.

Tuesday's ruling granted Diamond a new trial.

South Carolina law enforcement officials reacted strongly to the ruling, claiming it will severely hamper investigations. Most contacted by *The State* criticized of the ruling, especially its potential to hinder undercover drug investigations.

witness is not generally required." But Diamond's case involved an informant who "was clearly a participant in the (heroin) transaction, not a mere 'tipster' or witness," the justices said. The trial judge in Diamond's case had ruled the informant was a "conduit."

In such cases, the decision as to whether an informant should be named and called to the stand is for the accused and not the state to decide, the court said.

"Public policy considerations for

non-disclosure of an informant's identity are absent where the informant openly participates in a criminal transaction," the unanimous decision said.

Lexington County Sheriff James Metts said he had not read the opinion, but said he was "very much opposed to having to reveal informants' names. It could drastically hamper information coming to us and hamper investigations."

"Some do it for pay, some do it for revenge, but all do it because they can

remain anonymous," Metts said. "If their names were revealed, there could be retaliations."

If the ruling is taken in its broadest sense, Metts said law enforcement probably would not suffer because "police will find a way to get around" the ruling.

Richland County Sheriff Frank Powell said the ruling "would have a devastating effect. We use informants

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to make purchases of drugs, I doubt anyone would sell drugs to an officer in a blue uniform. The only way to get to the big drug pushers is by informants.

"It will really make us have to revamp our law enforcement techniques."

Eleventh Circuit Solicitor Donnie Myers said if the ruling inhibits the use of undercover operatives, "it will certainly hurt, especially in drug investigations."

"These guys don't do this (buy and sell drugs) at the First Baptist Church on Sunday morning. They do it in dark alleys in the dead of night, and that's the one way to get to that illegal trade."

Diamond was arrested in April 1982 after allegedly selling heroin to Phillip Wilkins, an undercover officer introduced to Diamond by the confidential informant.

Although Diamond claimed repeatedly he never sold heroin to the undercover agent or anybody else, he was convicted of selling the heroin and sentenced to nine years in prison.

In granting Diamond's new trial, the Supreme Court said identification of an informant is not generally required if the informant was not a participant in the alleged crime and if he has no material testimony as to guilt or innocence of the accused.

According to law enforcement officials, however, few informants fall into that category.

"It's a definite setback," Charleston County Sheriff Charles Dawley said. "Obviously, the in-

formation we get is useful because we guarantee confidentiality" and because the person has direct knowledge of a crime.

The president of the state Sheriff's Association, Clarendon County Sheriff H. F. Swilley, also objected to the ruling.

Swilley, who said he was speaking for himself and not the 46-member group, said he is "on record against that. That kills the whole deal all the way around."

He called use of confidential informants "one of long arms of good law enforcement."

"We screen our informants" and "don't jump off the end of the line" in choosing them, Swilley said.

The sheriff said law enforcement officials are careful to thoroughly check out possible informants, adding, "We don't go off half-cocked on these informants."

Greenville County Sheriff Johnny Mack Brown said, "A good officer is only as good as his informant." Unlike other officials, however, Brown said the decision will not seriously harm his department.

Likewise, the State Law Enforcement Division's undercover procedures will not have to be changed, because the agency does not allow informants to participate in alleged criminal acts, said spokesman Hugh Munn.

"We do not use informants to initiate undercover purchases," Munn said. "What we use the informant for is the (information); to get us in the ball park. We do not think this is new ground the Supreme Court is plowing."

Columbia Police Chief Robert Wilbur declined comment, saying he had not studied the Supreme Court's decision.

High court says police informants may be identified during trials

By Anne Marshall
Staff writer

The state Supreme Court today ruled confidential police informants may be identified at trials.

The landmark ruling stemmed from an appeal by William Diamond, who was convicted in 1982 in Richland County of selling heroin.

He will receive a new trial.

Jack Swerling, Diamond's attorney, said the ruling will have a far-reaching effect on law enforcement officers and their investigative methods.

The opinion came on Diamond's appeal from his November, 1982, Richland County

trial, where he was convicted of selling heroin and sentenced to nine years in prison.

By the unanimous agreement of the five-man court, Diamond will receive a new trial and the confidential informant involved in his case will be identified and made available for cross-examination.

Citing one of its 1973 opinions, the court said identification of an informer and not a participant nor a material witness is not generally required.

However, the justices said that if the informer were a participant or material witness on the issue of guilt or innocence, disclosure would depend on the various fac-

tors and circumstances of the particular case.

The justices said that in this case, the informant was clearly a participant.

Diamond said he was misidentified by the confidential informant, which the court said has thrown doubt as to the informant's identity.

The court said the decision on calling an informant as a witness is a matter for the accused, rather than the state, to decide.

"Public policy considerations for non-disclosure of an informant's identity are absent where the informant openly participates in a criminal transaction," the court ruled.

COLUMBIA REPORT 2-14-84