

Informant's Misconduct Threatens Cases

Law enforcement has paid 'special employee' more than \$100,000 for work on undercover drug stings.

BY BRENDAN SMITH

Even in the shady netherworld of police informants, one drug-addicted "special employee" raised eyebrows among his D.C. police supervisors.

But that didn't stop the Metropolitan Police Department from using him.

For years, they paid him thousands of dollars to make drug cases, even though he consistently abused cocaine, stole drugs during undercover buys, and even got kicked out of a witness-relocation program for beating up a family member, according to records filed this month in D.C. Superior Court.

It wasn't until the informant crashed an unmarked police car into three other cars last April that some police supervisors finally started to question whether he should still be working for them.

Those discussions may have come too late, as the informant made more than 40 undercover drug buys in a five-month sting at the Woodland Terrace public-housing project. Prosecutors filed charges against 23 defendants last September, but some of those cases may be unhinged by the informant's illegal behavior—including information indicating that he may have been high while working the sting.

"With informants like this, who knows where the line between cops and robbers is?" says defense attorney Colin Dunham, who represents a Woodland Terrace defendant. "Where does law enforcement end and lawbreaking begin? What's lurking behind here is, the integrity of the system is at stake."

The informant, who has testified in Superior Court in past drug cases, has earned more than \$5,800 so far from the Woodland Terrace bust, including \$100 per buy and a \$100 bonus for each guilty plea. But that is small change compared to past earnings: He's been paid an eye-popping \$105,000 in cash and relocation assistance from the police department and other area law-enforcement agencies for making hundreds of drug buys since 1998.

Channing Phillips, spokesman for the U.S. Attorney's Office for the District of Columbia, would not comment about the Woodland Terrace cases, but he conceded that the use of confidential informants presents "some inherent risks."



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CORNER CRASH: The sting targeted an open-air drug market at Woodland Terrace (above). Channing Phillips of the U.S. Attorney's Office (left) says there are always risks when relying on informants.

"Given the nature of undercover investigations, the system is not perfect, and at times it does not work as well as we would like, despite our best efforts," he said in an e-mail.

WORKING THE STREET

The police department's 7th District Focus Mission Unit targeted Woodland Terrace, a maze of low-slung buildings north of Suitland Parkway in Southeast Washington, because of an open-air drug market for PCP and crack where turf wars between rival crews terrified residents. One fight on a city bus last year caused the panicked driver to flee, allowing a crew member to drive off with the bus.

Police investigators let the informant play a major role in the investigation, but that ended soon after he got behind the wheel of an unmarked police car on April 14 as part of another police investigation.

The informant, whose identity has not been made public, did not have a valid driver's license and had failed recent drug tests while on probation for his own cocaine possession conviction. He claimed he blacked out before sideswiping a car on Southern Avenue Southeast and plowing into two parked vehicles, according to a D.C. police accident report.

The informant was not charged for the accident and didn't pay for the damage to any of the vehicles, including the unmarked Toyota Camry that D.C. police had borrowed from the U.S. Park Police. The report says he did not show signs of being under the influence of alcohol, but he was not drug-tested.

After the crash, questions about the reliability of the informant became so pervasive that his services were terminated for the Woodland Terrace investigation, which he was in the middle of, and for some unrelated surveillance work, according to interviews with two MPD lieutenants last week. Narcotics supervisors also considered decertifying the informant, or banning him from ever working for the D.C. police again, said Lt. Brian Murphy, who helped supervise the Woodland Terrace bust.

"I decided on my own to stop using him," Murphy told *Legal Times* last week. "I wasn't going to waste manpower and money making cases only to find out they were going to be thrown out later because he had been decertified."

Lt. Debra Manago of the Violence Intervention Project, which targets juvenile delinquency, says she also stopped using the informant for street surveillance last year after his crash.

"That was against [D.C. police] policy, to be honest with you," she says about the informant driving an unmarked police car. "There was always a question for me as to his reliability. Because I did not have a good feeling about that, I discontinued his services."

Both Manago and Murphy say they did not know the informant repeatedly failed drug tests last year; he tested positive for cocaine and marijuana. "You would not use someone who tested positive for illicit drugs," Manago says. "That just doesn't make sense."

Assistant U.S. Attorney George Varghese concedes in court records, however, that the informant "was using illegal narcotics during the time of the Woodland Terrace investigation." One incident was caught on tape during a May 17 drug buy when the informant smoked a cigarette dipped in PCP, claiming the seller wanted to prove he wasn't a police officer.

In 2000, the informant was convicted of three drug charges for stealing cocaine or marijuana during prior undercover drug buys. At a plea deal hearing in that case, the informant said he came to work for the police of his own free will.

"I wasn't in any trouble when I did make these purchases for the D.C. police department," he said, according to a transcript. "It is not like they scooped me up out of jail and asked me to help them out."

In addition to his conviction last year for cocaine possession, which resulted in six months of supervised probation, the informant has been convicted in four other cases in the District and Virginia for robbery, domestic assault, grand larceny, and assault and battery.

Seventh District Officer Howard Anderson helped keep the informant out of jail last summer at a probation-violation hearing after the informant skipped several drug tests. Anderson told a judge the informant didn't want to go to the drug-testing site because it was near Woodland Terrace, where he was making the buys, court records state.

While most of the informant's drug buys were taped, several defense attorneys say the poor quality of the tapes will make his credibility a major issue for cases that go to trial.

DIGGING FOR DISCOVERY

Defense attorney Donna Beasley has been involved in a tug of war with Varghese to obtain discovery about the informant's history in the first of the Woodland Terrace cases set for trial.

At the start of a Jan. 10 jury trial for defendant Timwone Tyree on four counts of drug distribution in a drug-free zone, Varghese handed Beasley a three-page letter containing limited details about the informant's history. The late disclosure forced the delay of the trial by Superior Court Judge Craig Iscoe, who admonished Varghese at a Jan. 12 status hearing—reminding the prosecutor of the government's responsibilities to turn over exculpatory and impeachment evidence as required by the 1963 Supreme Court ruling *Brady v. Maryland*.

"The government is really vouching there isn't any other *Brady* information, and I'm relying on that voucher. If that proves to be ultimately wrong, then it is at its peril," said Iscoe, who was a federal prosecutor before taking the bench.

But more incriminating details about the informant were revealed in two more discovery letters and other exhibits, including the failed drug-test results for the informant, presented at a Jan. 23 status hearing. Varghese produced the information after Beasley's repeated requests for *Brady* material.

The additional discovery prompted Iscoe to postpone a second Jan. 25 trial date, but he denied Beasley's motion to dismiss the case for *Brady* violations.

"The government has, if late, given you the information you need," Iscoe told Beasley.

Avis Buchanan, director of the D.C. Public Defender Service, which is representing some of the Woodland Terrace defendants, called the day-of-trial disclosure about the informant "bad enough."

"When you combine last-minute disclosure with long-standing and repeated government reliance on an informant with a sordid track record of drug addiction, recklessness, and blatant dishonesty, you have a veritable recipe for unfair trials and wrongful convictions," she said in an e-mail.

The late disclosures represent an ongoing pattern of *Brady* violations by federal prosecutors that delay trials, increase court costs, and jeopardize a defendant's right to a fair trial, according to several defense attorneys.

Eleven of the 23 Woodland Terrace defendants have already pleaded guilty, but none of the defense attorneys in the other cases received *Brady* information about the informant, according to Beasley's motion to dismiss Tyree's case.

Phillips, of the U.S. Attorney's Office, admits federal prosecutors make mistakes with *Brady* disclosures, but those mistakes are not intentional and are "very minute" compared to the office's large caseload. Prosecutors also receive regular training on *Brady* issues.

Lt. Eugene Bentley of the Narcotics and Special Investigations Division would not comment on whether the informant was decertified last year. "I can't talk about his history," Bentley says. "All those files are confidential. It's locked in a safe. We only reveal it for a subpoena."

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