



CI and Defense Investigation



Those are not my pants

or

There was no heroin

A CASE STUDY

Agenda

- ▶ Ofc Abdullah case
 - ▶ Investigation
 - ▶ Aftermath
 - ▶ Changes
- ▶ Trafficking Cases and Defender's Dilemma
- ▶ 2 'Hypotheticals'

Trafficking Heroin

- ▶ By Sell
 - ▶ 70 to 93 months (4-13 g)
 - ▶ 225 to 282 months (over 28 g)
- ▶ By Possession
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- ▶ By Possession
 - ▶ 70 to 93 months (4-13 g)
 - ▶ 225 to 282 months (over 28 g)

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- ▶ Arrest – high bond
 - ▶ FIR – CI that has provided reliable information in the past. Searched for contraband, officers maintained visual observation, CI returned to secured meeting location, provided 4 grams of heroin. Video and audio surveillance
 - ▶ NO ONE has watched the video and audio surveillance
 - ▶ CIs are biased.

"There was no heroin"

▶ March 2020

- ▶ Assigned three cases for trafficking heroin - clients said they did not sell heroin
- ▶ Asked the ADA, head of drug unit, if the same CI was used in all three cases – not name of CI
- ▶ Court shuts down due to COVID

▶ April

- ▶ Response – I don't know, but your clients are all part of same blood set
 - ▶ Defense investigator: nothing to support claim of gang connection
- ▶ Request CI video – refused

Bond

- ▶ Client #1 (DG) - \$1.5m
- ▶ Client #2 (SS) - \$300k – lowered to \$50k
 - ▶ Rearrested on intimidating witness charge
 - ▶ \$100k lowered to \$60k
 - ▶ Took defense investigator less than 48 hours to disprove allegation
- ▶ Client # 3 (KG) - \$250k

Where to Start

- ▶ ACIS
 - ▶ Search by arresting officer
 - ▶ Get name/case number for every trafficking heroin charge
 - ▶ Contact defense attorneys
- ▶ Odyssey
 - ▶ PDs can search by charging officer
- ▶ Defense list servs
- ▶ Investigator
 - ▶ Funding: AOC-G-309 form; Motion/Order
 - ▶ File ex parte

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- ▶ May – get video for 1 client
 - ▶ No video; audio cuts out during ‘buy’
 - ▶ June 5 – lab report for DG: no CS
 - ▶ Offer – possession of counterfeit substance
 - ▶ Bond lowered to \$30k on PFF; released
 - ▶ June 18 – ADA acknowledges issue with video; asks for list
 - ▶ June 30 – SS cases dismissed; after lab comes back
 - ▶ July 2 – KG case dismissed – been in custody since 3/20

Now What?

- ▶ Clients out of custody and/or cases dismissed
 - ▶ CI unreliable; no CS
- ▶ No action by RPD or DA
- ▶ July - Write letter to DA and IA
- ▶ September – Abdullah placed on admin leave (with pay)

Consequences

- ▶ Sweeping changes in how RPD handles CIs - No
- ▶ Modification to bond policies - No
- ▶ September 2021 – Dennis Williams (CI) indicted
 - ▶ Then DA says no evidence officer knew fake drugs
 - ▶ But...

Consequences

- ▶ #1: City of Raleigh settled - \$2m – 15 plaintiffs
- ▶ #2: \$350k – 3 plaintiffs

- ▶ July 2022 – Abdullah charged
- ▶ Oct 2023 – Pled to 2 charges; 24m probation; 38 day split
- ▶ **"The evidence in this case, from the state's perspective, was clear," said Wake County District Attorney Lorrin Freeman.**



Four other officers told Abdullah that the heroin Williams turned in looked like brown sugar. And the lawsuits and depositions indicate they allowed arrests to occur after field tests came back negative. In a text thread among the officers, they joked about taking “ ‘bets’ on whether Aspirin would again produce ‘fake heroin,’ ”

How was CI info kept from defense?

- ▶ No probable cause hearing
- ▶ Indict ham sandwich: “reliable CI, audio and video recorded”
- ▶ G.S. 15A-904(a1) makes an express carve-out: “the State is not required to disclose the identity of a confidential informant unless the disclosure is otherwise required by law.”

CI Identity

- ▶ State only has to reveal in specific circumstances
 - ▶ CI info leads to search warrant – NO
 - ▶ CI participant in crime – Maybe, but probably no
- ▶ See SOG blog posts

CI Identity

- ▶ Unlikely State would have had to reveal CI identity in my Abdullah cases.
 - ▶ Evidence collected during search
 - ▶ Buy was the basis of the search warrant
- ▶ Issue – was search warrant valid?
 - ▶ 4 corners of document
 - ▶ "provided reliable information in the past"

Defender's Dilemma

- ▶ Plea quickly
 - ▶ Offer attempted trafficking if don't have to reveal CI – ok
 - ▶ Withhold exculpatory evidence to get plea - not ok
 - ▶ Rasmussen, 23CR334950-910; 24CR015542-910
 - ▶ Plead quickly to provide useful SA
- ▶ Watch buy video with agreement
 - ▶ Cannot give client information about CI
 - ▶ Client has to agree

Hypotheticals

- ▶ Deceased CI
- ▶ Use buys with CI to get search warrant
 - ▶ Do not have to reveal CI info
- ▶ Client refuses to plea – state indicts on additional charges
 - ▶ Have to reveal CI info before trial
- ▶ Compromised CI
- ▶ Need CI to prove trafficking charge
- ▶ \$500k bond
- ▶ ADA informs you issue with CI on federal case – NOT this case

CI – Not Deceased

- ▶ Week before trial – get a page about CI
 - ▶ Had filed motion for CI file
 - ▶ State filed motion for protective order
- ▶ Get police reports
 - ▶ Subpoena LEO agency
 - ▶ Ask ADA who prosecuted CI's cases
- ▶ OBJECT!
- ▶ After testimony – jail calls

- ▶ Mistrial – no misconduct

Discovery



- ▶ Put every request in writing
 - ▶ Follow in-person request with email
- ▶ Body Cam/Dash Cam – does not exist
 - ▶ Request log
 - ▶ Does not exist = destroyed evidence
- ▶ Motion to Compel
- ▶ Subpoena
- ▶ Ex Parte Request



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