

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA MARIE TEIXEIRA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52156

FILED

NOV 12 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of maintaining a place for the sale or use of a controlled substance, one count of being under the influence of a controlled substance, and two counts of possession of a controlled substance for the purpose of sale. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge. The district court sentenced appellant Lisa Marie Teixeira to various concurrent prison terms totaling 12 to 36 months.

Teixeira contends that the district court erred by denying her pretrial motion and her renewed motion to dismiss the proceedings against her. Teixeira observes that the State asserted its privilege to refuse to disclose the identities of its confidential informants. Teixeira declares that her theory of defense was that the State's confidential informants planted evidence in her residence and then offered her to the police in exchange for leniency. Teixeira argues that without the confidential informants' identities and testimony, she was unable to develop her theory of defense. And Teixeira alleges that the facts of her case are peculiar, that Kelly Ryan was a possible confidential informant,

and that Sheriff Deputy Christopher Miller testified that he could withhold information about the identity of a confidential informant when giving testimony.

NRS 49.335 permits the State to refuse to disclose the identity of a confidential informant. However, the State's privilege to refuse disclosure is not unlimited and the district court is required to dismiss the proceedings based on the State's refusal to disclose the identity of the confidential informant if there is "a reasonable probability that the informer can give testimony necessary to a fair determination of the issue of guilt or innocence." NRS 49.365. In considering whether dismissal is appropriate, we have recognized that "[t]he identity of an informant need not be disclosed where he is not a material witness, because he can neither supply information constituting a defense nor rebut a necessary element of an offense." Sheriff v. Vasile, 96 Nev. 5, 8, 604 P.2d 809, 810 (1980).

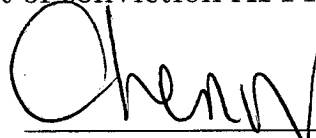
Prior to trial, the district court conducted an evidentiary hearing on Teixeira's motion to dismiss. The district court denied Teixeira's motion to dismiss after finding that the State had invoked its privilege pursuant to NRS 49.335, Ryan was not a confidential informant, and the confidential informants were not material witnesses as defined by Vasile, 96 Nev. at 8, 604 P.2d at 810.


During the trial, Teixeira questioned Deputy Miller about the confidential informants' statements in the affidavit that was used to obtain the search warrant. When the State also asked Deputy Miller about these statements on redirect examination, Teixeira argued that the State was presenting information it previously stated was not necessary to the fair determination of guilt or innocence in this case, and she renewed her motion to dismiss. The district court ruled that the confidential

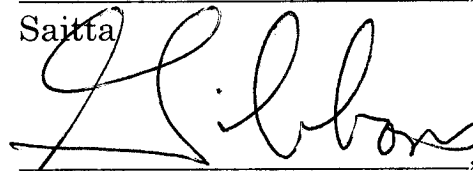
informants were not material witnesses in this case, noted that Teixeira opened the door to the State's line of questioning, and denied her renewed motion to dismiss.

There is nothing in the record on appeal to indicate that the confidential informants could supply information constituting a defense or rebutting a necessary element of an offense. Accordingly, we conclude that Teixeira has not demonstrated that the district court erred by denying her motions, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Leon Aberasturi, District Judge
Kalter Law Firm P.C.
Attorney General Catherine Cortez Masto/Carson City
Lyon County District Attorney
Lyon County Clerk