

Affirmed and Opinion filed February 10, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-01354-CR

ALIX A. ROMERO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 776,973**

OPINION

Appellant Alix A. Romero was charged with possession of cocaine. She filed a pretrial motion requesting disclosure of the identity of the confidential informant whose information had been used in obtaining the underlying search warrant, but the motion was denied. Appellant then pleaded guilty and was placed on deferred adjudication probation, subject to her right to appeal the denial of the pretrial motion. We find no error in the trial court's ruling on the pretrial motion, and affirm.

Houston Police Officer Stephen Kwiatkowski was informed by a confidential informant that a woman known as "Wheta" was selling crack cocaine at a certain bar in Houston, Texas,

and that approximately twenty “rocks” of crack cocaine were on a napkin behind the bar. Based upon this and other information, Officer Kwiatkowski obtained a search warrant to search the bar and arrest “Wheta.”

In later executing the warrant, the officer approached appellant who was behind the bar and asked if she was “Wheta.” Appellant replied “Si.” The officer observed crack cocaine in plain view on the bar in proximity to appellant, and arrested her for possession of cocaine. Prior to trial, appellant filed a motion requesting disclosure of the confidential informant’s identity, which was denied after a hearing.

As her sole point of error on appeal, appellant argues that the trial court erred in denying the motion, as the informant’s testimony was necessary to a fair determination of guilt. Rule 508, TEX. R. EVID., grants the State the privilege of not disclosing the identity of an informer, unless it is shown that the informer may be able to give testimony necessary to a fair determination of guilt or innocence. The defendant has the burden of establishing the need for disclosure. *Bridges v. State*, 909 S.W.2d 151, 157 (Tex. App. – Houston [14th Dist.] 1995, no pet.); *Abdel-Sater v. State*, 852 S.W.2d 671, 674 (Tex. App. – Houston [14th Dist.] 1993, pet. ref’d).

Appellant contends that the informer’s testimony was indispensable to establish whether appellant was the “Wheta” the informer had earlier seen possessing and selling crack cocaine behind the bar; whether the cocaine the informer saw was the same cocaine seen by Officer Kwiatkowski, and whether the location of the cocaine observed by the officer was the same location as observed by the informer.

Contrary to appellant’s argument, none of these factors is relevant to the offense of possession of cocaine as personally observed by Officer Kwiatkowski, and any earlier offense observed by the informer was not part of the subsequent offense as charged. The informer was not present at the bar when the warrant was executed or when appellant was arrested, and was not a witness to or participant in the offense for which appellant was charged. Under such circumstances, the identity of the informer is not required, as his or her testimony is not

essential to the fair determination of guilt for the actual offense charged. *See Menefee v. State*, 928 S.W.2d 274, 279 (Tex. App. – Tyler 1996, no. pet.); *Washington v. State*, 902 S.W.2d 649, 657 (Tex. App. – Houston [14th Dist.] 1995, pet. ref'd). The trial court did not err in denying appellant's motion for disclosure of the informer's identity.

Appellant's sole point of error is overruled, and the judgment affirmed.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed February 10, 2000.

Panel consists of Justices Robertson, Sears and Cannon.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Sam Robertson, Ross A. Sears and Bill Cannon sitting by assignment.