

Quinones v. State

Acting in concert with police, an informant wore a concealed microphone and recorded the defendant making incriminating statements involving his role in a murder. The defendant was arrested and prosecuted. At a preliminary hearing, the defense filed a motion to examine any recorded statements made by the defendant. The prosecution stated that none existed. The prosecutor later admitted that he was fully aware of the existence of the tape at the time, but that in his belief, it was not discoverable, and his statement was meant to reflect that determination. A few days before trial, the defense learned of the existence of the recording from the informant's attorney. The defense filed a motion for production, which the court denied as untimely. After introduction of the tape at trial, the defense requested a continuance in order to examine the tape. The request was denied.

The Court of Criminal Appeals recounted the purpose and function of the work product privilege and classified the tape as direct evidence which likely would be used at trial and did not qualify for the work product privilege. For this reason, the Court positively stated that the trial court had discretionary power to order discovery of the tape, had it known the tape existed. The Court also reaffirmed that if the tape had contained exculpatory material, then it would have been discoverable as a matter of constitutional right. However, the court continued on to explain that criminal defendants have no general right to discovery of evidence, including recordings of their own statements, absent the existence of exculpatory content. In this light, the Court reasoned that the question of whether the tape should have been provided to the defense rested within the discretion of the trial court and was reviewable for abuse of that discretion only if the evidence was shown to be material to the defense. Finding that no exculpatory material was present on the tape, the court declined to assign error. Although it deplored the conduct of the prosecution in withholding the tape, stating that the determination of discoverability was for the court and not the prosecution to make, it declined to reverse the conviction as a consequence.

The defense countered by arguing that the prosecution's concealment of the existence of the tape caused the defense to forego a plea agreement which had been withdrawn prior to their discovery of the tape. However, the Court rejected this argument, stating that the claim of prejudicial effect did not render the tape "material," and reiterated that the defense had not shown that it would have gained any exculpatory benefit from increased access to the recording.