



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**DENNIS WAYNE CANION v. HON. DAVID R. COLE, Respondent,  
and STATE OF ARIZONA, Real Party in Interest**  
1 CA-SA 04-0036 (Opinion); CV-04-0243-PR

**Parties/Counsel:** The State is represented by Deputy Maricopa County Attorney Paul McMurdie. Dennis W. Canion is represented by Martin Lieberman.

**FACTS:**

Dennis W. Canion was convicted of felony first degree murder and was sentenced to life imprisonment. He was also convicted of aggravated assault, misconduct involving weapons, solicitation to commit second degree murder, and second degree murder. The Court of Appeals reversed the second degree murder conviction and affirmed the other convictions. See State v. Canion, 199 Ariz. 227 (App. 2000).

Subsequently, Mr. Canion filed a notice for post-conviction relief in superior court. He requested that the Maricopa County Attorney's Office (MCAO) disclose particular materials which he asserted should have been but were not given to the defense prior to trial. MCAO produced some materials, but later refused further discovery on the grounds that there is a presumption that the State already disclosed the requested items prior to trial. Mr. Canion filed a Motion to Compel Disclosure with an affidavit from his trial counsel stating that the items in question had not been given to the defense. The superior court denied the motion. The Court of Appeals accepted jurisdiction of Mr. Canion's special action petition and wrote an opinion granting relief. Canion v. Cole, 208 Ariz. 133 (App. 2004). The State filed a petition for review.

The Court of Appeals' opinion holds that "as a matter of state and federal due process, the State's duty of disclosure does not simply end with the verdict." Canion, 208 Ariz. at ¶ 1. The court "accept[ed] for the purpose of this jurisdictional analysis that Canion was convicted having been denied pre-trial discovery to which he was entitled and that the trial court compounded the State's malfeasance by denying him that discovery in PCR proceedings." Id. at ¶ 12. The court noted the holding of Brady v. Maryland, 373 U.S. 83 (1963), that the prosecution's suppression of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecutor. Id. at ¶ 14. The court acknowledged that "by its words, Rule 15.1 does not apply to PCR proceedings, but to agree with the State that this is conclusive would allow the prosecution that unlawfully failed to disclose exculpatory information in a timely manner to continue to evade that duty and thwart the due process of law to which an accused is entitled." Id. at ¶ 16.

The Court of Appeals further stated that Rule 15.1, "simply a pretrial expression of due process," does not encompass "all of a defendant's due-process rights with regard to the disclosure of exculpatory evidence" and the "defendant's right to due process with regard to the disclosure of exculpatory evidence does not cease to exist after the verdict is rendered; the prosecution has a

continuing duty to provide such evidence as was unlawfully withheld, including in the context of a PCR proceeding.” Canion, 208 Ariz. at ¶ 18. In conclusion, the Court of Appeals stated:

Accordingly, although the formal requirements of Rule 15.1 may end with a verdict, the State’s provision of due process does not, and the prosecution cannot be allowed to hide its previous failure to provide exculpatory evidence behind the strictures of that rule. *See Banks*, 124 S.Ct. at 1275. Due process mandates disclosure of evidence favorable to the accused that was suppressed by the State to the prejudice of the defendant.

. . . On the record before us, it appears that Canion has shown good cause and made colorable allegations of newly discovered materials suggesting that evidence that should have been disclosed to him was not. The trial court erred by not considering his claims in the light of the State’s continuing duty to disclose such information as due process requires.

Upon remand in this case, it is incumbent upon the prosecution to respond to Canion’s allegations. Those materials and information about which there is no doubt as to their exculpatory value should be disclosed to Canion if they have not already been given to him. Any other materials and information of arguable exculpatory value should be given to the trial court for it to engage in suitable review, including if appropriate an in-chambers examination of the evidence. . . . The court then should . . . resolve the issue whether Canion suffered prejudice as a result and fashion an appropriate remedy.

Canion, 208 Ariz. at ¶¶ 23-26.

#### **ISSUES:**

A. “Did the Court of Appeals err in finding that all of the provisions of Rule 15.1, Arizona Rules of Criminal Procedure, including those requiring the disclosure of non-*Brady* material, apply to post-conviction relief proceedings?”

B. “Did the Court of Appeals err in holding that Canion had shown ‘good cause’ why the trial court should grant his requests for discovery?”

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