

INDIANA SUPREME COURT

State of Indiana v. Brian J. Taylor

49 N.E.3d 1019 (Ind. 2016) · No. No. 46S04-1509-CR-552 · Decided March 30, 2016

SUMMARY

The Indiana Supreme Court held that law-enforcement eavesdropping on a criminal suspect’s privileged consultation with counsel violated the suspect’s constitutional rights. The court ruled that the resulting testimony is presumptively tainted, but rejected prospective blanket suppression of all testimony from officers who invoked the Fifth Amendment. It remanded for the State to disprove testimonial taint beyond a reasonable doubt for each item of testimony while preserving potentially untainted foundational testimony.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Rush, Chief Justice; Dickson, Justice; Rucker, Justice; David, Justice; Massa, Justice
JURISDICTION	Indiana
DECIDED	March 30, 2016
DOCKET	No. 46S04-1509-CR-552
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed an interlocutory suppression order, and the Indiana Supreme Court accepted transfer from the Indiana Court of Appeals. The trial court had prospectively suppressed all testimony from witnesses who invoked the Fifth Amendment regarding the State's eavesdropping on Taylor's attorney-client consultation.
STANDARD OF REVIEW	The State had to show that the suppression ruling was contrary to law. The Supreme Court deferred to specific factual findings supported by substantial evidence of probative value, did not reweigh evidence or reassess witness credibility, and reviewed legal conclusions, including constitutional questions, de novo.
PRECEDENTIAL VALUE	Published Indiana Supreme Court opinion; precedential.
PARTIES	State of Indiana v. Brian J. Taylor

TOPICS

criminal procedure

right to counsel

sixth amendment

fifth amendment

suppression of evidence

PRACTICE AREAS

criminal procedure

constitutional law

evidence

remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether eavesdropping on Taylor's attorney-client consultation violated his federal and Indiana constitutional rights to counsel.
2. Whether the trial court properly imposed prospective blanket suppression of all testimony from witnesses who invoked the Fifth Amendment regarding the eavesdropping.
3. What burden the State must satisfy to establish that testimony by presumptively tainted witnesses has an independent, untainted source.
4. Whether the witnesses' invocation of the Fifth Amendment and the prosecutor's conduct required suppression of their testimony under the Sixth Amendment Confrontation Clause or as a remedy for prosecutorial misconduct.

HOLDINGS

1. Eavesdropping by law-enforcement personnel on a criminal suspect's confidential consultation with counsel violates the suspect's federal and Indiana constitutional rights to counsel.
2. Prospective blanket suppression of all testimony from witnesses who invoked the Fifth Amendment about the eavesdropping was premature and inappropriate because some limited testimony may be independently sourced and may not materially impair Taylor's confrontation rights.
3. The State must rebut the presumption that the testimony of eavesdropping witnesses is tainted by proving beyond a reasonable doubt, for the entire substance of each witness's testimony, an independent source that does not implicate the witness's Fifth Amendment privilege or derogate Taylor's confrontation rights.
4. The court did not need to decide the prosecutorial-misconduct claim because the State's required burden to disprove testimonial prejudice could prevent the tainted fruits from reaching the jury, and the claim therefore could not yet determine the outcome.

KEY QUOTATIONS

"We hold that the State's intrusion is presumptively prejudicial. But that presumption does not necessarily require blanket suppression—as the trial court here ordered—of all testimony from witnesses who pleaded the Fifth Amendment about the eavesdropping." (1)

"Thus, even though the officers' testimony is presumptively tainted by the eavesdropping, they may yet have an independent basis for certain limited testimony, such as routine evidentiary foundation for the unsuppressed exhibits." (1)

“Unlike the exclusionary rule for tangible evidence, though, we believe the State must disprove this more-insidious testimonial taint beyond a reasonable doubt.” (10-11)

“We reverse the blanket suppression of testimony from witnesses who invoke the Fifth Amendment and remand with instructions to determine as to each presumptively tainted witness whether the State has proven beyond a reasonable doubt an independent source for that witness’s testimony without implicating the witness’s Fifth Amendment privilege—and therefore without derogating Taylor’s right of confrontation.” (13)

FACTUAL BACKGROUND

After Taylor was arrested for the murder of his girlfriend, his attorney arrived at the police station and began a private consultation with him in an interview room. Despite being told that a switch would prevent monitoring, the attorney's consultation was transmitted to a nearby room where a prosecutor and police officers listened for approximately thirty to forty minutes, including discussion of evidence and defense strategy. Officers later invoked the Fifth Amendment when questioned about the eavesdropping, preventing Taylor from determining who listened and what was heard. The State stipulated to suppression of the handgun located after Taylor disclosed its location during the consultation, while the trial court found an independent source for much of the remaining evidence but broadly suppressed the officers' testimony.

PROCEDURAL HISTORY

After the State disclosed that law enforcement officers and a prosecutor had listened to Taylor's confidential consultation with counsel, Taylor moved to suppress evidence and testimony obtained after the eavesdropping began. The trial court found an independent source for most exhibits but ordered blanket suppression of testimony from witnesses who invoked the Fifth Amendment about the eavesdropping. The Court of Appeals reversed the blanket suppression, and the Indiana Supreme Court granted transfer, vacating the Court of Appeals opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine, as to each presumptively tainted witness, whether the State has proven beyond a reasonable doubt an independent source for that witness's testimony without implicating the witness's Fifth Amendment privilege and without derogating Taylor's confrontation rights. The trial court may hold a new suppression hearing or proceed directly to a new trial, where the State may attempt to meet its burden through offers to prove outside the jury's presence. The trial court's ruling was affirmed in all other respects.

CASES CITED

- State v. Taylor, 35 N.E.3d 287, 295, 302-03, 305 (Ind. Ct. App. 2015)
- Ind. Appellate Rule 58(A)
- State v. Washington, 898 N.E.2d 1200, 1203 (Ind. 2008)

- State v. Keck, 4 N.E.3d 1180, 1183 (Ind. 2014)
- State v. Quirk, 842 N.E.2d 334, 340 (Ind. 2006)
- Speers v. State, 999 N.E.2d 850, 852 (Ind. 2013)
- Caraway v. State, 891 N.E.2d 122, 126 (Ind. Ct. App. 2008)
- Taylor v. State, 689 N.E.2d 699, 703-04 (Ind. 1997)
- United States v. Gouveia, 467 U.S. 180, 185 (1984)
- Weatherford v. Bursey, 429 U.S. 545, 547-58 (1977)
- Malinski v. State, 794 N.E.2d 1071, 1081-82 (Ind. 2003)
- State v. Fuentes, 318 P.3d 257, 262 (Wash. 2014)
- Delaware v. Fensterer, 474 U.S. 15, 19 (1985)
- United States v. Zapata, 871 F.2d 616, 623-24 (7th Cir. 1989)
- Dunbar v. Harris, 612 F.2d 690, 692 (2d Cir. 1979)
- United States v. Lord, 711 F.2d 887, 892 (9th Cir. 1983)
- United States v. Humphrey, 696 F.2d 72, 75 (8th Cir. 1982)
- Lafler v. Cooper, 566 U.S. 156, 170, 132 S. Ct. 1376, 1388-89 (2012)
- Clark v. State, 994 N.E.2d 252, 260 (Ind. 2013)
- Nix v. Williams, 467 U.S. 431, 444 (1984)
- Harden v. State, 576 N.E.2d 590, 593 (Ind. 1991)
- Ryan v. State, 9 N.E.3d 663, 667 (Ind. 2014)