

# ALBUQUERQUE CRIMINAL LAWYER BLOG

PUBLISHED BY  
**COLLINS & COLLINS, P.C.**  
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July 4, 2010

## Suppression of Evidence for Violation of Criminal Discovery Rules

Broad discovery is fundamental to due process in the defense of criminal charges. The New Mexico Court of Appeals addressed the issue in *State v. Ortiz*. The court stated that a defendant is entitled to all discovery that might reasonably relate to the defense. The defendant need not know in advance that the records, documents or other evidence are helpful, but only that they might possibly be helpful to the defense.

*Ortiz* involved a DWI stop. The officer stated in grand jury testimony that he stopped the defendant due to erratic driving behavior. Through discovery, the State provided a videotape of the incident. However, the video was missing 6 minutes of footage. The defendant insisted that the State provide the excised portion of the tape. The State refused stating that the missing portion was irrelevant to the case. The defendant also requested the officer's cell phone records for the missing 6 minute period. Again, the State refused stating that the officer had an expectation of privacy in his personal cell phone records.

The district court ordered the State to provide both the missing video footage as well as the officer's cell phone records for the six minute period. The State refused. The Court, exercising its discretionary authority for discovery violations, suppressed all evidence arising from the DWI stop which resulted in dismissal of the case. The Court of Appeals affirmed the district court's dismissal of the case.

The Court of Appeals reiterated the liberal discovery standard in criminal cases. The court cited *United States v. Lloyd*, a 1993 D.C. Circuit Court case, as follows: the "materiality standard...is not a heavy burden; rather, evidence is material as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony or assisting impeachment or rebuttal."

The Court agreed with the district court that both the missing video footage and the officer's cell phone records during the missing 6 minutes might play a role in the defense. It was not up to the defendant to prove the materiality of the evidence. Instead, the defendant had the right to obtain and review the evidence for its materiality. The court indicated that liberal discovery was fundamental to the defendant's due process rights and his right to a fair trial.

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The Court's ruling as well as the liberal rules of discovery are essential to the defense. In addition, they reflect plain common sense. A defendant would hardly be entitled to any discovery if it were required that he or she first show the materiality of the evidence before obtaining it. The materiality of evidence often cannot be known until it has been reviewed. In many cases, a review of the evidence may find that it is immaterial or otherwise inadmissible. But due process dictates that all potentially material or relevant evidence be disclosed. Only then can a determination of admissibility be undertaken. It takes little imagination to envision potential abuse of a less stringent discovery rule.

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