

Summary of SC98875, *State ex rel. John Garrabrant, Prosecuting Attorney of Ozark County, Missouri v. The Honorable Calvin R. Holden*

Proceeding originating in the Taney County circuit court

Argued and submitted September 29, 2021; opinion issued November 9, 2021

Attorneys: The prosecutor was represented by Anthony M. Brown of the attorney general's office in Springfield, (573) 751-3321. Ruud was represented by L. Kate Wilborn of the public defender's office in Ava, (417) 683-5418.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A prosecutor seeks a writ ordering the circuit court to rescind its order finding a recorded conversation to be protected by attorney-client privilege and inadmissible at trial. In a unanimous decision written by Judge W. Brent Powell, the Supreme Court of Missouri makes its preliminary writ of mandamus permanent. Although the recorded conversation constitutes privileged attorney-client communication, the defendant waived that privilege when she voluntarily disclosed the recording to a third party.

Facts: In 2017, Rebecca Ruud and her then-husband, Robert Peat Jr., were charged in Ozark County with first-degree murder, abuse or neglect of a child resulting in death, second-degree felony murder, tampering with physical evidence, and abandonment of a corpse. Venue later was changed to Taney County. Before charges were filed, Rudd obtained counsel from the state public defender's office and recorded a meeting she had with a public defender's investigator and legal assistant. Prior to a trip, Rudd gave Peat an unsealed box of personal belongings including the recording. The recording remained in a closet for several years until Peat discovered it and surrendered it to the sheriff's office. The state sought a ruling as to whether the recording could be introduced at Rudd's trial. The circuit court concluded the communication was privileged and could not be used at trial for any purpose, including impeachment. The state subsequently petitioned for a writ, requesting the circuit court be ordered to rescind its order finding the communication to be privileged. This Court entered a preliminary writ of mandamus.

PRELIMINARY WRIT MADE PERMANENT.

Court en banc holds: (1) Rudd's recorded conversation with the public defender's staff members constitutes privileged attorney-client communication. Rudd was represented by the public defender's office at the time of the meeting and, although the staff members were not attorneys, the privilege extends to communications between clients and necessary agents of the attorney. The fact that Rudd recorded the conversation did not affect the confidential nature of the meeting because she had no reason to believe the conversation was anything but private.

(2) Rudd waived the attorney-client privilege, however, by voluntarily disclosing the recording to Peat, a third party. The record reflects Rudd consciously gave the unsealed box and all of its contents to Peat to store before the trip with no indication she intended the box's contents to remain private or secret. Handing over the recording in this manner constituted a voluntary disclosure of the information to a third party, thereby waiving any privilege.