

SUPREME COURT OF MISSOURI

State ex rel. Matthew Becker, Franklin County Prosecuting Attorney
v. The Honorable Gael D. Wood

No. SC98416 (Mo. Nov. 3, 2020) · No. SC98416 · Decided November 3, 2020

SUMMARY

The Supreme Court of Missouri made permanent a preliminary writ of prohibition preventing the circuit court from compelling the elected prosecuting attorney and an associate prosecutor to testify at a pretrial hearing concerning prosecutorial vindictiveness. The Court held that the prosecutors' sentencing rationale constituted privileged attorney work product and that the defendant's allegations did not establish a presumption of prosecutorial vindictiveness or otherwise require the State to provide testimony. A dissenting opinion would have quashed the writ, concluding that the circuit court had discretion to permit limited testimony concerning the delayed notice of intent to seek the death penalty.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Zel M. Fischer; Patricia Breckenridge; W. Brent Powell; W. David Wilson; George W. Draper III; Mary R. Russell; Richard B. Stith
JURISDICTION	Missouri
DECIDED	November 3, 2020
DOCKET	SC98416
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding in prohibition. The Franklin County prosecuting attorney sought to prohibit the circuit court from enforcing an order requiring the elected prosecutor and an associate prosecutor to testify under oath at a pretrial hearing concerning alleged prosecutorial vindictiveness.
STANDARD OF REVIEW	A writ of prohibition is an extraordinary remedy appropriate to prevent usurpation of judicial power, remedy an excess of authority or abuse of discretion where the lower court lacks power to act as intended, or prevent irreparable harm. The writ is not a substitute for correction of ordinary judicial error.

PRECEDENTIAL VALUE	Published en banc opinion; precedential Missouri Supreme Court decision.
PARTIES	Matthew Becker, Franklin County Prosecuting Attorney v. The Honorable Gael D. Wood

TOPICS

criminal procedure appellate procedure constitutional law due process right to counsel

PRACTICE AREAS

criminal procedure constitutional law evidence remedies appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court could require the elected prosecuting attorney and an associate prosecutor to testify at a pretrial hearing regarding the rationale for seeking the death penalty.
2. Whether Hodges's allegations that the State withdrew plea offers and filed notice of intent to seek the death penalty after he asserted a mental-disease-or-defect defense and elected to proceed to trial established a presumption or realistic likelihood of prosecutorial vindictiveness.
3. Whether compelling the prosecutors to testify would cause irreparable harm by requiring disclosure of privileged prosecutorial work product.

HOLDINGS

1. The circuit court could not compel Becker and Houston to provide sworn testimony regarding the rationale for seeking the death penalty because that rationale consists of privileged intangible attorney work product, and prosecutorial vindictiveness is not a peculiar and unusual circumstance justifying prosecutorial testimony.
2. Hodges's allegations did not establish a presumption or realistic likelihood of prosecutorial vindictiveness because the State did not augment or add a charge by announcing its intent to seek the death penalty after an indictment for first-degree murder, and the alleged conduct occurred in the pretrial setting.
3. The State did not act vindictively by rescinding outstanding plea offers when Hodges remained free to accept or reject them and no plea agreement had been reached.
4. Hodges had not yet presented the requisite objective evidence that the State acted solely to punish him for exercising a constitutional right, although the circuit court could require an on-the-record response if such objective evidence were later presented.

KEY QUOTATIONS

“A prosecuting attorney is not incompetent to be a witness,” (3)

“A claim of prosecutorial vindictiveness does not fit within that category of case.” (3)

“Thus, the State would suffer irreparable harm if Becker and Houston are compelled to testify regarding this information.” (4)

“A presumption of vindictiveness is established when “the facts show a realistic likelihood of vindictiveness in the prosecutor’s augmentation of charges.”” (5)

“A prosecuting attorney certainly possesses the discretion to seek any statutorily authorized sentence seven weeks before trial is set to begin.” (8)

“If Hodges, during the hearing on his motion, presents objective evidence supporting prosecutorial vindictiveness, the circuit court could properly require the State to choose between rebutting the claim of prosecutorial vindictiveness on the record or permitting the court to sustain the motion to strike in this case.” (10)

FACTUAL BACKGROUND

A grand jury indicted Aaron Hodges on two counts of first-degree murder and two counts of armed criminal action. After extended plea negotiations, Hodges withdrew his jury-trial waiver and announced an intent to proceed to trial based on a defense of not guilty by reason of mental disease or defect. The State withdrew outstanding plea offers, and the newly elected Franklin County prosecutor filed notice of intent to seek the death penalty seven weeks before trial. The circuit court ordered the elected prosecutor and an associate prosecutor to testify under oath about the rationale for the death-penalty notice and alleged prosecutorial vindictiveness.

PROCEDURAL HISTORY

A grand jury indicted Aaron Hodges for two counts of first-degree murder and two counts of armed criminal action. After plea negotiations, Hodges withdrew his jury-trial waiver and later announced an intent to proceed to trial on a mental-disease-or-defect defense. The State withdrew outstanding plea offers, and after a change in elected prosecutors, filed notice of intent to seek the death penalty. Hodges moved to strike the notice and sought to call the prosecutors as witnesses regarding the delay and rationale for seeking death. The circuit court ordered the testimony; the court of appeals denied prohibition; the Supreme Court of Missouri issued a preliminary writ and made it permanent.

DISPOSITION

writ_granted

CASES CITED

- State ex rel. Anheuser-Busch, LLC v. Moriarty, 589 S.W.3d 567 (Mo. banc 2019)
- State ex rel. Rogers v. Cohen, 262 S.W.3d 648 (Mo. banc 2008)
- State ex rel. Malashock v. Jamison, 502 S.W.3d 618 (Mo. banc 2016)
- State v. Hayes, 473 S.W.2d 688 (Mo. 1971)
- State v. Antwine, 743 S.W.2d 51 (Mo. banc 1987)
- United States v. Nobles, 422 U.S. 225 (1975)

- State ex rel. Gardner v. Boyer, 561 S.W.3d 389 (Mo. banc 2018)
- Blackledge v. Perry, 417 U.S. 21 (1974)
- State v. Gardner, 8 S.W.3d 66 (Mo. banc 1999)
- State v. Smith, 781 S.W.2d 761 (Mo. banc 1989)
- State v. Holland, 653 S.W.2d 670 (Mo. banc 1983)
- State v. Baker, 636 S.W.2d 902 (Mo. banc 1982)
- State ex rel. Patterson v. Randall, 637 S.W.2d 16 (Mo. banc 1982)
- State v. Cayson, 747 S.W.2d 155 (Mo. App. 1987)
- State v. Potts, 181 S.W.3d 228 (Mo. App. 2005)
- State ex rel. Douglas Toyota III, Inc. v. Keeter, 804 S.W.2d 750 (Mo. banc 1991)
- State ex rel. Strauser v. Martinez, 416 S.W.3d 798 (Mo. banc 2014)
- United States v. Goodwin, 457 U.S. 368 (1982)
- State v. Buchli, 152 S.W.3d 289 (Mo. App. 2004)
- State v. Miller, 981 S.W.2d 623 (Mo. App. 1998)
- State v. Barnett, 577 S.W.3d 124 (Mo. banc 2019)
- State v. Molinett, 876 S.W.2d 806 (Mo. App. 1994)
- State v. Massey, 763 S.W.2d 181 (Mo. App. 1988)
- Bordenkircher v. Hayes, 434 U.S. 357 (1978)
- State v. McMillin, 783 S.W.2d 82 (Mo. banc 1990)
- Morgan v. Illinois, 504 U.S. 719 (1992)
- Area 16 Public Defender Office III v. Jackson County Prosecuting Attorney's Office, WD82962, 2020 WL 3067596
- State ex rel. Patterson v. Randall, 637 S.W.2d 16 (Mo. banc 1982)