

FILED: December 18, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

DARRELL KELLY MIDDLEKAUFF,
Defendant-Appellant.

Deschutes County Circuit Court
06FE1899ST

A148871

Stephen N. Tiktin, Judge.

Submitted on September 30, 2013.

Peter Gartlan, Chief Defender, and Marc D. Brown, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Erin C. Lagesen, Assistant Attorney General, filed the brief for respondent.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Duncan, Judge.

PER CURIAM

Affirmed.

1 PER CURIAM

2 Defendant was convicted of one count of aggravated murder, seven counts
3 of second-degree sexual abuse, and seven counts of delivery of methamphetamine to a
4 minor. On appeal, defendant advances five assignments of error, but we write to address
5 only his second assignment of error. Defendant contends that the trial court erred in
6 admitting certain materials in an envelope marked "legal mail" because, according to
7 defendant, those materials were protected under attorney-client privilege. *See* OEC
8 503(2) ("A client has a privilege to refuse to disclose and to prevent any other person
9 from disclosing confidential communications made for the purpose of facilitating the
10 rendition of professional legal services to the client[.]").

11 After reviewing the record, we conclude that the trial court did not err in
12 admitting the contents of the envelope into evidence. During the state's case-in-chief, the
13 court overruled defendant's privilege-related objection to the evidence on the ground that,
14 in the course of pretrial litigation, defendant had raised and then withdrawn the same
15 privilege argument, and the case proceeded with the understanding that defendant was no
16 longer objecting to the admission of the evidence on the basis of attorney-client privilege.
17 The record is consistent with the trial court's understanding of the procedural history of
18 the case; as such, the court did not err in denying defendant's subsequent attempt to
19 relitigate his previously withdrawn privilege argument during the course of the trial.

20 Affirmed.