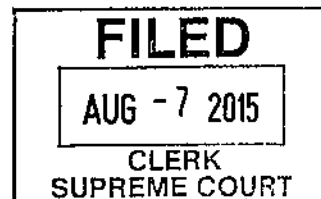


COMMONWEALTH OF KENTUCKY
KENTUCKY SUPREME COURT
APPEAL NO. 2014-SC-000394-D



GARY MARTIN, BOBBY MOTLEY, AND
MIKE SAPP

APPELLANTS

vs.

STEPHEN O'DANIEL

APPELLEE

** ** * * * * *

**ON DISCRETIONARY REVIEW FROM THE COURT OF APPEALS
2012-CA-001961
APPEAL FROM THE FRANKLIN CIRCUIT COURT
SUMMARY JUDGMENT
HONORABLE SHEILA R. ISAAC, SPECIAL JUDGE
NO. 07-CI-00820**

** ** * * * * *

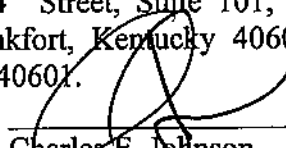
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REPLY BRIEF FOR APPELLANT, BOBBY MOTLEY

** ** * * * * *

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2015, a true and correct copy of the Appellant, Bobby Motley's Brief was served via first-class mail, postage prepaid, on the following: Hon. Shelia Isaac, Special Judge, Franklin Circuit Court, P.O. Box 678, Frankfort, KY, 40602-0678, Hon. Thomas E. Clay, 462 South 4th Street, Suite 101, Louisville, KY 40202, L. Scott Miller, 919 Versailles Rd, Frankfort, Kentucky 40601, William E. Johnson, 326 W. Main Street, Frankfort, Kentucky 40601.


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STATEMENT OF POINTS AND AUTHORITIES

ISSUES AND AUTHORITIES

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I. PURPOSE OF THIS REPLY BRIEF

This purpose of this brief is to respond to the counterstatement of the case and arguments found in Appellee's brief.

II. ARGUMENT

The Appellee's brief is riddled with references to documents, transcripts and conversations that simply are not part of the record in this case. Appellant Motley asks this Court to disregard any and all statements of Appellee that are not supported by the record in this case. The references are so numerous that is impossible to address each one in this Reply brief within the page limits allowed by CR 76. Appellee's baseless accusations were correctly rejected by the trial court because they are not supported by the record. Clearly, Appellee's continued recitation of unsupported accusations does not vitiate the undisputed facts in the record. The trial court properly rejected the unsupported conspiracy theory of the Appellee for the uncontroverted facts in the record.

On page 5 of the brief Appellee falsely asserts the Appellant Motley was "directly responsible for producing or (withholding) material turned over to the defense in discovery, by the prosecution in the case". This is simply

false. Assistant commonwealth's Attorney Tom Van Derothstyne testified he produced the discovery to the Appellee in the criminal case, not Appellant Motley.

Finally, the Appellee provides pages of excerpts from Cleve Gambill's deposition which do not have any relevance to any salient fact. Mr. Gambill's answers to hypothetical questions of Appellee's counsel and opinions and speculation regarding political posturing are not relevant or facts in this case regardless of Mr. Gambill's resume.

1. APPELLANT MOTLEY DID NOT INITIATE OR MAINTAIN AN ACTION AGAINST THE APPELLEE.

Appellee's entire argument avoids a discussion of the issue of whether appellant's Motley, Martin or Sapp initiated the criminal charges against him except to say they met with a prosecutor. This issue has been thoroughly set forth in Appellants briefs. As such a recitation here would simply be redundant. However, if the Appellee fails to prove the first element of initiation the arguments with respect to the remaining elements of malicious prosecution, even though false, are irrelevant and his claim must fail.

2. APPELLANT MOTLEY DID NOT ACT WITHOUT PROBABLE CAUSE OR WITH MALICE TOWARDS APPELLEE.

Appellant Motley did not arrest or take a criminal complaint against the Appellee. Appellant Motley did not

testify at the grand jury or for the Commonwealth in the trial of the case. he simply received an assignment to investigate an allegation of a forged application for title to a car from the Department of Transportation. He interviewed witnesses and provided that information to prosecutors.

As such it again is impossible to conclude he acted without probable cause or malice.

3. APPELLANT MOTLEY DID NOT GIVE FALSE TESTIMONY OR WITHHOLD EXCULPATORY EVIDENCE.

Appellee alleges that Motley concealed exculpatory information, specifically an interview of Eva McDaniel conducted on May 9, 2006. This is simply a false allegation because the Appellee in fact received the recorded taped interview before his trial and was aware of its existence since the beginning of the investigation a sit was detailed by appellant Motley in his case report. Appellee O' Daniels testified at his Deposition at pps. 114-116 as follows:

Q. What's the rest of it?

A. I think he participated in withholding the interview that he did with Eva McDaniel.

Q. And did you have that interview at your trial?

A. Yes.

Q. Did you play that interview?

A. I believe we did, yes.

Q. How long before the trial did you have it?

A. Maybe a week.

Q. And so because the interview wasn't made available to you a week before trial, that's a second basis for your filing this lawsuit against Bobby Motley?

A. Yes, sir.

With respect to withholding an exculpatory interview with Eva McDaniel a review of the KSP report of the entire investigation detailed the interview in question together with a narrative that clearly shows the Trial Court properly found that the statement was not exculpatory. RA2, Vol. 1, pp. 123-150.

Moreover, the lead prosecutor Tom Van DeRostyne testified at deposition that the interview alleged to have been withheld was in fact inculpatory. VanDeRostyne depo. pgs 10-11. In addition, Van DeRostyne further testified under questioning by Appellant's counsel that it was possible that he had the recording of the conversation all along and it just got lost in the discovery process. Van DeRostyne depo pgs 47-48.

Appellee provides a diatribe about the discovery process and cites to the "bates stamped documents of the

Commonwealth " in the criminal trial of the Appellee. Even though these documents are not part of the record in this case the whole argument is irrelevant because the Appellee knew of the existence and substance of the interview from Appellant Motley's initial police report and undeniably had the tape before the trial.

It is impossible to rationally conclude that the tape was withheld.

4. APPELLANT MOTLEY DID NOT ENGAGE IN A CONSPIRACY TO MISLEAD PROSECUTORS, THE GRAND JURY OR PETIT JURY.

The record herein, as extensive as it is, is devoid of any reference that Appellant Motley gave any false testimony. Quite the contrary. Appellant Motley did not testify before the grand jury and was not called in the Commonwealth's case in chief.

Appellee goes on to make an unconnected reference to Appellant Motley meeting with the Commonwealth's Attorney as if doing so somehow imputes a sinister motive to him. Meeting with prosecutors is day to day business of police investigators and does not effect Appellant Motley's entitlement to immunity.

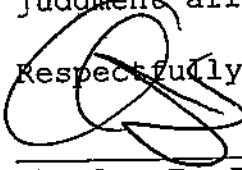
In Appellee's rambling diatribe against Motley much was made of the fact that he met with a prosecutor (his duty) and that, if appropriate, he wanted the whole bunch

indicted! If the evidence led to that conclusion that is exactly the correct response of a police officer, even if the "whole bunch" wielded extraordinary political influence. Herein, the general counsel and the deputy secretary of the justice cabinet (both licensed attorneys) preemptively met with the elected prosecutor on behalf of the Appellee. Were they there at lawyers for Appellee? If not what was their motivation? To browbeat an ordinary policeman to prevent him from his duty? Such unusual and extreme interference by such high ranking public figures certainly had an effect on Motley. He and the other officers proceeded in an abundance of caution, taking the lead and advice of the lawfully appointed prosecutor. The result of that caution was duly noted by the trial court when she correctly opined that the officers were entitled to Summary Judgment because they did not initiate an action against Appellee.

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that the Court of Appeals decision be reversed and the trial court's summary judgment affirmed.

Respectfully submitted,


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