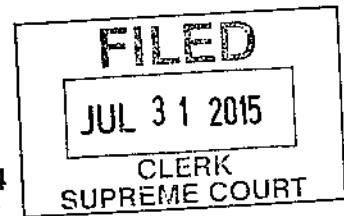


SUPREME COURT OF KENTUCKY
CASE NOS. 2014-sc-000373, 000389, 000394
COURT OF APPEALS NO. 2012-CA-001961



GARY MARTIN, BOBBY MOTLEY AND MIKE SAPP

APPELLANTS

v. 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

STEPHEN O'DANIEL

APPELLEE

REPLY BRIEF OF APPELLANT, GARY MARTIN

Certificate of Service

This brief was served by depositing true copies in the United States Mail, first class, postage prepaid, addressed to: Thomas E. Clay, Esq., Meidinger Tower, Suite 1730, 462 South Fourth Avenue, Louisville, KY 40202; Charles E. Johnson, Esq., Johnson & Engel, 43 S. Main Street, Winchester, KY 40391; Lindol Scott Miller, Esq., Kentucky State Police Legal Office, 919 Versailles Road, Frankfort, KY 40601; Timothy A. Sturgill, Esq., General Counsel, Kentucky Association of Counties, 400 Englewood Drive, Frankfort, KY 40601; John F. Estill, Esq., 24 W. 3rd Street, Maysville, KY 41056; Mike Troop, Esq., 178 Colston Lane, Frankfort, KY 40601; Honorable Sheila R. Isaac, Special Judge, 551 Robert F. Stephens Courthouse, 120 N. Limestone Street, Lexington, KY 40507 and Honorable Samuel P. Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601 on this the 31 day of July, 2015

Respectfully submitted,

BY: 

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I. THE PURPOSE OF THIS BRIEF

The purpose of this brief is to respond to both statements in the Counterstatement of the Case and the Argument found in Appellee's brief.

II. ARGUMENT

1. APPELLANT DETECTIVE MARTIN DID NOT ACT WITH MALICE AND WITHOUT PROBABLE CAUSE TOWARDS APPELLEE.

The allegation is made on page 1 of Appellee's brief that Appellants acted with malice and without proper cause. There is no evidence in the record supporting that statement.

The Kentucky State Police ("KSP") first became involved in this matter when Appellee, concerned that he may have purchased a stolen car, took the car to KSP Detective Bill Riley, a recognized expert in stolen car matters. Detective Riley confirmed it was a stolen car. KRS 16.200(3) and 186A.320 required KSP to impound the car. Later Detective Riley confirmed the vehicle was insured by State Farm Insurance Company ("State Farm"). State Farm had paid the rightful owner for the loss and acquired the right of ownership to the vehicle. Appellee commenced trying to find a way to secure title to the car even though he knew State Farm had the right to title to the car. Appellee, an employee of the Justice and Public Safety Cabinet, was able to get his bosses, including the Secretary of the Cabinet, Lt. Governor Pence, Deputy Secretary Gambill and General Counsel Morgan involved in a controversy with the KSP about who should have title to the vehicle. For some reason

Appellee and his supporters thought if the title could be registered in Appellee's name prior to being registered in State Farm's name, Appellee would have superior title. They were mistaken as to the law.

The fact the KSP had opened a criminal investigation about the impounding of a stolen vehicle meant that a criminal investigation was ongoing when the Justice Cabinet people became involved in trying to help Appellee secure title. It took a while for the criminal investigation information to sink into the thought processes of the Justice officials. See letter of Cleve Gambill, (Tab 3, Appellant Martin's brief) where he finally sees the light.

Appellee's problem in this case really began on April 25, 2006, when he went to County Clerk Eva McDaniel and convinced her to prepare title documents in his favor. He knew at that time State Farm had a right to title and was in the process of making application for title. This was the criminal act for which he was later charged.

Major Sapp, Appellant Martin's superior, directed Martin to investigate the actions of Appellee. All that Appellant Martin did thereafter was carry out the duties that were assigned to him. He confirmed in two interviews with County Clerk McDaniel that Appellee had presented her with a KSP Confidential Vehicle Inspection Report and persuaded her to make multiple computer changes to show a vehicle inspection number and year of production of the vehicle different from the title acquired by Appellee. The purpose of this deception was to show title in the vehicle to Appellee. Appellee did not tell Clerk McDaniel that State Farm had a right of title and was making application for title. Appellant Martin interviewed other possible witnesses, and met with prosecutors in preparing the case for presentation to the grand jury. He testified before the grand jury and at trial. There is nothing in the record

showing what he did was maliciously done and without proper cause. He simply carried out the dues of an investigating police officer.

2. THERE WAS NO "EGREGIOUS CONSPIRACY" HERE.

This is another assertion of Appellee in his brief without any foundation in the record. The special prosecutor was satisfied with the information presented to him, which he used at trial and made available to Appellee. It was the special prosecutor who decided that Appellee's actions violated KRS 516.030. It was the special prosecutor who elected to present the case to the grand jury. It was the grand jury who found probable cause for the issuance of an indictment. There was no finding of a conspiracy by the Trial Court. The Trial Court found that the underlying criminal case was initiated by the return of an indictment by a grand jury upon submission by the prosecuting attorney.

3. THE INTERVIEWS OF EVA McDANIEL AND THE INSIGNIFICANCE THEREOF.

There is no doubt that County Clerk Eva McDaniel was interviewed on three occasions. Shee was first interviewed by Detective Motley on May 9, 2006. Detective Motley details this interview in the Kentucky State Police Investigative Report which was given to Appellee in discovery. Thus Appellee knew well in advance of trial of the interview and its content. Appellee claims the fact an employer of the Kentucky Department of Vehicle Regulation told Ms. McDaniel she would need a State Police confidential vehicle

inspection report made the interview very important to him. However, this report would only be important to one having a right to title to the vehicle. Appellee did not have that right.

Appellant Martin interviewed Clerk McDaniel on June 6, 2006. Ms. McDaniel relates the same information from the first interview: that a confidential State Police inspection would be needed. Appellee received this by discovery and could have compared it to the detailed summary in the KSP investigative report. He could also have demanded a copy of the Motley interview.

The contentions of Appellee about the Motley interview is without merit because Appellee received all three interviews and used them at the criminal trial. The interviews are not exculpatory, but even if they were Appellee used them at trial and suffered no prejudice.

4. THE PARAGRAPH AT THE BOTTOM OF PAGE 2 OF APPELLEE'S BRIEF IS WITHOUT EVIDENTIARY FOUNDATION.

This is an assertion by Appellee's counsel in his questioning of Major Sapp during a deposition in this case. No witness in the case ever said such a telephone call was made or received. It does not constitute evidence in the case. It has no evidentiary value. Much like Appellee's conspiracy theories in this case, the assertion in the brief should be ignored.

5. THE PRESUMPTION OF PROBABLE CAUSE FOR THE INDICTMENT WAS NOT OVERCOME.

Appellee finally on page 26 of his brief gets to an argument as to why he contends the facts of the case overcome the presumption of probable cause for the indictment. First,

he claims there was "prosecutor shopping." It was Appellee, and later the General Counsel of the Justice and Public Safety Cabinet, who first went to see Commonwealth Attorney Larry Cleveland. This "persuasion shopping" by Appellee contributed to Commonwealth Attorney Cleveland writing that he had a conflict. In the letter asking for an appointment of a special prosecutor Commonwealth Attorney Cleveland writes: "My discussions regarding the matter with the individuals involved lead me to believe a conflict exists such as to make the appointment of a special prosecutor appropriate." (Writer's emphasis, Tab 5 of Appellant Martin's brief). Both Appellee and the KSP officers talked to Commonwealth Attorney Cleveland and this caused him to seek the appointment of a special prosecutor.

Next Appellee claims that Major Sapp's insubordination toward the Justice Cabinet's orders should override the presumption of probable cause. Appellee overlooks Deputy Secretary Cleve Gambill's letter to Commissioner Miller of the Kentucky State Police wherein he acknowledges that in an earlier letter he "made it abundantly clear that the KSP may investigate any and all criminal allegations in this matter." (Tab 3, Appellant Martin's brief). Obviously Deputy Secretary Gambill and those in the Justice Cabinet trying to help Appellee to secure title to the vehicle came to recognize that KSP had a right and duty to investigate this matter.

Finally Appellee claims there was the intentional withholding of exculpatory evidence that negates the presumption of probable cause. The facts are that every item of evidence claimed withheld was made available to him and was used by him at his criminal trial. Some evidence may have been given to him later than others, but he received and used it all at trial.


III. CONCLUSION

The Trial Court was correct in finding that it was the special prosecutor who made the decision to prosecute and undertook prosecution of the case. The many conspiratorial claims by Appellee are without merit in this case.

The opinion of the Court of Appeals should be reversed and the opinion and order of the Trial Judge reinstated.

Respectfully submitted,

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