

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

vs.

KELLEN C. McKINNEY,

APPELLANT.

DOCKET NUMBER WD69494

DATE: October 27, 2009

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Marco A. Roldan, Judge

Appellate Judges:

Division Three: Harold L. Lowenstein, P.J., Joseph M. Ellis and Lisa White Hardwick, JJ.

Attorneys:

Shaun J. Mackelprang, for Respondent

Frederick J. Ernst, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

KELLEN C. McKINNEY,

APPELLANT.

WD69494

Jackson County, Missouri

Before Division Three Judges: Harold L. Lowenstein, P.J., Joseph M. Ellis and Lisa White Hardwick, JJ.

Kellen McKinney appeals his convictions on two counts of murder in the first degree, two associated counts of armed criminal action, and one count of felony attempted escape from confinement.

REVERSED AND REMANDED.

Division Three holds:

(1) The trial court improperly joined McKinney's offense of attempted escape with his first degree murder and armed criminal action charges. Joinder was improper as a matter of law because McKinney's attempted escape charge is not of the same or similar character as his murder or armed criminal action charges. Further, it was neither part of the same transaction, nor connected to, McKinney's murder or armed criminal action charges. Finally, the attempted escape charge was not part of a common scheme or plan involving the murders or armed criminal action.

(2) In Missouri, prejudice is presumed when there is an improper joinder. *State v. Simmons*, 815 S.W.2d 426, 430 (Mo. banc 1991).

Opinion by: Joseph M. Ellis, Judge

Date: October 27, 2009

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