

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

OREN GENE GAMBLE, SR, et al.,

Appellants,

v.

JIM BROWNING, et al,

Respondents.

DOCKET NUMBER WD73352

Date: June 29, 2012

Appeal from:
Jackson County Circuit Court
The Honorable Joel F. May, Judge

Appellate Judges:
Division One: Alok Ahuja, P.J., James M. Smart, Jr., JJ. and James E. Welsh, JJ.

Attorneys:
Joseph P. Bednar, Jr., Jefferson City, MO and Chad C. Beaver, Kansas City, MO, for appellant.
Doug Leyshock, Jefferson City, MO and James F. Ralls, Jr., Liberty, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

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Appellants,

v.

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WD73352

Jackson County

Before: Division One: Alok Ahuja, P.J., James M. Smart, Jr., JJ. and James E. Welsh, JJ.

Oren Gamble sued Respondents Larry McCoy, a police informant, and Jim Browning and Dan Cline, both now retired Kansas City, Missouri, police officers, for malicious prosecution, based on Gamble's conviction for burglary in 1986. Gamble alleged that the Respondents improperly instigated his conviction by entering into, and then concealing, an agreement amongst themselves under which McCoy would falsely implicate Gamble in a crime in order to secure more favorable treatment for McCoy on other charges.

Gamble appeals a judgment entered in favor of the Respondents following a jury trial. He claims that the trial court made numerous errors in the admission or exclusion of evidence, and that he is entitled to a new trial.

AFFIRMED.

Division One holds:

The circuit court did not abuse its discretion by refusing to admit into evidence the 2001 order of another circuit judge setting aside Gamble's conviction and finding that a manifest injustice had occurred. The Respondents were not parties to the earlier proceeding, which resulted in the 2001 order, and were not in privity with the State, which was Gamble's adversary in the 2001 proceedings. We join with other courts which have held, as a general matter, that police officers are not bound, in their individual capacities, by determinations adverse to the state in prior criminal cases.

Given that the order's factual findings were not binding on the Respondents, admission of the order would have been unfairly prejudicial to them. Admission of the order cannot be justified by referencing the Respondents' cross-examination of Gamble concerning his

inconsistent allegations over the years concerning who was responsible for his wrongful conviction.

The circuit court did not err by introducing evidence of prior acts of misconduct by Gamble. Some of the evidence about which Gamble now complains was not properly objected to. In other cases, the evidence: was relevant to explain the Respondents' conduct; made only vague references to Gamble's prior bad acts; or referred to a prior instance of Gamble's conduct which reflected directly on his character for truthfulness.

Finally, Gamble argues that the trial court erroneously excluded portions of videotapes depicting encounters in which Larry McCoy admitted to having set Gamble up. Gamble failed to make a specific offer of proof listing the portions of the videotapes he alleges were improperly excluded, and fails to identify the improperly excluded portions on appeal. In addition, although Gamble argues that the presentation of an edited videotape suggested that the tape was a fabrication, the trial court was not required to admit the entirety of the tape, including the plainly irrelevant portions, simply to give the jury a more continuous viewing experience. Although we acknowledge that showing the entire videotapes may have had *some* limited tendency to rebut a contention that they were fabricated, we do not believe this tenuous connection required the trial court to play the entirety of the videotapes to the jury, given their length, and the fact that they included material which was plainly irrelevant.

Opinion by: Alok Ahuja, Judge

June 29, 2012

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