

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

MICHAEL J. NOLTE and BARBIE NOLTE,

Appellants,

v.

FORD MOTOR COMPANY,

Respondent.

DOCKET NUMBER WD75371

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 9, 2014

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable J. Dale Youngs, Judge

JUDGES

Division One: Martin, P.J., and Pfeiffer and Mitchell, JJ.

CONCURRING.

ATTORNEYS

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

MICHAEL J. NOLTE and BARBIE)
NOLTE,)
)
Appellants,) OPINION FILED:
v.) December 9, 2014
)
FORD MOTOR COMPANY,)
)
Respondent.)

WD75371

Jackson County

Before Division One Judges: Cynthia L. Martin, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

Michael and Barbie Nolte (collectively “Nolte”) appeal the trial court’s judgment, entered following a jury verdict in favor of Ford Motor Company, on their product liability claims related to the placement and design of the fuel storage system in Ford’s 2003 Crown Victoria Police Interceptor. Nolte argues that the trial court erred in the admission and exclusion of certain evidence during trial. Because the trial court erroneously concluded that a government report is admissible without first determining that the report was both logically and legally relevant, we reverse and remand.

REVERSED AND REMANDED.

Division One holds:

1. When a party receives an adverse ruling on a motion in limine seeking to exclude evidence, he may simply object when the evidence is offered by the opposing party and take his chances on appeal, or he may face the evidence directly by first broaching the subject to reduce the potentially damaging effect of the evidence.
2. A party cannot seek to utilize evidence in the pursuit of reasonable trial strategy and then turn around on appeal and claim that same evidence was inadmissible and prejudicial.

3. To properly preserve an objection to the admission of evidence, which is the subject of the motion, the movant must wait until the challenged evidence is actually offered and then make a specific objection to its admission. Regardless of any trial strategy, a party's pre-emptive introduction of *the challenged evidence* waives his objection thereto on appeal.
4. Mere *references* to challenged evidence following strenuous (but unsuccessful) objections to its admission do not waive the right to challenge the admission of that evidence on appeal.
5. When a party introduces evidence *related* to the challenged evidence, as opposed to the *actual* evidence being challenged, the question is whether the party opposing admission has opened the door to the admission of the evidence.
6. The doctrine of opening the door allows a party to explore otherwise inadmissible evidence on cross-examination when the opposing party has made unfair prejudicial use of related evidence on direct examination.
7. Even if the door is opened, admission of otherwise inadmissible evidence is not an automatic consequence; the evidence must still be examined for basic relevance.
8. Here, there was no "unfair prejudicial use" of the related evidence introduced at trial; thus, the door was not opened for admission of the entire report, which had potential relevance problems.
9. A government report that satisfies the foundation requirements of section 490.220 must nonetheless be relevant as a condition of its admissibility.
10. To be admissible, evidence must be both logically and legally relevant.
11. The party seeking to admit evidence bears the burden of establishing both its logical and its legal relevance.
12. At a minimum, when evaluating whether the ODI report was logically relevant, the trial court needed to consider what facts were in issue, because evidence is logically relevant only if it tends to prove or disprove a fact in issue.
13. Where the relevancy or admissibility of evidence offered is not apparent, it may be rejected unless there is a statement of the purpose of its introduction by which the court may determine its relevancy or admissibility.
14. Legal relevance is a determination of the balance between the probative and prejudicial effect of the evidence. That balancing requires the trial court to weigh the probative value, or usefulness, of the evidence against its costs, specifically the dangers of unfair prejudice, confusion of the issues, undue delay, misleading the jury, waste of time, or

needless presentation of cumulative evidence. If the cost outweighs the usefulness, the evidence is not legally relevant and should be excluded.

15. The potential for prejudice to Nolte from admission of the ODI report was great, as it likely implied to the jury that a federal regulatory agency, seemingly—though not definitively—tasked with the same responsibility the jury faced, already decided the issue in Ford’s favor.

16. The trial court failed to separately assess relevance, erroneously believing it was compelled to admit the ODI report merely because it was a government report with a tangential connection to the case. This was prejudicial error, as there is a reasonable probability that the error affected the outcome of the trial.

Opinion by: Karen King Mitchell, Judge

December 9, 2014

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