

ARKANSAS STATE HIGHWAY COMMISSION
v. Jesse BELT et ux

77-310

565 S.W. 2d 28

Opinion delivered May 1, 1978
(In Banc)

APPEAL & ERROR — IDENTICAL TESTIMONY PRESENTED ON RETRIAL. —
LAW OF THE CASE GOVERNS. — Where a trial court permitted cer-
tain testimony of a landowner to be introduced in a condemna-
tion proceeding, over the objection of the condemnor, but the
condemnor did not complain of the court's ruling on appeal, the
law of the case precludes the condemnor from raising the issue
on appeal of a retrial of the case in which the identical testimony
was admitted by the trial court.

Appeal from Franklin Circuit Court, *David Partain*,
Judge; affirmed.

Thomas B. Keys and Philip N. Gowen, for appellant.

Lonnie C. Turner and J. H. Evans, of *Warren & Smith*, for
appellees.

CONLEY BYRD, Justice. The first trial in this eminent do-
main action resulted in a jury verdict for \$10,000. We revers-
ed the judgment entered thereon because the trial court refus-
ed to permit the condemnor to cross examine the landowner
with reference to an eight (8) acre sale for \$35,000 that oc-
curred five years after the taking, *Arkansas State Highway Com-
mission v. Belt*, 260 Ark. 1, 537 S.W. 2d 378 (1976). Upon the
trial that is now before us the jury returned a verdict of \$11,-
000. The condemnor now alleges as ground for reversal that
the trial court erred in not striking the testimony of the land-
owner because of its speculative nature.

The record shows that the landowner testified to
damages of \$15,000 and that his expert appraisal witness
testified to damages of \$12,000. Appellant does not question
the value given by the expert witness.

The record in the previous appeal shows that the trial
court permitted the identical testimony of the landowner to

be introduced over the objection of appellant but that appellant did not complain of the court's ruling on that appeal. It follows that the law of the case precludes appellant from raising the issue now, *Woodward v. Blythe, Adm'x*, 249 Ark. 793, 462 S.W. 2d 205 (1971).

Affirmed.
