

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Frank R. Addy, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2012-CP-32-3208

Raymond Carter, ..... Appellant,

v.

Donnie Myers, Solicitor, Lexington County; Tracey Carroll,  
Assistant Solicitor, Lexington County; Brian Buck, Irmo  
Police Department; Scott Franklin, Irmo Police Department;  
Timothy E. Stephenson, South Carolina Law Enforcement (SLED);  
George White, Ex father-in-law; Tammy Carter, (AKA Tammy Scrogam),  
Ex-wife; Barbara Keadle (AKA Diane Hinkle) Investigator LDSS;  
Francis Ross, LDSS; Paulette Jolly, Guardian ad Litem, in their  
official and individual capacities, ..... Defendants,

Of whom, Brian Buck, Irmo Police Department and Scott Franklin,  
Irmo Police Department, are, ..... Respondents.

**BRIEF OF RESPONDENTS BRIAN BUCK AND SCOTT FRANKLIN**

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## STATEMENT OF ISSUES ON APPEAL

1. Whether or not the trial court properly granted Respondents' Motion for Judgment on the Pleadings and to Dismiss on the basis that the statute of limitations expired before the Appellant filed suit;
2. Whether or not the trial court properly determined that the statute of limitations for bringing the claims against these Respondents was not tolled until the Appellant's release from the care and control of the South Carolina Department of Mental Health; and,
3. Whether or not the trial court properly dismissed the Complaint as to Defendants Myers and Carrol on the basis of prosecutorial immunity.

## STATEMENT OF THE CASE

This Appeal arises in part out of the trial court's Order granting Respondents' Motion for Judgment on the Pleadings and to Dismiss and dismissing the Plaintiff's Complaint against them pursuant to Rule 12(b) of the South Carolina Rules of Civil Procedure. (R. 70-82). The trial court determined that the statute of limitations on all claims expired before the suit was filed. (R. 78-79).

The Appellant's Complaint alleges four causes of action against these Respondents: two causes of action for false imprisonment based on two separate instances in which he claims he was falsely imprisoned; a claim the appellant entitled "wrongful conviction;" and a claim the Appellant entitled "wrongful adjudication to commit to the South Carolina Department of Mental Health and continuing consequences." (R. 19-30, 38-44). As the matter was before the Court upon the Respondent's Motion to Dismiss and for Judgment on the Pleadings, the facts set forth here are taken primarily from the Appellant's Complaint. According to the Appellant's Complaint, on October 25, 1999, Respondents Buck and Franklin, both with the Irmo Police Department, went to the Appellant's home and asked him to submit himself to a polygraph examination regarding the molestation of several young girls, one of whom was the Appellant's daughter. (R. 20). Subsequently, on October 27, 1999, the Appellant met Respondent Buck at

the South Carolina Law Enforcement Division to submit to the polygraph examination, which was conducted by SLED Agent Stephenson. (R. 20-21). At the conclusion of the examination, Agent Stephenson allegedly informed the Appellant that he had failed the polygraph examination, at which point, Respondents Buck and Franklin as well as Agent Stephenson allegedly began interrogating the Appellant about the molestations for a little over four hours. (R. 21-22). During this time, the Appellant alleged he was forced to sign a waiver of rights. (R. 24). Also during this time, the Appellant alleges that Respondent Buck forced the Appellant to write a statement confessing to the molestations, which the Appellant maintains was false and scripted by Respondent Buck. (R. 24-25). Respondent Buck allegedly instructed the Appellant to turn himself in on October 19, 1999. (R. 25). However, the basis of the Appellant's first false imprisonment claim is the time he spent at the headquarters of the South Carolina Law Enforcement Division during the alleged interrogation and forced confession. (R. 27).

The Appellant maintains that Respondents Buck and Franklin gave the allegedly coerced and false confession to the Lexington County Solicitor's Office. (R. 27). He further maintains that the coerced and false confession was used as evidence to prosecute the Appellant for the molestations. (R. 27). On May 13, 2003, the Appellant pled guilty to one count of attempting or committing a lewd or lascivious act on a minor. (Appellant's Brief, p. 2). The Appellant completed his sentence on July 31, 2007. (R. 8).<sup>1</sup> However, he was sent back to the Lexington County Detention Center to be evaluated to determine whether he met the criteria under the South Carolina Sexually Violent Predator Act. (R. 8). The Appellant remained in the custody of the Lexington County Detention Center until November 4, 2008, at which time a jury determined

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<sup>1</sup> Despite Appellant's now asserted claim of a false and coerced confession, Appellant pled guilty in 2003 and completed his sentence in 2007. These Respondents also moved before the lower court for dismissal on grounds of estoppel in that Appellant cannot now contest the validity of the confession when he pled guilty to the crime. The Court did not reach that ground and estoppel is asserted here as an additional sustaining ground.

he was a sexually violent predator as defined by the statute, and he was committed to the South Carolina Department of Mental Health for long-term care and control. (R. 9).

On October 25, 2010, the Director of the South Carolina Department of Mental Health authorized the Appellant's attorney to file a motion with the Court for the Appellant's release. (Appellant's p. 3). On June 22, 2011, a trial was held regarding the Appellant's continued commitment at the South Carolina Department of Mental Health, and the trial court determined the State had not met its burden to continue the Appellant's commitment, granted Appellant's motion for directed verdict and ordered the Appellant's immediate release. (R. 9).

Aside from Respondents Buck and Franklin's dealings with the Appellant in late October, 1999, the Complaint alleges no further involvement by the Respondents in any of the Appellant's subsequent convictions, imprisonments or confinements. The Complaint merely alleges that the alleged false and coerced confession was used as evidence to prosecute the Appellant, which resulted in the Appellant pleading guilty in 2003 and as evidence in the trial in 2008 to determine whether the Appellant qualified as a sexually violent predator. (R. 27-30, 40).

On October 22, 2012, the Respondents filed a Motion for Judgment on the Pleadings and to Dismiss in part on the basis that the statute of limitations had expired before the Appellant filed his Complaint. (R. 55-56). A hearing on the Respondent's Motion was held on February 7, 2013. The Respondent was not present at the time of the hearing. Instead, he showed up sometime after the motion was argued and the Court had granted the Respondents' motion. This Appeal followed.

## ARGUMENT

### A. WHETHER OR NOT THE TRIAL COURT PROPERLY GRANTED RESPONDENTS' MOTION FOR JUDGMENT ON THE PLEADINGS AND TO DISMISS ON THE BASIS THAT THE STATUTE OF LIMITATIONS EXPIRED BEFORE THE APPELLANT FILED SUIT.

Granting Respondents' Motion, the trial court dismissed the claims against these Respondents because the statute of limitations expired on all claims before the Appellant filed his lawsuit. (R. 2-3). In considering a motion to dismiss a complaint based on Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the trial court must base its ruling solely on the allegations set forth in the complaint. Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (S.C. 2007). In considering a Motion for Judgment on the Pleadings, the trial court can also consider the defenses raised in the answer. It is indisputable from the allegations in the Complaint and the stamped filing date of the Complaint, that the statute of limitations for the claims asserted against these Respondents expired long before the Complaint was filed on August 22, 2012 and that the Respondents' raised the statute of limitations as a defense. The four claims that the Appellant asserted against these Respondents are governed by the South Carolina Tort Claims Act, which clearly sets forth a limitation period of two years after the loss was or should have been discovered. S.C. Code Ann. § 15-78-110 (2005).

The first claim asserted against these Respondents in the Complaint is a claim for false imprisonment. (R. 19-27). According to the supporting allegations stated in the Complaint, the first false imprisonment claim is based solely on the alleged five-hour encounter between the Appellant and the Respondents on October 27, 1999 during which time the Respondents allegedly forced a confession out of the Appellant after mercilessly interrogating him for four hours. (R. 19-27). If that encounter constituted false imprisonment, which is denied, the Appellant clearly knew or should have known he was being falsely imprisoned at the moment he

was imprisoned. The Complaint was filed on August 22, 2012, two months shy of *thirteen* years after the encounter. The statute of limitations for the false imprisonment claim had clearly run by the filing date of this Complaint, August 22, 2012. Accordingly, the trial court properly granted the Respondents' motion for judgment on the pleadings and to dismiss as to that claim.

The second cause of action asserted in the Complaint against these Respondents is a claim for "wrongful conviction." (R. 27). The allegations set forth in support of that cause of action make no mention of any further involvement by these Respondents in his conviction. (R. 27-30). The Complaint simply reiterates certain aspects of the encounter between the Appellant and these Respondents that took place on October 27, 1999. It further alleges that the Appellant's wrongful conviction was based on the false and coerced confession that these Respondents obtained on October 27, 1999. (R. 27-30). The Plaintiff pled guilty to one count of attempting or committing a lewd or lascivious act against a minor on May 13, 2003. The Complaint does not state any facts that constitute a cause of action against these Defendants. Even if it did, the Plaintiff pled guilty or was otherwise "wrongfully convicted" on May 13, 2003, *nine* years before the Appellant filed his Complaint. The statute of limitations had clearly run by the date the Complaint was filed. Additionally, the conviction has not been overturned. Instead, the Appellant has now completed his sentence. The trial court was proper in granting these Respondents' Motion for Judgment on the Pleadings and to Dismiss.

The third claim alleged in the Complaint against these Respondents is a claim entitled "wrongful adjudication to commit to the South Carolina Department of Mental Health and continuing consequences." (R. 38). Assuming there is such a claim, the Complaint alleges absolutely no facts against these Respondents. (R. 38-41). The only allegation alleged in the Complaint that remotely implicates these Respondents is the allegation that "the actions of all of the Defendant's, the false accusations, the false polygraph, the false coerced statement and the

ultimate conviction for an act or acts that never occurred placed the Plaintiff in grave danger.” (R. 40). He implies that these things lead to the jury’s determination that he met the criteria of a sexually violent predator under the Sexually Violent Predator Act, which caused him to be committed to the South Carolina Department of Mental Health for long-term care. (R. 38-41).

However, the Appellant alleges no new allegations against these Respondents about their participation in the trial and instead relies on evidence that was discovered in 1999. The Complaint does not state facts sufficient to constitute a cause of action against these Respondents. Even if it did, the Appellant was determined to meet the criteria on November 4, 2008. Accordingly, he had until on November 4, 2010 to file a complaint. It is clear from the Complaint that the statute of limitations had expired when the Complaint was filed on August 22, 2012. The trial court properly granted the Respondents’ Motion for Judgment on the Pleadings and to Dismiss.

The last cause of action alleged in the Complaint against these Respondents is a second claim for false imprisonment, which is based on the time the Appellant was committed to the South Carolina Department of Mental Health after being determined to have met the criteria under the Sexually Violent predator Act. (R. 41-44). Again, the allegations asserted in support of that cause of action do not mention these Respondents whatsoever. He simply states that the Defendants were notified that a trial was going to take place to determine if he was a sexually violent predator and they refused to intervene. (R. 44). He further alleges that the Defendants were notified that the Appellant had been civilly committed but did not object to the use of their evidence to stop the trial, which resulted in his commitment. (R. 44). He alleges no actions by these Respondent’s after 1999. Thus, his claims are barred by the two year statute of limitations contained in the South Carolina Tort Claims Act.

Even if the Plaintiff's allegations constitute a cause of action against these Respondents, which is vehemently denied, the statute on any such claim expired before the Appellant filed his Complaint. The Appellant was committed on or around the fourth or sixth of November, 2008. The Appellant knew or should have known that he was imprisoned on the date he was committed. He filed the Complaint on August 22, 2012, long after the statute of limitations had expired. The trial court properly granted these Respondents' Motion for Judgment on the Pleadings and to Dismiss.

In support of this issue on appeal, the Appellant argues that the statute of limitations for his claims was tolled until a judgment or order is issued from the Court and that an Order was issued on June 30, 2011 by the Honorable William P. Keesley directing a verdict in his favor as to the issue of his continued commitment by the South Carolina Department of Mental Health. (Appellant's Brief, p. 4). He appears to cite Rule 60(b) of the South Carolina Rules of Civil Procedure as authority for his proposition that he had one year after a judgment, order or proceeding was entered in which to bring his claims. (Appellant's Brief, p. 4). He further maintains that he should be allowed three years in which to file an action pursuant to S.C. Code Ann. § 15-3-530 after Judge Keesley issued the Order granting his motion for directed verdict. (Plaintiff's Brief, p. 4). Either way, the Appellant argues that the statute of limitations did not begin to run until Judge Keesley issued the order granting his motion for directed verdict on June 30, 2011. (Appellant's Brief, p. 4).

The Appellant has not cited any authority for the proposition that the statute of limitations was tolled until his release and/or until Judge Keesley issued the Order granting his motion for directed verdict. S.C. Code Ann. § 15-3-40 sets forth the circumstances under which the statute of limitations is tolled and provides a tolling of the time period in which to bring an action for people considered to be under a disability, which is defined by the statute as those people who

are either under the age of eighteen years or insane. S.C. Code Ann. § 15-3-40 (2005). Furthermore, the disability has to exist at the time of the right of action accrued. S.C. Code Ann. § 15-3-50 (2005). Neither of these disabilities applies to the Appellant. The Appellant was not under eighteen years of age when his causes of action accrued, and he has never provided any documentation evidencing that a determination by a professional that he was insane at the time his claims accrued.

The Appellant's causes of action for false imprisonment accrued at the time he was allegedly falsely imprisoned. The first time he was allegedly falsely imprisoned was on October 27, 1999; the second time was on or about November 4, 2008. There was no circumstance allowing the statute of limitations to be tolled at those points. The statute of limitations for the Appellant's wrongful conviction claim began to run when he was convicted on May 13, 2003. No circumstance existed to toll the statute of limitations for that claim. Lastly, if there is a claim for wrongful adjudication to commit to the South Carolina Department of Mental Health and continuing circumstances, it stands to reason that the claim began to run when the jury determined he met the criteria under the Sexually Violent Predators Act. No circumstances existed to toll the statute of limitations for that claim, either.

The Appellant has offered no authority for his argument that the statute of limitations was tolled until he was released and/or until he received Judge Keesley's order granting his motion for directed verdict. The Appellant cites to Rule 60 of the South Carolina Rules of Civil Procedure apparently for the proposition that he had one year from the date of Judge Keesley's Order in which to bring his claims against the respondents. However, Rule 60 of the South Carolina Rules of Civil Procedure does not govern the time period in which to file a Complaint. It states the circumstances under which and the time period for filing a motion to seek relief from final judgment, order or proceeding. South Carolina Rules of Civil Procedure, Rule 60, SCRPC.

Additionally, the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-530 does not apply to lawsuits, like the current lawsuit, that are brought against governmental entities. The period of time in which to bring a lawsuit against a governmental entity is governed by the South Carolina Tort Claims Act. S.C. Code Ann. § 15-78-110 (2005). None of the authority cited by the Appellant supports his argument that the statute of limitations was tolled until he was released and/or received Judge Keesley's Order.

The Appellant also argues that there was a continuing consequence of his agreeing to plead guilty to the charge of attempting or committing a lewd or lascivious act against a minor, which ultimately resulted in his being committed to the South Carolina Department of Mental Health. (R. 81). He claims that he was committed to the Mental Health Department solely because of the Respondents' actions. However, the only actions taken by these Respondents as alleged in the Appellant's Complaint were done in October, 1999. Accordingly, the statute of limitations as to any claim arising out of those actions had long since expired when he filed his Complaint in 2012. The trial court properly granted these Respondents' Motion for Judgment on the Pleadings and to Dismiss. These Respondents are entitled to have the grant of their Motion for Judgment on the Pleadings and to Dismiss affirmed.

**B. WHETHER OR NOT THE TRIAL COURT PROPERLY DETERMINED THAT THE STATUTE OF LIMITATIONS FOR BRINGING THE CLAIMS AGAINST THESE RESPONDENTS WAS NOT TOLLED UNTIL THE APPELLANT'S RELEASE FROM THE CARE AND CONTROL OF THE SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH DEPARTMENT.**

Again, the Appellant argues that Rule 60(b) of the South Carolina Rules of Civil Procedure allows him one year from the date of his release from the care and control of the South Carolina Department of Mental Health in which to file his complaint. (Appellant's Brief, p. 5). The Appellant has misinterpreted the meaning of Rule 60. Rule 60 sets forth the practice for seeking relief from a final judgment or order. It does not set forth the time period in which a

litigant has to file an action. Since this case was filed against employees of a governmental entity, the statute of limitations is governed by the South Carolina Tort Claims Act, which specifically provides:

Except as provided for in Section 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

S.C. Code Ann. § 15-78-110 (2005). As discussed in the foregoing section, none of the circumstances permitting the statute to be tolled pursuant to Section 15-3-40 are applicable in this case. Accordingly, the trial court properly determined that the time period in which the Appellant could bring his claims was tolled until his release from the South Carolina Department of Mental Health. These Respondents are entitled to have the grant of their Motion for Judgment on the Pleadings and to Dismiss affirmed.

The Appellant further maintains that his administrative remedies had not been completely exhausted at the time of his release. (Appellant's Brief, p. 5). Whether or not the Appellant exhausted his administrative remedies has absolutely no bearing on the issue of whether the statute of limitations should have been tolled until his release. Additionally, the Appellant raised the issue of his failure to exhaust his administrative remedies for the first time on appeal. The only issue he raised in response to the Respondent's Motion for Judgment on the Pleadings and to Dismiss was his belief argument that there were continuing consequences that resulted in his being placed in the control of the Department of Mental Health and that he had until one year from the date of his release to file his complaint. (R. 81). It is well settled law that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled on by the court in order to be preserved on appeal. Pye v. Estate of Fox, 269 S.C. 555, 633 S.E.2d 505

(S.C. 2006). Accordingly, to the extent there is any relevance to the Appellant's newly raised issue, it should not be considered.

C. WHETHER OR NOT THE TRIAL COURT PROPERLY DISMISSED THE COMPLAINT AS TO DEFENDANTS MYERS AND CARROL ON THE BASIS OF PROSECUTORIAL IMMUNITY.

None of the claims against these Respondents were dismissed on the basis of prosecutorial immunity. Accordingly, this issue on appeal is not applicable to these Respondents. However, for the reasons stated in the foregoing sections, these Respondents are entitled to have the grant of their Motion for Judgment on the Pleadings and to Dismiss affirmed.

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**CERTIFICATE OF COUNSEL**

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**SC Court of Appeals**

The undersigned counsel for the Respondents Brian Buck and Scott Franklin certifies that the Final Brief of Respondents Buck and Franklin complies with Rule 211(b), SCACR.

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**CERTIFICATE OF COMPLIANCE**

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The undersigned counsel for the Respondents Brian Buck and Scott Franklin certifies that the Final Brief of Respondents Buck and Franklin complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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CERTIFICATE OF SERVICE

The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants,  
Chief Brian Buck and Scott Franklin, does hereby certify that service of the **Brief of  
Respondents Brian Buck and Scott Franklin** in the above-captioned action was made upon  
Plaintiff and all counsel of record by placing same in the United States Mail, first class postage  
prepaid, at the below listed address clearly indicated on said envelope this the 4th day of March,  
2015, addressed as follows:

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