

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
APPEAL FROM WILLIAMSBURG COUNTY  
Court Of Common Pleas

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JUL 06 2015

SC Court of Appeals

The Honorable Maite Murphy, Circuit Court Judge

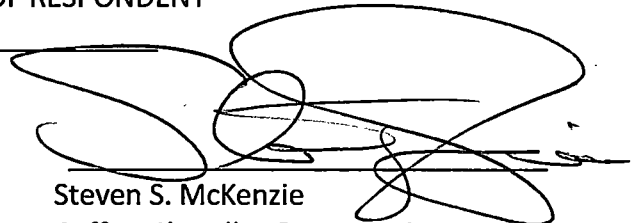
Case No. 2014-CP-45-377

Lauren Goodman,.....Respondent

v.

Willie M.  
Brown .....Appellant

INITIAL BRIEF OF RESPONDENT



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July 1, 2015

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## ARGUMENT

### **THE TRIAL COURT DID NOT COMMIT ERROR IN GRANTING SUMMARY JUDGMENT FOR THE RESPONDENT BECAUSE THE ISSUES AND FACTS ARE IDENTICAL IN THE CRIMINAL PROSECUTION AS IN THE CIVIL ACTION.**

Respondent's Motion for Summary Judgment, pursuant to Rule 56 and the doctrine of issue preclusion, or "collateral estoppel." Rule 56 sets forth the following:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

SCRCP 56(c).

Respondent cited *Doe v. Doe*, a South Carolina case where a civil defendant following his convictions in criminal court on five counts of first degree sexual conduct with a minor- was collaterally stopped from relitigating the issue of whether the defendant had physically and sexually abused his children in the children's civil action for assault and battery damages:

After defendant was convicted of five counts of first degree sexual conduct with a minor and committing or attempting to commit a lewd act upon a minor and his parental rights to his children were terminated based upon defendant's physical and sexual abuse of his children, defendant's children brought an action against defendant which sought damages for assault, battery, intentional infliction of emotional distress, negligence, and negligence per se based upon the defendant's physical and sexual abuse. . . The Supreme Court held that defendant was collaterally stopped from relitigating the issue of whether defendant had physically and sexually abused his children in children's civil action for assault and battery damages. . . [T]he children's civil action was based upon the same facts as defendant's criminal convictions, and defendant had a full and fair opportunity to contest his prior convictions. . . We now adopt the rule that once a person has been criminally convicted, he is bound by that adjudication in a subsequent civil proceeding based on the same facts underlying the criminal conviction. . . We note the reasons for the former rule were nonmutuality and a difference in the degree of proof required.

However, when a conviction is offered in a civil proceeding against the party convicted, the party cannot complain of a difference in the degree of proof when the burden of proof in the criminal proceeding was much higher than the burden of proof in the present civil proceeding.

*Doe v. Doe*, 346 S.C. 145 (2001). The Supreme Court adopted the rule that "once a person has been criminally convicted, he is bound" by that adjudication (for purposes of collateral estoppel). The Supreme Court did *not* adopt the rule that once a person has been criminally convicted *and* exhausted all appellate remedies and/or means of post-conviction relief, he is bound. Here as in *Doe*, Appellant plead not guilty to first degree criminal sexual assault of a minor (2 counts) and one count of lewd act on a minor. (Ex. A: Indictment). Appellant was afforded a jury trial that included a full and complete opportunity to contest all issues before the Court in his criminal trial, but was found guilty by a jury of his peers. (Ex. B: Trial Tr. P.519-20). Just as in *Doe*, the facts and issues in this matter are identical in the civil and criminal matter. The burden of proof was higher on the State in the criminal proceeding than in this matter, and the facts are identical with perpetrator and victim being identical in both cases.

The Appellant relies heavily in his brief on the fact that the *Doe* case had been appealed and the conviction was upheld on appeal. However, the Supreme Court did not rely on the distinction of finality of the appeal. Instead the Court rationalized its opinion based on what happened at the trial level and not the appellate level. The fact that the case had been appealed was only mentioned by the Court in the factual background of the opinion. See *Doe* 346 S.C. at 145-146. The Court's rationale for its finding is predicated upon the fact that the burden of proof in the criminal matter was substantially greater (beyond a reasonable doubt v. preponderance of the evidence)

and the fact that the Defendant/Appellant was afforded a trial in which he had the ability to fully and fairly litigate the issues. *Id.*

However, Opposing Counsel cites the Restatements and contends that, because Defendant has filed an appeal in relation to his conviction, Defendant has not had a full and fair opportunity to contest the prior determination and the conviction lacks the requisite finality for collateral estoppel. (See Appellants Brief pg. 4).

The doctrine of collateral estoppels does not require a judgment which ends the litigation and leaves nothing for the court to do but execute the judgment, but includes many dispositions which, though not final in that sense, have nevertheless fully litigated the issue:

As provided in the Restatement, for purposes of issue preclusion (as distinguished from merger or bar), a 'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect. The doctrine of collateral estoppel does not require a judgment which ends the litigation and leaves nothing for the court to do but execute the judgment, but includes many dispositions which, though not final in that sense, have nevertheless fully litigated the issue. Consequently, the mere fact that the damages of the plaintiffs have not yet been assessed may not deprive the ruling of any effect as collateral estoppels it would otherwise have.

47 Am. Jur. 2d Judgments § 522.

Further, in *S.E.C. v. Farkas*, the Fourth Circuit Court of Appeals recently disagreed with Opposing Counsel's argument. In that case, the facts were as follows:

Securities and Exchange Commission (SEC) filed civil enforcement action, seeking permanent injunctive relief and claiming violations of Securities Act, Securities Exchange Act, and Exchange Act Rules by criminal defendant who had been convicted and sentenced for one count of conspiracy to commit bank, wire, and securities fraud, six counts of bank fraud, four counts of wire fraud, and three counts of securities fraud. . . The United States District Court. . . granted SEC summary judgment. Defendant appealed. The Court of Appeals held that: (1) collateral estoppels barred relitigation of whether defendant committed fraud in

connection with securities; (2) findings supporting injunction were capable of meaningful appellate review; and (3) stay of appeal was not warranted pending resolution of motion for post-conviction relief.

*S.E.C. v. Farkas*, 557 Fed. Appx. 204 (2014). The Fourth Circuit Court of Appeals reasoned that, in the event the “[defendant proved] successful in vacating his convictions. . . . he [could have sought] relief from the civil judgment in the district court pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Accordingly, we deny Farkas’ motion for abeyance and affirm the district court’s judgment.” Here, as in *Farkas*, in the highly unlikely event that the Appellant is successful in his appeal on his criminal conviction, the Appellant may move to vacate the judgment pursuant to Rule 60(b) of the South Carolina.

CONCLUSION

Based upon the foregoing, the Respondent request that this Honorable Court to affirm the lower court’s granting of Summary Judgment.

Respectfully Submitted,

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In the Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on July 1, 2015, addressed to Lionel S. Lofton, 225 Seven Farms Drive, Suite 109, Charleston, SC 29492 and G. Wells Dickson, Jr., 124 Academy Street, Post Office Box 819, Kingstree, SC 29556.

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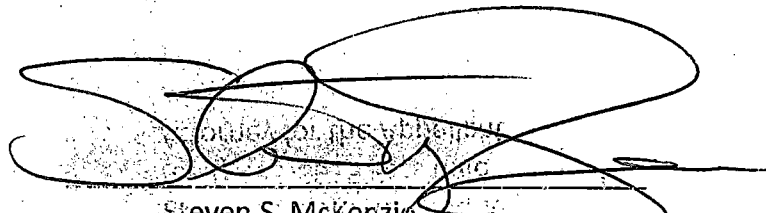
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Lauren Goodman, Respondent vs. Willie Marion Brown, Appellant  
Appellant case No: 2015-000546

Dear Ms. Kitchings:

Enclosed for filing is an Initial Brief of Respondent in the above case. Also enclosed are the following: Proof of Service of the Initial Brief of the Respondent.



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