

**VOL. III OF III**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from York County

John C. Hayes, III, Circuit Court Judge

---

**RECEIVED**

DEC 31 2013

**S.C. Supreme Court**

ADAM LEE BERARD

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001351

---

APPENDIX

---

SUSAN B. HACKETT  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

J. RUTLEDGE JOHNSON  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 said she saw based on where she was, if you felt like you  
2 needed to see that crime scene, what would you have done if  
3 she had denied you access?

4 A. The only thing I could think of was try to get a court  
5 order.

6 Q. If you felt it was important?

7 A. Yeah, if I felt it was that important. Forcing that,  
8 I don't know that a judge would have granted that. I don't  
9 know. I didn't try it. But I didn't try that. So I can't  
10 say that it would have or not have happened. But that's  
11 the only remedy for that problem that I could think of  
12 would be to try to get a court order making her do that.

13 Q. Even though Mr. Berard's family wasn't supportive and  
14 I guess were hostile, or appeared hostile, did he ever  
15 waiver on his assertion that Megan was lying?

16 A. No.

17 MS. CREECH: No further questions, your Honor.

18 MR. JOHNSON: No further questions from the State,  
19 Your Honor.

20 THE COURT: You can step down.

21 (WITNESS LEAVING WITNESS STAND.)

22 THE COURT: Any further witnesses for the State?

23 MR. JOHNSON: No, your Honor, that will be it.

24 THE COURT: I'll take it under advisement.

25 Ms. Creech, anything you want to point out to me at

1 this point? I've got what you told me at first and then  
2 I've got my notes and my law clerk's notes and then I've  
3 got the transcripts. Is there anything else?

4 MS. CREECH: As much as I hate redundancies, Your  
5 Honor, I would like to just sort of succinctly narrow what  
6 the issues are here.

7 Obviously, you know, our position is that the gross  
8 sexual imposition from Ohio would be a case where by Mr.  
9 Lemel's own testimony, by the State's own questioning,  
10 there was no evidence of penetration and yet my client was  
11 convicted of CSC. Clearly there was prejudice by allowing  
12 that prior conviction to come in.

13 That in and of itself we believe raises this case to  
14 the point that it should be considered to be - the post  
15 conviction relief that's being requested should be granted.  
16 When you couple that with the fact that Mr. Berard feels  
17 like he was put in motion through the advise of his counsel  
18 against his stated objections, against his stated concerns,  
19 that we also believe...

20 THE COURT: You talking about taking the stand?

21 MS. CREECH: Yes, sir, your Honor. And - and the  
22 assault and battery with the intent to kill. I think in  
23 looking at the case in the totality of these issues; not  
24 looking at whether or not Mr. Lemel thinks there was  
25 overwhelming evidence, but whether or not without the prior

1 conviction, whether or not without his testimony, whether  
2 or not without him admitting to the assault and battery  
3 with intent to kill, it would have been a different result.  
4 I think he is entitled to find that out. That's all I  
5 have.

6 MR. JOHNSON: Just briefly, Your Honor.

7 As far as the no penetration issue, Mr. Lemel did  
8 argue that for a directed verdict. That is an appellate  
9 issue, not proper for PCR.

10 As far as prejudice from the admission of the gross  
11 sexual imposition, the State argues there is no prejudice.  
12 There is only one question about it. The court, Judge Few,  
13 even admonishes the solicitor for not using it more  
14 thoroughly. Further, there is overwhelming evidence in  
15 this case through the applicant's own testimony which  
16 counsel clearly testified that he did not bully, he did not  
17 threaten Mr. Berard into testifying.

18 He advised him that that's the way he could get his  
19 version of the facts out. The court advised him and he on  
20 the record he said yes it is my decision to testify. He  
21 admits to the ABWIK and then once you fully read the  
22 record, you will see that there are statements from  
23 witnesses that see that he is in a sexual position with his  
24 - the victim is naked, he is half naked; that he did not  
25 have permission to enter the home and that he did kidnap

1 and confine Ms. Moss in this case.

2 Also you will see through the record is that there is  
3 expert testimony in the medical records about how severe  
4 her injuries were. Even if he didn't admit to the ABWIK,  
5 he certainly could be convicted of it.

6 The State asks that you deny his application and there  
7 is no ineffectiveness of counsel and to the extent that  
8 there is by letting in that gross position, any prejudice  
9 is taken care of through the overwhelming evidence prong.

10 Thank you, Your Honor.

11 THE COURT: I'll take it under advisement.

12 MS. CREECH: Thank you, sir.

13 MR. JOHNSON: Thank you.

14 THE COURT: Is that it for the week?

15 MR. JOHNSON: That is it, Judge.

16 THE COURT: All right.

17 (COURT IN RECESS AT 11:32 A.M..)

18 (END OF TRANSCRIPT OF RECORD.)

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STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Adam Lee Berard, #310249,

C.A. No.: 2010-CP-46-5386

Applicant,

v.

ORDER

State of South Carolina,

Respondent.

FILED - RECEIVED  
2013 JUN -3 PM 3:00  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

The Applicant filed this application for Post-Conviction Relief December 17, 2010. The Court heard this matter in open court on May 17, 2013. The Applicant was represented by Jennifer Ash, Esquire, the State by J. Rutledge Johnson, Esquire.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the August 2008 term of the York County Grand Jury for Assault and Battery with Intent to Kill (ABWIK) and Criminal Sexual Conduct (CSC), 1<sup>st</sup> degree (2008-GS-46-3020). He was also indicted at the September 2009 term of the York County Grand Jury for Kidnapping (2009-GS-46-3928) and Burglary, 1<sup>st</sup> degree (2009-GS-46-3929). Gary Lemel, Esquire, represented the Applicant. From December 14-18, 2009, the Applicant proceeded to trial and was convicted as indicted. The Honorable John C. Few sentenced him to confinement for twenty (20) years for ABWIK, thirty (30) years, consecutive, for CSC, 1<sup>st</sup> degree, thirty (30) years, consecutive to the ABWIK conviction but concurrent with the CSC conviction, for Kidnapping and life for Burglary, 1<sup>st</sup> degree.

The applicant filed a timely Notice of Appeal with the South Carolina Court of Appeals. An Anders brief was submitted on his behalf. The South Carolina Court of Appeals affirmed his

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conviction and sentence. State v. Berard, Op. No. 12-UP-320 (S.C. Ct. App. Filed May 30, 2012). The Remittitur was sent on June 20, 2012.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Counsel by not investigating defensive scenarios and preparing a strong investigative defense, and failed to defeat and remove the erroneous add-on charges of Kidnapping, Burglary, and Criminal Sexual Conduct."
  - a. "The State's witnesses including the Medical Examiner and SLED's DNA Analyst testified there was no evidence of sexual rap/penetration occurred vaginally or anally by Mr. Berard."
2. "Mr. Berard had an open invitation like any grandson to visit his grandmother, thus kidnapping could not have occurred."
  - a. "Mr. Berard was invited daily, and on this occasion, asked over for dinner, and made no attempt to kidnap his beloved Grandmother, Loretta Moss. The State failed to provide any evidence of plans, intentions, or kidnapping paraphernalia by Mr. Berard for committing the act of kidnapping."
3. "Burglary was not possible because Mrs. Moss invited Mr. Berard over for dinner as she often did."
  - a. "Mr. Berard arrived with Mrs. Moss waiting for him, and they sat down on the patio. He did not have any burglary tools, no duffel bags, and no plans of burglary. The State has no evidence of burglary, no witnesses, and there were no reports of any items missing by Mrs. Moss."
4. "Lemel failed to challenge erroneous assault charge."
  - a. "The State provided no witnesses, but only a possible scenario of the assault. An unconscious Mrs. Moss had no recollection of any assault occurring. Mrs. Moss only repeated what her grandson Russ and his girlfriend Megan told her though neither were present during the accident."
5. "Lemel made a serious mistake by introducing previous charges to the jury. Lemel admitted his mistake to Mr. Berard and the judge admonished Lemel for his error of judgment."
  - a. "The Trial Transcripts(sic) states the judge warned in lengthy conversation not to open the door of Mr. Berard's previous charges that would prejudice the jury. However, Mr. Lemel admitted his [mistakes] in his examination of Mr. Berard on the witness stand."

Jo #42

Prior to the presentation of testimony PCR counsel set forth the issues the Court is being asked to consider as:

1. An issue required the prior conviction evidence elicited by the State..
2. Applicant's decision to testify.
3. Trial counsel concerns by Applicant.
4. Applicant's motion to remove trial counsel.
5. Applicant's admission to the Commission of Assault and Battery with Intent to Kill.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 177-18, 386 S.E.2d at 625. With respect to

guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial.

Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Applicant called as his first witness trial counsel, Gary Lemel, Esquire who testified he had represented Applicant on a previous assault and battery of a high and aggravated assault charge. He testified Applicant had a prior Ohio conviction for an alleged forcible oral sexual encounter with a female. Trial counsel testified that during pre-trial he had successfully moved to preclude introduction of Applicant's prior record in the event Applicant testified at trial.

Trial counsel testified he met with Applicant many times prior to trial and discussed with Applicant his right to remain silent and not take the stand and testify. Trial counsel denied ever telling Applicant that he, Applicant, had to testify but that the only way to get before the jury Applicant's version (his story) of the incident was for Applicant to testify.

Trial counsel testified that he did not go to the scene of the alleged incident, Applicant's grandmother's (the alleged victim) house, due to the grandmother's hostility toward trial counsel.

Trial counsel testified that Applicant claimed his brother "wanted to put him away" and his brother concocted the story related to the jury and told the concocted story to his mother and his girlfriend, Megan.

Trial counsel recalled that Applicant had requested the Court relieve trial counsel as his attorney and believes the request was a product of Applicant's frustration as to the length of time elapsing without disposition of Applicant's case.

Trial counsel testified he "opened the door" to the introduction of the Ohio sexual offense conviction and that the interjection of this prior offense, admitted on cross-examination by

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Applicant, was "clearly prejudicial" and "highly prejudicial."<sup>1</sup> However, trial counsel could not say the evidence of Applicant's prior conviction made a big impact on Applicant's trial.

Trial counsel testified Applicant chose to testify and that he, trial counsel, had expressed to Applicant that as trial counsel, his opinion was that Applicant should have testified. Trial counsel testified that Applicant had admitted hitting his grandmother with a stick or bat.

Trial counsel testified that the facts which were being presented were that Applicant's brother and his girlfriend saw Applicant lying on top of his then naked grandmother; that Applicant fled the scene;<sup>2</sup> that Applicant went to a co-worker who offered to take Applicant to the hospital for treatment of a cut Applicant had sustained on his flight; that Applicant was found hiding under bed covers at his girlfriend's house and when found asked a probation officer, "how's Nanny doing." Trial counsel testified the evidence of flight was highly prejudicial.

Trial counsel testified Applicant did not dispute striking his grandmother and claimed he was present at his grandmother's house as an invited guest.

Trial counsel testified that he felt the State had not established the necessary element of penetration but acknowledged that "not much" penetration was needed for the State to prove penetration beyond a reasonable doubt. Trial counsel testified the victim, Applicant's grandmother, testified only that Applicant "was or was trying" to affect penetration at the time of the alleged sexual battery.

Trial counsel testified the State offered Applicant a plea bargained forty- year sentence and that trial counsel was trying to get Applicant a sentence of no more than twenty to thirty years. Trial counsel testified the length of sentence was really a moot issue because, with the offense and his prior record, Applicant would probably ultimately be found to be a sexually

<sup>1</sup> As set forth later herein, the undersigned is not convinced trial counsel "opened the door" to the prior conviction.

<sup>2</sup> Applicant admitted this and in addition, while in flight, cut off his parole electronic monitor severely cutting himself in the process. (TR p. 779, LL 3-13).

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violent predator and would therefore likely never be released into the general public again. Based on the posture of Applicant's prospects regarding imprisonment, perhaps for life, trial counsel testified that there was no real option other than proceeding to trial. Trial counsel acknowledged that it was only his opinion, not a sure thing, that Applicant would ultimately be determined to be a sexually violent predator.

Trial counsel testified Applicant's version of the pertinent events was not credible.

Applicant testified he had concerns about trial counsel's representation as he did not think Mr. Lemel would be "adequate" and would not defend him. This was based on his prior representation by trial counsel who he described as "not aggressive."<sup>3</sup> Applicant testified he moved to have Mr. Lemel relieved as they were not getting along and Mr. Lemel was not doing his job like Applicant wanted him to.

Applicant testified he told trial counsel the subject event was an accident. He testified he admitted to having committed an assault and battery with intent to kill because trial counsel insisted that he take the stand, but he did not want to testify. Applicant testified at the time of his trial he was 27 years old, had an eleventh grade education and felt bullied and pressured into testifying. Applicant testified he felt trial counsel knew the right thing to do to convince him to take the stand and that trial counsel used word play to convince Applicant to take the stand. Applicant testified he did not want nor need to testify.

Applicant testified the testifying witnesses, the victim, Applicant's brother and Applicant's brother's girlfriend, gave inconsistent statements and that trial counsel would not listen to anything Applicant had to say.

Applicant testified he wanted trial counsel to go to the scene, his grandmother's house, so he could see that the girlfriend could not have seen what she said she saw.

<sup>3</sup> He later testified his non-aggressive counsel "bullied" him into testifying.

Jc 2/16

Applicant testified he met with trial counsel five times for fifteen minutes or so a time and that at trial he told trial counsel he did not want to testify but that trial counsel made him believe his only option was to testify.

Applicant testified he was told by trial counsel to admit swinging a bat and was told he would get life if he did not take the stand.

On cross-examination, Applicant admitted he told the police he was swinging a bat and accidentally hit his grandmother. He also admitted that the trial judge explained to him at trial his right to remain silent.

On recall, trial counsel testified he never bullied or threatened Applicant to testify, but did let Applicant know how strongly he felt Applicant should testify and explained to Applicant what the trial judge would tell Applicant about his right to remain silent.

Trial counsel testified he met with Applicant more than five times and the length of each meeting was more than fifteen minutes. Trial counsel testified that all he could do regarding any witnesses' inconsistent testimony was to impeach them with their previous statement. Trial counsel testified he did not feel he needed to visit the scene and acknowledged that he could have gotten a court order to go on the property where the incident allegedly occurred and also acknowledged that Applicant always told him the girlfriend was lying.

As to the issue regarding trial counsel's failure to go to the scene, Applicant has failed to carry his burden of proof that such was necessary and thus trial counsel was ineffective for failing to visit the scene. Applicant has presented no pictures or diagrams from which the Court can assess the girlfriend's ability to observe that to which she testified so there is no way to determine a scene visit would have had any value in the defense of Applicant.

The credible testimony of trial counsel and the Trial Transcript reflect that Applicant freely and voluntarily took the stand to testify fully understanding his right to remain silent. Applicant's general "concerns" about counsel are without merit based on the Trial Transcript, and the credible testimony of trial counsel.

The Court's refusal to relieve trial counsel does not constitute any ineffective assistance of counsel and if the Court was in error for refusing Applicant's motion this would have been a ground for a direct appeal, not a post-conviction relief proceeding.

Applicant's complaint as to his admission to having committed assault and battery with intent to kill is not an allegation of merit as to trial counsel's representation except to the extent that Applicant claims trial counsel told him to admit he hit his grandmother with a stick or bat. Applicant had admitted to striking the victim, (TR p. 774, L 24), while on her house's porch. He testified this was an accident.

At trial, Applicant did not take the position that he accidentally hit his grandmother. At trial, he testified he "assaulted" his grandmother. (TR p. 774, L 23 to p. 775, L 7). (See also TR p. 790, L 14; p. 792, L 2; p. 795, L 22 to p. 796, L 19; p. 799, L 14; and p. 804, L 16). Applicant, even if advised by trial counsel to admit to such an offense, is the one who freely and voluntarily took the witness stand and admitted to striking his grandmother and inviting the jury to convict him of assault and battery with intent to kill. Applicant had prior to trial told trial counsel he was in fact guilty of assault and battery with intent to kill. Applicant's testimony on the stand to that which he had admitted to counsel cannot be laid at trial counsel's feet and is no evidence of ineffective assistance of trial counsel. At the post-conviction relief hearing Applicant testified not that he was not guilty of assault and battery with intent to kill, but that he admitted it because

trial counsel insisted Applicant take the stand. Earlier the Court addresses Applicant's issue with having taken the stand and need not revisit it here.

Trial counsel, in his testimony, made it clear that he thought he made a mistake in asking Applicant a question that opened the door for the State to introduce Applicant's prior Ohio offense of gross sexual imposition.

After much discussion, the trial judge allowed the State to ask Applicant about his prior conviction based on the Applicant having put his character in issue. The Court based the ruling on the question and answer. He discussed with the State and trial counsel that he, the trial judge, felt Applicant had opened the door to his character. In analyzing this, based on the record, the undersigned finds, in spite of the ruling by the trial judge, that trial counsel asked no question which "opened the door." Perhaps an answer by Applicant which arguably should have been "no" but was "never" is the answer on which the trial judge hinged his ruling. Trial counsel cannot be found to be ineffective based on Applicant's answer save the answer being directly precipitated by the question. The only exchange by trial counsel and Applicant that the Court can find that may have occasioned the Court's ruling is this:

Q. At any point in time did you try to commit any sort of sexual act with your grandmother?

A. Absolutely not.

Q. Did you do that?

A. Never.

(TR p. 784, LL 4-8).

Trial counsel's questions related solely to whether or not he committed a sexual battery on his grandmother. The question was proper and arguably necessary. That Applicant chose to

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answer "never" rather than "no" cannot be laid at trial counsel's feet. Therefore, that the trial judge found Applicant had placed his character in issue and based on that allowed the State to introduce the prior conviction was Applicant's own doing and not trial counsel's. If the trial judge was in error, that would have been an issue for direct appeal.


After a thorough review of the record and consideration of the testimony at Applicant's hearing, I find trial counsel's testimony to be credible in all respects and rely on trial counsel's testimony as opposed to Applicant's where their testimony differs.

I find trial counsel's representation was not ineffective when measured by the standards of Strickland, supra; Butler, supra; and Cherry, supra. Having so found, the prejudice prong of Cherry, supra is not implicated.

Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.


  
 \_\_\_\_\_  
 John C. Hayes, III  
 Presiding Judge #10

May 28<sup>th</sup>, 2013  
 York, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT
ADAM LEE BERARD, #310249, Applicant,	<b>CERTIFICATE OF SERVICE</b> C.A. NO.: 2010-CP-46-5386
vs.	
STATE OF SOUTH CAROLINA, Respondent.	

The undersigned hereby certifies that the **ORDER**, filed on June 3, 2013, delivered by certified mail, article no. 7011-2970-0001-7071-9879, on June 7, 2013, to the following:

Adam Lee Berard #310249  
McCormick Correctional Institute  
386 Redemption Way  
McCormick, SC 29899

  
Lauren Rickman  
Assistant to Jennifer McQueen Creech  
514 Oakland Avenue Suite 100  
Rock Hill, South Carolina 29730  
(803) 327-3300  
(803) 327-3399 (fax)

June 7, 2013

WITNESSES

YCSO / Miller

DOCKET NO. 2008-GS-46-03019

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

August 21, Term 2008

idm

ARREST WARRANT NUMBER

L-165865

ACTION OF GRAND JURY

TRUE BILL

Johnnie S. Moss  
Foreperson of Grand Jury  
Date: 8/21/08

VERDICT

Guilty

W. J. [Signature]  
Foreperson of Petit Jury  
Date: 12/18/2009

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ADAM LEE BERARD

THE STATE

vs.

Indictment for  
ASSAULT AND BATTERY WITH  
INTENT TO KILL

SC Code: 16-3-620  
CDR Code: 014

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

INDICTMENT


At a Court of General Sessions, convened on August 21, 2008, the Grand Jurors of York County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

The Defendant, Adam Lee Berard, did in York County, South Carolina on or about June 7, 2008, with malice aforethought commit an assault and battery upon one Loretta Moss with intent to kill the said victim. All in violation of Section 16-03-620 of the Code of Laws of South Carolina, (1976, as amended).

CERTIFIED TRUE COPY  
2008 DEC 21 PM 3:06  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

WITNESSES

CSO / Hager

DOCKET NO. 2008-GS-46-03020

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

August 21, Term 2008

ARREST WARRANT NUMBER  
173377

THE STATE

vs.

ACTION OF GRAND JURY

ADAM LEE BERARD

C.C.C. PLS. AND G.S.

FOR THE STATE

Johnnie B. Moore  
representing Grand Jury  
date: 8/21/08

VERDICT

GUILTY

Indictment for  
CRIMINAL SEXUAL CONDUCT, 1<sup>st</sup> DEGREE

John E. Ryan  
representing of Petit Jury  
date: 12/19/2009

SC Code: 16-03-652  
CDR Code: 160

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on August 21, 2008, the Grand Jurors of York County present upon their oath:

CRIMINAL SEXUAL CONDUCT, 1<sup>st</sup> DEGREE

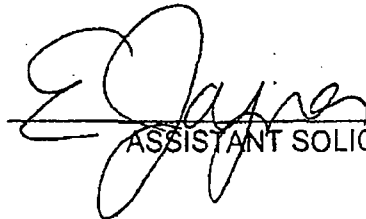
The Defendant, Adam Lee Berard, did in York County, South Carolina, on or about June 7, 2008, wilfully, unlawfully and feloniously without just cause and against the victim, Loretta Moss, will and consent, and with the use of aggravated force, engage in a sexual battery, to wit: the defendant did have vaginal and/or anal intercourse and/or oral copulation with Loretta Moss, against her will and without her consent, all in violation of Section 16-03-652, Code of Laws of South Carolina, (1976, as amended).

CERTIFIED TRUE COPY

2009 DEC 21 PM 3:06

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

WITNESSES

SD Miller

DOCKET NO. 2009-GS-46-03928

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

September 17, Term 2009

ARREST WARRANT NUMBER

Indictment: RE: NWN

THE STATE

Defendant

VS.

Witness:

ACTION OF GRAND JURY

ADAM LEE BERARD

C.C.C. PLS. AND G.S.

TRUE BILL

Person of Grand Jury

9/17/09

VERDICT

Guilty

Indictment for

BURGLARY  
IN THE FIRST DEGREE

Admitted E. Remond

Person of Petit Jury

12/18/2009

SC Code: 16-11-311

CDR Code: 079

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on September 17, 2009, the Grand Jurors of York County present upon their oath:

**BURGLARY FIRT DEGREE**

The Defendant, Adam Lee Berard, did in York County, South Carolina, on or about June 8, 2008, willfully and unlawfully enter the dwelling of Loretta Moss, located at 2410 Zinker Road, Rock Hill, South Carolina, without consent and with the intent to commit a crime therein and the defendant did commit said offense during the nighttime and/or while inside the residence the defendant did-commit an assault and battery upon the victim and/or the defendant was armed with a deadly weapon, all in violation of Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

CERTIFIED TRUE COPY

2009 DEC 21 PM 3:05

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

WITNESSES

:SD/Hager

DOCKET NO. 2009-GS-46-03929

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

September 17, Term 2009

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

ect Indictment Re: NWN

THE STATE

vs.

ADAM LEE BERARD

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

*John D. ...*  
Person of Grand Jury  
or: 9/17/09

VERDICT

Guilty

Indictment for

KIDNAPPING

*James E. ...*  
Person of Petit Jury  
or: 12/18/2009

SC Code: 16-03-910  
CDR Code: 0095

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on September 17, 2009, the Grand Jurors of York County present upon their oath:

KIDNAPPING

The Defendant, Adam Lee Berard, did in York County, South Carolina, on or about June 8, 2008, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Loretta Moss, without authority of law, all in violation of Section 16-03-910 of the Code of Laws of South Carolina, (1976, as amended).

CERTIFIED TRUE COPY  
2009 DEC 21 PM 3:05  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*Michael Henry Lippold*  
ASSISTANT SOLICITOR