

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Greenville County

Edward W. Miller, Circuit Court Judge  
\_\_\_\_\_

RECEIVED

APR 29 2014

S.C. Supreme Court

BENNIE LEE DAVENPORT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002753

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

GULTY PLEA HEARING TRANSCRIPT (AUGUST 25, 2011).....1

APPLICATION FOR POST-CONVICTION RELIEF.....17

RETURN .....28

POST-CONVICTION RELIEF HEARING TRANSCRIPT (OCTOBER 23, 2013).....33

ORDER OF DISMISSAL .....68

INDICTMENT .....76

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

COURT OF GENERAL SESSIONS  
2011-GS-23-3416

**ORIGINAL**

STATE OF SOUTH CAROLINA )

PLAINTIFF)

vs. )

TRANSCRIPT OF RECORD

BENNIE LEE DAVENPORT )

DEFENDANT)

August 25, 2011  
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD WELMAKER, Judge.

A P P E A R A N C E S:

ASHLEY CASE, ESQ.  
Attorney for the State

SUSANNAH ROSS, ESQ.  
Attorney for the Defendant

APRIL HERRON  
Official Court Reporter

INDEX OF WITNESSES

BENNIE DAVENPORT

Examination By The Court . . . . . 5

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There were no Exhibits.

Sentencing . . . . . 16

Certificate of Reporter . . . . . 16

1 THE CLERK: Your Honor, this is case number  
2 2011-GS-23-3416, The State vs. Bennie Lee Davenport,  
3 indicted for domestic violence. It is a true bill and  
4 he's pleading to the same.

5 Raise your right hand.

6 BENNIE DAVENPORT, after being duly sworn,  
7 testified as follows:

8 MS. CASE: Your Honor, if I could just address  
9 one issue.

10 THE COURT: Yes, you may.

11 MS. CASE: The Indictment indicates that the  
12 victim is Bonnie Brown, that's a scrivener's error. The  
13 victim is Sharon Brown. The warrant number is in correct  
14 on the Indictment and the warrant correctly reflected the  
15 victim as being Sharon Brown. And he has--

16 THE COURT: You're in agreement with that,  
17 Ms. Ross?

18 MS. ROSS: Yes, Your Honor. She found that  
19 error and informed me of it weeks ago so we were on notice  
20 of that.

21 THE COURT: Mr. Davenport, you realize that was  
22 just a typo on Bonnie Brown, it should have been Sharon  
23 Brown?

24 MR. DAVENPORT: Yes, sir, I understand that. My  
25 first time hearing about it but yes I do understand that.

1 THE COURT: You need to talk to your attorney  
2 about it or anything? In other words, it was just--

3 MR. DAVENPORT: No, sir.

4 THE COURT: Okay, you ready to proceed with the  
5 victim being Sharon Brown?

6 All right, Ms. Ross, you represent Mr. Davenport  
7 in this matter?

8 MS. ROSS: I do, Your Honor.

9 THE COURT: Have you had an opportunity to talk  
10 with your client about the charge pending against him, the  
11 possible punishments he faces and his Constitutional  
12 rights?

13 MS. ROSS: I have, Your Honor.

14 THE COURT: And do you believe he understands  
15 the discussions you've had with him?

16 MS. ROSS: I do.

17 THE COURT: Based upon your investigation of all  
18 the facts and circumstances, do you believe the State  
19 would prove its case to the jury's satisfaction beyond a  
20 reasonable doubt and a conviction would be most likely?

21 MS. ROSS: I do.

22 EXAMINATION

23 BY THE COURT:

24 Q Mr. Davenport, how old are you, sir?

25 A Thirty-four. I mean, 41.

## BENNIE DAVENPORT-EXAMINATION BY THE COURT

5

- 1 Q All right, sir. Are you married?
- 2 A No, sir.
- 3 Q Do you have children?
- 4 A Yes, sir.
- 5 Q How many children do you have?
- 6 A One.
- 7 Q How old is your child?
- 8 A Three.
- 9 Q Are you employed anywhere?
- 10 A Right now I'm not.
- 11 Q Where did you last work?
- 12 A At USA Food Service.
- 13 Q How long ago was it that you worked there?
- 14 A That's been a couple of years back.
- 15 Q How far did you go in school?
- 16 A Twelfth grade. I graduated.
- 17 Q Graduated, what school?
- 18 A Eastside High.
- 19 Q Okay. You ever had any alcohol or drug abuse  
20 treatment?
- 21 A No, sir.
- 22 Q Have you ever been treated for any mental illness?
- 23 A No, sir.
- 24 Q Do you have any alcohol or drugs or prescriptive  
25 drugs or anything in your body today?

1 A No, sir.

2 Q So you are fully aware of why we're here and what  
3 this charge is about?

4 A Yes, I am.

5 Q This Indictment that's been presented to me with the  
6 amendments state that here in Greenville County, back  
7 in April of this year, around the 9th of April, that  
8 you unlawfully caused or offered to cause physical  
9 harm or injury to a household member being Sharon  
10 Brown. With the apparent, present ability to do so  
11 that would create fear of imminent peril. You've  
12 previously been convicted of this same offense. I  
13 understand you're pleading guilty to this third  
14 offense or more?

15 A Yes, sir.

16 Q All right.

17 Solicitor, be glad to hear about the facts of  
18 the case.

19 MS. CASE: Yes, sir. Your Honor, on April the  
20 9th of 2011, the victim, Sharon Brown was walking to the  
21 store from the home she shared with her mother and her  
22 three year-old child. The store was a few blocks away.  
23 On her way to the store Mr. Davenport appeared out of a  
24 wooded area, approached her. Ms. Brown stopped and spoke  
25 with him and during the course to that conversation

## BENNIE DAVENPORT-EXAMINATION BY THE COURT

7

1 Mr. Davenport became angry. He grabbed her around the  
2 shirt, ripping her shirt, then tussled with her, slinging  
3 her around, causing her to be knocked down into the briars  
4 where she sustained some scratches, pretty deep scratches  
5 to her leg. Her chest and chin area were red as well as  
6 her shirt being ripped.

7 Sharon got up, walked back home and called the  
8 police. And while she was on the phone with the police,  
9 Mr. Davenport appeared at the home. And was met outside  
10 by her mother. Then ran away before the police got there.  
11 They do have a child, a three year-old son in common.

12 BY THE COURT:

13 Q You heard the facts surrounding this particular  
14 incident recited by the Solicitor, Mr. Davenport.  
15 Are those substantially the facts to which you're  
16 pleading guilty today?

17 A Yes, sir.

18 Q Now, do you understand that by entering a plea of  
19 guilty, you're giving up your right to a jury trial?  
20 A jury could be impaneled, The State of South  
21 Carolina would have the burden of proof. They would  
22 have to prove your guilt to that jury unanimously  
23 beyond a reasonable doubt. Since you'd be presumed  
24 innocent, you could remain silent. You could  
25 confront witnesses against you, ask questions of them

1 under oath, you could call witnesses in your own  
2 behalf and challenge the evidence the State tries to  
3 put in. You could challenge any incriminating  
4 statements that you may have made along the way of  
5 the investigation. You have these and other  
6 substantial rights but you give all those up by  
7 pleading guilty, do you understand that?

8 A Yes, sir, I do.

9 Q Is that what you want to do, give those up?

10 A Yes, sir, I do.

11 Q Are you satisfied with your lawyers representation?

12 A Yes, sir, I am.

13 Q Has she done everything to defend you that you've  
14 asked her to do?

15 A Yes, sir, she has.

16 Q Have you met with her for as often and for as long as  
17 you feel necessary?

18 A Yes, sir, I have.

19 Q Do you have any complaints whatsoever about her  
20 representation?

21 A No, sir, I don't.

22 THE COURT: Is there any recommendation from the  
23 State?

24 MS. CASE: Your Honor, there is no  
25 recommendation. There was a prior recommendation, this

## BENNIE DAVENPORT-EXAMINATION BY THE COURT

9

1 has been on the trial docket, so at this time we do not  
2 have a recommendation. But would ask that any active  
3 time, Your Honor, imposes, that you would also impose a  
4 probationary sentence to help ensure that Mr. Davenport  
5 stay away from Ms. Brown. This has been and on-going  
6 problem.

7 THE COURT: The victim's been notified?

8 MS. CASE: Yes, sir. Ms. Brown is present in  
9 the courtroom but does not wish to speak.

10 BY THE COURT:

11 Q Has anybody coerced you or threatened you in any way,  
12 Mr. Davenport?

13 A No.

14 Q To get you to plead guilty?

15 A No, sir.

16 Q Anybody promised you anything by way of sentence or  
17 otherwise to entice you to plead guilty?

18 A No, sir.

19 Q Do you understand you can be sentenced up to five  
20 years in jail for this?

21 A Yes, I do.

22 Q Do you understand the minimum sentence is one year?

23 A Yes, sir, I do.

24 Q Are you pleading guilty then of your own free will?

25 A Yes, sir, I am.

1 Q Are you doing so because you are, in fact, guilty?

2 A Yes, sir, I am.

3 Q Have you understood the questions I've asked you?

4 A Yes, sir, I have.

5 Q Have you been truthful in your answers to me?

6 A Yes, sir, I have.

7 THE COURT: I find there's a substantial,  
8 factual basis for the plea. That it has been freely,  
9 voluntarily, knowingly and intelligently made by  
10 Mr. Davenport with the advice of competent, legal counsel  
11 with whom he has expressed his satisfaction. I accept  
12 your plea.

13 Ms. Ross, be glad to hear from you and certainly  
14 from your client.

15 MS. ROSS: Thank you, Your Honor, may it please  
16 the Court. Along with graduating from high school,  
17 Bennie's also gone to Job Core. He has some skills that  
18 he can put to use and get a good job. He's talked to his  
19 sister, who lives up North, about moving up there and  
20 being with her. He understands that he cannot have  
21 contact with Sharon Brown though they have a child in  
22 common. And we understand that there could possibly be a  
23 no contact Order put in place. And he's recognizing of  
24 that.

25 To tell you how we get here pleading off the

1 docket, it comes to a situation of the break down with me  
2 working with Bennie. I think this visible injury on the  
3 incident report that stated no visible injury. And it was  
4 limited. We recently got the pictures showing scratches.  
5 With that I think Bennie felt that that would be a hard  
6 case to prove. And I didn't communicate with him enough  
7 about a lot of what this plea is about is his prior  
8 activity. The fact that we're getting up to a third.  
9 He's pleading because of prior behavior as much as this  
10 incident in particular.

11 He does love his child. Wants to do better.  
12 And I'd ask you to consider the nature and severity of  
13 this case in sentencing. And I'd also ask you to consider  
14 that under Nelson v. Osmont, it looks as though that one  
15 year mandatory minimum on CDV third, you receive no good  
16 time, no work credits on that, under that case law. So  
17 that's -- it says actually in prison for the mandatory  
18 minimum of one year is what the case actually says. And  
19 in considering that I'd ask you to consider that minimum  
20 for jail time in this case. And any other conditions you  
21 see fit in alternative to prison after that.

22 THE COURT: Thank you, ma'am.

23 Mr. Davenport, anything you want to tell me,  
24 sir?

25 MR. DAVENPORT: No, sir there's not.

1 THE COURT: Is there a Family Court Order or  
2 anything Visitation Order?

3 MS. ROSS: Not that I know of.

4 THE COURT: Custody -- y'all ever been To Family  
5 Court to establish custody of the child?

6 MR. DAVENPORT: No, sir, we haven't.

7 MS. ROSS: Have you done time for child support?

8 MS. CASE: Your Honor, he was under a prior  
9 Order of Protection where child support was ordered.  
10 However, I think that within the year of that Order of  
11 Protection, Ms. Brown dropped it and he did not pay child  
12 support.

13 THE COURT: What's his prior record?

14 MS. CASE: Your Honor, he has a 1988  
15 shoplifting. '89, two counts of shoplifting. '94,  
16 criminal domestic violence, burglary, second, five counts  
17 grand larceny, five counts. 2008, interference with  
18 officers, criminal domestic violence, first, two counts of  
19 criminal domestic violence, second. 2009, petit larceny--

20 THE COURT: Wait a minute. You're getting a  
21 head of me. '08 was what?

22 MS. CASE: Interfering with officers, criminal  
23 domestic violence, first degree and two counts of criminal  
24 domestic, second degree.

25 MS. ROSS: Second degree -- first offense and

1 second offense, I think.

2 MS. CASE: No, there was a first, then two  
3 seconds.

4 MS. ROSS: Okay.

5 MS. CASE: Then 2009 petit larceny, trespassing,  
6 indecent exposure. 2010, two counts of criminal domestic  
7 violence, second degree or second degree offense, excuse  
8 me. And malicious injury to personal property.

9 THE COURT: This is your seventh offense of  
10 criminal domestic violence? Back since '89 -- or excuse  
11 me, '94?

12 MS. CASE: Yes, sir.

13 MS. ROSS: One place he was thinking six. But  
14 yes. And lot of these involve Sharon Brown who's here in  
15 the courtroom today. And in part of Mr. Davenport's  
16 decision to plea was that she didn't want to testify. She  
17 expressed her interest in not testifying. And he said  
18 that he wanted to plead guilty to keep that from  
19 happening. And he has done this in the past. I've  
20 represented him before where he has made decisions to plea  
21 with different degrees of evidence in the case.

22 THE COURT: How long you been in a relationship  
23 with her?

24 MR. DAVENPORT: About four years.

25 THE COURT: Four years?

1 MR. DAVENPORT: Yes, sir.

2 MS. CASE: Your Honor, if I could just address  
3 that, I don't mean to belabor the point but, of course she  
4 didn't want to testify, nobody wants to testify. But she  
5 has been very cooperative, non-wavering in her testimony.  
6 She has attempted over the years to allow Mr. Davenport to  
7 try and spend time with his son in a public place. And  
8 his anger always ends up getting the best of him and  
9 that's where these domestic violence charges come.  
10 They're all in a public place where she's trying to allow  
11 him to see the child.

12 THE COURT: I guess there's a mutual relative  
13 that can arrange that in the future.

14 MS. ROSS: I spoke to Ms. Brown yesterday about  
15 the case and her wishes. And from beginning my  
16 understanding has been that her wishes were that  
17 Mr. Davenport stay away from her. And but that she didn't  
18 wish for a lot of jail time for him. And a lot of that  
19 has spoken before those same things. But that was her  
20 wishes. And I have here a picture of the injury, if you'd  
21 like to see.

22 THE COURT: Be glad to.

23 MS. ROSS: Let me get the other.

24 MS. CASE: I can hand those up.

25 MS. ROSS: Here are two more.

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SENTENCING

THE COURT: In a case 2011-GS-23-3416, the sentence of the Court is that the defendant be committed to the State Department of Corrections for a period of five years, provided however upon the service of 22 months, credit for time served. The balance is suspended, placed on probation for three years. Conditioned to perform a 100 hours of public service employment. Which will be suspended upon maintaining gainful employment. Have substance counseling as deemed necessary, random alcohol and drug testing. Have no contact with the victim. Complete a batters treatment program.

Wish you the best, Mr. Davenport.

MS. ROSS: Thank you, Your Honor.

MS. CASE: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded.)



STATE OF SOUTH CAROLINA )  
County of Greenville )

IN THE COURT OF COMMON PLEAS

Mr. Bennie Lee Davenport )

Full name and prison number (if any) of Applicant )  
SCDC # 229076, Applicant )  
v. )

State of South Carolina )

2011-CP-23-08175

APPLICATION FOR  
POST-CONVICTION RELIEF

RECEIVED  
CLERK OF COURT  
GREENVILLE COUNTY  
SOUTH CAROLINA  
DEC 9 AM 10:01  
JW

PRINTED ON RECYCLED PAPER

**INSTRUCTIONS B READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Dept. of Corrections, KCI-4344 Broad River Rd, Columbia, SC 29210
2. Name and location of Court which imposed sentence Court of General Sessions - Greenville County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2011GS2303416 - See Attached.  
Warrant Numbers: I-432699, I-432700

(b) Criminal Domestic Violence 3rd-16-25  
(c) 0020

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 25, 2011,  
(b) 5 years SS 22 months + 3 years Probation.  
(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes. See Sentence Sheet (Attached.)  
(b) after a plea of not guilty \_\_\_\_\_  
(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No. Entered Guilty Plea.

8. If you answered Ayes@ to (7), list: N/A

(a) the name of each Court to which you appealed:  
i. N/A  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed: N/A  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

(c) the date of each such result: N/A  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results: N/A  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) See 6(a) and #7 Above Please.

(b) \_\_\_\_\_  
(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel  
(b) in violation of Sixth (6th) Consti-  
(c) tutional Amend. Rights / 14th Amend. (Due Process)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See FACTS stated on  
(b) "ATTACHED SHEETS"  
(c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction: N/A

(a) any petition in a State Court under South Carolina Law? \_\_\_\_\_  
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A  
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A  
(d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application: N/A

(a) the specific nature thereof: N/A  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed: N/A  
i. \_\_\_\_\_  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof: *N/A*

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition: *N/A*

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: *N/A*

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? *N/A*

\_\_\_\_\_  
\_\_\_\_\_

15. If you answered "yes" to (14) identify: *N/A*

(a) which grounds have been presented: *N/A*

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised: *N/A*

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: N/A.

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes.
- (b) your trial, if any? N/A
- (c) your sentencing? yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Susannah Ross, Esq. 305 E. North Street, Suite 123 Greenville, S.C. 29601
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea.
  - ii. Sentencing.
  - iii. \_\_\_\_\_

22

Bonnie Lee Davenport

Attached Sheets - PCR

Date Nov. 22/2011

Bonnie Lee Davenport

1) Improper Indictment, victim on L.D.V. 3RD Case was Falsely<sup>23</sup> stated in the indictment as Bonnie Brown, yet the WARRANT for Bonnie Brown states Assault and BATTERY 3RD. Bonnie Brown is the mother of the victim and does not have a child in common with the defendant nor has she ever cohabitated with such.

2) Had Counsel conducted a proper investigation she would have seen that the state fraudulently obtained an Indictment by falsely stating that Bonnie Brown was the victim of a L.D.V. 3RD. When in fact warrant number I-432699 was issued for L.D.V. 3RD involving Sharon Brown whom was the defendants girl friend whom was stated as his child's mother. Therefor the indictment is challenged where Bonnie Brown was only the victim of a 3RD degree ASSAULT and BATTERY AS stated in WARRANT number I-432700. Thus the indictment issued can not stand as it was obtained under false means and unlawfully so.

3) Counsel also failed to present the facts as to what really happened the day the offense allegedly took place. Counsel was deficient where she failed to take a statement from her Client being the defendant, Counsel refused that option based on her opinion that the statement would be false or would not go over well with a jury or judge in this matter. Yet she did not know that the defendant was trying to call her attention to testimony which would have been a rebuttal to the indictment. Where she refused to hear the instructions of her Client Counsel would have been in the know as to the description of the state. Yet she chooses to dismiss her Clients testimony as not being the truth.

4) Counsel, Mrs. Suzana Ross failed in her duty to obtain video taped events and evidences that would have proven her Client was indeed telling the truth. Her refusal to do so was also grossly deficient and ineffective

24  
where she failed in due diligences. Counsel stated the tapes may have been destroyed after 2 hrs. yet she never attempted to contact the Express gas station or its owner located at Whitehorse Rd. Counsel failed to take Depositions from either alleged victims which would have nullified the States fraudulent Request for an Indictment. There was also such video evidences at the ABC Packages stores in Berkeley. The victim Sharon Brown was with the defendant, her alleged attacker, all day. Yet her version to the Police was that he popped out of the blues and beat her, had Counsel not refused to follow the instructions of her Client he would have been set at Liberty. Yet her ineffective counsel kept him in jail and had it not been for such the defendant would have opted for a Jury Trial which he would have won.

5) Counsel was also hostile towards her Client when she refused to obtain discovery which would have set her Client Free. Counsel also stated to her Client that she would do anything to get him off of her case load. Counsel was in error when she discussed privileged information her Client shared in her confidences. Such violated Attorney Client Privilege and such jeopardized the Clients defenses. Such ex parte communication denied the Defendant a fair and equal representation.

6) Counsel failed to give her Client due care in that she did not only argue with her Client, that in 3 visits in 5 months she failed to provide any defense strategy. She also stated on numerous occasions that she was tired of me as her Client and that she only visited me because of my complaints to her boss at the Public Defenders Office. That no matter what her Client said her attitudes towards him and his case would not change. She stated he could get new counsel if he did not like her counseling, yet she failed to remove herself as such where she was in belief of her Clients guilt.

7) Upon the promise of Defense Counsel (Mrs. Suzana Ross) that she would get her Client two (2) YEARS, an offer made by the Solicitor. When her Client opted for the deal he was instructed by Mrs. Ross to wait and see if she could get a better deal for him. She also stated that if she could not do so she would advise the court that she advised the Defendants decision to not take the previous deal offered by the Solicitors Office. Based on her unsound legal advice the defendant went against his better judgement and had forgone the 2 year deal. That Mrs. Ross did fail to uphold her promise to get her Client the same deal back on the table if he had plead guilty, such she used as a ploy to con and deceive her Client. Based on her lies the defendant was given Five (5) years suspended to 22 months in SLDC, and 3 years probation. Five (5) years is the maximum sentence allowed under the statutes and had the defendant proceeded to trial he would have won if not for counsels ineffectiveness, and but for such he would not have plead to the charges.

8) There was testimony given by the alleged victims mother that she used a toy chair 20 lbs. or better after he came to her home. Had counsel obtained photos of such she would have been able to impeach that testimony. That there was no way to wield that obstacle with one hand due to the size, shape, and weight of such while the defendant was holding her other arm.

19. State clearly the relief you seek in filing this application:

1) Reversal of Sentence with order to Vacate. 2) Evidentiary Hearing.

20. Are you now under sentence from any other court that you have not challenged?

Revised 3/2003

STATE OF SOUTH CAROLINA )  
County of Greenville )

VERIFICATION

I, Bennie Lee Davenport<sup>#</sup>, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Bennie Lee Davenport #229676

SWORN to and subscribed before me this 1st day of December, 2011.

[Signature] (L.S.)  
Notary Public

My Commission Expires: October 8, 2014

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Bennie Lee Davenport #, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Bennie Davenport 229576  
Applicant

SWORN or affirmed to and subscribed before me this  
19<sup>th</sup> day of December, 2011.

[Signature]  
Notary Public

My Commission Expires: October 8, 2014

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Bennie Lee Davenport, )  
 S.C.D.C. No. 229076, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2011-CP-23-8175

RETURN

ENTERED COMPUTER

2012 JUN 12 AM 11:12  
*JN*

In response to the post-conviction relief application filed December 9, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the July 2011 term of the Greenville County Grand Jury for criminal domestic violence, third offense or greater (2011-GS-23-3416). Susannah C. Ross, Esquire represented the Applicant.

On August 25, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to five (5) years imprisonment suspended on the service of twenty-two (22) months imprisonment and three (3) years probation. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript.

Copy mailed to  
 Applicant: Davenport  
 on 6 / 12 / 12

*Appt. Atty.*

## II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. Failed to present the facts.
  - b. Failed to obtain videotaped events and evidence.
  - c. Refused to obtain discovery.
  - d. Argued with the Applicant and failed to provide any defense strategy.
  - e. Advised the Applicant to reject a two (2) year offer.
  - f. Failed to impeach the victim's mother.
2. Lack of subject matter jurisdiction.
  - a. "Improper indictment, victim on C.D.V. 3rd case was falsely stated in the indictment as Bonnie Brown, yet the warrant for Bonnie Brown states assault and battery 3rd. Bonnie Brown is the mother of the victim and dose not haves a child in common with the defendant nor has she ever cohabitated with such."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged 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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

#### IV.

The Respondent submits the Applicant's assertion that the plea court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The

Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictment in this case was true-billed and clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN  
Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

June 5, 2012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 )  
 )  
 BENNIE LEE DAVENPORT, 229076 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

2011-CP-23-8175

AFFIDAVIT OF SERVICE BY MAIL

2012 JUN 12 AM 11:12  
 CLERK OF COURT  
 GREENVILLE COUNTY

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Bennie Lee Davenport, 229076  
 Tyger River Correctional Institution  
 100-200 Prison Road  
 Enoree SC 29335**

DATED this 5th day of June, 2012.

*Judy A. Carey*  
 Judy A. Carey, Legal Assistant  
 For Respondent

1 STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 2 COUNTY OF GREENVILLE )  
 3  
 4 Bennie Lee Davenport, )  
 ) TRANSCRIPT OF RECORD  
 Applicant, ) 2011-CP-23-08175  
 5 -vs- )  
 )  
 6 The State, )  
 ) October 23, 2013  
 7 Respondent. ) Greenville, South Carolina

8

9

10

11 B E F O R E:

12 HONORABLE EDWARD W. MILLER, JUDGE

13

14

15 A P P E A R A N C E S:

16 BRIAN P. JOHNSON, ESQUIRE  
 Attorney for the Applicant

17

18 KAREN C. RATIGAN, ESQUIRE  
 Attorney for the Respondent

19

20

21

22

23

Margaret A. Woods  
 Circuit Court Reporter

24

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21  
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24  
25

INDEX

WITNESSES

PAGE

BENNIE LEE DAVENPORT

Direct examination by Mr. Johnson

4

Cross-examination by Ms. Ratigan

16

SUSANNAH CONYERS ROSS

Direct examination by Ms. Ratigan

23

Cross-examination by Mr. Johnson

27

Certificate of reporter

34

NO EXHIBITS INTRODUCED

1 THE COURT: Okay, next case.

2 MS. RATIGAN: Thank Your Honor, may it please the Court.  
3 This is the case of Bennie Davenport vs. the State of South  
4 Carolina, Docket Number's 2011-CP-23-8175. Mr. Davenport, uh,  
5 was indicted for criminal domestic violence third offense or  
6 greater, he was represented on that charge by Ms. Ross. On  
7 August 25th of 2011 he pled guilty before Judge Welmaker. He  
8 received 5 years suspended on the service of 22 months and 3  
9 years probation, he did not file an appeal. I would note that  
10 Mr. Davenport, pardon me, was released to probation in June of  
11 2012 on this charge, uh, and you'll, Your Honor, will see that  
12 he's actually in a, in detention center scrubs, he's he's back  
13 in on an unrelated charge but I believe he is ready to go  
14 forward.

15 THE COURT: Okay.

16 MR. JOHNSON: Yes, sir, Your Honor.

17 THE COURT: Alright, Mr. Richey.

18 (Laughter.)

19 THE COURT: Oh, I'm sorry, Mr. Johnson.

20 MR. JOHNSON: Yes, sir, Your Honor. Uh, uh, my client,  
21 uh, relates to the Court today filed an application based  
22 upon, uh, says that Ms. Ross didn't didn't perform, uh, per  
23 the objectio -- uh, objective standard of reasonableness ---

24 THE COURT: Okay.

25 MR. JOHNSON: --- in reasonableness and he has been

BENNIE LEE DAVENPORT - DIRECT EXAMINATION BY MR. JOHNSON

1 prejudiced by it and at this time I'd I'd like to, uh, call  
2 him to the stand.

3 THE COURT: Alright, c'mon around. C'mon up here  
4 (indicating), ---

5 MR. JOHNSON: It's up there.

6 THE COURT: --- over here.

7 THE CLERK: Yeah, step around here (indicating) over here  
8 where the Bible is, please.

9 (Whereupon, the applicant came forward.)

10 THE CLERK: Please place your left hand on the Bible and  
11 raise your right hand best you can.

12 BENNIE LEE DAVENPORT, having been  
13 first duly sworn, testified as follows:

14 THE CLERK: Thank you, you may be seated. Please state  
15 your full name for the record.

16 THE APPLICANT: Bennie Lee Davenport.

17 THE COURT: Pull up, get close to that microphone so we  
18 can hear ya.

19 (Whereupon, the applicant complied.)

20 THE COURT: Alright, thank ya.

21 DIRECT EXAMINATION BY MR. JOHNSON:

22 Q. Bennie how old are ya?

23 A. Forty-three.

24 Q. Bennie, do you know why we're here today?

25 A. Yes, sir I do.

BENNIE LEE DAVENPORT - DIRECT EXAMINATION BY MR. JOHNSON

1 Q. Can you tell us?

2 A. A post-conviction hearin', uh, that I filed, uh, right  
3 after I got convicted for a simple fact I think I wasn't done  
4 right on the first trial.

5 Q. Okay. Now, uh, what type of relief are you seeking to  
6 Court today?

7 A. Well I know that they can vacate my sentence but also  
8 either to start over again or to rescind my plea.

9 Q. Okay. Now let's talk about some of the substance of, uh,  
10 of your, uh, complaints of Ms. Ross, okay?

11 A. Um-hum.

12 Q. Alright, now with regards to her representation of you,  
13 uh, what were the circumstances of your guilty plea?

14 A. Could you repeat that.

15 Q. What what what, uh, what were the circumstances of your  
16 guilty plea? Was it a plea day? was it on day of trial? how  
17 how was that?

18 A. Well that one is kinda hard to answer because I had, was  
19 taken up, uh, think it was day before and would offer a plea  
20 and I tried to accept it but I was told not to for for certain  
21 reasons with somethin' to do with the judge, wrong judge, she  
22 didn't want me in fronta that judge. The next day, uh, when I  
23 went to, actually went to court I was told that either I was  
24 gonna go and have a jury trial or I was gonna have a plea: one  
25 or the other. I didn't really understand it because

BENNIE LEE DAVENPORT - DIRECT EXAMINATION BY MR. JOHNSON

1 everything came kinda quick, you know, and I didn't understand  
2 how I was gonna be takin', uh, 10 to 15 minutes, you know, for  
3 from one to to the other, you know. Uh, you tell me that I'm  
4 goin' in, that I'm goin' in to a jury trial when we have  
5 talked about nothin' about a jury trial, we did nothin', you  
6 know, to, from from my knowledge to prepare me or anybody else  
7 for a jury trial but then you tell me it's either I'm goin' to  
8 the jury trial or I'm goin' to, I'm gonna take this plea: one  
9 or the other.

10 Q. So as you understood it you were on the trial docket.

11 A. Yes, sir.

12 Q. Okay. And and, uh, on this specific day you were either  
13 going to go to trial or you were going to plea to the charge.

14 A. Yes, sir.

15 Q. Okay. Now you you stated that you didn't feel that you  
16 you were prepared, can you tell the Court why you feel that  
17 way.

18 A. Because we, I mean, from my understandin' prepare a  
19 client for trial or anything you have to basically sit down  
20 and talk to him about the case, the, uh, circumstances  
21 surroundin' what happened, you know, to get him to the point  
22 to where he's been taken to trial and we never did that.

23 Q. So are you alleging that ya'll didn't discuss the case?

24 A. I rarely didn't see her.

25 Q. How often did you see her?

BENNIE LEE DAVENPORT - DIRECT EXAMINATION BY MR. JOHNSON

1 A. I seen her once on video court after, uh, some initial  
2 conversations with some other people at the probat -- I mean,  
3 at the public defender's office and then I seen her when I got  
4 to court.

5 Q. Now did you, when you did see her, did you ask her to do  
6 anything with regard to investigating your case?

7 A. Well I I I started doin' that from my initial point of  
8 bein' arres -- arrested and I did it for months. I ---

9 Q. So that's when you started, when was that? When were you  
10 arrested?

11 A. In April.

12 Q. And you stated that you saw Ms. Ro -- Ms. Ross after that  
13 point or soon after that point.

14 A. No, it wasn't soon after that.

15 Q. When'd you see her then?

16 A. I think it mighta been about a month, month and a half,  
17 two months.

18 Q. Okay, and at that point you you asked her to do what?

19 A. To, uh, I had started out from the beginnin' I asked to  
20 get some video ca -- uh, video footage from an Express, uh,  
21 Food Mart and a a liquor store that that I had went to that  
22 mornin' with, uh, the victim.

23 Q. Okay. Now why would that video have been important?

24 A. Because it would have, uh, -- I -- it would've, uh,  
25 reputed everything that ever said against me I was accused of,

1 uh, repute the things that I was accused of. I was accused of  
2 actually throwin' somebody down physically assaulting them and  
3 rippin' their clothes and the video would actually show that  
4 they did this theirselves and it wasn't in a place where they  
5 said it that that it happened at.

6 Q. So your testimony is that things that they did themselves  
7 woulda been seen on the video 'cuz it happened at that place.

8 A. Yes, sir.

9 Q. Okay. Uh, to your knowledge was a, was a video ever  
10 requested or obtained?

11 A. No. From my understandin' I was told that by Ms. Ross  
12 that normally most places of that status only keep a video for  
13 twenty-four hours 'cuz they use the same tape over, they'll  
14 re -- they'll record over the same tape over and over again so  
15 after twenty-four hours talkin' about it was useless, there is  
16 no video so she said there was -- it would be a waste a time  
17 in tryin' to get a video.

18 Q. Okay. Now is there anything else that you wanted her to  
19 do with regard to investigation? You just said you wanted her  
20 to request a video, was there anything else specific  
21 specifically that you asked her to do?

22 A. Well the video footage woulda been at two places, one was  
23 at a ABC store what it, what it -- whi -- which woulda showed  
24 that I was accused of jumpin' outta bushes and they didn't  
25 know, they hadn't seen me that mornin', they didn't know where

BENNIE LEE DAVENPORT - DIRECT EXAMINATION BY MR. JOHNSON

1 I was, that literally that I was upset because she wouldn't  
2 talk to me but if she -- if I got the video footage from the  
3 ABC store, it woulda showed that that was a lie because me and  
4 her went to the ABC store and I bought liquor for her that  
5 mornin'.

6 Q. So you statin' you went together.

7 A. We went together.

8 Q. Okay.

9 A. We went in holdin' hands, we left out holdin' hands.  
10 The, if we got the footage and the witness statements from  
11 them, it would actually show that that was a lie when they  
12 said they hadn't, they hadn't seen me.

13 Q. Now you stated witness statements, what witnesses are you  
14 referrin' to?

15 A. The the the owners of the liquor store.

16 Q. Okay. So you're stating that if if if she investigated  
17 the video she may have also been able to talk to the witnesses  
18 there.

19 A. Talk to the witnesses of the liquor store and they would  
20 sold -- they woulda simple fact said that both of 'em came in  
21 the store and wasn't no problem and I also had requested that  
22 the, uh, the scene where they said the incident happened at  
23 that she take pictures go of for showin' what time a the year  
24 it was. She said that I was jumpin' outta bushes and she  
25 couldn't see me and she wouldn't know that I was there but if

1 if she actually had a took pictures at that time you woulda  
2 seen that the vegetation wasn't thick enough that anybody else  
3 standin' out there woulda been seen.

4 Q. Now, Bennie, let me rewind. So we we talked about two  
5 scenes, we talked about a liquor store and a a Mart, are we  
6 talkin' about a separate place at this time?

7 A. Yes.

8 Q. Okay. Now where is this place?

9 A. Which one?

10 Q. Well this last place, the one you're referring to now  
11 about the bushes ---

12 (Cross-talk.)

13 A. Okay, that's that's behind the Express Mart, that's where  
14 I claim or that's where they claim that I jumped out the  
15 bushes at. It's a, it's a clearing behind the Express Mart on  
16 White Horse Road.

17 Q. Okay, and what were you accused of jumpin' outta the  
18 bushes and doing?

19 A. Attackin' Ms. Brown.

20 Q. Okay.

21 A. She said I tried to talk to her but when she refused to  
22 talk that I got violent and I end up throwin' her down and  
23 rippin' her shirt.

24 Q. Okay. Now what about, you you mentioned sumtin' about  
25 the bushes and and what what what about the bushes could she

BENNIE LEE DAVENPORT - DIRECT EXAMINATION BY MR. JOHNSON

1 have investigated in your opinion?

2 A. Okay, I was accused of hiding in the bushes and jumping  
3 out when when she couldn't see me but if I -- if they actually  
4 had, uh, paid attention to the vegetation, the clearing at  
5 that time, you'll see that it wasn't thick at all, it was no  
6 way possible for me to be hid in there and you not know that I  
7 was there.

8 Q. So what time a year this was again?

9 A. It was April, ---

10 Q. Was there -- so ---

11 A. --- beginnin' April.

12 Q. Beginnin' April, so it -- were there leaves on the trees  
13 that as far as you can remember?

14 A. It was just budding.

15 Q. Okay, so it -- so the plants were just budding ---

16 A. Right.

17 Q. --- and your testimony today is that if, uh, uh, they  
18 visited the scene they, uh, if she had visited or had seen  
19 investigate she'd been able to see that.

20 A. She'd a been able to see that and and the path that  
21 Ms. Brown said she took and from the point to where she said  
22 that I jumped out at there woulda been no way possible and no  
23 reason for her to actually be there for the, for the purpose  
24 she said she was go -- that she was there for.

25 Q. Okay. Now in in your understanding did Ms. Ross ever

1 visit the scene?

2 A. Uh, uh, she told me that she did the day before we went  
3 to tri -- the day before I pled I think she told me. Said she  
4 went to, she went out there, she seen, her and I think her  
5 investigator Tracy they took pictures the day before I went to  
6 court which was months later and, uh, she went, she walked  
7 through it, I basically think that's what she told me.

8 Q. Now at what point, at what what month and what date are  
9 we talkin' about, are we referrin' to here?

10 A. Uh, August.

11 Q. In August of 2011?

12 A. Yeah.

13 Q. Okay. Now would the vegetation have been the same at  
14 that point?

15 A. No.

16 Q. In your opinion what would've -- would it have shown?

17 A. It woulda been a difference wi -- woulda been a whole lot  
18 fuller. In ---

19 Q. What woulda ---

20 A. --- August ---

21 Q. --- been fuller?

22 A. The the trees in o -- at one point in April it woulda  
23 been thin, so thin that you could see through it from standing  
24 at the Expr -- Express Mart but in August it woulda been  
25 thicker to where at certain points not not nearly none of, not

BENNIE LEE DAVENPORT - DIRECT EXAMINATION BY MR. JOHNSON

1 nearly most of it when you woulda been able to hide in it but  
2 certain parts woulda been thicker to where if you actually  
3 didn't go back and actually look in the right spots where they  
4 actually claim that this happened at you mighta been deceived  
5 and say, Okay, yeah, you know, this mighta been possible but  
6 if you went to the actual spot, you'd say no 'cause it don't,  
7 it don't fit.

8 Q. Now, uh, you stated that, uh, she and her investigator,  
9 uh, took pictures, were you able to view those photos?

10 A. No, at the time where they told me they took pictures, I  
11 asked about 'em, she said they were still on Tracy's phone and  
12 she didn't have 'em at the time.

13 Q. So you weren't able to view them.

14 A. No.

15 Q. Uh, other than when visiting the scene other than the  
16 vegetation, did you, did you want her to do anything else  
17 there?

18 A. Well it was accu -- I was accused of actually living  
19 there, you know, so I actually wanted her to actually to go,  
20 if if I actually lived there would be some signs of of of of  
21 me livin' there, you know. I wanted her to actually go take  
22 pictures of the, uh, the surroundin' area, you know, where I  
23 was accused of living at, you know, so you would actually see,  
24 Nah, this is not some place that look like somebody live in,  
25 you know, and it would wouldn't fit because it's just a

1 clearing, it's a open, a big open spot to where anybody come  
2 through they gonna see.

3 Q. To be clear you were accused of living in those woods?

4 A. Yes.

5 Q. Okay. Now you state to the Court today that there woulda  
6 been no evidence of that.

7 A. No.

8 Q. Okay. Now, uh, let's go to the part where you, uh, pled  
9 guilty. Now under what mindset did you plead guilty?

10 A. Well, I didn't want to but I was told that it's e -- it's  
11 it's simple, that I was gonna plead guilty or I was goin' to  
12 trial. Now I, from my understandin', from my thinkin' there  
13 have been nothin' done as I said to prepare me to go for a  
14 trial so anything that I did as far as trial weight I couldn't  
15 see any kinda positive, you know, because everything that I  
16 had asked for that that I even requested done that show that  
17 it it woulda showed favoritism on my behalf that show that  
18 everything was wrong wasn't done. There was nothin' done to  
19 prepare for a trial. We hadn't spoke about a trial, we hadn't  
20 spoke about my case period, really, so how was I gonna be, how  
21 was I gonna go to trial.

22 Q. Okay, so you pled guilty and what was your sentence?

23 A. Five years.

24 Q. Well be specific.

25 A. Five years suspended to 22 months with 3 years probation.

BENNIE LEE DAVENPORT - DIRECT EXAMINATION BY MR. JOHNSON

1 Q. Okay. Now after the guilty plea, uh, as I understand it  
2 you and Ms. Ross has some communication, can you portray that  
3 to the Court.

4 A. Uh, I stated that if I'da took a jury trial and I was  
5 found guilty that I only coulda got 5 years, 5 years was the  
6 maximum minimum sentence and I got it on a plea and that I  
7 said that, uh, I didn't think that that was right and I asked  
8 to be re-sentenced. I asked that she take me in there, you  
9 know, file a motion or whatever she gotta do to get me  
10 re-sentence.

11 Q. So essentially you want her to to file a motion for  
12 reconsideration.

13 A. Right.

14 Q. Okay. Now after that happened did did that ever take  
15 place?

16 A. No, sir.

17 Q. Okay. Did you have any further communication with  
18 Ms. Ross at that time?

19 A. No. I had -- the next time I talk to Ms. Ross was, uh,  
20 about a different situation was months later.

21 Q. Months later?

22 A. Yeah.

23 Q. Okay.

24 MR. JOHNSTON: Uh, Your Honor, that's all I have for this  
25 witness at this time.

## BENNIE LEE DAVENPORT - CROSS-EXAMINATION BY MS. RATIGAN

1 THE COURT: Okay. Cross.

2 CROSS-EXAMINATION BY MS. RATIGAN:

3 Q. So you had discussed your case with Ms. Ross, would that  
4 be fair to say?

5 A. Discuss my case?

6 Q. Right.

7 A. I tried to discuss my case.

8 Q. Okay. And you told her what had happened that day with  
9 Ms. Brown?

10 A. I tried to tell her what happened that day.

11 Q. Did you discuss with her any possible defenses?

12 A. No, ma'am.

13 Q. Okay. Did you review your criminal record with  
14 Ms. Ross?

15 A. Yes, ma'am.

16 Q. And did she talk to you about the effect that your your  
17 prior CDV convictions had on the case?

18 A. Uh, yes, ma'am.

19 Q. Okay. In your application you said that Ms. Ross refused  
20 to obtain discovery, what exactly do you mean by that?

21 A. Uh, that the simple, the the simple fact of, uh, the, uh,  
22 the things that I woulda needed as far as evidence to to help  
23 me out in my case as far as the the pictures, the video, stuff  
24 like that.

25 Q. So it wasn't the discovery, it's just that she didn't

BENNIE LEE DAVENPORT - CROSS-EXAMINATION BY MS. RATIGAN

1 investigate.

2 A. Right.

3 Q. Okay. And when did the State make you that plea offer,  
4 do you remember?

5 A. Uh, when did they make me a plea offer?

6 Q. Yes, sir.

7 A. I didn't get a plea offer.

8 Q. Well I thought you said, uh, in your application that  
9 there was a 2-year plea offer.

10 A. Okay, that was actually, that was actually before I went  
11 in, that was the day before I went to court.

12 Q. Okay, so the day before you went to court the State made  
13 a 2-year plea offer?

14 A. Yes, ma'am.

15 Q. Okay.

16 THE COURT: How much months are there in two years?

17 MS. RATIGAN: That would be twenty-four, Your Honor.

18 THE COURT: Twenty-four, okay.

19 BY MS. RATIGAN:

20 Q. Uh, and I believe you testified that you wanted to take  
21 that offer but Ms. Ross told you to reject it?

22 A. Yes, ma'am.

23 Q. Okay. And when you went before Judge Welmaker, you knew  
24 that day you were pleading guilty without a recommendation, is  
25 that correct?

1 A. No, ma'am, I didn't.

2 Q. Okay. What did Ms. Ross tell you was gonna happen that  
3 day?

4 A. Well, that day we really didn't talk too much as far as a  
5 positive conversation I believe like that, uh, but the day  
6 before when Ms. Ross told me about the, uh, plea offer when  
7 she told me not to take it, she told me if there any way if  
8 that at any point come down the line to where I'd do have to  
9 plead guilty that she will make sure that I had those 2 years  
10 still ---

11 Q. As to ---

12 A. --- available to me.

13 Q. Did she promise you'd get 2 years if you pled guilty?

14 A. No, she didn't.

15 Q. Okay, that she would just try for it?

16 A. Right.

17 Q. Okay. So by the time you went to plead guilty you knew  
18 that Ms. Ross hadn't investigated the case the way that you  
19 wanted to?

20 A. Right.

21 Q. Okay. Why didn't you tell the Court that you were  
22 unhappy with how she represented you?

23 A. Well I was really kinda confused about a few things when  
24 I went into the courtroom because of the situation that  
25 happened right before I went into the courtroom.

BENNIE LEE DAVENPORT - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. Okay.

2 A. Uh, me and Ms. Ross had a conversation to where it really  
3 didn't go good and I didn't, I was really confused about the  
4 the jury trial thing and then the plea thing and I had at a  
5 point told 'em that, you know, that I didn't understand this  
6 and I didn't think it was right, you ---

7 Q. Um-hum.

8 A. --- know, that that I think that we needed more time  
9 because we hadn't had a chance to actually go over the case or  
10 nothin' like that and that I didn't feel comfortable goin' in  
11 and I didn't wanna go in so she left out and at, uh, 20, 30  
12 minutes later I ended up talkin' to investigator and I was  
13 simply told that regardless of what -- how I feel about the  
14 situation that it's either gonna be one way: I'd either go in  
15 and I'd go ahead and plead right now or I go in, you know, and  
16 take a trial. She said she could understand the points that  
17 I, that I'm complainin' about as far as Ms. Ross and the, uh,  
18 the evidence and stuff like that but right now it's just  
19 simple, I don't wanna go in and and and make the judge mad ---

20 Q. Okay.

21 A. --- and, uh, she told me I didn't wanna go in and make  
22 the judge mad, you know. She said a lotta clients go in and  
23 ask for a new lawyer which I said I -- that's was was gonna be  
24 my, was gonna be my request to the judge but she said the only  
25 thing that with the judge would do would deny me and that, uh,

BENNIE LEE DAVENPORT - CROSS-EXAMINATION BY MS. RATIGAN

1 she said the only thing the judge would do would deny me and  
2 that I would still have to have Ms. Ross in that courtroom as  
3 my attorney and that that probly would make the judge mad, you  
4 know, so really I was confused and didn't, and and really  
5 didn't know what was goin' on at that moment.

6 Q. But you had pled guilty to charges before, hadn't you?

7 A. Yes, I had.

8 Q. Okay, so you were familiar with court, you were just  
9 confused about what was happening in court that day.

10 A. Right, I never been to a trial, never been close to a  
11 trial.

12 Q. Okay. Well if today you're saying that you're innocent  
13 of the charge, why did you agree with the State's facts at the  
14 guilty plea hearing?

15 A. Well simply my lawyer told me, my lawyer and her her  
16 investigator told me soon as I go in the courtroom I'm I'm  
17 gonna go, I'm gonna be found guilty anyway.

18 Q. Okay.

19 A. See that was the whole thing that was preached to me from  
20 the beginnin', that's why I say I attempted to talk to my --  
21 to a -- I attempted to talk to my lawyer 'bout my case, not to  
22 talk to my lawyer 'bout my case ---

23 Q. Okay.

24 A. --- because from the time that I was, from the time that  
25 I was arrested and she talked to me, that's the only thing

BENNIE LEE DAVENPORT - CROSS-EXAMINATION BY MS. RATIGAN

1 that I seen that that was relayed to me you gonna be found  
2 guilty for this reason, for that reason.

3 Q. Okay, but my question is why did you agree with the  
4 State's facts at the plea that day? Was it just to get it  
5 over with?

6 A. Just to get it over with. I mean, I was basically  
7 confused, didn't know what was goin' on, just to get it over  
8 with.

9 Q. And is that also why you admitted you were guilty just to  
10 get it over with and get ---

11 A. Just to ---

12 Q. --- the plea done?

13 A. --- get it over with, ---

14 Q. Okay.

15 A. --- I mean, I didn't see no other way out.

16 Q. Okay. Now when you ask Ms. Ross to file a motion to  
17 reconsider your sentence, did you ask her in person or was it  
18 in a letter or a phone call, do you remember?

19 A. No, I asked her in person.

20 Q. Okay. Right after the plea?

21 A. Right after the plea.

22 Q. Okay.

23 MS. RATIGAN: That's all I have, Your Honor.

24 THE COURT: Got anything else?

25 MR. JOHNSON: No, sir, Your Honor.

## BENNIE LEE DAVENPORT - CROSS-EXAMINATION BY MS. RATIGAN

1 THE COURT: What you in for now?

2 THE APPLICANT: Uh, strong arm robbery. It's it's ---

3 THE COURT: Yeah, don't talk about it.

4 THE APPLICANT: It's -- yeah, it's not ---

5 THE COURT: Don't talk ---

6 THE APPLICANT: --- what it, ---

7 THE COURT: --- about it.

8 THE APPLICANT: --- it's not what it's ---

9 THE COURT: Don't, don't, don't ---

10 THE APPLICANT: Okay.

11 THE COURT: --- 'cause it's, uh, -- well you -- were you  
12 on, you still on probation or sumtin'?

13 THE APPLICANT: Yes, sir, I am.

14 THE COURT: Okay. And, uh, alright, I'll -- that's it.  
15 Thanks, you can step down.

16 (Whereupon, the applicant left the stand.)

17 THE COURT: Alright, Mr. Johnson.

18 MR. JOHNSON: Your Honor, that's my case.

19 THE COURT: Okay.

20 MS. RATIGAN: Your Honor, the State would call Ms. Ross.

21 THE COURT: C'mon around be sworn.

22 (Whereupon, the witness came forward.)

23 THE CLERK: Ms. Ross, place your left hand on the Bible,  
24 raise your right hand.

25 SUSANNAH CONYERS ROSS, having been

SUSANNAH CONYERS ROSS - DIRECT EXAMINATION BY MS. RATIGAN

1 first duly sworn, testified as follows:

2 THE CLERK: Thank you. Please state your full name for  
3 the record.

4 THE WITNESS: Susannah Conyers Ross.

5 DIRECT EXAMINATION BY MS. RATIGAN:

6 Q. Ms. Ross, do you remember representing Mr. Davenport on  
7 this charge?

8 A. I do.

9 Q. And were you appointed or retained?

10 A. Appointed.

11 Q. Did you file the usual discovery motions?

12 A. Yes.

13 Q. Did you receive those materials from the State?

14 A. I did.

15 Q. Did you go over them with Mr. Davenport?

16 A. I did and just lookin' through the file briefly I know  
17 eight pro. v., so visiting or discussing, so we spent some  
18 time.

19 THE COURT: "Pro. v." what does that mean?

20 THE WITNESS: Professional visitation ---

21 THE COURT: Oh.

22 THE WITNESS: --- so . . .

23 BY MS. RATIGAN:

24 Q. So you would have met with him about eight times at  
25 least?

1 A. Looks like it.

2 Q. Did you review with Mr. Davenport his version of what had  
3 happened with Ms. Brown that day?

4 A. I did.

5 Q. Do you remember discussing with him his desire to get a  
6 videotape from the Food Mart and the, uh, liquor store?

7 A. I do.

8 Q. And were you able to obtain those tapes?

9 A. No, they were no longer available.

10 Q. And did you tell Mr. Davenport that?

11 A. Yes.

12 Q. Did you attempt to speak ---

13 A. Now I say yes ---

14 Q. I'm sorry.

15 A. --- it's not noted in the file so I don't remember, I  
16 assume ---

17 Q. Okay.

18 A. --- I did.

19 Q. Did you attempt to talk to anyone at those stores and get  
20 statements about Mr. Davenport, Ms. Browns' appearance that  
21 day?

22 A. I I have on the 24th that I went to the scene, I  
23 interviewed witnesses, I interviewed a neighbor across the  
24 street, uh, who was unhelpful to Bennie's case. I did, uh,  
25 take pictures of the scene. The scene was behind this

SUSANNAH CONYERS ROSS - DIRECT EXAMINATION BY MS. RATIGAN

1 convenience store, there was a hill, a little ridge and then a  
2 clearing that then led to a a cul-de-sac and some other houses  
3 and there was a cut through that you could go to get to, uh,  
4 Bonnie the victim's house, uh, up through there. In the  
5 clearing that there there was a table and some chairs, there  
6 there was a blanket, uh, people had been there, uh, sort of as  
7 a hang out, there was evidence that they had, uh, I didn't  
8 find that to be helpful to to Bennie's case.

9 Q. Now at some point did the State make a plea offer?

10 A. Yes, they offered 2 years.

11 Q. And do you remember when they would have made that  
12 offer?

13 A. Uh, June 7th 2011 on the ---

14 Q. And did you convey that to Mr. Davenport?

15 A. I did.

16 Q. And in your discussions with him had you reviewed his  
17 criminal record with him?

18 A. Yes.

19 Q. And do you recall when Mr. Davenport rejected that  
20 offer?

21 A. Um, I have a note on August 1st pro. v. trial assault and  
22 battery third, that means I was tryin' to get that so he asked  
23 for a trial according to my note on August 1st 2011.

24 Q. Okay, so sometime between June 7th and August 1st he had  
25 rejected that offer?

1 A. Yes.

2 Q. Okay, so it was put on the trial docket?

3 A. It was.

4 Q. And do you recall what led Mr. Davenport to decide to,  
5 uh, plead guilty that day instead of going to trial?

6 A. You know, you know, I talked to the the victim the day  
7 before, he seemed to care for her and, uh, I don't know why he  
8 backed down the day of trial and decide to plea. He mentioned  
9 pleaing earlier in the week, he's right about that. He was on  
10 the docket on Thursday August 25th, he was, uh, third down in  
11 fronta Judge Welmaker. I advised him, uh, not to plea on that  
12 Monday because I felt we may avoid getting reached so I felt  
13 that, uh, I could get him back his plea offer, offer was off  
14 the table the week of trial. I thought I could get back the  
15 plea offer if if we avoided trial; however, the two in front  
16 of us pled out on Thursday leaving us with no choice but to go  
17 to trial which I was prepared for, I've got my little trial  
18 check list and witness cross-examination and so I was ready  
19 for trial, uh, Bennie just decided to plea.

20 Q. Okay, so when he tried to plead earlier that week, he  
21 woulda pled without a recommendation at that point?

22 A. Right.

23 Q. Okay. And did you explain to him that his eventual plea  
24 on August 25th that was gonna be without recommendation?

25 A. Yes.

SUSANNAH CONYERS ROSS- CROSS-EXAMINATION BY MR. JOHNSON

1 Q. Did you explain to him the sentence range on the  
2 charge?

3 A. Yes. I may have told him that I'd try to get the  
4 2 years, I think I was, I I haven't reviewed the transcript of  
5 me plea but I I was tryin' to get that plea offer back.  
6 Uh, ---

7 Q. Is that -- did you promise him he'd get that 2 years or  
8 just that you were gonna try and get it?

9 A. I didn't promise him.

10 Q. Okay. Did you recall Mr. Davenport after the plea asking  
11 you to file a motion to reconsider?

12 A. Uh, yeah, I noted that, uh, he pled, he was mad about his  
13 sentence. Uh, the judge was willing to re-sentence him to  
14 straight 5 years but, uh, the jail had already taken him back,  
15 had transported him by the time the judge was willing to do  
16 that, I then emailed Chris Florian at SCDC to try to get the  
17 exact time he'd served, got that somewhere, saw, um, and  
18 essentially they had said that that with the 22 months  
19 suspended to 5 he'd do about a year versus 2 1/2 years with a  
20 straight 5 so I really felt that it was in his best interest  
21 just to let it go, so I did, I made that judgment.

22 MS. RATIGAN: That's all I have, Your Honor.

23 MR. JOHNSON: Briefly, Your Honor.

24 CROSS-EXAMINATION BY MR. JOHNSON:

25 Q. Uh, Ms. Ross, have you seen the transcript from the plea?

1 A. I had but I couldn't find it, I I got it months ago ---

2 Q. Okay.

3 A. --- so . . . .

4 THE COURT: I I just handed ---

5 A. I can look at ---

6 THE COURT: --- her my copy.

7 A. Okay.

8 BY MR. JOHNSON:

9 Q. Okay. Ms. Ross, I'm gonna direct you to Page 11  
10 Line, uh, 6, ---

11 A. Okay.

12 Q. --- now I believe there it states, That I didn't  
13 communicate with him enough about a lot of what this plea is  
14 about, the his prior activity, can you reflect to the Court,  
15 uh, what you meant by that.

16 A. I meant that that a lot, he was stuck on there's no  
17 visible injury in this case, there's no visible injury in this  
18 case and I was, uh, and that's the truth but I think I shoulda  
19 been more clear to him that the judge was not necessarily  
20 sentencing him for just this case, with the CDV third, the  
21 judge is also considering, uh, the priors in what kinda  
22 sentence he's going to give.

23 Q. But ---

24 A. Essentially I was tryin' to put some a the blame on  
25 myself so that Welmaker wouldn't load him up as I I was afraid

SUSANNAH CONYERS ROSS- CROSS-EXAMINATION BY MR. JOHNSON

1 he was gonna do.

2 Q. Okay, but now with regards to the motion to reconsider  
3 you stated that, uh, basically you would have gone before the  
4 judge that same day if it weren't for him bein' transported  
5 back to the, to the jail.

6 A. Well that the judge was willing to. I I t -- I told the  
7 judge he was -- I was tryin' to feel out the judge on what  
8 kinda sentence he'd give as a straight sentence and and the  
9 impression I was getting was that it was going to be the  
10 5 years so as we discussed that it turns out he got  
11 transported back to the jail and given the fact that he was  
12 gonna get, uh, what I thought was a much, a harsher sentence  
13 if he went with a straight sentence, I did not have him  
14 brought back the next day or anything.

15 Q. Was that anything that you ever discussed with  
16 Mr. Davenport by, uh, any means whether it's, uh, mailed or,  
17 uh, in person?

18 A. I don't think I did.

19 MR. JOHNSON: Your Honor, I have nothin' further.

20 THE COURT: Okay.

21 MS. RATIGAN: I have no redirect ---

22 THE COURT: You can keep it, stick ---

23 MS. RATIGAN: --- and the S ---

24 THE COURT: --- it in the file, that's ---

25 MS. RATIGAN: --- I have no redirect and the State would

## MOTIONS AND MATTERS

1 rest, Your Honor.

2 THE COURT: Alright. Who represented you back in the  
3 90's, Bennie?

4 MR. JOHNSON: Stand up when ---

5 THE COURT: Who was your lawyer? Who was your lawyer  
6 back in the 90's?

7 THE APPLICANT: In the 90's for what?

8 THE COURT: Well you had burglaries, you had ---

9 THE APPLICANT: Uh, I can't -- it was in Hartsville, I  
10 mean, in Darlington, uh, ---

11 THE COURT: Okay. How long you been up here?

12 THE APPLICANT: In Greenville?

13 THE COURT: Yeah.

14 THE APPLICANT: I'm from Greenville. I got married when  
15 I was 19 and I moved to Hartsville, stayed down there for  
16 about five years.

17 THE COURT: Okay. Alright, anything ya'll wanna tell  
18 me?

19 MR. JOHNSON: Well, Judge, uh, again that, uh,  
20 Mr. Davenport just wants to re-assert his argument, uh, that,  
21 uh, Ms. Ross's representation didn't fit the objection, uh,  
22 objective standard of reasonable -- reasonableness and he's  
23 been prejudiced by it, Your Honor. I guess the two main  
24 things, uh, that we have here or three main things is my  
25 client's allegations, uh, with regards to investigation

## MOTIONS AND MATTERS

1 actually seem to be, uh, relatively supported Ms. Ross went  
2 the day before, they didn't have sufficient time to discuss  
3 it. Uh, my client also, uh, mentions ---

4 THE COURT: She had, she had seven or eight pro. v's.

5 MR. JOHNSON: Yes, sir, Your Honor, and and I think my  
6 client wanna portray to the Court that, uh, ---

7 (Cross-talk.)

8 THE COURT: Was he in jail? Were you in jail waitin'?

9 THE APPLICANT: Yes, sir.

10 THE COURT: So you'd been in jail 6 months or ---

11 MR. JOHNSON: Well, Judge, he, uh, this wasn't the only  
12 charge he had, he had multiple charges and my client just, my  
13 client wanna point out to the Court that, uh, some a the  
14 visits were obviously before, uh, this charge.

15 THE COURT: Some some what now?

16 MR. JOHNSON: Some of the visits were before this charge  
17 so it wasn't eight specific visits based upon this charge  
18 before you today, ---

19 THE COURT: Okay.

20 MR. JOHNSON: --- okay, Your Honor. Uh, uh, with regard  
21 to motion to reconsider, uh, looks like, uh, they agreed that  
22 they would do it and then once he was transported back that  
23 was never revisited.

24 THE COURT: So Bennie wants to come back and get a 5-year  
25 sentence now, is that what he's askin'?

## MOTIONS AND MATTERS

1 MR. JOHNSON: Well, Judge, he'd like to go back to  
2 beginning, I think that's possible. I mean, I ---

3 THE COURT: Well, he he was gonna get 2 years and  
4 they -- and she got it down to 22 months.

5 MR. JOHNSON: Well I don't think he wants to be on  
6 paperwork, Judge.

7 THE COURT: What? How many times you been on probation,  
8 Bennie?

9 THE APPLICANT: Uh, this the se ---

10 MR. JOHNSON: Stand up when you address the judge.

11 THE COURT: He's -- well thank you.

12 MR. JOHNSON: Okay, I'm sorry.

13 THE COURT: That's alright.

14 THE APPLICANT: This is the second time but from my  
15 understandin' she she wasn't gettin' me 2 years, she got me  
16 fi -- I got 5 years. I got 5 years suspended ---

17 THE COURT: Five suspended to 22 active.

18 THE APPLICANT: Twenty-two and 3 years probation, that's  
19 5 years. If I mess up on that probation, I go right back in  
20 prison, that's 5 years. Now if I'd a took those 2 years, I  
21 had 20, I had if I took those 2 -- 2 years that what's been  
22 offered to me from the beginnin' which I tried to do, uh, ---

23 THE COURT: No, ya didn't. Well I, ya know, maybe you,  
24 maybe you wanted to.

25 THE APPLICANT: I ---

## MOTIONS AND MATTERS

1 THE COURT: Bennie, what she ---

2 THE APPLICANT: --- I ---

3 THE COURT: --- did did not fall below an objective  
4 standard of reasonableness, I'm just bein' honest with ya.  
5 She did a good job for you, I think you know that. Oh, I  
6 think she went to visit the scene, she took pictures, she had  
7 pictures of victim, she did all the investigation, she met  
8 with you, uh, go ahead, Mr. Johnson, what?

9 MR. JOHNSON: See what my my client wanna portray to the  
10 Court that she did this months later. I think he's tryin' to  
11 say he did -- she did it too late in order ---

12 THE APPLICANT: This ha ---

13 MR. JOHNSON: --- to be prepared is what what he wants to  
14 say.

15 THE APPLICANT: Yeah, this happened in April, you went in  
16 August.

17 THE COURT: I didn't go ---

18 THE APPLICANT: You went in ---

19 THE COURT: --- in August.

20 THE APPLICANT: I mean, she went in August the day before  
21 we went to court then she went, the day before we went to  
22 court.

23 THE COURT: Well she's lookin' at a trial, lookin' down  
24 the the barrel.

25 THE APPLICANT: But you need, you need to prepare for

## MOTIONS AND MATTERS

1 this, right? You're gonna get your evidence before you go,  
2 not the day before you go ---

3 THE COURT: Um-hum.

4 THE APPLICANT: --- to trial, right?

5 THE COURT: Um, okay.

6 THE APPLICANT: You get, you go ---

7 THE COURT: Well, Bennie, I don't think what she did fell  
8 below an objective standard of reasonableness and so I'm gonna  
9 deny your application. Wish you the best a luck.

10 MR. JOHNSON: Thank Your Honor.

11 THE COURT: Okay.

12 MR. JOHNSON: Thank Your Honor.

13 THE COURT: Alright.

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on October 23, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 34, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

April 7, 2014

Margaret A. Woods

Margaret A. Woods, Court Reporter  
in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Bennie Lee Davenport, )  
 S.C.D.C. No. 229076, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2011-CP-23-8175

**ORDER OF DISMISSAL**

FILED--CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2013 NOV 26 PM 2 31

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 9, 2011. The Respondent made its return on June 5, 2012. An evidentiary hearing into the matter was convened on October 23, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Susannah C. Ross, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

**PROCEDURAL HISTORY**

The Applicant was indicted at the July 2011 term of the Greenville County Grand Jury for criminal domestic violence, third offense or greater (2011-GS-23-3416). Susannah C. Ross, Esquire represented the Applicant.

On August 25, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker

sentenced the Applicant to five years imprisonment suspended on the service of twenty-two months imprisonment and three years probation. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. Failed to present the facts.
  - b. Failed to obtain videotaped events and evidence.
  - c. Refused to obtain discovery.
  - d. Argued with the Applicant and failed to provide any defense strategy.
  - e. Advised the Applicant to reject a two (2) year offer.
  - f. Failed to impeach the victim's mother.
2. Lack of subject matter jurisdiction.
  - a. "Improper indictment, victim on C.D.V. 3rd case was falsely stated in the indictment as Bonnie Brown, yet the warrant for Bonnie Brown states assault and battery 3rd. Bonnie Brown is the mother of the victim and dose not haves a child in common with the defendant nor has she ever cohabitated with such."

At the PCR hearing, the Applicant proceeded solely upon the allegation of ineffective assistance of plea counsel.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he only had two meetings with plea counsel and that they did not discuss his case or possible defenses. The Applicant stated they did discuss his criminal record and that he attempted to tell her the facts of what happened on the day in question. The Applicant stated plea counsel failed to obtain videotapes from a food mart and liquor store to demonstrate how he and the victim interacted that day. The Applicant stated plea counsel also failed to obtain statements from anyone in those stores and failed to take photographs of the crime scene from around the time of the incident. The Applicant stated he tried to accept a two-year plea offer from the State (that was made the day before the plea hearing) but that plea counsel told him to reject it because of the potential plea judge. The Applicant stated he was

unhappy with plea counsel on the day of the plea hearing but that he did not tell the plea judge about this because he did not want to upset the judge. The Applicant stated he pled guilty in order to get it over with. The Applicant stated he did not know he was pleading guilty without a recommendation and that plea counsel said she would try to get him a two year sentence. The Applicant stated plea counsel failed to make a motion to reconsider the sentence.

Plea counsel testified she filed discovery motions, received those materials, and reviewed them with the Applicant. Plea counsel testified they reviewed the Applicant's criminal record and his version of events. Plea counsel testified her notes indicated she had eight meetings with the Applicant. Plea counsel testified the videotapes from the stores were not available. Plea counsel testified she visited the scene, interviewed witnesses, and took pictures. Plea counsel testified the State made a two-year plea offer on June 7, 2011 and the Applicant rejected it on August 1, 2011. Plea counsel testified the case was set to go before a certain judge and that she advised the Applicant not to go forward – but that there was no plea recommendation at that time. Plea counsel testified she explained the sentence range for the offense and that, while she may have said she would argue for a two-year sentence, she would not have made any promises. Plea counsel testified she brought up a motion to reconsider and that the plea judge was willing to re-sentence the Applicant to an active five-year sentence. Plea counsel testified she contacted the Department of Corrections, who stated the Applicant would only serve one year under the sentence he received but would serve two and a half years under a five-year active sentence. Plea counsel testified that, as the Applicant had already been taken to the Department of Corrections, she opted against moving for re-sentencing.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the

Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.7; p.10). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.7-9).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly meet with him or investigate the case. Plea counsel testified they had eight meetings and reviewed the evidence, Applicant's prior criminal record, and the Applicant's version of events. Plea counsel also testified about the steps she took to investigate the case. This Court finds plea counsel's testimony is credible. This Court finds the Applicant has failed to articulate how a different investigation would have changed the outcome of his case. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial). This Court further notes that, while the Applicant stated he was unhappy with plea counsel's investigation at the time he pled guilty, he informed the plea judge he was satisfied with her representation. (Plea transcript, p.8).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not

properly advise him about the State's plea offer. This Court notes the State advised the plea judge that there was a prior recommendation in this case. (Plea transcript, p.9). Plea counsel confirmed the Applicant's testimony that the State had made an offer for a two-year sentence. Plea counsel testified, however, that she had relayed this offer to the Applicant and he rejected it on August 1, 2011. This Court finds plea counsel's testimony is credible and that she fulfilled her obligation to convey the plea offer to the Applicant. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). This Court finds the plea offer had expired by (1) the time plea counsel advised him not to proceed before a certain judge and (2) the day of the plea hearing. This Court finds the Applicant knew he was pleading guilty without a recommendation that day, as it was stated on the record at the plea hearing. (Plea transcript, p.8).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have filed a motion to reconsider the sentence. Plea counsel testified that, while the plea judge was willing to re-sentence the Applicant to an active five-year sentence, she determined this would result in the Applicant serving a substantially longer sentence in the Department of Corrections. As such, plea counsel stated she did not pursue re-sentencing. This Court finds this was a strategic decision and that plea counsel was not at fault in not consulting the Applicant on the matter. See Strickland, 466 U.S., at 688, 104 S. Ct. at 2065 (holding a defense attorney has a duty to consult with the defendant regarding "important decisions" in the overall defense strategy).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

#### CONCLUSION

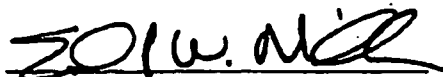
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this \_\_\_\_ day of 11/20, 2013.



Edward W. Miller  
Presiding Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina.

DOCKET NO. 2011-GS-23-  
APC 003416

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2011

THE STATE

vs.

BENNIE LEE DAVENPORT

WITNESSES

P D Derosa

Greenville County Sheriffs Office

4/13/2011

ARREST WARRANT NUMBER

1432699

ACTION OF GRAND JURY

TRUE BILL

Foreperson of GRAND GRAND JURY

VERDICT

3055

Indictment for

DOMESTIC VIOLENCE 3RD OR ABOVE

VIOLATION § 16-25-0020

Foreperson of Petit Jury

Date:

RECEIVED

MAY 12 2011

Clerk of Court  
Greenville County

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF GREENVILLE    )

INDICTMENT FOR  
DOMESTIC VIOLENCE 3RD OR ABOVE

At a Court of General Sessions, convened on **JUL 19 2011** the Grand Jurors of Greenville

County present upon their oath:

That **BENNIE LEE DAVENPORT** did in Greenville County, on or about the 9th day of April, 2011, unlawfully cause, offer, or attempt to cause physical harm or injury to a household member, **BONNIE BROWN**, with apparent present ability under circumstances reasonably creating fear of imminent peril, after having been previously convicted of at least two (2) violations of Criminal Domestic Violence within a period of ten years including and immediately preceding the foregoing date. This is in violation of §16-25-0020 of the South Carolina Code of Laws (1976) as amended.

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



\_\_\_\_\_  
SOLICITOR