



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 7, 2012

Mr. Kevin M. Ware, #269271  
MacDougall Correctional Inst  
1516 Old Gilliard Road  
Ridgeville, SC 29472

Re: The State v. Ware, Kevin M.

Dear Mr. Ware:

This is to advise you that the materials you have submitted will be included with the rest of the material that you have previously submitted for the Court's consideration.

You will need to serve the State with copies of the letters and documents you send to this office.

Very truly yours,



CLERK

DES/lda

cc: Assistant Attorney General William M. Blich, Jr.



ALAN WILSON  
ATTORNEY GENERAL

**RECEIVED**

OCT 27 2011

S.C. Supreme Court

October 27, 2011

Kevin M. Ware, #269271  
McDougall, B2-C15  
1516 Old Gilliard Road  
Ridgeville, SC 29472

Re: State v. Kevin Ware

Dear Mr. Ware:

I am enclosing two (2) copies of the Return to Petition for Writ of Certiorari to the Court of Appeals in the above-referenced case.

If you have any questions concerning this matter, please contact me.

Sincerely,

William M. Blich, Jr.  
Assistant Attorney General

WMB:erd  
Enclosures

cc: ~~Honorable Daniel E. Shearouse~~ (original and six enclosed)  
Victim Services (enclosure)



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

October 4, 2011

Mr. Kevin M. Ware, #269271  
MacDougall Correctional Inst  
1516 Old Gilliard Road  
Ridgeville, SC 29472

Re: The State v. Ware, Kevin M.  
Case Tracking No. 2011-198587

Dear Mr. Ware:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

DES/lda

Enclosure

cc: Assistant Attorney General William M. Blich, Jr.  
The Honorable Tanya Gee

Kevin M. Ware, #269271  
McDougall, B2-C15  
1516 Old Gilliard Road  
Ridgeville, SC 29472

September 27, 2011

Honorable Daniel E. Shearouse  
S.C. Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

**RECEIVED**

OCT 08 2011

Re: The State vs. Kevin Ware  
Opinion No. 2011-UP-272

S.C. SUPREME COURT  
pm 9-29-11

Dear Mr. Shearouse:

Please find enclosed for filing one (1) original of Petitioner's Petition For Writ of Certiorari, and one (1) copy of the Appendix. I provided the Respondent with a copy of the Appendix Index.

I have served the Respondent a copy of my Petition For Writ of Certiorari. However, as I explained in my Motion For In Forma Pauperis Status, submitted to the Court on September 2, 2011, I was unable to produce an additional copy of the Appendix to be served on the Respondent. As the Respondent has a copy of the Record On Appeal from my direct appeal, and the Appendix is virtually the same document, I would hope that it would not be necessary to produce another copy of the Appendix.

Thank you for your kind attention to the above matters. In highest regards, I am

Sincerely,

*Kevin Ware*  
Kevin M. Ware

cc: William M. Blicht, Jr.  
Asst. Attorney General

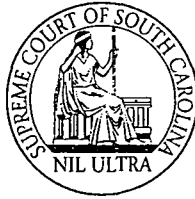
Kevin M. Ware, #269271  
McDougall, B2-C15  
1516 Old Gilliard Road  
Ridgeville, SC 29472



UNITED STATES POSTAGE  
PITNEY BOWES

02 1P \$ 005.15<sup>0</sup>  
0003167712 SEP 29 2011  
MAILED FROM ZIP CODE 29472

SUPREME COURT FOR SOUTH CAROLINA  
Mr. Daniel E. Shearouse, Clerk  
Post Office Box 11330  
Columbia, SC 29211



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 27, 2011

Mr. Kevin M. Ware, #269271  
MacDougall Correctional Institution  
1516 Old Gilliard Road  
Ridgeville, SC 29472

Re: The State v. Ware, Kevin M.

Dear Mr. Ware:

This Court has received your notice of appeal. Please be advised that decisions of the South Carolina Court of Appeals are reviewed by filing a petition for writ of certiorari and an appendix.

Therefore, you must file a petition for a writ of certiorari and appendix that complies with the requirements of Rule 242 (d) and (e), SCACR, within thirty (30) days of the date of this letter. The petition and appendix filed with this Court should be accompanied by a proof of service showing that a copy of the petition for a writ of certiorari has been served on opposing counsel. A copy of Rule 242 is enclosed.

Since no filing fee is required in this matter, no action will be taken on your motion to proceed in forma pauperis. Based on your indigency, it will only be necessary for you to file one copy of the petition and appendix with this Court. As indicated above, one copy of the petition must be served on opposing counsel.

Very truly yours,

CLERK

Enclosure

cc: Assistant Attorney General William M. Blich, Jr.  
The Honorable Tanya Gee

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY  
Court Of General Sessions

Honorable J.C. NICHOLSON Jr. CIRCUIT COURT JUDGE

Opinion No. 2011-UP-273

The State,

Respondent

vs.

Kevin M. Ware,

Petitioner.

NOTICE OF APPEAL

The Petitioner, Kevin M. Ware, appeals his conviction and sentence in this case. The sentence was imposed by the Honorable J.C. Nicholson, Jr., on January 7, 2009. This appeal is taken from the Order of the South Carolina Court of Appeals dated August 15, 2011, which denied Petitioner's Petition For Rehearing. The Petitioner received notice of the Court's decision on August 17, 2011.

Dated: 8-29-11  
Ridgeville, South Carolina

/s/ Kevin Ware  
Kevin M. Ware, Petitioner  
SCDC# 269271  
1516 Old Gilliard Road  
Ridgeville, SC 29472

Other Counsel Of Record:  
William M. Blich, Jr.  
Asst. Attorney General  
P.O. Box 11549  
Columbia, SC 29211

S.C. SUPREME COURT

SEP 08 2011

RECEIVED

11-9-11 AM

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY  
Court Of General Sessions

Honorable J.C. NICHOLSON, Jr., CIRCUIT COURT JUDGE

Opinion No. 2011-UP-273

The State,

Respondent,

vs.

Kevin M. Ware,

Petitioner.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served upon the Respondent a true copy of Petitioner's NOTICE OF APPEAL by placing same into the United States Mail, first class postage affixed, and addressed as follows:

Mr. William Blicht, Jr.  
Asst. Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Dated: 9-2-11.  
Ridgeville, South Carolina

/s/ Kevin Ware  
Kevin M. Ware, Petitioner  
SCDC# 269271  
1516 Old Gilliard Road  
Ridgeville, SC 29472

S.C. SUPREME COURT  
SEP 08 2011  
RECEIVED

# The South Carolina Court of Appeals

The State,

Respondent,

v.

Kevin M. Ware,

Appellant.


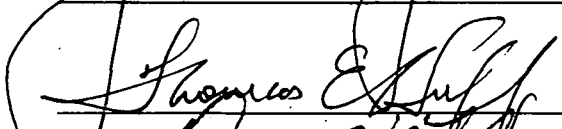

The Honorable J. C. Nicholson, Jr.  
Anderson County  
Trial Court Case No.  
2007-GS-04-00971  
2007-GS-04-00972

---

## ORDER

---

After a careful consideration of the Petition for Rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

  
\_\_\_\_\_  
C.J.  
  
\_\_\_\_\_  
J.  
  
\_\_\_\_\_

Columbia, South Carolina

**FILED**

August 15, 2011

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State,

Respondent,

v.

Kevin M. Ware,

Appellant.

---

Appeal From Anderson County  
J. C. Nicholson, Jr., Circuit Court Judge

---

Unpublished Opinion No. 2011-UP-273  
Submitted May 1, 2011 – Filed June 8, 2011

---

**AFFIRMED**

---

Appellate Defender LaNelle DuRant, of Columbia,  
for Appellant.

Attorney General Alan M. Wilson, Chief Deputy  
Attorney General John W. McIntosh, Assistant  
Deputy Attorney General Salley W. Elliott, and  
Assistant Attorney General William M. Blich, Jr.,  
all of Columbia; and Solicitor Christina T. Adams, of  
Anderson, for Respondent.

**PER CURIAM:** Kevin M. Ware appeals his convictions for possession with intent to distribute (PWID) crack cocaine and PWID crack cocaine within proximity of a park. First, he argues the trial court erred in admitting the crack cocaine into evidence because the State failed to establish a clear chain of custody. Specifically, Ware alleges two sets of crack cocaine might have been tested together because the Anderson Police Department's drug tracking report used the same Best Evidence Number to refer to both sets. Moreover, Ware also contends the evidence was insufficient to establish a chain of custody because the State's Form-B was a false affidavit. Second, Ware argues the trial court erred in declining to charge the jury on the lesser-included offense of possession of crack cocaine because the record contained evidence he only possessed the drugs. We affirm<sup>1</sup> pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the trial court erred in admitting the crack cocaine into evidence: State v. Hatcher, Op. No. 26950 (S.C.Sup.Ct. filed Mar. 21, 2011) (Davis Adv.Sh. No. 10 at 76) ("The trial [court]'s exercise of discretion must be reviewed in the light of the following factors: . . . the nature of the article, the circumstances surrounding the preservation and custody of it, and the likelihood of intermeddlers tampering with it. If upon the consideration of such factors the trial [court] is satisfied that in reasonable probability the article has not been changed in important respects, he may permit its introduction in evidence. . . . [W]here all individuals in the chain are, in fact, identified and the manner of handling is reasonably demonstrated, it is not an abuse of discretion for the trial [court] to admit the evidence in the absence of proof of tampering, bad faith, or ill-motive." (citations and internal quotation marks omitted) (second alteration in original).

2. As to whether the trial court erred in declining to charge the jury on the lesser-included offense of simple possession of crack cocaine: State v. Rivera, 389 S.C. 399, 404, 699 S.E.2d 157, 159 (2010) ("The law to be charged must be determined from the evidence presented at trial." (citations omitted)); State v. Fields, 356 S.C. 517, 523, 589 S.E.2d 792, 795 (Ct. App. 2003) ("[A] trial judge does not err by refusing to charge a lesser-included offense where there is no evidence tending to show that the defendant was

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

guilty only of the lesser offense." (citations omitted)); see also S.C. Code Ann. § 44-53-375(B) (Supp. 2010) (providing that a person commits PWID crack cocaine rather than merely simple possession of crack cocaine where the person "possesses with intent to distribute . . . cocaine base . . ."); State v. Franks, 376 S.C. 621, 624, 658 S.E.2d 104, 106 (2008) ("The mere contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tend to show the defendant was guilty of only the lesser offense." (citations and internal quotation marks omitted)).

**AFFIRMED.**

**FEW, C.J., HUFF and THOMAS, JJ., concur.**

This Sheet is to keep the Notice of Appeal, and  
the In Forma Pauperis Petition's Separate.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

APPEAL FROM ANDERSON COUNTY  
Court Of General Sessions

HONORABLE J.C. NICHOLSON, Jr., CIRCUIT COURT JUDGE

---

Opinion No. 2011-UP-272

---

The State,

Respondent,

vs.

Kevin M. Ware,

Plaintiff.

---

PETITION TO PROCEED  
IN FORMA PAUPERIS

---

The Petitioner, Kevin M. Ware, respectfully moves this Court to proceed in his Petition For Certiorari without the prepayment of fees or costs. This appeal is taken from a criminal conviction and sentence issued by the Anderson County General Sessions Court. The Petitioner submits the below information and facts for this Court's review and consideration.

1. The Petition is within the custody and control of the South Carolina Department of Corrections, and is assigned to the McDougall Correctional Facility in Ridgeville, South Carolina.
2. The Petitioner states that he has been continuously incarcerated since January 7, 2009.
3. The Petition states that he owns no bonds, stocks or other

financial instruments, and that he has no checking accounts, savings accounts, or other monies deposited in any bank, savings and loan, or other financial institution.

4. The Petitioner states that he owns no real property, automobiles, or other property exceeding a value of one hundred dollars (\$100).

5. The Petitioner states that because of his poverty, he is unable to provide the Court the requisite number of copies of the Appendix or brief required under the Rules of Appellate Procedure.

#### CONCLUSION

WHEREFORE, having shown good and just cause, the Petitioner respectfully moves to be allowed to proceed in this appeal under In Forma Pauperis status. Further, the Petitioner requests that he be allowed to submit one (1) copy of the Appendix and the original brief to this Court.

Respectfully submitted,

Dated: 8-29-11.  
Ridgeville, South Carolina

/s/ Kevin Ware  
Kevin M. Ware, Petitioner  
SCDC# 269271  
1516 Old Gilliard Road  
Ridgeville, SC 29472

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY  
Court Of General Sessions

Honorable J.C. NICHOLSON, Jr., CIRCUIT COURT JUDGE

Opinion No. 2011-UP-273

The State,

Respondent,

vs.

Kevin M. Ware,

Petitioner.

CERTIFICATE OF SERVICE

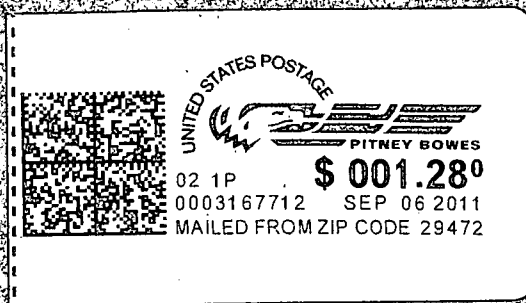
I hereby certify that I have this date served upon the Respondent a true copy of Petitioner's MOTION TO PROCEED IN FORMA PAUPERIS by placing same into the United States Mail, first class postage affixed, and addressed as follows:

Mr. William Blicht, Jr.  
Asst. Attorney General  
P.O. Box 11549  
Columbia, SC 29211

Dated: 9-2-11  
Ridgeville, South Carolina

/s/ Kevin Ware  
Kevin M. Ware, Petitioner  
SCDC# 269271  
1516 Old Gilliard Road  
Ridgeville, SC 29472

Kevin M. Ware #269271  
MacDougal Correctional Institution  
1516 Old Gilliard Road  
Ridgeville, S.C. 29472



Mr. Daniel E. Shearouse  
Clerk of the Supreme Court  
P. O. Box 11330  
Columbia, SC 29211