

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from Lexington County  
Court of Common Pleas  
Honorable William P. Keesley, Circuit Court Judge

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**Alfonso Ware, Jr.**

Petitioner,

v.

**The State ,**

Respondent.

Appellate Case No. 2014-001470

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**RETURN TO MOTION TO DISMISS APPEAL WITHOUT PREJUDICE**

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*SH*  
This matter comes before the Court by a “in the “Motion to dismiss without prejudice and with leave to appeal again” dated July 28, 2015. In the motion in this DNA application denial appeal, the petitioner, Alfonso Ware, Jr., requests the Court of Appeals to dismiss the matter without prejudice, based upon receipt of so-called “S.L.E.D evidence that was not considered by Judge Keesley.” Respondent opposes the motion to dismiss without prejudice.


A review of the prior pleadings before this Court suggests that the so-called SLED evidence that he wants this Court and Judge Keesley to consider is a response he received to an Freedom of Information Act request he received on February 4, 2015 which he presented o this Court in an earlier motion to “motion for relief from Judgment...’ received by the Court on June 2, 2015. These materials received by the Petitioner from S.L.E.D. do not effect either the matter on appeal from the denial of a DNA application by Judge Keesley nor authorize the

**RECEIVED**  
AUG 14 2015  
SC Court of Appeals

matter for DNA testing to be open below. Neither of the items of S.L.E.D. records from 1990 attached to the June 3 motion do not reflect that there is any trace evidence that was available for DNA testing which is the purpose of the DNA application.

In his May 21, 2014 Order conditionally denying the application, Judge Keesley concluded, upon the October 22, 2013 response from the 11<sup>th</sup> Circuit Solicitor's Office that :

After the application was sent to the Solicitor's office, the following things were determined:

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- a) the weapon and the clothing are not available for testing;
  - b) the evidence from the trial was released by the Clerk of Court, pursuant to an order of this court dated August 24, 1998;
  - c) on August 22, 2013, the Solicitor's office of the 11<sup>th</sup> Judicial Circuit assigned investigators to review records and to search for evidence, and found no paperwork or evidence from the trial;
  - d) the Solicitor's office of the 11<sup>th</sup> Judicial Circuit instructed its records custodian to search for files related to this case, and it was determined that files prior to 1992 were destroyed when pipes burst in the basement of the old office of the Solicitor's staff;
  - e) the West Columbia Police Department does not have any evidence from the trial, as confirmed by the evidence custodian of that agency on August 26, 2013;
  - f) SLED does not have any evidence from the trial, as the weapon and evidence tested were returned to the Lexington County Sheriffs Department on January 23, 1990, which was prior to the trial;

- g) Lexington Medical Center confirmed by affidavit that it does not have any evidence from the trial, no longer has any specimens for testing related to this case, and that its records show that no DNA testing was done by Lexington Medical Center; and,
- h) the Lexington County Sheriffs Department does not have any evidence from the trial, except an incident report with case number 89-38992, as confirmed by a search performed by the Sergeant of Evidence for the department.

Order of Intention to Summarily Dismiss the Application for DNA Testing, May 13, 2014, p. 4-5. This was restated again in the Order of Summary Dismissal of Application for DNA Testing, filed June 20, 2014, p. 4-5.

*43*  
*XB*  
The material Petitioner attached does not assert any newly discovered evidence that trace evidence, the gun or clothing or other items exist for DNA testing that he is seeking. In fact, it remains unclear why Petitioner asserts these particular SLED documents have any effect upon the representations and conclusions in 2013 and 2014 that evidence for DNA testing exists that he seeks to be tested.

In an abundance of caution, Respondent attaches the following documents:

1. Copy of an Order for Release of Evidence dated August 24, 1998 by the Honorable William P. Keesley.
2. Copy of a letter from Chief Investigator Matthew W. Martin of the Eleventh Judicial Circuit Solicitor's Office dated August 26, 2013.
3. Copy of a letter from the Evidence Custodian for the West Columbia Police Department dated August 26, 2013.

4. Copy of a sworn affidavit from the Lexington Medical Center dated September 12, 2013
5. Copy of a letter from the Sergeant of Evidence for the Lexington County Sheriffs Department dated September 17, 2013.

Exhibits 1-5 Attached.

The similar request was before the Court when on July 10, 2015, it interpreted the request as a motion to stay the proceedings and denied the motion. Ware v. State, Appellate Case 2014-001470, Order ( July 10, 2015) (order denying request to “stay proceedings in this Court.”). The same request is now converted to a motion to dismiss the appeal without prejudice and allow refiling. On July 23, 2015, by letter from the Clerk, the Petitioner was advised to file his Petition for Writ of Certiorari within 10 days. Rather than comply, he filed this motion to dismiss without prejudice and allow him to seek a reconsideration before Judge Keesley of his same presentation, again without recognizing that the information still does not reflect the existence of requested items to be tested. To the contrary, it shows that SLED released a “box” in January 1990, a matter that is not in dispute on whether the items remain in the custody to the Lexington County Sheriff Department.

Apparently, the Petitioner may be confused about the limited purpose of an application for DNA testing and thinks it is the equivalent of either a Rule 29 motion for new trial or application for post-conviction relief under S.C. Code Ann. Section 17-27-10, et. seq. . However, it is neither, but a limited procedure.

The Petitioner has made an inadequate showing to allow a dismissal without prejudice

## II.

Wherefore having made Response to the “Motion to Dismiss Without Prejudice and with

Leave to Appeal Again”, the Respondent requests that the motion be dismissed.”

Respectfully submitted,

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Senior Assistant Deputy Attorney General  
SC Bar #5758

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

**ATTORNEYS FOR RESPONDENTS**

By: 

DONALD J. ZELENKA

August 14, 2015

## ATTACHMENTS

1. Copy of an Order for Release of Evidence dated August 24,1998 by the Honorable William P. Keesley.
2. Copy of a letter from Chief Investigator Matthew W. Martin of the Eleventh Judicial Circuit Solicitor's Office dated August 26,2013.
3. Copy of a letter from the Evidence Custodian for the West Columbia Police Department dated August 26,2013.
4. Copy of a sworn affidavit from the Lexington Medical Center dated September 12, 2013
5. Copy of a letter from the Sergeant of Evidence for the Lexington County Sheriffs Department dated September 17,2013.

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
THE STATE )  
 )  
VS. )  
 )  
Alfonso Ware Jr. )  
 )  
DEFENDANT. )  
\_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

ORDER FOR RELEASE OF EVIDENCE

90-GS-32-56

It appears that the above-captioned action was tried before the Court of General Sessions of Lexington County on June 27, 1990, and that more than ten (10) days have now elapsed since the conclusion of said action. It also appears that no appeal has been perfected with regard to said action.

The following items were introduced into evidence:

No Sheet Available

1998 AUG 24 P 4:40  
CLERK OF COURT  
LEXINGTON COUNTY  
SOUTH CAROLINA

Since the retention of said items by the Clerk of Court no longer serves any judicial purpose,

IT IS THEREFORE ORDERED that said items be released to the state for distribution to their rightful owners.

AND IT IS SO ORDERED.

  
ELEVANTH JUDICIAL CIRCUIT COURT JUDGE

Lexington, South Carolina  
August 24, 19 98

**2**

# ELEVETH CIRCUIT SOLICITOR'S OFFICE

Donald V. Myers, Solicitor



205 EAST MAIN STREET #309  
LEXINGTON, SOUTH CAROLINA 29072  
TELEPHONE: (803) 785-8352 FAX: (803) 785-8431



**Matthew W. Martin-Chief Investigator**  
**(803) 785-2201**

*Matthew W. Martin*

**To: Assistant Solicitor Christopher Samellas**  
**Date: August 26, 2013**  
**Re: State v. Alphonso Ware (90-GS-32-56)**

After speaking with you on Thursday, August 22, concerning the appeal on the above mentioned case, I took the following actions. First, I contact Howard Jernigan from our office. Mr. Jernigan has been the liaison between the Lexington Clerk of Court's Office and our office since the early 1990's. Mr. Jernigan completed an intense search of the files in his possession relating to the transfer of evidence from the Clerk's Office back to law enforcement. Mr. Jernigan could find no paperwork related to the above listed case.

I next contacted Debbie McDaniels from our office. Ms. McDaniels is our in-house records custodian. Ms. McDaniels informed me that the only files from our office that still exist start at 1992. She stated that before Lexington County had a central records management storage area, the files for the Lexington County Solicitor's Office were stored in the basement of the office. These files were destroyed by a flood in 1995.

To that end, I am unaware of any other avenue for our office to take to locate any records that would have remained in our care, custody or control. Please do not hesitate to contact me should any further follow up be desired or assistance needed.

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**City of West Columbia**  
*Bridging Past, Present and Future*

**POLICE DEPARTMENT**  
CHIEF DENNIS K. TYNDALL

**To:** Lt. Bruce Wade, Chief of Detectives  
**Cc:** Maj. Matt Edwards, Deputy Chief of Police

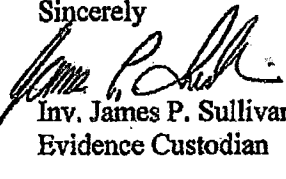
**From:** Inv. James P. Sullivan

**Ref:** State v. Alfonso Ware Jr.

**Date:** 08/26/2013

On 08/09/2013, Mr. Christopher G. Samellas, Senior Assistant Solicitor, 11<sup>th</sup> Judicial Circuit Solicitor's Office, pursuant to a Motion for DNA testing requested a review of any and all evidence concerning the State v. Alfonso Ware Jr. The incident took place in the jurisdiction of Lexington County; however, a City of West Columbia Officer did provide assistance. A check of West Columbia evidence records revealed that the City of West Columbia did not take any property into evidence in reference to the aforementioned case.

Sincerely



Inv. James P. Sullivan  
Evidence Custodian

4



2720 Sunset Boulevard  
West Columbia, SC 29169  
803-791-2000

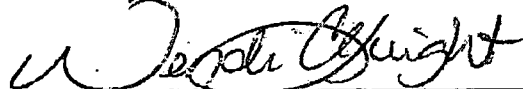
**Affidavit of Wendi C. Knight, MLS (ASCP)**

On August 7, 2013, I, Wendy C. Knight, MLS (ASCP), received from Christopher G. Samellas, Senior Assistant Solicitor for the Eleventh Judicial Circuit in South Carolina a copy of a Court Order regarding a Motion for DNA Testing in the case of *State v. Alfonso Ware, Jr.* Pursuant to the Court Order, our lab was required to locate the biological material and review the lab records in this case.

I am a licensed Medical Laboratory Scientist who currently works as a Lab Manager at Lexington Medical Center. I possess a board certification from the American Society for Clinical Pathology (ASCP). Additionally, I have an Associate's Degree and a Bachelor's degree. I have extensive professional knowledge regarding laboratory data, policy, and procedure, including but not limited to, the way our lab records are maintained and how to access our lab records. I have been in my current role of Lab Manager at Lexington Medical Center since May of 2011. However, I have been working in this field since 2004.

I have reviewed our lab records from 1990 as it relates to the case of *State v. Alfonso Ware, Jr.*, and I found that we no longer have any specimens for testing. I also determined that our lab did not perform any DNA testing and I do not know if another agency was involved that could have requested DNA testing. Since we did not have a lab computer system in 1990, all of the lab records from that time period are on paper and are attached to one another. Based on our records, I do not believe that the lab can be of any assistance in this matter.

Sincerely,

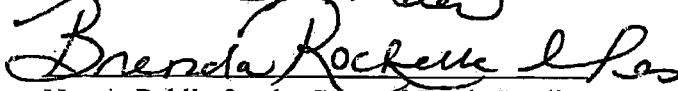


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Wendi C. Knight, MLS (ASCP)  
Medical Laboratory, Lab Manager  
Lexington Medical Center

SWORN AND SUBSCRIBED before me

This 12<sup>th</sup> day of September, 2013.



Notary Public for the State of South Carolina

My commission expires on ~~\_\_\_\_\_~~ My Commission Expires December 28, 2015.

**5**

James R. Metts, Ed. D.

**LEXINGTON COUNTY SHERIFF'S DEPARTMENT**

September 17, 2013

Senior Assistant Solicitor Chris Samellas  
Eleventh Judicial Circuit  
205 E. Main St.  
Lexington, South Carolina, 29072

Re: State of South Carolina v Alfonso Ware, Jr.

Pursuant to the court order in reference to State of South Carolina vs Alfonso Ware, Jr., a search of the evidence room and old records was performed. The only item found was an incident report with case number 89-38992 which was forwarded to the Solicitors Office. No other evidence could be located in reference to this case.



Sergeant Douglas A Novak  
Sergeant of Evidence  
Lexington County Sheriff's Department

LEXINGTON COUNTY SHERIFF'S OFFICE

INCIDENT REPORT

DATE NUMBER 81-3299

INCIDENT TYPE SHOOTING INCIDENT		PRESSURE TYPE ROADMAN		DATE ENTERED 1/15/70	DATE ENTRY
LOCATION (STREET, HIGHWAY, APARTMENT AND ROOM, STREET NAME AND NUMBER) HULLS ST. W. COIN. SC 29169					
APPROXIMATE TIME 11:55 PM	TO	DATE	WEAPON TYPE ROUNDER BULLET	RELATIONSHIP OF VICTIM TO SUSPECT PP	TRACT
APPROXIMATE TIME (AM - PM - HOUR)		APPROXIMATE DATE (MM - DD - YEAR)	CITY	STATE	ZIP CODE
3:01 GIBSON RD		LEXINGTON	SC	29072	
APPROXIMATE TIME (AM - PM - HOUR)		APPROXIMATE DATE (MM - DD - YEAR)	CITY	STATE	ZIP CODE
CHANNON, ROBERT P.		JAN 22	W. COIN	SC	29063
APPROXIMATE TIME (AM - PM - HOUR)		APPROXIMATE DATE (MM - DD - YEAR)	CITY	STATE	ZIP CODE
202 BROWNING		JAN 22	W. COIN	SC	29063
IMMEDIATE NEXT MOBILE					
ADDRESS					
CITY					
STATE					
ZIP CODE					
TRACT					
CHARGES					
<p>1. OBSCURITY</p> <p>2. OBSCURITY</p> <p>3. OBSCURITY</p> <p>4. OBSCURITY</p>					
VEHICLE MAKE AND MODEL		APPROVED BY (SHERIFF OR HIS DEPUTY)		DATE OF OFFENSE	
1964 CHEV		SC		1/15/70	
VEHICLE MAKE AND MODEL		APPROVED BY (SHERIFF OR HIS DEPUTY)		DATE OF OFFENSE	
84 CHEV		SC		1/15/70	
ADDITIONAL VEHICLE DESCRIPTION					
NONE					
<p>ON THE ABOVE LISTED INCIDENT DATE, W. COIN P.D. NARRATED THIS          REPORT OF A MURDER AT 378 AND HUMPHREYS ST. OFFICER RANGEL SE          FOUND THE LATER VICTIM DRAWING THE LATER BLOOD. OFFICER RANGEL          FOUND A WOUND ON THE VICTIM'S LEFT SIDE. DURING THIS TIME HE ALSO NOTED          A SMALL BULLETHOLE AND A SMALL AMOUNT OF BLOOD CAUSAL TOOLS IN THE          VICINITY. THE VICTIM HAD A SMALL AMOUNT OF MONEY IN HIS POCKET          OF THE VICTIM. OFFICER RANGEL ASKED THE VICTIM WHAT HAPPENED. VICTIM STATED          "IT WASN'T MEANING ANYTHING" OFFICER RANGEL TOLD THE VICTIM TO          "STAY" R/O. CONFIDENT POLICE WITH THE VICTIM.          BY C.D. VAN ARMAN ON THE VICTIM. CASE # 9807</p>					
ADDITIONAL INFORMATION					
NONE					
<p>APPROVAL OF THIS REPORT</p> <p>100</p> <p>REPORTING OFFICER: [Signature]</p> <p>DATE: 1/25/70</p> <p>NUMBER: 213</p> <p>APPROVED OFFICER: [Signature]</p> <p>DATE: 1/26/70</p> <p>NUMBER: 221</p>					

#311

LCP 5/17/69

**STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from Lexington County  
Court of Common Pleas  
Honorable William P. Keesley, Circuit Court Judge

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**Alfonso Ware, Jr.**

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v.

**The State ,**

Respondent.

Appellate Case No. 2014-001470

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**PROOF OF SERVICE**

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I, William Edgar Salter, III, on behalf of Donald J. Zelenka, Senior Assistant Deputy Attorney General, certifies that on the 14<sup>th</sup> day of August, 2015, he served two (2) copies of Respondent's Return to Motion to Dismiss Appeal Without Prejudice, with attachments on Petitioner by depositing same in the United States Mail, first class, postage prepaid, addressed as follows:

Alfonso Ware, Jr., #168464  
Broad River Correctional Institution  
Monticello 242  
4460 Broad River Road  
Columbia, South Carolina 29210

August 14, 2015.

  
\_\_\_\_\_  
WILLIAM EDGAR SALTER, III  
Attorneys for Respondent