

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appellate Case No. 2014-001470

Alfonso Ware Jr.  
Petitioner

v.

State of South Carolina  
Respondent.

RECEIVED

MAR -3 2017

S.C. SUPREME COURT

APPENDIX

Alfonso Ware Jr. Pro se  
4460 Broad River Rd.  
Columbia, SC 29210-4012

Office of the Attorney General  
Alan Wilson, Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-6505

February 27, 2017

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**COPY**

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

) IN THE COURT OF (Select one)  
)  GENERAL SESSIONS  
)  FAMILY COURT  
) JUDICIAL CIRCUIT

Alfonso Ware, Jr. #168464  
Name of applicant and Inmate number (if applicable)

) APPLICATION FOR  
) FORENSIC DNA TESTING

OR  
IN THE INTEREST OF

) ORIGINAL INDICTMENT NO.

Juvenile

) 90 -GS- 32- 0056

v.

) OR

State of South Carolina

) ORIGINAL PETITION NO.

) -JU-

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

2013 JUL 29 PM 1:39

FILED

**INSTRUCTIONS - 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 continue an 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 end of this 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 or adjudicated.

I understand that DNA testing is only available if I have been convicted or adjudicated of an offense listed in S.C. Code Ann. § 17-28-30, that I am currently incarcerated for that offense, and that I am asserting that I am innocent of the offense. Further, if the conviction or adjudication was the result of a plea of guilty or nolo contendere, the application must be filed within seven years of the date of sentencing.

1. Identify the proceedings in which the applicant was convicted or adjudicated:

Jury Trial, June 1990 term of Lexington County General  
Sessions Court.

**A TRUE COPY**  
[Signature]  
Lex. Co. C.C.P., G.S. & E.C.

2. Give the date of the entry of the judgment and sentence: June 27, 1990.

and current place of incarceration: Broad River Corr. Inst., Columbia, SC.

3. Identify all previous or ongoing proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or adjudication:

(a) Direct Appeal; State v. Ware, Op. No. 92-ANO-17 (Ct.App. Filed Feb. 24, 1992).

(b) PCR; denied June 16, 1995; See back of this page for grounds.

(c) Writ of Certiorari to S.C. Supreme Court; denied on Nov. 8, 1996.

4. Make a reasonable attempt to identify the physical evidence or biological material that should be tested: The alleged murder weapon. Clothing that I wore the day

the murder occurred, which were seized by the police.

Identify the specific type of DNA testing being sought:

Any type that could be used to test any blood found on the weapon and cloth-  
-ing, and that could establish conclusively that I did not commit murder.

5. Explain why the identity of the applicant was or should have been a significant issue during the original court proceedings, notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity:

There was only circumstantial evidence connecting me to the crime. The only

evidence the prosecution really had was an alleged confession, which I

maintained that I did not make. The murder happened at extreme close range.

If no blood is found on my clothing or the weapon, it would disprove the pro-  
-secutions theory about how the murder occurred.

6. Explain why the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, provide the results of the testing and explain how the requested DNA test would provide a substantially more probative result:

To my knowledge the material was never tested. My attorney did not request

that it be tested, and I do not know if the police tested it or not.

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

- 7. Explain why if the DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching:

Because if none of the victim's blood is found on the weapon  
or my clothing, it would prove that I could not have shot the  
victim.

- 8. I assert that I am actually innocent of the listed offense, that this offense is listed in S.C. Code Ann. § 17-28-30 and that I am currently incarcerated for the listed offense. I attest that this application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

- 9. If DNA testing is conducted and results are determined to be inculpatory by the Court, I understand that:

- (a) The Court may hold me in contempt of court if it determines that my assertion of actual innocence was intentionally false;
- (b) The Court may assess the cost of any DNA testing against me;
- (c) The South Carolina Department of Corrections may use this determination to deny good conduct credit; and,
- (d) The Department of Probation, Parole, and Pardon Services can use this determination to deny parole.

Alfonso Ware, Jr.  
 Print Applicant Name

Alfonso Ware Jr.  
 Signature of Applicant

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STATE OF SOUTH CAROLINA

County of **LEXINGTON**

)  
)  
)

VERIFICATION

I Alfonso Mare, Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; and that the matters and allegations set forth are true.

Alfonso Mare Jr.  
Signature of Applicant

SWORN to and subscribed before me this 11th  
day of February, 2013

Susan H. Dye (L.S.)  
Notary Public

My Commission Expires: \_\_\_\_\_  
My Commission Expires March 5, 2018

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

I, Alfonso Ware, Jr., 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.

Alfonso Ware Jr.  
Signature of Applicant

SWORN to and subscribed before me this 30  
day of Jan, 2015

Eugene Huff (L.S.)  
Notary Public

My Commission Expires: My Commission Expires April 4, 2018

6

January 30, 2013

The Honorable Beth Carrigg, Clerk of Court  
205 East Main Street  
Lexington, South Carolina 29072

6

FILED  
2013 JUL 29 PM 1:39  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

RE: Application for Forensic DNA Testing

Dear Ms. Carrigg:

Please find enclosed for filing an original and two copies of an Application for Forensic DNA Testing. Please return a clock-stamped copy to me for my record.

Your help with this matter is appreciated.

Sincerely,

s/ Alfonso Ware, Jr.  
Alfonso Ware, Jr.

Mr. Alfonso Ware, Jr., #168464  
Broad River Correctional Inst.  
Monticello - 286  
4460 Broad River Road  
Columbia, South Carolina 29210

**ORIGINAL**

**FILED**  
2013 JUL 29 PM 1:40

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA, )  
-vs- )  
ALFONSO WARE, JR., (#168464), )  
Defendant. )

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

ORDER REGARDING MOTION  
FOR DNA TESTING

Indictment Number: 1990GS3200056

The defendant has submitted a motion for DNA testing under the Access to Justice Post-Conviction DNA Testing Act, S.C. Code Ann. §17-28-10, et seq. He was convicted of Murder by a jury and sentenced to life imprisonment on June 27, 1990. Pursuant to the Act, the court directs the following actions.

*WPA  
#1*

- 1) The Clerk of Court is to file the application. The court finds that the applicant qualifies for indigent status under §17-28-60.
- 2) The application does not indicate a request for appointment of counsel. Under §17-28-60, the applicant is to request counsel in his application. The court is unaware of any ongoing PCR action that falls under the language of 17-28-60. The court will consider appointment of counsel if these proceedings reach a stage where the application is determined to be sufficient to proceed further.
- 3) Under §17-28-50(A):
  - a. a copy of the documents filed shall be forwarded by the Clerk of Court to the Solicitor's office of the 11<sup>th</sup> Judicial Circuit.
  - b. The Solicitor's office is responsible for notifying the Attorney General's office.

**A TRUE COPY**  
*[Signature]*  
Lex. Co. C.C.P., G.R. & F.C.

- 8
- c. The Solicitor's office is responsible for notifying the custodian of evidence.
  - d. The victim's family is to be notified under §16-3-1505, et seq., S.C. Code Ann.

4) Under §17-28-50(B):

- a. The Solicitor and/or the Attorney General shall file a response within 90 days of the date that a copy of the application is forwarded by the Clerk of Court. If additional time is needed, the prosecuting agency or agencies may file a request for an extension of time.
- b. The victim (as defined under §16-3-1505, et seq., S.C. Code Ann.) may file a response within 90 days of the filing of the application or within any time frame permitted by the court.

*Wpd #2*  
5) Under §17-28-70:


- a. The Solicitor's office is to forward a copy of this order to any custodian of evidence, and the custodian of evidence is hereby ordered to preserve all physical evidence and biological material related to the underlying murder charge.
  - b. The custodian of evidence is further ordered to prepare an inventory of the physical evidence and biological material, and to forward a copy of that inventory to the applicant, the Solicitor/Attorney General, and the court.
  - c. If the custodian of evidence indicates that the evidence has been lost or destroyed, the custodian must comply with §17-28-70(C).
- 6) Under §17-28-80, if any physical evidence or biological material has previously been submitted for DNA testing, the Solicitor/Attorney General shall produce all written

reports and laboratory reports related to the DNA testing, including underlying data and lab notes.

- 7) The court shall be notified of any issues related to preservation of evidence, with a copy sent to the parties. [See, for example, the Preservation of Evidence Act, §17-18-300, et seq. which went into effect in 2009.]

AND IT IS SO ORDERED.

July 26, 2013

  
 \_\_\_\_\_  
 William P. Keesley  
 Chief Judge for Administrative Purposes  
 General Sessions, 11<sup>th</sup> Judicial Circuit

#3

10  
**ORIGINAL**

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF GENERAL SESSIONS  
FOR THE ELEVENTH JUDICIAL CIRCUIT  
Case No: 1990-GS-32-0056

STATE, )  
 )  
v. )  
ALFONSO WARE, JR., #168494, )  
 )  
DEFENDANT. )

OCT 22 11 20 11  
BETH A. WATSON  
CLERK OF COURT  
LEXINGTON, SC

**RESPONSE TO DEFENDANT'S  
APPLICATION FOR  
FORENSIC DNA TESTING AND  
MOTION FOR SUMMARY DISMISSAL**

This matter comes before the Court by way of an application for Post-Conviction DNA Testing pursuant to S.C. Code Ann. §17-28-10, *et seq.* The Lexington County Solicitor's Office has notified the Attorney General's Office, the Lexington County Clerk of Court, the victim's family, and the custodians of evidence in the Lexington County Sheriff's Department, West Columbia Police Department, South Carolina Law Enforcement Division (SLED), and the Lexington Medical Center of this application in compliance with statute and Order dated July 26, 2013, of the Honorable William P. Keesley. For the following reasons, this Application should be summarily dismissed.

**Procedural History**

The Defendant is incarcerated in the South Carolina Department of Corrections (SCDC) pursuant to the Lexington County Clerk of Court's Order of Commitment. The Lexington County Grand Jury indicted the Defendant at the January 1990 term for Murder (1990-GS-32-0056). Thomas Bellinger, Esquire, and H. Patterson McWhirter, Esquire, represented the Defendant on the charge. Assistant Solicitors R. Knox McMahon and L. Lisa McPherson appeared on behalf of the State. The Defendant proceeded to a jury trial on June 25, 1990, and he

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was found guilty as indicted. The Honorable Hubert E. Long sentenced the Defendant to confinement for a period of life.

On July 3, 1990, H. Patterson McWhirter, Defendant's trial counsel, filed a timely Notice of Appeal on the Defendant's behalf. Robert M. Dudek of the South Carolina Office of Appellate Defense perfected the appeal on the Defendant's behalf. The South Carolina Supreme Court affirmed Defendant's conviction and sentence. *See State v. Ware*, Op. No. 92-MO-17 (S.C. Ct. App. Filed February 24, 1992).

The Defendant subsequently filed a Post-Conviction Relief (PCR) Application on August 21, 1992. The State filed its return on October 9, 1992. On May 2, 1995, the Honorable Daniel E. Martin held an evidentiary hearing. The Defendant was present at the PCR hearing, and Wayne Floyd, Esquire, represented him. By Order dated June 16, 1995, and filed June 21, 1995, Judge Martin denied and dismissed the Defendant's application.

Wayne Floyd, the Defendant's PCR counsel, filed a timely Notice of Appeal on the Defendant's behalf on July 19, 1995, and submitted a Petition for Writ of Certiorari on June 5, 1996. On November 8, 1996, the South Carolina Supreme Court denied the Petition. On December 19, 1996, the Court denied a Petition for Rehearing.

On March 11, 1997, the Defendant subsequently filed a Petition for Writ of Habeas Corpus in U.S. District Court. The Honorable Charles E. Simons, Jr., denied the Petition by Order dated January 14, 1998, and filed January 16, 1998. The Defendant appealed this decision to the U.S. Court of Appeals for the Fourth Circuit. The Court affirmed the dismissal of the Petition by Order dated June 2, 1998, and filed June 4, 1998.

The Defendant filed a second PCR Application on February 10, 2000, alleging that he had newly discovered evidence that warranted another evidentiary hearing. The State filed its

Return and Motion to Dismiss on April 13, 2000. The Honorable J.C. Nicholson, Jr., heard the Motion to Dismiss on June 14, 2001. Judge Nicholson denied the Motion to Dismiss by Order dated July 12, 2001, which was filed on July 17, 2001, and by Order dated July 31, 2001, which was filed on August 7, 2001. On August 27, 2001, the Honorable G. Thomas Cooper held an evidentiary hearing. William Rast, Esquire, represented the Defendant. Elizabeth McMahon, Esquire, of the South Carolina Attorney General's Office, represented the State. Judge Cooper denied the application by Order dated October 9, 2001, which was filed on October 26, 2001.

The Defendant filed a third PCR Application on December 6, 2001, alleging that his trial counsel was ineffective for failing to challenge his confession and for failing to object to the trial court's ruling pertaining to the validity of his confession. The Defendant further alleged that he did not knowingly and intelligently waive his right to appeal from the denial of his second PCR Application. The Honorable Marc H. Westbrook held an evidentiary hearing on January 6, 2003. The Defendant was present at the hearing, and Richard Breibart, Esquire, represented him. Allen Bullard, Esquire, of the South Carolina Attorney General's Office, represented the State. The Honorable Marc H. Westbrook denied the application by Order dated January 27, 2003, and filed February 4, 2003.

On August 14, 2003, the Defendant filed a fourth PCR Application against his PCR counsel for failing to appeal his third PCR Application. The State made its Return and Motion to Dismiss on March 31, 2004. The Honorable Clyde N. Davis, Jr., held an evidentiary hearing into the matter on October 21, 2005. The Defendant was present at the hearing, and Tommy A. Thomas, Esquire, represented him. Sabrina C. Todd, Esquire, of the South Carolina Attorney General's Office represented the State. The Honorable Clyde N. Davis, Jr., by Order dated

November 14, 2005, and filed on November 21, 2005, granted the Defendant's Application, which allowed the Defendant a belated review of the denial of his third PCR Application.

On December 15, 2005, Tommy A. Thomas, Defendant's counsel for his fourth PCR Application, filed a timely Notice of Appeal on the Defendant's behalf and a Petition for Writ of Certiorari for Defendant's third PCR Application. On September 5, 2007, the South Carolina Supreme Court denied the Petition.

**Facts**

On November 25, 1989, an individual who heard a loud collision outside of his home found Robert Chanon injured in a vehicle on Holmes Street in West Columbia. Law enforcement found a pistol in the vehicle on the passenger's side floorboard, which police later confirmed to be the murder weapon, and money in Chanon's hands. Chanon was incoherent when law enforcement arrived.

Emergency Medical Services (EMS) arrived on the scene and removed Chanon from the car. When EMS removed him, they identified a gunshot wound, and law enforcement found two pieces of crack cocaine in his seat. Chanon stated that someone shot him on crack alley. EMS transported Chanon to the hospital. In the emergency room, he told his girlfriend that an unfamiliar black man shot him.

Three days after the shooting, the police received a tip that the Defendant was involved. An officer located the Defendant and asked him if he knew about the shooting. The Defendant responded that he did, and he voluntarily went to the police station where the police gave him *Miranda* warnings. At this point, the Defendant began talking and gave the officer a confession. An officer typed up the Defendant's statement. Then the Defendant initialed and signed the statement. The Defendant stated that he had shot Chanon after Chanon had stolen his crack and

money right out of his hand. He also stated that he had thrown the pistol into the car as Chanon drove away.

The day after the Defendant confessed to the shooting, Chanon died from the gunshot wound.

At trial the Defendant testified that the deceased, while in his car, approached him about purchasing crack. He testified that the deceased snatched the crack out of his hand and drove away, and, on cross-examination, the Defendant denied stating that the deceased stole his money as well. He further testified that he threw the gun in the car, but denied intentionally pointing the gun at him or pulling the trigger. He also testified that the gun might have gone off when he threw it in the car.

**Material Requested to be Tested**

In this current Application for Forensic DNA Testing, the Defendant requests the following material be tested:

1. "The alleged murder weapon."
2. "Clothing that [he] wore the day the murder occurred, which were seized by the police."

**Requirements of the Forensic DNA Statute**

The Access to Justice Post-Conviction DNA Testing Act, S.C. Code Ann. §17-28-10 *et seq.*, authorizes a person who is currently incarcerated, who pled not guilty to certain offenses, who was subsequently convicted of the offense, and who asserts he is innocent to apply for forensic testing of his DNA and any physical evidence or biological material related to his conviction.

The Act requires that the Defendant identify the evidence that should be tested. The Act requires that the Defendant specifically articulate the basis for his request for additional testing and the specific testing sought. Further, the Act requires that the Defendant explain why his identity was or should have been a significant issue during the original trial of his case. The Act also requires that the Defendant explain why material to be tested was not previously subjected to testing or why additional testing would provide a substantially more probative result. Finally, the Act requires that the Defendant explain why, if the testing were to produce exculpatory results, the results will constitute new evidence that would change the results of the Defendant's conviction.

The Court shall not order DNA testing of the Defendant's DNA and the physical evidence or biological material until it makes a finding that the Defendant has established each of the following factors by a preponderance of the evidence (S.C. Code Ann. § 17-28-90(B)):

1. the physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing;
2. the physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material;
3. the physical evidence or biological material sought to be tested is material to the issue of the defendant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the Defendant may have pled guilty or *nolo contendere* or made or is alleged to have made an incriminating statement or admission as to identity;

4. the DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the defendant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the Defendant may have pled guilty or *nolo contendere* or made or is alleged to have made an incriminating statement or admission as to identity;
5. if the requested DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the defendant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching;
6. the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, the requested DNA test would provide a substantially more probative result; and
7. the application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

**Failure to Meet the Requirements Set Forth in the Statute**

The Defendant has failed to meet the requirements set forth in the statute by a preponderance of the evidence. Specifically, the Defendant has not explained why his identity was a significant issue during the original trial of the case. The Defendant placed himself at the scene of the crime prior to and during the trial. Prior to trial, the Defendant admitted to shooting the deceased after the deceased stole crack and money from him, and he admitted to throwing a gun into the car. The State had the benefit of the Defendant's confession and used it against him during the trial. Moreover, the deceased was found with money in his hand and crack in his seat. A gun also was found in the car. The Defendant provided information to law enforcement that

only a person at the scene of the crime would have known. Additionally, all of the physical evidence corroborated the Defendant's version of what happened.

Further, the Defendant testified under oath that the deceased approached him, stole from him, and that he threw a gun into the deceased's car. He testified that he did not know if the gun went off. At trial, the Defendant placed himself at the scene; he placed the murder weapon in his own hands. Identity of the Defendant was not a significant issue at the original trial.

This case was properly submitted to the jury to decide guilt or innocence. The trial judge allowed two lesser included verdicts to be submitted to the jury. The jury had the option to convict the Defendant of Murder, Manslaughter, or Involuntary Manslaughter or to find the Defendant not guilty. The jury was the sole finder of fact in this case, and it determined that the Defendant was guilty of Murder after having received all of the testimony and evidence presented during the trial. The Defendant had the opportunity to present his defense at trial. He took the stand and testified on his own behalf. The jury weighed all credible evidence and decided this case.

The Defendant asserts in this Application that "if no blood is found on [his] clothing or the weapon, it would disprove the prosecution[']s theory about how the murder occurred." Whether or not there is blood on the murder weapon or on the Defendant's clothing is inconsequential. Even if DNA results were to demonstrate that the victim's blood was not on the murder weapon or on the Defendant's clothing, that information would not provide evidence inconsistent with the State's theory of the case. The Defendant, through his verbal and written confession, created the State's theory of the case, which was corroborated by the evidence and other witnesses. More importantly, it would not demonstrate evidence that would suggest anyone other than the Defendant was responsible for the murder. The Defendant has failed to describe

adequately how DNA testing would exclude him to the extent that it would change the outcome of the trial.

Additionally, the murder weapon and the Defendant's clothing cannot be tested because they are no longer available. This murder occurred twenty-four years ago and these items cannot be located.

The Lexington County Clerk of Court does not have any evidence from the trial. On August 24, 1998, the Honorable William P. Keesley signed an Order for Release of Evidence, which ordered that the items in evidence be released from the Clerk's Office to the State for distribution to their rightful owners.

The Lexington County Solicitor's Office does not have any evidence from the trial. On August 22, 2013, Chief Investigator Matthew W. Martin of the Eleventh Judicial Circuit Solicitor's Office contacted Howard Jernigan, an investigator in the Solicitor's Office, who performed a review of the records in the Solicitor's Office. Mr. Jernigan was not able to locate either the evidence or any paperwork relating to the transfer of evidence in this case. Additionally, Mr. Martin contacted Debbie McDaniels, the Solicitor's Office Records Custodian, who informed him that the only files still in existence date back to 1992, because a flood, which was caused by burst pipes, in 1995 destroyed the files stored in the basement of the Solicitor's Office.

The West Columbia Police Department does not have any evidence from the trial. On August 26, 2013, Investigator James P. Sullivan, the Evidence Custodian for the West Columbia Police Department, informed the Solicitor's Officer that a review of West Columbia evidence records revealed that the West Columbia Police Department did not take any property into evidence in reference to this case.

SLED does not have any evidence from the trial. On September 10, 2013, Sharon Hunt, SLED/Forensic Services, provided the Solicitor's Office with copies of its case files. A review of its files revealed that R.M. Freeman picked up the murder weapon and all other evidence tested. He returned the items to the Lexington County Sheriff's Department on January 23, 1990, prior to the trial. SLED records do not indicate that it took possession of the evidence after the trial.

The Lexington Medical Center does not have any evidence from the trial. On September 12, 2013, Wendi C. Knight, MLS (ASCP), the Lab Manager at the Lexington Medical Center, informed the Solicitor's Office in a sworn affidavit that the Lexington Medical Center no longer has any specimens for testing as it relates to this case. She also informed the Solicitor's Office that the lab records do not indicate that any DNA testing was performed at the Lexington Medical Center.

The Lexington County Sheriff's Department does not have any evidence from the trial. On September 17, 2013, Sergeant Douglas A. Novak, the Sergeant of Evidence for the Lexington County Sheriff's Department, informed the Solicitor's Office that after he performed a search of the evidence room and old records, the only item found was an incident report with case number 89-38992 and that no other evidence could be located as it relates to this matter.

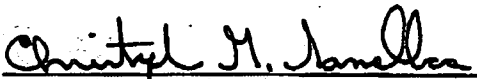
Thus, all custodians of evidence have indicated that they do not have in their possession any evidence as it relates to this case.

**Conclusion**

WHEREFORE, based on the foregoing, the State respectfully requests that the Court deny Defendant's Application for Post-Conviction Forensic DNA Testing because the Defendant has not articulated why DNA testing would prove probative or change the outcome of his trial. Furthermore, it is factually impossible to perform DNA testing, as the evidence no longer exists.

Thus, this Application should be summarily dismissed for its failure to meet each factor required by a preponderance of the evidence.

Respectfully submitted,

  
Christopher G. Samellas  
Senior Assistant Solicitor  
Eleventh Judicial Circuit Solicitor's Office  
205 E. Main Street  
Lexington, South Carolina 29072

October 22, 2013

21  
**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

Case No: 1990-GS-32-0056

2013 OCT 22 F 2:41

**AFFIDAVIT OF SERVICE BY MAIL**

STATE,

BETH A. WENGG  
CLERK OF COURT  
LEXINGTON, SC

v.

ALFONSO WARE, JR., #168464,

DEFENDANT.

1. I am an employee of the State 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 State's Response and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Alfonso Ware, Jr., #168464  
 Broad River Correctional Institution  
 Monticello - 286  
 4460 Broad River Road  
 Columbia, South Carolina 29210

  
 Christopher G. Samellas  
 Senior Assistant Solicitor

October 22, 2013

22

State of South Carolina  
Office of the Solicitor  
Eleventh Judicial Circuit

**ORIGINAL**

COUNTIES  
EDGEFIELD / LEXINGTON  
McCORMICK / SALUDA  
FAXES: (803) 785-8431 or (803) 785-8255



LEXINGTON COUNTY JUDICIAL CENTER  
205 E. MAIN ST. ROOM 309  
LEXINGTON, SOUTH CAROLINA 29072  
TELEPHONE: (803) 785-8352

**DONALD V. MYERS**  
Solicitor

October 22, 2013

Alfonso Ware, Jr., #168464  
Broad River Correctional Institution  
Monticello - 286  
4460 Broad River Road  
Columbia, South Carolina 29210

RECEIVED  
CLERK OF COURT  
LEXINGTON, SC

2013 OCT 22 1 24

Re: *State v. Ware*, #168464 (1990-GS-32-0056)

Dear Mr. Ware:

Please find enclosed the State's Response to the Defendant's Application for Forensic DNA Testing and Motion for Summary Dismissal.

Sincerely,

Christopher G. Samellas  
Senior Assistant Solicitor

cc: The Honorable William P. Keesley  
Lexington County Clerk of Court

ORIGINAL

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA )

-vs-

ALFONSO WARE, JR., (#168464),

Defendant.

ORDER OF THE INTENTION  
TO SUMMARILY DISMISS THE  
APPLICATION FOR DNA TESTING  
Indictment Number: 1990GS3200056  
Warrant Number: C560956

The court gives notice of its intention to summarily dismiss the application of the defendant for DNA testing under the Access to Justice Post-Conviction DNA Testing Act, S.C. Code Ann. §17-28-10, et seq. Based on the record at this point, the court sees no purpose for further proceedings and indicates to the applicant/defendant and the Solicitor that the action will be summarily dismissed for the reasons stated below, unless the applicant/defendant raises questions of fact or law related to the issues addressed in this order and the Response of the Solicitor filed on October 22, 2013. The applicant is given until 5:00 p.m. on Friday, June 13, 2014, in which to file his reply to the proposed dismissal. Upon receipt of the reply (or if none is filed), the court may order the application dismissed, may allow the applicant/defendant to file an amended application, or may direct that the application continue.

Ware #1

Mr. Ware was convicted of Murder by a jury and sentenced to life imprisonment on June 27, 1990. By order of July 26, 2013, the court directed that the Clerk of Court file this application. The order also tracked the statutes to set out the procedure to be followed.

PROCEDURE

It was noted in the order that the defendant had not indicated a request for counsel, and the order stated that the court would consider appointment of counsel, if these proceedings reach

a stage where the application is determined to be sufficient to proceed further. A copy of the documents filed was forwarded by the Clerk of Court to the Solicitor's office of the 11<sup>th</sup> Judicial Circuit.

The Solicitor's office was alerted that it was responsible for notifying the Attorney General's office, that the Solicitor's office was responsible for notifying the custodian of evidence, and that the victim's family was to be notified under §16-3-1505, et seq., S.C. Code Ann. The State was given 90 days in which to file a response and the victim (as defined under §16-3-1505, et seq., S.C. Code Ann.) was allowed to file a response within 90 days of the filing of the application or within any time frame permitted by the court.

The order further stated that, under §17-28-70, the Solicitor's office was to forward a copy of this order to any custodian of evidence, and the custodian of evidence was ordered to preserve all physical evidence and biological material related to the underlying murder charge. The custodian of evidence was further ordered to prepare an inventory of the physical evidence and biological material, and to forward a copy of that inventory to the applicant, the Solicitor/Attorney General, and the court. If the custodian of evidence indicated that the evidence has been lost or destroyed, the custodian was directed to comply with §17-28-70(C).

6/24  
#2

Under §17-28-80, if any physical evidence or biological material had previously been submitted for DNA testing, the Solicitor/Attorney General was to produce all written reports and laboratory reports related to the DNA testing, including underlying data and lab notes.

Finally, the court directed that it was to be notified of any issues related to preservation of evidence, with a copy sent to the parties. The parties were told to review the Preservation of Evidence Act, §17-18-300, et seq. which went into effect in 2009.

FACTUAL RESPONSE

On October 22, 2013, the Solicitor's office filed a Response and Motion for Summary Dismissal. The response recites the procedural history of the defendant's murder conviction, including 4 PCR applications and various appeals.

It asserted that the underlying incident occurred on or about November 25, 1989, in West Columbia. Police were called when a vehicle crashed outside an individual's home. The police found Robert Chanon in the vehicle and determined that he had been shot. He was still alive, but incoherent at the scene. EMS was called. A pistol was located in the vehicle. The weapon was determined to be the one that fired the shot that killed Mr. Chanon. Police also found two pieces of crack cocaine in the seat.

WPK  
#3

Statements were given by the victim to EMS, and to his girlfriend while in the Emergency Room. He stated that an unknown person had shot him on "crack alley," and he described the person as being black.

A tip was received 3 days later. In response to the tip, police contacted the defendant and asked him if he knew anything about the shooting. The State contends that the defendant admitted to officers that he knew about the shooting and that the defendant voluntarily met with the police. He was advised of his rights under Miranda, and he gave what the State contends to be a confession. The statement was typed, initialed, and signed by the defendant.

In the statement, the defendant admitted that he shot Mr. Chanon after Chanon stole the defendant's crack cocaine and money. The statement also indicated that the defendant threw the pistol into the vehicle.

Mr. Chanon died the day after this statement was given by the defendant.

A jury trial was held, and the defendant was represented by counsel. Mr. Ware testified at the trial. He stated that Mr. Chanon rode up and asked the defendant about purchasing crack cocaine. Mr. Ware testified that Mr. Chanon snatched the crack out of the defendant's hand and drove away. During cross-examination, the defendant denied that he told police that his money was stolen. He did admit to throwing the gun into the vehicle, but denied pointing the gun or pulling the trigger. He stated that the gun may have gone off when he threw it in the car.

The case was submitted to the jury with the options of finding the defendant not guilty, guilty of involuntary manslaughter, guilty of voluntary manslaughter, or guilty of murder. The jury found the defendant guilty as charged.

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

*WPK #4*

- 1) the weapon and the clothing are not available for testing;
- 2) the evidence from the trial was released by the Clerk of Court, pursuant to an order of this court dated August 24, 1998;
- 3) 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;
- 4) 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;
- 5) 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;

- 6) SLED does not have any evidence from the trial, as the weapon and evidence tested were returned to the Lexington County Sheriff's Department on January 23, 1990, which was prior to the trial;
- 7) 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,
- 8) the Lexington County Sheriff's 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.

**LEGAL ISSUES IN THE RESPONSE**

The papers submitted by the defendant indicate that he wants DNA testing performed on the weapon and the clothing worn by the defendant on the day of the incident. He asserts in the application that "if no blood is found on [his] clothing or the weapon, it would disprove the prosecution[']s theory about how the murder occurred."

WAL  
#5

The court agrees, based on the information currently available, that the application should be summarily dismissed because there are not materials to test. S.C. Code Ann. §17-28-90(B) reads:

- (B) The court shall order DNA testing of the applicant's DNA and the physical evidence or biological material upon a finding that the applicant has established each of the following factors by a preponderance of the evidence:
- (1) the physical evidence or biological material to be tested is available and is potentially in a condition that would permit the requested DNA testing;
  - (2) the physical evidence or biological material to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced, or altered in any material aspect, or the testing itself may establish the integrity of the physical evidence or biological material;
  - (3) the physical evidence or biological material sought to be tested is material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the applicant may have pled guilty or nolo

contendere or made or is alleged to have made an incriminating statement or admission as to identity;

(4) the DNA results of the physical evidence or biological material sought to be tested would be material to the issue of the applicant's identity as the perpetrator of, or accomplice to, the offense notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity;

(5) if the requested DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching;

(6) the physical evidence or biological material sought to be tested was not previously subjected to DNA testing, or if the physical evidence or biological material sought to be tested was previously subjected to DNA testing, the requested DNA test would provide a substantially more probative result; and

(7) the application is made to demonstrate innocence and not solely to delay the execution of a sentence or the administration of justice.

The court finds that there is currently no indication that evidence exists that would allow the applicant to meet the requirements of subsections (B)(1) and (B)(2). As for the other subsections, viewing every conceivable inference in the light most favorable to Mr. Ware, the court cannot determine, without reviewing the transcript or having additional knowledge about the evidence, whether DNA testing might tend to be exculpatory or go to show that the applicant did not commit murder. However, since there is no evidence to test, and no indication of a chain of custody, the court fails to see how the other elements could be proven.

The court acknowledges the State's contention that there is nothing to be gained from a DNA analysis, if it could be performed. It recognizes the State's argument that absence of the victim's blood from the defendant's clothing or the gun would not cast doubt on the State's case. However, without knowing more information about the evidence developed and the specific facts presented to the jury, the court is unwilling to summarily dismiss the application on this

ground.<sup>1</sup> The notification of intention to summarily dismiss the application is based on the absence of proof that any DNA material exists to test.

THEREFORE, IT IS ORDERED that the court gives notice of its intention to summarily dismiss the application of the defendant for DNA testing under the Access to Justice Post-Conviction DNA Testing Act, S.C. Code Ann. §17-28-10, et seq. The application will be summarily dismissed unless the court is made aware of some purpose for further proceedings. The applicant/defendant and the Solicitor are hereby notified that the action will be summarily dismissed for the reasons stated above, unless the applicant/defendant raises questions of fact or law related to the issues addressed above and those raised in the Response of the Solicitor filed on October 22, 2013. The applicant is given until 5:00 p.m. on Friday, June 13, 2014, in which to file his reply to the proposed dismissal. Upon receipt of the reply (or if none is filed), the court may order the application dismissed, may allow the applicant/defendant to file an amended application, or may direct that the application continue.

WPK  
#7

IT IS FURTHER ORDERED that a copy of this order be forwarded by the Clerk of Court to Assistant Solicitor Christopher G. Samellas, which he shall be responsible for distributing to any victims or other agencies required to have notice by law.

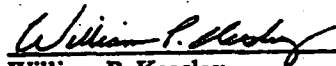
<sup>1</sup> There is no dispute that Mr. Chanon was shot and, presumably, no dispute that he bled. Mr. Ware admits he was there. In the abstract, it is conceivable that the absence of blood on Mr. Ware's clothing could, depending on the circumstances, provide an indication as to the proximity of Mr. Ware to Mr. Chanon when the shot hit the victim. Likewise, blood on the weapon could go to show the proximity of the weapon to Mr. Chanon when he was hit. If Mr. Ware claims that the weapon discharged by accident or by negligent handling of it, then the proximity of the weapon to the victim could, in abstract theory, support doubt as to whether or not the shooting was a murder. A similar argument could be made related to the lack of blood on Mr. Ware's clothing. His version of events is that he was outside the vehicle and Mr. Chanon was inside the vehicle. The court is unaware of any blood spatter evidence. The court does not know, at this point, what evidence was developed or presented that could go to the issue of the proximity of Mr. Ware and the weapon to Mr. Chanon. The court does not know, based solely on the application and Response, whether there was evidence of a close-contact wound. So, without an additional review, the court would not be able to evaluate whether the presence or absence of Mr. Chanon's blood on the gun could exonerate Mr. Ware, cast doubt, or diminish his conduct to something less than murder.

30

IT IS FURTHER ORDERED that a copy of this order be forwarded by the Clerk of Court to Mr. Alfonso Ware, Jr., #168464, Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210.

AND IT IS SO ORDERED.

May 21, 2014

  
\_\_\_\_\_  
William P. Keesley  
Chief Judge for Administrative Purposes  
General Sessions, 11<sup>th</sup> Judicial Circuit

#8

**ORIGINAL**  
**FILED**

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, South Carolina 29210

2014 JUN 13 AM 9:59

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

June 9, 2014

Beth A. Carrigg, Clerk  
Clerk of Court, Lexington County  
Lexington County Judicial Center  
205 East Main Street, Suite  
Lexington, South Carolina 29072

Dear Ms. Carrigg:

Please find enclosed Reply To Proposed Dismissal Of Application For DNA Testing, and a copy to be stamp-clocked returned to me within the prepaid S.A.S.E. provided; this is for my records. My copy has the paper clip on it with the yellow post-it sticker.

I do appreciate your assistance in this matter. Thank you very much.

Respectfully,

*Alfonso Ware Jr.*

Alfonso Ware Jr.



A timely Notice of Appeal was Appeal was filed on the defendants behalf and a petition for Writ of Certiorari was submitted by Wayne Floyd, the defendant PCR Counsel. On November 8, 1996, the South Carolina Supreme Court denied the Petition. A petition for Rehearing was denied on December 19, 1996.

The Applicant subsequently filed a Petition for Writ of Habeas Corpus in U.S. District Court. This Petition was denied by written Order of the Honorable Charles E. Simons, Jr., on January 14, 1998. The applicant appealed this decision to the U.S. Court Appeals for the Fourth Circuit. The dismissal of the Applicant's petition was affirmed on June 2, 1998.

The defendant filed yet another PCR Application on February 10, 2000. An Evidentiary hearing was convened on June 14, 2001, the Honorable J.C. Nicholson denied Respondent's Motion to Dismiss and allowed defendant to submit another application for Post Conviction Relief. An Evidentiary hearing was held on August 27, 2001, before the Honorable G. Thomas Cooper. Judge Cooper denied the Application. The defendant filed another application for PCR. On December 6, 2001, an Evidentiary hearing into the matter was convened on January 6, 2003, the Honorable Marc Westbrook denied the Application. Defendant filed PCR Application on August 14, 2003, on April 7, 2004, Respondents filed their Return to this Application.

QUESTIONS OF FACT AND LAW

DID THE CUSTODIAN OF THE EVIDENCE FOLLOW THE MANDATES SET OUT IN SOUTH CAROLINA CODE ANN. 17-28-320(A) and 17-28-320(C)?

South Carolina Code Annotated §17-28-320(A) States:  
A Custodian of the Evidence MUST preserve all physical evidence and biological material related to the conviction or adjudication of a person for at least one of the following offenses:

- (1) Murder (§16-3-10)

**Fact: Defendant was convicted of Murder.**

**§17-28-320(C) States: The physical evidence and biological material MUST be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A).**

**Fact: Defendant since 1990 has been incarcerated.**

**§17-28-70(C) States: For physical evidence or biological material that the custodian of evidence asserts has been lost or destroyed, the court shall Order a Custodian of Evidence to locate and provide the Applicant and the Solicitor or Attorney General as applicable, with a copy of any document, note, log, report relating to the physical evidence or biological material.**

**The Solicitor's Office determined that:**

- (1) The weapon and clothing are not available for testing.**
- (2) The Evidence from trial was released by the Clerk of Court, pursuant to an Order of this Court dated August 24, 1998.**

**Who was this Evidence released to?**

**Why was it released, when defendant was still in litigation and incarcerated?**

- ¶6) S.L.E.D. does not have any evidence from the trial, as the weapon and evidence tested were returned to the Lexington County Sheriff's Department on January 23, 1990, which was prior to the trial.**

**Who at the Lexington County Sheriff's Dept. took custody of this evidence and the results of SLED Testing? Where is the documentation from that exchange?**

**While the S.C. Code Ann. §17-28-300 took effect in 2009, a look at the history of this Act shows that in 1990 South Carolina had a Preservation of Evidence Act in place.**

**This Court is presented with the question of what was the results of the test done by S.L.E.D. in 1990?**

From the things determined by the Solicitor's Office, there are questions that are not answered. There are reports and test results not made available, evidence turned over by S.L.F.D. to Lexington County Sheriff Department who in that department? Who was the evidence from the trial released to?

The State has a duty to take affirmative steps to preserve evidence. The defendant has a protected ~~privilege~~ privilege to request and obtain from the State evidence that is material to the guilt of the defendant.

This Honorable Court in its foot note 1. Agree's that in the abstract it is conceivable that the absence of blood on Mr. Ware is very important to the doubt as to support Mr. Ware's verison of the events.

The defendant has raised questions of fact and law related to the issues and the response of the Solicitor filed.

This Court must Order that the defendant is allowed to continue. The Applicant request this Court for an Order for Appoint-ment of Counsel. As is evidence from what has been presented here, this is a complex issue that will require the skills of a trained attorney.

*Alfonso Ware Jr.*

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, South Carolina 29210

Dated: June 9, 2014

**ORIGINAL**

**FILED**

STATE OF SOUTH CAROLINA )  
2014 JUN 18 AM 9:50 THE COURT OF GENERAL SESSIONS  
COUNTY OF LEXINGTON )

BETH A. CARRIGG  
CLERK OF COURT  
STATE OF SOUTH CAROLINA )  
LEXINGTON SC )

v. )

CERTIFICATE OF SERVICE

ALFONSO WARE JR. (168464) )

I, Alfonso Ware Jr., the defendant, declares under the penalty of perjury that I mailed a copy of his Reply to Proposed Dismissal of Application for DNA Testing to the parties listed below by placing in the U.S. Mail clearly addressed as follows:

Donald V. Myers  
Solicitor, Eleventh Judicial Circuit  
Lexington County Judicial Center  
205 E. Main Street, Suite 309  
Lexington, South Carolina 29072

Beth A. Carrigg  
Clerk of Court, Lexington County  
Lexington County Judicial Center  
205 East Main Street, Suite  
Lexington, South Carolina 29072

William P. Keesley, Judge  
The Circuit Court of the  
Eleventh Judicial Circuit  
Post Office Box 10  
127 Courthouse Square  
Edgefield, SC 29824-0010

*Alfonso Ware Jr.*

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, South Carolina 29210

SWORN TO AND SUBSCRIBED BEFORE ME

This 10th day of June, 2014

*Susan H. Frye*  
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: \_\_\_\_\_ Commission Expires

JUN 15 2019

**ORIGINAL**

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA, )

-vs-

**ORDER OF SUMMARY DISMISSAL  
OF APPLICATION FOR DNA TESTING**

ALFONSO WARE, JR., (#168464), )  
Defendant. )

Indictment Number: 1990GS3200056  
Warrant Number: C560956

BETH N. CARRIGGS  
CLERK OF COURT  
LEXINGTON SC

2014 JUN 20 PM 1:23

FILED

By order dated May 21, 2014, the court gave notice of its intention to summarily dismiss the application of the defendant for DNA testing under the Access to Justice Post-Conviction DNA Testing Act, S.C. Code Ann. §17-28-10, et seq. The court gave both sides an opportunity to file submissions related to this issue. Mr. Ware sent his response on June 10, 2014. Having reviewed the matter, the court finds no basis for this application to continue and no purpose to be gained by doing so. The motion is summarily dismissed.

*Ware #1*

Mr. Ware was convicted of Murder by a jury and sentenced to life imprisonment on June 27, 1990. By order of July 26, 2013, the court directed that the Clerk of Court file this application. The order also tracked the statutes to set out the procedure to be followed.

**PROCEDURE**

It was noted in the order that the defendant had not indicated a request for counsel, and the order stated that the court would consider appointment of counsel, if these proceedings reach a stage where the application is determined to be sufficient to proceed further. Copies of the documents filed were forwarded by the Clerk of Court to the Solicitor's office of the 11<sup>th</sup> Judicial Circuit.

**A TRUE COPY**  
*[Signature]*  
Lex. Co. C.C.P., G.S. & F.C.

The Solicitor's office was alerted that it was responsible for notifying the Attorney General's office, that the Solicitor's office was responsible for notifying the custodian of evidence, and that the victim's family was to be notified under §16-3-1505, et seq., S.C. Code Ann. The State was given 90 days in which to file a response and the victim (as defined under §16-3-1505, et seq., S.C. Code Ann.) was allowed to file a response within 90 days of the filing of the application or within any time frame permitted by the court.

The order further stated that, under §17-28-70, the Solicitor's office was to forward a copy of this order to any custodian of evidence, and the custodian of evidence was ordered to preserve all physical evidence and biological material related to the underlying murder charge. The custodian of evidence was further ordered to prepare an inventory of the physical evidence and biological material, and to forward a copy of that inventory to the applicant, the Solicitor/Attorney General, and the court. If the custodian of evidence indicated that the evidence had been lost or destroyed, the custodian was directed to comply with §17-28-70(C).

WPK  
#2

Under §17-28-80, if any physical evidence or biological material had previously been submitted for DNA testing, the Solicitor/Attorney General was to produce all written reports and laboratory reports related to the DNA testing, including underlying data and lab notes.

Finally, the court directed that it was to be notified of any issues related to preservation of evidence, with a copy sent to the parties. The parties were told to review the Preservation of Evidence Act, §17-18-300, et seq. which went into effect in 2009.

**FACTUAL RESPONSES**

On October 22, 2013, the Solicitor's office filed a Response and Motion for Summary Dismissal. The response recites the procedural history of the defendant's murder conviction, including 4 PCR applications and various appeals.

It asserted that the underlying incident occurred on or about November 25, 1989, in West Columbia. Police were called when a vehicle crashed outside an individual's home. The police found Robert Chanon in the vehicle and determined that he had been shot. He was still alive, but incoherent at the scene. EMS was called. A pistol was located in the vehicle. The weapon was determined to be the one that fired the shot that killed Mr. Chanon. Police also found two pieces of crack cocaine in the seat.

Statements were given by the victim to EMS and to his girlfriend while in the Emergency Room. He stated that an unknown person had shot him on "crack alley," and he described the person as being black.

A tip was received 3 days later. In response to the tip, police contacted the defendant and asked him if he knew anything about the shooting. The State contends that the defendant admitted to officers that he knew about the shooting and that the defendant voluntarily met with the police. He was advised of his rights under *Miranda*, and he gave what the State contends to be a confession. The statement was typed, initialed, and signed by the defendant.

W/pt  
#3

In the statement, the defendant admitted that he shot Mr. Chanon after Chanon stole the defendant's crack cocaine and money. The statement also indicated that the defendant threw the pistol into the vehicle.

Mr. Chanon died the day after this statement was given by the defendant.

A jury trial was held, and the defendant was represented by counsel. Mr. Ware testified at the trial. He stated that Mr. Chanon rode up and asked the defendant about purchasing crack cocaine. Mr. Ware testified that Mr. Chanon snatched the crack out of the defendant's hand and drove away. During cross-examination, the defendant denied that he told police that his money

was stolen. He did admit to throwing the gun into the vehicle, but denied pointing the gun or pulling the trigger. He stated that the gun may have gone off when he threw it in the car.

The case was submitted to the jury with the options of finding the defendant not guilty, guilty of involuntary manslaughter, guilty of voluntary manslaughter, or guilty of murder. The jury found the defendant guilty as charged.

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

- 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 Sheriff's Department on January 23, 1990, which was prior to the trial;

*Call #4*

- 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 Sheriff's 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.

In response to the May 21, 2014 order, Mr. Ware recites the following questions:

- a) Did the custodian of the evidence follow the mandates set out in South Carolina Code Ann. 17-28-320(A) and 17-28-320(C)?
  - i. He argues that the custodian of evidence was required to maintain physical evidence and biological material.
  - ii. He argues that, even though the code section cited did not take effect until 2009, there was a preservation of evidence act in place prior to that time, though the provides no specifics.
  - iii. He states, "This Court is presented with the question of what was [sic] the results of the test done by S.L.E.D. in 1990?"

Ware #5

As to these issues, they do not change the basis for the notice of summary dismissal. S.C. Code Ann. §17-28-90(B) provides the basis for having the court order DNA testing. As stated previously, there does not appear to be any biological material to test.

- b) Mr. Ware goes on to argue that "there are questions that are not answered." He objects to the failure of the State to maintain the evidence. He claims that the evidence is material to the question of his guilt. He notes that the court, in its prior order, acknowledged that a question could exist, in the abstract, about whether the

absence of blood on the gun and on Mr. Ware's clothing could go to an issue related to whether there is doubt as to murder versus accident or involuntary manslaughter.

As to these arguments, Mr. Ware has no indication that there is any evidence to test. His questions and his assertions really seem to be an attempt to go on a fishing expedition to see what might develop. While that is understandable on the part of someone who has been convicted of murder and is serving a lengthy prison term, this application seeks an order directing DNA testing. The court sees no valid purpose in proceeding with consideration of this application, in the absence of any information that biological material is available for testing.

Further, as explained below, the court was trying to give the applicant every benefit of the doubt in allowing the application to proceed this far and to see if any evidence existed for DNA testing. The point is that Mr. Ware is arguing that he should be able to develop evidence to show the absence of biological material.

*WPC #6*

While the court focused in its prior order on the key issue of the non-existence of anything remaining to test, it seems obvious that Mr. Ware's application and response are questions about the presence or absence of blood, not the source of any blood. He does not seem to even argue that there is a need for DNA testing under the definitions of §17-28-20.

An application under this Act is to include certain things under S.C. Code Ann. §17-28-40.

Those requirements include the following:

(5) explain why the identity of the applicant was or should have been a significant issue during the original court proceedings, notwithstanding the fact that the applicant may have pled guilty or nolo contendere or made or is alleged to have made an incriminating statement or admission as to identity.

(7) explain why if the DNA testing produces exculpatory results, the testing will constitute new evidence that will probably change the result of the applicant's

conviction or adjudication if a new trial is granted and is not merely cumulative or impeaching.

As noted in the prior order and in this one, Mr. Ware gave a written statement to police and he testified at his trial. He placed himself at the scene. According to the statement, he shot the decedent in a drug deal. According to another version, the decedent grabbed the gun. In another version, the defendant threw the gun into the decedent's car, but never pointed or presented the gun. There is no question about the identity of Mr. Ware as the person with the gun initially. The only conceivable question would relate to which of the stories to believe and/or whether there is any evidence that would create doubt of guilt.

In addition, as noted in the prior order:

The papers submitted by the defendant indicate that he wants DNA testing performed on the weapon and the clothing worn by the defendant on the day of the incident. He asserts in the application that "if no blood is found on [his] clothing or the weapon, it would disprove the prosecution[']s theory about how the murder occurred."

Ware #7

Presumably, Mr. Ware is asserting that the absence of blood on him, his clothing, and the gun would go to issues of his guilt or, if guilty of anything, whether he should have been convicted of the lesser offense of involuntary manslaughter, which was submitted to the jury. There is no indication from anything provided to the court that there was evidence that Mr. Ware was bleeding. The only known evidence related to the source of blood is that the decedent was the sole person bleeding. So, regardless of whether or not DNA testing would have provided information about the source of blood, the question of whether or not blood was present on Mr. Ware, his clothing, or the weapon is not a new issue. Even if it were established that there was no blood on Mr. Ware, his clothing, or the gun, it is merely impeachment evidence. [See §17-


28-40(7)).] It was an issue that one would have known to pursue in the original trial or in any of the multiple PCR applications.

The court has considered the application, the State's response, and the applicant's response. The court finds no purpose in pursuing DNA testing, based on the representations made to the court.

**THEREFORE, IT IS ORDERED** that the court summarily dismisses the application of the defendant for DNA testing under the Access to Justice Post-Conviction DNA Testing Act, S.C. Code Ann. §17-28-10, et seq.

**AND IT IS SO ORDERED.**

June 18, 2014

  
\_\_\_\_\_  
William P. Keesley  
Chief Judge for Administrative Purposes  
General Sessions, 11<sup>th</sup> Judicial Circuit

#8

45

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, South Carolina 29210

June 30, 2014

The Honorable Beth Carrigg  
Clerk of Court for Lexington County  
205 E. Main Street, Suite 227  
Lexington, South Carolina 29072

RE: State of South Carolina v. Alfonso Ware Jr.

Dear Ms. Carrigg:

Enclosed for filing is a Notice of Appeal in the above case.

Sincerely,

Alfonso Ware Jr.  
Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, SC 29210

cc: File

46

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, South Carolina 29210

June 30, 2014

The Honorable Jeanette Barber  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: The State of South Carolina v. Alfonso Ware Jr.,  
Indictment No. 1990GS3200056, Warrant No. C560956. Appellant  
appeals denial of his Access to Justice Post-Conviction DNA  
Testing Act, S.C. Code Ann. 17-28-10 et seq.

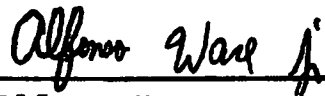
Dear Ms. Barber:

Enclosed for filing is a Notice of Appeal in the above  
case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondents.
2. Copy of the Order.

Also enclosed is a S.A.S.E. to return a clock-stamped copy  
for my records. I appreciate your assistance in this matter. Thank  
you.

Sincerely,



Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, SC 29210

cc: File  
Attachments

47

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

**Appeal from Lexington County  
Court of General Session  
William P. Keesley, Circuit Court Judge**

**Indictment No. 1990GS3200056  
Warrant No. C560956**

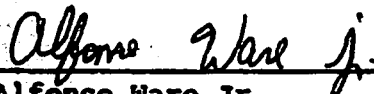
**State of South Carolina  
Respondents**

**v.**

**Alfonso Ware Jr.  
Appellant**

**NOTICE OF APPEAL**

Alfonso Ware Jr. appeals the Order of the Honorable William P. Keesley, dated June 18, 2014. Appellant received written Notice of Entry of this Order on June 26, 2014.

  
\_\_\_\_\_  
Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, SC 29210

June 30, 2014

cc: File

48

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Lexington County  
Court of General Session  
William P. Keesley, Circuit Court Judge

Indictment No. 1990GS3200056  
Warrant No. C560956

State of South Carolina  
Respondents

v.

Alfonso Ware Jr.  
Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all parties listed below by depositing a copy in the U.S. Mail clearly addressed.

Ms. Jeanette Barber, Clerk  
Clerk, S.C. Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

Mr. Alan Wilson, Attorney General  
Attorney General's Office  
P.O. Box 11549  
Columbia, South Carolina 29211

Ms. Beth Carrigg, Clerk  
Clerk of Court, Lexington County  
205 E. Main Street, Suite 227  
Lexington, South Carolina 29072

*Alfonso Ware, Jr.*

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, SC 29210

June 30, 2014

19A06532 0056

**ORIGINAL**

C560956

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, South Carolina 29210

49

July 21, 2014

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

FILED  
2014 JUL 23 AM 7:51  
BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON SC

RE: The State v. Alfonso Ware Jr.  
Appellate Case No. 2014-001470

Dear Kitchings:

Enclosed is a copy of the Proof of Service of the Notice of Appeal was served to the solicitor. I do apologize for that mistake. The deficiency has been corrected.

I appreciate your assistance in this matter. Thank you.

sincerely,

*Alfonso Ware Jr.*

Alfonso Ware Jr.

BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, SC 29210

cc: File

**ORIGINAL**

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, South Carolina 29210

50

July 21, 2014

Mr. Donald V. Myers  
Solicitor, Eleventh Judicial Circuit  
Lexington County Judicial Center  
205 E. Main Street, Suite 309  
Lexington, South Carolina 29072

FILED  
2014 JUL 23 AM 7:51  
BETH A. CARRIG  
CLERK OF COURT  
LEXINGTON SC

RE: State of South Carolina v. Alfonso Ware Jr.

Dear Mr. Myers:

Enclosed for filing is a Notice of Appeal in the above  
XXXX case. I apologize for the delay.

Sincerely,

*Alfonso Ware, Jr.*

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, SC 29210

cc: File  
Attorney General Office  
SC Court of Appeals  
Clerk of Court, Lexington County

**ORIGINAL**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY  
Court of General Session

William P. Keesley, Circuit Court Judge

Indictment No. 1990GS3200056  
Warrant No. C560956

BETH A. CARRIG  
CLERK OF COURT  
LEXINGTON SC

51  
2014 JUL 23 AM 7:51

FILED

State of South Carolina ..... Respondents

v.

Alfonso Ware Jr. .... Appellant

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on all parties listed below by depositing a copy in the U.S. Mail, postage pre-paid, and clearly addressed.

Mr. Donald V. Myers  
Solicitor, Eleventh Judicial Circuit  
Lexington County Judicial Center  
205 E. Main Street, Suite 309  
Lexington, south Carolina 29072

*Alfonso Ware Jr.*

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, SC 29210

July 21, 2014

52  
Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, South Carolina 29210

July 21, 2014

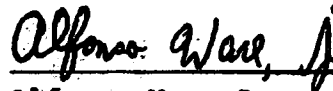
Mr. Donald V. Myers  
Solicitor, Eleventh Judicial Circuit  
Lexington County Judicial Center  
205 E. Main Street, Suite 309  
Lexington, South Carolina 29072

RE: State of South Carolina v. Alfonso Ware Jr.

Dear Mr. Myers:

Enclosed for filing is a Notice of Appeal in the above case. I apologize for the delay.

Sincerely,



Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, SC 29210

cc: File  
Attorney General Office  
SC Court of Appeals  
Clerk of Court, Lexington County

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

53

APPEAL FROM LEXINGTON COUNTY  
Court of General Session

William P. Keesley, Circuit Court Judge

Indictment No. 1990GS3200056  
Warrant No. C560956

State of South Carolina ..... Respondents

v.

Alfonso Ware Jr. .... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all parties listed below by depositing a copy in the U.S. Mail, postage pre-paid, and clearly addressed.

Mr. Donald V. Myers  
Solicitor, Eleventh Judicial Circuit  
Lexington County Judicial Center  
205 E. Main Street, Suite 309  
Lexington, South Carolina 29072

*Alfonso Ware, Jr.*

Alfonso Ware Jr.  
BRCI/Wateree 286; #168464  
4460 Broad River Road  
Columbia, SC 29210

July 21, 2014

Alfonso Ware Jr.  
BRCI/Waterloo 286; #168464  
4460 Broad River Road  
Columbia, South Carolina 29210

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July 21, 2014

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

RE: The State v. Alfonso Ware Jr.  
Appellate Case No. 2014-001470

Dear Ms. Kitchings:

Enclosed is a copy of the Proof of Service of the Notice of Appeal was served to the solicitor. I do apologize for that mistake. The deficiency has been corrected.

I appreciate your assistance in this matter. Thank you.

Sincerely,

*Alfonso Ware, Jr.*

Alfonso Ware Jr.  
BRCI/Waterloo 286; #168464  
4460 Broad River Road  
Columbia, SC 29210

cc: File