

Date: March 19, 2020

To: Cherokee County Board of Elections & Registration

Re: Formal Challenge to the eligibility of Coroner candidate Don Gordon Ware Jr.

We, Bill Parrish and Tim Adderholdt, as registered voters of Cherokee County, Georgia, are challenging the eligibility of Coroner candidate Don Gordon Ware Jr. based upon two (2) criteria:

1. Ineligible/Prohibited due to Federal Plea Agreement.
2. Violation of O.C.G.A. §45-16-1(F)
 - (1) No person shall be eligible to offer for election to or to hold the office of coroner unless he or she:
 - (F) Has not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States

In an effort to achieve a fair and unbiased review of the merits of this challenge, we request that Mr. Mike Byrd, a member of the Elections Board, be recused from any and all proceedings, hearings, meetings or discussions involving this challenge based on the fact that Mr. Byrd was personally appointed to his position on the Board by the respondent, Mr. Ware, while Mr. Ware served as the Cherokee County Republican Party Chairman. The decision to appoint Mr. Byrd to this position was made unilaterally by Mr. Ware without the input or approval of the Cherokee County Republican Party Executive Committee which, prior to Mr. Ware's appointment, was customary procedure.

Additionally, we request that Ms. Cindy Castello, also a member of the Elections Board, be recused from any and all proceedings, hearings, meetings or discussions involving this challenge based on the fact that Ms. Castello and her husband, Mr. Pete Castello, have or recently have had, a business relationship with Mr. Ware.

The remainder of this letter will address the above two items.

RECEIVED

MAR 19 2020

CHEROKEE COUNTY

Actions of Respondent on which this claim is based:

Ineligible/Prohibited due to Federal Plea Agreement:

- 1) On November 3rd, 1999, defendant Don Gordon Ware Jr., pled guilty to the crime of violating:
United States Code Title 18-CRIMES AND CRIMINAL PROCEDURE,
CHAPTER 13-CIVIL RIGHTS
§242, Deprivation of rights under color of law. (See **EXHIBITS "A" & "B"**)
- 2) Defendant Don Gordon Ware Jr. entered into a plea agreement with the United States District Court for the Northern District of Georgia and Assistant United States Attorney David Nahmias, in which, defendant Don Gordon Ware Jr. agreed to the following in paragraph 3 of the plea agreement;
"The defendant agrees to surrender all law enforcement licenses and certifications he holds, before the date of sentencing in this case. The defendant further agrees that he will not seek, accept, or maintain employment in the field of law enforcement, including private security work. Should the defendant violate this employment restriction at any time, the government will be released from its commitment to honor all of its obligations to the defendant under this plea agreement." (See **EXHIBIT "A"** - "Plea Agreement", page 1, paragraph 3)
- 3) By going so far as to permanently prohibit defendant Don Gordon Ware Jr. from even engaging in "private security work" such as mall or event security, the plea agreement makes clear in its objective of prohibiting defendant Don Gordon Ware Jr. from being anywhere near the field of law enforcement." (See **EXHIBIT "A"** - "Plea Agreement", page 1, paragraph 3)
- 4) During defendant Don Gordon Ware Jr.'s plea hearing with the United States District Court for the Northern District of Georgia, AUSA David Nahmias stated, "The bottom line is he needs to stay out of law enforcement under this agreement." (See **"EXHIBIT "B" Plea Hearing**", page 8)
- 5) Following defendant Don Gordon Ware Jr.'s 18 USC §242 conviction the Georgia Peace Officer Standards and Training Council (P.O.S.T.) permanently revoked Mr. Ware's P.O.S.T. certification and stated in their findings; "he/she shall not work with any law enforcement agency." (See **EXHIBIT "C"** - "P.O.S.T." record, page 6)
- 6) The Coroner's Office is a "Law Enforcement Unit" as defined by O.C.G.A. § 35-8-2(7)(A) "Any Agency, organ or department of this state, a subdivision or municipality thereof, or a railroad whose primary functions include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime".

As a "Law Enforcement Unit", the Coroner's Office is in the "field of law enforcement" which Mr. Ware is prohibited from seeking or accepting employment in.
(See **EXHIBIT "E"**)

- 7) Coroners must attend Police Academy Training
O.C.G.A. TITLE 35. LAW ENFORCEMENT OFFICERS AND AGENCIES
CHAPTER 4. GEORGIA POLICE ACADEMY
§ 35-4-8. Training program for coroners and deputy coroners
Subject to rules and regulations prescribed by the board, the academy shall make available to all coroners and deputy coroners in the state at least once annually a training program of at least 16 hours of instruction including, but not limited to, the following: Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act"; all laws pertaining to the duties of coroners; and investigating technique. (See **EXHIBIT "F"**)
- 8) O.C.G.A. Section §42-4-3 requires the Coroner to be the keeper of the jail under certain circumstances.
TITLE 42. PENAL INSTITUTIONS
CHAPTER 4. JAILS ARTICLE 1. GENERAL PROVISIONS
Section §42-4-3. When coroner to act as keeper of jail
The county coroner shall be keeper of the jail when the sheriff is imprisoned or absent from the county leaving no deputy. (See **EXHIBIT "G"**)
- 9) Respondent Don Gordon Ware Jr. knows the Coroner is a Law Enforcement Unit based on statements he makes in a recorded phone call made on March 16th, 2020.
(See **EXHIBITS "L (1) & L (2)"**)
- 10) By knowingly violating his plea agreement with the United States District Court for the Northern District of Georgia and signing the required affidavits to qualify to seek the office of Coroner in Cherokee County, Georgia, Don Gordon Ware Jr. has possibly committed a felony violation of O.C.G.A. §16-10-20.1(b)(2), by:
"Knowingly alter, conceal, cover up, or create a document and file, enter, or record it in a public record or court of this state or of the United States knowing or having reason to know that such document has been altered or contains a materially false, fictitious, or fraudulent statement or representation" (See **EXHIBITS "I" & "J"**)
- 11) Also, Don Gordon Ware Jr. lists 23 consecutive years of residency in Cherokee County, Georgia on his qualifying affidavit, however, he was served with Contempt of Court service at his residence at 6165 Parris Circle, Cumming, Forsyth County, Georgia 30040, on March 28th, 2002. (See **EXHIBITS "H" & "J"**)

Ineligible/Prohibited due to O.C.G.A. §45-16-1(F) Moral Turpitude:

- 1) In addition to being permanently forbidden from seeking, accepting, or maintaining employment in the field of law enforcement, including private security work by the United States District Court for the Northern District of Georgia, during his commission of the crime of violating USC 18-13-§242 Don Gordon Ware Jr. **displayed extreme moral turpitude** by inflicting serious bodily pain and suffering upon a handcuffed individual, Christopher Stone, by standing on Mr. Stone's back and neck for approximately 3 minutes. (See Exhibits "D", & "K")
 - (a) While standing on Christopher Stone's back and neck, respondent Don Gordon Ware Jr. jumped up and down on Mr. Stone, causing Mr. Stone to defecate himself.
 - (b) While standing on Mr. Stone's back and neck, respondent Don Gordon Ware Jr. stated, "I don't give a shit if you die. I'll do the paperwork."
 - (c) While standing on Mr. Stone's back and neck, respondent Don Gordon Ware Jr. stated, "Hold still. I'll break your neck now hold still."
 - (d) While standing on Mr. Stone's back and neck, respondent Don Gordon Ware Jr. stated, "I was trained by the Air Force. We can kill with our feet, man."
 - (e) After handcuffing Mr. Stone's hands and feet to a restraining chair, respondent Don Gordon Ware Jr. dragged Mr. Stone into holding cell #38 by his head and chin.
 - (f) While Christopher Stone was handcuffed to the chair, locked in a holding cell, and asleep, respondent Don Gordon Ware Jr. sprayed pepper spray under the door of the holding cell, twice, "for the amusement of onlookers and himself."
 - (g) The Cherokee Sheriff's Office investigation found respondent Don Gordon Ware Jr. showed no remorse for his actions. (CSO investigation, page 8)
 - (h) The Cherokee Sheriff's Office investigation found respondent Don Gordon Ware Jr. sprayed Christopher Stone with pepper spray for the amusement of onlookers and himself. (CSO investigation, page 14)
- 2) O.C.G.A. §45-16-1(b)(1)(F) states "No person shall be eligible to offer for election to or to hold the office of coroner unless he or she: Has not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state."
- 3) Don Gordon Ware Jr. displayed extreme moral turpitude when committing the above criminal actions.
- 4) During his investigation lead Cherokee Sheriff's Office investigator Lieutenant Ed Lacy found of Don Gordon Ware Jr "Ware does not feel remorse for his actions", and sprayed Mr. Stone with pepper spray "for the amusement of onlookers and himself.". (See EXHIBIT "D")
- 5) Don Gordon Ware Jr. CONTINUES to be unapologetic for his actions and insists he did nothing wrong when he tortured Christopher Stone for 3 minutes. (See EXHIBIT "K (3)")

Don Gordon Ware Jr. is ineligible to seek or hold the office of coroner for the following reasons:

- 1) Defendant Don Gordon Ware Jr. agreed in his plea agreement with the United States District Court for the Northern District of Georgia following his conviction for violating USC 18-13-§242, "The defendant further agrees that he will not seek, accept, or maintain employment in the field of law enforcement, including private security work." Should the defendant violate this employment restriction at any time, the government will be released from its commitment to honor all of its obligations to the defendant under this plea agreement."
- 2) The office of Coroner is classified as a "LAW ENFORCEMENT UNIT" under O.C.G.A. § 35-8-2(7)(A). (See **EXHIBIT "E"**)
- 3) As required by law under O.C.G.A. § 35-4-8, Coroners must attend Police Academy Training. In the Federal Plea Agreement, defendant Don Gordon Ware Jr. agreed, "The defendant agrees to surrender all law enforcement licenses and certifications he holds, before the date of sentencing in this case," and is thus ineligible to attend Police Academy Training as required by O.C.G.A. § 35-4-8. (See **EXHIBIT "F"**)
- 4) O.C.G.A. §42-4-3 by law establishes the Coroner as the keeper of the jail under certain circumstances, meaning if elected, Don Gordon Ware Jr. could return to the ACTUAL SCENE OF THE CRIME and be in charge of the jail. This is the clearest violation of his Federal plea agreement possible. (See **EXHIBIT "F"**)
- 5) Don Gordon Ware Jr. has been convicted of a crime involving moral turpitude in violation of OCGA 45-16-1(F)

Don Gordon Ware Jr. displayed extreme moral turpitude and lack of remorse during the commission of the crime of violating USC 18-13-§242, for which he was convicted.

Moral Turpitude is described legally "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." The word "Turpitude" means depravity, moral corruption, wickedness.

Standing with one's feet on the back and neck of an intoxicated, handcuffed, defenseless man until he defecates himself, then laughing about it, is Moral Turpitude. (See **Exhibits "D" & "I"**)

Spraying pepper spray under a door, twice, onto a defenseless, restrained and sleeping man is Moral Turpitude. (See **EXHIBIT "B" & "D"**)

The Cherokee County Sheriff's Departments Internal Investigation (Exhibit D) found that: "Ware was not in need of self-defense, he was not overcoming resistance or an attempt at self-inflicted injury, nor was he preventing a crime in progress. He may attempt to state that he was attempting to restore institutional integrity, but this cannot be shown. Ware made threatening remarks and by these remarks showed a lack of remorse and possible lack of care for the prisoner's safety. By stating that he did not care that the prisoner died, and by stating the intent to break the prisoner's neck, he crossed the line from reasonable force to force which was abusive and punitive in nature.

While placing Stone in into the restraining chair, Ware can be heard making statements such as "did that hurt" and then laughing. After placing Stone in the holding cell, and Stone was obviously non-resisting and definitely not a threat, Ware sprayed pepper spray into the cell. ***This was done for no other reason than to abuse and harass the prisoner.***

Additionally, the CSO report stated:

"At the time pepper spray was used, the prisoner was in a restraint chair and asleep. It is clear that the prisoner was under control and incapacitated. **The prisoner was not participating in any activity other than sleeping.** He was not causing a disturbance in the facility. Therefore, the use of pepper spray cannot be justified." The CSO further concluded: "Cpl. Ware was in no way concerned for the safety, good order, or security of the detention facility. He did not give any verbal commands that were not obeyed. No imminent assault was present. No attempts to incite a riot were present. Corporal Ware merely walked by the holding cell and sprayed the pepper spray under the door while the prisoner was restrained in the chair. ***This appears to have been done for the amusement of onlookers and himself.***"

If these actions do not constitute acts of Moral Turpitude, then we must ask the Board of Elections, what does?

- 6) By violating his plea agreement with the United States District Court for the Northern District of Georgia and signing the required affidavits to qualify to seek the office of Coroner in Cherokee County, Georgia, while knowingly and willingly concealing the fact he is permanently prohibited from working in the field of law enforcement, Don Gordon Ware Jr. has possibly committed a felony violation of O.C.G.A. § 16-10-20.1(b)(2), by, "Knowingly alter, conceal, cover up, or create a document and file, enter, or record it in a public record or court of this state or of the United States knowing or having reason to know that such document has been altered or contains a materially false, fictitious, or fraudulent statement or representation." By being witness to the possible commission of the above described felony, and now being certifiably made aware of Don Gordon Ware Jr.'s actions in possibly committing the above described felony, the Cherokee County Board of Elections & Registration is obligated to report the above described possible felony to the Cherokee Sheriff's Office and any/all other proper authorities and organizations, including the Cherokee County District Attorney, the Georgia Secretary of State and the Georgia Attorney General.

CONCLUSION

The office of Cherokee County Coroner is a critically important position requiring an individual possessing the highest standards of integrity, ethics and character. Since the legal qualifications to serve in this position are minimal, it is even more important that we, as citizens of the county, demand that candidates for this office, at the very least, meet these requirements in their entirety.

As a Deputy Sheriff for Cherokee County, Mr. Ware took an Oath to the Citizens of Cherokee County and promised to abide by the "Law Enforcement Code of Ethics", which states in part:

"As a law enforcement officer, my fundamental duty is to serve mankind, to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder, and to respect the constitutional rights of all persons to liberty, equality, and justice."

"I will enforce the law courteously and appropriately without fear or favor, malice or violence."

"I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of law enforcement."

When entrusted by the county to serve as a Deputy Sheriff, Mr. Ware violated his Oath and the public trust in a particularly heinous way. (Exhibit "D") Using unauthorized excessive force against a captive fellow citizen and doing so without cause, while acting as a Sheriff on behalf of our county, cannot be tolerated, excused, or forgotten.

We as Americans believe in redemption, second chances and that people can "change". There is no doubt Mr. Ware would claim to be a "different" man today. But, even as recently as a few days ago, when asked if he is remorseful, regrets his actions, or would like to apologize for his actions, the audio recordings (Exhibit "L (1)(2)(3)") show that Mr. Ware still believes he did nothing wrong. How has a person "Changed" if they still believe today what they believed 23 years ago? If Mr. Ware doesn't feel his actions 23 years ago were wrong, then what would prevent him from repeating his behavior today?

Mr. Ware was given the public trust once and he betrayed that trust. The Citizens of Cherokee County should not have the opportunity to unknowingly make the same mistake again.



Bill Parrish



Tim Adderholdt

The following exhibits are attached and included on the USB storage device to this challenge to the eligibility of respondent Don Gordon Ware Jr. to seek or hold the office of Coroner.

1. **EXHIBIT "A"** - A Copy of respondent Don Gordon Ware Jr.'s plea agreement with the United States District Court for the Northern District of Georgia,
2. **EXHIBIT "B"** - A copy of respondent Don Gordon Ware Jr.'s plea hearing with the United States District Court for the Northern District of Georgia,
3. **EXHIBIT "C"** - A copy of respondent Don Gordon Ware Jr.'s Georgia Peace Officer Standards and Training Council (P.O.S.T.) record,
4. **EXHIBIT "D"** - A copy of the Cherokee Sheriff's Office investigation of respondent Don Gordon Ware Jr.'s actions in the Cherokee County Adult Detention Center, detailing the torture of Christopher Stone,
5. **EXHIBIT "E"** - A copy of O.C.G.A. § 35-8-2 establishing the coroner as a LAW ENFORCEMENT UNIT,
6. **EXHIBIT "F"** - A copy of O.C.G.A. § 35-4-8 requiring the coroner to receive Law Enforcement training,
7. **EXHIBIT "G"** - A copy of O.C.G.A. §42-4-3 requiring, by law, the coroner to be the keeper of the jail under certain circumstances,
8. **EXHIBIT "H"** - A copy of the Contempt of Court civil action from Forsyth County, GA with a copy of service on March 28th, 2002,
9. **EXHIBIT "I"** - A copy of O.C.G.A. § 16-10-20.1(b)(2), describing how respondent Don Gordon Ware Jr. committed a felony violation of O.C.G.A. § 16-10-20.1(b)(2) by qualifying to run for the office of Coroner while knowingly to be forbidden from the field of Law Enforcement permanently.
10. **EXHIBIT "J"** - A copy of respondent Don Gordon Ware Jr.'s qualifying affidavits submitted to the Cherokee County Board of Elections & Registration,
11. **EXHIBIT "K"** - Narrated video of the incident between Don Gordon Ware Jr. and Christopher Stone taken at the Cherokee Adult Detention Center as available on YouTube (USB data storage device)
12. **EXHIBITS "L (1)(2)(3)"** - Recordings of phone conversations where respondent Don Gordon Ware Jr. describes the coroner working directly with law enforcement and does not apologize. (USB Storage Device)
13. The criminal case files are available through the US Clerk's office.
Case# 1:99-CR-601, Volume 26, Box 23 Session 021-02-0284.

ORIGINAL

GUILTY PLEA and PLEA AGREEMENT

United States Attorney
Northern District of Georgia

FILED IN OPEN COURT
11-3-90
Luther D. Thomas, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

By:

Deputy Clerk

CRIMINAL NO. 1:99-CR-601-ECS

DONALD WARE, defendant, having received a copy of the above-numbered misdemeanor **CRIMINAL INFORMATION**, hereby pleads **GUILTY** to **THE CRIMINAL INFORMATION**. The defendant, his counsel, and counsel for the United States ("the government"), subject to approval by the Court, have agreed upon a negotiated plea in this case, the terms of which are as follows:

1. The government will recommend that the defendant receive the maximum adjustment for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines. However, the government's obligation to recommend acceptance of responsibility pursuant to this plea agreement is contingent upon the defendant's continuing manifestation of acceptance of responsibility. Should the defendant deny his involvement, give conflicting statements as to his involvement, or engage in additional related criminal conduct, the government will not be bound to recommend acceptance of responsibility.
2. The defendant agrees to cooperate truthfully and completely with the government with regard to his offense and all matters relating to it, including being debriefed and providing truthful testimony at any proceeding resulting from or related to his cooperation. The defendant also agrees to disclose the existence of and to produce to the government any and all books, papers, documents, and/or other items of evidentiary value to his cooperation that are in his actual or constructive possession. Pursuant to Section 1B1.8 of the Sentencing Guidelines, the government agrees that any self-incriminating information which was previously unknown to the government and is provided to the government by the defendant in connection with his cooperation and as a result of this plea agreement will not be used in determining the applicable sentencing guideline range. The government also agrees not to bring additional charges against the defendant, with the exception of charges resulting from or related to violent criminal activity, based on any information provided by the defendant in connection with his cooperation, which information was not known to the government prior to that cooperation. If the defendant is not completely truthful and candid in his cooperation with the government, he may be subject to prosecution for perjury, false statements, obstruction of justice, and any other similar charge, and the information he provides may be used against him in such a proceeding.
3. The defendant agrees to surrender all law enforcement licenses and certifications he holds, before the date of sentencing in this case. The defendant further agrees that he will not seek, accept, or maintain employment in the field of law enforcement, including private security work. Should the defendant violate this employment restriction at any time, the government will be

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released from its commitment to honor all of its obligations to the defendant under this plea agreement. The government may then prosecute the defendant for any and all crimes he may have committed before the date of this plea agreement. The defendant agrees to waive any statute of limitations and speedy trial defenses to such charges, and he understands and agrees that the government may use against him any admissions, information, and documents that he may have provided during the course of his cooperation. Finally, if the defendant is convicted of such charges, the government may recommend to the Court any sentence up to and including the maximum sentence allowed by law.

4. The defendant reserves the right to move for a downward departure from the otherwise applicable sentencing guideline range. The government agrees that it will not take a position on such a departure motion, nor will the government recommend the specific sentence that the Court should impose within the guideline range.

5. Except as discussed above, the government reserves the right to make recommendations as to specific characteristics and adjustments listed in the Sentencing Guidelines. The government also reserves the right to fully inform the Court and the United States Probation Office of all the facts and circumstances surrounding this entire case, and to respond to any questions from the Court and to any misstatements of fact or law.

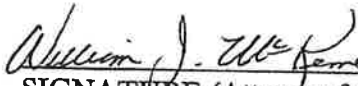
6. **WAIVER OF APPEAL:** Understanding that Title 18, United States Code, Section 3742 provides for appeal by a defendant of his sentence under certain circumstances, the defendant expressly waives any and all rights conferred by Title 18, United States Code, Section 3742 to appeal his sentence. To the maximum extent permitted by Federal law, the defendant also expressly waives the right to appeal his sentence on any other ground and the right to attack his sentence in any post-conviction proceeding. The parties agree that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b); however, should the government appeal the defendant's sentence pursuant to that statute, defendant will be released from his appeal waiver.

7. The defendant understands and agrees that the recommendations of the government incorporated within the terms of this plea agreement, as well as any stipulations of fact or guideline computations incorporated into this plea agreement or otherwise discussed between the parties, are not binding on the District Court and that the District Court's failure to accept one or more of the recommendations, stipulations, and/or guideline computations will not constitute grounds to withdraw his guilty plea or to claim a breach of this plea agreement.

8. The defendant acknowledges and agrees to pay at sentencing a special assessment in the amount of \$25. This amount is payable by cash, cashier's check, or U.S. Postal Money Order to the United States District Court Clerk.

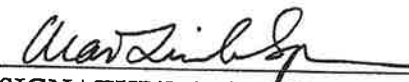
9. There are no other agreements, promises, understandings, or undertakings between the defendant and the government.

In Open Court this 3rd day of November, 1999.


SIGNATURE (Attorney for Defendant)
WILLIAM J. MCKENNEY


SIGNATURE (Defendant)
DONALD WARE

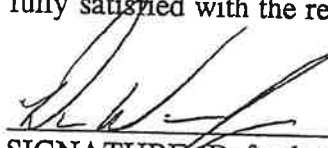

SIGNATURE (Assistant U.S. Attorney)
DAVID E. NAHMIAS


SIGNATURE (Trial Attorney, Dept. of Justice)
MAI LINH SPENCER


SIGNATURE (Approving Official)
F. GENTRY SHELNUTT

11-2-99
DATE

I have read the Criminal Information filed against me and have discussed it with my attorney. I understand the charge and the elements of the charge that the Government would have to prove to convict me at a trial. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I have also discussed with my attorney the rights I may have to appeal or challenge my sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my sentence or challenging my sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the Government toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.


SIGNATURE (Defendant)

11-3-99
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. ATLANTA

JUL 28 2000

LUTHER B. THOMAS, JR.
CLERK

UNITED STATES OF AMERICA,
PLAINTIFF,

VS.

DONALD WARE,

DEFENDANT.

NO. 1:99-CR-601 -1-ELS
ATLANTA, GEORGIA
NOVEMBER 3, 1999
10:45 A.M.

TRANSCRIPT OF PLEA HEARING PROCEEDINGS

BEFORE THE HONORABLE E. CLAYTON SCOFIELD, III,
UNITED STATES MAGISTRATE JUDGE.

APPEARANCES:

FOR THE PLAINTIFF:

OFFICE OF THE U.S. ATTORNEY
BY: DAVID E. NAHMIA, A.U.S.A.
MAI LINH SPENCER, ESQ.

FOR THE DEFENDANT:

WILLIAM J. MCKENNEY, ESQ.

COURT REPORTER:

THERESE J. VESEL, R.D.R.
2114 U.S. COURTHOUSE
75 SPRING STREET, S.W.
ATLANTA, GEORGIA 30303
(404) 331-3721

(12)

1 (ATLANTA, FULTON COUNTY, GEORGIA, WEDNESDAY, NOVEMBER 3,
2 1999, AT 10:43 A.M.)

3 (IN OPEN COURT)

4 THE COURT: ALL RIGHT. CALL THE MATTER OF UNITED
5 STATES OF AMERICA V. DONALD WARE, CRIMINAL INFORMATION NUMBER
6 1:99-CR-601.

7 MR. NAHMIAS FOR THE GOVERNMENT, AND MR. MCKENNEY.

8 MS. NAHMIAS: YES.

9 YOUR HONOR, I ALSO HAVE MAI LINH SPENCER FROM THE
10 CIVIL RIGHTS SECTION, CIVIL RIGHTS DIVISION, CRIMINAL SECTION
11 OF THE DEPARTMENT OF JUSTICE.

12 MS. SPENCER: GOOD MORNING, YOUR HONOR.

13 THE COURT: GOOD MORNING.

14 AS I UNDERSTAND IT, THIS MATTER IS BEFORE ME THIS
15 MORNING FOR THE ENTRY OF A GUILTY PLEA.

16 MR. NAHMIAS: YES, YOUR HONOR, AND INITIAL
17 APPEARANCE.

18 THE COURT: AND INITIAL APPEARANCE. ALL RIGHT.

19 MR. WARE, THIS IS YOUR INITIAL APPEARANCE BEFORE THIS
20 COURT IN THIS MATTER, WHICH IS A CRIMINAL INFORMATION FILED BY
21 THE GOVERNMENT. IT CHARGES YOU -- HAVE YOU BEEN PROVIDED WITH
22 A COPY OF THE CRIMINAL INFORMATION?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: AND YOU ARE REPRESENTED BY MR. MCKENNEY
25 YOUR LAWYER HERE?

1 THE DEFENDANT: YES, SIR, YOUR HONOR.

2 THE COURT: AND THE CHARGES AGAINST YOU, IN SUMMARY,
3 ARE THAT YOU VIOLATED TITLE 18, SECTION 242, OF THE UNITED
4 STATES CODE. IN ESSENCE, CHARGING YOU WITH VIOLATION OF THE
5 CONSTITUTIONAL RIGHTS OF AN INDIVIDUAL BY USING, IN ESSENCE,
6 EXCESSIVE FORCE. DO YOU UNDERSTAND THAT THOSE ARE THE CHARGES
7 AGAINST YOU?

8 THE DEFENDANT: YES, SIR, YOUR HONOR.

9 THE COURT: ALL RIGHT. NOW, BECAUSE THIS IS YOUR
10 INITIAL APPEARANCE, I WANT TO ADVISE YOU OF CERTAIN OF YOUR
11 CONSTITUTIONAL RIGHTS. YOU HAVE THE ABSOLUTE CONSTITUTIONAL
12 RIGHT TO REMAIN SILENT. THAT MEANS THAT NOBODY CAN FORCE YOU
13 TO MAKE ANY STATEMENTS OR REQUIRE YOU TO MAKE ANY STATEMENTS
14 BUT ANY STATEMENTS YOU DO MAKE CAN BE USED AGAINST YOU.

15 YOU ARE ENTITLED TO BE REPRESENTED BY COUNSEL AND YOU
16 ARE ENTITLED TO REPRESENTATION AND TO CONSULT WITH A LAWYER AT
17 ALL COURT PROCEEDINGS IN THIS MATTER AND AT ANY QUESTIONING BY
18 THE AUTHORITIES OR BY THE POLICE, ANY LINE-UPS AN ANY OTHER
19 CRITICAL STAGES IN THIS PROSECUTION. YOU CAN HIRE YOUR OWN
20 LAWYER, AS I UNDERSTAND YOU HAVE DONE, OR IF YOU CANNOT AFFORD
21 COUNSEL, THEN YOU CAN ASK THE COURT TO APPOINT A LAWYER TO
22 REPRESENT YOU AT NO EXPENSE. BUT IN THIS CASE I UNDERSTAND YOU
23 HAVE HIRED AND RETAINED PRIVATE COUNSEL; IS THAT RIGHT?

24 THE DEFENDANT: YES, SIR, YOUR HONOR.

25 THE COURT: ALL RIGHT. THIS MATTER IS BEFORE ME FOR

1 ENTRY OF A GUILTY PLEA.

2 MR. NAHMIAS: YES, YOUR HONOR, AND MR. WARE HAS
3 EXECUTED THE WAIVER, THE CONSENT TO PROCEED BEFORE YOU, AND THE
4 WAIVER OF RIGHT TO TRIAL BY JURY AND WAIVER OF THE RIGHT TO
5 HAVE 30 DAYS TO PREPARE FOR TRIAL.

6 LET ME JUST VERIFY THAT THIS IS YOUR SIGNATURE ON THE
7 WAIVER FORM.

8 THE DEFENDANT: YES, SIR.

9 THE COURT: ALL RIGHT.

10 MR. NAHMIAS: I'LL TENDER THE WAIVER TO THE COURT AT
11 THIS TIME.

12 THE COURT: ALL RIGHT.

13 MR. NAHMIAS: THIS IS A MISDEMEANOR INFORMATION WHICH
14 WE FILED THIS MORNING, SO THERE IS NO NEED TO WAIVE INDICTMENT.

15 THE COURT: ALL RIGHT.

16 ALL RIGHT, MR. WARE, WOULD YOU COME FORWARD TO THE
17 PODIUM, PLEASE, WITH YOUR COUNSEL.

18 MR. WARE, WE HAVE ALREADY DISCUSSED -- I HAVE ALREADY
19 ADVISED YOU OF YOUR RIGHTS AT THIS INITIAL APPEARANCE AND WE
20 DISCUSSED THE CHARGES AND I THINK YOU UNDERSTAND THE CHARGE
21 THAT HAS BEEN MADE AGAINST YOU UNDER TITLE 18, SECTION 242. IT
22 IS MY UNDERSTANDING THAT YOU WISH TO PLEAD GUILTY THIS MORNING.

23 THE DEFENDANT: YES, SIR, YOUR HONOR.

24 THE COURT: IS THAT CORRECT?

25 AND YOU HAVE SIGNED THE CONSENT TO PROCEED BEFORE THE

1 MAGISTRATE JUDGE IN THIS CASE. YOU HAVE THAT.

2 YOU RECOGNIZE THAT YOU DO HAVE THE RIGHT TO HAVE THIS
3 MATTER HEARD BEFORE A DISTRICT JUDGE. I'M AN UNITED STATES
4 MAGISTRATE JUDGE, BUT YOU WOULD HAVE THE RIGHT TO HAVE THIS
5 MATTER DETERMINED BEFORE AN UNITED STATES DISTRICT JUDGE WHO IS
6 A JUDGE APPOINTED BY THE PRESIDENT FOR A LIFE TERM; WHEREAS,
7 THE UNITED STATES MAGISTRATE JUDGE IS APPOINTED BY THE DISTRICT
8 COURT FOR A SET TERM. YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: AND YOU HAVE CONSENTED TO PROCEED BEFORE
11 THIS COURT?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: ALL RIGHT. NOW, AS I UNDERSTAND IT, THE
14 GOVERNMENT AND THE DEFENDANT HAVE ENTERED INTO A PLEA
15 AGREEMENT. HAS THAT BEEN FILED OF RECORD AS YET?

16 MR. NAHMIAS: NOT YET, YOUR HONOR. I HAVE GIVEN YOU
17 A COURTESY COPY.

18 THE COURT: I DO HAVE A COPY OF IT AND WE CAN --

19 MR. NAHMIAS: WOULD YOU LIKE ME TO VERIFY THE
20 SIGNATURES?

21 THE COURT: YES. AND LET'S GO AHEAD AND PUT A COPY
22 OF IT IN THE RECORD.

23 MR. NAHMIAS: I'M SHOWING YOU WHAT IS MARKED AS THE
24 ORIGINAL GUILTY PLEA AND PLEA AGREEMENT IN THIS MATTER. IT IS
25 FOUR PAGES INCLUDING NINE NUMBERED PARAGRAPHS, AND ON THE THIRD

1 PAGE IS THIS YOUR SIGNATURE AS THE DEFENDANT?

2 THE DEFENDANT: YES, SIR.

3 MR. NAHMIAS: IS THIS IS THIS YOUR SIGNATURE AT THE
4 BOTTOM OF THE PAGE, AS WELL?

5 THE DEFENDANT: YES, SIR.

6 MR. NAHMIAS: MR. MCKENNEY, IS THIS YOUR SIGNATURE AS
7 COUNSEL?

8 MR. MCKENNEY: YES, IT IS.

9 MR. NAHMIAS: THE PLEA AGREEMENT HAS ALSO BEEN SIGNED
10 BY MYSELF AND MS. SPENCER ON BEHALF OF THE GOVERNMENT AND BY
11 GENTRY SHELNUTT AS THE APPROVING OFFICIAL, AND I WOULD TENDER
12 THAT TO THE COURT.

13 THE COURT: ALL RIGHT. THANK YOU. LET IT BE FILED.
14 ALL RIGHT, AND I HAVE A COPY HERE.

15 MR. WARE, WOULD YOU STATE YOUR NAME FOR THE RECORD,
16 PLEASE.

17 THE DEFENDANT: I'M DON GORDON WARE, JR.

18 THE COURT: AND HOW OLD ARE YOU, SIR?

19 THE DEFENDANT: 31, SIR.

20 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

21 THE DEFENDANT: I GRADUATED HIGH SCHOOL. HIGH SCHOOL
22 DIPLOMA.

23 THE COURT: ALL RIGHT. ARE YOU UNDER THE INFLUENCE
24 OF ANY DRUGS, ALCOHOL OR MEDICATION THAT WOULD AFFECT YOUR
25 ABILITY TO UNDERSTAND THESE PROCEEDINGS HERE TODAY?

1 THE DEFENDANT: NO, SIR.

2 THE COURT: ALL RIGHT. HAVE YOU RECEIVED -- YOU HAVE
3 RECEIVED, WE HAVE ALREADY ESTABLISHED, A COPY OF THE
4 INFORMATION AND THE CHARGES. HAVE YOU ALSO REVIEWED THE GUILTY
5 PLEA AND PLEA AGREEMENT THAT WAS JUST FILED OF RECORD IN THIS
6 CASE?

7 THE DEFENDANT: YES, SIR.

8 THE COURT: ALL RIGHT. AND HAVE YOU HAD AN
9 OPPORTUNITY TO DISCUSS THE AGREEMENT WITH YOUR ATTORNEY?

10 THE DEFENDANT: YES, SIR, I HAVE.

11 THE COURT: MR. NAHMIAS, I'M GOING TO ASK YOU TO
12 SUMMARIZE, GO THROUGH THE PROVISIONS OF THE GUILTY PLEA
13 AGREEMENT.

14 MR. NAHMIAS: YOUR HONOR, IN SUMMARY, PARAGRAPH ONE
15 STATES THAT THE GOVERNMENT WILL RECOMMEND THAT THE DEFENDANT
16 RECEIVE THE MAXIMUM CREDIT FOR ACCEPTING RESPONSIBILITY SO LONG
17 AS HE CONTINUES TO ACCEPT RESPONSIBILITY.

18 IN PARAGRAPH TWO THE DEFENDANT IS AGREEING TO
19 COOPERATE TRUTHFULLY AND COMPLETELY WITH THE GOVERNMENT
20 REGARDING THIS OFFENSE IN MATTERS RELATING TO IT, INCLUDING
21 BEING DEBRIEFED AND PROVIDING TRUTHFUL TESTIMONY AT ANY
22 PROCEEDING THAT RESULTS FROM HIS COOPERATION AND PRODUCING ANY
23 EVIDENTIARY MATERIAL IN HIS POSSESSION.

24 WE HAVE AGREED NOT TO USE THAT INFORMATION THAT HE
25 PROVIDES IN HIS COOPERATION AGAINST HIM SO LONG AS HE IS

1 TRUTHFUL AND CANDID.

2 IN PARAGRAPH THREE THE DEFENDANT HAS AGREED TO
3 SURRENDER ALL LAW ENFORCEMENT LICENSES AND CERTIFICATIONS HE
4 HOLDS BEFORE THE DATE OF SENTENCING, AND HE FURTHER AGREES THAT
5 HE WILL NOT SEEK, ACCEPT OR MAINTAIN EMPLOYMENT IN THE FIELD OF
6 LAW ENFORCEMENT, INCLUDING PRIVATE SECURITY WORK. SHOULD HE
7 VIOLATE THAT EMPLOYMENT RESTRICTION AT ANY TIME, ESSENTIALLY
8 THE GOVERNMENT WOULD BE RELEASED FROM ITS OBLIGATIONS UNDER
9 THIS PLEA AGREEMENT AND COULD PROSECUTE THE DEFENDANT FOR ANY
10 AND ALL CRIMES HE COMMITTED BEFORE TODAY. AND IN THAT
11 SITUATION THE DEFENDANT WOULD WAIVE THE STATUTE OF LIMITATIONS
12 AND SPEEDY TRIAL DEFENSE TO SUCH CHARGES AND WE COULD USE
13 AGAINST HIM ALL THE INFORMATION HE PROVIDES DURING HIS
14 COOPERATION AND RECOMMEND TO THE COURT THE MAXIMUM SENTENCE.

15 THE BOTTOM LINE IS HE NEEDS TO STAY OUT OF LAW
16 ENFORCEMENT UNDER THIS AGREEMENT.

17 IN PARAGRAPH FOUR THE DEFENDANT IS RESERVING THE
18 RIGHT TO MOVE FOR A DOWNWARD DEPARTURE FROM THE APPLICABLE
19 GUIDELINE SENTENCING RANGE AND THE GOVERNMENT AGREES WE WILL
20 NOT TAKE A POSITION ON THAT MOTION NOR WILL WE RECOMMEND ANY
21 SPECIFIC SENTENCE WITHIN THE GUIDELINE RANGE TO THE COURT.

22 OTHER THAN THAT, IN PARAGRAPH FIVE WE CAN MAKE
23 WHATEVER RECOMMENDATIONS WE WISH REGARDING THE SENTENCING
24 GUIDELINES, AND WE CAN INFORM THE COURT OF ALL OF THE FACTS AND
25 CIRCUMSTANCES IN THE CASE AND RESPOND TO ANY QUESTIONS AND ANY

1 MISSTATEMENTS OF FACT OR LAW.

2 IN PARAGRAPH SIX, THE DEFENDANT IS WAIVING ALL OF HIS
3 RIGHTS TO APPEAL THE SENTENCE OR TO ATTACK HIS SENTENCE IN ANY
4 POST-CONVICTION PROCEEDING WITH THE ONE EXCEPTION THAT IF THE
5 GOVERNMENT FILES AN APPEAL OF THE SENTENCE, THE DEFENDANT COULD
6 THEN CROSS-APPEAL HIS SENTENCE, AS WELL.

7 IN PARAGRAPH SEVEN THE DEFENDANT IS STATING HIS
8 UNDERSTANDING THAT ALL OF THE RECOMMENDATIONS AND TERMS OF THIS
9 PLEA AGREEMENT ARE NOT BINDING ON THE COURT AND THE COURT CAN
10 ESSENTIALLY DO WHAT IT WISHES AND THE DEFENDANT WOULD NOT THEN
11 HAVE THE RIGHT TO WITHDRAW HIS GUILTY PLEA.

12 IN PARAGRAPH EIGHT THE DEFENDANT IS AGREEING TO PAY
13 AT SENTENCING A SPECIAL ASSESSMENT IN THE AMOUNT OF \$25, AND
14 PARAGRAPH NINE PROVIDES THAT THERE ARE NO OTHER AGREEMENTS,
15 OTHER THAN THIS PLEA AGREEMENT, BETWEEN THE GOVERNMENT AND THE
16 DEFENDANT.

17 THE COURT: MR. WARE, DOES THAT REPRESENT YOUR FULL
18 AGREEMENT WITH THE GOVERNMENT?

19 THE DEFENDANT: YES, SIR, YOUR HONOR.

20 THE COURT: HAS ANYONE MADE YOU ANY OTHER PROMISES IN
21 ORDER TO INDUCE YOU TO ENTER INTO THIS AGREEMENT AND TO PLEAD
22 GUILTY?

23 THE DEFENDANT: NO, SIR, YOUR HONOR.

24 THE COURT: ALL RIGHT. AND YOU UNDERSTAND THAT THE
25 AGREEMENT DOESN'T LIMIT WHAT THE COURT MAY DO AS FAR AS WHAT

1 THE ULTIMATE SENTENCE MAY BE, SO LONG AS IT IS IN COMPLIANCE
2 WITH THE GUIDELINES AND THE APPLICABLE LAW. YOU UNDERSTAND
3 THAT?

4 THE DEFENDANT: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 THE COURT: AND YOU UNDERSTAND YOU WON'T BE ABLE TO
7 WITHDRAW THE PLEA AFTER YOU ENTER IT?

8 THE DEFENDANT: YES, SIR.

9 THE COURT: HAS ANYBODY DONE ANYTHING TO TRY TO FORCE
10 YOU TO PLEAD GUILTY IN THIS CASE?

11 THE DEFENDANT: NO, SIR.

12 THE COURT: ARE YOU PLEADING GUILTY VOLUNTARILY AND
13 WITH FULL UNDERSTANDING OF THE FACT THAT YOU ARE PLEADING
14 GUILTY?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: ARE YOU PLEADING GUILTY OF YOUR OWN FREE
17 WILL?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: WHAT IS THE MAXIMUM -- AS I UNDERSTAND IT
20 LOOKING AT THE STATUTE, THE MAXIMUM IS ONE YEAR FOR A
21 MISDEMEANOR UNDER 242.

22 MR. NAHMIAS: ONE YEAR IMPRISONMENT, ONE YEAR
23 SUPERVISED RELEASE, A HUNDRED THOUSAND DOLLAR FINE, AND THE \$25
24 SPECIAL ASSESSMENT AS WELL AS ANY RESTITUTION ORDERED BY THE
25 COURT.

1 THE COURT: ALL RIGHT. IS RESTITUTION AN ISSUE IN
2 THIS CASE?

3 MR. NAHMIAS: THERE IS POTENTIAL RESTITUTION. WE
4 HAVE CONTACTED THE VICTIM AND HAVE YET TO RECEIVE ANY
5 INFORMATION. IF THE VICTIM DOESN'T ASK FOR RESTITUTION, THEN
6 THERE WON'T BE ANY.

7 THE COURT: ALL RIGHT.
8 AND THE SENTENCING GUIDELINES APPLY?

9 MR. NAHMIAS: THEY DO, YOUR HONOR.

10 THE COURT: AND LET ME MAKE SURE, MR. WARE, THAT YOU
11 UNDERSTAND THAT GUIDELINES HAVE BEEN ISSUED BY WHAT IS CALLED
12 THE SENTENCING COMMISSION, THAT MUST BE FOLLOWED IN THIS CASE.

13 HAVE YOU HAD AN OPPORTUNITY TO DISCUSS THOSE WITH
14 YOUR ATTORNEY?

15 MR. MCKENNEY: YOUR HONOR, WE HAVE. BUT I WANT TO BE
16 CLEAR WITH THE COURT. WE ARE GOING TO BE SEEKING A DOWNWARD
17 DEPARTURE EXCEPTION.

18 THE COURT: ALL RIGHT.

19 MR. MCKENNEY: TO THE GUIDELINES.

20 THE COURT: ALL RIGHT. I UNDERSTAND THAT. YOU ARE
21 AWARE THAT THERE ARE GUIDELINES AND YOU HAVE HAD AN OPPORTUNITY
22 TO DISCUSS THOSE WITH YOUR LAWYER?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: ALL RIGHT. AND YOU UNDERSTAND THAT BY
25 ENTERING A GUILTY PLEA YOU WILL BE GIVING UP -- IN ACCORDANCE

1 WITH THIS AGREEMENT, YOU WILL BE GIVING UP YOUR RIGHTS TO
2 APPEAL?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: NOW, LET ME GO OVER WHAT YOU ARE GIVING
5 UP BY PLEADING GUILTY. YOU -- MR. WARE, YOU HAVE THE RIGHT TO
6 PLEAD NOT GUILTY, AND I'M SURE YOU UNDERSTAND THAT. IF YOU
7 PLEAD NOT GUILTY, THEN YOU WOULD HAVE THE RIGHT TO A TRIAL
8 BEFORE A JURY IN THIS CASE. AT THAT TRIAL YOU WOULD BE
9 PRESUMED INNOCENT. THE GOVERNMENT WOULD BE REQUIRED TO PROVE
10 ITS CASE AGAINST YOU BEYOND A REASONABLE DOUBT. YOU WOULD BE
11 ENTITLED TO BE REPRESENTED BY COUNSEL, TO HAVE YOUR COUNSEL
12 CROSS-EXAMINE ANY WITNESSES THAT MIGHT BE CALLED AGAINST YOU,
13 AND YOU WOULD BE ENTITLED TO CALL WITNESSES ON YOUR BEHALF.

14 YOU COULD TESTIFY, IF YOU WISHED, BUT YOU WOULD NOT
15 BE REQUIRED TO TESTIFY IF YOU WENT TO TRIAL. YOU WOULD HAVE
16 THE RIGHT TO COMPULSORY PROCESS, THAT IS, SUBPOENAS COULD BE
17 ISSUED TO BRING WITNESSES IN TO TESTIFY ON YOUR BEHALF. AND
18 YOU UNDERSTAND THAT BY ENTERING A GUILTY PLEA THERE WILL BE NO
19 TRIAL. YOU UNDERSTAND THAT? YOU WILL BE GIVING UP OR WAIVING
20 YOUR RIGHT TO TRIAL?

21 THE DEFENDANT: YES, SIR.

22 THE COURT: ALL RIGHT.

23 NOW, THE CODE SECTION I DON'T HAVE HERE. BUT YOU
24 HAVE BE CHARGED WITH A VIOLATION OF TITLE 18, SECTION 242 -- I
25 MIGHT HAVE IT HERE -- WHICH STATES IN WHAT I HOPE IS PERTINENT

1 PART, WHOEVER UNDER COLOR OF ANY LAW, STATUTE, ORDINANCE,
2 REGULATION, CUSTOM, WILLFULLY SUBJECTS ANY PERSON IN ANY STATE,
3 TERRITORY, COMMONWEALTH, POSSESSION OR DISTRICT TO THE
4 DEPRIVATION OF ANY RIGHTS, PRIVILEGES OR IMMUNITIES SECURED OR
5 PROTECTED BY THE CONSTITUTIONAL LAWS OF THE UNITED STATES,
6 WHICH IS WHAT I UNDERSTAND IS THE PROVISION ASSERTED HERE AND
7 NOT MATTERS OF RACE, COLOR, SHALL BE FINED UNDER THIS TITLE OR
8 IMPRISONED NOT MORE THAN ONE YEAR OR BOTH. AS I UNDERSTAND IT,
9 THAT IS THE PROVISION UNDER WHICH YOU ARE BEING CHARGED,
10 MR. WARE, IN THIS CASE.

11 ARE YOU, IN FACT, GUILTY OF THE CHARGE?

12 THE DEFENDANT: YES, SIR, I AM.

13 THE COURT: LET ME GET THE GOVERNMENT TO TELL ME WHAT
14 THE EVIDENCE, WHAT THE GOVERNMENT CONTENDS THE CASE WOULD SHOW.

15 MR. NAHMIA: YOUR HONOR, THE GOVERNMENT'S EVIDENCE
16 WOULD SHOW THAT DURING THE EVENING OF JUNE THE 6TH OF 1997 THE
17 DEFENDANT WAS ON DUTY AS A CORPORAL IN THE CHEROKEE COUNTY
18 SHERIFF'S OFFICE IN CANTON, GEORGIA, WHICH IS IN THE NORTHERN
19 DISTRICT OF GEORGIA.

20 ON THAT DATE THE VICTIM, CHRISTOPHER STONE, WAS
21 ARRESTED AND BROUGHT TO THE SHERIFF'S OFFICE. AFTER HE ARRIVED
22 AT THE SHERIFF'S OFFICE, SEVERAL OFFICERS, INCLUDING THE
23 DEFENDANT, PLACED MR. STONE IN A HOLDING CELL. AT THE TIME
24 MR. STONE WAS HANDCUFFED BEHIND HIS BACK. WHEN MR. STONE
25 DISOBEYED ORDERS TO REMAIN ON HIS KNEES, THE OFFICERS FORCED

1 HIM TO THE GROUND WHERE HE REMAINED FACE DOWN AND HANDCUFFED
2 BEHIND HIS BACK. THE DEFENDANT THEN STOOD ON MR. STONE'S BACK
3 WITH ONE FOOT ON THE BACK OF MR. STONE'S NECK AND THE OTHER
4 FOOT ON HIS LOWER BACK. THE DEFENDANT'S ENTIRE WEIGHT RESTED
5 ON MR. STONE'S BACK FOR APPROXIMATELY THREE MINUTES.

6 THE DEFENDANT AND OTHER OFFICERS THEN TOOK MR. STONE
7 INTO THE HALLWAY, REMOVED HIS HANDCUFFS, PLACED HIM IN A
8 RESTRAINING CHAIR AND PUT HIM BACK INTO THE HOLDING CELL.
9 AFTER SEVERAL MINUTES THE DEFENDANT SPRAYED TWO BURSTS OF
10 CHEMICAL PEPPER SPRAY UNDER THE DOOR AND INTO THE CELL. AT THE
11 TIME THE PEPPER SPRAY WAS SPRAYED INTO THE CELL, MR. STONE WAS
12 QUIET AND NONRESISTANT, STRAPPED TO THE RESTRAINING CHAIR IN
13 THE LOCKED AND ENCLOSED HOLDING CELL. THAT IS WHAT THE
14 GOVERNMENT'S EVIDENCE WOULD SHOW, YOUR HONOR.

15 THE COURT: MR. WARE, DO YOU AGREE THAT IS WHAT THE
16 EVIDENCE WOULD SHOW IN THIS CASE AS SUMMARIZED BY THE
17 GOVERNMENT?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: IS THAT, IN FACT, WHAT YOU DID IN THIS
20 CASE?

21 THE DEFENDANT: YES, SIR, YOUR HONOR.

22 THE COURT: ALL RIGHT. MR. WARE, LET ME ASK YOU THEN
23 HOW DO YOU PLEAD TO THE CHARGE, DO YOU PLEAD GUILTY OR NOT
24 GUILTY?

25 THE DEFENDANT: GUILTY, SIR.

1 THE COURT: ALL RIGHT. THEN IN THIS CASE, UNITED
2 STATES OF AMERICA V. DONALD WARE, THE COURT FINDS THAT THE
3 DEFENDANT IS COMPETENT AND CAPABLE OF ENTERING AN INFORMED
4 PLEA, HE IS AWARE OF THE CHARGES AND THE CONSEQUENCES OF THE
5 PLEA, THE PLEA IS KNOWING AND VOLUNTARY AND SUPPORTED BY AN
6 INDEPENDENT BASIS IN FACT. I WILL ACCEPT THE PLEA OF GUILTY
7 AND ADJUDICATE THE DEFENDANT GUILTY.

8 NOW, WITH RESPECT TO THE SENTENCING, I WANT A
9 PRESENTENCE REPORT. ORDINARILY THAT TAKES ABOUT 60 DAYS. SO
10 WE WILL BE SETTING THE ACTUAL SENTENCING, MR. WARE, FOR
11 APPROXIMATELY 60 DAYS FROM NOW. LET'S SEE, IS PROBATION OR
12 PRETRIAL SERVICES OR PROBATION HERE, ANYBODY HERE?

13 (NO AUDIBLE RESPONSE.)

14 THE COURT: WELL, GENERALLY THEY TAKE 60 DAYS. DO
15 YOU HAVE ANY REASON TO THINK IT WILL TAKE ANY LONGER THAN THAT?

16 MR. NAHMIAS: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. SO THIS IS -- WE ARE LOOKING
18 AT MOST LIKELY IN THE FIRST WEEK IN THE NEW YEAR.

19 MR. NAHMIAS: I'M ACTUALLY TEACHING A SEMINAR THAT
20 VERY FIRST WEEK.

21 THE COURT: ALL RIGHT. WE CAN SET IT FOR THE SECOND
22 WEEK. IS THAT OKAY WITH YOU, MR. MCKENNEY?

23 MR. MCKENNEY: YES.

24 THE COURT: MR. WARE, I TAKE IT YOU ARE OUT ON BOND.
25 THAT WOULD BE THE WEEK OF THE 10TH. AND AT THIS

1 POINT I CAN SET IT -- WHY DON'T WE SET IT -- ANY PROBLEMS OVER
2 THERE?

3 MS. SPENCER: YOUR HONOR, I WILL BE OUT OF THE
4 COUNTRY ACTUALLY UNTIL THE 12TH.

5 THE COURT: THE 12TH. THAT'S FINE. WE CAN DO IT
6 LATER IN THAT WEEK. WE CAN DO IT THE 13TH OR THE 14TH,
7 THURSDAY THE 13TH. ANY PREFERENCE ON TIME OF DAY? RIGHT NOW
8 IT IS WIDE OPEN.

9 MR. NAHMIAS: IF WE CAN DO IT LATER IN THE MORNING,
10 MS. SPENCER CAN FLY DOWN FROM WASHINGTON, SO MAYBE ELEVEN
11 O'CLOCK.

12 THE COURT: ELEVEN O'CLOCK?

13 MS. SPENCER: THAT WOULD BE TERRIFIC. THANKS.

14 THE COURT: ALL RIGHT, ELEVEN O'CLOCK?

15 MR. NAHMIAS: ON THE 14TH?

16 THE COURT: ON THE 13TH. LET'S GO AHEAD AND DO IT ON
17 THE 13TH AT ELEVEN O'CLOCK. AND THAT WILL, OF COURSE, GIVE
18 TIME FOR THE PRETRIAL, I MEAN THE PRESENTENCE REPORT TO BE
19 PREPARED, MR. WARE, AND IT WILL BE PROVIDED TO YOUR ATTORNEY.

20 MR. NAHMIAS: I BELIEVE WE NEED TO SET A BOND, BUT
21 THE GOVERNMENT HAS NO OBJECTION TO IT, \$10,000 O.R. BOND.

22 THE COURT: ALL RIGHT.

23 MR. MCKENNEY: I THOUGHT WE WOULD GO INTO THE
24 APPLICATION OF THAT AND REQUEST HE SIGN HIS OWN BOND. HE IS
25 MARRIED, LIVES IN THE COMMUNITY, HE IS GAINFULLY EMPLOYED. I

1 THINK WE ARE GOING TO GO FROM HERE TO A DEBRIEFING, AND IN
2 ACCORDANCE WITH THE PLEA AGREEMENT, SO I DON'T THINK THERE IS
3 ANY DANGER OF TURNING HIM OUT HERE.

4 THE COURT: ALL RIGHT.

5 IT DOESN'T SOUND LIKE THE GOVERNMENT HAS ANY CONCERN,
6 EITHER, SO I'LL ALLOW HIM TO SIGN A \$10,000 UNSECURED BOND.

7 THE DEFENDANT: THANK YOU, YOUR HONOR.

8 THE COURT: DOES HE NEED ANY SUPERVISION?

9 THE COURT: I DON'T BELIEVE SO UNLESS PRETRIAL
10 SERVICES DECIDES AT SOME POINT THAT THEY --

11 THE COURT: WE WON'T HAVE ANY CONDITIONS OTHER
12 THAN -- YOU WILL NEED TO REPORT TO PRETRIAL. I THINK THAT IS
13 APPROPRIATE. BUT THERE IS NO NEED FOR ANY OTHER SPECIAL
14 CONDITIONS THAT I CAN THINK OF UNLESS THE GOVERNMENT CAN THINK
15 OF ANY.

16 MR. NAHMIAS: JUST THE STANDARD CONDITION THAT HE NOT
17 VIOLATE ANY LAW AND SHOW UP.

18 THE COURT: RIGHT. I'LL GO OVER THOSE CONDITIONS
19 BEFORE YOU SIGN THE BOND.

20 ALL RIGHT, MR. WARE, THE CONDITIONS WILL BE THAT YOU
21 CONTINUE TO RESIDE AT THE ADDRESS THAT YOU PROVIDE ON THESE
22 PAPERS AND NOT CHANGE ADDRESS WITHOUT PERMISSION OF THE COURT.

23 YOU WILL BE REQUIRED TO CONTACT PRETRIAL SERVICES.
24 THEY WILL PROCESS YOU TODAY AND YOU WILL BE UNDER THEIR
25 SUPERVISION. THE ONLY OTHER CONDITION IS THAT, OF COURSE, NO

1 TRAVEL OUTSIDE THE NORTHERN DISTRICT OF GEORGIA WITHOUT
2 PREAPPROVAL, AND IF PRETRIAL SERVICES REQUIRES, YOU MAY BE
3 REQUIRED TO REPORT TO PRETRIAL SERVICES. THOSE WILL BE THE
4 CONDITIONS.

5 ALL RIGHT, MR. WARE, I HAVE SIGNED OFF ON YOUR BOND.
6 THE CONDITIONS WILL BE AS I INDICATED A MOMENT AGO. IN
7 ADDITION, I'M REQUIRED TO ADVISE YOU THAT SHOULD YOU FAIL TO
8 APPEAR UNDER THIS BOND, THAT IS A SEPARATE CRIME YOU CAN BE
9 PROSECUTED FOR AND POTENTIALLY IMPRISONED. IF YOU VIOLATE ANY
10 OF THE TERMS OF THE BOND, ALTHOUGH THIS BOND HAS MINIMAL TERMS,
11 BUT SHOULD YOU VIOLATE THE TERMS OF THE BOND, A WARRANT CAN BE
12 ISSUED FOR YOU FOR A REVOCATION OF THE BOND AND YOU CAN BE HELD
13 IN CUSTODY UNTIL YOU APPEAR FOR SENTENCING.

14 IF YOU SHOULD COMMIT A CRIME WHILE YOU ARE OUT ON
15 BOND, YOU MAY BE PUNISHED MORE SEVERELY FOR THAT CRIME THAN YOU
16 WOULD BE IF YOU WERE NOT OUT ON BOND. AND, FINALLY, ALTHOUGH
17 NOT STRICTLY APPLICABLE TO THIS CASE, IT IS A CRIME TO AND
18 UNLAWFUL TO ATTEMPT TO OBSTRUCT THE ADMINISTRATION OF JUSTICE
19 EITHER BY TRYING TO INTIMIDATE WITNESSES OR JURORS OR TO
20 RETALIATE AGAINST ANYBODY THAT MAY BE PROVIDING INFORMATION IN
21 YOUR CASE. BUT HAVING ADVISED YOU OF THOSE THINGS, YOU CAN BE
22 RELEASED AFTER PROCESSING AND CONTACTING PRETRIAL SERVICES AND
23 THEN WE WILL BE BACK ON JANUARY 13TH AT ELEVEN O'CLOCK. ALL
24 RIGHT.

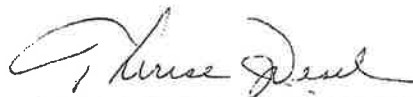
25 MR. NAHMIAS: THANK YOU, YOUR HONOR.

1 THE COURT: WE WILL BE IN RECESS.
2 (THE PLEA HEARING WAS CONCLUDED AND A RECESS TAKEN AT
3 11:15 A.M.)
4
5

6 C E R T I F I C A T E
7 UNITED STATES OF AMERICA,
8 NORTHERN DISTRICT OF GEORGIA:
9

10 I, THERESE J. VESEL, OFFICIAL COURT REPORTER OF THE
11 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
12 GEORGIA, DO HEREBY CERTIFY THAT THE FOREGOING 18 PAGES
13 CONSTITUTES A TRUE TRANSCRIPT OF THE TAPE-RECORDED PROCEEDINGS
14 HAD BEFORE THE SAID COURT, HELD IN THE CITY OF ATLANTA,
15 GEORGIA, IN THE MATTER THEREIN STATED.

16 IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON
17 THIS, THE 14TH DAY OF JULY, 2000.
18
19

20 

21 THERESE J. VESEL, R.D.R.
22 OFFICIAL COURT REPORTER
23 UNITED STATES DISTRICT COURT
24
25



State of Georgia
Peace Officer Standards and Training Council
Network Data Gateway



Data Report System

Individual Officer Profile

Created: 03-12-2020 02:53

Requested by: Jill Perry



O048119

Officer Key **O048119**
Officer Name **DON G WARE JR**
Race **White (Not Hispanic or Latino)**
Education **High School Diploma**
Status **POST Review Required**

Officer Certifications

Certification	Description	Certification Type	Status
PBLE910723S	BASIC LAW ENFORCEMENT	Basic	Active

Instructor Certifications

None Found

Employment History

Agency	Rank	Start Date	End Date	Status
CHEROKEE COUNTY SHERIFFS OFFICE	Deputy Sheriff	December 15, 1996	July 1, 1997	Terminated
CHEROKEE COUNTY SHERIFFS OFFICE	Peace Officer	June 24, 1990	July 24, 1995	Voluntary Resignation

Sanctions

Body	Date	Sanction
Final Action	May 17, 2001	REVOKE CERTIFICATION

Investigations

Date Opened	I-Stat	C-Stat
May 17, 2001	Closed	Complete

Training History

Date	Number	Course	Hours
May 30, 1997	AHE01H	HAZARDOUS MATERIAL AWARENESS LEVEL	8
April 23, 1997	UFR00F	FIREARMS REQUALIFICATIONS	8
1997 Total Hours : 16			
December 31, 1996	PAV95T	20 HR/FA/UODF 3 MONTH WAIVER	20
December 22, 1996	IBA00G	ARSON INVESTIGATION	2
December 22, 1996	IHT00G	FIRE SAFETY TRAINING	2
December 22, 1996	IXI00G	INSERVICE DRUGS Drug Interdiction	4
December 16, 1996	IFR00F	INSERVICE FIREARMS FIREARMS REQUALIFICATION	4

December 16, 1996	IFE00F	SHOTGUN	2
December 16, 1996	IFO00F	OFFICER SURVIVAL	2
December 16, 1996	IQP00G	POLICY/PROCEDURES	2
May 13, 1996	IGU00G	INSERVICE GENERAL OF MISCELLANEOUS OLYMPIC SECURITY TRAINING	3
			1996 Total Hours : 41
June 19, 1995	IQP00G	POLICY/PROCEDURES	1
June 19, 1995	IFR00F	INSERVICE FIREARMS FIREARMS REQUALIFICATION	4
April 7, 1995	CAL02G	ADVANCED REPORT WRITING	16
April 5, 1995	CAF02G	ADVANCED TRAFFIC LAW	24
March 30, 1995	IDO00G	INSERVICE DEFENSIVE TACTICS OLBORESIN CAPSIUM	4
February 10, 1995	AGM30G	PEER COUNSELING	40
			1995 Total Hours : 89
December 19, 1994	Y0413G		8
November 8, 1994	IFM00F	FIREARMS TRAINING (NOT REQUALIFICATION)	4
August 5, 1994	IQP00G	POLICY/PROCEDURES	2
July 18, 1994	ITM00G	MISCELLANEOUS TRAFFIC	1
June 21, 1994	IFR00F	INSERVICE FIREARMS FIREARMS REQUALIFICATION	4
May 27, 1994	ACD03G	FAMILY VIOLENCE	40
April 7, 1994	ASE02G	BASIC E.V.O.C. (EMER. VEH. OP. CRSE)	24
			1994 Total Hours : 83
October 15, 1993	PSC520	NON CERTIFIED TRAINING DRIVER TRAINING INSTRUCTOR TRAINING	40
May 29, 1993	Y0018G		4
April 15, 1993	Y0288G		4
March 24, 1993	PAC010	NON CERTIFIED TRAINING CAREER DEVELOPMENT INTERPERSONAL RELATIONS/CRISIS INTERVENTION 01 M	8
January 11, 1993	Y0282G		4
			1993 Total Hours : 60
October 21, 1992	Y0215G		4
October 16, 1992	Y0090G		4
September 8, 1992	Y0174G		16
May 21, 1992	Y0189G		4
May 1, 1992	Y0187G		4
April 30, 1992	Y0184G		4
March 5, 1992	PAE01C	NON CERTIFIED TRAINING CAREER DEVELOPMENT OFFICER SURVIVAL 01 M	4
			1992 Total Hours : 40
October 11, 1991	Y0090G		4
July 13, 1991	Y0100G		8
May 24, 1991	Y0057G		240
May 18, 1991	Y0061G		16
			1991 Total Hours : 268
December 28, 1990	P90 5	NON CERTIFIED TRAINING	3
December 12, 1990	P93 39	NON CERTIFIED TRAINING	2
			1990 Total Hours : 5

Summary of Hours for 8 Years

Year	Total Hours	Firearms	Deadly Force	De-escalation	Community Policing
1997	16	1	0	0	0
1996	41	2	1	1	2
1995	89	1	0	0	0
1994	83	1	0	0	0
1993	60	0	0	0	0
1992	40	0	0	0	0
1991	268	0	0	0	0
1990	5	0	0	0	0
Grand Total of Hours (all years and courses)	602				

**Georgia Peace Officer Standards
and Training Council
Investigator's Officer Profile For:**

DON G WARE, JR.

Officer Certifications

PBLE910723S BASIC LAW ENFORCEMENT 05/31/1991

Employment History

Agency Name	Code	Started	To
CHEROKEE COUNTY SHERIFFS OFFICE	G1172	12/15/1996	07/01/1997 T
CHEROKEE COUNTY SHERIFFS OFFICE	G1172	06/24/1990	07/24/1995 R

Training History

DATE	NUMBER	COURSE	HOURS
05/30/1997	AHE01H1	HAZARDOUS MATERIAL AWARENESS LEVEL	8
04/23/1997	UFR00F1	FIREARMS REQUALIFICATIONS	8

TOTAL HOURS for 1997: 16

12/22/1996	IXI00G1	DRUG INTERDICTION	4
12/22/1996	IBA00G1	ARSON INVESTIGATION	2
12/22/1996	IHT00G1	FIRE SAFETY TRAINING	2
12/16/1996	IFE00F1	SHOTGUN	2
12/16/1996	IFR00F1	REQUALIFICATIONS FIREARMS	4
12/16/1996	IQP00G1	POLICY/PROCEDURES	2
12/16/1996	IFO00F1	OFFICER SURVIVAL	2
05/13/1996	IGU00G2	OLYMPIC SECURITY TRAINING	3

TOTAL HOURS for 1996: 21

06/19/1995	IQP00G1	POLICY/PROCEDURES	1
06/19/1995	IFR00F1	REQUALIFICATIONS FIREARMS	4
04/07/1995	CAL02G1	ADVANCED REPORT WRITING	16
04/05/1995	CAF02G1	ADVANCED TRAFFIC LAW	24
03/30/1995	IDO00G1	OLEORESIN CAPSICUM	4
02/10/1995	AGM30G1	PEER COUNSELING	40

TOTAL HOURS for 1995: 89

12/19/1994	Y0413G	JUDGEMENTAL SIMULATOR TRAINING	8
11/08/1994	IFM00F1	FIREARMS TRAINING	4
08/05/1994	IQP00G	POLICY/PROCEDURES	2
07/18/1994	ITM00G1	MISCELLANEOUS TRAFFIC	1
06/21/1994	IFR00F1	REQUALIFICATIONS FIREARMS	4
05/27/1994	ACD03G1	FAMILY VIOLENCE	40
04/07/1994	ASE02G1	BASIC E.V.O.C. (EMER.VEH. OP. CRSE)	24

TOTAL HOURS for 1994: 83

10/15/1993	PSC520	FIELD TRAINING OFFICER	40
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P.O.S.T. Officer Profile Report

05/29/1993	Y0018G	FIREARMS TRNG: RE-QUALIFICATIONS	4
04/15/1993	Y0288G	FIELD SOBRIETY TESTING	4
03/24/1993	PAC010	OFFICER SURVIVAL	8
01/11/1993	Y0282G	GEORGIA IMPLIED CONSENT RIGHTS	4

TOTAL HOURS for 1993: 60

10/21/1992	Y0215G	VEHICLE PULLOVERS	4
10/16/1992	Y0090G	FIREARMS TRNG: RE-QUALIFICA	4
09/08/1992	Y0174G	SPECIALIZED PATROL TECHNIQUES	16
05/21/1992	Y0189G	DOMESTIC VIOLENCE OVERVIEW	4
05/01/1992	Y0187G	OVERVIEW OF OCCULT CRIME INVEST.	4
04/30/1992	Y0184G	COURTROOM SECURITY	4
03/05/1992	PAE01C	PR-24 POLICE BATON RE-CERTIFICATION	4

TOTAL HOURS for 1992: 40

10/11/1991	Y0090G	FIREARMS TRNG: RE-QUALIFICA	4
07/13/1991	Y0100G	ASP TACTICAL BATON TRAINING	8
05/24/1991	Y0057G	BASIC LAW ENF. TRNG (91-9/94TH)	240
05/18/1991	Y0061G	PR-24 POLICE BATON CERTIFICATION	16

TOTAL HOURS for 1991: 268

12/28/1990	P90 5	DUTIES AND RESPONSIBILITIES	3
12/12/1990	P93 39	INMATE DISCIPLINE	2

TOTAL HOURS for 1990: 5

Grand Total Hours: 582

Investigations

CASE	DATE	INVESTIGATOR	I-STAT	C-STAT	CLOSED
0013720797	07/01/1997	BRACEWELL	C	C	05/17/2001
Violation 06/05/1997	230	UNDUE FORCE			
Disposition 04/04/2001	01	Probable Cause Committee			REVOKE CERTIFICATION
Disposition 04/05/2001	02	POST Council Meeting			REVOKE CERTIFICATION
Disposition 05/17/2001	16	Final Action			REVOKE CERTIFICATION

Comments

No notes found for this file

CASE SUMMARY

Companion Case 001-373-07-97

This officer is a certified peace officer (basic 05-31-91) employed with a law enforcement agency on 06-24-90. This officer was dismissed on 07-01-97 following allegations that he/she physically assaulted an inmate in the jail.

On 06-05-97 an inmate was brought into the jail after being arrested for DUI and other traffic offenses. The prisoner refused to submit to a breath test, and he was placed in a cell and given a mattress to lay on. Booking officers later attempted to escort the inmate into the booking area, and he resisted. Another officer applied an arm bar takedown technique and placed the inmate on the floor until he stopped resisting. Officers gave verbal instructions to the inmate, and he rose to a kneeling position. The inmate began to resist again, and this officer pushed him to the floor with his/her foot. This officer then moved to a position where he/she had one foot on the inmate's neck and the other on the inmate's back. This officer bounced up and down and asked, "Did that feel good?". This officer then told the inmate, "I don't care if you die, I'll do the paperwork". Later this officer said, "I was trained by the Air Force, we can kill with our feet, man". This officer could later be heard, more than once, stating, "Did that hurt?", and then laughing. This officer then pulled the inmate back into the cell, and it appeared that he/she was grasping the inmate's chin and top of the head while twisting his head and neck. This officer later sprayed pepper spray under the door of the cell.

This officer was determined to have violated agency policy regarding use of force, and he/she was dismissed on 07-01-97. A criminal investigation was conducted by the FBI into alleged Civil Rights violations. As a result of the FBI investigation this officer was charged under Title 18, Section 242. On 01-13-00 he/she pled guilty to the charge of Deprivation of Civil Rights and was sentenced to the following:

- 1) \$1,000 fine,
- 2) 1 year probation,
- 3) 200 hours of community service, and
- 4) he/she shall not work with any law enforcement agency.

This officer is not currently employed in law enforcement.

DISCIPLINARY HISTORY

None Noted.

CASE NO. 001-372-07-97

Recommendation to Council:
pursuant to O.C.G.A. 35-8-7.1(6,7,8,11)

Revoke Certification

Darlene Neely
PCC Chairman
Date: April 4, 2001

Council Action:

Revoke Certification

James Chadwick
Council Chairman
Date: April 5, 2001

CHEROKEE COUNTY SHERIFF'S OFFICE
MEMORANDUM

TO: D/S Don Ware

FROM: Chief Deputy Mike Malone 

DATE: June 30, 1997

SUBJECT: Notice of Final Disciplinary Action

1. In accordance with the procedures outlined in General Order No. 95-21, at your request, I conducted an informal hearing with you on June 27, 1997 to review the proposed disciplinary action being brought against you.
2. Based upon the results of the investigation into your acts of misconduct, a review of your file, and the information that you provided to me during the informal hearing, I concur with the disciplinary action to be initiated against you by Major David Bores.
3. The following action will be taken:
 - a. Termination of employment with the Cherokee County Sheriff's Office effective July 1, 1997.
4. You are to turn all issued Cherokee County Sheriff's Office equipment and property in to Capt. Tyrone Duke by 1630 hrs. on the effective date of your termination.
5. You are advised of your right to appeal the factual basis for this decision in accordance with House Bill No. 1691. Should you desire to initiate an appeal, it must be submitted in writing directly to the County Attorney, Mr. Mark Mahler, at the Cherokee County Justice Center no later than 1630 hours, July 11, 1997. If your written notice outlining the specific reasons for your appeal is not received by that date, your right to contest this termination shall be waived.


Acknowledgment of receipt

6/30/97
Date

pc: Sheriff Roger Garrison
Major David Bores
Capt. Tyrone Duke
personnel file



Cherokee County Sheriff's Office

498 Chattin Drive
Canton, Georgia 30115
Fax (770) 345-3396
(770) 345-3300



Roger Garrison, Sheriff

"A NATIONALLY ACCREDITED LAW ENFORCEMENT AGENCY"

TO: CORPORAL DONALD WARE

FROM: MAJOR DAVID R. BOREN

DATE: JUNE 16, 1997

SUBJECT: NOTICE OF ADVERSE DISCIPLINARY ACTION

1. In accordance with the procedures outlined in General Order No. 95-21, I am notifying you that I intend to initiate the following disciplinary action against you:

a. Reduction in grade to deputy sheriff effective immediately AND

b. Termination of employment with the Cherokee County Sheriff's Office effective July 1, 1997.

2. This disciplinary action is being taken because it has been determined by an Internal Affairs Investigation that you committed several acts of misconduct. Specifically, while assigned duties in the Adult Detention Center on the evening of June 5 and 6, you violated the following agency directives while handling an intoxicated inmate in custody:

a. GO 95-6 Handling Persons in Custody and GO 95-12 Use of Force in that you used force that was unreasonable to include standing and bouncing on the back and neck of a handcuffed inmate while he was laying face down on the floor in holding cell 38;

b. GO 95-2 Use of Pepper Spray in that you used pepper spray without proper justification against an inmate in holding cell 38 who was incapacitated due to suspected intoxication and who was restrained within the cell;

c. GO 95-12 Use of Force in that you failed to prepare and submit a Use of Force Report to your immediate supervisor prior to your departure from duty on June 6, outlining the facts and circumstances concerning the physical force and pepper spray you used against the inmate in holding cell 38;

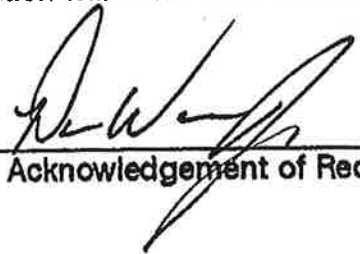
d. GO 96-28 Authority, Discretion, and Arrest in that you exceeded the limits of

your authority as a deputy sheriff by using force that was not reasonable under the circumstances of the situation;

e. GO 95-22 Code of Conduct in that you mistreated a person in legal custody by using physical force and pepper spray not appropriate or reasonable to the situation and further, that you used language, made statements, and failed to exercise the utmost patience or control of your temper in a manner to impair the efficient operation of the Adult Detention Center, AND

f. GO 95-22 Code of Conduct in that you failed to comply with the verbal and written orders of Lieutenant Ed Lacey by not being at your directed place of duty on Thursday, June 12 at approximately 14:00 hours and by failing to properly notify Lt Lacey that you would not be at your directed place of duty.

3. You are advised that you may request in writing that this adverse disciplinary action be reviewed by Chief Deputy Mike Malone and further, that you may request an informal hearing with the reviewing officer. This request must be submitted no later than 4:30 PM at the Chief Deputy's office on June 23, 1997. Your decision not to request a review of this action will constitute a waiver of all further opportunities to appeal this matter.



Acknowledgement of Receipt and Date

cc: Sheriff Garrison
Chief Malone
Capt. Duke
Capt. Hicks

TO: Chief G.M. Malone
COMPLAINANT: Christopher Stone
EMPLOYEE: Corporal Don Ware
INVESTIGATOR: Lieutenant Edward Lacey
DATE: June 13, 1997
RESULT: Sustained

BACKGROUND:

On June 6, 1997, Lisa Stone called B.J. Free at the Public Safety Building to complain that her husband, Christopher Stone, had been treated poorly upon his incarceration on the prior evening. On June 9th, I called Mrs. Stone and discussed the case with her. I also interviewed Mr. Stone via telephone. He stated that upon his arrest for DUI by Deputy Gianfala, he was transported to the ADC without incident. He stated that he felt he was treated fairly by UPD officers. He stated that once at the jail, about seven officers, specifically Corporals Ware and Donohue, beat him, stood on his hands and feet, stood on his neck and back while he was in cuffs, and mislaid his personal property. He stated that he was strapped to a chair and refused access to restroom facilities to the extent that he defecated and urinated upon himself.

Mr. Stone stated that upon being arrested, he had in his possession one wallet, one nine millimeter automatic pistol and one .22 magnum caliber revolver. He stated that upon his release from the ADC, he was unsure where his vehicle was as well as the aforementioned personal property. I found his weapons had been released to the evidence/property unit for safekeeping. He alleges that officers have stolen his wallet which has not been found as of this date.

FACTS: See following case report for details.

FINDINGS:

Sustained: The evidence is sufficient to show that Corporal Ware did violate General Order 95-12, 96-28, and 95-22 in regards to his use of force against Mr. Stone and his failure to fill out use of force reports. He further failed to supervise his shift by not requiring each involved deputy fill out use of force reports.

Sustained: The evidence is sufficient to show that Corporal Ware did violate General Order 95-22 in regards to being disrespectful towards Mr. Stone and in neglect for Mr. Stone's personal well being.

Sustained: The evidence is sufficient to show that Corporal Ware did violate General Order 95-2 in regards to his use of pepper spray.

Sustained: The evidence is sufficient to show that Corporal Ware did violate General Order 95-33 in regards to his violation of the Law Enforcement Officer's Code of ethics.

Sustained: The evidence is sufficient to show that Corporal Ware did violate General Order 96-33 in regards to his violation of the Law Enforcement Officer's Code of ethics.

Sustained: The evidence is sufficient to show that Corporal Ware did violate General Order 95-22, Code of Conduct, by failing to obey a direct lawful order given to him from a superior in conjunction with an Internal Affairs Investigation.

EXPLANATION: An explanation of each of the findings is attached to this report.

EXPLANATION OF FINDINGS CORPORAL DON WARE

INCIDENT SUMMARY:

In this case, it is clear that Mr. Stone was highly intoxicated upon being brought into the ADC. He was incoherent and unable to stand or walk with out assistance. The deputies brought him into holding cell number 38 and laid him upon a mattress. While uncuffing the inmate, Deputy Pellitier was controlling his head while Stone was being moved into a position to uncuff. It is not seen on the video, but audio alludes that Mr. Stone's head slipped to the floor during this process. Deputy Pellitier confirms this in his interview with me. No criminal intent is present.

At approximately 23:00 hours, Mr. Stone is uncuffed and laid on his back upon a mattress in holding cell number 38. He stays in this position, apparently asleep until approximately 01:00 hours when he is awakened by jail deputies to begin the book in process. He is taken to the book in area by Corporal Donohue. Deputies Frizzell and D. Silvey are present. He is placed in the booking holding area and Donohue attempts to begin the booking process. Two other inmates are present in the cell as well. It is apparent at this point that Stone is somewhat hesitant to follow instructions and answer questions regarding the booking process, especially regarding his health history / medical screening. Corporal Donohue continues to call Mr. Stone, "Marine Stone" or "Marine".

Deputy Peter Morgan began the health screening process with Mr. Stone. Upon asking if Stone was currently under treatment for physical, dental, or psychiatric reasons, Stone answered, "all of the above". Upon asking if Stone was taking any medication, he answered, "PXA". Donohue asked him what PXA was and Stone replied by asking if Donohue was a pharmacist. Donohue told him that he was more of a pharmacist than he was. Stone stated that since he was not a pharmacist then that was all he needed to know. Donohue told Stone that he had played one (pharmacist) on T.V. once. Morgan asked what Stone was taking PXA for and was told by Stone to ask them. He clarified "them" as being doctors. Donohue then asked what doctor, "doc holiday"? After more verbal banter, the deputies appear to decide that Stone is too uncooperative to book and decide to move him from the book in area back to cell #38. Donohue tells Stone to answer his questions. Stone replies that he is answering their questions. Donohue replies, "no you're not, you're bull shitting us".

Deputy Morgan opens the cell, enters and asks Stone to stand up. Stone refuses and pulls away when Morgan tries to grasp Stones upper arm in an attempt to apply escort techniques. Donohue enters the cell and moves behind Stone. Deputies Obryan and Frizzell enter the cell and Corporal Ware observes from outside the cell. Morgan offers Stone a verbal warning that he is about to use pepper spray by telling Stone, "you're about to get sprayed, now get up". Stone stands up but still pulls his arms away from the deputies when they attempt to escort him out of the cell. He is visibly and audibly resisting. As Stone stops in the door way to the cell, Donohue asks him not to, "bow up".

Stone appears to resist leaving the cell. Donohue appears to apply an arm bar take down technique to Stone which causes Stone to go to the ground face first. It does not appear that Stone hit his head. However, all deputies and Stone are behind the book in counter at this point and invisible to the camera.

At this point, Corporal Ware begins calling military cadence in a voice that emulates a drill instructor. He counts, "one two three four" then barks, "on your feet Marine, get up!". Ware laughs, then states, "uh oh, oh shit". Stone is then lifted into view, in cuffs, and escorted to holding cell number 38.

At 01:12 hours, Stone is brought into cell 38 by Morgan and Frizzell with Obryan following. Ware and Donohue come in after Obryan. Frizzell and Morgan appear to be in very much control and sever times give verbal instructions for Stone to "relax". They ask stone to his knees and escort him to a kneeling position. At this point, Frizzell tells Stone to stay in that position as he moves toward the door. When Frizzell is in front of and to the left of Stone, Stone attempts to stand on one foot, and looses his balance and falls backward into the wall. At this point Frizzell attempts to catch Stone to no avail. Corporal Ware calls for "the chair". Upon doing so, he stands on Stone's right foot and leg. Stone makes attempts to prevent this from happening and is perceived as physically resisting. Ware then takes his right foot and places it upon Stones neck and shoulder area, pushing him back into the corner. As Stone turns to the right and moves his head toward the floor, Ware steps on the side of Stone's neck and pushes down to the floor. Obryan and Morgan pull Stone straight and lay him face down. Donohue, then stands on the left foot of Stone. Morgan and Obryan then stand on the left and right legs of Stone. Ware moves to a position where he has one foot on the back of Stone's neck and one on Stone's back. Ware then bounces up and down and asks, "did that feel good?". Donohue asks, "what's PXA" and then Ware tells Stone, "you know what, I don't care if you die, I'll do the paperwork". Later, Ware states, "hold still, I'll break your neck now hold still" and "I was trained by the Air Force, we can kill with our feet, man". Ware then bounces up and down on the back and neck of Stone and asks, "you going to do what we say to do?". The deputies then move Stone out of camera view to place him in the restraint chair. Ware can later be heard, more than once, stating, "did that hurt" and then laughing. Ware then pulls Stone back into the cell. It appears that he is grasping Stone's chin and top of head, twisting his head and neck as he pulls Stone into the cell. Later on the tape, you can hear Ware and Donohue taunting Stone through the cell door. You can also hear what sounds like some type of spray can being discharged under the door of the cell.

Through interviews of deputies present, I found that the positioning of Ware's feet were in fact upon Stone's neck and back. I found that Ware did discharge his can of pepper spray under the door of the holding cell. I found that Stone's elbow was cut and bleeding from some part of the altercation, more than likely from the incident in the booking area. None of the deputies using force completed a use of force report form or supplemental reports.

Upon interviewing Ware, I found that he does not feel remorse for his actions. Ware states that the force he used was reasonable and necessary. He stated that he did not put his foot on Stone's neck. He stated that he had no intent to cause injury to Stone at any time. He stated that he did not remember bouncing up and down on Stone at any time. He stated that he did not remember making any comments concerning any comment to Stone in holding cell 38 other than, "I don't care if you die, I'll do the paperwork". He stated that he does not remember stating, "I'll break your neck", nor, "I was trained by the Airforce and we were trained to (inaudible) with our feet".

Ware stated that he was angry when he noticed blood on Deputy Frizzel and thought that Frizzel was injured by Stone. Ware stated that this anger may have influenced his actions against Stone.

Ware states that he has never received a complaint for excessive use of force and that this should account for something when the administration decides what action to take. He states that he has many years invested in this career and does not wish for it to be washed away by an incident such as this.

VIOLATION SUSTAINED: The evidence is sufficient to show that Corporal Ware did violate General Order 95-12, 95-6, and 95-22 in regards to his use of force against Mr. Stone.

POLICY: General Order 95-12

C. POLICY:

1. PERSONNEL WILL USE ONLY THAT FORCE WHICH IS REASONABLY NECESSARY TO ACCOMPLISH THEIR LAWFUL OBJECTIVES. ONCE THE NEED FOR FORCE IS NO LONGER PRESENT BECAUSE RESISTANCE ENDS OR THE POSSIBILITY OF VIOLENCE IS REMOVED, THE CONTINUED USE OF FORCE CANNOT BE JUSTIFIED, (CALEA 1.3.1/GA 1.7)

1. DEPUTIES MAY USE NON DEADLY FORCE IN THE FOLLOWING CIRCUMSTANCES: (CALEA 1.3.4)

- a. In self-defense or in defense of another against unlawful violence to his/her person.
- b. To overcome resistance or interference to a lawful arrest or search.
- c. To prevent escapes from custody.
- d. To prevent or interrupt a crime or attempted crime against property.
- e. To preserve the peace, prevent commission of offenses, or prevent suicide or self-inflicting injury.
- f. To restore institutional integrity in the Adult Detention Center or the Court Holding Facility.

AND ALSO

2. Non threatening suspects who do not pose a significant risk to officer safety should not be sprayed unless verbalizing, warning, and compliance escort techniques have been attempted and resisted. Such individuals include those who are:

3. An individual who refuses to submit peacefully to lawful arrest, attempts to escape from lawful custody, or refuses compliance with lawful orders during arrest, detention, or custody is subject to the use of pepper spray when:

a. Deputies have attempted compliance escort techniques and the suspect resists; **OR**

b. Deputies reasonably believe the use of compliance escort techniques will jeopardize their safety; **OR**

c. The circumstances reasonably indicate that attempting compliance escort control may lead to an escalation of force and accompanying risk of physical injury to the suspect, a third party, or to law enforcement personnel.

4. A person in lawful custody within a detention facility, before or after conviction of a crime, is subject to the use of pepper spray when:

a. The prisoner assaults or threatens imminent assault of any person or attempts to incite other prisoners to assault or damage property; **OR**

b. The prisoner refuses to comply with a lawful command related to the maintenance of good order and security of the facility or court; or refuses to comply with instructions that are necessary for legitimate safety concerns of the facility or court.

8. **PEPPER SPRAY CANNOT BE JUSTIFIED** once the suspect is incapacitated or under control.

AND ALSO

O. REPORTING USES OF FORCE: (CALEA 1.3.6/GA 1.9)

1. A deputy who uses force requiring a Use of Force Report will immediately notify the Field Supervisor.

2. **A USE OF FORCE REPORT WILL BE SUBMITTED** when: (CALEA 1.3.6)

a. A firearm is discharged, on or off-duty, except during training on the firing range or in conjunction with legitimate recreational activities; (CALEA 1.3.6a/GA 1.10)

b. The use of force results in, or is alleged to have resulted in, any injury, regardless of severity, or death; (CALEA 1.3.6b)

c. When force is applied through the use of lethal **OR** less-than-lethal weapons; (CALEA 1.3.6c)

d. When compliance escort techniques are used to overcome resistance or failure to comply with lawful instructions; (CALEA 1.3.6d)

e. Force is applied through the actual use of pepper spray, or other method greater than compliance escort techniques, such as compliance pain or mechanical, chemical agents, or impact weapons; (CALEA 1.3.6d)

3. Each incident requiring a Use of Force Report shall also be **REPORTED IN A SUPPLEMENTAL REPORT** detailing the facts and circumstances. Deputies will explain the reasons for using force, the type force/methods used, and the outcome. The Supplemental Report should detail the causes for the deputy's actions and will include: (GA 1.9)....

4. **EACH DEPUTY PRESENT OR ASSISTING IN THE INCIDENT REQUIRING THE USE OF FORCE SHALL SUBMIT A SUPPLEMENTAL REPORT DESCRIBING THE INCIDENT.**

5. The Use of Force Report and Supplemental Report will normally be submitted to the Field Supervisor for initial review prior to a deputy's departure from duty. However, in those circumstances when a deputy is physically or emotionally unable to do so, the reports will be prepared as soon as is practical thereafter.

GENERAL ORDER 96-28, AUTHORITY AND DISCRETION

4. **LIMITS OF AUTHORITY:** No officer will arrest any person with a warrant unless she/he reasonably believes the warrant is valid and that the person described in the warrant is before him/her. No officer will make a warrantless arrest without probable cause **NOR** will any officer use any force that is not reasonable under the circumstances of the situation.

GENERAL ORDER 95-22, CODE OF CONDUCT

20. **USE OF FORCE:** Employees shall use only the force that is reasonably necessary under the circumstances to achieve lawful agency objectives. The use of physical force shall be restricted to that amount of force which is reasonable and necessary to effect a lawful arrest, overcome resistance, capture a person who has escaped from custody, or in defense of self or others. The use of force shall be in accordance with law and the procedures established in the Use of Force SOP.

Recommended action: Open recommendation

GENERAL ORDER 95-6 HANDLING OF PERSONS IN CUSTODY

n. Once a person is handcuffed, only **THE MINIMUM FORCE NECESSARY** to control the suspect and to protect law enforcement personnel will be used.

APPLICATION OF POLICY:

The totality of the circumstances governs whether force used is reasonable or not. Factors used to weigh the totality of the circumstances are

- | | |
|-----------------------------------|---------------------------------|
| 1. age | 2. size |
| 3. sex | 4. Skill level |
| 5. multiple officers or offenders | 6. Close proximity to a firearm |
| 7. special knowledge | 8. Injury or exhaustion |
| 9. Ground | 10. Disability |
| 11. imminent danger | |

These factors are placed upon a scale, such as the scales of justice, with the officer on one side and the offender on the other. When the factors are weighed, they determine whether the officer needs to cease, escalate or de-escalate his use of force.

In this case, the officer and offender are pretty much equal on age, size, and sex. The officers have to assume some type of skill level on behalf of the offender due to the offender's being dressed in tiger striped military shorts and wearing a Marine Force Recon t-shirt. The officer to offender ratio was seven to one. The offenders condition at the time the force was used was intoxication. He could barely stand on his own. He was handcuffed behind his back. Both of these constitute a disability. The offender was taken to the ground, and the officers were standing. The offender had been struggling for some time and it was apparent that exhaustion on his part was more of a factor than it was with Cpl. Ware. Corporal Ware could not have perceived a threat that constituted imminent danger.

As one can tell, the scale of comparison was far out weighed in favor of the officers. The officers could have retreated to a safe location and allowed the prisoner to flail in the cell. Since Stone was sleeping in the cell and obviously intoxicated when brought in, they should have allowed him to "sleep it off" prior to attempting to book him in.

Ware was not in need of self defense, he was not overcoming resistance or an attempt at self inflicted injury, nor was he preventing a crime in progress. He may attempt to state that he was attempting to restore institutional integrity, but this cannot be shown. Ware made threatening remarks and by these remarks showed a lack of remorse and possible lack of care for the prisoner's personal safety. By stating that he did not care if the prisoner died, and by stating intent to break the prisoner's neck, he crossed the line from reasonable force to force which was abusive and punitive in nature.

While placing Stone into the restraining chair, Ware can be heard making statements such as, "did that hurt" and then laughing. After placing Stone in the holding cell, and Stone was obviously non resisting and definitely not a threat, Ware sprayed pepper spray into the cell. This was done for no other reason than to abuse and harass the prisoner. Ware

violated 95-12 by this non-appropriate use of force option. General order 95-2 governs the use of pepper spray, but 95-12 also specifically addresses pepper spray (see above).

At the time pepper spray was used, the prisoner was in the restraint chair and asleep. It is clear that the prisoner was under control and incapacitated. The prisoner was not participating in any activity other than sleeping. He was not causing a disturbance in the facility. Therefore, use of pepper spray cannot be justified.

Ware has been trained in the physiological responses to prone restraint and shown what factors contribute to positional asphyxia. He has been trained not to use the knee across the neck at any time. He knows that choke holds are barred from use except in deadly force cases. He has been trained in our use of force policy and the use of force continuum. He has been shown when to use and when not to use each type of force option along the continuum and has blatantly violated his training.

Ware violated 95-12 by his failure to complete a use of force report and further by failing to require his subordinates to complete a use of force report.

Ware violated General Order 95-6 by failing to use minimum force necessary once Stone was placed into handcuffs.

I allowed Ware to view the video tape of the encounter with Stone. Upon doing so, I asked him to justify his actions. I asked him to tell me how to justify his actions to the Chief and the Sheriff. He gave no statements towards the justification of the incident.

VIOLATION SUSTAINED

The evidence is sufficient to show that Corporal Ware did violate General Order 95-22 in regards to the treatment of Mr. Stone being disrespectful and in neglect for his personal well being.

POLICY: GENERAL ORDER 95-22, CODE OF CONDUCT

2. **UNBECOMING CONDUCT:** Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the agency. Conduct unbecoming shall include that which tends to discredit or cause the public to lose confidence in the agency or Cherokee County government; which is prejudicial to good order; **OR** that otherwise tends to impair the operation, efficiency, and/or morale of the agency. Examples of unbecoming conduct are, but are not limited to, the following: participating in vice activities; engaging in off-duty employment for persons engaged in unlawful activities, who provide adult entertainment such as "strip-clubs" or topless bars, who allow gambling unless otherwise authorized by State law, or who otherwise engage in conduct that may involve a conflict of interest with the agency; participating in enterprises or activities designed to manufacture pornographic or obscene material or literature...

6. **COURTESY:** Employees shall be courteous and professional in their association with members of the public and other agency members. Employees shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion. In the performance of their duties, employees shall not use profane, vulgar, defamatory, or insolent language, drawings, depictions, or gestures toward another individual **NOR** express or display any prejudice concerning race, color, gender, religion, national origin, or disability.

APPLICATION OF POLICY:

Corporal Ware did engage in acts that constitute conduct unbecoming. He was supervising several new employees, most of which have less than a month on the job. He used language, statements, and displayed an attitude that tended to impair the efficient operation of the agency. His example to his subordinates sent a clear picture and message in direct conflict with the expectations of this agency and Sheriff Garrison. These actions were prejudicial to good order.

Corporal Ware did use profane, vulgar, defamatory and insolent language toward Mr. Stone. He did not exercise utmost patience or control of temper.

VIOLATION SUSTAINED: The evidence is sufficient to show that Corporal Ware did violate General Order 95-2 in regards to his use of pepper spray.

POLICY: GENERAL ORDER 95-2 USE OF PEPPER SPRAY

C. POLICY: PERSONNEL WILL USE ONLY THAT FORCE WHICH IS REASONABLY NECESSARY TO ACCOMPLISH THEIR LAWFUL OBJECTIVES, TO OVER COME ANY UNLAWFUL RESISTANCE, OR TO DE-ESCALATE A POTENTIALLY DANGEROUS CIRCUMSTANCES.

1. Once the need for force is no longer present because resistance ends or the possibility of violence is removed, the continued use of force cannot be justified...

4. A person in lawful custody within a detention facility, before or after conviction of a crime, is subject to the use of pepper spray when:

a. The prisoner assaults or threatens imminent assault of any person or attempts to incite other prisoners to assault or damage property; **OR**

b. The prisoner refuses to comply with a lawful command related to the maintenance of good order and security of the facility or court; or refuses to comply with instructions that are necessary for legitimate safety concerns of the facility or court.

In this case, Cpl. Ware was in no way concerned for the safety, good order, or security of the detention facility. He did not give any verbal commands that were not obeyed. No imminent assault was present. No attempts to incite a riot were present. Corporal Ware merely walked by the holding cell and sprayed the o. c. under the door while the prisoner was restrained in the chair. This appears to have been done for the amusement of onlookers and himself.

VIOLATION SUSTAINED: The evidence is sufficient to show that Corporal Ware did violate General Order 96-33 in regards to his violation of the Law Enforcement Officer's Code of ethics.

POLICY: GENERAL ORDER 96-33, OATH OF OFFICE AND CODE OF ETHICS

D. CODE OF ETHICS: (CALEA 1.1.2) All sworn officers will abide by the Law Enforcement Officer's Code of Ethics adopted by the National Sheriff's Association.

LAW ENFORCEMENT CODE OF ETHICS

AS A LAW ENFORCEMENT OFFICER, MY FUNDAMENTAL DUTY IS TO SERVE MANKIND; TO SAFEGUARD LIVES AND PROPERTY; TO PROTECT THE INNOCENT AGAINST DECEPTION, THE WEAK AGAINST OPPRESSION OR INTIMIDATION, AND THE PEACEFUL AGAINST VIOLENCE OR DISORDER; AND TO RESPECT THE CONSTITUTIONAL RIGHTS OF ALL PERSONS TO LIBERTY, EQUALITY, AND JUSTICE.

I WILL KEEP MY PRIVATE LIFE UNSULLIED AS AN EXAMPLE TO ALL; MAINTAIN COURAGEOUS CALM IN THE FACE OF DANGER, SCORN, OR RIDICULE; DEVELOP SELF-RESTRAINT; AND BE CONSTANTLY MINDFUL OF THE WELFARE OF OTHERS. HONEST IN THOUGHT AND DEED IN BOTH MY PERSONAL AND OFFICIAL LIFE, I WILL BE EXEMPLARY IN OBEYING THE LAWS OF THE LAND AND THE REGULATIONS ON MY AGENCY. WHATEVER I SEE OR HEAR OF A CONFIDENTIAL NATURE OR THAT IS CONFIDED TO ME IN MY OFFICIAL CAPACITY WILL BE KEPT EVER SECRET UNLESS REVELATION IS NECESSARY IN THE PERFORMANCE OF MY DUTY.

I WILL NEVER ACT OFFICIOUSLY OR PERMIT PERSONAL FEELINGS, PREJUDICES, ANIMOSITIES, OR FRIENDSHIPS TO INFLUENCE MY DECISIONS. WITH NO COMPROMISE FOR CRIME AND WITH RELENTLESS PROSECUTION OF CRIMINALS, I WILL ENFORCE THE LAW COURTEOUSLY AND APPROPRIATELY WITHOUT FEAR OR FAVOR, MALICE, OR VIOLENCE AND NEVER ACCEPTING GRATUITIES IF GIVEN FOR THE PURPOSE TO INFLUENCE ACTION OF AN OFFICIAL NATURE OR TO SEEK TO AFFECT THE PERFORMANCE OR NON-PERFORMANCE OF AN OFFICIAL DUTY.

I RECOGNIZE THE BADGE OF MY OFFICE AS A SYMBOL OF PUBLIC FAITH, AND I ACCEPT IT AS A PUBLIC TRUST TO BE HELD SO LONG AS I AM TRUE TO THE ETHICS OF LAW ENFORCEMENT. I WILL CONSTANTLY STRIVE TO ACHIEVE THESE OBJECTIVES AND IDEALS, DEDICATING MYSELF BEFORE GOD TO MY CHOSEN PROFESSION...LAW ENFORCEMENT.

APPLICATION OF POLICY:

Cpl. Ware failed to protect and safeguard the life of Christopher Stone. He did not show self restraint in his actions or speech. He was far from being exemplary in obeying the laws of the land and the regulations of this agency. He acted officiously and discourteously in the discharge of his official duties.

VIOLATION SUSTAINED: The evidence is sufficient to show that Corporal Ware did violate General Order 95-22, Code of Conduct, by failing to obey a direct lawful order given to him from a superior in conjunction with an Internal Affairs Investigation.

POLICY: GENERAL ORDER 95-22, CODE OF CONDUCT

22. **LAWFUL ORDERS:** (CALEA 12.1.3) Employees shall obey all lawful orders issued by a superior, including any order relayed from a superior by an employee of the same or lesser rank. Employees who are given an otherwise proper order which is in conflict with a previous order, regulation, or directive shall respectfully inform the individual issuing the order of conflict. If the person issuing the order does not alter or retract the conflicting order, the last order shall stand and be followed. Under such circumstances, the responsibility shall be upon the superior who issued the order and the employee shall not be held responsible for disobedience of the order previously issued. No employee shall obey any order which they reasonably believe to be illegal. If in doubt as to the legality of the order, the employee shall request that the issuing superior clarify the order or confer with higher authority.

First recommended action: Open recommendation

APPLICATION OF POLICY:

On Monday June 9, 1997, I issued a direct verbal as well as written order, in official agency memorandum format, advising Cpl. Ware that he was on administrative leave and considered reassigned to the duty working hours of 08:00 until 16:00, Monday through Friday. I read the memorandum to Ware and explained its content. The written order specifies that he is to stay accessible by home telephone at all times and that failure to be contacted at home will violate a direct written order.

On Thursday, June 12, 1997, at 14:00 hours, I attempted to contact Ware at home to no avail. No one answered. I paged him. He called me back and advised that he was at his ex wife's house with his children.

Ware failed to notify me of his whereabouts and abandoned his duty station by leaving his residence. He totally disregarded my written instructions.

END OF REPORT

COPY

Lieutenant Edward D. Lacey III

Date

O.C.G.A. § 35-8-2

Current through the 2019 Regular Session of the General Assembly

GA - Official Code of Georgia Annotated

TITLE 35. LAW ENFORCEMENT OFFICERS AND AGENCIES

CHAPTER 8. EMPLOYMENT AND TRAINING OF PEACE OFFICERS

§35-8-2. Definitions

As used in this chapter, the term:

- (1) "Applicant" means a prospective peace officer who has not commenced employment or service with a law enforcement unit.
- (2) "Candidate" means a peace officer who, having satisfied preemployment requirements, has commenced employment with a law enforcement unit but who has not satisfied the training requirement provided for in this chapter.
- (3) "Council" means the Georgia Peace Officer Standards and Training Council.
- (4) "Department head" means the chief executive or head of a state department or agency, a county, a municipality, or a railroad who is a peace officer and whose responsibilities include the supervision and assignment of one or more employees or the performance of administrative and managerial duties of a police agency or law enforcement unit. Such term does not include the Attorney General, the director of the Georgia Drugs and Narcotics Agency, a district attorney, a solicitor-general, a county or municipal fire chief, or peace officers employed exclusively as investigators of any such offices who do not exercise any law enforcement supervisory or managerial duties. The provisions of this paragraph shall not apply to any sheriff or to any head of any law enforcement unit within the office of sheriff.
- (4.1) "Detention facility" means a municipal or county jail used for the detention of persons charged with or convicted of a felony, a misdemeanor, or a municipal or county ordinance, but shall not include a facility customarily used to hold one or more persons for a period not to exceed eight hours while any such person awaits processing, booking, court appearance, or release.

(5) "Emergency peace officers" means any peace officers who are employed or appointed to act as peace officers during an emergency or disaster which has been so declared by the chief executive officer of the state and whose status as peace officers is intended to be temporary and for that limited purpose.

(5.1) "Jail officer" means any person who is employed or appointed by a county or a municipality and who has the responsibility of supervising inmates who are confined in a municipal or county detention facility.

(5.2) "Juvenile correctional facility" means a facility operated by the Department of Juvenile Justice and used for the detention of youth who are delinquent or who are alleged to be delinquent or a facility operated by the Department of Juvenile Justice used for the care, treatment, and rehabilitation of juvenile offenders.

(5.3) "Juvenile correctional officer" means any person employed or appointed by the Department of Juvenile Justice who has the primary responsibility for the supervision and control of youth confined in its programs and facilities.

(6) "Law enforcement support personnel" means persons, other than peace officers, whose primary employment with a law enforcement unit consists of performing functions directly related to the prevention, detection, or investigation of crime.

(7) "Law enforcement unit" means:

(A) Any agency, organ, or department of this state, a subdivision or municipality thereof, or a railroad whose primary functions include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime;

(B) The Office of Permits and Enforcement of the Department of Transportation, the Department of Juvenile Justice and its institutions and facilities for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by such department or institutions, and the office or section in the Department of Juvenile Justice in which persons are assigned who have been designated by the commissioner to investigate and apprehend delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services; and

(C) The Department of Corrections, the Department of Community Supervision, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, and county correctional institutions for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by such department, board, or institutions.

(8) "Peace officer" means, for purposes of this chapter only:

(A) An agent, operative, or officer of this state, a subdivision or municipality thereof, or a railroad who, as an employee for hire or as a volunteer, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public order, the protection of life and property, and the prevention, detection, or investigation of crime;

(B) An enforcement officer who is employed by the Department of Transportation in its Office of Permits and Enforcement and any person employed by the Department of Juvenile Justice who is designated by the commissioner to investigate and apprehend delinquent children and any child with a pending juvenile court case alleging the child to be a child in need of services;

(B.1) Personnel who are authorized to exercise the power of arrest, who are employed or appointed by the Department of Juvenile Justice, and whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, the supervision of delinquent children in the department's institutions, facilities, or programs, or the supervision of delinquent children under intensive supervision in the community;

(C) Personnel who are authorized to exercise the power of arrest and who are employed or appointed by the Department of Corrections, the Department of Community Supervision, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, county probation systems, and county correctional institutions; and

(D) An administrative investigator who is an agent, operative, investigator, or officer of this state whose duties include the prevention, detection, and investigation of violations of law and the enforcement of administrative,

regulatory, licensing, or certification requirements of his or her respective employing agency.

Law enforcement support personnel are not peace officers within the meaning of this chapter, but they may be certified upon voluntarily complying with the certification provisions of this chapter.

(9) "Retired peace officer" means a retired law enforcement officer who, prior to his or her retirement from service with the state or a subdivision or municipality thereof, was a peace officer within the meaning of such term as defined in paragraph (8) of this Code section. A retired peace officer may be certified or registered upon voluntarily complying with the certification or registration provisions of this chapter. Such term shall also mean a retired law enforcement officer who retired from service with the United States who meets all criteria as specified by the council for such classification; provided, however, that such classification shall not exempt such officer from satisfying the minimum employment and training requirements of this chapter if such officer is appointed or employed as a peace officer by the state or a subdivision or municipality thereof.

(10) "School" means any school, college, university, academy, or training program approved by the council which offers basic law enforcement training and which consists of a combination of a course curriculum, instructors, and facilities.

(10.1) "School resource officer" means a peace officer whose primary employment or assigned duties with a law enforcement unit is assignment or appointment to a public elementary school or secondary school.

(11) "Speed detection device" means that particular device designed to measure the speed or velocity of a motor vehicle and marketed under the name "Vascar," any device designed to measure the speed or velocity of motor vehicles using the Doppler principle of radio detection and ranging and commonly marketed under the name "radar," or any similar device, including but not limited to laser, operating under the same or similar principle, which device is approved by the Department of Public Safety for the measurement of speed, including any device for the measurement of speed or velocity based upon the Doppler principle of radar or speed timing principle of laser.

O.C.G.A. § 35-4-8

Current through the 2019 Regular Session of the General Assembly

GA - Official Code of Georgia Annotated

TITLE 35. LAW ENFORCEMENT OFFICERS AND AGENCIES

CHAPTER 4. GEORGIA POLICE ACADEMY

§ 35-4-8. Training program for coroners and deputy coroners

Subject to rules and regulations prescribed by the board, the academy shall make available to all coroners and deputy coroners in the state at least once annually a training program of at least 16 hours of instruction including, but not limited to, the following: Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act"; all laws pertaining to the duties of coroners; and investigating technique. The board is authorized to charge such tuition as may be necessary to defray the expense of such training and is also authorized to accept appropriations from any governmental unit or gifts or grants for such purpose.

History

Ga. L. 1980, p. 543, § 4; Ga. L. 1992, p. 6, § 35.

OFFICIAL CODE OF GEORGIA ANNOTATED

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O.C.G.A. Section 42-4-3

Current through the 2019 Regular Session of the General Assembly

GA - Official Code of Georgia Annotated TITLE 42. PENAL INSTITUTIONS CHAPTER 4. JAILS ARTICLE 1. GENERAL PROVISIONS

Section 42-4-3. When coroner to act as keeper of jail

The county coroner shall be keeper of the jail when the sheriff is imprisoned or absent from the county leaving no deputy.

History

Orig. Code 1863, § 564; Code 1868, § 628; Code 1873, § 587; Code 1882, § 587; Penal Code 1895, § 1122; Penal Code 1910, § 1151; Code 1933, § 77-105.

OFFICIAL CODE OF GEORGIA ANNOTATED

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02CV-0541

Joyce H. Cantrell
Superior Court Clerk
Pickens County

Telephone
(706) 692-2014

PICKENS COUNTY SUPERIOR COURT
STATE OF GEORGIA

P.O. Box 130
Jasper, Georgia 30143

JERILYN JOYE WARE
VS
DON GORDON WARE, JR.

CIVIL ACTION
2000 SU CV 542

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FORSYTH COUNTY GEORGIA
FILED IN THIS OFFICE

APR 10 2002

Douglas Bonella
CLERK SUPERIOR COURT

THIS IS TO CERTIFY THAT THE FOREGOING ARE THE ORIGINAL
DOCUMENTS FILED IN THE ABOVE-STYLED-CASE
THIS 9TH DAY OF APRIL 2002

GAIL BROWN

Gail Brown

DEPUTY CLERK



IN THE SUPERIOR/~~STATE~~ COURT OF PICKENS COUNTY
STATE OF GEORGIA

JERILYN JOYE WARE

CIVIL ACTION
NUMBER

02CV-0541
2002-SU-CV-91

PLAINTIFF

VS.

DON GORDON WARE, JR.

DEFENDANT

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

T. RUSSELL McCLELLAND, III
DREGER, McCLELLAND & PIESCHEL, LLP
555 SUN VALLEY DRIVE
SUITE K-1
ROSWELL, GEORGIA 30076

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 6th day of February, 20 02.

Clerk of Superior/State Court

BY Paul Brown

Deputy Clerk

INSTRUCTIONS: Attach addendum sheet for additional parties if needed; make notation on this sheet if addendum sheet is used.

IN THE SUPERIOR COURT OF PICKENS COUNTY

2002 FEB -7 AM 11:31

STATE OF GEORGIA

JERILYN JOYE WARE,

Plaintiff

vs.

DON GORDON WARE, JR.,

Defendant.

2002 SU CV 91
CIVIL ACTION
FILE NO. 95CV-000081MOTION FOR CONTEMPT

COMES NOW, T. Russell McClelland III as counsel for the Plaintiff in the above-styled case and files and moves the Court to attach the Defendant for contempt upon the following grounds:

1.

The Defendant is subject to the jurisdiction of this Court and may be personally served with a copy of this motion at 6165 Parris Circle, Cumming, Forsyth County, Georgia 30040.

2.

On April 6, 1995, in the matter of *Ware v. Ware*, Civil Action File No. 95CV-000081, this Court issued a Final Judgment and Decree of Total Divorce (hereinafter "Final Decree"), which incorporated the Compromise Agreement Settling All Issues Except Divorce dated February 28, 1995 (hereinafter "Settlement Agreement") in said Final Decree by reference.

3.

Paragraph 3 of the Settlement Agreement required the Defendant to pay One Hundred Eight and 55/100 Dollars (\$108.55) per week for child support.

4.

Paragraph 5 of the Settlement Agreement requires the Defendant to maintain a life insurance policy in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) with the Plaintiff as the exclusive primary beneficiary with the parties' minor children as exclusive secondary beneficiaries as long as the Defendant is required to support the parties' minor children.

5.

Paragraph 6 of the Settlement Agreement requires the Defendant to maintain medical and hospitalization insurance for the benefit of the parties minor children and provides that Defendant shall be solely responsible for paying all medical, hospitalization, doctor, dental, psychological and prescription drug expenses not paid or covered under any medical and hospitalization policy maintained by the Defendant, including deductible.

6.

Notwithstanding such Final Decree, the Defendant has wilfully failed and refused to meet his weekly child support obligation in full. Defendant is currently Two Thousand-Two Hundred-Seventy-Nine and 07/100 Dollars (\$2,279.07) in arrears on his child support obligations.

7.

Notwithstanding such Final Decree, the Defendant has willfully failed and refused to maintained and does not currently have in effect the required life insurance policy for the benefit of the Plaintiff and the minor children.

8.

Notwithstanding such Final Decree, the Defendant has willfully failed and refused to maintained medical and hospitalization insurance for the benefit of the minor children. The Plaintiff has been forced to provide the required medical and hospitalization insurance at her own expense.

Plaintiff has paid Five Thousand-Three Hundred-Eighty-Four and 72/100 Dollars (\$5,384.72) to maintain medical and hospitalization insurance on the minor children. Additionally, Plaintiff has paid \$750.00 Dollars in medical expenses of the minor children.

9.

In addition, it has been necessary for the Plaintiff to retain legal counsel and incur substantial costs of litigation in order to enforce the Final Decree.

THEREFORE, the Plaintiff seeks the Court's assistance in enforcing the Final Decree and by issuance of a Rule Nisi requiring the Defendant to appear and show cause why he should not be attached for contempt, required to pay all child support arrearage instant, required to reimburse Plaintiff for her expenses for medical and hospitalization insurance instant, required to reimburse Plaintiff for her medical expenses instant and required to pay Plaintiff's attorney fees and expenses of litigation and for such other relief as the Court deems just and proper.

Respectfully submitted this 5 day of February, 2002.

DREGER, McCLELLAND & PIESCHEL, LLP



T. Russell McClelland III
Georgia Bar No. 483401
Attorney for Plaintiff

555 Sun Valley Drive
Suite K-1
Roswell, Georgia 30076
770-518-8475

IN THE SUPERIOR COURT OF PICKENS COUNTY

2002 FEB -7 AM 11:31

STATE OF GEORGIA

JERILYN JOYE WARE,

Plaintiff

vs.

DON GORDON WARE, JR.,

Defendant.

JOYCE F. GANTHER, CLERK
PICKENS COUNTY, GA

2002 SU CV 91

CIVIL ACTION
FILE NO. 95CV-000081

RULE NISI

The Motion for Contempt, having been read and considered, shall be filed; and a copy together with this Rule Nisi shall be served upon the Defendant as required by law.

The Defendant shall appear and show cause before the appropriate non-jury division of this Court on 20th day of March, 2002 at 9:00 o'clock A.m. why he should not be attached for contempt in the above-referenced matter.

This 7th day of February, 2002

Paul D. Brown, Jr.
Judge, Superior Court of Pickens County

IN THE SUPERIOR COURT OF PICKENS COUNTY

STATE OF GEORGIA

JERILYN JOYE WARE,

Plaintiff

v.

DON GORDON WARE, JR.,

Defendant

CIVIL ACTION FILE

2002 SU CV 91
NO. 95CV-000081

ACKNOWLEDGMENT OF SERVICE

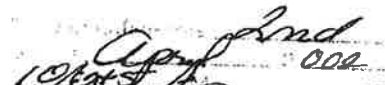
The undersigned Defendant in the above styled action hereby acknowledges personal service of the Motion for Contempt; all additional service is hereby waived.

This 28 day of March, 2002.


Don Gordon Ware, Jr.
Defendant

Sworn to and subscribed before me this
28th day of March, 2002.


NOTARY PUBLIC Notary Public, Forsyth County, Georgia
My Commission Expires Feb. 16, 2004


10/24/02
Don Brown, Jr.

IN THE SUPERIOR COURT OF PICKENS COUNTY

STATE OF GEORGIA

JERILYN JOYE WARE,

Plaintiff

vs.

DON GORDON WARE, JR.,

Defendant.

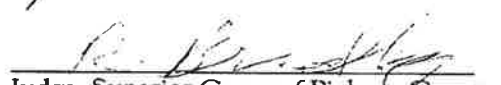
CIVIL ACTION
FILE NO: 2002SUCV91

TRANSFER ORDER

It appearing to the Court that the parties agree and consent that because there is now pending in the Superior Court of Forsyth County an action, to-wit: Don Ware, Jr. v. Jerilyn Harder, Civil Action File No. 02-CV-0178, between these parties involving issues of modification of child support and visitation and that it would be appropriate for this matter to be transferred to the Superior Court of Forsyth County and consolidated with the action now pending in said Court.

It is therefore ORDERED that this case be transferred to the Superior Court of Forsyth County dependent upon the Plaintiff incurring all costs including \$50.00 transfer costs, provided that unless Plaintiff pays all accrued costs within twenty days of mailing or delivery of cost bill to the Plaintiff, this action shall automatically stand dismissed without prejudice.

So ORDERED this 5 day of April, 2002.


Judge, Superior Court of Pickens County

[SIGNATURES CONTINUED ON NEXT PAGE]

Prepared and submitted by:



T. Russell McClelland III
Attorney for Plaintiff
Georgia Bar No. 483401
Dreger, McClelland & Pieschel, LLP
555 Sun Valley Drive, Suite K-1
Roswell, Georgia 30076
(770) 518-8475

Consented to by:



Signed with express permission by T. Russell McClelland III

Jeanne L. Sacks
Attorney for Defendant
Georgia Bar No. 455584
Banks, Stubbs, Neville & Cunat L.L.P.
309 Pirkle Ferry Road, Building F
Cumming, Georgia 30040
(770) 887-1209

Notice of Non-Compliance with O.G.G.A § 9-11-3 (b) and/or 9-11-58 (b)

To: Georgia Superior Court Clerks' Cooperative Authority

From: Office of the Clerk of Court
Superior Court
Forsyth County

Date: 4-10-02

Civil Action Number: 02CV-0541

Notice is hereby given to the Georgia Superior Court Clerks' Cooperative Authority that the party(ies) responsible for complying with the statutory provisions of O.G.G.A § 9-11-3 (b) and/or O.G.G.A § 9-11-58 (b) have failed to do so and, therefore, this office can not transmit the form(s) designated below, as required by O.G.G.A § 15-6-61 (a) (16) and (17).

General Civil Case

- ☐ General Civil Case Initiation form was not filed pursuant to O.G.G.A § 9-11-3 (b).
- ☐ General Civil Case Disposition form was not filed pursuant to O.G.G.A § 9-11-58 (a).

Domestic Relations Case

- ☒ Domestic Relations Case Initiation form was not filed pursuant to O.G.G.A § 9-11-3 (b).
- ☐ Domestic Relations Case Disposition form was not filed pursuant to O.G.G.A § 9-11-58 (b).

COPY TO CLERKS
AUTHORITY

DATE 4/16/02 BY BM

IN THE SUPERIOR COURT OF FORSYTH COUNTY
STATE OF GEORGIA

FORSYTH COUNTY GEORGIA
FILED IN THIS OFFICE

JUN 10 2005

Daugherty Lavelle
CLERK SUPERIOR COURT

JERILYN JOYE WARE,
Plaintiff,

v.

DON GORDON WARE, JR.,
Defendant.

Civil Action File
No. 02CV-0541

Dismissal Without Prejudice
For Want of Prosecution

ORDER

The above styled case having come on for a docket call on June 6, 2005, and the parties and/or counsel having been given notice at the last address of record; and there having been no motion for continuance nor legal cause shown why the case should not be called; upon call of the case there was no response within a reasonable period of time;

It is, therefore, ORDERED and ADJUDGED that the above styled case is hereby Dismissed Without Prejudice For Want of Prosecution with costs cast upon the Plaintiff.

So ORDERED, this 10th day of June, 2005.



David L. Dickinson, Judge
Superior Court of Forsyth County
Bell-Forsyth Judicial Circuit

Original: Clerk of Superior Court
cc: Dreger, Coyle, Bergman & Pietschel
Jeanne L. Sacks, Esq.

O.C.G.A. § 16-10-20.1

Current through the 2019 Regular Session of the General Assembly

GA - Official Code of Georgia Annotated

TITLE 16. CRIMES AND OFFENSES

CHAPTER 10. OFFENSES AGAINST PUBLIC ADMINISTRATION

ARTICLE 2. OBSTRUCTION OF PUBLIC ADMINISTRATION AND RELATED OFFENSES

§ 16-10-20.1. Filing false documents

(a) As used in this Code section, the term "document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form and shall include, but shall not be limited to, liens, encumbrances, documents of title, instruments relating to a security interest in or title to real or personal property, or other records, statements, or representations of fact, law, right, or opinion.

(b) Notwithstanding Code Sections 16-10-20 and 16-10-71, it shall be unlawful for any person to:

(1) Knowingly file, enter, or record any document in a public record or court of this state or of the United States knowing or having reason to know that such document is false or contains a materially false, fictitious, or fraudulent statement or representation; or

(2) Knowingly alter, conceal, cover up, or create a document and file, enter, or record it in a public record or court of this state or of the United States knowing or having reason to know that such document has been altered or contains a materially false, fictitious, or fraudulent statement or representation.

(c) Any person who violates subsection (b) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than ten years, a fine not to exceed \$10,000.00, or both.

(d) This Code section shall not apply to a court clerk, registrar of deeds, or any other government employee who is acting in the course of his or her official duties.

History

Code 1981, § 16-10-20.1, enacted by Ga. L. 2012, p. 90, § 1/HB 997; Ga. L. 2014, p. 741, § 1/HB 985.

OFFICIAL CODE OF GEORGIA ANNOTATED

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To: The Chairman and Secretary of the County
Executive Committee of the REPUBLICAN
Party of CHEROKEE County/Municipality
State of Georgia

DECLARATION OF CANDIDACY AND AFFIDAVIT
(COUNTY/MUNICIPALITY)

I, the undersigned, being first duly sworn on oath, do depose and say: my name is DON GORDON WARE Jr

my residence address is 501 RABUN CT
(Street Number) (Street)

CANTON CHEROKEE GA 30115
(City) (County) (State) (Zip Code)

my post office address is 501 RABUN CT CANTON GA 30115

my telephone number is 6787707523 6787707523
(Business) (Home)

my profession, business, occupation (if any) is BUSINESS OWNER

the name of my precinct is 020; I am an elector of the county of my
residence and eligible to vote in the primary election in which I am a candidate for nomination; the name of the office

I am seeking is CORONER; my date of birth is 12/12/1967; as of the
(Circuit, District, or Post if Applicable)

general election for this office, I will have been a legal resident of the State of Georgia for 52 consecutive years; a legal

resident of CHEROKEE county for 23 consecutive years; a legal resident of my district (if applicable)

for 14 consecutive years; and a legal resident of my circuit (if applicable) for _____ consecutive years;

I am a citizen of the United States; I am eligible to hold such office; I am a candidate for nomination in the

REPUBLICAN GENERAL PRIMARY ELECTION to be held on the 19 day of May, 2020;
(Primary)

I have never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude or conviction of domestic violence under the laws of this State, any other State, or of the United States, or, if so convicted that my civil rights have been restored; and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude; I am not a defaulter for any federal, state, county, municipal, or school system taxes required of such officeholder or candidate if such person has been finally adjudicated by a court of competent jurisdiction to owe those taxes, but such ineligibility may be removed at any time by full payment thereof, or by making payments to the tax authority pursuant to a payment plan, or under such other conditions as the General Assembly may provide by general law (pursuant to Ga. Const. Art. II, Sec. II, paragraph III); I will not knowingly violate any provisions of the Georgia Election Code (O.C.G.A. § 21-2) or of the rules or regulations adopted thereunder; I will not knowingly violate the rules or regulations of the Republican party

I understand that any false statement knowingly made by me in this Declaration of Candidacy and Affidavit will subject me to criminal penalties as provided by law and I hereby request you to cause my name to be placed on the ballots to be used in such primary election as a candidate for the nomination I am seeking.

(Signature of Candidate)

Sworn to and subscribed before this 5th day of March, 2020

(Notary Public)

My Commission Expires: 4-21-21

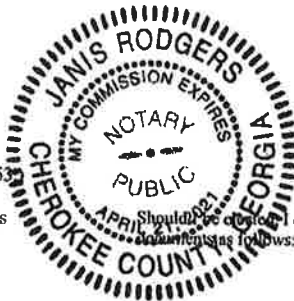
(Required by Ga. Election Code O.C.G.A. § 21.2.153)

I desire that my name appear on the ballot as follows
(the surname of the candidate shall be as it appears
on the candidate's voter registration card):

DON WARE JR
(Please Print)

DON WARE
(Please Print)

(over)



1. ☒ I hereby tender check/cash in the amount of \$35.00

NAME OF BANK: RENASANT BANK

CHECK NUMBER: 1183

In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the superintendent shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check as prescribed in O.C.G.A. §21-2-6(d).

☐ I hereby file a Pauper's Affidavit, accompanied by a qualifying petition as prescribed in O.C.G.A. § 21-2-153 (a.1), in lieu of paying the qualifying fee.

NOTE: CANDIDATES FOR THE FOLLOWING OFFICES MUST FILE AN ADDITIONAL AFFIDAVIT IN ACCORDANCE WITH THE LISTED CODE SECTION AND MAY HAVE OTHER REQUIREMENTS IN ORDER TO BE QUALIFIED TO SEEK OFFICE. CANDIDATES SHOULD REVIEW THE QUALIFICATIONS FOR WHICH THEY OFFER FOR ELECTION CAREFULLY.

CLERK OF SUPERIOR COURT	O.C.G.A. § 15-6-50(b)(2)
JUDGE OF THE PROBATE COURT	O.C.G.A. § 15-9-2 (a)(2)
SHERIFF	O.C.G.A. § 15-16-1(c)(2)
CORONER	O.C.G.A. § 45-16-1(b)(2)
TAX RECEIVER	O.C.G.A. § 48-5-210(b)(2)
TAX COLLECTOR	O.C.G.A. § 48-5-210(b)(2)
TAX COMMISSIONER	O.C.G.A. § 48-5-210(b)(2)

AFFIDAVIT FOR CORONER

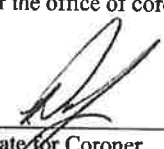
To be completed by Candidates for Coroner. This affidavit is to be filed with the officer before whom such person has qualified to seek said office prior to or at the time of qualifying. Reference O.C.G.A. 45-16-1.

I DON GORDON WARE JR. have qualified to seek the office of Coroner in CHEROKEE County, Georgia, on 5th March 2020

I hereby affirm that I meet the following qualifications for said office:

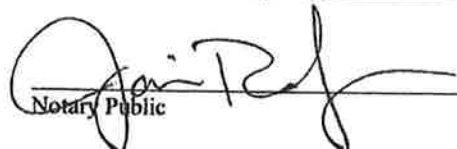
- (A) I am a citizen of the United States;
- (B) I am a resident of CHEROKEE County and have been for at least two years prior to qualifying for the election to the office and will remain a resident of such county during my term of office;
- (C) I am a registered voter in CHEROKEE County;
- (D) I have attained the age of 25 years prior to the date of the general primary in the year I have qualified for election to the office;
- (E) I have obtained a high school diploma or its recognized equivalent. (This shall not apply to any person serving as a coroner on July 1, 1980);
- (F) I have not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States; and
- (G) I will successfully complete the next scheduled class no longer than 180 days after my election or appointment a basic training course provided by the Georgia Police Academy, but the affidavit required in O.C.G.A. 45-16-1 shall not be required to affirm that the requirements of this subparagraph have been met at the time of qualifying for the office of coroner.

This 5th day of March, 2020


Candidate for Coroner

Sworn to and subscribed before me this

5th day of March, 2020


Notary Public

