

486

IN THE SUPERIOR COURT OF WALKER COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)	
)	
vs.)	CASE #'s
)	03-CR-20884; 03-CR-00885;
TOMMY RAY-BRENT MARSH,)	03-CR-20886; & 03-CR-20887
Defendant)	

MOTION FOR DISCLOSURE OF SIMILAR OR EXTRINSIC ACT EVIDENCE AND FOR PRETRIAL HEARING TO DETERMINE ADMISSIBILITY OF ANY ACTS ALLEGED BY THE STATE TO BE SIMILAR TRANSACTIONS WITH AUTHORITY

COMES NOW the Defendant, through counsel, and moves the Court for an order compelling the State to produce any similar or extrinsic act, general bad character or prior conviction evidence that the State anticipates attempting to introduce against the defendant as proof of intent, motive, plan, scheme, bent of mind, and/or course of conduct or in cross-examination of the defendant, should the defendant testify at trial, as provided for in O.C.G.A. § 24-9-20 (b). Specifically, Defendant seeks information pertaining to the identity of individuals and the dates and transactions alleged to be extrinsic act evidence or evidence of general bad character or prior convictions of the defendant.

The defendant submits that disclosure of the evidence described by this motion is required by the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution as well as Article I, Section I, Paragraph I of the Constitution of the State of Georgia.

Prompt pretrial production of this type of evidence is in accordance with Uniform Superior Court Rule 31.1 and will enable the defendant to prepare appropriate legal objections to the admissibility of such evidence, such as an objection establishing insufficient similarity or connection between the independent crime or misconduct and the offense for which the defendant is presently on trial. The defendant respectfully submits that there is no valid justification for non-disclosure at this juncture.

FILED IN OFFICE

SEP 23 2003

Bre. Marsh
Clerk

487

Defendant further moves for a pretrial hearing, pursuant to Rule 31.3 of the Uniform Rules for the Superior Courts, to determine the admissibility of any alleged similar transaction(s) which the State will seek to introduce at trial against the defendant.

Rule 31.3 provides, in pertinent part, that the Court

"...shall hold a hearing at such time as may be appropriate, and may receive evidence on any issue of fact necessary to determine the request, out of the presence of the jury."

While Rule 31.3 does not mandate a pretrial hearing, it does require that the Court make its determination outside the presence of the jury. Counsel submits that a pretrial hearing would be in the interest of judicial economy in that the jury would not be inconvenienced by any extended presentation of evidence or argument. In addition, if the hearing is held pretrial, counsel will be able to provide the Court with briefs on any issue of law which may develop.

Finally, the pretrial determination of admissibility would assist both the State and the defendant in the organization and presentation of their respective cases.

The Georgia Court of Appeals in the case of Poole v. State, 201 Ga. App. 554, 411 S.E.2d 562 (1991), noted, in dicta, that it "is preferable that the (31.3) hearing be held before trial." In the Poole case, the state's attorney made a reference in his opening statement to a prior drug distribution offense which, as of that time, had not been ruled admissible by the Court.

Although there was no error in that case because it was later determined that the act was admissible as a similar transaction, the possibility for mistrial clearly existed. Counsel suggests that a pretrial hearing would alleviate this type of predicament.

WHEREFORE, the defendant requests that his motion for a pretrial hearing on this matter be granted.

Respectfully submitted, this 23rd day of Sept., 2003.

488

P. O. Box 1130
Ringgold, Georgia 30736
(706) 965-8300



McCracken Poston
Attorney for Tommy Ray-Brent Marsh
GB 585606


Ron Cordova

CERTIFICATE OF SERVICE

Now comes McCracken Poston, counsel for Defendant, and hereby certifies that a true and accurate copy of the foregoing pleading has been served upon the District Attorney (by ~~posting said copy in the U.S. Mail with sufficient postage attached thereto~~)(by hand delivery to the District Attorney or one of his staff).

This 23 day of Sept., 2003.



McCracken Poston