

596

IN THE SUPERIOR COURT OF WALKER COUNTY
STATE OF GEORGIA

FILED IN OFFICE

STATE OF GEORGIA)
)
vs.)
)
TOMMY RAY-BRENT MARSH,)
Defendant)

APR 08 2004

INDICTMENT NOS. 03CR20884,
03CR20885, 03CR20886 and
03CR20887

12:35 P.M.

MOTION FOR FULL RECORDATION
AND OBJECTION TO NON-RECORDED PROCEEDING

Defendant moves that the Court require all proceedings in this case, including all pre-trial motions and proceedings, voir dire, opening statements, sidebar conferences, closing arguments, jury charges and any conferences thereon, sentencing proceedings, post trial motions, and all conferences held between the District Attorney of this Circuit and any Superior Court Judges concerning the above entitled case when the defendant or defense counsel is or is not present, to be taken down by the court reporter. This is required by the due process and assistance of counsel guarantees of the 1982 Georgia Constitution, Article I, Section I, Paragraphs I and XIV (O.C.G.A. §§ 2-101, 2-114) and the Sixth and Fourteenth Amendments to the United States Constitution.

Furthermore, on two occasions the Court has initiated "in chambers" conferences without the presence of a court reporter. In the first, the Court discussed a pending motion of the Defendant to set aside an earlier ruling that directed the defense to pay a court reporter's costs of taking down evidence in a motion hearing. Fortunately, the Court reversed its earlier ruling in the first unreported conference.

On Monday, April 5, 2004, counsel for the Defendant was requested by the Court to attend a meeting in the offices of the Superior Court of Walker County. In an abundance of precaution, counsel for defendant requested to the Judge's law clerk that the Court provide a court reporter. The said meeting was held at approximately 3:00 p.m. on that date. Present were District Attorney Buzz Franklin, Assistant District Attorney Chris Arnt, the defendant, the undersigned counsel for the defendant, the Honorable Judge Bodiford, and his Law Clerk Ms. Leanne Dolin. No court reporter was present, although one had been requested by the defense. The Court did address at the meeting that it did not feel a court reporter was necessary.

However, significant issues concerning the case were discussed at this meeting, mostly concerning the mechanism for choosing a county, from a short list prepared by the Court, from which to obtain jurors for a trial in the above-styled cases. Furthermore, there was some discussion by the Court of the Court's application of population comparisons in determining the "short list" of five counties from which the State and the defense were asked to attempt an agreement on one county. There were population statistics produced by the Court, through the Court's law clerk, and distributed to the State and to the defense. There was also some discussion of keeping confidential the short list of counties until the Court made a selection. The defendant understands the need for confidentiality but feels that the matter should have been recorded and preserved for possible later appeal.

The defense feels that the April 5, 2004 meeting concerned significant issues and subject matter and was a proceeding that should have been recorded by an official court reporter for the Court. The defense had no method of preserving the statements of the Court. Furthermore, the production by the Court of statistics concerning Walker County and the five counties chosen by the

598

Court was submitted to the litigants in the case without any mechanism to question the admissibility and accuracy of the material. For lack of an official record of the proceeding, the defense may only object after the fact. This objection is made to attempt to preserve the record for appeal of the selection process of the county from which jurors will be chosen for the above-styled case. The defense further prays that all future matters that involve significant issues be taken down and recorded in the official record of this case.

Counsel for Defendant has attached an affidavit to this pleading in support of said pleading, as Exhibit "A."

Respectfully submitted, this 8th day of April, 2004.



McCRACKEN POSTON
Georgia State Bar No. 585606
Attorney for Defendant

P. O. Box 1130
Ringgold, GA 30736
706-965-8300

599

CERTIFICATE OF SERVICE

This is to certify that I have this day, served a copy of the foregoing pleading, by depositing the same in the United States Mail, with adequate postage affixed thereon to ensure delivery, addressed as follows:

Honorable Herbert E. "Buzz" Franklin
District Attorney- Lookout Mountain Judicial Circuit
P. O. Box 1025
LaFayette, Georgia 30728

This 8th day of April, 2004.



McCRACKEN

600

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APR 13 2004

Bice madame
Clerk

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vs.)	INDICTMENT NOS. 03CR20884,
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Defendant)	

AFFIDAVIT IN SUPPORT OF MOTION FOR FULL RECORDATION
AND OBJECTION TO NON-RECORDED PROCEEDING

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EXHIBIT "A"

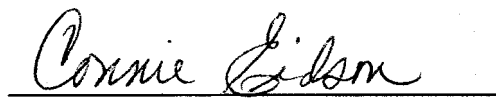
601

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This 8th day of April, 2004.


McCRACKEN POSTON

Sworn to and subscribed before me,
this 8th day of April, 2004.


Notary Public

My Commission Expires: 09-19-2005

EXHIBIT "A"