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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 INDIVIDUAL SEQUESTERED  
VOIR DIRE, AND SEQUESTRATION OF  
JURORS DURING VOIR DIRE AND THROUGHOUT THE TRIAL

The defendant, by counsel, moves this Court, pursuant to O.C.G.A. Section 15-12-133 and 15-12-142, Article 1, Section 1, Paragraphs I, II, XI, and XVII of the Georgia Constitution of 1983, the Sixth, Eighth and Fourteenth Amendments to the United States Constitution to allow counsel for the Defendant to voir dire prospective jurors individually and to sequester the jurors from the courtroom during the voir dire in order to prevent the jury panel from hearing questions being asked individual jurors. The defendant also moves for sequestration of the jury throughout the trial of the case.

The Defendant is charged in a total of seven hundred and eighty-seven felony counts contained in the above numbered four indictments, to wit: #03CR20884 "Burial Service Fraud" (122 counts); #03CR20885 "False Statement" (47 counts); #03CR20886 "Abuse of a Dead Body" (179 counts); and #03CR20887 "Theft by Taking" (437 counts), "Criminal Attempt – Theft by Taking" (2 counts).

The crime with which the defendant is charged received considerable prejudicial pretrial publicity, and continues to receive media publicity. In Jordan v. Lippman, 763 F.2d 1265, 1278 (11th Cir. 1985), The Eleventh Circuit held that in such circumstances, "the voir dire must be adequate to unearth potential prejudice."

**FILED IN OFFICE**

SEP 23 2003

*Brie Matheson*  
Clerk

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O.C.G.A. 15-12-133 states:

In all criminal cases both the state and the defendant shall have the right to an individual examination of each juror from which the jury is to be selected prior to interposing a challenge. The examination shall be conducted after the administration of a preliminary oath to the panel or in criminal cases after the usual voir dire questions have been put by the court.

The defendant, pursuant to O.S.G.A. 15-12-133, has a right after the usual voir dire questions have been put to the jury by the court, to individually question all jurors on the entire panel prior to interposing a challenge to any of them. Ladd v. State, 228 Ga. 113, 184 S.E.2d 158 (1971); Gunnin v. State, 112 Ga. App. 720, 146 S.E. 2d 131 (1965).

The ABA Standards for Criminal Justice, Section 8-3.5(a) (2d ed. 1980) (emphasis added).

In Calley v. Callaway, 519 F.2d 184, 208-9 (5th Cir. 1975) (en banc), cert. denied, 425 U.S. 911 (1976), a case which, like the instant one, contained a strong possibility of prejudice due to pretrial publicity, the appellate court commended the lower court's conducting of the voir dire examination in accordance with the ABA Standards. See also, Coleman v. Kemp, 778 F.2d at 1542 (confirming preference for voir dire pursuant to the ABA Standards in the event of a significant possibility of prejudice).

The issues in the case require that voir dire include sensitive and potentially embarrassing questions exploring the prospective jurors' bias or prejudice.

Collective voir dire of jurors in panels as to their attitudes, familiarity with the crime or

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victim will inhibit candid responses and educate all jurors to prejudicial and incompetent material, making it impossible to inquire fully into a basis for challenge. "First, the juror may be reluctant to admit any bias in front of his peers - Second, . . . group questioning serves to apprise otherwise ignorant jurors of the offensive publicity. "Williams v. Griswald, 743 F.2d 1533, 1540 n. 14 (11th Cir. 1984).

Jurors are often reluctant to frankly and openly discuss their biases in a group setting. This Court cannot rely upon jurors' assurances of impartiality. Irvin v. Dowd, 366 U.S. 717, 728, (1961) (jurors' statement of impartiality to be given "little weight" due to "unconscious mental processes"); Jordan v. Lippman, 763 F.2d at 1274, quoting United States v. Davis, 583 F.2d 190, 197 (5th Cir. 1978) ("The juror is poorly placed to make a determination of his own impartiality.") Thus, the voir dire must be sufficient to bring out enough underlying facts about the juror's extrajudicial knowledge, the opinions which have been formed and all of the surrounding circumstances so that an independent determination of impartiality can be made regardless of the juror's assurances. Jordan v. Lippman, 763 F.2d 1274. The Court must determine of each juror as to whether he can put aside extrajudicial influences and decide the case only on the law and the evidence presented at trial.

Individual voir dire promotes candor and allows jurors to respond openly and frankly to sensitive questions, without risk of fear that the entire panel will be tainted.

The federal courts have recognized that in a case such as this, Georgia's statutory questions are insufficient to unearth juror bias. Jordan v. Lippman, 763 F.2d 1276 n. 12 citing Ham v. South Carolina, 409 U.S. 524 (1973). Accord: Coleman v. Kemp, 778 F.2d 1487, 1542-43 (11th Cir. 1985). cert. denied, \_\_\_\_ U.S. \_\_\_\_, 90 L.Ed.2d 730 (1986). To ensure a fair and impartial jury, it is essential that jurors be asked questions such as: "What have you read about this case?"; "What

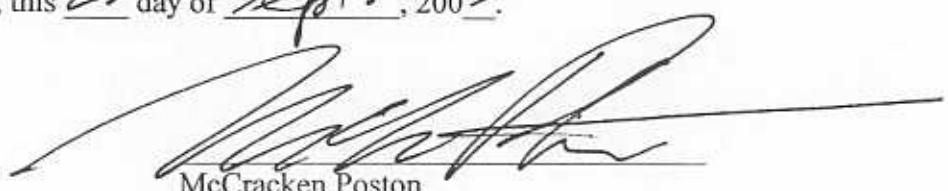
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have you heard about this case?"; "What have you heard about my client, who is accused of this crime?"; "How do you think what you have read and heard will affect you?" Such questions cannot be asked in a collective voir dire. Since any information revealed in the answers will be imparted to remaining venire members.

Defendant has also filed a motion for a complete and total change of venue. Should that motion be granted, the needs for the relief sought in this motion will be admittedly lessened, depending upon the area of the State where a trial would be held and the saturation of media coverage in that location.

WHEREFORE, defendant prays that the Court grant this motion.

Respectfully submitted, this 23<sup>rd</sup> day of Sept., 2003.



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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<sup>rd</sup> day of Sept; 2003



McCracken Poston